

LEGAL NOTICE NO.....

**THE CONSTITUTION OF KENYA REVIEW
(REFERENDUM) REGULATIONS, 2010**

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**THE CONSTITUTION OF KENYA REVIEW ACT
(No.9 of 2008)**

IN EXERCISE of the powers conferred by section 58(3) of the Constitution of Kenya Review Act, 2008, the Interim Independent Electoral Commission makes the following Regulations—

**THE CONSTITUTION OF KENYA REVIEW (REFERENDUM) REGULATIONS,
2010**

PART I—PRELIMINARY

Citation. **1.** These Regulations may be cited as the Constitution of Kenya Review(Referendum) Regulations, 2010.

Interpretation. **2.** In these Regulations, unless the context otherwise requires—

No. 9 of 2008 “Act” means the Constitution of Kenya Review Act, 2008;

“agent” means a person duly appointed by a referendum committee for the purposes of these Regulations and includes a counting agent;

“chief agent” in respect of a registered referendum committee, means the person recorded in the register maintained by the Commission under the regulation 13 as the person responsible for the affairs of the referendum committee;

“Commission” means the Interim Independent Electoral Commission established by section 41A of the Constitution;of

“constituency” means one of the constituencies into which Kenya is divided under section 42 of the Constitution;

Cap.66 “corrupt practice” means any offence mentioned and punishable under the provisions of Part III of the Election Offences Act;

“election offence” means a corrupt practice, an illegal practice or any offence under the Election Offences Act;

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

“elector’s card” means a card issued to an elector as evidence of the person’s registration in the register of voters ;

“illegal practice” means an offence so designated and punishable under part IV of the Election Offences Act;

“oppose” in respect of a referendum question means voting not to approve the referendum question specified in section 37 of the Act;

“Parliamentary Select Committee” means the Parliamentary Select Committee on the Review of the Constitution;

“petition” means an application filed under section 44 (1) of the Act to the Interim Independent Constitutional Dispute Resolution Court established under section 60A of the Constitution;

“police officer” means a member of the Kenya Police Force or of the Administration Police; or any other person assigned, by the Commission, the duties that are performed by a police officer under these Regulations;

“polling area” means one of the areas into which a constituency is divided under regulation 7, or, if the Commission has declared a constituency to be a single polling area, that constituency;

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

“polling time” means the period between seven o’clock in the morning and five o’clock in the afternoon of the polling day and includes the time taken to vote by voters who were present in a polling station by five o’clock;

“presiding officer” means a person appointed under the regulation 4 to preside at a polling station;

“referendum” means the process of the ratification of the proposed new Constitution of Kenya specified under Part V of the Act;

“referendum committee” means any group of persons that intends to support or oppose the referendum question during the referendum period;

“referendum officer” means a returning officer, presiding officer and any other person appointed by the Commission to perform referendum duties

under these Regulations;

“referendum period” means the period beginning on the day on which the text of the referendum question is published and ending on polling day of the referendum;

“referendum question” means the question upon which the people shall vote in the referendum as specified in section 37 of the Act;

“register” means the register of voters specified under section 41 A(d) of the Constitution;

“returning officer” means a person appointed under regulation 3 for the purpose of conducting the referendum in a constituency;

“voter” in relation to the referendum, means a person whose name is included in the current register of voters ;

“support” in respect of referendum question, means voting to approve the referendum question specified in section 37 of the Act;

PART II—MATTERS PRELIMINARY TO REFERENDUM

Returning
Officers.

3.(1) The Commission shall appoint a returning officer for each constituency and may appoint such deputy returning officers for the constituencies as it may consider necessary.

(2) A returning officer may preside at a polling station and in that case the officer shall, for the purposes of these Regulations, be deemed to be presiding officer of that station.

(3) The returning officer shall, in consultation with the Commission, appoint presiding officers and deputy presiding officers to preside at a polling station.

(4) A deputy returning officer shall, subject to the general direction and control of the returning officer to whom the officer is a deputy, have all the power, and may perform all the duties, of the returning officer under these Regulations.

(5) A deputy presiding officer may perform any act which the

presiding officer is required or authorized to perform by these Regulations; but no deputy presiding officer shall have power to order the arrest of any person or the exclusion or removal of any person from a polling station.

(6) Every appointment of a returning officer and a deputy returning officer under this regulation shall be published in the Gazette and in such other manner as the Commission may deem necessary.

Appointment of other officers.

4.(1) The Commission shall appoint such other referendum officers with such designations as it may deem necessary to assist in the conduct of the referendum and such referendum officers, may, subject to the general or special directions of the Commission, exercise any or all of the duties and powers conferred or imposed upon the Commission by the Constitution, the National Assembly and Presidential Act and this Act.

(2) The referendum officer shall take such oath of office as the Commission may specify.

(3) Referendum officers shall, in performing their duties and functions under these Regulations, act impartially and not in any way show favour to any side in a referendum.

Register of voters.

5. The register of voters prepared under the National Assembly and Presidential Elections Act for the election of members to the parliament and of the president, as revised from time to time, shall be the register of voters for the purpose of the referendum.

Right to vote and evidence of identity.

6.(1) A registered voter in a particular constituency is entitled to vote at the referendum unless otherwise disqualified from voting by any other written law.

(2) A presiding officer shall require a person applying for a ballot paper to produce the person's identity card issued under the Registration of Persons Act or a valid Kenyan passport and the elector's card issued by the Commission.

Polling areas and polling stations.

7.(1) The Commission shall—

- (a) divide each constituency in which the referendum is to be held into polling areas or, if it thinks fit, declare any particular constituency to be a single polling area;

- (b) assign to each polling area a distinguishing number or letter or a combination of number and letter;
- (c) appoint a place or places or designate a vehicle or vehicles or a vessel or vessels at which the polling station or stations for each polling area shall be established; and
- (d) publish in the Gazette a notice specifying—
 - (i) the polling areas established for each constituency, which may be done by specifying the registration units which they respectively comprise;
 - (ii) the distinguishing number or letter, or combination thereof, assigned to each polling area; and
 - (iii) the place or places appointed or the vehicle or vehicles, vessel or vessels designated for the establishment of a polling station or stations for each polling area.

(2) In determining the boundaries of any polling area, the Commission shall have regard to geographical considerations and any other factors affecting the facility of communication between various places within the polling area.

(3) Subject to sub-regulation (2), the Commission may alter a division, assignment or appointment made under sub regulation (1) and shall thereupon publish a notice in the Gazette specifying the alteration.

(4) The Commission may, if it considers it desirable, appoint a single polling station for two or more polling areas.

Use of public facilities.

8.(1) The Commission may use, free of charge, any public facility as a polling station.

(2) Where any damage is caused to a public facility by reason of its being used as polling station under this regulation, the Commission shall either make good the damage or defray any expenses incurred by persons having control of the facility in making the damage good.

Referendum question and notice of referendum.

9.(1) Subject to section 37 (2), the Commission shall, in consultation with the Parliamentary Select Committee, within seven days after publication of the draft Constitution by the Attorney-General under section 34 (1) of the

Act, frame the referendum question.

(2) The Commission shall publish the referendum question, by notice in the Gazette in accordance with section 37 (1).

(3) A notice published by the Commission under sub-regulation (2) shall be in Form 1 set out in the First Schedule.

(4) The Commission shall, within fourteen days after publication of the question by notice in the Gazette , specify—

- (a) the referendum question;
- (b) the symbols assigned for the answers to the referendum question on the ballot paper ;
- (c) the day on which the referendum is to be held;
- (d) the polling time of the referendum;
- (e) the referendum campaign period; and
- (f) the day by which the referendum committees specified in regulation 12 must have registered with the Commission.

(5) A notice published by the Commission under sub-regulation (4) shall be in Form 2 set out in the First Schedule.

(6) The returning officer of every constituency shall, within twenty one days after publication of the notice under sub-regulation (2), notify the public of the referendum in Form 3 set out in the First Schedule.

- (2) On publication of the notice specified in sub- regulation (2) in the Gazette by the Commission the registration of voters shall be suspended.

Application of
Cap 7. and Cap.
66.

10.(1) The National Assembly and Presidential Elections Act and Regulations made thereunder shall, with necessary modifications, apply to the conduct of the referendum.

(2) The Election Offences Act shall apply with respect to the referendum as though it were an election within the meaning of the Act.

PART III—REFERENDUM COMMITTEES

Referendum
Committees.

11.(1) Persons intending to support or oppose the referendum question may form one national committee and one committee in each parliamentary constituency which committees shall be known as referendum committees.

Cap.7.

(2) A referendum committee formed under this regulation shall subscribe to and abide by the Electoral Code of Conduct provided for under section 34A of the National Assembly and Presidential Elections Act and set out in the Fourth Schedule thereto, in the manner the Commission shall direct in writing.

Registration of
referendum
committees.

12.(1) A referendum committee may apply for registration for the purposes of a referendum by filing with the Commission, at any time during the referendum period, an application in accordance with this regulation.

(2) An application under sub-regulation (1) shall—

- (a) be accompanied by information and statements showing that the applicant adequately represents those campaigning for or against the referendum question; and
- (b) be made within the period specified by the Commission.

(3) An application for registration shall be signed by the leader of the referendum committee and shall—

(a) set out—

- (i) the full name of the committee;
- (ii) the full name, address and telephone number of the leader of the committee;
- (iii) the name, address and telephone number and title of each officer of the committee;
- (iv) the address and telephone number of the office of the committee to which communication may be addressed; and

- (v) the name, address and telephone number of the chief agent of the committee;
 - (b) indicate the electoral areas in which the committee intends to support or oppose the referendum question; and
 - (c) be accompanied by a statement signed by the chief agent that the agent has accepted the appointment as chief agent.
- (4) On receipt of an application for registration of a referendum committee, the Commission shall examine the application and determine whether the committee can be registered and shall—
 - (a) if the committee can be registered, register it and inform the person who signed the application; or
 - (b) if the committee cannot be registered, inform the person who signed the application that the committee cannot be registered and state the reasons thereof.
- (5) A referendum committee shall not be registered if—
 - (a) the application does not comply with these Regulations;
 - (b) the name of the committee so resembles the name of a previously registered referendum committee that the committee is likely to be confused with that previously registered committee; or
 - (d) the Commission is not satisfied that the applicant adequately represents those campaigning for a particular outcome.
- (6) A referendum committee shall not be registered if the name or logo of the committee is the name or logo of a political party or so resembles such a name or logo that the committee is likely to be confused with the party.
- (7) For the purpose of sub regulation (6), the name of a party means—
 - (a) the full name of the party; or

(b) any name, or abbreviation of a name, used to identify the party in election documents.

(8) Where a referendum committee is registered and any information given by the committee pursuant to sub regulation (2) ceases to be applicable or accurate, the referendum committee shall forthwith send a report in writing, signed by the leader or chief agent of the committee, to the Commission setting out the information necessary to bring the information up to date.

(9) The registration of a referendum committee for the purposes of a referendum is valid only for that referendum.

Appointment of
chief agent.

13. (1) Every referendum committee that intends to apply for registration under regulation 12 shall, before applying, appoint a chief agent.

(2) The Commission shall maintain a register of the chief agents of registered referendum committees in which shall be recorded the name, address and telephone number of the chief agent of each such committee.

(3) The chief agent of a referendum committee appointed under sub regulation (1) shall be responsible for the affairs of the registered referendum committee and shall provide a sample signature to the Commission.

Appointment of
agents.

Cap. 7.

14.(1) The chief agents of all the registered referendum committees in an electoral area or constituency may appoint not more than two agents to be present when voting is taking place at each polling area.

(2) Each agent appointed under sub-regulation (1) has, for the purposes of proceedings at the polling station all the rights and obligations of a candidate's agent specified under the National Assembly and Presidential Elections Act for that polling station by the Commission.

(3) Every person appointed pursuant to this regulation shall be appointed in writing and shall take such oath of office as the Commission may specify.

Rights and
duties of agents.

15.(1) An agent appointed under regulation 14 shall when present, be entitled to—

(a) witness the opening and closing procedures and processes of a polling station;

(b) examine the serial numbers of the ballot boxes before the

commencement of the polling and after the close of the polling;

- (c) examine electors' registers;
- (d) verify whether a person who has applied for a ballot paper to vote is qualified to vote at a polling station;
- (e) be furnished with the names of the election officials at a polling station and constituency tallying centre;
- (f) put a security seal on the ballot box;
- (g) object, to the presence of any person, other than a person lawfully present at the polling station or tallying centre;
- (h) take note of all the activities taking place in a polling station including the conduct of the poll, the observance of the polling regulations, the conduct of the count of the votes and the observance of the counting regulations and in that connection the agent shall be entitled to take notes, object to the relevant referendum officers preferably in writing, when the agent considers that to be appropriate; and
- (i) perform any other function or carry out any other responsibility conferred on an agent by these Regulations or by the Act.

(2) An agent shall comply with these Regulations and in particular shall—

- (a) submit to the authority of the presiding officer and deputy presiding officer at the polling station and the returning officer and deputy returning officer at the constituency tallying centre;
- (b) comply with lawful orders given by the returning officer, deputy returning officer, presiding officer and deputy presiding officer;
- (c) not communicate with any voter in the polling station except as authorised by these Regulations;

(d) not interfere with the poll or counting process in any manner which is not authorised by these Regulations; and

(e) not willfully damage, destroy or in any way endanger any document or other property of the Commission which comes into the agent's possession or which the agent is entitled to use, examine or handle.

(2) The returning officer, deputy returning officer, presiding officer, or deputy presiding officer may suspend for a period of time or expel completely an agent from the place the agent is attached to perform the agent's functions if the agent repeatedly flouts these Regulations in a manner which threatens to interfere or actually interferes with the voting process at that place:

Provided that the referendum officer shall alert the agent of a breach every time it occurs and offer the agent an opportunity to defend such conduct.

(3) Where a referendum officer suspends or expels an agent under this regulation, the referendum officer shall serve the agent with a written order to that effect and inform the relevant referendum committee of the action taken.

Referendum
campaign
period.

16.(1) Any person or referendum committee supporting or opposing the referendum question may carry out campaigns to support or oppose the referendum question within the referendum period.

(2) All campaigns referred to in sub regulation (1) shall cease twenty-four hours before the start of polling.

PART IV—PROVISIONS RELATING TO VOTING

Voting
procedure.

17.(1) Voting at the referendum shall be by secret ballot wherein the votes shall consist of ballot papers, and shall be held in accordance with the provisions of these Regulations.

(2) No person shall vote in an area other than that in respect of

which that person is registered as an elector.

(3) No person shall cast more than one vote at the referendum.

Equipment of
polling stations.

18.(1) The returning officer shall provide each presiding officer with such number of ballot boxes and ballot papers as the returning officer considers necessary for the effective carrying out of the provisions of these Regulations relating to the referendum.

(2) Every ballot box shall be constructed—

- (a) with an aperture which is large enough to receive a ballot paper but which is no larger;
- (b) so as to be capable of being sealed so that ballot papers cannot be taken out of the box so long as the seal is unbroken; and
- (c) so that the ballot boxes shall bear serial numbers of the polling stations, which serial numbers shall be posted prominently and in full view of voters at every polling station?

(3) The returning officer shall provide each polling station with—

- (a) materials to enable voters to mark their ballot papers where marking is necessary;
- (b) instruments for stamping the official mark on ballot papers;
- (c) a seal of the Commission suitable for the purposes of regulation 25 (2);
- (d) a bottle or container of indelible ink suitable for the purposes of regulation 25 (3) (c);
- (e) a copy of the register of voters or such part thereof as contains the names of the voters entitled to vote at that polling station;
- (f) a sufficient number of compartments in which voters can mark their votes screened from observation; and

- (g) any other equipment necessary for the conduct of voting at the polling station.

Admission to
polling stations.

19.(1) The presiding officer shall regulate the number of voters to be admitted to the polling station at the same time, and shall exclude all other persons except—

- (a) agents;
- (b) referendum officers on duty;
- (c) police officers on duty;
- (d) persons necessarily assisting blind or incapacitated voters;
and
- (e) accredited observers and representatives of the print and electronic media approved or accredited by the Commission.

(2) The presiding officer shall admit to the polling station not more than two agents from each group of registered referendum committee but the presiding officer may refuse admission to a person claiming to be an agent if that person does not produce a letter of appointment as an agent signed by the chief agent of that referendum committee.

(3) No person shall be admitted to vote at any polling station other than where that person is registered as a voter.

Keeping order at
the polling
station.

20.(1) It shall be the duty of the presiding officer to keep order at the polling station.

(2) The presiding officer may order the dispersal of any gathering of persons which appears to the officer to be preventing free ingress to, or egress from, the polling station or to be intimidating or interfering with voters, and any such order shall be sufficient authority for a police officer, or any other person authorised by the order, to effect the dispersal.

(3) The power conferred on a presiding officer and a police officer under sub regulations (1) and (2) shall not be limited to the area covered by the polling station only but shall encompass a radius of four hundred meters from the centre of the polling station.

(4) Notwithstanding the provisions of the Police Act, police officer assigned duties during the conduct of a referendum shall be deemed to be an election official for purposes of the Act and subject to direction and instruction of the Commission.

(5) If any person misbehaves in a polling station, or fails to obey the lawful instructions or orders of the presiding officer, the person may immediately be removed, by order of the presiding officer, or by a police officer, and a person so removed shall not re-enter the polling station during the continuance of the poll without the permission of the presiding officer.

Postponement of
polling.

21.(1) Notwithstanding the terms of any notice or writ issued under the Act or these Regulations, a presiding officer may postpone or adjourn the proceedings at the polling station if they are interrupted by a riot, violence, natural catastrophe, shortage of equipment or other cause, but the proceedings shall be resumed as soon as practicable.

(2) The powers of a presiding officer under sub-regulation (1) shall include the power to transfer the proceedings to another polling station in the same constituency, and in such a case—

- (a) the presiding officer shall advertise the fact as specified in Form 4 set out in the First Schedule or in such manner as the presiding officer thinks sufficient to bring it to the notice of voters; and
- (b) the polling area for the polling station from which the proceedings are transferred shall, for all the purposes be deemed to be part of the polling area of the polling station to which the proceedings are transferred.

(3) A presiding officer may extend the hours of polling at the polling station where polling has been interrupted under this regulation or for other good cause, and shall, where polling in that polling station is delayed, extend the period of polling to recover any lost time.

Communication
with voters at
polling station.

22. No person other than a referendum officer or police officer on duty shall, except with the authority of the presiding officer, communicate with a voter who is in, or in the immediate precincts of a polling station for the purpose of voting; but this regulation shall not prevent the companion of a blind or incapacitated voter from communicating with that voter.

Sealing of ballot
boxes.

23.(1) Immediately before the commencement of the poll, the

presiding officer shall show the ballot box or ballot boxes to those persons lawfully present in the polling station to so ascertain that the box or boxes are empty, and shall thereupon close the box or boxes so that they may not be opened without breaking the seal.

(2) After a ballot box is sealed under sub-regulation (1) the presiding officer shall cause it to be so placed in the polling station that it can at all times be in the view of the officer, the deputy presiding officer and the agents present.

(3) On the adjournment of the poll in a polling station to another day, or on the close of the poll at one station with a view to transferring a ballot box to another station, and at any other time when the ballot box is not in use, the presiding officer shall close the aperture used for the insertion of the ballot papers into the box and place an official seal on it in such a manner as to prevent the insertion of ballot papers without breaking the seal.

(4) After a ballot box has been sealed under sub-regulation (3), the seal shall not be broken or the aperture opened until broken and opened in the presence of those persons lawfully present in the polling station where polling is about to resume.

(5) In every circumstance where the presiding officer is required to affix an official seal on a ballot box, the agents of each committee shall be entitled to affix their seals.

Ballot papers.

24.(1) Ballot papers for use at the referendum shall be in Form 5 set out in the First Schedule.

(2) Every ballot paper for use at the referendum shall—

- (a) contain the question being voted on in English and Kiswahili languages;
- (b) be capable of being folded up;
- (c) have a number, or combination of letter and number, printed on the front;
- (d) have attached a counterfoil with the same number or combination printed thereon; and
- (e) contain a different and distinct symbol for each answer to

the referendum question to be voted on.

(3) The presiding officer shall allow those persons lawfully present at the polling station before polling commences to inspect the ballot papers provided for use at the polling station and note the serial numbers thereon.

General voting
procedures.

25.(1) Before the delivery of a ballot paper to a voter—

(a) the back of the ballot paper shall be stamped with the official mark of the Commission;

(b) the number and name of the voter as stated in the copy register shall be called out; and

(c) the name of the voter shall be deleted from the register but the electoral number of the voter shall be retained as a proof that a ballot paper has been delivered to the voter.

(2) Upon receiving a ballot paper, a voter shall submit the elector's card to be impressed with the seal of the Commission leaving a permanent impression on the card.

(3) A voter shall, upon receiving a ballot paper under sub-regulation (2)—

(a) immediately proceed into one of the compartments of the polling station and while there, secretly mark the ballot paper by putting a cross, a tick or any other mark in the box and column provided against the symbol of the side for whom the voter wishes to vote;

(b) fold it up so as to conceal the vote and put the ballot paper into the ballot box in the presence of the presiding officer, in full view of the persons lawfully present;

(c) submit to having one of the voter's fingers immersed or dipped in ink of a distinctive colour which, so far as is possible, is sufficiently indelible to leave a mark for the period of the referendum; and

(d) immediately after voting, leave the polling station.

(4) No person other than a person acting under regulation 26 shall be present in a compartment of a polling station while a voter is therein for the purpose of marking the ballot paper and any person who contravenes this sub-regulation commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or both.

(5) A person who knowingly fails to place a ballot paper issued to the person (other than a spoilt ballot paper) into a ballot box before leaving the place where the box is situated, commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both.

(6) A referendum officer who deliberately refuses to mark or stamp any ballot paper commits an offence and is liable on conviction to fine not exceeding fifty thousand shilling or to imprisonment for a term not exceeding one year or to both.

Assisted voters.

26.(1) On the application of a voter who declares to be unable to read or write, or who is incapacitated by reason of blindness or other physical cause from voting in the manner prescribed in these Regulations, the presiding officer shall permit the voter to be assisted by a person of the voter's own choice.

(2) No person other than the person chosen by the voter shall enter the compartment whilst the voter is casting his vote.

(3) The person chosen by the voter is not required to be qualified to vote but is required to have attained the age of eighteen years.

(4) The following shall apply with respect to a person who assists a voter under this regulation—

(a) the person shall assist only one voter; and

(b) the person shall submit to having the left thumb immersed or dipped in ink of a distinctive colour which, so far as is possible is sufficiently indelible to leave a mark for the period of the referendum.

(5) The presiding officer may make such inquiries as the officer may deem necessary in order to establish that the voter and the chosen assistant

satisfy the provisions of this regulation.

(6) The presiding officer, may where the voter has no assistant, and upon request by the voter cause the vote of the voter to be cast on the voter's behalf.

(7) Where the presiding officer grants the request of a voter under this regulation, the presiding officer shall record in the copy register against the name of the voter the fact that the voter was assisted and the reason for the assistance.

(8) A person who makes a false statement in relation to their incapacity, together with any officer or agent who knowingly permits or assists that person to be assisted commits an offence.

(9) A person who contravenes the provisions of this regulation commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding three months or both.

Procedure on
close of poll.

27.(1) Immediately after the close of the polling station the presiding officer shall make a written statement of—

- (a) the number of ballot papers issued to the officer under regulation 18;
- (b) the number of ballot paper, other than spoiled ballot papers used;
- (c) the number of spoilt ballot papers; and
- (d) the number of ballot papers remaining unused.

(2) Immediately after the completion of the statement under sub-regulation (1), the presiding officer, in the presence of persons lawfully present shall make up into separate packets—

- (a) the spoilt ballot papers, if any;

(b) the marked copy register;

(c) the counterfoils of the used ballot papers; and

(d) the statement specified in sub regulation (1),

and shall seal each of the packets with an official seal of the Commission.

Votes to be
counted at the
polling station.

28.(1) Immediately after complying with the provisions of regulation 27 the presiding officer shall in the presence of agents proceed to count the votes for that polling station.

(2) No agent shall be deemed to be a counting agent unless at least thirty six hours before the close of the poll in the referendum, the name and address of the agent and the appointment letter as such by the registered referendum committee has been submitted to the presiding officer and a presiding officer shall not allow a person whose name and address and authorization has not been so submitted to attend to a counting of votes notwithstanding that the appointment of that person is otherwise in order.

(3) Notwithstanding the provisions of this regulation, a presiding officer shall not be obliged to admit more than two counting agents of all the registered referendum committees to the counting of votes in the electoral area or constituency.

(4) The Commission shall admit observers and representatives of the media duly approved or accredited by the Commission to attend the proceedings of the counting of votes.

(5) If a vehicle or vessel is appointed for a polling station and weather conditions that may interfere with the counting of votes exist, immediately after the presiding officer complies with the provisions of regulation 27, the Commission may allow the vehicle or vessel to be moved to a place where the votes can be counted.

Preparation
and counting
of votes.

29.(1) In pursuance of the provisions of regulation 28, the presiding officer shall, in the presence of the persons lawfully present at the polling station—

(a) open each ballot box and empty its contents onto the

counting table or any other facility provided for the purpose and, with the assistance of counting clerks, proceed to count the votes polled supporting the referendum question and opposing the referendum question separately; and

- (b) record the total number of votes cast in support of the referendum question and the votes cast in opposition to the referendum question.

(2) Each ballot paper shall be counted as follows—

- (a) the presiding officer shall in respect of every ballot paper, announce the side in whose favour the vote was cast;
- (b) display to the persons lawfully present the ballot paper sufficiently for them to ascertain the vote; and
- (c) put the ballot paper at the place on the counting table, or other facility provided for this purpose, set for the side in whose favour it was cast.

(3) An agent shall have a right to—

- (a) dispute the inclusion in the count of a ballot paper; or
- (b) object to the rejection of a ballot paper,

whereupon the presiding officer may decide to uphold or reject the complaint and act as provided under this regulation.

(4) The presiding officer and the agents present at the counting of votes shall then sign the declaration in Form 6 set out in the First Schedule, which shall state—

- (a) the name and code of the polling station;
- (b) the total number of registered voters for the polling station;
- (c) the total number of valid votes cast;

(d) the number of votes cast in support of the referendum question and in opposition for the referendum question;

(e) the number of votes that were rejected; and

(f) the number of disputed votes.

(5) The presiding officer shall—

(a) immediately announce the results of the voting at the polling station before communicating them to the returning officer;

(b) request each registered agent of a referendum committee present to append their signature or write down reasons for the refusal to sign the declaration of the results of the count of the votes at the polling station;

(c) provide each agent with a copy of the declaration of the results; and

(d) affix a copy of the declaration of the results at the public entrance to the polling station or at any place convenient and visible to the public at the polling station.

(6) Where any of the agents refuses or fails to sign the declaration form, the presiding officer shall record the fact of their refusal or failure to sign.

(7) Where the agent refuses or fails to record the reasons for refusal or failure to sign the declaration form the presiding officer shall record the fact of their refusal or failure to sign the form.

(8) The refusal or failure of any agent to sign a declaration form under sub-regulation (6) or to record the reasons for their refusal to sign as required under sub-regulation 7 shall not by itself invalidate the results announced under sub-regulation (5).

(9) The absence of a registered agent of a referendum committee at the signing of a declaration form or the announcement of results under sub regulation (8) shall not by itself invalidate the results announced.

(10) A presiding officer shall, so far as practicable proceed

continuously with the counting of votes.

(11) A presiding officer shall not commence to count votes unless the officer is of the opinion that the process can conveniently be completed without a break.

(12) The presiding officer shall place the ballot paper and other documents relating to the election under the Commission seal and shall otherwise take all due and proper precautions for the security of such papers and documents.

Void ballot
papers

30.(1) During the counting of votes at the referendum any ballot paper—

- (a) which does not bear any mark;
- (b) on which there has been voting for more than one choice; or
- (c) on which anything is written or marked as to be uncertain for which side the vote has been cast; or
- (d) which bears a serial number different from the serial number of the respective polling station and which cannot be verified from the counterfoil of ballot papers used at that polling station,

shall subject to sub regulation (2) be void and shall not be counted.

(2) If the intention of the voter is clear, a ballot paper shall not be void by reason only that it is marked—

- (a) elsewhere than in a proper place; or
- (b) by more than one mark.

(3) Nothing in sub-regulation (2) shall validate a ballot paper that is marked in a manner that the voter can be identified.

Recount.

31.A registered agent of a referendum committee may, upon completion of counting of votes, require the presiding officer to have the votes rechecked and recounted or the presiding officer may on his own initiative have the votes recounted but no recount of votes shall take place more than twice.

Rejected ballot papers.

32.(1) Every rejected ballot paper shall be marked with word "rejected" by the presiding officer and, if an objection is made by a registered agent of a referendum committee, the presiding officer shall add the words "rejection objected to".

(2) The presiding officer shall mark every ballot paper counted but whose validity has been disputed or questioned by a registered agent of a referendum committee with word "disputed" but such ballot paper shall be treated as valid for the purpose of the declaration of referendum results at the polling station.

(3) When the counting of votes is concluded, the presiding officer shall prepare a statement showing the number of rejected ballot papers on the basis of the following grounds—

(a) want of an official mark;

(b) voting, both in support of, and in opposition to the referendum question;

(c) unauthorized writing or a mark by which the voter might be identified; and

(d) unmarked or void for uncertainty.

(4) An agent of a registered referendum committee shall be entitled to a copy of that statement.

Sealing of ballot papers.

33.(1) On completion of the counting of the ballot papers, the presiding officer shall seal in separate packets—

(a) the counted ballot papers which are not disputed;

(b) the rejected ballot papers together with the statement relating

thereto; and

(c) the disputed ballot papers.

(2) The presiding officer shall allow the agents who are then present to affix their own seals on the packets specified in regulation 29.

(3) The presiding officer shall put the three packets together with the statement made under regulation 29 and the declaration of results made under regulation 29(4) in the used ballot box after first demonstrating to the agents present that it is empty, then seal the ballot box with the Commission's seal and let the agents present or any of them affix their own seals on the ballot box if they so wish.

(4) The presiding officer shall as soon as is practicable deliver to the returning officer for the constituency the ballot box containing the items listed under sub-regulation (3).

Constituency
referendum
results

34.(1) Immediately after the results of the poll for all polling stations in a constituency have been received by the returning officer, the returning officer shall, in the presence of registered agents of referendum committees and observers present—

- (a) examine the ballot papers marked "rejected", "rejection objected to" and "disputed" and confirm or vary the decisions of the presiding officers with regard to the validity of those ballot papers;
- (b) publicly announce to persons present the total number of valid votes cast for each side in the referendum;
- (c) publicly declare to the persons present the side that has received the greater number of votes in the referendum and therefore the winning side;
- (d) complete Form 7 set out in the First Schedule in which the officer shall declare the—
 - (i) name of the constituency;
 - (ii) total number of registered voters;

(iii) votes cast in support of and in opposition to the referendum question;

(iv) number of rejected votes cast in support of and in opposition to the referendum question in each polling station;

(v) aggregate number of votes cast in the constituency; and

(vi) aggregate number of rejected votes; and

(e) sign and date the form and—

(i) give a copy of the form to the registered referendum committee's agents; and

(ii) deliver the original of Form 6 to the Commission.

(2) The results of the referendum in a constituency shown in Form 6 shall be subject to confirmation by the Commission after a tally of all the votes cast in the referendum.

(3) The decision of the returning officer on the validity or otherwise of a ballot paper or vote under this regulation shall, subject to verification by the Commission, be final except, where a referendum petition has been filed.

Return of
referendum.

35.(1) The returning officer shall as soon as practicable, forward to the Commission the results of the referendum.

(2) Upon receipt of constituency referendum results under sub-regulation (1) the Commission shall hold the Constituency results until the results to the referendum in every constituency have been received:

Provided that the Commission may declare the results of the referendum before all the constituencies have delivered their results, if in its opinion the results that have not been received would not make a difference to the results of the referendum.

Publication of
referendum
results.

36.(1) The Commission shall on receipt of results of the referendum from all constituencies under regulation 34 and within forty eight hours from the close of the final polling in the referendum—

(a) announce to the public the total number of valid

votes cast supporting or opposing the referendum question;

(b) declare whether or not the proposed constitution has been ratified by—

(i) more than fifty per cent of the valid votes cast; and

(ii) at least twenty-five percent of the votes cast in at least five of the eight provinces;

(c) publish a notice in the *Gazette* indicating the results of the referendum in each Constituency; and

(d) publish in the *Gazette* a certificate in the form set out in the Second Schedule declaring the results of the referendum and confirming whether or not the proposed new Constitution has been ratified in accordance with the provisions of the Act.

(2) For all purposes of the referendum, the results published in the *Gazette* shall be the official results of the referendum.

(3) Where the referendum results in a tie the Commission shall proceed to hold a fresh referendum.

PART V—MISCELLANEOUS PROVISIONS

Retention and
public
inspection of
document.

(Cap. 19.)

37.(1) All documents relating to the referendum shall be forwarded to and retained in safe custody by the Commission of Kenya for a period of six months after the results of the referendum have been declared and shall, subject to the provisions of the National Archives Act, and unless the Commission or the High Court otherwise directs, be destroyed.

(2) Documents retained under this regulation, other than ballot papers and their counterfoils, shall be made available for inspection by any member of the public, upon request, at such time and subject to such conditions as may be decided by the Commission.

(3) For the purpose of an inspection under sub-regulation (2), the returning officer shall unseal the documents concerned in the presence of a witness, who shall not be the person making the inspection and the returning officer and the witness shall keep the documents under their

scrutiny until they are resealed by the returning officer in the presence of the witness after the inspection is completed.

- (4) The provisions of this regulation shall not apply to documents that concern a pending referendum petition unless there is a court order granting such authority.

Offences by
referendum
officials.

38. A referendum officer or other person who, having a duty to perform under these Regulations fails to so perform, without reasonable cause, commits an offence, and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Voting under
special
circumstances.

39. The Commission may make special provisions for Kenyan citizens who are out of the country or who would not be able to vote on the voting day because of essential duties, patients in hospitals, persons admitted in sanatoria or homes for the aged and similar institutions, persons who lead nomadic life on account of vagaries of climate, physically disabled persons and expectant mothers.

Accreditation
of referendum
observers.

40.(1) An individual who, or an association, organization, or institution which intends to act as referendum observer, shall, not later than two months before the referendum date, apply to the Commission for accreditation.

(2) No person, association, organization or institution shall observe any referendum unless the person, association, organization or institution has been accredited by the Commission.

(3) The Commission may at the referendum accredit individuals who or officials of associations, organizations, or institutions which are manifestly non-partisan to act as referendum observers.

(4) The Commission shall issue guidelines for referendum observers, consistent with internationally accepted standards for free and fair referendum, which shall be binding on referendum observers upon accreditation by the Commission.

(5) Without prejudice to the generality of sub-regulation (4), the guidelines issued thereunder may specify the procedures for the accreditation of referendum observers.

(6) The Commission may revoke the accreditation it has granted to

any referendum observers where it is satisfied that the referendum observer is partisan.

(7) All the accredited referendum observers shall submit to the Commission a written report of their individual or group observation not later than six months after the date of the announcement of the referendum results in respect of the referendum observed.

Attendance of
agents.

41. Where in these Regulations expressions are used requiring, authorising, or implying that any act or thing is to be done in the presence of polling or counting agents, those expressions shall be regarded as a reference to the presence of such agents as may be authorised to attend and have in fact attended at the time and place where the act or thing is being done and the mere non-attendance of any agent at that time and place shall not, if any act or thing is otherwise lawfully done, invalidate that act or thing.

General powers
of Commission

42. Nothing in these Regulations shall be construed as preventing the Commission from making further administrative measures, policy guidelines and regulations to ensure effective conduct of the referendum.

SCHEDULES

FIRST SCHEDULE

((r.9(3))

FORM 1

CONSTITUTION OF KENYA REVIEW ACT
(No.9 of 2008)

CONSTITUTION OF KENYA REVIEW (REFERENDUM) REGULATIONS, 2010
INTERIM INDEPENDENT ELECTORAL COMMISSION
REFERENDUM QUESTION

1. It is hereby notified that a referendum will be held on the proposed new Constitution of Kenya on the 20..... from 7.00 a.m. to 5.00 p.m.
2. The question to be voted upon in the referendum is as follows:—

.....

Dated the 20.....

.....

Chairman

Interim Independent Electoral Commission

FORM 2

(r 9(5))

CONSTITUTION OF KENYA REVIEW ACT
(No.9 of 2008)

CONSTITUTION OF KENYA REVIEW (REFERENDUM) REGULATIONS, 2010

INTERIM INDEPENDENT ELECTORAL COMMISSION

NOTICE OF REFERENDUM

1. It is hereby notified that a referendum will be held on the proposed new Constitution of Kenya on the 20..... from 7.00 a.m. to 5.00 p.m.
2. The question to be voted upon in the referendum is as follows:
.....
3. Any person or group of persons wishing to campaign during the referendum period must form a referendum committee and register with the Interim Independent Electoral Commission before the.....20
4. All campaigns in support of or against the referendum shall cease twenty-four hours before 7.00 a.m. of the polling day.
5. Every referendum committee participating in the referendum shall subscribe to and abide by the Electoral Code of Conduct as provided for under section 34A of the National Assembly and Presidential Elections Act and set out in the Fourth Schedule thereto.

Dated the 20.....

.....

Chairman

Interim Independent Electoral Commission

FORM 3

(r.9(6))

CONSTITUTION OF KENYA REVIEW ACT

CONSTITUTION OF KENYA REVIEW (REFERENDUM) REGULATIONS, 2010

INTERIM INDEPENDENT ELECTORAL COMMISSION

NOTICE OF REFERENDUM BY RETURNING OFFICER

1. It is hereby notified that a referendum shall be held on the proposed new Constitution of Kenya on the 20 from 7.00 a.m. to 5.00 p.m.

2. The question to be voted upon in the referendum shall be—

.....

3. Voting shall take place at the polling stations where each voter is registered.

Dated the

Name of Returning Officer..... ID No.....

Constituency.....

FORM 4

(r.21(2)(a))

CONSTITUTION OF KENYA REVIEW ACT
(No.9 of 2008)

CONSTITUTION OF KENYA REVIEW (REFERENDUM) REGULATIONS, 2010
INTERIM INDEPENDENT ELECTORAL COMMISSION

TRANSFER OF POLLING STATION

This is to notify the voters for polling station
No..... of Constituency that the above polling station has
been transferred to

The reason(s) for the transfer is (are) as follows:

1.
2.
3.

Name of Returning Officer..... ID No.....

Constituency.....

Dated the20.....

.....
Presiding Officer

Polling Station ID No.....

FORM 5

(r.24(1))

CONSTITUTION OF KENYA REVIEW ACT
(No.9 of 2008)

CONSTITUTION OF KENYA REVIEW (REFERENDUM) REGULATIONS, 2010
INTERIM INDEPENDENT ELECTORAL COMMISSION
REFERENDUM ON THE PROPOSED NEW CONSTITUTION OF KENYA
BALLOT PAPER

Name of constituency /Jina la Constituency.....No.....

QUESTION/SWALI

.....
.....

ANSWER/JIBU	SYMBOL/ALAMA	VOTER'S MARK/ALAMA YA MPIGA KURA
YES/ NDIYO		
NO/ LA		

INSTRUCTIONS TO VOTER

1. Mark the box beside the Symbol of your choice with any mark.
2. Fold the paper through the centre, left to right, so as to conceal your vote.
3. Make no other mark whatsoever on the paper.
4. Put the ballot into the ballot box.

FORM 6

(r.29(4))

CONSTITUTION OF KENYA REVIEW ACT
(No.9 of 2008)

CONSTITUTION OF KENYA REVIEW (REFERENDUM) REGULATIONS, 2010
INTERIM INDEPENDENT ELECTORAL COMMISSION
DECLARATION OF REFERENDUM RESULTS

POLLING STATION

CONSTITUENCY.....

1. Total number of registered voters:

2. Total number of valid votes cast:

3. Total number of rejected votes:

4. Total number of disputed votes:

5. Total number of valid votes cast for and against the referendum question:

No. of valid votes cast: FOR.....

No. of valid votes cast: AGAINST.....

6. Declaration:

We, the undersigned, being present when the results of the count were announced, do hereby declare that the results shown above are a true and accurate count of the ballots in ...

..... Polling station

7. Presiding Officer's statutory comments:

.....
.....
.....
.....

Presiding officer: Name: ID No.

Signature.....

AGENTS

Name	Signature	In case of refusal to sign, reasons for refusal
1.....
2.....
3.....
4.....
5.....
6.....
7.....
8.....

FORM 7

(r.34(1)(d))

CONSTITUTION OF KENYA REVIEW ACT
(No 9 of 2008)

CONSTITUTION OF KENYA REVIEW (REFERENDUM) REGULATIONS, 2010
INTERIM INDEPENDENT ELECTORAL COMMISSION

DECLARATION OF REFERENDUM RESULTS IN THE.....CONSTITUENCY

PER POLLING STATION

CONSTITUENCY

POLLING STATION NO.	NAME OF POLLING STATION	VOTES		VOTES CAST	REJECTED VOTES	VALID VOTES
		FOR	AGAINST			

Name of Returning Officer.....ID No

Constituency

SECOND SCHEDULE

(r.36(1)(d))

CONSTITUTION OF KENYA REVIEW ACT
(No.9 of 2008)

CONSTITUTION OF KENYA REVIEW ACT (REFERENDUM) REGULATIONS, 2010

INTERIM INDEPENDENT ELECTORAL COMMISSION

CERTIFICATE OF RESULTS OF REFERENDUM

The Interim Independent Electoral Commission certifies that the proposed new Constitution of Kenya has been/has not been ratified.

The results of the referendum are as follows:—

For (in figures).....(in words)

Against (in figures).....(in words)

Dated the, 20

.....

Chairman

Interim Independent Electoral Commission

Dated.....,2010.

AHMED ISSACK HASSAN,
Chairman
Interim Independent Electoral Commission.