REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2015

NAIROBI, 30th April, 2015

CONTENT

Bill for Introduction into the National Assembly—

The Two-Third Gender Rule Laws (Amendment) Bill, 2015 ................... 801
THE TWO-THIRD GENDER RULE LAWS (AMENDMENT) BILL, 2015

A Bill for

AN ACT of Parliament to amend various laws; to give effect to Article 100 of the Constitution; to promote the representation in Parliament of women, youth, persons with disabilities, ethnic minorities and marginalized communities in elective and appointive positions and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Two-Third Gender Rule Laws (Amendment) Bills, 2015.

2. Section 2 of the National Gender and Equality Commission Act, 2011 is amended by inserting the following definition in the proper alphabetical sequence—

“special interest groups” means the following groups specified under Article 100 of the Constitution—

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

3. Section 8 of the National Gender and Equality Commission Act, 2011 is amended—

(a) by renumbering the existing provision as (1);
(b) by inserting the following new paragraph immediately after paragraph (h)—

(ha) oversee the preparation and implementation of measures necessary to give effect to Article 100 of the Constitution by—

(i) monitoring the framework for the promotion of representation of the special interest groups in Parliament, county assemblies and other elective positions;
(ii) monitoring compliance with the Electoral Code of Conduct as it relates to special interest groups;

(c) by inserting the following new subsections immediately after sub section (1)—

(2) Despite the provisions of any other law, the Commission shall liaise with all relevant public bodies and non-public bodies to develop and implement measures, in order to achieve the progressive realisation of representation of special interest groups in public bodies, which measures may include—

(a) monitoring capacity building programmes of special interest groups to enable them to participate in elections; and

(b) enhancing the understanding and attitudes of communities to accept the capabilities and participation of the special interest groups as their equals;

(3) The Commission may develop guidelines to assist the public and non-public bodies to comply with the provisions of subsection (2).

(4) The bodies referred under subsection (3) shall, for purposes of reporting and monitoring, submit to the Commission their plans and measures in compliance with the provision of this section on annual basis.

4. The Political Parties Act, 2011 is amended in section 2 by inserting the following definitions in the proper alphabetical sequence—

“special interest groups” means the following groups specified under Article 100 of the Constitution—

(a) women;

(b) persons with disabilities;

(c) youth;

(d) ethnic and other minorities; and

(e) marginalised communities.

“marginalised community” has the meaning assigned to it under the Constitution;
"youth" has the meaning assigned to it under the Constitution; and

"ethnic and other minorities" means a group that is not the dominant one in a given society and includes immigrant racial groups.

5. Section 7 of the Political Parties Act, 2011 is amended in sub section (2) by –

(a) deleting the words, “minorities and marginalized groups” wherever they appear in paragraphs (b) and (c) and substituting therefor the words “women, persons with disabilities, youth, ethnic and other minorities and marginalized communities”; and

(b) inserting the following new sub-paragraph immediately after sub-paragraph (iii) in paragraph (f) –

(iv) the disaggregated data of its membership based on each of the components of the special interest groups; and

6. Section 21 of the Political Parties Act, 2011 is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (f) –

(fa) does not have the requisite representation of women, persons with disabilities, youth, ethnic and other minorities and marginalized communities; or

7. Section 21 of the Political Parties Act, 2011 is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (f) –

(fa) does not have the requisite representation of women, persons with disabilities, youth, ethnic and other minorities and marginalized communities; or

8. Section 25 of the Political Parties Act, 2011 is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (b) –

(c) it does not have, in its governing body, representation of special interest groups.

9. Section 29 of the Political Parties Act, 2011 is amended in sub section (1) by inserting the words
"including details of the amount allocated and expended on each category of the special interest groups" immediately after the word “party” appearing in paragraph (b).

10. Section 34 A of the Political Parties Act, 2011 is amended in sub section (1) by inserting the following new paragraph immediately after paragraph (f)—

(g) one person representing special interest groups nominated by the Cabinet Secretary in charge of gender affairs.

11. Section 49 of the Political Parties Act, 2011 is amended in sub section (2) by inserting the following new paragraph immediately after paragraph (g)—

(h) prescribing the procedure for nomination of a candidate for a party list by use of delegates system at the branch level for county assemblies and National Delegates conference for National Assembly and Senate.

12. The First Schedule to the Political Parties Act, 2011 is amended—

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

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

(e) implement the affirmative action programmes, policies and strategies contemplated under Article 27(6) of the Constitution.

in paragraph 6 by deleting the word “marginalized” appearing sub-paragraph (d) and substituting therefor the word “special interest groups”.

13. The Second Schedule to the Political Parties Act, 2011 is amended—

(a) in section 6 by inserting the following new paragraph immediately after paragraph (b)—

(ba) membership of special interest groups;

(a) by deleting section 19 and substituting therefor the
The Two-Third Gender Rule Laws (Amendment) Bill, 2015

following new paragraph—

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

(a) elections of the party officials;
(b) nomination of candidates for election; and
nomination of candidates to political party lists.

14. Section 16 of the Elections Act, 2011 is amended in sub section (2) by inserting the following new paragraph immediately after paragraph (c)—

(d) on the day the Commission shall conduct nominations for the party list as contemplated under Article 90 of the Constitution, which date shall be at least ninety days before the date of the general election.

15. Section 19 of the Elections Act, 2011 is amended in sub section (1) by inserting the following new paragraph immediately after paragraph (b)—

on the day the Commission shall conduct nominations for the party list as contemplated under Article 90 of the Constitution which date shall be at least ninety days before the date of the general election

16. Section 27 of the Elections Act, 2011 is amended in sub section (1) by deleting the word “three” and substituting therefor the word “six”.

17. Section 28 of the Elections Act, 2011 is amended by deleting the words “forty-five” and substituting therefor the word “sixty”.

18. Section 35 of the Elections Act, 2011 is amended by inserting the following new sub section immediately after sub section (1)–

(2) The party list referred to subsection (1) shall be submitted together with signed minutes of all members of the governing body present during the party nominations.

19. Section 109 of the Elections Act, 2011 is amended by inserting the following new sub section immediately after sub section (1)–
(1A) The Commission shall have the power to make regulations to progressively give effect to—

(a) the full realization of the right to equality and freedom from discrimination, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination;

(b) principle that not more than two-thirds of members elective public bodies shall be of the same gender; and

the promotion of representation in Parliament of special interest groups.

20. Section 2 of the Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following definition in the proper alphabetical sequence—

“special interest groups” means the following groups specified under Article 100 of the Constitution—

(a) women;

(b) persons with disabilities;

(c) youth;

(d) ethnic and other minorities; and

(e) marginalised communities.

21. Section 4 of the Independent Electoral and Boundaries Commission Act, 2011 is amended—

(a) in paragraph (b) by inserting the words “including disaggregation of the data on the voters roll on the basis of all categories of special interest groups” immediately after the word “roll”;

(b) in paragraph (d) by inserting the words “and conduct the nominations of the party lists in line with Article 90 of the Constitution” immediately after the word “election”;

(c) in paragraph (g) by inserting the words “to all voters including special interest groups” immediately after the word “education”; and

in paragraph (m) by inserting the words “including communication modes accessible to persons with disabilities” immediately after the word “functions”.

Amendment to section 2 of No. 9 of 2011.

Amendment to section 4 of No. 9 of 2011.
22. Section 27 of the Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new sub section immediately after sub section (5) –

(6) The Commission shall ensure that information is publicized using such modes as are accessible to persons with disabilities including persons with hearing or visual impairment.

23. Section 7 of the County Government Act, 2012 is amended in subsection (1) by deleting paragraph (a) of and substituting therefor the following new paragraph—

not less than five percent of elected members who are men are persons with disabilities and not less than five percent of women members nominated under Article 177 (b) are persons with disabilities.
MEMORANDUM OF OBJECTS AND REASONS

Article 100 of the Constitution requires Parliament to enact legislation to promote the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalized communities.

This Bill seek to make amendments to the existing laws in order to give effect to Article 100 of the Constitution.

It contains proposed amendments to the following laws.

**National Gender and Equality Commission Act (No.11 of 2011)**

**Clause 2** of the Bill proposes to amend section 2 of the National Gender and Equality Commission Act, 2011 by introducing a new definition of the word “special interest groups” as eligible demographic groups of the Kenyan population which are specified under Article 100 of the Constitution.

**Clause 3** of the Bill proposes to amend section 8 of the Act in order to expand the mandate of the Commission in operationalizing the provisions of Article 100 of the Constitution, through, among other activities, monitoring implementation of affirmative action programmes, identify and address the challenges faced by the special interest groups.

**Political Parties Act (No.11 of 2011)**

The Bill proposes to amend the Political Parties Act in order to provide for additional requirements for a political party to be eligible for registration. A political party should have the requisite number of representation of persons with disabilities.

The Bill also proposes to amend the conditions set out under *section 7* of the Act for registering a political party and deregistration of a political party under *section 21 (1)(c)* if it does not adhere to the rules of nomination of candidates with respect to the special interests groups.

The Bill also proposes to amend *section 29(1) (b)* to require a political party to specifically publish in its statement of income and expenditure the amount allocated and expended on the special interest groups. It includes the composition of the governing body representation of persons with disabilities and should also have a disaggregate data information on persons with disabilities. The amendment also emphasizes that the publication of the notice of any change in the constitution of the political party should be in the manner and form that is accessible on its website in the manner and form that is accessible on its website. The Bill also proposes to include representation of special interest groups in the membership of the selection committee for recruiting the Registrar of political parties.
The Bill further proposes the amendment of the First and Second Schedules of the Act by providing the code of conduct for Political Parties by making it a requirement for political parties to implement the formulated affirmative action policies, programmes and strategies.

The Bill also provides for the powers of the Registrar to make Regulations pertaining to the procedure for nomination of a candidate for party list by use of delegates system at the branch level for county assemblies and National Delegates conference for National Assembly and Senate.

**The Elections Act (No. 24 of 2011)**

The Bill proposes to amend the Elections Act to require political parties to submit the party list together with signed minutes of all members present during the party nominations. It also provides for the provision of adequate security to special interest groups during election campaigns.

It is also proposed that the Commission shall be given powers to make Regulations to ensure:

(a) the progressive realization of the principle that not more than two-thirds of members of elective public bodies shall be of the same gender;

(b) the promotion of representation in Parliament of special interest groups.

**Independent Electoral and Boundaries Commission Act (No.9 of 2011)**

The Bill proposes to amend the Independent Electoral and Boundaries Commission Act to provide for disaggregation of the data on the voters' rolls on the basis of disability and ensure that conduct the nominations of the party lists is in line with Article 90 of the Constitution.

The proposed amendments also require voter education to include special interest groups and utilize such communication modes as may be accessible to persons with disabilities including persons with hearing or visual impairment. The Bill further proposes to have in the composition of the Commission representation of persons with disabilities. The Bill obligates the Inspector General to ensure that women candidates and candidates who have any kind of a disability are adequately protected during the entire campaign period and on the day of voting.

**The County Governments Act (No. 17 of 2012)**

The Bill proposes to amend the County Governments Act to include into the membership of the county assembly not less than five percent of elected members who are men are persons with disabilities and not less
than five of women members nominated under Article 177 (b) are persons with disabilities. It emphasizes the proper constitution of county assemblies to ensure that at least five percent of the members are persons with disabilities and women.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill may concern County Governments in terms of Article 110 (1) (a) of the Constitution as it affects the functions and powers of County Government set out in the Fourth Schedule.

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 to be provided for through the annual estimates.

Dated 28th April, 2015.

SAMUEL CHEPKONGA,
Chairperson,
Justice and Legal Affairs Committee.
Section 2 of No. 15 of 2011 which it is proposed to amend.

(1) In this Act, unless the context otherwise requires—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to gender affairs;

“chairperson” means the chairperson of the Commission appointed under section 11;

“Commission” means the National Gender and Equality Commission established under section 3;

“former National Commission on Gender and Development” means the Commission established under the National Commission on Gender and Development Act, 2003 (No. 13 of 2003);

“gender” means the social definition of women and men among different communities and cultures, classes, ages and during different periods in history;

“gender mainstreaming” means ensuring that the concerns of women and men form an integral dimension of the design of all policies, laws and administrative procedures including budgeting and budget implementation, and the monitoring and evaluation of programmes implementing such policies, laws and administrative procedures in all political, economic and societal spheres, so as to ensure that women and men benefit equally, and that inequality is not perpetuated;

“marginalised group” means a group of people who, because of laws or practices before, on or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4) of the Constitution;

Section 8 of No. 15 of 2011 which it is proposed to amend.

The functions of the Commission shall be to—

(a) promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution;

(b) monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions;

(c) act as the principal organ of the State in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalised persons, women, persons with disabilities, and children;
(d) co-ordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalised groups in national development and to advise the Government on all aspects thereof;

(e) monitor, facilitate and advise on the development of affirmative action implementation policies as contemplated in the Constitution;

(f) investigate on its own initiative or on the basis of complaints, any matter in respect of any violations of the principle of equality and freedom from discrimination and make recommendations for the improvement of the functioning of the institutions concerned;

(g) work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights specified in Article 43 of the Constitution and other written laws;

(h) co-ordinate and advise on public education programmes for the creation of a culture of respect for the principles of equality and freedom from discrimination;

(i) conduct and co-ordinate research activities on matters relating to equality and freedom from discrimination as contemplated under Article 27 of the Constitution;

(j) receive and evaluate annual reports on progress made by public institutions and other sectors on compliance with constitutional and statutory requirements on the implementation of the principles of equality and freedom from discrimination;

(k) work with the National Commission on Human Rights, the Commission on Administrative Justice and other related institutions to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration in the protection and promotion of rights related to the principle of equality and freedom from discrimination;

(l) prepare and submit annual reports to Parliament on the status of implementation of its obligations under this Act;

(m) conduct audits on the status of special interest groups including minorities, marginalised groups, persons with disability, women, youth and children;
(n) establish, consistent with data protection legislation, databases on issues relating to equality and freedom from discrimination for different affected interest groups and produce periodic reports for national, regional and international reporting on progress in the realization of equality and freedom from discrimination for these interest groups;

(o) perform such other functions as the Commission may consider necessary for the promotion of the principle of equality and freedom from discrimination; and

(p) perform such other functions as may be prescribed by the Constitution and any other written law.

The Political Parties Act, 2011

Section 2 of No. 11 of 2011 which it is proposed to amend.

In this Act, unless the context otherwise requires—

“branch” means any devolved unit of a political party;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to elections;

“coalition” means an alliance of two or more political parties formed for the purpose of pursuing a common goal and is governed by a written agreement deposited with the Registrar;

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

“election” means the act of selecting by vote, of a person or persons from among a number of candidates to fill an office or to membership of any political party and includes a presidential, parliamentary or county election;

“founding members of a political party” means the persons who form a political party and who have contributed or offered to contribute either in cash or in kind to the initial assets of the party in respect of the first year of its existence;

“Fund” means the Political Parties Fund established by section 23;

“Gazette” means the Kenya Gazette published by the authority of the national government, or a supplement of the Kenya Gazette;

“governing body” means the committee responsible for administering the affairs of a political party;
“merger” means where two or more political parties consolidate their operations and combine all officers, structure, and other functions of the political parties;

“office holder” in relation to a political party means any person who is elected by the members of the political party to hold office and is registered with the Registrar of Political Parties;

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

“public officer” has the meaning assigned to it under Article 260 of the Constitution;

“Registrar” means the Registrar of political parties appointed under section 33;

“State” when used as a noun, means the collectivity of offices, organs and other entities comprising the government of the Republic under the Constitution; and

“Tribunal” means the Political Parties Disputes Tribunal established under section 39.

Section 7 of No. 11 of 2011 which it is proposed to amend.

(1) An application for full registration of a political party shall be in writing and shall be signed by an authorized official of the political party.

(2) A provisionally registered political party shall be qualified to be fully registered if—

(a) it has recruited as members, not fewer than one thousand registered voters from each of more than half of the counties;

(b) the members referred to in paragraph (a) reflect regional and ethnic diversity, gender balance and representation of minorities and marginalised groups;

(c) the composition of its governing body reflects regional and ethnic diversity, gender balance and representation of minorities and marginalised groups;

(d) not more than two-thirds of the members of its governing body are of the same gender;

(e) it has demonstrated that members of its governing body meet the requirements of Chapter Six of the Constitution and the laws relating to ethics;

(f) it has submitted to the Registrar—
(i) a list of the names, addresses and identification particulars of all its members;

(ii) the location of its head office, which shall be a registered office, within Kenya and a postal address to which notices and other communication may be sent; and

(iii) the location and addresses of the branch offices of the political party, which shall be in more than half of the counties; and

(g) it has undertaken to be bound by this Act and the Code of Conduct set out in the First Schedule.

(3) A person is disqualified from being a member of the governing body if that person—

(a) is an undischarged bankrupt;

(b) has been convicted of a criminal offence and sentenced to imprisonment for a period of not less than six months;

(c) has been suspended for a period of six months for violating the code of conduct of the political party; or

(d) has contravened the provisions of Chapter Six of the Constitution.

(4) The Registrar shall, within thirty days of an application under subsection (2), issue a certificate of full registration to a provisionally registered political party which has fulfilled the conditions of full registration.

(5) A person who is not a citizen of Kenya shall not be appointed to any office or be a member of a political party in Kenya.

Section 20 of No. 11 of 2011 which it is proposed to amend.

20. Notification of changes, alterations in Constitution, etc., of political party

(1) Where a fully registered political party intends to change or amend—

(a) its Constitution;

(b) its rules and regulations;

(c) the title, name or address of any party official

(d) its name, symbol, slogan or colour; or

(e) the address and physical location of the head office or country office, it shall notify the Registrar of its intention and the Registrar shall, within fourteen days after the receipt of the
notification, cause a notice of the intended change or alteration to be published in the Gazette.

(2) The political party giving notification under subsection (1) shall publish such notification in at least two daily newspapers having nationwide circulation.

(3) Upon the expiry of thirty days from the date of publication of the notice in subsection (1), the political party may, after taking into account any representations received from the public under subsections (1) and (2), effect the change or alteration in accordance with its Constitution and rules.

21. Deregistration of a political party

(1) The Registrar may deregister a political party if the political party—

(a) has contravened the provisions of Article 91 of the Constitution;
(b) does not promote free and fair nomination of candidates;
(c) does not adhere to the law relating to the nomination of candidates;
(d) does not respect the national values and principles of the Constitution;
(e) obtained its registration in a fraudulent manner;
(f) has instigated or participated in the commission of an election offence; or
(g) has acted contrary to the provisions of section 26.

(2) The Registrar shall, before deregistering a political party—

(a) inform the political party, in writing, of the particulars of the breach or contravention;
(b) inform the political party, in writing, of the intention to deregister the political party; and
(c) direct the political party to remedy the breach or contravention within ninety days or otherwise show cause why the party should not be deregistered.

(3) The Registrar may suspend the registration of a political party to enable that political party to remedy the breach specified in the notice issued by the Registrar under subsection (2).
(4) A political party that has been suspended under subsection (3) shall not be entitled to any of the rights and privileges specified in section 15.

(5) The Registrar shall deregister a political party which has not remedied the breach or complied with the Act as required by the Registrar under subsection (2).

(6) The Registrar shall deregister a political party which has been declared to be a prohibited organisation under the provisions of any written law.

Section 25 of No. 11 of 2011 which it is proposed to amend.

(1) The Fund shall be distributed as follows—

(a) ninety-five per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election; and

(b) five per cent for the administration expenses of the Fund.

(2) Notwithstanding subsection (1), a political party shall not be entitled to receive funding from the Fund if—

(a) the party does not secure at least five per cent of the total number of votes at the preceding general elections; or

(b) more than two-thirds of its registered office bearers are of the same gender.

(3) For purposes of subsections (1)(a) and (2)(a), the total number of votes secured by a political party shall be computed by adding the total number of votes obtained in the preceding general election by a political party in the election for the President, members of Parliament, county governors and members of county assemblies.

Section 29 of No. 11 of 2011 which it is proposed to amend.

(1) A political party shall, within ninety days of the end of its financial year, publish—

(a) the sources of its funds stating—

(i) the amount of money received from the Fund;

(ii) the amount of money received from its members and supporters; and

(iii) the amount and sources of the donations given to the party;

(b) the income and expenditure of the political party; and

(c) the assets and liabilities of the political party.
(2) The publication referred to in subsection (1) shall be in at least two newspapers having nationwide circulation.

(3) A political party which contravenes this section commits an offence.

(4) Notwithstanding the provisions of subsection (3), a political party that fails to comply with this section shall, during the period of non-compliance, be disqualified from receiving moneys from the Fund.

Section 34A of No. 11 of 2011 which it is proposed to amend.

(1) The President shall, within a period not later than one hundred and ten days prior to the first general elections under the Constitution, or of the occurrence of a vacancy in the Office of Registrar or Assistant Registrar, and with the approval of the National Assembly, appoint a Selection Committee comprising—

(a) a Chairperson who shall he nominated by the President;

(b) one person nominated by the Law Society of Kenya;

(c) one person nominated by the Institute of Certified Public Accountants of Kenya;

(d) one person nominated by the Association of Professional Societies in East Africa;

(e) two persons nominated by the political parties represented in the National Assembly according to their proportion of members in the Assembly; and

(f) two persons nominated by the political parties represented in the Senate according to their proportion of members in the Senate.

(2) The persons nominated under subsection (1) shall not be members of Parliament.

(3) Until after the first elections held under the Constitution, the nomination under subsection (1) (a) shall be made by the President, in consultation with the Prime Minister.

(4) The Seventh Schedule shall apply to the nomination and appointment of the members under subsection (1) (b), (c) and (d) and to the procedures of the Selection Committee.

Section 49 of No. 11 of 2011 which it is proposed to amend.

(1) The Registrar may make regulations generally for the better carrying out of provisions of this Act.

(2) In particular and without prejudice to the generality of the power conferred by subsection (1), the Registrar may make regulations—
(a) prescribing the manner of registration of political parties;
(b) regulating the activities of political parties that are registered under this Act as provided under this Act;
(c) regulating or restricting the use or changes of names, symbols or colours of political parties;
(d) prescribing the forms, which may be used for carrying out the provisions of this Act;
(e) for securing the submission, to the Registrar, of the audited accounts and financial accounts relating to the assets and liabilities, income and expenditure of political parties;
(f) prescribing the fees in respect of anything to be done under this Act; or
(g) requiring the submission, to the Registrar, of annual or other periodical returns relating to the Constitution, objects and membership of political parties.

**First schedule to No. 11 of 2011 which it is proposed to amend.**

**CODE OF CONDUCT FOR POLITICAL PARTIES**

1. Political parties shall, pursuant to Articles 91 and 92 of the Constitution and section 8 of this Act, subscribe and observe this code of conduct.

2. This code of conduct shall regulate the behaviour of members and office holders of political parties, aspiring candidates, candidates and their supporters, promote good governance and eradicate political malpractices.

3. Political competition and co-operation shall be regulated under this code of conduct on the basis of rule of law and universally accepted best practices.

4. Political parties shall—
   (a) promote policy alternatives responding to the interests, concerns and needs of the citizens of Kenya;
   (b) respect and uphold the democratic process as they compete for political power so as to implement their policies;
   (c) promote consensus building in policy decision making on issues of national importance.

5. Every political party shall—
   (a) respect the right of all persons to participate in the political process including youth, minorities and marginalized groups;
(b) respect and promote gender equity and equality, human rights and fundamental freedoms; and

(c) be tolerant and inclusive in all their political activities.

6. Every political party shall—

(a) respect, uphold and defend the Constitution of Kenya;

(b) respect and uphold this Act and any other written law relating to elections and political parties;

(c) respect, uphold and defend their respective political party Constitutions, political party election rules, political party nomination rules and any other political party rules and regulations developed and agreed upon in accordance with this code of conduct;

(d) respect, uphold and promote human dignity, equity, social justice, inclusiveness and non-discrimination and protection of the marginalized;

(e) respect, uphold and promote human rights and the rule of law;

(f) promote national patriotism and national unity;

(g) respect, uphold and promote democratic values and principles, performing inclusive participation of party members and accountable representation in governance for the development of the country;

(h) respect, uphold and promote good governance, integrity, respect, tolerance, transparency and accountability;

(i) promote co-operation in the political competition;

(j) promote sharing and devolution of power and resources;

(k) respect, uphold and promote democratic practices through regular free, fair and credible elections within the political party and among others have a democratically elected governing body and political party organs;

(l) respect, uphold and promote democratic practices through free, fair and credible political party nominations;

Second schedule to No. 11 of 2011 which it is proposed to amend.

CONTENTS OF THE CONSTITUTION OR RULES OF A POLITICAL PARTY

1. The name of the political party and any abbreviation.

2. The logo and symbol of the political party and party colours.
3. The objects of the political party.

4. Clearly defined vision, mission, guiding principles and values.

5. The physical and postal address of the registered office.

6. Membership requirements including—
   (a) the eligibility criteria;
   (b) subscription fees for joining the party and for being a member of the party;
   (c) the criteria for resignation from party membership or ceasing to be a member; and
   (d) the rights and duties of members of the party;
   (e) membership details to be contained in the register including identification details, region, ethnicity, gender and county; and
   (f) the procedure for conducting the annual general meeting or the other general meetings of the political party, including matters which may only be decided upon by a meeting of the party members or, as the case may be, of the county representatives of the party.

7. Governing body requirements—
   (a) the name of the governing body;
   (b) the eligibility criteria for election to the governing body;
   (c) the positions, titles and term of office;
   (d) the rights and duties of members of the governing body;
   (e) the procedure for the election of members of the governing body and other political party organs, including committees;
   (f) guidelines for the operations of the governing body and its committees;
   (g) quorum;
   (h) frequency of meetings;
   (i) decision making powers; and
   (j) guidelines for meetings; procedures of convening meetings; procedure of meetings and the official recording of resolutions passed at meetings.

8. A list of political party management structure of the political party and systems to be documented at the political party offices including—
   (a) the employee details and terms of employment;
(b) the party human resource, financial and audit and administration and management policies and procedures; and

(c) the party sub-branches within each county.

9. The forming of political party branches, including in the diaspora, and their roles and responsibilities.

10. The financial structure and system including—

(a) the roles and responsibilities of individual political party officials, organs and governing bodies with regard to the finances of the political party;

(b) the annual statutory and other audits of accounts of the political party; and

(c) the purposes for which the funds may be used, and in particular the prohibition against the distribution of funds among members.

11. The general organisation structure and management of the political party, including the county structures and systems and county governing bodies.

12. The establishment and management of National Assembly, Senate and County Assemblies Caucuses.

13. The disciplinary measures against a member or official of a political party including—

(a) the methods and procedure of disciplinary action;

(b) possible disciplinary actions and reasons;

(c) criteria for various disciplinary actions; and

(d) consequences of each action for the national and county levels.

14. The right to inspect the books or list of members of the political party by a member of the party or a member of the public.

15. The authorized officials of a political party shall sign on behalf of the political party—

(a) documents presented to the Registrar including membership register, mergers, and other reports to the Registrar;

(b) the accounts and bank accounts of the political party;

(c) the audited annual accounts and financial statements of the political party;

(d) any report or document of the political party required under this Act or any other written law; and
(e) the nomination certificates for any nomination or election of a member of the political party.

16. The policy documents which the political party will develop and on which the political party will perform including the manner and procedures in which they will be developed, approved and implemented.

17. The policy reporting documents and their regularity which the political party will produce including the manner and the procedures in which they will be developed, approved and publicized.

18. Asset management policies and procedures, the custody and investment of the funds and property of the political party, and the designation of the persons responsible for them.

19. The political party nomination rules and regulations with respect to elections of the party and rules governing the preparation of party lists.

20. Provisions for the amendment of the name, Constitution, and rules of the political party.

21. Rules for mergers including—
   (a) the circumstances and criteria for mergers; and
   (b) the procedure and guidelines for such mergers as approved by an annual general meeting of the political party.

22. Provisions on dissolution of the political party, including—
   (a) provisions on the disposal of the property of the political party; and
   (b) the manner of and procedures to be followed for the dissolution of the political party or any branch of the party.

23. Internal party dispute resolution mechanism.

24. Democratic practices that cover gender, affirmative action for minorities and marginalized groups.


26. The manner of implementing national values and principles of governance as provided in the Constitution.

The Elections Act, 2011

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

16. Initiation of election of member of Parliament

(1) Whenever a parliamentary election is to be held, the Commission shall publish a notice of the holding of the election in the Gazette and in the electronic and print media of national circulation—
(a) in the case of a general election, at least sixty days before the date of the general election; or

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

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

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

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

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

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

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

Section 19 of No. 24 of 2011 which it is proposed to amend.

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

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

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

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

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

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

(c) the day or days on which the poll shall be taken for the county election, which shall not be less than twenty one days after the day specified for the nomination under paragraph (b).
(3) Whenever a vacancy occurs in a county assembly, the speaker of the county assembly shall within twenty one days after the occurrence of the vacancy issue a notice to the Commission in the prescribed form.

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

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

(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.

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 35 of No. 24 of 2011 which it is proposed to amend.

(1) A political party shall submit its party list to the Commission on the same day as the day designated for submission to the Commission by political parties of nominations of candidates for an election before the nomination of candidates under Articles 97(1)(a) and (b), 98(1)(a) and 177(1)(a) of the Constitution.

Section 109 of No. 24 of 2011 which it is proposed to amend.

(1) The Commission may make regulations generally for the better carrying out of the purposes and provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, may make regulations to—

(a) prescribe the manner in which registers of voters shall be compiled and the manner in which they shall be revised;

(b) prescribe the procedure for registration and issuance of voters cards and provide for the progressive registration of Kenyan citizens living abroad;

(c) to provide for the regulation of the process by which parties nominate candidates for elections;
(d) to provide for the manner of nomination, allocation and re-allocation of special seats and mechanisms for resolving disputes arising out of such nomination, allocation and re-allocation;

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

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

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

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

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

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

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

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

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

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

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

(p) prescribe the procedure to be followed in the counting of votes and the circumstances in which votes may be rejected by a returning officer as being invalid;
(q) prescribe conditions for the use of private motor vehicles, vessels or buildings at elections;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ff) prescribe anything which is required to be prescribed or is necessary or desirable for the better giving effect to this Act.
(2) The power to make regulations conferred on the Commission under this Act shall be—

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

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

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

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

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

The Independent Electoral and Boundaries Commission Act, 2011

Section 4 of No. 9 of 2011 which it is proposed to amend.

As provided for by Article 88 (4) of the Constitution, the Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for—

(a) the continuous registration of citizens as voters;

(b) the regular revision of the voters’ roll;

(c) the delimitation of constituencies and wards in accordance with the Constitution;

(d) the regulation of the process by which parties nominate candidates for elections;

(e) 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;

(f) the registration of candidates for election;

(g) voter education;

(h) the facilitation of the observation, monitoring and evaluation of elections;
(i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;

(j) the development and enforcement of a code of conduct for candidates and parties contesting elections;

(k) the monitoring of compliance with the legislation required by Article 82(1)(b) of the Constitution relating to nomination of candidates by parties;

(l) the investigation and prosecution of electoral offences by candidates, political parties or their agents pursuant to Article 157(12) of the Constitution;

(m) the use of appropriate technology and approaches in the performance of its functions; and

(n) such other functions as are provided for by the Constitution or any other written law.

Section 27 of No. 9 of 2011 which it is proposed to amend.

(1) The Commission shall publish and publicise all important information within its mandate affecting the nation.

(2) A request for information in the public interest by a citizen—

(a) shall be addressed to the secretary or such other person as the Commission may for that purpose designate and may be subject to the payment of a reasonable fee in instances where the Commission incurs an expense in providing the information; and

(b) may be subject to confidentiality requirements of the Commission.

(3) Subject to Article 35 of the Constitution, the Commission may decline to give information to an applicant where—

(a) the request is unreasonable in the circumstances;

(b) the information requested is at a deliberative stage by the Commission;

(c) failure of payment of the prescribed fee; or

(d) the applicant fails to satisfy any confidentiality requirements by the Commission.

(4) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.
(5) Every member and employee of the Commission shall sign a confidentiality agreement.

**The County Government Act, 2012**

*Section 7 of No. 17 of 2012 which it is proposed to amend.*

7. (1) In addition to the members who are elected under Article 177 (a), or nominated under Article 177 (b) of the Constitution, a county assembly shall comprise—

(a) six nominated members as contemplated in Article 177 (c) of the Constitution; and

(b) the speaker, who is an ex officio member elected in accordance with Article 178 of the Constitution.

(2) The political party nominating persons under subsection (1) shall ensure that—

(a) community and cultural diversity of the county is reflected in the county assembly; and

(b) there is adequate representation to protect minorities within the county in accordance with Article 197 of the Constitution.

(3) The number of members nominated under subsection 1(a) shall be reviewed to accord with the number of Wards determined by the Independent Electoral and Boundaries Commission under section 27(3)(a).