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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON:

THE CONSIDERATION OF THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024
(SENATE BILL NO. 29 OF 2024)

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 14 AUG 2025 DAY. THURSDAY
TABLED BY: CHAIRPERSON, JUSTICE & LEGAL AFFAIRS HON. K. MURUGARA
CLERK-AT THE-TABLE: Kanda Tililee

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LIST OF ABBREVIATIONS AND ACRONYMS

COG	-	Council of County Governors
CMD	-	Centre for Multiparty Democracy
ELGIA	-	Electoral Law and Governance Institute for Africa
FORD	-	Forum for the Restoration of Democracy
IEBC	-	Independent Electoral and Boundaries Commission
IRCK	-	Inter-Religious Council of Kenya
KLRC	-	Kenya Law Reform Commission
LSK	-	Law Society of Kenya
MCA	-	Member of County Assembly
MCCP	-	Maendeleo Chap Chap Party
MP	-	Member of Parliament
NADCO	-	National Dialogue Committee
ORPP	-	Office of the Registrar of Political Parties
ODM	-	Orange Democratic Movement
TAA	-	The Architects Alliance
UDA	-	United Democratic Alliance
UDM	-	United Democratic Movement
WDM	-	Wiper Democratic Movement

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Annexure 6: Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

This Report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Elections (Amendment) (No. 2) Bill *(Senate Bill No. 29 of 2024)*. The Bill, having been passed in the Senate on 5th December, 2024 and forwarded to the National Assembly, was read a First Time in the House on 13th February, 2025 and was thereafter committed to the Committee in line with Standing Order 143(2) of the National Assembly Standing Orders.

The Bill seeks to give effect to some of the recommendations by NADCO on the issues of electoral justice and related matters, fidelity to political parties/coalitions and the law on multiparty democracy.

The Bill seeks to amend the Elections Act (Cap 7) to, among other things:

(a) align the terminology in the Act with the provisions of the Constitution with respect to the responsibility of IEBC to register candidates for elections and the role of political parties to nominate candidates for elections;
(b) repeal various provisions of the Act that have been declared unconstitutional such as the educational requirement for registration as a candidate for election as MP and MCA;
(c) enhance the processing and declaration of election results by IEBC; and
(d) provide for the scope of evaluation of electoral process as provided for under Article 88(4)(h) of the Constitution.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Committee placed an advertisement in the print media on 18th and 19th February, 2025 inviting the public to submit memoranda by way of written statements on the Bill. In addition, the Committee, vide letter Ref. No. *NA/DDC/JLAC/2025/017* dated 10th April 2025, invited key stakeholders to submit views on the Bill and attend a public participation forum on 17th April, 2025. The memoranda were to be received on or before 5th March, 2025 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received ten (10) memoranda. The Council of County Governors (COG), Independent Electoral and Boundaries Commission (IEBC), Inter-Religious Council of Kenya (IRCK), Kenya Law Reform Commission (KLRC), Office of the Registrar of Political Parties (ORPP), Law Society of Kenya (LSK), Centre for Multiparty Democracy (CMD), the CRADLE, the Electoral Law and Governance Institute for Africa (ELGIA) and The Architects Alliance (TAA) gave their views on the Bill which the Committee considered as contained in Chapter Three of this Report.

While considering the Bill, the Committee observed that the Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the NADCO which was established to facilitate dialogue and consensus building and thereafter recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya. In particular, the Bill aims to address the issues on elections, electoral justice and related matters.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the COG, IEBC, IRCK, KLRC, ORPP, LSK, CMD, the CRADLE, ELGIA and TAA for submitting memoranda on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee

Secretariat who made useful contributions towards the preparation and production of this Report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6) of the National Assembly Standing Orders, it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Elections (Amendment) (No. 2) Bill *(Senate Bill No. 29 of 2024)*.

It is my pleasure to report that the Committee has considered the Elections (Amendment) (No. 2) Bill *(Senate Bill No. 29 of 2024)* and has the honour to report back to the National Assembly with the recommendation that the **House approves the Bill with amendments**.

Hon. George Gitonga Murugara, CBS, MP
Chairman, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

   i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
   ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
   iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
   iv. *To study and review all legislation referred to it;*
   v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
   vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
   vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
   viii. *To examine treaties, agreements and conventions;*
   ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
   x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
   xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

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

   (a) The Judiciary;
   (b) Tribunals;
   (c) Access to Justice;
   (d) Public prosecutions;
   (e) Ethics, Integrity and Anti-corruption;
   (f) Correctional services;
   (g) Community service orders and witness protection;
   (h) Constitutional Affairs;
   (i) Sovereign immunity;
   (j) Elections including referenda;
   (k) Human rights;
   (l) Political parties; and
   (m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversights the following Ministries, Departments and Agencies:

   (a) The Judiciary;
   (b) Judicial Service Commission;

(c) State Department of Correctional Services;
(d) State Department of Justice, Human Rights and Constitutional Affairs;
(e) State Law Office and Department of Justice
(f) Office of the Director of Public Prosecutions;
(g) Ethics and Anti-Corruption Commission;
(h) Independent Electoral and Boundaries Commission;
(i) Commission on Administrative Justice;
(j) Office of the Registrar of Political Parties;
(k) Witness Protection Agency;
(l) Kenya National Commission on Human Rights;
(m) Kenya Law Reform Commission; and
(n) Council of Legal Education.

1.3 Committee Membership

4. The Committee comprises the following Members:

Chairperson
Hon. Murugara George Gitonga, CBS, MP
Tharaka Constituency
UDA Party

Vice-Chairperson
Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Hon. Gladys Boss, MGH, MP
Uasin Gishu Constituency
UDA Party

Hon. Maalim Farah, EGH, MP
Dadaab Constituency
WDM-Kenya

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Francis Kajwang' Tom Joseph, CBS, MP
Ruaraka Constituency
ODM Party

Hon. Wetang'ula Timothy Wanyoyi, CBS, MP
Westlands Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, EBS, MP
Rarieda Constituency
ODM Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Muchangi Karemba, MP
Runyenjes Constituency
UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Mogaka Stephen M., MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa County (CWR)
Jubilee Party

Hon. CPA Suleka Hulbale Harun, MP
Nominated Member
UDM Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I/Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Ms. Jael Ayiego
Clerk Assistant III

Mr. Omar Abdirahim
Fiscal Analyst I

Mr. John Nduaci
Serjeant-At-Arms

Ms. Mary Kamande
Public Communications Officer III

Mr. Silas Opanga
Hansard Reporter III

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Ms. Vivienne Ogega
Research Officer III

Mr. Meldrick Sakani
Audio Officer III

Mr. Calvin Karung'o
Media Relations Officer III

CHAPTER TWO

2 OVERVIEW OF THE ELECTIONS (AMENDMENT) (NO. 2) BILL *(SENATE BILL NO. 29 OF 2024)*

2.1 Background

6. The Bill seeks to give effect to some of the recommendations by NADCO on the issues of electoral justice and related matters, fidelity to political parties and coalition parties and the law on multiparty democracy.

7. The Bill, having been passed in the Senate on 5th December, 2024 and forwarded to the National Assembly, was read a First Time in the House on 13th February, 2025 and was thereafter committed to the Committee in line with Standing Order 143(2) of the National Assembly Standing Orders.

2.2 Summary of the Bill

8. The Bill *(Annexure 3)* seeks to amend the Elections Act, Cap. 7 to, among other things:
   (a) align the terminology in the Act with the provisions of the Constitution with respect to the responsibility of IEBC to register candidates for elections and the role of political parties to nominate candidates for elections;
   (b) repeal various provisions of the Act that have been declared unconstitutional such as the educational requirement for registration as a candidate for election as MP and MCA;
   (c) enhance the processing and declaration of election results by IEBC; and
   (d) provide for the scope of evaluation of electoral process as provided for under Article 88(4)(h) of the Constitution.

9. In particular:
   (a) **Clause 2** of the Bill proposes to amend section 2 of the Act by providing for new definitions of the terms "nomination" and "political party" and delete the definition of the term "nomination day". Further, it proposes to insert the word "valid" immediately before the words "Kenyan passport" in the definition of "identification document" and to insert the definition of the term "registration of candidates;
   (b) **Clause 3** proposes to amend section 5 of the Act which provides for registration of voters by:
      (i) 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;
      (ii) inserting the words "of the referendum question" immediately after the word "publication" in subsection (1)(ba) to correct an omission;
      (iii) inserting the word "valid" immediately before the words "Kenyan passport" in subsection (3); and
      (iv) 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.
   (c) **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.

(d) **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 and cleaning up the cross-referencing in subsection (4).

(e) **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. Further **Clause 10** of the Bill proposes to delete section 22(1)(b) that set out the education requirements for registration as a candidate for election as a Member of Parliament or member of 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)***

(f) **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. It proposes to amend subsection (2A) to insert reference to the nomination rules by a coalition party submitted to IEBC to ensure compliance.

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

  (i) 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;

  (ii) the submission to the IEBC of the names of the persons contesting in the party primary and the date of the party primary, and publication of these information in the *Gazette* by IEBC; and

  (iii) the requirement that Parliament shall appropriate monies for the effective implementation of the provisions on nomination of candidates by political parties.

(h) **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.

(i) **Clause 17** of the Bill proposes to amend section 33 which provides for nomination of independent candidates:

  (i) in subsection (1) by deleting the word "nomination" and substituting therefor the word "registration";

  (ii) 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

  (iii) in subsection (1), by deleting paragraph (d) on the requirement of selection in the manner provided for in the Constitution or the Election Act.

(j) **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.

(k) **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 by a political party 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. It also proposes to delete subsection (9) on the requirement that a party list shall not contain the name of a candidate nominated for an election. This subsection was declared to be unconstitutional by ***Commission for the Implementation of the Constitution v. Attorney General & Another (Civil Appeal No. 351 of 2012)***.

(l) **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 conduct in a place not designated as a polling station.

(m) **Clause 21** of the Bill amends section 38A on number of voters per polling station to limit the number of voters to between 50 and 1000.

(n) **Clause 22** of the Bill proposes to repeal section 39 which provides for determination and declaration of results and substitute it with a new section. The new section proposes that results declared at the polling station shall be final, and the results of 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:

   (i) 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;

   (ii) any failure to transmit or publish the election results in an electronic format shall not invalidate the result as announced and declared; and

   (iii) the requirement for IEBC to establish a mechanism for the live-streaming of results as announced at polling stations to facilitate public information.

(o) **Clause 23** of the Bill proposes to amend section 44 which provides for technology to provide that the Commission shall, during procurement, ensure that IP rights vests in IEBC, a supplier of technology to be used shall not 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.

(p) **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.

(q) **Clause 25** of the Bill proposes to amend section 45 of the Act which provides for right of recall of a member of Parliament. The grounds of recall; the requirement of

obtaining a judgment from the High Court; and the restriction of an unsuccessful candidate from petitioning, were declared unconstitutional in ***Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016 [Formerly Kisumu Petition Number 9 of 2016]***

(r) **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]***

(s) **Clause 27** of the Bill proposes to delete section 48 of the Act which 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]***

(t) **Clause 28** of the Bill proposes to delete section 44 of the Act which, pursuant to Article 88(4)(e) of the Constitution, gives the IEBC the mandate of settling electoral disputes including disputes arising from the nomination of candidates.

(u) **Clause 29** of the Bill proposes to amend section 75 which provides for county election disputes by deleting the requirement that an appeal to the High Court shall be on matter 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.

(v) **Clause 30** 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.

(w) **Clause 31** of the Bill proposes to amend section 85A of the Act on appeals in an election petition to the Court of Appeal. It proposes to delete the requirement that an appeal shall be on matter of law only and inserting a new provision to provide that the decision of the Court of Appeal shall be final.

(x) **Clause 32** of the Bill proposes to insert new sections 87A, 87B and 87C to provide for evaluation of the elections by IEBC pursuant to Article 88(4) of the Constitution. The evaluation shall include a review of the legal framework, processes and costs associated with the electoral process. The proposed new provisions require the publication of the report and submission to Parliament.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

10. Article 118 (1)(b) of the Constitution provides that:

"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

11. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

"(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including-

(a) inviting submission of memoranda;

(b) holding public hearings;

(c) consulting relevant stakeholders in a sector; and

(d) consulting experts on technical subjects.

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 Memoranda Received on the Bill

12. Pursuant to the aforementioned provisions of the law, the Committee placed an advertisement *(Annexure 4)* in the print media on 18th and 19th February, 2025 inviting the public to submit memoranda by way of written statements on the Bill on or before 5th March, 2025 at 5.00 pm (East African Time). Further, the Committee vide letter Ref. No. *NA/DDC/JLAC/2025/017* dated 10th April, 2025 *(Annexure 5)* invited key stakeholders to submit views on the Bill and attend a public participation forum on 17th April 2025.

13. To this end, the KLRC, ORPP, *Katiba* Institute, the CRADLE and ELGIA attended the public participation forum on 17th April 2025. Upon request, the IEBC appeared before the Committee on 22nd April 2025 to submit their views.

14. The Committee received ten (10) memoranda from the COG, IEBC, IRCK, KLRC, ORPP, LSK, CMD, the CRADLE, ELGIA and TAA. The memoranda are annexed to this report as *Annexure 6*.

15. LSK submitted memoranda in full support of the Bill while COG, IEBC, IRCK, KLRC, ORPP, CMD, ELGIA, the CRADLE and TAA submitted memoranda with proposed amendments. The stakeholders submitted as follows:

Clause 2

16. **ORPP** submitted that Parliament should reconsider qualifying the passport to validity given that the said documentation is for purposes of identification to prevent disenfranchisement. On definition of political parties, **ORPP** proposed referencing the interpretation provided under section 2 of the Political Parties Act, Cap. 7D as it has a more succinct interpretation.

17. The **CRADLE** proposed amending the definition of "nomination" to mean the process through which a political party elects or selects its candidates for elections, conducted in

a transparent, democratic and verifiable manner. This seeks to ensure clarity and prevent manipulation of party nominations and align with Article 91 of the Constitution.

18. **TAA** proposed that the definition of the term "registration of a candidate" expressly includes compliance with Chapter Six of the Constitution on leadership and integrity to align with the constitutional requirements for ethical leadership and accountability.

19. **IEBC** proposed the deletion of the amendment to the term "political party" since the definition is what is contained in the Act.

Committee Observation

20. The Committee observed that Clause 2 seeks to amend the definition and interpretation of the words and phrases to clarify and align them with the respective functions assigned by the Constitution to IEBC and ORPP.

21. The Committee further observed that the definition of "political party" contained in the Political Parties Act is more precise.

22. The Committee observed that Article 91(1)(d) requires political parties to abide by the democratic principle of good governance and promote and practice democracy through regular, free and fair elections within the party. Therefore, there may be no need to re-state these principles in the definition of "nomination".

Clause 3

23. **ORPP** proposed the deletion because it limits the rights of registered voters to contest elections yet it does not satisfy Article 24 of the Constitution in terms of the purpose and importance of limitation. Furthermore, while elected representatives represent a particular constituency, their roles are not removed from contributing to better governance of the whole country.

24. The **CRADLE** proposed amending the new proposed section 5(3A) to include a proviso for eligibility to contest in a by-election if they had initiated registration before the suspension period to prevent unfair disenfranchisement of citizens whose registration process was pending before suspension and to ensure equal political rights under Article 38 of the Constitution.

25. **IEBC** proposed that proposed new section 5(3A) be introduced as an amendment to section 26 which provides for additional disqualifications for contesting in an election.

Committee Observation

26. The Committee observed that the Clause seeks to limit the period in which registration of voter is suspended pending a by-election to the affected electoral area. This seeks to ensure continuous registration of voters outside the electoral area.

27. The Committee also observed that the proposed new subsection (3A) which seeks to guarantee the right to free and fair elections by disqualifying a person who registers as a voter during the period of suspension of registration for contesting in such by-election. This provision may be transferred to section 26 on additional disqualifications for contesting in an election.

Clause 4

28. The **CRADLE** and **TAA** proposed amending the new section 6(1) to require the IEBC to provide online access to the register of voters for public inspection to enhance transparency and accessibility and reduce voter suppression and align with digital advancements in election management.

29. **IEBC** proposed a review of the period of suspension for the revision of the register of voters.

Committee Observation

The Committee observed that a person has the right to inspect the register of voters for purposes of confirming and verifying the status or registration and particulars. Where the IEBC is required to revise the register of voters, the period of suspension for revision of the register of voters should be clearly stated in the Act.

Clause 5

30. **CMD** submitted that the need to review section 8A to provide for how the register of voters will be audited.

31. **IEBC** proposed the timelines in which the IEBC is required to engage a firm to conduct the audit of the register of voters before a general election be revised from six months before a general election to nine months before a general election.

Committee Observation

32. The Committee observed that the timelines for audit of the register of votes should be reasonable to give the IEBC enough time to procure the services of a reputable firm and implement the recommendations that may be contained in the audit report.

Clause 6

33. The **CRADLE** proposed amending the new section 14(2)(a) to provide for a time-limitation period of not less than thirty days before the presidential election date to ensure adequate time for verification and dispute resolution as well as reduce chances of last-minute disqualifications and legal battles.

Committee Observation

34. The Committee observed that section 14 requires the IEBC to publish a notice of the election of the President and timelines depend on whether the election is through a general election, a run-off election or declaration of vacancy. The timelines take care of the eventualities of a dispute on registration arising between IEBC and a candidate.

Clause 10

35. The **CRADLE** proposed amending section 22(1)(b)(i) to provide for qualification to be nominated as a candidate for election as Member of Parliament, at least a post-secondary qualification relevant to governance or leadership.

Committee Observation

36. The Committee observed that the High Court declared section 22(1)(b)(i) as unconstitutional in the case of ***Wambui & 10 others v Speaker of the National Assembly & 6 others Constitutional Petition 28 of 2021 & Petition E549, E077, E037 & E065 of 2021 (Consolidated).*** The court held that the provision offended Article 27

of the Constitution to the extent that it, unfairly and without justification, discriminated election candidates on the basis of educational qualifications.

Clause 14

37. **CMD** proposed a further amendment to the provision as it makes reference to sub-section (1A) which is not in the Principal Act.

38. The **CRADLE** proposed amending the new proposed section 27(1B) to provide for public scrutiny of a coalition political party's nomination rules to enhance transparency and accountability and reduce manipulation in coalition agreements that may disenfranchise members.

39. **IEBC** proposed the deletion of Clause 14 since the amendment is amorphous and will create confusion or if the proposed amendment is retained the timeline for submission of coalition political party nomination rules be reviewed downwards to seven days after registration of the coalition political party.

Committee Observation

40. The Committee observed that the definition of the of "political party" in the Political Parties Act, Cap. 7D includes a coalition party. There may be need to regularize the definition of "political party" in the Election Act, Cap. 7 with the definition in the Political Parties Act, Cap. 7D.

Clause 15

41. **KLRC** was of the view that section 31(2), (2E) and (2F) of the principal Act should not be deleted because it would offend Article 88(4) of the Constitution which mandates the IEBC to conduct and supervise elections to any elective body or office and any other elections as may be prescribed.

42. **CMD** proposed the introduction of a new section to cater for the conduct of nominations.

43. **IEBC** supported the proposed deletions as it leaves the conduct of nomination to political parties. This delineation of roles of IEBC and political parties during nomination prevents any conflict of interest that may arise.

Committee Observation

44. The Committee observed that Article 88(4)(d) of the Constitution provides that one of the functions of IEBC is to regulate the process by which political parties nominate candidates for elections. Therefore, the conduct of nomination should be left to political parties.

Clause 16

45. **ORPP** noted that the clause erroneously references 3(a) as opposed to 3(b) and (c).

46. **CMD** proposed retaining the section 32(1A) of the principal Act to prevent the influx of independent candidates who decide to run as independents by virtue of failing to clinch the nominations under their respective parties.

47. **The CRADLE** noted the need to prevent confusion and duplication of symbols and enhance voter clarity during elections and therefore proposed amending section 32(1) of

the principal Act to read 'An independent candidate shall submit the symbol the candidate intends to use during an election to the Commission at least thirty days before nomination day, and the Commission shall public all approved symbols in a public register."

48. **IEBC** submitted the proposal will lessen the burden on independent candidates by restricting the identification of unique symbols to a county, However, the amendments should be proposed to paragraphs (b) and (c).

Committee Observation

49. The Committee observed that Article 85 recognizes the right of a person to stand for election as an independent candidate. Therefore, limiting the uniqueness of a symbol to a particular county seeks to promote the exercising of political rights by independent candidates.

Clause 17

50. **IEBC** submitted that sections 33(1)(d) and 33(2) be retained as they provide for procedures for clearing independent candidates which culminates into a *Gazette* notice once all independent candidates have been approved considering provisions of the Act and the constitution under Articles 85 and 88.

Committee Observation

51. The Committee observed that the new section 33A of the Bill provides for the requirement of publication in the *Gazette* of the names of candidates registered by IEBC to contest in an election.

Clause 18

52. **IEBC** proposed the deletion of the clause because the provisions on gazettement before and after registration of candidates enables the IEBC to discharge its mandate under Article 88(4)(d) effectively and for record purposes.

Committee Observation

53. The Committee observed that, pursuant to Article 88(4)(f) of the Constitution, the IEBC is mandated to register candidates for election. Therefore, the requirement to publish the names of registered candidates in the *Gazette* seeks to serve as a formal and indisputable record.

Clause 19

54. **ORPP** noted that the Constitution does not provide for separate qualifications for persons who are elected to a county assembly either through gender top-up list or marginalised groups list and hence, the need to reconsider the proposal.

55. **CMD** stated that while the amendment is aimed at protecting the voters at the ward levels and promote party fidelity, it does not guarantee adherence by political parties and also locks out viable candidates for nomination.

56. **IEBC** proposed that the requirement for a nominee in a party list to be a registered voter in the electoral area for which they are nominated should apply to the seats in the National Assembly and the Senate as well. Further, **IEBC** proposed the deletion of the new proposed subsection (8A) arguing that the provisions would be difficult to implement and that the role of the IEBC is to ensure compliance with the law on nomination of party list members. In addition, **IEBC** proposed the retaining of section 34(9) which prohibits a

party list from containing a name of a candidate nominate for election as it prohibits gambling and political tokenism. It submitted that Kenya Law had erroneously captured that section 34(9) was declared unconstitutional in the case of ***Commission for the Implementation of the Constitution v. Attorney General & Another (Civil Appeal No. 351 of 2012).***

Committee Observation

57. The Committee observed that IEBC is responsible for conducting and supervising elections for seats in Parliament provided for under Articles 97(1)(c), (b) and (d) and for the members of county assemblies under Article 177(1)(b) and (c).

58. The Committee further observed that the provision that was declared unconstitutional in the case of ***Commission for the Implementation of the Constitution v. Attorney General & Another (Civil Appeal No. 351 of 2012)*** was the provision which allowed the party list to contain the names of the candidates for the President or the Deputy President.

Clause 20

59. **IRCK** proposed amending the proposal to provide for gazettement of polling stations regularly instead of the three months before the date of any election to build public trust.

60. **ORPP** proposed reconsidering the proposed timeline for IEBC to gazette polling stations. The proposed three-months timeline for IEBC to gazette polling stations does not take into account other processes and key timelines within the election period such as the 90-day applications for transfer of voter registration.

61. **ELGIA** submitted that the use of the preposition 'or' in the new proposed section 38A(2) contradicts with the definition of 'polling station' in section 2 of the principal Act and hence proposed amending the sub-section to read "No election shall be conducted or held in an ungazetted polling station."

62. **CMD** and ELGIA also noted the need for clarity on polling stations in the relevant statutes governing elections to enable electoral management bodies develop specific guidelines and regulations.

63. **TAA** submitted that the new proposed section 38A be amended to require the Commission to provide a mapping tool for polling stations accessible online and via mobile application to improve voter participation.

64. **IEBC** proposed that the new proposed section 38A be deleted. If left as proposed, it would mean that there shall be no polling stations to conduct an election where emergencies occur. The Commission should have the authority to gazette polling stations even on election day should the need arise,

Committee Observation

65. The Committee observed that gazettement and publicization of polling stations is provided by Regulation 7 of the Elections (General) Regulations. Therefore, for greater legal authority and stability, the provisions may be made through primary legislation rather than leaving them to be set out in secondary or delegated legislation.

Clause 21

66. **IEBC** proposed the removal of the lower limit of 50 persons to cater of far-flung areas with diverse needs.

Committee Observation

67. The Committee observed that providing a maximum number of voters per polling station ensures that elections are carried out in an efficient and effective manner.

Clause 22

68. **KLRC** submitted that the new proposed section 39 leaves out live-streaming of the results which undermines transparency. This is especially because technological transparency has assisted in boosting public confidence in the past elections.

69. **CMD** and **ELGIA** submitted that different statutory roles are assigned to different officials within the Commission and hence the need for clarity on the specific electoral responsibilities listed in section 39 (1), (4), (5) and (8) to allow for better implementation of Article 138(3)(c) of the Constitution.

70. **IEBC** submitted that the usage of the terms "declare and announce" is problematic; the proposed timeline of two hours to electronically transmit results is not practical; the proposals are not in tandem with the definition of the "Commission" as held by the Supreme Court in ***Presidential Election Petition of 2022;*** and various subsections under section 39 of the Elections Act, Cap. 7 were declared unconstitutional in ***IEBC v. Maina Kiai & 5 Others [2017] eKLR.***

Committee Observation

71. The Committee observed that the amendments to section 39 of the Act are to ensure compliance with the court decision in ***IEBC v. Maina Kiai & 5 Others [2017] eKLR*** which declared various provisions unconstitutional.

Clause 23

72. The **CRADLE** proposed amending the new proposed section 44(4A) to provide that election technology undergoes an independent audit before deployment to ensure security and prevent voter fraud and system manipulation.

73. **TAA** proposed further amending section 44 to include a requirement that election technology suppliers undergo independent audits for compliance with international cybersecurity standards to prevent vulnerabilities in election technology. **TAA** further proposed that the Commission be mandated to conduct public demonstrations of election technology and provide stakeholders with access to audit reports.

74. **IEBC** submitted that scrutiny of election technology should be conducted pursuant to a court order and should be in line with the Election (Technology) Regulations 2017.

Committee Observation

75. The Committee observed that the use of technology in the electoral process involves use of digital equipment and systems to support various aspects of the electoral process from voter registration to tabulation of results. Therefore, the use of technology facilitates the exercise of political right guaranteed under Article 38 of the Constitution.

Clause 24

76. **IEBC** proposed the deletion of paragraph (c) which requires the Commission to make regulations for better carrying into effect the provisions of section 44A on complementary mechanism for identification of voters. In their view, the Supreme Court in the 2017 and 2022 Presidential Election Petitions did not pronounce itself on any complimentary mechanisms for transmission of election results.

Committee Observation

77. The Committee noted that Clause 24 of the Bill places an obligation on the IEBC to put in place complementary mechanism for identification of voters and transmission of election results. It is on this basis that the IEBC is required to make regulations for better carrying into effect these provisions.

Clause 25

78. **ORPP** proposed qualifying the ground for persistent desertion of the electorate to the duties of the Legislature.

79. **COG** proposed amending section 45 to introduce a consequential amendment to repeal sections 27(2), (3) and (6) and 28(1)(b)(ii)(c) of the County Governments Act, Cap. 265 which were declared unconstitutional by the High Court in ***Katiba Institute & Another v Attorney General & Another [2017] KEHC 4648 (KLR).***

80. **ELGIA** noted that the proposed grounds for recall of MPs are fairly vague and do not provide an objective assessment of conduct that makes an MP amenable to recall. Hence, recommended amending the provision to harmonize the grounds for recall of an MP with those of an MCA as amended in section 27 of the County Governments Act, Cap. 265 following a court's decision declaring that section and section 45 of the Elections Act as unconstitutional.

81. **IEBC** proposed the deletion of section 45 and substitution with sections 27, 28 and 29 of the County Governments Act, with necessary modifications, to operationalize Article 104 of the Constitution and the court's decision in ***Constitutional Petition 209 of 2016: Katiba Institute and Another v Attorney General and Another*** that mandated Parliament to enact provisions on recall for MPs.

Committee Observation

82. The Committee observed that the High Court in ***Katiba Institute & Another v Attorney General & Another [2017] KEHC 4648 (KLR)*** declared sections 45(2), (3) and (6), section 46(1)(b)(ii) and (c) and section 48 of the Elections Act, Cap. 7 to be unconstitutional. Also, sections 27(2), (3) and (6) and section 28(1)(b)(ii) and (c) of the County Governments Act, Cap. 265 were declared to be unconstitutional. Therefore, there is need to align the provisions of Part IV on recall of MP with the orders given by the court.

Clause 28

83. **KLRC** submitted that the proposal offends Article 88(e) of the Constitution that mandates IEBC to settle electoral disputes including disputes relating to or arising from nominations.

84. **ORPP** noted that the proposal relates to a proposed NADCO constitutional amendment which may not precede the passage of the instant Bill. **ORPP**, therefore, proposed

retaining the IEBC's mandate to resolve disputes emanating from decisions of the returning officers to avoid a lacuna in law.

85. **IEBC** submitted that repealing section 74 is unconstitutional because Article 88(4)(e) of the Constitution provides that the IEBC has the mandate of settling electoral disputes including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results. Also, **IEBC** proposed amendments to provide for a clear mechanism for the IEBC to hear and determine electoral disputes.

Committee Observation

86. The Committee observed that the ***Joint Report of the National Assembly Departmental Committee on Justice and Legal Affairs and the Senate Standing Committee on Justice, Legal Affairs and Human Rights on Consideration of the NADCO and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle,*** proposed the deletion of Article 88(4)(e) of the Constitution. Therefore, this Bill may be considered together with the Constitution of Kenya (Amendment) Bill proposed by NADCO to avoid a lacuna in law.

Clause 29

87. **COG** proposed deleting sub-clause (3) because the right of appeal cannot be limited by virtue of Article 163(4) of the Constitution.

88. **TAA** proposed that the Bill be amended to establish a specialized Election Dispute Tribunal under the IEBC to expedite the resolution of election-related disputes.

89. **IEBC** proposed that appeals shall lie to the High Court on matters of law only.

Committee Observation

90. The Committee observed that limiting appeals to matter of law only may lead to injustice if a decision is based on flawed facts.

Clause 31

91. **IEBC** proposed that retaining the provision that appeals to the Court of Appeal with respect to election petitions shall be limited to matters of law only.

Committee Observation

92. The Committee observed that limiting appeals to matter of law only may lead to injustice if a decision is based on flawed facts.

Clause 32

93. **ORPP** proposed including a review of the law and processes of developing party lists and designation of special seats to ensure exhaustiveness.

94. **TAA** proposed amending the new proposed section 87A to require the Commission to establish a public consultation process as part of the evaluation, involving civil society, media and professional bodies to promote the inclusion of diverse perspectives in evaluating elections.

95. **IEBC** submitted that the provision on evaluation of elections is over prescriptive. It further proposed that the evaluation be extended to 18 months; inclusion of review of

party list processes and consequential amendment to section 24A of the IEBC Act, Cap. 7C that provides for review of conduct of general elections to avoid double legislation of one process in two statutes.

Committee Observation

96. The Committee observed that Article 88(4)(h) of the Constitution provides that the IEBC shall be responsible for facilitating evaluation of elections. Section 24A of the IEBC Act, Cap. 7C provides for review of conduct of general elections. If the Bill is passed as proposed, there will be two Acts of Parliament regulating a similar process.

NEW PROPOSALS TO THE ELECTIONS ACT, CAP. 7

Section 2

97. **IEBC** proposed the insertion of a new definition of forensic image to be used in scrutiny as follows:

> *"'Forensic Image' means an exact duplicate of a digital storage device such as a server, computer, laptop, tablet or memory card collected in a manner that preserves the contents of the storage device for purposes of presentation and analysis by the court."*

Section 6A

98. **IEBC** noted the conflicting timelines between verification and inspection of voters and thus proposed amending section 6A by deleting sub-section (1) and substituting therefor:

> *"The Commission shall open the Register of Voters for verification of Biometric data by members of the Public for a period that the Commission may consider appropriate."*

Section 8

99. **IEBC** noted that there is no mechanism for publication of the list of deceased voters before deletion as the Act only provides for the deletion of the names of the deceased voters without notifying the public of the list of deceased voters. In its view, it is important for the public to be notified of the intended deletion and therefore proposed insertion of a new sub-section (2)(ba) as follows:

> *"(i) In recommending the deletion of deceased voters under section 8(2)(b), the Commission shall publish the list of the reported deceased voters arising from the audit report.*
>
> *(ii) The Commission will invite disputes arising from the published report within a period the Commission may determine."*

100. **IEBC** further noted the need to make provision for incorporating the changes in the register of voters after altering the boundaries of counties, constituencies and wards by amending section 8 in accordance with Articles 89 and 94(3) of the Constitution.

Section 8A

101. **IRCK** proposed amending section 8A(1) of the principal Act to require an audit of the register of voters to be conducted at the end of every second year after every general election instead of six months before a general election.

Sections 16 and 19

102. **IEBC** was of the view that the process for initiation of an election following vacancy is exhaustively covered in sections 16(1) to (3) and 19(1) to (3) and thus sections 16(4) and 19(4) should be deleted.

Section 36

103. **IEBC** proposed that party lists for special seats should commence with the name of a female candidate and alternate between male and female candidate in priority in which they are listed to facilitate the implementation of the not more than two thirds gender principle and increase representation of women in the National Assembly. Hence, amendment of section 36(2) of the Act should be amended as follows:

> *"A party list submitted under section 1(a), (c), (d), (e) and (f) shall commence with the name of a female candidate and alternate between male and female candidates in the priority in which they are listed."*

Part V of the Act

104. **IEBC** noted that the provisions on referendum were found insufficient by the Court of Appeal in ***Civil Appeal No. E291 of 2021*** as consolidated with ***Civil Appeals No. E292, E293 and E294 of 2021, AG and Others vs David Ndii and Others.*** Therefore, IEBC proposed deletion of Part V and enactment of a separate Act on referendum.

Section 44

105. **IEBC** proposed that section 44(4)(a) of the Act be amended by deleting the phrase "procure and" to enable the Commission explore more options of acquisition of technology such as the technology being built internally.

106. **IEBC** proposed the deletion of section 44(5) and move the provision to section 109 which provides for the general mandate of the Commission to make Regulations.

Section 55A and 55B

107. **IEBC** noted that sections 55A and 55B relate to maintenance of secrecy at elections and postponement of elections, respectively, and are misplaced in Part V of the Act on referendum which is proposed for deletion. The Commission thus proposes amending the Act to move sections 55A and 55B to Part III of the Act that relate to election.

Section 82

108. **The CRADLE** proposed amending section 82 to prevent unnecessary delays in election petitions and ensure scrutiny remains within reasonable limits by to introducing a new sub-section (4) to read, "An election court may extend a scrutiny of votes beyond the polling stations or areas mentioned in the pleadings if there is prima facie evidence of irregularities or fraud."

Section 83

109. **IEBC** noted that the court in ***Katiba Institute and 3 Others vs Attorney General and 2 Others (2018)eKLR*** rendered itself on the parameters for determining an election petition where it held that, *"...there was no constitutional compulsion or rational in amending section 83 of the Act to remove the disjunctive word 'or' and introduce the conjunctive word 'and' so that only where there are failures in complying with the Constitution and election laws and they substantially affect the results, should an election be nullified."* IEBC, therefore, proposed amending section 83 to delete the word 'and' and replace it with 'or' to ensure compliance with the principles of electoral system in the Constitution.

Section 109

110. **IEBC** noted that sub-sections (3) and (4) are spent and thus need for clarity in the Act that the Commission can make Regulations subject to public participation and publication.

The Commission thus proposed amending section 109 by deleting sub-section (3) and (4) and substituting therefor a new sub-section 3 to read as follows:

"The Commission shall make or review its regulations and publish them in the Gazette, not later than four months prior to the date of a general election after subjecting them to public participation."

General

111. **TAA** proposed additional recommendations based on global best practices including requiring that annual capacity-building programs be held for election officials to ensure they are well-equipped to effectively manage the electoral process.

112. **TAA** also proposed further amending the Bill to include provisions for gender and minority representation in the nomination and registration of candidates in accordance with Article 27 of the Constitution.

Committee Observation

113. Relating to the new proposals, the Committee noted that they may be introduced in a separate Bill as they would offend Standing Order 133(5) of the National Assembly Standing Orders which provides that, *"No amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill."*

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

114. Upon reviewing the Bill and the submissions received, the Committee made the following observations:

(1) The Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the NADCO which was established to facilitate dialogue and consensus building and thereafter recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya. Particularly, the Bill aims to address the issues on electoral justice and related matters.

(2) The Bill seeks to align the provisions of the Elections Act, Cap. 7 with the Constitution with respect to the function of the political parties to nominate candidates for election and the function of the IEBC to regulate the process by which parties nominate candidates for elections.

(3) Further, the Bill proposes to align various provisions of the Elections Act, Cap. 7 with various court pronouncements on, among other things, determination and declaration of presidential election results; recall of members of Parliament; and educational requirements for registration of candidates for election as Member of Parliament and member of county assembly.

(4) During consideration of the Bill, the Senate introduced the following amendments:
   (a) amended the definition of "political party";
   (b) deleted the proposed use of a "valid" passport in voter registration;
   (c) amended the proposed section 6(1A) of the Act to give the IEBC discretion in rectification of voter particulars;
   (d) amended the Bill to retain section 31(2B) of the Act on the requirement for parties to submit to the IEBC names of persons contesting in a party primary and the date of the party primary;
   (e) amended the Bill to retain section 31(2C) of the Act on the requirement for the IEBC to publish names of persons contesting in a party primary and the date of the party primary;
   (f) amended section 32(3) of the Act to limit the similarity of the symbol of an independent candidate to that of another independent candidate within the same county;
   (g) amended section 38A to alter the number of polling station from a maximum of 700 to between 50 and 1,000;
   (h) amended the proposed section 44(4A) to include the requirement that in procuring election technology, the IEBC shall ensure that processing of data is only effected through a server or data centre located in Kenya;
   (i) amended section 45 on the right to recall to prescribe the instances in which an MP may be recalled;
   (j) deleted the amendment to section 82 of the Act allowing an election court to extend scrutiny of votes beyond the polling stations or areas mentioned in the pleadings; and
   (k) amended the proposed section 82A on evaluation of elections to include a requirement that information requested from the IEBC is in accessible formats for persons living with disabilities.

CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

115. The Committee, having considered the Elections (Amendment) (No. 2) Bill *(Senate Bill No. 29 of 2024)* and the submissions from members of the public and stakeholders, recommends that the House **approves the Bill with the amendments** contained in the Schedule of Amendments forming Chapter Six of this Report.

SIGNED..... 13. 8. 025 ..... DATE.....

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRMAN
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 14 AUG 2025
DAY. THURSDAY
TABLED BY: CHAIRPERSON JUSTICE & LEGAL AFFAIRS HON. G. MURUGARA
CLERK-AT-THE-TABLE: Kanda Tililei

CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

116. In view of the observations made, the Committee proposed the following amendment to the Bill:

CLAUSE 2

THAT Clause 2 of the Bill be amended by deleting paragraph (c) and substituting therefor the following new paragraph—

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

"political party" has the meaning assigned to it under section 2 of the Political Parties Act;

Justification: The definition provided under the Political Parties Act is comprehensive as it provides for the nature and functions of a political party and includes a coalition political party. The definition of "political parties" under Article 260 of the Constitution prescribes the requirements of a political parties.

CLAUSE 3

THAT Clause 3 of the Bill be amended by deleting paragraph (c).

Justification: The proposed new section 5(3A) seeks to disqualify a person who registers as a voter during the period of suspension from eligibility to contesting in a by-election. The provision may be transferred to section 29 which outlines additional disqualifications for contesting in an election.

CLAUSE 4

THAT Clause 4 of the Bill be amended in paragraph (a) by deleting the proposed new subsection (1A) and substituting therefor the following new subsection—

(1A) The Commission shall rectify the particulars of voters at all times except—
(a) in the case of a general election or 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 declaration of the vacancy of the seat concerned and the date of such election within the affected electoral area; or
(c) in the case of a referendum, between the date of publication of the referendum question and the date of the referendum.

Justification: This seeks to make it mandatory for the IEBC to rectify the particulars of a voter upon inspection of the register by the voter. Also, the new subclause substitutes the word "revise" with "rectify" to clarify that the obligation placed on the IEBC is to correct an error that may be identified in the particulars of a voter upon inspection by the voter.

CLAUSE 9

THAT Clause 9 of the Bill be amended in paragraph (a) by inserting the word "assembly" immediately after the word "county" in the proposed new paragraph (b).

Justification: This is to clarify that the registration done by IEBC relate to the county assembly elections.

CLAUSE 10

THAT Clause 10 of the Bill be amended by inserting the following new paragraphs after paragraph (b)—

(ba) deleting subsection (1A);
(bb) deleting subsection (1B);

Justification: Sections 22(1A) and (1B) were introduced through the Election Laws (Amendment), 2017 which introduced the educational requirements for registration as candidates for election as Member of Parliament and member of county assembly and the commencement of the educational requirements to candidates who contested in elections after the general election held in 2017. These educational requirements were declared unconstitutional in the case of ***Wambui & 10 others v Speaker of the National Assembly & 6 others Constitutional Petition 28 of 2021 & Petition E549, E077, E037 & E065 of 2021 (Consolidated).*** Therefore, the proposed amendments to delete subsections (1A) and (1B) seeks to clean up section 22.

CLAUSE 16

THAT Clause 16 of the Bill be amended by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) in subsection (3) by—
(i) deleting paragraph (b) and substituting therefor the following new paragraph—
(b) is the symbol of another independent candidate within the same county or of a political party; or

(ii) deleting paragraph (c) and substituting therefor the following ne paragraph—
(c) so nearly resembles the symbol of another independent candidate within the same county or political party or any other legal entity registered under any other written law.

Justification: To correct an error in the cross-reference and to limit the resemblance of symbols to candidates within the same county.

CLAUSE 21

THAT Clause 21 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) by deleting the words "seven hundred" appearing immediately after the word "exceed" and substituting therefor the words "one thousand".

Justification: As submitted by IEBC, expanding the maximum number of number of voters per polling station will help reduce the cost of elections. Also, removing the lower limit of 50 persons as amended by the Senate will carter for far-flung areas with diverse needs.

CLAUSE 25

THAT the Bill be amended by deleting Clause 25 and substituting therefor the following new Clause—

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

Justification: The grounds for recalling an MP as introduced by the Senate will be difficult to measure. Also, the provisions of recalling an MP may be provided for in a stand-alone legislation.

CLAUSE 26

THAT the Bill be amended by deleting Clause 26 and substituting therefor the following new Clause—

26. The principal Act is amended by deleting section 46.

CLAUSE 30

Justification: The provisions of recalling an MP may be provided for in a stand-alone legislation.

THAT Clause 30 of the Bill be amended by deleting subsection (5) in the proposed new section 82A.

Justification: The mandatory requirement placed on the IEBC to ensure that information is in accessible format for PWDs may result in implementation challenges. A person requiring information may request the information to be in a particular format.

CLAUSE 32

THAT Clause 32 of the Bill amended in subsection (1) of the proposed new section 87A by deleting the words "one year" appearing immediately after the word "within" and substituting therefor the words "eighteen months".

Justification: To align the provision with section 24A of the IEBC Act which provides that the IEBC shall, after a general election, review its operations and that the review shall be completed within eighteen months.

NEW CLAUSES

THAT the Bill be amended by inserting the following new Clause after Clause 13—

Amendment of section 26 of Cap. 7.

13A. Section 26 of the principal Act is amended by inserting the following new subsection after subsection (1)—

(3) 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 section 5(1)(b) shall not be eligible to contest in the electoral area affected by the by-election.

Justification: Section 26 which provides for additional disqualifications for registration of a candidate is the appropriate section to provide for the disqualification as proposed by the Senate.

THAT the Bill be amended by inserting the following new Clause after Clause 26—

26A. The principal Act is amended by deleting section 47.

Justification: The provisions of recalling an MP may be provided for in a stand-alone legislation.

Annexure 1

Adoption Schedule

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT – 4TH SESSION-2025

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION OF THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024 (SENATE BILL NO. 29 OF 2024)

We, the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this Report of the Committee on the Elections (Amendment) (No. 2) Bill, 2024 (Senate Bill No. 29 of 2024), and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson .....
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chair .....
3. Hon. Gladys Boss, MGH, MP .....
4. Hon. Farah Maalim, EGH, MP .....
5. Hon. Silvanus Osoro Onyiego, CBS, MP .....
6. Hon. Tom Joseph Francis Kajwang', CBS, MP .....
7. Hon. Muchangi Karemba, CBS, MP .....
8. Hon. Timothy Wanyonyi Wetangula, CBS, MP .....
9. Hon. (Dr.) Otiende Amollo, SC, EBS, MP .....
10. Hon. Michael Mwangi Muchira, MP ..... Virtually
11. Hon. Aden Daud, EBS, MP ..... Virtually
12. Hon. John Okwisia Makali, MP .....
13. Hon. Stephen M. Mogaka, MP ..... Virtually
14. Hon. Amina Udgoon Siyad, MP ..... Virtually
15. Hon. CPA Suleka Hulbale Harun, MP ..... Virtually

Annexure 2

Minutes

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION-2025
DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 61ST SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD IN COMMITTEE ROOM 16, 3RD FLOOR, BUNGE TOWER ON TUESDAY 12TH AUGUST 2025 AT 10:00 AM

PRESENT

1. Hon. Murugara George Gitonga, MP - *Chairperson*
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - *Vice Chairperson*
3. Hon. Muchira Michael Mwangi, MP - *virtually*
4. Hon. Muchangi Karemba, CBS, MP
5. Hon. Aden Daud, EBS, MP - *virtually*
6. Hon. Mogaka Stephen M. MP - *virtually*
7. Hon. Siyad Amina Udgoon, MP - *virtually*
8. Hon. CPA. Sulekha Hulbale Harun, MP - *virtually*

ABSENT WITH APOLOGIES

1. Hon. Francis Kajwang' Tom Joseph, MP
2. Hon. Gladys Boss, MGH, MP
3. Hon. Onyiengo Silvanus Osoro, CBS, MP
4. Hon. Maalim Farah, EGH, MP
5. Hon. Francis Kajwang' Tom Joseph, CBS, MP
6. Hon. (Dr.) Otiende Amollo, SC, EBS, MP
7. Hon. Makali John Okwisia, MP

SECRETARIAT

1.	Mr. Abdikafar Abdi	-	Clerk Assistant III
2.	Ms. Jael Ayiego	-	Clerk Assistant III
3.	Mr. Isaac Nabiswa	-	Legal Counsel II
4.	Ms. Vivienne Ogega	-	Research Officer III
5.	Mr. Samuel Kioko	-	JLAC attaché from Starehe Boys Centre

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Matters arising
5. Adoption of the Report on the Consideration of the Elections (Amendment) (No.2) Bill, 2024 (Senate Bill No. 29 of 2024)
6. Any Other Business
7. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/287/2025: PRELIMINARIES

The meeting was called to order at twenty-five minutes past ten o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves. The agenda was adopted having been proposed by Hon. Muchira Michael Mwangi, MP and seconded by Hon. Mutuse Eckomas Mwengi, OGW, MP.

MIN. NO. DDC/JLAC/288/2025: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred.

MIN. NO. DDC/JLAC/289/2025: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE ELECTIONS (AMENDMENT) (NO.2) BILL, 2024 (SENATE BILL NO. 29 OF 2024)

Committee Observations

Upon reviewing the Bill and the submissions received, the Committee made the following observations:

(1) The Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the NADCO which was established to facilitate dialogue and consensus building and thereafter recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya. Particularly, the Bill aims to address the issues on electoral justice and related matters.

(2) The Bill seeks to align the provisions of the Elections Act, Cap. 7 with the Constitution with respect to the function of the political parties to nominate candidates for election and the function of the IEBC to regulate the process by which parties nominate candidates for elections.

(3) Further, the Bill proposes to align various provisions of the Elections Act, Cap. 7 with various court pronouncements on, among other things, determination and declaration of presidential election results; recall of members of Parliament; and educational requirements for registration of candidates for election as Member of Parliament and member of county assembly.

(4) During consideration of the Bill, the Senate introduced the following amendments:

(a) amended the definition of "political party";

(b) deleted the proposed use of a "valid" passport in voter registration;

(c) amended the proposed section 6(1A) of the Act to give the IEBC discretion in rectification of voter particulars;

(d) amended the Bill to retain section 31(2B) of the Act on the requirement for parties to submit to the IEBC names of persons contesting in a party primary and the date of the party primary;

(e) amended the Bill to retain section 31(2C) of the Act on the requirement for the IEBC to publish names of persons contesting in a party primary and the date of the party primary;

(f) amended section 32(3) of the Act to limit the similarity of the symbol of an independent candidate to that of another independent candidate within the same county;

(g) amended section 38A to alter the number of polling station from a maximum of 700 to between 50 and 1,000;

(h) amended the proposed section 44(4A) to include the requirement that in procuring election technology, the IEBC shall ensure that processing of data is only effected through a server or data centre located in Kenya;
(i) amended section 45 on the right to recall to prescribe the instances in which an MP may be recalled;
(j) deleted the amendment to section 82 of the Act allowing an election court to extend scrutiny of votes beyond the polling stations or areas mentioned in the pleadings; and
(k) amended the proposed section 82A on evaluation of elections to include a requirement that information requested from the IEBC is in accessible formats for persons living with disabilities.

Committee Recommendations

The Committee, having considered the Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024) and the submissions from members of the public and stakeholders, resolved to recommend that the House approves the Bill with the amendments contained in the Schedule of Amendments forming Chapter Six of its Report.

Adoption of the Report

The Committee adopted its Report having been proposed by Hon. Mutuse Eckomas Mwengi, OGW, MP and seconded by Hon. Muchangi Karemba, CBS, MP.

MIN. NO. DDC/JLAC/290/2025: ADJOURNMENT

There being no other business, the meeting was adjourned at five minutes past eleven o'clock. The next meeting will be held on notice.

SIGNED: ..... **DATE:** 13.8.025

(CHAIRPERSON HON. MURUGARA GEORGE GITONGA, CBS, MP)

Annexure 3

The Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024)

REPUBLIC OF KENYA

PARLIAMENT

RECEIVED
12 FEB 2025
National Assembly
Table Office

SENATE BILLS
(*Bill No. 29 of 2024*)

THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024

(A Bill published in the Kenya *Gazette* Supplement No. 99 of 7th May, 2024 and passed by the Senate, with amendments, on 5th December, 2024)

THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024

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)(No. 2) Act, 2024.

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 Article 260 of the Constitution;

(d) inserting the word "valid" immediately before the words "Kenyan passport" in the definition of "identification document"; and

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

"registration of a candidate" means the process through which a person applies to and is cleared by 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) 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 by 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 may revise the particulars of voters at any time 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 within the affected electoral area; 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

6. Section 14 of the principal Act is amended in

No. 24 of 2011. 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—

(b) 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 election for a county governor;

(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—

(b)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—

(a) 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.

(b) in subsection (2A) by deleting the words "from a political party under subsection (1)" appearing immediately after the words "the nomination rules" and substituting thereof the words "under subsection (1) and (1B)".

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 (2E); and

(c) 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;

(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"; and

(c) in subsection (3) by deleting the word "candidate" appearing immediately after the words "the symbol of another" in paragraph (a) and substituting therefor the words "independent candidate within the same county".

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 No. 24 of 2011.

18. The principal Act is amended by inserting the following 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 section 38A of No. 24 of 2011.

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

(a) renumbering it 38B; and

(b) by deleting the words "not exceed seven hundred" appearing immediately after the words "polling station shall not exceed" and substituting therefor the words "by between fifty and one thousand".

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;

No. 24 of 2019

(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; and

(iv) processing of data is only effected through a server or a data centre located in Kenya.

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. Section 45 of the principal Act be amended by—

(a) deleting subsection (2) and substituting therefore the following new subsection—

(2) A member may be recalled on the following grounds—

(a) misconduct likely to bring hatred, ridicule, contempt or disrepute to the office; and,

(b) persistent desertion of the electorate without reasonable cause.

(b) deleting subsection (3); and

(c) deleting subsection (6).

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 sub-section (4) by the High Court shall be final.

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

30. 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.

(5) The Commission shall, in ensuring access to information, ensure that the information is in accessible formats for persons with disability where such a request is made or where the information is required to be made available to the general public.

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

31. 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.

32. 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.

I certify that this printed impression is a true copy of the Bill as passed by the Senate on Thursday, 5th December, 2024.

Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of Standing Order 161 of the Senate Standing Orders.

Speaker of the Senate

PRINTED BY THE CLERK OF THE SENATE

Annexure 4

Advertisement inviting the public to submit memoranda on the Bill

Eaagads Ltd

(Company Number: C.5/54)

The Capital Markets Act
(Chapter 485A of the Laws of Kenya)
Capital Markets (Public Offers, Listings and Disclosures) Regulations, 2023

PUBLIC ANNOUNCEMENT

CHANGE IN THE OPERATING MODEL

The Board of Directors of Eaagads Limited **(the Company)** wishes to notify its esteemed shareholders, the general investor community and the public of the discontinuation of the outsourced management function of the Company's coffee operations from Coffee Management Services Limited **(CMS)** effective **1st April,2025.**

The activities that have been brought inhouse include coffee production, coffee quality, milling, cost management, marketing strategies and sales.

The transition is expected to have minimal impact on employees engaged in the Company's operations. They will continue under their current terms of employment.

This change is designed to streamline processes and enhance efficiency ultimately delivering improved financial results for the shareholders.

The Board thanks CMS for their valued services over the years in ensuring the coffee farm is a premier coffee producer.

By order of the Board

Date: 12th February 2025

Winnie Jumba
Company Secretary

DISCLAIMER: This announcement is for informational purposes only. As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this announcement.

THIRTEENTH PARLIAMENT - FOURTH SESSION (2025)
THE NATIONAL ASSEMBLY
IN THE MATTER OF ARTICLE 118(1) (B) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF SESSIONAL PAPER NO. 1 OF 2025 ON THE FOREIGN POLICY OF THE REPUBLIC OF KENYA

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS Sessional Paper No. 1 of 2025 on the Foreign Policy of the Republic of Kenya was submitted to the National Assembly and referred to the Departmental Committee on Defence, Intelligence and Foreign Relations for consideration and reporting to the House;

IT IS NOTIFIED that Sessional Paper No. 1 of 2025 on the Foreign Policy of the Republic of Kenya seeks to enhance the country's standing as a regional leader and an effective advocate of Africa's interests at a global stage. The specific objectives of the Policy are to—

1. Protect Kenya's sovereignty and territorial integrity;
2. Promote regional and global peace and security;
3. Advance the country's development agenda and economic prosperity;
4. Position Kenya as a leader in environmental and climate action;
5. Project, promote and protect the county's image and prestige globally;
6. Promote sub regional and regional integration and cooperation;
7. Promote international cooperation multilateralism and active participation in global governance; and
8. Enhance the voice of Kenyans in diaspora and promote and protect their interests and welfare abroad.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution, the Clerk of the National Assembly hereby invites the public to submit memoranda on the Sessional Paper to the **Departmental Committee on Defence, Intelligence and Foreign Relations.**

Copies of the Sessional Paper are available at the National Assembly Table Office, Main Parliament Buildings and on **http://www.parliament.go.ke/the-national-assembly/house-business/paper-laid**

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to **cna@parliament.go.ke** to be received on or before **Tuesday, 4th March 2025** at **5.00 p.m.**

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
19th February 2025

"For the Welfare of Society and the Just Government of the People"

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FOURTH SESSION (2025)

IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF—
(1) THE COMPUTER MISUSE AND CYBERCRIME (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 41 OF 2024);
(2) THE PUBLIC TRANSPORT (MOTORCYCLE REGULATIONS) BILL (SENATE BILL NO. 38 OF 2023);
(3) THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILL NO. 40 OF 2023);
(4) THE FIRE AND RESCUE SERVICES PROFESSIONALS BILL (SENATE BILL NO. 55 OF 2023);
(5) THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL (SENATE BILL NO. 12 OF 2024);
(6) THE POLITICAL PARTIES (AMENDMENT) (No. 2) BILL (SENATE BILL NO. 26 OF 2024); AND
(7) THE ELECTIONS (AMENDMENT) (No. 2) BILL (SENATE BILL NO. 29 OF 2024)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the **Computer Misuse and Cybercrime (Amendment) Bill (National Assembly Bill No. 41 of 2024)**, the **Public Transport (Motorcycle Regulations) Bill (Senate Bill No. 38 of 2023); the Public Finance Management (Amendment) Bill (Senate Bill No. 40 of 2023)**; the **Fire and Rescue Services Professionals Bill (Senate Bill No. 55 of 2023); the Intergovernmental Relations (Amendment) Bill (Senate Bill No. 12 of 2024); the Political Parties (Amendment) (No.2) Bill (Senate Bill No. 26 of 2024; and the Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024)** were Read a First Time and referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that—

(1) The **Computer Misuse and Cybercrime (Amendment) Bill (National Assembly Bill No. 41 of 2024)** is sponsored by **Hon. Aden Daud Mohamed, MP.** The Bill seeks to amend the Computer Misuse and Cybercrimes Act, Cap 79C to prohibit the use of electronic mediums to promote terrorism and extreme religious cultic practices.

(2) The **Public Transport (Motorcycle Regulations) Bill (Senate Bill No. 38 of 2023)** is sponsored by **Sen. Boni Khalwale, MP.** The Bill seeks to put in place a legal framework to regulate the use of motorcycles (bodabodas) in Kenya by introducing new provisions for their registration, operation, and safety at the county level.

(3) The **Public Finance Management (Amendment) Bill (Senate Bill No. 40 of 2023)** is sponsored by **Sen. Hamida Ali Kibwana, MP.** The Bill seeks to amend the Public Finance Management Act, No. 18 of 2012 to require county governments to develop and implement a county revenue collection system. This will boost revenue collection by the county governments and ensure counties realise their revenue targets. Further, the Bill proposes to amend the Public Finance Management Act to provide for the process of funding of functions that have been transferred from one level of government to another under Article 187 of the Constitution.

(4) The **Fire and Rescue Services Professionals Bill (Senate Bill No. 55 of 2023)** is sponsored by Sen. Mohamed Abass Sheikh, MP. The Bill seeks to establish a regulatory and institutional framework for the fire and rescue services professionals and to provide for the registration, licensing, and training of the fire and rescue services professionals.

(5) The **Intergovernmental Relations (Amendment) Bill (Senate Bill No. 12 of 2024)** is sponsored by the **Senate Majority Leader**. The Bill seeks to amend the Intergovernmental Relations Act, No. 2 of 2012 to establish a structured framework for intergovernmental relations. This will enhance intergovernmental relations amongst the national government, County executive and County assemblies.

(6) The **Political Parties (Amendment) (No.2) Bill (Senate Bill No. 26 of 2024)** is co-sponsored by the **Senate Majority Leader** and the **Senate Minority Leader.** 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.

(7) The **Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024)** is co-sponsored by the Senate Majority Leader and the Senate Minority Leader. 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.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and National Assembly Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the Departmental Committees specified below—

S/NO.	BILL	COMMITTEE
1.	The Computer Misuse and Cybercrime (Amendment) Bill (National Assembly Bill No. 41 of 2024)	Communication, Information and Innovation
2.	The Public Transport (Motorcycle Regulations) Bill (Senate Bill No. 38 of 2023)	Transport and Infrastructure
3.	The Public Finance Management (Amendment) Bill (Senate Bill No. 40 of 2023)	Finance and National Planning
4.	The Fire and Rescue Services Professionals Bill (Senate Bill No. 55 of 2023)	Regional Development
5.	The Intergovernmental Relations (Amendment) Bill (Senate Bill No. 12 of 2024)	
6.	The Political Parties (Amendment) (No.2) Bill (Senate Bill No. 26 of 2024)	Justice and Legal Affairs
7.	The Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024)	

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings, and on ***ww.parliament.go.ke/the-national-assembly/house-business/bills.***
The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842- 00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings**, Nairobi; or emailed to ***cna@parliament.go.ke*** to be received on or before **Wednesday, 5th March, 2025** at **5.00 p.m.**

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
19th February, 2025

"For the Welfare of Society and the Just Government of the People"

REPUBLIC OF KENYA

13TH PARLIAMENT – FOURTH SESSION – 2025

THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF SESSIONAL PAPER NO. 1 OF 2025 ON THE FOREIGN POLICY OF THE REPUBLIC OF KENYA

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS Sessional Paper No. 1 of 2025 on the *Foreign Policy of the Republic of Kenya* was submitted to the National Assembly and referred to the Departmental Committee on Defence, Intelligence and Foreign Relations for consideration and reporting to the House;

IT IS NOTIFIED that Sessional Paper No. 1 of 2025 on the Foreign Policy of the Republic of Kenya seeks to enhance the country's standing as a regional leader and an effective advocate of Africa's interests at a global stage. The specific objectives of the Policy are to:-

(1) Protect Kenya's sovereignty and territorial integrity;
(2) Promote regional and global peace and security;
(3) Advance the country's development agenda and economic prosperity;
(4) Position Kenya as a leader in environmental and climate action;
(5) Project, promote and protect the county's image and prestige globally;
(6) Promote sub regional and regional integration and cooperation;
(7) Promote international cooperation multilateralism and active participation in global governance; and
(8) Enhance the voice of Kenyans in diaspora and promote and protect their interests and welfare abroad.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution, the Clerk of the National Assembly hereby invites the public to submit memoranda on the Sessional Paper to the **Departmental Committee on Defence, Intelligence and Foreign Relations**.

Copies of the Sessional Paper are available at the National Assembly Table Office, Main Parliament Buildings and on http://parliament.go.ke/the-national-assembly/house-business/paper-laid

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi;** or emailed to **cna@parliament.go.ke** to be received on or before **Tuesday, 4th March 2025** at **5.00 p.m.**

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
18th February 2025

"For the Welfare of Society and the Just Government of the People"

---

eaagads Ltd.

(Company Number: C.5/54)

The Capital Markets Act
(Chapter 485A of the Laws of Kenya)
Capital Markets (Public Offers, Listings and Disclosures) Regulations, 2023

PUBLIC ANNOUNCEMENT

CHANGE IN THE OPERATING MODEL

The Board of Directors of Eaagads Limited (**the Company**) wishes to notify its esteemed shareholders, the general investor community and the public of the discontinuation of outsourced management function of the Company's coffee operations from Coffee Management Services Limited (**CMS**) effective **1st April,2025**.

The activities that have been brought inhouse include coffee production, coffee quality, milling, cost management, marketing strategies and sales.

The transition is expected to have minimal impact on employees engaged in the Company's operations. They will continue under their current terms of employment.

This change is designed to streamline processes and enhance efficiency ultimately delivering improved financial results for the shareholders.

The Board thanks CMS for their valued services over the years in ensuring the coffee farm is a premier coffee producer.

By order of the Board
Date: 12th February 2025
Winnie Jumba
Company Secretary

DISCLAIMER: *This announcement is for informational purposes only. As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this announcement.*

REPUBLIC OF KENYA

13TH PARLIAMENT – FOURTH SESSION – 2025

THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:-

(1) THE COMPUTER MISUSE AND CYBERCRIME (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 41 OF 2024);
(2) THE PUBLIC TRANSPORT (MOTORCYCLE REGULATIONS) BILL (SENATE BILL NO. 38 OF 2023);
(3) THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILL NO. 40 OF 2023);
(4) THE FIRE AND RESCUE SERVICES PROFESSIONALS BILL (SENATE BILL NO. 55 OF 2023);
(5) THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL (SENATE BILL NO. 12 OF 2024);
(6) THE POLITICAL PARTIES (AMENDMENT) (No. 2) BILL (SENATE BILL NO. 26 OF 2024); AND
(7) THE ELECTIONS (AMENDMENT) (No. 2) BILL (SENATE BILL NO. 29 OF 2024)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the **Computer Misuse and Cybercrime (Amendment) Bill (National Assembly Bill No. 41 of 2024);** the **Public Transport (Motorcycle Regulations) Bill (Senate Bill No. 38 of 2023);** the **Public Finance Management (Amendment) Bill (Senate Bill No. 40 of 2023);** the **Fire and Rescue Services Professionals Bill (Senate Bill No. 55 of 2023);** the **Intergovernmental Relations (Amendment) Bill (Senate Bill No. 12 of 2024);** the **Political Parties (Amendment) (No.2) Bill (Senate Bill No. 26 of 2024**; and the **Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024)** were Read a First Time and referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:-

(1) The **Computer Misuse and Cybercrime (Amendment) Bill (National Assembly Bill No. 41 of 2024)** is sponsored by **Hon. Aden Daud Mohamed, MP**. The Bill seeks to amend the Computer Misuse and Cybercrimes Act, Cap 79C to prohibit the use of electronic mediums to promote terrorism and extreme religious cultic practices.

(2) The **Public Transport (Motorcycle Regulations) Bill (Senate Bill No. 38 of 2023)** is sponsored by **Sen. Boni Khalwale, MP**. The Bill seeks to put in place a legal framework to regulate the use of motorcycles (*bodabodas*) in Kenya by introducing new provisions for their registration, operation, and safety at the county level.

(3) The **Public Finance Management (Amendment) Bill (Senate Bill No. 40 of 2023)** is sponsored by **Sen. Hamida Ali Kibwana, MP**. The Bill seeks to amend the Public Finance Management Act, No. 18 of 2012 to require county governments to develop and implement a county revenue collection system. This will boost revenue collection by the county governments and ensure counties realise their revenue targets. Further, the Bill proposes to amend the Public Finance Management Act to provide for the process of funding of functions that have been transferred from one level of government to another under Article 187 of the Constitution.

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(7) The **Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024)** is co-sponsored by the **Senate Majority Leader** and the **Senate Minority Leader.** 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.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and National Assembly Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the Departmental Committees specified below:-

S/ NO.	BILL	COMMITTEE
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4.	The Fire and Rescue Services Professionals Bill (Senate Bill No. 55 of 2023)	Regional Development
5.	The Intergovernmental Relations (Amendment) Bill (Senate Bill No. 12 of 2024)	
6.	The Political Parties (Amendment) (No.2) Bill (Senate Bill No. 26 of 2024)	Justice and Legal Affairs
7.	The Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024)	

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings, and on **www.parliament.go.ke/the-national-assembly/house-business/bills**.

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842- 00100, Nairobi;** hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi;** or emailed to **cna@parliament.go.ke** to be received on or before **Wednesday, 5th March, 2025** at **5.00 p.m.**

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
18th February, 2025

"For the Welfare of Society and the Just Government of the People"

Annexure 5

Letter from the Clerk of the National Assembly inviting stakeholders to attend the public participation forum

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote:

Ref: NA/DDC/JLAC/2025/017 **10th April 2025**

Hon. Winfridah Boyani Mokaya, CBS
Chief Registrar of the Judiciary
Judicial Service Commission
Supreme Court Building
NAIROBI

CPA Marjan Hussein Marjan, MBS
Commission Secretary / Chief Executive Officer
Independent Electoral and Boundaries Commission
University Way, Anniversary Towers, 6th Floor
NAIROBI

Hon. Shadrack Mose, CBS
Solicitor General
The State Law Office and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Ms. Anne Njeri Nderitu, CBS
Registrar of Political Parties
Office of the Registrar of Political Parties
Lions Place, 1st Floor
Karuna Close, Waiyaki Way Westlands
NAIROBI

Mr. Joash Dache, MBS
Chief Executive Officer / Commission Secretary
Kenya Law Reform Commission,
Reinsurance Plaza, 3rd Floor, Taifa Road
NAIROBI

Ms. Florence W. Muturi
Chief Executive Officer
Law Society of Kenya (LSK)
Lavington, Opposite Valley Arcade, Gitanga Road
NAIROBI

Mr. Felix Owuor
Executive Director
Electoral Law and Governance Institute for Africa (ELGIA)
Landmark Plaza, 13th Floor Argwings Kodhek Rd
NAIROBI

Mr. Nyang'ori Ohenjo
Chief Executive Officer
Centre for Minority Rights Development
Kisamis Town, Magadi Road, Ongata Rongai
NAIROBI

Mr. Frankline Mukwanja
Executive Director
Centre for Multiparty Democracy
6th Floor, International House
Mama Ngina Street
NAIROBI

Mr. Joshua Changwony
Executive Director
Constitution and Reform Education Consortium
Matumbato 45, Off Upper Hill Road
NAIROBI

Mr. Mulle Musau
National Coordinator
Elections Observation Group (ELOG)
Jumuia Place, Lenana Road
NAIROBI

Mr. Ukeh Michael Obaje
Country Director
International Foundation of Electoral System
Embankment Plaza, Longonot Rd
NAIROBI

Ms. Nora Mbagathi
Executive Director
Katiba Institute
House No.5 - The Crescent-Off Parklands Road
NAIROBI

Mr. Evans Misati James
Chairman
Political Parties Liaison Committee
Lions Place, 1st Floor, Karuna Close
Waiyaki Way Westlands
NAIROBI

Mr. Linus Nthigai
Ag. Executive Director
Inter-Religious Council of Kenya
Mararo Avenue off Gitanga Road
NAIROBI

Ms. Oliver Waindi
Chairperson
Uraia Trust
Jacaranda Avenue, off Gitanga Road
NAIROBI

Ms. Caroline Gaita
Executive Director
Mzalendo Trust
ACK Garden House, 2nd Floor, Wing A
1st Ngong Avenue
NAIROBI

Dr. Wambua Kituku
Ag. Executive Director
Kituo cha Sheria
Ole Odume Rd, Off Argwings Kodhek Rd
NAIROBI

Ms. Mary Mwiti, EBS
Chief Executive Officer
Council of Governors
2nd Floor, Westlands Delta House, Waiyaki Way
NAIROBI

Arch. Sylvia Kasanga
The Architects Alliance
6th Floor, Fortis Tower
Woodvale Grove, Westlands
NAIROBI

The Cradle, The Children Foundation
702 Dhanjay Apartments
Hendred Avenue, off Gitanga Road
NAIROBI

Dear

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE POLITICAL PARTIES (AMENDMENT) (NO.2) BILL (SENATE BILL NO. 26 OF 2024); THE ELECTIONS OFFENCES (AMENDMENT) (NO.2) BILL (SENATE BILL NO. 28 OF 2024); AND THE ELECTIONS (AMENDMENT) (NO.2) BILL (SENATE BILL NO. 29 OF 2024) CO-SPONSORED BY THE SENATE MAJORITY LEADER AND SENATE MINORITY LEADER

The Departmental Committee on Justice and Legal Affairs is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and are mandated to ***inter alia, 'study and review all legislation referred to it.'***

The following three Bills are before the Committee for consideration and reporting back to the House:

1. The Political Parties (Amendment) (No.2) Bill (Senate Bill No. 26 of 2024) co-sponsored by the Senate Majority Leader and Senate Minority Leader;
2. The Elections Offences (Amendment) (No.2) Bill (Senate Bill No. 28 of 2024) co-sponsored by the Senate Majority Leader and Senate Minority Leader; and

3. The Elections (Amendment) (No.2) Bill (Senate Bill No. 29 of 2024) co-sponsored by the Senate Majority Leader and Senate Minority Leader.

The Bills seek 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.

Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. Due to the great public interest in the Bills, the Committee has resolved to meet critical stakeholders to make submissions on the Bills.

In this regard, the Committee invites you for a meeting on **Thursday, 17th April 2025** at **10:00am** at a venue, within Parliament Buildings, to be confirmed in due course. The agenda of the meeting is to receive your views on the Bills.

You are requested to prepare your written submissions in a matrix format that indicates the section of the Act, specific clause, proposed amendment and justification, for each of the Bills separately. Twenty (20) hard copies of the submissions to be availed to the meeting, soft copies of which may be sent to the Committee through the Office of the Clerk of the National Assembly via email: cna@parliament.go.ke by Wednesday, 16th April 2025.

Hard copies of the Bills are available at the National Assembly Table Office, Main Parliament Building while electronic copies may be accessed on the Parliament website: www.parliament.go.ke/the-national-assembly/house-bills for reference.

Our Liaison Officers on this matter are **Mr. Ahmed Salim** who may be contacted on tel. no. **0710204056** or email: ahmed.salim@parliament.go.ke **Ms. Jael Ayiego Kilaka** tel. no. **0725385945** or email: jael.kilaka@parliament.go.ke **Mr. Abdikafar Abdi Sheikh** on tel. no. **0715456503** or email: abdikafar.sheikh@parliament.go.ke.

Yours

JEREMIAH M. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: -

Hon. Dorcas Agik Oduor, SC, OGW, EBS
The Attorney General
The State Law Office and the Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Annexure 6

Memoranda by Stakeholders

COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref: COG/6/11 Vol. 4 (16)

5th March, 2025

Samuel Njoroge, CBS
The Clerk of the National Assembly
Parliament Buildings
Nairobi

Dear Mr. Njoroge,

LEGISLATIVE MEMORANDUM ON BILLS BEFORE VARIOUS COMMITTEES OF THE NATIONAL ASSEMBLY

Greetings.

The Council of Governors has reviewed the **The Intergovernmental Relations (Amendment) Bill (Senate Bill No. 12 of 2024)** and **The Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024)** hereby forwards its legislative memoranda attached herewith for your consideration.

Please accept the assurance of our highest esteem and consideration.

Yours sincerely,

Mary Mwiti, EBS
Chief Executive Officer

Copy: All Excellency Governors



LEGISLATIVE MEMORANDUM ON THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024(SENATE BILLS NO. 29 OF 2024)

FROM

THE COUNCIL OF GOVERNORS

TO

THE NATIONAL ASSEMBLY JUSTICE AND LEGAL AFFAIRS COMMITTEE

4TH MARCH, 2025

A. Introduction

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for cooperation, coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

Having reviewed the **Elections (Amendment) (No. 2) Bill, 2024(Senate Bills No. 29 of 2024),** the Council of Governors on behalf of the 47 County Governments submits the proposals highlighted herein below for consideration.

B. General comments

1. On 16th August 2023 and 29th August 2023, the National Assembly and the Senate, respectively approved a Motion that established the National Dialogue Committee to facilitate dialogue and consensus building and recommend appropriate legal and policy reforms on various issues including elections.

2. In undertaking this mandate, the National Dialogue Committee received views from various stakeholders including the Council of Governors.

3. Consequently, the National Dialogue Committee in its final report recommended that Parliament amends the Elections Act, 2011 to repeal various provisions of the Act that were declared unconstitutional by the Honourable Court in the case ***of Katiba Institute & 3Others v Attorney General & Others, Constitutional Petition No. 548 of 2017 in the High Court of Kenya at Nairobi***.

4. The Council posits that the previous General Elections have exposed a lacuna in our Electoral laws and therefore there is need for urgent amendments to align with the constitution and the principles governing free and fair elections as enshrined under Articles 10, 81 and 86 of the Constitution.

5. In this regard, the Council appreciates the work and the efforts made towards development of the **Elections (Amendment) (No. 2) Bill, 2024(Senate Bills No. 29 of 2024),** which is not only timely but very critical in enhancing transparency and accountability of the electoral process.

C. Specific Comments

The following is a tabulated analysis of the specific areas of concern that should be considered/ addressed if the bill is to result in a legislation that is in line with the constitution.

Clause	Provision	CoG's proposal	Rationale/Justification
25	25. The principal Act is amended by deleting section 45.	Include a new clause titled **"consequential amendment"** to read as follows: **consequential amendment** **Section 27(2)(3) and (6) and 28(1)(b)(ii)(c) of the County Governments Act Cap 265 is repealed.**	This is in line with the case ***of Katiba Institute & another v Attorney General & Another, Constitutional Petition No, 209 of 2016 in High Court of Kenya at Nairobi*** that declared sections 45(2)(3)and (6), 46(1)(b)(ii) and (c) and 48 of the Elections Act and sections 27(2)(3) and (6) and 28(1)(b)(ii) and (c) of the County Governments Act unconstitutional and short of the constitutional imperative in Article 104 of the Constitution which bestows upon the voters the right to recall their representatives.
32	32. Section 85A of the principal Act is amended – (a)	**Amend by deleting clause 32(3) in its entirety.**	The Council posits that the right of appeal cannot be limited by virtue of Article 163(4) which states that Appeals shall lie from the

	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.	.	Court of Appeal to the Supreme Court- (a) As of right in any case involving the interpretation or application of this Constitution; and (b) In any other case in which the Supreme Court, or the Court of Appeal, certifies that a matter of general public importance is involved, subject to clause (5). Further, the Supreme Court's jurisdiction to hear appeals from the Court of Appeal, including appeals emanating from election of a county governor flows from the Constitution and hence cannot be limited.

D. Conclusion

The Council requests the Senate to consider incorporating these recommendations to enhance transparency and accountability in the electoral process. Further, these recommendations are critical as they ensure our Electoral laws conform to emerging practices.

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

MEMORANDUM

TO THE NATIONAL ASSEMBLY

ON

THE ELECTIONS (AMENDMENT) (NO.2) BILL

(Senate Bill No. 29 of 2024)

16th APRIL, 2025

Independent Electoral & Boundaries Commission (I.E.B.C)
Anniversary Towers, Off University Way
P.O. Box 45371-00100, Nairobi-Kenya
Telephone: +254 (0) 20 2992

Introduction

1. The Independent Electoral and Boundaries Commission established under Article 88 of the Constitution is responsible for the conduct or supervision of referenda and elections to any elective body or office established by the Constitution and any other elections prescribed by an Act of Parliament.

2. The IEBC is a Constitutional Commission established under **Chapter 15** of the Constitution with particular reference to **Article 249(1)** which sets out the objects of Constitutional Commissions.

3. The general functions of IEBC and other Commissions are set out under **Article 252(1).** However, the specific mandate of the Commission is primarily governed by Article 88(4) of the Constitution and the IEBC Act.

4. It is informative to note that after the 2017 General Election, the Commission embarked on a broader legal reform agenda with the intention of identifying gaps in law, ambiguities and inconsistencies and proposing areas for review towards enhancing efficiency and effectiveness in the management of future elections. The overarching object was to infuse change in the electoral legal framework with a view to improving election management.

5. You may wish to note that this broader review of laws governing elections resulted in the development of several Bills that unfortunately were not enacted into law. A detailed Electoral Law Reform in Kenya: The IEBC Experience Report informing the legal reform agenda was also developed and shared with Parliament. *(A copy is attached for ease of reference)*

6. Notably, this process was informed by extensive discussions at operational and administrative level including comparative analysis of other similar electoral systems and electoral management bodies. The study identified areas for electoral reform in the following areas:

1.1.1. IEBC Act, 2011 generally with particular focus on the structure and operations of the Commission;

1.1.2. Elections generally with a focus on voter eligibility and registration, and candidate eligibility and nomination;

1.1.3. Political party regulation with a focus on campaign finance, party primaries and party lists;

1.1.4. Public/Stakeholder participation with respect to voter education, media, observers, monitors and agents;

1.1.5. Conduct of election with a focus on polling, counting and management of results;

1.1.6. Election Dispute Resolution with respect to, candidate nomination complaints, Peace Committees, IEBC Dispute Resolution Committee, Political Parties Dispute Tribunal, Electoral Code of Conduct Enforcement Committee, High Court, and the Supreme Court jurisdictions;

1.1.7. ICT in elections with regard to registration and Identification of votes, development and deployment of nomination software (CRMS) and transmission of election results;

1.1.8. Voter Registration processes and challenges.

7. The Commission notes the Bills under reference and makes submissions:

Purpose of the Bill

8. The Bill seeks among others to amend the Elections Act, 2011 and provide clarity on provisions raising ambiguity.

General Comments

9. Following the 2022 General Election, the Commission conducted a post-election evaluation exercise drawing lessons based on the challenges experienced in the election process. Through this exercise, the Commission was able to ascertain what worked well

and what did not work well. The Commission was able to identify all electoral and legal gaps experienced before, during and after the elections.

10. The Commission in consultation with the Justice and Legal Affairs Committee of both Houses of Parliament developed proposals for review of the said laws and after a series of consultative meetings with JLAC, reduced the same into the draft legislation submitted to Parliament and the National Dialogue Committee (NADCO) for consideration.

Specific Comments

11. The Commission appreciates that a majority of its proposals were considered in the drafting of this Bill which were informed by extensive discussions at operational and administrative level including comparative analysis of other similar electoral systems and electoral management framework. It identifies with reforms around the conduct of elections generally with a focus on voter eligibility and registration, and candidate eligibility and nomination.

12. The Bill also addresses related matters on political party regulation and pre-election dispute resolution in respect to nomination of candidates for elections.

13. ICT in elections regarding transmission of election results and the process of collation, announcement and declaration of results from the polling stations to the Tallying Centers is also key in addressing the result path within the conduct of elections.

14. We wish to make specific highlights on the Key Proposals that inform amendments to the Act:

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
1.	Section 2 – Interpretation	Clause 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 Article 260 of the Constitution; (d) inserting the word "valid" immediately before the words "Kenyan	The Commission welcomes the proposals but suggests a review on (c) as the suggested proposal is already carried verbatim in the Elections Act.	Clause 2 (c) be deleted. Further, section 2 of the Political Parties Act be considered for review for a harmonized definition of a political party in both Acts.

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		passport" in the definition of "identification document"; and (e) inserting the following new definition in proper alphabetical sequence— "registration of a candidate" means the process through which a person applies to and is cleared by the Commission to contest in an election.		
2.	Section 5 – Registration of voters	Clause 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";	The Commission welcomes the proposals with an additional proposal to amend Section 5 (3) for the requirement of a valid Kenyan passport for registration as a voter and to align it with the proposal in clause 2. The Commission further proposes that the proposed section (5) 3A introduced under Clause 3(c) of the Bill be moved to Section 26 as it is the section that	Section 5 of the principal Act is amended— In subsection 3 by inserting the word "valid" immediately before the words "Kenyan passport" Section 26 of the Act is amended by inserting a new subsection (3) as follows,

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		(c) 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 by the by-election".	deals with additional disqualifications to contest in an election.	*26 (3)* "*A person who registers as a voter during the period when registration of voters is suspended for the purposes of a by-election shall not be eligible to contest in the electoral area affected by the by-election.*"
3.	Section 6 – Inspection of register of voters	Clause 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.	The Commission welcomes the proposed amendments with a proposal to review the timelines. (Attached are propsed timelines)	

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		(1A) The Commission may revise the particulars of voters at all times except— (a) in the case of a general election or 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 within the affected electoral area; 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)		
4.	Section 8A – Audit of the register of voters	Clause 5 Section 8 A of the principal Act is amended— (a) by deleting subsection (3); and	The Commission welcomes the proposals as it will tidy-up the Act and delete spent provisions.	Section 8A of the Act is amended in sub section (1) by *deleting the term "six" and replacing it with the term "nine"*

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		(b) in subsection (4), by deleting the expression "subsection (3)" and substituting therefor the expression "subsection (1)".	The Commission further proposes that the timeline for the audit of the register of voters be expanded from six (6) to nine (9 months to give the Commission more time to procure an audit firm, conduct the audit and clean the register of voters in readiness for a General Election. This is based on previous experience such as the 2022 election.	
5.	Section 27 – Submission of party nomination rules	Clause 14 Section 27 of the principal Act is amended – (a) by inserting the following new subsection immediately after subsection (1A)— (IB) 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.	The Commission welcomes the attempt to provide timelines for the review of the nomination rules of coalition political parties as provided under the Political Parties Act. However, the Commission notes that the introduction of the term coalition political party is an amorphous term that creates confusion and should be deleted.	Delete provisions on a coalition political party. In the event the term Coalition political party be maintained; the Commission proposes a review of the timelines to seven days to enable the Commission have sufficient time to review the said Rules and revert to the Party.

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		(b) in subsection (2A) by deleting the words "from a political party under subsection (1)" appearing immediately after the words "the nomination rules" and substituting thereof the words "under subsection (1) and (1B)		

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
6.	Section 31 – Nomination of political party candidates	Clause 15 Section 31 of the principal Act is amended— (a) by deleting subsection (2); (d) by deleting subsection (2E); and (e) by deleting subsection (2F).	The Commission welcomes the proposal to delete sections 31 (2), 31 (2E) and 31 (2F) as it leaves the conduct of nominations to political parties. This delineates the roles of the Commission and political parties during nomination and prevents any conflict of interest that may arise on the Commission's part.	
			The Commission proposes a review of section 31(2B) to align it with the deletion of the term nomination day as proposed in the Bill.	Clause 15 of the Bill to be reviewed as follows, i. Section 31 (2B) is amended by *deleting the term "nomination day" appearing after the term "before the" and replace it with the term "date of registration of candidates"*

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			The Commission further proposes a new provision pursuant to the decision in *High Court constitutional petition no. 19 of 2017; Katiba institute v IEBC* which directed that political parties must take measures to actualize the not more than two thirds gender principle during party nominations and that the Commission shall reject any nomination list that is not compliant.	ii. Section 31 is amended by inserting a new sub section as follows, 2G *"A political party shall ensure that the names of the party candidates submitted to the Commission under this section in a general election for parliamentary elections comply with the principle that not more than two-thirds of the candidates shall be of the same gender."*

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
7.	Section 32 – Approval of symbol for independent candidate	Clause 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; (b) in subsection (IA) by deleting the word "nomination" appearing immediately after the words "days before" and substituting therefor the words "the date for registration of candidates", and (c) in subsection (3) by deleting the word "candidate" appearing immediately after the words "the symbol of another" in paragraph (a) and substituting therefor the words "independent candidate within the same county"	The Commission welcomes the proposal to lessen the burden on independent candidates by restricting the identification of unique symbols to a county. However, a further amendment of the section is required to reflect the proposal in both section 3(b) and (c).	Section 32(3) of the Act is amended by deleting it and replacing it as follows, *32 (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 a political party or another independent candidate within the same County; or* *(c) so nearly resembles the symbol of a political party or another independent candidate within the same County or any other legal entity registered under any other written law.*

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
8.	Section 33 – Nomination of independent candidates	Clause 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";	The Commission welcomes the proposal to delete the word "nomination" and replace it with "registration of candidates".	
		(iv) by deleting paragraph (d); and		

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		(c) by deleting subsection (2).	However, the Commission suggests that the proposals to delete sections 33 1(d) and 33 (2) be excluded from the Bill. There is a procedure for clearing independent candidates by the Commission which culminates into a gazette notice once all independent candidates have been approved considering provisions of the Act and the Constitution under Articles 85 and 88.	Clause 17 to be reviewed to ensure Section 33 1(d) and 2 are retained in the Principal Act and not deleted as suggested in the Bill.
9.	Section 33 A – New Section introduced by the Bill	Clause 18 The principal Act is amended by inserting the following new section immediately after section 33— 33A. The Commission shall publish in the Gazette the names of political party candidates and independent candidates registered to contest in an election.	The Commission submits that the provisions on gazettement before and after registration of candidates enables the Commission to discharge its mandate under Article 88 (4) (d) effectively and for record purposes.	The clause be deleted.

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			Clause 18 of the Bill is restrictive since it only requires the Commission to gazette list of candidates after registration. The Commission should be allowed to discharge its constitutional mandate of regulating the process by which parties nominate candidates for election and clear independent candidates. In the premises the Commission should gazette political party aspirants ahead of political party nominations and independent candidates before candidate registration.	
10.	Section 34 – Nomination of party list members	Clause 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)	The Commission welcomes the proposal to ensure that a person nominated to the County Assembly through a party list is a registered voter in the county. The position has been reiterated in several court decisions on the matter.	

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		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.	The Commission further submits that the requirement for a nominee in a party list to be a registered voter in the electoral area for which they are nominated, be introduced for persons nominated to the Senate and the National Assembly as well. The county where one is registered as a voter is a consideration by the Commission when doing allocation as per the Guidelines on Party Lists, developed by the Commission pursuant to the decision of the court in Civil Appeal 351 of 2012. The courts have held that the role of the Commission is to ensure that the nomination to party lists for compliance with the law and not to overly legislate parties on the process. The proposal under 8B would be difficult to implement.	Review Clause 19 (8A) to provide that the requirement for one to be a registered voter in a county apply to the lists under Article 97 and 98 for the National Assembly and Senate. Delete clause 19 (8B)

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		(b) by deleting subsection (9)	The deletion of section 34 (9) is improper as it denies/or reduces the chance of marginalized people to be nominated in the Party Lists. Kenya law has erroneously captured that section 34(9) was declared unconstitutional by the Court in *Civil Appeal No 351 of 2012; Commission for the Implementation of the Constitution V Attorney General & another.* However, the decision of the court was in relation to the now repealed section 34 (9) which was in a provision that spoke to the inclusion of a President and Deputy President candidate in a party list. The present section 34(9) expands the democratic space by giving marginalized groups a chance to be nominated through party lists. Indeed, section 34(9) of the Act serves a good	Clause 19 (b) of the Bill be deleted.

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
			purpose as it disallows candidates registered to contest in elections from being in the party list. It prohibits gambling and political tokenism.	
11.	Section 38 A - New Section introduced by the Bill	Clause 20 The principal Act is amended by inserting the following new section immediately after section 38 – 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 publicize 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).	For avoidance of doubt, the Commission does not conduct election in any place other than the gazetted polling stations and therefore this provision should be deleted. Further, the Commission has authority to postpone an election in the circumstances listed under section 55B of the Elections, Act. If left as proposed, it would mean that there shall be no polling stations to conduct an election where emergencies occur. The Commission should have authority to gazette polling stations even on election day should need arise.	The proposal is not welcome as it is operational and is exhaustively covered under Regulation 64 of the Elections (General) Regulations, 2012. Should there be need to maintain the same, our advice is that we duplicate the provision of Regulation 64 as follows; *38A.* *(1) A presiding officer, after consultation with the returning officer, may adjourn the proceedings at his or her polling station where they are interrupted by a riot, violence, natural disaster or other occurrence, shortage of*

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			The timeline for publication of Polling Stations is linked to the timeline for the certification of the Register of Voters.	*equipment or other materials or other administrative difficulty.* *(2) Where the presiding officer adjourns the proceedings as in (1) above, the presiding officer shall re-start the proceedings at the earliest practicable moment.* *(3) The powers of a presiding officer under subsection (1) shall include a power in the circumstances therein mentioned to transfer the proceedings to another polling station or public facility in the same constituency, and where a presiding officer does so-* *(a) the presiding officer shall advertise the fact in such manner as is sufficient to bring it to the notice of voters; and* *(b) the electoral area for the polling station from which the proceedings*

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
				are transferred shall, for all the purposes of these Act, be deemed to be part of the electoral area of the polling station to which the proceedings are transferred.
12.	Section 38 A - Number of voters per polling station:	Clause 21 Section 38A of the principal Act be amended by – (a) renumbering it 38B and (b) by deleting the words "not exceed seven hundred" appearing immediately after the words "polling station shall not exceed" and substituting therefor the words "by between fifty and one thousand"	The Commission welcomes the proposal as it will help reduce the cost of elections. It however, proposes the removal of the lower limit of 50 I order to cater for far-flung areas with diverse needs.	The Commission proposes an amendment to Section 38A of the Principal Act as follows: 38B. "For the purposes of efficient and effective conduct of elections, the number of voters per polling station shall not exceed one thousand.
13.	Section 39 - Determination and declaration of results	Clause 22 Section 39 is amended by deleting and substituting with a new Section 39.(1) The Commission shall determine, declare and publish the results of an	The interchangeable usage of the terms "declare and announce" is problematic and is not consistent with the established electoral law.	Clause 22 be reviewed as follows, Section 39 of the Act be amended by; *(a) deleting sub-section (1C) (a) and substituting therefor-* *"electronically transmit, in the prescribed form, the*

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		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	The proposed timeline of "two hours" to electronically transmit results is not practical for any election official. The proposals made are not in tandem with the definition of the "Commission" as held by the Supreme Court in *Presidential Election Petition E005, E001, E002, E003, E004, E007 & E008 of 2022 (Consolidated)* where the Court held that the interpretation of the Commission depends on the subject matter. As such, it is problematic as used in the proposed amendment. In *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] Eklr*, the Court declared Sections 39 (1E), (1F),(1G), (2) & (3) unconstitutional.	*tabulated results of an election for the President and physically deliver from a polling station to the constituency tallying centre and to the national tallying centre"* *(b) deleting the sub-section (1D) and substituting therefor-* *"The Commission shall verify that results transmitted and the physically submitted results are an accurate record of the results tallied, verified and declared at the respective polling stations."* *(c) deleting sub-sections 1E, 1F,1G* *(d) deleting sub-sections (2) & (3)* (

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		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 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 result from a polling	Additionally, the credibility of the 2022 General Election was attributable to the Online Portal. NB: There is no provision for the recording of timeline for announcement of results, practicality of time synchronization, disclaimer on circumstances using the 2022 General Election data and replacing clause (4)(a) with (8).	

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		station to the constituency tallying centre, national tallying centre, the candidates or their agents and 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 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 result 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.		

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		(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,		

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		announcement and declaration of results.		
14.	Section 44 (4) Use of Technology	Clause 23 Section 44 (4) is amended by inserting a new sub-section 4A immediately after sub-section (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 the 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; (iii) subject to the Constitution, this Act and the Data Protection Act, the technology is accessible and available for scrutiny by	The Commission notes the proposals under Section 44 (4A) (iii) However, it is our considered opinion that scrutiny of election technology should be conducted pursuant to a Court Order just like the scrutiny of votes provided for under Section 82 of the Elections Act. In addition, scrutiny should also be in line with the proposals in the Election (Technology) Regulations, 2017. (see proposed Election (Technology) (Amendment) Regulations, 2024.	Review Clause 23 of the Bill as follows, - i. Section 44 (4) (a) of the principal Act is amended by deletion of the phrase, ***"procure and"*** appearing before the word, ***"put"***. This will enable the Commission to explore more options in acquisition of technology such as the technology being built internally. In the event that the technology is procured as suggested under Clause 23 4A(i) of the Bill, the intellectual property rights cannot vest in the Commission.

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		candidates, courts and such other persons as required under the law; and (iv) processing of data is only effected through a server or a data center located in Kenya.		ii. Delete section 44(5) and move the provision to section 109 of the Act which provides for the general mandate of the Commission to make Regulations. *"The Commission shall make Regulations on the use of technology necessary for the conduct of elections."*
15.	Section 44A Complementary mechanism for identification of voters	Clause 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 immediately after subsection (1)—	The Commission welcomes the proposals with a review of 24(c). The Supreme court in the presidential Election Petitions of 2017 and 2022 declared that the result is confined to the physical form 34A and that it is the Image of the statutory form that should be transmitted. The Court did not pronounce itself on any complementary mechanisms for transmission of election results.	Clause 24 (c) be deleted

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		(2) The Commission shall make Regulations for the better carrying into effect the provisions of this section.		
16.	Section 45 - Right of recall	Clause 25 Section 45 of the principal Act is amended by – (a) Deleting subsection (2) and substituting therefore the following new subsection – (2) A member may be recalled on the following grounds – (a) misconduct likely to bring hatred, ridicule, contempt or disrepute to the office; and, (b) persistent desertion of the electorate without reasonable cause. (b) Deleting subsection (3); and (c) Deleting subsection (6)	Sections 45(2), 45(6), 46(1)(b)(ii), (c) and 48 were declared unconstitutional in *Constitutional Petition 209 of 2016; Katiba Institute & another v Attorney General & another* which have posed a challenge for the electorate to recall a member of Parliament. The Commission proposes a deletion and substitution of section 45 with the proposed provision of the county Government Act with necessary modifications to operationalize the provisions of Article 104 of the Constitution and the decision of *Constitutional Petition 209 of 2016;Katiba Institute & another v Attorney General & another* that mandated parliament to enact	The Commission proposes an amendment of section 45 as follows, - (Export the provision of Section 27, 28 and 29 of the County Government Act on recall with the necessary modifications to the provisions to Part IV of the Elections Act on a Member of Parliament)

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
			provisions on recall for members of Parliament.	
17.	Section 46 – Petition for recall	Clause 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).	The provisions were declared unconstitutional by the court.	The Commission submits that the section be read with the proposals under section 45 above.
18.	Section 48 – Validity of recall election	Clause 27 The principal Act is amended by deleting section 48.		The Commission submits that the section be read with the proposals under section 45 above.
19.	Section 74 – Settlement of certain disputes	Clause 28 Section 74 of the principal Act is amended by repealing the section	The proposal is unconstitutional as section 74 of the Act is a mirror of Article 88 (4) (e) of the Constitution. Settlement of pre-election disputes is the Commission's constitutional mandate. Section 74 has its anchor under Article 88 of the Constitution. In addition, the High Court and the Supreme Court have affirmed this position in various cases; including	Review Clause 28 as follows, - Section 74 of the principal Act is amended by; i. Inserting a new sub section 1A as follows - *1A- Lodging of disputes under (1) above on registration of candidates for an election shall commence upon the close of registration of candidates for an election and not later than*

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
			Supreme Court Petition No 23. (E026) Of 2022 IEBC vs. Hon. Sabina Wanjiru Chege which affirmed the mandate of the Commission's Electoral Code of Conduct Enforcement Committee to issue summons and conduct trial proceedings. The Court further reitersted emphasized that the IEBC can conclusively determine pre-electoral disputes. The Commission instead proposes an amendment to the section to provide a clear mechanism for the Commission to hear and determine disputes. The Commission submits that for it to effectively discharge its dispute resolution mandate and operate smoothly, the complaints should be	*seventy-two hours after the close of registration of all candidates in that election."* ii. Amending section 74(2) to read as follows- *An electoral dispute under subsection (1) shall be determined within fourteen days of the last day of lodging of disputes.* iii. Inserting a new section 74(4) as follows - a. *Party list disputes shall be lodged within 72 hours of publication of the lists in the newspapers of national circulation.* b. *The Commission shall determine party list disputes lodged in (a) above within 7 days after the close of lodging of disputes with the Commission.*

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
			lodged as soon as the process for registering candidates has ended. The Commission also proposes introduction of timelines for lodging and determination of party list disputes.	c. *The Political Parties Dispute Tribunal shall determine party list disputes lodged within 14 days after the close of lodging of disputes with the Tribunal.* iv. Inserting a new section 74(5) as follows - *The determination of the appeals under sub section (4) by the High Court shall be final.* v. Inserting a new section 74(6) as follows - *Disputes and subsequent appeals arising from registration of candidates for election shall be heard and determined 30 days before a General Election.* **This proposal would have a consequential amendment to the Political Parties Act to provide the

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
				timelines proposed above for lodging and determination of party list disputes by PPDT.
20.	Section 75 – County election petitions	Clause 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 section (4) by the High Court shall be final.	The Commission welcomes the proposal on finality of MCA election petitions in line with court decisions on the matter. The Commission, however, proposes that the appeals be on matters of law only.	Clause 29 be reviewed to delete the words *"on matters of law only."*
21.	Section 82 Scrutiny of Votes	Clause 30 The principal Act is amended by inserting the following new section immediately after section 82 – 82A. (1) The Commission shall ensure access to information including any technology used in elections in	Section 27 of the IEBC Act and the Access to Information Act have substantive provisions on access to information. The Commission proposes that scrutiny be left to the discretion of the Election	The Commission proposes a review of Clause 31 of the Bill as follows - Section 82 A is amended by inserting a new section immediately after Section 82; *82A Scrutiny of Technology*

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		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	Court to be conducted under the supervision of the Court. The Commission proposes a new provision be inserted on scrutiny of technology to guide the process of scrutiny as well as help in safeguarding the sensitivity of data and Technology used in an Election as was recommended by the Supreme Court in *Odinga & 16 others v Ruto & 10 others; Law Society of Kenya & 4 others (Amicus Curiae) (Presidential Election Petition E005, E001, E002, E003, E004, E007 & E008 of 2022 (Consolidated)) [2022] KESC 54 (KLR)* .	*(1) The Commission shall pursuant to an Order of an election Court for a forensic image of the server(s), SD cards or any other materials, provide the same under confidential cover for scrutiny by the Court only and in compliance with intellectual property and the principles of Data Protection.* *(2) The materials submitted to the election Court under sub-section (1) above, shall be remitted back to the Commission under confidential cover within seven days upon delivery of Judgment.* *(3) The Commission shall develop Regulations for supervised and read only access to information and Scrutiny of Technology. (The draft Regulations are*

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		information and if applicable, supplying them to the applicant. (5) The Commission shall, in ensuring access to information, ensure that the information is in accessible formats for persons with disability where such a request is made or where the information is required to be made available to the general public.		*carried under the Election Technology (Amendment) Regulations)*
22.	Section 85A Appeals to the Court of Appeal	Clause 31 Section 85A of the principal Act is amended - (a) In subsection (i) 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.	The Commission welcomes the proposal as there is need for timely conclusion of election petitions. and in compliance with *Supreme Court Petition No. 2B of 2014; Gitarau Peter Munya v Dickson Mwenda Kithinji & 3 Others.* The Commission however, proposes that the appeals be on matters of law only.	Clause 32 be reviewed to delete the words *"on matters of law only."*

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
23.	Section 87 A New Section introduced by the Bill	Clause 32 The principal Act is amended by inserting the following new subpart immediately after section 87 – Evaluation of electoral process 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;	It should be noted that after every election, after engagement with key elections stakeholders, the Commission prepares and publishes a post-election evaluation report pursuant to Article 88 (4) (h) of the Constitution and Section 4(h) of the IEBC Act. In most circumstances, the Commission has published its report within 18 months after the General Election. This is considering the determination of election petitions that take six months after the election and determination of any appeals arising therefrom that are made in the ensuing six months.	The Commission notes the proposal albeit over prescriptive. The Commission proposes that the Commission be allowed to facilitate the evaluation of the electoral process as prescribed by Article 88 (4)(h) of the Constitution. It is further proposed that the said evaluation be extended to 18 months. The Commission also proposes the inclusion of review of the party lists processes be included under the evaluation in 87 A. The Commission proposes a consequential amendment to section 24 A of the IEBC Act that provides for evaluation of the General Election. This is to avoid double legislation of one process in two Statutes.

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
		(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. 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.		

S/ No.	Section of the Act proposed for amendment	Clause of the Bill and proposed amendment	IEBC Comments and Justification	Proposals for review
24.		87 B 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	This is a welcome proposal.	The Commission proposes that the said publication be publicized on the Commission's website.
NEW PROPOSALS BY THE COMMISSION FOR CONSIDERATIONS				
25.	Section 2	Interpretation	The Commission also proposes the insertion of the definition of forensic image to be used in scrutiny. (The duplicate can be analyzed for evidence during scrutiny as per Section 82 of the Principal Act, without affecting the original devices.)	inserting the definition of "*Forensic Image" to mean "An exact duplicate of a digital storage device such as a server, computer, laptop, tablet or memory card collected in a manner that preserves the contents of the storage device for purposes of presentation and analysis by the court"*
26.	Section 6A	Verification of biometric data	There are conflicting timelines between verification and inspection of voters. The Commission proposes that the Section be amended to give clarity on	The Commission proposes amendments to Section 6A of the Principal Act by deleting subsection (1) and substituting thereof the following new subsection:

			the timelines for verification of biometric data.	*The Commission shall open the Register of Voters for verification of Biometric data by members of the Public for a period that the Commission may consider appropriate".*
27.	S 8 (2)(b)	Audit of the Register of Voters	i. There is no mechanism for publication of the list of deceased voters before deletion ii. The Act only provides for the deletion of the names of the deceased voters without notifying the public of the list of deceased voters It is important for the public to be notified of the intended deletion.	Insert S 8(2) (ba) as follows, i. In recommending the deletion of deceased voters under Section 8 (2)(b), the Commission shall publish the list of the reported deceased voters arising from the audit report. ii) the Commission will invite disputes arising from the published report within a period the Commission may determine.
28.	S 8(2) (e)	Updating of the Register of Voters	There is need to make provision for incorporating the changes in the register of voters after altering the boundaries of Constituencies and Wards. After review of any electoral boundary the net effect is County,	Amend section 8 by introducing the Revision of the Register of Voters whenever county, constituency or ward boundaries are altered in accordance with Articles 89 and 94 (3) of the Constitution.

			Constituency and Ward boundaries will be affected and therefore the Commission shall have to revise the Register of Voters for the affected electoral areas.	
29.	Section 16 (4), 19(4)	Transmission of declaration of vacancy to the Returning officer	i. The law creates a process that has no impact on the election and hence, the provisions are superfluous. ii. The process for initiation of an election following vacancy is exhaustively covered within the provisions of sub-sections (1) -(3). In any event, once the Commission publishes the notice of election the same is transmitted to the Returning officer who takes the necessary steps.	Sections 16(4) and 19(4) of the Act be deleted.
30.	Section 36 (2)		A party list submitted under subsection (1)(a), (c), (d), (e) and (f) shall contain alternates between male and female	Section 36(2) of the Act be amended as follows, *"(2) A party list submitted under section 1 (a), (c) (d) (e) and (f) shall*

			candidates in the priority in which they are listed The Commission proposes that a party list for special seats under Section 36 shall commence with the name of a female candidate and alternate between male and female candidate in the priority in which they are listed. This will facilitate the implementation of the not more than two thirds gender principle and increase representation of women especially in the National Assembly.	*commence with the name of a female candidate and alternate between male and female candidate in the priority in which they are listed."*
31.	Part V –	Referendum	The provisions on Referendum were found insufficient by the Court of Appeal in *Civil Appeal No. E291 of 2021 as consolidated with Civil Appeals Nos. E292, E293, and E294 of 2021, AG and Others vs David Ndii and Others.* In addition, the National Assembly in consultation with the Commission agreed to have a separate and distinct	Deletion of part V and enacting a new Act on referendum. (*Attached is the draft Referendum Bill, 2024 and the attendant Regulations.)*

			Referendum Bill that exhaustively covers conduct o referendum.	
32.	Section 55A and 55B		Section 55A maintenance of secrecy at elections and 55B on the postponement of elections are misplaced under part V of the Act on referendum which the Commission proposes be deleted.	Proposal is to move Sections 55A and 55B to part III of the Act that speaks to election.
33.	Section 83	Nullification of an election	In *Katiba Institute & 3 Others vs Attorney General & 2 Others (2018) eKLR*, rendered itself on the parameters for determining an election petition. In essence the Court held that "there was no constitutional compulsion or rational in amending section 83 of the Act to remove the disjunctive word 'or' and introduce the conjunctive word 'and' so that only where there are failures in complying with the constitution and election laws and they substantially affected the results should an election be nullified.	Section 83 of the Act be amended to delete the word "and" and replace it with the word "or"

			Removing the twin test for annulling faulty election results negates the principles of electoral system in the Constitution. The Court declared that the amendment of section 83 to use the word and instead of or was invalid.	
34.	Section 109	Regulations	Sub sections 3 and 4 are spent and there is need for clarity in the Act that the Commission can make Regulations, subject them to public participation and publish them to take effect.	Amend Section 109 by deleting sub sections 3 and 4 and inserting a new sub section 3 as follows, - (3) The Commission shall make or review its regulations and publish them in the *Gazette*, not later than four months prior to the date of a general election after subjecting them to public participation.

CONCLUSION

The Commission submits that the proposals of the Bill are appreciated. We request this Committee to consider the issues identified in the matrix and urge this Honourable House to adopt the said proposals for better carrying out of election processes.



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MARJAN HUSSEIN MARJAN, MBS
COMMISSION SECRETARY/CEO

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

A FURTHER WRITTEN MEMORANDUM

BY

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

TO THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS (JLAC) OF THE NATIONAL ASSEMBLY FOLLOWING THE MEETING HELD ON TUESDAY 22ND APRIL 2025 AT BUNGE TOWERS NAIROBI

ON THE

POLITICAL PARTIES (AMENDMENT) (No. 2) BILL, 2024

(Senate Bills No. 26)

ELECTIONS OFFENCES (AMENDMENT) BILL, 2024

(Kenya Gazette Supplement No. 98 (Senate Bills No. 28)

ELECTIONS (AMENDMENT) (NO.2) BILL

(Senate Bill No. 29 of 2024)

23RD APRIL, 2025

Independent Electoral & Boundaries Commission (I.E.B.C)

Anniversary Towers, Off University Way

P.O. Box 45371-00100, Nairobi-Kenya

Telephone: +254 (0) 20 2992

INTRODUCTION

1. The Commission appeared before the Justice and Legal Affairs Committee of the National Assembly on 22nd April, 2025 pursuant to an invite dated 17th April, 2025. The Commission made submissions regarding the aforementioned Bills on the Electoral Law Reform Agenda ahead of the 2027 General Election. From the said meeting, the Commission was expected to respond to some questions raised and submit them in writing for consideration.
2. The Independent Electoral and Boundaries Commission (IEBC) is a constitutional Commission established under Article 88 of the Constitution and is responsible for supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament.

QUESTIONS AND RESPONSES

a. **What is the principle that you can register and cannot accommodate one to vie in a by-election?**

3. Article 38(3)(a) of the Constitution confers a right to every adult citizen to register as a voter without unreasonable restrictions. Article 88 provides for continuous voter registration (CVR) and regular revision of the register of voters.
4. Section 5(1) of the Elections Act provides an exception to this requirement and states that during an election, registration of voters and revision of the Register of voters ceases for purposes of preparing the register for the said election.
5. To this end, the Register of voters is ring fenced for purposes of that election. It, therefore, means that a person residing outside the subject electoral area may register elsewhere and vie in the election in that electoral area even though the electoral area has been ring-fenced and therefore no registration of voters is taking place.
6. In addition, it creates an unfair advantage to the residents of the area where a by-election is to be conducted, where non-residents may register outside the allowable window and vie in the said electoral area.
7. Recognizing the dynamic nature and complexity of voter registration, the Commission requires time to verify the details of an application by a voter as espoused under Article

83 of the Constitution. Article 83 of the constitution provides qualifications for registration of citizens as a voter. Specifically, the person must be an adult citizen, not declared to be of unsound mind and has not been convicted of an election offence during the preceding five years.

b. Why would you need a whole nine (9) months to conduct an audit?

8. Section 8(1) of Kenya's Elections Act, 2011, empowers the Independent Electoral and Boundaries Commission (IEBC) to engage a professional and reputable firm to audit the Register of Voters at least six months before a general election. This provision ensures that the Register of Voters is accurate, updated, credible and free from irregularities, which is crucial for maintaining public trust in the electoral process.
9. The Commission's request for additional time to procure such a firm reflects an effort to comply with procurement laws and address potential legal challenges. By starting the procurement process early, the IEBC aims to avoid the delays and complications experienced during elections, for instance, what was experience in 2022 General Election. This proactive approach could enhance the integrity of the electoral process and ensure that no voter is disenfranchised.
10. In essence, the Commission's strategy underscores the importance of thorough preparation and adherence to legal frameworks in conducting free and fair elections. It also highlights the need for transparency and accountability in managing electoral resources and processes.
11. We noticed from the framing of this question may have been misunderstood to mean an expansion of the actual conduct of audit. The proposed amendment to expand the timelines from 6 to 9 months is for purposes of procurement of an audit firm and not to conduct the actual audit. This will provide sufficient timelines in case the process is challenged as in the case of the 2022 General Election. We urge this Committee to reconsider and adopt our Proposal.

c. Why would you not have intellectual property in election technology?

12. Clause 23 proposes that intellectual property rights shall vest in the Commission. This aligns with Section 44(2) of the Elections Act, 2011 which mandates the Commission to develop a policy for the progressive use of technology in the electoral process.

13. The complexities and costs of ICT solutions necessitate effective and transparent procurement. Election technology should be cost-effective, transparent, sustainable, and accurate.
14. Election technology often combines proprietary and open-source components, making intellectual property considerations complex. Proprietary systems, while robust, can be costly and less accessible for governments or institutions with tight budgets. Open-source solutions, on the other hand, are often more adaptable and cost-effective.
15. While the Commission's ownership of intellectual property rights is a positive step, it is important to note that such procurement could significantly increase costs for taxpayers, raising concerns about the overall cost of elections.

d. **Explain independent candidate symbols per county- what does that portend for the Presidential candidates which are national?**

16. The proposal under clause 32 is welcome. The Commission makes an additional proposal that is aimed at reducing the burden of independent candidates at the county level to avoid duplication of symbols in a ballot paper within the same electoral area.
17. For presidential elections, this issue does not arise, as the process is conducted at the national level.

e. **Explain unreasonable delay under the Election Offences Act, as it would seem it's a matter of interpretation. What is the issue with the proposal?**

18. Clause 22 of the Elections (Amendment) Bill introduces a two-hour deadline for transmitting election results, aiming to enhance efficiency and transparency. However, this provision raises practical and operational hurdles, especially in areas with unique challenges.
19. For instance, in 2022 General Election in Eldas Constituency, a Presiding Officer was attacked and severely injured culminating into the amputation of his leg. This highlights the risks faced by election officials. Charging such individuals for failing to meet the deadline would be unjust and could discourage officials from serving in high-risk areas.

20. In addition, the lack of mechanisms to verify compliance with the two-hour requirement and the absence of time synchronization across polling stations make enforcement impractical. This could lead to unfair accusations against officials who genuinely face obstacles in meeting the deadline and who essentially act in good faith.
21. The conflicting use of terms such as "declaration" and "announce" further complicates the implementation of Clause 22. Simplifying and clarifying these terms could obviate confusion and ensure consistency in electoral processes.
22. Ultimately, while the intention behind Clause 22 is noted, its rigid application may inadvertently undermine the fairness and practicality of election management. A more flexible and context-sensitive approach could better address the realities on the ground.
23. Clause 2 of the Election Offences (Amendment) Bill, 2024, be deleted, as Section 6(h) of the Act already addresses this matter.

f. **Dispute Resolution: the Commission has complained that it gets overwhelmed with dealing with political parties' nomination, wouldn't you consider delegating this function without changing the Constitution?**

24. Article 88(4)(e) of the Constitution, bestows upon the Commission the mandate to settle all pre-election disputes including disputes relating to or arising from nominations.
25. Section 40(fa) of the Political Parties Act empowers the Political Parties Disputes Tribunal to address disputes stemming from party primaries or political party nominations. However, Section 74 of the Elections Act preserves the Commission's mandate to hear and determine disputes related to the nomination or registration of candidates. This dual framework ensures that disputes are handled by the appropriate bodies, depending on their nature and origin. This delineation has seamlessly enabled this function.
26. The Commission's mandate has been consistently upheld by judicial determinations, including those from the High Court and the Supreme Court. A notable example is Supreme Court Petition No. 23 (E026) of 2022, IEBC vs. Hon. Sabina Wanjiru Chege. In this case, the Court affirmed the authority of the Commission's Electoral Code of Conduct Enforcement Committee to issue summons and conduct trial proceedings. The

ruling emphasized the Commission's ability to conclusively resolve pre-electoral disputes, reinforcing its pivotal role in maintaining electoral integrity. The case of Sammy Waity vs Nderitu Murithi (2017) is illustrate of the pre-eminent role of the IEBC pre-election dispute resolution framework.

27. Over the years, the Commission has demonstrated its capacity to effectively manage disputes arising from breaches of the electoral code of conduct, party lists, and nominations. Its track record highlights its competence in upholding the principles of justice and fairness within the electoral framework.
28. The proposed repeal of Section 74 of the Elections Act is therefore unconstitutional. The attempt to remove a Commission's mandate through statutory amendments would undermine its constitutional function, potentially disrupting the balance and efficiency of the electoral dispute resolution process. It would be a vain exercise to delete Section 74 when Article 88(4)(e) which is by all fours a mirror of Section 74 is intact.

g. What is your issue with a coalition political party?

29. The Commission requests that the proposal be reviewed to establish clear timelines for revising the Rules. This is to prevent a recurrence of the gaps experienced in 2022 regarding the handling of coalition political party candidates.
30. The Commission emphasizes that its request aligns with its mandate under Article 88(4)(d) of the Constitution, which necessitates the review of Nomination Rules within a defined timeline.

h. Why does it seem like you have challenges with some of the functions of the Registrar of Political Parties?

31. The Commission and the Office of the Registrar of Political Parties (ORPP) have maintained a collaborative relationship since the Commission's inception as the Interim Independent Electoral Commission. When the Commission transitioned to the Independent Electoral and Boundaries Commission (IEBC), the ORPP operated as a Directorate within the Commission. However, it later became an autonomous body following the enactment of the Political Parties Act.

32. Contrary to claims of challenges between the Commission and the ORPP, the Commission asserts that it is merely defending its constitutional mandate as outlined in the Constitution and the Elections Act. Specifically, the certification of symbols by the ORPP conflicts with the principles established under Article 85 of the Constitution and Section 32 of the Elections Act.

33. The Commission emphasizes that the ORPP's primary role is to verify that independent candidates have not been members of political parties within three months prior to a General Election and to ensure that their proposed symbols do not resemble that of any political party. Indeed, the approval and publication of symbols in the Kenya Gazette remains the exclusive mandate of the Commission.

34. The proposal that ORPP certifies the symbols of independent candidates should, therefore, be reviewed or deleted. This will lessen the burden of an aspirant to duplicated processes.

CONCLUSION

35. In conclusion, and in view of the foregoing, the Commission invites this Committee to consider the Commission's matrices, and the issues highlighted above in order to facilitate the Commission to improve on the electoral legislative framework to discharge its Constitutional mandate.

MARJAN HUSSEIN MARJAN, MBS
COMMISSION SECRETARY/CEO

INTER-RELIGIOUS COUNCIL of KENYA

P.O Box 6352, 00200 Nairobi, Kenya Tel: 3877791, 3872070 Fax : 3861397
Email: info@interreligiouscouncil.or.ke, www.interreligiouscouncil.or.ke

MEMORANDUM PRESENTED TO THE CLERK OF THE NATIONAL ASSEMBLY ON ISSUES OF INTEREST IN THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024 CURRENTLY IN THE NATIONAL ASSEMBLY

16TH APRIL 2025

SUBMITTED BY

INTER-RELIGIOUS COUNCIL OF KENYA

16TH APRIL 2025

To
The Clerk of the National Assembly,
P. O. Box 41842-00100
Main Parliament Buildings
Nairobi, Kenya.

Dear Mr. Jeremiah M. Ndombi, MBS

RE: Memorandum on the Elections (Amendment) (No. 2) Bill, 2024

The Inter-Religious Council of Kenya **(IRCK)**, driven by an enduring desire to see the undertaking of regular, free, fair, credible, transparent and verifiable elections as we strive to perfect our democracy, fully avails itself to participate in the process of legislation by way of public participation.

IRCK was established as a society in 2005. It is a national coalition of all major faith communities (Christian, Hindu, and Muslim) in Kenya that works together to deepen interfaith dialogue and collaboration among members for a common endeavour to mobilize the unique moral and social resources of religious people and address shared concerns.

Being a membership organization, the IRCK works through umbrella bodies known as Religious Coordinating Bodies (RCBs) which have a presence in all the 47 counties in Kenya. The Council has facilitated the formation of Interfaith Networks in all 47 counties that comprise members of the clergy as well as youth and women leaders for local-level advocacy and implementation of programmatic interventions.

The Council endeavours to fulfill the ***Vision "Faith communities living in peace; united in social economic action in Kenya",*** being guided by the ***Mission: "To promote a just society in Kenya through social economic transformation".***

Democratic governance has come to be seen as the bedrock upon which the progress and development of every nation stands, with increasing calls for civility, openness, accountability and transparency in electoral and electioneering processes.

Elections, therefore, mean more than an exercise where citizens determine to whom they will confer delegated sovereign power for representation, but also the quality of representation.

The elections laws give provision for the conduct of elections to the office of the President, the National Assembly, the Senate, county governor and county assembly; to

provide for the conduct of referenda; to provide for election dispute resolution and for connected purposes.

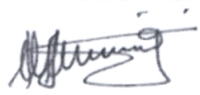
IRCK submits the following proposals for consideration on the Elections (Amendment Bill) 2024;

Proposed Amendment	Implication	Proposal
An independent audit and cleaning up of the voters' register should be undertaken by the end of 2nd year after every General Election	Institute predictable and independent cleaning of the voters' register	i. Amend Section 8a (1) of the Elections Act No. 24 of 2011 by deleting the words "at least six months before a general election" appearing immediately after the words "at least" and replacing it with the words "at the end of every second year after every General Election" ii. The new clause shall read "The Commission may, at least six months before a general election, at the end of every second year after every General Election, engage a professional reputable firm to conduct an audit of the Register of Voters."
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.	Gazettement of polling stations should be done regularly and incrementally to build public trust	Amendment 38a. (1) to read as follows: 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 regularly, with the final list of polling stations or

		polling stations published at least six months before the date of any election.

Signed and submitted on behalf of the Inter-Religious Council of Kenya on 16th April 2025.

Signed:



Linus Nthigai
Ag. Executive Director
Inter-Religious Council of Kenya

KENYA LAW REFORM COMMISSION

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NAIROBI, KENYA

17th April, 2025

The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O. Box 41842-00100
NAIROBI

(Attn: Mr. Jeremiah Nombi, MBS)

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE POLITICAL PARTIES (AMENDMENT)(NO.2) BILL (SENATEBILL NO. 26 OF 2024); ELECTION OFFENCES (AMENDMENT) (NO.2) BILL, (SENATE BILL NO. 28 OF 2024 AND THE ELECTIONS (AMENDMENT) (NO.2) SENATE BILL NO. 20 OF 2024 CO-SPONSORED BY THE SENATE MAJORITY LEADER AND SENATE MINORITY LEADER

Your letter Ref. NA/DDC/JLAC/2025/017 on the above subject dated 10th April, 2025 refers.

The Kenya Law Reform Commission has analyzed the proposals and makes the following comments:

BILL	CLAUSE	KLRC PROPOSAL	RATIONALE
Political Parties (Amendment) Bill 2024	5 and 10 Repeal of section 14A When a member may be deemed to have resigned from a political party	A deeming provision serves the following purposes: 1. Upholds party discipline and loyalty. 2. Discourages political opportunism. 3. Preserves the integrity of a party list and	Repealing Section 14A will offend the Constitution. Article 103 requires Parliament to enact legislation providing for circumstances under which of political party shall be deemed to have resigned.

		allows a party to maintain control over who represents it. 4. Prevents political betrayal or conflict of interests. In practical terms, it will allow politicians to support rival agenda and this could erode party loyalty and policy coherence.	
	7 establishment of an independent Political Parties Regulatory Commission	Replacing the Registrar with a Commission could increase professionalism and independence in party regulation.	The proposed Commission could still be politicized if not well insulated from political influence.
Elections (Amendment) Bill, 2024	15 deletes section 31 (2) (2E) and (2F) of the Act which provides that the IEBC 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.	These subsections should not be deleted.	The deletion offends Article 88 (4) of the Constitution which provides that the IEBC is responsible for conducting and supervising elections to any elective body or office and any other elections as may be prescribed.
	22 deletes and replaces section 39 which deals with determination and declaration of results	The proposed version leaves out live-streaming of the results as announced at polling stations	Scrapping live-streaming of results undermines transparency, especially given the fact that in the past elections technological transparency helped public confidence.

	27 deletes section 48 on validity of recall election		Already past amendments to Part IV of the Act (Recall of Member of Parliament) have offended the spirit of Article 104 of the Constitution which requires Parliament to enact legislation to provide the grouds upon which a member may be recalled. The Court declared sections 45(2)(3)and (6), 46(1)(b)(ii) and (c) ~~and 48~~ of the Elections Act and sections 27(2)(3) and (6) and 28(1)(b)(ii) and (c) of the County Governments Act are meaningless and superfluous; or, that they fall far short of the constitutional imperative in Article 104 of the Constitution and to that extent are unconstitutional. (Katiba Institute & another v Attorney General & another [2017] eKLR)
	Clause 27 deletes section 74 on settlement of certain disputes by the IEBC		This amendment offends Article 88(e) which gives the IEBC the mandate to settle electoral disputes including disputes relating to or arising from nominations.
Election Offences (Amendment) Bill, 2024	General comment	Harsh penalties may discourage IEBC staff from working under pressure or in volatile regions.	In regions with logistical challenges, delays may occur unintentionally—laws need to account for context

Conclusion: KLRC recommends that the provisions touching on the letter and spirit of the Constitution (Articles 88, 103 and 104) should be withdrawn.			

We thank you for your continued support and cooperation.

Peter M. Musyimi, HSC
Ag. SECRETARY/CEO

Copy to:

Hon. Dorcas A. Oduor, SC, OGW, EBS
The Attorney General
The State Law Office and the Department of Justice
Sheria House, Harambee Avenue
NAIROBI

ORPP MEMORANDUM ON THE ELECTIONS (AMENDMENT) BILL, 2024

A. INTRODUCTION

1. Pursuant the mandate of the National Assembly's Departmental Committee on Justice and Legal Affairs, the National Assembly called for submission of views on the Elections Offences (Amendment) (No.2) Bill (Senate Bill No.28 of 2024).

2. The Office of the Registrar of Political Parties (ORPP) is established under Section 33 of the Political Parties Act Cap. 7D, herein PPA, as an independent State Office within the meaning of Article 260 of the Constitution. Its mandate includes registration and regulation of political parties as well as administration of the Political Parties Fund.

3. The ORPP views are as captured herein below;

B. MATRIX OF OBSERVATIONS AND RECOMMENDATIONS

4. The observations and recommendations are captured herein below in detail;

No.	PROVISION/ELEMENT	OBSERVATION	RECOMMENDATION
1.	Clause 2 provides for interpretation of terms.	The Bill deletes the definitions of, inter alia, the term nomination, nomination day, and replaces them, with modification, the phrase registration of a candidate.	ORPP agrees with the proposal as the term nomination exist under the Political Parties Act CAP 7D to mean the process through which parties determine their candidates. Further, the introduction of the term registration of candidates feeds into the language of the Constitution under Article 88(4).
2.	Clause 2 provides for interpretation of terms.	The Bill has qualified the Kenyan Passport to a valid Kenyan Passport.	Parliament should reconsider qualifying the passport to validity given that the the said documentation is for purposes of identification. Qualifying to validity may

			contribute to disenfranchisement.
3.	Clause 2 provides for interpretation of terms.	The Bill interprets the term "political party" to have the meaning as assigned under Article 260 of the Constitution. The said Article provides that a political party means an association contemplated in Part 3 of Chapter Seven. Section 2 of the Political Parties Act Cap. 7D has a more succinct interpretation of the phrase political party.	Parliament is urged to consider referencing the interpretation provided under Section 2 of the PPA.
4.	Clause 3 provides for, interalia, that 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 by the by-election.	The provision limits the rights of registered voters to contest elections. Under the current legal framework, once there is declaration of a vacancy, registration of voters in the affected electoral area stops yet persons in other electoral areas could register and qualify to contest elections. Nothing in law stops persons in the by-election-electoral area to register elsewhere and contest. The limitation introduced in the proposal does not seem to promote Article 38 of the Constitution but is constrictive.	Parliament should consider deleting the proposed provision on the basis of the limitation not satisfying Article 24 of the Constitution in terms of the purpose and importance of limitation. In any case, nothing stops persons who are not registered voters and who hail from the affected electoral area from registering as voters in other electoral areas so as to contest in the by-election. Further, while elected representatives represent a particular constituency, their roles are not removed from contributing to better governance of the whole country.
5.	Clause 4 provides for, interalia, periods when the Commission may not revise particulars of voters with regard to a general election, by-election, or a referendum.	The provision addresses the issue of the certainty of the register of voters.	The ORPP agrees with the proposal is so far as it relates to certainty of the register of voters.
6.	Clauses 6, 7, 8, 9, 10,11, 12, 13 of the Bill relates	The Bill seeks to have consistency given the departure from the term nomination to	The ORPP agrees with the proposal in so far as it relates to replacement of the term

	to replacement of the word nomination with registration.	registration of candidates.	nomination with registration.
7.	Clause 14 provides for submission of certified coalition party nomination rules to the IEBC.	The Bill addresses the timeline for submission of nomination rules for a coalition political party given that it is registered at least 120 days to the date of a general election, a period when other political parties would have already submitted their nomination rules to IEBC.	The ORPP agrees with the proposal in so far as it relates to addressing the timeline for a coalition political party to submit its nomination rules to IEBC.
8.	Clause 15 provides for deletion of various provisions on IEBC's role on party nominations.	The Bill seeks to remove IEBC from the actual conduct of party nominations. Since its enactment, the provision that requires IEBC to conduct party nominations has never been implemented. Further, it is our view that to require IEBC to conduct party nominations is to deviate from Article 88(4) of the Constitution which requires IEBC to regulate the process by which parties' elect candidates for elections.	The ORPP agrees with the proposal to remove IEBC from the conduct of party nominations.
9.	Clauses 16 of the Bill relates to replacement of the word nomination with registration.	The Bill seeks to have consistency given the departure from the term nomination to registration of candidates.	The ORPP agrees with the proposal.
10.	Clause 16 of the Bill provides for approval of symbols for independent candidates.	The clause erroneously references 3(a) as opposed to 3(b) and 3(c). The provision shall address the scope within which independent candidates may share symbols.	Parliament is urged to address 3(b) and 3(c) as opposed to 3(a).
11.	Clauses 17 of the Bill relates to replacement of the variations of the word nomination with registration.	The Bill seeks to have consistency given the departure from the term nomination to registration of candidates.	The ORPP agrees with the proposal.
12.	Clause 17 provides for	The Gazette is a transparency measure and	Parliament should consider retaining the

	deletion of the role of IEBC to gazette persons intending to contest elections as independent candidates.	is used by Returning Officer for purposes of registration of candidates for elections.	provision.
13.	Clause 18 provides for the Commission to publish candidates registered to contest an election.	The provision is a marker of transparency.	ORPP agrees with the proposal.
14.	Clause 19 provides for, inter alia, that MCA party list nominees have to be, on the date of submission of party list by the part, registered voters in the counties where they are nominated.	It is appreciated that the proposal is meant to enhance the place of registered voters in their counties of registration, the following issue emerge: ▪ Under Article 193 of the Constitution, the requirement for a one to be elected an MCA is not qualified to whether they are registered in a particular ward or county; one simply has to be a registered voter in Kenya. Further, the Constitution does not provide for separate qualifications for persons who are elected to a county assembly either through gender top-up list or marginalised groups list.	On the basis of the observations, Parliament should reconsider the provision.
15.	Clause 20 provides for, inter alia, publishing in the Gazette polling stations at least 3 months to the date of election.	The proposed three months timeline for the IEBC to gazette polling stations does not consider other processes and key timelines within the election period. For instance: ▪ under the current legal framework on elections, a polling station comprises 700 voters. Further, the application for transfer of voter registration under Section 7 of the	Parliament should reconsider the proposed timeline for IEBC to gazette polling stations.

		Elections Act is at least 90 days to the date of election and the IEBC has to effect the transfer at least 60 days preceding a general election. Therefore, it may not prudent to determine the polling stations when voter registration and transfer is still on going.	
16.	Clause 25 provides for deletion of Section 45 of the Elections Act on recall provisions.	Section 45(2)(3) and (6) were declared unconstitutional in Katiba Institute & another v Attorney General & another [2017] eKLR. The present proposal provides the grounds for recall.	Parliament should consider qualifying the ground for persistent desertion of the electorate to the duties of the Legislature. It is important to qualify the desertion of the electorate.
17.	Clause 26 provides for deletion of provisions under Section 46 on recall.	Section 46 (b)(ii) and (c) were declared unconstitutional in Katiba Institute & another v Attorney General & another [2017] eKLR.	ORPP agrees with the proposal.
18.	Clause 27 provides for deletion of Section 48 on recall.	The provision was found unconstitutional in Katiba Institute & another v Attorney General & another [2017] eKLR.	ORPP agrees with the proposal to delete Section 48.
19.	Clause 28 provides for repeal of the mandate of the IEBC to settle electoral disputes.	The ORPP is aware that this proposal stems from the NADCO process with respect to the Constitutional Amendment Bill that seeks to amend the Constitution with regard to the mandate of IEBC to resolve electoral disputes. The assumption therefore is that the Constitutional Amendment Bill shall pass before this provision becomes, in the absence of that, there shall be a lacuna in law. Further, it is not clear where the disputes emanating from decisions on registration of candidates for elections shall lie.	Parliament is urged to consider the observations including retaining the IEBC's mandate to resolve disputes emanating from decisions of the Returning Officers.
20.	Clause 32 provides for	While the provisions leads with the word	Parliament should consider including a review

	evaluation of electoral process.	"including" meaning the list is not exhaustive, the election through party list under Articles 90, 97, 98, and 177 of the Constitution ought to be specifically provided as an element of evaluation.	of the law and processes of developing party list and designation of special seats.

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MEMORANDUM

TO

THE SENATE

ON

THE ELECTIONS (AMENDMENT) (NO. 2) SENATE BILL NO. 29 OF 2024)

MARCH, 2025

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Introduction.

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- President, Faith Mony Odhiambo
- Vice President, Mwaura Kabata
- General Membership Representatives, Tom K'opere, Teresia Wavinya, Hosea Manwa
- Nairobi Representatives, Gloria Kimani, Irene Otto, Stephen Mbugua
- Up-country Representatives, Vincent Githaiga, Lindah Kiome, Hezekiah Aseso, Zulfa Roble
- Coast Representative, Elizabeth Wanjeri
- Secretary/CEO, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation in Kenya. Pursuant to this statutory mandate, the Law Society of Kenya makes a presentation on **the Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024).**

GENERAL COMMENTS.

The Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024) 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 proposed amendments add clarity to the already existing legal provisions by inserting new provisions and words that will promote electoral justice. LSK recognizes that there is need to review the electoral process legal frameworks to ensure that there is a genuine opportunity for political contestants to compete fairly; effective remedies can be applied by administrative bodies and the courts; political competitors can turn to legal redress, rather than violence or other extra-legal measures; and citizens have confidence that they can overcome any obstacles to their political enfranchisement.

Specifically, Clause 18 of the Elections (Amendment) Bill, 2024, provides that "the principal Act is amended by inserting the following new section immediately after section 33 — 33A "The Commission shall publish in the Gazette the names of political party candidates and independent candidates registered to contest in an election". It is our proposal that clear timelines should be included in the clause to ensure certainty on the time when the Commission is expected to publish in the Gazette the names of political party candidates and independent candidates registered to contest in an election.

Yours faithfully,



Faith Odhiambo

President Law Society of Kenya.

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16th April 2025

The Clerk of the National Assembly
Parliament Building
P.O. Box 41842-00100
Nairobi.

RE: The Elections (Amendment) (No. 2) Bill (*Senate Bills, No. 29 of 2024)*

The Centre for Multi-Party Democracy (CMD-Kenya) is a political parties-based membership organization, whose mandate is to enhance multiparty democracy and strengthen the institutional capacity of political parties in Kenya through policy influence and capacity building.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 127 (3) of the National Assembly, CMD-Kenya hereby submits its memoranda on the Elections (Amendment) (No. 29 of 2024) as follows:

Title and Section in the Act (Cap 7)	Current Provision in the Act	Proposed Amendment in the Bill	Justification and Rationale
Section2 Interpretation	In this Act, unless the context otherwise requires- "nomination" means the submission to the Commission of the name of a candidate in accordance with the Constitution and this Act;	**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	These proposals are in order as they do away with ambiguities.

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		its candidates for elections;	
	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;	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; d.) inserting the word "valid" immediately before the words "Kenyan passport" in the definition of "identification document"; and	
	"Identification document" means a Kenyan national identification card or a Kenyan passport;	e.) inserting the following new definition in its proper alphabetical sequence— "registration of a candidate" means the process through which a person applies to the	

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		Commission to contest in an election.	
Section 5 Registration of voters.	(1) Registration of voters and revision of the register of voters under this Act shall be carried out at all times except— (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 by-election;	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";	This proposal is in order as it narrows it down to the affected geographical location
	(ba) in the case of a referendum between the date of the publication and the date of the referendum.	b.) in subsection (1)(ba) by inserting the words "of the referendum question" immediately after the word "publication";	This proposal is in order
	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	c.) in subsection (3) by inserting the word "valid" immediately before the words "Kenyan passport";	This proposal is in order

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	application, in the prescribed manner, to the Commission.	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 by the by- election".	This is to ensure that a candidate does not bring in support from outside for purposes of winning the election.
Section 6 Inspection of register of voters.	1) The Commission shall cause the 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.	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	This is in order as it always ensures scrutiny of the register by the public.

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		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).	
	(2) The Commission shall, within ninety days from the date of the notice for a general election, open the Register of Voters for inspection for a period of at least thirty days or such period as the Commission may consider necessary.		
Section 8A	3) For purposes of the first	5. Section 8A of the principal Act is	This section is not in order, we need more

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Audit of the register of voters	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.	amended— a.) by deleting subsection (3); b.) in subsection (4), by deleting the expression "subsection (3)" and substituting therefor the expression "subsection (1)".	clarification on how the register of voters will be audited. We propose provisions for audits be provided for.
Section 14. Initiation of	(2) The notice referred to in subsection (1) shall be	6. Section 14 of the principal Act is amended in subsection (2)—	This proposal is in order

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Presidential election	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	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".	
Section 16. Initiation of election of member of Parliament.	(2) The notice referred to under subsection (1) shall be in the prescribed form and shall specify— (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	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".	This proposals are in order

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	after the day specified for nomination under paragraph (b).		
Section 17 Initiation of county governor election.	(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	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 election for a county governor; b.) by deleting the word "nomination" appearing in paragraph (b) and substituting therefor the words "registration of candidates".	These proposals are in order
Section 19. Initiation of County assembly elections	(2) The notice referred to under subsection (1) shall be in the prescribed form and shall specify— 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	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	This proposals are in order

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	after the day specified for the nomination under paragraph (b).	paragraph (c) and substituting therefor the word "registration".	
Section 22 Qualifications for nomination of candidates.	Qualifications for nomination of candidates.	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";	This proposals are in order
	(1) A person may be nominated as a candidate for an election under this Act only if that person— (b) holds— (i) in the case of a Member of Parliament, a degree from a university recognized in Kenya; or (ii) in the case of member of a county assembly, a degree from a university recognized in Kenya	b.) 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".	
	2) Notwithstanding		

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	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 recognized in Kenya.		
Section 23. Qualifications and disqualifications for nomination as President	Qualifications and disqualifications for nomination as President. (1) A person qualifies for nomination as a presidential candidate if the person— (2) A person is not qualified for nomination	**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	This proposals are in order

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	as a presidential candidate if the person—	substituting therefor the word "registration".	
Section 24. Qualifications and disqualifications for nomination as member of Parliament.	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—	**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".	This proposals are in order
Section 25. Qualifications for nomination as member of county assembly.	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—	**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";	This proposals are in order
Section 27.		**14.** Section 27 of the principal Act is	The provided timelines are in order to ensure

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Submission of party nomination rules.		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.	that agreements and other legal frameworks are registered on time for proper running and regulation of the coalitions. We further propose that since the section refers to subsection 1A which is not in the Act. The clauses can therefore be rearranged by introducing 1A as captured by section 14(1) of the Act then introduce the 1B as captured in the Bill.
Section 31. Nomination of political party candidates.	(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. (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	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).	We propose that a section be introduced in the Act to cater for the conduct of nominations. Alternatively, we propose that the conduct of nominations be provided in a standalone legislation to cater for their conduct.

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	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),		

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	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		

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	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. 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	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	We propose that Section 33(2) of the principal Act be retained as it seeks to prevent the influx of independent candidates who decide to run as independents by virtue of failing to clinch the nominations under their respective parties

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	candidate shall submit to the Commission, the symbol that the person intends to use during an election at least seven days before nomination.	"the date for registration of candidates".	
Section 33. Nomination of independent candidates.	**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— 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;	**17.** Section 33 of the principal Act is amended— (i) in the marginal note by deleting the word "nomination" and substituting therefor the word "registration"; (ii) in subsection (1)— (iii) by deleting the word "nominated" appearing in the introductory phrase and substituting therefor the word "registered"; (iv) by deleting the words "nomination paper" appearing in paragraph (b) and substituting therefor the words "registration of candidates Form"; (v) by deleting the words "nomination day"	This proposals are in order

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	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.	(g) by deleting paragraph (c) and substituting therefor with the words "date for registration of candidates"; (vi) by deleting paragraph (d); and c.) by deleting subsection (2).	
		18. The principal Act is amended by inserting the following new section immediately after section 33—	This proposals are in order

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		33A. The Commission shall publish in the Gazette the names of political party candidates and independent candidates registered to contest in an election.	
Section 34. Nomination of party lists members.		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).	Whereas the though behind this was to protect the voters at the ward levels and promote party fidelity. It is not a guarantee that political parties will adhere to this. It also locks out good legislatures who might be nominated to areas where the are not voters but end up doing a good job.
	(9) The party list shall not		

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	contain a name of a candidate nominated for an election.*		
38. Holding of elections.	38. Holding of elections.	20. The principal Act is amended by inserting the following new section immediately after section 38 – **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).	The amendment seeks to enhance the organization, transparency, and accessibility of the electoral process. By mandating the Commission to appoint and publicize official polling stations for each electoral area well in advance. This section has however been named wrongly as there is a section 38A(On the Number of voters per polling station) in the principal Act Additionally, the Bill should be aligned with the definition of a **Polling Station** under Section 2(Polling station means any room, place, vehicle or vessel set apart and equipped for the casting of votes by voters in an election) of the principal Act with regards to vehicles or vessels set aside for casting of votes. In cognizance that such measures have been deployed in other jurisdiction like ***Canada, Australia and South Africa*** where mobile polling stations are often set up in vehicles Such clarity will enable the Electoral Management Bodies in developing specific and subsequent guidelines and regulations.
Section 38A.	For the purposes of	21. Section 38A of the principal Act	The amendment seeks to enhance the

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Number of voters per polling station.	providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed seven hundred.	be amended by renumbering it as 38B.	organization, transparency, and accessibility of the electoral process. By mandating the Commission to appoint and publicize official polling stations for each electoral area well in advance. However the section has been named wrongly as there is a section 38A (On the Number of voters per polling station) in the principal Act
39. Determination and declaration of results.	(1) The Commission shall determine, declare and publish the results of an election immediately after close of polling. (1A) The Commission shall appoint constituency returning officers to be responsible for— (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 the county assembly; (b) collating and announcing the results from each polling station in	22. The principal Act is amended by deleting section 39 and substituting therefor the following new section— 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	The amendment id welcome, however due to the electoral responsibilities listed under Section 39(4), (5) and (8) of the Bill, and the fact that the Word 'Commission' has multiple meanings within the Act, the Bill needs to be clear who the Commission refers to in this Subsection 4 and 5 of the Bill. This will restore clarity in Presidential elections. This will provide as it is under other sub-Section 1,2,3 and 6 covering other elections. Further to this, it will allow better implementation of Article 138(3)(c) of the Constitution. *Read the findings of the Supreme Court in the 2022 Presidential Petitition where the Court found that the Chairperson cannot exclude any member or members of the Commission in conducting the responsibilities thereunder*. In this case and for lack of clarity the then chairperson interpreted the word Commission hereunder to mean the chairperson in exclusion of other members of the Commission and gazetted himself for the

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	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. (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	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	responsibility.

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	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	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	

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	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	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	

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	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.	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 authorized to access a polling station or tallying centre to record and document the tallying, announcement and declaration of results.	
Section 44. Use of technology.	Use of technology.	23. Section 44 of the principal Act is amended by inserting the following new subsection immediately after subsection (4) –	

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		(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.	
		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	

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		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.	
Section 45. Right of recall.	Right of recall. 1) The electorate in a county or constituency may recall their member of Parliament before the end of the term of the relevant House of Parliament on any of the grounds specified in subsection (2). (2) A member of Parliament may be recalled where the member— (a) is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution; (b) is found, after due process of the law, to have mismanaged public resources;	25. The principal Act is amended by deleting section 45.	Deletion should be in line with the judgment in Constitutional Petition No. 209 of 2016 where it was held; a. A declaration is hereby issued declaring sections 45(2)(3)and (6), 46(1)(b)(ii) and (c) and 48 of the Elections Act and sections 27(2)(3) and (6) and 28(1)(b)(ii) and (c) of the County Governments Act are meaningless and superfluous; or, that they fall far short of the constitutional imperative in Article 104 of the Constitution and to that extent are unconstitutional. b. A declaration is hereby issued declaring sections 45(1)(b)(ii) and 45(6) of the Elections Act and sections 27(6) and 28(1)(b)(ii) of the County Government Act discriminatory and therefore unconstitutional. The Judgment did not declare the entire Section 45 of the Principal Act Unconstitutional. The

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	(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		Court only declared Section 45(1)(b)(ii)(2) and (3) unconstitutional and deleting the entire Section will render the recall process unattainable and impossible since Section 45 of the Principal Act sets out the grounds for right recall as required under Article 104 of the Constitution. In as much as it is a principle in law that the Court neither approves nor condemns any legislation policy, in this case the Judgment intends to have amendment in Section 45 of the principal Act to be in consistent with to Article 104(2) of the Constitution and not to suppress the right of recall which in the view of the Court is a fundamental bill of right subject to Article 19(3)(b) of the Constitution. *A copy of the Judgment is attached.*

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	petition under this section.		
Section 46. Petition for recall.	(1) A recall under section 45 shall be initiated by a petition which shall be filed with the Commission and which shall be— b) signed by a petitioner who— (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).	**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)	This is in order
Section 48. Validity of recall election.	A recall election shall be valid if the number of voters who concur in the recall election is at least fifty percent of the total number of registered voters in the affected county or constituency	**27.** The principal Act is amended by deleting section 48.	This section is in order through there is a need to provide a proper procedure for recall.
Section 74. Settlement of certain disputes.	(1) Pursuant to Article 88(4)(e) of the Constitution, the	**28.** The principal Act is amended by repealing section 74.	This is in order as this mandate is a duplication of mandate of the PPDT.

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	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. County election petitions.	(4) An appeal under subsection (1A) shall lie to the High Court on matters	**29.** Section 75 of the principal Act is amended – a.) in subsection (4) by deleting the words "on matters of law only"; and	Article 164(3) doesn't limit the jurisdiction of the CoA. Does putting a cap interfere with one's right to a fair trial, a right that cannot be derogated under Article 25(c). we recommend the removal of the cap on the high court being

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	of law only and shall be—	b.) by inserting the following subsection immediately after subsection (4)— (5) The determination of the appeal under sub- section (4) by the High Court shall be final.	the "final court"
Section 82. Scrutiny of votes		**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.	This is in order
		31. The principal Act is amended by inserting the following new section immediately after section 82 – **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	This is in order

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		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.	
Section 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	**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	This is on order

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	shall be—	subsection (2)—	
	(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	(3) The determination of the appeal under section (2) by the Court of Appeal shall be final.	
Section 87. Report of Court on electoral malpractices		**33.** The principal Act is amended by inserting the following new sub-part immediately after section 87- *Evaluation of electoral process* **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;	This proposal is in order

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

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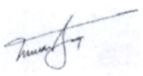
		submitted to Parliament.	

Sincerely,



Frankline Mukwanja
Executive Director.

THE CRADLE, THE CHILDREN FOUNDATION

Memoranda to the Election Amendments Bill

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Directorate of Departmental Committees

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Clause	Provision	Proposed Amendment	Justification for the Amendment
Clause 2 – Definition of "Nomination"	**"nomination" means the process through which a political party elects or selects its candidates for elections."**	Amend to: **"Nomination means the process through which a political party elects or selects its candidates for elections, conducted in a transparent, democratic, and verifiable manner."**	Ensures **clarity** and prevents **manipulation of party nominations**. This aligns with **Article 91 of the Constitution**, which requires political parties to uphold democratic principles
Clause 3 – Voter Registration (Section 5(3A))	**"(3A) A person who registers as a voter during the period when registration of voters is suspended for the purposes of a by-election shall not be eligible to contest in the electoral area affected by the by-election."**	Amend to: **"(3A) A person who registers as a voter during the period when registration of voters is suspended for the purposes of a by-election shall not be eligible to contest unless they had initiated registration before the suspension period."**	Prevents **unfair disenfranchisement** of citizens whose **registration process was pending** before suspension. Ensures **equal political rights under Article 38 of the Constitution**.
Clause 4 Inspection of the Voter Register (Section 6(1))	**"(1) The Commission shall cause the Register of Voters to be opened for inspection by members of the public at all times."**	Amend to: **"(1) The Commission shall cause the Register of Voters to be opened for inspection by members of the public at all times and provide an online platform for accessibility."**	Enhances **transparency and accessibility**. Reduces **voter suppression** and aligns with **digital advancements** in election management.
Insert new amendment Presidential Election Timelines (Section 14(2)(b))	**"(b) the day or days for the registration of candidates for the presidential election."**	Amend to: **"(b) the day or days for the registration of candidates for the presidential election, which shall not be less than 30 days before the election date."**	Ensures **adequate time for verification and dispute resolution**. Reduces chances of **last-minute disqualifications and legal battles**.

Insert new amendment Qualifications for Election (Section 22(1)(b))	**"(b) holds— (i) in the case of a Member of Parliament, a degree from a university recognized in Kenya."**	Amend to: **"(b) holds— (i) in the case of a Member of Parliament, at least a post-secondary qualification relevant to governance or leadership."**	Removes **discriminatory academic barriers** while ensuring **leadership competency**. Aligns with **Wambui & 10 others v Speaker of the National Assembly case** that declared the degree requirement unconstitutional.
Clause 14 – Political Party Nomination Rules (Section 27(1B))	**"(1B) Notwithstanding the provisions under sub section (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."**	Amend to: **"(1B) A coalition political party shall, within fourteen days of registration, submit to the Commission a copy of the coalition political party's nomination rules, which shall be subject to public scrutiny and certified by the Registrar of Political Parties."**	Enhances **transparency and accountability**. Reduces **manipulation in coalition agreements** that may **disenfranchise members**.
Amendment under Clause 16 – Approval of Independent Candidates' Symbols (Section 32(1))	**"(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."**	Amend to: **"(1) An independent candidate shall submit the symbol the candidate intends to use during an election to the Commission at least thirty days before nomination day, and the Commission shall publish all approved symbols in a public register."**	Prevents **confusion and duplication of symbols**. Ensures **clear differentiation** between candidates. Enhances **voter clarity** during elections.
Clause 23 Election Technology and Procurement (Section 44(4A))	**"(4A) In procuring the technology, the Commission shall ensure that– (i) intellectual**	Amend to: **"(4A) In procuring the technology, the Commission shall ensure that– (i)**	Ensures **security and reliability** of election technology. Prevents **voter fraud and system**

	property rights to the technology vest in the Commission."	intellectual property rights to the technology vest in the Commission; (ii) the election technology shall undergo an independent audit before deployment."	manipulation. Aligns with best international electoral practices.
Insert new amendment Scrutiny of Votes (Section 82(4))	"(4) An election court may extend a scrutiny of votes beyond the polling stations or areas mentioned in the pleadings."	Amend to: "(4) An election court may extend a scrutiny of votes beyond the polling stations or areas mentioned in the pleadings if there is prima facie evidence of irregularities or fraud."	Prevents unnecessary delays in election petitions. Ensures scrutiny remains within reasonable limits. Balances judicial efficiency with electoral integrity.

MEMORANDA

From : Electoral Law and Governance Institute for Africa (ELGIA)

To : The Clerk of the National Assembly

Date : 15th April, 2025

RE : The Elections (Amendment) (No. 2) Bill, (Senate Bill No.29 of 2024)

Background

- The Departmental Committee on Justice, Legal Affairs (JLAC), as established pursuant to National Assembly Standing Order No. 216, has invited the ELGIA to submit memoranda/comments on or before 16th April, 2025, on the Bills introduced from the Senate. This is in line with Article 118(1)(b) of the Constitution and the Standing Order number 127(3) of the National Assembly which requires Parliament to facilitate public participation and other critical stakeholders' involvement in the legislative and other business of Parliament and its committees.

- Electoral Law and Governance Institute for Africa (ELGIA), is a continental organization, headquartered in Nairobi, Kenya, working to strengthen and consolidate constitutional democracy, good governance, and electoral processes in African dialogue, electoral reforms, and advocacy. ELGIA collaborates with continental and sub-regional organizations such as the African Union, East African Community (EAC), Southern Africa Development Community (SADC) and ECOWAS. The institution aims to strengthen governance and political institutions through technical assistance, capacity building, advocacy and research.

- ELGIA has developed this memorandum to outline the key considerations that will inform the Committee on the proposed amendments to the Elections (Amendment) Bill, 2024.

The Memoranda Context

- The Bill seeks to amend the Elections Act 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 Justices and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/ Coalitions and the law on multiparty Democracy among others. One of the objectives of the amendment is to clean up the Act by providing for

the procedures for the delimitation of Electoral Units. In supporting some of the proposed amendments, ELGIA raises some issues with some of the proposals.

Remarks and comments

Proposed Amendment Clauses	Observation/ Proposals	Remarks and Comments
Clause 20 of the Bill The Bill proposes to amend the Act by inserting Section 38A of the Act to enable the Commission to appoint a place or places as a polling station or polling stations for each electoral area. It provides that Elections shall not be conducted in a place other than a place gazetted as a polling station under the above provision	• Section 38A already exists in the principal Act thus the new Section would be Section 38B of the principal Act. • The Bill should be aligned with the definition of a **Polling Station** under Section 2 of the principal Act with regards to vehicles or vessels set aside for casting of votes. • The proposed Subsection 38A (2) of the Bill contradicts Section 2 of the Principal Act due to the use of preposition 'or' in the definition of a polling station. It outrightly excludes other	• In cognisance that such measures have been deployed in other jurisdiction like ***Canada, Australia and South Africa*** where mobile polling stations are often set up in vehicles to reach remote communities and indigenous reserves, we propose for more clarity in the relevant statutes governing elections. • Such clarity will enable the Electoral Management Bodies in developing specific and subsequent guidelines and regulations. • ELGIA propose the Subsection to read '*No Election shall be conducted or held in an ungazetted polling station*' This will also align it to the proposal under Clause 2 of the Elections Offences (Amendment) Bill.
• **Clause 22 of the Bill** The Bill proposes to amend the principal Act by deleting Section 39 and substituting with the new Section 39 1 to streamline the determination	• Due to the electoral responsibilities listed under Section 39(4), (5) and (8) of the Bill, and the fact that the Word 'Commission' has multiple meanings within the Act, the Bill needs to be clear who/what the '**Commission**' as used in Subsections 4 and 5 of the Bill mean. This will	• This will provide clarity as it is under other sub-Sections 1,2,3 and 6 covering other elections. In this sections it is clear what the word Commission mean Further to this, it will allow better implementation of Article 138(3)(c) of the Constitution. *Read the findings of the Supreme Court in the 2022*

and declaration of Results.	restore clarity in Presidential elections. • In a presidential election, different statutory roles are a signed to different officials within the Commission. For instance, the Presiding Officer, Constituency Returning Officer and National Returning Officer/ Chair of the Commission have respective roles. The Bill should provide clearly these respective responsibilities under Section 39 (1)(4) instead of using the general word Commission.	*Presidential Petitition where the Court found that the Chairperson cannot exclude any member or members of the Commission in conducting the responsibilities thereunder*. In this case and for lack of clarity the then chairperson interpreted the word Commission hereunder to mean the chairperson in exclusion of other members of the Commission and gazetted himself for the responsibility.
• **Clause 25 of the bill**	• Following the declaration of section 45 of the Elections Act and section 27 of the County Governments Act as unconstitutional, section 27 of the County Governments Act was amended to set out new grounds for recall of MCAs which are clear and objective. The proposed grounds for recall of members of parliament do not provide an objective assessment of conduct that makes an MP amenable to recall.	• It is proposed to harmonise the grounds for recall of members of county assembly with those of members of parliament. • In the alternative, we propose the revision of the proposed grounds of recall to provide an objective assessment of conduct which enables an electorate to recall their member of parliament.

Felix Odhiambo Owuor
Executive Director- Electoral Law and Governance Institute for Africa (ELGIA)

(1) D/DC
Please deal
25/02/25

DIRECTOR
RECEIVED
THE ARCHITECTS ALLIANCE
25 FEB 2025
Directorate of Departmental Committees

Our Ref: TAA/TTC/24022025/05
Your Ref: TBA

(2) Mr. Abenayo Wasine, HOD
Bring to the attention of JLAC
26/02/25

NATIONAL ASSEMBLY
RECEIVED
25 FEB 2025
CLERK'S OFFICE
P.O Box 41842, NAIROBI

NATIONAL ASSEMBLY
RECEIVED
25 FEB 2025
DEPUTY CLERK, S. KIOKO
P.O. Box 41842-00100, NAIROBI

Date: 24th February 2025

To:
Clerk of The National Assembly
P.O. Box 41842-00100,
Nairobi.
Email: cna@parliament.go.ke

(3) Mr. Salim
Please deal
26/02/25

SUBJECT: RECOMMENDATIONS ON THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024

The Architects Alliance (TAA) is a professional body representing architects in Kenya, advocating for policies and legislative frameworks that promote transparency, accountability, and inclusivity in governance. This memorandum provides an analysis of The Elections (Amendment) (No. 2) Bill, 2024, highlighting key clauses, proposing amendments based on global best practices, and offering additional recommendations to align the Bill with international standards.

The Elections (Amendment) (No. 2) Bill, 2024, seeks to amend the Elections Act, 2011, to improve the electoral process, address gaps in voter registration, candidate nomination, and election dispute resolution, and enhance transparency in the use of election technology.

Table of Specific Clauses and Recommendations

Clause	Current Provision	Proposed Amendment	Justification
Section 2	Redefines "nomination" and introduces "registration of a candidate."	Ensure that the definition of "registration of a candidate" explicitly includes compliance with Chapter Six of the Constitution on leadership and integrity.	Aligns with constitutional requirements for ethical leadership and promotes accountability.
Section 6	Allows the Register of Voters to be	Require the Commission to provide online	Enhances transparency and

Clause	Current Provision	Proposed Amendment	Justification
	inspected at all times, with exceptions before elections.	access to the Register of Voters for public inspection, ensuring data protection and privacy compliance.	accessibility while safeguarding voter information, following Estonia's model.
Section 33A	Requires publication of political party and independent candidates in the Gazette.	Mandate the publication of candidate lists on a public online portal in addition to the Gazette.	Increases accessibility and ensures the public can easily verify candidate information.
Section 38A	Requires polling stations to be gazetted three months before elections.	Require the Commission to provide a mapping tool for polling stations accessible online and via mobile applications.	Improves voter participation by making polling station locations easily accessible, as practiced in South Korea.
Section 44	Addresses election technology procurement but lacks specific safeguards.	Include a requirement that election technology suppliers undergo independe nt audits for compliance with international cybersecurity standards.	Prevents vulnerabilities in election technology, as seen in Germany and Canada.

Clause	Current Provision	Proposed Amendment	Justification
Section 87A	Mandates evaluation of the electoral process within one year of a general election.	Require the Commission to establish a public consultation process as part of the evaluation, involving civil society, media, and professional bodies like TAA.	Promotes inclusivity and ensures diverse perspectives are considered in evaluating elections.

Additional Recommendations Based on Global Best Practices

1. Capacity Building for Election Officials
- Global Practice: In countries like Ghana and Denmark, election officials undergo regular training on electoral laws, technology, and dispute resolution.
- Recommendation: Mandate annual capacity-building programs for election officials to ensure they are well-equipped to manage the electoral process effectively.
2. Gender and Minority Representation
- Global Practice: Rwanda mandates gender quotas in political representation, ensuring inclusivity in governance.
- Recommendation: Amend the Bill to include provisions for gender and minority representation in the nomination and registration of candidates, ensuring compliance with Article 27 of the Constitution.
3. Election Technology Transparency
- Global Practice: In India, election technology is subjected to public and third-party audits to ensure transparency.
- Recommendation: Require the Commission to conduct public demonstrations of election technology and provide stakeholders with access to audit reports.
4. Dispute Resolution Mechanisms
- Global Practice: In New Zealand, specialized election tribunals handle disputes efficiently.
- Recommendation: Establish a dedicated Election Dispute Tribunal under the Independent Electoral and Boundaries Commission (IEBC) to expedite the resolution of election-related disputes.

Conclusion

The Elections (Amendment) (No. 2) Bill, 2024, presents an opportunity to strengthen Kenya's electoral framework. By adopting the recommendations outlined above, the Bill can align with global best practices, promote transparency, and enhance public confidence in the electoral process. The Architects Alliance (TAA) urges Parliament to consider these amendments in the interest of good governance and democratic accountability.

THE ARCHITECTS ALLIANCE

Signed,



Arch. Sylvia Kasanga
For and on behalf of the Architects Alliance