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PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FIFTH SESSION (2017)

SELECT COMMITTEE ON DELEGATED LEGISLATION

REPORT ON:

THE DRAFT ELECTIONS (VOTER EDUCATION) REGULATIONS, 2017

Directorate of Committee Services,
The National Assembly,
Parliament Buildings,
Nairobi.

March 2017

Paper laid by Chairperson Delegated Legislation on 29/3/17

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LIST OF ABBREVIATIONS AND ACRONYMS

CEO	-	Chief Executive Officer
IEBC	-	Independent Electoral and Boundaries Commission

1.0 CHAIRPERSON'S FOREWORD

In exercise of powers conferred by section 109 (1) (aa) of the Elections Act, 2011 as amended by the Election Laws (Amendment) Act No. 36 of 2016 and Election Laws (Amendment) Act No. 1 of 2017, IEBC was required to make the Elections (Voter Education) Regulations and effect them before the August, 2017 general elections.

The making of these Regulations is premised on the Elections Act, No. 24 of 2011 and Article 88 (4) (g) of the Constitution of Kenya. The purpose of the Regulations is to provide for processes for enabling persons to be informed on matters elections so that they can register and vote as a right whenever necessary.

Section 109 (3) of the Elections Act, 2011 as amended requires IEBC to first submit to the National Assembly draft Regulations for approval before publication and that this approval should be granted at least four (4) months preceding a general election. Section 109 (4) further requires IEBC to publish these draft regulations in the Kenya Gazette after approval by the House not later than sixty days prior to the date of a general election.

IEBC submitted the draft Regulations to the House on 13th February, 2017. The Committee deliberated on the Regulations with the Commission at sittings held on 20th and 21st February, 2017 at the Serena Beach Resort and Spa in Mombasa County on 13th and 14th March, 2017 at PrideInn Paradise again in Mombasa. According to IEBC, the Elections (Voter Education) Regulations, 2012 had proved difficult to implement and the Commission would be revoking them and substituting them with these new regulations.

It should be noted that regulation making process is through delegated authority by the National Assembly and cannot be taken away by the delegating authority. The role of the Committee therefore in the scrutiny of Regulations is to ensure that they conform to the constitution of Kenya, the Statutory Instruments Act, the National Assembly Standing Orders and all other legal laws, rules and regulations in force in Kenya before reporting to the House. For instance, the National Assembly Standing Orders require that Regulations should not be in conflict with provisions of the constitution of Kenya and the Act pursuant to which they are made, should not infringe on fundamental rights and freedoms of the public and should not directly or indirectly bar the jurisdiction of the courts.

Following the scrutiny, amendments were agreed on and are part and parcel of the final draft Regulations forming part of this report for approval by the House.

The Committee considered and adopted its report at a sitting held on 28th March, 2017 in the Main Parliament Building. There was no dissenting voice to the adoption. Minutes of sittings of the Committee as well list of Members present during adoption are annexed hereto as appendices 1 and 2.

The Committee wishes to express gratitude to the Speaker for the support and direction his leadership has accorded Committees in the discharge of their mandate. The Committee also wishes to record its appreciation to office of the Clerk of the National Assembly and the Directorates of Committees and Legal Services for providing technical support which was vital in the execution of its mandate and production of this report.

On behalf of the Committee on Delegated Legislation, and pursuant to Standing Order No. 199, it is my pleasure and duty to present to the House the Committee's report on the final draft Elections (Voter Education) Regulations, 2017 for debate and approval by the House for publication.

Signed.....**Date**.....28:3:17

HON WILLIAM CHEPTUMO, M.P.
CHAIRPERSON, SELECT COMMITTEE ON DELEGATED LEGISLATION

2.0 EXECUTIVE SUMMARY

Following the enactment of the Election Laws (Amendment) Act No. 36 of 2016 and the Election Laws (Amendment) Act No. 1 of 2017, a number of significant reforms have been introduced in the electoral process. They include the use of technology Regulations and a requirement that only party registered members shall vote at party primaries.

Effective voter education mechanisms are fundamentally important for any election because it is through such processes that persons are informed on electoral matters thus able to exercise their political rights under the constitution. These Regulations are intended to:-

(i) Implement Article 88 (4) of the constitution;
(ii) Create an environment for objective and effective voter education for all Kenyans;
(iii) Ensure efficient coordination of voter education for purposes of harmonization of the content of the voter education material;
(iv) Provide framework for monitoring and evaluation of voter education programmes :
(v) Promote effective and efficient use of resources set aside for voter education.

The scrutiny of the regulations was guided by:-

(i) The Constitution of the Republic of Kenya;
(ii) The Statutory Instruments Act, 2013;
(iii) The National Assembly's Standing Orders;
(iv) The Elections Act, 2011;
(v) The Elections (General) Regulations, 2012 with the amendments effected under the Election Laws (Amendment) Act, No. 36 of 2016 and Election Laws (Amendment) Act, No. 1 of 2017.

Upon scrutiny, the Committee is satisfied that the Regulations conform to the cited constitution of the Republic of Kenya, statutes and the National Assembly Standing Orders and recommends to the House to approve them for publication.

3.0 PREFACE

3.1 Committee's mandate

The Select Committee on Delegated Legislation is established pursuant to provisions of Standing Order No. 210 and its mandate is to consider in respect of any statutory instrument whether it:-

(a) *Is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;*
(b) *Infringes on fundamental rights and freedoms of the public;*
(c) *Contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;*
(d) *Contains imposition of Taxation;*
(e) *Directly or indirectly bars the jurisdiction of the court;*
(f) *Gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;*
(g) *Involves expenditure from the consolidated fund or other public revenues;*
(h) *Is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;*
(i) *Appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;*
(j) *Appears to have had unjustifiable delay in its publication or laying before Parliament;*
(k) *Makes rights, liberties or obligations unduly dependent upon non-renewable decisions;*
(l) *Makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;*
(m) *Inappropriately delegates legislative powers;*
(n) *Imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;*
(o) *Appears for any reason to infringe on the rule of law;*
(p) *Inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and,*
(q) *Accords to any other reason that the Committee considers fit to examine.*

Standing Order No. 210(4) provides that if the Committee:-

(a) *Resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument.*
(b) *Does not accede to the statutory instrument, the Committee may recommend to the House that the Assembly resolves that all or part of the statutory instrument be annulled and if the instrument:-*

(i) *is not made under a legislation concerning counties and a resolution is passed by the Assembly within twenty days on which it next sits after the instrument laid before it under paragraph (2), that all or part of the statutory instrument be annulled, the instrument of part thereof shall henceforth stand annulled; and*

(ii) *is made under a legislation concerning counties the Clerk shall within seven days of the resolution transmit a message to the Senate.*

Standing Order No. 210(5) provides that:-

The Clerk shall submit the resolution under paragraph 4(b) (i) to the relevant state department or the authority that published the statutory instrument.

Section 109 (3) and (4) of the Elections Act, 2011 as amended however provides as follows:-

> *"(3) 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 four months preceding a general election:*
>
> *Provided that this applies to the first general election under this Act.*
>
> *(4) The Commission shall publish in the Gazette, not later than sixty days prior to the date of the general election, the regulations approved by the National Assembly under subsection (3)''*

3.2 Committee Membership

The Committee was constituted on 21st May, 2013 and as at the time of adopting this report comprised:-

Hon. William Cheptumo, M.P.	-	***Chairperson***
Hon. Joseph Gitari, M.P.	-	***Vice Chairperson***
Hon. Alfred Keter, M.P.		
Hon. Hassan Aden Osman, M.P.		
Hon. Timothy W. Wanyonyi, M.P.		
Hon. George Theuri, M.P.		
Hon. Elisha Busienei, M.P.		
Hon. (Eng) Shadrack Manga, M.P.		
Hon. Yusuf Hassan, M.P.		
Hon. Michael Kisoi, M.P.		
Hon. Mohamed Adan Huka, M.P.		
Hon. John M. Waiganjo, M.P.		
Hon. Paul K. Bii, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Tom J. Kajwang', M.P.		

Hon. Simba Arati, M.P.
Hon. Rachael A. Ameso, M.P.
Hon. Vincent Musau, M.P.
Hon. William Kisang', M.P.
Hon. Neto Agostinho, M.P.
Hon. Paul Koinange, M.P.
Hon. Ibrahim Abdi Saney, M.P.
Hon. Eusilah Ng'eny, M.P.
Hon. Nicholas Ngi'kor Nixon, M.P.
Hon. Bernard Shinali, M.P.
Hon. Kabando Wa Kabando, M.P.
Hon. Daniel Maanzo, M.P.
Hon. Junet Nuh Sheikh, M.P.
Hon. William Kamoti Mwamkale, M.P.

3.3 Committee secretariat

George Gazemba	-	Senior Clerk Assistant
Wilson Dima Dima	-	Senior Legal Counsel
Abdullahi Aden	-	First Clerk Assistant
Halima Hussein	-	Third Clerk Assistant

4.0 INTRODUCTION AND BACKGROUND INFORMATION

4.1 Making of the Regulations and Committal to the Select Committee on Delegated Legislation

In exercise of powers conferred by Section 109 (1) (aa) of the Elections Act, 2011 and Article 88 (4) (g) of the constitution of Kenya, IEBC was required to make the Elections (Voter Education) Regulations and effect them before the August, 2017 general elections.

Section 109 (1) (aa) states as follows:-

> *''(1) 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 –*
>
> *(aa) provide for mechanisms for carrying out effective voter education''*

Section 109(3) and (4) state as follows:-

> *"(3) 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 four months preceding a general election:*
>
> *Provided that this applies to the first general election under this Act.*
>
> *(4) The Commission shall publish in the Gazette, not later than sixty days prior to the date of the general election, the regulations approved by the National Assembly under subsection (3)''*

Article 88 (4) (g) of the constitution states as follows:-

> *''(4) The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this constitution, and any other elections as prescribed by an Act of Parliament and, in particular for*
>
> *(g) Voter education''*

4.2. Legislative context and policy background of the Regulations

Article 88 (4) (g) of the constitution of Kenya requires IEBC to conduct and supervise voter education. The current Elections (Voter Education) Regulations, 2012 contemplate the establishment of national, sub national and constituency voter education committees. The Regulations also require the Commission to assign staff as voter educators but do not make provision for voter education curriculum.

According to IEBC, the Elections (Voter Education) Regulations, 2012 had proved difficult to implement and the purpose of these new regulations is to substitute and revoke the existing regulations. The new regulations purpose is to:-

(i) Implement Article 88 (4) of the constitution;
(ii) Create an environment for objective and effective voter education for all Kenyans;
(iii) Ensure efficient coordination of voter education for purposes of harmonization of the content of the voter education material;
(iv) Provide framework for monitoring and evaluation of voter education programmes :
(v) Promote effective and efficient use of resources set aside for voter education.

Part I of the Regulations is on preliminary matters and entails definition and objectives of the Regulations. Part II is on provision of voter education and makes provision on the role of the Commission in provision of voter education as well as voter education curriculum and education materials.

Part III of the Regulations is on voter educators and provides for qualifications for appointment as voter educators, their terms of reference and code of conduct. Part IV is on accreditation of voter education providers and sets out the accreditation criteria and issuance of accreditation certificates as well as code of conduct and revocation of accreditation among others. Part V is on conduct of voter education and also revokes Legal Notice No. 127 of 2012 on the Elections (Voter Education) Regulations, 2012.

The Regulations were accompanied by an explanatory memorandum as required by section 11 (2) of the Statutory Instruments Act, 2013.

5.0 CONSIDERATION OF THE REGULATIONS

The Committee considered these Regulations at sittings held on 20th and 21st February, 2017 at Serena Beach Resort and Spa in Mombasa and again on 13th and 14th March, 2017 at PrideInn Paradise Hotel in Mombasa.

It should be noted that regulation making process is effected through delegated authority by the National Assembly and the Assembly cannot take away this authority from the regulation making authority. In this regard, the role of the Committee in the scrutiny is to ensure that the Regulations adhere to the constitution of Kenya, the Statutory Instruments Act, the National Assembly Standing Orders and all other legal laws in force in Kenya before reporting to the House.

Upon consideration, the Committee presents to the House the final draft Regulations are as follows:-

THE ELECTIONS ACT
(*No.* 24 *of* 2011)
THE ELECTIONS (VOTER EDUCATION) REGULATIONS, 2017

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

1—Citation
2—Interpretation
3—Objective

PART II—PROVISION OF VOTER EDUCATION

4—Role of the Commission in provision of voter education
5— Voter curriculum and education material
6—Constituency election coordinators
7—Remuneration

PART III—VOTER EDUCATORS

8—Voter educators
9—Manner of carrying out the tasks of voter educators
10—Qualifications and other requirements
11—Code of conduct for voter education providers

PART IV— ACCREDITATION OF VOTER EDUCATION PROVIDERS

12—Application for accreditation
13—Accreditation criteria
14—Certificate of accreditation
15—Inspection of register
16—Accredited persons and organizations to sign Code of conduct
17—Commission may revoke accreditation, etc.
18—Monitoring and evaluation of voter education
19—Impartiality of voter education providers
20- Submission of information.

PART V— CONDUCT OF VOTER EDUCATION

21—Conduct of voter education
22— Revocation of L.N No 127 of 2012
SCHEDULE—Forms

IN EXERCISE of the powers conferred by section 109 of the Elections Act, 2011, the Independent Electoral and Boundaries Commission makes the following Regulations—

PART I—PRELIMINARY

Citation.

1. These Regulations may be cited as the Elections (Voter Education) Regulations, 2017 and shall come into effect upon publication in the Gazette.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"constituency elections coordinator" means an officer appointed by the Commission who is in charge of administration and coordination of the functions of the Commission at the constituency and may act as registration officer or a returning officer during elections;

"curriculum" means the voter education curriculum developed by the Commission under Regulation 5 and includes support materials approved by the Commission;

"voter education" means all forms of information or communication whose purpose is to educate members of the public including citizens residing outside Kenya on their rights and responsibilities in the electoral process;

"voter educator" means a person engaged by the Commission or by a voter education provider to carry out voter education under these Regulations;

"voter education provider" means an organization accredited by the Commission to conduct voter education under these Regulations;

Objective

3. The objective of these Regulations is to—

(a) implement Article 88 (4) (g) of the Constitution;

(b) create an environment for objective and effective voter education for all Kenyans;

(c) ensure efficient coordination of voter education for purposes of harmonization of the content of the voter education material;

(d) provide a framework for monitoring and evaluation of voter education programmes; and

(e) promote effective and efficient use of resources set aside for voter education in Kenya.

PART II—PROVISION OF VOTER EDUCATION

Role of the Commission in provision of voter education

4. The Commission shall be responsible for—

(a) formulation and review of policy and strategies for voter education;
(b) development and review of the voter education curriculum;
(c) accreditation and maintenance of a register of voter education providers;
(d) carrying out continuous voter education programmes;
(e) development and dissemination of voter education materials;
(f) collaboration with stakeholders and partners in voter education; and
(g) monitoring and evaluating the voter education programmes.

Voter education curriculum and education materials

5. (1) The Commission shall develop a voter education curriculum and support materials.

(2) The voter education curriculum shall cover all processes outlined in the electoral cycle.

(3) The dissemination of the voter education curriculum and support materials may be through mass media, electronic learning, public forums or any other appropriate modes.

(4) The Commission shall —

(a) build capacity of all the voter education providers to ensure voter education is carried out effectively and
(b) conduct monitoring and evaluation of the voter education process.

(5) In the conduct of voter education, the Commission and the voter education providers shall take into account —

(a) the national values and principles of governance set out under Article 10 of the Constitution; and
(b) the principles of equality and freedom from discrimination;
(c) the provisions of Article 100 of the Constitution and shall in particular explain to the voters measures put in place to promote the representation of —
    (i) women;
    (ii) persons with disabilities;
    (iii) youth;
    (iv) ethnic and other minorities; and
    (v) marginalized communities.

Constituency election coordinators

6. (1) The Commission shall designate at the constituency level, the constituency elections coordinator who shall—

(a) advise on constituency voter education needs and strategies;
(b) conduct recruitment, induction, deployment of constituency voter educators;
(c) supervise and monitor activities and operations of constituency voter educators and providers;
(d) evaluate constituency voter education activities and programs;
(e) sensitize and engage partners and stakeholders in the

implementation of voter education programs at the constituency level;

(f) make periodic reports and feedback to the commission; and

(g) undertake any other duty assigned by the Commission.

(2) A constituency elections coordinator shall be responsible to the Commission for all matters relating to voter education. The Commission may appoint one or more assistants to assist the constituency elections coordinator.

Remuneration.

7. (1) A voter educator engaged by the Commission may be paid such remuneration as the Commission may determine.

(2) Where a voter education provider engages a voter educator, the Commission shall not be responsible for the cost and expenses of such voter educator.

PART III—VOTER EDUCATORS

Voter educators.

8. The Commission may engage voter educators at the ward or other levels in such manner as the Commission may, from time to time, determine.

Manner of carrying out the tasks of voter educators.

9. A voter educator appointed under these Regulations shall carry out voter education in accordance with the voter education curriculum and guidelines issued by the Commission from time to time.

Qualifications and other requirements.

10. A person may qualify as a voter educator if that person-

(a) holds a post secondary school qualification from a recognized institution in Kenya;

(b) has experience in conducting voter education or civic education ;

(c) is a resident of the respective Ward, Constituency or County.

Code of conduct for voter educators and voter education providers

11. Every voter educator and voter education provider shall sign and abide by the Code of conduct prescribed in Form 3 set out in the schedule.

PART IV—ACCREDITATION OF VOTER EDUCATION PROVIDERS

Application for accreditation.

12. (1) The Commission may publicly advertise and invite, in an accessible medium, applications for accreditation as voter education providers.

(2) A State or non-State agency or organisation may apply to the Commission to be accredited to provide voter education.

(3) An application for accreditation to provide voter education shall be made to the Commission in Form 1 set out in the Schedule.

Accreditation criteria

13. (1) The Commission may accredit an applicant if that applicant—

(a) possesses valid registration certificates;

(b) has civic education as an objective in the instrument of registration;

(c) has a presence in at least one constituency in Kenya;

(d) possesses at least 6 months demonstrable experience in the provision of voter or civic education;

(e) demonstrates to the Commission that it has the necessary institutional and resource capacity to carry out voter education; and

(f) meets tax compliance requirements as the law may require of organizations of its kind.

Certificate of accreditation.

14. (1) If the Commission is satisfied that an applicant meets the requirements for accreditation as set out in regulation 15, the Commission shall—

(a) enter the name and particulars of the applicant in the register of voter education providers in Form 1A set out in the Schedule; and

(b) issue a certificate of accreditation in the name of the applicant stating the period of validity and any other conditions of accreditation as the Commission may determine.

(2) The certificate issued under sub regulation (1) (b) shall be in Form 2 set out in the Schedule.

Inspection of the register.

15. A person may apply to inspect the register of voter education providers by lodging Form 2A set out in the Schedule with the Commission.

Accredited persons and organizations to sign Code of conduct.

16. All voter educators and persons engaged by voter education providers shall sign and abide by the Code of conduct in Form 3 set out in the Schedule.

Commission may revoke accreditation, etc.

17. (1) Where a voter education provider contravenes the Code of conduct the Commission may—

a. issue a formal warning;

b. suspend the accreditation for a period to be determined; or

c. revoke the accreditation.

(2) Where the Commission revokes the accreditation of a voter education provider—

(a) it shall delete the name from the register; and

(b) may not accredit the organization for any future voter education.

Monitoring and evaluation of voter education

18. The Commission may carry out an assessment of a voter education exercise carried out by a voter education provider and advice on the same.

Impartiality and conduct of voter education providers

19. A voter education provider shall—

(a) be impartial and independent of any political party or candidate contesting an election;

(b) be competent to carry out voter education;

(c) subscribe to the code of conduct;

(d) provide voter education in accordance with the curriculum developed by the Commission;

(e) promote cohesion and integration; and

(f) enhance participation in elections and promote free and fair elections.

Submission of information.

20. (1)The Commission may at such intervals as it may determine require a voter education provider to submit a report concerning the conduct of voter education under these Regulations.

(2) A voter education provider shall prepare and submit to the Commission a report on voter education which shall contain the following information—

(a) activities carried out in the area covered;

(b) appropriate statistical information or data; and

(c) any other relevant information.

(3) The Commission may suspend or revoke accreditation certificate of a voter education provider who fails to comply with the requirement of this regulation.

PART V— CONDUCT OF VOTER EDUCATION

Conduct of voter education.

21. (1) The conduct of voter education shall in its design, messaging and implementation be impartial and non-partisan.

(2) The Commission shall use various methods to deliver voter

education information and messages through: Electronic and print media engagement, Stakeholder forums, dissemination of information and education materials or outdoor outreach programs.

(3) The Commission may use one or a combination of these methods including transcribing information into compatible formats to facilitate outreach to all special interest groups.

Revocation of L.N No 127 of 2012.

22. The Elections (Voter Education) Regulations, 2012, Legal Notice No. 127 of 2012 is hereby revoked.

SCHEDULE

FORM 1 (r. 12 (3))

APPLICATION FOR ACCREDITATION FORM

1. Name of Organisation (Attach certified copy of Registration certificate)

_____

2. Address: (postal and physical including city/street/building)

_____

3.Telephone:_____

4. Principal Officers: (Attach certified copies of National ID/Passport)

(a) Name of President/Chairperson:_____

(b) Name of Secretary General/ Executive Director/ Country Director:

_____

5. Person authorised by the organization to liaise with the Commission

Name:_____

Position: _____

Address:_____

Telephone:_____

Email_____

6. Set out statement of objectives of the organisation: _____

7. Estimated number of members that the group plans to deploy for voter education: _____

8. Source of Funds (Attach bank statement for the previous three months)

_____

9. Person submitting this application:

Name: _____

Designation_____

Email_____

Telephone_____

Signature_____

Date_____

(official stamp)

10. Designation: _____

11. Telephone, email, etc.: _____

I/We solemnly swear(or affirm) and certify, under penalty of false declaration under the Oaths and Statutory declaration Act(Cap 15 of the Laws of Kenya), that all the foregoing statements in this declaration are true and correct to the best of my knowledge

Dated at..... this ..... day of .....

FORM 1A (r. 14 (1) (a))

REGISTER OF VOTER EDUCATION PROVIDERS

1. Registration Number.....
2. Name of Organisation.....
3. Principal place of business.....
4. Postal address.....
5. Other places of business.....
6. Nature of business.....
7. Date of Registration.....

PARTNERS OR PROPRIETORS DETAILS

Name	**Contact (Postal address/ telephone/ email)**	**Nationality**
1.		
2.		
3.		
4.		

STATUTORY DECLARATION

(To be made by Person authorised by the organization to liaise with the Commission)

I .....

of.....

do solemnly and sincerely declare that the particulars set out herein are true and correct and I make this declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act (Cap 159) of the Laws of Kenya.

Declared at this.....day of .....20...

Before me .....

(Signature)

.....

(Magistrate or Commissioner for Oaths)

FORM 2 (r. 14 (2))

ACCREDITATION CERTIFICATE
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

Certificate of Accreditation as a Voter Education Provider

This is to certify that..... (Name of Organisation)
.....has been accredited as a voter education provider in ..... (Electoral area).....for the period commencing.....up to.....
Issued this day .....of .....20 .....

Seal of Independent Electoral and Boundaries Commission.

Name
Signature
Commission

Chief Executive Officer/Secretary
Independent Electoral and boundaries

FORM 2A (r. 15)

APPLICATION TO INSPECT THE REGISTER OF VOTER EDUCATION PROVIDERS

I.....do hereby apply to inspect the register of voter education providers.

I undertake to pay any fees that may be prescribed by the Commission.

Name.....

Constituency.....

Sign.....

Date.....

Dated the .....20..

FORM 3 (r. 11)

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

CODE OF CONDUCT OF VOTER EDUCATORS AND VOTER EDUCATION PROVIDERS

1. The principal duty of the a voter educator is to promote awareness among the population of Kenya in general and the voting population in particular on the need for all citizens of Kenya of voting age to register and vote in the elections or referenda.

2. A voter educator is a friend of every voter. He or she will endeavor to provide appropriate information, insight and advice to every voter on issues relating to the registration, elections and the referendum. He or she shall however not use his or her position as a voter educator to influence any voter to vote for any particular candidate or political party.

3. A voter educator shall—

(a) conduct voter education in accordance with the curriculum prepared and approved by the Commission;

(b) conduct voter education impartially and without the advocacy or influence from any person or group;

(c) refrain from engaging in or supporting any activity that would discredit the work or image of the Commission;

(d) not in any way actively subvert the attainment of the Commission's statutory mandate and the conduct of the electoral process;

(e) shall not in any way solicit for funds in the name of the Commission

(f) refuse any gift, favour, hospitality or any inducement that would influence or appear to influence the discharge of his or her duties;

(g) carry out voter education without intimidation, coercion, threats, duress or undue influence;

(h) be sensitive to the needs of people with disabilities, women, youth and other marginalized groups when providing voter education;

(i) give due consideration to special and appropriate circumstances regarding accessibility, language and methodology in the provision of voter education;

(j) avoid actual or apparent conflicts of interest in the provision of voter education;

(k) refrain from disclosing any confidential information acquired in the course of their work unless otherwise authorized by the Commission;

(l) perform his or her duty in accordance with such other rules, regulations, standards as the IEBC may set from time to time;

(m) endeavor to use every means at his or her disposal to encourage every Kenyan who is eligible to register as voter to exercise his or her constitutional right to register and vote in elections and referenda.

4. A voter educator who does not abide by the code of conduct shall be liable to such penalty Commission may deem fit, including termination of the contract and revocation of the right to conduct voter education for voter registration, elections and a referendum.

STATEMENT OF ACCEPTANCE OF CODE OF CONDUCT

I.....do hereby accept to serve as a voter educator

I accept to be bound to the above code of conduct and with such Regulations that may be made from time by the commission for the purpose of giving effect to the code of conduct at all times during my term of service as voter education provider.

I undertake to relinquish my duty as a voter educator if required to do so, for good cause, by the Commission

Name.....

Constituency.....

Sign.....

Date.....

Dated the 2017

Chairperson,
Independent Electoral and Boundaries Commission

The Committee is satisfied that the draft Regulations conform to the Constitution of Kenya, the National Assembly Standing Orders, the parent Act and the Statutory Instruments Act, 2013.

6.0 RECOMMENDATIONS

The Committee recommends that the House approves the draft Elections (Voter Education) Regulations, 2017 for publication by the regulation making authority.

Signed.....Date.....28.3.17

HON WILLIAM CHEPTUMO, M.P.
CHAIRPERSON, SELECT COMMITTEE ON DELEGATED LEGISLATION

APPENDIX 1

APPENDIX 1

MINUTES OF THE FIFTY SEVENTH SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 28TH MARCH, 2017 AT 10.00 A.M. IN THE MEMBERS LOUNGE, MAIN PARLIAMENT BUILDING

PRESENT:-

Hon. William Cheptumo, M.P. – **Chairperson**
Hon. Joseph Gitari, M.P. – **Vice Chairperson**
Hon. Timothy W. Wanyonyi, M.P.
Hon. Yusuf Hassan, M.P.
Hon. George Theuri, M.P.
Hon. Kabando wa Kabando, M.P.
Hon. Elisha Busienei, M.P.
Hon. Eusilah Jepkosgei, M.P.
Hon. Hassan Osman Aden, M.P.
Hon. Mohamed Aden Huka, MP.
Hon. William Kisang, M.P.
Hon. Bernard Shinali, M.P.
Hon. Nicholas Nixon, M.P.
Hon. Rachael Ameso, M.P.
Hon. Simba Arati, M.P.
Hon. T. J. Kajwang', M.P.
Hon. Daniel Maanzo, M.P.
Hon. Kamoti Mwamkale, M.P.

ABSENT:-

Hon. John Waiganjo, M.P.
Hon. Alfred Keter, M.P.
Hon. Paul Bii, M.P.
Hon. Neto Augostinho, M.P.
Hon. Shadrack Manga, M.P.
Hon. Saney Abdi Ibrahim, M.P.
Hon. Junet Sheikh Nuh, MP.
Hon. Charles Gimose, M.P.
Hon. Vincent Musau, M.P.
Hon. Michael Kisoi Manthi, M.P.
Hon. Paul Koinange, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY:-

George Gazemba	-	Senior Clerk Assistant
Wilson Dima	-	Senior Legal Counsel
Halima Hussein	-	Third Clerk Assistant
Doreen Karani	-	Legal Counsel

MIN No. DL/164/2017: PRELIMINARIES

The sitting commenced with a word of prayers by Hon. Joseph Gitari, vice chairperson.

MIN No. DL/165/2017: CONSIDERATION AND ADOPTION OF REPORTS ON DRAFT ELECTIONS RELATED REGULATIONS

The Committee considered and adopted five reports on draft Elections related Regulations namely:-

(i) **Draft Elections (Technology) Regulations, 2017**

The adoption of the report was proposed by Hon. Elisha Busienei and seconded by Rachael Ameso

(ii) **The Elections (Registration of Voters) (Amendment) Regulations, 2017**

The adoption of the report was proposed by Hon. Joseph Gitari and seconded by Hon. George Theuri. There was no dissenting voice to the adoption.

(iii) **The Elections (Voter Education) Regulations, 2017**

The adoption of the report was proposed by Hon. Eusillah Jepkosgei and seconded by Hon. Bernard Shinali. There was no dissenting voice to the adoption.

(iv) **The Elections (General) (Amendment) Regulations, 2017**

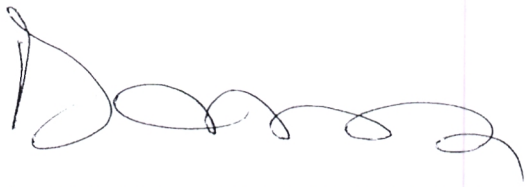
The adoption of the report was proposed by Hon. Kamoti Mwamkale and seconded by Hon. Elisha Busienei. There was no dissenting voice to the adoption.

(v) **The Elections (Party Primaries and Party Lists) Regulations, 2017**
The adoption of the report was proposed by Hon. George Theuri and

seconded by Hon. Rachael Ameso. There was no dissenting voice to the adoption.

MIN No. DL/166/2017:- **ADJOURNMENT**

There being no Any Other Business to transact the chairperson adjourned the sitting at fifteen minutes past eleven O'clock in the morning.



SIGNED..... .....

(CHAIRPERSON)

DATE.....28.3.17.....

MINUTES OF THE FIFTY SECOND SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON MONDAY, 13TH MARCH, 2017 AT 2.30 P.M. AT THE CONVENTION CENTRE, PRIDE INN PARADISE HOTEL, MOMBASA

PRESENT:-

Hon. William Cheptumo, M.P.	–	**Chairperson**
Hon. Joseph Gitari, M.P.	–	**Vice Chairperson**
Hon. Timothy W. Wanyonyi, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Mohamed Aden Huka, MP.		
Hon. William Kisang', M.P.		
Hon. Yusuf Hassan, M.P		
Hon. Rachael Ameso, M.P.		
Hon. Daniel Maanzo, MP.		
Hon. T. J. Kajwang, M.P.		
Hon. Vincent Musau, M.P.		
Hon. Michael Kisoi Manthi, M.P.		
Hon. Kamoti Mwamkale, MP.		
Hon. Simba Arati, M.P.		
Hon. Paul Koinange, M.P.		

ABSENT:-

Hon. John Waiganjo, M.P.
Hon. Hassan Aden, M.P.
Hon. Alfred Keter, M.P.
Hon. Kabando wa Kabando, M.P.
Hon. George Theuri, M.P.
Hon. Elisha Busienei, M.P.
Hon. Paul Bii, M.P.
Hon. Neto Augostinho, M.P.
Hon. Bernard Shinali, M.P.
Hon. Shadrack Manga, M.P.
Hon. Saney Abdi Ibrahim, M.P.
Hon. Eusilah Jepkosgei, M.P.
Hon. Junet Sheikh Nuh, MP.
Hon. Nicholas Nixon, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Nicholas Emejen	-	Principal Clerk Assistant I
George Gazemba	-	Senior Clerk Assistant
Wilson Dima	-	Senior Legal Counsel
Abdullahi Aden	-	First Clerk Assistant
Halima Hussein	-	Third Clerk Assistant
Doreen Karani	-	Legal Counsel II
Josephat Bondotich	-	Serjeant-at-arms
Robert Langat	-	Office Attendant

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

Prof. Abdi Yakub Guliye	-	Commissioner
Dr. Roselyn K. Akombe	-	Commissioner
Praxedes Tororey	-	Director, Legal and Political Affairs
Immaculate Kassait	-	Director, Voter Registration and Elections Operations
Salome Oyugi	-	Manager, Political Parties and Campaign Financing
Moses Kipkogei	-	Personal Assistant to the CEO/Secretary
Silas Njeru	-	Manager ICT
Ruth Mukuthu	-	Senior Legal Officer

MIN No. DL/162/2017:- REVIEW OF DRAFT ELECTIONS REGULATIONS

(i) The Elections (Registration of Voters) (Amendment) Regulations, 2017

The meeting reviewed the Regulations as follows:-

(i) Include definition of *''registration centre''* in the definitions part.

(ii) Regulation 13(b) – sounds unconstitutional and needs recasting.
substitute *five months* with *six months*

(iii) Regulation 16: Insert a new sub-regulation to read *"The Commission shall avail the register to the public at all polling stations to allow members of the public to inspect the register"*

(ii) Consideration of the Elections (Voter Education) Regulations, 2016

The meeting reviewed the Regulations as follows:-

Regulation 5:	Recast to provide for *''accredited''* voter education service Providers
Regulation 10:	Provide the details of the qualifications instead of a form. Have consistency in the Form numbering in letters instead of numbers

(iii) Consideration of the Elections (General) (Amendment) Regulations, 2017

Clause 2:	Substitute the word *''primary''* with *''Primaries''*
Regulation 10:	cross reference be named correctly
Regulation 16:	Delete *''Ethics and Anti-Corruption Commission''*
Regulation 18:	delete (c)
Regulation 29:	Recast to empower IEBC to declare results before conclusion of counting of votes as long as the balance of the votes is insignificant to make a difference between the leading and the second candidate.

MIN No. DL/163/2017:- ADJOURNMENT

The Chairperson adjourned the meeting at Six O'clock in the evening till nine O'clock of the following day at the same venue.

SIGNED..... .....

(CHAIRPERSON)

28.03.17

DATE.....

MINUTES OF THE FIFTY FIRST SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON MONDAY, 13TH MARCH, 2017 AT 9.00 A.M. AT THE CONVENTION CENTRE, PRIDE INN PARADISE, HOTEL IN MOMBASA

PRESENT:-

Hon. William Cheptumo, M.P.	–	**Chairperson**
Hon. Joseph Gitari, M.P.	–	**Vice Chairperson**
Hon. Timothy W. Wanyonyi, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Mohamed Aden Huka, MP.		
Hon. William Kisang, M.P.		
Hon. Yusuf Hassan, M.P		
Hon. Rachael Ameso, M.P.		
Hon. Daniel Maanzo, MP.		
Hon. T. J. Kajwang', M.P.		
Hon. Vincent Musau, M.P.		
Hon. Michael Kisoi Manthi, M.P.		
Hon. Kamoti Mwamkale, MP.		
Hon. Simba Arati, M.P.		
Hon. Paul Koinange, M.P.		

ABSENT:-

Hon. John Waiganjo, M.P.
Hon. Hassan Osman Aden, M.P.
Hon. Alfred Keter, M.P.
Hon. Kabando wa Kabando, M.P
Hon. George Theuri, M.P.
Hon. Elisha Busienei, M.P.
Hon. Paul Bii, M.P.
Hon. Neto Augostinho, M.P.
Hon. Bernard Shinali, M.P.
Hon. Shadrack Manga, M.P.
Hon. Saney Abdi Ibrahim, M.P.
Hon. Eusilah Jepkosgei, M.P.
Hon. Junet Sheikh Nuh, MP.
Hon. Nicholas Nixon, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

Nicholas Emejen	-	Principal Clerk Assistant I
George Gazemba	-	Senior Clerk Assistant
Wilson Dima	-	Senior Legal Counsel
Abdullahi Aden	-	First Clerk Assistant
Halima Hussein	-	Third Clerk Assistant
Doreen Karani	-	Legal Counsel II
Josephat Bondotich	-	Serjeant-at-arms
Robert Langat	-	Office Attendant

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

Prof. Abdi Yakub Guliye	-	Commissioner
Dr. Roselyn K. Akombe	-	Commissioner
Praxedes Tororey	-	Director, Legal and Political Affairs
Immaculate Kassait	-	Director, Voter Registration and Elections Operations
Salome Oyugi	-	Manager, Political Parties and Campaign Financing
Moses Kipkogei	-	Personal Assistant to the CEO/Secretary
Silas Njeru	-	Manager ICT
Ruth Mukuthu	-	Senior Legal Officer

MIN No. DL/159/2017:- PRELIMINARIES

The sitting commenced with a word of prayer from Hon. Rachael Ameso followed by introductions. The Chairperson welcomed the team from Independent Electoral and Boundaries Commission to the meeting and outlined the day's agenda as review of the 2nd drafts of the five (5) sets of Regulations under the Election Laws to confirm if amendments agreed on during previous meetings had been incorporated in the drafts.

MIN No. DL/160/2017:- REVIEW OF THE DRAFT ELECTIONS (TECHNOLOGY) REGULATIONS, 2017

The meeting reviewed the Regulations as follows:-

(i) Regulation 11: delete the words *"or as may be required''*

(ii) Regulation 14: attach the schedule

(iii) Regulation 15: *"Prescribe a form"* – attach the form

(c): Delete

(iv) Regulation 22: Increase the coverage days from 30 to 45 days.

(v) Regulation 26: replace the word *"may"* with the word *"shall"*

(2): correct numbering

(vi) include the word *"Director"*

(vi) Regulation 29: delete the words *''and conduct training for stakeholders within sufficient time before election day''*

(vii) Regulations 33 (c): *Include majority and minority parties in parliament.*

MIN No. DL/161/2017: **ADJOURNMENT**

The Chairperson adjourned the meeting at One O'clock till thirty minutes past three of the same afternoon.

SIGNED.....

(CHAIRPERSON)

DATE.....28.2.17.....

MINUTES OF THE FORTY NINTH SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON 21ST FEBRUARY, 2017 AT 9.00 A.M. AT BAOBAB CONFERENCE CENTRE, SERENA BEACH HOTEL, MOMBASA

PRESENT:-

Hon. Joseph Gitari, M.P. – **Vice Chairperson (Chairing)**
Hon. George Theuri, M.P.
Hon. Charles Gimose, M.P.
Hon. Timothy W. Wanyonyi, M.P.
Hon. Elisha Busienei, M.P.
Hon. Rachael Ameso, M.P.
Hon. Daniel Maanzo, MP.
Hon. T. J. Kajwang', M.P.
Hon. Neto Agostinho, M.P.
Hon. Simba Arati, M.P.
Hon. Eusilah Jepkosgei, M.P.
Hon. Vincent Musau, M.P.
Hon. Michael Kisoi Manthi, M.P.
Hon. Bernard Shinali, M.P.
Hon. William K. Mwamkale

ABSENT WITH APOLOGIES:-

Hon. William Cheptumo, M.P. – **Chairperson**
Hon. John Waiganjo, M.P.
Hon. Hassan Aden, M.P.
Hon. Alfred Keter, M.P.
Hon. Paul Bii, M.P.
Hon. Mohamed Aden Huka, MP.
Hon. William Kisang, M.P.
Hon. Yusuf Hassan, M.P.
Hon. Kabando wa Kabando, M.P
Hon. Junet Sheikh Nuh, MP.
Hon. Nicholas Nixon, M.P.
Hon. Paul Koinange, M.P.
Hon. Shadrack Manga, M.P.
Hon. Saney Abdi Ibrahim, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

Nicholas Emejen	-	Principal Clerk Assistant I
George Gazemba	-	Senior Clerk Assistant
Wilson Dima	-	Senior Legal Counsel
Abdullahi Aden	-	First Clerk Assistant
Halima Hussein	-	Third Clerk Assistant
Christine Odhiambo	-	Legal Counsel
Yezzel Igwo Jillo	-	Serjeant-at-arms
Lewis Njeru	-	Office Assistant

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

Consolata N.B. Maina	-	Vice Chairperson
Dr. Roselyn Akombe	-	Commissioner
Boya Molu	-	Commissioner
Prof. Abdi Y. Guliye	-	Commissioner
Margret Mwachanya	-	Commissioner
Betty Sungura	-	Deputy Chief Executive Officer (CEO), Operations
Praxidis Tororey	-	Director, Legal Services
Rasi Masudi	-	Director, Voter Education and Partnerships
Salome Oyugi	-	Manager, Political Parties & Campaign Financing
Ruth Mukuthu	-	Senior Legal Officer
Moses Kipkosgei	-	Personal Assistant to the CEO
Benjamin Kimuei	-	Training Coordinator
Fiona Otieno	-	Political Parties Campaign Finance Liaison Officer

They were accompanied by Mr. Peter Musyimi, a Legislative Draftsperson from the Kenya Law Reform Commission.

MIN.NO. DL/153/2017:- PRELIMINARIES

The sitting commenced with a word of prayer from Hon. Rachael Ameso. There was only one agenda item namely; consideration of the draft Elections (Voter Education) Regulations, 2017.

MIN.NO. DL/154/2017:- THE ELECTION (VOTER EDUCATION) REGULATIONS, 2017

The meeting discussed the Regulations and agreed on amendments as per the matrix attached hereto.

The meeting resolved that the Independent Elections and Boundaries Commission (IEBC) redrafts all the five sets of Regulations as amended and submits them to the Committee for further action within seven (7) days from the date of this meeting. The Commission was further advised to ensure the Regulations contain proper explanatory memoranda and regulatory impact statements.

MIN No. DL/155/2017:- **ADJOURNMENT**

There being no Any Other Business to transact, the Chairperson adjourned the meeting at Five O'clock in the evening.

SIGNED.....

(CHAIRPERSON)

DATE.....28/3/17.....

THE ELECTIONS (VOTER EDUCATION) REGULATIONS, 2017

PROVISION	COMMITTEE'S COMMENTS	COMMISSION'S DECISION
2 – Interpretation	Include definition of "voter education curriculum" and "voter educator"	Definitions inserted: "curriculum" means the voter education curriculum developed by the Commission under Regulation 5 and includes support materials approved by the Commission; "voter educator" means a person engaged by the Commission or by a voter education provider to carry out voter education under these Regulations; In the definition of "voter education" insert "citizens residing outside Kenya"
4 - Role of the Commission in provision of voter education	Include Accreditation of voter providers; Maintaining an updated register of voter education providers.	Proposals incorporated: 4 (c) accreditation and maintenance of a register of voter education providers
5 – Voter education curriculum and education materials	Formulate a provision that will speak to capacity building of all voter education providers for purposes of uniformity, quality control and to enable monitoring. The voter education curriculum should accommodate special interest groups to reflect the spirit of Article 27 of the Constitution.	Insert 5 (2) (2) The voter education curriculum shall cover all processes outlined in the electoral cycle. 5(3) delete "of delivering education and training programmes and materials" Revise 5 (3) (a) "build capacity of all the voter education providers" Revise regulation 5 (5) "in the conduct of voter education, the Commission and the accredited voter education providers shall take into account- 5 (5)(b) the principles of equality and freedom from discrimination.

		5 (5)(c) the provisions of Article 100 of the Constitution and shall in particular explain to the voters measures put in place to promote the representation of- (i) women; (ii) persons with disabilities; (iii) youth; (iv) ethnic and other minorities; and (v) marginalized communities."
6 - Establishment of voter education standing committee.		Deleted. It was noted that it was not necessary to regulate the Commission's internal processes.
7 – Constituency election coordinators		7 (2) insert "The Commission may appoint one or more assistants to assist the constituency elections coordinator."
8 – Remuneration		Insert 8 (2) "Where a voter education provider engages a voter educator, the Commission shall not be responsible for the cost and expenses of such voter educator." It would need to be clear that the Commission absolves itself from any financial obligation related to the voter educators engaged by voter education providers.
11- Qualifications and other requirements.	The qualifications need to be outlined in a schedule for purposes of clarity.	Incorporated as: 11 (1) A voter educator shall possess the qualifications and other requirements that the Commission may from time to time determine as prescribed in Form …… set out in the Schedule 11(2) deleted
12 - Code of conduct for voter educators and voter education providers		"Every voter educator and voter education provider" The Code of Conduct should be applicable to not only voter education providers but also voter educators.
13 – Application for accreditation	Concerns raised on implementation of regulation 13 (2)	13 (2) revised "A State or non-state agency or organization" State agencies included for purposes of

		inclusivity as the Commission also works with these actors.
14 – Accreditation criteria	Accreditation criteria should be in a schedule	Accreditation criteria retained in the draft regulations as it is properly captured in that form Insert: 14 (i) meets registration or certificates of incorporation requirements as the law may require of organizations of its kind.
21 – Submission of information	Provide recourse mechanisms for voter education providers whose accreditation has been revoked.	Insert clause 21 (4) "A voter education provider's accreditation certificate will not be suspended or revoked unless all possibility of review of the decision has been exhausted."
Part V— Conduct of voter education	The draft regulations were observed to be thin on how voter education shall be conducted.	Insertion of Part V- Conduct of Voter Education to state the process of voter education while noting that the Voter Education Curriculum will contain the rest of the voter education information pursuant to section 40 of the Elections Act, 2011.

MINUTES OF THE FORTY EIGHTH SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON MONDAY, 20TH FEBRUARY, 2017 AT 9.00 A.M. AT BAOBAB CONFERENCE CENTRE, SERENA BEACH HOTEL, MOMBASA

PRESENT:-

Hon. Joseph Gitari, M.P. – **Vice Chairperson (Chairing)**
Hon. George Theuri, M.P.
Hon. Charles Gimose, M.P.
Hon. Timothy W. Wanyonyi, M.P.
Hon. Elisha Busienei, M.P.
Hon. Rachael Ameso, M.P.
Hon. Daniel Maanzo, MP.
Hon. T. J. Kajwang', M.P.
Hon. Neto Agostinho, M.P.
Hon. Simba Arati, M.P.
Hon. Eusilah Jepkosgei, M.P.
Hon. Vincent Musau, M.P.
Hon. Michael Kisoi Manthi, M.P.
Hon. Bernard Shinali, M.P.
Hon. William K. Mwamkale

ABSENT WITH APOLOGIES:-

Hon. William Cheptumo, M.P. – **Chairperson**
Hon. John Waiganjo, M.P.
Hon. Hassan Aden, M.P.
Hon. Alfred Keter, M.P.
Hon. Paul Bii, M.P.
Hon. Mohamed Aden Huka, MP.
Hon. William Kisang, M.P.
Hon. Yusuf Hassan, M.P.
Hon. Kabando wa Kabando, M.P
Hon. Junet Sheikh Nuh, MP.
Hon. Nicholas Nixon, M.P.
Hon. Paul Koinange, M.P.
Hon. Shadrack Manga, M.P.
Hon. Saney Abdi Ibrahim, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

Nicholas Emejen	-	Principal Clerk Assistant I
George Gazemba	-	Senior Clerk Assistant
Wilson Dima	-	Senior Legal Counsel
Abdullahi Aden	-	First Clerk Assistant
Halima Hussein	-	Third Clerk Assistant
Christine Odhiambo	-	Legal Counsel
Yezzel Igwo Jillo	-	Serjeant-at-arms
Lewis Njeru	-	Office Assistant

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

Wafula Chebukati	-	Chairperson
Consolata N.B. Maina	-	Vice Chairperson
Dr. Roselyn Akombe	-	Commissioner
Boya Molu	-	Commissioner
Prof. Abdi Y. Guliye	-	Commissioner
Margret Mwachanya	-	Commissioner
Betty Sungura	-	Deputy Chief Executive Officer (CEO), Operations
Praxedes Tororey	-	Director, Legal and Public Affairs
Rasi Masudi	-	Director, Voter Education and Partnerships
Salome Oyugi	-	Manager, Political Parties & Campaign Financing
Ruth Mukuthu	-	Senior Legal Officer
Moses Kipkosgei	-	Personal Assistant to the CEO
Benjamin Kimuei	-	Training Coordinator
Fiona Otieno	-	Political Parties Campaign Finance Liaison Officer

They were accompanied by Mr. Peter Musyimi, a Legislative Draftsperson from the Kenya Law Reform Commission.

MIN No. DL/150/2017: PRELIMINARIES

This retreat followed another one held on 13th and 14th February, 2017 at the Windsor Golf Hotel & Country Club where out of the five (5) sets of Elections related Regulations earmarked for consideration, three were considered leaving a balance of two namely; the draft Elections (Voter Education) Regulations, 2017 and the draft Elections (Party Primaries and Party Lists) Regulations, 2017 which were the agenda items for this retreat.

The sitting commenced with a word of prayer from Hon. Rachael Ameso followed by self introduction of participants. The Committee Chairperson then welcomed participants to the retreat and in his remarks drew to their attention the urgency with which all Elections related Regulations were supposed to be enacted because of the forthcoming August, 2017 general elections.

The IEBC Chairperson thanked the Committee for convening the retreat and stated that the enactment of the two sets of Regulations on the agenda would:-

a) Ensure fair party nomination processes
b) Ensure all groups are represented in nominations
c) Outline the role of the Commission in providing guidelines in during voter education exercise and party primaries.

MIN No. DL/151/2017:- **THE ELECTION (PARTY PRIMARIES AND PARTY LISTS) REGULATIONS, 2017**

The meeting deliberated on the Regulations and agreed on certain amendments. The outcome of the deliberations is contained in the matrix attached hereto.

The Commission further took the Committee through the revised elections nomination timelines for candidates for the August 8, 2017 general elections as shown below:-

NO.	ACTIVITY	NO. OF DAYS	START DATE	END DATE
1.	Submission of Party Nominations Rules to the Commission	14	Monday, February 20, 2017	Thursday, March 02, 2017
2.	Submission of Party Membership List	10	Thursday, march 09,2017	Sunday, March 19, 2017
3.	Submission of Names of Candidates for Party Primaries to the Commission	10	Sunday, March 26, 2017	Wednesday, April 12, 2017
4.	Gazettement of Candidates and Date of Primaries	7	Thursday, march 30, 2017	Wednesday, April 12, 2017
5.	Parties conduct party primaries	14	Thursday April 13, 2017	Wednesday, April 26, 2017

6.	Dispute Resolution by Political Parties and PPDT	30	Thursday, April 20, 2017	Friday, May 19, 2017
7.	Submission of Independent Candidates Symbols, Letter of Intent to Vie and Clearance from Registrar of Political Parties to the Commission	1	Thursday, May 04, 2017	Thursday, May 04, 2017
8.	Submission of Political Party Symbols, Names and Specimen Signatures of Political Party authorised persons to certify nomination of the political party candidates	2	Friday, May 05, 2017	Sunday, May 07, 2017
9.	Approval by the Commission of the political party symbols and Independent Candidates Symbols	2	Monday, May 08, 2017	Tuesday, May 09, 2017
10.	Commission Transmits Copies of Party signatories' specimen signatures and Candidate symbols to Returning Officers	2	Wednesday, May 10, 2017	Thursday, May 11, 2017
11.	Submission, verification and certification of lists of Presidential Candidates Supporters	5	Thursday, May 18, 2017	Monday, May 22, 2017
12.	Pre-Nomination Meetings with Aspirants	1	Tuesday, May 23, 2017	Tuesday, May 23, 2017
13.	Nominations for Presidential Elections	2	Sunday, May 28, 2017	Monday, May 29, 2017
14.	Nominations for Senate Elections	2	Sunday, May 28, 2017	Monday, May 29, 2017
15.	Nominations for the County Assembly Ward	4	Sunday, May 28, 2017	Wednesday,

	Representative Elections			May 31, 2017
16.	Nominations for the County Women Members to the National Assembly Elections	2	Tuesday, May 30, 2017	Wednesday, May 31 2017
17.	Nominations for National Assembly Elections	2	Thursday, June 01, 2017	Friday, June 02, 2017
18.	Nominations for Gubernatorial Elections	2	Thursday, June 01, 2017	Friday, June 02, 2017
19.	Settlement of Disputes from Nominations	10	Tuesday, May 30, 2017	Friday, June 09, 2017
20.	Publications of all Nominated Candidates	7	Saturday, June 10, 2017	Saturday, June 17, 2017
21.	Parties submit party List	14	Saturday, June 10, 2017	Saturday, June 24, 2017

MIN No. DL/152/2017: **ADJOURNMENT**

There being no Any Other Business to transact, the Chairperson adjourned the meeting at twelve minutes past five O'clock in the afternoon till the following day, the 21st of February, 2017.

SIGNED.....

(CHAIRPERSON)

DATE.....

THE ELECTIONS (PARTY PRIMARIES AND PARTY LISTS) REGULATIONS, 2017

PROVISION	PROPOSED AMENDMENTS	ACTION TAKEN
2 – Interpretation	Include definition of "Elections Board" as it is not defined in the substantive Act; therefore a reference is necessary to identify the organ in the political parties' structures responsible for elections.	Definition of "Elections Board" provided
		Definition of "Electoral College" omitted as there is no mention of the term in the regulations. A resource book containing best practices on the use of electoral colleges shall however be developed and offered to political parties.
		The definition of "Party nomination of party lists" is provided to refer to the elaborate process of elections to party lists; a process which is not limited to preparation.
		Definition of "Registrar" as cross-referenced with the provision in the Political Parties Act omitted as there is no mention of "Registrar" in the regulations.
	Include definition of "special interest groups"	Definition of "Special interest groups" included as the regulations contains provisions for these groups.
4 – Guiding principles		4 (b) "a level playing field" replaced with "equal opportunities" for clarity. 4 (h) "comply with the principles of electoral system set out under Article 81 of the Constitution" deleted as certain processes such as voting by secret ballot is not mandatory to when parties are conducting primaries.
5 – Access to information		Proposal to avoid specificity with regard to "accessibility" as raised by the Civil

		Society Organisations to avoid opening up the regulations to broad interpretation. Further provisions on the modes of access to information are provided for in Regulation 9(3).
6 – Political party nomination rules and procedures		6 (1)(a) insertion of "with specific considerations for members with disabilities" to factor in accessibility for persons with disabilities. 6 (2)(b) "the procedure for identifying candidates for inclusion in the party lists" deleted and content subsumed in 6(2)(a) 6 (3)(c) "any other matter relating to party primaries" deleted. The provision lacked clarity as to which body would identify such other matters thus opening up the rules to cases of malpractice. 6(4) and 6(5) amended to ensure compliance with these regulations as well.
7 – Party's nomination code of conduct		Delete "a candidate seeking" and replace with "an aspiring candidate" Delete "or placed on the party list". "an aspiring candidate seeking to be nominated" adresses both nominations in the party primaries and party nomination of party lists.
Part II – Party primaries conducted by the political party	Change title of Part II	Heading changed to ""Party Primaries and Party Nomination of the Party List" as the part not only addresses the processes relating to party primaries, but also party nomination of party lists.
8 – Party's Election Board	Justification for upper limit of 7 members and lower limit of 3 members	Upper limit retained while lower limit changed to 5 to also accommodate representation of special interest groups given the mandatory one third gender representation.
9 – Qualification of a member of a		9(3) deleted as its contents are provided for in regulation 6.

party's Election Board		
10 – Functions of Election Boards		Proposal from Civil Society Organisations to have the board develop a checklist to ensure compliance with Chapter 6 of the Constitution omitted to avoid legislating party processes. 10(5) insert "The aspiring candidate or agent shall be given an opportunity to write down on the Form reasons for refusal to sign the Form"
11 – Removal of a member of a party's Election Board	Introduce "incapacitation" and "declaration of interest in the nominations" as grounds for removal.	Both recommendations inserted in 11(d) and 11(e). 11(f) "other serious" deleted.
12 – Vacancy in a party's Election Board	Need to provide a timeline	12 (2)(c) replaced with "within seven days after the occurrence of the vacancy"
13 – Tenure of a party's Election Board	N/A	13(a) revised to mirror the language used in Section 31 (2A) of the Elections Act.
14 – Fees	Determination of fees should be at the discretion of parties.	Clause retained.
15 – Application for nomination	Revise 15 (1)(a)(i) on party loyalty. Provide an alternative to party membership card to accommodate parties that do not issue party membership cards. Remove requirement on clearance from the Ethics and Anti-Corruption Commission due to lack of a clear legal provision making reference to the EACC as the body that certifies the self-declaration form. Revise the language in 15(2) to reflect application for	15 (1)(a)(i) "commitment to the political party policies" 15 (1)(e) "evidence of registration as a member of the party" 15 (1)(f) deleted. 15 (2) "Where an aspiring candidate

	nomination as a person with disabilities or application for nomination to represent youth.	intends to be nominated on the ground that the candidate is a person with disability" 15 (3) "Where a person wishes to be nominated by a political party to represent the youth because he or she is a person who has attained the ages of eighteen but has not attained thirty five years"
16 – Conduct of party primaries		16 (2) Insert "The election board shall in writing certify and declare the aspiring candidate as the party nominee." 16 (3) delete "the party shall certify the list of nominees" and replace with "the authorized party officials shall certify the list of nominees" 16 (4) delete "except in accordance with the law"
18 – Declaration for conduct of party primaries	Need to be compliant with the provisions of the Elections Act.	18 (1) insert "to the effect that the political party has complied with its rules in the conduct of the party primaries."
19 – Role of agents of nomination candidates		19 (2)(c) deleted as it is not part of the role of an agent. 19 (2)(d) revised "have access to information relating to the party primary or party nomination of party lists"
20 – Party lists		Marginal note changed from "Woman candidate to be considered in party list" to "Party lists" 20 (2) deleted as the provision does not clearly articulate the intended spirit of affirmative action. Further, in view of the applicable mathematical formula in the allocation of seats, the provision would not have the effect of increasing women's representation. The provision would however be included in the guidelines on party nominations.
21 - Authorized		21 (2) revised to include the specific

officer to submit party list on oath or solemn affirmation.		provisions in the Constitution on party lists.
23 - Political party to be responsible for the preparatory work	The Commission should take the responsibility of declaration of results.	Incorporated as follows: 16 (2)"For the avoidance of doubt, the Commission's role in party primaries shall be limited to the supervision, conduct, announcement and declaration of results of party primaries" 16 (1)(c) insert "preparing a list of members eligible to vote in each primary from the party membership list submitted to the Commission in accordance to Section 28 of the Act" 16 (1)(e) insert "designing and production of ballot papers in accordance with Commission specification"
24 – Conduct of elections	Remove "party membership" card as a requirement to vote in party primaries. The basis for determination of spoilt votes questioned.	24 (2)(a) "party membership card" deleted. Verification of a voter's identity shall be through a national identity card or passport as provided in law thus "valid" deleted. 24 (5) revised to reflect the Commission's mandate "The Commission shall have the discretion to decide whether or not a ballot is rejected"
25 - Commission to submit party primary results to the Board	The Commission to bear responsibility of declaration of results	25 (1) revised "Upon announcement and declaration of the results of the primary, the Commission shall submit the results of the party primary to the Election Board of the party"
26 – Commission to reject party list if it does not conform to law	Redraft regulation 26 (2) to reflect the provisions in Section 34 of the Elections Act as amended by the Election Laws(Amendment) 2017 For purposes of coherence, regulation 26(5) to be shifted to	Regulation 26 revised with the insertion of the following sub-regulations: 26 (2) Where the Commission rejects a list or a name in the list, it shall require the political party to resubmit the party list or nominee within such period as the Commission may specify. 26 (3) A political party resubmitting a party list under sub regulation (2) shall

	a different part as it is a process carried out post-submission of party lists.	resubmit a declaration under Regulation 18 to the effect that the political party has complied with its rules relating to the nomination of the names contained in the list. 26 (4) In the event that a political party fails to resubmit the list or a name in the list after it has been rejected under sub-regulation (1), the party shall not be considered in the allocation of seats.
28 - Party to prescribe nomination malpractices	Political parties' determination of other acts that constitute malpractices seen to be over-prescriptive and ambiguous.	28 (2) deleted
29 – Guidelines by the Commission	Guidelines are statutory instruments and would thus require a separate formal procedure for scrutiny and approval	deleted

MINUTES OF THE FORTY SEVENTH SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 14TH FEBRUARY, 2017 AT 9.00 A.M. AT WINDSOR GOLF HOTEL AND COUNTRY

PRESENT:-

Hon. William Cheptumo, M.P. – **Chairperson**
Hon. Joseph Gitari, M.P. – **Vice Chairperson**
Hon. John Waiganjo, M.P.
Hon. Yusuf Hassan, M.P.
Hon. Paul Koinange, M.P.
Hon. George Theuri, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. Elisha Busienei, M.P.
Hon. Alfred Keter, M.P.
Hon. Eusilah Jepkosgei, M.P.
Hon. Mohamed Aden Huka, M.P.
Hon. Charles Gimose, M.P.
Hon. Bernard Shinali, M.P.
Hon. Vincent Musau, M.P.
Hon. Kamoti Mwamkale, M.P.
Hon. Michael Kisoi Manthi, M.P.
Hon. Rachael Ameso, M.P.
Hon. Saney Abdi Ibrahim, M.P.
Hon. Simba Arati, M.P.
Hon. Neto Augostinho, M.P.
Hon. Timothy W. Wanyonyi, M.P.
Hon. Daniel Maanzo, MP.

ABSENT:-

Hon. Kabando wa Kabando, M.P
Hon. Junet Nuh Sheikh, M.P.
Hon. Nicholas Nixon, M.P.
Hon. Shadrack Manga, M.P.
Hon. Hassan Aden, M.P.
Hon. Paul Bii, M.P.
Hon. William Kisang', M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

George Gazemba	-	Senior Clerk Assistant
Wilson Dima Dima	-	Senior Legal Counsel
Abdullahi Aden	-	First Clerk Assistant
Yezzel Jillo	-	Serjeant-at-arms

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

Wafula Chebukati	-	Chairperson
Consolata Maina	-	Vice Chairperson
Boya Molu	-	Commissioner
Margaret Mwachaya	-	Commissioner
Amb. Paul Kurgat	-	Commissioner
Dr. Roselyn Akombe	-	Commissioner
Prof. Abdi Guliye	-	Commissioner
Marjan Hussein	-	Deputy Chief Executive Officer (CEO), Support Services
Betty Sangura	-	Deputy Chief Executive Officer, Operations
Praxedes Tororey	-	Director, Legal & Public Affairs
Immaculate Kassait	-	Director, Voter Registration and Election Operations
Rasi Masudi	-	Director, Voter Education and Partnerships
James Muhati	-	Director, Information and Communication Technology (ICT)
Salome Oyugi	-	Manager, Political Parties and Campaign Financing
Moses Kipkosgei	-	Personal Assistant to the CEO
Ruth Mukuthu	-	Senior Legal Officer
Benjamin Kimwei	-	Training Coordinator
Fiona Otieno	-	Political Parties & Campaign Financing Liaison Officer

MIN No. DL/146/2017: PRELIMINARIES

The sitting commenced with a word of prayer from Hon. Paul Koinange. The agenda item for the meeting was consideration of the draft Elections (General) (Amendments) Regulations, 2017.

MIN No. DL/147/2017: CONSIDERATION OF THE DRAFT ELECTIONS (GENERAL) (AMENDMENT) REGULATIONS, 2017

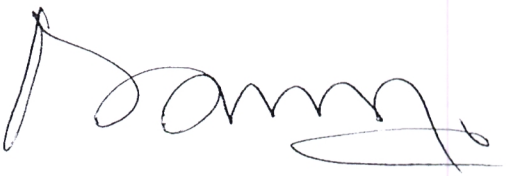
The meeting considered the draft Elections (General) (Amendment) Regulations, 2017. The outcome of the deliberations is contained in the matrix attached.

MIN No. DL/148/2017: ANY OTHER BUSINESS

Out of the five sets of Elections related Regulations the Committee had earmarked to consider, during the retreat, only three had been considered leaving a balance of two. The Committee could not sit beyond thirty minutes past two in the afternoon because the House was sitting and the Chairperson had not obtained the Speaker's approval to sit concurrently with the House. It was resolved another retreat be held in Mombasa on 20th and 21st February, 2017 to dispense with the pending Regulations.

MIN No. DL/149/2017:- ADJOURNMENT

There being no Any Other Business to transact, the sitting ended at five minutes past two in the afternoon.



SIGNED..... .....

(CHAIRPERSON)

28/3/17

DATE.....

THE ELECTIONS (GENERAL) (AMENDMENT) REGULATIONS, 2017

PROVISION	PROPOSED AMENDMENTS	ACTION TAKEN
Clause 2 on interpretation	1. Introduce acknowledgement slip. 2. Define Polling station diary. 3.Delete reference to referendum in the Regulations	Comments incorporated.
Clause 3	1. Separate deletion of (c) (d) and (e) under clause 3(c) (ii).	Comment incorporated.
Clause 4	1.Edit the words 'Returning Officers' to 'Returning Officer'	Comment incorporated.
Clause 5	Introduction of a new provision to address transmission of results electronically at constituencies and counties.	Comment incorporated under clause 5(d).
Clause 6(1)(1A)	Substitution of the word 'consistent' with 'similar'.	The word 'consistent' deleted and replaced with 'same' because the word 'similar' means resemblance and not a replica.
Clause 6(3)	Develop a form for submission of a symbol by an independent candidate.	Comment absorbed by development of a form in the schedule.
Clause 7(a)(1A)	The Commission cannot disqualify a candidate on the basis rejection of a party's nomination rules.	Provision redrafted to provide that a political party whose rules have been declared void by the Commission shall not participate in elections.
Clause 7 (b)	Redraft the provision since attestation means that the alteration has been attested to.	Provision redrafted to illustrate that the Commission will only accept an altered nomination certificate if attested to.
Clause 8	Provide for submission of details of primaries in appropriate formats.	Comment adopted by providing submission of details in both printed and electronic form.
Clause 9	No clarity on the form.	Form 12 provided in the schedule.
Clause 10	No clarity on the form.	From 14 provided in the schedule.
Clause 11(b)	Include 'or passport' given that it is an identification document.	Provision has employed the word 'identification document' which means both an identity card and a valid passport.
Clause 12(a)-15	Include passport	Provision has employed the word 'identification document' which means both an identity card and a valid passport.
Clause 16	Delete clause	Clause deleted
Clause 17	EACC doesn't issue clearance	Provision amended to provide for a

	certificates	self-declaration form to reflect Section 13(2) of the Leadership and Integrity Act.
Clause 20	Provide timelines for swearing in newly elected persons	Clause 23(b) provides for swearing in within seven (7) days.
Clause 25	Include passport size photograph of nominees and identification document numbers.	Comment incorporated under Clause 25.
Clause 29	Delete the word screen	Comment incorporated.
Clause 30	Review the provision to incorporate provision 55B.	Comment incorporated.
Clause 32	Provide for inclusion of name and symbol of candidate	Comment incorporated.
Clause 33	Complementary mechanism.	Provided for.
Clause 35	Lack of clarity on addressing rejected ballots.	Addressed under clause 35.
Clause 38	Recraft rejection of results by Returning Officer where total votes exceed number of registered voters.	Comment incorporated.

MINUTES OF THE FORTY SIXTH SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON MONDAY, 13TH FEBRUARY, 2017 AT 3.30 P.M. AT WINDSOR GOLF HOTEL AND COUNTRY CLUB

PRESENT:-

Hon. William Cheptumo, M.P. – **Chairperson**
Hon. Joseph Gitari, M.P. – **Vice Chairperson**
Hon. John Waiganjo, M.P.
Hon. Yusuf Hassan, M.P.
Hon. Paul Koinange, M.P.
Hon. George Theuri, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. Elisha Busienei, M.P.
Hon. Alfred Keter, M.P.
Hon. Eusilah Jepkosgei, M.P.
Hon. Mohamed Aden Huka, M.P.
Hon. Charles Gimose, M.P.
Hon. Bernard Shinali, M.P.
Hon. Vincent Musau, M.P.
Hon. Kamoti Mwamkale, M.P.
Hon. Michael Kisoi Manthi, M.P.
Hon. Rachael Ameso, M.P.
Hon. Saney Abdi Ibrahim, M.P.
Hon. Simba Arati, M.P.
Hon. Neto Augostinho, M.P.
Hon. Timothy W. Wanyonyi, M.P.
Hon. Daniel Maanzo, MP.

ABSENT:-

Hon. Kabando wa Kabando, M.P
Hon. Junet Nuh Sheikh, M.P.
Hon. Nicholas Nixon, M.P.
Hon. Shadrack Manga, M.P.
Hon. Hassan Aden, M.P.
Hon. Paul Bii, M.P.
Hon. William Kisang', M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

George Gazemba	-	Senior Clerk Assistant
Wilson Dima Dima	-	Senior Legal Counsel
Abdullahi Aden	-	First Clerk Assistant
Yezzel Jillo	-	Serjeant-at-arms

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

Wafula Chebukati	-	Chairperson
Consolata Maina	-	Vice Chairperson
Boya Molu	-	Commissioner
Margaret Mwachaya	-	Commissioner
Amb. Paul Kurgat	-	Commissioner
Dr. Roselyn Akombe	-	Commissioner
Prof. Abdi Guliye	-	Commissioner
Marjan Hussein	-	Deputy Chief Executive Officer (CEO), Support Services
Betty Sangura	-	Deputy Chief Executive Officer, Operations
Praxedes Tororey	-	Director, Legal & Public Affairs
Immaculate Kassait	-	Director, Voter Registration and Election Operations
Rasi Masudi	-	Director, Voter Education and Partnerships
James Muhati	-	Director, Information and Communication Technology (ICT)
Salome Oyugi	-	Manager, Political Parties and Campaign Financing
Moses Kipkosgei	-	Personal Assistant to the CEO
Ruth Mukuthu	-	Senior Legal Officer
Benjamin Kimwei	-	Training Coordinator
Fiona Otieno	-	Political Parties & Campaign Financing Liaison Officer

MIN No. DL/143/2017: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past three in the afternoon. The item on the agenda was consideration of the draft Elections (Registration of Voters) (Amendment) Regulations, 2017.

MIN No. DL/144/2017: CONSIDERATION OF THE DRAFT ELECTIONS (REGISTRATION OF VOTERS) (AMENDMENT) REGULATIONS, 2017

The meeting considered the draft Elections (Registration of Voters) (Amendment) Regulations, 2017. The outcome of the deliberations is contained in the matrix attached

hereto.

MIN No. DL/145/2017:- ADJOURNMENT

There being no Any Other Business to transact, the sitting was adjourned at twenty five minutes past six in the evening till the following day, 14th February, 2017 at nine in the morning.

SIGNED.....

(CHAIRPERSON)

DATE.....28.3.17.....

THE ELECTIONS (REGISTRATION OF VOTERS) (AMENDMENT) REGULATIONS, 2017

CLAUSE	PROPOSED AMENDMENT	ACTION TAKEN
2	Define complimentary mechanism Reword "voter Records Book"	Complimentary mechanism defined in the election (General) Regulations Retained the Voter Records Book as it is the first point of reference for information.
4	Insert "Shall include" not "shall contain"	Change incorporated.
6	In (b) delete or and insert 'and' Expand the provisions of 6A in this regulation	Regulation 12 deleted in its entirety and clarification provided on the publication of the register of voters and not certification of the register of the voters.
7	7 (b) delete 'determined by the Commission'. This removes the discretional powers from the Commission.	Regulation 13 of the principal regulation is amended to provide clarity on the process of registration and that the process includes the collection of such biometric data of persons applying for registration. The Commission has introduced the provision that a person shall not at any one given time be registered as a voter in more than one Ward. The Commission has also provided that a voter, who simultaneously makes two or more applications to be registered as a voter, shall not be eligible to register as a voter.
8	Recommendation to legislate the acknowledgement slip with the justification that the Kenyan culture is that once a person registers they would like to have a document showing that they registered. It is also becoming a requirement to access services in certain parts of the country hence the need to legislate the document.	The Commission has defined the acknowledgement slip as the document issued by the Registration Officer acknowledging application for registration. However, the Acknowledgement Slip will not be used for purposes of voting.
14	Delete the discretionary powers of the	This has been incorporated in the draft

	Commission 'or such other manner as the commission may determine'	amendments.
	Clarify on the process on verification and inspection	This has been clarified through a proposed amendment to regulation 27 of the Principal regulations to provide a clear process on the process of verification and inspection pursuant to the amendments to the Elections Act.
18	On the provision for registration of citizens living outside the country the Commission needs to expand the process of voter registration and how it will be conducted. Need to state who conducts the registration. State how voter registration in the Diaspora will be achieved progressively pursuant to the provisions of Article 82(1)(e) of the Constitution.	The Commission has provided for the process in the Regulations. The Commission has a policy that outlines procedures and how it will progressively achieve this mandate.
	On the provision of registration of prisoners the Commission is requested to: Expand the process of voter registration and how it will be conducted. Need to state who conducts the registration and whether it is applying to everyone including those in remand. Expand on whether candidates will be allowed to campaign in the Prisons if so, how the activity will be regulated. Identify how many have ID cards in order to get the number in all prisons eligible to register.	The Commission has provided for a general procedure in the Regulations. The Voters in prisons will be registered and vote in the same manner accorded to other voters in the country. They will however vote only for the President or referendum as the case may be.

MINUTES OF THE FORTY FIFTH SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON MONDAY, 13TH FEBRUARY, 2017 AT 9.00 A.M. AT WINDSOR GOLF HOTEL AND COUNTRY CLUB, KIAMBU

PRESENT:-

Hon. William Cheptumo, M.P. – **Chairperson**
Hon. Joseph Gitari, M.P. – **Vice Chairperson**
Hon. John Waiganjo, M.P.
Hon. Yusuf Hassan, M.P.
Hon. Paul Koinange, M.P.
Hon. George Theuri, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. Elisha Busienei, M.P.
Hon. Alfred Keter, M.P.
Hon. Eusilah Jepkosgei, M.P.
Hon. Mohamed Aden Huka, M.P.
Hon. Charles Gimose, M.P.
Hon. Bernard Shinali, M.P.
Hon. Vincent Musau, M.P.
Hon. Kamoti Mwamkale, M.P.
Hon. Michael Kisoi Manthi, M.P.
Hon. Rachael Ameso, M.P.
Hon. Saney Abdi Ibrahim, M.P.
Hon. Simba Arati, M.P.
Hon. Neto Augostinho, M.P.
Hon. Timothy W. Wanyonyi, M.P.
Hon. Daniel Maanzo, MP.

ABSENT:-

Hon. Kabando wa Kabando, M.P
Hon. Junet Nuh Sheikh, M.P.
Hon. Nicholas Nixon, M.P.
Hon. Shadrack Manga, M.P.
Hon. Hassan Aden, M.P.
Hon. Paul Bii, M.P.
Hon. William Kisang', M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

George Gazemba - Senior Clerk Assistant

Wilson Dima Dima	-	Senior Legal Counsel
Abdullahi Aden	-	First Clerk Assistant
Yezzel Jillo	-	Serjeant-at-arms

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

Wafula Chebukati	-	Chairperson
Consolata Maina	-	Vice Chairperson
Boya Molu	-	Commissioner
Margaret Mwachaya	-	Commissioner
Amb. Paul Kurgat	-	Commissioner
Dr. Roselyn Akombe	-	Commissioner
Prof. Abdi Guliye	-	Commissioner
Marjan Hussein	-	Deputy Chief Executive Officer (CEO), Support Services
Betty Sangura	-	Deputy Chief Executive Officer, Operations
Praxedes Tororey	-	Director, Legal & Public Affairs
Immaculate Kassait	-	Director, Voter Registration and Election Operations
Rasi Masudi	-	Director, Voter Education and Partnerships
James Muhati	-	Director, Information and Communication Technology (ICT)
Salome Oyugi	-	Manager, Political Parties and Campaign Financing
Moses Kipkosgei	-	Personal Assistant to the CEO
Ruth Mukuthu	-	Senior Legal Officer
Benjamin Kimwei	-	Training Coordinator
Fiona Otieno	-	Political Parties & Campaign Financing Liaison Officer

MIN No. DL/140/2017: PRELIMINARIES

The sitting commenced with a word of prayer from Hon. Timothy W. Wanyonyi followed by around of self introduction. The Chairperson then welcomed all to the retreat and outlined its agenda as consideration of the following:-

(i) The Elections (Technology) Regulations, 2017;
(ii) The Elections (Registration of Voters) (Amendment) Regulations, 2017
(iii) The Elections (Voter Education) Regulations, 2017
(iv) The Elections (General) (Amendment) Regulations, 2017
(v) The Elections (Party Primaries and Party Lists) Regulations, 2017

In his remarks, the Chairperson drew the attention of IEBC to the fact that the role of the Committee in regulation making was not to aid or make regulations on behalf of the Commission but to ensure that the Regulations made conform to outlined provisions of

the constitution of Kenya, the Statutory Instruments Act, 2013, the National Assembly Standing Orders and any other legal law in force in the Republic of Kenya.

In his remarks, the IEBC Chairperson informed the meeting that the newly appointed Commission had synergies to achieve its goals and most importantly, was committed to ensuring free and fair 2017 general elections. He appealed to the Committee to ensure that the Regulations are approved at least four (4) months before the 2017 general elections as required by the Elections Act.

MIN No. DL/141/2017: CONSIDERATION OF THE DRAFT ELECTIONS (TECHNOLOGY) REGULATIONS, 2016

A meeting held on 31st January, 2017 at Parliament Buildings had partially considered these draft Regulations. The meeting considered afresh the entire Regulations. The outcome of the deliberations is contained in the matrix attached hereto.

MIN No. DL/142/2017:- ADJOURNMENT

There being no Any Other Business to transact, the sitting was adjourned at five minutes past two in the afternoon till thirty minutes past three in the afternoon of the same day.

SIGNED..... .....

(CHAIRPERSON)

DATE..... 28.03.17

THE ELECTIONS (TECHNOLOGY) REGULATIONS, 2017

PROVISION	PROPOSED AMENDMENTS	ACTION TAKEN
Clause 11 on audit of technology.	The word 'regular' is vague and such does not provide accountability.	The word 'regular' replaced with 'annually'.
Clause 12 on body to conduct audit	1.No need for internal audit 2. Lack of a timeline for the conduct of external audit. 3. External audit is mandatory and not optional. 4. Need to specify the monitoring device for audit.	1.Aspect of internal audit deleted from 12(1) 2. Insertion of the word 'annual' in 12(1) to provide for the timeline. 3. Use of the word 'shall' in 12(1) to indicate that external audits are mandatory. 4. Clause 13 provides for an audit report.
Clause 13 on audit report	No logic in conducting an audit and not making the report available	The Commission shall prepare the report and make it available under Clause 13.
Clause 14 on information security	1. Purpose of the Clause isn't clear.	Clause redrafted to provide for availability, accuracy, integrity, and confidentiality of information.
Clause 15 on data storage	Lack of clarity	The Clause redrafted to adopt the principles enshrined under the Access to Information Act, 2016.
Clause 17 on the period of retention of election electronic data	The rationale for the retention for only three years period.	1. The Clause redrafted to provide that data will not be disposed off but archived. 2. The three year period retention relates to conclusion of litigation.
Clause on 18 on request for information	Purpose of the provision	The Clause mirrors the principles enshrined under the Access to Information Act, 2016.
Clause 22 on telecommunication infrastructure	Lack of a timeline	A 30 days timeline provided.
Clause 26	Justification for suspension or termination election technology	There exist variables that may cause suspension or termination of technology that cannot be exhaustively provided for in the regulations.
Clause 27	Limitation on the notice by individuals	The provision expounded to include reporting through any medium.

Clause 29 on capacity building	Lack of a timeline and vagueness of the word 'sufficient time'.	A timeline cannot be provided given that different cadres of election officials, for instance presiding officers and clerks, are trained days preceding conduct of elections so that they have hands on skills; the probability of forgetting what has been taught is high when trainings are conducted early.
Clause 33 on the composition of the committee	Need to re-look at the composition of the Committee.	Composition of the Committee changed to reflect institutions that will be resourceful in providing the technical know-how on the adoption of technology in the electoral process and implement the use of such technology.
Clause 41	No reason to issue guidelines yet the Clauses will be in place.	Provision deleted.

MINUTES OF THE FORTY FOURTH SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 31ST JANUARY, 2017 AT 3.00 P.M. IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING

PRESENT:-

Hon. William Cheptumo, M.P. – **Chairperson**
Hon. Joseph Gitari, M.P. – **Vice Chairperson**
Hon. John Waiganjo, M.P.
Hon. George Theuri, M.P.
Hon. Charles Gimose, M.P.
Hon. Timothy W. Wanyonyi, M.P.
Hon. Hassan Aden, M.P.
Hon. Elisha Busienei, M.P.
Hon. Alfred Keter, M.P.
Hon. Paul Bii, M.P.
Hon. Mohamed Aden Huka, M.P.
Hon. William Kisang', M.P.
Hon. Rachael Ameso, M.P.
Hon. Daniel Maanzo, MP.
Hon. Tom J. Kajwang', M.P.
Hon. Neto Augostinho, M.P.
Hon. Simba Arati, M.P.
Hon. Eusilah Jepkosgei, M.P.

ABSENT:-

Hon. Yusuf Hassan, M.P.
Hon. Kabando wa Kabando, M.P
Hon. Junet Nuh Sheikh, M.P.
Hon. Vincent Musau, M.P.
Hon. Michael Kisoi Manthi, M.P.
Hon. Nicholas Nixon, M.P.
Hon. Paul Koinange, M.P.
Hon. Shadrack Manga, M.P.
Hon. Saney Abdi Ibrahim, M.P.
Hon. Bernard Shinali, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

Wilson Dima - Senior Legal Counsel

Abdullahi Aden	-	First Clerk Assistant
Halima Hussein	-	Third Clerk Assistant
Mugure Gituto	-	Legal Counsel II

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

Ezra Chiloba	-	Chief Executive Officer (CEO) /Secretary
Marjan Hussein	-	Deputy CEO
James Muhaki	-	Director, Information and Communication Technology (ICT)
Moses Kipkosgei	-	Personal Assistant to the CEO
Michael Ouma	-	Manager, ICT
Christopher Msando	-	Manager, ICT
Douglas Borgoret	-	Legal Counsel

MIN No. DL/137/2017: PRELIMINARIES

The sitting commenced with a word of prayer from Hon. Eusilah Jepkosgei followed by self introduction. The main agenda item was consideration of draft Elections related Regulations made by the Independent Electoral and Boundaries Commission (IEBC).

MIN No. DL/138/2017: MEETING WITH THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC) TO CONSIDER THE DRAFT ELECTIONS (TECHNOLOGY) REGULATIONS, 2016

The Chairperson welcomed the Independent Electoral and Boundaries Commission (IEBC) team to the meeting and briefed them on the Committee's mandate. He requested them to urgently forward to the House all pending Regulations for scrutiny and approval in view of the prescribed statutory timelines before the general elections in August, 2017. The CEO and his team thanked the Committee for the invite and appreciated the urgent need for enactment of the Regulations under discussion.

The Committee considered the draft Elections (Technology) Regulations, 2016 and recommended as follows:-

Part I

(I) The Committee expressed concern about the definition of the word *"Audit"* in Regulation 2: The Committee recommended that the words *"or an examination of the internal controls within information technology systems and infrastructure"* be deleted to avoid repetition;

(II) The Committee recommended that the words "*integrated election*" be included in Regulation 2 as captured in the parent Act.

Part II

The Committee observed that under Regulation 3 (2) consultation with stakeholders was not captured in the content. The Committee therefore recommended that "*requirement analysis*" be done in consultation with stakeholders including the Political Parties.

Part III

The Committee observed that persons with disability were not recognized under the regulation and recommended that the Commission makes necessary amendment to accommodate them.

The Committee resolved to urgently retreat with Commission to consider the remaining parts of the Regulations and also consider all other pending Regulations.

MIN No. DL/139/2017:- ADJOURNMENT

There being no Any Other Business to transact, the Chairperson adjourned the meeting at Six O'clock in the evening.

SIGNED.....

(CHAIRPERSON)

DATE.....28.03.17.....

APPENDIX 2

APPENDIX 2

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

ATTENDANCE REGISTER FOR MEMBERS

ADOPTION OF THE REPORT ON THE ELECTION REGULATIONS

DATE 28/03/2017. 10.50. A.M.

MEMBERS LOUNGE

NO.	NAME	SIGNATURE
1.	Hon. William Cheptumo, M.P. - Chairperson	
2.	Hon. Joseph Gitari, M.P. -Vice Chairperson	
3	Hon. John Waiganjo, M.P.	
4.	Hon. Yusuf Hassan, M.P.	
5.	Hon. Paul Koinange, M.P.	
6.	Hon. George Theuri, M.P.	
7.	Hon. Kabando wa Kabando, M.P.	
8.	Hon. Elisha Busienei, M.P.	
9.	Hon. Alfred Keter, M.P.	
10.	Hon. Eusilah Jepkosgei, M.P.	
11.	Hon. Hassan Osman Aden, M.P.	
12.	Hon. Paul Bii, M.P.	
13.	Hon. Mohamed Aden Huka, M.P	
14.	Hon. William Kisang, M.P.	
15.	Hon. Benard Shinali, M.P.	
16.	Hon. Shadrack Manga, M.P.	
17.	Hon. Charles Gimose, M.P.	

18.	Hon. Vincent Musau, M.P.	
19.	Hon. Nicholas Nixon, M.P.	
20.	Hon. Michael Kisoi Manthi, M.P.	
21.	Hon. Rachael Ameso, M.P.	
22..	Hon. Saney Abdi Ibrahim, M.P.	
23.	Hon. Simba Arati, M.P.	
24.	Hon. Neto Agostinho, M.P.	
25.	Hon. Wetangula Timothy Wanyonyi, M.P.	
26.	Hon. Junet Sheikh Nuh, MP.	
27.	Hon. T. J. Kajwang, M.P.	
28.	Hon. Daniel Maanzo, MP	
29.	Hon. Kamoti Mwamkale, MP.	

GEORGE GAZEMBA
For: CLERK OF THE NATIONAL ASSEMBLY

APPENDIX 3

APPENDIX 3



THE REPUBLIC OF KENYA

LAWS OF KENYA

ELECTIONS ACT

NO. 24 OF 2011

Revised Edition 2015 [2012]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

NO. 24 OF 2011

ELECTIONS ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

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1. Short title.
2. Interpretation.

PART II – REGISTRATION OF VOTERS AND DETERMINATION OF QUESTIONS CONCERNING REGISTRATION

3. Right to vote.
4. Register of Voters.
5. Registration of voters.
6. Inspection of register of voters.
6A. Verification of biometric Data.
7. Transfer of registration
8. Updating of the Register of Voters.
8A. Audit of the Register of Voters.
9. Postponement of disqualification to enable appeal.
10. Eligibility to vote.

Determination of Questions Concerning Registration

11. Determination of questions as to registration.
12. Claims.

PART III – ELECTIONS

13. Nomination of candidates by a political party.

Presidential Elections

14. Initiation of presidential election.
15. Change of deputy president nominee candidate.

Parliamentary Elections

16. Initiation of election of member of Parliament.

County Governor Elections

17. Initiation of county governor election.
18. Change of deputy county governor nominee candidate.

County Assembly Elections

19. Initiation of country assembly elections.
20. Notification in electronic media.
21. Election of county assembly speaker.

Nominations and Elections Generally

22. Qualifications for nomination of candidates.
23. Qualifications and disqualifications for nomination as President.
24. Qualifications and disqualifications for nomination as member of Parliament.

Section

25. Qualifications for nomination as member of county assembly.
26. Additional disqualification.
27. Submission of party nomination rules.
28. Submission of party membership lists.
29. Power to nominate.
30. Appointment of agents.
31. Nomination of political party candidates.
32. Approval of symbol for independent candidate.
33. Nomination of independent candidates.

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34. Nomination of party lists members.
35. Submission of party lists.
36. Allocation of special seats.
37. Re-allocation of special seat.
38. Holding of elections.
38A. Number of voters per polling station.
39. Determination and declaration of results.
40. Voter education.
41. Access to and obligation of media.
42. Accreditation of observers, agents, reporters, etc.
43. Participation in elections by public officers.
44. Use of technology.

PART IV – RECALL OF MEMBER OF PARLIAMENT

45. Right of recall.
46. Petition for recall.
47. Recall elections.
48. Validity of recall election.

PART V – REFERENDUM

49. Initiation of a referendum.
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51. Referendum committees.
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54. Voting threshold.
55. General power of the Commission.
55A. Maintenance of secrecy at elections
55B. Postponement of elections by the Commission.
55C. General power of the Commission.

PART VI – ELECTION OFFENCES

56 – 73. *REPEALED*

PART VII – ELECTION DISPUTES RESOLUTION

Dispute Resolution by the Commission

74. Settlement of certain disputes.

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75. County election petitions.
76. Presentation of petitions.
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78. Security for costs.
79. Procedure of election court on receipt of petition.
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81. Prohibition of disclosure of vote.
82. Scrutiny of votes.
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85A. Appeals to the Court of Appeal.
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87. Report of court on electoral malpractices.

Referendum Petitions

88. Election petition procedures to apply to referendum petition.
89. Referendum petition.
90. Composition of Court.
91. Operation of declared result of issue submitted to referendum.
92. Persons who may present referendum petition.
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Section

99. Powers of a court to summon witnesses in a referendum petition.
100. Prohibition of disclosure of vote.
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102. Powers of Court.
103. Petition expenses.
104. Facilitation of persons with special needs including persons with disabilities.

(a) a notice in the *Gazette* to the effect that the revision under subsection (2) has been completed; and

(b) the Register of Voters online and in such other manner as may be prescribed by regulations.

[Act No. 36 of 2016, s.5.]

7. Transfer of registration

(1) Where a voter wishes to transfer the voter's registration to an electoral area other than the one the voter is registered in, the voter shall notify the Commission, in the prescribed manner, of the intention to transfer the registration to the preferred electoral area not less than ninety days preceding an election.

(2) Upon receipt of the notification referred to in subsection (1), the Commission shall transfer the voter's registration particulars to the register of the preferred constituency not later than sixty days preceding the election.

8. Updating of the Register of Voters

(1) The Commission shall maintain an updated Register of Voters.

(2) For purposes of maintaining an updated register of voters, the Commission shall—

(a) regularly revise the Register of Voters;

(b) update the Register of Voters by deleting the names of deceased voters and rectifying the particulars therein;

(c) conduct a fresh voter registration, if necessary, at intervals of not less than eight years, and not more than twelve years, immediately after the Commission reviews the names and boundaries of the constituencies in accordance with Article 89(2) of the Constitution;

(d) review the number, names and boundaries of wards whenever a review of the names and boundaries of counties necessitates a review; and

(e) revise the Register of Voters whenever county boundaries are altered in accordance with Article 94(3) of the Constitution.

[Act No. 36 of 2016, s. 26.]

8A. Audit of the register of votes.

(1) The Commission may, at least six months before a general election, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of—

(a) verifying the accuracy of the Register;

(b) recommending mechanisms of enhancing the accuracy of the Register; and

(c) updating the register.

(2) The Kenya Citizens and Foreign Nationals Management Service established under section 3 of the Kenya Citizens and Foreign Nationals Management Service Act, No. 3 of 2011 shall make available to the Commission the information held by it in the national population register for the purpose of the conduct of an audit under subsection (1).

(3) For purposes of the first general election after the commencement of this section, the Commission shall, within thirty days of the commencement of

section, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of —

(a) verifying the accuracy of the Register;

(b) recommending mechanisms of enhancing the accuracy of the Register; and

(c) updating the register.

(4) The firm engaged under subsection (3) shall conduct the audit and report to the Commission within a period of thirty days from the date of engagement.

(5) The Commission shall, within fourteen days of receipt of the report under subsection (4), submit the report to the National Assembly and the Senate.

(6) The Commission shall implement the recommendations of the audit report within a period of thirty days of receipt of the report and submit its report to the National Assembly and the Senate.

[Act No. 36 of 2016, s. 6]

9. Postponement of disqualification to enable appeal

Where a person has been adjudged or declared to be of unsound mind, adjudged bankrupt or convicted of an election offence and is thereby disqualified from being registered as a voter, then, if that person is entitled to appeal against the decision, that person shall not be disqualified from being so registered until the expiration of thirty days after the date of the decision or such further period as the Commission may, at the request of the person, direct in order to enable the person to appeal against the decision.

10. Eligibility to vote

(1) A person whose name and biometric data are entered in a register of voters in a particular polling station, and who produces an identification document shall be eligible to vote in that polling station.

(2) The identification document produced in subsection (1) shall be the identification document used at the time of registration as a voter.

(3) Nothing in this section shall entitle a person who is prohibited from voting by any written law to vote or relieve that person from any penalties to which the person may be liable for voting.

[Act No. 36 of 2016, s. 7]

Determination of Questions Concerning Registration

11. Determination of questions as to registration

Any question whether a person is qualified to be registered as a voter shall be determined in accordance with this Part.

12. Claims

(1) 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.

(2) Subject to the Constitution, a claim under subsection (1) shall be determined by the registration officer in the prescribed manner, and an appeal shall lie in the prescribed manner, to the Principal Magistrates Court on matters of fact and law and to the High Court on matters of law.

PART III – ELECTIONS

13. Nomination of candidates by a political party

(1) A political party shall nominate its candidates for an election under this Act at least sixty days before a general election under this Act in accordance with its constitution and nomination rules.

(2) A political party shall not change the candidate nominated after the nomination of that person has been received by the Commission:

Provided that in the event of the death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party may after notifying the candidate that the party seeks to substitute, where applicable, substitute its candidate before the date of presentation of nomination papers to the Commission.

(3) Notwithstanding subsection (1), in the case of any other election, the Commission shall by notice in the prescribed form, specify the day or days upon which political parties shall nominate candidates to contest in a presidential, parliamentary or county election in accordance with its constitution or rules, which shall be at least forty-five days before such election.

[Act No. 12 of 2012, Act No. 36 of 2016, s. 8.]

Presidential Elections

14. Initiation of presidential election

(1) Whenever a presidential election is to be held, the Commission shall publish a notice of the holding of the election in the *Gazette* and in electronic and print media of national circulation—

(a) in the case of a general election, at least sixty days before the date of the election; or

(b) in the case of an election under Article 138(5) of the Constitution, at least twenty-one days before the date of the election;

(c) in any other case, upon the office of the President becoming vacant.

(2) The notice referred to in subsection (1) shall be in the prescribed form and shall specify—

(a) the nomination day for the presidential election; and

(b) the day or days on which the poll shall be taken for the presidential election, which shall not be less than twenty-one days after the day specified for nomination.

15. Change of deputy president nominee candidate

(1) A presidential candidate or a political party shall not at any time change the person nominated as a deputy presidential candidate after the nomination of that person has been received by the Commission:

Provided that in the event of death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party may substitute its candidate before the date of presentation of nomination papers to the Commission.

(2) Subsection (1) shall apply in the case of a fresh election under Article 138(5) of the Constitution.

Parliamentary Elections

16. Initiation of election of member of Parliament

(1) Whenever a parliamentary election is to be held, the Commission shall publish a notice of the holding of the election in the *Gazette* and in the electronic and print media of national circulation—

(a) in the case of a general election, at least sixty days before the date of the general election; or

(b) in any other case, upon the office of a member of Parliament becoming vacant and on receipt of a notice issued by the respective Speaker under subsection (2).

(2) The notice referred to under subsection (1) shall be in the prescribed form and shall specify—

(a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;

(b) the day for the nomination of candidates for the parliamentary election; and

(c) the day or days on which the poll shall be taken for the election, which shall not be less than twenty-one days after the day specified for nomination under paragraph (b).

(3) Whenever a vacancy occurs in the National Assembly or the Senate, the respective Speaker shall issue a notice in accordance with Article 101 of the Constitution.

(4) The Commission shall within twenty one days of receipt of the notice issued under subsection (2), transmit the notice to the relevant returning officer.

County Governor Elections

17. Initiation of county governor election

(1) Whenever an election for a county governor is to be held, the Commission shall publish a notice of the holding of the election in the *Gazette* and in the electronic and print media of national circulation—

(a) in the case of a general election, at least sixty days before the date of the general election; or

(b) in any other case, upon the office of the county governor becoming vacant.

(2) The notice referred to in subsection (1) shall be in the prescribed form and shall specify—

(a) the day for the nomination of candidates for the county governor election; and

(b) the day or days on which the poll shall be taken for the county governor election, which shall not be less than twenty one days after the day specified for nomination.

18. Change of deputy county governor nominee candidate

A county governor candidate or a political party shall not at any time change the person nominated as a deputy county governor candidate after the nomination of that person has been received by the Commission:

Provided that in the event of death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party may substitute its candidate before the date of presentation of nomination papers to the Commission.

County Assembly Elections

19. Initiation of county assembly elections

(1) Whenever a county assembly election is to be held, the Commission shall publish a notice of the holding of the election in the *Gazette* and in the electronic and print media of national circulation—

(a) in the case of a general election, at least sixty days before the date of general election; or

(b) in any other case, upon the office of a member of a county assembly becoming vacant.

(2) The notice referred to under subsection (1) shall be in the prescribed form and shall specify—

(a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;

(b) the day for the nomination of candidates for county elections; and

(c) the day or days on which the poll shall be taken for the county election, which shall not be less than twenty one days after the day specified for the nomination under paragraph (b).

(3) Whenever a vacancy occurs in a county assembly, the speaker of the county assembly shall within twenty one days after the occurrence of the vacancy issue a notice to the Commission in the prescribed form.

(4) The Commission shall within twenty one days of receipt of the notice issued under subsection (3), transmit the notice to the relevant returning officer.

20. Notification in electronic media

The Commission may in addition publicise the notices under sections 14, 16, 17 and 19 in the electronic and print media of national circulation.

21. Election of county assembly speaker

(1) The speaker of a county assembly shall be elected by each county assembly in accordance with the Standing Orders of the county assembly, from among persons who are qualified to be elected as members of a county assembly but are not such members.

(2) For the purpose of the election of the speaker of the county assembly after the first election under the Constitution, the procedure set out in the First Schedule shall apply.

(3) The deputy speaker of a county assembly shall be elected from among persons who are members of that county assembly.

(4) The First Schedule shall, with necessary modifications, apply to the election of the deputy speaker after the first election under the Constitution.

(5) The office of speaker of a county assembly shall become vacant—

(a) when a new county assembly first meets after an election;

(b) if the office holder vacates office;

(c) if the county assembly resolves to remove the office holder by a resolution supported by the votes of at least two-thirds of its members;

(d) if the office holder resigns from office in a letter addressed to the county assembly;

(e) where the office holder violates the Constitution;

(f) in the case of gross misconduct on the part of the office holder;

(g) where the office holder is incapable, owing to physical or mental infirmity, to perform the functions of the office;

(h) where the office holder is bankrupt;

(i) where the office holder is sentenced to a term of imprisonment of six months or more; or

(j) if the officer holder dies.

Nominations and Elections Generally

22. Qualifications for nomination of candidates

(1) A person may be nominated as a candidate for an election under this Act only if that person—

(a) is qualified to be elected to that office under the Constitution and this Act; and

(b) holds a certificate, diploma or other post secondary school qualification acquired after a period of at least three months study, recognized by the relevant Ministry and in such manner as may be prescribed by the Commission under this Act.

(2) Notwithstanding subsection (1)(b), a person may be nominated as a candidate for election as President, Deputy President, county Governor or deputy county Governor only if the person is a holder of a degree from a university recognised in Kenya.

(2A) For the purposes of the first elections under the Constitution, section 22(1)(b) and section 24(1)(b), save for the position of the President, the Deputy President, the Governor and the Deputy Governor, shall not apply for the elections of the offices of Parliament and county assembly representatives.

[Act No. 12 of 2012, Sch., Act No. 48 of 2012, s. 3.]

23. Qualifications and disqualifications for nomination as President

(1) A person qualifies for nomination as a presidential candidate if the person—

(a) is a citizen by birth;

(b) is qualified to stand for election as a member of Parliament;

(c) is nominated by a political party, or is an independent candidate; and

(d) is nominated by not fewer than two thousand voters from each of a majority of the counties.

(2) A person is not qualified for nomination as a presidential candidate if the person—

(a) owes allegiance to a foreign state; or

(b) is a public officer, or is acting in any State or other public office.

(3) Subsection (2)(b) shall not apply to—

(a) the President;

(b) the Deputy President; or

(c) a member of Parliament.

24. Qualifications and disqualifications for nomination as member of Parliament

(1) Unless disqualified under subsection (2), a person qualifies for nomination as a member of Parliament if the person—

(a) is registered as a voter;

(b) satisfies any educational, moral and ethical requirements prescribed by the Constitution and this Act; and

(c) is nominated by a political party, or is an independent candidate who is supported—

(i) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency; or

(ii) in the case of election to the Senate, by at least two thousand registered voters in the county.

(2) A person is disqualified from being elected a member of Parliament if the person—

(a) is a State officer or other public officer, other than a member of Parliament;

(b) has, at any time within the five years immediately preceding the date of election, held office as a member of the Commission;

(c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;

(d) is a member of a county assembly;

(e) is of unsound mind;

(f) is an undischarged bankrupt;

(g) is subject to a sentence of imprisonment of at least six months, as at the date of registration as a candidate, or at the date of election; or

(h) is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six of the Constitution.

(3) A person is not disqualified under subsection (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

25. Qualifications for nomination as member of county assembly

(1) Unless disqualified under subsection (2), a person qualifies for nomination as a member of a county assembly if the person—

(a) is registered as a voter;

(b) satisfies any educational, moral and ethical requirements prescribed the Constitution and this Act; and

(c) is either—

(i) nominated by a political party; or

(ii) an independent candidate supported by at least five hundred registered voters in the ward concerned.

(2) A person is disqualified from being elected a member of a county assembly if the person—

(a) is a State officer or other public officer, other than a member of the county assembly;

(b) has, at any time within the five years immediately before the date of election, held office as a member of the Commission;

(c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;

(d) is of unsound mind;

(e) is an undischarged bankrupt;

(f) is serving a sentence of imprisonment of at least six months; or

(g) has been found, in accordance with any law, to have misused or abused a State office or public office or to have contravened Chapter Six of the Constitution.

(3) A person is not disqualified under subsection (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

26. Additional disqualification

(1) A person who directly or indirectly participates in any manner in any or public fundraising or harambee within eight months preceding a general election or during an election period, in any other case, shall be disqualified from contesting in the election held during that election year or election period.

(2) Subsection (1) shall not apply to a fundraising for a person who is contesting an election under this Act or to a fundraising for a political party.

27. Submission of party nomination rules

(1) A political party shall submit its nomination rules to the Commission at least three months before the nomination of its candidates.

(2) A political party which has submitted its nomination rules to the Commission pursuant to subsection (1) may amend the rules and submit the rules as amended to the Commission, at least seven days before nomination of candidates for elections.

[Act No. 12 of 2012, Sch., Act No. 48 of 2012, Sch.]

28. Submission of party membership lists

A political party that nominates a person for any election under this Act shall submit to the Commission a party membership list of the party at least ninety days before the date of the general elections.

[Act No. 12 of 2012, Sch., Act No. 47 of 2012, Sch., Act No. 36 of 2016, s. 9]

29. Power to nominate

(1) The persons who nominate a presidential candidate shall be members of the candidate's political party.

(2) The persons who nominate an independent presidential candidate shall not be members of any political party.

[Act No. 47 of 2012, Sch., Act No. 48 of 2012, Sch.]

30. Appointment of agents

(1) A political party may appoint one agent for its candidates at each polling station.

(2) A candidate nominated by a political party may appoint an agent of the candidate's choice.

(3) An independent candidate may appoint his own agent.

30. Appointment of agents

(1) A political party may appoint one agent for its candidates at each polling station.

(2) Where a political party does not nominate an agent under subsection (1), a candidate nominated by a political party may appoint an agent of the candidate's choice.

(3) An independent candidate may appoint his own agent.

[Act No. 12 of 2012, Sch.]

31. Nomination of political party candidates

(1) A person qualifies to be nominated by a political party for presidential, parliamentary and county elections for the purposes of Articles 97, 98, 137, 177 and 180 of the Constitution if that person—

(a) is selected in the manner provided for in the constitution or rules of the political party concerned relating to members of that party who wish to contest presidential, parliamentary and county elections; and

(b) subject to subsection (4), the party certifies the nomination to the Commission.

(2) 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.

(2A) Every political party shall submit the names of the party candidates who have been selected to participate in the general elections under this Act at least sixty days before the elections.

(2B) A political party shall, at least twenty-one days before the nomination day, submit to the Commission the names of the persons contesting in its party primary and the date of its party primary.

(2C) 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 candidates.

(2D) A candidate for a presidential, parliamentary or county election shall be selected by persons who are members of the respective political parties and whose names appear on the party membership list as submitted to the Commission under section 28.

(3) Every political party shall notify the Commission of the name of the person authorised by the party to certify to the Commission that a person has or persons have been selected by the party under subsection (1) and the person or persons so named shall deposit his or their specimen signature with the Commission in such manner as the Commission may require.

(4) The authorised person or persons referred to in subsection (4) shall, in writing, certify that a candidate has been nominated by the party.

[Act No. 36 of 2016, s. 10.]

32. Approval of symbol for independent candidate

(1) An independent candidate shall submit the symbol the candidate intends to use during an election to the Commission at least twenty-one days before nomination day.

(2) The Commission shall, upon receipt of the symbol submitted to it under subsection (1) approve or reject the symbol.

(3) The Commission may refuse to approve the symbol of an independent candidate if the symbol—

(a) is obscene or offensive;

(b) is the symbol of another candidate or of a political party; or

(c) so nearly resembles the symbol of another candidate or political party or any other legal entity registered under any other written law.

33. Nomination of independent candidates

(1) A person qualifies to be nominated as an independent candidate for presidential, parliamentary and county elections for the purposes of Articles 97, 98, 137, 177 and 180 of the Constitution if that person—

(a) has not been a member of any political party for at least three months preceding the date of the election;

(b) has submitted to the Commission, at least sixty days before a general election, a duly filled nomination paper in such form as may be prescribed by the Commission;

(c) has, at least ninety days before the date of a general election or at least twenty one days before the date appointed by the Commission as the nomination day for a by–election, submitted to the Commission the name that the person intends to use during the election.

(d) is selected in the manner provided for in the Constitution and by this Act.

(2) The Commission shall 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.

[Act No. 36 of 2016, s. 11].

Nomination of Party Lists Members

34. Nomination of party lists members

(1) The election of members for the National Assembly, Senate and county assemblies for party list seats specified under Articles 97(1)(c) and 98(1)(b)(c) and (d) and Article 177(1)(b) and (c) of the Constitution shall be on the basis of proportional representation and in accordance with Article 90 of the Constitution.

(2) A political party which nominates a candidate for election under Article 97(1)(a) and (b) shall submit to the Commission a party list in accordance with Article 97(1)(c) of the Constitution.

(3) A political party which nominates a candidate for election under Article 98(1)(a) shall submit to the Commission a party list in accordance with Article 98(1)(b) and (c) of the Constitution.

(4) A political party which nominates a candidate for election under Article 177(1)(a) shall submit to the Commission a party list in accordance with Article 177(1)(b) and (c) of the Constitution.

(5) The party lists under subsections (2), (3) and (4) shall be submitted in order of priority.

(6) The party lists submitted to the Commission under this section shall be in accordance with the constitution or nomination rules of the political party concerned.

(7) The party lists submitted to the Commission shall be valid for the term of Parliament.

(8) A person who is nominated by a political party under subsections (2), (3) and (4) shall be a person who is a member of the political party on the date of submission of the party list by the political party.

(9) The party list may contain a name of any Presidential or Deputy Presidential candidate nominated for an election under this Act.

(10) A party list submitted for purposes of subsections (2), (3), (4) and (5) shall not be amended during the term of Parliament or the county assembly, as the case may be, for which the candidates are elected.

[L.N. 142/2011, Act No. 32 of 2012, s. 2.]

35. Submission of party lists

A political party shall submit its party list to the Commission at least forty-five days before the date of the general election.

[Act No. 36 of 2016, s. 12.]

36. Allocation of special seats

(1) A party list submitted by a political party under—

(a) Article 97(1)(c) of the Constitution shall include twelve candidates;

(b) Article 98(1)(b) of the Constitution shall include sixteen candidates;

(c) Article 98(1)(c) of the Constitution shall include two candidates;

(d) Article 98(1)(d) of the Constitution shall include two candidates;

(e) Article 177(1)(b) of the Constitution shall include a list of the number of candidates reflecting the number of wards in the county;

(f) Article 177(1)(c) of the Constitution shall include eight candidates, at least two of whom shall be persons with disability, two of whom shall be the youth and two of whom shall be person representing a marginalized group.

(2) A party list submitted under subsection (1)(a), (c), (d), (e) and (f) shall contain alternates between male and female candidates in the priority in which they are listed.

(3) The party list referred to under subsection (1)(f) shall prioritise a person with disability, the youth and any other candidate representing a marginalized group.

(4) Within thirty days after the declaration of the election results, the Commission shall designate, from each qualifying list, the party representatives on the basis of proportional representation.

(5) The allocation of seats by the Commission under Article 97(1)(c) of the Constitution will be proportional to the number of seats won by the party under Article 97(1)(a) and (b) of the Constitution.

(6) The allocation of seats by the Commission under Article 98(1)(b), (c) and (d) of the Constitution shall be proportional to the number of seats won by the party under Article 98(1)(a) of the Constitution.

(7) For purposes of Article 177(1)(b) of the Constitution, the Commission shall draw from the list under subsection (1)(e), such number of special seat members in the order given by the party, necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender.

(8) For purposes of Article 177(1)(c) of the Constitution, the Commission shall draw from the list under subsection (1)(f) four special seat members in the order given by the party.

(9) The allocation of seats by the Commission under Article 177(1)(b) and (c) of the Constitution shall be proportional to the number of seats won by the party under Article 177(1)(a) of the Constitution.

[Act No. 12 of 2012, Sch.]

37. Re-allocation of special seat

(1) If a representative from a political party list dies, withdraws from the party list, changes parties, resigns or is expelled from his or her party during the term of the representative, the seat of the representative shall be allocated to the next candidate of the same gender on the respective political party list.

(2) Notwithstanding the provision of section 34(10), if there are no more candidates on the same party's list, the Commission shall require the concerned political party to nominate another candidate within twenty-one days.

(3) A vacancy in any seat in a political party list shall not be filled three months immediately before a general election.

(4) Where a political party fails to comply with the provisions of subsection (2) the Commission shall not allocate the seat for the remainder of the term of Parliament or the county assembly.

38. Holding of elections

After a notice of an election has been published in the *Gazette* under section 14, 16, 17 and 19, every returning officer shall proceed to hold the election according to the terms of the notice and in accordance with the regulations relating to elections.

[Act No. 47 of 2012, Sch.]

38A. Number of voters per polling station

For the efficient and effective conduct of elections, the Commission shall determine the number of voters per polling station but such number shall not exceed five hundred voters.

[Act No. 36 of 2016, s.13]

39. Determination and declaration of results

(1) The Commission shall determine, declare and publish the results of an election immediately after close of polling.

(1A) The Commission shall appoint constituency returning officers to be responsible for—

(i) tallying, announcement and declaration, in the prescribed form, of the final results from each polling station in a constituency for the election of a member of the National Assembly and members of the county assembly;

(ii) collating and announcing the results from each polling station in the constituency for the election of the President, county Governor, Senator and county women representative to the National Assembly; and

(iii) submitting, in the prescribed form, the collated results for the election of the President to the national tallying centre and the collated results for the election of the county Governor, Senator and county women representative to the National Assembly to the respective county returning officer.

(1B))The Commission shall appoint county returning officers to be responsible for tallying, announcement and declaration, in the prescribed form, of final results from constituencies in the county for purposes of the election of the county Governor, Senator and county women representative to the National Assembly.

(1C) For purposes of a presidential election the Commission shall —

(a) electronically transmit, in the prescribed form, the tabulated results of an election for the President from a polling station to the constituency tallying centre and to the national tallying centre;

(b) tally and verify the results received at the national tallying centre; and

(c) publish the polling result forms on an online public portal maintained by the Commission.

(1D) The chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

(2) Before determining and declaring the final results of an election under subsection (1), the Commission may announce the provisional results of an election.

(3) The Commission shall announce the provisional and final results in the order in which the tallying of the results is completed.

[Act No. 36 of 2016, s. 14]

40. Voter education

(1) The Commission shall, in performing its duties under Article 88(4)(g) of the constitution establish mechanisms for the provision of continuous voter education and cause to be prepared a voter education curriculum.

(2) The mechanisms under subsection (1) shall include provision for partnership with other agencies and non-state actors in the provision of voter education.

[Act No. 36 of 2016, s. 15]

41. Access to and obligation of media

(1) Subject to subsection (2), a political party participating in an election shall have access to the state owned media services during the campaign period.

(2) The Commission shall, after consultations with the independent candidates, the political parties concerned and the officers responsible for the state owned media services, monitor the equitable allocation of air-time during the campaign period.

(3) Every state owned print or electronic media which publishes any information relating to the electoral process shall be guided by the principle of total impartiality and shall refrain from any discrimination in relation to any candidate.

(4) The Code of Conduct for the practice of journalism prescribed under the Media Act (No. 3 of 2007) shall be subscribed to and observed by every media house and every person who reports on any election and referendum under the Constitution and this Act.

(5) For the purpose of giving effect to this section, the Commission may, in writing, issue directives to the media.

(6) The Commission may prohibit a media house that contravenes the Code of Conduct prescribed under the Media Act from transmitting information related to an election under this Act.

[Act No. 12 of 2012, Sch.]

42. Accreditation of observers, agents, reporters, etc.

The Commission may at any election accredit—

(a) person as an observer, agent or media representative; or

(b) any person or institution to report on an election.

43. Participation in elections by public officers

(1) *Deleted by Act No. 36 of 2016, s. 14.*

(2) *Deleted by Act No. 36 of 2016, s. 14.*

(3) *Deleted by Act No. 36 of 2016, s. 14.*

(4) *Deleted by Act No. 36 of 2016, s. 14.*

(5) A public officer who intends to contest an election under this Act shall resign from public office at least six months before the date of election.

(6) This section shall not apply to—

(a) the President;

(b) *Deleted by Act No. 36 of 2016, s. 14;*

(c) the Deputy President;

(d) a member of Parliament;

(e) a county governor;

(f) a deputy county governor;

(g) a member of a county assembly.

[Act No. 12 of 2012, Sch, Act No. 36 of 2016, s. 16.]

44. Use of technology

(1) Subject to this section, there is established an integrated electronic electoral system that enables biometric voter registration, electronic voter identification and electronic transmission of results.

(2) The Commission shall, for purposes of subsection(1), develop a policy on the progressive use of technology in the electoral process.

(3) The Commission shall ensure that the technology in use under subsection (1) is simple, accurate, verifiable, secure, accountable and transparent.

(4) The Commission shall, in an open and transparent manner —

(a) procure and put in place the technology necessary for the conduct of a general election at least eight months before such elections; and

(b) test, verify and deploy such technology at least sixty days before a general election.

(5) The Commission shall, for purposes of this section and in consultation with relevant agencies, institutions and stakeholders, including political parties, make regulations for the implementation of this section and in particular, regulations providing for —

(a) the transparent acquisition and disposal of information and communication technology assets and systems;

(b) testing and certification of the system;

(c) mechanisms for the conduct of a system audit;

(d) data storage and information security;

(e) data retention and disposal;

(f) access to electoral system software source codes;

(g) capacity building of staff of the Commission and relevant stakeholders on the use of technology in the electoral process;

(h) telecommunication network for voter validation and result transmission;

(i) development, publication and implementation of a disaster recovery and operations continuity plan; and

(j) the operations of the technical committee established under subsection (7).

(6) 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.

(7) The technology used for the purpose of the first general elections upon the commencement of this section shall —

(a) be restricted to the process of voter registration, identification of voters and results transmission; and

(b) be procured at least eight months before the general election.

(8) For the purposes of giving effect to this section, the Commission shall establish a technical committee of the Commission consisting of such members and officers of the Commission and such other relevant agencies, institutions or stakeholders as the Commission may consider necessary to oversee the adoption of technology in the electoral process and implement the use of such technology.

[Act No. 36 of 2016, s. 17.]

PART IV – RECALL OF MEMBER OF PARLIAMENT

45. Right of recall

(1) The electorate in a county or constituency may recall their member of Parliament before the end of the term of the relevant House of Parliament on any of the grounds specified in subsection (2).

(2) A member of Parliament may be recalled where the member—

(a) is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;

(b) is found, after due process of the law, to have mismanaged public resources;

(c) is convicted of an offence under this Act.

(3) A recall of a member of Parliament under subsection (1) shall only be initiated upon a judgement or finding by the High Court confirming the grounds specified in subsection (2).

(4) A recall under subsection (1) shall only be initiated twenty-four months after the election of the member of Parliament and not later than twelve months immediately preceding the next general election.

(5) A recall petition shall not be filed against a member of Parliament more than once during the term of that member in Parliament.

(6) A person who unsuccessfully contested an election under this Act shall not be eligible, directly or indirectly, to initiate a petition under this section.

46. Petition for recall

(1) A recall under section 45 shall be initiated by a petition which shall be filed with the Commission and which shall be—

(a) in writing;

(b) signed by a petitioner who—

(i) is a voter in the constituency or county in respect of which the recall is sought; and

(ii) was registered to vote in the election in respect of which the recall is sought;

(c) accompanied by an order of the High Court issued in terms of section 45(3).

(2) The petition referred to in subsection (1) shall—

(a) specify the grounds for the recall as specified under section 45(2);

(b) contain a list of such number of names of voters in the constituency or county which shall represent at least thirty percent of the registered voters; and

(c) be accompanied by the fee prescribed for an election petition.

(3) The list of names referred to in subsection (2)(b) shall contain the names, address, voter card number, national identity card or passport number and signature of the voters supporting the petition and shall contain names of at least fifteen percent of the voters in more than half of the wards in the county or the constituency, as appropriate.

(4) The voters supporting a petition under subsection (3) shall represent the diversity of the people in the county or the constituency as the case may be.

(5) The petitioner shall collect and submit to the Commission the list of names under subsection (2)(b) within a period of thirty days after filing the petition.

(6) The Commission shall verify the list of names within a period of thirty days of receipt of that list.

(7) The Commission, if satisfied that the requirements of this section are met, shall within fifteen days after the verification, issue a notice of the recall to the Speaker of the relevant House.

(8) The Commission shall conduct a recall election within the relevant constituency or county within ninety days of the publication of the question.

47. Recall elections

(1) Where a member of Parliament is to be recalled under section 45, the Commission shall frame the question to be determined at the recall election.

(2) A question referred to in subsection (1) shall be framed in such a manner as to require the answer "yes" or the answer "no".

(3) The Commission shall assign a symbol for each answer to the recall question.

(4) The voting at a recall election shall be by secret ballot.

(5) A recall election shall be decided by a simple majority of the voters voting in the recall election.

(6) Where a recall election results in the removal of a member of Parliament, the Commission shall conduct a by-election in the affected constituency or county.

(7) A member of Parliament who has been recalled may run in the by-election conducted under subsection (6).

48. Validity of recall election

A recall election shall be valid if the number of voters who concur in the recall election is at least fifty percent of the total number of registered voters in the affected county or constituency.

PART V – REFERENDUM

49. Initiation of a referendum

(1) Whenever it is necessary to hold a referendum on any issue, the President shall by notice refer the issue to the Commission for the purposes of conducting a referendum.

(2) Where an issue to be decided in a referendum has been referred to the Commission under subsection (1), the Commission shall frame the question or questions to be determined during the referendum.

(3) The Commission shall, in consultation with the Speaker of the relevant House, lay the question referred to in subsection (2) before the House for approval by resolution.

(4) The National Assembly may approve one or more questions for a referendum.

(5) The Commission shall publish the question approved under subsection (4) in the *Gazette* and in the electronic and print media of national circulation.

(6) The Commission shall conduct the referendum within ninety days of publication of the question.

(7) The Commission may assign such symbol for each answer to the referendum question or questions as it may consider necessary.

(8) A symbol assigned under subsection (7) shall not resemble that of a political party or of an independent candidate.

50. Notice of holding referendum

(1) The Commission shall, within fourteen days after publication of the question referred to in section 49 publish a notice of the holding of the referendum and the details thereof in the *Gazette*, in the electronic and print media of national circulation.

(2) The notice shall specify—

(a) the referendum question or questions and the option of the answer or answers;

(b) the symbols assigned for the answers to the referendum question;

(c) the day on which the referendum is to be held which shall not be less than twenty one days after the date of the publication of the notice;

(d) the polling time of the referendum;

(e) the day by which the referendum committees shall have registered with the Commission; and

(f) the day and time by which campaign in support of or in opposition to the referendum question shall start and cease.

51. Referendum committees

(1) Where a referendum question requires a "yes" or "no" answer, persons intending to campaign for or against the referendum question shall form such national referendum committees and constituency referendum committees as are necessary.

(2) Where there is more than one referendum question, persons intending to campaign for or against each referendum question shall, on application to the Commission, form one national referendum committee each and one committee each in every constituency for each referendum question.

(3) A referendum committee shall apply to the Commission for registration in the prescribed form.

(4) An application under subsection (3) shall be accompanied by information showing that the applicant adequately represents persons campaigning for or against the referendum question.

(5) The national referendum committees shall control and regulate the constituency referendum committees.

(6) A member of a referendum committee shall subscribe to and abide by the Electoral Code of Conduct set out in the Second Schedule.

[L.N. 19/2012.]

52. Costs of referendum committee

(1) Each referendum committee shall bear its own costs during the campaign period of the referendum.

(2) The costs referred to in subsection (1) include payment of the agents of the respective referendum committees.

53. Procedure for conduct of referendum

The procedure for the conduct of an election shall apply with necessary modifications to the conduct of referendum.

54. Voting threshold

A referendum question on an issue other than that contemplated in Articles 255 and 256 of the Constitution shall be decided by a simple majority of the citizens voting in the referendum.

55. General power of the Commission

Nothing in this Act shall preclude the Commission from taking any administrative measures to ensure effective conduct of the referendum.

55A. Maintenance of secrecy at elections

(1) Every elections officer, candidate or agent authorized to take part in any proceedings relating to the issue or receipt of ballot papers or to attend at a polling station or at the counting of the votes shall, before so attending, make an oath of secrecy prescribed in the Third Schedule.

(2) Every officer, candidate or agent in attendance at a polling station shall-

(a) maintain and aid in maintaining the secrecy of the ballot; and

(b) not communicate, except for a purpose authorized by law before the poll is closed, any information as to the name or number on the register of voters, of any voter who has or has not applied for a ballot paper or voted at that station or as to the official mark.

(3) A presiding officer may, upon request, divulge to a candidate or to the agent of a candidate the total number of voters who have voted in the station at any time before the poll is closed.

[Act No. 36 of 2016, s.18.]

55B. Postponement of elections by the Commission

(1) The Commission may, where a date has been appointed for holding an election, postpone the election in a constituency, county or ward for such period as it may consider necessary where —

(a) there is reason to believe that a serious breach of peace is likely to occur if the election is held on that date;

(b) it is impossible to conduct the elections as a result of a natural disaster or other emergencies,

(c) that there has been occurrence of an electoral malpractice of such a nature and gravity as to make it impossible for an election to proceed.

(2) Where an election is postponed under subsection (1), the election shall be held at the earliest practicable time.

(3) Notwithstanding the provisions of this section, the Commission may, if satisfied that the result of the elections will not be affected by voting in the area in respect of which substituted dates have been appointed, direct that a return of the elections be made.

[Act No. 36 of 2016, s. 18.]

PART VI – ELECTION OFFENCES

56. *Repealed by Act No. 37 of 2016, s. 25.*

57. *Repealed by Act No. 37 of 2016, s. 25.*

58. *Repealed by Act No. 37 of 2016, s. 25.*

59. *Repealed by Act No. 37 of 2016, s. 25.*

60. *Repealed by Act No. 37 of 2016, s. 25.*

61. *Repealed by Act No. 37 of 2016, s. 25.*

62. *Repealed by Act No. 37 of 2016, s. 25.*

63. *Repealed by Act No. 37 of 2016, s. 25.*

64. *Repealed by Act No. 37 of 2016, s. 25.*

65. *Repealed by Act No. 37 of 2016, s. 25.*

66. *Repealed by Act No. 37 of 2016, s. 25.*

67. *Repealed by Act No. 37 of 2016, s. 25.*

68. *Repealed by Act No. 37 of 2016, s. 25.*

69. *Repealed by Act No. 37 of 2016, s. 25.*

70. *Repealed by Act No. 37 of 2016, s. 25.*

71. *Repealed by Act No. 37 of 2016, s. 25.*

72. *Repealed by Act No. 37 of 2016, s. 25.*

73. *Repealed by Act No. 37 of 2016, s. 25.*

PART VII – ELECTION DISPUTES RESOLUTION

Dispute Resolution by the Commission

74. Settlement of certain disputes

(1) Pursuant to Article 88(4)(e) of the Constitution, the Commission shall be responsible for 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.

(2) An electoral dispute under subsection (1) shall be determined within seven days of the lodging of the dispute with the Commission.

(3) Notwithstanding subsection (2), where a dispute under subsection (1) relates to a prospective nomination or election, the dispute shall be determined before the date of the nomination or election, whichever is applicable.

Election Petitions

75. County election petitions

(1) A question as to validity of an election of a county governor shall be determined by High Court within the county or nearest to the county.

(1A) A question as to the validity of the election of a member of a county assembly shall be heard and determined by the Resident Magistrate's Court designated by the Chief Justice.

(2) A question under subsection (1) shall be heard and determined within six months of the date of lodging the petition.

(3) In any proceeding brought under this section, a court may grant appropriate relief, including—

(a) a declaration of whether or not the candidate whose election is questioned was validly elected;

(b) a declaration of which candidate was validly elected; or

(c) an order as to whether a fresh election will be held or not.

(4) An appeal under subsection (1A) shall lie to the High Court on matters of law only and shall be—

(a) filed within thirty days of the decision of the Magistrate's Court; and

(b) heard and determined within six months from the date of filing of the appeal.

[Act No. 47 of 2012, Sch.]

76. Presentation of petitions

(1) A petition—

(a) to question the validity of an election shall be filed within twenty eight days after the date of declaration of the results of the election and served within fifteen days of presentation;

(b) to seek a declaration that a seat in Parliament or a county assembly has not become vacant shall be presented within twenty-eight days after the date of publication of the notification of the vacancy by the relevant Speaker; or

(c) to seek a declaration that a seat in Parliament or a county assembly has become vacant may be presented at any time.

(2) A petition questioning a return or an election upon the ground of a corrupt practice, and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned or by an agent of that person or with the privity of that person or his agent may, so far as respects the corrupt practice, be filed at any time within twenty-eight days after the publication of the election results in the *Gazette*.

(3) A petition questioning a return or an election upon an allegation of an illegal practice and alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned, or by an agent of that person, or with the privity of that person or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, may, so far as respects the illegal practice, be filed at any time within twenty-eighty days after the publication of the election results in the *Gazette*.

(4) A petition filed in time may, for the purpose of questioning a return or an election upon an allegation of an election offence, be amended with the leave of the election court within the time within which the petition questioning the return or the election upon that ground may be presented.

(5) A petition filed in respect of the matters set out in subsections (2) and (3) may, where a petition has already been presented on other grounds, be presented as a supplemental petition.

[Act No. 36 of 2016, s. 19.]

77. Service of petition

(1) A petition concerning an election, other than a presidential election, shall be filed within twenty-eight days after the declaration of the election results by the Commission.

(2) A petition may be served personally upon a respondent or by advertisement in a newspaper with national circulation.

78. Security for costs

(1) A petitioner shall deposit security for the payment of costs that may become payable by the petitioner not more than ten days after the presentation of a petition under this Part.

(2) A person who presents a petition to challenge an election shall deposit—

(a) one million shillings, in the case of a petition against a presidential candidate;

(b) five hundred thousand shillings, in the case of a petition against a member of Parliament or a county governor; or

(c) one hundred thousand shillings, in the case of a petition against a member of a county assembly.

(3) Where a petitioner does not deposit security as required by this section, or if an objection is allowed and not removed, no further proceedings shall be heard on the petition and the respondent may apply to the election court for an order to dismiss the petition and for the payment of the respondent's costs.

(4) The costs of hearing and deciding an application under subsection (3) shall be paid as ordered by the election court, or if no order is made, shall form part of the general costs of the petition.

(5) An election court that releases the security for costs deposited under this section shall release the security after hearing all the parties before the release of the security.

79. Procedure of election court on receipt of petition

Upon receipt of a petition, an election court shall peruse the petition and—

(a) if it considers that no sufficient ground for granting the relief claimed is disclosed therein may reject the petition summarily; or

(b) fix a date for the trial of the petition.

80. Powers of election court

(1) An election court may, in the exercise of its jurisdiction—

(a) summon and swear in witnesses in the same manner or, as nearly as circumstances admit, as in a trial by a court in the exercise of its civil jurisdiction and impose the same penalties for the giving of false evidence;

(b) compel the attendance of any person as a witness who appears to the court to have been concerned in the election or in the circumstances of the vacancy or alleged vacancy;

(c) examine a witness who is compelled to attend or any other person who has not been called as a witness in court, and examined by a party to the petition and after examination the witness may be cross examined by or on behalf of the petitioner and respondent or either of them; and

(d) decide all matters that come before it without undue regard to technicalities.

(2) A person who refuses to obey an order to attend court commits the offence of contempt of court.

(3) Interlocutory matters in connection with a petition challenging results of presidential, parliamentary or county elections shall be heard and determined by the election court.

(4) An election court may by order direct the Commission to issue a certificate of election to a President, a member of Parliament or a member of a county assembly if—

(a) upon recount of the ballots cast, the winner is apparent; and

(b) that winner is found not to have committed an election offence.

(5) The Commission shall, in writing, notify the relevant Speaker of the decision made under subsection (4).

81. Prohibition of disclosure of vote

A voter who has voted at an election shall not, in the proceedings of an election petition, be required to state whom they voted for.

82. Scrutiny of votes

(1) An election court may, on its own motion or on application by any party to the petition, during the hearing of an election petition, order for a scrutiny of votes to be carried out in such manner as the election court may determine.

(2) Where the votes at the trial of an election petition are scrutinized, only the following votes shall be struck off—

(a) the vote of a person whose name was not on the register or list of voters assigned to the polling station at which the vote was recorded or who had not been authorised to vote at that station;

(b) the vote of a person whose vote was procured by bribery, treating or undue influence;

(c) the vote of a person who committed or procured the commission of personation at the election;

(d) the vote of a person proved to have voted in more than one constituency;

(e) the vote of a person, who by reason of conviction for an election offence or by reason of the report of the election court, was disqualified from voting at the election; or

(f) the vote cast for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification or when the facts causing it were notorious.

(3) The vote of a voter shall not, except in the case specified in subsection (1) (e), be struck off under subsection (1) by reason only of the voter not having been or not being qualified to have the voter's name entered on the register of voters.

83. Non-compliance with the law

No election shall be declared to be void by reason of non-compliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in the Constitution and in that written law or that the non-compliance did not affect the result of the election.

84. Costs

An election court shall award the costs of and incidental to a petition and such costs shall follow the cause.

85. Determination of election petition

An election petition under this Act shall be heard and determined within the period specified in the Constitution

85A. Appeals to the Court of Appeal

(1) An appeal from the High Court in an election petition concerning membership of the National Assembly, Senate or the office of county governor shall lie to the Court of Appeal on matters of law only and shall be—

(a) filed within thirty days of the decision of the High Court; and

(b) heard and determined within six months of the filing of the appeal.

(2) An appeal under subsection (1) shall act as a stay of the certificate of the election court certifying the results of an election until the appeal is heard and determined.

[Act No. 47 of 2012, Sch, Act No. 36 of 2016, s. 20.]

86. Certificate of court as to validity of election

(1) An election court shall, at the conclusion of the hearing of an election petition, determine the validity of any question raised in the petition, and shall certify its determination to the Commission which shall then notify the relevant Speaker.

(2) Upon receipt of a certificate under this section, the relevant Speaker shall give the necessary directions for altering or confirming the return, and shall issue any notification which may be necessary.

87. Report of court on electoral malpractices

(1) An election court may, at the conclusion of the hearing of a petition, in addition to any other orders, make a determination on whether an electoral malpractice of a criminal nature may have occurred.

(2) Where the election court determines that an electoral malpractice of a criminal nature may have occurred, the court shall direct that the order be transmitted to the Director of Public Prosecutions.

(3) Upon receipt of the order under subsection (2), the Director of Public Prosecutions shall —

(a) direct an investigation to be carried out by such State agency as it considers appropriate; and

(b) based on the outcome of the investigations, commence prosecution or close the matter.

[Act No. 36 of 2016, s. 21.]

Referendum Petitions

88. Election petition procedures to apply to referendum petition

Unless specifically provided for in this Act, the procedure applicable to an election petition shall apply to a referendum petition.

89. Referendum petition

(1) The conduct, result and validity of a referendum may be challenged by petition to the High Court.

(2) A petition challenging the conduct, result or validity of a referendum shall—

(a) set out the facts relied on to invalidate the referendum;

(b) identify the specific matter or matters on which the petitioner relies as justifying the grant of relief;

(c) contain a request for the relief to which the petitioner claims to be entitled; and

(d) be filed in the High Court within twenty-one days of the publication of the notice of the results of the referendum in the *Gazette*.

(3) A referendum petition may be presented on any of the following grounds—

(a) in respect of the result of the voting in all the constituencies or in any one constituency, that corrupt practices prevailed at or in relation to the voting at the referendum in that constituency, or that there was an error or misconduct, whether by act or omission, on the part of a referendum officer; or

(b) in respect of the declared result of the referendum, that there was an error in the counting or tallying of the votes cast in the referendum.

90. Composition of Court

A referendum petition shall be heard and determined by a bench of three judges appointed by the Chief Justice.

91. Operation of declared result of issue submitted to referendum

(1) Where a referendum petition is not presented to the High Court within the time specified in section 89(2)(d), the declared result of referendum shall—

(a) have effect from the date on which the result is *gazetted*;

(b) be final and not be challenged in any court of law; and

(c) be conclusive evidence of the voting at the referendum and of the result of the referendum.

(2) Nothing in this section shall be construed as preventing or delaying the coming into operation of any law in respect of which a referendum is held pursuant to the provisions of the Constitution or any other written law if—

(a) it is stated in the declared result of the referendum that the provisions of the Act are supported by the votes of a majority of the persons entitled to vote in the referendum; and

(b) the question raised by any referendum petition or, if more than one, by all referendum petitions presented to the High Court in respect of such referendum would not, if decided in favour of the petitioner or petitioners, as the case may be, lead to a declaration by the Commission that the votes of a majority of the persons entitled to vote in such referendum did not support the provisions of the said law.

92. Persons who may present referendum petition

(1) A referendum petition may be presented in the High Court by—

(a) in the case of a petition in respect of the result of the voting in a constituency, a person who voted lawfully or had a right to vote in that constituency at the referendum;

(b) in the case of a petition in respect of the declared result of the referendum, a person who voted at the referendum or had a right to vote at the referendum; or

(c) in any other case, the Commission.

(2) A petitioner who presents a referendum petition shall serve all the respondents to the petition within seven days of filing the petition.

(3) A petitioner shall publish a notice of the petition in the *Gazette* and in at least one newspaper of national circulation, within fourteen days after the petition is filed.

(4) A petition may be served personally upon the respondent or by advertisement in a newspaper with national circulation.

[Corr. No. 18/2012.]

93. Respondents to referendum petition

(1) Where, at the hearing of a referendum petition, a person is alleged to have been guilty of a corrupt practice in relation to the referendum, or where a copy of a referendum petition is served on a particular person on the direction of the High Court, the High Court may, on the application of that person, add or name that person as a respondent to the petition.

(2) Where, at the trial of a referendum petition presented by the Commission, a question of law arises in relation to action or omission by a referendum officer, the High Court may, on the application of the Attorney-General, name the referendum officer as a respondent to the petition.

94. Filing of referendum petition

(1) A referendum petition shall be signed by the petitioner or by all the petitioners, if more than one.

(2) Whenever a referendum petition is presented under this section, the Registrar of the High Court shall, in writing, inform the Commission of the filing.

95. Duty of Registrar to make list of referendum petitions

(1) Subject to the provisions of subsection (2), the Registrar of the High Court shall make a list of all the referendum petitions filed under this Part in the order in which they are filed, and shall keep in the Registrar's office, a copy of the list which shall be open for inspection by any person who applies to inspect the list.

(2) A referendum petition shall, unless the High Court orders otherwise, be tried in the order in which it appears on the list made by the Registrar under subsection (1).

(3) Where more than one petition is presented relating to the same referendum, all such petitions shall be dealt with as one petition as far as the inquiry into the referendum is concerned.

96. Practice procedure and security for costs

(1) Subject to the provisions of section 98, the Rules Committee as constituted under the Civil Procedure Act (Cap. 21), may make rules generally to regulate the practice and procedure of the High Court with respect to the filing and trial of election and referendum petitions, including rules—

(a) specifying—

(i) the time within which any requirement of the rules is to be complied with;

(ii) the costs of and incidental to the filing and the trial of an election and referendum petition; and

(iii) the fees to be charged in respect of proceedings of an election and referendum petition; and

(b) generally with regard to any other matter relating to an election and referendum petition as the Chief Justice may deem necessary.

(2) A petitioner shall deposit one million shillings as security for costs of a petition presented under this Act, within ten days of presenting the petition.

(3) Where, a petitioner does not deposit security for costs as required under this section after presenting of a referendum petition, the referendum petition shall be struck out.

(4) The High Court may, make such order as to costs as it may deem fit and just in respect of any referendum petition dismissed under this section.

[Act No. 47 of 2012, Sch.]

97. Death of or delay by petitioner

Where there are two or more petitioners and one or more of the petitioners dies or die at any time before the final order of the court hearing the petition, the surviving petitioner or petitioners shall be entitled to continue with the petition.

98. Hearing of referendum petition

(1) A referendum petition shall be—

(a) heard and determined within six months from the date of presentation of a petition; and

(b) heard in open court.

(2) The High Court may, in respect of the trial of a referendum petition, exercise such powers within its civil jurisdiction as it may deem appropriate.

(3) A referendum petition may be withdrawn by the petitioner on notice to the other parties and the High Court, subject to any order of the Court as to costs.

99. Powers of a court to summon witnesses in a referendum petition

(1) A Court hearing a referendum petition may, at the hearing of the petition—

(a) order any person who appears to the court to be concerned in or affected by the referendum petition to attend as a witness at such hearing; and

(b) examine any witness or any person who is present at the hearing even if the witness or person is not called as a witness by any party to the proceedings:

Provided that after examination by the court, the witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

(2) Where a person is ordered to attend as a witness under subsection (1), the Court may direct that a copy of the referendum petition be served on that person.

(3) A person who is called as a witness at the trial of a referendum petition shall not be excused from answering any question relating to any offence connected with the referendum on the ground that the answer thereto may incriminate them or on the ground of privilege.

(4) Notwithstanding subsection (3)—

(a) a witness who answers every question which they are required to answer under this section to the satisfaction of the court, and the answers to which may tend to incriminate them, shall not be liable to prosecution for any offence committed by them in connection with the referendum and in respect of which they are so examined, and shall be entitled to receive a certificate of indemnity issued by the Registrar stating that the person is discharged from liability and shall not be prosecuted for that offence; and

(b) an answer by a witness to a question before the Court under this section shall not, except in the case of any criminal proceedings for giving false evidence in respect of such evidence, be admissible as evidence in any civil or criminal proceedings against them.

(5) Where a person has received a certificate of indemnity under subsection (3), and legal proceedings are, at any time, brought against that person for an offence to which the certificate relates, the court having cognizance of the case shall, on proof of the certificate of indemnity, stay such proceedings.

(6) All reasonable expenses incurred by any person in attending at or appearing before the High Court to give evidence as a witness at the trial of a referendum petition shall be paid to such person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

100. Prohibition of disclosure of vote

A voter who has voted at a referendum shall not, in proceedings to question the referendum be required to state how he voted.

101. Examination of votes

(1) The High Court on its own motion or on an application by a petitioner may, during the hearing of a referendum petition, order for a scrutiny of votes to be carried out in such manner as the High Court may determine.

(2) The provisions of section 82 shall apply with respect to scrutiny of votes under this section.

102. Powers of Court

(1) At the conclusion of the hearing of a referendum petition challenging the conduct or result of the referendum, the High Court may—

(a) dismiss the petition;

(b) declare the published result to be incorrect;

(c) declare the referendum to be void; or

(d) uphold the petition in whole or in part.

(2) Without limiting the generality of this section, the High Court may exercise its powers to declare a referendum void on the ground that this Act or the regulations made under this Act were contravened during the referendum, and such contravention has seriously affected the result of the referendum.

(3) The Registrar of the High Court shall deliver to the Commission a certified copy of any decision made by the High Court under subsection (1).

(4) The Registrar of the High Court shall, at the conclusion of the proceedings in respect of a referendum petition, submit to the Commission a certificate under the Registrar's hand, stating that the hearing of the referendum petition has been concluded, and the Commission shall, upon receipt of such certificate, declare and publish the result of the referendum in accordance with the findings of the High Court.

(5) A declaration made by the Commission under subsection (4) shall be final, shall not be challenged in any court, and shall be conclusive evidence of the voting at the referendum to which it relates and of the result of such referendum.

(6) Where the High Court declares a referendum void, the Commission shall conduct a fresh referendum.

103. Petition expenses

(1) Subject to the provisions of this section, all costs, charges and expenses of and incidental to the presentation and hearing of a referendum petition shall be borne in such manner and in such proportions as the High Court may order, and in particular, any costs which, in the opinion of the High Court, have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.

(2) Where in the hearing of a referendum petition a person appears to the High Court to have been guilty of any corrupt practice relating to the referendum, the High Court may, after giving that person an opportunity to make a statement to show why the order should not be made, order the whole or a portion of the costs of or incidental to the trial of the referendum petition to be paid by that person to such person or persons as the High Court may determine.

(3) Money deposited as security shall, when no longer needed as security for costs, be returned to the person in whose name it is deposited or to any person entitled to receive the money by order of the High Court, which may be made upon motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the High Court may require.

104. Facilitation of persons with special needs including persons with disabilities.

The Commission shall, for the purpose of ensuring that persons with special needs including persons with disabilities realise their right to vote —

(a) put in place appropriate infrastructure including special voting booths; and

(b) have in each polling station such officers as the Commission considers necessary to facilitate voting.

[Act No. 36 of 2016, s. 22.]

PART VIII – GENERAL PROVISIONS

105. Duty to co-operate

(1) It shall be the duty of every public officer and public or private entity to co-operate with the Commission in its activities during an election and not to hinder the Commission in carrying out its functions.

(2) It shall be the duty of police officers in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of an election and to protect and uphold the rights of all persons under any written law relating to elections.

(3) Notwithstanding the provisions of the law relating to the National Police Service or any other written law, a police officer assigned duties during the conduct of an election or referendum shall be deemed to be an elections officer for purposes of this Act and subject to direction and instruction of the Commission.

(4) It shall be the duty of—

(a) all officers of the county administration, in their respective administrative units;

(b) all persons in charge of local authority facilities;

(c) persons in charge of facilities;

(d) all political parties and members of the public;

(e) all persons in charge of public utilities including teachers in charge of public schools;

(f) the Registrar of Persons; and

(g) the Registrar of Political Parties,

to give the Commission and its officers the support and collaboration necessary for the Commission to execute the activities relating to the conduct of an election.

106. *Deleted by Act No. 36 of 2016, s. 23.*

107. Powers of arrest and prosecution

(1) A member of the Commission or any officer designated by the Commission may order the arrest of a person who commits an offence under this Act.

(2) The Commission shall have the power to prosecute any offences under this Act and impose sanctions against a person who commits an offence under this Act pending the hearing and determination of the offence.

(3) A member of the Commission or any person designated by the Commission shall have the power to impound or to order the impounding of any state resources that are used in an election campaign.

108. Airtime by state radio and television for election campaign

All candidates and political parties participating in an election shall be allocated reasonable airtime on all broadcasting media during the campaign period.

[Act No. 12 of 2012, Sch.]

109. Regulations

(1) 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—

(a) prescribe the manner in which registers of voters shall be compiled and the manner in which they shall be revised;

(b) prescribe the procedure for registration and issuance of voters cards and provide for the progressive registration of Kenyan citizens living abroad prisoner;

(c) to provide for the regulation of the process by which parties nominate candidates for elections;

(d) to provide for the manner of nomination, allocation and re-allocation of special seats and mechanisms for resolving disputes arising out of such nomination, allocation and re-allocation;

(e) prescribe the procedure for making and determining claims to be registered and objections to registration;

(f) authorise any registration officer to consider or determine any application, claim, objection or appeal, to summon any person to appear before them and give evidence on oath, and to administer an oath for that purpose and to order the production of any document relevant to any issue which the officer is required to consider and determine;

(g) provide for the division of constituencies into units for the purpose of the registration of voters;

(h) prescribe the conditions under which elections may be held in accordance with the provisions of the Constitution, this Act or any other written law relating to elections;

(i) prescribe the amount of the deposit to be paid by or on behalf of candidates at all elections and the circumstances in which the deposit may be forfeited;

(j) provide for the appointment of officers to preside at polling stations;

(k) prescribe the facilities to be provided at polling stations and the persons who may be admitted to polling stations;

(l) prescribe the place and manner in which votes may be cast and the construction and scaling of ballot boxes and provide for the issue of ballot papers to voters;

(m) provide for the manner in which, and the person by whom any question as to the identity of any person claiming the right to vote shall be determined;

(n) provide for the manner in which a voter who is not able to read or write may vote or be assisted in voting;

(o) provide for the manner in which a voter with special needs including a person with a disability may vote or be assisted in voting;

(p) prescribe the procedure to be followed in the counting of votes and the circumstances in which votes may be rejected by a returning officer as being invalid;

(q) prescribe conditions for the use of private motor vehicles, vessels or buildings at elections;

(r) prescribe the facilities to be provided during the electoral process and in particular, for voting by electronic machines and the persons entitled so to vote and the circumstances in which persons may so vote;

(s) provide for the allocation by the Commission, in a just and equitable manner of the use of state owned radio and television broadcasting services during any election period;

(t) prescribe the procedure to be adopted by the public in making representations for the alteration of electoral area boundaries;

(u) prescribe the forms which may be used under this Act and the fees in respect of anything to be done under this Act;

(v) prescribe the procedure for advance voting for special categories including patients admitted in hospital, pastoralists, armed forces, elections officers and other citizens of Kenya providing essential services;

(w) prescribe the procedure for voting for citizens residing outside Kenya;

(x) provide for complaints resolution mechanisms and for the manner of settlement of electoral disputes;

(y) provide for the conduct of election observers, the media, monitors and evaluators and organisations carrying out civic and voter education;

(z) provide with reasonable grounds for the postponement of elections;

(aa) provide for mechanisms for carrying out effective voter education;

(bb) provide for the mode of declaration of the result of an election;

(cc) prescribe the manner of enforcing the Electoral Code of Conduct; or

(dd) provide for the conduct of campaigns during a referendum or an election;

(ee) provide for the financing of campaigns during a referendum or an election;

(ff) prescribe anything which is required to be prescribed or is necessary or desirable for the better giving effect to this Act.

(2) The power to make regulations conferred on the Commission under this Act shall be—

(a) for the purpose and objective of giving effect to the Constitution and this Act;

(b) limited to the nature and scope specifically stipulated in the Constitution and this Act; and

(c) based on the general principles and standards contained in the Constitution and this Act.

(3) 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 four months preceding a general election:

Provided that this applies to the first general election under this Act.

(4) The Commission shall publish in the *Gazette*, not later than sixty days prior to the date of a general election, the regulations approved by the National Assembly under subsection (3).

[Act No. 31 of 2012, s. 3, Act No. 47 of 2012, Sch, Act No. 36 of 2016, s.24.]

110. Electoral code of conduct

(1) Every political party and every person who participates in an election or referendum under the Constitution and this Act shall subscribe to and observe the Electoral Code of Conduct set out in the Second Schedule in such manner as the Commission may, subject to paragraph 6 of that Schedule, determine.

(2) A political party that is eligible to nominate candidates under the Constitution, this Act or any other written law shall not be eligible to contest in any election unless the political party and the candidate have subscribed to the Electoral Code of Conduct referred to in subsection (1).

(3) *Deleted by Act No. 36 of 2016, s. 25.*

(4) *Deleted by Act No. 36 of 2016, s. 25.*

(5) The trial of an offence under this section shall be without prejudice to any proceedings in or consequent upon a petition.

(6) *Deleted by Act No. 36 of 2016, s. 25*

(Act No. 36 of 2016, s. 25)

111. Repeals

The National Assembly and Presidential Elections Act (Cap. 7) and the Election Offences Act (Cap. 66) are repealed.

112. Transitional provisions

(1) Notwithstanding the provisions of this Act—

(a) the register of voters prepared under the National Assembly and Presidential Elections Act (Cap. 7) shall be deemed to have been prepared under this Act;

(b) a voter's cards issued under the National Assembly and Presidential Elections Act shall be deemed to have been issued under this Act;

(c) an election official holding office immediately before the commencement of this Act shall be deemed to have been appointed in accordance with the provisions of this Act; and

(d) an election petition filed under the National Assembly and Presidential Elections Act (Cap. 7) shall be deemed to have been filed under this Act.

(2) For avoidance of doubt, until the final announcement of all results of the first elections for Parliament under the Constitution—

(a) a notice of commencement of the provisions of this Act under section 1 shall apply to the extent contemplated by section 2(1)(a) of the Sixth Schedule to the Constitution;

(b) any election held before the first elections for Parliament under the Constitution shall be held in accordance with the provisions of the former Constitution and the law applicable under that Constitution pursuant to section 3(2) of the Sixth Schedule to the Constitution:

Provided that the period prescribed for the issuance of any document or the doing of any other act or thing in respect of an election to which is due at the commencement of this subsection shall, notwithstanding the provisions of any other written law, be deemed to run with effect from the date of such commencement.

[Act No. 12 of 2012, Sch., L.N. 76/2012.]

FIRST SCHEDULE

[Section 21(2).]

ELECTION OF SPEAKER OF COUNTY ASSEMBLY

1. A speaker of a county assembly shall be elected when the county assembly first meets after a general election and before the county assembly proceeds with the dispatch of any other business.

2. If the office of speaker falls vacant at any time before the dissolution of the county assembly, another member of the assembly shall be elected to preside over the transaction of business until after the election of a new speaker.

3. The clerk of the county assembly shall preside over the election under paragraph (2).

4. The names of candidates for election to the office of speaker shall be entered upon nomination papers obtained from and handed to the clerk, at least forty-eight hours before the time appointed at which the county assembly is to meet to elect a speaker, and shall be accompanied in each case, by signatures of two members who support the candidate and a declaration by them that the candidate is willing to serve and that the candidate is qualified to be elected as a member of the county assembly under this Act.

5. The clerk shall maintain a register in which shall be shown the date and time when each candidate's nomination papers were received and shall ascertain that every such candidate for election to the office of speaker is qualified to be elected as such under this Act.

6. The election of the speaker shall be by secret ballot.

7. The clerk shall prepare, at least one hour before the meeting of the county assembly, ballot papers upon which shall be shown the names of all candidates validly nominated under paragraph (5) and shall issue not more than one such paper to each member who comes to the table to obtain it.

8. The clerk shall, at the commencement of each ballot, cause the ballot box, empty and unlocked, to be displayed to the county assembly and shall, in the presence of the county assembly, lock the box, which shall thereafter be kept in the full view of the county assembly until the conclusion of the ballot.

9. Each member of the county assembly who wishes to vote shall proceed to a booth or designated area provided by the clerk for that purpose and located next to and within reasonable distance of the ballot box and shall, whilst therein, mark the ballot paper by placing a mark in the space opposite the name of the candidate for whom the member wishes to vote, fold the marked ballot paper before leaving the booth or area and place the folded ballot paper in the ballot box:

Provided that a member who, before the conclusion of a ballot has marked a paper in error may, by returning it to the clerk, obtain another in its place and the clerk shall immediately cancel and destroy the paper so returned.

10. The clerk shall make such arrangements as may be necessary to enable any member with disability to vote.

11. When it appears to the clerk that all members who are present and who wish to vote have placed their ballot papers in the ballot box, the clerk shall unlock the box, examine the ballot papers and, having rejected those unmarked or spoilt, report the result of the ballot; and no member who has not already recorded his or her vote shall be entitled to do so after the clerk has unlocked the ballot box.

12. A person shall not be elected as speaker of a county assembly, unless supported by votes of two-thirds of all the members of the county assembly and if no candidate is supported by the votes of two-thirds of all the members, the candidate who in that ballot receives the highest number of votes and the candidate who in the ballot receives the next highest number shall alone stand for election in a further ballot and the candidate who receives the highest number of votes on the further ballot shall be elected speaker.

13. A candidate may, by written notice to the clerk, withdraw his or her name before a ballot is started, and in the event of such withdrawal, the clerk shall cross the name of that candidate off any ballot papers issued for that or any subsequent ballot.

14. Notwithstanding anything to the contrary in this Schedule, if there is only one candidate who has been duly nominated, that candidate shall be declared forthwith to have been elected speaker, without any ballot or minimum vote being required.

SECOND SCHEDULE

[Sections 51(6), 110(1).]

ELECTORAL CODE OF CONDUCT

(1) This Code shall be subscribed to by—

(a) every political party participating in the election of a president, a member of Parliament, a county governor, a member of a county assembly;

(b) every candidate; and

(c) every leader, chief agent, agent or official of a referendum committee.

(2) This Code shall, in so far as it is applicable, bind the Government and every political party, leader, office bearer, agent and member of a political party or a person who supports a political party, and every candidate nominated under the electoral laws for any election.

(3) All registered political parties and referendum committees shall execute this Code through the hand of their respective registered officials to signify their acceptance to be bound by the provisions of this Code and their commitment to strive to ensure that their members and any person who supports the political party abide by the code at all stages of elections and referendum.

2. In this Code, unless the context otherwise requires—

"Committee" means the Electoral Code of Conduct Enforcement Committee;

"electoral area" means a ward, county or constituency;

"election court" means the Supreme Court in exercise of the jurisdiction conferred upon it by Article 163(3)(a), the High Court in the exercise of the jurisdiction conferred upon it by Article 165(3)(a) of the Constitution, or the High Court in the exercise of the jurisdiction conferred upon it by this Act;

"electoral laws" means the Constitution, the Elections Act and subsidiary legislation made thereunder as they relate to the presidential, parliamentary, county elections and the referendum.

3. The object of this Code is to promote conditions conducive to the conduct of free and fair elections and a climate of tolerance in which political activity may take place without fear, coercion, intimidation or reprisals.

4. All registered political parties and other persons bound by this Code shall endeavour to promote the object of the code to enable free political campaigning and open public debate to take place in all parts of Kenya during an election period.

5. Registered political parties, referendum committees, officials of political parties and referendum committees and candidates do, by subscribing to this Code, further commit themselves to—

(a) adhere to the values and principles of the Constitution;

(b) give wide publicity to this Code;

(c) promote voter education campaigns;

(d) condemn, avoid and take steps to prevent violence and intimidation;

(e) instruct their candidates, office-bearers, agents, members and persons who support the political party of their obligations under this Code;

(f) promote gender equality;

(g) promote ethnic tolerance;

(h) promote cultural diversity;

(i) promote the fair representation of special interest groups;

(j) generally affirm the rights of all participants in an election to–

(i) express divergent political opinions;

(ii) debate and contest the policies and programmes of other parties;

(iii) canvass freely for membership and support from voters;

(iv) subject to the Public Order Act (Cap. 56) hold public meetings;

(v) attend public meetings convened by others;

(vi) distribute non-offensive electoral literature and campaign materials;

(vii) publish and distribute non-offensive notices and advertisements;

(viii) erect non-offensive banners, placards and posters;

(ix) remove all banners, placards and posters erected during the election period;

(x) promote free electoral campaigns by all lawful means; and

(xi) co-operate with the Commission and the relevant Government agencies and other authorities in the investigation of issues and allegations arising during the election period.

6. All those bound by this Code shall, throughout an election period—

(a) publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage, or for any other reason;

(b) refrain from any action involving violence or intimidation;

(c) ensure that no arms or weapons of any kind are carried or displayed at political meetings or any march, demonstration or other event of a political nature;

(d) refrain from campaigning in places of worship or during burial ceremonies;

(e) co-operate and liaise in good faith with other parties to avoid organizing public meetings, demonstrations, rallies or marches to take place at the same time and venue as similar political events organized by other parties;

(f) do nothing to impede the right of any party, through its candidates, canvassers and representatives, to have reasonable access to voters for the purposes of conducting voter education, fund raising, canvassing membership and soliciting support;

(g) avoid plagiarizing the symbols, colours or acronyms of other parties; and to discourage and, if possible, prevent the removal, disfigurement or destruction of political campaign materials of any party;

(h) refrain from offering any document or reward to any person in consideration of such person either joining or not joining any party; attending or not attending any political event; voting or not voting (either at all, or in any particular manner); or accepting, refusing or withdrawing such person's nomination as a candidate in the election;

(i) refrain from any attempt to abuse a position of power, privilege or influence, including parental, patriarchal, state or traditional authority for political purposes including any offer of reward or threat of penalty;

(j) avoid any discrimination based on race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth in connection with the election and political activity;

(k) in relation to the Commission—

(i) acknowledge the authority of the Commission in the conduct of the election or referendum;

(ii) ensure the attendance and participation of representatives at meetings of any party liaison committee and other forums convened by or on behalf of the Commission;

(iii) implement the orders and directions of the Commission;

(iv) facilitate the Commissions right of access through official observers and other representatives to all public political meetings or other electoral activities;

(v) co-operate in the official investigation of issues and allegations arising during an election period;

(vi) take all reasonable steps to ensure the safety of observers and other representatives of the Commission from exposure to insult, hazard or threat in the course of their official duties;

(vii) to establish and maintain effective lines of communication with the Commission; and

(viii) to abide by the provisions of this Code;

(l) reassure voters with regard to the impartiality of the Commission and the secrecy and integrity of the ballot, and to reaffirm that no one should know how any other person has voted;

(m) take reasonable steps to discipline and restrain their party office-bearers, employees, candidates, members and persons who support the political party who—

(i) infringe this Code;

(ii) engage in activities of commission or omission which constitute offences under the electoral laws or otherwise fail to observe this Code; and

(iii) contravene or fail to comply with any provision of the electoral laws;

(n) agree for party office bearers, employees, candidates members and persons who support the political party to submit to the disciplinary procedures of the Commission for any violation of this Code; and

(o) without prejudice to the right to present a petition to an election court, accept the final outcome of the election and the Commission's declaration and certification of the results thereof.

7. Where, in the opinion of the Commission, any political party or referendum committee participating in any election or referendum or the leader, office-bearer or member of a political party or person who supports the political party or referendum committee or any candidate at any election, in any way infringes any provision of this Code, the Commission may—

(a) in the case of a political party and, subject to sub-paragraph (b), and in the case of the leader, any office-bearer or member of a political party or person who supports the political party referendum committee or candidate, impose upon that political party one or more of the following penalties or sanctions which any or all may be suspended on specific conditions—

(i) a formal warning;

(ii) a fine determined by the Commission;

(iii) notwithstanding the provisions of any other written law, an order prohibiting the political party, whether permanently or for a specified period, from utilizing any public media time, through the television or radio broadcasting service of such media as have been or may be allocated to the political party for electoral purposes;

(vi) an order prohibiting the political party, referendum committee or candidate from—

(aa) holding particular public meetings, demonstrations or marches, or any kind of meeting, demonstration or march;

(bb) entering any specified electoral area for purposes of canvassing for membership, or for any other electoral purpose;

(cc) erecting placards or banners, or from publishing and distributing campaign literature;

(dd) publishing or distributing campaign literature and electoral advertising or limiting the rights of the political party to do so, and such prohibition or limitation shall be notified to the relevant regulating officers under the Public Order Act (Cap. 56) in the affected places or electoral areas for purposes of the Act;

(ee) in the case of the leader, candidate, an office-bearer or member of a political party or person who supports the political party or referendum committees impose any one or more of the penalties or sanctions referred to in sub-paragraph (a)(i) or (ii) of this paragraph;

(b) Where a political party, referendum committee, leader or any office bearer, member or person who supports the political party, referendum committee or any candidate at an election fails, neglects or refuses to comply with the orders of the Commission issued under paragraph 7(a), the Commission shall impose upon the defaulting party any of the following sanctions which may be suspended on specific conditions—

(i) in case of fine imposed, prohibit the defaulting party from participating in ongoing and future elections as candidates in case of a defaulting candidate or prohibit the political party or the referendum committee official from participating in ongoing elections and referendum, and future elections or referendum or any activity facilitated by the Commission until such fine has been paid;

(ii) in case of failure to comply with any other sanctions imposed, cancel the right of such political party or candidate to participate in the next election; and

(iii) file execution proceedings in the High Court to enforce the recovery of the fine.

8. A fine imposed by the Commission under this Code shall be registered in the High Court.

9. Without prejudice to the provisions of paragraph 7, the Commission may either of its own motion or in consequence of any report made to it, institute proceedings in the High Court as may be appropriate in the case of any alleged infringement of this Code by a political party or by the leader, any office-bearer or member of a political party or person who supports a political party or any candidate and where the Court finds the infringement of the provisions of this Code—

(a) in the case of a political party, any act or omission involving violence, intimidation or a gross or systematic violation of the rights of any political party, candidate or voter, the Court may, in addition to or in substitution for any other penalty or sanction specified in paragraph 7(a), make an order cancelling the right of such party to participate in the election concerned; or

(b) in the case of the leader, any office-bearer or member of a political party or person who supports the political party or of any candidate, that any act or omission involving violence or intimidation or gross or systematic violation of the rights of any political party candidate or voter, the Court may in addition to or in substitution of any other penalty or sanction specified in paragraph 7(a)(i) and (ii), make an order disqualifying, in the case of a person who is a candidate, that person from being a candidate or deleting the name of that candidate from the list or lists of candidates concerned.

10. In making its decision regarding appropriate penalties or sanctions, the Commission or, as the case may be, the High Court shall have regard to any other legal consequences that may result from civil or criminal proceedings instituted by reason of the same occurrence.

11. The High Court shall ensure that any proceedings initiated under paragraph 9 are dealt with in priority to all other matters brought before it, and that the decision of that Court is given before the date of the election concerned.

12. The procedure of the High Court in cases falling within the provisions of this Code shall, without prejudice to paragraph 9, be in accordance with such Rules of Procedure as shall from time to time be promulgated by the Chief Justice.

13. Every registered political party, referendum committee, candidate and agent—

(a) shall respect the role of the media before, during and after an election or referendum conducted under this Act;

(b) may not prevent access by members of the media to public political meetings, marches, demonstrations and rallies; and

(c) shall take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or persons who supports the candidate or political party.

14. Every media house and its representative shall—

(a) adhere to the media professional ethics in its coverage of public meetings, campaign rallies and demonstrations;

(b) during the prescribed hours of polling, not publish or distribute the result of an exit poll taken in that election or referendum;

(c) adhere to any media regulations issued by the Commission; and

(d) abide by the provisions of this Act.

15. (1) The Commission shall set up the Electoral Code of Conduct Enforcement Committee which shall comprise of not less than five members of the Commission and shall be chaired by a member appointed by the Chairperson; the Commission may nominate a member of its staff to be the secretary to the Committee.

(2) The Chairperson of the committee shall be a person who is qualified to hold the office of Judge of the High Court.

(3) Every candidate, official and agent shall—

(a) acknowledge the authority of the Committee to enforce the provisions of this Code on behalf of the Commission;

(b) ensure compliance with summons issued to the party, its candidates or representatives by the Committee;

(c) co-operate in the official investigation of issues and allegations arising at election period; and

(d) respect and comply with the orders issued by the Committee.

(4) The Committee shall issue summons to the person, political party or referendum committee against whom a complaint has been received as having infringed the provisions of this Code and any other person who the Commission ~~has reason~~ to believe to have infringed the provisions of this Code to attend its meetings. The meetings will be convened at any place which the Committee may deem fit.

(5) In its proceedings, the Committee may examine the person summoned and may allow a person to have legal representation.

(6) The committee shall not be bound by the provisions of the Criminal Procedure Code (Cap. 75) or the Evidence Act (Cap. 80) in its proceedings.

(7) Every person who is summoned by the Committee and who attends the meetings of the Committee shall be accorded the right to be heard.

(8) The Committee shall exercise the powers provided under this Code to punish any person found to have infringed this Code.

(9) The Committee shall deliver its verdict expeditiously and inform the parties of the decision.

(10) Notwithstanding the provisions of this Code, any complaint submitted in writing alleging any irregularity with any establishment of the electoral process at any stage if not satisfactorily resolved by the peace committee shall be examined and determined by the Committee.

16. Every registered political party referendum committee, candidate and agent shall—

(a) ensure security and full participation of women and persons with disabilities as candidates and voters;

(b) respect the right of women to communicate freely with political parties, committees and candidates;

(c) facilitate the full and equal participation of women in political activities;

(d) ensure free access of women and persons with disabilities to all public political meetings, marches, demonstrations, rallies and other public political events; and

(e) take reasonable steps to ensure that women are free to engage in any political activity.

17. (1) The Commission may establish peace committees in every constituency during an election and referendum period.

(2) Every political party, referendum committee, candidate, official and agent shall—

(a) acknowledge the activity of peace committee established at the constituency level by the Commission;

(b) ensure attendance of the peace committee meetings convened at the constituency level on behalf of the Commission; and

(c) co-operate in the official investigation initiated by the peace committee on issues and allegation arising at the election period.

(3) The peace committee shall have power to—

(a) reconcile warring parties;

(b) mediate political disputes in the constituencies;

(c) liaise with government security agencies in the constituency and report suspected election malpractices; and

(d) report any violation of this Code to the Committee for appropriate action.

18. This Code shall take effect from the date of dissolution of parliament until polling day.

19. Any person may complain about the breach of this Code.

THIRD SCHEDULE

[Section 55A).]
[Act No. 12 of 2012, Sch, Act No. 36 of 2016, s. 27.]

OATH OF SECRECY

I, ... I.D./ Passport No..... swear that I shall maintain the secrecy of the ballot and shall not communicate, except for a purpose authorized by law before the poll is closed, any information as to the name or number on the register of voters, of any voter who has or has not applied for a ballot paper or voted at that station or as to the official mark with respect to the ..... constituency/county/ward or do anything that compromises the secrecy of the vote.

Signature of person taking the oath

Before me

.....

(Signature)

Commissioner for Oaths/Magistrate

Date: .....

APPENDIX 4

APPENDIX 4

SPECIAL ISSUE

Kenya Gazette Supplement No. 4 (Acts No. 1)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2017

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THE ELECTION LAWS (AMENDMENT) ACT

No. 1 of 2017

Date of Assent: 9th January, 2017

Date of Commencement: 30th January, 2017

AN ACT of Parliament to give effect to Article 99 (1) (b) of the Constitution, to amend the Elections Act, 2011 and the Independent Electoral and Boundaries Commission Act, 2011; to provide for electoral processes and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Election Laws (Amendment) Act, 2017.

Amendment of section 2 of No. 24 of 2011.

2. Section 2 of the Elections Act, 2011 is amended by deleting the words "or a referendum" appearing in the definition of "returning officer."

Amendment of section 5 of No. 24 of 2011.

3. Section 5 of the Elections Act, 2011 is amended in subsection (1) by—

(a) deleting the proviso to paragraph (a);

(b) inserting the following new paragraph immediately after paragraph (b)—

"(ba) in the case of a referendum, between the date of the publication and the date of the referendum";

(c) deleting paragraph (c).

Amendment of section 6 of No. 24 of 2011.

4. Section 6 of the Elections Act, 2011 is amended by deleting subsection (2) and replacing with the following—

(2) The Commission shall, within ninety days from the date of the notice for a general election, open the Register of Voters for inspection for a period of at least thirty days or such period as the Commission may consider necessary.

Amendment of section 6A of No. 24 of 2011.

5. Section 6A of the Elections Act, 2011 is amended in subsection (1) by deleting the word "ninety" and substituting therefor the word "sixty."

Amendment of section 13 of No. 24 of 2011.

6. Section 13 of the Elections Act, 2011 is amended—

(a) in subsection (1) by deleting the word "sixty" after the words "at least" and substituting therefor the word "ninety ";

(b) by inserting the following new subsection immediately after subsection (2)—

(2A) A political party shall hear and determine all intra party disputes arising from political party nominations within thirty days.

(c) in subsection (3) by deleting the words "forty-five" after the words "at least" and substituting therefor the words "fifty-five."

Amendment of section 16 of No. 24 of 2011.

7. Section 16 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (3)—

(3A) For purposes of subsection (3), a vacancy in the office of a Member of Parliament shall be deemed to occur on the date of issuance of a notice to the Commission which shall not be later than twenty-one days from the date of the actual occurrence of the vacancy.

Amendment of section 22 of No. 24 of 2011.

8. Section 22 of the Elections Act, 2011 is amended—

(a) in subsection (1) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) holds—

(i) in the case of a Member of Parliament, a degree from a university recognized in Kenya; or

(ii) in the case of member of a county assembly, a degree from a university recognized in Kenya.

(b) by inserting the following new subsections immediately after subsection (1)—

(1A) Notwithstanding subsection (1), this section shall come into force and shall apply to qualifications for candidates in the general elections to be held after the 2017 general elections.

(1B) The provisions of this section apply to qualifications to nomination for a party list member under section 34.

Amendment of section 27 of No. 24 of 2011.

9. Section 27 of the Elections Act, 2011 is amended—

(a) in subsection (1) by deleting the words "three months" and substituting therefor the words "six months";

(b) in subsection (2) by deleting the subsection and substituting therefor the following—

(2) An amendment to the nomination rules shall only be effective ninety days after submission of the amendments to the Commission.

(c) by inserting the following new subsections immediately after subsection (2)—

(2A) Upon receipt of the nomination rules from a political party under subsection (1), the Commission shall, within fourteen days, review the rules to ensure compliance with the prescribed regulations and—

(a) issue the political party with a certificate of compliance; or

(b) require the political party to amend the rules to ensure such compliance within fourteen days.

(2B) For purposes of subsection (2A), the Commission shall, by notice in the Gazette, issue Regulations prescribing guidelines to be complied with and the process by which political parties nominate candidates for nomination in accordance with Article 88 (4) (d) of the Constitution failing which the rules shall become void.

Amendment of section 28 of No. 24 of 2011

10. The Elections Act, 2011 is amended by deleting section 28 and substituting therefor the following section—

Submission of party membership lists

28. (1) A political party that nominates a person for an election under this Act shall submit to the Commission a membership list of the party—

(a) in the case of a general election, at least one hundred and twenty days before the date of the election; and

(b) in the case of a by-election, forty-five days before the date of the by-election.

(2) The Commission shall publicize the membership lists as received from political parties.

11. Section 30 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (3)— Amendment of section 30 of No. 24 of 2011.

(3A) A registered referendum committee may appoint one agent at each polling station.

12. Section 31 of the Elections Act, 2011 is amended by inserting the following new subsections immediately after subsection (2D)— Amendment of section 31 of No. 24 of 2011.

(2E) Where the Commission receives multiple requests under subsection (2), the Commission shall conduct and supervise the nomination of candidates for presidential, parliamentary or county elections for all the requesting political parties—

(a) on the same day;

(b) in the same polling centres; and

(c) in different polling streams for each participating political party."

(2F) Parliament shall appropriate monies for the effective implementation of this section.

13. Section 32 of the Elections Act, 2011 is amended— Amendment of section 32 of No. 24 of 2011.

(a) by inserting a new subsection immediately after subsection (1) —

(1A) Where there is a vacancy in the office of the Governor, an independent candidate shall submit to the Commission, the symbol that the person intends to use during an election at least seven days before nomination.

(b) in subsection (2) by deleting the words "subsection (1)" appearing immediately after the word "under" and substituting therefor the words "this section."

14. Section 33 of the Elections Act, 2011 is amended in subsection (1) by inserting the words "and symbol" immediately after the words "submitted to the Commission the name" appearing in paragraph (c). Amendment of section 33 of No. 24 of 2011.

15. Section 34 of the Elections Act, 2011 is amended— Amendment of section 34 of No. 24 of 2011.

(a) by inserting the following new subsection immediately after subsection (4)—

(4A) In the case of a person nominated pursuant to Article 177(1) (c) of the Constitution, the party list shall include a certification in the manner prescribed by the Commission.

(b) by inserting the following new subsections immediately after subsection (6)—

(6A) Upon receipt of the party list from a political party under subsection (1), the Commission shall review the list to ensure compliance with the prescribed regulations and—

(a) issue the political party with a certificate of compliance; or

(b) require the political party to amend the party list to ensure such compliance failing which the Commission shall reject the list.

(6B) For purposes of subsection (6A), the Commission may, by notice in the gazette, issue regulations prescribing guidelines to be complied with in preparation of party lists.

(c) by deleting subsection (9) and substituting therefore the following—

(9) The party list shall not contain a name of a candidate nominated for an election.

Insertion of new section 38A of No. 24 of 2011.

16. The Elections Act, 2011 is amended by inserting the following new section immediately after section 38—

Number of voters per polling station.

38A. For the purposes of providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed seven hundred.

Amendment of section 43 of No. 24 of 2011.

17. Section 43 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (5)—

(5A) A public officer who intends to contest in a by-election under this Act shall resign from public office within seven days of the declaration of a vacancy.

Amendment of section 44 of No. 24 of 2011.

18. Section 44 of the Elections Act, 2011 is amended—

(a) in subsection (4) by deleting the words "eight months" appearing paragraph (a) and substituting therefor the words "one hundred and twenty days"; and

(b) in subsection (7) by deleting the words "eight months" appearing paragraph (b) and substituting therefor the words "one hundred and twenty days".

Amendment of No. 24 of 2011.

19. The Elections Act, 2011 is amended by inserting the following new section immediately after section 44—

Complementary mechanism for identification of voters.

44A. Notwithstanding the provisions of section 39 and section 44, the Commission shall put in place a complementary mechanism for identification of voters and transmission of election results that is simple, accurate, verifiable, secure, accountable and transparent to ensure that the Commission complies with the provisions of Article 38 of the Constitution.

Amendment of section 46 of No. 24 of 2011.

20. Section 46 of the Elections Act, 2011 is amended in subsection (3) by inserting the words "or thumb prints" immediately after the word "signature";

Amendment of section 50 of No. 24 of 2011.

21. Section 50 of the Elections Act, 2011 is amended in subsection (2) (b) by deleting the words "answers to the referendum question" and substituting therefor the words "answer or answers to the referendum question or questions."

Amendment of section 54 of No. 24 of 2011.

22. Section 54 of the Elections Act, 2011 is amended by deleting the words "255 and 256" appearing immediately after the word "Article" and substituting therefor the words "255, 256 and 257".

Amendment of section 74 of No. 24 of 2011.

23. Section 74 of the Elections Act, 2011 is amended in subsection (2) by deleting the word "seven" appearing immediately after the word "within" and substituting therefor the word "ten".

Amendment of section 86 of No. 24 of 2011.

24. Section 86 of the Elections Act, 2011 is amended—

(a) in subsection (1) by deleting the words "which shall then" appearing immediately after the word "Commissioner" and substituting therefor the word "and"; and

(b) by deleting subsection (2).

Amendment of section 91 of No. 24 of 2011.

25. Section 91 of the Elections Act, 2011is amended—

(a) in subsection (1) (a) by the deleting the word "gazetted " appearing immediately after the words "results if" and substituting therefor the word "declared";

(b) in subsection (2) by—

(i) deleting the words "the votes of a majority of the persons entitled to vote in the referendum" appearing immediately after the words "supported by" in paragraph (a) and substituting therefor the words "a simple majority of the citizens voting in the referendum".

(ii) deleting the words "the votes of a majority of the persons entitled to vote in such referendum" appearing immediately after the words "Commission that" in paragraph (b) and substituting therefor the words "a simple majority of the citizens voting in such referendum".

Amendment of the Second Schedule to No. 24 of 2011.

26. The Second Schedule to the Elections Act, 2011 is amended by deleting paragraph 18 and substituting therefor the following paragraph—

"18. This Code shall apply—

(a) in the case of a general election, from the date of publication of a notice of election until the swearing in of newly elected candidates; and

(b) in the case of a by-elections, from the date of declaration of a vacancy until the swearing in of elected candidates."

Amendment of section 3 of No. 9 of 2011.

27. Section 3 of the Independent Electoral and Boundaries Commission Act, 2011, is amended by deleting paragraph (e).

Amendment of section 24 of No. 9 of 2011.

28. Section 24 of the Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting subsection (3) and substituting therefor the following subsection—

(3) The Commission shall publish and publicize the annual report.

29. The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting section 35.

Amendment of section 35 of No. 9 of 2011.

30. The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting section 36 and substituting therefor the following new section—

Amendment of section 36 of No. 9 of 2011.

Procedure for delimitation of electoral boundaries.

36. (1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.

(2) Subject to the Constitution, matters to be addressed in the delimitation of electoral boundaries are—

(a) review of the names and boundaries of constituencies;

(b) review of the number, names and boundaries of wards;

(c) re-distribution of wards affected by any changes in the boundaries of constituencies; and

(d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as provided for by Article 89(5) of the Constitution and that such a process—

(i) allows for variation of margin of not more than the limits provided under Article 89 (6) of the Constitution in relation to cities, sparsely populated areas and other areas;

(ii) takes into account the provisions of Article 89 (7) (b) of the Constitution that provides for the progressive realization of the requirement that the number of inhabitants in each constituency and ward

to be as nearly as possible, equal to the population quota for the purposes of the each review;

(iii) is subject to the use of enumerated national census figures.

(3) The Commission shall prepare and publish a preliminary report outlining—

(a) the proposed delimitation of boundaries for constituencies and wards; and

(b) the specific geographical; and

(c) demographical details relating to such delimitation.

(4) The Commission shall ensure that the preliminary report is made available to the public for a period of thirty days and invite representations from the public on the proposals contained in the report during that period.

(5) Upon the expiry of the period provided in subsection (4), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received and submit the revised preliminary report to the Parliamentary Committee.

(6) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.

(7) The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission.

(8) Within fourteen days of the expiry of the period provided for in subsection (7),

the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the *Gazette*.

(9) Where the National Assembly fails to make recommendations within the period specified in subsection (7), the Commission shall publish its report in accordance with subsection (8).

(10) A person who, being responsible for the publication in the *Gazette* of the final report submitted under this subsection fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

(11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subsection (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the Gazette.

Amendment of the Second Schedule to No. 9 of 2011.

31. The Second Schedule to the Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting paragraph 9 (3).

Amendment of No 42 of 2013.

32. The Elections Campaign Financing Act, 2013 is amended by inserting the following new section immediately after section 1—

Suspension of operation of Act.

1A. The operation of this Act is suspended and the Act shall come into force immediately after the general elections to be held in the year 2017.

Amendment of section 6 of No. 42 of 2013.

33. Section 6 of the Elections Campaign Financing Act, 2013 is amended in subsection (5) by deleting the word "eight" appearing in paragraph (a) and substituting therefor the word "two."

APPENDIX 5

APPENDIX 5

NATIONAL COUNCIL
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SPECIAL ISSUE

Kenya Gazette Supplement No. 157 (Acts No. 36)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2016

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THE ELECTION LAWS (AMENDMENT) ACT

No. 36 of 2016

Date of Assent: 13th September, 2016

Date of Commencement: 4th October, 2016

AN ACT of Parliament to amend various laws relating to elections and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Election Laws (Amendment) Act, 2016.

Amendment of section 2 of No. 24 of 2011.

2. Section 2 of the Elections Act, 2011 is amended—

(a) in the definition of "county" by inserting the words "one of" immediately after the word "means";

(b) in the definition of "election court" by deleting the word "and" appearing immediately after the words "of the Constitution" and substituting therefor the word "or";

(c) in the definition of "nomination day" by inserting the words "at least sixty days before an election" immediately after the words "day gazetted";

(d) in the definition of "Principal Register of Voters" by deleting the expression "Principal Register of Voters" and substituting therefor the expression "Register of Voters";

(e) inserting the following new definitions in their proper alphabetical sequence—

"biometric" means unique identifiers or attributes including fingerprints, hand geometry, earlobe geometry, retina and iris patterns, voice waves, DNA, and signatures; and

"integrated electronic electoral system" refers to a system that includes biometric voter registration, biometric voter identification and electronic result transmission system.

Amendment of section 5 of No. 24 of 2011.

3. Section 5 of the Elections Act, 2011 is amended by—

(a) deleting subsection (3A); and

(b) deleting subsection (3B).

4. Section 6 of the Elections Act, 2011 is amended by— Amendment of section 6 of No. 24 of 2011.

(a) deleting subsection (2) and substituting therefor the following new subsection—

(2) The Commission shall, for purposes of subsection (1), maintain a public web portal for inspection of the register of members of the public.

(b) deleting subsection (3).

5. The Elections Act, 2011 is amended by inserting the following new section immediately after section 6— Insertion of new section 6A in No. 24 of 2011.

Verification of biometric data.

6A. (1) The Commission shall, not later than ninety days before the date of a general election, open the Register of Voters for verification of biometric data by members of the public at their respective polling stations for a period of thirty days.

(2) The Commission shall, upon the expiry of the period for verification under subsection (1), revise the Register of Voters to take into account any changes in particulars arising out of the verification process.

(3) The Commission shall, upon expiry of the period for verification specified under subsection (1) publish—

(a) a notice in the *Gazette* to the effect that the revision under subsection (2) has been completed; and

(b) the Register of Voters online and in such other manner as may be prescribed by regulations.

6. The Elections Act, 2011 is amended by inserting the following new section immediately after section 8— Insertion of new section 8A in No. 24 of 2011.

Audit of the register of voters.

8A. (1) The Commission may, at least six months before a general election, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of—

(a) verifying the accuracy of the Register;

(b) recommending mechanisms of enhancing the accuracy of the Register; and

(c) updating the register.

(2) The Kenya Citizens and Foreign Nationals Management Service established under section 3 of the Kenya Citizens and Foreign Nationals Management Service Act shall make available to the Commission the information held by it in the national population register for the purpose of the conduct of an audit under subsection (1).

No. 3 of 2011.

(3) 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—

(a) verifying the accuracy of the Register;

(b) recommending mechanisms of enhancing the accuracy of the Register; and

(c) updating the register.

(4) The firm engaged under subsection (3) shall conduct the audit and report to the Commission within a period of thirty days from the date of engagement.

(5) The Commission shall, within fourteen days of receipt of the report under subsection (4), submit the report to the National Assembly and the Senate.

(6) The Commission shall implement the recommendations of the audit report within a period of thirty days of receipt of the report and submit its report to the National Assembly and the Senate.

Amendment of section 10 of No. 24 of 2011.

7. Section 10 of the Elections Act, 2011 is amended in subsection (1) by deleting the word "is" and substituting therefor the words "and biometric data are".

Amendment of section 13 of No. 24 of 2011.

8. Section 13 of the Elections Act, 2011 is amended in subsection (1) by deleting the words "forty-five" appearing immediately after the words "at least" and substituting therefor the word "sixty".

Amendment of section 28 of No. 24 of 2011.

9. Section 28 of the Elections Act, 2011 is amended by deleting the words "forty-five" appearing immediately after the words "at least" and substituting therefor the word "ninety".

Amendment of section 31 of No. 24 of 2011.

10. Section 31 of the Elections Act, 2011 is amended by—

(a) deleting subsection (2) and substituting therefor the following subsection—

(2) 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.

(b) inserting the following new subsections immediately after subsection (2)—

(2A) Every political party shall submit the names of the party candidates who have been selected to participate in the general elections under this Act at least sixty days before the elections.

(2B) A political party shall, at least twenty-one days before the nomination day, submit to the Commission the names of the persons contesting in its party primary and the date of its party primary.

(2C) 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 candidates.

(2D) A candidate for a presidential, parliamentary or county election shall be selected

by persons who are members of the respective political parties and whose names appear on the party membership list as submitted to the Commission under section 28.

Amendment of section 33 of No. 24 of 2011.

11. Section 33 of the Elections Act, 2011 is amended by—

(a) renumbering the existing provision as subsection (1);

(b) in subsection (1) by—

(i) deleting paragraph (b) and substituting therefor the following new paragraph—

(b) has submitted to the Commission, at least sixty days before a general election, a duly filled nomination paper in such form as may be prescribed by the Commission;

(ii) deleting paragraph (c) and substituting therefor the following new paragraph—

(b) has, at least ninety days before the date of a general election or at least twenty one days before the date appointed by the Commission as the nomination day for a by–election, submitted to the Commission the name that the person intends to use during the election.

(2) inserting the following new subsection immediately after subsection (1)—

(2)The Commission shall 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.

Amendment of section 35 in No. 24 of 2011.

12. The Elections Act, 2011 is amended by deleting section 35 and substituting therefor the following section—

Submission of party lists.

35. A political party shall submit its party list to the Commission at least forty-five days before the date of the general election.

Insertion of new section 38A in No. 24 of 2011.

13. The Elections Act, 2011 is amended by inserting the following new section immediately after section 38—

Number of voters per polling station.

38A. For the efficient and effective conduct of elections, the Commission shall determine the number of voters per polling station but such number shall not exceed five hundred voters.

Amendment of section 38 of No. 24 of 2011.

14. Section 39 of the Elections Act, 2011 is amended by inserting the following new sub-sections immediately after subsection (1)—

(1A) The Commission shall appoint constituency returning officers to be responsible for—

(i) tallying, announcement and declaration, in the prescribed form, of the final results from each polling station in a constituency for the election of a member of the National Assembly and members of the county assembly;

(ii) collating and announcing the results from each polling station in the constituency for the election of the President, county Governor, Senator and county women representative to the National Assembly; and

(iii) submitting, in the prescribed form, the collated results for the election of the President to the national tallying centre and the collated results for the election of the county Governor, Senator and county women representative to the National Assembly to the respective county returning officer.

(1B)The Commission shall appoint county returning officers to be responsible for tallying, announcement and declaration, in the prescribed form, of final results from constituencies in the county for purposes of the election of the county Governor, Senator and county women representative to the National Assembly.

(1C) For purposes of a presidential election the Commission shall—

(a) electronically transmit, in the prescribed form, the tabulated results of an election

for the President from a polling station to the constituency tallying centre and to the national tallying centre;

(b) tally and verify the results received at the national tallying centre; and

(c) publish the polling result forms on an online public portal maintained by the Commission.

(1D) The chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

Amendment of section 40 of No. 24 of 2011.

15. Section 40 of the Elections Act, 2011is amended by—

(a) renumbering the existing provision as subsection (1); and

(b) inserting the following new subsection immediately after subsection (1)—

(2) The mechanisms under subsection (1) shall include provision for partnership with other agencies and non–state actors in the provision of voter education.

Amendment of section 43 in No. 24 of 2011.

16. Section 43 of the Elections Act, 2011 is amended—

(a) by deleting subsections (1), (2), (3) and (4); and

(b) in subsection (6), by deleting paragraph (b).

Amendment of section 44 of No. 24 of 2011.

17. The Elections Act, 2011 is amended by deleting section 44 and substituting therefor the following new section—.

Use of technology.

44. (1) Subject to this section, there is established an integrated electronic electoral system that enables biometric voter registration, electronic voter identification and electronic transmission of results.

(2) The Commission shall, for purposes of subsection(1), develop a policy on the progressive use of technology in the electoral process.

(3) The Commission shall ensure that the technology in use under subsection (1) is simple, accurate, verifiable, secure, accountable and transparent.

(4) The Commission shall, in an open and transparent manner—

(a) procure and put in place the technology necessary for the conduct of a general election at least eight months before such elections; and

(b) test, verify and deploy such technology at least sixty days before a general election.

(5) The Commission shall, for purposes of this section and in consultation with relevant agencies, institutions and stakeholders, including political parties, make regulations for the implementation of this section and in particular, regulations providing for—

(a) the transparent acquisition and disposal of information and communication technology assets and systems;

(b) testing and certification of the system;

(c) mechanisms for the conduct of a system audit;

(d) data storage and information security;

(e) data retention and disposal;

(f) access to electoral system software source codes;

(g) capacity building of staff of the Commission and relevant stakeholders on the use of technology in the electoral process;

(h) telecommunication network for voter validation and result transmission;

(i) development, publication and implementation of a disaster recovery and operations continuity plan; and

(j) the operations of the technical committee established under subsection (7).

(6) 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.

(7) The technology used for the purpose of the first general elections upon the commencement of this section shall –

(a) be restricted to the process of voter registration, identification of voters and results transmission; and

(b) be procured at least eight months before the general election.

(8) For the purposes of giving effect to this section, the Commission shall establish a technical committee of the Commission consisting of such members and officers of the Commission and such other relevant agencies, institutions or stakeholders as the Commission may consider necessary to oversee the adoption of technology in the electoral process and implement the use of such technology.

Insertion of new section 55A, 55B and 55C in No. 24 of 2011.

18. The Elections Act, 2011 is amended by inserting the following new sections immediately after section 55–

Maintenance of secrecy at elections.

55A. (1) Every elections officer, candidate or agent authorized to take part in any proceedings relating to the issue or

receipt of ballot papers or to attend at a polling station or at the counting of the votes shall, before so attending, make an oath of secrecy prescribed in the Third Schedule.

(2) Every officer, candidate or agent in attendance at a polling station shall—

(a) maintain and aid in maintaining the secrecy of the ballot; and

(b) not communicate, except for a purpose authorized by law before the poll is closed, any information as to the name or number on the register of voters, of any voter who has or has not applied for a ballot paper or voted at that station or as to the official mark.

(3) A presiding officer may, upon request, divulge to a candidate or to the agent of a candidate the total number of voters who have voted in the station at any time before the poll is closed.

Postponement of elections by the Commission.

55B (1) The Commission may, where a date has been appointed for holding an election, postpone the election in a constituency, county or ward for such period as it may consider necessary where—

(a) there is reason to believe that a serious breach of peace is likely to occur if the election is held on that date;

(b) it is impossible to conduct the elections as a result of a natural disaster or other emergencies,

(c) that there has been occurrence of an electoral malpractice of such a nature and gravity as to make it impossible for an election to proceed.

(2) Where an election is postponed under subsection (1), the election shall be held at the earliest practicable time.

(3) Notwithstanding the provisions of this section, the Commission may, if satisfied that the result of the elections will not be affected by voting in the area in respect of which substituted dates have been appointed, direct that a return of the elections be made.

Amendment of section 76 of No. 24 of 2011.

19. Section 76 of the Elections Act, 2011 is amended–

(a) in subsection (1)(a) by deleting the words "publication of the results of the election in the *Gazette*" appearing immediately after the words "date of" and substituting therefor the word "declaration of the results of the election"; and

(b) in subsection (1)(c) by inserting the words "or a county assembly" immediately after the word "Parliament".

Amendment of section 85A of No. 24 of 2011.

20. Section 85A of the Elections Act, 2011 is amended by—

(a) renumbering the existing provision as subsection (1);

(b) inserting the following new subsection—

(2) An appeal under subsection (1) shall act as a stay of the certificate of the election court certifying the results of an election until the appeal is heard and determined.

Amendment of section 87 of No. 24 of 2011.

21. The Elections Act is amended by deleting section 87 and substituting therefor the following new section—

Report of Court on electoral malpractices.

87. (1) An election court may, at the conclusion of the hearing of a petition, in addition to any other orders, make a determination on whether an electoral malpractice of a criminal nature may have occurred.

(2) Where the election court determines that an electoral malpractice of a criminal nature may have occurred, the court shall

direct that the order be transmitted to the Director of Public Prosecutions.

(3) Upon receipt of the order under subsection (2), the Director of Public Prosecutions shall—

(a) direct an investigation to be carried out by such State agency as it considers appropriate; and

(b) based on the outcome of the investigations, commence prosecution or close the matter.

Replacement of section 104 in No. 24 of 2011.

22. The Elections Act is amended by deleting section 104 and substituting therefor the following new section—

Facilitation of persons with special needs including persons with disabilities.

104. The Commission shall, for the purpose of ensuring that persons with special needs including persons with disabilities realise their right to vote—

(a) put in place appropriate infrastructure including special voting booths; and

(b) have in each polling station such officers as the Commission considers necessary to facilitate voting.

Amendment of section 106 of No. 24 of 2011.

23. The Elections Act, 2011 is amended by deleting section 106.

Amendment of section 109 of No. 24 of 2011.

24. Section 109 of the Elections Act is amended in subsection (1) by inserting the word "prisoner" immediately after the word "citizens living abroad" appearing in paragraph (b).

Amendment of section 110 of No. 24 of 2011.

25. Section 110 of the Elections Act, 2011 is amended by—

(a) deleting subsection (3);

(b) deleting subsection (4); and

(c) deleting subsection (6).

General amendment to Act No. 24 of 2011.

26. The Elections Act, 2011 is amended by deleting the expression "Principal Register of Voters" wherever it appears and substituting therefor the expression "Register of Voters".

Insertion of new Schedule.

27. The Elections Act, 2011 is amended by inserting the following new schedule immediately after the Second Schedule—

THIRD SCHEDULE (s. 55A)

OATH OF SECRECY

I, ...
I.D./Passport No. .....
swear that I shall maintain the secrecy of the ballot and shall not communicate, except for a purpose authorized by law before the poll is closed, any information as to the name or number on the register of voters, of any voter who has or has not applied for a ballot paper or voted at that station or as to the official mark with respect to the ..... constituency/county/ward or do anything that compromises the secrecy of the vote.

.....
Signature of person taking the oath

Before me

.....
(Signature)

Commissioner for Oaths/Magistrate

Date: .....

Amendment of section 25 of No. 11 of 2011.

28. Section 25 of the Political Parties Act is amended in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraphs—

(a) eighty per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election;

(aa) fifteen per cent of the Fund proportionately to political parties qualifying under paragraph (a) based on the number of candidates of the party from special interest groups elected in the preceding general election ; and

Amendment of section 3 of No. 9 of 2011.

29. Section 3 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in paragraph (b) by deleting the expression "12(b)" appearing immediately after the words "pursuant to Article" and substituting therefor the expression "88(1), (2) and (3)".

Amendment of section 4 of No. 9 of 2011.

30. Section 4 of the Independent Electoral and Boundaries Commission Act, is amended in subsection (1) by deleting paragraph (*l*).

Amendment of section 5 of No. 9 of 2011

31. The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting section 5 and substituting therefor the following section—

Composition and appointment of the Commission

5. (1) The Commission shall consist of a chairperson and six other members appointed in accordance with Article 250(4) of the Constitution and the provisions of this Act.

(2) The chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.

(3) The process of replacement of a chairperson or a member of the Commission shall commence at least six months before the lapse of the term of the chairperson or member of the Commission.

(4) The procedure set out in the First Schedule shall apply, with the necessary modifications, whenever there is a vacancy in the Commission

Amendment of section 6 of No. 9 of 2011

32. Section 6 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in subsection (2) by deleting paragraph (a).

Insertion of section 7A in No.9 of 2011.

33. The Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new section immediately after section 7—

Vacancy in the office of chairperson and members

7A. (1) The office of the chairperson or a member of the Commission shall become vacant if the holder—

(a) dies;

(b) resigns from office by notice in writing addressed to the President; or

(c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(2) The President shall publish a notice of a vacancy in the *Gazette* within seven days of the occurrence of such vacancy.

(3) Whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2).

Amendment of section 10 of No. 9 of 2011.

34. The Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new section immediately after section 10—

Vacancy of office of secretary

10A. (1) The office of the secretary shall become vacant if the holder—

(a) dies;

(b) resigns from office by notice in writing addressed to the Commission; or

(c) is removed from office under any of the circumstances set out under section 10.

Insertion of new section 11A of No. 9 of 2011.

35. The Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new section immediately after section 11—

Relationship between the Commissioners and Secretariat.

11A. For the effective performance of the functions of the Commission–

(a) the chairperson and members of the Commission shall perform their functions in accordance with the Constitution and in particular, shall be responsible for the formulation of policy and strategy of the Commission and oversight; and

(b) the secretariat shall perform the day-to-day administrative functions of the Commission and implement the policies and strategies formulated by the Commission.

Amendment of section 24 of No. 9 of 2011.

36. Section 24 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (b)—

(ba) progress made in the continuous registration of citizens as voters and the progressive realisation of the right to vote of citizens residing outside Kenya and prisoners;

Amendment of section 31 of No. 9 of 2011.

37. Section 31 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in subsection (2) by deleting paragraph (e).

Amendment of the First Schedule No. 9 of 2011.

38. The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting the First Schedule and substituting therefor the following new Schedule:

FIRST SCHEDULE (S. 5)

PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE COMMISSION

Selection panel

1. (1) At least six months before the lapse of the term of the chairperson or member of the Commission or within fourteen days of the declaration of a vacancy in the office of the chairperson or member of the Commission under the Constitution or this Act, the President shall appoint a selection panel consisting of such persons as Parliament shall determine for the purposes of appointment of the chairperson or member of the Commission.

(2) For the purpose of the first appointment of commissioners upon the commencement of section 5, the selection panel shall consist of –

(a) four persons, being two men and two women, nominated by the Parliamentary Service Commission;

(b) one person nominated by the Kenya Conference of Catholic Bishops;

(c) one person nominated by the National Council of Churches of Kenya;

(d) one person nominated by the Supreme Council of Kenya Muslims, the National Muslim Leaders Forum and the Council of Imams and Preachers of Kenya;

(e) one person nominated by the Evangelical Alliance of Kenya; and

(f) one person nominated by the Hindu Council of Kenya.

(3) The respective nominating bodies under sub-paragraphs (2)(b) to (f) shall submit the names of their nominees to the Parliamentary Service Commission for transmission to the President for appointment.

(4) The selection panel shall, at its first sitting, elect a chairperson and vice-chairperson from amongst its number.

(5) Subject to the provisions of this Schedule, the selection panel shall determine its own procedure.

(6) The Parliamentary Service Commission shall provide the secretariat services and facilities required by the selection panel in the performance of its functions.

Oath or affirmation of office

2. The chairperson and members of the selection panel shall, before assuming office, take and subscribe the oath or affirmation of office prescribed in the Third Schedule.

Selection of nominees

3. (1) The selection panel shall, within seven days of its appointment, invite applications from qualified persons and publish the names of all applicants and their qualifications in the *Gazette*, two newspapers of national circulation and on the website of the Parliamentary Service Commission.

(2) The selection panel shall consider the applications, shortlist and interview the applicants.

(3) The interviews under subparagraph (2) shall be conducted in public.

(4) After conducting interviews under subparagraph (2), the selection panel shall select two persons qualified to be appointed as chairperson and nine persons qualified to be appointed as members of the Commission and shall forward the names to the President for nomination of one person for appointment as the chairperson and six persons for appointment as members.

(5) The President shall, within seven days of receipt of the names under sub-paragraph (4), forward the list of nominees to the National Assembly for approval in accordance with the Public Appointments (Parliamentary Approval) Act.

Appointment by the President.

4. The President shall, within seven days of receipt of the names approved by the National Assembly, by notice in the *Gazette*, appoint the Chairperson and the members of the Commission.

Gender equity and regional balance.

5. In short listing, nominating or appointing persons as chairperson and members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender and shall ensure regional balance.

Dissolution of Selection Panel

6. The selection panel shall stand dissolved upon the requisite appointments being made under paragraph 4.

Amendment of section 12 of No. 7 of 2011.

39. Section 12 of the Supreme Court Act is amended—

(a) by renumbering the existing provision as subsection (1);

(b) by inserting the following new subsection immediately after subsection (1)—

(2) The Independent Electoral and Boundaries Commission shall, within a period of forty-eight hours from the date of the service of a presidential election petition, submit to the Supreme Court certified copies of the documents used to declare the results of the presidential election, including the forms used to announce the results of the election at the polling station and the constituency tallying centre and to declare the result at the national tallying centre.

Amendment of section 9 of Cap. 107.

40. Section 9 of the Registration of Persons Act is amended—

(a) in subsection (1) by inserting the words "within a period of thirty days from the date of registration" immediately after the words "registration officer shall";

(b) in subsection (6) by inserting the words "within a period of fourteen days from the date of payment of the fees" immediately after the words "a new identity card".

Amendment of section 16 of Cap. 107.

41. Section 16 of the Registration of Persons Act is amended by inserting the following new paragraph immediately after paragraph (b)—

(ba) providing simple guidelines for the vetting of applicants prior to the issuance or replacement of an identity card;