

SPECIAL ISSUE

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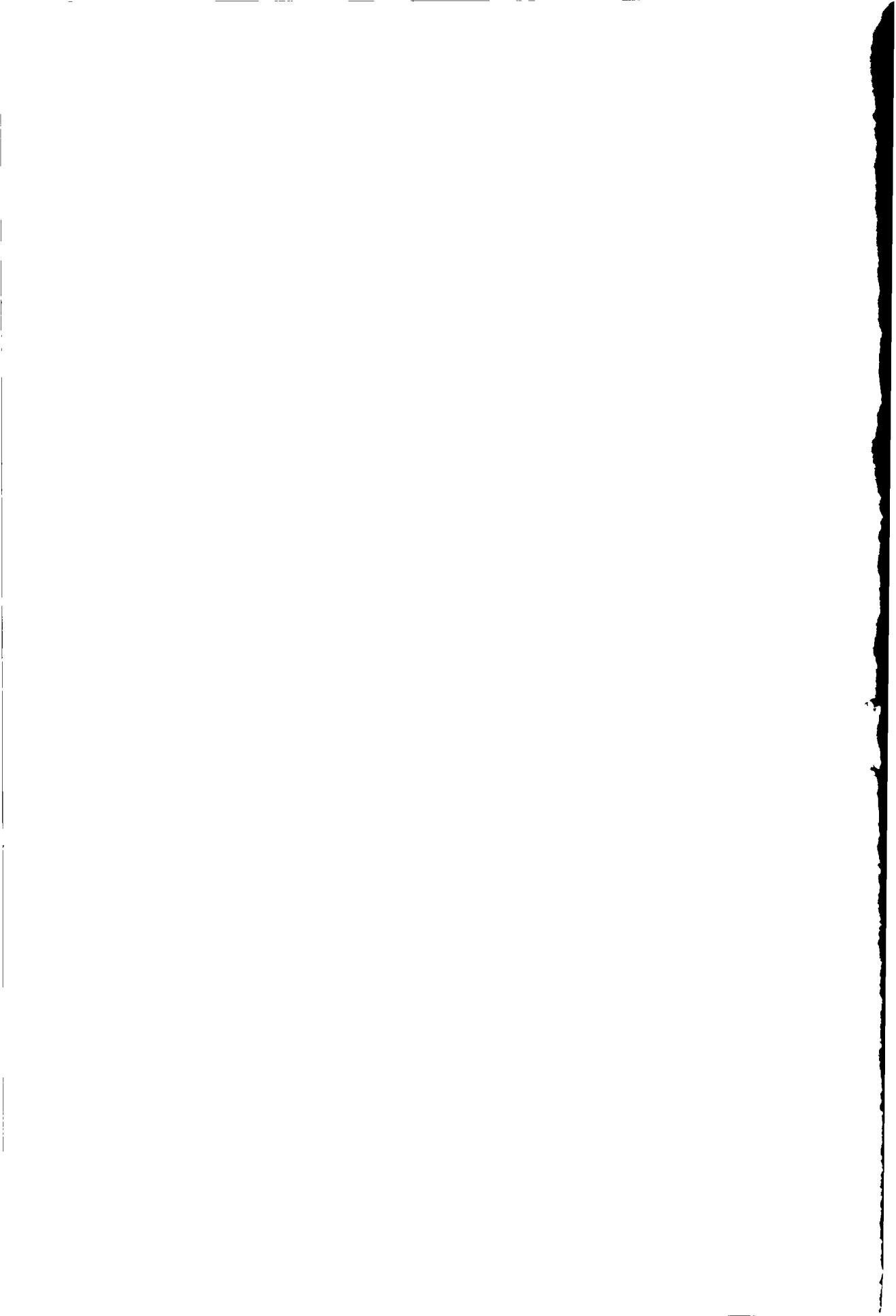
ACTS, 2017

NAIROBI, 2nd November, 2017

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THE ELECTION LAWS (AMENDMENT) ACT

No. 34 of 2017

Date of Assent: 28th October, 2017

Date of Commencement: See Section 1

AN ACT of Parliament to amend election-related laws and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Election Laws (Amendment) Act, 2017 and shall come into force upon publication in the Gazette.

Short title.

2. The Independent Electoral and Boundaries Commission Act, 2011 is amended in section 2 by deleting the definition of the term “chairperson” and substituting therefor the following new definition—

Amendment of section 2 of No. 9 of 2011.

“chairperson” means the chairperson of the Commission appointed in accordance with Article 250(2) of the Constitution or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson.

3. The Independent Electoral and Boundaries Commission Act, 2011 is amended in section 7A by inserting the following new subsections immediately after sub-section (3) —

Amendment of section 7A of No.9 of 2011.

(4) Whenever a vacancy occurs in the office of the chairperson, the vice-chairperson shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such a time as the chairperson is appointed.

(5) Where the positions of chairperson and vice-chairperson are vacant, a member elected by members of the Commission shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such a time as the chairperson is appointed.

(6) The provisions of section 6(1) shall not apply to the vice-chairperson or a member acting as chairperson under this section.

3A. The Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new section immediately after section 7A —

Insertion of a new section in No.9 of 2011.

Absence of chairperson.

7B. (1) Whenever the chairperson is absent, the vice-chairperson shall assume the duties of the chairperson and exercise the powers and responsibilities of the chairperson.

(2) Whenever the chairperson and the vice-chairperson are absent, members of the Commission shall elect from amongst themselves a member to act as the chairperson and exercise the powers and responsibilities of the chairperson.

(3) The provisions of section 6(1) shall not apply to the vice-chairperson or a member acting as chairperson under this section.

4. The Independent Electoral and Boundaries Commission Act, 2011 is amended in the Second Schedule, by—

Amendment of the Second Schedule to No. 9 of 2011

- (a) deleting the word “five members of the Commission” appearing in paragraph 5 and substituting therefor the words “half of the existing members of the Commission, provided that the quorum shall not be less than three members”;
- (b) deleting paragraph 7 and substituting therefor the following new paragraph 7—

7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the members present and voting.

5. The Elections Act, 2011 is amended by deleting section 29.

Deletion of section 29 of No. 24 of 2011.

6. Section 39 of the Elections Act, 2011 is amended by—

Amendment of section 39 of No. 24 of 2011.

- (a) deleting subsection (1C) and substituting therefor the following new subsection—

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

- (a) electronically transmit and physically deliver 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 constituency tallying centre and the national tallying centre; and
- (c) publish the polling result forms on an online public portal maintained by the Commission.

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

(1D) The Commission shall verify that the results transmitted under this section are an accurate record of the results tallied, verified and declared at the respective polling stations.

(1E) Where there is a discrepancy between the electronically transmitted and the physically delivered results, the Commission shall verify the results and the result which is an accurate record of the results tallied, verified and declared at the respective polling station shall prevail.

(1F) Any failure to transmit or publish the election results in an electronic format shall not invalidate the result as announced and declared by the respective presiding and returning officers at the polling station and constituency tallying centre, respectively.

(1G) The Commission shall, to facilitate public information, establish a mechanism for the live-streaming of results as announced at polling stations, and the results so streamed shall be for purposes of public information only and shall not be the basis for a declaration by the Commission.

- (c) renumbering subsection (1D) as subsection (1H);
- (d) by deleting sub-section (2) and substituting therefor the following new subsection—

(2) The Chairperson may declare a candidate elected as the President before all the constituencies have transmitted their results if the Commission is satisfied the results that have not been received will not affect the result of the election.

- (e) in subsection (3), by deleting the words “provisional and” appearing before the words “final results”.

7. The Elections Act, 2011 is amended in section 44 by—

Amendment of section 44 of No. 24 of 2011.

- (a) deleting subsection (5) and substituting therefor the following new subsection—

(5) The Commission shall, in consultation with the relevant agencies, institutions and stakeholders, make regulations for the better carrying into effect the provisions of this section.

- (b) deleting subsection (6);
 (c) deleting subsection (7);
 (d) deleting subsection (8).

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

Deletion of section 44A of No. 24 of 2011.

Complementary mechanism for identification of voters.

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

9. The Elections Act, 2011 is amended by deleting section 83 and substituting therefor the following section—

Amendment of section 83 of No. 24 of 2011.

Nullification of an election

83. (1) A Court shall not declare an election void for non-compliance with any written law relating to that election if it appears that—

- (a) the election was conducted in accordance with the principles laid

down in the Constitution and in that written law; and

- (b) the non-compliance did not substantially affect the result of the election.

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(2) Pursuant to section 72 of the Interpretation and General Provisions Act, a form prescribed by this Act or the regulations made thereunder shall not be void by reason of a deviation from the requirements of that form, as long as the deviation is not calculated to mislead.

10. The Elections Act, 2011 is amended by inserting the following new section immediately after section 86—

Insertion of new section 86A in No. 24 of 2011.

Procedure at fresh presidential election.

86A. (1) Where, pursuant to Article 140(3) of the Constitution, a presidential election is invalidated by the Supreme Court on a petition, the Commission shall publish a notice in the Gazette, within seven days from the determination of the Court—

- (a) indicating that the presidential election has been invalidated and that no candidate has been elected as president;
- (b) announce the date for fresh election pursuant to Article 140(3) of the Constitution;
- (c) publish the names and political parties of the candidates to participate in the fresh election.

(2) The Commission shall not conduct fresh nominations for a fresh election pursuant to Article 140(3) of the Constitution.

(3) An eligible candidate for an election pursuant to Article 140(3) of the Constitution may withdraw from the election by notice in writing to the Commission, and—

- (a) where there are more than two remaining candidates in the election after the withdrawal, the election shall proceed as scheduled;
- (b) where only one candidate remains after the withdrawal, the remaining candidate shall be declared elected forthwith as the President-elect without any election being held.

11. Section 6 of the Election Offences Act, 2016 is amended in the closing statement by deleting the words “one million shillings or to imprisonment for a term not exceeding three years” and substituting therefor the words “two million shillings or to imprisonment for a term not exceeding five years”.

Amendment of
section 6 of No.
37 of 2016.

12. The Election Offences Act, 2016 is amended in section 14 by deleting sub-section (2).

Amendment of
section 14 of No.
37 of 2016.