

ANNEX 1:

RESOLUTIONS

ESTABLISHING THE

COMMITTEE



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT (SECOND SESSION)

RESOLUTION: ESTABLISHMENT OF THE NATIONAL DIALOGUE COMMITTEE

AWARE THAT Article 1(1) of the Constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution;

FURTHER AWARE that Article 1(2) of the Constitution provides that the people of Kenya may exercise their sovereign power either directly or through their democratically elected representatives;

CONSCIOUS that Article 10 of the Constitution espouses the national values and principles of governance, which include the rule of law, democracy and participation of the people;

FURTHER CONSCIOUS that Article 94 of the Constitution provides that Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty;

RECOGNISING that there is a need to embrace consultation, dialogue and consensus building as a way of resolving issues of concern to the people of Kenya;

COGNIZANT that despite the constitutional and legal reforms on the electoral processes and the electoral laws, after every election cycle there has been mistrust of electoral outcomes, leaving the country divided;

FURTHER COGNIZANT that efforts to enhance constitutionalism, the rule of law and respect for human rights need to be promoted;

AWARE that there have been previous calls and attempts at building consensus on issues of concern to the people of Kenya through bi-partisan engagements in Parliament;

APPRECIATING the need to establish an inclusive forum for dialogue, consultation and consensus building in seeking to promote the peace, stability and prosperity of the country;

ACKNOWLEDGING THAT the Majority Party in Parliament and the Minority Party in Parliament have agreed to embrace dialogue through the establishment of a *National Dialogue Committee* to recommend a way forward on issues of concern to the people of Kenya;

NOW, THEREFORE, the Houses of Parliament **RESOLVE AS FOLLOWS:-**

1. **THAT** the two Houses of Parliament establish a *National Dialogue Committee* consisting of ten (10) Members to represent the Kenya Kwanza Alliance (“**Kenya Kwanza**”), a coalition constituting the Majority Party of the Parliament of the Republic of Kenya and Azimio La Umoja One Kenya Coalition Party (“**Azimio**”), a coalition forming the Minority Party of the Parliament of the Republic of Kenya;
2. **THAT** each Coalition shall appoint five (5) Members to the *National Dialogue Committee*;
3. **THAT** the membership of the *National Dialogue Committee* shall be drawn from Parliament and outside Parliament;
4. **THAT** the *National Dialogue Committee* shall comprise the following Members to represent Kenya Kwanza:
 - 1) Hon. Kimani Ichungw’ah (**Delegation Leader**);
 - 2) Gov. Cecily Mbarire (**Deputy Delegation Leader**);
 - 3) Hon. Sen. Aaron Cheruiyot;
 - 4) Hon. Omar Hassan Omar; and
 - 5) Hon. Catherine Wambilianga.
5. **THAT** the *National Dialogue Committee* shall comprise the following Members to represent Azimio:
 - 1) H. E. Stephen Kalonzo Musyoka (**Delegation Leader**);
 - 2) Hon. Opiyo Wandayi (**Deputy Delegation Leader**);
 - 3) Hon. Amina Mnyazi;
 - 4) Hon. Eugene Wamalwa; and
 - 5) Hon. Sen. Okong’o Mogeni.

6. **THAT** the mandate of the *National Dialogue Committee* shall be to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, to be framed by the *National Dialogue Committee*, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs.

THE HOUSES OF PARLIAMENT NOTES:-

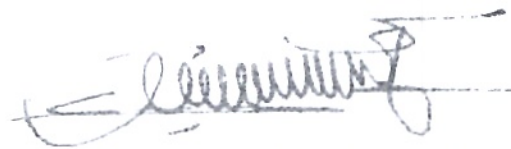
7. **THAT** the Technical Teams representing Kenya Kwanza and Azimio shall support the *National Dialogue Committee*.
8. **THAT** the Technical Team representing Kenya Kwanza shall comprise the following persons:
- (1) Dr. Muthomi Thiankolu;
 - (2) Dr. Linda Musumba;
 - (3) Dr Duncan Ojwang; and
 - (4) Nick Biketi.
9. **THAT** the Technical Team representing Azimio shall comprise the following persons:
- (1) Hon. Jeremiah Kioni;
 - (2) Prof. Adams Oloo;
 - (3) Abubakar Zein Abubakar; and
 - (4) Lynn Ngugi.
10. **THAT** further the *National Dialogue Committee* shall be assisted by two (2) Officers designated as Communication Secretaries, one (1) of whom shall be appointed by the Leader of Majority Party and the other by the Leader of Minority Party.

THE HOUSES OF PARLIAMENT FURTHER RESOLVE:-

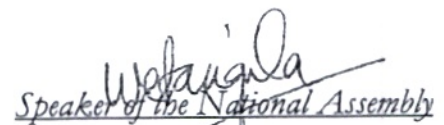
11. **THAT** the *National Dialogue Committee* shall formulate and adopt a Framework Agreement to guide the bi-partisan talks
12. **THAT** the *National Dialogue Committee* shall report to the Leadership of Kenya Kwanza and Azimio Coalitions within sixty (60) days and after that, submit its report to Parliament.

13. THAT in the execution of its mandate, the *National Dialogue Committee* may invite, engage with and consider submissions from stakeholders, collate views from the public and engage experts, professionals and other technical resource persons as necessary.
14. THAT the *National Dialogue Committee* shall determine its own rules of procedure.
15. THAT the Speakers and Clerks of both Houses of Parliament shall provide secretariat and any other necessary support to facilitate the work of the *National Dialogue Committee*.
-

I certify that this printed impression is a true copy of the Resolution as passed by the National Assembly on Wednesday 16th August 2023.


Clerk of the National Assembly
17.8.2023

Endorsed for presentation to the Senate.


Speaker of the National Assembly
17/08/2023



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (SECOND SESSION)

THE SENATE

MESSAGES

MESSAGE TO THE NATIONAL ASSEMBLY

No. 018 of 2023

SUBJECT: ESTABLISHMENT OF THE NATIONAL DIALOGUE COMMITTEE

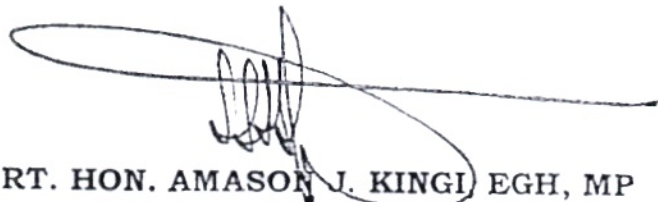
PURSUANT to the provisions of Standing Order 46 (1) of the Standing Orders of the Senate, I hereby convey the following Message from the Senate –

WHEREAS, the National Assembly, on Wednesday, 16th August, 2023, considered and passed a resolution on the Establishment of the National Dialogue Committee, to facilitate dialogue and consensus building and to recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya;

AND WHEREAS, the National Assembly, vide *Message No. 007 of 2023* dated Thursday, 17th August, 2023, sought for the consideration of the said Motion by the Senate;

AND WHEREAS, the Senate considered and APPROVED the said Motion, on Tuesday, 29th August, 2023 without amendments;

NOW THEREFORE, in accordance with the provisions of Standing Order 46 (1) of the Standing Orders of the Senate, I hereby convey the said decision of the Senate.



RT. HON. AMASON J. KINGI EGH, MP
SPEAKER OF THE SENATE

30th August, 2023

ANNEX 2:

GAZETTE NOTICE ON

ESTABLISHMENT OF

THE COMMITTEE

SPECIAL ISSUE



THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXXV—No. 207

NAIROBI, 15th September, 2023

Price Sh. 60

GAZETTE NOTICE NO. 12619

THE CONSTITUTION OF KENYA PARLIAMENT OF KENYA

ESTABLISHMENT OF THE NATIONAL DIALOGUE COMMITTEE

IT IS notified for the information of the general public that the National Assembly on the 16th August, 2023 and the Senate on the 29th August, 2023, approved the following motion for the establishment of the National Dialogue Committee—

AWARE THAT Article 1 (1) of the Constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution;

FURTHER AWARE that Article 1 (2) of the Constitution provides that the people of Kenya may exercise their sovereign power either directly or through their democratically elected representatives;

CONSCIOUS that Article 10 of the Constitution espouses the national values and principles of governance, which include the rule of law, democracy and participation of the people;

FURTHER CONSCIOUS that Article 94 of the Constitution provides that Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty;

RECOGNIZING that there is need to embrace consultation, dialogue and consensus building as a way of resolving issues of concern to the people of Kenya;

COGNIZANT that despite the constitutional and legal reforms on the electoral processes and the electoral laws, after every election cycle there has been mistrust of electoral outcomes, leaving the country divided;

FURTHER COGNIZANT that efforts to enhance constitutionalism, the rule of law and respect for human rights need to be promoted;

AWARE that there have been previous calls and attempts at building consensus on issues of concern to the people of Kenya through bi-partisan engagements in Parliament;

APPRECIATING the need to establish an inclusive forum for dialogue, consultation and consensus building in seeking to promote the peace, stability and prosperity of the country;

ACKNOWLEDGING THAT the Majority Party in Parliament and the Minority Party in Parliament have agreed to embrace dialogue

through the establishment of a National Dialogue Committee to recommend a way forward on issues of concern to the people of Kenya;

Now, therefore, the Houses of Parliament resolve as follows—

1. THAT the two Houses of Parliament establish a National Dialogue Committee consisting of ten (10) Members to represent the Kenya Kwanza Alliance Party ("Kenya Kwanza"), a coalition constituting the Majority Party of the Parliament of the Republic of Kenya and Azimio La Umoja One Kenya Coalition Party ("Azimio"), a coalition forming the Minority Party of the Parliament of the Republic of Kenya;

2. THAT each Coalition shall appoint five (5) Members to the National Dialogue Committee;

3. THAT the membership of the National Dialogue Committee shall be drawn from Parliament and outside Parliament;

4. THAT the National Dialogue Committee shall comprise the following Members to represent Kenya Kwanza:

Kimani Ichungw'ah (Delegation Leader);
Gov. Cecily Mbarire (Deputy Delegation Leader);
Aaron Cheruiyot;
Hassan Omar Hassan; and
Catherine Wambilianga.

5. THAT the National Dialogue Committee shall comprise the following Members to represent Azimio:

Stephen Kalonzo Musyoka (Delegation Leader);
Opiyo Wandayi (Deputy Delegation Leader);
Amina Mnyazi;
Eugene Wamalwa; and
Sen. Okong'o Mogeni.

6. THAT the mandate of the National Dialogue Committee shall be to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, to be framed by the National Dialogue Committee, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs.

The Houses of Parliament note—

7. That the Technical Teams representing Kenya Kwanza and Azimio shall support the National Dialogue Committee.

8. That the Technical Team representing Kenya Kwanza shall comprise the following persons:

Muthomi Thiankolu (Dr.);
Linda Musumba (Dr.);
Duncan Ojwang (Dr.); and
Nick Biketi.

9. That the Technical Team representing Azimio shall comprise the following persons:

Jeremiah Kioni;
Adams Oloo (Prof.);
Abubakar Zein Abubakar; and
Lynn Ngugi.

10. THAT further the National Dialogue Committee shall be assisted by two (2) Officers designated as Communication Secretaries, one (1) of whom shall be appointed by the Leader of Majority Party and the other by the Leader of Minority Party.

The Houses of Parliament Further Resolve—

11. That the National Dialogue Committee shall formulate and adopt a Framework Agreement to guide the bi-partisan talks.

12. That the National Dialogue Committee shall report to the Leadership of Kenya Kwanza and Azimio Coalitions within sixty (60) days and after that, submit its report to Parliament

13. That in the execution of its mandate, the National Dialogue Committee may invite, engage with and consider submissions from stakeholders, collate views from the public and engage experts, professionals and other technical resource persons as necessary.

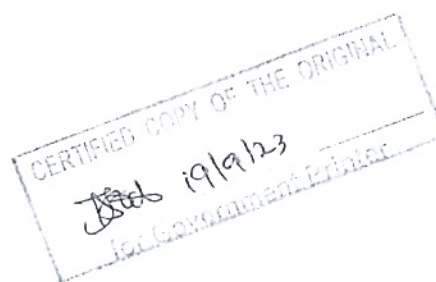
14. That the National Dialogue Committee shall determine its own rules of procedure.

15. That the Speakers and Clerks of both Houses of Parliament shall provide secretariat and any other necessary support to facilitate the work of the National Dialogue Committee.

Dated the 14th September, 2023.

MOSES. M. WETANG'ULA,
Speaker of the National Assembly.

AMASON JEFFAH KINGI,
Speaker of the Senate.



ANNEX 3:

RESOLUTIONS

EXTENDING THE TERM

OF THE COMMITTEE



**REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - (SECOND SESSION)
THE NATIONAL ASSEMBLY**

MESSAGES

MESSAGES TO THE SENATE

_____ (No. 018 of 2023) _____

**RESOLUTION: EXTENSION OF THE MANDATE OF THE NATIONAL
DIALOGUE COMMITTEE**

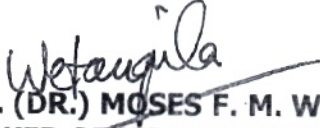
PURSUANT to the provisions of Standing Order 41(1) of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly—

WHEREAS, the National Assembly and the Senate considered and passed a resolution on the *Establishment of a National Dialogue Committee* on 16th August 2023 and 29th August 2023, respectively;

AND WHEREAS, the National Dialogue Committee (NADCO) was mandated to, amongst other roles, facilitate dialogue, build consensus, and recommend appropriate constitutional, legal, and policy reforms on issues of concern to the people of Kenya and to report to the Leadership of the Kenya Kwanza and Azimio Coalitions, and to Parliament within sixty (60) days from 29th August 2023;

FURTHER WHEREAS, on Tuesday, 17th October 2023 following a request from NADCO, the National Assembly considered and passed a Resolution on the *Extension of the Mandate of the National Dialogue Committee* by a further thirty (30) days from 28th October 2023;

NOW THEREFORE, in accordance with the provisions of Standing Orders 41(1) of the National Assembly Standing Orders, I hereby **convey** the said Resolution of the National Assembly to the Senate for consideration.


THE RT. HON. (DR.) MOSES F. M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Wednesday, 18th October 2023

MOTION – EXTENSION OF THE MANDATE OF THE NATIONAL DIALOGUE COMMITTEE

AWARE THAT the National Dialogue Committee was established by Parliament through a Resolution passed by the National Assembly and Senate on 16th August 2023 and 29th August 2023 respectively;

FURTHER AWARE that the Resolution outlines the mandate of the Committee which includes to facilitate dialogue, consensus building and recommend appropriate constitutional, legal, and policy reforms on issues of concern to the people of Kenya;

ACKNOWLEDGING THAT since its establishment, the Committee has made tremendous progress in exercise of its mandate and has achieved the following milestones: formulated and adopted the framework agreement; framed and adopted the statement of Issues; unbundled the issues and agreed on prioritization of Issues; harmonized the unbundled issues; conducted public participation and stakeholder engagements in line with the requirements of Article 10 of the Constitution; and examined and analyzed the memoranda that were received from the public and stakeholder submissions;

FURTHER COGNIZANT that the Committee is presently in the process of considering the issues for negotiations and recommending appropriate constitutional, legal and policy reforms on each of the framed issues which are electoral justice and related matters: outstanding constitutional matters: fidelity to political parties/coalitions and the law on multiparty democracy: entrenching the National Government Constituencies Development Fund, National Government Affirmative Action Fund, and the Senate Oversight Fund into the Constitution and Establishment and Entrenchment of State Offices;

CONSCIOUS that the Resolution as made by both Houses of Parliament required the Committee to report to the Leadership of Kenya Kwanza and Azimio Coalitions within sixty (60) days, from 29th August 2023;

RECOGNIZING the need for the Committee to conclude the consideration of the issues for negotiations, the process of making the appropriate constitutional, legal and policy reforms on each of the issues as framed by the Committee and preparation of a Report for submission to the Leadership of Kenya Kwanza and Azimio Coalitions and thereafter, to Parliament;



NOW THEREFORE, the Houses of Parliament **RESOLVE** to extend the mandate of the National Dialogue Committee by a further thirty (30) days from 28th October 2023 consequent to which, the Committee shall report to the Leadership of Kenya Kwanza and Azimio Coalitions, **on or before 26th November 2023 and thereafter submit its Report to Parliament.**

Sponsors: Leader of the Majority Party & Leader of the Minority Party

Motion Passed: 17th October 2023

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a flourish.

REPUBLIC OF KENYA



Telegraphic Address

'Bunge', Nairobi

Telephone 2848003

Fax: 2243694

E-mail: clerk.senate@parliament.go.ke

PARLIAMENT

Clerk's Chambers

The Senate

Parliament Buildings

P. O. Box 41842 -00100

Nairobi, Kenya

OFFICE OF THE CLERK OF THE SENATE

REF: SEN/RESOLS/25/2023(01)

19th October, 2023.

Sen. Aaron Cheruiyot, MGH, MP,
Senate Majority Leader and Member,
National Dialogue Committee,
Parliament Buildings,
NAIROBI.

Sen. Erick Okong'o Mogeni, SC, MP,
Member,
National Dialogue Committee,
Parliament Buildings,
NAIROBI.

Dear *Hon. Senators*

RE: EXTENSION OF THE MANDATE OF THE NATIONAL DIALOGUE
COMMITTEE

At its Sitting held on Wednesday, 18th October, 2023, the Senate considered the Motion on the above subject matter and resolved as follows;

"AWARE THAT the National Dialogue Committee was established by Parliament through a Resolution passed by the National Assembly and Senate on 16th August 2023 and 29th August 2023 respectively;

FURTHER AWARE that the Resolution outlines the mandate of the Committee which includes to facilitate dialogue, consensus building and recommend appropriate constitutional, legal, and policy reforms on issues of concern to the people of Kenya;

ACKNOWLEDGING THAT since its establishment, the Committee has made tremendous progress in exercise of its mandate and has achieved the following milestones: Formulated and adopted the Framework Agreement; Framed and adopted the Statement of Issues; Unbundled the Issues and agreed on prioritization of Issues;

Page 1 of 3

While replying please quote our reference.

Harmonized the unbundled Issues; Conducted public participation and stakeholder engagements in line with the requirements of Article 10 of the Constitution; and Examined and analyzed the memoranda that were received from the public and stakeholder submissions;

FURTHER COGNIZANT that the Committee is presently in the process of considering the issues for negotiations and recommending appropriate constitutional, legal and policy reforms on each of the framed issues which are Electoral Justice and Related Matters: Outstanding Constitutional Matters: Fidelity to Political Parties/Coalitions and the law on multiparty democracy: Entrenching the National Government Constituencies Development Fund, National Government Affirmative Action Fund, and the Senate Oversight Fund into the Constitution and Establishment and Entrenchment of State Offices;

CONSCIOUS that the Resolution as passed by both Houses of Parliament, required the Committee to report to the Leadership of Kenya Kwanza and Azimio Coalitions within sixty (60) days, from 29th August 2023;

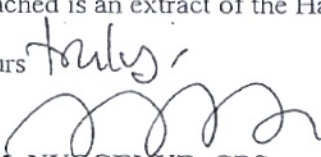
RECOGNIZING the need for the Committee to conclude the consideration of the issues for negotiations, the process of making the appropriate constitutional, legal and policy reforms on each of the issues as framed by the Committee and preparation of a Report for submission to the Leadership of Kenya Kwanza and Azimio Coalitions and thereafter, to Parliament;

NOW, THEREFORE, the Houses of Parliament RESOLVE to extend the mandate of the National Dialogue Committee by a further thirty (30) days from 28th October 2023 and consequently, the Committee shall be required to report to the Leadership of Kenya Kwanza and Azimio Coalitions, on or before 26th November 2023 and after that submit its Report, to Parliament."

This is to bring to your attention the foregoing resolution for your information and further action.

Attached is an extract of the Hansard report for Wednesday, 18th October, 2023 for information.

Yours


J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.

Encls.

Copies to:-

Rt. Hon. Amason Jeffah Kingi, EGH, MP,
Speaker of the Senate,
Parliament Buildings,
NAIROBI.

Sen. Justice (Rtd.) Stewart Madzayo, CBS, MP,
Senate Minority Leader,
Parliament Buildings,
NAIROBI.

While replying please quote our reference.

ANNEX 4:

FRAMEWORK

AGREEMENT



DATED THIS

DAY OF

2023

FRAMEWORK AGREEMENT
(AN AGREEMENT TO ESTABLISH A STRUCTURED FRAMEWORK FOR NATIONAL
DIALOGUE AND NEGOTIATIONS ON MATTERS RELATING TO THE NATION OF KENYA)

-BETWEEN-

THE KENYA KWANZA ALLIANCE
(KENYA KWANZA)

-AND-

AZIMIO LA UMOJA ONE KENYA COALITION
(AZIMIO)

FRAMEWORK AGREEMENT

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This Framework Agreement is made the.....day
of.....**2023**

BETWEEN:

- 1 The Kenya Kwanza Alliance Party, a coalition constituting the Majority Party of the Parliament of the Republic of Kenya (from now on referred to as "**Kenya Kwanza**," which expression shall where the context so admits include its successors and assigns) on the one part.

AND

- 2 The Azimio La Umoja One Kenya Coalition Party, a coalition constituting the Minority Party of the Parliament of the Republic of Kenya (from now on referred to as "**Azimio**," which expression shall where the context so admits include its successors and assigns) on the other part.

PREAMBLE

AWARE THAT Article 1(1) of the Constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution;

FURTHER AWARE that Article 1(2) of the Constitution provides that the people of Kenya may exercise their sovereign power either directly or through their democratically elected representatives;

CONSCIOUS that Article 10 of the Constitution espouses the national values and principles of governance, which include the rule of law, democracy and participation of the people;



FURTHER CONSCIOUS that Article 94 of the Constitution provides that Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty;

RECOGNISING that there is a need to embrace consultation, dialogue and consensus building as a way of resolving Issues of concern to the people of Kenya;

COGNIZANT that despite the constitutional and legal reforms on the electoral processes and the electoral laws, after every election cycle there has been mistrust of electoral outcomes, leaving the country divided;

FURTHER COGNIZANT that efforts to enhance constitutionalism, the rule of law and respect for human rights need to be promoted;

AWARE that there have been previous calls and attempts at building consensus on Issues of concern to the people of Kenya through bi-partisan engagements in Parliament;

APPRECIATING the need to establish an inclusive forum for dialogue, consultation and consensus building in seeking to promote the peace, stability and prosperity of the country;

ACKNOWLEDGING THAT the Majority Party in Parliament and the Minority Party in Parliament have agreed to embrace dialogue through the establishment of a *National Dialogue Committee* to recommend a way forward on Issues of concern to the people of Kenya;

The Parties agree as follows:

ESTABLISHMENT OF THE COMMITTEE

- 1 A National Dialogue Committee ("**the Committee**") is established with the mandate set out in Clauses 3 and 20 to 23 of this Agreement.
- 2 The Committee shall have ten (10) Members to represent the Parties, with each Party nominating five (5) Members. The Membership of the Committee shall be drawn from Parliament and outside Parliament.

MANDATE OF THE COMMITTEE

- 3 The mandate of the National Dialogue Committee shall be to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, to be framed by the National Dialogue Committee, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs.

COMPOSITION OF THE COMMITTEE

- 4 The Committee shall comprise the following Members to represent Kenya Kwanza—
 - (a) Hon. Kimani Ichung'wah (**Delegation Leader**);
 - (b) H.E. Hon. Cecily Mbarire (Deputy Delegation Leader);
 - (c) Hon. Sen. Aaron Cheruiyot;
 - (d) Hon. Hassan Omar Hassan; and
 - (e) Hon. Catherine Wambilianga.
- 5 The Committee shall comprise the following Members to represent Azimio—



- (a) H. E. Stephen Kalonzo Musyoka (**Delegation Leader**);
- (b) Hon. Opiyo Wandayi (Deputy Delegation Leader);
- (c) Hon. Amina Mnyazi;
- (d) Hon. Eugene Wamalwa; and
- (e) Hon. Sen. Okong'o Mogeni.

- 6 Each Delegation Leader shall be their nominating Party's authorised representative.
- 7 Each Delegation Leader shall have the power and authority to speak and sign documents for and on behalf of their nominating Party.
- 8 The Leaders of Delegations shall be the Delegation Leaders of the meetings of the Committee. Where a Delegation Leader is absent from a meeting of the Committee, the relevant Deputy Delegation Leader or other Member of the Committee chosen by the relevant Party shall act as the Delegation Leader.
- 9 A Party may replace a Member of the Committee. Such replacement shall be in writing under the hand of the Delegation Leader or the Leader of the Party making the replacement.

SUB-COMMITTEES AND PANELS OF THE COMMITTEE

- 10 The Committee may form sub-committees or panels and delegate to them the crafting of Proposals on the resolution of specific Issues or the exercise of the Committee's mandate.
- 11 All sub-committees and panels of the Committee shall report to the Committee.

TECHNICAL TEAMS AND SECRETARIAT

Technical Teams

- 12 Each Party shall nominate four (4) members to the Technical Teams to provide the necessary technical support and advice to the Committee.
- 13 The Technical Team representing Kenya Kwanza shall comprise the following persons:
- (a) Dr. Muthomi Thiankolu;
 - (b) Dr. Linda Musumba;
 - (c) Nick Biketi; and
 - (d) Dr. Duncan Ojwang.
- 14 The Technical Team representing Azimio shall comprise the following persons:
- (a) Hon. Jeremiah Kioni;
 - (b) Professor Adams Oloo;
 - (c) Abubakar Zein Abubakar; and
 - (d) Lynn Ngugi.
- 15 Each Party may replace a member of its Technical Team. Such replacement shall be in writing under the hand of the Delegation Leader or the Leader of the Party making the replacement.
- 16 Each Party may designate a member of its Technical Team as a Co-Rapporteur.

The Secretariat

- 17 The Committee shall have a Secretariat comprising persons seconded from the staff of Parliament. The Secretariat may



include researchers, drafters, secretaries, stenographers, copy typists and such other cadres of professionals as the Committee may from time to time require.

- 18 The Secretariat shall be responsible for the hospitality, logistical, hansard and other administrative requirements of the Committee.
- 19 The Secretariat shall work under the direction of the Delegation Leaders.

STATEMENTS OF ISSUES

- 20 Each Team shall formulate specific Issues for discussion and resolution by the Committee. The Statement of Issues, once adopted and signed by the Members of the Committee, shall be deemed to be part of this Agreement.
- 21 The Teams shall engage in good faith on the Issues identified by each Party and work towards finding common ground and developing mutually acceptable solutions.
- 22 The Issues for discussion and resolution proposed by either Team shall be harmonised and adopted by consensus or by a majority of all Committee Members.
- 23 The Committee may consider and adopt such other Issues as may be communicated to it by the public and any person for discussion.

PUBLIC PARTICIPATION

- 24 The Committee shall facilitate public participation in the National Dialogue and Negotiations.
- 25 The Committee may invite, engage with and consider submissions from stakeholders, collate views from the public



and engage experts, professionals and other technical resource persons as necessary.

THE SEAT OF NEGOTIATION AND PAYMENT OF COSTS

- 26 The seat of negotiations shall be such place or places as the Committee may determine from time to time.
- 27 The Committee shall determine its expenditure needs and limits and adopt the same by consensus.
- 28 The Committee may receive financial support from the exchequer, partners and well-wishers.
- 29 The Committee may receive financial support from partners and well-wishers subject to the following conditions—
 - (a) the source of funding shall be disclosed; and
 - (b) no partner or well-wisher shall influence or attempt to influence the agenda, deliberations or decisions of the Committee.
- 30 The Committee shall use its best efforts to adopt such measures and policies as necessary to secure prudent utilisation of resources.

FORMALISATION

- 31 This Agreement shall commence, and stand adopted, upon—
 - (a) the passing of the Resolution of Parliament; and
 - (b) the execution of this Agreement by the Members of the Committee.
- 32 The Parties shall take all necessary steps to ensure the effective implementation of this Agreement, including allocating



resources and establishing mechanisms for monitoring and reporting on progress.

DISPUTE RESOLUTION

- 33 Any disputes arising under or in connection with this Agreement shall be resolved through consultation and negotiation in good faith between the Parties.
- 34 The Parties may amend this Agreement at any time by mutual Agreement, provided that any such amendment is in writing and is signed by Members of the Committee.

DELIVERABLES AND TIMEFRAME

- 35 The time-frame for the Committee to conclude the National Dialogue and Negotiations shall be sixty (60) days.

Provided that:

- (a) the Committee shall determine the urgent matters within thirty (30) days; and
 - (b) the Committee may at any time agree on Interim Measures necessary for the resolution of the Issues that form the focus of the National Dialogue and Negotiations.
- 36 If there are outstanding Issues after sixty (60) days, the Committee may request the Parties and Parliament to extend the time.

PROTECTION OF CONSENSUS

- 37 Where the Committee reaches a consensus on an Issue in consultation with the coalition structures, the relevant part of

the Final Report and Proposals shall be ringfenced from amendment.

- 38 The Final Report and Proposals of the Committee shall contain a List of Agreed Issues and those not agreed upon.
- 39 The Final Report and Proposals of the Committee shall be presented to the respective Coalition Leaders. In addition, the Final Report and Proposals of the Committee shall be submitted to the Leader of the Majority Party and the Leader of the Minority Party of each House of Parliament.
- 40 Upon presentation of the Final Report and Proposals of the Committee, the Leader of the Majority Party and the Leader of the Minority Party of each House of Parliament shall table them and ensure that any proposed reform is introduced in Parliament.
- 41 Any solutions agreed by consensus that require changes in public policy shall be recommended and effected by the State as appropriate, in accordance with the Constitution and the relevant laws and regulations.

RULES OF PROCEDURE

- 42 The Committee may make and adopt such Rules of Procedure as it deems necessary to regulate its affairs. The Rules of Procedure may cover any relevant procedural matter, including the process for voting, the transmission of documents to and from the Committee, transcription of proceedings, time of sittings and nature of sittings. The Committee may amend its rules of procedure.
- 43 Unless otherwise provided for by the Committee, the Rules of Procedure for the Committee shall be as follows—



11

- (a) The quorum of the Committee shall be three (3) members from each Team.
- (b) If there is no quorum within 30 minutes of the agreed time for any meeting, the meeting shall be adjourned to a date and time determined by the Delegation Leaders.
- (c) The Committee shall make its decisions by discussion and consensus.
- (d) If the Committee cannot reach a consensus on any Issue, the dispute resolution mechanism shall apply.
- (e) The Committee may generate Lists of Agreed Issues and those not agreed upon.
- (f) The Committee shall conduct its meetings and deliberations in good order, decorum, etiquette and civility based on the directions of the Delegation Leaders. The dignity of all participants in the national dialogue process shall be respected.
- (g) Any Member of the Committee may object at any time during the speech of another Member stating that they object to any Issue or question under discussion.
- (h) A Member who objects to the speech of another Member may, with the leave of the Delegation Leaders, speak on the objection.
- (i) The Delegation Leaders shall either give a decision on the objection forthwith or announce that the decision is deferred for consideration, after which the Member who was speaking when the objection was raised may continue to talk.

- (j) No Member shall anticipate debate on an Issue or question for discussion unless the same is demonstrably connected to an Issue active discussion when the objection is raised.
- (k) The Delegation Leaders shall determine the procedure and time allocations for debate and presentation of Issues.
- (l) The Committee shall determine the procedures dealing with any emerging or unforeseen Issues.
- (m) The Committee shall agree on the design and contents of its logo, letterhead and other stationery.
- (n) The Delegation Leaders shall be the joint spokespersons of the Committee.
- (o) All communications by and on behalf of the Committee shall be under the hand of the Delegation Leaders and on the official letterhead of the Committee.
- (p) The Co-Rapporteurs in consultation with the Delegation Leaders shall prepare the agenda and notices of meetings with the support of the Secretariat.

ADJOURNMENT OF PROCEEDINGS AND DISSOLUTION OF THE NATIONAL DIALOGUE COMMITTEE

44 The Committee shall stand dissolved—

- (a) upon presentation of the Final Report; or
- (b) by mutual consent of the Parties.

45 The Committee may adjourn its proceedings for a period not exceeding three (3) days to build consensus on any Issue. If there are irreconcilable differences on any such Issue at the end of the adjournment period, the matter shall be referred to the Coalition Leaders for directions and resolution.

LANGUAGE

- 46 The languages of the Committee and its subcommittees or panels shall be Kiswahili, English and Kenya sign language.

MEDIA AND BROADCASTING

- 47 The media shall cover and broadcast the proceedings of the Committee as may be approved by the Delegation Leaders.
- 48 The Committee shall, from time to time, brief the public and the media on its deliberations.
- 49 The Delegation Leaders shall agree on the information to be disseminated to the public regarding the National Dialogue and Negotiations.
- 50 The Committee may, where it deems appropriate, conduct its proceedings in camera.

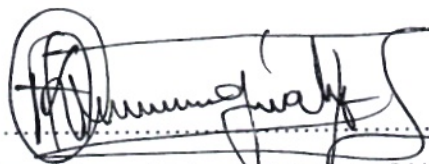
RECORD KEEPING AND ARCHIVING

- 51 The Committee shall ensure its records are delivered and stored at Parliament, at the National Archives and other appropriate forums and places.

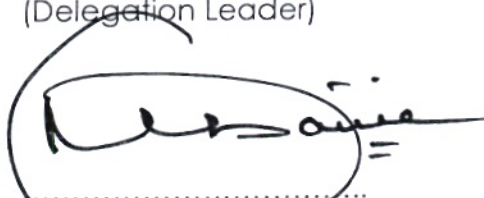


ADOPTED BY RESOLUTION of the Committee at its meeting held aton.....
the.....day of.....**2023.**





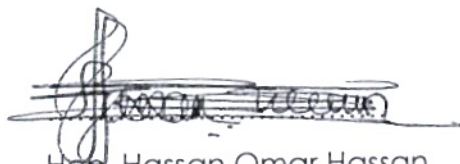
Hon. Kimani Ichung'wa, MGH, MP
(Delegation Leader)



H.E. Hon. Cecily Mbarire, MGH
(Deputy Delegation Leader)



Hon. Sen. Aaron Cheruiyot, MGH, MP
(Member)



Hon. Hassan Omar Hassan
(Member)



Hon. Catherine Wambilianga, MP
(Member)



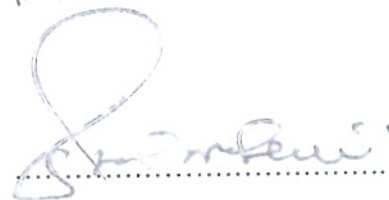
Hon. Stephen Kalonzo Musyoka,
EGH, SC
(Delegation Leader)



Hon. Opiyo Wandayi, MGH, MP
(Deputy Delegation Leader)



Hon. Eugene Wamalwa, EGH
(Member)



Hon. Sen. Okon'go Mogeni, SC,
MP
(Member)



Hon. Mnyazi Amina Laura, MP
(Member)

ANNEX 5: STATEMENT OF ISSUES



**STATEMENT OF ISSUES FOR NEGOTIATION BY THE NATIONAL DIALOGUE COMMITTEE
(IN NO PARTICULAR ORDER)**

1. Outstanding Constitutional Matters:

- (a). Article 43 of the Constitution, the Cost of Living and related issues;
- (b). implementation of the "two-thirds gender rule";
- (c). governance issues, including promoting national unity and inclusivity in public appointments; and
- (d). adequate checks and balances.

2. Electoral Justice and Related Matters:

- (a). restructuring and reconstitution of the Independent Electoral and Boundaries Commission ("the IEBC");
- (b). boundaries delimitation; and
- (c). audit of the 2022 presidential election.

3. Entrenching Funds into the Constitution:

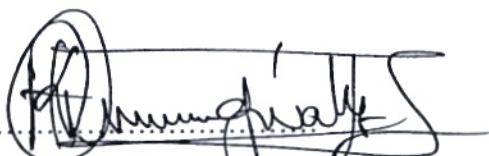
- (a). the National Government Constituencies Development Fund;
- (b). the National Government Affirmative Action Fund; and
- (c). the Senate Oversight Fund.

4. Establishment and Entrenchment of State Offices:

- (a). the office of the Leader of the Official Opposition; and
- (b). the office of the Prime Cabinet Secretary.

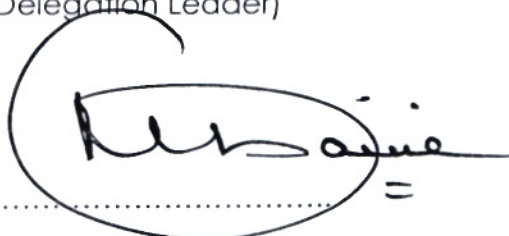
5. Fidelity to Political Parties/Coalitions and the law on multiparty democracy:

Preventing interference with political parties/coalitions.



.....

Hon. Kimani Ichung'wah, MGH, MP
(Delegation Leader)



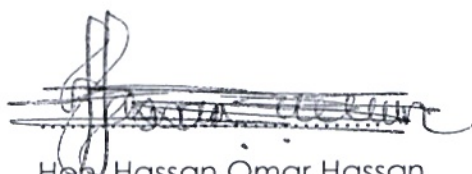
.....

H.E. Hon. Cecily Mbarire, MGH
(Deputy Delegation Leader)



.....

Hon. Sen. Aaron Cheruiyot, MGH, MP
(Member)



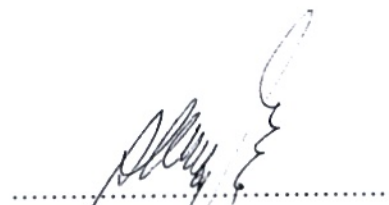
.....

Hon. Hassan Omar Hassan
(Member)



.....

Hon. Catherine Wambilianga, MP
(Member)



.....

Hon. Stephen Kalonzo Musyoka, EGH,
SC
(Delegation Leader)



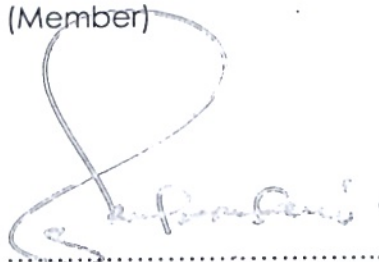
.....

Hon. Opiyo Wandayi, MGH, MP
(Deputy Delegation Leader)



.....

Hon. Eugene Wamalwa, EGH
(Member)



.....

Hon. Sen. Okon'go Mogeni, SC, MP
(Member)



.....

Hon. Mnyazi Amina Laura, MP
(Member)

ANNEX 6:

ADVERTISEMENTS ON

PUBLIC

PARTICIPATION



Parliament Buildings, P.O. BOX 41842-00100 Nairobi.
TEL: (020) 2221291, Email: nationaldialoguecommittee@parliament.go.ke

PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA BY THE PUBLIC TO THE NATIONAL DIALOGUE COMMITTEE ON ISSUES OF CONCERN TO THE PEOPLE OF KENYA

A. ESTABLISHMENT AND MANDATE OF THE NATIONAL DIALOGUE COMMITTEE

On Wednesday, 16th August, 2023 and Tuesday, 29th August, 2023, the National Assembly and the Senate, respectively, established the National Dialogue Committee. The mandate of the Committee is to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, as framed by the National Dialogue Committee, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs.

B. ISSUES OF CONCERN TO THE PEOPLE OF KENYA AS FRAMED BY THE NATIONAL DIALOGUE COMMITTEE

The National Dialogue Committee has framed the following five (5) issues of concern to the people of Kenya:

ISSUE 1-Outstanding Constitutional Matters:

- (a) Article 43 of the Constitution, the Cost of Living and related issues;
- (b) implementation of the "two-thirds gender rule";
- (c) governance issues, including promoting national unity and inclusivity in public appointments; and
- (d) adequate checks and balances.

ISSUE 2- Electoral Justice and Related Matters:

- (a) restructuring and reconstitution of the Independent Electoral and Boundaries Commission ("the IEBC");
- (b) boundaries delimitation; and
- (c) audit of the 2022 presidential election.

ISSUE 3-Entrenching Funds into the Constitution:

- (a) the National Government Constituencies Development Fund;
- (b) the National Government Affirmative Action Fund; and
- (c) the Senate Oversight Fund.

ISSUE 4- Establishment and Entrenchment of State Offices:

- (a) the office of the Leader of the Official Opposition; and
- (b) the office of the Prime Cabinet Secretary.

ISSUE 5- Fidelity to Political Parties/Coalitions and the law on multiparty democracy: Preventing interference with political parties/coalitions.

C. SUBMISSION OF MEMORANDA BY THE PUBLIC

Article 10 of the Constitution espouses the national values and principles of governance, which include participation of the people. Pursuant to Article 10 of the Constitution, the Committee is required to engage with and consider submissions from stakeholders, collate views from the public and engage experts, professionals and other technical resource persons as necessary.

In accordance with its mandate, the Committee now invites members of the public and stakeholders to **make representations on any or all of the five (5) issues as framed by the National Dialogue Committee.**

The representations may be made in the following manner—

- (1) Written memoranda addressed to the **Clerk of the National Assembly or the Clerk of the Senate, P.O. Box 41842-00100, Nairobi** (clearly marked "Memorandum to the National Dialogue Committee"); hand-delivered to the **Secretariat, National Dialogue Committee, CPA Room, Ground Floor, Parliament Buildings**; or emailed to: nationaldialoguecommittee@parliament.go.ke, to be received **on or before 8th September, 2023 at 5.00 p.m.**
- (2) **Submission of oral representations at the Public Hearings to be held at a date to be communicated by the National Dialogue Committee.**

HON. KIMANI ICHUNG'WAH, MGH, MP.
DELEGATION LEADER

H.E DR. STEPHEN KALONZO MUSYOKA, EGH, SC
DELEGATION LEADER

**ANNEX 7: LIST OF
STAKEHOLDERS WHO
SUBMITTED
MEMORANDA**



LIST OF STAKEHOLDERS THAT SUBMITTED WRITTEN MEMORANDA

HAND DELIVERY AT PARLIAMENT BUILDINGS

The following submitted memoranda by hand-delivery at Parliament Buildings- **31**

INDIVIDUALS

1. Dominic Khobocha Lepartingat
2. Hon. Caroli Omondi
3. Hon. Musili Mawathe
4. James Muriithi Ndwiga
5. Otieno Okanja
6. Peter Ouko Moreka
7. Sen. Ledama Olekina
8. Shadrack Agaki

GROUPS/INSTITUTIONS

9. Amnesty International
10. Association of Members of County Assemblies
11. Community Advocacy and Awareness Trust (CRAWN Trust)
12. Constitution and Reform Education Consortium
13. CPF Financial Services
14. Football Kenya Federation
15. Former Commissioners of IEBC (J. Cherera, J. Nyangaya, F. Wanderi and I. Masit)
16. Hon. Marwa Kitayama Maisori, MP, Kuria East Constituency and 26 other Members of Parliament
17. Independent Electoral and Boundaries Commission
18. Inter-Religious Council of Kenya
19. Kenya Women Parliamentary Association (KEWOPA)
20. Mau Mau War Veterans Association

21. Mkenya Daima
22. Mt. Elgon Ogiek Ndorobo Council of Elders through Chepkitale Indigenous People's Development Project
23. National Gender and Equality Commission
24. Political Parties Liaison Committee
25. Saboot Community
26. Slums Outreach Programme
27. Stakeholders from Lambwe Valley Settlement Scheme
28. Trans Nzoia Saboot Professional Association
29. Turkana Professionals Association
30. Wajir South Leaders Caucus
31. Women with Disabilities

HAND DELIVERY AT BOMAS

The following submitted memoranda by hand-delivery at BOMAS-48

INDIVIDUALS

1. Abel Rotich Lokwete
2. Sen. Enoch Kiio Wambua
3. Ambassador Jack B. Tumwa
4. John Kebaso Onchwari
5. Bruce Namachanja
6. Hon. D.W.A Mutumbwa
7. Titus Mwandikwa
8. Hon. Peter Kaluma
9. Joshua Omolo
10. Sen. Cherargei Kiprotich
11. Komrade Bush
12. Edwin Oiko
13. Ferdinand Waititu
14. Joshua Juma
15. Bishop Raymond Mutama
16. Hon. Boniface G. Gatobu on behalf of Shining Hope Community
17. Reverend Teresia Njoki
18. Hon. Antony Tom Oluoch, MP.

19.Hon. Alice W. Ng'anga, MP. on behalf of The Mlima Parliamentary Caucus.

GROUPS/INSTITUTIONS

- 20.Electoral Law and Governance Institute for Africa (ELGIA)
- 21.Justice and Freedom Party
- 22.Operation Linda Jamii
- 23.Mt. Kenya Youth Impact Group
- 24.Inter-Party Youth Forum
- 25.United Karanja Fort Traders
- 26.Labwe Valley Settlement Scheme
- 27.Azimio Coalition
- 28.Ethnic Minorities and Marginalized Communities
- 29.Health Sector Unions Societies and Associations
- 30.Trans Nzoia County Community Council of Elders
31. Kenya Vision 2030
- 32.Mbeere County Pioneers
- 33.Inter-Religious Council of Kenya
- 34.Parklands Action Network
- 35.Jubilee Party
- 36.Torobeek Community
- 37.Ichamus Community
- 38.NARC Kenya Disability League
- 39.Ufungamano Joint Forum of Religious Organizations
- 40.Cheragany Council of Elders
- 41.Nubian Constitutional Review Forum
- 42.Corner Tribe of Mandera County
- 43.The Ogiek People of South, West Mau, Nakuru County
- 44.Thika County Stakeholder Forum
- 45.National IDPs Network
- 46.The Saboot Community
- 47.The Kenya Conference of Catholic Bishops
- 48.The ANC Party

SUBMISSIONS VIA EMAIL

The following submitted memoranda via email-181

INDIVIDUALS

1. Abner Agutu
2. Allan Akivanga
3. Allan Odhiambo Muthiga
4. Alloys Nyakwara
5. Amb. Jack B. Tumwa
6. Ambrose Oroda
7. Antony Kirori
8. Bernard Adongo
9. Bertha Odawa
10. Boaz Waruku
11. Boniface Mumo Mue
12. Boniface Mutungi
13. Boniface Mwai Gachunga
14. Camlus Oloo
15. Charles Arap Kese
16. Charles Mwangi
17. Christine Munene
18. Col. (Rtd) Cherotwei Simotwo
19. Collins Miruka
20. Collins Owiti
21. Constant Sabwami
22. Cyprian Nyamwamu
23. Daniel Dean Kathurima
24. David Biwott
25. David Muthui Muthui
26. Dickson Karani Mwaniki
27. Dr. Edward Kabuthi
28. Edwinenn602gmail.com (No name indicated)
29. Elder Dr. Kabugi Abraham Ronnie
30. Elly Owiny Kotieno

31. Emmanuel Magoba
32. Evans Mogendi Canoti
33. Evans Njenga Njogu
34. Festus Kazungu Masha
35. George Omari
36. Gerishom Majanja
37. Godfrey Omurabi-ACPN
38. Hannah Kiarie
39. Henry K. Memusi
40. Herman Manyara
41. Hezron Mutugi Kinyua
42. Hon. Kennedy Musyoka Kalonzo
43. Isabel Nyambura Mwangi
44. Isaiah Kithaka Karimi
45. J.A.Akali
46. Jacobsamante2yahoo.com- No name indicated
47. James Muriithi Ndwiga
48. James Mwangi Njiiri
49. James Ogachi Bange
50. Jesse Abisheck
51. Joash Gisore
52. John Kabatha
53. John Kariuki
54. John Kariuki MD
55. John Maina (FCPA-KCAU)
56. John Mweha Kariuki
57. John Otieno Adino
58. John Ouma
59. Joram Godhard Ondere
60. Joseck Ogeta
61. Juma Hemedi
62. Kelvin Ambrose Opiy
63. Kelvin Kosgei

64. Kevin Kiarie
65. Lenah Muthoni Mwendwa
66. Lucas Gisiri
67. Maalik Athman Shekue
68. Macmillan Nyange
69. Maina Munuhe
70. Mark Wairuri Kiarie
71. Martin Ochieng Deya
72. Maurice Anyanga
73. Mbute Mbiyu
74. Mercy Chacha
75. Michael M. Waititu
76. Michael Nganju Nyore
77. Moses Mugambi Mugendi
78. Motonu Nyaega
79. Mutembei Ntongai
80. Muthoni Kihara
81. Mwaniki Githaiga
82. Ngure Joy Nyambura
83. Njoroge Waweru
84. Nurdin Hassan
85. Otieno Okanja
86. Patrick Gichohi
87. Patrick Wangai Muiga
88. Patrick Wangai Muiga
89. Paul Chanzu
90. Peter K. Kinyunye
91. Peter Kibet
92. Petronilla Were
93. Prof. Tom Ojienda
94. Rachel Njoki Muema
95. Raphael Ondeko Ndengu
96. Robert Khaemba

97. Sam Ndungu Mburu
98. Samuel Kariuki Kiragu
99. Samuel Mungai
100. Sarah Kamau
101. Sen. Fatuma Dullo
102. Sen. Ledama Ole Kina
103. Silas Aluku
104. Silvanus Ndemo Nyamora
105. Simon Karanja Mote
106. Somoe Sheile
107. Stephen Cheregony
108. Steve Misango
109. Titus Kaloki
110. Victor Kipyegon
111. Victor Mwangi
112. Vincent Museywa
113. Waiganjo Sammie Mwaniki
114. Wandabwa Ngaira
115. Yahya Mohamed
116. Zaddock(No second Name)
117. CEO Laxcom Media
118. Kelly Matayian
119. Academically and Financially Challenged People in Kenya (AFCPK)
120. Africa Women Leaders Network
121. Amnesty International Kenya Section
122. Association of Members of County Assemblies
123. Association of Small-Scale Traders
124. Centre for Accountability Reform and Democracy
125. Centre for Multiparty Democracy Kenya
126. Constitution and Reform Education Consortium
127. County Assemblies Forum
128. Daraja CIF
129. David Calleb Otieno

130. Democracy Trust Fund
131. Dr. Sylvester Odhiambo Obong'o
132. Larger East Pokot-Tiaty Constituency
133. East Pokot Professional Forum
134. Echo Network Africa
135. Eintreten Association, Alkeblun Group & Perseguir Group
136. Elections Observation Group
137. Governance Re-imagined
138. Hon. Wanja Maina-PWDs
139. Hustler Nation Youth Charter
140. Institute for Democratic Governance
141. Inter Religious Council of Kenya
142. Joseph Kibet, Boniface Momanyi & Grace Warii
143. Jua-Kali Sector
144. Jubilee Party
145. Kenya Bora Tuitakayo
146. Kenya Devolution Civil Society Organizations Working Group
147. Kenya Diaspora
148. Kenya National Interface Team
149. Kenya Women Parliamentarians (KEWOPA)
150. Mercy Jelimo
151. Mkenya Daima Steering Committee
152. Mwonge Residents Association
153. Mt. Kenya Colleges and Universities Students Association (M-CUSA)
154. National Liberal Party
155. National Muslim Leaders Forum (NAMLEF)
156. Nakuru Women
157. Nakuru Youth
158. Nakuru Leaders
159. Nakuru Citizens Accountability and Development Association
160. Nguzo Africa
161. Pamoja Self Help Group, Makueni
162. Pastoralist Community Professional Association

163. Peace and Development Network
164. Peter Wanyama- Manyonge, Wanyama & Associates
165. Prisca Adomeyan and 7 others
166. Pwani Professionals
167. Royal Luo Republic
168. Robotics Society of Kenya
169. Rusinga Island Council of Elders
170. Sabaot Community Forum
171. Slums Outreach Programme
172. Taireni Association and Mijikenda
173. Tana River Council of Elders and Professionals
174. The Elders, Bureti, Konoin and Sotik
175. The Service Party
176. Trans Nzoia Sabaot Professionals Association
177. Turkana Professionals Association
178. Voters and Residents of Meru County
179. We Care Community based Organization
180. Association of Small-Scale Traders
181. Kenya Meteorological Department

**ANNEX 8: LIST OF
STAKEHOLDERS WHO
MADE ORAL
PRESENTATIONS**



LIST OF STAKEHOLDERS THAT MADE ORAL PRESENTATIONS

1. The Independent Electoral and Boundaries Commission Secretariat
2. County Assemblies Forum (CAF)
3. Central Organization of Trade Unions (COTU-K)
4. Kenya Women Parliamentarians (KEWOPA)
5. Multi-Sectoral Working Group on the 2/3 Gender Principle
6. National Gender and Equality Commission (NGEC)
7. Political Parties Liaison Committee (PPLC)
8. Trans Nzoia Sabao Professional Association
9. National Council for Persons with Disabilities
10. National Youth Council
11. Inter-Religious Council of Kenya
12. Law Society of Kenya
13. Election Observation Group (ELOG)
14. Institute of Certified Public Accountants Kenya (ICPAK)
15. Centre for Multiparty Democracy
16. KEPSA-Mkenya Daima
17. Kenya National Chamber of Commerce (KNCCI)
18. Media Council of Kenya
19. Wajir South Leaders Forum
20. Independent Policing Oversight Authority (IPOA)
21. Maendeleo ya Wananwake
22. National Cohesion and Integration Commission (NCIC)
23. Dr. Mutubwa
24. Turkana Professionals Association
25. Judicial Service Commission (JSC)
26. International Commission of Jurists (ICJ)

27. GEMA Watho Association
28. Office of the Registrar of Political Parties
29. Amnesty International
30. Former Attorney General - Prof. Githu Muigai
31. Former IEBC Commissioners
 - Juliana Cherera
 - Francis Wanderi
 - Irene Masit
 - Justus Nyagaya
32. IEBC Selection Panel
33. Homabay Interface Community Health Desk
34. Former Attorney General - Hon. Amos Wako
35. Kenya Institute for Public Policy Research Analysis (KIPPRA)
36. Sen. Enoch Wambua
37. Sen. Tom Ojienda
38. Public Service Commission
39. Trans Nzoia County Communities' Council
40. Information Communication Technology Association of Kenya (ICTAK)
41. Council of Governors
42. Ilchamus Community
43. National Parliamentary Caucus for additional Counties (27 MPs)
44. National Council of Churches Kenya (NCCCK)
45. Kenya Conference of Catholic Bishops
46. Electoral Law Governance Institute for Africa
47. Ethics and Anti-Corruption Commission (EACC)
48. Former immediate Auditor General - Edward Ouko
49. Kenya Kwanza Alliance
50. Federation of Kenya Employers
51. Hon. Waititu Ferdinand
52. Kenya National Human Rights Commission
53. Azimio la Umoja One Kenya Coalition

- 54. Coast Parliamentary Group
- 55. Mt. Kenya Jurists
- 56. Civil Society Reference Group
- 57. CPF Financial Services
- 58. Shining Hope for Communities (SHOFCO)
- 59. Kiambu Leaders Forum
- 60. Nubian Community

ANNEX 9:

LIST OF

STAKEHOLDERS

INVITED FOR FURTHER

CONSULTATIONS



LIST OF STAKEHOLDERS INVITED FOR FURTHER CONSULTATIONS

1. The Parliamentary Service Commission
2. The Multisectoral Working Group on the Realization of the Two Thirds Gender Principle
3. Centre for Multiparty Democracy
4. The Office of the Controller of Budget
5. The Institute of Economic Affairs
6. Parliamentary Budget Office
7. Society for International Development
8. The National Treasury and Economic Planning
9. The Ministry of Energy and Petroleum
10. The Ministry of Lands, Public Works, Housing and Urban Development
11. International Budget Partnership
12. Hon. Billow Kerrow – Former Senator, Mandera County
13. The Parliamentary Caucus on the National Government Constituencies Development Fund.

ANNEX 10:

CONSTITUTIONAL

AMENDMENT BILL

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Constitution by parliamentary initiative.

ENACTED by the Parliament of Kenya, as follows—

Short title and
commencement.

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2023, and shall come into operation or be deemed to have come into operation as follows—

- (a) sections 7, 8, 13, 14, 23 and 24 of this Act immediately after the general elections held following the enactment of this Act; and
- (b) all other sections, upon publication in the Gazette.

Amendment of
Article 75 of the
Constitution.

2. Article 75 of the Constitution is amended by inserting the following new clauses immediately after clause (3) —

(4) A State Officer or public officer as provided for under Article 80(c), shall promptly obey and act in accordance with a court order.

(5) A court may impose appropriate sanctions against any state or public officer who fails to comply with a court order.

Amendment of
Article 88 of the
Constitution.

3. Article 88(4) of the Constitution is amended by deleting paragraph (e).

Amendment of
Article 89 of the
Constitution.

4. Article 89 of the Constitution is amended by inserting the following new clause immediately after clause (2) —

(2A) Where for any reason the review of the names and boundaries of constituencies is not completed within the time stipulated under clause (2) or there are justifiable reasons for the extension of the period for review, Parliament may extend the period provided for under clause (2) by a resolution passed by —

- (a) the National Assembly, with the support of a majority of all the Members of the Assembly; and
- (b) the Senate, with the support of a majority of all the county delegations.

Amendment of
Article 91 of the
Constitution.

5. Article 91 of the Constitution is amended —

(a) in clause (1) —

(i) by inserting the following new paragraphs immediately after paragraph (d) —

- (da) promote discipline within the party;
- (db) conduct its affairs in a manner that promotes democracy and peaceful politics;
- (dc) adhere to the values and principles of the Constitution in the nomination of persons to appointive or elective positions including Article 27, Article 54, Article 55, Article 56, Article 57 and Article 100 of the Constitution;

(ii) by inserting the words “and as such other code of conduct as may be prescribed by the Independent Electoral and Boundaries Commission” immediately after the words “political parties” appearing in paragraph (h);

(b) by inserting the following new clauses immediately after clause (2) —

(3) A member of a political party shall—

- (a) subscribe to the constitution, rules and regulations of the political party; and

(b) be bound by the policies, ideology, philosophy and manifesto of the party.

(4) A citizen shall not be a member of more than one political party at any given time.

(5) Subject to clause (11), a member once deregistered from a political party shall cease holding any appointive or elective position held by virtue of such membership including a position held as a Member of Parliament, a county governor or a member of a county assembly.

(6) For purposes of clause (5), the reasons for deregistration or resignation of a member from a political party shall be exclusively determined in accordance with the constitution or regulations of a political party, by the internal dispute resolution mechanism of the party.

(7) An appeal against the decision of the internal dispute resolution mechanism of the party under clause (6) may be made to the relevant statutory body responsible for determining such disputes.

(8) An appeal against the decision of the relevant statutory body under clause (7) shall be made to the High Court.

(9) All disputes relating to deregistration or resignation of a member of a political party shall be heard and determined within a period not exceeding ninety days from the date of filing the appeal.

(10) Subject to exhaustion of appeal mechanisms, the body responsible for regulation of political parties, Speakers of both Houses of Parliament and speakers of county assemblies shall give effect to the

decision of the political party or the courts,
as the case may be.

(11) A party shall not deregister a member of a political party unless the procedures for deregistration adheres to—

- (a) the freedom of expression set out in Article 33;
- (b) the freedom of association set out in Article 36;
- (c) the political rights set out in Article 38;
- (d) the right of fair administrative action set out in Article 47; and
- (e) the right to fair hearing set out in Article 50.

Insertion of a
new Article 92A
in the
Constitution.

6. The Constitution is amended by inserting the following new Article immediately after Article 92—

Part 4—Office of the Leader of the Opposition

92A. Leader of the Opposition

- (1) There is established the office of the Leader of the Opposition.
- (2) The Leader of the Opposition shall be the person who is—
 - (a) the leader of the party or coalition of parties which garnered the second greatest number of votes in the immediately preceding presidential election; or
 - (b) the person designated to hold that office in accordance with a resolution of a party or coalition agreement.
- (3) There shall be two Deputy Leaders of the Opposition who shall deputize the Leader of Opposition.

(4) The remuneration and benefits payable to the Leader of the Opposition and Deputy Leaders of the Opposition shall be a charge on the Consolidated Fund.

(5) Parliament shall enact legislation to give further effect to this Article.

Amendment
of Article
101 of the
Constitution.

7. Article 101 of the Constitution is amended by deleting clause (1) and substituting therefor the following new clause—

(1) A general election of members of Parliament shall be held on the second Tuesday in August in—

- (a) every fifth year in the case of the National Assembly; and
- (b) every seventh year in the case of the Senate.

Amendment of
Article 102 of the
Constitution.

8. Article 102 of the Constitution is amended by deleting clause (1) and substituting therefor the following new clause—

(1) The term of a House of Parliament expires—

- (a) on the date of the next general election in every fifth year, in the case of the National Assembly; and
- (b) on the seventh year from the date of the last election, in the case of the Senate.

Amendment of
Article 103 of
the Constitution.

9. Article 103 of the Constitution is amended —

(a) in clause (1)(e) by deleting paragraph (i) and substituting therefor the following new paragraph—

- (i) as a member of a political party, the member resigns or is deregistered from the party in accordance with this Constitution.

(b) by deleting clause (3).

Insertion of new
Article 108A in
the
Constitution.

10. The Constitution is amended by inserting the following new Article immediately after Article 108 —

Recognition of international legislative bodies

108A. Parliament shall enact legislation to provide for the recognition and status of representatives in international legislative bodies of which Kenya is a member.

Amendment of
Article 130 of
the Constitution.

11. Article 130(1) of the Constitution is amended by inserting the words “the Prime Minister” immediately after the words “Deputy President”.

Amendment of
Article 131 of
the Constitution.

12. Article 131(1) of the Constitution is amended in paragraph (b) by inserting the words “the Prime Minister” immediately after the words “the Deputy President”.

Amendment of
Article 132 of
the Constitution.

13. Article 132 of the Constitution is amended—

- (a) in clause (1) by inserting the words “House of” immediately after the words “newly elected” appearing in paragraph (a); and
- (b) in clause (2) by inserting the words “Prime Minister and” immediately before the words “Cabinet Secretaries” appearing in paragraph (a).

Amendment of
Article 136 of the
Constitution.

14. Article 136(2) of the Constitution is amended in paragraph (a) by deleting the word “Parliament” and substituting therefor the words “the National Assembly”.

Amendment of
Article 137 of the
Constitution.

15. Article 137(3) of the Constitution is amended by inserting the following new paragraphs immediately after paragraph (b) —

- (ba) the Prime Minister;
- (bb) the Leader of the Opposition;
- (bc) a Deputy Leader of the Opposition;

Amendment of
Article 138 of the
Constitution.

16. Article 138(10) of the Constitution is amended by inserting the words “as verified by the Independent Electoral and Boundaries Commission under clause (3)(c)” immediately after the words “declare the result of the election” appearing in paragraph (a).

Amendment of
Article 140 of
the Constitution.

17. Article 140(2) of the Constitution is amended by deleting the word “fourteen” and substituting therefor the word “twenty-one”.

Insertion of a
new Article
151A in the
Constitution.

18. The Constitution is amended by inserting the following new Article immediately after Article 151—

Office of the Prime Minister

151A. (1) There is established the office of the Prime Minister.

(2) The Prime Minister shall be nominated and, with the approval of the National Assembly, appointed by the President.

(3) The Prime Minister shall not be a Member of Parliament.

(4) The Prime Minister shall —

(a) assist the President and the Deputy President in the coordination, supervision and implementation of the national government policies, programmes and projects across all government ministries and state departments;

(b) coordinate the national government’s legislative agenda across all ministries and state departments; and

(c) perform any other function as may be directed by the President.

(5) The provisions of Article 152(4), (5), (6), (7), (8), (9) and (10) and Article 153(2), (3) and (4) shall apply with the necessary modifications to the Prime Minister.

Amendment of
Article 152 of
the Constitution.

19. Article 152 of the Constitution is amended—

(a) in clause (1) by inserting the following new paragraph immediately after paragraph (b)

—
(ba) the Prime Minister;

(b) in clause (2) by inserting the words “the Prime Minister and” immediately after the words “National Assembly appoint”.

Amendment of
Article 162 of
the Constitution.

20. Article 162 of the Constitution is amended—

(a) in clause (1) by deleting the words “the High Court and the courts referred to in clause (2) and substituting therefor the words” and the High Court”;

(b) by deleting clause (2); and

(c) by deleting clause (3).

Amendment of
Article 165 of
the Constitution.

21. Article 165(5) of the Constitution is amended by deleting paragraph (b).

Amendment of
Article 169 of
the Constitution.

22. Article 169(1) of the Constitution is amended in paragraph (d) by deleting the words “other than the courts established as required by Article 162(2)”.

Amendment of
Article 177 of the
Constitution.

23. Article 177(1) of the Constitution is amended in paragraph (a) by deleting the word “Parliament” and substituting therefor the words “the National Assembly”.

Amendment of
Article 180 of the
Constitution.

24. Article 180(1) of the Constitution is amended by deleting the word “Parliament” and substituting therefor the words “the National Assembly”.

Amendment of
Article 181 of the
Constitution.

25. Article 181(1) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (d) —

(e) having been elected as a governor as a member of a political party, the governor resigns or is deregistered from that political party;

Amendment of
Article 194 of the
Constitution.

26. Article 194 of the Constitution is amended —

(a) in clause (1)(e) by deleting paragraph (i) and substituting therefor the following new paragraph—

(i) as a member of a political party, the member resigns or is deregistered from the party in accordance with this Constitution.

(b) by deleting clause (2).

Amendment of
Article 203 of the
Constitution.

27. Article 203(2) of the Constitution is amended by deleting the words “fifteen per cent” and substituting therefor the words “twenty per cent”.

Insertion of new
Articles 204A,
204B and 204C
in the
Constitution.

28. The Constitution is amended by inserting the following new Articles immediately after Article 204—

The National Government Constituencies Development Fund.

204A. (1) There is established the National Government Constituencies Development Fund which shall be a national government fund consisting of monies appropriated from the national government’s share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(2) All monies allocated under this Article shall be considered as funds allocated to constituencies pursuant to Article 206(2)(c) of the Constitution and is to be administered in accordance with the provisions of an Act of Parliament.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

The Senate Oversight Fund

204B. (1) There is established the Senate Oversight Fund which shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(2) All monies allocated under this Article shall be considered as funds allocated to the Senate pursuant to Article 206(2)(c) of the Constitution and is to be administered in accordance with the provisions of an Act of Parliament.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

The National Government Affirmative Action Fund.

204C. (1) There is established the National Government Affirmative Action Fund whose object and purpose shall be to complement the National Government programmes on affirmative action.

(2) The Fund shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

Amendment of
Article 240 of
the Constitution.

29. Article 240(2) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (b) —

(ba) the Prime Minister;

Amendment of
Article 260 of
the Constitution.

30. Article 260 of the Constitution is amended in the definition of a "State office" by inserting the following new paragraph immediately after paragraph (b) —

(ba) the Prime Minister;

Consequential
legislation.

31. (1) Parliament shall enact any legislation required to be enacted under this Act within a period of six months of the coming into force of this Act.

(2) Parliament shall prepare the relevant Bills for tabling as soon as is reasonably practicable to enable enactment of the legislation within the prescribed time under sub-section (1).

Transition
provision.

32. A person who immediately before the commencement of this Act was serving as a judge in a court established under Article 162(2) of the Constitution (now repealed) shall continue serving as a judge of the High Court established under Article 165 of the Constitution without loss of any benefits or status.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the Constitution by parliamentary initiative in seeking to resolve issues of concern to the people of Kenya, promote national unity and inclusivity, enhance representative democracy, transparency, accountability and good governance and establish adequate checks and balances. The Bill seeks to give effect to the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 of the Bill sets out the short title of the Bill and provides for its commencement date.

Clause 2 of the Bill seeks to amend Article 75 of the Constitution to ensure compliance with court orders by state and public officers.

Clause 3 of the Bill proposes to amend Article 88 of the Constitution to review the framework for election dispute resolution. The Bill seeks to remove the role of settlement of electoral disputes, (including disputes relating to or arising from nominations) from the Independent Electoral and Boundaries Commission and confer the mandate to the Political Parties Disputes Tribunal established under the Political Parties Act, 2011.

Clause 4 of the Bill seeks to amend Article 89 of the Constitution to provide that where for any reason the review of the names and boundaries of constituencies by the Independent Electoral and Boundaries Commission is not completed within the time stipulated under Article 89(2) or where there are justifiable reasons for the extension of the period for review, Parliament may extend the period provided for under Article 89(2) of the Constitution by a resolution passed by the National Assembly, with the support of a majority of all the Members of the Assembly; and the Senate, with the support of a majority of all the county delegations.

As it is presently, the deadline for the review of the boundaries of constituencies is March, 2024. Cognizant of the fact that the Independent Electoral and Boundaries Commission is yet to be reconstituted, it is paramount to amend Article 89(2) of the Constitution and provide for for

the extension of the period for review of boundaries of constituencies by the Commission once reconstituted.

Clause 5 of the Bill seeks to amend Article 91 of the Constitution to include in the basic requirements of political parties that every political party shall promote discipline within the party; conduct its affairs in a manner that promotes democracy and peaceful politics; and adhere to the values and principles of the Constitution in the nomination of persons to appointive or elective positions including Article 27, Article 54, Article 55, Article 56, Article 57 and Article 100 of the Constitution. Further, the Bill seeks to amend Article 91 of the Constitution to promote multipartyism and fidelity to Political Parties by entrenching procedures for deregistration of members of political parties.

Clause 6 of the Bill proposes to insert a new Article 92A in the Constitution to provide for the establishment of the office of the Leader of the Opposition. The Leader of Opposition shall be deputized by two Deputy Leaders of Opposition. The clause further provides that Parliament shall enact legislation to give further effect to the new Article 92A of the Constitution. The Clause seeks to enhance national unity, inclusivity and good governance by ensuring that the views and interests of the opposition are represented.

Clauses 7 and 8 of the Bill seeks to amend Articles 101 and 102 of the Constitution to provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 9 of the Bill seeks to amend Article 103 of the Constitution to provide that where a member of a political party, who was elected to Parliament resigns or is deregistered from the party in accordance with the Constitution, the office of the member shall become vacant. This is intended to promote party discipline and fidelity to political parties by removing the apparently unenforceable deeming provisions provided for in Article 103 of the Constitution.

Clause 10 of the Bill proposes to amend the Constitution to insert new Article 108A to provide for recognition of representatives in international legislative bodies of which Kenya is a member.

Clauses 11, 12 and 13 of the Bill proposes to amend Articles 130, 131 and 132 of the Constitution to institutionalize the office of the Prime Minister

which is mandated to perform the key functions of coordination, supervision and implementation of national government policies, programmes and projects across all government ministries and state departments. Further, clause 13 of the Bill proposes to amend Article 132 of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution.

Clause 14 of the Bill seeks to amend Article 136(2) of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 15 of the Bill proposes to amend Article 137(3) of the Constitution to provide that the disqualifications under Article 137(2) of the Constitution shall not apply to the Prime Minister, Leader of the Opposition and the Deputy Leaders of Opposition.

Clause 16 of the Bill proposes to amend Article 138(10) of the Constitution to provide clarity that the chairperson of the Independent Electoral and Boundaries Commission shall declare the result of the presidential election as verified by the Independent Electoral and Boundaries Commission in accordance with Article 138(3)(c) of the Constitution.

Clause 17 of the Bill proposes to amend Article 140(2) of the Constitution to increase the timelines within which the Supreme Court shall hear and determine the validity of presidential election from fourteen to twenty-one days.

Clauses 18 and 19 of the Bill proposes to insert a new Article 151A and amend Article 152 of the Constitution to institutionalize the office of the Prime Minister which is mandated to perform the key functions of coordination, supervision and implementation of the national government policies, programmes and projects across all government ministries and state departments.

Clause 20 of the Bill seeks to amend Article 162 of the Constitution to make the Environment and Land Court and the Employment and Labour Relations Court (ELRC) part of the High Court. This is intended to broaden the experience of judges within the High Court. Presently, a judge serving

in the two specialized courts cannot serve in the High Court or preside over a matter in the High Court.

Clause 21 of the Bill proposes to amend Article 165 of the Constitution to align with the proposed amendments to Article 162 of the Constitution.

Clause 22 of the Bill proposes to amend Article 169 of the Constitution to align with the proposed amendments to Article 162 of the Constitution.

Clause 23 of the Bill proposes to amend Article 177(1) of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 24 of the Bill proposes to amend Article 180(1) of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 25 of the Bill proposes to amend Article 181 of the Constitution to provide that a county governor may be removed from office where having been elected as a governor, as a member of a political party, the governor resigns or is deregistered from that political party.

Clause 26 of the Bill proposes to amend Article 194 of the Constitution to provide that where a member of a political party who was elected to a county assembly, resigns or is deregistered from the party in accordance with the Constitution, the office of the member shall become vacant. This is intended to promote party discipline and fidelity to political parties by removing the deeming provisions provided for in Article 194 of the Constitution.

Clause 27 of the Bill proposes to amend Article 203(2) of the Constitution to increase the equitable share of the revenue raised nationally that is allocated to county governments from not less than fifteen per cent of all revenue collected by the national government to not less than twenty per cent of all revenue collected by the national government.

Clause 28 of the Bill proposes to insert new Articles 204A, 204B and 204C in the Constitution to entrench the following Funds as Funds established in the Constitution—

- (a) the National Government Constituencies Development Fund;
- (b) the National Government Affirmative Action Fund; and
- (c) the Senate Oversight Fund.

The entrenchment of the Funds in the Constitution seeks to ensure funding and implementation of national government projects in all parts of the Republic. The Senate Oversight Fund shall enhance the oversight role of the Senate as enshrined under Article 96 of the Constitution.

Clauses 29 of the Bill proposes to amend Article 240 of the Constitution to provide that the Prime Minister shall be a member of the National Security Council in light of the functions conferred to the office.

Clause 30 of the Bill proposes to amend Article 260 of the Constitution to provide that the office of the Prime Minister shall be a state office for purposes of Article 260 of the Constitution and for which the requirements under Chapter Six of the Constitution on leadership and integrity shall apply.

Clause 31 of the Bill provides for enactment by Parliament of any legislation required to be enacted under the Act within a period of six months.

Clause 32 of the Bill is the transition provision. The clause provides for a transition provision to the amendment to Article 162(2) of the Constitution in order to provide that a person who immediately before the commencement of the Act was serving as a judge in a court established under Article 162(2) of the Constitution (now repealed) shall continue serving as a judge of the High Court established under Article 165 of the Constitution without loss of any benefits or status.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

The Bill shall be considered and passed by both Houses of Parliament in terms of Article 256 of the Constitution.

Statement on the financial implications of the Bill

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the, 2023

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of Minority Party.

Article 75 of the Constitution which it is proposed to amend—

75. Conduct of State officers

(1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

- (a) any conflict between personal interests and public or official duties;
- (b) compromising any public or official interest in favour of a personal interest; or
- (c) demeaning the office the officer holds.

(2) A person who contravenes clause (1), or Article 76, 77 or 78(2)—

- (a) shall be subject to the applicable disciplinary procedure for the relevant office; and

(b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

(3) A person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in clause (2) is disqualified from holding any other State office.

Article 88 of the Constitution which it is proposed to amend—

88. Independent Electoral and Boundaries Commission

(1) There is established the Independent Electoral and Boundaries Commission.

(2) A person is not eligible for appointment as a member of the Commission if the person—

(a) has, at any time within the preceding five years, held office, or stood for election as—

(i) a member of Parliament or of a county assembly; or

(ii) a member of the governing body of a political party;
or

(b) holds any State office.

(3) A member of the Commission shall not hold another public office.

(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—

(a) the continuous registration of citizens as voters;

(b) the regular revision of the voters' roll;

(c) the delimitation of constituencies and wards;

(d) the regulation of the process by which parties nominate candidates for elections;

- (e) the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;
 - (f) the registration of candidates for election;
 - (g) voter education;
 - (h) the facilitation of the observation, monitoring and evaluation of elections;
 - (i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
 - (j) the development of a code of conduct for candidates and parties contesting elections; and
 - (k) the monitoring of compliance with the legislation required by Article 82 (1) (b) relating to nomination of candidates by parties.
- (5) The Commission shall exercise its powers and perform its functions in accordance with this Constitution and national legislation.

Article 89 of the Constitution which it is proposed to amend—

89. Delimitation of electoral units

- (1) There shall be two hundred and ninety constituencies for the purposes of the election of the members of the National Assembly provided for in Article 97 (1) (a).
- (2) The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of Parliament.
- (3) The Commission shall review the number, names and boundaries of wards periodically.

(4) If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.

(5) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota, but the number of inhabitants of a constituency may be greater or lesser than the population quota in the manner specified in clause

(6) to take account of—

- (a) geographical features and urban centres;
- (b) community of interest, historical, economic and cultural ties; and
- (c) means of communication.

(6) The number of inhabitants of a constituency or ward may be greater or lesser than the population quota by a margin of not more than—

- (a) forty per cent for cities and sparsely populated areas; and
- (b) thirty per cent for the other areas.

(7) In reviewing constituency and ward boundaries the Commission shall—

- (a) consult all interested parties; and
- (b) progressively work towards ensuring that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota.

(8) If necessary, the Commission shall alter the names and boundaries of constituencies, and the number, names and boundaries of wards.

(9) Subject to clauses (1), (2), (3) and (4), the names and details of the boundaries of constituencies and wards determined by the Commission

shall be published in the Gazette, and shall come into effect on the dissolution of Parliament first following their publication.

(10) A person may apply to the High Court for review of a decision of the Commission made under this Article.

(11) An application for the review of a decision made under this Article shall be filed within thirty days of the publication of the decision in the Gazette and shall be heard and determined within three months of the date on which it is filed.

(12) For the purposes of this Article, "population quota" means the number obtained by dividing the number of inhabitants of Kenya by the number of constituencies or wards, as applicable, into which Kenya is divided under this Article.

Article 91 of the Constitution which it is proposed to amend—

91. Basic requirements for political parties

(1) Every political party shall—

- (a) have a national character as prescribed by an Act of Parliament;
- (b) have a democratically elected governing body;
- (c) promote and uphold national unity;
- (d) abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party;
- (e) respect the right of all persons to participate in the political process, including minorities and marginalized groups;
- (f) respect and promote human rights and fundamental freedoms, and gender equality and equity;

- (g) promote the objects and principles of this Constitution and the rule of law; and
 - (h) subscribe to and observe the code of conduct for political parties.
- (2) A political party shall not—
- (a) be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis;
 - (b) engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;
 - (c) establish or maintain a paramilitary force, militia or similar organization;
 - (d) engage in bribery or other forms of corruption; or
 - (e) except as is provided under this Chapter or by an Act of Parliament, accept or use public resources to promote its interests or its candidates in elections.

Article 93 of the Constitution which it is proposed to amend—

93. Establishment of Parliament

- (1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.
- (2) The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.

Article 101 of the Constitution which it is proposed to amend—

101. Election of members of Parliament

(1) A general election of members of Parliament shall be held on the second Tuesday in August in every fifth year.

(2) Whenever a vacancy occurs in the office of a member of the National Assembly under Article 97 (1) (c), or of the Senate under Article 98 (1) (b), (c) or (d), the respective Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to—

(a) the Independent Electoral and Boundaries Commission; and

(b) the political party on whose party list the member was elected or nominated.

(3) A vacancy referred to in clause (2) shall, subject to clause (5), be filled in the manner prescribed by an Act of Parliament within twenty-one days of the notification by the respective Speaker.

(4) Whenever a vacancy occurs in the office of a member of the National Assembly elected under Article 97 (1) (a) or (b), or of the Senate elected under Article 98 (1) (a)—

(a) the respective Speaker shall, within twenty-one days after the occurrence of the vacancy, give notice in writing of the vacancy to the Independent Electoral and Boundaries Commission; and

(b) a by-election shall be held within ninety days of the occurrence of the vacancy, subject to clause (5).

(5) A vacancy referred to in clause (4) shall not be filled within the three months immediately before a general election.

Article 102 of the Constitution which it is proposed to amend—

102. Term of Parliament

(1) The term of each House of Parliament expires on the date of the next general election.

(2) When Kenya is at war, Parliament may, by resolution supported in each House by at least two-thirds of all the members of the House, from time to time extend the term of Parliament by not more than six months at a time.

(3) The term of Parliament shall not be extended under clause (2) for a total of more than twelve months.

Article 103 of the Constitution which it is proposed to amend—

103. Vacation of office of member of Parliament

(1) The office of a member of Parliament becomes vacant—

- (a) if the member dies;
- (b) if, during any session of Parliament, the member is absent from eight sittings of the relevant House without permission, in writing, from the Speaker, and is unable to offer a satisfactory explanation for the absence to the relevant committee;
- (c) if the member is otherwise removed from office under this Constitution or legislation enacted under Article 80;
- (d) if the member resigns from Parliament in writing to the Speaker;
- (e) if, having been elected to Parliament—
 - (i) as a member of a political party, the member resigns from that party or is deemed to have resigned from the party as determined in accordance with the legislation contemplated in clause (2); or
 - (ii) as an independent candidate, the member joins a political party;
- (f) at the end of the term of the relevant House; or

(g) if the member becomes disqualified for election to Parliament under Article 99 (2) (d) to (h).

(3) Parliament shall enact legislation providing for the circumstances under which a member of a political party shall be deemed, for the purposes of clause (1) (e), to have resigned from the party.

Article 130 of the Constitution which it is proposed to amend—

130. The National Executive

(1) The national executive of the Republic comprises the President, the Deputy President and the rest of the Cabinet.

(2) The composition of the national executive shall reflect the regional and ethnic diversity of the people of Kenya.

Article 131 of the Constitution which it is proposed to amend—

131. Authority of the President

(1) The President—

(a) is the Head of State and Government;

(b) exercises the executive authority of the Republic, with the assistance of the Deputy President and Cabinet Secretaries;

(c) is the Commander-in-Chief of the Kenya Defence Forces;

(d) is the chairperson of the National Security Council; and

(e) is a symbol of national unity.

(2) The President shall—

(a) respect, uphold and safeguard this Constitution;

(b) safeguard the sovereignty of the Republic;

(c) promote and enhance the unity of the nation;

- (d) promote respect for the diversity of the people and communities of Kenya; and
 - (e) ensure the protection of human rights and fundamental freedoms and the rule of law.
- (3) The President shall not hold any other State or public office.

Article 132 of the Constitution which it is proposed to amend—

132. Functions of the President

- (1) The President shall—
- (a) address the opening of each newly elected Parliament;
 - (b) address a special sitting of Parliament once every year and may address Parliament at any other time; and
 - (c) once every year—
 - (i) report, in an address to the nation, on all the measures taken and the progress achieved in the realisation of the national values, referred to in Article 10;
 - (ii) publish in the Gazette the details of the measures and progress under sub-paragraph (i); and
 - (iii) submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic.
- (2) The President shall nominate and, with the approval of the National Assembly, appoint, and may dismiss—
- (a) the Cabinet Secretaries, in accordance with Article 152;
 - (b) the Attorney-General, in accordance with Article 156;
 - (c) the Secretary to the Cabinet in accordance with Article 154;
 - (d) Principal Secretaries in accordance with Article 155;

- (e) high commissioners, ambassadors and diplomatic and consular representatives; and
 - (f) in accordance with this Constitution, any other State or public officer whom this Constitution requires or empowers the President to appoint or dismiss.
- (3) The President shall—
- (a) chair Cabinet meetings;
 - (b) direct and co-ordinate the functions of ministries and government departments; and
 - (c) by a decision published in the Gazette, assign responsibility for the implementation and administration of any Act of Parliament to a Cabinet Secretary, to the extent not inconsistent with any Act of Parliament.
- (4) The President may—
- (a) perform any other executive function provided for in this Constitution or in national legislation and, except as otherwise provided for in this Constitution, may establish an office in the public service in accordance with the recommendation of the Public Service Commission;
 - (b) receive foreign diplomatic and consular representatives;
 - (c) confer honours in the name of the people and the Republic;
 - (d) subject to Article 58, declare a state of emergency; and
 - (e) with the approval of Parliament, declare war.
- (5) The President shall ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Cabinet Secretaries.

Article 136 of the Constitution which it is proposed to amend—

136. Election of the President

(1) The President shall be elected by registered voters in a national election conducted in accordance with this Constitution and any Act of Parliament regulating presidential elections.

(2) An election of the President shall be held—

(a) on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year; or

(b) in the circumstances contemplated in Article 146.

Article 137 of the Constitution which it is proposed to amend—

137. Qualifications and disqualifications for election 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) Clause (2)(b) shall not apply to—

(a) the President;

(b) the Deputy President; or

(c) a member of Parliament.

Article 138 of the Constitution which it is proposed to amend—

138. Procedure at presidential election

(1) If only one candidate for President is nominated, that candidate shall be declared elected.

(2) If two or more candidates for President are nominated, an election shall be held in each constituency.

(3) In a presidential election—

(a) all persons registered as voters for the purposes of parliamentary elections are entitled to vote;

(b) the poll shall be taken by secret ballot on the day specified in Article 101 (1) at the time, in the places and in the manner prescribed under an Act of Parliament; and

(c) after counting the votes in the polling stations, the Independent Electoral and Boundaries Commission shall tally and verify the count and declare the result.

(4) A candidate shall be declared elected as President if the candidate receives—

(a) more than half of all the votes cast in the election; and

(b) at least twenty-five per cent of the votes cast in each of more than half of the counties.

(5) If no candidate is elected, a fresh election shall be held within thirty days after the previous election and in that fresh election the only candidates shall be—

(a) the candidate, or the candidates, who received the greatest number of votes; and

(b) the candidate, or the candidates, who received the second greatest number of votes.

(6) If more than one candidate receives the greatest number of votes, clause (5)(b) shall not apply and the only candidates in the fresh election shall be those contemplated in clause (5)(a).

(7) The candidate who receives the most votes in the fresh election shall be declared elected as President.

(8) A presidential election shall be cancelled and a new election held if—

(a) no person has been nominated as a candidate before the expiry of the period set for the delivery of nominations;

(b) a candidate for election as President or Deputy President dies on or before the scheduled election date; or

(c) a candidate who would have been entitled to be declared elected as President, dies before being declared elected as President.

(9) A new presidential election under clause (8) shall be held within sixty days after the date set for the previous presidential election.

(10) Within seven days after the presidential election, the chairperson of the Independent Electoral and Boundaries Commission shall—

(a) declare the result of the election; and

(b) deliver a written notification of the result to the Chief Justice and the incumbent President.

Article 140 of the Constitution which it is proposed to amend—

140. Questions as to validity of presidential election

(1) A person may file a petition in the Supreme Court to challenge the election of the President-elect within seven days after the date of the declaration of the results of the presidential election.

(2) Within fourteen days after the filing of a petition under clause (1), the Supreme Court shall hear and determine the petition and its decision shall be final.

(3) If the Supreme Court determines the election of the President-elect to be invalid, a fresh election shall be held within sixty days after the determination.

Article 152 of the Constitution which it is proposed to be amended—

152. Cabinet

- (1) The Cabinet consists of—
 - (a) the President;
 - (b) the Deputy President;
 - (c) the Attorney-General; and
 - (d) not fewer than fourteen and not more than twenty-two Cabinet Secretaries.
- (2) The President shall nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries.
- (3) A Cabinet Secretary shall not be a Member of Parliament.
- (4) Each person appointed as a Cabinet Secretary—
 - (a) assumes office by swearing or affirming faithfulness to the people and the Republic of Kenya and obedience to this Constitution, before the President and in accordance with the Third Schedule; and
 - (b) may resign by delivering a written statement of resignation to the President.
- (5) The President—
 - (a) may re-assign a Cabinet Secretary;
 - (b) may dismiss a Cabinet Secretary; and
 - (c) shall dismiss a Cabinet Secretary if required to do so by a resolution adopted under clauses (6) to (10).
- (6) A member of the National Assembly, supported by at least one-quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary—
 - (a) on the ground of a gross violation of a provision of this Constitution or of any other law;

- (b) where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or
 - (c) for gross misconduct.
- (7) If a motion under clause (6) is supported by at least one-third of the members of the National Assembly—
- (a) the Assembly shall appoint a select committee comprising eleven of its members to investigate the matter; and
 - (b) the select committee shall, within ten days, report to the Assembly whether it finds the allegations against the Cabinet Secretary to be substantiated.
- (8) The Cabinet Secretary has the right to appear and be represented before the select committee during its investigations.
- (9) If the select committee reports that it finds the allegations—
- (a) unsubstantiated, no further proceedings shall be taken; or
 - (b) substantiated, the National Assembly shall—
 - (i) afford the Cabinet Secretary an opportunity to be heard; and
 - (ii) vote whether to approve the resolution requiring the Cabinet Secretary to be dismissed.
- (10) If a resolution under clause (9) (b) (ii) requiring the President to dismiss a Cabinet Secretary is supported by a majority of the members of the National Assembly—
- (a) the Speaker shall promptly deliver the resolution to the President; and
 - (b) the President shall dismiss the Cabinet Secretary.

Article 162 of the Constitution which it is proposed to be amended—

162. System of courts

- (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a) employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land.

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

(4) The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.

Article 165 of the Constitution which it is proposed to be amended—

165. High Court

(1) There is established the High Court, which—

(a) shall consist of the number of judges prescribed by an Act of Parliament; and

(b) shall be organised and administered in the manner prescribed by an Act of Parliament.

(2) There shall be a Principal Judge of the High Court, who shall be elected by the judges of the High Court from among themselves.

(3) Subject to clause (5), the High Court shall have—

(a) unlimited original jurisdiction in criminal and civil matters;

(b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;

(c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;

(d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—

- (i) the question whether any law is inconsistent with or in contravention of this Constitution;
 - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and
 - (e) any other jurisdiction, original or appellate, conferred on it by legislation.
- (4) Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.
- (5) The High Court shall not have jurisdiction in respect of matters—
- (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
 - (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).
- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

Article 169 of the Constitution which it is proposed to be amended—

169. Subordinate courts

- (1) The subordinate courts are—

- (a) the Magistrates courts;
 - (b) the Kadhis' courts;
 - (c) the Courts Martial; and
 - (d) any other court or local tribunal as may be established by an Act of Parliament, other than the courts established as required by Article 162 (2).
- (2) Parliament shall enact legislation conferring jurisdiction, functions and powers on the courts established under clause (1).

Article 177 of the Constitution which it is proposed to be amended—

177. Membership of county assembly

- (1) A county assembly consists of—
- (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;
 - (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;
 - (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and
 - (d) the Speaker, who is an ex officio member.
- (2) The members contemplated in clause (1) (b) and (c) shall, in each case, be nominated by political parties in proportion to the seats received in that election in that county by each political party under paragraph (a) in accordance with Article 90.
- (3) The filling of special seats under clause (1) (b) shall be determined after declaration of elected members from each ward.
- (4) A county assembly is elected for a term of five years.

Article 180 of the Constitution which it is proposed to be amended—

180. Election of county governor and deputy county governor

- (1) The county governor shall be directly elected by the voters registered in the county, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year.
- (2) To be eligible for election as county governor, a person must be eligible for election as a member of the county assembly.
- (3) If only one candidate for county governor is nominated, that candidate shall be declared elected.
- (4) If two or more candidates are nominated, an election shall be held in the county and the candidate who receives the greatest number of votes shall be declared elected.
- (5) Each candidate for election as county governor shall nominate a person who is qualified for nomination for election as county governor as a candidate for deputy governor.
- (6) The Independent Electoral and Boundaries Commission shall not conduct a separate election for the deputy governor but shall declare the candidate nominated by the person who is elected county governor to have been elected as the deputy governor.
- (7) A person shall not hold office—
 - (a) as a county governor for more than two terms; or
 - (b) as a deputy county governor for more than two terms.
- (8) For the purposes of clause (7), a person who has assumed the office of county governor shall be deemed to have served a full term, subject only to Article 182 (3) (b).

Article 181 of the Constitution which it is proposed to be amended—

181. Removal of a county governor

(1) A county governor may be removed from office on any of the following grounds—

- (a) gross violation of this Constitution or any other law;
- (b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;
- (c) abuse of office or gross misconduct; or
- (d) physical or mental incapacity to perform the functions of office of county governor.

(2) Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in clause (1).

Article 194 of the Constitution which it is proposed to be amended—

194. Vacation of office of member of county assembly

(1) The office of a member of a county assembly becomes vacant—

- (a) if the member dies;
- (b) if the member is absent from eight sittings of the assembly without permission, in writing, of the speaker of the assembly, and is unable to offer satisfactory explanation for the absence;
- (c) if the member is removed from office under this Constitution or legislation enacted under Article 80;
- (d) if the member resigns in writing addressed to the speaker of the assembly;
- (e) if, having been elected to the assembly—
 - (i) as a member of a political party, the member resigns from the party, or is deemed to have resigned from the party as determined in accordance with the legislation contemplated in clause (2); or
 - (ii) as an independent candidate, the member joins a political party;
- (f) at the end of the term of the assembly; or

(g) if the member becomes disqualified for election on grounds specified in Article 193 (2).

(2) Parliament shall enact legislation providing for the circumstances under which a member of a political party shall be deemed, for the purposes of clause (1)(e), to have resigned from the party.

Article 203 of the Constitution which it is proposed to amend—

203. Equitable share and other financial laws

(1) The following criteria shall be taken into account in determining the equitable shares provided for under Article 202 and in all national legislation concerning county government enacted in terms of this Chapter—

- (a) the national interest;
- (b) any provision that must be made in respect of the public debt and other national obligations;
- (c) the needs of the national government, determined by objective criteria;
- (d) the need to ensure that county governments are able to perform the functions allocated to them;
- (e) the fiscal capacity and efficiency of county governments;
- (f) developmental and other needs of counties;
- (g) economic disparities within and among counties and the need to remedy them;
- (h) the need for affirmative action in respect of disadvantaged areas and groups;
- (i) the need for economic optimisation of each county and to provide incentives for each county to optimise its capacity to raise revenue;
- (j) the desirability of stable and predictable allocations of revenue; and

- (k) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.
- (2) For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.
- (3) The amount referred to in clause (2) shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

Article 240 of the Constitution which it is proposed to amend—

240. Establishment of the National Security Council

- (1) There is established a National Security Council.
- (2) The Council consists of—
 - (a) the President;
 - (b) the Deputy President;
 - (c) the Cabinet Secretary responsible for defence;
 - (d) the Cabinet Secretary responsible for foreign affairs;
 - (e) the Cabinet Secretary responsible for internal security;
 - (f) the Attorney-General;
 - (g) the Chief of Kenya Defence Forces;
 - (h) the Director-General of the National Intelligence Service; and
 - (i) the Inspector-General of the National Police Service.
- (3) The Council shall exercise supervisory control over national security organs and perform any other functions prescribed by national legislation.
- (4) The President shall preside at meetings of the Council.

- (5) The Council shall appoint its secretary.
- (6) The Council shall—
 - (a) integrate the domestic, foreign and military policies relating to national security in order to enable the national security organs to co-operate and function effectively; and
 - (b) assess and appraise the objectives, commitments and risks to the Republic in respect of actual and potential national security capabilities.
- (7) The Council shall report annually to Parliament on the state of the security of Kenya.
- (8) The Council may, with the approval of Parliament—
 - (a) deploy national forces outside Kenya for—
 - (i) regional or international peace support operations; or
 - (ii) other support operations; and
 - (b) approve the deployment of foreign forces in Kenya.

Article 260 of the Constitution which it is proposed to amend—

260. Interpretation

In this Constitution, unless the context requires otherwise—

"adult" means an individual who has attained the age of eighteen years;

"affirmative action" includes any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or fundamental freedom;

"child" means an individual who has not attained the age of eighteen years;

"contravene" includes fail to comply with;

"county legislation" means a law made by a county government or under authority conferred by a county Assembly;

"disability" includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities;

"document" includes—

- (a) any publication, or any matter written, expressed, or inscribed on any substance by means of letters, figures or marks, or by more than one of those means, that is intended to be used or may be used for the purpose of recording that matter; and
- (b) electronic files;

"effective date" means the date that this Constitution came into force;

"fail" includes refuse;

"financial year" means the period of twelve months ending on the thirtieth day of June or other day prescribed by national legislation, but the initial financial year of any entity is the period of time from its coming into existence until the immediately following thirtieth day of June, or other day prescribed by national legislation;

"*Gazette*" means the Kenya *Gazette* published by authority of the national government, or a supplement to the Kenya *Gazette*;

"guarantee" means any absolute or conditional promise, commitment or undertaking by the national government to partially or completely re-pay any loan to a county government or any person;

"judicial officer" means a registrar, deputy registrar, magistrate, Kadhi or the presiding officer of a court established under Article 169(1)(d);

"land" includes—

- (a) the surface of the earth and the subsurface rock;
- (b) any body of water on or under the surface;
- (c) marine waters in the territorial sea and exclusive economic zone;

- (d) natural resources completely contained on or under the surface; and
- (e) the air space above the surface;

"legislation" includes—

- (a) an Act of Parliament, or a law made under authority conferred by an Act of Parliament; or
- (b) a law made by an assembly of a county government, or under authority conferred by such a law;

"loan" includes any form of borrowing, lending or deferred payment in respect of which money from a public fund may be used, or is required to be used, for payment or repayment;

"marginalised community" means—

- (a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;
- (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;
- (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or
- (d) pastoral persons and communities, whether they are—
 - (i) nomadic; or
 - (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;

"marginalised group" means a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4);

"national legislation" means an Act of Parliament, or a law made under authority conferred by an Act of Parliament;

"natural resources" means the physical non-human factors and components, whether renewable or non-renewable, including—

- (a) sunlight;
- (b) surface and groundwater;
- (c) forests, biodiversity and genetic resources; and
- (d) rocks, minerals, fossil fuels and other sources of energy;

"older member of society" means a person who has attained the age of sixty years;

"person" includes a company, association or other body of persons whether incorporated or unincorporated;

"political party" means an association contemplated in Part 3 of Chapter Seven;

"property" includes any vested or contingent right to, or interest in or arising from—

- (a) land, or permanent fixtures on, or improvements to, land;
- (b) goods or personal property;
- (c) intellectual property; or
- (d) money, choses in action or negotiable instruments;

"public officer" means—

- (a) any State officer; or
- (b) any person, other than a State Officer, who holds a public office;

"public office" means an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable

directly from the Consolidated Fund or directly out of money provided by Parliament;

"public service" means the collectivity of all individuals, other than State officers, performing a function within a State organ;

"Republic" means the Republic of Kenya;

"State", when used as a noun, means the collectivity of offices, organs and other entities comprising the government of the Republic under this Constitution;

"State office" means any of the following offices—

- (a) President;
- (b) Deputy President;
- (c) Cabinet Secretary;
- (d) Member of Parliament;
- (e) Judges and Magistrates;
- (f) member of a commission to which Chapter Fifteen applies;
- (g) holder of an independent office to which Chapter Fifteen applies;
- (h) member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government;
- (i) Attorney-General;
- (j) Director of Public Prosecutions;
- (k) Secretary to the Cabinet;
- (l) Principal Secretary;
- (m) Chief of the Kenya Defence Forces;
- (n) commander of a service of the Kenya Defence Forces;
- (o) Director-General of the National Intelligence Service;

(p) Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or

(q) an office established and designated as a State office by national legislation;

"State officer" means a person holding a State office;

"State organ" means a commission, office, agency or other body established under this Constitution;

"writing" includes printing, photography, lithography, typewriting, Braille, and any other means of representing or reproducing words in a visible form; and

"youth" means the collectivity of all individuals in the Republic who—

(a) have attained the age of eighteen years; but

(b) have not attained the age of thirty-five years.

ANNEX 11:

STATUTORY

AMENDMENT BILLS

**THE INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION
(AMENDMENT) BILL, 2023**

**THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION (AMENDMENT) BILL, 2023**

A Bill for

AN ACT of Parliament to amend the Independent Electoral and Boundaries Commission Act, 2011 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title and
commencement.

1. This Act may be cited as the Independent Electoral and Boundaries Commission (Amendment) Act, 2023 and shall come into force upon publication in the Gazette.

Amendment of
section 2 of
No.9 of 2011.

2. Section 2 of the Independent Electoral and Boundaries Commission Act, 2011 (hereinafter referred to as “the principal Act”) is amended-

- (a) in the definition of the word “chairperson” by deleting the words “or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson” appearing immediately after the word “Constitution”;
- (b) by deleting the definition of the expression “first review”;
- (c) by deleting the definition of the expression “former Boundaries Commission”;
- (d) by deleting the definition of the expression “former Constitution”;
- (e) by deleting the definition of the expression “issues arising”.

Amendment of
section 6 of
No.9 of 2011.

3. Section 6 of the principal Act is amended in subsection (2)(c) by inserting the following new sub-paragraphs immediately after sub-paragraph (vi) —

- (vii) information and communication technology;
- (viii) accounting.

Amendment of
section 7A of
No.9 of 2011.

4. Section 7A of the principal Act is amended-

- (a) by deleting sub-section (4);

- (b) by deleting sub-section (5);
- (c) by deleting sub-section (6).

Amendment of
section 10 of
No. 9 of 2011.

5. Section 10 of the principal Act is amended by deleting sub-section (4) and substituting therefor the following new sub-section-

(4) The secretary shall hold office for a term of three years and may be eligible for re-appointment for one further term of three years.

Amendment of
section 12 of
No. 9 of 2011.

6. Section 12 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section (2)-

(3) The Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.

(4) The review shall be completed within one year after every general election and the Commission shall publish the report in the *Gazette* and submit the report to Parliament.

Amendment of
section 36 of
No. 9 of 2011.

7. Section 36 of the principal Act is amended by inserting the following new sub-section immediately after sub-section (11)-

(12) Subject to this section, the provisions set out in the Fifth Schedule shall apply during the process of delimitation of electoral units.

Amendment of
the First
Schedule to No.
9 of 2011.

8. The First Schedule to the principal Act is amended—

(a) in paragraph 1—

(i) by deleting sub-paragraph (2) and substituting therefor the following new sub-paragraph—

(2) The selection panel shall consist of—

- (a) two persons nominated by the Parliamentary Service Commission, representing the majority party or coalition of parties and the minority party or coalition of parties;
 - (b) three persons nominated by the Political Parties Liaison Committee of whom—
 - (i) one shall be from a party other than a parliamentary party or coalition of parties;
 - (ii) one shall be from a parliamentary party or coalition of parties forming the national government;
 - (iii) one shall be from a parliamentary party or coalition of parties not forming the national government;
 - (c) one person nominated by the Law Society of Kenya;
 - (d) one person nominated by the Institute of Certified Public Accountants of Kenya; and
 - (e) two persons nominated by the Inter-religious Council of Kenya.
- (ii) by inserting the following new sub-paragraphs immediately after sub-paragraph (2A)—
- (2B) The respective nominating bodies shall select the nominees for appointment through a competitive and transparent process.
- (2C) In nominating, the persons under subparagraph (2)(a), (b) and (e), the respective nominating bodies shall ensure that not more than two-thirds of the nominees are of the same gender.
- (iii) in sub-paragraph (3), by deleting the words “sub-paragraphs (2)(b) and (c)” and substituting therefor the words “sub-paragraphs (2)(b), (c), (d) and (e)”;

- (b) by deleting paragraph 6 and substituting therefor the following new paragraph-

Dissolution of Selection Panel

6.(1) The selection panel shall finalize the recruitment exercise within ninety days of its appointment and forward the names of the nominees to the President and shall thereafter stand dissolved.

(2) Despite sub-paragraph (1), Parliament may, by resolution passed in both the National Assembly and the Senate, extend the tenure of the selection panel for a specified period.

Amendment of
the Second
Schedule to No.
9 of 2011.

9. The Second Schedule to the principal Act is amended-
(a) by deleting paragraph 5 and substituting therefor the following new paragraph-

“5. The quorum for the conduct of business at a meeting of the Commission shall be at least five members of the Commission.”

- (b) by deleting paragraph 7 and substituting therefor the following new paragraph-

“(7) Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by the concurrence of a majority of all the members of the Commission.”

10. The principal Act is amended by deleting the Fifth Schedule and substituting therefor the following new Schedule-

FIFTH SCHEDULE (s.36)

**PROCEDURES FOR THE DELIMITATION OF
ELECTORAL UNITS**

1. Notice of delimitation of electoral units

- (1) Whenever it is necessary to review the names and boundaries of electoral units in accordance with Article 89(2)

and (3) of the Constitution, the Commission shall notify the public of—

- (a) the intended review;
- (b) invite representations from interested parties; and
- (c) specify the period within which the Commission shall publish the preliminary report.

(2) A notice under sub-paragraph (1) shall be accompanied by a preliminary report containing the particulars set out under paragraph 2.

2. Preliminary report

The preliminary report shall contain the following particulars—

- (a) the proposed delimitation of boundaries for constituencies and wards including the actual proposed names of every constituency and ward; and
- (b) description of the proposed boundaries showing the specific geographical and demographical details relating to such delimitation including—
 - (i) the population quota for constituencies and wards;
 - (ii) the number of inhabitants in every constituency and ward;
 - (iii) a classification in relation to each electoral area indicating whether it is a city, a sparsely populated area or other area; and
 - (iv) an indication of the proposed margin of change from the population quota.

3. Reference materials

(1) The Commission shall, use as its primary reference material—

- (a) the final report of the last Electoral and Boundaries Commission on the review of electoral units; and
- (b) the latest official population census report.

(2) The Commission may use as its secondary reference material—

- (a) the reports of County Boundary Review Panels; or
- (b) other relevant data.

(3) The County Boundary Review Panels shall conduct their business as the Commission may, by guidelines determine.

4. Ascertainment of the inhabitants of Kenya

(1) For purposes of determining the population quota, the Commission shall ascertain the number of the inhabitants of Kenya from the figures contained in the latest official national population census report.

(2) Despite sub-paragraph (1), the Commission shall, subject to the timelines set out under Article 89(2) of the Constitution, conduct the delimitation exercise after the national population census.

(3) The Kenya National Bureau of Statistics, shall, as soon as possible after the completion of every national census, submit a copy of the report in the prescribed format to the Commission.

5. Publicization of the preliminary report

(1) The Commission shall—

- (a) publicize the preliminary report in its website and in at least two newspapers of nationwide circulation;
- (b) invite the public to make representations on the proposals contained in the report; and
- (c) put in place administrative mechanisms for receiving representations from the public.

(2) The period set aside for receiving representations from the public on the proposals contained in the report under this paragraph shall be as determined by the Commission.

6. Public sensitization

(1) The Commission shall, upon notification of the public of the intended delimitation of boundaries under paragraph 1 of this Schedule, provide the framework for sensitization and participation of the public.

(2) The Commission may engage the media, avail equipment and prepare materials for effective public education and engagement.

7. Public hearings

(1) The Commission shall conduct boundaries review hearings in every county and may constitute constituencies and wards boundaries review panels in each county for the purposes of facilitating public hearings.

(2) Before engaging in the county boundaries review hearings, the Commission shall notify the public of date, time and place of such hearings.

(3) Representations to the Commission may be made orally or in writing.

(4) The proceedings of all boundary review public hearings shall be recorded, translated and transcribed.

8. Preparation of revised report

(1) Upon completion of the public hearings, the Commission shall review the proposed delimitation of boundaries and submit the report to Parliament.

(2) The revised report shall be based on the feedback received during the public consultative process, subject to the relevant provisions of the law.

9. Preparation and dissemination of maps

(1) The Commission shall prepare and publish maps in its website—

- (a) for all the electoral units in accordance with the final boundary dissemination delimitation report;
- (b) for the respective constituencies in every county; and
- (c) for wards in every constituency.

(2) Despite sub-paragraph (1), the Commission shall provide physical copies of the maps to Parliament.

10. Review of the decisions of the Commission

(1) Pursuant to Article 89(10) of the Constitution, a person may apply to the High Court for review of a decision of the Commission on the delimitation of electoral boundaries.

(2) An application for the review under this paragraph shall be made within thirty days of the publication of the decision in the Gazette as required under Article 89(9) of the Constitution and shall be heard and determined within three months of the date on which it is filed.

11. Maintenance of records

The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by members of the public.

12. Duty of certain officers to co-operate with the Commission

It shall be the duty of every state officer or public officer serving in the relevant government ministry, department or agency including the ministry for the time being responsible for Interior and National Administration, Director of Surveys, Director-General of the Kenya National Bureau of Statistics and every other public officer whose services are required by the Commission for purposes of the delimitation of electoral units to provide the necessary information and technical support.

Transition
provision.

11. The selection panel existing immediately at the commencement date of this Act ceases to exist but a person who served as a member of that selection panel may be nominated to serve as a member of a selection panel appointed under this Act.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

The Bill seeks to amend the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 to clean up the Act by deleting obsolete provisions. The Bill further seeks to make some consequential amendments intended to align the Act to the Judgment of the High Court in *Katiba Institute & 3 Others v Attorney-General & 2 Others [2018]eKLR* wherein the High Court held that certain provisions of the Act were unconstitutional.

The Bill also seeks to amend section 6 of the Act and include experience in accounting or information and communication technology as additional professional qualifications for appointment as a member of the Independent Electoral and Boundaries Commission.

The Bill further seeks to amend the First Schedule to the Independent Electoral and Boundaries Commission No. 9 of 2011 to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups.

The Bill further seeks to replace the current Fifth Schedule with a new and updated Schedule.

Clause 1 of the Bill sets out the short title of the Bill and provides for its commencement date.

Clause 2 of the Bill seeks to amend section 2 of the Bill by aligning the definition of the chairperson of the Commission to the Judgment of the High Court and by deleting obsolete provisions in the section.

Clause 3 of the Bill seeks to amend section 6(2)(c) of the Act to include information and communications technology and one of the relevant professional areas to be taken into account when nominating persons to be appointed as members of the Commission.

Clause 4 of the Bill seeks to amend section 7A of the Act and delete subsections (4), (5) and (6) that were held to be unconstitutional by the High Court.

Clause 5 of the Bill seeks to amend section 10 of the principal Act to provide that the term of the secretary to the Commission shall be three years, renewable once.

Clause 6 of the Bill seeks to amend section 12 of the principal Act and provide that the Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.

Clause 7 of the Bill provides for the amendment of section 36 of the Act to anchor the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units.

Clause 8 of the Bill seeks to amend the First Schedule to the Act to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups.

Clause 9 of the Bill seeks to amend the Second Schedule to the Act and provide for the quorum of the Commission.

Clause 10 of the Bill provides for the deletion and substitution of the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units.

Clause 11 of the Bill sets out the transitional provisions relating to the selection panel for the appointment of members of the Commission.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers and it does not also contain provisions limiting fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1) of the Constitution as it contains provisions relating to the election of a county assembly and a county executive.

Statement on the financial implications of the Bill

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

Section 2 of No. 9 of 2011 which it is proposed to amend—

Interpretation

(1) In this Act, unless the context otherwise requires—

"Cabinet Secretary" means the Cabinet Secretary appointed under Article 152 of the Constitution;

"**chairperson**" means the chairperson of the Commission appointed in accordance with Article 250(2) of the Constitution or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson;

"Commission" means the Independent Electoral and Boundaries Commission established by Article 88 of the Constitution;

"first review" means the review conducted by the former Boundaries Commission taking into account any outstanding work of that Commission and issues arising from that review;

"former Boundaries Commission" means the Interim Independent Boundaries Review Commission established under section 41 B of the former Constitution;

"former Constitution" means the Constitution in force immediately before the 27th of August, 2010;

"Fund" means the Independent Electoral and Boundaries Commission Fund established by section 18;

"issues arising" means the issues specified in paragraph 1 of the Fifth Schedule;

"member" means a member of the Commission and includes the chairperson;

"Parliamentary Committee" means the relevant Departmental Committee of the National Assembly responsible for matters relating to the Commission;

"principal office" means the headquarters of the Commission;

"Registrar of Persons" means the office in charge of identification, registration and issuance of identity cards to all Kenyan citizens;

"Salaries and Remuneration Commission" means the Salaries and Remuneration Commission established under Article 230(1) of the Constitution;

"secretary" means the secretary to the Commission appointed under Article 250(12) of the Constitution;

"vice-chairperson" means the vice-chairperson of the Commission elected under Article 250(10) of the Constitution.

(2) Despite subsection (1), until after the first election under the Constitution, references in this Act to the expression "Cabinet Secretary" shall be construed to mean "Minister".

Section 6 of No. 9 of 2011 which it is proposed to amend—

Qualification for appointments as chairperson or member of the Commission

6.(1) The chairperson of the Commission shall be a person who is qualified to hold the office of judge of the Supreme Court under the Constitution.

(2) A person is qualified for appointment as a member of the Commission if such person—

- (a) deleted by Act No. 36 of 2016, s. 32;
- (b) holds a degree from a recognized university;
- (c) has proven relevant experience in any the following fields—
 - (i) electoral matters;
 - (ii) management;
 - (iii) finance;
 - (iv) governance;
 - (v) public administration;
 - (vi) law; and
- (d) meets the requirements or Chapter Six of the Constitution.

Section 7A of No. 9 of 2011 which it is proposed to amend—

7A. Vacancy in the office of chairperson and members

(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).

(4) Whenever a vacancy occurs in the office of the chairperson, the vice-chairperson shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such a time as the chairperson is appointed.

(5) Where the positions of chairperson and vice-chairperson are vacant, a member elected by members of the Commission shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such a time as the chairperson is appointed.

(6) The provisions of section 6(1) shall not apply to the vice-chairperson or a member acting as chairperson under this section.

[Act No. 36 of 2016, s. 33, Act No. 34 of 2017, s. 3.]

Section 10 of No. 9 of 2011 which it is proposed to amend—

Secretary to the Commission

(1) The Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the secretary to the Commission.

(2) A person shall be qualified for appointment as the secretary if the person—

- (a) is a citizen of Kenya;
- (b) possesses a degree from a recognized university;
- (c) has had at least five years' proven experience at management level;
- (d) has proven relevant experience in either—
 - (i) electoral matters;
 - (ii) management;
 - (iii) finance;
 - (iv) governance;
 - (v) public administration;
 - (vi) law; or
 - (vii) political science, and

(e) meets the requirements of Chapter Six of the Constitution.

(3) The secretary shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Third Schedule.

(4) The secretary shall hold office for a term of five years but shall be eligible for re-appointment for one further term of five years.

(5) Where the Commission does not intend to reappoint the secretary, the Commission shall notify the secretary and shall cause the vacancy to be advertised at least three months before the expiry of the incumbent's term.

(6) The secretary shall, in the performance of the functions and duties of office, be responsible, answerable and report to the Commission.

(7) The secretary shall be-

- (a) the chief executive officer of the Commission;
- (b) head of the secretariat;
- (c) the accounting officer of the Commission;
- (d) custodian of all Commission's records;
- (e) responsible for-
 - (i) executing decisions of the Commission;
 - (ii) assignment of duties and supervision of all employees of the Commission;
 - (iii) facilitating, co-ordinating and ensuring execution of Commission's mandate;
 - (iv) ensuring staff compliance with public ethics and values; and
- (v) the performance of such other duties as may be assigned by the law and Commission.

(8) The secretary may only be removed from office by the Commission on grounds of-

- (a) inability to perform functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct;
- (c) bankruptcy; or
- (d) incompetence.

(9) Before removal under subsection (8), the secretary shall be -

- (a) informed in writing of the reasons for the intended removal;
- (b) given an opportunity to put in a defence against any such allegations, either in person or through an advocate.

Section 36 of No. 9 of 2011 which it is proposed to amend—

Procedure for delimitation of electoral boundaries

(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. [Act No. 1 of 2017, s. 30]

The First Schedule to No. 9 of 2011 which it is proposed to amend—

FIRST SCHEDULE

PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE COMMISSION

- 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 seven persons for the purposes of appointment of the chairperson or member of the Commission.

- (2) The selection panel shall consist of—
 - (a) one man and one woman, nominated by the Parliamentary Service Commission;
 - (b) one person nominated by the Public Service Commission;
 - (c) one person nominated by the Political Parties Liaison Committee;
 - (d) one person nominated by the Law Society of Kenya; and
 - (e) two persons nominated by the Inter-religious Council of Kenya.
 - (2A) A person is qualified for appointment as a member of the selection panel if such person —
 - (a) is a citizen of Kenya;
 - (b) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution; and
 - (c) holds a degree from a university recognized in Kenya.
 - (3) The respective nominating bodies under sub-paragraphs (2)(b) and (c) shall, within seven days of the declaration of a vacancy in the office of the chairperson or member of the Commission, 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.
2. Oath or affirmation of office

The chairperson and members of the selection panel shall, before assuming office, make and subscribe the oath or affirmation of office prescribed in the Third Schedule.

3. Selection of nominees

- (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 (Cap. 7F).

4. Appointment by the President

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.

5. Gender equity and regional balance

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.

6. Dissolution of Selection Panel

The selection panel shall stand dissolved upon the requisite appointments being made under paragraph 4.

The Second Schedule to No. 9 of 2011 which it is proposed to amend—

SECOND SCHEDULE[s. 8]

PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COMMISSION

1. The Commission shall meet as often as may be necessary for the carrying out of its business but it shall meet at least once every calendar month.
2. A meeting of the Commission shall be held on such date and at such time as the chairperson shall decide.
3. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Commission.
4. Unless the majority of the total membership or the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.
5. The quorum for the conduct of business at a meeting of the Commission shall be at least half of the existing members of the Commission, provided that the quorum shall not be less than three members;
6. The chairperson shall preside at every meeting of the Commission at which he is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to the meeting and the business transacted thereat have all the powers of the chairperson.
7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the members present and voting.
8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

9. (1) The secretary shall be the secretary at all meetings of the Commission.
(2) The Commission shall, subject to subparagraph (3), establish a committee for liaison with political parties and may establish committees of its members for any other purpose.
10. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.
11. Except as provided by this Schedule, the Commission may regulate its own procedure.
12. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.
(2) A disclosure or interest made under subsection (1) shall be recorded in the minutes or the meeting at which it is made.
(3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.
(4) A member or employee of the Commission shall not transact any business or trade with the Commission.

The Fifth Schedule to No. 9 of 2011 which it is proposed to replace—

FIFTH SCHEDULE

[s. 2]

PROVISIONS RELATING TO THE FIRST REVIEW

[Act No. 12 of 2012, Sch.]

1. Resolution of issues arising from the first review
The Commission shall resolve all issues arising from the first review relating to the delimitation of boundaries or constituencies and wards and publish its final report within a period of four months or the date of its appointment under this Act.
2. Reference materials

- (1) The Commission shall, in addressing the issues arising out of the first review-
 - (a) use as its primary material the report of the former Boundaries Commission on the first review as adopted by the National Assembly; and
 - (b) use as its secondary reference material the report of the Parliamentary Committee on the report of the former Boundaries Commission on the first review.
 - (2) The issues arising out of the first review are -
 - (a) re-distribution of such wards or administrative units in the affected constituencies as may be appropriate;
 - (b) subject to the Constitution, addressing issues of new constituencies falling outside the population quota as provided for by Article 89(6) of the Constitution but at the same time ensuring that such a process shall -
 - (i) take into account the provisions of Article 89(7)(b) of the Constitution that requires progressive efforts and not instant demographic equality of all towards attaining the population quota in each constituency and ward for the purposes of the first review;
 - (ii) not be subject to new definitions of cities, urban areas and sparsely populated areas or to new population figures;
 - (iii) be subject to the use of enumerated national census figures and not projected figures.
 - (c) addressing the issue of progressively advancing towards the population quota in protected constituencies in relation to neighbouring constituencies where appropriate.
3. Delimitation of electoral units

- (1) 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 demographical details relating to such delimitation.
- (2) The Commission shall ensure that the preliminary report is made available to the public for a period of twenty-one days and invite representations from the public on the proposals contained in the report during that period.
- (3) Upon the expiry of the period provided in sub-paragraph (2), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received under that sub-paragraph and submit the revised preliminary report of proposed boundaries to the Parliamentary Committee.
- (4) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report under sub-paragraph (3), table the revised preliminary report to the National Assembly together with its recommendations.
- (5) The National Assembly shall, within seven days of the tabling of the revised preliminary report, consider the revised report and forward its resolutions to the Commission.
- (6) Within fourteen days of the expiry of the period provided for in sub-paragraph (5), the Commission shall, taking into account the resolutions of the National Assembly under subparagraph (5), prepare and submit its final report outlining the matters set out in sub-paragraph (1)(a) for publication in the *Gazette*.
- (7) Where the National Assembly fails to make a resolution within the period specified in subparagraph (5), the Commission shall proceed to publish its report in accordance with subparagraph (6).
- (8) Any person who, being responsible for the publication in the *Gazette* of the final report submitted under this paragraph 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.

- (9) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subparagraph (6) 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*.
4. Review of decision of Commission
A person may apply to the High Court for review of a decision of the Commission made under the Constitution and this Act.
5. Application for review
An application for the review of the decision made under paragraph 4 shall be made within thirty days of the publication of the decision in the *Gazette* and shall be heard and determined within three months of the date on which it is filed.
6. Sensitization on the proposed boundaries
The Commission shall, upon publication of the boundaries referred to in paragraph 3 facilitate sensitization of the public on the boundaries for a period of thirty days.
7. Maintenance of records
The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by members of the public.

**THE ELECTIONS (AMENDMENT) BILL,
2023**

THE ELECTIONS (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Elections Act and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Elections (Amendment) Act, 2023.

Amendment of
section 2 of No.
24 of 2011.

2. Section 2 of the Elections Act, 2011 (hereinafter referred to as “the principal Act”) is amended by—

(a) deleting the definition of “nomination” and substituting therefor with the following new definition—

“nomination” means the process through which a political party elects or selects its candidates for elections;

(b) deleting the definition of “nomination day”;

(c) deleting the definition of political party and substituting therefor with the following new definition—

“political party” has the meaning assigned to it under section 2 of the Political Parties Act, No. 11 of 2011; and

(e) inserting the word “valid” immediately before the words “Kenyan passport” in the definition of “identification document”; and

(d) inserting the following new definition in proper alphabetical sequence—

“registration of a candidate” means the process through which a person applies to the Commission to contest in an election.

Amendment of
section 5 of No.
24 of 2011.

3. Section 5 of the principal Act is amended—

(a) in subsection (1)(b) by inserting the words “within the affected electoral area” immediately after the words “such by-election”;

(b) in subsection (1)(ba) by inserting the words “of the referendum question” immediately after the word “publication”;

(c) in subsection (3) by inserting the word “valid” immediately before the words “Kenyan passport”;

(d) by inserting the following new subsection immediately after subsection 3-

“(3A) A person who registers as a voter during the period when registration of voters is suspended for the purposes of a by-election as contemplated under subsection (1)(b) shall not be eligible to contest in the electoral area affected the by-election”.

Amendment of
section 6 of No.
24 of 2011.

4. Section 6 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsections-

(1) The Commission shall cause the Register of Voters to be opened for inspection by members of the public at all times.

(1A) The Commission shall rectify the particulars of voters at all times except-

(a) in the case of a general election or an election under Article 138(5) of the Constitution, during the sixty-day period before the date of the election;

(b) in the case of a by-election, between the date of the declaration of the vacancy of the seat concerned and the date of such election; or

(c) in the case of a referendum, between the date of the publication of the referendum question and the date of the referendum.

(b) by deleting subsection (2).

Amendment of
section 8A of
No. 24 of 2011.

5. Section 8A of the principal Act is amended—

(a) by deleting subsection (3); and

(b) in subsection (4), by deleting the expression “subsection (3)” and substituting therefor the expression “subsection (1)”.

Amendment of
section 14 of
No. 24 of 2011.

6. Section 14 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) the day or days for the registration of

candidates for the presidential election;

(b) by deleting the word “nomination” appearing in paragraph (b) and substituting therefor the words “registration of candidates”.

Amendment of
section 16 of
No. 24 of 2011.

7. Section 16 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (b) and substituting therefor the following new paragraph—

(a) the day or days for registration of candidates for the parliamentary election;

(b) by deleting the word “nomination” appearing in paragraph (c) and substituting therefor the words “registration of candidates”.

Amendment of
section 17 of
No. 24 of 2011.

8. Section 17 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) the day or days for registration of candidates for the governor election;

(b) by deleting the word “nomination” appearing in paragraph (b) and substituting therefor the words “registration of candidates”.

Amendment of
section 19 of
No. 24 of 2011.

9. Section 19 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (b) and substituting therefor the following new paragraph—

(a) the day or days for registration of candidates for the county elections; and

(b) by deleting the word “nomination” appearing in paragraph (c) and substituting therefor the word “registration”.

Amendment of
section 22 of
No. 24 of 2011.

10. Section 22 of the principal Act is amended—

(a) in the marginal note by deleting the word “nomination” and substituting therefor the word “registration”;

(b) in subsection (1) by—

(i) deleting the word “nominated” appearing in the introductory phrase and substituting therefor the word “registered”;

(ii) deleting paragraph (b); and

(c) in subsection (2), by deleting the word “nominated” and substituting therefor the word “registered”.

Amendment of
section 23 of
No. 24 of 2011.

11. Section 23 of the principal Act is amended—

(a) in the marginal note, by deleting the word “nomination” and substituting therefor the word “registration”;

(b) in the introductory phrase of subsection (1) by deleting the word “nomination” appearing immediately after the words “person qualifies” and substituting therefor the word “registration”; and

(c) in the introductory phrase of subsection (2) by deleting the word “nomination” appearing immediately after the words “not qualified for” and substituting therefor the word “registration”.

Amendment of
section 24 of
No. 24 of 2011.

12. Section 24 of the principal Act is amended—

(a) in the marginal note by deleting the word “nomination” and substituting therefor the word “registration”; and

(b) in the introductory phrase of subsection (1) by deleting the word “nomination as a” and substituting therefor the words “registration as a candidate for election to the office of”.

Amendment of
section 25 of
No. 24 of 2011.

13. Section 25 of the principal Act is amended—

(a) in the marginal note by deleting the word “nomination” and substituting therefor the word “registration”;

(b) in the introductory phrase of subsection (1) by deleting the word “nomination as a” and substituting therefor the words “registration as a candidate for election to the office of”;

Amendment of
section 27 of
No. 24 of 2011.

14. Section 27 of the principal Act is amended by inserting the following new subsection immediately after subsection (1A)—

(1B) Notwithstanding the provisions under subsection (1) a coalition political party shall, within fourteen days of registration, submit to the Commission a copy

of the coalition political party's nomination rules certified by the Registrar of Political Parties.

Amendment of
section 31 of
No. 24 of 2011.

15. Section 31 of the principal Act is amended—

- (a) by deleting subsection (2);
- (b) by deleting subsection (2B);
- (c) by deleting subsection (2C);
- (d) by deleting subsection (2E); and
- (e) by deleting subsection (2F).

Amendment of
section 32 of
No. 24 of 2011.

16. Section 32 of the principal Act is amended-

- (a) in subsection (1) by deleting the words “nomination day” appearing immediately after the words “days before” and substituting therefor the words “the date for registration of candidates; and
- (b) in subsection (1A) by deleting the word “nomination” appearing immediately after the words “days before” and substituting therefor the words “the date for registration of candidates”.

Amendment of
section 33 of
No. 24 of 2011.

17. Section 33 of the principal Act is amended—

- (a) in the marginal note by deleting the word “nomination” and substituting therefor the word “registration”;
- (b) in subsection (1)—
 - (i) by deleting the word “nominated” appearing in the introductory phrase and substituting therefor the word “registered”;
 - (ii) by deleting the words “nomination paper” appearing in paragraph (b) and substituting therefor the words “registration of candidates Form”;
 - (iii) by deleting the words “nomination day” appearing in paragraph (c) and substituting therefor with the words “date for registration of candidates”;
 - (iv) by deleting paragraph (d); and
- (c) by deleting subsection (2).

Insertion of new
section 33A in

18. The principal Act is amended by inserting the following

No. 24 of 2011. new section immediately after section 33—

Publication of registered candidates. **33A.** The Commission shall publish in the Gazette the names of political party candidates and independent candidates registered to contest in an election.

Amendment of section 34 of No. 24 of 2011.

19. Section 34 of the principal Act is amended—

(a) by inserting the following new subsections immediately after subsection 8—

(8A) A person shall not be nominated by a political party under subsection (4) unless the person is, on the date of submission of the party list by the political party, a registered voter in any of the wards in the county in which the person is nominated.

(8B) The nomination under subsection (4) by a political party shall ensure equitable representation from all wards comprising the respective county.

(b) by deleting subsection (9).

Insertion of new section 38A in No 24 of 2011.

20. The principal Act is amended by inserting the following new section immediately after section 38 —

Gazettement of polling station.

38A. (1) The Commission shall —

(a) appoint a place or places as a polling station or polling stations for each electoral area; and

(b) publish in the Gazette and publicise through electronic and print media of national circulation and other easily accessible medium, a notice specifying the polling stations established for each electoral area at least three months before the date of any election.

(2) No election shall be conducted in a place other than a place gazetted as a polling station under subsection (1).

Amendment of

21. Section 38A of the principal Act be amended by

section 38A of
No. 24 of 2011.

renumbering it 38B.

Deletion and
substitution of
section 39 of
No. 24 of 2011.

22. The principal Act is amended by deleting section 39 and substituting therefor the following new section—

Determination
and declaration of
results.

39.(1) The Commission shall determine, declare and publish the results of an election immediately after the close of polling and results declared at the polling station shall be final.

(2) The Commission shall appoint constituency returning officers to be responsible for-

(a) 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 a county assembly;

(b) collating, announcing and declaring 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

(c) 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.

(3) 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.

(4) For purposes of a presidential election, the Commission shall—

- (a) tally, announce and declare the presidential results before tallying, announcing and declaring results for the other elective positions;
 - (b) electronically transmit the results, within two hours of the declaration of the results, from a polling station to the constituency tallying centre, national tallying centre, the candidates or their agents and elections observers in the prescribed form;
 - (c) where the results are not transmitted in accordance with paragraph (b), provide reasons in a prescribed form;
 - (d) physically deliver the tabulated results from a polling station to the constituency tallying centre and thereafter to the national tallying centre;
 - (e) tally and verify the results received at the constituency tallying centre and the national tallying centre; and
 - (f) publish the polling results forms on an online public portal maintained by the Commission.
- (5) The Commission shall verify that the results transmitted under this section are an accurate record of the results tallied, verified and declared at the respective polling stations.
- (6) The Chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.
- (7) The Chairperson may declare a candidate elected as the President before all the constituencies have transmitted their results if the Commission is satisfied that the results that have not been received will not affect the result of the

election.

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

(9) The Commission shall, to facilitate public information, allow a candidate and their agent, observers and any other person authorised to access a polling station or tallying centre to record and document the tallying, announcement and declaration of results.

Amendment of
section 44 of
No. 24 of 2011.

23. Section 44 of the principal Act is amended by inserting the following new subsection immediately after subsection (4) –

(4A) In procuring the technology, the Commission shall ensure that –

- (i) intellectual property rights to the technology vests in the Commission;
- (ii) the supplier or their associates have not been found guilty of violating any procurement law, committed a crime, violated professional standards or been barred from participating in public procurement in any jurisdiction; and
- (iii) subject to the Constitution, this Act and the Data Protection Act, the technology is accessible and available for scrutiny by candidates, courts and such other persons as required under the law.

No. 24 of 2019.

Amendment of
section 44A of
No. 24 of 2011.

24. Section 44A of the principal Act is amended-

- (a) by renumbering the existing provision as subsection (1);
- (b) by inserting the words “and transmission of election results” immediately after the words “identification of voters”; and
- (c) by inserting the following new sub-section immediately after subsection (1)—

(2) The Commission shall make

Regulations for the better carrying into effect the provisions of this section.

Amendment of section 45 of No. 24 of 2011.

25. The principal Act is amended by deleting section 45.

Amendment of section 46 of No. 24 of 2011.

26. Section 46 of the principal Act is amended in subsection (1) by-

- (a) deleting subparagraph (ii) appearing in paragraph (b); and
- (b) deleting paragraph (c)

Amendment of section 48 of No. 24 of 2011.

27. The principal Act is amended by deleting section 48.

Repeal of section 74 of No. 24 of 2011.

28. The principal Act is amended by repealing section 74.

Amendment of section 75 of No. 24 of 2011.

29. Section 75 of the principal Act is amended –

- (a) in subsection (4) by deleting the words “on matters of law only”; and
- (b) by inserting the following subsection immediately after subsection (4)—
 - (5) The determination of the appeal under subsection (4) by the High Court shall be final.

Amendment of section 82 of No. 24 of 2011.

30. Section 82 of the principal Act is amended by inserting the following subsection immediately after subsection (3) –

- (4) An election court may extend a scrutiny of votes beyond the polling stations or areas mentioned in the pleadings.

Insertion of new section 82A in No. 24 of 2011.

31. The principal Act is amended by inserting the following new section immediately after section 82 –

Access to information.

No. 24 of 2019
No. 9 of 2011

82A. (1) The Commission shall ensure access to information including any technology used in the elections in accordance with the Constitution, the Data Protection Act and the Independent Electoral and Boundaries Commission Act.

(2) Where a request for access to information is made for the purposes of a court order for

scrutiny of votes, the Commission shall facilitate access—

(a) in the case of a presidential election, within three days of the date of the request; and

(b) in the case of any other elective position, within seven days of the date of the request.

(3) The Commission shall not charge fees where the information requested is provided in softcopy format.

4) Where information requested is to be provided in hardcopy format, the Commission may charge a prescribed fee for the provision of the information and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the applicant.

Amendment of section 85A of No. 24 of 2011.

32. Section 85A of the principal Act is amended –

(a) in subsection (1) by deleting the words “on matters of law only”; and

(b) by inserting the following subsection immediately after subsection (2)—

(3) The determination of the appeal under section (2) by the Court of Appeal shall be final.

Insertion of new part in No. 24 of 2011.

33. The principal Act is amended by inserting the following new sub-part immediately after section 87-

Evaluation of electoral process

Evaluation of elections.

87A. (1) The Commission shall, pursuant to Article 88(4)(h) of the Constitution and within one year of a general election, facilitate evaluation of the electoral process.

(2) An evaluation under subsection (1) shall include-

(a) a review of the legal framework under which the general elections were conducted;

(b) an audit of the Register of Voters used during the election;

- (c) a review of the role of media and civil society in the elections;
- (d) a review of the voting procedures on election day;
- (e) a review of the vote counting procedures on election day;
- (f) a review of the elections information and communication technology deployed in the conduct of the general elections;
- (g) a review of the human resource deployed for the conduct of the general elections;
- (h) a review of the existing elections disputes resolution mechanisms; and
- (i) a review of the cost of conducting the general elections including the procurement of the necessary goods and services.

Reports.

87B. A report on the evaluation of the electoral process undertaken in accordance with section 87A shall be published in the *Gazette* and submitted to Parliament.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

The principal object of this Bill is to amend the Elections Act, 2011. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 2 of the Bill proposes to amend section 2 of the Act by providing for new definitions for the terms nomination, political party and nomination day. Further, clause 2 proposes to insert the word “valid” immediately before the words “Kenyan passport” in the definition of “identification document and to insert in the interpretation section the definition of the term “registration of candidates “

Clause 3 of the Bill proposes to amend section 5 of the Act which provides for registration of voters by –

- a) inserting the words “within the affected electoral area” immediately after the words “such by-election” in subsection (1)(b); (to clarify that suspension of voter registration and revision of the register of voters applies only to the electoral area affected by a by-election)
- b) inserting the words “of the referendum question” immediately after the word “publication” in subsection (1)(ba);
- c) inserting the word “valid” immediately before the words “Kenyan passport” in subsection (3); and
- d) inserting a new subsection (3A) which provides that persons registered as voters during the period when registration of voters is suspended by reason of a by-election shall not be eligible to contest in the electoral area affected by the by-election.

Clause 4 of the Bill proposes to amend section 6 of the Act which provides for inspection of register of voters by deleting subsections (1) and (2) and substituting therefor with new subsections providing for the inspection of register of voters by members of the public and rectification of particulars of voters as well as the exceptions when the IEBC shall not be expected to rectify the particulars of voters.

Clause 5 of the Bill proposes to amend section 8A by deleting subsection (3) which provides for audit of the register of voters by a professional reputable firm for purposes of the first general election after commencement of the Act.

Clauses 6, 7, 8, 9, 10, 11, 12 and 13 of the Bill proposes to amend sections 14, 16, 17, 19, 22, 23, 24, and 25 by deleting the word “nominations” and substituting it with “registration of candidates” so as to differentiate the roles of IEBC and those of the Registrar of political parties. Additionally, clauses 7 and 9 deletes submission of party lists in respect of Parliament and County Assemblies to IEBC by political parties.

Further **clause 10** of the Bill proposes to delete section 22(1)(b) that set out the education requirements for Members of Parliament or County Assembly. These requirements were declared unconstitutional in *Wambui & 10 others v Speaker of the National Assembly & 6 others Constitutional Petition 28 of 2021 & Petition E549, E077, E037 & E065 of 2021 (Consolidated)*.

Clause 14 of the Bill proposes to amend section 27 by inserting a new subsection (1B) to provide that a coalition party shall within 14 days of registration submit to IEBC a copy of its nomination rules certified by the Registrar of political parties.

Clause 15 of the Bill proposes to amend section 31 which provides for nomination of political party candidates by deleting subsection (2), (2B), (2C), (2E) and (2F) which provide for –

- a) that IEBC shall upon request by a political party, conduct and supervise nomination of candidates by the political party for presidential, parliamentary, or county elections in accordance with article 88 of the constitution;
- b) the submission to the IEBC of the names of the persons contesting party primary and the date of the party primary, and publication of these information in the Gazette by IEBC; and
- c) the requirement that Parliament shall appropriate monies for the effective implementation of the section.

Clause 16 of the Bill proposes to amend section 32 which provides for approval of symbol for independent candidate by deleting the words “nomination day” and “nomination” and substituting them with the words “the date for registration”; and “registration” respectively.

Clause 17 of the Bill proposes to amend section 33 which provides for nomination of independent candidates –

- a) in subsection (1) by deleting the word “nomination” and substituting therefor the word “registration”;

- b) in subsection (1) deleting the words “nomination paper” in paragraph (b) and substituting therefor the words “registration of candidates Form”, and in paragraph (c) by deleting the words “nomination day” and substituting therefor the words “date gazetted for registration of candidates”; and
- c) deleting subsection (2) which provide for the publication in the Gazette of the names of persons intending to contest in the election as independent candidates.

Clause 18 of the Bill proposes to amend the Act by inserting new section 33A to provide for publication in the Gazette of party candidates and independent candidates registered to contest in an election.

Clause 19 of the Bill proposes to amend section 34 which provide for nomination of party lists members by inserting new sections (8A) and (8B) to provide that a person can only be nominated as a member of a county assembly if such a person is a registered voter in a ward within a county the person is to be nominated, and the need to ensure equitable representation from all wards comprising the respective county as regards nominations.

Clause 20 of the Bill proposes to amend the Act by inserting a new section 38A to provide for the designation of polling stations by the IEBC and publishing them in the Gazette at least three months before the date of any election. Further, the new section provides that elections shall not be conducted in a place not designated as a polling station.

Clause 22 of the Bill proposes to repeal and replace section 39 which provides for determination and declaration of results and substitute it with a new section. The new section proposes that results at the polling station shall be final, and the presidential election shall be tallied, announced and declared and electronically transmitted before all other elective positions. Further, the new section has omitted provisions providing for –

- a) where there is a discrepancy between the electronically transmitted and the physically delivered results the result which is an accurate record of the results tallied, verified and declared at the respective polling station shall prevail;
- b) any failure to transmit or publish the election results in an electronic format shall not invalidate the result as announced and declared; and
- c) the requirement for IEBC to establish a mechanism for the live-streaming of results as announced at polling stations to facilitate public information.

Clause 23 of the Bill proposes to amend section 44 which provides for technology to provide that the Commission shall ensure that intellectual property to the technology is vested in the Commission, a supplier of technology to be used shall not have been found guilty of violating any procurement law or committed a crime anywhere in the world. Additionally, the amendment seeks to provide for access accessible and available for scrutiny of the technology subject to the applicable laws.

Clause 24 of the Bill proposes to amend section 44A of the act which provides for complementary mechanism for identification of voters by inserting the words “and

transmission of election results” and mandating IEBC to make Regulations for better carrying into effect the provisions of section 44A.

Clause 25 of the Bill proposes to delete section 45 of the Act which provides for conditions under which a Member of Parliament may be recalled. These provisions were declared unconstitutional in *Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016* [Formerly Kisumu Petition Number 9 of 2016]

Clause 26 of the Bill proposes to delete the provisions of section 46(1)(b)(ii) and (c) that required that a petition to recall a member of parliament must be signed by a petitioner who was registered to vote in the election in respect of which the recall is sought and that the petition must be accompanied by an order of the High Court. These provisions were declared unconstitutional in *Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016* [Formerly Kisumu Petition Number 9 of 2016]

Clause 27 of the Bill proposes to delete section 48 of the Act which presently provides that 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. This provision was declared unconstitutional in *Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016* [Formerly Kisumu Petition Number 9 of 2016]

Clause 28 of the Bill proposes to repeal section 74 of the Act which provides for settlement of certain electoral disputes by the IEBC since this mandate is now a function of the Political Parties Disputes Tribunal established under the Political Parties Act, 2011.

Clause 29 of the Bill proposes to amend section 75 which provides for county election disputes by deleting the requirement that appeals to the High Court shall be on matters of law only, and inserting a new subsection (5) to provide that the decision of the High Court on an appeal on the validity of election of a member of a county assembly shall be final.

Clause 30 of the Bill proposes to amend section 82 of the Act which provides for scrutiny of votes by providing that a court may extend a scrutiny of votes beyond the polling stations or areas mentioned in the pleadings.

Clause 31 of the Bill proposes to insert a new section 82A to provide for access to information held by the IEBC. Where such information is required for purposes of scrutiny of votes, the information shall be provided within three days in the case of a presidential election, and within seven days in the case of all other elective positions.

Clause 32 of the Bill proposes to amend section 85A which provides for appeals to the Court of Appeal in respect of membership of the National Assembly, Senate or the office of county governor by deleting the requirement that appeals shall be on matters of law only, and inserting a new subsection (5) to provide that the decision of the Court of Appeal shall be final.

Clause 33 of the Bill proposes to insert new sections 87A, 87B and 87C to provide for the appointment by Parliament of an independent firm to carry out an evaluation of the electoral

process after a general election. The evaluation shall include a review of the legal framework, processes and costs associated with the electoral process. The proposed new provisions require the preparation of a report for submission to Parliament within ninety days of the appointment of the independent firm.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1) of the Constitution as it contains provisions relating to the election of members of a county assembly and a county executive.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the....., 2023.

KIMANI ICHUNG'WAH,

Leader of the Majority Party.

OPIYO WANDAYI,

Leader of Minority Party.

Section 2 of the Act which it is proposed to amend—

2. In this Act, unless the context otherwise requires—

“adult” has the meaning assigned to it in Article 260 of the Constitution;

“agent” means a person duly appointed by—

(a) a political party or an independent candidate for the purposes of an election under this Act; or

(b) a referendum committee for the purposes of a referendum under this Act, and includes a counting agent and a tallying agent;

“ballot box” means a transparent container with a slot on the top sufficient to accept a ballot paper in an election or in a referendum but which prevents access to the votes cast until the closing of the voting period;

“ballot paper” means a paper used to record the choice made by a voter and shall include an electronic version of a ballot paper or its equivalent for purposes of electronic voting;

“campaign period” means the period specified as such in the notice issued by the Commission in relation to an election;

“candidate” means a person contesting for an elective post;

“Commission” means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

“constituency” means one of the constituencies into which Kenya is divided under Article 89 of the Constitution;

“constituency register” means the register of voters compiled in respect of each constituency by the Commission;

“county” means the counties into which Kenya is divided under Article 6 (1) of the Constitution and specified in the First Schedule of the Constitution;

“county assembly” means a county assembly constituted in accordance with Article 177 of the Constitution;

“county election” means the election of a county governor or a member of a county assembly;

“disability” has the meaning assigned to it in Article 260 of the Constitution;

“election” means a presidential, parliamentary or county election and includes a by-election;

“electoral area” means a constituency, a county or a ward;

“election court” means the Supreme Court in exercise of the jurisdiction conferred upon it by Article 163 (3) (a) or the High Court in the exercise of the jurisdiction conferred upon it by Article 165 (3) (a) of the Constitution and the Resident Magistrate’s Court designated by the Chief Justice in accordance with section 75 of this Act;

“election material” means ballot boxes, ballot papers, counterfoils, envelopes, packets statements and other documents used in connection with voting in an election and includes information technology equipment for voting, the voting compartments, instruments, seals and other materials and things required for the purpose of conducting an election;

“election material” means ballot boxes, ballot papers, counterfoils, envelopes, packets statements and other documents used in connection with voting in an election and includes information technology equipment for voting, the voting compartments, instruments, seals and other materials and things required for the purpose of conducting an election;

"election offence" means an offence under this Act;

“elections officer” means a person appointed by the Commission for the purposes of conducting an election under this Act;

“election period” means the period between the publication of a notice by the Commission for a presidential, parliamentary or county election under sections 14, 16, 17 and 19 and the Gazettement of the election results;

“election results” means the declared outcome of the casting of votes by voters at an election;

“harambee” means the public collection of monies or other property in aid or support of a cause or a project;

“identification document” means a Kenyan national identification card or a Kenyan passport;

“illegal practice” means an offence specified in Part VI;

“independent candidate” means a candidate for presidential, parliamentary or county elections who is not a member of a political party;

“nomination” means the submission to the Commission of the name of a candidate in accordance with the Constitution and this Act;

“nomination day” in respect of an election, means the day gazetted by the Commission as the day for the nomination of candidates for that election

“observer” means a person or an organisation accredited by the Commission to observe an election or a referendum;

“party list” means a party list prepared by a political party and submitted to the Commission pursuant to and in accordance with Article 90 of the Constitution and sections 28, 34, 35, 36 and 37;

“parliamentary election” means the election of one or more members of Parliament;

“petition” means an application to the election court under the Constitution or under this Act;

“political party” has the meaning assigned to it in Article 260 of the Constitution;

“polling station” means any room, place, vehicle or vessel set apart and equipped for the casting of votes by voters at an election;

“presidential election” means an election of a President in accordance with Articles 136, 139 (1) (b) and 146 (2) (b) of the Constitution;

“Principal Register of Voters” means a current register of persons entitled to vote at an election prepared in accordance with section 3 and includes a register that is compiled electronically;

“public officer” has the meaning assigned to it in Article 260 of the Constitution;

“public resources” include—

(a) any vehicle, or equipment owned by or in the possession; or (b) premises owned or occupied by, any government, state organ, statutory corporation or a company in which the Government owns a controlling interest;

“referendum” means a poll held under Part V;

“referendum committee” means a national or a parliamentary constituency committee comprising of persons intending to support or oppose a referendum question;

“referendum officer” means a person appointed by the Commission for the purpose of conducting a referendum;

“referendum question” means a question upon which voters shall vote in a referendum as specified in section 49;

“registration officer” means a person appointed by the Commission for the purpose of preparing a register of voters;

“returning officer” means a person appointed by the Commission for the purpose of conducting an election or a referendum under this Act;

“supporter” means a voter who supports the nomination of a candidate;

“vessel” includes any ship, boat or any other description of vessel used in navigation;

“voter” means a person whose name is included in a current register of voters;

“voting period” means the period specified as such in the notice issued by the Commission in relation to an election;

“ward” means an electoral area within a county delimited in accordance with Article 89 of the Constitution.

Section 5 of the Act which it is proposed to amend-

5. (1) Registration of voters and revision of the register of voters under this Act shall be carried out at all times except—

(a) in the case of a general election or an election under Article 138(5) of the Constitution, between the date of commencement of the sixty day period immediately before the election and the date of such election;

Provided that this applies to the first general election under this Act.

(c) in the case of a by-election, between the date of the declaration of the vacancy of the seat concerned and the date of such by-election; or

(d) in any other case, between the date of the declaration of the vacancy of the seat concerned and the date of such election.

(2) Notwithstanding subsection (1), where an election petition is filed in respect of an electoral area, between the date of the filing of the petition and the date of the by-election, where a court determines that a by-election is to be held, a voter shall not be allowed to transfer his or her vote to the affected electoral area.

(3) Any citizen of Kenya who has attained the age of eighteen years as evidenced by either a national identity card or a Kenyan passport and whose name is not in the register of voters shall be registered as a voter upon application, in the prescribed manner, to the Commission.

(3A) Despite subsection (3), a citizen who has attained the age of eighteen years and has registered for an identification card and is in the possession of an acknowledgement of registration certificate shall, upon application, be registered as a voter using the acknowledgement of registration certificate, but may only vote using an identification card.

(3B) For purposes of this section, an acknowledgment of registration certificate means a certificate issued by a registration officer under the Registration of Persons Act to a person who has applied for an identification card, pending the issuance of that card.

(4) All applicants for registration under this section shall be registered in the appropriate register by the registration officer or any other officer authorised by the Commission.

(5) The registration officer or any other authorised officer referred to in subsection (3) shall, at such times as the Commission may direct, transmit the information relating to the registration of the voter to the Commission for inclusion in the Principal Register of voters.

Section 6 of the Act which it is proposed to amend-

6. (1) The Commission shall cause the Principal Register of Voters to be opened for inspection by members of the public at all times for the purpose of rectifying the particulars therein, except for such period of time as the Commission may consider appropriate.

(2) The Commission shall, within sixty days from the date of the notice for a general election, open the Principal Register of Voters for inspection for a period of at least fourteen days or such period as the Commission may consider necessary.

(3) The Commission shall, upon expiry of the period for inspection specified under subsection (1), compile the amendments to the register of voters and as soon as practicable thereafter, at least fourteen days before an election—

(a) publish a notice in the Gazette to the effect that such compilation has been completed; and

(b) cause to be transmitted to every registration officer, a copy of the part of the Principal Register of Voters relating to the constituency for which the registration officer is responsible to be kept in safe custody.

(4) The Principal Register of Voters shall be kept at the headquarters of the Commission and copies of the part of the Principal Register of Voters relating to the constituency for which the registration officer is responsible shall be kept at all the constituency offices of the Commission.

Section 8A of the Act which it is proposed to amend-

8(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 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.

Section 14 of the Act which it is proposed to amend-

14. (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.

Section 16 of the Act which it is proposed to amend-

16. (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.

Section 17 of the Act which it is proposed to amend-

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.

Section 19 of the Act which it is proposed to amend-

19. (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.

Section 22 of the Act which it is proposed to amend-

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—

(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.

(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.

(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.

Section 23 of the Act which it is proposed to amend-

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.

Section 24 of the Act which it is proposed to amend-

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.

Section 25 of the Act which it is proposed to amend-

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.

Section 27 of the Act which it is proposed to amend-

27. Submission of party nomination rules

- (1) A political party shall submit its nomination rules to the Commission at least six months before the nomination of its candidates.
- (1A) The Registrar of Political Parties shall certify the nomination rules submitted under subsection (1).
- (2) An amendment to the nomination rules shall only be effective ninety days after submission of the amendments to the Commission.

(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.

Section 31 of the Act which it is proposed to amend-

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.

(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.

(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.

Section 32 of the Act which it is proposed to amend-

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.

(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.

(2) The Commission shall, upon receipt of the symbol submitted to it under this section 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.

Section 33 of the Act which it is proposed to amend-

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 and symbol that the person intends to use during the election; and

(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.

Section 34 of the Act which it is proposed to amend-

34.(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.

(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.

(5) The party lists under subsection (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.

(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.

(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 subsection (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 shall not contain a name of a candidate nominated for an election.

(10) A party list submitted for purposes of subsection (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.

Section 38A of the Act which it is proposed to amend-

38A. Number of voters per polling station

For the purposes of providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed seven hundred.

Section 39 of the Act which it is proposed to amend-

Determination and declaration of results

39.(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 and physically deliver 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 constituency tallying centre and the national tallying centre; and

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

(1D) The Commission shall verify that the results transmitted under this section are an accurate record of the results tallied, verified and declared at the respective polling stations.

(1E) Where there is a discrepancy between the electronically transmitted and the physically delivered results, the Commission shall verify the results and the result which is an accurate record of the results tallied, verified and declared at the respective polling station shall prevail.

(1F) Any failure to transmit or publish the election results in an electronic format shall not invalidate the result as announced and declared by the respective presiding and returning officers at the polling station and constituency tallying centre, respectively.

(1G) The Commission shall, to facilitate public information, establish a mechanism for the live-streaming of results as announced at polling stations, and the results so streamed shall be for purposes of public information only and shall not be the basis for a declaration by the Commission.

(1H) 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) The Chairperson may declare a candidate elected as the President before all the constituencies have transmitted their results if the Commission is satisfied the results that have not been received will not affect the result of the election.

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

Section 44 of the Act which it is proposed to amend

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 one hundred and twenty days before such elections; and

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

(5) The Commission shall, in consultation with the relevant agencies, institutions and stakeholders, make regulations for the better carrying into effect the provisions of this section.

Section 44A of the Act which it is proposed to amend

44A. Complementary mechanism for identification of voters.

Notwithstanding the provisions of section 44, the Commission shall put in place a complementary mechanism for identification of voters that is simple, accurate, verifiable, secure, accountable and transparent to ensure that the Commission complies with the provisions of Article 38 of the Constitution.

Section 45 of the Act which it is proposed to amend

45.(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.

Section 46 of the Act which it proposed to amend

46.(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 or thumb prints 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.

Section 48 of the Act which it is proposed to amend

48. 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.

Section 74 of the Act which it is proposed to repeal-

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 ten 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.

Section 75 of the Act which it is proposed to amend-

75. County election petitions

- (1) A question as to validity of a 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 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.

Section 82 of the Act which it is proposed to amend-

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.

Section 85A of the Act which it is proposed to amend-

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 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.

**THE ELECTIONS OFFENCES
(AMENDMENT) BILL, 2023**

The Election Offences (Amendment) Bill, 2023

THE ELECTION OFFENCES (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Election Offences Act

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Election Offences (Amendment) Act, 2023.

Amendment
of section 6
of No. 37 of
2016.

2. Section 6 of the Election Offences Act, 2016 is amended—

- (a) in paragraph (h), by inserting the words “or unreasonably delays” immediately after the word “fails.”
- (b) in paragraph (k), by inserting the words “and any other person” immediately after the word “candidate.”
- (c) by inserting the following new paragraphs immediately after paragraph m—
 - (n) conducts or holds an election in an ungazetted polling station;
 - (o) knowingly or intentionally interferes, alters or knowingly or intentionally causes another person to interfere or alter declared results;

Dated the....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

The Election Offences (Amendment) Bill, 2023

MEMORANDUM ON OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend section 6 of the Election Offences Act, 2016. The Bill seeks to give effect to recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 sets out the short title of the Bill.

Clause 2 of the Bill amends section 6 of the Act to provide that it shall be an offence for members and staff of the Independent Election and Boundaries Commission to conduct or hold an election in ungazetted polling station. Further, the Clause creates offences for members and staff of the Commission who unreasonably delay in declaring election results or knowingly alter declared election results.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

Statement that the Bill concerns county governments

This is a Bill concerning county governments in terms of Article 110(1) of the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the, 2023.

KIMANI ICHUNG'WAH
Leader of the Majority Party.

OPIYO WANDAYI
Leader of the Minority Party.

The Election Offences (Amendment) Bill, 2023

Section 6 of No.37 of 2016 which it is proposed to be amended-

6. Offences by members and staff of the Commission

A member of the Commission, staff or other person having any duty to perform pursuant to any written law relating to any election who—

- (a) makes, in any record, return or other document which they are required to keep or make under such written law, an entry which they know or have reasonable cause to believe to be false, or do not believe to be true;
- (b) permits any person whom they know or have reasonable cause to believe to be able to read or write to vote in the manner provided for persons unable to read or write;
- (c) permits any person whom they know or have reasonable cause to believe not to be visually impaired or a person with disability to vote in the manner provided for persons who are visually impaired or persons with disability, as the case may be;
- (d) wilfully prevents any person from voting at the polling station at which they know or have reasonable cause to believe such person is entitled to vote;
- (e) wilfully rejects or refuses to count any ballot paper which they know or have reasonable cause to believe is validly cast for any candidate in accordance with the provisions of such written law;
- (f) wilfully counts any ballot paper as being cast for any candidate which they know or have reasonable cause to believe was not validly cast for that candidate;
- (g) interferes with a voter in the casting of his vote in secret;
- (h) where required under the Elections Act (No. 24 of 2011) or any other law to declare the result of an election, fails to declare the results of an election;
- (i) except in the case of a member, officer or person authorised to do so, purports to make a formal declaration or formal announcement of an election result;
- (j) without reasonable cause does or omits to do anything in breach of his official duty;

The Election Offences (Amendment) Bill, 2023

- (k) colludes with any political party or candidate for purposes of giving an undue advantage to the political party or candidate;
- (l) wilfully contravenes the law to give undue advantage to a candidate or a political party on partisan, ethnic, religious, gender or any other unlawful considerations; or
- (m) fails to prevent or report to the Commission or any other relevant authority, the commission of an electoral offence committed under this Act,

commits an offence and is liable on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years or to both.

**THE ETHICS AND ANTI-CORRUPTION
COMMISSION (AMENDMENT) BILL,
2023**

**THE ETHICS AND ANTI-CORRUPTION COMMISSION
(AMENDMENT) BILL, 2023**

A Bill for

**AN ACT of Parliament to amend the Ethics and Anti-Corruption
Commission Act**

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Ethics and Anti-Corruption Commission (Amendment) Act, 2023.

Amendment of
section 5 of No.
22 of 2011.

2. Section 5 of the Ethics and Anti-Corruption Commission Act, 2011 (in this Act referred to as the “principal Act”) is amended by deleting sub-section (1) and substituting therefor the following new subsection—

“(1) The chairperson of the Commission shall be a person who is qualified to hold the office of a judge of the High Court under the Constitution.”

Saving provision.

3. Sections 2 of this Act shall not apply to a person who immediately before the commencement of this Act was serving as a Chairperson of the Commission.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the Ethics and Anti-Corruption Commission Act No. 22 of 2011 to prescribe the qualifications for appointment of a Chairperson of the Commission. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 of the Bill sets out the short title of the Bill.

Clause 2 of the Bill amends section 5 of the Act to prescribe the qualifications for appointment of a Chairperson of the Commission. The clause provides that the Chairperson of the Commission shall be a person who is qualified to hold the office of judge of the High Court under the Constitution.

Clause 4 of the Bill is a saving provision and provides that the Act shall not apply to a person who immediately before the commencement of the Act was serving as a Chairperson of the Commission.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement that the Bill does not concern County Governments.

The Bill does not concern County Governments in terms of Article 110 (1)(a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

Section 5 of No. 22 of 2011 which it is proposed to be amend—

5. Qualifications for appointment as chairperson or member

(1) A person shall be qualified for appointment as the chairperson if that person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) holds a degree from a university recognised in Kenya;
- (c) has knowledge and experience of not less than fifteen years in any of the following fields—
 - (i) ethics and governance;
 - (ii) law;
 - (iii) public administration;
 - (iv) leadership;
 - (v) economics;
 - (vi) social studies;
 - (vii) audit;
 - (viii) accounting;
 - (ix) fraud investigation;
 - (x) public relations and media; or
 - (xi) religious studies or philosophy; and
- (d) has had a distinguished career in their respective field.

(2) A person shall be qualified for appointment as a member of the Commission if that person—

- (a) meets the requirements of Chapter Six of the Constitution.
- (b) holds a degree from a University recognized in Kenya;
- (c) has knowledge and experience of not less than ten years in any of the following fields—
 - (i) ethics and governance;
 - (ii) law;
 - (iii) public administration;
 - (iv) leadership;
 - (v) economics;
 - (vi) social studies;
 - (vii) audit;
 - (viii) accounting;
 - (ix) fraud investigation;
 - (x) public relations and media; or
 - (xi) religious studies or philosophy; and
- (d) has had a distinguished career in their respective field.

(3) A person shall not be qualified for appointment as a chairperson or as a member if the person—

- (a) is a member of a governing body of a political party;

- (b) is an undischarged bankrupt;
 - (c) has been convicted of a felony; or
 - (d) has been removed from public office for contravening the provisions of the Constitution or any other law.
- (4) Subsection (3)(a) shall cease to apply to a person after two general elections have been held since the person ceased to hold such office.

**THE STATUTORY INSTRUMENTS
(AMENDMENT) BILL, 2023**

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Statutory Instruments Act to provide for the timelines within which statutory instruments shall be made; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Statutory Instruments (Amendment) Act, 2023.

Insertion of new section 24A to No. 23 of 2023.

2. The Statutory Instruments Act is amended by inserting the following new section immediately after section 24 –

Timelines for making of statutory instrument.

24A. (1) A regulatory-making authority shall make a statutory instrument within the period provided for under the enabling legislation.

(2) If the enabling legislation does not provide the timelines within which a statutory instrument is to be made, the regulatory-making authority shall make the statutory instrument within twelve months from the date of commencement of the enabling legislation.

(3) If a regulatory-making authority fails to make a statutory instrument within the specified time, any person may petition Parliament and where possible together with a draft of the statutory instrument for consideration.

(4) A person who without a reasonable cause fails to make a statutory instrument within the required timelines commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings.

(5) A person liable for an offence under subsection (4) shall be personally liable for the fine and public funds shall not be used to pay such a fine.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

The Bill seeks to amend the Statutory Instruments Act, 2013 to provide the timelines for the making of regulations to ensure implementation of laws passed by Parliament. The Bill proposes to insert a new section 24A in the Statutory Instruments Act to require a person responsible for the making of regulations to make the regulations within twelve months, where the enabling legislation has not set of the timelines for the making of regulations. Where a person fails to make regulations within the required timelines, the person commits an offence punishable with a fine of five hundred thousand shillings.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

**THE POLITICAL PARTIES
(AMENDMENT) BILL, 2023**

THE POLITICAL PARTIES (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Political Parties Act, 2011

ENACTED by the Parliament of Kenya as follows—

- | | | | | | |
|---|---|---|---|--|---|
| Short title and commencement. | 1. This Act may be cited as the Political Parties (Amendment) Act, 2023 and shall come into force upon publication in the Gazette. | | | | |
| Amendment of section 2 of No. 11 of 2011. | 2. Section 2 of the Political Parties Act (hereinafter referred to as the “principal Act”) is amended by—
(a) inserting the following new definition in proper alphabetical sequence—

“Commission” means the Independent Political Parties Regulatory Commission established under section 33A;
(b) by deleting the definition of the term “Registrar”. | | | | |
| Amendment of No.11 of 2011. | 3. The principal Act is amended—
(a) by deleting the word “Registrar” wherever it appears and substituting therefor the word “Commission”; and
(b) by deleting the words “Office of the Registrar of Political Parties” wherever they appear and substituting therefor the word “Commission”. | | | | |
| Repeal of section 14A of No. 2 of 2011. | 4. The principal Act is amended by repealing section 14A. | | | | |
| Repeal and replacement of section 33 of No.11 of 2011. | 5. The principal Act is amended by repealing section 33 and substituting therefor the following new sections—

<table border="0"><tr><td>Establishment of the Independent Political Parties Regulatory Commission.</td><td>33A. (1) There is established the Independent Political Parties Regulatory Commission.</td></tr><tr><td></td><td>(2) The Commission shall be responsible for —</td></tr></table> | Establishment of the Independent Political Parties Regulatory Commission. | 33A. (1) There is established the Independent Political Parties Regulatory Commission. | | (2) The Commission shall be responsible for — |
| Establishment of the Independent Political Parties Regulatory Commission. | 33A. (1) There is established the Independent Political Parties Regulatory Commission. | | | | |
| | (2) The Commission shall be responsible for — | | | | |

- (a) the registration of political parties and their office holders;
- (b) the management of the Political Parties' Fund established under this Act;
- (c) ensuring the publication of audited annual accounts of political parties;
- (d) the verification and make publicly available the list of all members of political parties;
- (e) keeping and maintaining a register of members of registered political parties;
- (f) maintaining a register of political parties and the symbols of the political parties
- (g) ensuring and verifying that no person is a member of more than one political party and notifying the Independent Electoral and Boundaries Commission of its findings;
- (h) certifying that an independent candidate in an election is not a member of any registered political party;
- (i) certifying that the symbol intended to be used by an independent candidate in an election does not resemble the symbol of a registered political party;
- (j) certifying that the names appearing in a party list are the names of members of

- the political party;
presenting the party list;
- (k) regulating political party
nominations in accordance
with this Act;
- (l) training political party
election agents upon the
request and financing by
the political party;
- (m) investigating complaints
received under this Act;
- (n) such other functions as may
be conferred on the
Commission by national
legislation.

(3) The Commission, in the
performance of its functions, shall
be an independent office and shall
not be under the direction or control
of any person or authority.

Appointment of
members of the
Commission.

33B. (1) The Commission shall be
comprised of five commissioners
appointed by the President with the
approval of the National Assembly.

(2) The Commission shall consist of
—

- (a) two members, one man and
one woman, nominated by
the majority party or
coalition of parties in the
National Assembly;
- (b) two members, one man and
one woman, nominated by
the minority party or
coalition of parties in the
National Assembly;
- (c) one member nominated by
the Parliamentary Service
Commission being a
representative of non-

The Political Parties (Amendment) Bill, 2023

parliamentary registered
political parties.

(3) The commissioners shall each hold office for a non-renewable term of six years.

(4) The members of the Commission shall elect a chairperson and vice-chairperson from among themselves—

(a) at the first sitting of the Commission; and

(b) whenever it is necessary to fill a vacancy in the office of the chairperson and vice-chairperson.

(5) The chairperson and vice-chairperson of the Commission shall not be of the same gender.

Powers of the
Commission to
appoint staff.

33C. The Commission shall have the power to appoint staff upon consultation with the Public Service Commission and the Salaries and Remuneration Commission.

Repeal of
section 34 of
No. 11 of 2011.

6. The principal Act is amended by repealing section 34.

Amendment of
section 34C of
No. 11 of 2011.

7. Section 34C(1) of the principal Act is amended by deleting the words “or is deemed to have resigned from the political party and the Registrar has been notified of the resignation” appearing in paragraph (c).

Saving
provision.

8. A person who immediately before the commencement of this Act was a member of staff of the Office of the Registrar of Political Parties shall be deemed to be a member of staff of the Commission and shall continue to serve under the same terms and conditions.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

The Bill seeks to amend the Political Parties Act, No. 11 of 2011 in order to replace the Office of Registrar of Political Parties with the Independent Political Parties Regulatory Commission.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill contains provisions that affect the functions and powers of county governments in terms of Article 110 of the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH,

OPIYO WANDAYI,

Leader of the Majority Party.

Leader of Minority Party.

Section 2 of No. 11 of 2011 which it is proposed to amend-

Interpretation

In this Act, unless the context otherwise requires—

"branch" means any devolved unit of a political party;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to elections;

"coalition" means an alliance of two or more political parties formed for the purpose of pursuing a common goal and is governed by a written agreement deposited with the Registrar;

"coalition political party" means a coalition that is registered by the Registrar as a political party;

"Commission" means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

"direct party nomination" means the process by which a political party, through its registered members, elects candidates for an election;

"election" means the act of selecting by vote, of a person or persons from among a number of candidates to fill an office or to membership of any political party and includes a presidential, parliamentary or county election;

"ethnic minorities" means a group that is not the dominant one in a given society;

"founding members of a political party" means the persons who form a political party and who have contributed or offered to contribute either in cash or in kind to the initial assets of the party in respect of the first year of its existence;

"Fund" means the Political Parties Fund established by section 23;

"Gazette" means the Kenya Gazette published by the authority of the national government, or a supplement of the Kenya Gazette;

"governing body" means the committee responsible for administering the affairs of a political party

"indirect party nomination" means the process by which a political party, through the use of delegates selected from registered members of the political party and interviews, selects its candidates for an election;

The Political Parties (Amendment) Bill, 2023

"marginalised community" has the meaning assigned to it under Article 260 of the Constitution;

"merger" means where two or more political parties consolidate their operations and combine all officers, structure, and other functions of the political parties;

"office holder" in relation to a political party means any person who is elected by the members of the political party to hold office and is registered with the Registrar of Political Parties;

"political party"—

(a) means an association of citizens with an identifiable ideology or programme that is constituted for the purpose of influencing public policy of nominating candidates to contest elections; and

(b) includes a coalition political party;

"public officer" has the meaning assigned to it under Article 260 of the Constitution;

"Registrar" means the Registrar of political parties appointed under section 33;

"special interest groups" includes—

(a) women;

(b) persons with disabilities;

(c) youth;

(d) ethnic minorities; and

(e) marginalized communities.

"State" when used as a noun, means the collectivity of offices, organs and other entities comprising the government of the Republic under the Constitution;

"statement of ideology" means a statement setting out the doctrine, ethical ideals, and principles of the party;

"Tribunal" means the Political Parties Disputes Tribunal established under section 39; and

"youth" has the meaning assigned to it under Article 260 of the Constitution.

Section 14A of No. 11 of 2011 which it is proposed to amend-

14A. When a member may be deemed to have resigned from a political party

- (1) A person who, while being a member of a political party shall be deemed to have resigned from that party if that person—
- (a) forms another political party;
 - (b) joins in the formation of another political party;
 - (c) another political party;
 - (d) in any way or manner, publicly advocates for the formation of another political party; or
 - (e) promotes the ideology, interests or policies of another political party.
- (2) A political party shall, before deeming a member to have resigned under subsection (1)—
- (a) notify the member that he or she has been deemed to have resigned from the political party and that the political party intends to remove his or her name from the list of its members; and
 - (b) afford the member a fair opportunity to be heard in accordance with the procedure set out in the constitution of the political party.
- (3) A political party which deems a member to have resigned from the political party shall notify the Registrar in writing of the member's resignation and request the Registrar to remove that person's name from the register of members of that political party.
- (4) Upon the notification under subsection (3), the Registry may, where the Registrar is satisfied that the political party has complied with the procedure under subsection (2), remove the member's name from the register of members of the political party within seven days of the notification and notify the member in writing that he or she has ceased to be a member of that political party.
- (5) Where the Registrar is not satisfied in accordance with subsection (4), the Registrar shall refer the matter back to the concerned political party for reconsideration.
- (6) Subsection (1) (c), (d) and (e) shall not apply to a member of a political party which enters or proposes to enter a merger or a coalition with another political party.

Section 33 of No. 11 of 2011 which it is proposed to repeal and replace-

33. Establishment of the Office of Registrar

- (1) There is established the Office of the Registrar of Political Parties which shall be a body corporate with perpetual succession and a seal and which shall be capable of suing and being sued in its corporate name.
- (2) The Registrar shall be deputed by three Assistant Registrars, not more than two of whom shall be of the same gender.
- (3) The Office of the Registrar shall be a State office within the meaning of Article 260 of the Constitution
- (4) The Office of the Registrar may engage such staff, experts or consultants as are necessary for the proper and effective discharge of its functions under this Act and any other written law.
- (5) The Office of Registrar shall be independent and shall not be subject to direction or control of any person or authority.
- (6) A person shall be qualified for appointment as Registrar or as an Assistant Registrar if the person—
 - (a) holds a degree from a university recognised in Kenya;
 - (b) has proven knowledge and experience in any of the following fields—
 - (i) finance;
 - (ii) management;
 - (iii) political science;
 - (iv) law;
 - (v) governance; or
 - (vi) public administration;
 - (c) has, in the case of the Registrar, at least fifteen years post qualification experience in the relevant areas of expertise and, in the case of an Assistant Registrar, has at least ten years post qualification experience in the relevant area of expertise; and
 - (d) is a person of high moral character and integrity and has satisfied the requirements of Chapter Six of the Constitution.
- (7) A person shall not be qualified for appointment as a Registrar or Assistant Registrar if the person has, at any time within the preceding five years, held office or stood for election as a member of Parliament or a county assembly or as a member of a governing body of a political party.
- (8) The Registrar and Assistant Registrars shall, before assuming office, take

and subscribe to the oath or affirmation prescribed in the Fourth Schedule.

(9) The Registrar and Assistant Registrars shall serve for a non-renewable term of six years and shall not be eligible for re-appointment.

(10) A person who serves as a Registrar or Assistant Registrar shall not be eligible to contest for election as a member of Parliament or a county assembly, or as a member of a governing body of a political party within five years of the person ceasing to be Registrar or Assistant Registrar.

Section 34 of No. 11 of 2011 which it is proposed to amend-

34. Functions of the Registrar

The functions of the Registrar shall be to—

(a) register, regulate, monitor, investigate and supervise political parties to ensure compliance with this Act;

(b) administer the Fund;

(c) ensure publication of audited annual accounts of political parties;

(d) verify and make publicly available the list of all members of political parties;

(da) keep and maintain a register of members of registered political parties;

(e) maintain a register of political parties and the symbols of the political parties;

(f) ensure and verify that no person is a member of more than one political party and notify the Commission of the findings;

(fa) certify that an independent candidate in an election is not a member of any registered political party;

(fb) certify that the symbol intended to be used by an independent candidate in an election does not resemble the symbol of a registered political party;

(fc) certify that the names appearing in a party list are the names of members of the political party presenting the party list;

(fd) regulate political party nominations in accordance with this Act;

(fe) train political party election agents upon the request and financing by the political party;

(g) investigate complaints received under this Act; and

(h) perform such other functions as may be conferred by this Act or any other written law.

Section 34C of No. 11 of 2011 which it is proposed to amend-

34C. Powers of the Registrar in respect of political party Records

(1) The Registrar may make changes to the records of political parties submitted to the Registrar under this Act where—

- (a) the application by a provisionally registered political party for full registration has not been granted;
- (b) a political party has been deregistered;
- (c) a member of a political party resigns or is deemed to have resigned from the political party and the Registrar has been notified of the resignation;
- (d) a member of a political party has been expelled from the political party and the Registrar has been notified of the expulsion;
- (e) a member of a political party dies;
- (f) a member of a political party has ceased to be a citizen of Kenya;
- (g) a political party has merged with another political party;
- (h) the constitution of a political party has been amended, changed or altered; or
- (i) any other event that justifies the changes occurs.

(2) The changes contemplated under subsection (1) may include—

- (a) amendment of the register of members of a political party;
- (b) amendment, change or alteration of the constitution of a political party;
- (c) addition or deletion of records;
- (d) addition, deletion or alteration of names; and
- (e) any other change that is consistent with the provisions of this Act.

(3) The Registrar shall notify the political party of any change made to its records under subsection (1).

(4) A political party that is dissatisfied by the decision of the Registrar under subsection (1) may appeal to the Tribunal.

[Act No. 2 of 2022, s. 23.]

**THE NATIONAL GOVERNMENT CO-
ORDINATION (AMENDMENT) BILL,
2023**

**THE NATIONAL GOVERNMENT CO-ORDINATION
(AMENDMENT) BILL, 2023**

A Bill for

**AN ACT of Parliament to amend the National Government
Co-ordination Act**

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the National Government Co-ordination (Amendment) Act, 2023.

Insertion of a new
section to No. 1 of
2013

2. The National Government Co-ordination Act, 2013 is amended by inserting the following new section immediately after section 8 —

**Office of
the Prime
Minister.**

8A. (1) Pursuant to Article 152 of the Constitution, the Prime Minister shall be an integral part of the national government coordination framework.

(2) The Prime Minister—

- (a) shall assist the President and the Deputy President in the coordination and supervision of Government Ministries and State Departments;
- (b) oversee the implementation of National Government policies, programmes, and projects and be responsible for the technical monitoring and evaluation of Government policies, programs, and projects;
- (c) chair and co-ordinate the National Government's legislative agenda across all ministries and state departments;
- (d) coordinate the national government agenda together with the Office of the President, the Cabinet, and the Cabinet Office; and
- (e) perform any other function as may be assigned by the President.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the National Government Coordination Act, 2013 to include the Office of the Prime Minister as an integral part of the national government coordination framework. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 sets out the short title of the Bill.

Clause 2 the Bill seeks to introduce a new section 8A to the Act to provide the functions of the Prime Minister which shall be to assist the President and the Deputy President in the coordination and supervision of Government Ministries and State Departments. Further, the Bill provides that the office of the Prime Minister shall be mandated to perform the key function of overseeing the implementation of National Government policies, programmes, and projects. The Bill further provides that the Prime Minister shall be responsible for the technical monitoring and evaluation of Government policies, programs, and projects and shall chair and co-ordinate the National Government's legislative agenda.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement that the Bill does not concern County Governments.

The Bill does not concern County Governments in terms of Article 110 (1)(a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

**THE LEADER OF OPPOSITION BILL,
2023**

THE LEADER OF THE OPPOSITION BILL, 2023

ARRANGEMENT OF CLAUSES

Clauses

1—Short title

2—Interpretation

3—Functions of the Leader of the Opposition.

4—Appointment, swearing in and removal of the Leader of the Opposition.

5—Facilitation of the Office of the Leader of the Opposition.

THE LEADER OF THE OPPOSITION BILL, 2023

A Bill for

AN ACT of Parliament to provide for the functions of the office of the Leader of the Opposition, procedure for appointment and tenure of the Leader of the Opposition; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title. **1.** This Act may be cited as the Leader of the Opposition Act, 2023.

Interpretation. **2.** In this Act, unless the context otherwise requires—

“Deputy Leader of the Opposition” means the person who deputizes the Leader of the Opposition.

“Leader of the Opposition” means the person who is—

- (a) the leader of the party or coalition of parties which garnered the second greatest number of votes in the immediately preceding presidential election; or
- (b) the person designated to hold that office in accordance with a resolution of a party or coalition agreement.

“Parliament” means the National Assembly and the Senate.

Functions of the Leader of the Opposition. **3.** (1) The Leader of the Opposition shall be responsible for—

- (a) representing the interests of the opposition;
- (b) providing an alternative policy agenda and constructive criticism of government policies;
- (c) promoting transparency, accountability and good governance in public affairs;
- (d) fostering cooperation and constructive engagement between the government and opposition in the pursuit of national interests;
- (e) participating in state ceremonial functions and international parliamentary events on behalf of the Opposition; and
- (f) promoting public awareness and understanding of the role of opposition in a democratic state.

(2) There shall be two Deputy Leaders of the Opposition who shall deputize the Leader of the Opposition.

(3) The two Deputy Leaders of the Opposition shall be the principal assistants to the Leader of the Opposition and shall deputize for the Leader of the Opposition in the execution of the functions of the Leader of the Opposition.

(4) The two Deputy Leaders of the Opposition shall perform the functions conferred by this Act and any other functions as the Leader of the Opposition may assign.

Appointment,
swearing in and
removal of the
Leader of the
Opposition.

4. (1) Within seven days of the swearing-in of the President after a general election, the Chief Justice shall, in accordance with Article 92A of the Constitution, swear in the Leader of the Opposition, as determined by the Independent Electoral and Boundaries Commission.

(2) The Chief Justice, or in the absence of the Chief Justice the Deputy Chief Justice, shall administer the oath of allegiance and the oath of office to the Leader of the Opposition, as provided for in the Schedule, affirming commitment to upholding the Constitution and serving the interests of the nation.

(3) In the event that the designated Leader of the Opposition, as determined by the Independent Electoral and Boundaries Commission, refuses or is unable to take the oath of office within the specified seven-day period, the Chief Justice shall proceed to swear in to office the person designated to hold that office in accordance with a resolution of a party or coalition agreement.

(4) The Leader of the Opposition shall assume the functions and responsibilities of the office upon the completion of the swearing-in ceremony.

(5) The Leader of the Opposition shall hold office until the next General Elections, at which time a new Leader of the Opposition shall be appointed following the same process as set out in subsection (1).

(6) The Leader of the Opposition may be removed from office —

- (a) by a resolution of the party or coalition of parties which garnered the second greatest number of votes in the immediately preceding presidential election;
- (b) if the person is sentenced for a term of imprisonment of at least six months and has exhausted all appeal or review relief available in relation to that case;
- (c) if the person, is found in accordance with any law, to have misused or abused the office; or
- (d) if the person is unable to perform the functions of the office arising from mental or physical incapacity.

(7) Upon the removal of the Leader of Opposition under subsection (6), the Chief Justice shall forthwith swear in to office the person designated to hold that office in accordance with a resolution of a party or coalition agreement.

(8) The provisions of this section shall apply with the necessary modifications, to a Deputy Leader of the Opposition.

Facilitation of the
Office of the
Leader of the
Opposition.

5. (1) The remuneration and benefits payable to the Leader of the Opposition and the two Deputy Leaders of the Opposition shall be a charge on the Consolidated Fund.

(2) The Office of the Leader of the Opposition shall have access to necessary facilities, resources and staff required for the effective discharge of the functions under this Act.

SCHEDULE

(s.4)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF
OFFICE FOR THE LEADER OF THE OPPOSITION**

I, , do swear/ solemnly affirm
that I will always truly and diligently serve the people and the Republic of
Kenya in the office of the Leader of the Opposition of the Republic of Kenya;
that I will bear true faith and allegiance to the People and the Republic of
Kenya; that I will diligently discharge my duties and perform my functions in
the said office, to the best of my judgment; that I will obey, respect, uphold,
preserve, protect and defend this Constitution of the Republic of Kenya; and
that I will faithfully and conscientiously discharge the duties of the Leader of
the Opposition (In the case of an oath— So help me God.)

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to provide for the functions of the office of the Leader of the Opposition, procedure for appointment and tenure of the Leader of the Opposition. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 of the Bill sets out the short title of the Bill.

Clause 2 of the Bill provides for the definition of terms.

Clause 3 of the Bill defines the functions of the Leader of the Opposition which shall include representing the interests of the Opposition and providing an alternative policy agenda and constructive criticism of government policies. The clause also provides for the functions of the Deputy Leaders of the Opposition who shall be the principal assistants to the Leader of Opposition and shall deputize for the Leader of the Opposition in the execution of the functions of the Leader of the Opposition's functions.

Clause 4 of the Bill provides for the procedure of appointment, swearing in and removal of the Leader of the Opposition. The procedures shall apply with the necessary modifications to the Deputy Leader of the Opposition.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement that the Bill does not concern County Governments.

The Bill does not concern County Governments in terms of Article 110 (1)(a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the, 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

