

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**ACTS, 2016**

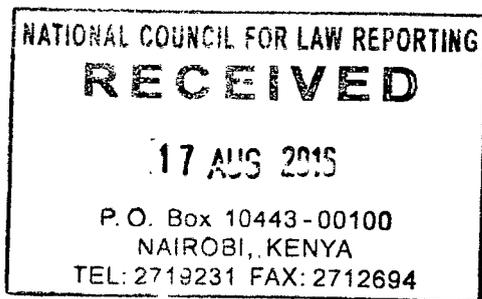
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**NAIROBI, 7th July, 2016**

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# THE POLITICAL PARTIES (AMENDMENT) ACT

## No. 21 of 2016

*Date of Assent: 30th June, 2016*

*Date of Commencement: 21st July, 2016*

### AN ACT of Parliament to amend the Political Parties Act, 2011, and for connected purposes—

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Political Parties (Amendment) (No. 2) Act, 2016.

Short title.

2. The Political Parties Act, 2011 (in this Act referred to as “the principal Act”), is amended in section 2 by inserting the following definitions in their proper alphabetical sequence—

Amendment of section 2 of No. 11 of 2011.

“ethnic minorities” means a group that is not the dominant one in a given society;

“marginalised community” has the meaning assigned to it under Article 260 of the Constitution;

“part primary” means the process through which a political party elects or selects its candidates for a forthcoming general election or for a forthcoming by-election;

“special interest groups” includes—

- (a) women;
- (b) persons with disabilities;
- (c) youth;
- (d) ethnic minorities; and
- (e) marginalized communities.

“youth” has the meaning assigned to it under Article 260 of the Constitution.’

3. Section 3 of the principal Act is amended by—

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

Amendment of section 3 of No. 11 of 2011.

“(1A) A political party shall promote inclusiveness, democracy and participation of the people in the—

- (a) formulation of its policies; and
- (b) nomination of candidates for elections”;
- (b) deleting subsection (2) and substituting therefor the following new subsection—

“(2) A citizen of Kenya who has attained the age of eighteen years may, subject to the provisions of this Act and any other law—

- (a) form or participate in the formation of a political party; or
- (b) contest for an elective position in a political party in which the person is a member.”

4. Section 5 of the principal Act is amended by—

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

“(2) Upon receipt of an application for registration under subsection (1), the Registrar shall—

- (a) within fourteen days, publish a notice in the *Gazette* and in at least two newspapers with nationwide circulation, inviting objections from any person or any other political party concerning the registration of the name, symbol, colour of the political party, or any other issue relating to the registration of the political party;
- (b) within thirty days of the association or organisation fulfilling the conditions prescribed in section 6, issue that association or organisation with a certificate of provisional registration”;

- (b) deleting subsection (4).

5. Section 6 of the principal Act is amended in subsection (1) by deleting the word “applicant” and substituting therefor the words “applicants, of whom not more than two-thirds shall be of the same gender”.

Amendment of section 5 of No. 11 of 2011.

6. Section 7 of the principal Act is amended in subsection (2) by—

Amendment of section 6 of No. 11 of 2011.

Amendment of section 7 of No. 11 of 2011.

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- (a) deleting the words “minorities and marginalised groups” and substituting therefor the words “special interest groups” in paragraph (b);
- (b) deleting the words “minorities and marginalized groups” and substituting therefor the words “special interest groups” in paragraph (c);
- (c) inserting the following new subparagraph immediately after subparagraph (iii) of paragraph (f)—
  - “(iv) the disaggregated data of its membership based on each of the components of the special interest groups”.

7. Section 9 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of section 9 of No. 11 of 2011.

“(1A) The constitution or rules of every political party shall ensure that not more than two-thirds of the membership of all party organs, bodies and committees, in aggregate, are of the same gender”.

8. Section 11 of the principal Act is amended —

Amendment of section 11 of No. 11 of 2011.

- (a) by deleting subsection (1) and substituting therefor the following new subsection—
  - “(1A) A political party may merge with another political party by—
    - (a) forming a new political party; or
    - (b) merging into an already registered political party”;
- (b) in subsection (4), by—
  - (i) deleting the words “and the registration of the new political party” and substituting therefor the words “in accordance with the constitutions of the respective political parties” in paragraph (a);
  - (ii) deleting the words “and the particulars for the new political party to be registered under this Act” in paragraph (b).
- (c) by inserting the following new subsection immediately after subsection (5) —

“(5A) Upon receipt of the merger instrument under subsection (1)(a), the Registrar shall immediately withdraw and cancel the certificates of registration of all the political parties that have merged and shall gazette the dissolution of the merged parties within seven days and a certificate of full registration issued to the new political party”;

- (d) by deleting subsection (6) and substituting therefor the following new subsection—

“(6) Upon receipt of the merger instrument under subsection (1)(b), the Registrar shall gazette within seven days the dissolution of the parties that have resolved to dissolve and the registered party the parties have merged into”;

- (e) by deleting subsection (7) and substituting therefor the following new subsections—

“(7) Where a party merges under this section, a member of the political party that has merged with another political party shall be deemed to be a member of the new political party.

“(8) Despite subsection (7), a member who is a President, Deputy President, Governor or Deputy Governor, Member of Parliament or member of a County Assembly, and who does not desire to be a member of the new political party registered after the merger shall continue to serve in such elected office for the remainder of the term, and may join another political party or choose to be an independent member within thirty days of the registration of the new party.

“(9) Where political parties have merged and are dissolved the particulars including their names, symbol, logo, slogan and colours shall be removed from the register of political parties and such names, symbols, logos, slogans and colours shall not be available for registration by any person as a political party in the subsequent election following the merger.

“(10) Despite subsection (9), where the merging parties wish to register and use any of the

merging parties' names, symbols, logos, slogans and colours, such registration shall be permitted.

“(11) The records, assets and liabilities, rights and obligations of all the dissolved political parties shall be the records, assets and liabilities, rights and obligations of the new political party including their entitlement to the Political Parties Fund under section 25 of the Act”.

**9.** Section 14 of the principal Act is amended—

Amendment of  
section 14 of No. 11  
of 2011.

- (a) in subsection (3), by deleting the word “three” and substituting therefor the word “seven”;
- (b) by inserting the following new subsection immediately after subsection (3)—

“(3A) Upon receiving the notification under subsection (3), the Registrar shall cause the name of such member to be removed from the membership list of that political party”;

- (c) by inserting the following new subsection immediately after subsection (5)—

“(5A) A political party whose member is deemed to have resigned under subsection (5), shall in accordance with the procedure set out in the constitution of that political party, notify the Registrar of such decision within seven days”;

- (d) by deleting subsection (6) and substituting therefor the following new subsection—

“(6) Subject to specific provisions of a coalition or merger agreement, subsection (5)(c), (d) and (e) shall not apply to a member of a political party which enters into a merger or a coalition with another party”.

**10.** Section 15 of the principal Act is amended by—

Amendment of  
section 15 of No. 11  
of 2011.

- (a) inserting the words “a provisionally registered” immediately after the word “of” in the marginal note;
- (b) deleting the words “commits an offence” and substituting therefor the words “shall not qualify for full registration” in subsection (3).

11. Section 16 of the principal Act is amended by inserting the following new subsections immediately after subsection (5)—

Amendment of section 16 of No. 11 of 2011.

“(5A) A fully registered political party shall be deregistered if it has not presented a candidate in two consecutive general elections.

“(5B) Upon deregistration under subsection (5A), the Registrar shall publish a notice in the *Gazette* and notify the Attorney-General in accordance with section 48, for purposes of winding up of the political party.”

12. Section 18 of the principal Act is amended by deleting the marginal note and substituting therefor the following new marginal note “Inspection of records of political parties”.

Amendment of section 18 of No.11 of 2011.

13. The principal Act is amended by deleting section 19 and substituting therefor the following new section—

Deletion of section 19 of No. 11 of 2011.

Public meetings of political party.

19. (1) A fully registered political party shall hold meetings of the party organs at national and county level in accordance with the party constitution.

(2) A political party intending to hold a public meeting shall comply with the provisions of the laws relating to public meetings.

14. Section 20 of the principal Act is amended by—

Amendment of section 20 of No. 11 of 2011.

(a) deleting subsection (3) and substituting therefor the following new subsection—

“(3) Upon the expiry of fourteen days from the date of publication of the notice in subsection (2), the political party may, after taking into account any representations received from the public, effect the change or alteration in accordance with its constitution and rules”;

(b) inserting the following new subsection immediately after subsection (3)—

“(3A) The political party shall after the expiry of the period specified under subsection (3), notify the Registrar of the decision taken and the actual changes given effect”.

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15. Section 21 of the principal Act is amended by—

(a) inserting the following new paragraphs immediately after paragraph (g)—

“(h) does not have representation of special interest groups;

(i) does not maintain the requirements set out under section 7;

(j) has contravened the provisions of Article 81(b) of the Constitution”;

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

“(6A) The Registrar shall, within fourteen days after deregistration of a political party under subsection (5), cause a notice of the deregistration to be published in the *Gazette*”.

16. Section 25 of the principal Act is amended—

(a) in subsection (2), by inserting the following new paragraph immediately after paragraph (b)—

“(ba) the party does not have, in its governing body, representation of special interest groups”;

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

“(2A) For purposes of this section, “office bearers” “means national and county officials elected or nominated by a political party in accordance with the party constitution”.

17. The principal Act is amended by deleting section 34A and substituting therefor the following new section—

**34A.** Whenever a vacancy arises in the Office of the Registrar of Political Parties or the Assistant Registrar, the President shall, with the approval of the National Assembly, appoint the Registrar of Political Parties or the Assistant Registrar from the names of nominees forwarded by the Public Service Commission in accordance with the Sixth Schedule to this Act.

Vacancy in the Office of the Registrar of Political Parties or the Assistant Registrar.

Amendment of section 21 of No. 11 of 2011.

Amendment of section 25 of No. 11 of 2011.

Deletion of section 34A of No. 11 of 2011.

**18.** Section 39 of the principal Act is amended in subsection (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

Amendment of section 39 of No.11 of 2011.

“(b) six other members, three of whom shall be Advocates of the High Court of seven years standing and three other professionals with outstanding governance, administrative, social, political, economic and other record”.

**19.** Section 40 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (f)—

Amendment of section 40 of No.11 of 2011.

“(fa) disputes arising out of party primaries”.

**20.** Section 41 of the principal Act is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 41 of No.11 of 2011.

“(3A) The Chief Justice may, in consultation with the Tribunal, prescribe regulations for determination of disputes under this section”.

**21.** Section 45 of the principal Act is amended by—

Amendment of section 45 of No.11 of 2011.

(a) deleting the words “principal officer” and substituting therefor the words “office holder” in subsection (2);

(b) deleting subsection (6) and substituting therefor the following new subsection—

“(6) Despite subsection (5), an elected person who is a member of a political party whose registration has been suspended, shall continue in office for the unexpired term”.

**22.** The First Schedule to the principal Act is amended by—

Amendment of the First Schedule to No.11 of 2011.

(a) inserting the following new sub-paragraphs immediately after sub-paragraph (c) of paragraph 4—

“(d) develop and implement measures for the progressive realisation of representation and participation of the special interest groups in decision-making organs; and

(e) implement the affirmative action programmes, policies and strategies relating

to political representation contemplated under Article 27(6) of the Constitution”;

- (b) deleting the words “youth, minorities and marginalized groups” and substituting therefor the words “special interest groups” in paragraph 5(a).

**23.** The Second Schedule to the principal Act is amended—

Amendment of the  
Second Schedule to  
No. 11 of 2011.

- (a) in paragraph 6 by—

(i) inserting the word “disability” immediately after the word “ethnicity” in subparagraph (e);

(ii); inserting the following new subparagraph immediately after subparagraph (f)—

“(fa) the requirement for continuous updating of the membership register”;

- (b) in paragraph 13(a) by inserting the words “in accordance with Articles 47 and 50 of the Constitution” immediately after the word “action”.

- (c) by deleting paragraph 19 and substituting therefor the following new paragraph—

“19. The political party rules and regulations with respect to—

(a) elections of the party officials;

(b) nomination of candidates for elections;  
and

(c) nomination of candidates to political party lists”;

- (d) in paragraph 20 by inserting the words “symbol, party colours” after the word “name”;

- (e) by inserting the following new paragraph immediately after paragraph 21—

“21A. Rules for entering into coalitions”;

- (f) in paragraph 23 by inserting the words “in accordance with Article 47 and 50 of the Constitution” immediately after the word “mechanism”.

**24.** The Third Schedule to the principal Act is amended in paragraph 3 by inserting the following new subparagraph immediately after subparagraph (h)—

Amendment of the Third Schedule to No. 11 of 2011.

“(ha) the process and mechanisms upon which the coalition agreement may be amended”.

**25.** The Fourth Schedule to the principal Act is amended in the heading by deleting the words “Chairperson and members of the Selection Committee”.

Amendment of the Fourth Schedule to No. 11 of 2011.

**26.** The Fifth Schedule to the principal Act is deleted.

Amendment of the Fifth Schedule to No. 11 of 2011.

**27.** The Sixth Schedule to the principal Act is amended—

Amendment of the Sixth Schedule to No. 11 of 2011.

(a) by deleting the words “Selection Committee” wherever they appear and substituting therefor the words “Public Service Commission”;

(b) in paragraph 1 by deleting the words “declare vacancies in the office of Registrar and the offices of Assistant Registrar” and substituting therefor the words “invite applications for the positions of the Registrar and the Assistant Registrar”;

(c) in paragraph 5 by deleting the word “seven” and substituting therefor the word “fourteen”;

(d) in paragraph 6 by deleting the word “fourteen” and substituting therefor the words “twenty one”;

(e) by deleting paragraph 11 and substituting therefor the following new paragraph—

“11. In shortlisting, nominating, approving or appointing the Registrar or the Assistant Registrars, the Public Service Commission, the National Assembly, and the President shall ensure that the appointments reflect the regional and ethnic diversity of the people of Kenya and that not more than two-thirds of the appointees are of the same gender”.

**28.** The Seventh Schedule to the principal Act is deleted.

Amendment of the Seventh Schedule to No. 11 of 2011.