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Bill for Introduction into the National Assembly—

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THE ELECTION LAWS (AMENDMENT) (No. 3) BILL, 2015

A Bill for

AN ACT of Parliament to amend the Elections Act, 2011 and the Independent Electoral and Boundaries Commission Act, 2011; to provide for electoral processes and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Election Laws (Amendment) (No. 3) Act, 2015.

2. Section 2 of the Elections Act, 2011 is amended—
   (a) by deleting the words “or a referendum” appearing in the definition of “returning officer”;
   (b) by inserting the following new definition in its proper alphabetical sequence—

   “registration of voters” includes the registration of new voters, transfer of registration of voters, correction of particulars of voters and deletion of names of deceased voters from the register by the Commission;”

3. Section 5 of the Elections Act, 2011 is amended—
   (a) in subsection (1) by—
      (i) deleting the proviso to paragraph (a);
      (ii) inserting the following new paragraph immediately after paragraph (b)—

      “(ba) in the case of a referendum, between the date of the publication and the date of the referendum”;
      (i) deleting paragraph (c);
   (b) by deleting subsection (3A); and
   (c) by deleting subsection (3B).

4. Section 6 of the Elections Act, 2011 is amended—
   (a) by deleting subsection (2) and replacing with the following—
“(2) The Commission shall, within ninety days from the date of the notice for a general election, open the Principal Register of Voters for inspection for a period of at least thirty days or such period as the Commission may consider necessary.”;

(b) in subsection (3) by deleting the word “fourteen” appearing immediately after the word “least” and substituting therefor the word “thirty”.

5. Section 13 of the Elections Act, 2011 is amended—

(a) in subsection (1) by deleting the word “forty-five” after the words “at least” and substituting therefor the word “ninety”;

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

“(2A) A political party shall hear and determine all intra party disputes arising from political party nominations within forty days.”;

(c) in subsection (3) by deleting the words “forty-five” after the words “at least” and substituting therefor the words “fifty-five”.

6. Section 16 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (3)—

“(3A) For purposes of subsection (3), a vacancy in the office of a Member of Parliament shall be deemed to occur on the date of issuance of a notice to the Commission which shall not be later than twenty-one days from the date of the actual occurrence of the vacancy.”

7. Section 22 of the Elections Act, 2011 is amended—

(a) in subsection (1) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) holds—

(i) in the case of a Member of Parliament, a degree from a university recognized in Kenya; or

(ii) in the case of member of a county assembly, a post-secondary school diploma from an institution recognized in Kenya.
(b) by inserting the following new subsections immediately after subsections (1)—

(1A) Notwithstanding subsection (1), in the general elections after the 2017 general elections, a member of a county assembly may only be nominated for an election if the person is a holder of a degree from a university recognised in Kenya.”

(1B) The provisions of this section apply to qualifications to nomination for of a party list member under section 34.”

8. Section 27 of the Elections Act, 2011 is amended—

(a) in subsection (1) by deleting the words “three months” and substituting therefor the words “six months”;

(b) in subsection (2) by deleting the subsection and substituting therefor the following—

“(2) An amendment to the nomination rules shall only be effective ninety days after submission of the amendments to the Commission.”

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

“(2A) Upon receipt of the nomination rules from a political party under subsection (1), the Commission shall, within fourteen days, review the rules to ensure compliance with the prescribed regulations and—

(a) issue the political party with a certificate of compliance; or

(b) require the political party to amend the rules to ensure such compliance within fourteen days.

(2B) For purposes of subsection (2A), the Commission shall, by notice in the Gazette, issue Regulations prescribing guidelines to be complied with and the process by which political parties nominate candidates for nomination in accordance with Article 88 (4) (d) of the Constitution failing which the rules shall become void.”
9. The Elections Act, 2011 is amended by deleting section 28 and substituting therefor the following section—

28. (1) A political party that nominates a person for an election under this Act shall submit to the Commission a membership list of the party—

(a) in the case of a general election, at least one hundred and twenty days before the date of the election; and

(b) in the case of a by-election, forty-five days before the date of the by-election.

(2) The Commission shall publicize the membership lists as received from political parties.

10. Section 30 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (3)—

“(3A) A registered referendum committee may appoint one agent at each polling station.”

11. Section 32 of the Elections Act, 2011 is amended—

(a) by inserting a new subsection immediately after subsection (1)—

“(1A) Where there is a vacancy in the office of the Governor, an independent candidate shall submit to the Commission, the symbol that the person intends to use during an election at least seven days before nomination.”

(b) in subsection (2) by deleting the words “subsection (1)” appearing immediately after the word “under” and substituting therefor the words “this section.”

12. Section 34 of the Elections Act, 2011 is amended—

(a) by inserting the following new subsection immediately after subsection (4)—
“(4A) In the case of a person nominated pursuant to Article 177(1) (c) of the Constitution, the party list shall include a certification in the manner prescribed by the Commission.”

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

“(6A) Upon receipt of the party list from a political party under subsection (1), the Commission shall review the list to ensure compliance with the prescribed regulations and—

(a) issue the political party with a certificate of compliance; or

(b) require the political party to amend the party list to ensure such compliance failing which the Commission shall reject the list.

(6B) For purposes of subsection (6A), the Commission may, by notice in the gazette, issue regulations prescribing guidelines to be complied with in preparation of party lists.”

(c) by deleting subsection (9) and substituting therefore the following—

“(9) The party list shall not contain a name of a candidate nominated for an election.”

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

38A. For the purposes of providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed seven hundred or such other number as the Commission may determine.

14. Section 43 of the Elections Act, 2011 is amended by deleting subsection (5) and substituting therefor the following—

“(5) A public officer who intends to contest an election under this Act shall resign or otherwise exit from public office—
(a) in the case of a general election, at least one year before the date of the general election; or

(b) in the case of a by-election, within seven days of the declaration of a vacancy.”

15. Section 46 of the Elections Act, 2011 is amended in subsection (3) by inserting the words “or thumb prints” immediately after the word “signature”;

16. Section 50 of the Elections Act, 2011 is amended in subsection (2) (b) by deleting the words “answers to the referendum question” and substituting therefor the words “answer or answers to the referendum question or questions.”

17. Section 54 of the Elections Act, 2011 is amended by deleting the words “255 and 256” appearing immediately after the word “Article” and substituting therefor the words “255, 256 and 257”.

18. Section 56 of the Elections Act, 2011 is amended by deleting the word “and” appearing immediately after the word “shillings” and substituting therefor the word “or”.

19. Section 74 of the Elections Act, 2011 is amended in subsection (2) by deleting the word “seven” appearing immediately after the word “within” and substituting therefor the word “ten”.

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

(a) in subsection (1) (a) by deleting the words “publication” appearing immediately after the words “date of” and substituting therefor the word “declaration”;

(b) in subsection (1) (c) by inserting the words “or a county assembly” immediately after the word “Parliament”.

21. Section 85A of the Elections Act, 2011 is amended by renumbering the provision as subsection (1) and inserting the following new subsection—

“(2) An appeal under subsection (1) shall act as a stay of the certificate of the election court certifying the results of an election until the appeal is heard and determined.”
22. Section 86 of the Elections Act, 2011 is amended—

(a) in subsection (1) by deleting the words “which shall then” appearing immediately after the word “Commissioner” and substituting therefor the word “and”; and

(b) by deleting subsection (2).

23. The Elections Act, 2011 is amended by deleting section 87 and substituting therefor the following section—

87. (1) An election Court shall, at the conclusion of hearing of a petition, in addition to any other orders, send to the Director of Public Prosecution and the Commission a report in writing indicating whether an election offence is likely to have occurred in connection with the election.

(2) Upon receipt of the report, the Director of Public Prosecutions shall—

(a) direct investigation to be carried out by the Inspector General of the National Police Service; and

(b) based on the outcome of the investigations, commence prosecution or close the matter.

24. Section 91 of the Elections Act, 2011 is amended—

(a) in subsection (1) (a) by the deleting the word “gazetted” appearing immediately after the words “results if” and substituting therefor the word “declared”;

(b) in subsection (2) by—

(i) deleting the words “the votes of a majority of the persons entitled to vote in the referendum” appearing immediately after the words “supported by” in paragraph (a) and substituting therefor the words “a simple
majority of the citizens voting in the referendum”.

(ii) deleting the words “the votes of a majority of the persons entitled to vote in such referendum” appearing immediately after the words “Commission that” in paragraph (b) and substituting therefor the words “a simple majority of the citizens voting in such referendum”.

25. The Second Schedule to the Elections Act, 2011 is amended by deleting paragraph 18 and substituting therefor the following paragraph—

“18. This Code shall apply—

(a) in the case of a general election, from the date of publication of a notice of election until the swearing in of newly elected candidates; and

(b) in the case of a by-elections, from the date of declaration of a vacancy until the swearing in of elected candidates.”

26. The Third Schedule to the Elections Act, 2011 is amended by inserting the words “Commissioner for Oaths/Magistrates” immediately before the words “Member/Secretary/Returning officer”.

27. Section 3 of the Independent Electoral and Boundaries Commission Act, 2011, is amended by deleting paragraph (e).

28. Section 24 of the Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting subsection (3) and substituting therefor the following subsection—

“(3) The Commission shall publish and publicize the annual report.”

29. The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting section 35.

30. The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting section 36 and substituting therefor the following new section—
36. (1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.

(2) Subject to the Constitution, matters to be addressed in the delimitation of electoral boundaries are—

(a) review of the names and boundaries of constituencies;

(b) review of the number, names and boundaries of wards;

(c) re-distribution of wards affected by any changes in the boundaries of constituencies; and

(d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as provided for by Article 89(5) of the Constitution and that such a process—

(i) allows for variation of margin of not more than the limits provided under Article 89 (6) of the Constitution in relation to cities, sparsely populated areas and other areas;

(ii) takes into account the provisions of Article 89 (7) (b) of the Constitution that provides for the progressive realization of the requirement that
the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the population quota for the purposes of the each review;

(iii) is subject to the use of enumerated national census figures.

(3) The Commission shall prepare and publish a preliminary report outlining—

(a) the proposed delimitation of boundaries for constituencies and wards; and

(b) the specific geographical; and

(c) demographical details relating to such delimitation.

(4) The Commission shall ensure that the preliminary report is made available to the public for a period of thirty days and invite representations from the public on the proposals contained in the report during that period.

(5) Upon the expiry of the period provided in subparagraph (4), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received and submit the revised preliminary report to the Parliamentary Committee.

(6) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.

(7) The National Assembly shall, within fourteen days of the tabling of
the revised preliminary report, consider the report and forward its recommendations to the Commission.

(8) Within fourteen days of the expiry of the period provided for in subparagraph (7), the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the Gazette.

(9) Where the National Assembly fails to make recommendations within the period specified in subparagraph (7), the Commission shall publish its report in accordance with subparagraph (8).

(10) A person who, being responsible for the publication in the Gazette of the final report submitted under this paragraph fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

(11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subparagraph (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the Gazette.

32. The Second Schedule to the Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting paragraph 8 (3).
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Elections Act, 2011 and the Independent Electoral and Boundaries Commission Act, 2011, in order to address the concerns that resulted following the general election held on 4th March 2013, which was the first under the new constitutional dispensation. The elections laid the foundation for the transformation Kenya’s electoral politics.

Central to the conduct of the elections are the constitutional role and responsibility of the Independent Electoral and Boundaries Commission (IEBC), and the Judiciary. However the delivery of the 2013 elections, like many aspects of public administration and management involved interplay of several agencies, both State and non-state actors. It is these aspects that this Bill seeks to redress.

Clause 2 seeks to amend section of the Elections Act, 2011 by rectifying the definition of the term “returning officer” to include all related processes.

Clause 3 proposes to amend section 5 of the Elections Act, 2011 to provide for the period when the continuous registration of voters may be temporarily stopped during a referendum and removes entitlement for persons who have applied for national identification cards to register as voters before the issuance of actual identification documents.

Clause 4 seeks to amend section 6 of the Elections Act, 2011 by increasing, the period within which the Commission must open the register for inspection from sixty to ninety days before the date of a general election. It also increases from fourteen to thirty the number of days before a general election during which the Commission must publish a notice and transmit copies of the register to all registration officers.

Clause 5 seeks to amend section 13 of the Elections Act, 2011 by making it a requirement for political parties to nominate their candidates for general elections at least ninety days before the election. This section also requires a political party to hear and determine any disputes arising from the political party nominations within forty days.

Clause 6 seeks to amend section 16 of the Elections Act, 2011 to clarify that a vacancy in the office of a Member of Parliament shall be deemed to occur on the date of issuance of a notice to the Commission which shall not be later than twenty-one days from the date of the actual occurrence of the vacancy.

Clause 7 seeks to amend section 22 of the Elections Act, 2011 to require that a person seeking nomination for an election should possess, as minimum qualifications, a degree in the case of Parliamentary elections
and a diploma in the case of county assembly elections. This clause also contains a proviso to the effect that after the 2017 general elections, a member of a county assembly shall be required to possess a degree from a university recognised in Kenya.

Clause 8 amends sections 27 of the Elections Act, 2011 to require that political parties submit to the Commission party nomination rules six months before an election. This section further requires that an amendment of those rules should have effect ninety days after notification to the Registrar. The clause further empowers the Commission to issue political parties with compliance certificates.

Clause 9 amends section 28 of the Elections Act, 2011 to require that a political party that nominates a person for an election shall submit to the Commission a party membership list of the party at least sixty days before the date of the general elections and forty-five days before a by-election. This Clause further requires the Commission to publish a composite list of all persons nominated under party lists.

Clause 10 proposes to amend section 30 of the Elections Act, 2011 to allow registered referendum committees to appoint one agent at each polling station.

Clause 11 amends section 32 of the Elections Act, 2011 to require that where there is a vacancy in the office of the Governor, an independent candidate shall submit to the Commission the symbol that the person intends to use during an election at least seven days before nomination.

Clause 12 amends section 34 of the Elections Act, 2011 to require that in the case of a person nominated pursuant to Article 177(1) (c) of the Constitution, the party list shall include a certification in the manner prescribed by the Commission. This clause further requires the Commission to verify the list and issue a certificate of compliance. The Commission is to prescribe regulations on the standards to be complied with in developing party lists.

Clause 13 amends the Elections Act, 2011 by inserting a new section 38A to require that the number of voters per polling station in a general election shall not exceed seven hundred.

Clause 14 seeks to amend section 43 of the Elections Act, 2011 to clarify that a public officer intending to stand for election must resign one year before general elections or within seven days of the declaration of a vacancy in a by-election.

Clause 15 amends section 46 of the Elections Act, 2011 to require that a petition for recall should be accompanied by, among other particulars, thumb prints.
Clause 19 amends section 74 of the Elections Act, 2011 to remove typographical errors.

Clause 20 amends section 76 of the Elections Act, 2011 to require that a petition questioning the validity of an election shall be filed within twenty eight days after the date of declaration (rather than publication) of the results of the election.

Clause 21 seeks to amend section 85A of the Elections Act, 2011 to provide that an appeal to the Court of Appeal against the determination of an election petition shall operate as an automatic stay of the certificate issued by an election Court.

Clause 22 seeks to amend section 86 of the Elections Act, 2011 to require an election court to notify the relevant Speaker of Parliament of its determination of the validity of any question raised with regard to an election.

Clause 23 seeks to delete section 87 of the Elections Act, 2011 to require an election court to send to the Director of Public Prosecution and the Commission a report in writing indicating whether an election offence is likely to have occurred in connection with the election. Based on the result of the investigations, the DPP is to then initiate prosecution or close the matter.

Clause 24 amends section 91 of the Elections Act, 2011 to make it a requirement that where no petition for the referendum result is filed within the time specified, the declared (not gazetted) result shall have effect.

Clause 25 amends the Second Schedule of the Act to clarify that the Electoral code of conduct is applicable to both general and by-elections.

Clause 27 amends the Third Schedule of the Act to correct typographical omissions.

Clauses 29 to 32 seek to make amendments to the Independent Electoral and Boundaries Commission Act to—

(a) delete spent sections;
(b) provide for the procedure and criteria for the delimitation of electoral boundaries;
(c) provide for the involvement of the public in delimitation of boundaries;
(d) provide for the resolution of disputes arising from delimitation of boundaries; and
(e) remove obsolete provisions of the Act.
Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms.

This Bill delegates legislative powers to the Independent Electoral and Boundaries Commission to prescribe regulations on the standards to be complied with in developing party lists. It does not limit any fundamental rights or freedoms.

Statement that the Bill concerns county governments

The Bill is a Bill concerning County governments. It contains provisions affecting the election of members of a county assembly.

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

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 17th November, 2015.

SAMUEL CHEPKONG'A,
Member of Parliament.
Section 2 of No. 24 of 2011 which it is proposed to amend

Interpretation

2. 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;

“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 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 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 and 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;

“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 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;

“Principal Register of Voters” means a current register of persons entitled to vote at an election prepared in accordance with section 3 and includes a register that is compiled electronically;

“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;

“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.

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

Registration of voters

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

(a) in the case of a general election or an election under Article 138(5) of the Constitution, between the date of commencement of the sixty day period immediately before the election and the date of such election:

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

(b) in the case of a by-election, between the date of the declaration of the vacancy of the seat concerned and the date of such by-election; or

(c) in any other case, between the date of the declaration of the vacancy of the seat concerned and the date of such election.

(2) Notwithstanding subsection (1), where an election petition is filed in respect of an electoral area, between the date of the filing of the petition and the date of the by-election, where a court determines that a by-election is to be held, a voter shall not be allowed to transfer his or her vote to the affected electoral area. (3) Any citizen of Kenya who has attained the age of eighteen years as evidenced by either a national identity card or a Kenyan passport and whose name is not in the register of voters shall be registered as a voter upon application, in the prescribed manner, to the Commission.

(3A) Despite subsection (3), a citizen who has attained the age of eighteen years and has registered for an identification card and is in the possession of an acknowledgement of registration certificate shall, upon application, be registered as a voter using the acknowledgement of registration certificate, but may only vote using an identification card.
(3B) For purposes of this section, an acknowledgement of registration certificate means a certificate issued by a registration officer under the Registration of Persons Act to a person who has applied for an identification card, pending the issuance of that card.

(4) All applicants for registration under this section shall be registered in the appropriate register by the registration officer or any other officer authorised by the Commission.

(5) The registration officer or any other authorised officer referred to in subsection (3) shall, at such times as the Commission may direct, transmit the information relating to the registration of the voter to the Commission for inclusion in the Principal Register of voters.

Section 6 of No. 24 of 2011 which it is proposed to amend

Inspection of register of voters

6. (1) The Commission shall cause the Principal Register of Voters to be opened for inspection by members of the public at all times for the purpose of rectifying the particulars therein, except for such period of time as the Commission may consider appropriate.

(2) The Commission shall, within sixty days from the date of the notice for a general election, open the Principal Register of Voters for inspection for a period of at least fourteen days or such period as the Commission may consider necessary.

(3) The Commission shall, upon expiry of the period for inspection specified under subsection (1), compile the amendments to the register of voters and as soon as practicable thereafter, being at least fourteen days before an election—

(a) publish a notice in the Gazette to the effect that such compilation has been completed; and

(b) cause to be transmitted to every registration officer, a copy of the part of the Principal Register of Voters relating to the constituency for which the registration officer is responsible to be kept in safe custody.

(4) The Principal Register of Voters shall be kept at the headquarters of the Commission and copies of the part of the Principal Register of Voters relating to the constituency for which the registration officer is responsible shall be kept at all the constituency offices of the Commission.
Section 13 of No. 24 of 2011 which it is proposed to amend

Nomination of candidates by a political party

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

(2) A political party shall not change the candidate nominated after the nomination of that person has been received by the Commission:

Provided that in the event of the death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party may after notifying the candidate that the party seeks to substitute, where applicable, substitute its candidate before the date of presentation of nomination papers to the Commission.

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

Section 16 of No. 24 of 2011 which it is proposed to amend

Initiation of election of Member of Parliament

16. (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.

Section 22 of No. 24 of 2011 which it is proposed to amend

Qualifications for nomination of candidates

22. (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.

Section 27 of No. 24 of 2011 which it is proposed to amend

Submission of party nomination rules

27. (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.
Section 28 of No. 24 of 2011 which it is proposed to amend

Submission of party membership lists

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

Section 30 of No. 24 of 2011 which it is proposed to amend

Appointment of agents

30. (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.

Section 34 of No. 24 of 2011 which it is proposed to amend

Nomination of party lists members

34. (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.

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

Participation in elections by public officers

43. (1) A public officer shall not—

(a) engage in the activities of any political party or candidate or act as an agent of a political party or a candidate in an election;

(b) publicly indicate support for or opposition against any party, side or candidate participating in an election;

(c) engage in political campaigns or other political activity; or

(d) use public resources to initiate new development projects in any constituency or county for the purpose of supporting a candidate or political party in that constituency or county.

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

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

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

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

(6) This section shall not apply to—

(a) the President;

(b) the Prime Minister;

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

Section 46 of No. 24 of 2011 which it is proposed to amend

Petition for recall

46. (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.

Section 49 of No. 24 of 2011 which it is proposed to amend

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.

Section 50 of No. 24 of 2011 which it is proposed to amend

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.

Section 54 of No. 24 of 2011 which it is proposed to amend

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.

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

General power of the Commission

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

Section 56 of No. 24 of 2011 which it is proposed to amend

Offences relating to register of voters and voter’s cards

56. A person who—

(a) without authority makes, prepares, prints or is in possession of a document or paper purporting to be a register of voters;

(b) Deleted by Act No. 12 of 2012, Sch.;

(c) Deleted by Act No. 12 of 2012, Sch.;

(d) Deleted by Act No. 12 of 2012, Sch.;

(e) Deleted by Act No. 12 of 2012, Sch.;

(f) Deleted by Act No. 12 of 2012, Sch.;
(g) knowingly makes any false statement on, or in connection with any application to be registered in any register of voters; or

(h) aids, abets, counsels or procures the commission of or attempts to commit any of the offences referred to in paragraphs (a) to (f), commits an offence and is liable on conviction, to a fine not exceeding one million shillings and to imprisonment for a term not exceeding six years, or to both.

Section 74 of No. 24 of 2011 which it is proposed to amend

Settlement of certain disputes

74. (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.

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

Presentation of petitions

76. (1) A petition—

(a) to question the validity of an election shall be filed within twenty eight days after the date of publication of the results of the election in the Gazette and served within fifteen days of presentation;

(b) to seek a declaration that a seat in Parliament or a county assembly has not become vacant shall be presented within twenty-eight days after the date of publication of the notification of the vacancy by the relevant Speaker; or

(c) to seek a declaration that a seat in Parliament has become vacant may be presented at any time.

(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.

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

Appeals to the Court of Appeal

85A. An appeal from the High Court in an election petition concerning membership of the National Assembly, Senate or the office of county governor shall lie to the Court of Appeal on matters of law only and shall be—

(a) filed within thirty days of the decision of the High Court; and

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

Section 86 of No. 24 of 2011 which it is proposed to amend

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

Report of court on election offences

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

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

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

Section 91 of No. 24 of 2011 which it is proposed to amend

Operation of declared result of issue submitted to referendum

91. (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.

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

Object and purpose of the Act

3. The object and purpose of this Act is to—

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

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

(c) provide for the manner of the exercise of the powers, responsibilities and functions of the Commission pursuant to Article 88(5) of the Constitution;

(d) establish mechanisms for the Commission to facilitate consultations with interested parties pursuant to Article 89(7) of the Constitution; and

(e) establish mechanisms for the Commission to address the issues arising out of the first review.

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

Annual report

24. (1) Within three months after the end of each financial year, the Commission shall present its annual report to the President and submit the same to Parliament.

(2) The annual report shall in respect of the year to which it relates, contain—

(a) the financial statements of the Commission;

(b) the activities the Commission has undertaken; and

(c) any other information, the Commission may consider relevant.

(3) The Commission shall publish the annual report in the Gazette and in at least one newspaper of national circulation.
SECOND SCHEDULE to No. 24 of 2011 which it is proposed to amend

SECOND SCHEDULE

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

ELECTORAL CODE OF CONDUCT

1. (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;
promote free electoral campaigns by all lawful means; and
(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 Commission's 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;

(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

OATH OF SECRECY

I........................................................................................................I.D./Passport No.
........................................................................................................... swear that I will not at this election for
the........................................................................................................constituency/county/ ward do anything forbidden under Part VI of the Elections
Act which has been read to me.

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

Signature of person taking the oath

Before me

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

(Signature)

Member/Secretary/Returning Officer

Date......................................................

Section 35 of No. 9 of 2011 which it is proposed to amend

Appointment of the first Commission

35. (1) For purposes of the appointment of the first Commission under this Act, the Selection Panel shall have regard to the provisions of section 28(2) of the Sixth Schedule to the Constitution and in accordance with the procedure set out in the First Schedule to this Act.

(2) This section shall lapse upon the appointment of the first Commission under this Act.

Section 36 of No. 9 of 2011 which it is proposed to amend

36. Delimitation during first review

(1) The provisions of the Fifth Schedule shall have effect for the purposes of addressing issues arising from first review.

(2) This section shall lapse upon the gazettement of the final report in accordance with the Fifth Schedule.
Second Schedule to No. 9 of 2011 which it is proposed to amend—

SECOND SCHEDULE

[Section 8.]

PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COMMISSION

1. The Commission shall meet as often as may be necessary for the carrying out of its business but it shall meet at least once every calendar month.

2. A meeting of the Commission shall be held on such date and at such time as the chairperson shall decide.

3. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Commission.

4. Unless the majority of the total membership of the Commission otherwise agree, at least fourteen days’ written notice of every meeting of the Commission shall be given to every member of the Commission.

5. The quorum for the conduct of business at a meeting of the Commission shall be at least five members of the Commission.

6. The chairperson shall preside at every meeting of the Commission at which he is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

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

8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

(1) The secretary shall be the secretary at all meetings of the Commission.

(2) The Commission shall, subject to subparagraph (3), establish a committee for liaison with political parties and may establish committees of its members for any other purpose.

(3) The Political Parties Liaison Committee established under the Political Parties Act, 2011, consists of the designated members of the Commission and the representatives of every political party with one or
more candidates validly nominated for the election; and the Commission shall consult with the committee on all matters relating to the election.

10. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.

11. Except as provided by this Schedule, the Commission may regulate its own procedure.

(1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(4) A member or employee of the Commission shall not transact any business or trade with the Commission.