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13TH PARLIAMENT | 5TH SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

REPORT ON CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024 (SENATE BILLS NO. 29 OF 2024)

PAPERS LAID
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COMMITTEE JLAHRC
CLERK AT THE TABLE

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the Senate/Secretary, PSC
Date 10/11/26

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

November, 2026

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LIST OF ABBREVIATIONS AND ACRONYMS

Cap.	Chapter of the Laws of Kenya
IEBC	Independent Electoral and Boundaries Commission
MCA	Member of County Assembly
MP	Member of Parliament
NADCO	National Dialogue Committee
ORPP	Office of the Registrar of Political Parties

LIST OF CASES

a) *County Assembly Forum & 6 others v Attorney General & 2 Others; Senate of the Republic of Kenya (Interested Party)* [2021] KEHC 304 (KLR)

b) *Paul Macharia Wambui & 10 others v Speaker of the National Assembly & 6 Others* [2022] KEHC 10275 (KLR)

c) *Buoga v Attorney General & Another* [2022] KEHC 13214 (KLR)

d) *Katiba Institute v Independent Electoral & Boundaries Commission* [2017] KEHC 2009 (KLR)

e) *National Assembly v Katiba Institute & 6 Others* [2023] KECA 1174 (KLR)

f) *Okoiti & Another v Independent Electoral and Boundaries Commission & 5 Others* [2026] KEHC 13916 (KLR)

g) *Katiba Institute & Another v Attorney General & Another* [2017] KEHC 4648 (KLR)

h) *Kering v Torome & 5 Others [2023] KEHC 22368 (KLR)*

i) *Matuli & Another v IEBC & 2 Others [2024] KEHC 210 (KLR)*

j) *Victoria Cheruto Limo & Another v IEBC & Another* [2018] KEHC 4571 (KLR)

k) Maralal Constitutional Petition No. E1 of 2024: *Janet Lenaimalda v IEBC & 3 Others*

ESTABLISHMENT, MANDATE AND MEMBERSHIP OF THE COMMITTEE

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under the Standing Orders of the Senate and is mandated 'to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.

Membership of the Committee

The Committee comprises -

1. Sen. Wakili Hillary Sigei, CBS, MP - Chairperson
2. Sen. Veronica W. Maina, CBS, MP - Vice-chairperson
3. Sen. Raphael Chimera Mwinzagu, MP - Member
4. Sen. Karen N. Nyamu, MP - Member
5. Sen. Andrew Omtatah Okoiti, MP - Member
6. Sen. (Prof.) Tom Ojienda, SC, MP - Member
7. Sen. Crystal Kegehi Asige, MP - Member
8. Sen. Daniel Kitonga Maanzo, EBS, MP - Member

The Minutes of the Committee in considering the National Assembly amendments to the Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024) are attached to this Report as ***Annex 1.***

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

The report contains the proceedings of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the National Assembly amendments to the Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024). The Bill was published on 7th May 2024, was read a First Time in the Senate on 4th July 2024 and was passed by the Senate, with amendments, on 5th December 2024 following which it was referred to the National Assembly for its consideration.

The National Assembly considered the Bill and, on 22nd October 2026, passed the Bill with amendments, following which the Bill was referred to the Senate for consideration of the National Assembly amendments to the Bill.

Honourable Speaker,

For context, this Bill is one of the Bills that emanated from the National Dialogue Committee (NADCO) and is co-sponsored by the Senate Majority Leader and the Senate Minority Leader.

The principal object of the Bill is to amend the Elections Act, Cap 7, to streamline the electoral administration process. The Bill seeks to demarcate better the responsibilities of the Independent Electoral and Boundaries Commission (IEBC) and the Office of the Registrar of Political Parties (ORPP). The IEBC will deal with the registration of candidates while nomination will now be a preserve of the Registrar of Political Parties. Additionally, the Bill amends the Act by deleting provisions that the courts have declared unconstitutional.

Honourable Speaker,

The Standing Committee on Justice, Legal Affairs and Human Rights has taken great care in considering the amendments by the National Assembly to this Bill. This includes ensuring that the proposed amendments align with the Constitution, with other laws, with judicial precedents and that they do not negate the extensive negotiations and consensus arrived at during the NADCO process on key provisions of the Bill. The Committee also made reference to stakeholder submissions made both during the NADCO process as well as to the Committee when it considered the Bill after its First Reading in the Senate. These deliberations, on each proposed amendment, are set out in detail in Chapter Two of this Report.

Honourable Speaker,

Having considered the National Assembly Amendments to the Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024), the Standing Committee on Justice, Legal Affairs and Human Rights **recommends** that the Senate-

a) **agrees to** the amendments by the National Assembly to clause 2, clause 3, clause 9, new clause 13A, clause 16, clause 20 and clause 21 of the Bill; and

b) **rejects** the amendments by the National Assembly to clause 10, clause 15, clause 19, clause 22, clause 23, clause 24, clause 25, new clause 26A, clause 30, clause 32 and new clause 33 of the Bill.

This will pave way for the said clauses to be subjected to the mediation process as contemplated under Article 113 of the Constitution.

Noting the timelines towards the 2027 general elections, the Committee recommends that the mediation process in respect of this Bill be fast-tracked with the target of securing approval of the mediated version of the Bill, by both Houses, on or before 3rd December, 2026, when the two Houses will be proceeding for the long recess.

Honourable Speaker,

I wish to thank the Offices of the Speaker and the Clerk of the Senate for the support accorded to the Committee during its consideration of the National Assembly amendments. I also acknowledge and commend the industry, profound insight and commitment of the Members of the Committee, as well as the diligence and unfailing support of the Secretariat, whose combined efforts were integral to the successful and timely completion of this assignment.

Honourable Speaker,

It is now my pleasant duty, pursuant to Standing Order 223(6) of the Senate Standing Orders, to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the National Assembly amendments to the Elections (Amendment) (No. 2) Bill, 2024 (Senate Bill No. 29 of 2024).

Signed ..... Date 10/11/2026

SEN. WAKILI HILLARY SIGEI, CBS, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

CHAPTER ONE: INTRODUCTION

1.1 Introduction

1. The Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024) was published on 7th May 2024 and was introduced in the Senate, by way of First Reading, on Thursday, 4th July, 2024. A copy of the Bill, as originally published, is attached to this Report as ***Annex 2***.

2. The Bill, which is co-sponsored by the Senate Majority Leader and the Senate Minority Leader, was one of the Bills originating from the National Dialogue Committee (NADCO).

3. The principal object of the Bill is to amend the Elections Act, Cap 7, to streamline the electoral administration process. The Bill also seeks to demarcate better the responsibilities of the Independent Electoral and Boundaries Commission (IEBC) and the Office of the Registrar of Political Parties (ORPP). The IEBC will deal with the registration of candidates while nomination will now be a preserve of the Registrar of Political Parties. Additionally, the Bill amends the Act by deleting provisions that the courts have declared unconstitutional.

4. The Bill underwent the legislative process in the Senate and was passed, with amendments, on Thursday, 5th December 2024 following which it was referred to the National Assembly for consideration, pursuant to Article 110(4) of the Constitution. A copy of the Bill, as passed by the Senate, is attached to this Report as ***Annex 3***.

5. On Thursday, 22nd October 2026, the National Assembly considered and passed the Bill with amendments and referred the Bill back to the Senate for reconsideration, pursuant to Article 112(1)(b) of the Constitution. A copy of the Message conveying the decision of the National Assembly, together with the Schedule of National Assembly amendments to the Bill, is attached to this Report as ***Annex 4***.

B. The Procedure for Consideration of National Assembly Amendments to a Senate Bill

6. Under Article 112(1) of the Constitution, if one House passes an ordinary Bill concerning counties, and the second House—

(a) rejects the Bill, it shall be referred to a mediation committee appointed under Article 113; or

(b) passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration.

7. Article 112(2) of the Constitution further provides that if, after the originating House has reconsidered a Bill referred back to it under clause (1) (b), that House—

(a) passes the Bill as amended, the Speaker of that House shall refer the Bill to the President within seven days for assent; or

(b) rejects the Bill as amended, the Bill shall be referred to a mediation committee under Article 113.

8. Standing order 165 of the Senate Standing Orders further outlines the procedure to be followed during consideration of National Assembly amendments to Bills originating from the Senate.

9. Standing order 165(1) provides that amendments by National Assembly to a Bill originating in the Senate shall be circulated to Senators within seven days of receipt of the amendments from the National Assembly and shall be put down for consideration in a Committee of the Whole on such day as the Senate Business Committee shall appoint.

10. Standing order 165(4) further provides that when the Senate has concluded the consideration of the amendments by the National Assembly to a Bill originating in the Senate and the Senate—

(a) passes the Bill as amended, the Speaker shall refer the Bill to the President within seven days for assent; or

(b) rejects the Bill as amended, the Speaker shall refer the Bill to a Mediation Committee under Article 113 of the Constitution.

CHAPTER TWO: CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE BILL

2.1 Introduction

11. Following committal of the National Assembly amendments to the Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024), the Standing Committee on Justice, Legal Affairs and Human Rights proceeded to consider the amendments at a meeting held on Thursday, 5th November, 2026 and at a retreat held on Friday, 6th November, 2026 in Machakos County.

12. The section below contains the observations and recommendations of the Committee in respect of each proposed amendment.

2.2 Clause-by-Clause Consideration of the National Assembly Amendments

2.2.1 Clause 2

13. The National Assembly amended Clause 2 of the Bill as follows-

> *THAT, clause 2 of the Bill be amended by—*
>
> *(a) 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;"*
>
> *(b) deleting paragraph (d).*

14. The amendment to clause 2(a) of the Bill, on the definition of a 'political party', replaces the reference to Article 260 of the Constitution with a reference to section 2 of the Political Parties Act.

15. The Committee observed that the definition of a 'political party' at section 2 of the Political Parties Act is broader as it provides for the nature and functions of a political party and includes a coalition political party. The Committee therefore **agreed to** the proposed amendment to clause 2(a) of the Bill.

16. The deletion of paragraph 2(d) of the Bill removes the requirement for a Kenyan passport to be 'valid' for purposes of identification during voter registration and voting.

17. The Committee observed that the validity of a Kenyan passport as a travel document was not equivalent to its validity as an identification document for purposes of participation in elections, and that insistence on such a Kenyan passport being 'valid' may lead to disenfranchisement of eligible voters during elections. The Committee therefore **agreed to** the proposed deletion of clause 2(d) of the Bill.

2.2.2 Clause 3

18. The National Assembly amended Clause 3 of the Bill as follows-

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

19. Clause 3(c) of the Bill proposes to insert a new section 5(3A), barring a person who registers as a voter during the period in which voter registration is suspended for a by-election from contesting that by-election.

20. The Committee observed that, while this provision is deleted from clause 3 of the Bill, it is retained as the new Clause 13A of the Bill. This places the disqualification in section 26 of the Act as a restriction on candidature rather than a rule of voter registration. The Committee therefore **agreed to** the proposed deletion of clause 3(c) of the Bill.

2.2.3 Clause 9

21. The National Assembly amended Clause 9 of the Bill as follows-

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).

22. Clause 9 of the Bill seeks to amend section 19 of the Act on the initiation of county assembly elections. The Committee observed that the amendment clarifies that the proposed paragraph 2(b) relates to the registration of candidates for county assembly elections. The Committee therefore **agreed to** the proposed amendment to clause 9(a) of the Bill.

2.2.4 Clause 10

23. The National Assembly amended Clause 10 of the Bill as follows-

> *THAT, clause 10 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—*
>
> *"(b) in subsection (1), by deleting the word "nominated" appearing immediately after the words "may be" in the opening statement and substituting therefor the word "registered";"*

24. Clause 10(b) of the Bill as passed by the Senate sought to effect two amendments. The first was replacement of the word 'nominated' with the word 'registered' with respect to the registration of candidates for elections under the Act. The second sought to delete section 22(1)(b) of the Act which imposes the requirement for a university degree for one to be registered as a candidate for election as a Member of Parliament or a member of a county assembly.

25. The Committee observed that, while the National Assembly retained the proposed amendment to replace nomination of candidates with registration of candidates for election, the amendments by the National Assembly effectively deleted clause 10(b)(ii) of the Bill as passed by the Senate, which sought to delete section 22(1)(b) of the Act to remove the degree requirement for one to be registered as a candidate for election as a Member of Parliament or a member of a county assembly.

26. The Committee further observed that, by dint of Articles 137(1)(b) and 148(1) of the Constitution, reinstating the degree requirement for one to be elected as a Member of Parliament would reimpose the same academic qualification for one to be registered as a candidate for election as President or Deputy President.

27. Likewise, by dint of Article 180(2) and (5) of the Constitution, reinstating the degree requirement for one to be elected as a member of a county assembly would reimpose the same academic qualification for one to be registered as a candidate for election as county governor or deputy governor.

28. The Committee observed that, effectively, this would reimpose the degree requirement across all elective positions in the country, from member of a county assembly to the President.

29. The Committee took note of key judicial decisions that declared the degree requirement for various elective positions as unconstitutional for unjustifiably limiting the political rights of all citizens and equality guarantees under Articles 38 and 27 of the Constitution, notably –

a) *County Assembly Forum & 6 others v Attorney General & 2 others; Senate of the Republic of Kenya (Interested Party) [2021] eKLR*[1], in which the High Court held that subjecting all the candidates for the positions of member of county assembly to a minimum academic qualification of university degree prejudiced the rights and fundamental freedoms of those who were not able to directly acquire/afford university degrees;

b) *Paul Macharia Wambui & 10 others v Speaker of the National Assembly & 6 others [2022] eKLR*[2], where the High Court declared Section 22(1)(b)(i) of the Elections Act on the requirement of a degree qualification as a pre-condition for nomination for election as a Member of Parliament as unconstitutional; and

c) *Buoga v Attorney General & another [2022] eKLR*[3], in which the High Court declared Section 22(2) of the Elections Act unconstitutional for creating an avenue for differentiation between the eligibility requirements between members of county assembly and county governors.

30. The Committee observed that, in both *Paul Macharia Wambui* and *Buoga v Attorney General*, the High Court faulted the equating of academic qualifications of all elective positions in Kenya, without any differentiation or regard to the different attending responsibilities, and by disregarding the different remuneration and benefits, as contravening several provisions of the Constitution.

31. The Committee further took note that the National Dialogue Committee proposed the deletion of section 22(1)(b) of the Elections Act to comply with the said judicial decisions declaring the degree requirement for the positions of Members of Parliament and members of county assembly as unconstitutional. This was the intent that was carried in both the Bill that originated from NADCO, as published and as passed by the Senate.

32. The Committee also examined the practice in comparative jurisdictions and observed that a university degree requirement for election to a national legislature is rare, and that it has been abandoned or rejected in several of the jurisdictions

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[1] [2021] KEHC 304 (KLR)

[2] [2022] KEHC 10275 (KLR)

[3] [2022] KEHC 13214 (KLR)

where it was tried. Further, where an educational qualification is imposed for national office, it is generally set at school level rather than at degree level.

33. The Committee further took note that Article 53(1)(b) of the Constitution guarantees every child the right to free and compulsory basic education, meaning primary and secondary school education. Thus, while Parliament may impose academic qualifications for candidates for elective office, the same must not extend beyond what the State is mandated by the Constitution to provide to every child. This is because it would render elective office a preserve of only those with the means to pursue tertiary education.

34. The Committee therefore resolved to recommend that the Senate **rejects** the National Assembly amendment to clause 10(b) of the Bill.

2.2.5 New Clause 13A

35. The National Assembly amended the Bill by inserting a new Clause 13A, as follows-

> *THAT, the Bill be amended by inserting the following new clause immediately after clause 13—*
>
> *"13A. Section 26 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—*
>
> *(3) A person who registers as a voter during the period registration of voters is suspended for 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.*

36. The new Clause 13A of the Bill proposes to insert a new section 26(3) of the Elections Act, barring a person who registers as a voter during the period in which voter registration is suspended for a by-election from contesting that by-election.

37. The Committee observed that this provision was picked from the previous clause 3(c) of the Bill which was deleted and retained as the new clause 13A of the Bill. This places the disqualification in section 26 of the Act as a restriction on candidature rather than a rule of voter registration. The Committee therefore **agreed to** the proposed insertion of the new clause 13A.

2.2.6 Clause 15

38. The National Assembly amended Clause 15 of the Bill as follows-

THAT, clause 15 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (a)—

"(aa) by deleting subsection (2B);

(ab) by deleting subsection (2C);"

39. Section 31 of the Elections Act relates to nomination of political party candidates for purposes of an election under the Act. While the Bill as passed by the Senate deleted section 31 (2), (2E) and (2F) of the Elections Act, the amendment by the National Assembly additionally seeks to delete subsections (2B) and (2C) of section 31 of the Act.

40. The said subsections provide for the submission by political parties to IEBC of the names of the persons contesting in party primaries, the dates of the party primaries, and for the publication by IEBC of this information in the *Gazette*.

41. The Committee recalled that-

a) in the original Bill as published, it was proposed that section 31 (2), (2B), (2C), (2E) and (2F) be deleted. This would demarcate the responsibilities of the IEBC and the ORPP, with IEBC dealing with the registration of candidates while nomination would now be a preserve of ORPP;

b) during public participation on the Bill, IEBC argued for the retention of section 31 (2B) and (2C) on the basis that the deletion of the said subsections would interfere with its mandate Article 88 of the Constitution, specifically Article 88(4)(d) which vests on the Commission the responsibility to regulate the process by which parties nominate candidates for election; and

c) consequently, the Senate deleted paragraphs 15(a) and (b) of the original Bill, which proposed the deletion of subsections 31(2B) and (2C) of the Act.

42. The Committee observed that the amendments by the National Assembly effectively sought to reinstate paragraphs 15(a) and (b) of the Bill as originally published, thus deleting subsections 31(2B) and (2C) of the Act.

43. Noting the need to demarcate the responsibilities of the IEBC and ORPP, while upholding the IEBC's mandate under Article 88(4)(d) of the Constitution, the Committee resolved to recommend that the Senate **rejects** the proposed insertion of subclauses 15(aa) and (ab) of the Bill. This would pave way for further

deliberation and consensus building on how the provision should be framed in the eventual law to be enacted by Parliament.

2.2.7 Clause 16

44. The National Assembly amended Clause 16 of the Bill as follows-

> *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 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."*

45. The amendment by the National Assembly relates to sections 32(3)(b) and (c) of the Act. At paragraph (b), the amendment clarifies that the proposed symbol by an independent candidate should not be similar to that of another independent candidate within the same county or of a political party. At paragraph (c), the amendment corrects a cross-referencing error where the Bill as passed by the Senate cited the wrong paragraph and proceeds to clarify the limitation on resemblance of symbols proposed by an independent candidate for election as governor.

46. The Committee noted that the amendment provided further clarity on the provision and corrected a cross-referencing error in the version of the Bill as passed by the Senate. The Committee therefore **agreed to** the proposed amendment to clause 16(c) of the Bill.

2.2.8 Clause 19

47. The National Assembly amended Clause 19 of the Bill as follows-

THAT, clause 19 of the Bill be amended by deleting paragraph (a).

48. Clause 19(a) of the Bill as published and as passed by the Senate sought to introduce a requirement that, for one to be nominated as a member of a county assembly, the person must be a registered voter in any of the wards in that county as at the date of submission of the party list to IEBC. The clause further sought to ensure equitable representation of the nominated members from across the wards comprising that county. This clause was deleted by the National Assembly.

49. The Committee observed that there was emerging jurisprudence from Superior Courts that a nominated MCA should be a registered voter and resident in the County of appointment. This was affirmed by the Courts in –
    a) Narok Election Petition Appeal E002 of 2023: *Kering v Torome & 5 Others*[4]
    b) Kapsabet High Court Election Appeal No. E001 of 2022: *Matuli & Another v IEBC & 2 Others*[5]
    c) Garissa Election Petition Appeal 5 & 7 of 2018: *Victoria Cheruto Limo & Another v IEBC & Another*[6]
    d) Maralal Constitutional Petition No. E1 of 2024: *Janet Lenaimalda v IEBC & 3 Others*

50. The Committee further recalled that, following consideration of a Petition by Mr. Laban Omusundi, the Committee recommended that section 34 of the Elections Act be amended to provide that, for one to be eligible for nomination to a county assembly, one would need to demonstrate that he or she is either a registered voter in any of the wards in that county, is a resident of that county, or has a demonstrated interest in the affairs of that county.[7]

51. The Committee observed that, while residency and demonstrable interest may not be as clearly ascertainable as registration as a voter, the criteria and procedure for determination of the same could be provided for in election regulations.

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[4] [2023] KEHC 22368 (KLR)

[5] [2024] KEHC 210 (KLR)

[6] [2018] KEHC 4571 (KLR)

[7] Report of the Standing Committee on Justice, Legal Affairs and Human Rights on consideration of a Petition by Mr. Laban Omusundi concerning the enactment of a clause in electoral laws to ensure than all nominated Members of County Assembly (MCAs) are voters and residents of the respective Counties, laid on the Table of the Senate on 28th November, 2023.

52. The Committee therefore affirmed the requirement that, for one to be eligible for nomination as a member of a county assembly, one would need to demonstrate that he or she is either a registered voter in any of the wards in that county, is a resident of that county, or has a demonstrated interest in the affairs of that county

53. Consequently, the Committee resolved to recommend that the Senate **rejects** the proposed deletion of clause 19(a) of the Bill.

2.2.9 Clause 20

54. The National Assembly deleted clause 20 of the Bill, as follows-

THAT, the Bill be amended by deleting clause 20.

55. Clause 20 of the Bill proposed inserting a new section 38A of the Act requiring IEBC to publish in the *Gazette* and in other easily accessible mediums the polling stations appointed for each electoral area at least three months before the date of any election. The provision further prohibited the holding of elections in a place other than a gazetted polling station. This clause was deleted by the National Assembly.

56. The Committee observed that this was a matter that could be adequately provided for in election regulations, and therefore **agreed to** the proposed deletion of clause 20 of the Bill.

2.2.10 Clause 21

57. The National Assembly deleted clause 21 of the Bill, as follows-

THAT, the Bill be amended by deleting clause 21.

58. Clause 21 of the Bill proposed renumbering of the existing section 38A of the Act to 38B, in light of the amendment proposed in clause 20. It further sought to replace the capping of voters at a polling station from the existing seven hundred voters to a minimum of fifty and a maximum of one thousand voters. This clause was deleted by the National Assembly.

59. The Committee observed that, while the proposal to vary the number of voters per polling station was not contained in the original Bill, it was incorporated by the

Senate following submissions by the IEBC. The Commission proposed to increase the number of voters per polling station from a number of not less than fifty and not more than a thousand for purposes of enhancing efficient and effective conduct of the elections. IEBC noted that, with advances in technology, a polling station could now comfortably handle up to one thousand voters. This would further reduce the cost of elections.

60. Nevertheless, noting the time remaining to the next general elections and the changes that would have to be made to the voters roll in adjusting the number of voters per polling station, the Committee resolved that the amendment be deferred until after the next general elections.

61. The Committee further noted that, with the proposed deletion of clause 20 which had proposed the insertion of a new section 38A of the Act, clause 21(a) of the Bill was considered spent.

62. The Committee therefore **agreed to** the proposed deletion of clause 21 of the Bill.

2.2.11 Clause 22

63. The National Assembly deleted clause 22 of the Bill, as follows-

THAT, the Bill be amended by deleting clause 22.

64. Clause 22 of the Bill sought to delete section 39 of the Elections Act and to substitute it with a new section. The proposed new section 39 provided for the determination, declaration and publication of election results; the appointment and functions of constituency and county returning officers; and the tallying, transmission, verification, announcement, declaration and publication of the results of a presidential election. The clause further provided for access by agents, observers and other authorized persons to polling or tallying centre to record and document the tallying, announcement and declaration of the results.

65. The National Assembly deleted clause 22 of the Bill in its entirety, thus retaining section 39 of the Elections Act as it currently is.

66. The backdrop to amendment of section 39 of the Act, particularly subsection 39(IG), was the decision of the High Court in *Katiba Institute v Independent*

Electoral & Boundaries Commission [2017] eKLR[8] as upheld by the Court of Appeal in *National Assembly v Katiba Institute & 6 others [2023] eKLR*[9]. In the two decisions, the Courts invalidated section 39(1G), which required livestreaming but confined streamed results to public information and excluded them as a basis for declaration. The Courts rejected that restriction for undermining electoral transparency and accountability.

67. The impugned section 39(1G) of the Elections Act provides that-

> '*The Commission shall, to facilitate public information, establish a mechanism for the livestreaming of results as announced at polling stations, and the results so streamed shall be for purposes of public information only and shall not be the basis for a declaration by the Commission.*'

68. In the proposed amendments as contained in clause 22 of the Bill, the new paragraph (9) provided as follows-

> *'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.'*

69. This Bill therefore replaced the provision on livestreaming with one on access to polling or tallying centres by candidates, their agents or other authorised persons to record and document the tallying, announcement and declaration of results.

70. In considering the National Assembly amendment to delete clause 22 of the Bill, the Committee observed that-

    a) the amendments did not address themselves to the decisions in *Katiba Institute v Attorney General* and *National Assembly v Katiba Institute*, invalidating section 39(G) of the Act on the livestreaming of election results;

    b) the decision of the High Court in *Okoiti & another v Independent Electoral and Boundaries Commission & 5 others [2026] eKLR*[10] did not distinguish, vacate or overturn the said decisions on the invalidity of section 39(IG) of the Elections Act as currently framed;

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[8] [2017] KEHC 2009 (KLR)
[9] [2023] KECA 1174 (KLR)
[10] [2026] KEHC 13916 (KLR)

c) no adequate justification had been given for the proposed deletion of the entire clause 22 of the Bill, particularly considering that it comprised the negotiated outcome of the National Dialogue Committee (NADCO) and had further taken into account judicial decisions rendered by the Superior Courts on the determination and declaration of election results.

71. Consequently, the Committee resolved to recommend that the Senate **rejects** the proposed deletion of clause 22 of the Bill. This would pave way for further deliberation and consensus building on how the provision should be framed in the eventual law to be enacted by Parliament.

2.2.12 Clause 23

72. The National Assembly amended Clause 23 of the Bill as follows-

THAT, the Bill be amended by deleting clause 23 and substituting therefor the following new Clause—

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, 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."

73. Clause 23 of the Bill as passed by the Senate provided for the addition of new sections after section 44(4) of the Elections Act on the procurement of technology used during elections. The amendment required that the IEBC before procuring any technology shall ensure that the suppliers of the technology have not violated any procurement law, committed a crime, violated professional standards, and have not been barred from participating in public procurement in any jurisdiction.

74. Additionally, the procured technology shall be subjected to scrutiny by the candidates, courts and other persons required under the law subject to the Constitution, the Elections Act and the Data Protection Act. The clause also vested the intellectual property rights of the procured technology with IEBC and provided that processing of data would only be effected through a server or data centre located in Kenya.

75. This clause was amended by the National Assembly to only retain the subclause on the technology being accessible and available for scrutiny by candidates, courts and such other persons as are required under any law.

76. The Committee observed that this amendment significantly watered down the outcome negotiated at the National Dialogue Committee and warranted further consideration to arrive at a more ideal framing of the text. The Committee resolved to recommend that the Senate **rejects** the proposed amendment to clause 23 of the Bill.

2.2.13 Clause 24

77. The National Assembly amended Clause 24 of the Bill as follows-

THAT, clause 24 of the Bill be amended by deleting paragraph (c).

78. Subclause 24(c) of the Bill provided the IEBC with the mandate to make regulations for the better carrying out the provisions dealing with the use of technology for biometric voter registration, electronic voter identification and electronic transmission of results under section 44A of the Act. This provision was deleted by the National Assembly.

79. The Committee observed that the power granted to the Commission under section 44(5) of the Act was specific to that section and did not extend to the making of regulations on the complementary mechanism for identification of voters and transmission of election results as contemplated under section 44A of the Act. Additionally, this power was not granted to the Commission under section 109 of the Act which provided for the regulation making powers of the Commission on other election-related aspects.

80. Consequently, the Committee resolved to recommend that the Senate **rejects** the proposed amendment to clause 24 of the Bill.

2.2.14 Clause 25

81. The National Assembly amended Clause 25 of the Bill as follows-

THAT, clause 25 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

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

(2) A member of Parliament may be recalled—

(a) for gross violation of a provision of the Constitution or any other law;

(b) where there are serious reasons for believing that the member has committed a crime under national or international law; or

(c) for gross misconduct."

82. The amendment replaces the grounds for recall of a member of Parliament as contained in the Bill passed by the Senate. The Bill, in turn, proposed to replace the grounds for recall as set out at section 45(2) of the Elections Act.

83. The Committee observed that-

a) In *Katiba Institute & another v Attorney General & another [2017] eKLR*[11], the High Court declared that sections 45(2), (3)and (6), 46(1)(b)(ii) and (c) and 48 of the Elections Act fell far short of the constitutional imperative in Article 104 of the Constitution and, to that extent, were unconstitutional; and

b) There was need to harmonize the different sets of grounds for recall as set out in the Bill as passed by the Senate and as passed by the National Assembly, while ensuring that the same met the threshold established by the High Court in the above case.

84. Consequently, the Committee resolved to recommend that the Senate **rejects** the proposed amendment to clause 25 of the Bill.

2.2.15 New Clause 26A

85. The National Assembly amended the Bill by inserting a new Clause 26A, as follows-

THAT, the Bill be amended by inserting the following new clause immediately after clause 26—

*"**26A.** Section 47 of the principal Act is amended by deleting subsection (5) and substituting therefor the following new subsection—*

[11] [2017] KEHC 4648 (KLR)

(5) A recall election shall be decided by—

(a) a simple majority of the voters voting in the recall election; and

(b) the concurrence of at least one-third of—

(i) the registered voters in every ward of the affected constituency, in the case of a member of the National Assembly; or

(ii) the registered voters in every constituency of the affected county, in the case of a member of the Senate."

86. The amendment introduces an additional threshold that a recall election must meet for it to be considered valid. While section 47(5) of the Elections Act provides for a simple majority of the voters voting in the recall election, the amendment enhances this threshold by requiring that, in the case of a member of the National Assembly, the recall be supported by at least one third of the registered voters in every ward of the affected constituency and, in the case of a Senator, the recall be supported by at least a third of the registered voters in every constituency.

87. The Committee observed that, which this amendment provided further clarity on the threshold for recall of a member and further ensured that such a recall enjoyed support across the electoral area, there was need to reconsider-

a) the differentiation in the requirement for a simple majority of voters voting in the recall election vis-à-vis one third of all the registered voters in every ward or constituency of the respective area, as appropriate; and

b) whether the enhanced threshold complied with the constitutional imperative in Article 104 of the Constitution , as enunciated by the High Court in the above-cited case of *Katiba Institute & another v Attorney General & another [2017] eKLR.*

88. The Committee therefore resolved to recommend that the Senate **rejects** the proposed insertion of the new clause 26A of the Bill.

2.2.16 Clause 30

89. The National Assembly deleted clause 30 of the Bill, as follows-

THAT, the Bill be amended by deleting clause 30.

90. Clause 30 of the Bill proposed the insertion of a new section 82A to the Elections Act on access to information and the responsibility of the IEBC during scrutiny of votes by an election court. The new section directed that the IEBC shall ensure access to information including any technology used in elections during such scrutiny following the Access to Information Act, the Data Protection Act and the Independent Electoral and Boundaries Commission Act. IEBC was further required to facilitate such access within 3 days of request in the case of a Presidential election and 7 days of request in the case of any other elective position.

91. The Committee observed that no adequate justification had been given for the proposed deletion of clause 30 of the Bill, particularly considering that it comprised the negotiated outcome of the National Dialogue Committee (NADCO) and had further taken into account judicial decisions rendered by the Superior Courts on access to information during elections and in the context of the determination of electoral disputes.

92. The Committee therefore resolved to recommend that the Senate **rejects** the proposed deletion of clause 30 of the Bill.

2.2.17 Clause 32

93. The National Assembly deleted clause 32 of the Bill, as follows-

THAT, the Bill be amended by deleting clause 32.

94. Clause 32 of the Bill sought to insert a new section 87A of the Elections Act on the evaluation of the electoral process. Under this provision, IEBC would be required to facilitate an evaluation of the electoral process within one year of a general election, including a review of the legal framework guiding the conduct of general elections, an audit of the register of voters, the role of media and civil societies in elections, voting and vote counting procedures on election day, elections ICT and human resources deployed in the conduct of general elections, election dispute resolution mechanisms, and the cost of conducting the general elections. The evaluation report would be published in the *Gazette* and submitted to Parliament.

95. The Committee observed that no adequate justification had been given for the proposed deletion of clause 32 of the Bill, particularly considering that it

comprised the negotiated outcome of the National Dialogue Committee (NADCO), that the proposal reflected global best practice on the conduct and evaluation of electoral processes, and further codified in law existing practice on post-election evaluation by the IEBC.

96. The Committee therefore resolved to recommend that the Senate **rejects** the proposed deletion of clause 32 of the Bill.

2.2.18 New Clause 33

97. The National Assembly amended the Bill by inserting a new Clause 33, as follows-

THAT, the Bill be amended by inserting the following new clause immediately after clause 32—

*"**33.** Section 109 of the principal Act is amended by—*

(a) deleting subsection (3) and substituting therefor the following new subsection—

(3) The Commission shall make or amend its regulations and publish them in the Gazette not later than four months before the date of a general election.

(b) inserting the following new subsection immediately after subsection (3)—

(3A) The Commission shall subject the regulations made or amended pursuant to subsection (3) to public participation in accordance with the Statutory Instruments Act.

(c) deleting subsection (4)."

98. The proposed new clause 32 made provisions on the powers by the IEBC to make regulations relating to the matters specified under section 109 of the Elections Act. Notably, the proposal deletes subsection 109(3) of the Act which is considered spent, and replaces it with a new provision requiring the Commission to publish regulations not later than four months before a general election. The provision further mandates IEBC to facilitate public participation in formulating the said regulations. Lastly, the provision deletes the requirement for IEBC to publish the regulations in the Gazette not later than sixty days before a general election, subject to approval of the regulations by the National Assembly.

99. The Committee observed that both the amendments to section 109(3) and (4) remove altogether the requirement for the IEBC to submit either a draft or the published regulations to Parliament for scrutiny and approval pursuant to the Statutory Instruments Act, Cap. 2A of the Law of Kenya.

100. Further, considering the electoral calendar and the work program of the Houses of Parliament during an election year, it would be more ideal to have the regulations submitted to Parliament not later than six months ahead of the general election and for the same to be approved by Parliament not later than four months ahead of the general election.

101. Lastly, the Committee emphasized the need for the election regulations to be subjected to approval by both Houses of Parliament, considering that they applied to all electoral positions including elections to the Senate, to the county executives and the county assemblies.

102. Consequently, the Committee resolved to recommend that the Senate **rejects** the proposed insertion of the new clause 33 of the Bill. This would pave way for further deliberation and consensus building on the final text of the proposed clause.

CHAPTER THREE: COMMITTEE RECOMMENDATIONS

3.1 Committee Recommendations

103. Having considered the National Assembly Amendments to the Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024), the Standing Committee on Justice, Legal Affairs and Human Rights **recommends** that the Senate-

a) **agrees to** the amendments by the National Assembly to clause 2, clause 3, clause 9, new clause 13A, clause 16, clause 20 and clause 21 of the Bill; and

b) **rejects** the amendments by the National Assembly to clause 10, clause 15, clause 19, clause 22, clause 23, clause 24, clause 25, new clause 26A, clause 30, clause 32 and new clause 33 of the Bill.

104. Noting the timelines towards the 2027 general elections, the Committee further **recommends** that the mediation process in respect of the Bill be fast-tracked with the target of securing approval of the mediated version of the Bill, by both Houses, on or before 3rd December, 2026.

LIST OF ANNEXES

Annex 1: Minutes of the Committee in considering the National Assembly Amendments to the Bill

Annex 2: The Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024) – as published

Annex 3: The Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024) – as passed by the Senate, with amendments, on 5th December, 2024

Annex 4: Message conveying the decision of the National Assembly, together with the Schedule of National Assembly amendments to the Bill

Annex 1: Minutes of the Committee in considering the National Assembly Amendments to the Bill

13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 322ND SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURDAY, 5TH NOVEMBER, 2026 AT 8:00 A.M. VIRTUALLY, VIA THE ZOOM ONLINE MEETING PLATFORM

PRESENT

1. Sen. Veronica W. Maina, CBS, MP - Vice-Chairperson
2. Sen. Daniel Kitonga Maanzo, EBS, MP - Member *(Chairing)*
3. Sen. (Prof.) Tom Ojienda, SC, MP - Member
4. Sen. Andrew Omtatah Okoiti, MP - Member
5. Sen. Crystal Kegehi Asige, MP - Member

ABSENT WITH APOLOGY

1. Sen. Wakili Hillary Sigei, CBS, MP - Chairperson
2. Sen. Raphael Chimera Mwinzagu, MP - Member
3. Sen. Karen Njeri Nyamu, MP - Member

SECRETARIAT

1. Mr. Charles Munyua - Principal Clerk Assistant II
2. Mr. Boniface Kiambi - Senior Clerk Assistant
3. Mr. Malcolm Ngugi - Senior Legal Counsel
4. Ms. Angela Bonaya - Clerk Assistant III *(Taking Minutes)*
5. Mr. Jackson Matheshe - Research Officer III
6. Mr. Josphat Ngeno - Media Relations Officer
7. Mr. Zenton Williams - Audio Officer
8. Mr. John Lekampule - Sergeant-at-Arms

MIN. NO. 1141/2026 PRELIMINARIES

The meeting was called to order at twenty-five minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 1142/2026 ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

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MIN. NO. 1143/2026 **NATIONAL ASSEMBLY AMENDMENTS TO THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024 (SENATE BILLS NO. 29 OF 2024)**

The Committee was taken through a brief on the National Assembly amendments to the Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024) as contained in Committee Paper No. 32/26.

Thereupon, the Committee resolved to substantively consider the National Assembly amendments at the retreat of the Committee to be held from 5th to 8th November, 2026 in Machakos County.

MIN. NO. 1144/2026 **ADJOURNMENT**

The Chairperson adjourned the meeting at forty-one minutes past eight O'clock. The next meeting would be held on Friday, 6th November, 2026 in Machakos County.

SIGNED: .....

DATE: 10/11/2026

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13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 323RD SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON FRIDAY, 6TH NOVEMBER, 2026 AT 9:00 A.M. AT FOUR POINTS BY SHERATON, MACHAKOS COUNTY

PRESENT

1. Sen. Veronica W. Maina, CBS, MP - Vice-Chairperson
2. Sen. Daniel Kitonga Maanzo, EBS, MP - Member *(Chairing)*
3. Sen. (Prof.) Tom Ojienda, SC, MP - Member
4. Sen. Andrew Omtatah Okoiti, MP - Member
5. Sen. Crystal Kegehi Asige, MP - Member

ABSENT WITH APOLOGY

1. Sen. Wakili Hillary Sigei, CBS, MP - Chairperson
2. Sen. Raphael Chimera Mwinzagu, MP - Member
3. Sen. Karen Njeri Nyamu, MP - Member

SECRETARIAT

1. Mr. Hassan Odhowa - HoD, Governance Committees
2. Mr. Charles Munyua - Principal Clerk Assistant II
3. Mr. Malcolm Ngugi - Senior Legal Counsel
4. Ms. Angela Bonaya - Clerk Assistant II *(Taking Minutes)*
5. Mr. Jackson Matheshe - Research Officer II
6. Ms. Linet Aseka - Research Officer II
7. Mr. Josphat Ngeno - Media Relations Officer
8. Mr. Zenton Williams - Audio Officer
9. Mr. Joseph Wangai - Office Assistant

MIN. NO. 1145/2026 PRELIMINARIES

The meeting was called to order at twenty-nine minutes past nine O'clock and opened with a word of Prayer.

MIN. NO. 1146/2026 ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. (Prof.) Tom Ojienda, SC, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

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MIN. NO. 1147/2026 **NATIONAL ASSEMBLY AMENDMENTS TO THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024 (SENATE BILLS NO. 29 OF 2024)**

The Committee was taken through a matrix of amendments to the Bill as passed by National Assembly *vis-à-vis* the Bill as initially passed by the Senate.

Following deliberations, Members resolved to -

i) accede to the amendments by the National Assembly to clause 2, clause 3, clause 9, new clause 13A, clause 16, clause 19 and clause 20 of the Bill; and

ii) reject the amendments by the National Assembly to clause 10 and clause 15 of the Bill.

Owing to time constraints, the Committee resolved to defer further consideration of the amendments to the same day, at two O'clock.

MIN. NO. 1148/2026 **ADJOURNMENT**

The Chairperson adjourned the meeting at fifteen minutes past one O'clock. The next meeting would be held on the same day, at two O'clock.

SIGNED: .....

DATE: 10/11/2026 .....

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13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 324TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON FRIDAY, 6TH NOVEMBER, 2026 AT 2:00 P.M. AT FOUR POINTS BY SHERATON, MACHAKOS COUNTY

PRESENT

1. Sen. Veronica W. Maina, CBS, MP - Vice-Chairperson
2. Sen. Daniel Kitonga Maanzo, EBS, MP - Member *(Chairing)*
3. Sen. (Prof.) Tom Ojienda, SC, MP - Member
4. Sen. Andrew Omtatah Okoiti, MP - Member
5. Sen. Crystal Kegehi Asige, MP - Member

ABSENT WITH APOLOGY

1. Sen. Wakili Hillary Sigei, CBS, MP - Chairperson
2. Sen. Raphael Chimera Mwinzagu, MP - Member
3. Sen. Karen Njeri Nyamu, MP - Member

SECRETARIAT

1. Mr. Hassan Odhowa - HoD, Governance Committees
2. Mr. Charles Munyua - Principal Clerk Assistant II
3. Mr. Malcolm Ngugi - Senior Legal Counsel
4. Ms. Angela Bonaya - Clerk Assistant II *(Taking Minutes)*
5. Mr. Jackson Matheshe - Research Officer II
6. Ms. Linet Aseka - Research Officer II
7. Mr. Josphat Ngeno - Media Relations Officer
8. Mr. Zenton Williams - Audio Officer
9. Mr. Joseph Wangai - Office Assistant

MIN. NO. 1149/2026 PRELIMINARIES

The meeting was called to order at ten minutes past two O'clock and opened with a word of Prayer.

MIN. NO. 1150/2026 ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. (Prof.) Tom Ojienda, SC, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

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MIN. NO. 1151/2026 **NATIONAL ASSEMBLY AMENDMENTS TO THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024 (SENATE BILLS NO. 29 OF 2024)**

The Committee resumed consideration of the matrix of amendments to the Bill as passed by National Assembly *vis-à-vis* the Bill as initially passed by the Senate.

Following deliberations, Members resolved to -

i) accede to the amendment by the National Assembly to clause 21 of the Bill; and
ii) reject the amendments by the National Assembly to clause 22, clause 23, clause 24, clause 25, new clause 26A, clause 30, clause 32 and new clause 33 of the Bill.

The Committee observed that the clauses on which there was no concurrence between the two Houses may be subjected to the mediation process as contemplated under Article 113 of the Constitution, with a view to coming up with a version of the Bill that may be passed by both Houses.

Thereupon, it was resolved that the Secretariat prepares the draft Committee Report for consideration by the Committee at its next meeting.

MIN. NO. 1152/2026 **THE PUBLIC PARTICIPATION BILL, 2025 (NATIONAL ASSEMBLY BILLS NO. 44 OF 2025)**

The Committee deferred consideration of the Bill to a later date.

MIN. NO. 1153/2026 **STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 11 OF 2026)**

The Committee deferred consideration of the Bill to a later date.

MIN. NO. 1154/2026 **ADJOURNMENT**

The Chairperson adjourned the meeting at fifteen minutes past four O'clock. The next meeting would be held on Tuesday, 10th November, 2026 at 8:00 a.m.

SIGNED: .....

DATE: 10/11/2026

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13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 325TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 10TH NOVEMBER, 2026 AT 8:00 A.M. VIRTUALLY ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

1. Sen. Wakili Hillary Sigei, CBS, MP - Chairperson
2. Sen. Veronica W. Maina, CBS, MP - Vice-Chairperson *(Chairing)*
3. Sen. Raphael Chimera Mwinzagu, MP - Member
4. Sen. Andrew Omtatah Okoiti, MP - Member
5. Sen. (Prof.) Tom Ojienda, SC, MP - Member
6. Sen. Crystal Kegehi Asige, MP - Member
7. Sen. Daniel Kitonga Maanzo, EBS, MP - Member

ABSENT WITH APOLOGY

1. Sen. Karen Njeri Nyamu, MP - Member

SECRETARIAT

1. Mr. Charles Munyua - Principal Clerk Assistant II
2. Mr. Malcolm Ngugi - Senior Legal Counsel
3. Ms. Angela Bonaya - Clerk Assistant II *(Taking Minutes)*
4. Mr. Jackson Matheshe - Research Officer II
5. Ms. Rosebella Ngesa - Public Communications Officer II
6. Mr. Zenton Williams - Audio Officer

MIN. NO. 1155/2026 PRELIMINARIES

The meeting was called to order at twenty-eight minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 1156/2026 ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Crystal Kegehi Asige, MP.

MIN. NO. 1157/2026 CONFIRMATION OF MINUTES

a) The Minutes of the 321st Sitting were confirmed as a true record of proceedings having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Veronica W. Maina, CBS, MP.

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b) The Minutes of the 322nd Sitting were confirmed as a true record of proceedings having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

c) The Minutes of the 323rd Sitting were confirmed as a true record of proceedings having been proposed by Sen. Veronica W. Maina, CBS, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

d) The Minutes of the 324th Sitting were confirmed as a true record of proceedings having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 1158/2026 MATTERS ARISING

Under Min. No. 1152/2026 – The Public Participation Bill, 2025 (National Assembly Bills No. 44 of 2025) and Min. No. 1153/2026 - The Statutory Instruments (Amendment) Bill, 2026 (Senate Bills No. 11 of 2026)

The Committee recalled that, due to lapse of time, it did not consider the submissions received on the two Bills during the retreat held on 5th to 8th November, 2026 in Machakos County.

Thereupon, the Committee resolved to hold a retreat from 15th to 17th November, 2026, with Monday, 16th November, 2026 being the working day, to consider the submissions received on the said Bills. The venue for the retreat would be Kiambu County.

MIN. NO. 1159/2026 NATIONAL ASSEMBLY AMENDMENTS TO THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2024 (SENATE BILLS NO. 29 OF 2024)

The Committee was taken through and considered the draft Report on consideration of the National Assembly amendments to the Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024).

Following deliberations, the Committee resolved to-

a) buffer the section of the Report citing the grounds for rejection of the National Assembly amendment to clause 10 of the Bill, on the educational qualifications for various elective offices; and
b) revise its recommendation with regard to clause 19 of the Bill, on the eligibility requirements for nomination as an MCA, to recommend that the Senate rejects the National Assembly amendment to the Bill.

Thereupon, the Committee adopted the Report, having been proposed by Sen. Wakili Hillary Sigei, CBS, MP and seconded by Sen. Crystal Asige, MP.

Members further resolved to engage the Rt. Hon. Speaker of the Senate to nominate a majority of members from the Committee when constituting the Mediation Committee on the Bill, if the Senate concurred with the Committee recommendations on the Bill.

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MIN. NO. 1160/2026 ANY OTHER BUSINESS

The Committee Vice Chairperson informed Members that she would be hosting a delegation from the California State Assembly on Thursday, 12th November, 2026, and invited Members of the Committee to join her during that engagement.

MIN. NO. 1161/2026 ADJOURNMENT

The Chairperson adjourned the meeting at eleven minutes past ten O'clock. The next meeting would be held on Thursday, 12th November, 2026 at 8:00 a.m.

SIGNED: .....

DATE: 10/11/2026.....

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Annex 2: The Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024) – as published

SPECIAL ISSUE

Kenya Gazette Supplement No. 99 (Senate Bills No. 29)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2024

NAIROBI, 7th May, 2024

CONTENT

Bill for Introduction into the Senate—

PAGE

The Elections (Amendment) (No. 2) Bill, 2024 545

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

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 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

(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 Commission to contest in an election.

Amendment of section 5 of No. 24 of 2011.

3. Section 5 of the principal Act is amended—

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

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

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

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

"(3A) A person who registers as a voter during the period when registration of voters is suspended for the purposes of a by-election as contemplated under subsection (1)(b) shall not be eligible to contest in the electoral area affected 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 shall rectify the particulars of voters at all times except-

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

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

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

(b) by deleting subsection (2).

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

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

(a) by deleting subsection (3); and

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

6. Section 14 of the principal Act is amended in subsection (2)— Amendment of section 14 of No. 24 of 2011.

(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".

7. Section 16 of the principal Act is amended in subsection (2)— Amendment of section 16 of No. 24 of 2011.

(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".

8. Section 17 of the principal Act is amended in subsection (2)— Amendment of section 17 of No. 24 of 2011.

(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".

9. Section 19 of the principal Act is amended in subsection (2)— Amendment of section 19 of No. 24 of 2011.

(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 by inserting the following new subsection immediately after subsection (1A)—

(1B) Notwithstanding the provisions under subsection (1) a coalition political party shall, within fourteen days of registration, submit to the Commission a copy of the coalition political party's nomination rules certified by the Registrar of Political Parties.

Amendment of section 31 of No. 24 of 2011.

15. Section 31of the principal Act is amended—

(a) by deleting subsection (2);

(b) by deleting subsection (2B);

(c) by deleting subsection (2C);

(d) by deleting subsection (2E); and

(e) by deleting subsection (2F).

Amendment of section 32 of No. 24 of 2011.

16. Section 32 of the principal Act is amended-

(a) in subsection (1) by deleting the words "nomination day" appearing immediately after the words "days before" and substituting therefor the words "the date for registration of candidates; and

(b) in subsection (1A) by deleting the word "nomination" appearing immediately after the words "days before" and substituting therefor the words "the date for registration of candidates".

Amendment of section 33 of No. 24 of 2011.

17. Section 33 of the principal Act is amended—

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

(b) in subsection (1)—

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

(ii) by deleting the words "nomination paper" appearing in paragraph (b) and substituting therefor the words "registration of candidates Form";

(iii) by deleting the words "nomination day" appearing in paragraph (c) and substituting therefor with the words "date for registration of candidates";

(iv) by deleting paragraph (d); and

(c) by deleting subsection (2).

Insertion of new section 33A in 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 renumbering it 38B.

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

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

Determination and declaration of results.

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

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

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

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

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

(3) The Commission shall appoint county returning officers to be responsible

for tallying, announcement and declaration, in the prescribed form, of final results from constituencies in the county for purposes of the election of the county Governor, Senator and county women representative to the National Assembly.

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

(a) tally, announce and declare the presidential results before tallying, announcing and declaring results for the other elective positions;

(b) electronically transmit the results, within two hours of the declaration of the results, from a polling station to the constituency tallying centre, national tallying centre, the candidates or their agents and elections observers in the prescribed form;

(c) where the results are not transmitted in accordance with paragraph (b), provide reasons in a prescribed form;

(d) physically deliver the tabulated results from a polling station to the constituency tallying centre and thereafter to the national tallying centre;

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

(f) publish the polling results forms on an online public portal maintained by the Commission.

(5) The Commission shall verify that the results transmitted under this section are an accurate record of the results tallied, verified and declared at the respective polling stations.

(6) The Chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

(7) The Chairperson may declare a candidate elected as the President before all the constituencies have transmitted their results if the Commission is satisfied that the results that have not been received will not affect the result of the election.

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

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

Amendment of section 44 of No. 24 of 2011.

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

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

(i) intellectual property rights to the technology vests in the Commission;

(ii) the supplier or their associates have not been found guilty of violating any procurement law, committed a crime, violated professional standards or been barred from participating in public procurement in any jurisdiction; and

(iii) subject to the Constitution, this Act and the Data Protection Act, the technology is accessible and available for scrutiny by candidates, courts and such other persons as required under the law.

No. 24 of 2019

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

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

(a) by renumbering the existing provision as subsection (1);

(b) by inserting the words "and transmission of election results" immediately after the words "identification of voters"; and

(c) by inserting the following new sub-section immediately after subsection (1)—

(2) The Commission shall make Regulations for the better carrying into effect the provisions of this section.

Amendment of section 45 of No. 24 of 2011.

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

Amendment of section 46 of No. 24 of 2011.

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

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

(b) deleting paragraph (c)

Amendment of section 48 of No. 24 of 2011.

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

Repeal of section 74 of No. 24 of 2011.

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

Amendment of section 75 of No. 24 of 2011.

29. Section 75 of the principal Act is amended –

(a) in subsection (4) by deleting the words "on matters of law only"; and

(b) by inserting the following subsection immediately after subsection (4)—

(5) The determination of the appeal under sub-section (4) by the High Court shall be final.

Amendment of section 82 of No. 24 of 2011.

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

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

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

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

Access to information.

No. 24 of 2019
No. 9 of 2011

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

(2) Where a request for access to information is made for the purposes of a court order for scrutiny of votes, the Commission shall facilitate access–

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

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

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

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

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

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

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

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

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

Insertion of new part in No. 24 of 2011.

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

Evaluation of electoral process

Evaluation of elections.

87A. (1) The Commission shall, pursuant to Article 88(4)(h) of the

Constitution and within one year of a general election, facilitate evaluation of the electoral process.

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

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

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

(c) a review of the role of media and civil society in the elections;

(d) a review of the voting procedures on election day;

(e) a review of the vote counting procedures on election day;

(f) a review of the elections information and communication technology deployed in the conduct of the general elections;

(g) a review of the human resource deployed for the conduct of the general elections;

(h) a review of the existing elections disputes resolution mechanisms; and

(i) a review of the cost of conducting the general elections including the procurement of the necessary goods and services.

Reports.

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

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

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

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

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

(a) inserting the words "within the affected electoral area" immediately after the words "such by–election" in subsection (1)(b); (to clarify that suspension of voter registration and revision of the register of voters applies only to the electoral area affected by a by-election)

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

(c) inserting the word "valid" immediately before the words "Kenyan passport" in subsection (3); and

(d) inserting a new subsection (3A) which provides that persons registered as voters during the period when registration of voters is suspended by reason of a by-election shall not be eligible to contest in the electoral area affected by the by-election.

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

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

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

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

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

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

(a) that IEBC shall upon request by a political party, conduct and supervise nomination of candidates by the political party for presidential, parliamentary, or county elections in accordance with article 88 of the constitution;

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

(c) the requirement that Parliament shall appropriate monies for the effective implementation of the section.

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

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

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

(b) in subsection (1) deleting the words "nomination paper" in paragraph (b) and substituting therefor the words "registration of candidates Form", and in paragraph (c) by deleting the words "nomination day" and substituting therefor the words "date gazetted for registration of candidates"; and

(c) deleting subsection (2) which provide for the publication in the Gazette of the names of persons intending to contest in the election as independent candidates.

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

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

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

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

(a) where there is a discrepancy between the electronically transmitted and the physically delivered results the result which is an accurate record of the results tallied, verified and declared at the respective polling station shall prevail;

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

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

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

Clause 24 of the Bill proposes to amend section 44A of the act which provides for complementary mechanism for identification of voters by inserting the words "and transmission of election results" and mandating IEBC to make Regulations for better carrying into effect the provisions of section 44A.

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

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

Clause 27 of the Bill proposes to delete section 48 of the Act which presently provides that a recall election shall be valid if the number of voters who concur in the recall election is at least fifty percent of the total number of registered voters in the affected county or constituency. This provision was declared unconstitutional in *Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016 [Formerly Kisumu Petition Number 9 of 2016]*

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

Clause 29 of the Bill proposes to amend section 75 which provides for county election disputes by deleting the requirement that appeals to the High Court shall be on matters of law only, and inserting a new subsection

(5) to provide that the decision of the High Court on an appeal on the validity of election of a member of a county assembly shall be final.

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

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

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

Clause 33 of the Bill proposes to insert new sections 87A, 87B and 87C to provide for the appointment by Parliament of an independent firm to carry out an evaluation of the electoral process after a general election. The evaluation shall include a review of the legal framework, processes and costs associated with the electoral process. The proposed new provisions require the preparation of a report for submission to Parliament within ninety days of the appointment of the independent firm.

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

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

Statement on whether the Bill concerns county governments

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

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

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

AARON CHERUIYOT,
Senate Majority Leader.

STEWART MADZAYO,
Senate Minority Leader.

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

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

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

"agent" means a person duly appointed by—

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

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

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

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

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

"candidate" means a person contesting for an elective post;

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

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

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

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

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

"county election" means the election of a county governor or a member of a county assembly;

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

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

"electoral area" means a constituency, a county or a ward;

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

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

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

"election offence" means an offence under this Act;

"elections officer" means a person appointed by the Commission for the purposes of conducting an election under this Act;

"election period" means the period between the publication of a notice by the Commission for a presidential, parliamentary or county election under sections 14, 16, 17 and 19 and the Gazettement of the election results;

"election results" means the declared outcome of the casting of votes by voters at an election;

"harambee" means the public collection of monies or other property in aid or support of a cause or a project;

"identification document" means a Kenyan national identification card or a Kenyan passport;

"illegal practice" means an offence specified in Part VI;

"independent candidate" means a candidate for presidential, parliamentary or county elections who is not a member of a political party;

"nomination" means the submission to the Commission of the name of a candidate in accordance with the Constitution and this Act;

"nomination day" in respect of an election, means the day gazetted by the Commission as the day for the nomination of candidates for that election

"observer" means a person or an organisation accredited by the Commission to observe an election or a referendum;

"party list" means a party list prepared by a political party and submitted to the Commission pursuant to and in accordance with Article 90 of the Constitution and sections 28, 34, 35, 36 and 37;

"parliamentary election" means the election of one or more members of Parliament;

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

"political party" has the meaning assigned to it in Article 260 of the Constitution;

"polling station" means any room, place, vehicle or vessel set apart and equipped for the casting of votes by voters at an election;

"presidential election" means an election of a President in accordance with Articles 136, 139 (1) (b) and 146 (2) (b) of the Constitution;

"Principal Register of Voters" means a current register of persons entitled to vote at an election prepared in accordance with section 3 and includes a register that is compiled electronically;

"public officer" has the meaning assigned to it in Article 260 of the Constitution;

"public resources" include—

(a) any vehicle, or equipment owned by or in the possession; or (b) premises owned or occupied by, any government, state organ, statutory corporation ora company in which the Government owns a controlling interest;

"referendum" means a poll held under Part V;

"referendum committee" means a national or a parliamentary constituency committee comprising of persons intending to support or oppose a referendum question;

"referendum officer" means a person appointed by the Commission for the purpose of conducting a referendum;

"referendum question" means a question upon which voters shall vote in a referendum as specified in section 49;

"registration officer" means a person appointed by the Commission for the purpose of preparing a register of voters;

"returning officer" means a person appointed by the Commission for the purpose of conducting an election or a referendum under this Act;

"supporter" means a voter who supports the nomination of a candidate;

"vessel" includes any ship, boat or any other description of vessel used in navigation;

"voter" means a person whose name is included in a current register of voters;

"voting period" means the period specified as such in the notice issued by the Commission in relation to an election;

"ward' means an electoral area within a county delimited in accordance with Article 89 of the Constitution.

Section 5 of the Act which it is proposed to amend—

5. (1) Registration of voters and revision of the register of voters under this Act shall be carried out at all times except—

(a) in the case of a general election or an election under Article 138(5) of the Constitution, between the date of commencement of the sixty day period immediately before the election and the date of such election;

Provided that this applies to the first general election under this Act.

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

(d) in any other case, between the date of the declaration of the vacancy of the seat concerned and the date of such election.

(2) Notwithstanding subsection (1), where an election petition is filed in respect of an electoral area, between the date of the filing of the petition and the date of the by-election, where a court determines that a by-election is to be held, a voter shall not be allowed to transfer his or her vote to the affected electoral area.

(3) Any citizen of Kenya who has attained the age of eighteen years as evidenced by either a national identity card or a Kenyan passport and whose name is not in the register of voters shall be registered as a voter upon application, in the prescribed manner, to the Commission.

(3A) Despite subsection (3), a citizen who has attained the age of eighteen years and has registered for an identification card and is in the possession of an acknowledgement of registration certificate shall, upon application, be registered as a voter using the acknowledgement of registration certificate, but may only vote using an identification card.

(3B) For purposes of this section, an acknowledgment of registration certificate means a certificate issued by a registration officer under the Registration of Persons Act to a person who has applied for an identification card, pending the issuance of that card.

(4) All applicants for registration under this section shall be registered in the appropriate register by the registration officer or any other officer authorised by the Commission.

(5) The registration officer or any other authorised officer referred to in subsection (3) shall, at such times as the Commission may direct, transmit the information relating to the registration of the voter to the Commission for inclusion in the Principal Register of voters.

Section 6 of the Act which it is proposed to amend—

6. (1) The Commission shall cause the Principal Register of Voters to be opened for inspection by members of the public at all times for the purpose of rectifying the particulars therein, except for such period of time as the Commission may consider appropriate.

(2) The Commission shall, within sixty days from the date of the notice for a general election, open the Principal Register of Voters for inspection for a period of at least fourteen days or such period as the Commission may consider necessary.

(3) The Commission shall, upon expiry of the period for inspection specified under subsection (1), compile the amendments to the register of voters and as soon as practicable thereafter, at least fourteen days before an election—

(a) publish a notice in the Gazette to the effect that such compilation has been completed; and

(b) cause to be transmitted to every registration officer, a copy of the part of the Principal Register of Voters relating to the constituency for which the registration officer is responsible to be kept in safe custody.

(4) The Principal Register of Voters shall be kept at the headquarters of the Commission and copies of the part of the Principal Register of Voters relating to the constituency for which the registration officer is responsible shall be kept at all the constituency offices of the Commission.

Section 8A of the Act which it is proposed to amend—

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

(a) verifying the accuracy of the Register;

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

(c) updating the register.

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

(3) For purposes of the first general election after the commencement of this section, the Commission shall, within thirty days of the commencement of this section, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of —

(a) (a)verifying the accuracy of the Register;

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

(c) (c)updating the register.

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

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

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

Section 14 of the Act which it is proposed to amend–

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

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

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

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

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

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

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

Section 16 of the Act which it is proposed to amend—

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

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

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

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

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

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

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

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

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

Section 17 of the Act which it is proposed to amend—

17. Initiation of county governor election

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

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

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

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

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

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

Section 19 of the Act which it is proposed to amend—

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

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

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

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

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

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

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

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

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

Section 22 of the Act which it is proposed to amend–

22. Qualifications for nomination of candidates

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

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

(b) holds—

(i) in the case of a Member of Parliament, a degree from a university recognized in Kenya; or

(ii) in the case of member of a county assembly, a degree from a university recognized in Kenya.

(1A) Notwithstanding subsection (1), this section shall come into force and shall apply to qualifications for candidates in the general elections to be held after the 2017 general elections.

(1B) The provisions of this section apply to qualifications to nomination for a party list member under section 34.

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

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

Section 23 of the Act which it is proposed to amend—

23. Qualifications and disqualifications for nomination as President

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

(a) is a citizen by birth;

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

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

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

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

(a) owes allegiance to a foreign state; or

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

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

(a) the President;

(b) the Deputy President; or

(c) a member of Parliament.

Section 24 of the Act which it is proposed to amend—

24. Qualifications and disqualifications for nomination as member of Parliament

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

(a) is registered as a voter;

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

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

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

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

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

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

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

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

(d) is a member of a county assembly;

(e) is of unsound mind;

(f) is an undischarged bankrupt;

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

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

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

Section 25 of the Act which it is proposed to amend—

25. Qualifications for nomination as member of county assembly

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

(a) is registered as a voter;

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

(c) is either-

(i) nominated by a political party; or

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

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

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

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

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

(d) is of unsound mind;

(e) is an undischarged bankrupt;

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

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

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

Section 27 of the Act which it is proposed to amend—

27. Submission of party nomination rules

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

(1A) The Registrar of Political Parties shall certify the nomination rules submitted under subsection (1).

(2) An amendment to the nomination rules shall only be effective ninety days after submission of the amendments to the Commission.

(2A) Upon receipt of the nomination rules from a political party under subsection (1), the Commission shall, within fourteen days, review the rules to ensure compliance with the prescribed regulations and —

(a) issue the political party with a certificate of compliance; or

(b) require the political party to amend the rules to ensure such compliance within fourteen days.

(2B) For purposes of subsection (2A), the Commission shall, by notice in the Gazette, issue Regulations prescribing guidelines to be complied with and the process by which political parties nominate candidates for nomination in accordance with Article 88 (4) (d) of the Constitution failing which the rules shall become void.

Section 31 of the Act which it is proposed to amend—

31. Nomination of political party candidates

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

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

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

(2) The Commission shall, upon the request of a political party, conduct and supervise the nomination of candidates by the political party for presidential, parliamentary or county elections in accordance with Article 88 of the Constitution.

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

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

(2C) The Commission shall publish, in the Gazette the names of the persons contesting in a party primary under subsection (1) and the date of the party primary within seven days of receipt of the names of party candidates.

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

(2E) Where the Commission receives multiple requests under subsection (2), the Commission shall conduct and supervise the nomination of candidates for presidential, parliamentary or county elections for all the requesting political parties —

(a) on the same day;

(b) in the same polling centres; and

(c) in different polling streams for each participating political party.

(2F) Parliament shall appropriate monies for the effective implementation of this section.

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

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

Section 32 of the Act which it is proposed to amend—

32. Approval of symbol for independent candidate

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

(1A) Where there is a vacancy in the office of the Governor, an independent candidate shall submit to the Commission, the symbol that the person intends to use during an election at least seven days before nomination.

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

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

(a) is obscene or offensive;

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

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

Section 33 of the Act which it is proposed to amend—

33. Nomination of independent candidates

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

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

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

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

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

(2) The Commission shall publish in the Gazette, the names of persons intending to contest in the election as independent candidates at least fourteen days before the nomination day.

Section 34 of the Act which it is proposed to amend—

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

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

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

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

(4A) In the case of a person nominated pursuant to Article 177(1) (c) of the Constitution, the party list shall include a certification in the manner prescribed by the Commission.

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

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

(6A) Upon receipt of the party list from a political party under subsection (1), the Commission shall review the list to ensure compliance with the prescribed regulations and —

(a) issue the political party with a certificate of compliance; or

(b) require the political party to amend the party list to ensure such compliance failing which the Commission shall reject the list.

(6B) For purposes of subsection (6A), the Commission may, by notice in the gazette, issue regulations prescribing guidelines to be complied with in preparation of party lists.

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

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

(9) The party list shall not contain a name of a candidate nominated for an election.

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

Section 38A of the Act which it is proposed to amend—

38A. Number of voters per polling station

For the purposes of providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed seven hundred.

Section 39 of the Act which it is proposed to amend—

Determination and declaration of results

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

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

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

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

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

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

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

(a) electronically transmit and physically deliver the tabulated results of an election for the President from a polling station to the constituency tallying centre and to the national tallying centre;

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

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

(1D) The Commission shall verify that the results transmitted under this section are an accurate record of the results tallied, verified and declared at the respective polling stations.

(1E) Where there is a discrepancy between the electronically transmitted and the physically delivered results, the Commission shall verify the results and the result which is an accurate record of the results tallied, verified and declared at the respective polling station shall prevail.

(1F) Any failure to transmit or publish the election results in an electronic format shall not invalidate the result as announced and declared by the respective presiding and returning officers at the polling station and constituency tallying centre, respectively.

(1G) The Commission shall, to facilitate public information, establish a mechanism for the live-streaming of results as announced at polling stations, and the results so streamed shall be for purposes of public information only and shall not be the basis for a declaration by the Commission.

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

(2) The Chairperson may declare a candidate elected as the President before all the constituencies have transmitted their results if the Commission is satisfied the results that have not been received will not affect the result of the election.

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

Section 44 of the Act which it is proposed to amend—

44. Use of technology

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

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

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

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

(a) procure and put in place the technology necessary for the conduct of a general election at least one hundred and twenty days before such elections; and

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

(5) The Commission shall, in consultation with the relevant agencies, institutions and stakeholders, make regulations for the better carrying into effect the provisions of this section.

Section 44A of the Act which it is proposed to amend—

44A. Complementary mechanism for identification of voters.

Notwithstanding the provisions of section 44, the Commission shall put in place a complementary mechanism for identification of voters that is simple, accurate, verifiable, secure, accountable and transparent to ensure that the Commission complies with the provisions of Article 38 of the Constitution.

Section 45 of the Act which it is proposed to amend—

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

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

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

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

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

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

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

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

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

Section 46 of the Act which it proposed to amend—

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

(a) in writing;

(b) signed by a petitioner who—

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 48 of the Act which it is proposed to amend—

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

Section 74 of the Act which it is proposed to repeal—

74. Settlement of certain disputes

(1) Pursuant to Article 88 (4) (e) of the Constitution, the Commission shall be responsible for the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results.

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

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

Section 75 of the Act which it is proposed to amend—

75. County election petitions

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

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

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

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

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

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

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

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

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

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

Section 82 of the Act which it is proposed to amend—

82. Scrutiny of votes

(1) An election court may, on its own motion or on application by any party to the petition, during the hearing of an election petition, order

for a scrutiny of votes to be carried out in such manner as the election court may determine.

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

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

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

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

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

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

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

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

Section 85A of the Act which it is proposed to amend-

85A. Appeals to the Court of Appeal

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

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

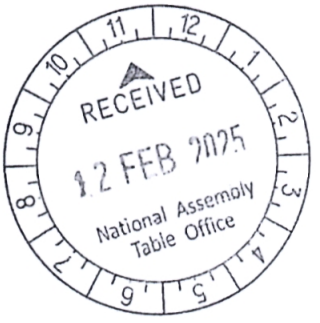
(b) heard and determined within six months of the filing of the appeal.

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

Annex 3: The Elections (Amendment) (No. 2) Bill, 2024 (Senate Bills No. 29 of 2024) – as passed by the Senate, with amendments, on 5th December, 2024

REPUBLIC OF KENYA

PARLIAMENT



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;

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(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.

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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

Annex 4: Message conveying the decision of the National Assembly, together with the Schedule of National Assembly amendments to the Bill

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – FIFTH SESSION

THE NATIONAL ASSEMBLY

MESSAGES

MESSAGE TO THE SENATE

(No. 028 of 2026)

SUBJECT: PASSAGE OF THE ELECTIONS (AMENDMENT) (NO.2) BILL (SENATE BILL No. 29 OF 2024)

PURSUANT to the provisions of Standing Order 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly—

WHEREAS, the Elections (Amendment) (No.2) Bill (Senate Bill No. 29 of 2024) was passed by the Senate on Thursday, 5th December 2024, and referred to the National Assembly for consideration pursuant to the provisions of Article 110(4) of the Constitution;

AND WHEREAS, the National Assembly considered and passed the said Bill on Thursday, 22nd October 2026, **with amendments** and in the form contained in the schedule attached hereto;

NOW THEREFORE, in accordance with the provisions of Article 112(1)(b) of the Constitution, Standing Orders 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.

Wetang'ula

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

Friday, 23rd October 2026

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

Bill also passed by the National Assembly on Thursday, 22nd October, 2026

SCHEDULE OF AMENDMENTS MADE TO THE BILL BY THE NATIONAL ASSEMBLY

THAT, Clause 2 of the Bill be amended by—

(a) 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;"

(b) deleting paragraph (d).

CLAUSE 3

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

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).

CLAUSE 10

THAT, Clause 10 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

"(b) in subsection (1), by deleting the word "nominated" appearing immediately after the words "may be" in the opening statement and substituting therefor the word "registered";"

NEW CLAUSE 13A

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 (2)—

(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.

Clerk of the National Assembly

CLAUSE 15

THAT, Clause 15 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (a)—

"(aa) by deleting subsection (2B);

(ab) by deleting subsection (2C);"

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 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.""

CLAUSE 19

THAT, Clause 19 of the Bill be amended by deleting paragraph (a).

CLAUSE 20

THAT, the Bill be amended by deleting Clause 20.

CLAUSE 21

THAT, the Bill be amended by deleting Clause 21.

CLAUSE 22

THAT, the Bill be amended by deleting Clause 22.

CLAUSE 23

THAT, the Bill be amended by deleting Clause 23 and substituting therefor the following new Clause—

Clerk of the National Assembly

Amendment of section 44 of Cap. 7.

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

Cap. 411C.

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

CLAUSE 24

THAT, Clause 24 of the Bill be amended by deleting paragraph (c).

CLAUSE 25

THAT, Clause 25 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

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

"(2) A member of Parliament may be recalled—

(a) for gross violation of a provision of the Constitution or any other law;

(b) where there are serious reasons for believing that the member has committed a crime under national or international law; or

(c) for gross misconduct.""

NEW CLAUSE 26A

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

Amendment of section 47 of Cap. 7.

26A. Section 47 of the principal Act is amended by deleting subsection (5) and substituting therefor the following new subsection—

(5) A recall election shall be decided by—

(a) a simple majority of the voters voting in the recall election; and

(b) the concurrence of at least one-third of—

(i) the registered voters in every ward of the affected constituency, in the case of a member of the National Assembly; or

(ii) the registered voters in every constituency of the affected county, in the case of a member of the Senate.

CLAUSE 30

THAT, the Bill be amended by deleting Clause 30.

Clerk of the National Assembly

CLAUSE 32

THAT, the Bill be amended by deleting Clause 32.

NEW CLAUSE 33

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 32—

Amendment of section 109 of Cap. 7.

33. Section 109 of the principal Act is amended by—

(a) deleting subsection (3) and substituting therefor the following new subsection—

(3) The Commission shall make or amend its regulations and publish them in the *Gazette* not later than four months before the date of a general election.

(b) by inserting the following new subsection immediately after subsection (3)—

Cap. 2A.

(3A) The Commission shall subject the regulations made or amended pursuant to subsection (3) to public participation in accordance with the Statutory Instruments Act.

(c) deleting subsection (4).

Certified

.....

Clerk of the National Assembly

This 23rd **day of** October, **2026**