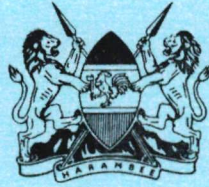


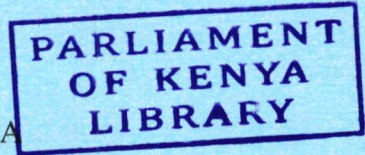
**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 13 (Senate Bills No. 3)*

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REPUBLIC OF KENYA



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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2026**

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**NAIROBI, 12th February, 2026**

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**THE REFERENDUM BILL, 2026**

**A Bill for**

**AN ACT of Parliament to provide for the conduct of a referendum, and for connected purposes**

ENACTED by the Parliament of Kenya as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Referendum Act, 2026.

Short title.

2. In this Act,—

Interpretation.

“draft Bill” means a Bill for the amendment of the Constitution proposed by a popular initiative as contemplated under Article 257(2) of the Constitution;

“chief agent” in respect of a registered referendum committee, means the person recorded in the register maintained by the Commission as the person responsible for the affairs of the referendum committee;

“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;

“petition” means an application to the election court under the Constitution or under this Act;

“polling station” has the meaning assigned to it under the Elections Act;

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“register of voters” has the meaning assigned to it under the Elections Act;

“referendum” means a poll held under this Act;

“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 option” means one of the preferences upon which voters shall vote in a referendum under this Act;

“referendum question” means a question upon which voters shall vote in a referendum under this Act; and

“voter” has the meaning assigned to it under the Elections Act.

3. This Act shall apply to the conduct of—

Application of the Act.

- (a) a referendum to amend the Constitution under Articles 255, 256 and 257 of the Constitution;
- (b) county referenda; and
- (c) a referendum on any other issue other than amendment of the Constitution.

4. (1) For purposes of conducting a referendum under this Act, the provisions under the Elections Act relating to

Application of the Elections Act.

- (a) eligibility to vote;
- (b) registration of voters;
- (c) compilation and maintenance of registers;
- (d) inspection of the register;
- (e) updating of the register;
- (f) transfer of registration;
- (g) determination of questions as to registration;
- (h) making and determining claims to be registered and objections to registration;
- (i) appointment of officers to preside at polling stations;
- (j) designation of polling stations;
- (k) place and manner in which votes may be cast;
- (l) design and handling of ballot papers;
- (m) grounds for postponement of elections;
- (n) conduct of campaigns; and

**THE REFERENDUM BILL, 2026**

**A Bill for**

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**ENACTED** by the Parliament of Kenya as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Referendum Act, 2026.

Short title.

2. In this Act,—

Interpretation.

“draft Bill” means a Bill for the amendment of the Constitution proposed by a popular initiative as contemplated under Article 257(2) of the Constitution;

“chief agent” in respect of a registered referendum committee, means the person recorded in the register maintained by the Commission as the person responsible for the affairs of the referendum committee;

“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;

“petition” means an application to the election court under the Constitution or under this Act;

“polling station” has the meaning assigned to it under the Elections Act;

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“register of voters” has the meaning assigned to it under the Elections Act;

“referendum” means a poll held under this Act;

“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 option” means one of the preferences upon which voters shall vote in a referendum under this Act;

“referendum question” means a question upon which voters shall vote in a referendum under this Act; and

“voter” has the meaning assigned to it under the Elections Act.

**3.** This Act shall apply to the conduct of—

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- (a) a referendum to amend the Constitution under Articles 255, 256 and 257 of the Constitution;
- (b) county referenda; and
- (c) a referendum on any other issue other than amendment of the Constitution.

**4.** (1) For purposes of conducting a referendum under this Act, the provisions under the Elections Act relating to

Application of the Elections Act.

- (a) eligibility to vote;
- (b) registration of voters;
- (c) compilation and maintenance of registers;
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- (f) transfer of registration;
- (g) determination of questions as to registration;
- (h) making and determining claims to be registered and objections to registration;
- (i) appointment of officers to preside at polling stations;
- (j) designation of polling stations;
- (k) place and manner in which votes may be cast;
- (l) design and handling of ballot papers;
- (m) grounds for postponement of elections;
- (n) conduct of campaigns; and

(o) election offences,

shall apply in the same manner as if a referendum was a general election.

(2) The procedure for the conduct of an election under the Elections Act shall apply with necessary modifications to the conduct of a referendum.

## PART II—PRE-REFERENDUM PROCESSES

5. Whenever it is necessary to hold a referendum to amend the Constitution in relation to a matter specified in Article 255 (1) of the Constitution, the President shall, within thirty days of the receipt of the Bill from Parliament, notify the Commission to conduct a referendum within ninety days.

Submission of a Bill to the Commission pursuant to Article 256(5)(a).

6. (1) For the purpose of a referendum to amend the Constitution by popular initiative pursuant to Article 257 of the Constitution, the promoters of a popular initiative shall deliver to the Commission, the draft Bill together with –

Amendment of the Constitution by popular initiative.

(a) information on name and national identification number of each registered voter supporting the initiative in the prescribed form; and

(b) signatures of the registered voters appended against the respective voter's information under paragraph (a).

(2) The Commission shall, within ninety days of receipt of the draft Bill and supporting signatures,—

(a) avail the initiative and supporting signatures for inspection by the public at its offices, or electronically through its public portal or such other medium the Commission may approve;

(b) verify that the initiative is supported by at least one million registered voters;

(c) satisfy itself that the initiative meets the requirements of Article 257 of the Constitution; and

(d) publish a report on the verification exercise.

(3) If the Commission finds that the requirements of Article 257 of the Constitution have not been met, it shall—

- (a) declare that the initiative has failed to meet the threshold under Article 257;
- (b) notify the promoters, in writing and within seven days of the verification exercise, of its decision under paragraph (a); and
- (c) give such directions as are necessary to ensure compliance with Article 257.

(4) The promoters of a popular initiative may resubmit the draft Bill and supporting signatures upon complying with the Commission's directions as issued in subsection (3).

(5) If the Commission finds that the requirements of subsection (3) have been met, it shall, pursuant to Article 257(5) of the Constitution, submit the draft Bill to each county assembly for consideration.

7. (1) Each county assembly shall—

- (a) approve the draft Bill and deliver to the Speakers of both Houses a copy of the draft Bill together with the certificate prescribed in the First Schedule 1 certifying that the county assembly has approved it; or
- (b) reject the draft Bill and deliver, to the Speakers of both Houses, the certificate prescribed in the Second Schedule certifying that the county assembly has rejected the draft Bill,

within three months after the date it was submitted by the Commission.

(2) If the Speakers of the two Houses do not receive a response from a county assembly within the three months stipulated under Article 257 (6), the Bill shall be deemed as not approved in respect of that county assembly.

8. (1) If the draft Bill is approved by a majority of the county assemblies, it shall be introduced in Parliament pursuant to Article 257(7) of the Constitution.

(2) Each House shall publicise the Bill and facilitate public discussion before passage.

(3) If the Bill is supported by a majority of the members of each House of Parliament, the Speakers of the two Houses shall jointly submit the Bill to the President.

Consideration of  
the draft Bill by  
county assemblies.

Consideration of  
the draft Bill by  
Parliament.

(4) The President shall, if the Bill —

- (a) relates to a matter specified under Article 255(1) of the Constitution, within thirty days, notify the Commission to conduct, within ninety days, a national referendum for approval of the Bill, before assenting to the Bill; or
- (b) does not relate to a matter specified under Article 255(1) of the Constitution, assent to the Bill within seven days.

(5) If one or both Houses of Parliament fail to pass the Bill, the Speaker of the relevant House shall—

- (a) notify the Commission its resolution not to pass the Bill; and
- (b) the proposed amendment shall be submitted to the people in a referendum.

(6) If a House of Parliament does not pass or reject the Bill within eighteen months, the Bill shall be deemed as not passed in respect of that House.

**9.** (1) A Bill to amend the Constitution through a parliamentary initiative relating to a matter specified under Article 255(1) of the Constitution shall be formulated in a participatory and inclusive manner taking into account all opinions and recommendations.

Bill to amend the Constitution relating to a matter specified in Article 255(1) of the Constitution.

(2) All opinions and recommendations that are not in opposition may be incorporated into a single Bill.

(3) Where, in the case of an amendment to the Constitution by parliamentary initiative, there is a divergent draft Bill, Parliament shall consider all the draft Bills and may—

- (a) merge them into one draft Bill;
- (b) approve one draft Bill and disapprove the other; or
- (c) approve all the draft Bills for submission to the people in a referendum.

(4) Where more than one draft Bill is to be submitted to the people in a referendum, each of the draft Bills shall constitute an option with a separate symbol and answer.

(5) A voter in a referendum may only vote for one option.

### **PART III – CONDUCT OF A REFERENDUM**

**10.** (1) Where the Commission—

Referendum  
question.

- (a) receives a notification from the President under Article 256(5)(a); or
- (b) is notified by the Speaker of one or both Houses of Parliament that the draft Bill considered under section 8 has not been passed,

the Commission shall, within twenty-one days, frame the question or option to be determined during the referendum.

(2) The Commission may consult Parliament or in the case of a popular initiative, the promoters of the initiative, when framing the question or option.

(3) The Commission shall—

- (a) publish the question or option in the *Gazette*, in the electronic media, and in a newspaper of national circulation; and
- (b) conduct civic education and public sensitisation on the referendum through various platforms including local radio and television stations, social media and public forums.

(4) A referendum question shall—

- (a) be written in plain language in both English and Swahili using short sentences, simple and direct wording, and familiar terms without jargon or technical language;
- (b) be written in neutral language and shall avoid words that suggest a judgement or opinion, either explicitly or implicitly;
- (c) contain information that is factual, and shall describe the issue and the options clearly and accurately; and
- (d) be so worded that each voter may express an opinion on the question or option by making a mark after the word “yes” or “no” on the ballot paper.

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

(6) A symbol assigned under subsection (5) shall not resemble that of a political party or of an independent candidate used in a preceding election.

**11.** (1) The Commission shall, within fourteen days after publication of the question or option referred to in section 9, publish in the *Gazette*, in the electronic media and in a newspaper of national circulation, a notice of the holding of the referendum specifying the particulars set out in subsection (2).

Notice of holding  
referendum

(2) The notice shall contain the following particulars—

- (a) the nature of the referendum;
- (b) the referendum question and option of the answer or answers;
- (c) the symbols assigned for each answer to the referendum question or option;
- (d) the day on which the referendum is to be held which shall be at least forty-five days from the date of the publication of the notice;
- (e) the polling time of the referendum;
- (f) the day by which the referendum committees must have registered with the Commission; and
- (g) the day and time by which campaigns in support of or in opposition to the referendum question or option shall start and cease.

**12.** (1) A Person intending to campaign for or against a referendum question or option may form a national referendum committee and a referendum committee in every constituency.

Referendum  
committees.

(2) A referendum committee may, where there is more than one question or option, indicate the questions or options it intends to campaign for or against at the time of its registration.

(3) A person intending to register a referendum committee shall submit to the Commission—

- (a) an application for registration in the prescribed form;
- (b) information showing that the applicant adequately represents persons campaigning for or against the referendum question or option;
- (c) information relating to the members appointed under section 13(1); and
- (d) such other information as the Commission shall prescribe.

(4) A national referendum committee shall control and regulate the conduct and activities of its respective constituency referendum committees.

**13.** (1) A person who intends to apply for registration under section 12 shall, before submitting an application, appoint a leader, a chief agent and the members of the committee.

Appointment of  
chief agent.

(2) The Commission shall maintain a register of leaders, chief agents and committee members of registered referendum committees in which shall be recorded the name, address and telephone number of the leader, chief agent and committee members of each such committee.

(3) The chief agent of a referendum committee appointed under subsection (1) shall be responsible for the affairs of the registered referendum committee and shall provide a sample signature to the Commission.

(4) The Commission may prescribe timelines for the appointment of chief agents and lodging of registration applications.

**14.** (1) Each referendum committee shall bear the costs of its operations during its existence.

Costs of  
referendum  
committee.

(2) The provisions of the Election Campaign Financing Act relating to formation of expenditure committees, regulation of expenditure, contributions and donations, resolution of disputes shall apply to financing of referendums under this Act.

Cap. 7A

15. (1) A question on an issue contemplated under Articles 255, 256 and 257 of the Constitution shall be approved by a referendum if—

Voting threshold.

- (a) at least twenty percent of the registered voters in each of at least half of the counties vote in the referendum; and
- (b) the amendment is supported by a simple majority of the citizens voting in the referendum.

(2) A referendum question on an issue other than that contemplated in Articles 255, 256 and 257 of the Constitution shall be decided by a simple majority of the citizens voting in the referendum.

16. (1) Upon conclusion of the referendum, the Chairperson of the Commission shall within three days of the referendum—

Declaration and certification of referendum results.

- (a) declare the referendum results through a notice published in the *Gazette*; and
- (b) certify to the President whether the Bill has been approved in the referendum.

(2) If the Bill is approved in the referendum, the President shall assent to the Bill within thirty days of certification under subsection (1)(b).

### PART III – OTHER REFERENDA

17. (1) A referendum may be conducted in a county on local issues including —

County referenda.

- (a) county laws or petitions; or
- (b) planning and investment decisions affecting the county for which a petition has been raised and duly signed by at least twenty-five percent of the registered voters where the referendum is to take place.

(2) A referendum under subsection (1) may be referred to the Commission by—

- (a) the county assembly in respect of issues under subsection (1)(a); or
- (b) the relevant county executive committee member in respect of issues under subsection (1)(b).

(3) Where an issue to be decided in a referendum under subsection (1) has been referred to the Commission the Commission shall conduct a referendum within ninety days in accordance with this Act.

**18.** (1) A referendum may, upon resolution by more than fifty percent of the members of each House of Parliament, be conducted on any other matter other than amendment of the Constitution.

A resolution of Parliament for specific referendum.

(2) The resolution may be made on the basis of—

- (a) a matter referred to Parliament by the Cabinet;
- (b) a petition presented in accordance with Article 119 of the Constitution; or
- (c) any other matter within the legislative competence of Parliament.

(3) The resolution shall specify—

- (a) nature and purpose of the referendum;
- (b) the referendum question or option;
- (c) persons eligible to vote in the referendum;
- (d) public education and sensitisation; and
- (e) any other matter specific to the referendum.

(4) Where an issue to be decided in a referendum under subsection (1) has been referred to the Commission the Commission shall conduct a referendum within ninety days in accordance with this Act.

**19.** Nothing in this Act precludes the Commission from taking any administrative measures to ensure the effective conduct of a referendum.

General power of the Commission.

#### **PART IV—REFERENDUM PETITIONS**

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

Referendum petitions.

(2) A referendum petition may be presented in the High Court by any person in accordance with Article 22(1) and (2) of the Constitution.

(3) A petition—

- (a) to question the conduct, result and validity of a referendum shall be filed within fourteen days after the date of declaration of the results of the referendum and served within seven days of presentation;
- (b) to seek a declaration concerning any matter relating to the referendum shall be presented within fourteen days after the proclamation of the referendum or occurrence the event complained against whichever is later.

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

- (a) set out the facts relied upon to invalidate the referendum;
- (b) identify the specific matter or matters on which the petitioner relies as justifying the grant of relief; and
- (c) contain a request for the relief to which the petitioner claims to be entitled.

(5) A referendum petition shall be heard and determined within thirty days of lodging the petition.

**21.** (1) A petitioner who files a referendum petition shall serve all the respondents to the petition within seven days of filing the petition.

Service of a referendum petition.

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

(3) A petition that has not been served within the stipulated timelines shall be struck out.

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

Respondents to a referendum petition.

(2) Where, at the trial of a referendum petition presented by the Commission, a question of law arises in

relation to action or omission by a referendum officer, the High Court may, on the application of the Commission, name the referendum officer as a respondent to the petition.

**23.** (1) A referendum petition shall be signed by every petitioner or by an advocate acting on their behalf, if more than one.

Filing of referendum petition.

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

**24.** (1) A referendum petition shall be heard and determined by a bench of three judges appointed by the Chief Justice.

Composition of the Bench.

**25.** (1) A referendum petition shall act as a stay of the results of a referendum from the time of filing of the petition, until the petition is heard and determined, and any period of filing of an appeal has lapsed without an appeal being filed.

Operation of declared result of issue submitted to referendum.

(2) Where a referendum petition is not presented to the High Court within the time specified under section 19(2), the declared result of referendum shall—

- (a) have effect from the date on which the result is declared;
- (b) be final; and
- (c) be conclusive evidence of the voting at the referendum and of the result of the referendum.

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

- (a) it is stated in the declared result of the referendum that the provisions of the Act are supported by the votes of a majority of the persons entitled to vote in the referendum; and
- (b) the question raised by any referendum petition or, if more than one, by all referendum petitions presented to the High Court in respect of such referendum would not, if decided in favour of the petitioner or petitioners, as the case may be, lead

to a declaration by the Commission that the votes of a majority of the citizens voting in the referendum did not support the provisions of the said referendum.

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

Duty of Registrar to make list of referendum petitions

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

27. (1) Subject to the provisions of section 43, the Rules Committee constituted under the Civil Procedure Act, may make rules generally to regulate the practice and procedure of the High Court with respect to the filing of referendum petitions, including rules—

Practice procedure Cap. 21.

(a) specifying—

- (i) the time within which any requirement of the rules is to be complied with;
- (ii) the costs of and incidental to the filing and the trial of a referendum petition; and
- (iii) the fees to be charged in respect of proceedings of a referendum petition; and

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

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

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

Death of petitioner

(2) Upon death of a petitioner under subsection (1), any qualified person may apply to the court to be substituted as the petitioner.

**29.** (1) A referendum petition shall be—

(a) heard in open court; and

(b) heard and determined within thirty days from the date of presentation of a petition.

Hearing of  
referendum  
petition

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

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

**30.** (1) An appeal from the High Court in a referendum petition shall lie to the Court of Appeal on matters of law only and shall be —

Appeals to the  
Court of Appeal.

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

(b) heard and determined within sixty days of the filing of the appeal.

(2) An appeal under subsection (2) shall act as a stay of the results of a referendum until the appeal is heard and determined.

**31.** (1) A court hearing a referendum petition may, at the hearing of the petition—

Powers of a court  
to summon  
witnesses in a  
referendum  
petition

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

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

(2) A witness or person under subsection (1) may, upon examination, be cross-examined by or on behalf of the petitioner or the respondent.

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

**32.** A voter who has cast a ballot at a referendum shall not, in proceedings to question the referendum be required to state how he or she voted.

Secrecy of the ballot.

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

Examination of votes.

Cap. 7

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

(3) The Commission shall be responsible for the custody of all the ballot boxes.

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

Powers of Court

- (a) dismiss the petition;
- (b) declare the published result to be incorrect and direct the publication of the correct results;
- (c) uphold the result of the referendum; or
- (d) declare the referendum to be void.

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

(3) The Registrar of the High Court shall, within seven days of conclusion of the proceedings in respect of a referendum petition, submit to the Commission—

- (a) a certificate under the Registrar's hand, stating that the hearing of the referendum petition has been concluded; and
- (b) a certified copy of any decision made by the High Court under subsection (1).

(4) The Commission shall, where the Court has declared the published result to be incorrect, declare and

publish the result of the referendum in accordance with the findings of the High Court.

(5) Where the High Court declares a referendum void, the Commission shall conduct a fresh referendum within sixty days.

**35.** The costs of a referendum petition shall be borne in such manner and in such proportions as the High Court may order.

Petition expenses.

#### **PART IV – MISCELLANEOUS PROVISIONS**

**36.** (1) All documents relating to the referendum shall be forwarded to and retained in safe custody by the Commission for a period of six months after the results of the referendum have been declared and shall, subject to the provisions of the Public Archives and Documentation Service Act, and unless the Commission or the High Court otherwise directs, be destroyed.

Retention and public inspection of documents  
Cap. 19.

(2) Documents retained under this section, other than ballot papers and their counterfoils, shall be made available for inspection by any member of the public, upon request, at such time and subject to such conditions as may be prescribed by the Commission.

(3) For the purpose of an inspection under subsection (2), the referendum officer shall unseal the documents concerned in the presence of a witness, who shall not be the person making the inspection and the referendum officer and the witness shall keep the documents under their scrutiny until they are resealed by the referendum officer in the presence of the witness after the inspection is completed.

(4) The provisions of this section shall not apply to documents that concern a pending referendum petition unless there is a court order granting such authority.

**37.** The provisions of Election Offences Act relating to election offences, shall apply with necessary modifications to a referendum under this Act.

Application of the Elections Offences Act. Cap 66.

**38.** (1) It shall be the duty of every public officer and public or private entity to co-operate with the Commission in its activities during a referendum and not to hinder the Commission in carrying out its functions.

Duty to co-operate.

(2) It shall be the duty of police officers in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of a referendum and to protect and uphold the rights of all persons under any written law relating to the referendum.

(3) Notwithstanding the provisions of the law relating to the National Police Service or any other written law, a police officer assigned duties during the conduct of a referendum shall be deemed to be a referendum officer for purposes of this Act and subject to direction and instruction of the Commission.

(4) It shall be the duty of—

- (a) all officers of the county administration, in their respective administrative units;
- (b) all persons in charge of county government facilities;
- (c) persons in charge public of facilities;
- (d) all referendum committees and members of the public;
- (e) all persons in charge of public utilities including teachers in charge of public schools used as polling centres;
- (f) the Registrar of Persons; and
- (g) the Registrar of Political Parties,

to give the Commission and its officers the support and collaboration necessary for the Commission to execute the activities relating to the conduct of a referendum.

**39.** A person who contravenes a provision in this Act for which a penalty has not been provided for, commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.

General penalty.

**40.** (1) The Electoral Code of Conduct prescribed under Second Schedule to the Elections Act shall apply to a referendum under this Act.

Referendum Code of Conduct.

(2) Every referendum committee and every person who participates in a referendum under the Constitution and this Act shall subscribe to and observe the Electoral

Cap. 7

Code of Conduct set out in the Second Schedule to the Elections Act.

(3) Any person who contravenes the Electoral Code of Conduct commits an offence.

(4) The trial of an offence under this section shall be without prejudice to any proceedings in or consequent upon a petition.

**41.** (1) The Commission may make regulations generally for the better carrying out of the purposes and provisions of this Act.

Regulations.

(2) The regulations under subsection (1) may prescribe—

- (a) the forms required under this Act;
- (b) guidelines for formulation of a draft Bill for amendment of the Constitution through a popular initiative;
- (c) forms and procedures for collection and submission of supporting signatures to the Commission;
- (d) guidelines for verification that a popular initiative meets the threshold under Article 257 of the Constitution;
- (e) registration and conduct of referendum committees;
- (f) the conduct of a referendum generally; and
- (g) any other matter required to be prescribed under this Act.

(3) The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by both Houses of Parliament.

**42.** (1) The Elections Act is amended—

Consequential amendments.

(a) in section 2 by—

- (i) deleting paragraph (b) of the definition of the term “agent”;
- (ii) deleting the words “or in a referendum” appearing in the definition of the word “ballot box”;

- (iii) deleting the words “or a referendum” appearing in the definition of the term “observer”;
  - (iv) deleting the definition of the word “referendum”;
  - (v) deleting the definition of the word “referendum committees”;
  - (vi) deleting the definition of the word “referendum officer”;
  - (vii) deleting the definition of the word “referendum question”;
  - (viii) deleting the words “or a referendum” appearing in the definition of the word “returning officer”;
- (b) in section 41 by deleting the words “and referendum” appearing in subsection (4); Cap. 265.
- (c) by repealing sections 49 to 55;
- (d) by repealing sections 88 to 104;
- (e) in section 105 by deleting the words “or referendum” appearing in subsection (3); and
- (f) in section 109 by deleting the term “referendum” appearing in subsections (1) (dd) and (1) (ee).
- (2) The County Governments Act is amended by repealing section 90.

## **FIRST SCHEDULE**

### **(Section 7(a))**

#### **Certificate of Approval by the County Assembly**

To: The Hon. Speaker of the National Assembly,  
Parliament of Kenya,  
Parliament Buildings,  
**NAIROBI.**

To: The Hon. Speaker of the Senate,  
Parliament of Kenya,  
Parliament Buildings,  
**NAIROBI.**

I, ....., Speaker of the  
County Assembly of ....., hereby  
certify that the County Assembly of  
....., having received  
a draft Bill for the amendment of the Constitution by  
popular initiative pursuant to Article 257(5) on  
....., 20.....considered and approved  
the....., a draft Bill  
pursuant to Article 257(6) on .....,  
20.....

*Name:*.....

*Speaker of the County Assembly of:*.....

*Signature:*.....

*Date:*.....

## SECOND SCHEDULE

### (Section 7(b))

#### **Certificate of Rejection by the County Assembly**

To: The Hon. Speaker of the National Assembly,  
Parliament of Kenya,  
Parliament Buildings,  
**NAIROBI.**

To: The Hon. Speaker of the Senate,  
Parliament of Kenya,  
Parliament Buildings,  
**NAIROBI.**

I, ....., Speaker of the County Assembly of ....., hereby certify that the County Assembly of ....., having received a draft Bill for the amendment of the Constitution by popular initiative pursuant to Article 257(5) on ....., 20.....considered and rejected the....., a draft Bill pursuant to Article 257(6) on ....., 20.....

*Name:*.....

*Speaker of the County Assembly of*.....

*Signature:*.....

*Date:*.....

## MEMORANDUM OF OBJECTS AND REASONS

### Statement of objects and reasons

The principal object of this Bill is to consolidate the law relating to conduct of a referendum, to provide for a transparent and fair process in order to obtain a clear expression of the will of people, by establishing the procedures for the conduct of a referendum. The structure of the Bill is as follows:

**Clauses 1 to 4** provide for preliminary matters including the short title, interpretation and the application of the Elections Act to referenda.

**Clause 5** provide for the notification of the Commission by the President of a referendum to amend the Constitution in relation to matters specified in Articles 255 (1) and 257 (10) of the Constitution. Upon the notification, the Independent Electoral and Boundaries Commission shall conduct a referendum in 90 days.

**Clause 7 and 8** provide for the consideration of the draft Bill, in respect of an amendment to the Constitution through a popular initiative, by both county assemblies and Parliament.

**Clause 10** provides the procedure and timelines for framing the referendum question or option and assigning symbols for each answer.

**Clause 11** of the Bill provides for notice of holding a referendum and requires the Commission to publish the notice in the Gazette as well as in electronic and print media. The notice shall contain specific particulars relating to the referendum.

**Clause 12, 13 and 14** provides for formation and registration of referendum committees, appointment of the chief agent for every referendum committee, costs of referendum committees and invokes the relevant sections of the Election Campaign Financing Act, 2013.

**Clause 15** provides for the approval threshold in a referendum which is at least twenty percent of the registered voters in each of at least half of the counties vote in the referendum and the majority of the citizens voting in the referendum.

**Clause 16** provides for declaration of results and certification of the results of the referendum. This is to be done within three days of polls.

**Clause 17 and 18** provide for the conduct of other forms of referendum, including county referenda and referenda conducted pursuant to a specific resolution of Parliament. This clause contemplates that the resolution of Parliament shall specify the wording of the referendum question or option. The notice shall contain key particulars including the nature and purpose of the referendum, the referendum question(s), the symbols assigned for each answer, the date of the referendum, polling

time, date of registration of referendum committees and the campaign period for the referendum.

**Clause 19** provides for a general power of the Commission to take administrative measures to ensure successful conduct of a referendum.

**Clauses 20** provides for filing of referendum petitions within fourteen days, and for the petitions to be heard within thirty days from the date of filing.

**Clause 21 to 35** also provide for referendum petitions including persons who may present petitions, respondents, composition of the Court, appeals to the Court of Appeal, hearing of petitions, examination of votes and petition expenses. **Clause 30** provides for appeals to the Court of Appeal to be filed within thirty days of the decision of the High Court.

**Clauses 36 to 42** contain general provisions dealing with the documents, offences and general penalty, application of the Election Offences Act, 2016, duty to cooperate, prosecutions and arrests, power to make regulations and consequential amendments.

#### **Statement on the limitation of fundamental rights and freedoms**

The Bill does not limit fundamental rights and freedoms.

#### **Statement on how the bill concerns county governments**

This Bill concerns county governments in terms of Article 110(1) (a) of the Constitution.

#### **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 28th January, 2026.

WAKILI HILLARY SIGEI,  
*Chairperson,  
Standing Committee on Justice,  
Legal Affairs and Human Rights.*

*Section 2 of Cap 7 of which it is proposed to amend—*

## **2. Interpretation.**

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;

"biometric" means unique identifiers or attributes including fingerprints, hand geometry, earlobe geometry, retina and iris patterns, voice waves, DNA, and signatures;

"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 by 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 one of 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 or 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 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 gazetting 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;

"integrated electronic electoral system" refers to a system that includes biometric voter registration, biometric voter identification and electronic result transmission system;

"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 at least sixty days before an election 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;

"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;

"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;

"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 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;

"voter's card" *deleted by Act No. 12 of 2012, Sch.;*

"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 41 of Cap 7 of which it is proposed to amend—*

#### **41. Access to and obligation of media**

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

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

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

(4) The Code of Conduct for the practice of journalism prescribed under the Media Council Act (Cap. 411B) shall be subscribed to and observed by every media house and every person who reports on any election and referendum under the Constitution and this Act.

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

(6) The Commission may prohibit a media house that contravenes the Code of Conduct prescribed under the Media Council Act (Cap. 411B) from transmitting information related to an election under this Act.

*Section 49 of Cap 7 of which it is proposed to amend—*

**49. Initiation of a referendum.**

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

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

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

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

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

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

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

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

*Section 50 of Cap 7 of which it is proposed to amend—*

**50. Notice of holding referendum.**

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

(2) The notice shall specify—

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

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

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

- (d) the polling time of the referendum;
- (e) the day by which the referendum committees shall have registered with the Commission; and
- (f) the day and time by which campaign in support of or in opposition to the referendum question shall start and cease.

*Section 51 of Cap 7 of which it is proposed to amend—*

### **51. Referendum Committees.**

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

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

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

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

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

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

*Section 52 of Cap 7 of which it is proposed to amend—*

### **52. Costs of referendum committee.**

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

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

*Section 53 of Cap 7 of which it is proposed to amend—*

### **53. Procedure for conduct of referendum.**

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

*Section 54 of Cap 7 of which it is proposed to amend—*

**54. Voting threshold.**

A referendum question on an issue other than that contemplated in Articles 255, 256 and 257 of the Constitution shall be decided by a simple majority of the citizens voting in the referendum.

*Section 55 of Cap 7 of which it is proposed to amend—*

**55. General power of the Commission.**

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

*Section 88 of Cap 7 of which it is proposed to amend—*

**88. Election petition procedures to apply to referendum petition.**

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

*Section 89 of Cap 7 of which it is proposed to amend—*

**89. Referendum petition.**

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

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

- (a) set out the facts relied on to invalidate the referendum;
- (b) identify the specific matter or matters on which the petitioner relies as justifying the grant of relief;
- (c) contain a request for the relief to which the petitioner claims to be entitled; and
- (d) be filed in the High Court within twenty-one days of the publication of the notice of the results of the referendum in the *Gazette*.

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

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

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

*Section 90 of Cap 7 of which it is proposed to amend—*

### **90. Composition of Court.**

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

*Section 91 of Cap 7 of which it is proposed to amend—*

### **91. Operation of declared result of issue submitted to referendum.**

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

- (a) have effect from the date on which the result is declared;
- (b) be final and not be challenged in any court of law; and
- (c) be conclusive evidence of the voting at the referendum and of the result of the referendum.

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

- (a) it is stated in the declared result of the referendum that the provisions of the Act are supported by a simple majority of the citizens voting in the referendum; and
- (b) the question raised by any referendum petition or, if more than one, by all referendum petitions presented to the High Court in respect of such referendum would not, if decided in favour of the petitioner or petitioners, as the case may be, lead to a declaration by the Commission that a simple majority of the citizens voting in such referendum did not support the provisions of the said law.

*Section 92 of Cap 7 of which it is proposed to amend—*

### **92. Persons who may present referendum petition.**

- (1) A referendum petition may be presented in the High Court, by—
  - (a) in the case of a petition in respect of the result of the voting in a constituency, a person who voted lawfully or had a right to vote in that constituency at the referendum;

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

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

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

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

*Section 93 of Cap 7 of which it is proposed to amend—*

### **93. Respondents to referendum petition.**

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

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

*Section 94 of Cap 7 of which it is proposed to amend—*

### **94. Filing of referendum petition.**

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

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

*Section 95 of Cap 7 of which it is proposed to amend—*

### **95. Duty of Registrar to make list of referendum petitions.**

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

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

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

*Section 96 of Cap 7 of which it is proposed to amend—*

### **96. Practice procedure and security for costs.**

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

(a) specifying—

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

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

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

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

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

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

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

*Section 97 of Cap 7 of which it is proposed to amend—*

### **97. Death of or delay by petitioner.**

Where there are two or more petitioners and any of the petitioners dies at any time before the final order of the court hearing the petition, the

surviving petitioner or petitioners shall be entitled to continue with the petition.

*Section 98 of Cap 7 of which it is proposed to amend—*

### **98. Hearing of referendum petition.**

(1) A referendum petition shall be—(a)heard and determined within six months from the date of presentation of a petition; and(b)heard in open court.(2)The High Court may, in respect of the trial of a referendum petition, exercise such powers within its civil jurisdiction as it may deem appropriate.(3)A referendum petition may be withdrawn by the petitioner on notice to the other parties and the High Court, subject to any order of the Court as to costs.

*Section 99 of Cap 7 of which it is proposed to amend—*

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

(1) A Court hearing a referendum petition may, at the hearing of the petition—(a)order any person who appears to the court to be concerned in or affected by the referendum petition to attend as a witness at such hearing; and(b)examine any witness or any person who is present at the hearing even if the witness or person is not called as a witness by any party to the proceedings:Provided that after examination by the court, the witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

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

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

(4) Notwithstanding subsection (3)—(a)a witness who answers every question which they are required to answer under this section to the satisfaction of the court, and the answers to which may tend to incriminate them, shall not be liable to prosecution for any offence committed by them in connection with the referendum and in respect of which they are so examined, and shall be entitled to receive a certificate of indemnity issued by the Registrar stating that the person is discharged from liability and shall not be prosecuted for that offence; and(b)an answer by a witness to a question before the Court under this section shall not, except in the case of any criminal proceedings for giving false evidence in respect of such

evidence, be admissible as evidence in any civil or criminal proceedings against them.

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

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

*Section 100 of Cap 7 of which it is proposed to amend—*

### **100. Prohibition of disclosure of vote.**

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

*Section 101 of Cap 7 of which it is proposed to amend—*

### **101. Examination of votes.**

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

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

*Section 102 of Cap 7 of which it is proposed to amend—*

### **102. Powers of Court.**

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

- (a) dismiss the petition;
- (b) declare the published result to be incorrect;
- (c) declare the referendum to be void; or(d) uphold the petition in whole or in part.

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

the referendum, and such contravention has seriously affected the result of the referendum.

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

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

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

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

*Section 103 of Cap 7 of which it is proposed to amend—*

### **103. Petition expenses.**

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

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

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

evidence, be admissible as evidence in any civil or criminal proceedings against them.

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

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

*Section 100 of Cap 7 of which it is proposed to amend—*

### **100. Prohibition of disclosure of vote.**

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

*Section 101 of Cap 7 of which it is proposed to amend—*

### **101. Examination of votes.**

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

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

*Section 102 of Cap 7 of which it is proposed to amend—*

### **102. Powers of Court.**

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

- (a) dismiss the petition;
- (b) declare the published result to be incorrect;
- (c) declare the referendum to be void; or(d) uphold the petition in whole or in part.

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

the referendum, and such contravention has seriously affected the result of the referendum.

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

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

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

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

*Section 103 of Cap 7 of which it is proposed to amend—*

### **103. Petition expenses.**

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

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

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

have been satisfied or otherwise sufficiently provided for as the High Court may require.

*Section 105 of Cap 7 of which it is proposed to amend—*

**105. Duty to co-operate.**

(1) It shall be the duty of every public officer and public or private entity to co-operate with the Commission in its activities during an election and not to hinder the Commission in carrying out its functions.

(2) It shall be the duty of police officers in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of an election and to protect and uphold the rights of all persons under any written law relating to elections.

(3) Notwithstanding the provisions of the law relating to the National Police Service or any other written law, a police officer assigned duties during the conduct of an election or referendum shall be deemed to be an elections officer for purposes of this Act and subject to direction and instruction of the Commission.

(4) It shall be the duty of—

- (a) all officers of the county administration, in their respective administrative units;
- (b) all persons in charge of local authority facilities;
- (c) persons in charge of facilities;
- (d) all political parties and members of the public;
- (e) all persons in charge of public utilities including teachers in charge of public schools;
- (f) the Registrar of Persons; and
- (g) the Registrar of Political Parties,

to give the Commission and its officers the support and collaboration necessary for the Commission to execute the activities relating to the conduct of an election.

*Section 109 of Cap 7 of which it is proposed to amend—*

**109. Regulations.**

(1) The Commission may make regulations generally for the better carrying out of the purposes and provisions of this Act, and in particular,

but without prejudice to the generality of the foregoing, may make regulations to—

- (a) prescribe the manner in which registers of voters shall be compiled and the manner in which they shall be revised;
- (b) prescribe the procedure for registration and issuance of voters cards and provide for the progressive registration of Kenyan citizens living abroad and prisoners;
- (c) to provide for the regulation of the process by which parties nominate candidates for elections;
- (d) to provide for the manner of nomination, allocation and re-allocation of special seats and mechanisms for resolving disputes arising out of such nomination, allocation and re-allocation;
- (e) prescribe the procedure for making and determining claims to be registered and objections to registration;
- (f) authorise any registration officer to consider or determine any application, claim, objection or appeal, to summon any person to appear before them and give evidence on oath, and to administer an oath for that purpose and to order the production of any document relevant to any issue which the officer is required to consider and determine;
- (g) provide for the division of constituencies into units for the purpose of the registration of voters;
- (h) prescribe the conditions under which elections may be held in accordance with the provisions of the Constitution, this Act or any other written law relating to elections;
- (i) prescribe the amount of the deposit to be paid by or on behalf of candidates at all elections and the circumstances in which the deposit may be forfeited;
- (j) provide for the appointment of officers to preside at polling stations;
- (k) prescribe the facilities to be provided at polling stations and the persons who may be admitted to polling stations;
- (l) prescribe the place and manner in which votes may be cast and the construction and scaling of ballot boxes and provide for the issue a ballot papers to voters;

have been satisfied or otherwise sufficiently provided for as the High Court may require.

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(c) persons in charge of facilities;

(d) all political parties and members of the public;

(e) all persons in charge of public utilities including teachers in charge of public schools;

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- (d) to provide for the manner of nomination, allocation and re-allocation of special seats and mechanisms for resolving disputes arising out of such nomination, allocation and re-allocation;
- (e) prescribe the procedure for making and determining claims to be registered and objections to registration;
- (f) authorise any registration officer to consider or determine any application, claim, objection or appeal, to summon any person to appear before them and give evidence on oath, and to administer an oath for that purpose and to order the production of any document relevant to any issue which the officer is required to consider and determine;
- (g) provide for the division of constituencies into units for the purpose of the registration of voters;
- (h) prescribe the conditions under which elections may be held in accordance with the provisions of the Constitution, this Act or any other written law relating to elections;
- (i) prescribe the amount of the deposit to be paid by or on behalf of candidates at all elections and the circumstances in which the deposit may be forfeited;
- (j) provide for the appointment of officers to preside at polling stations;
- (k) prescribe the facilities to be provided at polling stations and the persons who may be admitted to polling stations;
- (l) prescribe the place and manner in which votes may be cast and the construction and scaling of ballot boxes and provide for the issue a ballot papers to voters;

- (m) provide for the manner in which, and the person by whom any question as to the identity of any person claiming the right to vote shall be determined;
- (n) provide for the manner in which a voter who is not able to read or write may vote or be assisted in voting;
- (o) provide for the manner in which a voter with special needs including a person with a disability may vote or be assisted in voting;
- (p) prescribe the procedure to be followed in the counting of votes and the circumstances in which votes may be rejected by a returning officers as being invalid;
- (q) prescribe conditions for the use of private motor vehicles, vessels or buildings at elections;
- (r) prescribe the facilities to be provided during the electoral process and in particular, for voting by electronic machines and the persons entitled so to vote and the circumstances in which persons may so vote;
- (s) provide for the allocation by the Commission, in a just and equitable manner of the use of state-owned radio and television broadcasting services during any election period;
- (t) prescribe the procedure to be adopted by the public in making representations for the alteration of electoral area boundaries;
- (u) prescribe the forms which may be used under this Act and the fees in respect of anything to be done under this Act;
- (v) prescribe the procedure for advance voting for special categories including patients admitted in hospital, pastoralists, armed forces, elections officers and other citizens of Kenya providing essential services;
- (w) prescribe the procedure for voting for citizens residing outside Kenya;
- (x) provide for complaints resolution mechanisms and for the manner of settlement of electoral disputes;
- (y) provide for the conduct of election observers, the media, monitors and evaluators and organisations carrying out civic and voter education;
- (z) provide with reasonable grounds for the postponement of elections;

- (aa) provide for mechanisms for carrying out effective voter education;
- (bb) provide for the mode of declaration of the result of an election;
- (cc) prescribe the manner of enforcing the Electoral Code of Conduct; or
- (dd) provide for the conduct of campaigns during a referendum or an election;
- (ee) Provide for the financing of campaigns during a referendum or an election;
- (ff) prescribe anything which is required to be prescribed or is necessary or desirable for the better giving effect to this Act.

(2) The power to make regulations conferred on the Commission under this Act shall be—

- (a) for the purpose and objective of giving effect to the Constitution and this Act;
- (b) limited to the nature and scope specifically stipulated in the Constitution and this Act; and
- (c) based on the general principles and standards contained in the Constitution and this Act.

(3) The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by the National Assembly, at least four months preceding a general election. Provided that this applies to the first general election under this Act.

(4) The Commission shall publish in the *Gazette*, not later than sixty days prior to the date of a general election, the regulations approved by the National Assembly under subsection (3).