

REPUBLIC OF KENYA

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THE NATIONAL ASSEMBLY

KNA/MESSAGE/TS/2016/(045)

23rd December 2016

Mr. Jeremiah Nyegenye, CBS

Clerk of the Senate
Parliament Buildings
P.O. Box 41842-00100

NAIROBI



Dear *Jeremiah*

RE: PASSAGE OF THE ELECTION LAWS (AMENDMENT) (NO. 3) BILL (NATIONAL ASSEMBLY BILL NO. 63 OF 2015)

The above-mentioned matter refers.

Enclosed herewith, please find a Message from the Speaker of the National Assembly regarding the passage of the Election Laws (Amendment) (No. 3) Bill (National Assembly Bill No. 63 of 2015).

I have also a copy of the Report of the Departmental Committee on Justice and Legal Affairs on the Bill, copies of the Order Papers and appropriate sections of the Votes and Proceedings and Hansard Reports of the relevant Sitzings of the House, for reference.

Yours

**JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY**

//Encls.

REPUBLIC OF KENYA



ELEVENTH PARLIAMENT- (FOURTH SESSION)

THE NATIONAL ASSEMBLY
MESSAGES

MESSAGE TO THE SENATE

(No. 050 of 2016)



SUBJECT: PASSAGE OF THE ELECTION LAWS (AMENDMENT) (NO. 3) BILL (NATIONAL ASSEMBLY BILL NO. 63 OF 2015)

PURSUANT to the provisions of Standing Orders 41 and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly –

WHEREAS, the Election Laws (Amendment) (No. 3) Bill (National Assembly Bill No. 63 of 2015) was published *vide* Kenya Gazette Supplement No. 189 of 27th November 2015 to give effect to Article 99 of the Constitution, amend the Elections Act, 2011, the Independent Electoral and Boundaries Commission Act, 2011 and the Election Campaign Financing Act, 2013 and to make other provisions relating to the electoral processes;

AND WHEREAS, on Thursday, 22nd December 2016, the National Assembly considered and **passed** the said Bill **with amendments** and in the form attached hereto;

NOW THEREFORE, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order 142 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.

THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Friday, December 23, 2016

REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 189 of 2015)

THE ELECTION LAWS (AMENDMENT) (NO. 3) BILL, 2015

(A Bill published in the Kenya Gazette Supplement No.189 of 2015 and passed by the National Assembly, with amendments, on 22nd December, 2016)

N.A. /B/No. 63/2015

**THE ELECTION LAWS (AMENDMENT) (No.3)
BILL, 2015**

A Bill for

AN ACT of Parliament to give effect to Article 99 (1) (b) of the Constitution, to amend the Elections Act, 2011 and the Independent Electoral and Boundaries Commission Act, 2011; to provide for electoral processes and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Election Laws (Amendment) (No. 3) Act, 2015.

Short title.

2. Section 2 of the Elections Act, 2011 is amended by deleting the words “or a referendum” appearing in the definition of “returning officer.”

Amendment of section 2 of No. 24 of 2011.

3. Section 5 of the Elections Act, 2011 is amended in subsection (1) by—

Amendment of section 5 of No. 24 of 2011.

- (i) deleting the proviso to paragraph (a);
- (ii) inserting the following new paragraph immediately after paragraph (b)—

“(ba) in the case of a referendum, between the date of the publication and the date of the referendum”;

- (iii) deleting paragraph (c).

4. Section 6 of the Elections Act, 2011 is amended—

Amendment of section 6 of No. 24 of 2011.

- (a) by deleting subsection (2) and replacing with the following—

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

necessary.

- (b) in subsection (3) by deleting the word “fourteen” appearing immediately after the word “least” and substituting therefor the word “thirty”.

5. Section 6A of the Elections Act, 2011 is amended in subsection (1) by deleting the word “ninety” and substituting therefor the word “sixty.”

Amendment of section 6A of No. 24 of 2011.

6. Section 13 of the Elections Act, 2011 is amended—

Amendment of section 13 of No. 24 of 2011.

- (a) in subsection (1) by deleting the word “sixty” after the words “at least” and substituting therefor the word “ninety”;
- (b) by inserting the following new subsection immediately after subsection (2)—

(2A) A political party shall hear and determine all intra party disputes arising from political party nominations within thirty days.

- (c) in subsection (3) by deleting the words “forty-five” after the words “at least” and substituting therefor the words “fifty-five.”

7. Section 16 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 16 of No. 24 of 2011.

(3A) For purposes of subsection (3), a vacancy in the office of a Member of Parliament shall be deemed to occur on the date of issuance of a notice to the Commission which shall not be later than twenty-one days from the date of the actual occurrence of the vacancy.

8. Section 22 of the Elections Act, 2011 is amended—

Amendment of section 22 of No. 24 of 2011.

- (a) in subsection (1) by deleting paragraph (b) and substituting therefor the following new paragraph—
- (b) holds—
 - (i) in the case of a Member of Parliament, a degree from a university recognized in Kenya; or
 - (ii) in the case of member of a county assembly, a degree from a university

recognized in Kenya.

- (b) by inserting the following new subsections immediately after subsection (1)—

(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.

- 9.** Section 27 of the Elections Act, 2011 is amended—

Amendment of
section 27 of No.
24 of 2011.

- (a) in subsection (1) by deleting the words “three months” and substituting therefor the words “six months”;
- (b) in subsection (2) by deleting the subsection and substituting therefor the following—

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

- (c) by inserting the following new subsections immediately after subsection (2)—

(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.

10. The Elections Act, 2011 is amended by deleting section 28 and substituting therefor the following section—

Amendment of section 28 of No. 24 of 2011.

Submission of party membership lists

28. (1) A political party that nominates a person for an election under this Act shall submit to the Commission a membership list of the party—

(a) in the case of a general election, at least one hundred and twenty days before the date of the election; and

(b) in the case of a by-election, forty-five days before the date of the by-election.

(2) The Commission shall publicize the membership lists as received from political parties.

11. Section 30 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 30 of No. 24 of 2011.

(3A) A registered referendum committee may appoint one agent at each polling station.

12. Section 31 of the Elections Act, 2011 is amended by inserting the following new subsections immediately after subsection (2D)—

Amendment of section 31 of No. 24 of 2011.

(2F) 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.”

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

13. Section 32 of the Elections Act, 2011 is amended—

Amendment of section 32 of No. 24 of 2011.

(a) by inserting a new subsection immediately after subsection (1) —

(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.

(b) in subsection (2) by deleting the words “subsection (1)” appearing immediately after the word “under” and substituting therefor the words “this section.”

14. Section 33 of the Elections Act, 2011 is amended in in subsection (1) by inserting the words “and symbol” immediately after the words “submitted to the Commission the name” appearing in paragraph (c).

Amendment of section 33 of No. 24 of 2011.

15. Section 34 of the Elections Act, 2011 is amended—

Amendment of section 34 of No. 24 of 2011.

(a) by inserting the following new subsection immediately after subsection (4)—

(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.

(b) by inserting the following new subsections immediately after subsection (6)—

(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.

- (c) by deleting subsection (9) and substituting therefore the following—

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

16. The Elections Act, 2011 is amended by inserting the following new section immediately after section 38—

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

Number of voters per polling station.

38A. For the purposes of providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed seven hundred.

17. Section 43 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (5)—

Amendment of section 43 of No. 24 of 2011.

Amendment of section 43 of No. 24 of 2011.

(5A) A public officer who intends to contest in a by-election under this Act shall resign from public office within seven days of the declaration of a vacancy.

Amendment of section 44 of No. 24 of 2011.

18. Section 44 of the Elections Act, 2011 is amended—

- (a) in subsection (4) by deleting the words “eight months” appearing paragraph (a) and substituting therefor the words “one hundred and twenty days”; and
- (b) in subsection (7) by deleting the words “eight months” appearing paragraph (b) and substituting therefor the words “one hundred

and twenty days”.

Amendment of No. 24 of 2011. **19.** The Elections Act, 2011 is amended by inserting the following new section immediately after section 44—

Complementary mechanism for identification of voters. **44A.** Notwithstanding the provisions of section 39 and section 44, the Commission shall put in place a complementary mechanism for identification of voters and transmission of election results that is simple, accurate, verifiable, secure, accountable and transparent to ensure that the Commission complies with the provisions of Article 38 of the Constitution.

20. Section 46 of the Elections Act, 2011 is amended in subsection (3) by inserting the words “or thumb prints” immediately after the word “signature”;

Amendment of section 46 of No. 24 of 2011.

21. Section 50 of the Elections Act, 2011 is amended in subsection (2) (b) by deleting the words “answers to the referendum question” and substituting therefor the words “answer or answers to the referendum question or questions.”

Amendment of section 50 of No. 24 of 2011.

22. Section 54 of the Elections Act, 2011 is amended by deleting the words “255 and 256” appearing immediately after the word “Article” and substituting therefor the words “255, 256 and 257”.

Amendment of section 54 of No. 24 of 2011.

23. Section 56 of the Elections Act, 2011 is amended by deleting the word “and” appearing immediately after the word “shillings” and substituting therefor the word “or”.

Amendment of section 56 of No. 24 of 2011.

24. Section 74 of the Elections Act, 2011 is amended in subsection (2) by deleting the word “seven” appearing immediately after the word “within” and substituting therefor the word “ten”.

Amendment of section 74 of No. 24 of 2011.

25. Section 86 of the Elections Act, 2011 is amended—

Amendment of section 86 of No. 24 of 2011.

(a) in subsection (1) by deleting the words “which

shall then” appearing immediately after the word “Commissioner” and substituting therefor the word “and”; and

(b) by deleting subsection (2).

26. Section 91 of the Elections Act, 2011 is amended—

Amendment of section 91 of No. 24 of 2011.

(a) in subsection (1) (a) by deleting the word “gazetted ” appearing immediately after the words “results if” and substituting therefor the word “declared”;

(b) in subsection (2) by—

(i) deleting the words “the votes of a majority of the persons entitled to vote in the referendum” appearing immediately after the words “supported by” in paragraph (a) and substituting therefor the words “a simple majority of the citizens voting in the referendum”.

(ii) deleting the words “the votes of a majority of the persons entitled to vote in such referendum” appearing immediately after the words “Commission that” in paragraph (b) and substituting therefor the words “a simple majority of the citizens voting in such referendum”.

27. The Second Schedule to the Elections Act, 2011 is amended by deleting paragraph 18 and substituting therefor the following paragraph—

Amendment of the Second Schedule to No. 24 of 2011.

“18. This Code shall apply—

(a) in the case of a general election, from the date of publication of a notice of election until the swearing in of newly elected candidates; and

(b) in the case of a by-elections, from the date of declaration of a vacancy until the swearing in of elected candidates.”

28. The Third Schedule to the Elections Act, 2011 is amended by inserting the words “Commissioner for Oaths/Magistrates” immediately before the words

Amendment of the Third Schedule to No. 24 of 2011.

“Member/Secretary/Returning officer”.

29. Section 3 of the Independent Electoral and Boundaries Commission Act, 2011, is amended by deleting paragraph (e).

Amendment of section 3 of No. 9 of 2011.

30. Section 24 of the Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting subsection (3) and substituting therefor the following subsection—

Amendment of section 24 of No. 9 of 2011.

(3) The Commission shall publish and publicize the annual report.

31. The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting section 35.

Amendment of section 35 of No. 9 of 2011.

32. The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting section 36 and substituting therefor the following new section—

Amendment of section 36 of No. 9 of 2011.

Procedure for delimitation of electoral boundaries.

36. (1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.

(2) Subject to the Constitution, matters to be addressed in the delimitation of electoral boundaries are—

- (a) review of the names and boundaries of constituencies;
- (b) review of the number, names and boundaries of wards;
- (c) re-distribution of wards affected by any changes in the boundaries of constituencies; and
- (d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as

provided for by Article 89(5) of the Constitution and that such a process—

- (i) allows for variation of margin of not more than the limits provided under Article 89 (6) of the Constitution in relation to cities, sparsely populated areas and other areas;
- (ii) takes into account the provisions of Article 89 (7) (b) of the Constitution that provides for the progressive realization of the requirement that the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the population quota for the purposes of the each review;
- (iii) is subject to the use of enumerated national census figures.

(3) The Commission shall prepare and publish a preliminary report outlining—

- (a) the proposed delimitation of boundaries for constituencies and wards; and
- (b) the specific geographical; and
- (c) demographical details relating to such delimitation.

(4) The Commission shall ensure that the preliminary report is made available to the public for a period of thirty days and invite representations

from the public on the proposals contained in the report during that period.

(5) Upon the expiry of the period provided in subparagraph (4), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received and submit the revised preliminary report to the Parliamentary Committee.

(6) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.

(7) The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission.

(8) Within fourteen days of the expiry of the period provided for in subparagraph (7), the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the *Gazette*.

(9) Where the National Assembly fails to make recommendations within the period specified in subparagraph (7), the Commission shall publish its report in accordance with subparagraph (8).

(10) A person who, being responsible for the publication in the *Gazette* of the final report submitted under this paragraph fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an

offence and is liable to imprisonment for a term of one year.

(11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subparagraph (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the *Gazette*.

33. The Second Schedule to the Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting paragraph 9 (3).

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

34. The Elections Campaign Financing Act, 2013 is amended by inserting the following new section immediately after section 1—

Amendment of No 42 of 2013.

Suspension of operation of Act.

1A. The operation of this Act is suspended and the Act shall come into force immediately after the general elections to be held in the year 2017.

35. Section 6 of the Elections Campaign Financing Act, 2013 is amended in subsection (5) by deleting the word “eight” appearing in paragraph (a) and substituting therefor the word “two.”

Amendment of section 6 of No. 42 of 2013.

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 22nd December, 2016.



Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.



Speaker of the National Assembly