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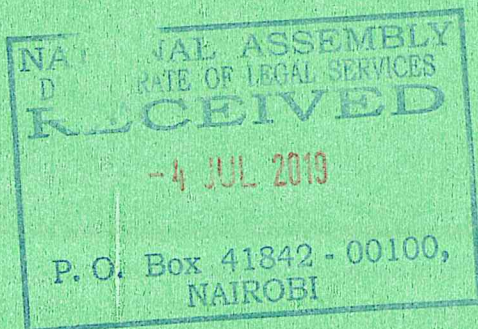
NAIROBI, 3rd July, 2019

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**THE REPRESENTATION OF SPECIAL INTEREST
GROUPS LAWS (AMENDMENT) BILL, 2019**

A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Representation of Special Interest Groups Laws (Amendment) Act, 2019.

Short title.

2. (1) The object and purpose of this Act is to amend the provisions of electoral and related laws to give further effect to Article 100 of the Constitution on the promotion of the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities.

Object and purpose of the Act.

(2) Without prejudice to the generality of subsection (1), this Act seeks to—

- (a) enhance the funding of special interests groups through assured disbursements from the Political Parties Fund;
- (b) require political parties to allocate funds disbursed from the Political Parties Fund to election campaign activities of special interest groups through publicity and other measures;
- (c) mandate the National Gender and Equality Commission with the function of conducting and facilitating civic and voter education to sensitise the public on the right of special interest groups to participate in the electoral process;
- (d) provide a forum for harnessing political will to support the representation in Parliament of special interest groups;
- (e) require political parties to enhance the representation of special interest groups in elective

bodies by ensuring that their nomination lists comply with the provisions of Article 54(2) and 81(b) of the Constitution;

- (f) require the Independent Electoral and Boundaries Commission to ensure lists submitted by political parties seeking to participate in a parliamentary election comply with the provisions of Article 54(2) and 81(b) of the Constitution; and
- (g) enhance the capacity of special interest groups to participate in the electoral process.

PERSONS WITH DISABILITIES ACT, 2003

3. Section 7(1) of the Persons With Disabilities Act, 2003 is amended in paragraph (b) by inserting the following new subparagraph immediately after subparagraph (viii)—

Amendment of section 7 of No. 14 of 2003.

“(ix) promote the inclusion of persons with disabilities in the decision-making bodies of public institutions;”

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT, 2011

4. Section 2(1) of the Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following definition in proper alphabetical sequence—

Amendment of section 2 of No. 9 of 2011.

“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.

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

Amendment of section 4 of No. 9 of 2011.

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

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

(c) by inserting the following new paragraph immediately after paragraph (k)—

“(ka) the conduct and regulation of the process by which parties conduct the nominations of the party lists in line with Article 90 of the Constitution.”;

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

6. Section 27 of the Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of
section 27 of No.
9 of 2011.

“(1A) The Commission shall ensure that the information specified under subsection (1) is published and publicised using modes that are accessible to persons with disabilities.”

POLITICAL PARTIES ACT, 2011

7. Section 2 of the Political Parties Act, 2011 is amended—

Amendment of
section 2 of No.
11 of 2011

(a) by deleting the definition of “ethnic minorities” and substituting with the following definition—

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

(b) by deleting the definition of “special interest groups” and substituting with the following definition—

“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.

8. Section 20 of the Political Parties Act, 2011 is amended—

Amendment of section 20 of No. 11 of 2011.

- (a) in subsection (2) by inserting the words “and on its website in a manner and form that is accessible to all persons including special interest groups” immediately after the word “circulation”;
- (b) by inserting the following new subsection immediately after subsection (2)—

(2A) A political party shall ensure that information specified under subsection (2) is published and publicised in a manner accessible to persons with disabilities.

9. Section 25 of the Political Parties Act, 2011 is amended

Amendment of section 25 of No. 11 of 2011.

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

“(1) The Fund shall be distributed as follows—

- (a) fifty-three per cent of the Fund proportionately shared between the largest party or coalition of parties in the National Assembly, and the second largest party or coalition of parties in the National Assembly;
- (b) twenty percent of the fund proportionately shared among all other political parties;
- (c) twenty per cent of the Fund proportionately to political parties based on the number of candidates of the party from special interest groups elected in the preceding general elections;
- (d) five per cent for the administration expenses of the Fund; and

(e) two per cent for the administration expenses of the Political Parties Liaison Committee.

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

(2) A political party shall be entitled to receive funding from the Fund if—

(a) not more than two-thirds of its registered office bearers are of the same gender;

(b) the party has in its governing body, representation of special interest groups; and

(c) the party has at least—

(i) five elected members of Parliament;

(ii) one elected Governor; and

(iii) twelve elected members of County Assemblies:

Provided that the provisions of paragraph (c) of this subsection shall not apply to distribution of the Fund under subsection (1)(c).

10. Section 26(1) of the Political Parties Act, 2011 is amended by deleting paragraph (a) and substituting therefor the following new paragraph—

Amendment of section 26 of No. 11 of 2011.

“(a) promoting the representation in Parliament and in the county assemblies of special interest groups through—

(i) civic education;

(ii) capacity building;

(iii) facilitating party candidates in campaigns;

(iv) publicity; and

(v) such other measures as may be approved by the Registrar.”

11. Section 29 of the Political Parties Act, 2011 is amended in subsection (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).

Amendment of section 29 of No. 11 of 2011.

12. The Political Parties Act, 2011 is amended by inserting the following new sections immediately after section 30—

Insertion of new section 30A in No. 11 of 2011.

Report on promotion of representation of special interest groups.

30A. A political party shall within thirty days of the end of each financial year submit to the Registrar a report of its activities promoting the representation of special interest groups in Parliament and in the county assemblies.

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

Amendment of section 49 of No. 11 of 2011.

“(h) prescribing the formula for the distribution of the allocation to special interest groups from the Fund to ensure adequate distribution to special interest groups elected to Parliament and county assemblies by each political party in the preceding general election.”

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

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

(a) in paragraph 5—

(i) by deleting subparagraph (a) and substituting therefor the following new subparagraph—

“(a) respect, protect and ensure the right of all persons including special interest groups to participate in the political process;”

(ii) by inserting the word “safeguard” immediately after the word “respect” appearing in subparagraph (b);

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

NATIONAL GENDER AND EQUALITY COMMISSION ACT, 2011

15. Section 2(1) of the National Gender and Equality Commission Act, 2011 is amended by inserting the following new definitions in proper alphabetical sequence—

Amendment of section 2 of No. 15 of 2011.

““Electoral Code of Conduct” means the Electoral Code of Conduct set out under the Second Schedule to the Elections Act, 2011;

“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.”

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

Amendment of
section 8 of No.
15 of 2011.

- (a) renumbering the existing provision as subsection (1);
- (b) 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, including—

- (i) monitoring the framework for the promotion of representation of the special interest groups in Parliament, county assemblies and other elective positions; and
- (ii) supporting special interest groups in presenting complaints relating to compliance with the Electoral Code of Conduct.”

- (c) inserting the following new subsections after subsection (1)—

“(2) The Commission shall liaise with all relevant public institutions to develop and implement measures to achieve the progressive realisation of representation of special interest groups in public institutions, which measures may include—

- (a) monitoring, facilitating and advising on capacity building programmes of special interests groups to enable them participate in elections; and
- (b) enhancing the understanding and attitudes of communities to accept the capabilities and participation of special interest groups as their equals.

(3) The Commission shall develop guidelines to assist public institutions to comply with the provisions of subsection (2).

(4) All public institutions shall, for purposes of reporting and monitoring, submit to the Commission their plans and measures in compliance with the provisions of this section on an annual basis.”

ELECTIONS ACT, 2011

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

Amendment of section 13 No. 24 of 2011.

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

“(1A) Every political party participating in an election shall during party nominations ensure that at least—

- (a) one-third of its nominees for parliamentary and county assembly elections are of either gender; and
- (b) five percent of its nominees for parliamentary and county assembly elections are persons with disabilities.”

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

“(3A) The Commission shall not accept the list of candidates nominated under this section by a political party unless it is satisfied that the political party has complied with subsection (1A).”

(3B) The provisions of subsection (1A) and (3A) shall lapse twenty years after its commencement, subject to sub-section (3C).

(3C) Parliament may enact legislation suspending the effect of sub-section (3B) for a further fixed period of years.”

18. Section 35 of the Elections Act, 2011 is amended by—

Amendment of section 35 of No. 24 of 2011.

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new subsection immediately after subsection (1)—

“(2) The party list shall be submitted together with a statutory declaration signed by the person authorised to certify that the candidates were nominated by the party and minutes of the approval of the list by the party’s election board.”

19. Section 40 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of section 40 of No. 24 of 2011.

“(1A) In providing voter education, the Commission shall—

- (a) ensure the participation of special interest groups in its programmes; and
- (b) sensitize voters on the inclusion of special interest groups in the electoral process.”

20. Section 41 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 41 of No. 24 of 2011.

“(2A) A political party participating in an election shall procure and fund the access of its special interest groups candidates to media coverage.”

21. The Second Schedule to the Elections Act, 2011 is amended by deleting paragraph 16 and substituting therefor the following paragraph—

Amendment of the Second Schedule to No. 24 of 2011.

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

- (a) ensure security and full participation of persons belonging to special interest groups as candidates and voters;
- (b) respect the right of persons belonging to special interest groups to communicate freely with political parties, committees and candidates;
- (c) facilitate the full and equal participation of persons belonging to special interest groups in political activities;
- (d) ensure free access of persons belonging to special interest groups to all public political meetings, marches, demonstrations, rallies and other public political events; and
- (e) take reasonable steps to ensure that persons belonging to special interest groups are free to engage in any political activity.”

ELECTION CAMPAIGN FINANCING ACT, 2013

22. Section 2 of the Election Campaign Financing Act, 2013 is amended by inserting the following definition in its proper alphabetical sequence—

Amendment of section 2 of No. 42 of 2013.

““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;”

23. Section 18(4) of the Election Campaign Financing Act, 2013 is amended by inserting the following new paragraph immediately after paragraph (e)—

Amendment of section 18 of No. 42 of 2013.

“(f) candidates belonging to special interest groups.”

ELECTION OFFENCES ACT, 2016

24. Section 13 of the Election Offences Act is amended in paragraph (f)(i) by inserting the words “disability, youth, membership to an ethnic or other minority group or marginalized community” immediately after the word “gender”.

Insertion of a new section 11A in No.37 of 2016.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons of the Bill

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 collectively referred to as special interest groups.

This Bill seeks to make amendments to various existing laws in order to give further effect to Article 100 of the Constitution. It contains proposed amendments to the following laws—

Persons With Disabilities Act (No. 14 of 2003)

The Bill seeks to amend the Persons With Disabilities Act, 2003 to require the National Council of Persons with Disabilities to promote the inclusion of persons with disabilities in decision-making bodies, boards, agencies and other public institutions and organisations as part of the functions it undertakes.

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

The Bill proposes to amend the Independent Electoral and Boundaries Commission Act, 2011 to define special interest groups as those provided for in Article 100 of the Constitution. It also provides for disaggregation of the data on the voters' roll on the basis of all categories of special interest groups and requires the Commission to conduct the nominations of the party lists to ensure the process is in line with Article 90 of the Constitution.

The proposed amendments also require voter education to include special interest groups and to utilize such communication modes as may be accessible to persons with disabilities including persons with hearing or visual impairment.

Political Parties Act (No. 11 of 2011)

The Bill proposes to amend the Political Parties Act, 2011 by defining special interest groups as those provided for in Article 100 of the Constitution. It also provides additional requirements for a political party to be eligible for registration.

The Bill also proposes to amend sections 25 and 29 of the Act to provide that 20% of the Political Parties Fund be distributed based on the elected numbers of special interest groups and 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, respectively.

The amendments also emphasize that the publication of the notice of any change in the constitution of a political party should be on its website and in a manner and form that is accessible to special interest groups.

The Bill further proposes the amendment of the First and Second Schedules of the Act on 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 and prescribing the need for the constitution of political parties to include membership of special interest groups and manner of nomination of candidates to political party lists.

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

The National Gender and Equality Commission Act (No. 15 of 2011)

The Bill proposes to amend section 8 of the National Gender and Equality Commission Act, 2011 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 and identifying and addressing the challenges faced by the special interest groups.

The Elections Act (No. 24 of 2011)

The Bill proposes to amend the Elections Act, 2011 to require each political party to ensure that at least one third of its candidates for nominations are of either gender. In addition, the Bill proposes amendments to the Elections Act, 2011 to preclude the Independent Electoral and Boundaries Commission from accepting any list of candidates for election which does not have at least one third of the candidates from either gender and at least five per cent of its candidates as persons with disabilities in line with constitutional requirements.

Election Campaign Financing Act (No. 42 of 2013)

The Bill seeks to amend the Election Campaign Financing Act, 2013 to require the Independent Electoral and Boundaries Commission to take into consideration candidates from special interest groups when prescribing the spending limits applicable to election campaigns.

Election Offences Act (No. 37 of 2016)

The Bill seeks to amend the Election Offences Act, 2016 to criminalize the use of demeaning or derogatory language targeted at special interest groups in the election process. Under the Act, the general

penalty for any offence is a fine not exceeding one million shillings or imprisonment for a term not exceeding three years, or both the fine and imprisonment.

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

The Bill does not limit any fundamental right or freedom.

Statement that the Bill concerns county governments

The Bill concerns County Governments in terms of Article 110 (1) (b) of the Constitution as it seeks to amend laws relating to 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 to be provided for through the annual estimates.

Dated 3rd July, 2019.

JEREMIAH KIONI,
*Chairperson, Constitutional,
Implementation Oversight Committee.*

Section 7 of the Persons With Disabilities Act, 2011 that it is proposed to be amended—

Functions of the Council

7. (1) The functions of the Council shall be—

- (a) to issue adjustment orders under section 24 of this Act;
- (b) to formulate and develop measures and policies designed to—
 - (i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services;
 - (ii) co-operate with the Government during the national census to ensure that accurate figures of persons with disabilities are obtained in the country, for purposes of planning;
 - (iii) advise the Minister on the provisions of any international treaty or agreement relating to the welfare or rehabilitation of persons with disabilities and its benefits to the country;
 - (iv) recommend measures to prevent discrimination against persons with disabilities;
 - (v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disabilities;
 - (vi) encourage and secure the rehabilitation of persons with disabilities within their own communities and social environment;
 - (vii) encourage and secure the establishment of vocational rehabilitation centres and other institutions and other services for the welfare, rehabilitation and employment of persons with disabilities; and
 - (viii) co-ordinate services provided in Kenya for the welfare and rehabilitation of persons with disabilities and to implement programmes for vocational guidance and counselling;
- (c) to register—
 - (i) persons with disabilities;
 - (ii) institutions, associations and organizations, including those controlled and managed by the Government and local

- authorities, that provide services for the rehabilitation and welfare of persons with disabilities;
- (iii) places at which services for the rehabilitation of persons with disabilities are provided; and
 - (iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services;
- (d) to provide, to the maximum extent possible—
- (i) assistive devices, appliances and other equipment to persons with disabilities; and
 - (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the Government;
- (e) to consult with the Government in the formulation of suitable curricula for vocational rehabilitation centres and other training facilities for persons with disabilities;
- (f) to make provision for assistance to students with disabilities in the form of scholarships, loan programmes, fee subsidies and other similar forms of assistance in both public and private institutions;
- (g) to assess and report to the Minister on the welfare and rehabilitation of persons with disabilities and to advise on the relative priorities to be given to the implementation of those measures;
- (h) to consult with the Government in the provision of suitable and affordable housing for persons with disabilities;
- (i) generally to carry out measures for public information on the rights of persons with disabilities and the provisions of this Act;
- (j) to perform such other functions in relation to the welfare and rehabilitation of persons with disabilities as the Council may deem necessary; and
- (k) to perform such other functions as may be assigned to the Council under this or any other Act.

(2) Without prejudice to the provisions of subsection (1), the Council shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and in particular—

- (a) to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities;
- (b) to constitute committees consisting of its members, and where necessary to co-opt experts to serve on such committees with the approval of the Minister;
- (c) to vest in or delegate to any committee constituted under paragraph (b) such of the functions of the Council as the Council may with the approval of the Minister determine; and
- (d) with the approval of the Minister, to engage or make other arrangements with any other person to carry out research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disabilities.

Section 4 of the Independent Electoral and Boundaries Act, 2011 that it is proposed to be amended—

Functions of the Commission

4. (1) 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) deleted by Act No. 36 of 2016, s. 30;
- (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 the Independent Electoral and Boundaries Act, 2011 that it is proposed to be amended—

Management of information

27. (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.

Section 2 of the Political Parties Act, 2011 that it is proposed to be amended—

Interpretation

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

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

“special interest groups” includes —

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

Section 20 of the Political Parties Act, 2011 that it is proposed to be amended—

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

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

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

Section 25 of the Political Parties Act, 2011 that it is proposed to be amended—

Distribution of the Fund

25. (1) The Fund shall be distributed as follows—

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

(aa) fifteen per cent of the Fund proportionately to political parties qualifying under paragraph (a) based on the number of candidates of the party from special interest groups elected 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 three 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;

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

(c) the party does not have at least —

(i) twenty elected members of the National Assembly; and

(ii) three elected members of the Senate; and

(iii) three elected members who are Governors; and

(iv) forty members of County Assemblies.

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

(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 26 of the Political Parties Act, 2011 that it is proposed to be amended—

Purposes of the Fund

26. (1) Moneys allocated to a registered political party from the Fund shall be used for purposes compatible with democracy including—

- (a) promoting the representation in Parliament and in the county assemblies of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities;
- (b) promoting active participation by individual citizens in political life;
- (c) covering the election expenses of the political party and the broadcasting of the policies of the political party;
- (d) the organisation by the political party of civic education in democracy and other electoral processes;
- (e) bringing the political party's influence to bear on the shaping of public opinion; and
- (f) administrative and staff expenses of the political party which shall not be more than thirty per cent of the moneys allocated to the political party:

Provided that not less than thirty per cent of the moneys allocated to a political party under section 25 shall be used for the purposes referred to in subsection (1)(a).

(2) The moneys allocated to a political party shall not be used for any other purposes other than those specified in this Act.

(3) Moneys allocated to a political party from the Fund shall not be used—

- (a) for paying directly or indirectly remuneration, fees, rewards, allowances or any other benefit to a member or supporter of the political party, other than a member of staff;
- (b) to finance or as a contribution to any matter, cause, event or occasion directly or indirectly in contravention of any code of ethics binding on public officers;
- (c) directly or indirectly for the purposes of establishing any business or acquiring or maintaining any right or financial interest whatsoever in any business or in any immovable property; or
- (d) for any other purpose incompatible with the promotion of a multiparty democracy and the electoral processes, or with the Constitution.

(4) A political party shall ensure accountability and transparency in its procurement processes.

(5) A person who contravenes the provisions of this section commits an offence.

Section 29 of the Political Parties Act, 2011 that it is proposed to be amended—

Publishing sources of funds

29. (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 49 of the Political Parties Act, 2011 that it is proposed to be amended—

Regulations

49. (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 the Political Parties Act, 2011 that it is proposed to be amended—

FIRST SCHEDULE

CODE OF CONDUCT FOR POLITICAL PARTIES

5. Every political party shall—

- (a) respect the right of all persons to participate in the political process;
- (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;
- (m) respect, uphold and promote leadership and integrity as prescribed in the Constitution of Kenya; and
- (n) perform transparency and accountability in all its legislation and regulations, structures, procedures and performance.

Section 8 of the National Gender and Equality Commission Act, 2011 that is proposed to be amended—

Functions of the Commission

8. 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.

Section 13 of the Elections Act, 2011 that is proposed to be amended—

Nomination of candidates by a political party

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

(2A) A political party shall hear and determine all intra party disputes arising from political party nominations within thirty days.

(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 fifty-five days before such election.

Section 35 of the Elections Act, 2011 that is proposed to be amended—

Submission of party lists

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

Section 40 of the Elections Act, 2011 that is proposed to be amended—

Voter education

40. (1) The Commission shall, in performing its duties under Article 88(4)(g) of the constitution establish mechanisms for the provision of continuous voter education and cause to be prepared a voter education curriculum.

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

Section 41 of the Elections Act, 2011 that is proposed to be amended—

Access to and obligation of media

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

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

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

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

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

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

The Second Schedule to the Elections Act, 2011 that is proposed to be amended—

SECOND SCHEDULE

ELECTORAL CODE OF CONDUCT

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.

Section 18 of the Election Campaign Financing Act, 2013 that is proposed to be amended—

Spending limits

18. (1) The Commission shall, at least twelve months before an election, by notice in the Gazette, prescribe the spending limits including the total amount that a candidate, political party or referendum committee may spend during an expenditure period, including the limit for media coverage.

(2) Except for contribution by a candidate into his or her own campaign financing account, any contribution from a person, organisation or any other lawful source contributed to a candidate, a political party or a referendum committee campaign financing account shall not exceed the limit of the total contribution prescribed under subsection (1).

(3) The Commission may, by notice in the Gazette, vary the spending limits prescribed under subsection (1).

(4) The Commission shall, in prescribing spending limits under subsection (1), take into consideration—

- (a) geographical features and urban centres;
- (b) the type of election;
- (c) the population in an electoral area;
- (d) the number of party members in an electoral area;
- (e) the communication infrastructure in an electoral area.

(5) Subsection (4)(d) shall only apply with respect to party nomination expenditure of a party candidate.

(6) Where a candidate, political party or a referendum committee exceeds the spending limits prescribed under this section due to unforeseeable and extraneous circumstances, the candidate, political party or referendum committee shall file a report with the Commission specifying the reasons for exceeding the limit, with such time as the Commission may prescribe and the Commission shall determine if such spending was justifiable.

(7) A candidate who, or a political party or referendum committee which, exceeds the prescribed spending limits and fails to report this fact to the Commission commits an offence.

Section 13 of the Election Offences Act, 2016 that is proposed to be amended—

Offences relating to elections

13. A person who—

- (a) prints, publishes, distributes or posts up, or causes to be printed, published, distributed or posted up, any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of the printer and publisher;
- (b) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of withdrawal of any other candidate at such election;
- (c) forges, defaces or destroys any nomination paper, or delivers to a returning officer any nomination paper knowing it to be forged;
- (d) interferes with election material by removing, destroying, concealing or mutilating or assists in the removal, destruction, concealment or mutilation of any such material save on the authority of the Commission or under the provisions of the Elections Act (No. 24 of 2011);
- (e) directly or indirectly prints, manufactures or supplies or procures the printing, manufacture or supply of any election material in connection with the election save on the authority of the Commission;
- (f) interferes with free political canvassing and campaigning by—
 - (i) using language which is threatening, abusive or insulting or engages in any kind of action which may advocate hatred, incite violence or influence the voters on grounds of ethnicity, race, religion, gender or any other ground of discrimination;
 - (ii) directly or indirectly, using the threat of force, violence, harassment or otherwise preventing the conduct of any political meeting, march, demonstration or other event of a political nature or any other person from attending or participating therein;
 - (iii) creating a material disruption with the intention of preventing a political party from holding a public political meeting;

- (iv) impeding, preventing or threatening to impede or prevent the right of any representative of any political party from gaining access, in the manner and during the hours prescribed to voters in any particular area, whether public or private for the purposes of canvassing and campaigning and soliciting membership and support; or
- (v) impeding, preventing or threatening to impede or prevent a member of the Commission, a representative of the Commission or any other authorised person or organisation engaged in voter education from gaining access, in the refuses or fails to effect a direction, instruction or lawful order issued by or on behalf of the Commission;
- (g) refuses or fails to leave an election counting centre or any area designated by the Commission for electoral purposes when so ordered in accordance with the Elections Act;
- (h) enters or remains in an election centre or in any area designated by the Commission for electoral purposes in contravention of Elections Act;
- (i) obstructs or hinders any elections officer, candidate or agent in the execution of their lawful duties;
- (j) makes a false statement or furnishes false particulars in any statement which is required under Elections Act knowing the statement or particulars to be false or without reasonable grounds for believing the same to be true; or
- (k) publishes, repeats or disseminates in any manner whatsoever, information with the intention of—
 - (i) disrupting or preventing the election;
 - (ii) creating hostility or fear in order to influence the process or outcome of the election; or
 - (iii) otherwise unlawfully influencing the process or outcome of the election, or aids, abets counsels or procures the commission of or attempts to commit any such offence; or
- (l) forges, defaces or destroys any campaign or promotional material of an opposing candidate or political party,

commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.