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ELECTIONS ACT

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NO. 24 OF 2011

ELECTIONS ACT

[*Date of assent:27th August, 2011*.]

[*Date of commencement:2nd December, 2011*.]

An Act of Parliament to provide for the conduct of elections to the office of the President, the National Assembly, the Senate, county governor and county assembly; to provide for the conduct of referenda; to provide for election dispute resolution and for connected purposes

[Act No. 24 of 2011, L.N. 142/2011, L.N. 182/2011, L.N. 19/2012, Corr. No. 18/2012, Act No. 12 of 2012, L.N. 19/2012, L.N. 76/2012, Act No. 31 of 2012, Act No. 32 of 2012, Act No. 47 of 2012, Act No. 48 of 2012, No. 36 of 2016, Act No. 37 of 2016.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Elections Act, 2011.

2. Interpretation

In this Act, unless the context otherwise requires—

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

"agent" means a person duly appointed by—

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

(b) a referendum committee for the purposes of a referendum under this Act,

and includes a counting agent and a tallying agent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"election offence" means an offence under this Act;

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

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

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

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

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

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

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

"integrated electronic electoral system" refers to a system that includes biometric voter registration, biometric voter identification and electronic result transmission system.

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

"nomination day" in respect of an election, means the day gazetted at least sixty days before an election by the Commission as the day for the nomination of candidates for that election;

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

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

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

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

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

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

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

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

"public resources" include—

(a) any vehicle, or equipment owned by or in the possession; or

(b) premises owned or occupied by,

any government, state organ, statutory corporation or a company in which the Government owns a controlling interest;

"referendum" means a poll held under Part V;

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

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

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

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

" 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;

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

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

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

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

"voter's card"*Deleted by Act No. 12 of 2012, Sch.*;

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

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

[Act No. 12 of 2012, Sch., Act No. 47 of 2012, Sch, Act No. 36 of 2016, s. 2.]

PART II – REGISTRATION OF VOTERS AND DETERMINATION OF QUESTIONS CONCERNING REGISTRATION

3. Right to vote

(1) An adult citizen shall exercise the right to vote specified in Article 38(3) of the Constitution in accordance with this Act.

(2) A citizen shall exercise the right to vote if the citizen is registered in the Register of Voters.

[Act No. 36 of 2016, s. 26.]

4. Register of Voters

(1) There shall be a register to be known as the Register of Voters which shall comprise of—

(a) a poll register in respect of every polling station;

(b) a ward register in respect of every ward;

(c) a constituency register in respect of every constituency;

(d) a county register in respect of every county; and

(e) a register of voters residing outside Kenya.

(2) The Commission shall compile and maintain the Register of Voters referred to in subsection (1).

(3) The Register of Voters shall contain such information as shall be prescribed by the Commission.

[Act No. 36 of 2016, s. 26.]

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) *Deleted by Act No. 36 of 2016, s. 3*.

(3B) *Deleted by Act No. 36 of 2016, s. 3*.

(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 Register of Voters.

[Act No. 31 of 2012, s. 2, Act No. 48 of 2012, s. 2, Act No. 36 of 2016, s. 3, 26.]

6. Inspection of register of voters

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

(3) *Deleted by Act No. 36 of 2016, s. 4.*

(4) The Register of Voters shall be kept at the headquarters of the Commission and copies of the part of the 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.

[Act No. 47 of 2012, Sch, Act No. 36 of 2016, s. 4, 26.]

6A. Verification of biometric data

(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.

[Act No. 36 of 2016, s.5.]

7. Transfer of registration

(1) Where a voter wishes to transfer the voter's registration to an electoral area other than the one the voter is registered in, the voter shall notify the Commission, in the prescribed manner, of the intention to transfer the registration to the preferred electoral area not less than ninety days preceding an election.

(2) Upon receipt of the notification referred to in subsection (1), the Commission shall transfer the voter's registration particulars to the register of the preferred constituency not later than sixty days preceding the election.

8. Updating of the Register of Voters

(1) The Commission shall maintain an updated Register of Voters.

(2) For purposes of maintaining an updated register of voters, the Commission shall—

(a) regularly revise the Register of Voters;

(b) update the Register of Voters by deleting the names of deceased voters and rectifying the particulars therein;

(c) conduct a fresh voter registration, if necessary, at intervals of not less than eight years, and not more than twelve years, immediately after the Commission reviews the names and boundaries of the constituencies in accordance with Article 89(2) of the Constitution;

(d) review the number, names and boundaries of wards whenever a review of the names and boundaries of counties necessitates a review; and

(e) revise the Register of Voters whenever county boundaries are altered in accordance with Article 94(3) of the Constitution.

[Act No. 36 of 2016, s. 26.]

8A. Audit of the register of votes.

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

(a) verifying the accuracy of the Register;

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

(c) updating the register.

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

(3) For purposes of the first general election after the commencement of this section, the Commission shall, within thirty days of the commencement of

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.

[Act No. 36 of 2016, s. 6]

9. Postponement of disqualification to enable appeal

Where a person has been adjudged or declared to be of unsound mind, adjudged bankrupt or convicted of an election offence and is thereby disqualified from being registered as a voter, then, if that person is entitled to appeal against the decision, that person shall not be disqualified from being so registered until the expiration of thirty days after the date of the decision or such further period as the Commission may, at the request of the person, direct in order to enable the person to appeal against the decision.

10. Eligibility to vote

(1) A person whose name and biometric data are 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.

[Act No. 36 of 2016, s. 7]

Determination of Questions Concerning Registration

11. Determination of questions as to registration

Any question whether a person is qualified to be registered as a voter shall be determined in accordance with this Part.

12. Claims

(1) A person who has duly applied to be registered and whose name is not included in the register of voters may submit a claim for the name to be included in the register to the registration officer in the prescribed form and manner and within the prescribed time.

(2) Subject to the Constitution, a claim under subsection (1) shall be determined by the registration officer in the prescribed manner, and an appeal shall lie in the prescribed manner, to the Principal Magistrates Court on matters of fact and law and to the High Court on matters of law.

PART III – ELECTIONS

13. Nomination of candidates by a political party

(1) A political party shall nominate its candidates for an election under this Act at least sixty 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.

[Act No. 12 of 2012, Act No. 36 of 2016, s. 8.]

Presidential Elections

14. Initiation of presidential election

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

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

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

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

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

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

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

15. Change of deputy president nominee candidate

(1) A presidential candidate or a political party shall not at any time change the person nominated as a deputy presidential candidate after the nomination of that person has been received by the Commission:

Provided that in the event of 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 substitute its candidate before the date of presentation of nomination papers to the Commission.

(2) Subsection (1) shall apply in the case of a fresh election under Article 138(5) of the Constitution.

Parliamentary Elections

16. Initiation of election of member of Parliament

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

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

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

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

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

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

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

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

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

County Governor Elections

17. Initiation of county governor election

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

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

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

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

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

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

18. Change of deputy county governor nominee candidate

A county governor candidate or a political party shall not at any time change the person nominated as a deputy county governor candidate after the nomination of that person has been received by the Commission:

Provided that in the event of 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 substitute its candidate before the date of presentation of nomination papers to the Commission.

County Assembly Elections

19. Initiation of county assembly elections

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

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

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

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

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

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

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

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

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

20. Notification in electronic media

The Commission may in addition publicise the notices under sections 14, 16, 17 and 19 in the electronic and print media of national circulation.

21. Election of county assembly speaker

(1) The speaker of a county assembly shall be elected by each county assembly in accordance with the Standing Orders of the county assembly, from among persons who are qualified to be elected as members of a county assembly but are not such members.

(2) For the purpose of the election of the speaker of the county assembly after the first election under the Constitution, the procedure set out in the First Schedule shall apply.

(3) The deputy speaker of a county assembly shall be elected from among persons who are members of that county assembly.

(4) The First Schedule shall, with necessary modifications, apply to the election of the deputy speaker after the first election under the Constitution.

(5) The office of speaker of a county assembly shall become vacant—

(a) when a new county assembly first meets after an election;

(b) if the office holder vacates office;

(c) if the county assembly resolves to remove the office holder by a resolution supported by the votes of at least two-thirds of its members;

(d) if the office holder resigns from office in a letter addressed to the county assembly;

(e) where the office holder violates the Constitution;

(f) in the case of gross misconduct on the part of the office holder;

(g) where the office holder is incapable, owing to physical or mental infirmity, to perform the functions of the office;

(h) where the office holder is bankrupt;

(i) where the office holder is sentenced to a term of imprisonment of six months or more; or

(j) if the officer holder dies.

Nominations and Elections Generally

22. Qualifications for nomination of candidates

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

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

(b) holds a certificate, diploma or other post secondary school qualification acquired after a period of at least three months study, recognized by the relevant Ministry and in such manner as may be prescribed by the Commission under this Act.

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

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

[Act No. 12 of 2012, Sch., Act No. 48 of 2012, s. 3.]

23. Qualifications and disqualifications for nomination as President

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

(a) is a citizen by birth;

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

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

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

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

(a) owes allegiance to a foreign state; or

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

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

(a) the President;

(b) the Deputy President; or

(c) a member of Parliament.

24. Qualifications and disqualifications for nomination as member of Parliament

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

(a) is registered as a voter;

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

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

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

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

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

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

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

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

(d) is a member of a county assembly;

(e) is of unsound mind;

(f) is an undischarged bankrupt;

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

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

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

25. Qualifications for nomination as member of county assembly

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

(a) is registered as a voter;

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

(c) is either—

(i) nominated by a political party; or

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

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

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

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

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

(d) is of unsound mind;

(e) is an undischarged bankrupt;

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

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

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

26. Additional disqualification

(1) A person who directly or indirectly participates in any manner in any or public fundraising or harambee within eight months preceding a general election or during an election period, in any other case, shall be disqualified from contesting in the election held during that election year or election period.

(2) Subsection (1) shall not apply to a fundraising for a person who is contesting an election under this Act or to a fundraising for a political party.

27. Submission of party nomination rules

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

(2) A political party which has submitted its nomination rules to the Commission pursuant to subsection (1) may amend the rules and submit the rules as amended to the Commission, at least seven days before nomination of candidates for elections.

[Act No. 12 of 2012, Sch., Act No. 48 of 2012, Sch.]

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 ninety days before the date of the general elections.

[Act No. 12 of 2012, Sch., Act No. 47 of 2012, Sch., Act No. 36 of 2016, s. 9]

29. Power to nominate

(1) The persons who nominate a presidential candidate shall be members of the candidate's political party.

(2) The persons who nominate an independent presidential candidate shall not be members of any political party.

[Act No. 47 of 2012, Sch., Act No. 48 of 2012, Sch.]

30. Appointment of agents

(1) A political party may appoint one agent for its candidates at each polling station.

(2) A candidate nominated by a political party may appoint an agent of the candidate's choice.

(3) An independent candidate may appoint his own agent.

30. Appointment of agents

(1) A political party may appoint one agent for its candidates at each polling station.

(2) Where a political party does not nominate an agent under subsection (1), a candidate nominated by a political party may appoint an agent of the candidate's choice.

(3) An independent candidate may appoint his own agent.

[Act No. 12 of 2012, Sch.]

31. Nomination of political party candidates

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

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

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

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

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

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

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

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

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

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

[Act No. 36 of 2016, s. 10.]

32. Approval of symbol for independent candidate

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

(2) The Commission shall, upon receipt of the symbol submitted to it under subsection (1) approve or reject the symbol.

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

(a) is obscene or offensive;

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

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

33. Nomination of independent candidates

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

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

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

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

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

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

[Act No. 36 of 2016, s. 11].

Nomination of Party Lists Members

34. Nomination of party lists members

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

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

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

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

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

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

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

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

(9) The party list may contain a name of any Presidential or Deputy Presidential candidate nominated for an election under this Act.

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

[L.N. 142/2011, Act No. 32 of 2012, s. 2.]

35. Submission of party lists

A political party shall submit its party list to the Commission at least forty-five days before the date of the general election.

[Act No. 36 of 2016, s. 12.]

36. Allocation of special seats

(1) A party list submitted by a political party under—

(a) Article 97(1)(c) of the Constitution shall include twelve candidates;

(b) Article 98(1)(b) of the Constitution shall include sixteen candidates;

(c) Article 98(1)(c) of the Constitution shall include two candidates;

(d) Article 98(1)(d) of the Constitution shall include two candidates;

(e) Article 177(1)(b) of the Constitution shall include a list of the number of candidates reflecting the number of wards in the county;

(f) Article 177(1)(c) of the Constitution shall include eight candidates, at least two of whom shall be persons with disability, two of whom shall be the youth and two of whom shall be person representing a marginalized group.

(2) A party list submitted under subsection (1)(a), (c), (d), (e) and (f) shall contain alternates between male and female candidates in the priority in which they are listed.

(3) The party list referred to under subsection (1)(f) shall prioritise a person with disability, the youth and any other candidate representing a marginalized group.

(4) Within thirty days after the declaration of the election results, the Commission shall designate, from each qualifying list, the party representatives on the basis of proportional representation.

(5) The allocation of seats by the Commission under Article 97(1)(c) of the Constitution will be proportional to the number of seats won by the party under Article 97(1)(a) and (b) of the Constitution.

(6) The allocation of seats by the Commission under Article 98(1)(b), (c) and (d) of the Constitution shall be proportional to the number of seats won by the party under Article 98(1)(a) of the Constitution.

(7) For purposes of Article 177(1)(b) of the Constitution, the Commission shall draw from the list under subsection (1)(e), such number of special seat members in the order given by the party, necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender.

(8) For purposes of Article 177(1)(c) of the Constitution, the Commission shall draw from the list under subsection (1)(f) four special seat members in the order given by the party.

(9) The allocation of seats by the Commission under Article 177(1)(b) and (c) of the Constitution shall be proportional to the number of seats won by the party under Article 177(1)(a) of the Constitution.

[Act No. 12 of 2012, Sch.]

37. Re-allocation of special seat

(1) If a representative from a political party list dies, withdraws from the party list, changes parties, resigns or is expelled from his or her party during the term of the representative, the seat of the representative shall be allocated to the next candidate of the same gender on the respective political party list.

(2) Notwithstanding the provision of section 34(10), if there are no more candidates on the same party's list, the Commission shall require the concerned political party to nominate another candidate within twenty-one days.

(3) A vacancy in any seat in a political party list shall not be filled three months immediately before a general election.

(4) Where a political party fails to comply with the provisions of subsection (2) the Commission shall not allocate the seat for the remainder of the term of Parliament or the county assembly.

38. Holding of elections

After a notice of an election has been published in the *Gazette* under section 14, 16, 17 and 19, every returning officer shall proceed to hold the election according to the terms of the notice and in accordance with the regulations relating to elections.

[Act No. 47 of 2012, Sch.]

38A. Number of voters per polling station

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.

[Act No. 36 of 2016, s.13]

39. Determination and declaration of results

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

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

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

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

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

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

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

(a) electronically transmit, 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.

(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.

[Act No. 36 of 2016, s. 14]

40. Voter education

(1) 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.

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

[Act No. 36 of 2016, s. 15]

41. Access to and obligation of media

(1) Subject to subsection (2), a political party participating in an election shall have access to the state owned media services during the campaign period.

(2) The Commission shall, after consultations with the independent candidates, the political parties concerned and the officers responsible for the state owned media services, monitor the equitable allocation of air-time during the campaign period.

(3) Every state owned print or electronic media which publishes any information relating to the electoral process shall be guided by the principle of total impartiality and shall refrain from any discrimination in relation to any candidate.

(4) The Code of Conduct for the practice of journalism prescribed under the Media Act (No. 3 of 2007) shall be subscribed to and observed by every media house and every person who reports on any election and referendum under the Constitution and this Act.

(5) For the purpose of giving effect to this section, the Commission may, in writing, issue directives to the media.

(6) The Commission may prohibit a media house that contravenes the Code of Conduct prescribed under the Media Act from transmitting information related to an election under this Act.

[Act No. 12 of 2012, Sch.]

42. Accreditation of observers, agents, reporters, etc.

The Commission may at any election accredit—

(a) person as an observer, agent or media representative; or

(b) any person or institution to report on an election.

43. Participation in elections by public officers

(1) *Deleted by Act No. 36 of 2016, s. 14*.

(2) *Deleted by Act No. 36 of 2016, s. 14*.

(3) *Deleted by Act No. 36 of 2016, s. 14*.

(4) *Deleted by Act No. 36 of 2016, s. 14.*

(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) *Deleted by Act No. 36 of 2016, s. 14;*

(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.

[Act No. 12 of 2012, Sch, Act No. 36 of 2016, s. 16.]

44. Use of technology

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

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

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

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

(a) procure and put in place the technology necessary for the conduct of a general election at least 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.

[Act No. 36 of 2016, s. 17.]

PART IV – RECALL OF MEMBER OF PARLIAMENT

45. Right of recall

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

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

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

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

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

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

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

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

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

46. Petition for recall

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

(a) in writing;

(b) signed by a petitioner who—

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

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

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

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

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

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

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

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

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

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

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

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

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

47. Recall elections

(1) Where a member of Parliament is to be recalled under section 45, the Commission shall frame the question to be determined at the recall election.

(2) A question referred to in subsection (1) shall be framed in such a manner as to require the answer “yes” or the answer “no”.

(3) The Commission shall assign a symbol for each answer to the recall question.

(4) The voting at a recall election shall be by secret ballot.

(5) A recall election shall be decided by a simple majority of the voters voting in the recall election.

(6) Where a recall election results in the removal of a member of Parliament, the Commission shall conduct a by-election in the affected constituency or county.

(7) A member of Parliament who has been recalled may run in the by-election conducted under subsection (6).

48. Validity of recall election

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

PART V – REFERENDUM

49. Initiation of a referendum

(1) Whenever it is necessary to hold a referendum on any issue, the President shall by notice refer the issue to the Commission for the purposes of conducting a referendum.

(2) Where an issue to be decided in a referendum has been referred to the Commission under subsection (1), the Commission shall frame the question or questions to be determined during the referendum.

(3) The Commission shall, in consultation with the Speaker of the relevant House, lay the question referred to in subsection (2) before the House for approval by resolution.

(4) The National Assembly may approve one or more questions for a referendum.

(5) The Commission shall publish the question approved under subsection (4) in the *Gazette* and in the electronic and print media of national circulation.

(6) The Commission shall conduct the referendum within ninety days of publication of the question.

(7) The Commission may assign such symbol for each answer to the referendum question or questions as it may consider necessary.

(8) A symbol assigned under subsection (7) shall not resemble that of a political party or of an independent candidate.

50. Notice of holding referendum

(1) The Commission shall, within fourteen days after publication of the question referred to in section 49 publish a notice of the holding of the referendum and the details thereof in the *Gazette*, in the electronic and print media of national circulation.

(2) The notice shall specify—

(a) the referendum question or questions and the option of the answer or answers;

(b) the symbols assigned for the answers to the referendum question;

(c) the day on which the referendum is to be held which shall not be less than twenty one days after the date of the publication of the notice;

(d) the polling time of the referendum;

(e) the day by which the referendum committees shall have registered with the Commission; and

(f) the day and time by which campaign in support of or in opposition to the referendum question shall start and cease.

51. Referendum committees

(1) Where a referendum question requires a “yes” or “no” answer, persons intending to campaign for or against the referendum question shall form such national referendum committees and constituency referendum committees as are necessary.

(2) Where there is more than one referendum question, persons intending to campaign for or against each referendum question shall, on application to the Commission, form one national referendum committee each and one committee each in every constituency for each referendum question.

(3) A referendum committee shall apply to the Commission for registration in the prescribed form.

(4) An application under subsection (3) shall be accompanied by information showing that the applicant adequately represents persons campaigning for or against the referendum question.

(5) The national referendum committees shall control and regulate the constituency referendum committees.

(6) A member of a referendum committee shall subscribe to and abide by the Electoral Code of Conduct set out in the Second Schedule.

[L.N. 19/2012.]

52. Costs of referendum committee

(1) Each referendum committee shall bear its own costs during the campaign period of the referendum.

(2) The costs referred to in subsection (1) include payment of the agents of the respective referendum committees.

53. Procedure for conduct of referendum

The procedure for the conduct of an election shall apply with necessary modifications to the conduct of referendum.

54. Voting threshold

A referendum question on an issue other than that contemplated in Articles 255 and 256 of the Constitution shall be decided by a simple majority of the citizens voting in the referendum.

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.

55A. Maintenance of secrecy at elections

(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.

[Act No. 36 of 2016, s.18.]

55B. Postponement of elections by the Commission

(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.

[Act No. 36 of 2016, s. 18.]

PART VI – ELECTION OFFENCES

56. *Repealed by Act No. 37 of 2016, s. 25.*

57. *Repealed by Act No. 37 of 2016, s. 25.*

58. *Repealed by Act No. 37 of 2016, s. 25.*

59. *Repealed by Act No. 37 of 2016, s. 25.*

60. *Repealed by Act No. 37 of 2016, s. 25.*

61. *Repealed by Act No. 37 of 2016, s. 25.*

62. *Repealed by Act No. 37 of 2016, s. 25.*

63. *Repealed by Act No. 37 of 2016, s. 25.*

64. *Repealed by Act No. 37 of 2016, s. 25.*

65. *Repealed by Act No. 37 of 2016, s. 25.*

66. *Repealed by Act No. 37 of 2016, s. 25.*

67. *Repealed by Act No. 37 of 2016, s. 25.*

68. *Repealed by Act No. 37 of 2016, s. 25.*

69. *Repealed by Act No. 37 of 2016, s. 25.*

70. *Repealed by Act No. 37 of 2016, s. 25.*

71. *Repealed by Act No. 37 of 2016, s. 25.*

72. *Repealed by Act No. 37 of 2016, s. 25.*

73. *Repealed by Act No. 37 of 2016, s. 25.*

PART VII – ELECTION DISPUTES RESOLUTION

Dispute Resolution by the Commission

74. Settlement of certain disputes

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

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

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

Election Petitions

75. County election petitions

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

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

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

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

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

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

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

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

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

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

[Act No. 47 of 2012, Sch.]

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 declaration of the results of the election 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 or a county assembly has become vacant may be presented at any time.

(2) A petition questioning a return or an election upon the ground of a corrupt practice, and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned or by an agent of that person or with the privity of that person or his agent may, so far as respects the corrupt practice, be filed at any time within twenty-eight days after the publication of the election results in the *Gazette*.

(3) A petition questioning a return or an election upon an allegation of an illegal practice and alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned, or by an agent of that person, or with the privity of that person or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, may, so far as respects the illegal practice, be filed at any time within twenty-eighty days after the publication of the election results in the *Gazette*.

(4) A petition filed in time may, for the purpose of questioning a return or an election upon an allegation of an election offence, be amended with the leave of the election court within the time within which the petition questioning the return or the election upon that ground may be presented.

(5) A petition filed in respect of the matters set out in subsections (2) and (3) may, where a petition has already been presented on other grounds, be presented as a supplemental petition.

[Act No. 36 of 2016, s. 19.]

77. Service of petition

(1) A petition concerning an election, other than a presidential election, shall be filed within twenty-eight days after the declaration of the election results by the Commission.

(2) A petition may be served personally upon a respondent or by advertisement in a newspaper with national circulation.

78. Security for costs

(1) A petitioner shall deposit security for the payment of costs that may become payable by the petitioner not more than ten days after the presentation of a petition under this Part.

(2) A person who presents a petition to challenge an election shall deposit—

(a) one million shillings, in the case of a petition against a presidential candidate;

(b) five hundred thousand shillings, in the case of a petition against a member of Parliament or a county governor; or

(c) one hundred thousand shillings, in the case of a petition against a member of a county assembly.

(3) Where a petitioner does not deposit security as required by this section, or if an objection is allowed and not removed, no further proceedings shall be heard on the petition and the respondent may apply to the election court for an order to dismiss the petition and for the payment of the respondent's costs.

(4) The costs of hearing and deciding an application under subsection (3) shall be paid as ordered by the election court, or if no order is made, shall form part of the general costs of the petition.

(5) An election court that releases the security for costs deposited under this section shall release the security after hearing all the parties before the release of the security.

79. Procedure of election court on receipt of petition

Upon receipt of a petition, an election court shall peruse the petition and—

(a) if it considers that no sufficient ground for granting the relief claimed is disclosed therein may reject the petition summarily; or

(b) fix a date for the trial of the petition.

80. Powers of election court

(1) An election court may, in the exercise of its jurisdiction—

(a) summon and swear in witnesses in the same manner or, as nearly as circumstances admit, as in a trial by a court in the exercise of its civil jurisdiction and impose the same penalties for the giving of false evidence;

(b) compel the attendance of any person as a witness who appears to the court to have been concerned in the election or in the circumstances of the vacancy or alleged vacancy;

(c) examine a witness who is compelled to attend or any other person who has not been called as a witness in court, and examined by a party to the petition and after examination the witness may be cross examined by or on behalf of the petitioner and respondent or either of them; and

(d) decide all matters that come before it without undue regard to technicalities.

(2) A person who refuses to obey an order to attend court commits the offence of contempt of court.

(3) Interlocutory matters in connection with a petition challenging results of presidential, parliamentary or county elections shall be heard and determined by the election court.

(4) An election court may by order direct the Commission to issue a certificate of election to a President, a member of Parliament or a member of a county assembly if—

(a) upon recount of the ballots cast, the winner is apparent; and

(b) that winner is found not to have committed an election offence.

(5) The Commission shall, in writing, notify the relevant Speaker of the decision made under subsection (4).

81. Prohibition of disclosure of vote

A voter who has voted at an election shall not, in the proceedings of an election petition, be required to state whom they voted for.

82. Scrutiny of votes

(1) An election court may, on its own motion or on application by any party to the petition, during the hearing of an election petition, order for a scrutiny of votes to be carried out in such manner as the election court may determine.

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

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

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

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

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

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

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

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

83. Non-compliance with the law

No election shall be declared to be void by reason of non-compliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in the Constitution and in that written law or that the non-compliance did not affect the result of the election.

84. Costs

An election court shall award the costs of and incidental to a petition and such costs shall follow the cause.

85. Determination of election petition

An election petition under this Act shall be heard and determined within the period specified in the Constitution

85A. Appeals to the Court of Appeal

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

(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.

[Act No. 47 of 2012, Sch, Act No. 36 of 2016, s. 20.]

86. Certificate of court as to validity of election

(1) An election court shall, at the conclusion of the hearing of an election petition, determine the validity of any question raised in the petition, and shall certify its determination to the Commission which shall then notify the relevant Speaker.

(2) Upon receipt of a certificate under this section, the relevant Speaker shall give the necessary directions for altering or confirming the return, and shall issue any notification which may be necessary.

87. Report of court on electoral malpractices

(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.

(3) 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.

[Act No. 36 of 2016, s. 21.]

Referendum Petitions

88. Election petition procedures to apply to referendum petition

Unless specifically provided for in this Act, the procedure applicable to an election petition shall apply to a referendum petition.

89. Referendum petition

(1) The conduct, result and validity of a referendum may be challenged by petition to the High Court.

(2) A petition challenging the conduct, result or validity of a referendum shall—

(a) set out the facts relied on to invalidate the referendum;

(b) identify the specific matter or matters on which the petitioner relies as justifying the grant of relief;

(c) contain a request for the relief to which the petitioner claims to be entitled; and

(d) be filed in the High Court within twenty-one days of the publication of the notice of the results of the referendum in the *Gazette*.

(3) A referendum petition may be presented on any of the following grounds—

(a) in respect of the result of the voting in all the constituencies or in any one constituency, that corrupt practices prevailed at or in relation to the voting at the referendum in that constituency, or that there was an error or misconduct, whether by act or omission, on the part of a referendum officer; or

(b) in respect of the declared result of the referendum, that there was an error in the counting or tallying of the votes cast in the referendum.

90. Composition of Court

A referendum petition shall be heard and determined by a bench of three judges appointed by the Chief Justice.

91. Operation of declared result of issue submitted to referendum

(1) Where a referendum petition is not presented to the High Court within the time specified in section 89(2)(d), the declared result of referendum shall—

(a) have effect from the date on which the result is *gazetted*;

(b) be final and not be challenged in any court of law; and

(c) be conclusive evidence of the voting at the referendum and of the result of the referendum.

(2) Nothing in this section shall be construed as preventing or delaying the coming into operation of any law in respect of which a referendum is held pursuant to the provisions of the Constitution or any other written law if—

(a) it is stated in the declared result of the referendum that the provisions of the Act are supported by the votes of a majority of the persons entitled to vote in the referendum; and

(b) the question raised by any referendum petition or, if more than one, by all referendum petitions presented to the High Court in respect of such referendum would not, if decided in favour of the petitioner or petitioners, as the case may be, lead to a declaration by the Commission that the votes of a majority of the persons entitled to vote in such referendum did not support the provisions of the said law.

92. Persons who may present referendum petition

(1) A referendum petition may be presented in the High Court by—

(a) in the case of a petition in respect of the result of the voting in a constituency, a person who voted lawfully or had a right to vote in that constituency at the referendum;

(b) in the case of a petition in respect of the declared result of the referendum, a person who voted at the referendum or had a right to vote at the referendum; or

(c) in any other case, the Commission.

(2) A petitioner who presents a referendum petition shall serve all the respondents to the petition within seven days of filing the petition.

(3) A petitioner shall publish a notice of the petition in the *Gazette* and in at least one newspaper of national circulation, within fourteen days after the petition is filed.

(4) A petition may be served personally upon the respondent or by advertisement in a newspaper with national circulation.

[Corr. No. 18/2012.]

93. Respondents to referendum petition

(1) Where, at the hearing of a referendum petition, a person is alleged to have been guilty of a corrupt practice in relation to the referendum, or where a copy of a referendum petition is served on a particular person on the direction of the High Court, the High Court may, on the application of that person, add or name that person as a respondent to the petition.

(2) Where, at the trial of a referendum petition presented by the Commission, a question of law arises in relation to action or omission by a referendum officer, the High Court may, on the application of the Attorney-General, name the referendum officer as a respondent to the petition.

94. Filing of referendum petition

(1) A referendum petition shall be signed by the petitioner or by all the petitioners, if more than one.

(2) Whenever a referendum petition is presented under this section, the Registrar of the High Court shall, in writing, inform the Commission of the filing.

95. Duty of Registrar to make list of referendum petitions

(1) Subject to the provisions of subsection (2), the Registrar of the High Court shall make a list of all the referendum petitions filed under this Part in the order in which they are filed, and shall keep in the Registrar's office, a copy of the list which shall be open for inspection by any person who applies to inspect the list.

(2) A referendum petition shall, unless the High Court orders otherwise, be tried in the order in which it appears on the list made by the Registrar under subsection (1).

(3) Where more than one petition is presented relating to the same referendum, all such petitions shall be dealt with as one petition as far as the inquiry into the referendum is concerned.

96. Practice procedure and security for costs

(1) Subject to the provisions of section 98, the Rules Committee as constituted under the Civil Procedure Act (Cap. 21), may make rules generally to regulate the practice and procedure of the High Court with respect to the filing and trial of election and referendum petitions, including rules—

(a) specifying—

(i) the time within which any requirement of the rules is to be complied with;

(ii) the costs of and incidental to the filing and the trial of an election and referendum petition; and

(iii) the fees to be charged in respect of proceedings of an election and referendum petition; and

(b) generally with regard to any other matter relating to an election and referendum petition as the Chief Justice may deem necessary.

(2) A petitioner shall deposit one million shillings as security for costs of a petition presented under this Act, within ten days of presenting the petition.

(3) Where, a petitioner does not deposit security for costs as required under this section after presenting of a referendum petition, the referendum petition shall be struck out.

(4) The High Court may, make such order as to costs as it may deem fit and just in respect of any referendum petition dismissed under this section.

[Act No. 47 of 2012, Sch.]

97. Death of or delay by petitioner

Where there are two or more petitioners and one or more of the petitioners dies or die at any time before the final order of the court hearing the petition, the surviving petitioner or petitioners shall be entitled to continue with the petition.

98. Hearing of referendum petition

(1) A referendum petition shall be—

(a) heard and determined within six months from the date of presentation of a petition; and

(b) heard in open court.

(2) The High Court may, in respect of the trial of a referendum petition, exercise such powers within its civil jurisdiction as it may deem appropriate.

(3) A referendum petition may be withdrawn by the petitioner on notice to the other parties and the High Court, subject to any order of the Court as to costs.

99. Powers of a court to summon witnesses in a referendum petition

(1) A Court hearing a referendum petition may, at the hearing of the petition—

(a) order any person who appears to the court to be concerned in or affected by the referendum petition to attend as a witness at such hearing; and

(b) examine any witness or any person who is present at the hearing even if the witness or person is not called as a witness by any party to the proceedings:

Provided that after examination by the court, the witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

(2) Where a person is ordered to attend as a witness under subsection (1), the Court may direct that a copy of the referendum petition be served on that person.

(3) A person who is called as a witness at the trial of a referendum petition shall not be excused from answering any question relating to any offence connected with the referendum on the ground that the answer thereto may incriminate them or on the ground of privilege.

(4) Notwithstanding subsection (3)—

(a) a witness who answers every question which they are required to answer under this section to the satisfaction of the court, and the answers to which may tend to incriminate them, shall not be liable to prosecution for any offence committed by them in connection with the referendum and in respect of which they are so examined, and shall be entitled to receive a certificate of indemnity issued by the Registrar stating that the person is discharged from liability and shall not be prosecuted for that offence; and

(b) an answer by a witness to a question before the Court under this section shall not, except in the case of any criminal proceedings for giving false evidence in respect of such evidence, be admissible as evidence in any civil or criminal proceedings against them.

(5) Where a person has received a certificate of indemnity under subsection (3), and legal proceedings are, at any time, brought against that person for an offence to which the certificate relates, the court having cognizance of the case shall, on proof of the certificate of indemnity, stay such proceedings.

(6) All reasonable expenses incurred by any person in attending at or appearing before the High Court to give evidence as a witness at the trial of a referendum petition shall be paid to such person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

100. Prohibition of disclosure of vote

A voter who has voted at a referendum shall not, in proceedings to question the referendum be required to state how he voted.

101. Examination of votes

(1) The High Court on its own motion or on an application by a petitioner may, during the hearing of a referendum petition, order for a scrutiny of votes to be carried out in such manner as the High Court may determine.

(2) The provisions of section 82 shall apply with respect to scrutiny of votes under this section.

102. Powers of Court

(1) At the conclusion of the hearing of a referendum petition challenging the conduct or result of the referendum, the High Court may—

(a) dismiss the petition;

(b) declare the published result to be incorrect;

(c) declare the referendum to be void; or

(d) uphold the petition in whole or in part.

(2) Without limiting the generality of this section, the High Court may exercise its powers to declare a referendum void on the ground that this Act or the regulations made under this Act were contravened during the referendum, and such contravention has seriously affected the result of the referendum.

(3) The Registrar of the High Court shall deliver to the Commission a certified copy of any decision made by the High Court under subsection (1).

(4) The Registrar of the High Court shall, at the conclusion of the proceedings in respect of a referendum petition, submit to the Commission a certificate under the Registrar's hand, stating that the hearing of the referendum petition has been concluded, and the Commission shall, upon receipt of such certificate, declare and publish the result of the referendum in accordance with the findings of the High Court.

(5) A declaration made by the Commission under subsection (4) shall be final, shall not be challenged in any court, and shall be conclusive evidence of the voting at the referendum to which it relates and of the result of such referendum.

(6) Where the High Court declares a referendum void, the Commission shall conduct a fresh referendum.

103. Petition expenses

(1) Subject to the provisions of this section, all costs, charges and expenses of and incidental to the presentation and hearing of a referendum petition shall be borne in such manner and in such proportions as the High Court may order, and in particular, any costs which, in the opinion of the High Court, have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.

(2) Where in the hearing of a referendum petition a person appears to the High Court to have been guilty of any corrupt practice relating to the referendum, the High Court may, after giving that person an opportunity to make a statement to show why the order should not be made, order the whole or a portion of the costs of or incidental to the trial of the referendum petition to be paid by that person to such person or persons as the High Court may determine.

(3) Money deposited as security shall, when no longer needed as security for costs, be returned to the person in whose name it is deposited or to any person entitled to receive the money by order of the High Court, which may be made upon motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the High Court may require.

104. Facilitation of persons with special needs including persons with disabilities.

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.

[Act No. 36 of 2016, s. 22.]

PART VIII – GENERAL PROVISIONS

105. Duty to co-operate

(1) It shall be the duty of every public officer and public or private entity to co-operate with the Commission in its activities during an election and not to hinder the Commission in carrying out its functions.

(2) It shall be the duty of police officers in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of an election and to protect and uphold the rights of all persons under any written law relating to elections.

(3) Notwithstanding the provisions of the law relating to the National Police Service or any other written law, a police officer assigned duties during the conduct of an election or referendum shall be deemed to be an elections officer for purposes of this Act and subject to direction and instruction of the Commission.

(4) It shall be the duty of—

(a) all officers of the county administration, in their respective administrative units;

(b) all persons in charge of local authority facilities;

(c) persons in charge of facilities;

(d) all political parties and members of the public;

(e) all persons in charge of public utilities including teachers in charge of public schools;

(f) the Registrar of Persons; and

(g) the Registrar of Political Parties,

to give the Commission and its officers the support and collaboration necessary for the Commission to execute the activities relating to the conduct of an election.

106. *Deleted by Act No. 36 of 2016, s. 23.*

107. Powers of arrest and prosecution

(1) A member of the Commission or any officer designated by the Commission may order the arrest of a person who commits an offence under this Act.

(2) The Commission shall have the power to prosecute any offences under this Act and impose sanctions against a person who commits an offence under this Act pending the hearing and determination of the offence.

(3) A member of the Commission or any person designated by the Commission shall have the power to impound or to order the impounding of any state resources that are used in an election campaign.

108. Airtime by state radio and television for election campaign

All candidates and political parties participating in an election shall be allocated reasonable airtime on all broadcasting media during the campaign period.

[Act No. 12 of 2012, Sch.]

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 prisoner;

(c) to provide for the regulation of the process by which parties nominate candidates for elections;

(d) to provide for the manner of nomination, allocation and re-allocation of special seats and mechanisms for resolving disputes arising out of such nomination, allocation and re-allocation;

(e) prescribe the procedure for making and determining claims to be registered and objections to registration;

(f) authorise any registration officer to consider or determine any application, claim, objection or appeal, to summon any person to appear before them and give evidence on oath, and to administer an oath for that purpose and to order the production of any document relevant to any issue which the officer is required to consider and determine;

(g) provide for the division of constituencies into units for the purpose of the registration of voters;

(h) prescribe the conditions under which elections may be held in accordance with the provisions of the Constitution, this Act or any other written law relating to elections;

(i) prescribe the amount of the deposit to be paid by or on behalf of candidates at all elections and the circumstances in which the deposit may be forfeited;

(j) provide for the appointment of officers to preside at polling stations;

(k) prescribe the facilities to be provided at polling stations and the persons who may be admitted to polling stations;

(l) prescribe the place and manner in which votes may be cast and the construction and scaling of ballot boxes and provide for the issue of ballot papers to voters;

(m) provide for the manner in which, and the person by whom any question as to the identity of any person claiming the right to vote shall be determined;

(n) provide for the manner in which a voter who is not able to read or write may vote or be assisted in voting;

(o) provide for the manner in which a voter with special needs including a person with a disability may vote or be assisted in voting;

(p) prescribe the procedure to be followed in the counting of votes and the circumstances in which votes may be rejected by a returning officer as being invalid;

(q) prescribe conditions for the use of private motor vehicles, vessels or buildings at elections;

(r) prescribe the facilities to be provided during the electoral process and in particular, for voting by electronic machines and the persons entitled so to vote and the circumstances in which persons may so vote;

(s) provide for the allocation by the Commission, in a just and equitable manner of the use of state owned radio and television broadcasting services during any election period;

(t) prescribe the procedure to be adopted by the public in making representations for the alteration of electoral area boundaries;

(u) prescribe the forms which may be used under this Act and the fees in respect of anything to be done under this Act;

(v) prescribe the procedure for advance voting for special categories including patients admitted in hospital, pastoralists, armed forces, elections officers and other citizens of Kenya providing essential services;

(w) prescribe the procedure for voting for citizens residing outside Kenya;

(x) provide for complaints resolution mechanisms and for the manner of settlement of electoral disputes;

(y) provide for the conduct of election observers, the media, monitors and evaluators and organisations carrying out civic and voter education;

(z) provide with reasonable grounds for the postponement of elections;

(aa) provide for mechanisms for carrying out effective voter education;

(bb) provide for the mode of declaration of the result of an election;

(cc) prescribe the manner of enforcing the Electoral Code of Conduct; or

(dd) provide for the conduct of campaigns during a referendum or an election;

(ee) provide for the financing of campaigns during a referendum or an election;

(ff) prescribe anything which is required to be prescribed or is necessary or desirable for the better giving effect to this Act.

(2) The power to make regulations conferred on the Commission under this Act shall be—

(a) for the purpose and objective of giving effect to the Constitution and this Act;

(b) limited to the nature and scope specifically stipulated in the Constitution and this Act; and

(c) based on the general principles and standards contained in the Constitution and this Act.

(3) The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by the National Assembly, at least four months preceding a general election:

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

(4) The Commission shall publish in the *Gazette*, not later than sixty days prior to the date of a general election, the regulations approved by the National Assembly under subsection (3).

[Act No. 31 of 2012, s. 3, Act No. 47 of 2012, Sch, Act No. 36 of 2016, s.24.]

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) *Deleted by Act No. 36 of 2016, s. 25.*

(4) *Deleted by Act No. 36 of 2016, s. 25.*

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

(6) *Deleted by Act No. 36 of 2016, s. 25*

(Act No. 36 of 2016, s. 25)

111. Repeals

The National Assembly and Presidential Elections Act (Cap. 7) and the Election Offences Act (Cap. 66) are repealed.

112. Transitional provisions

(1) Notwithstanding the provisions of this Act—

(a) the register of voters prepared under the National Assembly and Presidential Elections Act (Cap. 7) shall be deemed to have been prepared under this Act;

(b) a voter's cards issued under the National Assembly and Presidential Elections Act shall be deemed to have been issued under this Act;

(c) an election official holding office immediately before the commencement of this Act shall be deemed to have been appointed in accordance with the provisions of this Act; and

(d) an election petition filed under the National Assembly and Presidential Elections Act (Cap. 7) shall be deemed to have been filed under this Act.

(2) For avoidance of doubt, until the final announcement of all results of the first elections for Parliament under the Constitution—

(a) a notice of commencement of the provisions of this Act under section 1 shall apply to the extent contemplated by section 2(1)(a) of the Sixth Schedule to the Constitution;

(b) any election held before the first elections for Parliament under the Constitution shall be held in accordance with the provisions of the former Constitution and the law applicable under that Constitution pursuant to section 3(2) of the Sixth Schedule to the Constitution:

Provided that the period prescribed for the issuance of any document or the doing of any other act or thing in respect of an election to which is due at the commencement of this subsection shall, notwithstanding the provisions of any other written law, be deemed to run with effect from the date of such commencement.

[Act No. 12 of 2012, Sch., L.N. 76/2012.]

FIRST SCHEDULE

[Section 21(2).]

ELECTION OF SPEAKER OF COUNTY ASSEMBLY

1. A speaker of a county assembly shall be elected when the county assembly first meets after a general election and before the county assembly proceeds with the dispatch of any other business.

2. If the office of speaker falls vacant at any time before the dissolution of the county assembly, another member of the assembly shall be elected to preside over the transaction of business until after the election of a new speaker.

3. The clerk of the county assembly shall preside over the election under paragraph (2).

4. The names of candidates for election to the office of speaker shall be entered upon nomination papers obtained from and handed to the clerk, at least forty-eight hours before the time appointed at which the county assembly is to meet to elect a speaker, and shall be accompanied in each case, by signatures of two members who support the candidate and a declaration by them that the candidate is willing to serve and that the candidate is qualified to be elected as a member of the county assembly under this Act.

5. The clerk shall maintain a register in which shall be shown the date and time when each candidate's nomination papers were received and shall ascertain that every such candidate for election to the office of speaker is qualified to be elected as such under this Act.

6. The election of the speaker shall be by secret ballot.

7. The clerk shall prepare, at least one hour before the meeting of the county assembly, ballot papers upon which shall be shown the names of all candidates validly nominated under paragraph (5) and shall issue not more than one such paper to each member who comes to the table to obtain it.

8. The clerk shall, at the commencement of each ballot, cause the ballot box, empty and unlocked, to be displayed to the county assembly and shall, in the presence of the county assembly, lock the box, which shall thereafter be kept in the full view of the county assembly until the conclusion of the ballot.

9. Each member of the county assembly who wishes to vote shall proceed to a booth or designated area provided by the clerk for that purpose and located next to and within reasonable distance of the ballot box and shall, whilst therein, mark the ballot paper by placing a mark in the space opposite the name of the candidate for whom the member wishes to vote, fold the marked ballot paper before leaving the booth or area and place the folded ballot paper in the ballot box:

Provided that a member who, before the conclusion of a ballot has marked a paper in error may, by returning it to the clerk, obtain another in its place and the clerk shall immediately cancel and destroy the paper so returned.

10. The clerk shall make such arrangements as may be necessary to enable any member with disability to vote.

11. When it appears to the clerk that all members who are present and who wish to vote have placed their ballot papers in the ballot box, the clerk shall unlock the box, examine the ballot papers and, having rejected those unmarked or spoilt, report the result of the ballot; and no member who has not already recorded his or her vote shall be entitled to do so after the clerk has unlocked the ballot box.

12. A person shall not be elected as speaker of a county assembly, unless supported by votes of two-thirds of all the members of the county assembly and if no candidate is supported by the votes of two-thirds of all the members, the candidate who in that ballot receives the highest number of votes and the candidate who in the ballot receives the next highest number shall alone stand for election in a further ballot and the candidate who receives the highest number of votes on the further ballot shall be elected speaker.

13. A candidate may, by written notice to the clerk, withdraw his or her name before a ballot is started, and in the event of such withdrawal, the clerk shall cross the name of that candidate off any ballot papers issued for that or any subsequent ballot.

14. Notwithstanding anything to the contrary in this Schedule, if there is only one candidate who has been duly nominated, that candidate shall be declared forthwith to have been elected speaker, without any ballot or minimum vote being required.

SECOND SCHEDULE

[Sections 51(6), 110(1).]

ELECTORAL CODE OF CONDUCT

(1) This Code shall be subscribed to by—

(a) every political party participating in the election of a president, a member of Parliament, a county governor, a member of a county assembly;

(b) every candidate; and

(c) every leader, chief agent, agent or official of a referendum committee.

(2) This Code shall, in so far as it is applicable, bind the Government and every political party, leader, office bearer, agent and member of a political party or a person who supports a political party, and every candidate nominated under the electoral laws for any election.

(3) All registered political parties and referendum committees shall execute this Code through the hand of their respective registered officials to signify their acceptance to be bound by the provisions of this Code and their commitment to strive to ensure that their members and any person who supports the political party abide by the code at all stages of elections and referendum.

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

"Committee" means the Electoral Code of Conduct Enforcement Committee;

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

"election court" means the Supreme Court in exercise of the jurisdiction conferred upon it by Article 163(3)(a), the High Court in the exercise of the jurisdiction conferred upon it by Article 165(3)(a) of the Constitution, or the High Court in the exercise of the jurisdiction conferred upon it by this Act;

"electoral laws" means the Constitution, the Elections Act and subsidiary legislation made thereunder as they relate to the presidential, parliamentary, county elections and the referendum.

3. The object of this Code is to promote conditions conducive to the conduct of free and fair elections and a climate of tolerance in which political activity may take place without fear, coercion, intimidation or reprisals.

4. All registered political parties and other persons bound by this Code shall endeavour to promote the object of the code to enable free political campaigning and open public debate to take place in all parts of Kenya during an election period.

5. Registered political parties, referendum committees, officials of political parties and referendum committees and candidates do, by subscribing to this Code, further commit themselves to—

(a) adhere to the values and principles of the Constitution;

(b) give wide publicity to this Code;

(c) promote voter education campaigns;

(d) condemn, avoid and take steps to prevent violence and intimidation;

(e) instruct their candidates, office-bearers, agents, members and persons who support the political party of their obligations under this Code;

(f) promote gender equality;

(g) promote ethnic tolerance;

(h) promote cultural diversity;

(i) promote the fair representation of special interest groups;

(j) generally affirm the rights of all participants in an election to–

(i) express divergent political opinions;

(ii) debate and contest the policies and programmes of other parties;

(iii) canvass freely for membership and support from voters;

(iv) subject to the Public Order Act (Cap. 56) hold public meetings;

(v) attend public meetings convened by others;

(vi) distribute non-offensive electoral literature and campaign materials;

(vii) publish and distribute non-offensive notices and advertisements;

(viii) erect non-offensive banners, placards and posters;

(ix) remove all banners, placards and posters erected during the election period;

(x) promote free electoral campaigns by all lawful means; and

(xi) co-operate with the Commission and the relevant Government agencies and other authorities in the investigation of issues and allegations arising during the election period.

6. All those bound by this Code shall, throughout an election period—

(a) publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage, or for any other reason;

(b) refrain from any action involving violence or intimidation;

(c) ensure that no arms or weapons of any kind are carried or displayed at political meetings or any march, demonstration or other event of a political nature;

(d) refrain from campaigning in places of worship or during burial ceremonies;

(e) co-operate and liaise in good faith with other parties to avoid organizing public meetings, demonstrations, rallies or marches to take place at the same time and venue as similar political events organized by other parties;

(f) do nothing to impede the right of any party, through its candidates, canvassers and representatives, to have reasonable access to voters for the purposes of conducting voter education, fund raising, canvassing membership and soliciting support;

(g) avoid plagiarizing the symbols, colours or acronyms of other parties; and to discourage and, if possible, prevent the removal, disfigurement or destruction of political campaign materials of any party;

(h) refrain from offering any document or reward to any person in consideration of such person either joining or not joining any party; attending or not attending any political event; voting or not voting (either at all, or in any particular manner); or accepting, refusing or withdrawing such person's nomination as a candidate in the election;

(i) refrain from any attempt to abuse a position of power, privilege or influence, including parental, patriarchal, state or traditional authority for political purposes including any offer of reward or threat of penalty;

(j) avoid any discrimination based on race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth in connection with the election and political activity;

(k) in relation to the Commission—

(i) acknowledge the authority of the Commission in the conduct of the election or referendum;

(ii) ensure the attendance and participation of representatives at meetings of any party liaison committee and other forums convened by or on behalf of the Commission;

(iii) implement the orders and directions of the Commission;

(iv) facilitate the Commissions right of access through official observers and other representatives to all public political meetings or other electoral activities;

(v) co-operate in the official investigation of issues and allegations arising during an election period;

(vi) take all reasonable steps to ensure the safety of observers and other representatives of the Commission from exposure to insult, hazard or threat in the course of their official duties;

(vii) to establish and maintain effective lines of communication with the Commission; and

(viii) to abide by the provisions of this Code;

(l) reassure voters with regard to the impartiality of the Commission and the secrecy and integrity of the ballot, and to reaffirm that no one should know how any other person has voted;

(m) take reasonable steps to discipline and restrain their party office-bearers, employees, candidates, members and persons who support the political party who—

(i) infringe this Code;

(ii) engage in activities of commission or omission which constitute offences under the electoral laws or otherwise fail to observe this Code; and

(iii) contravene or fail to comply with any provision of the electoral laws;

(n) agree for party office bearers, employees, candidates members and persons who support the political party to submit to the disciplinary procedures of the Commission for any violation of this Code; and

(o) without prejudice to the right to present a petition to an election court, accept the final outcome of the election and the Commission's declaration and certification of the results thereof.

7. Where, in the opinion of the Commission, any political party or referendum committee participating in any election or referendum or the leader, office-bearer or member of a political party or person who supports the political party or referendum committee or any candidate at any election, in any way infringes any provision of this Code, the Commission may—

(a) in the case of a political party and, subject to sub-paragraph (b), and in the case of the leader, any office-bearer or member of a political party or person who supports the political party referendum committee or candidate, impose upon that political party one or more of the following penalties or sanctions which any or all may be suspended on specific conditions—

(i) a formal warning;

(ii) a fine determined by the Commission;

(iii) notwithstanding the provisions of any other written law, an order prohibiting the political party, whether permanently or for a specified period, from utilizing any public media time, through the television or radio broadcasting service of such media as have been or may be allocated to the political party for electoral purposes;

(vi) an order prohibiting the political party, referendum committee or candidate from—

(aa) holding particular public meetings, demonstrations or marches, or any kind of meeting, demonstration or march;

(bb) entering any specified electoral area for purposes of canvassing for membership, or for any other electoral purpose;

(cc) erecting placards or banners, or from publishing and distributing campaign literature;

(dd) publishing or distributing campaign literature and electoral advertising or limiting the rights of the political party to do so, and such prohibition or limitation shall be notified to the relevant regulating officers under the Public Order Act (Cap. 56) in the affected places or electoral areas for purposes of the Act;

(ee) in the case of the leader, candidate, an office-bearer or member of a political party or person who supports the political party or referendum committees impose any one or more of the penalties or sanctions referred to in sub-paragraph (a)(i) or (ii) of this paragraph;

(b) Where a political party, referendum committee, leader or any office bearer, member or person who supports the political party, referendum committee or any candidate at an election fails, neglects or refuses to comply with the orders of the Commission issued under paragraph 7(a), the Commission shall impose upon the defaulting party any of the following sanctions which may be suspended on specific conditions—

(i) in case of fine imposed, prohibit the defaulting party from participating in ongoing and future elections as candidates in case of a defaulting candidate or prohibit the political party or the referendum committee official from participating in ongoing elections and referendum, and future elections or referendum or any activity facilitated by the Commission until such fine has been paid;

(ii) in case of failure to comply with any other sanctions imposed, cancel the right of such political party or candidate to participate in the next election; and

(iii) file execution proceedings in the High Court to enforce the recovery of the fine.

8. A fine imposed by the Commission under this Code shall be registered in the High Court.

9. Without prejudice to the provisions of paragraph 7, the Commission may either of its own motion or in consequence of any report made to it, institute proceedings in the High Court as may be appropriate in the case of any alleged infringement of this Code by a political party or by the leader, any office-bearer or member of a political party or person who supports a political party or any candidate and where the Court finds the infringement of the provisions of this Code—

(a) in the case of a political party, any act or omission involving violence, intimidation or a gross or systematic violation of the rights of any political party, candidate or voter, the Court may, in addition to or in substitution for any other penalty or sanction specified in paragraph 7(a), make an order cancelling the right of such party to participate in the election concerned; or

(b) in the case of the leader, any office-bearer or member of a political party or person who supports the political party or of any candidate, that any act or omission involving violence or intimidation or gross or systematic violation of the rights of any political party candidate or voter, the Court may in addition to or in substitution of any other penalty or sanction specified in paragraph 7(a)(i) and (ii), make an order disqualifying, in the case of a person who is a candidate, that person from being a candidate or deleting the name of that candidate from the list or lists of candidates concerned.

10. In making its decision regarding appropriate penalties or sanctions, the Commission or, as the case may be, the High Court shall have regard to any other legal consequences that may result from civil or criminal proceedings instituted by reason of the same occurrence.

11. The High Court shall ensure that any proceedings initiated under paragraph 9 are dealt with in priority to all other matters brought before it, and that the decision of that Court is given before the date of the election concerned.

12. The procedure of the High Court in cases falling within the provisions of this Code shall, without prejudice to paragraph 9, be in accordance with such Rules of Procedure as shall from time to time be promulgated by the Chief Justice.

13. Every registered political party, referendum committee, candidate and agent—

(a) shall respect the role of the media before, during and after an election or referendum conducted under this Act;

(b) may not prevent access by members of the media to public political meetings, marches, demonstrations and rallies; and

(c) shall take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or persons who supports the candidate or political party.

14. Every media house and its representative shall—

(a) adhere to the media professional ethics in its coverage of public meetings, campaign rallies and demonstrations;

(b) during the prescribed hours of polling, not publish or distribute the result of an exit poll taken in that election or referendum;

(c) adhere to any media regulations issued by the Commission; and

(d) abide by the provisions of this Act.

15. (1) The Commission shall set up the Electoral Code of Conduct Enforcement Committee which shall comprise of not less than five members of the Commission and shall be chaired by a member appointed by the Chairperson; the Commission may nominate a member of its staff to be the secretary to the Committee.

(2) The Chairperson of the committee shall be a person who is qualified to hold the office of Judge of the High Court.

(3) Every candidate, official and agent shall—

(a) acknowledge the authority of the Committee to enforce the provisions of this Code on behalf of the Commission;

(b) ensure compliance with summons issued to the party, its candidates or representatives by the Committee;

(c) co-operate in the official investigation of issues and allegations arising at election period; and

(d) respect and comply with the orders issued by the Committee.

(4) The Committee shall issue summons to the person, political party or referendum committee against whom a complaint has been received as having infringed the provisions of this Code and any other person who the Commission has reason to believe to have infringed the provisions of this Code to attend its meetings. The meetings will be convened at any place which the Committee may deem fit.

(5) In its proceedings, the Committee may examine the person summoned and may allow a person to have legal representation.

(6) The committee shall not be bound by the provisions of the Criminal Procedure Code (Cap. 75) or the Evidence Act (Cap. 80) in its proceedings.

(7) Every person who is summoned by the Committee and who attends the meetings of the Committee shall be accorded the right to be heard.

(8) The Committee shall exercise the powers provided under this Code to punish any person found to have infringed this Code.

(9) The Committee shall deliver its verdict expeditiously and inform the parties of the decision.

(10) Notwithstanding the provisions of this Code, any complaint submitted in writing alleging any irregularity with any establishment of the electoral process at any stage if not satisfactorily resolved by the peace committee shall be examined and determined by the Committee.

16. Every registered political party referendum committee, candidate and agent shall—

(a) ensure security and full participation of women and persons with disabilities as candidates and voters;

(b) respect the right of women to communicate freely with political parties, committees and candidates;

(c) facilitate the full and equal participation of women in political activities;

(d) ensure free access of women and persons with disabilities to all public political meetings, marches, demonstrations, rallies and other public political events; and

(e) take reasonable steps to ensure that women are free to engage in any political activity.

17. (1) The Commission may establish peace committees in every constituency during an election and referendum period.

(2) Every political party, referendum committee, candidate, official and agent shall—

(a) acknowledge the activity of peace committee established at the constituency level by the Commission;

(b) ensure attendance of the peace committee meetings convened at the constituency level on behalf of the Commission; and

(c) co-operate in the official investigation initiated by the peace committee on issues and allegation arising at the election period.

(3) The peace committee shall have power to—

(a) reconcile warring parties;

(b) mediate political disputes in the constituencies;

(c) liaise with government security agencies in the constituency and report suspected election malpractices; and

(d) report any violation of this Code to the Committee for appropriate action.

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

19. Any person may complain about the breach of this Code.

THIRD SCHEDULE

[Section 55A).]
[Act No. 12 of 2012, Sch, Act No. 36 of 2016, s. 27.]

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: .....