

THE ELECTION LAWS (AMENDMENT) BILL, 2016

A Bill for

**AN ACT of Parliament to amend various laws relating to elections
and for connected purposes**

ENACTED by the Parliament of Kenya, as follows —

Short title.

1. This Act may be cited as the Election Laws (Amendment) Act, 2016.

Amendment of
section 2 of No. 24
of 2011.

2. Section 2 of the Elections Act, 2011 is amended—

(a) in the definition of “county” by inserting the words “one of” immediately after the word “means”;

(b) in the definition of “election court” by deleting the word “and” appearing immediately after the words “of the Constitution” and substituting therefor the word “or”;

(c) in the definition of “nomination day” by inserting the words “at least sixty days before an election” immediately after the words “day gazetted”;

(d) in the definition of “Principal Register of Voters” by deleting the expression “Principal Register of Voters” and substituting therefor the expression “Register of Voters”;

(e) inserting the following new definitions in their proper alphabetical sequence –

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

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

Amendment

of

3. Section 5 of the Elections Act, 2011 is amended by—

section 5 of No. 24 of
2011.

(a) deleting subsection (3A); and

(b) deleting subsection (3B).

Amendment of
section 6 of No. 24 of
2011.

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

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

(2) The Commission shall, for purposes of subsection (1), maintain a public web portal for inspection of the register of members of the public.

(b) deleting subsection (3).

Insertion of new
section 6A in No. 24
of 2011.

5. The Elections Act, 2011 is amended by inserting the following new section immediately after section 6 –

Verification of
biometric data.

6A. (1) The Commission shall, not later than ninety days before the date of a general election, open the Register of Voters for verification of biometric data by members of the public at their respective polling stations for a period of thirty days.

(2) The Commission shall, upon the expiry of the period for verification under subsection (1), revise the Register of Voters to take into account any changes in particulars arising out of the verification process.

(3) The Commission shall, upon expiry of the period for verification specified under subsection (1) publish-

(a) a notice in the *Gazette* to the effect that the revision under subsection (2) has been completed; and

(b) the Register of Voters online and in such other manner as may be prescribed by regulations.

Insertion of new
section 8A in No.
24 of 2011.

6. The Elections Act, 2011 is amended by inserting the following
new section immediately after section 8—

Audit of the
register of voters.

8A. (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.

No. 3 of 2011.

(2) The Kenya Citizens and Foreign Nationals Management Service established under section 3 of the Kenya Citizens and Foreign Nationals Management Service Act 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) verifying the accuracy of the Register;
- (b) recommending mechanisms of enhancing the accuracy of the Register; and
- (c) updating the register.

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

(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.

Amendment of
section 10 of No.
24 of 2011.

7. Section 10 of the Elections Act, 2011 is amended in subsection (1) by deleting the word “is” and substituting therefor the words “and biometric data are”.

Amendment of
section 13 of No.
24 of 2011.

8. Section 13 of the Elections Act, 2011 is amended in subsection (1) by deleting the words “forty-five” appearing immediately after the words “at least” and substituting therefor the word “sixty”.

Amendment of
section 28 of No. 24
of 2011.

9. Section 28 of the Elections Act, 2011 is amended by deleting the words “forty-five” appearing immediately after the words “at least” and substituting therefor the word “ninety”.

Amendment of
section 31 of No. 24
of 2011.

10. Section 31 of the Elections Act, 2011 is amended by—

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

(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.

(b) inserting the following new subsections immediately after subsection (2)—

(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.

Amendment of
section 33 of No. 24
of 2011.

11. Section 33 of the Elections Act, 2011 is amended by –

- (a) renumbering the existing provision as subsection (1);
- (b) in subsection (1) by-
 - (i) deleting paragraph (b) and substituting therefor the following new paragraph -

(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;

- (ii) deleting paragraph (c) and substituting therefor the following new paragraph—

(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 that the person intends to use during the election.

(2) inserting the following new subsection immediately after subsection (1)-

(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.

Amendment of
section 35 in No.
24 of 2011.

12. The Elections Act, 2011 is amended by deleting section 35 and substituting therefor the following section -

Submission of
party lists.

35. A political party shall submit its party list to the Commission at least forty-five days before

the date of the general election.

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

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

Number of voters
per polling station.

38A. For the efficient and effective conduct of elections, the Commission shall determine the number of voters per polling station but such number shall not exceed five hundred voters.

Amendment of
section 38 of No.
24 of 2011.

14. Section 39 of the Elections Act, 2011 is amended by inserting the following new sub-sections immediately after subsection (1) –

(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, in the prescribed form, 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 national tallying centre; and

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

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

Amendment of
section 40 of No.
24 of 2011.

15. Section 40 of the Elections Act, 2011 is amended by—

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

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

(2) The mechanisms under subsection (1) shall include provision for partnership with other agencies and non-state actors in the provision of voter education.

Amendment of
section 43 in No.
24 of 2011.

16. Section 43 of the Elections Act, 2011 is amended—

(a) by deleting subsections (1), (2), (3) and (4); and

(b) in subsection (6), by deleting paragraph (b).

Amendment of
section 44 of No.
24 of 2011.

17. The Elections Act, 2011 is amended by deleting section 44 and substituting therefor the following new section—

Use of
technology.

44. (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 eight months before such elections; and
- (b) test, verify and deploy such technology at least sixty days before a general election.

(5) The Commission shall, for purposes of this section and in consultation with relevant agencies, institutions and stakeholders, including political parties, make regulations for the implementation of this section and in particular, regulations providing for–

- (a) the transparent acquisition and disposal of information and communication technology assets and systems;
- (b) testing and certification of the system;
- (c) mechanisms for the conduct of a system audit;
- (d) data storage and information security;
- (e) data retention and disposal;
- (f) access to electoral system software source codes;
- (g) capacity building of staff of the Commission and relevant stakeholders on the use of technology in the electoral process;
- (h) telecommunication network for voter validation and result

transmission;

- (i) development, publication and implementation of a disaster recovery and operations continuity plan; and
- (j) the operations of the technical committee established under subsection (7).

(6) Notwithstanding the provisions of section 109(3) and (4), the Commission shall prepare and submit to Parliament, the regulations required made under subsection (4) within a period of thirty days from the date of commencement of this section.

(7) The technology used for the purpose of the first general elections upon the commencement of this section shall –

- (a) be restricted to the process of voter registration, identification of voters and results transmission; and
- (b) be procured at least eight months before the general election.

(8) For the purposes of giving effect to this section, the Commission shall establish a technical committee of the Commission consisting of such members and officers of the Commission and such other relevant agencies, institutions or stakeholders as the Commission may consider necessary to oversee the adoption of technology in the electoral process and implement the use of such technology.

Insertion of new section 55A, 55B and 55C in No. 24 of 2011.

18. The Elections Act, 2011 is amended by inserting the following new sections immediately after section 55–

Maintenance of secrecy at elections.

55A. (1) Every elections officer, candidate or agent authorized to take part in any proceedings relating to the issue or receipt of ballot papers or to attend at a polling station or at the counting of the votes shall, before so attending, make an oath of secrecy prescribed in the Third Schedule.

(2) Every officer, candidate or agent in attendance at a polling station shall—

(a) maintain and aid in maintaining the secrecy of the ballot; and

(b) not communicate, except for a purpose authorized by law before the poll is closed, any information as to the name or number on the register of voters, of any voter who has or has not applied for a ballot paper or voted at that station or as to the official mark.

(3) A presiding officer may, upon request, divulge to a candidate or to the agent of a candidate the total number of voters who have voted in the station at any time before the poll is closed.

Postponement of elections by the Commission.

55B (1) The Commission may, where a date has been appointed for holding an election, postpone the election in a constituency, county or ward for such period as it may consider necessary where—

(a) there is reason to believe that a serious breach of peace is likely to occur if the election is held on that date;

(b) it is impossible to conduct the elections as a result of a natural disaster or other emergencies,

(c) that there has been occurrence of an electoral malpractice of such a nature and gravity as to make it impossible for an election to proceed.

(2) Where an election is postponed under subsection (1), the election shall be held at the earliest practicable time.

(3) Notwithstanding the provisions of this section, the Commission may, if satisfied that the result of the elections will not be affected by voting in the area in respect of which substituted

dates have been appointed, direct that a return of the elections be made.

Amendment of
section 76 of No.
24 of 2011.

19. Section 76 of the Elections Act, 2011 is amended—

- (a) in subsection (1)(a) by deleting the words “publication of the results of the election in the *Gazette*” appearing immediately after the words “date of” and substituting therefor the word “declaration of the results of the election”; and
- (b) in subsection (1)(c) by inserting the words “or a county assembly” immediately after the word “Parliament”.

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

20. Section 85A of the Elections Act, 2011 is amended by—

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new subsection—

(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.

Amendment of
section 87 of No.
24 of 2011.

21. The Elections Act is amended by deleting section 87 and substituting therefor the following new section—

Report of Court
on electoral
malpractices.

87. (1) An election court may, at the conclusion of the hearing of a petition, in addition to any other orders, make a determination on whether an electoral malpractice of a criminal nature may have occurred.

(2) Where the election court determines that an electoral malpractice of a criminal nature may have occurred, the court shall direct that the order be transmitted to the Director of Public Prosecutions.

(2) Upon receipt of the order under subsection (2), the Director of Public Prosecutions shall –

- (a) direct an investigation to be carried out by such State agency as it considers appropriate; and
- (b) based on the outcome of the investigations, commence prosecution

or close the matter.

Replacement of
section 104 in No.
24 of 2011.

22. The Elections Act is amended by deleting section 104 and substituting therefor the following new section—

Facilitation of
persons with
special needs
including persons
with disabilities.

104. The Commission shall, for the purpose of ensuring that persons with special needs including persons with disabilities realise their right to vote –

- (a) put in place appropriate infrastructure including special voting booths; and
- (b) have in each polling station such officers as the Commission considers necessary to facilitate voting.

Amendment of
section 106 of No.
24 of 2011.

23. The Elections Act, 2011 is amended by deleting section 106.

Amendment of
section 109 of No.
24 of 2011.

24. Section 109 of the Elections Act is amended in subsection (1) by inserting the word “prisoner” immediately after the word “citizens living abroad” appearing in paragraph (b).

Amendment of
section 110 of No.
24 of 2011.

25. Section 110 of the Elections Act, 2011 is amended by—

- (a) deleting subsection (3);
- (b) deleting subsection (4); and
- (c) deleting subsection (6) .

General
amendment to Act
No. 24 of 2011.

26. The Elections Act, 2011 is amended by deleting the expression “Principal Register of Voters” wherever it appears and substituting therefor the expression “Register of Voters”.

Insertion of new
Schedule.

27. The Elections Act, 2011 is amended by inserting the following new schedule immediately after the Second Schedule—

THIRD SCHEDULE

(s. 55A)

OATH OF SECRECY

I,
I.D./Passport No. swear that I
shall maintain the secrecy of the ballot and shall not communicate,
except for a purpose authorized by law before the poll is closed,

any information as to the name or number on the register of voters, of any voter who has or has not applied for a ballot paper or voted at that station or as to the official mark with respect to the constituency/county/ward or do anything that compromises the secrecy of the vote.

.....
Signature of person taking the oath

Before me

.....
(Signature)
Commissioner for Oaths/Magistrate

Date:

Amendment of
section 25 of No. 11
of 2011.

28. Section 25 of the Political Parties Act is amended in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraphs –

- (a) eighty per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election;
- (aa) fifteen per cent of the Fund proportionately to political parties qualifying under paragraph (a) based on the number of candidates of the party from special interest groups elected in the preceding general election ; and

Amendment of
section 3 of No. 9
of 2011.

29. Section 3 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in paragraph (b) by deleting the expression “12(b)” appearing immediately after the words “pursuant to Article” and substituting therefor the expression “88(1), (2) and (3)”.

Amendment of
section 4 of No. 9
of 2011.

30. Section 4 of the Independent Electoral and Boundaries Commission Act, is amended in subsection (1) by deleting paragraph (l).

Amendment of
section 5 of No. 9
of 2011

31. The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting section 5 and substituting therefor the

following section—

Composition and
appointment of the
Commission

5. (1) The Commission shall consist of a chairperson and six other members appointed in accordance with Article 250(4) of the Constitution and the provisions of this Act.

(2) The chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.

(3) The process of replacement of a chairperson or a member of the Commission shall commence at least six months before the lapse of the term of the chairperson or member of the Commission.

(4) The procedure set out in the First Schedule shall apply, with the necessary modifications, whenever there is a vacancy in the Commission

Amendment of
section 6 of No. 9 of
2011

1 **32.** Section 6 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in subsection (2) by deleting paragraph (a).

Insertion of section
7A in No.9 of 2011.

1 **33.** The Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new section immediately after section 7-

Vacancy in
the office of
chairperson
and members

7A. (1) The office of the chairperson or a member of the Commission shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the President; or
- (c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(2) The President shall publish a notice of a vacancy in the *Gazette* within seven days of the occurrence of such vacancy.

(3) Whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2).

Amendment of
section 10 of No. 9 of
2011.

1 **34.** The Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new section immediately after section 10-

Vacancy of
office of
secretary

10A. (1) The office of the secretary shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission; or
- (c) is removed from office under any of the circumstances set out under section 10.

Insertion of new
section 11A of No. 9
of 2011.

1 **35.** The Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new section immediately after section 11-

Relationship
between the
Commissioners and
Secretariat.

11A. For the effective performance of the functions of the Commission—

- (a) the chairperson and members of the Commission shall perform their functions in accordance with the Constitution and in particular, shall be responsible for the formulation of policy and strategy of the Commission and oversight; and
- (b) the secretariat shall perform the day-to-day administrative functions of the Commission and implement the policies and strategies formulated by the Commission.

Amendment of
section 24 of No. 9 of
2011.

36. Section 24 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (b) –

(ba) progress made in the continuous registration of citizens as voters and the progressive realisation of the right to vote of citizens residing outside Kenya and prisoners;

Amendment of
section 31 of No. 9 of
2011.

37. Section 31 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in subsection (2) by deleting paragraph (e).

Amendment of the
First Schedule No. 9
of 2011.

38. The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting the First Schedule and substituting therefor the following new Schedule-

FIRST SCHEDULE

(S. 5)

PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE COMMISSION

Selection
panel

1. (1) At least six months before the lapse of the term of the chairperson or member of the Commission or within fourteen days of the declaration of a vacancy in the office of the chairperson or member of the Commission under the Constitution or this Act, the President shall appoint a selection panel consisting of such persons as Parliament shall determine for the purposes of appointment of the chairperson or member of the Commission.
- (2) For the purpose of the first appointment of commissioners upon the commencement of section 5, the selection panel shall consist of –
 - (a) four persons, being two men and two women, nominated by the Parliamentary Service Commission;
 - (b) one person nominated by the Kenya Conference of Catholic Bishops;
 - (c) one person nominated by the National Council of Churches of Kenya;

- (d) one person nominated by the Supreme Council of Kenya Muslims, the National Muslim Leaders Forum and the Council of Imams and Preachers of Kenya;
 - (e) one person nominated by the Evangelical Alliance of Kenya; and
 - (f) one person nominated by the Hindu Council of Kenya.
- (3) The respective nominating bodies under subparagraphs (2)(b) to (f) shall submit the names of their nominees to the Parliamentary Service Commission for transmission to the President for appointment.
- (4) The selection panel shall, at its first sitting, elect a chairperson and vice-chairperson from amongst its number.
- (5) Subject to the provisions of this Schedule, the selection panel shall determine its own procedure.
- (6) The Parliamentary Service Commission shall provide the secretariat services and facilities required by the selection panel in the performance of its functions.
- Oath or affirmation of office 2. The chairperson and members of the selection panel shall, before assuming office, take and subscribe the oath or affirmation of office prescribed in the Third Schedule.
- Selection of nominees 3. (1) The selection panel shall, within seven days of its appointment, invite applications from qualified persons and publish the names of all applicants and their qualifications in the *Gazette*, two newspapers of national circulation and on the website of the Parliamentary Service Commission.
- (2) The selection panel shall consider the applications, shortlist and interview the applicants.
- (3) The interviews under subparagraph (2) shall be conducted in public.

(4) After conducting interviews under subparagraph (2), the selection panel shall select two persons qualified to be appointed as chairperson and nine persons qualified to be appointed as members of the Commission and shall forward the names to the President for nomination of one person for appointment as the chairperson and six persons for appointment as members.

(5) The President shall, within seven days of receipt of the names under sub-paragraph (4), forward the list of nominees to the National Assembly for approval in accordance with the Public Appointments (Parliamentary Approval) Act.

Appointment
by the
President.

4. The President shall, within seven days of receipt of the names approved by the National Assembly, by notice in the *Gazette*, appoint the Chairperson and the members of the Commission.

Gender equity
and regional
balance.

5. In short listing, nominating or appointing persons as chairperson and members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender and shall ensure regional balance.

Dissolution of
Selection
Panel

6. The selection panel shall stand dissolved upon the requisite appointments being made under paragraph 4.

Amendment of
section 12 of No. 7
of 2011.

39. Section 12 of the Supreme Court Act is amended—

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

(b) by inserting the following new subsection immediately after subsection (1) –

(2) The Independent Electoral and Boundaries Commission shall, within a period of forty-eight hours from the date of the service of a presidential election petition, submit to the Supreme Court certified copies of the documents used to declare the results of the presidential election, including the forms used to announce the results of the election at the polling station and the constituency tallying centre and to declare the result at the national tallying centre.

Amendment of
section 9 of Cap. 107.

40. Section 9 of the Registration of Persons Act is amended –

- (a) in subsection (1) by inserting the words “within a period of thirty days from the date of registration” immediately after the words “registration officer shall”;
- (b) in subsection (6) by inserting the words “within a period of fourteen days from the date of payment of the fees” immediately after the words “a new identity card”.

Amendment of
section 16 of Cap.
107.

41. Section 16 of the Registration of Persons Act is amended by inserting the following new paragraph immediately after paragraph (b)–

- (ba) providing simple guidelines for the vetting of applicants prior to the issuance or replacement of an identity card;

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the Elections Act, 2011, the Independent Electoral and Boundaries Commission Act, 2011, the Political Parties Act, 2011, the Supreme Court Act, 2011 and the Registration of Persons Act, Cap 106, in order to address concerns noted by the Joint Committee on matters relating to the Independent Electoral and Boundaries Commission and the conduct of elections.

Clause 2 of the Bill seeks to amend section 2 of the Elections Act, 2011 to clarify the fact that there is only one register of voters by substituting the term “Principal Register of Voters” with “Register of Voters”. It also defines the terms “biometric” and “integrated electronic electoral system”.

Clause 3 of the Bill seeks to amend section 5 of the Elections Act, 2011 to disallow the use acknowledgement of registration certificate (waiting card) as an identification document for the purposes of an election.

Clause 4 of the Bill seeks to amend section 6 of the Elections Act, 2011 to require the Commission to maintain a public web portal to allow for online inspection of the Register of Voter.

Clause 5 of the Bill seeks to amend the Elections Act, 2011 by inserting a new section 6A to provide for a ninety-day period for the biometric verification of the Register of Voters before a general election.

Clause 6 of the Bill seeks to amend the Elections Act, 2011 to insert a new section 8A to provide for an audit of the Register of Voters and to require that for the purposes of the August 2017 General Election, the Commission engages an independent firm to conduct an audit to verify the accuracy of the Register and to update the Register. The Commission is also required to submit the report of the audit to Parliament, implement the recommendations set out in the report and to submit the report of such implementation to Parliament.

Clause 7 of the Bill seeks to amend section 10 of the Elections Act, 2011 to provide that a person shall be eligible to vote if his or her name and biometric voter data are entered in a Register of Voters and, in addition, produces the identification document used at the time of registration.

Clause 8 of the Bill seeks to amend section 13 of the Elections Act, 2011 to alter the period for the conduct of party primaries from at least forty-five days before a general election to at least sixty days before a general election.

Clause 9 of the Bill seeks to amend section 28 of the Elections Act, 2011 to alter the date for the submission of party membership lists to the Commission from at least forty-five days before the date of a general election to at least ninety days before the date of a general election.

Clause 10 of the Bill seeks to amend section 31 of the Elections Act, 2011 to require that the Commission conducts and supervises a party primary upon the request of a political party. It further requires political parties to submit the names of persons contesting in their primaries and the date of their primaries at least twenty one days before the nomination day. The names and dates are to be published in the *Gazette* within seven days of receipt by the Commission. Only members of political parties are allowed to vote for candidates at party primaries.

Clause 11 of the Bill seeks to amend section 33 of the Elections Act, 2011 to require independent candidates to submit to the Commission, their names at least ninety days before the general election and that the Commission publishes the names in the *Gazette* at least fourteen days before the nomination day.

Clause 12 of the Bill seeks to amend section 35 of the Elections Act, 2011 by requiring political parties to submit their Party Lists required under Article 90 of the Constitution at least forty-five days to the general election.

Clause 13 of the Bill seeks to amend the Elections Act, 2011 to insert a new section 38A to limit the number of voters per polling station to five hundred.

Clause 14 of the Bill seeks to amend section 39 of the Elections Act, 2011 to require the electronic transmission of election results from polling stations, constituency tallying centres and county tallying centres to the National Tallying Centre as appropriate.

Clause 15 of the Bill seeks to amend section 40 of the Elections Act, 2011 to allow the Commission to partner with non-state agencies in the provision of voter education.

Clause 16 of the Bill seeks to amend section 43 of the Act to delete references to election offences which are proposed to be contained in a separate election law on offences.

Clause 17 seeks to amend section 44 of the Elections Act, 2011 to require the establishment of an integrated electronic electoral system that allows for the biometric registration of voters, electronic voter identification and electronic transmission of results. For the purposes of the August, 2017 elections, the use of technology is to be limited to the registration and identification of voters and the transmission of results.

Clause 18 is a consequential provision following the repeal of election offences from the Elections Act, 2011 to the proposed new Election Offences Bill, 2016.

Clause 19 seeks to amend section 76 of the Elections Act, 2011 so as to clarify that the period for the filing of petition against the election of Member of Parliament, county Governor or Member of County Assembly begins to run from the date of the declaration of results.

Clause 20 of the Bill seeks to amend section 85A of the Elections Act, 2011 to provide that an appeal against the judgment of an election court acts as an automatic stay of the holding of a by-election.

Clause 21 of the Bill seeks to amend section 87 of the Elections Act, 2011 to require that a separate criminal process be pursued by the Director of Public Prosecutions in the event an election court makes a finding that an electoral malpractice of a criminal nature may have occurred during an election.

Clause 22 of the Bill seeks to repeal section 104 of the Act which relates to election offences and replace it with a new section to require that the Commission puts mechanisms in place to facilitate the voting of persons with special needs including persons with disabilities.

Clause 23 of the Bill seeks to repeal section 106 of the Elections Act, 2011 as offences under the Act are proposed to be re-enacted in the Election Offences Bill, 2016.

Clause 24 of the Bill seeks to amend section 109 of the Elections Act to require the making of regulations for the progressive realization of the registration of prisoners as voters and their right to vote.

Clause 25 of the Bill seeks to amend section 110 of the Elections Act, 2011 to delete references to election offences.

Clause 26 of the Bill seeks to amend the Elections Act, 2011 to substitute references to the “Principal Register of Voters” with the “Register of Voters”.

Clause 27 of the Bill retains the form of the oath of secrecy to be taken by officers of the Commission previously provided for under Part VI of the Act.

Clause 28 of the Bill seeks to amend section 25 of the Political Parties Act, 2011 to provide fiscal incentives to political parties in order to assist in implementing the two-thirds gender principle. Fifteen percent of the Political Parties Fund is proposed to be distributed among parties based on the number of elected special interest candidates.

Clause 29 of the Bill seeks to amend section 3 of the Independent Electoral Commission and Boundaries Act, 2011 to correct an erroneous reference.

Clause 30 of the Bill seeks to amend section 4 of the Independent Electoral Commission and Boundaries Act, 2011 to remove the investigative and prosecutorial powers previously granted to the Commission which are proposed to be exercised by the Office of the Director of Public Prosecutions.

Clause 31 of the Bill seeks to amend section 5 of the Independent Electoral Commission and Boundaries Act, 2011 to provide for the composition and appointment of the members of the Commission who are proposed to be reduced to seven members from the current nine members.

Clause 32 of the Bill seeks to amend section 6 of the Independent Electoral Commission and Boundaries Act, 2011 to remove the requirement that Commissioners be citizens of Kenya.

Clause 33 of the Bill seeks to amend the Independent Electoral Commission and Boundaries Act, 2011 by inserting a new section 7A to provide for other modes of vacation from office of members of the Commission including death and resignation from office as this is not covered under the Independent Electoral Commission and Boundaries Act, 2011.

Clause 34 of the Bill seeks to amend the Independent Electoral Commission and Boundaries Act, 2011 by inserting a new section 10A to provide for the vacation from office of the secretary of the Commission through death or resignation as this is also not covered under the Independent Electoral Commission and Boundaries Act, 2011.

Clause 35 of the Bill seeks to amend the Independent Electoral Commission and Boundaries Act, 2011 by inserting a new clause 11A to delineate the functions of the members of the Commission and the secretariat.

Clause 36 of the Bill seeks to amend section 24 of the Independent Electoral Commission and Boundaries Act, 2011 to require the Commission to include in its annual report to Parliament, a report on progress made in the realization of the registration of citizens as voters and the progressive realization of the right to vote of Kenyans in the Diaspora and prisoners.

Clause 37 of the Bill seeks to amend section 31 of the Independent Electoral Commission and Boundaries Act, 2011 to delete a provision already provided for under section 109 of the elections Act, 2011.

Clause 38 of the Bill seeks to amend the First Schedule to the Independent Electoral Commission and Boundaries Act, 2011 to provide for the procedure for the appointment of the chairperson and members of the Commission.

Clause 39 of the Bill seeks to amend section 12 of the Supreme Court Act, 2011 to require the submission of certified copies of the documents used to declare the results of the election of the President to the Supreme Court within forty-eight hours of the service of a petition challenging the election of the President.

Clause 40 of the Bill seeks to amend section 9 of the Registration of Persons Act to require the issuance of an Identification Card within thirty days of the date of registration and replacement of an Identification Card within fourteen days.

Clause 41 of the Bill seeks to amend section 16 of the Registration of Persons Act to require the Kenya Citizens and Foreign Nationals Management Service to prescribe simple guidelines for the vetting of applicants prior to issuance or replacement of an Identity Card.

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

This Bill delegates legislative powers to the Independent Electoral and Boundaries Commission Act for the purpose of requiring the Commission to develop regulations on the use of technology in elections. It also delegates legislative powers to the Kenya

Citizens and Foreign Nationals Management Service to prescribe guidelines on the vetting of applicants for the issuance and replacement of Identification Cards.

The Bill does not limit any fundamental rights or freedoms.

Statement that the Bill concerns county governments

The Bill concerns county governments as it contains provisions relating to the election of members of a county assembly and a county executive.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

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

Dated the.....2016.

.....

Section 2 of No. 24 of 2011 which it is proposed to be amended.

“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;

“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;

“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;

“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.

Section 5 of No. 24 of 2011 which it is proposed to be amended.

5. Registration of voters

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

- (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;

- (b) in the case of a by-election, between the date of the declaration of the vacancy of the seat concerned and the date of such by-election; or
- (c) 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 acknowledgement 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 No. 24 of 2011 which it is proposed to be amended.

6. Inspection of register of voters

(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, being 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 10 of No. 24 of 2011 which it is proposed to be amended.

10. Eligibility to vote

(1) A person whose name is entered in a register of voters in a particular polling station, and who produces an identification document shall be eligible to vote in that polling station.

(2) The identification document produced in subsection (1) shall be the identification document used at the time of registration as a voter.

(3) Nothing in this section shall entitle a person who is prohibited from voting by any written law to vote or relieve that person from any penalties to which the person may be liable for voting.

Section 13 of No. 24 of 2011 which it is proposed to be amended.

13. Nomination of candidates by a political party

(1) A political party shall nominate its candidates for an election under this Act at least forty-five days before a general election under this Act in accordance with its constitution and nomination rules.

(2) A political party shall not change the candidate nominated after the nomination of that person has been received by the Commission: Provided that in the event of the death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party may after notifying the candidate that the party seeks to substitute, where applicable, substitute its candidate before the date of presentation of nomination papers to the Commission.

(3) Notwithstanding subsection (1), in the case of any other election, the Commission shall by notice in the prescribed form, specify the day or days upon which political parties shall nominate candidates to contest in a presidential, parliamentary or county election in accordance with its constitution or rules, which shall be at least forty-five days before such election.

Section 28 of No. 24 of 2011 which it is proposed to be amended.

28. Submission of party membership lists

A political party that nominates a person for any election under this Act shall submit to the Commission a party membership list of the party at least forty-five days

Section 31 of No. 24 of 2011 which it is proposed to be amended.

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) Each political party shall bear the expenses relating to the nomination of candidates to contest in presidential, parliamentary, county governor and county assembly elections and a political party may, at its own expense and on such terms as may be agreed between the party and the Commission, request the Commission to supervise party nominations of candidates.

Section 33 of No. 24 of 2011 which it is proposed to be amended.

33. Nomination of independent candidates

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 on the day appointed by the Commission as the nomination day, a duly filled nomination paper as the Commission may prescribe;
- (c) has submitted the 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.

Section 35 of No. 24 of 2011 which it is proposed to be amended.

35. Submission of party lists

- (1) A political party shall submit its party list to the Commission on the same day as the day design

Section 39 of No. 24 of 2011 which it is proposed to be amended.

39. Determination and declaration of results

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

(2) Before determining and declaring the final results of an election under subsection (1), the Commission may announce the provisional results of an election.

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

Section 40 of No. 24 of 2011 which it is proposed to be amended.

40. Voter education

The Commission shall, in performing its duties under Article 88(4)(g) of the constitution establish mechanisms for the provision of continuous voter education and cause to be prepared a voter education curriculum.

Section 43 of No. 24 of 2011 which it is proposed to be amended.

43. Participation in elections by public officers

(1) A public officer shall not—

- (a) engage in the activities of any political party or candidate or act as an agent of a political party or a candidate in an election;
- (b) publicly indicate support for or opposition against any party, side or candidate participating in an election;
- (c) engage in political campaigns or other political activity; or
- (d) use public resources to initiate new development projects in any constituency or county for the purpose of supporting a candidate or political party in that constituency or county.

(2) A public officer who contravenes subsection (1) commits an offence and is liable on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.

(3) A person who knowingly aids in contravention of subsection (1) commits an offence and is liable, on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(4) A candidate who knowingly aids in contravention of subsection (1) shall not be eligible to contest in the election.

(5) A public officer who intends to contest an election under this Act shall resign from public office at least six months before the date of election.

(6) This section shall not apply to—

- (a) the President;

- (b) the Prime Minister;
- (c) the Deputy President;
- (d) a member of Parliament;
- (e) a county governor;
- (f) a deputy county governor;
- (g) a member of a county assembly.

Section 44 of No. 24 of 2011 which it is proposed to be amended.

44. Use of technology

The Commission may use such technology as it considers appropriate in the electoral process.

Section 55 of No. 24 of 2011 which it is proposed to be amended.

55. General power of the Commission

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

Section 76 of No. 24 of 2011 which it is proposed to be amended.

76. Presentation of petitions

- (1) A petition—
 - (a) to question the validity of an election shall be filed within twenty eight days after the date of publication of the results of the election in the Gazette and served within fifteen days of presentation;
 - (b) to seek a declaration that a seat in Parliament or a county assembly has not become vacant shall be presented within twenty-eight days after the date of publication of the notification of the vacancy by the relevant Speaker; or
 - (c) to seek a declaration that a seat in Parliament has become vacant may be presented at any time.

Section 85A of No. 24 of 2011 which it is proposed to be amended.

85A. Appeals to the Court of Appeal

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 and 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.

Section 87 of No. 24 of 2011 which it is proposed to be amended.

87. Report of court on election offences

(1) An election court shall, at the conclusion of the hearing of a petition, in addition to any other orders, send to the Director of Public Prosecutions, the Commission and the relevant Speaker a report in writing indicating whether an election offence has been committed by any person in connection with the election, and the names and descriptions of the persons, if any, who have been proved at the hearing to have been guilty of an election offence.

(2) Before a person, not being a party to an election petition or a candidate on whose behalf the seat is claimed by an election petition, is reported by an election court, the elections court shall give that person an opportunity to be heard and to give and call evidence to show why he should not be reported.

(3) The relevant Speaker shall publish a report made under this section in the Gazette, and the Commission shall consider the report and delete from the register of voters, the name of a person who is disqualified from being registered in that register of voters.

Section 104 of No. 24 of 2011 which it is proposed to be amended.

104. Certification of referendum

In any prosecution for an offence under this Act alleged to have been committed at or in connection with a referendum in any constituency, the certificate of the returning officer for that constituency stating that the referendum

Section 106 of No. 24 of 2011 which it is proposed to be amended.

106. General penalty

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

(2) An offence under this Act relating to an election shall, with necessary modifications, be an offence during a referendum.

(3) A person who is convicted of an offence under this Act shall not be eligible for election or nomination in an election under this Act for a period of five years following the date of conviction.

Section 106 of No. 24 of 2011 which it is proposed to be amended.

109. Regulations

(1) The Commission may make regulations generally for the better carrying out of the purposes and provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, may make regulations to—

- (a) prescribe the manner in which registers of voters shall be compiled and the manner in which they shall be revised;
- (b) prescribe the procedure for registration and issuance of voters cards and provide for the progressive registration of Kenyan citizens living abroad;

Section 110 of No. 24 of 2011 which it is proposed to be amended.

110. Electoral code of conduct

(1) Every political party and every person who participates in an election or referendum under the Constitution and this Act shall subscribe to and observe the Electoral Code of Conduct set out in the Second Schedule in such manner as the Commission may, subject to paragraph 6 of that Schedule, determine.

(2) A political party that is eligible to nominate candidates under the Constitution, this Act or any other written law shall not be eligible to contest in any election unless the political party and the candidate have subscribed to the Electoral Code of Conduct referred to in subsection (1).

(3) Every officer of a political party or a referendum committee which, and every nominated candidate who, attempts to participate in or participates in an election or referendum without subscribing to the Electoral Code of Conduct commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six years or to both.

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

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

Paragraph 18 of the Second Schedule of No. 24 of 2011 which it is proposed to amend

18. This Code shall take effect from the date of dissolution of parliament until polling day.

Section 110 of No. 24 of 2011 which it is proposed to be amended.

25. Distribution of the Fund

- (1) The Fund shall be distributed as follows—

(a) ninety-five per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election; and

(b) five per cent for the administration expenses of the Fund.

- (2) Notwithstanding subsection (1), a political party shall not be entitled to receive funding from the Fund if—

(a) the party does not secure at least five per cent of the total number of votes at the preceding general elections; or

(b) more than two-thirds of its registered office bearers are of the same gender.

- (3) For purposes of subsections (1)(a) and (2)(a), the total number of votes secured by a political party shall be computed by adding the total number of votes obtained in the preceding general election by a political party in the election for the President, members of Parliament, county governors and members of county assemblies.

Section 3 of No. 9 of 2011 of which it is proposed to amend –

3. Object and purpose of the Act

The object and purpose of this Act is to—

(a) provide for the operations, powers, responsibilities and functions of the Commission to supervise elections and referenda at County and National government levels;

(b) provide a legal framework for the identification and appointment of the chairperson, members and the secretary of the Commission pursuant to Article (12)(b) and 250(2) of the Constitution;

- (c) provide for the manner of the exercise of the powers, responsibilities and functions of the Commission pursuant to Article 88(5) of the Constitution;
- (d) establish mechanisms for the Commission to facilitate consultations with interested parties pursuant to Article 89(7) of the Constitution; and
- (e) establish mechanisms for the Commission to address the issues arising out of the first review.

Section 4 of No. 9 of 2011 of which it is proposed to amend –

4. Functions of the Commission

As provided for by Article 88(4) of the Constitution, the Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for—

- (a) the continuous registration of citizens as voters;
- (b) the regular revision of the voters' roll;
- (c) the delimitation of constituencies and wards in accordance with the Constitution;
- (d) the regulation of the process by which parties nominate candidates for elections;
- (e) 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;
- (f) the registration of candidates for election;
- (g) voter education;
- (h) the facilitation of the observation, monitoring and evaluation of elections;
- (i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
- (j) the development and enforcement of a code of conduct for candidates and parties contesting elections;

- (k) the monitoring of compliance with the legislation required by Article 82(1)(b) of the Constitution relating to nomination of candidates by parties;
- (l) the investigation and prosecution of electoral offences by candidates, political parties or their agents pursuant to Article 157(12) of the Constitution;
- (m) the use of appropriate technology and approaches in the performance of its functions; and
- (n) such other functions as are provided for by the Constitution or any other written law.

Section 6 of No. 9 of 2011 of which it is proposed to amend –

6. Qualifications for appointment as chairperson or member of the Commission

- (1) The chairperson of the Commission shall be a person who is qualified to hold the office of judge of the Supreme Court under the Constitution.
- (2) A person is qualified for appointment as a member of the Commission if such person—
 - (a) is a citizen of Kenya;
 - (b) holds a degree from a recognised university;
 - (c) has proven relevant experience in any of the following fields—
 - (i) electoral matters;
 - (ii) management;
 - (iii) finance;
 - (iv) governance;
 - (v) public administration;
 - (vi) law; and
 - (d) meets the requirements of Chapter Six of the Constitution.

Section 24 of No. 9 of 2011 of which it is proposed to amend -

Section 31 of No. 9 of 2011 of which it is proposed to amend -

31. Regulations

- (1) The Commission may make regulations for the better carrying out of the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), such regulations may provide for—

- (a) the appointment, including the power to confirm appointments of persons, to any office in respect of which the Commission is responsible under this Act;
- (b) the disciplinary control of persons holding or acting in any office in respect of which the Commission is responsible under this Act;
- (c) the termination of appointments and the removal of persons from any office, in respect of which the Commission is responsible under this Act;
- (d) the practice and procedure of the Commission in the exercise of its functions under this Act;
- (e) the progressive registration of Kenyan citizens residing outside Kenya and putting into effect the progressive realisation of their right to vote;
- (f) the delegation of the Commission's functions or powers; and
- (g) any other matter required under the Constitution, this Act or any other written law.

(3) The purpose and objective for making the rules and regulations under subsection (1) is to enable the Commission to effectively discharge its mandate under the Constitution and this Act.

PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE COMMISSION

(1) Within fourteen days of the commencement of this Act, the President shall, in consultation with the Prime Minister and with the approval of the National Assembly, appoint a Selection Panel comprising of—

- (a) two persons, being one man and one woman, nominated by the President;
- (b) two persons, being one man and one woman, nominated by the Prime Minister;
- (c) one person nominated by the Judicial Service Commission;
- (d) one person nominated by the Kenya Anti-Corruption Advisory Board; and

(e) one person nominated by the Association of Professional Societies of East Africa.

(2) The respective nominating bodies under subparagraph (1)(c), (d) and (e) shall, for purposes of making their nominations, each propose and submit two names of nominees, being one man and one woman, to the Clerk of the National Assembly.

(3) The National Assembly shall, upon receipt of the names of the nominees, consider them and—

(a) approve one of the nominees; or

(b) reject both of the nominees.

(4) The Clerk of the National Assembly shall notify the respective nominating bodies of the approval or rejection under subparagraph (3).

(5) If the National Assembly approves a nominee, the Clerk of the National Assembly shall forward the name of the nominee to the President and the President shall appoint the nominee as a member of the Selection Panel.

(6) If the National Assembly rejects the names of both nominees submitted by a nominating body, the Clerk of the National Assembly shall request the nominating body to submit the names of new nominees to the National Assembly for consideration and subparagraphs (2), (3), (4) and (5) shall apply, with necessary modifications, to the consideration of the new nominees.

Section 12 of No. 7 of 2011 which it is proposed to amend –

12. Determination of disputes arising out of presidential elections

An application to the Supreme Court in respect of a dispute to which Article 163(3)(a) of the Constitution applies shall be submitted by petition and shall further comply with the procedures prescribed by the rules.

Section 9 of Cap. 107 which it is proposed to amend –

9. Registration officer to issue identity cards

(1) Upon the registration of a person under this Act, the registration officer shall issue an identity card in the prescribed form to that person.

(2) Every identity card shall contain—

(a) a photograph, of the prescribed size and type, of the registered person; and

(b) such of the finger and thumb or palm or toe impressions of the registered person as the registration officer may require, and for the purpose of obtaining them the registered person shall permit his photograph and his finger and thumb or palm or toe impression to be taken: Provided that a registered person may elect, or be required by a registration officer, to supply a photograph of himself in duplicate where the registration officer is satisfied that the photographs are of the prescribed size and type and have been taken within the prescribed time.

(3) A registered person whose identity card is torn, worn out, mutilated, tampered with or otherwise rendered unserviceable may attend upon a registration officer and apply for renewal of the identity card upon payment of such fee, if any, as may be prescribed and shall at the time surrender the torn, worn out, mutilated, tampered with or otherwise unserviceable identity card.

(4) Upon the re-registration of a person under subsection (3), the registration officer shall issue a new identity card to that person, and the provisions of subsection (2) shall apply thereto.

(5) Every person to whom an identity card has been issued shall keep the card in safe custody.

(6) Any person who loses his identity card shall, without undue delay, report the loss to the nearest registration officer, who, on payment of such fee, if any, as may be prescribed and subject to such conditions as may be prescribed, shall issue to that person a new identity card: Provided that if the registration officer is satisfied that the loss was through no fault or neglect of that person the new identity card shall be issued free of charge.

(7) Any person who finds, or who comes into possession of, an identity card which does not belong to him shall without undue delay and without charging any fee therefor, return it either to its owner or to the nearest registration officer or alternatively to the nearest police station.

Section 16 of Cap. 107 which it is proposed to amend –

16. Rules

The Minister may make rules—

- (a) prescribing anything required to be prescribed under this Act;
- (b) prescribing the form of identity card;
- (c) providing for the insertion in, or removal from the register of the particulars of any person, and for the procedure to be followed in the issue, surrender or cancellation of any identity card, the issue of duplicate identity card and the renewal of identity cards;
- (d) providing for the procedure to be followed where any registered person has changed his name or changes his place of residence or postal address or leaves Kenya or dies;

- (e) prescribing the fees, if any, which may be charged for a duplicate identity card or for initial registration the renewal or alteration of an identity card;
- (f) generally for the better carrying out of the provisions of this Act.