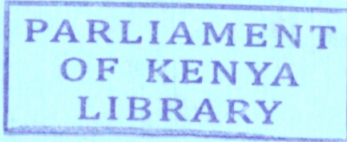


SPECIAL ISSUE

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

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—

1. This Act may be cited as the Elections (Amendment) (No. 2) Act, 2024.

Short title.

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

Amendment of section 2 of No. 24 of 2011.

- (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.

3. Section 5 of the principal Act is amended—

Amendment of section 5 of No. 24 of 2011.

- (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”.

4. Section 6 of the principal Act is amended—

Amendment of
section 6 of No.
24 of 2011.

- (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).

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

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

- (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”.

10. Section 22 of the principal Act is amended—Amendment of
section 22 of No.
24 of 2011.

- (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”.

11. Section 23 of the principal Act is amended—Amendment of
section 23 of No.
24 of 2011.

- (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”.

12. Section 24 of the principal Act is amended—Amendment of
section 24 of No.
24 of 2011.

- (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”.

13. Section 25 of the principal Act is amended—Amendment of
section 25 of No.
24 of 2011.

- (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”;

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

Amendment of section 27 of No. 24 of 2011.

(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.

15. Section 31 of the principal Act is amended—

Amendment of section 31 of No. 24 of 2011.

- (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).

16. Section 32 of the principal Act is amended—

Amendment of section 32 of No. 24 of 2011.

- (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”.

17. Section 33 of the principal Act is amended—

Amendment of section 33 of No. 24 of 2011.

- (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).

18. The principal Act is amended by inserting the following new section immediately after section 33—

Insertion of new section 33A in No. 24 of 2011.

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.

19. Section 34 of the principal Act is amended—

Amendment of section 34 of No. 24 of 2011.

(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).

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

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

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).

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

Amendment of section 38A of No. 24 of 2011.

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

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

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.

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

Amendment of
section 44 of No.
24 of 2011.

(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

- 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.
- 25.** The principal Act is amended by deleting section 45. Amendment of section 45 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 46 of No. 24 of 2011.
- 27.** The principal Act is amended by deleting section 48. Amendment of section 48 of No. 24 of 2011.
- 28.** The principal Act is amended by repealing section 74. Repeal of section 74 of No. 24 of 2011.
- 29.** Section 75 of the principal Act is amended –
- (a) in subsection (4) by deleting the words “on matters of law only”; and
- (b) by inserting the following subsection immediately after subsection (4)—
- (5) The determination of the appeal under subsection (4) by the High Court shall be final. Amendment of section 75 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. Amendment of section 82 of No. 24 of 2011.
- 31.** The principal Act is amended by inserting the following new section immediately after section 82 – Insertion of new section 82A in No. 24 of 2011.

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.

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

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

(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.

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

Insertion of new part in No. 24 of 2011.

Evaluation of electoral process

Evaluation of elections.

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

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

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

- (a) a review of the legal framework under which the general elections were conducted;
- (b) an audit of the Register of Voters used during the election;
- (c) a review of the role of media and civil society in the elections;
- (d) a review of the voting procedures on election day;
- (e) a review of the vote counting procedures on election day;
- (f) a review of the elections information and communication technology deployed in the conduct of the general elections;
- (g) a review of the human resource deployed for the conduct of the general elections;
- (h) a review of the existing elections disputes resolution mechanisms; and
- (i) a review of the cost of conducting the general elections including the procurement of the necessary goods and services.

Reports.

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

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) where there is a discrepancy between the electronically transmitted and the physically delivered results the result which is an accurate record of the results tallied, verified and declared at the respective polling station shall prevail;
- (b) any failure to transmit or publish the election results in an electronic format shall not invalidate the result as announced and declared; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Statement on whether the Bill concerns county governments

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

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

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

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 or a company in which the Government owns a controlling interest;

“referendum” means a poll held under Part V;

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

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

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

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

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

“supporter” means a voter who supports the nomination of a candidate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) verifying the accuracy of the Register;
- (b) recommending mechanisms of enhancing the accuracy of the Register; and
- (c) updating the register.

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

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

- (a) (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) The Commission shall announce the final results in the order in which the tallying of the results is completed.

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

44. Use of technology

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

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

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

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

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

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

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

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

44A. Complementary mechanism for identification of voters.

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

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

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

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

- (a) is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;
- (b) is found, after due process of the law, to have mismanaged public resources;
- (c) is convicted of an offence under this Act.

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

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

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

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

Section 46 of the Act which it proposed to amend—

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

- (a) in writing;
- (b) signed by a petitioner who—

- (i) is a voter in the constituency or county in respect of which the recall is sought; and
- (ii) was registered to vote in the election in respect of which the recall is sought;
- (c) accompanied by an order of the High Court issued in terms of section 45(3).

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

- (a) specify the grounds for the recall as specified under section 45 (2);
- (b) contain a list of such number of names of voters in the constituency or county which shall represent at least thirty percent of the registered voters; and
- (c) be accompanied by the fee prescribed for an election petition.

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

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

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

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

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

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

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

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

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

74. Settlement of certain disputes

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

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

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

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

75. County election petitions

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

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

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

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

- (a) a declaration of whether or not the candidate whose election is questioned was validly elected;
- (b) a declaration of which candidate was validly elected; or
- (c) an order as to whether a fresh election will be held or not.

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

- (a) filed within thirty days of the decision of the Magistrate's Court; and
- (b) heard and determined within six months from the date of filing of the appeal.

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

82. Scrutiny of votes

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

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

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

- (a) the vote of a person whose name was not on the register or list of voters assigned to the polling station at which the vote was recorded or who had not been authorised to vote at that station;
- (b) the vote of a person whose vote was procured by bribery, treating or undue influence;
- (c) the vote of a person who committed or procured the commission of personation at the election;
- (d) the vote of a person proved to have voted in more than one constituency;
- (e) the vote of a person, who by reason of conviction for an election offence or by reason of the report of the election court, was disqualified from voting at the election; or
- (f) the vote cast for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification or when the facts causing it were notorious.

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

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

85A. Appeals to the Court of Appeal

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

- (a) filed within thirty days of the decision of the High Court; and
- (b) heard and determined within six months of the filing of the appeal.

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