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REPUBLIC OF KENYA




THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION – 2022

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE CONSIDERATION OF THE ELECTIONS (AMENDMENT) BILL,
(NATIONAL ASSEMBLY BILL NO. 3 OF 2022)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 29 MAR 2022	DAY: Tues
TABLED BY:	Hon. Olago John, MP Member, Jhac
CLERK-AT THE-TABLE:	F. Muniiki

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2022

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CHAIRPERSON'S FOREWORD

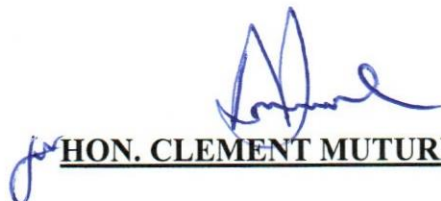
The Elections (Amendment) Bill, (*National Assembly Bill No. 3 of 2022*) sponsored by the Leader of Majority underwent First Reading in the National Assembly on 15th February, 2022 and was committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House pursuant to the provisions of National Assembly Standing Order 127(1).

The principal object of the Bill is to amend the Elections Act, No. 24 of 2011 to provide clearer definitions of the definitions “nomination”, political party” and “registration of candidates”. The Bill further provides for a valid Kenyan passport as requirement during registration as a voter and further provides for the qualifications for transfer of registration among other amendments.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 127 (3), the Committee through advertisement in the local daily newspapers of 17th February, 2022 invited the public to make representations on the Bill. The Committee received submissions from the Attorney-General, Independent Electoral and Boundaries Commission (IEBC), Registrar of Political Parties, Judiciary, Council of Governors, County Assemblies Forum, Kenya Law Reform Commission, Electoral Law and Governance Institute – ELGIA and Civil Society Parliamentary Organization (CSPEN).

May I take this opportunity to commend the Committee Members for their devotion and commitment to duty which made the consideration of the Bill successful. May I also express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing direction and the Committee secretariat for providing technical and logistical support.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House the report of the Committee on the Elections (Amendment) Bill, (*National Assembly Bill No. 3 of 2022*).


HON. CLEMENT MUTURI KIGANO, M.P.

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS**

CHAPTER ONE

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216 (5) which provides for the functions of Departmental Committees as follows:-
 - (a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - (b) *study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
 - (c) *study and review all legislation referred to it;*
 - (d) *study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - (e) *investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - (f) *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - (g) *examine treaties, agreements and conventions;*
 - (h) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - (i) *consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*
 - (j) *examine any questions raised by Members on a matter within its mandate.*

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the subjects of the Committee, as follows-
 - (a) Constitutional affairs;
 - (b) The administration of law and Justice;
 - (c) The Judiciary;
 - (d) Public prosecutions;
 - (e) Elections;
 - (f) Ethics, integrity and anti-corruption; and
 - (g) Human rights.

1.2 Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017. The current membership is as follows-

Chairperson

Hon. Clement Muturi Kigano, M.P.
Kangema Constituency

Jubilee Party

Vice Chairperson

Hon. Francis Tom Kajwang', M.P.
Ruaraka Constituency

Orange Democratic Movement (ODM)

Hon. Emmanuel Wangwe, M.P.
Navakholo Constituency

Jubilee Party

Hon. Junet Sheikh Nuh Mohamed, M.P.
Suna East Constituency

Orange Democratic Movement (ODM)

Hon. John Olago Aluoch, M.P.
Kisumu West Constituency

FORD-Kenya

Hon. George Peter Kaluma, M.P.
Homa Bay Town Constituency

Orange Democratic Movement (ODM)

Hon. Roselinda Soipan Tuyu, M.P.
Narok County

Jubilee Party

Hon. Josephine Naisula Lesuuda, M.P.
Samburu West Constituency

KANU-Kenya

Hon. W. Kamoti Mwamkale, M.P.
Rabai Constituency

Orange Democratic Movement (ODM)

Hon. Zuleikha Hassan, M.P.
Kwale County

Orange Democratic Movement (ODM)

Hon. Jennifer Shamalla, M.P.
Nominated MP

Jubilee Party

Hon. Adan Haji Yussuf, M.P.
Mandera West Constituency

Economic Freedom Party (EFP)

Hon. Daniel Rono Kipkogei, M.P.
Kirinyaga Central

Jubilee Party

Hon. George Gitonga Murugara, M.P.
Tharaka Constituency

Democratic Party (DP)

Hon. Anthony Githiaka Kiai, M.P.
Mukurueni Constituency

Jubilee Party

Hon. Japheth Mutai, M.P.
Bureti Constituency

Jubilee Party

Hon. John Kiarie Waweru, M.P.
Dagoretti South Constituency

Jubilee Party

Hon. Robert Gichimu Githinji, M.P.
Gichugu Constituency

Jubilee Party

Hon. Anthony Oluoch, M.P.
Mathare Constituency

Orange Democratic Movement (ODM)

1.3 Committee Secretariat

4. The Committee secretariat is comprised of;

Mr. Samuel Kalama
Principal Clerk Assistant II
Lead Clerk

Mr. Denis Abisai
Deputy-Director, Legal Services

Ms. Halima Hussein
Clerk Assistant II

Ms. Emma Essendi
Legal Counsel I

Mr. Clive Onyancha
Hansard Reporter III

Dr. Donald Manyala
Research Officer II

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Roselyne Ndegi
Serjeant-at-Arms I

Ms. Noelle Chelangat
Media Liaison Officer

CHAPTER TWO

2.0 OVERVIEW OF THE BILL

5. The principal object of the Bill is to amend the Elections Act, 2011 to provide clarity on provisions raising ambiguity.
6. **Clause 1** of the Bill provides for the short title of the Bill.
7. **Clause 2** of the Bill seeks to amend section 2 of the Act in order to provide for a clearer definition of “nomination” and Political Party”. The Bill also deletes the definition of “nomination day” in the Act; the Bill further seeks to define the term “Registration of candidates” in relation to selection and election of party candidates to cater for the inclusion of new provisions on conduct of party nominations which are to be introduced into the Act.
8. **Clause 3** of the Bill seeks to amend section 5 of the Act to provide that a person must present a valid Kenyan passport during registration as a voter.
9. **Clause 4** of the Bill seeks to repeal section 6 (2) of the Act.
10. **Clause 5** of the Bill seeks to amend section 7 of the Act to provide for qualifications for transfer of registration.
11. **Clause 6** of the Bill seeks to amend section 8A of the Act which relates to the audit of the Register of voters by deleting subsection (3) as it makes reference to the first general election after the commencement of the Election Laws (Amendment) Act, 2016. The provision required the Commission to engage a professional firm to conduct an audit of the Register of voters for the purposes of the first general election.
12. **Clauses 7, 8, 9, 10, 11, 12, 13, 14, 18 and 19** seeks to amend sections 14, 16, 17, 19, 22, 23, 24, 25, 32 and 33 of the Act respectively by deleting the word “nominations” and substituting it with the words “registration of candidates”. This will ensure that there is a clear distinction between the registration of candidates for an election by the Commission and the nomination of a candidate by political parties to contest an election as provided in the Constitution.

13. Further, **clauses 13 and 14** provide that a person shall be qualified for election as a Member of Parliament or county assembly if the person is registered as a voter at the time of the occurrence of the vacancy. Sections 24 and 25 of the Elections Act, 2011 mirror Articles 99 and 193 of the Constitution. The mischief that the IEBC intends to address is to stop a person who was not registered as a voter at the time of the occurrence of a vacancy from vying as a Member of Parliament or a County Assembly.
14. This provision effectively stops the registration of voters at particular times and is applicable both to the aspirants and voters.
15. **Clause 15** amends section 27 of the Act to provide that a party shall submit to the Commission a copy of its nomination rules certified by the Registrar of Political Parties at least six months before the nomination of its candidates. It is to be noted that a similar amendment had been proposed under the Political Parties (Amendment) Act, 2022 (section 31 (a) and the Committee may propose to delete paragraph (a).
16. Further, paragraph (b) provides that in the case of a coalition political party, the coalition political party shall submit a certified copy of its nomination rules issued by the Registrar of Political Parties within fourteen days of its registration.
17. **Clause 16** amends section 28 of the Act to provide that a party shall submit to the Commission a copy of the membership list certified by the Registrar of Political Parties. It is to be noted that a similar amendment had been proposed under the Political Parties (Amendment) Act, 2022 (section 31 (b) and the Committee may propose to delete paragraph (a).
18. The clause further proposes to reduce the timeline for submission of party membership lists by a political party from 120 days to 90 days.
19. **Clause 17** amends section 31 of the Act by deleting subsections (2), (2B), (2C), (2E) and (2F). These are the provisions that mandated the IEBC to conduct party primaries. There have been arguments that the IEBC could not be seen as a fair adjudicator whereby it conducts the party primaries and then adjudicates on the issues arising from the same party primaries that it supervised.

20. **Clause 20** seeks to amend section 39 of the Act to provide for the flow of election results for a presidential election from the presiding officer to the Commission. In the case of *HC 548 of 2017 Nairobi Katiba Institute and 3 others versus the Attorney-General and 2 others* the Court held that a declaration be and is hereby issued that sections 39(1C) (a), 39(1D), 39(1E), 39(1F), 39(1G), and the entire section 83 of the Elections Act, 2011 are constitutionally invalid. Further, in *CA 105 of 2017 Nairobi IEBC versus Maina Kiai and 5 others* the Court held that section 39 (2) and (3) of the Act are unconstitutional. The proposed deletions are in compliance with the court rulings.
21. It is worth noting that section 83 of the Elections Act, 2011 which deals with nullification of an election was declared unconstitutional in the *Katiba Institute* case. Section 83 provides as follows:
- (1) A Court shall not declare an election void for non-compliance with any written law relating to that election if it appears that —*
- (a) the election was conducted in accordance with the principles laid down in the Constitution and in that written law; and*
- (b) the non-compliance did not substantially affect the result of the election.*
- (2) Pursuant to section 72 of the Interpretation and General Provisions Act (Cap. 2), a form prescribed by this Act or the regulations made thereunder shall not be void by reason of a deviation from the requirements of that form, as long as the deviation is not calculated to mislead.*
22. The effect of this is that there are no legal grounds for nullifying or sustaining the results of an election. This has been left to the discretion of the court or judicial officer. The Committee needs to address this vacuum and consult the IEBC on possible solutions.
23. **Clause 21** seeks to amend section 44A of the Act to provide that the Commission shall put in place complementary mechanisms for transmission of election results in addition to the mechanism for identification of voters. These mechanisms shall be provided in Regulations.
24. **Clause 22** seeks to amend section 74 of the Act to provide for a time limit of 48 hours for lodging an electoral dispute with the Commission.
25. **Clause 23** seeks to amend section 75 of the Act to provide that the decision of the High Court on an appeal on the election of a member of a county assembly shall be final.

26. The Bill confers on the Commission the powers to make regulations and it does not limit any fundamental rights or freedoms.
27. The Bill concerns county governments in terms of Article 110 (1) (a) of the Constitution.
28. The Bill is not a money Bill within Article 114 of the Constitution.

CHAPTER THREE

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

29. Pursuant to Standing Order 127(3) of the National Assembly Standing Orders, a committee is obligated to facilitate public participation on a Bill through an appropriate mechanism including-
- a) Inviting submission of memoranda;
 - b) Holding public hearings;
 - c) Consulting relevant stakeholders in the sector; or
 - d) Consulting experts on technical subjects.
30. Public participation is a constitutional imperative flowing from Article 118 of the Constitution which provides that Parliament shall-
- a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and
 - b) Facilitate public participation and involvement in the legislative and other business of Parliament and its committees.
31. Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127 (3), which provide that the Parliament shall facilitate public participation, the Committee placed an advert in the local dailies on 17th February, 2022 inviting the public to submit their views on the Bill to the Clerk of the National Assembly. Copy of the newspaper advertisement is attached to the report as (**Annexure 3**).
32. The following stakeholders submitted comments on the Bill. Copies of the submissions are attached to the report as (**Annexure 4**).
- c) Independent Electoral and Boundaries Commission (IEBC)
 - d) Office of the Registrar of Political Parties,
 - e) Judiciary
 - f) Kenya Law Reform Commission,
 - g) Council of Governors
 - h) County Assemblies Forum
 - i) Electoral Law and Governance Institute – ELGIA
 - j) Civil Society Parliamentary Organization (CSPEN),
33. In processing the Bill, the Committee took into account the memoranda received from the public and its deliberations.

3.1 Stakeholders submissions

CLAUSE	PROPOSAL	JUSTIFICATION	COMMITTEE OBSERVATION	COMMITTEE RECOMMENDATION
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)				
2	The term nomination is problematic as used in the Act as it is used interchangeably to mean party primaries and registration of candidates in different sections.	Need for clarity on the use of terms.	The Committee noted that the use of the word nomination in the Act creates confusion since it is used interchangeable to mean part primaries and registration of candidates for purposes of participating in a general election	The Committee agreed with the Commission
	Delete the words “at least 60 days before an election” appearing after the word “gazetted” and before the word “by”.	Further amended to align with the timelines for nominations provided under section 31 of the Elections Act, 2011.	The Committee noted that the submission by the Commission was not provided for in the proposed amendment in the Bill	The proposal be rejected as it was not provided for in the Bill
3	The issue is whether one can use an expired passport to vote or one needs both the expired and new passport.	The amendment is intended to provide clarity on the use of a valid passport in the election process.	The Committee was of the view that the provision is reasonable because a person should not be allowed to use an expired passport for the initial registration as a voter.	The Committee recommends that the proposal be adopted as published in the Bill as it ensures in case a person chooses to register as a voter using his or her passport, such passport must be “valid”
4	Section 6 addresses the inspection of register of voters whereas section 6A addresses the verification of biometric data. There are conflicting timelines between inspection of register of voters and verification of biometric data.	This is to draw distinction between the period of inspection and verification.	The Committee was of the view that there was need to distinguish between the inspection of the Register of Voters and rectification of the Register of Voters.	The Committee recommends the proposal in Clause 4 of the Bill be dropped and substituted with a new clause to ensure the <i>inspection of the Register of Voters to be continuous but rectification needs to be limited in the case of an election or</i>

				<i>referendum</i>
5	Regulation 13C provides that: <i>A voter is not qualified to transfer his or her registration unless at the date of his or her application to be transferred he or she was ordinarily resident in that constituency six months immediately preceding the date of his or her application to transfer.</i>	The provision in the Act does not indicate what parameters can be applied to ensure (confirm) one's residency.	The Committee noted that the intention of the proposal was to limit mass transfers of voters and that it did not comply with Article 24 (2) of the Constitution on how to limit rights. Further, the Committee was of the view that this provision was not reasonable as provided under Article 38 (3) of the Constitution	The Committee recommends that the clause 5 of the Bill be deleted as it did not comply with Article 24 (2) of the Constitution on how to limit rights and negates the provisions of Article 38 (3).
6	The law makes reference to the first audit upon enactment of the section.	The provision is spent.	The committee noted that the amendment seeks to clean up spent provisions of the Act and is reasonable.	The Committee recommends that the proposal in clause 6 of the Bill be adopted as published
7, 8, 9, 10	These clauses are on the initiation of a Presidential, Parliamentary and County Assembly elections	The interchange of words is a consequential amendment on definition of the words "nomination" and "registration of candidates".	The Committee noted that the proposals are consequential one on definition of the words "nomination" and "registration of candidates".	The Committee recommends that the proposal in clauses 7,8,9 and 10 be adopted as published in the Bill
11, 12, 13	These clauses are on qualifications and disqualifications of Presidential, Parliamentary and County Assembly Members.	Consequential amendment – deletion of the word "nomination" and replacement with the words "registration of candidates"	The proposals are consequential one on definition of the words "nomination" and "registration of candidates".	The Committee recommends that the proposals in clauses 11,12 and 13 be adopted as published in the Bill
13 (b) (ii)	Qualification of a Member of Parliament. The issue arising is how the Commission can ensure that it regulates prospective candidates from vying in an electoral area where they are not registered after the declaration of a vacancy. The intent and purpose of ring-fencing		The Committee was of the view that this proposal was an attempt to amend the Constitution through legislation and does not comply with Article 24 (2) of the Constitution on how to limit rights and was	The Committee recommends that clause 13 of the Bill be amended by deleting paragraph (b) (ii) as the proposal did not comply with Article 24 (2) of the Constitution on how

	under section 5 upon declaration of an election date. This qualifies the period of registration to also cater for by-elections.		not reasonable as provided under Article 38 (3) of the Constitution.	to limit rights and was not reasonable as provided under Article 38 (3) of the Constitution.
15	There is need to harmonise and streamline the submission of party membership list and nomination rules between the ORPP and the IEBC.	Ensures authenticity of submitted nomination rules and membership lists and binds parties to use their lists during their nominations and not the Commission's register of voters.	The Committee noted that similar provision was passed in the Political Parties (Amendment) Act, 2022	The Committee recommends that the proposal in clause 15 of the Bill be amended by deleting paragraph (a) as the same has already been provided for in the Political Parties (Amendment) Act, 2022
16	Amend section 28 of the Act to harmonize and streamline the submission of party membership list and nomination rules between the ORPP and the IEBC	Ensures authenticity of submitted nomination rules and membership lists and binds parties to use their lists during their nominations and not the Commission's register of voters.	The Committee noted that similar provision was passed in the Political Parties (Amendment) Act, 2022	The Committee recommends that the proposal in clause 16 of the Bill be deleted as a similar amendment had been catered for in the Political Parties (Amendment) Act, 2022
17	It raises a conflict of interest where the Commission cannot conduct nomination for parties and subsequently conduct the elections.	This amendment delineates the roles and responsibilities of the Commission and political parties during nomination.	The proposal for deletion is fair as it would ensure that political parties grow democratically and be able to manage their affairs without the involvement of the Commission	The Committee agreed to carry the proposal as it delineates the roles and responsibilities of the Commission and political parties during nomination.
18, 19		Consequential amendments on the definition of the words "nomination" and "registration of candidates". The amendment further seeks to delete section 33(2)	The Committee noted that there is need to delete any reference to nomination and substitute with the words "registration of candidates"	The committee agreed to the to adopt the clauses as published in the bill

		of the Act which requires the Commission to publish in the Gazette the names of persons contesting an election as independent candidates at least 14 days before the nomination day.		
20	How to ensure that the electronic figures correspond with those physically delivered to the Returning Officer.	Sections 39(2) & (3), (1E), (1F) and (1G) were declared unconstitutional in the <i>Maina Kiai</i> Decision.	The Committee noted that in the case of HC 548 of 2017 Nairobi-Katiba Institute and 3 others versus the Attorney-General and 2 others the Court held that a declaration be and is hereby issued that sections 39(1C) (a), 39(1D), 39(1E), 39(1F), 39(1G), and the entire section 83 of the Elections Act, 2011 are constitutionally invalid. The Committee noted the need to recast section 39 of the Elections Act, 2011 to conform the court decision.	Committee recommends that the proposal in clause 20 be dropped and substituted with a new clause to conform with the court decision
21	There is need to provide complementary mechanism for transmission of results as determined by the Supreme Court in 2017.	This amendment gives authority to the Commission to make regulations on the use of these mechanisms as deemed appropriate by the prevailing circumstances.	The Committee was of the view that there is need to have a complementary mechanism for transmission of election results which would be provided in the Regulations. However, as the Regulations directly affect the Members of Parliament. It would be important that they are tabled and	The Committee recommends that the proposal in clause 21 be dropped and substituted with a new clause to provide for a complementary mechanism for transmission of election results

			approved by Parliament before they take effect	
22	There is inconsistency on when a dispute is to be lodged and when it is to be determined.	The amendment clears the ambiguity on when disputes are to be filed before the Commission.	The Committee noted that the provision is reasonable as it seeks to fill a lacuna in the law however the Committee the Committee was of the view that the period of 48 hours within which to lodge a dispute with the Commission was too short and there was need to increase the same to 72 hours from the date of the publication of the notice.	The Committee recommends that the proposal in clause 22 of the Bill be amended and replaced with a new clause to increase the time within which to lodge a dispute with the Commission from 48 to 72 hours from the date of the publication of the notice.
23		Litigation on election petition must end to enable the elected Member to serve the constituents.	The Committee noted the concerns regarding election petitions for Members of the County Assembly. In the case of <i>Hamdia Yaro Shek Nuri v Faith Tumaini Kombe, Amani National Congress & Independent Electoral and Baoundaries Commission [2019] eKLR</i> , the Supreme Court held that Section 75 of the Elections Act, as presently worded, does not confer a second right of appeal to the Court of Appeal in petitions challenging the election of Members of County Assemblies. These appeals should thus end at the High Court.	The Committee recommends that the proposal be adopted to conform with the court rulings

OFFICE OF THE REGISTRAR OF POLITICAL PARTIES (ORPP)				
2	On the new definition of “nomination” - consider adopting the definition under section 2 of the PPA.		The Committee noted definition of “nomination” as provided for in the bill is more comprehensive and the definition in the PPA describes the various modes of conducting nominations that is the ‘direct party nomination and “indirect party nomination”	The Committee rejected the proposal
	On the deletion of “nomination day”	The deletion is in order as it addresses the above cited issues.	The Committee noted that the use of the word nomination in the Act creates confusion since it is used interchangeable to mean part primaries and registration of candidates for purposes of participating in a general election	The Committee agreed with the proposal
	On the deletion of the definition of the word ‘Political Party’ and adopting the definition provided under Section 2 of the PPA.	This is in order as it ensures consistency across legislation. It is to be noted that the definition under the PPA is drawn from the description of a political party under Chapter 7 of the Constitution.	The committee noted that there is need to ensure consistency in the definition of political party with across legislation.	The Committee agreed with the definition as published in the Bill
	On the insertion of a new definition which is “registration of a candidate”	The proposal is consistent with the phraseology under Article 88(4)(f) of the Constitution wherein the Commission is responsible for the “the registration of candidates for election”.	The Committee noted that the use of the word nomination in the Act creates confusion since it is used interchangeable to mean part primaries and registration of candidates for purposes of participating in a general election	The Committee agreed to the definition as proposed in the bill
3	Consider unpacking what invalidity means.	Section 2 of the principal Act defines an identification document to mean Kenyan national	The Committee noted that there is need to amend section 2 of the Act in the definition of “identification	The Committee recommends that the proposal be adopted as it provides clarity

		identification card or a Kenyan passport. It has not been amended to qualify the passport to include the word “valid”.	document” to insert the word “valid” immediately before the word “passport”.	
4		The principle of verification under section 6(2) of the Elections Act, 2011 is catered for under section 6(1).	The Committee was of the view that there was need to distinguish between the inspection of the Register of Voters and rectification of the Register of Voters.	The Committee recommends to amend the proposal to ensure the inspection of the Register of Voters to continuous but rectification needs to be limited in the case of an election or referendum
5		The clause seemingly seeks to address the issue of mass voter transfers. The proposal should be interrogated through the reality of change/loss of jobs and hence relocation. Further, the proposal introduces a limitation of political rights without satisfying Article 24(2) of the Constitution.	The Committee was of the view that this provision did not comply with Article 24 (2) of the Constitution on how to limit rights. Further, the Committee was of the view that this provision was not reasonable as provided under Article 38 (3) of the Constitution	The Committee agreed with the proposal and recommends that the clause be deleted as it did not comply with Article 24 (2) of the Constitution on how to limit rights
6	Delete section 8A (3)	Justifiable as the provision is spent with respect to the first general election under the Act.	The Committee noted that the amendment seeks to clean up spent provisions of the Act and is reasonable.	The Committee recommends that the proposal be agreed to as published in the Bill
7, 8, 9, 10, 11, 12, 13	On deletion of reference to nomination and adopting the term “registration of candidates”.	Consistency across the Act and adherence to the Political Parties Act, 2011 as amended by the Political Parties (Amendment) Act, 2022.	The Committee noted that the proposals provide for consistency across the Act and adherence to the Political Parties Act, 2011 as amended by the Political Parties (Amendment) Act, 2022.	The Committee recommends that the proposal be agreed to as published in the Bill

13 & 14		<p>The Committee should consider Article 99(1) and 193(1) of the Constitution which stipulates, inter alia, that a person is eligible for election as a member of Parliament if the person is a registered voter.</p> <p>If the intention of the proposal is to cure particular mischief, of persons registering as voters after occurrence of a vacancy, the question becomes whether that is mischief or simply pronounced way of exercising political rights.</p>	<p>The Committee noted that Article 38(3) of the Constitution provides that <i>Every adult citizen has the right, without unreasonable restrictions—</i></p> <p><i>(a) to be registered as a voter;</i></p> <p><i>(b) to vote by secret ballot in any election or referendum; and</i></p> <p><i>(c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.</i></p> <p>The Committee was of the view that this proposal was an attempt to amend the Constitution through legislation. It also did not comply with Article 24 (2) of the Constitution on how to limit rights and was not reasonable as provided under Article 38 (3) of the Constitution.</p>	<p>The Committee recommends that clause 13 of the Bill be amended by deleting paragraph (b) (ii) as the proposal did not comply with Article 24 (2) of the Constitution on how to limit rights and was not reasonable as provided under Article 38 (3) of the Constitution.</p>
15	<p>The Bill proposes to amend Section 27(1) by removing the words its 'nomination rules' and replacing it with 'a copy of the political party's nomination rules certified by the Registrar of Political Parties'.</p>	<p>The proposal is consistent with the Political Parties Act, 2011.</p>	<p>The Committee noted that similar provision was passed in the Political Parties (Amendment) Act, 2022</p>	<p>The Committee recommends that the clause 15 of the Bill be amended by deleting paragraph (a) as the same has already been provides for the Political Parties (Amendment) Act, 2022</p>
16	<p>The Bill proposes to amend Section 28 of the Act by deleting in subsection 1 the words 'membership list' and substituting it with 'a copy of the membership list certified</p>	<p>The proposal is consistent with the Political Parties Act, 2011.</p>	<p>The Committee noted that similar provision was passed in the Political Parties (Amendment) Act, 2022</p>	<p>The Committee recommends that the proposal in clause 16 of the bill be deleted as has already been</p>

by the Registrar of Political Parties'			catered for in the Political Parties (Amendment) Act, 2022
The Bill further proposes to replace the 120 days with 90 days which is a justifiable amendment.		<p>Section 28 (1) (a) of the Elections Act, 2011 provides as follows: <i>(1) A political party that nominates a person for an election under this Act shall submit to the Commission a membership list of the party—</i> <i>(a) in the case of a general election, at least one hundred and twenty days before the date of the election;</i> The amendment reduces this period to 90 days. This effectively stops a candidate who participated in the nomination of a political party from vying as an independent candidate.</p>	<p><i>On paragraph (b), this provision was intended stop a candidate from participating in the nominations of a political party and thereafter contesting as an independent candidate as the date of submission of a party membership list is the same as the date for one to contest as an independent candidate as provided under Article 85 of the Constitution.</i></p> <p><i>The law prohibits a person from party hopping and thus it would be fair to also stop a person from moving from a party to contest as an independent. However, the Committee was of the view as the political parties are still young and may have not fully developed their dispute resolution organs, it would only be fair to allow an aggrieved party to still contest in the</i></p>

				<i>election as an independent.</i>
17	The Bill proposes to delete IEBC-party nomination related duties from section 31 including the conduct of party nominations.	This is justified as it fits into Articles 88(4) and 92 of the Constitution through the lenses of the PPA as amended.	The proposal for deletion is fair as it would ensure that political parties grow democratically and be able to manage their affairs without the involvement of the Commission	The Committee agreed to carry the proposal as it delineates the roles and responsibilities of the Commission and political parties during nomination.
18 and 19	The Bill proposes to delete from section 32 and 33 the phraseology that speaks to “nomination” “nomination day” “nominated” and replacing the same with variations of “registered”	Consistency across the Act and adherence to the Political Parties Act, 2011 as amended by the Political Parties (Amendment) Act, 2022.		The Committee agreed with the definition in the bill as published
19	The Bill proposes deletion of subsection (2) under section 33 which requires the Commission to publish in the Gazette, the names of persons intending to contest in the election as independent candidates at least fourteen days before the nomination day.	The Gazette Notice serves as point of information to the prospective independent candidates and the general public noting the role of the Commission in approving symbols under section 32(3); i.e. the Commission is under duty not to approve a symbol that nearly resembles the symbol of any other legal entity registered under any other written law.	The noted that there is need to delete any reference to nomination and substitute with registration to	The Committee agreed with the provision as published in the bill
22	The Bill proposes to amend Section 74 of the Act by adding subsection 1A which reads, “An electoral dispute under subsection (1) shall be lodged with the Commission within forty-eight hours after the last day for registration of candidates specified in the	A justified amendment to provide for timelines as there was no clarity in terms of the lifespan of the 10 days under Section 74(2) in terms of when it starts running.	The Committee noted that the provision is reasonable as it seeks to fill a lacuna in the law however the Committee was of the view that the period of 48 hours within which to lodge a dispute with the Commission	The Committee recommends that the clause 22 be amended and replaced with a new clause to increase the time within which to lodge a dispute

	notice.”		was too short and there was need to increase the same to 72 hours from the date of the publication of the notice.	with the Commission from 48 to 72 hours from the date of the publication of the notice.
23	The Bill proposes to amend Section 75 of the Act by capping appeals regarding MCA election petitions at the High Court level with the High Court decision’s being final.	Finality.	The Committee noted the concerns regarding election petitions for Members of the County Assembly. In the case of <i>Hamdia Yaroi Shek Nuri v Faith Tumaini Kombe, Amani National Congress & Independent Electoral and Baoundaries Commission [2019] eKLR</i> , the Supreme Court held that Section 75 of the Elections Act, as presently worded, does not confer a second right of appeal to the Court of Appeal in petitions challenging the election of Members of County Assemblies. These appeals should thus end at the High Court.	The Committee recommends that the proposal be adopted to conform with the court rulings

JUDICIARY

2	In support	In light of the decision of the Court of Appeal in <i>Kibeh v Waibara & another (Civil Appeal E468 of 2020) [2022]</i> , we welcome the proposed amendments to Section 2 of the Elections Act with respect to the definition of 'nomination' and the introduction of 'registration of a	The Committee noted that the use of the word nomination in the Act creates confusion since it is used interchangeable to mean part primaries and registration of candidates for purposes of participating in a general election	The Committee agreed with the proposal
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		<p>candidate' as a distinct stage in the electoral process.</p> <p>The proposed amendment will provide much needed clarity on the various stages of the electoral process by drawing a clear distinction between the selection of candidates by political parties vis-à-vis the registration of those candidates by the electoral body.</p>		
23	In support	<p>In <i>Hamdia Yaroi Shek Nuri v Faith Tumaini Kombe, Amani National Congress & Independent Electoral and Baoundaries Commission [2019] eKLR</i>, the Supreme Court held that Section 75 of the Elections Act, as presently worded, does not confer a second right of appeal to the Court of Appeal in petitions challenging the election of Members of County Assemblies. We therefore support Clause 23 of the Elections (Amendment) Bill which seeks to amend Section 75 of the Elections Act</p>	<p>The Committee noted the concerns regarding election petitions for Members of the County Assembly. In the case of <i>Hamdia Yaroi Shek Nuri v Faith Tumaini Kombe, Amani National Congress & Independent Electoral and Baoundaries Commission [2019] eKLR</i>, the Supreme Court held that Section 75 of the Elections Act, as presently worded, does not confer a second right of appeal to the Court of Appeal in petitions challenging the election of Members of County Assemblies. These appeals should thus end at the High Court.</p>	<p>The Committee recommends that the proposal be adopted to conform with the court rulings</p>

		to provide expressly that the decision of the High Court in such appeals shall be final.		
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KENYA LAW REFORM COMMISSION

2	Substitution of the definition of “nomination” clarifies the definition.		The Committee noted that the use of the word nomination in the Act creates confusion since it is used interchangeable to mean part primaries and registration of candidates for purposes of participating in a general election	The Committee adopted the definition of nomination as published in the bill
	The rationale for deletion of “nomination day” is not clear.	It is proposed that the term ‘nomination day’ be substituted with “nomination period”	The proposal to retain the definition is not tenable since the definition contains a substantive provision which should ordinarily be provided for in the body of the Act.	
	Substitution of the definition of “political party” is in line with the definition contained in the Political Parties Act.			The Committee adopted the definition of political party as provided in the political parties Act 2022
	Insertion of the definition of term “registration of a candidate is not necessary if the term “nomination period” is adopted instead of “nomination day”.		The term “registration of candidates” will still be necessary even if the term “nomination period” is adopted as they refer to two different stages in an election.	The Committee adopted the definition of the term as published in the bill
	Political party coalitions do not have their own members but individual parties in the coalition have their own members.		The Committee noted that this provision is misplaced.	Rejected the proposal
3	Insertion of the term “valid” before “identity card” is not necessary since an invalid identity card is not an	Drop the proposed amendment	The word “valid” refers to a passport and not an identity card. The Committee noted that the	The Committee recommends that the proposal be adopted as it

	identity card for purposes of the law.		revision is reasonable because a person should not be allowed to use an expired passport for the initial registration as a voter.	ensures in case a person chooses to register as a voter using his or her passport, such passport must be “valid”
4	Deletion of subsection 2 requiring IEBC to open the register for inspection within 90 days after notification of a general election is proper since subsection (1) provides that the register shall be open for inspection at all times except as provided under the law.		The Committee was of the view that there was need to distinguish between the inspection of the Register of Voters and rectification of the Register of Voters.	The Committee recommends the proposal in Clause 4 of the Bill be dropped and substituted with a new provision to ensure that the inspection of the Register of Voters should be at all times but rectification needs to be limited in the case of an election or referendum
5	Insertion of subsection 3 providing for grounds under which a voter may transfer their registration provides more clarity		The Committee noted that the intention of this proposal was to limit mass transfers of voters. The Committee was of the view that this provision did not comply with Article 24 (2) of the Constitution on how to limit rights. Further, the Committee was of the view that this provision was not reasonable as provided under Article 38 (3) of the Constitution	The Committee recommends that the clause be deleted as it did not comply with Article 24 (2) of the Constitution on how to limit rights
6	Deletion of subsection (3) which relates to the first general elections under the Act is proper since it has become spent.		The Committee noted that the amendment seeks to clean up spent provisions of the Act and is reasonable.	The Committee recommends that the proposal be agreed to as published in the Bill

New Proposals	Amendment of sections 9, 10, 11, 12, 13, 14, 18, 19, 22, 23, 24 and 25. Amendments to sections 32 and 33 are similar	It is not clear how the deletion of the term “nomination” and substitution thereof of the term “registration of candidates” ensures “clear delineation of the roles of the Commission and the Registrar of Political Parties”. It is proposed that the term ‘nomination day’ be substituted with “nomination period”. Sections 22, 23, 24 and 25 do not require to be amended.	There is a distinction between “registration of candidates” and “nomination” and there is need to retain the words in the Bill.	The Committee retained the word nomination and registration in the bill
15		The proposed amendments requiring a certified copy of nomination rules and requiring coalition political parties to nomination rules within 14 days are proper as they align with the provisions of the Political Parties Act, 2022.	The Committee noted that similar provision was passed in the Political Parties (Amendment) Act, 2022	The Committee recommends that the clause 15 of the Bill be amended by deleting paragraph (a) as the same has already been provides for the Political Parties (Amendment) Act, 2022
16		Proposal to require that membership list of a political party be certified and reduction of the timeline for submission from 120 to 90 days..	The Committee noted that similar was passed in the Political Parties (Amendment) Act, 2022	The Committee recommends that the proposal in clause 16 of the bill be deleted as has already been catered for in the Political Parties (Amendment) Act, 2022
17	The proposed amendment seeks to delete the provisions	These provisions are intended to give	There is a conflict of interest when the	The Committee agreed to carry the

	relating to conduct of political party nominations by the Commission upon request, submission of names of party candidates, gazetting of names and the requirement that Parliament appropriates moneys to give effect to these provisions.	effect to the constitutional requirement contained in Article 82 of the Constitution that the Commission is responsible for supervision of elections including the nomination of candidates for elections. It is proposed that these amendments be dropped.	Commission conducts nominations, settles disputes arising from the nominations and ultimately conducts election. The proposal for deletion is fair as it would ensure that political parties grow democratically and be able to manage their affairs without the involvement of the Commission	proposal in clause 17 of the Bill since it delineates the roles and responsibilities of the Commission and political parties during nomination.
20	<p>The proposed amendment seeks to amend the manner transmission of presidential election results by assigning specific officers (namely the presiding officer and the constituency returning officer) the responsibilities of both electronic transmission and physical delivery in person for the results in prescribed form. The deletion of subsections (1E), (1F), (1G) (2) and (3) appears to lose some important safety and precautionary provisions including:</p> <ul style="list-style-type: none"> a) <i>Verification of results by the IEBC by comparing electronic and physical transmissions</i> b) <i>Possibility of failure of electronic transmission;</i> c) <i>Public information including livestreaming of the results by the Commission</i> d) <i>Early declaration of the winner where delayed results are unlikely to affect the result of the election.</i> 	It is proposed that subsections (1E), (1F), (1G) (2) and (3) should not be deleted.	The Committee noted that in the case of <i>HC 548 of 2017 Nairobi Katiba Institute and 3 others versus the Attorney-General and 2 others</i> the Court held that a declaration be and is hereby issued that sections 39(1C) (a), 39(1D), 39(1E), 39(1F), 39(1G), and the entire section 83 of the Elections Act, 2011 are constitutionally invalid. Further, in <i>CA 105 of 2017 Nairobi IEBC versus Maina Kiai and 5 others</i> the Court held that section section 39 (2) and (3) of the Act are unconstitutional.	Committee recommends that the proposal in clause 20 be dropped and substituted with a new provision to conform the court decision

21	The amendment seeks to delegate to the Commission the power to make Regulations for identification of voters and transmission of election results.		The Committee was of the view that there is need to have a complementary mechanism for transmission of election results which would be provided in the Regulations. However, as the Regulations directly affect the Members of Parliament. It would be important that they are tabled and approved by Parliament before they take effect	The Committee recommends that the proposal in clause 21 be amended and substituted with a new provision to provide for a complementary mechanism for transmission of election results
22	Introduces a provision to the effect that electoral disputes be filed with the Commission 48 hours after registration of candidates.	The timeline is too short, consider dropping the amendment.	The Committee noted that the provision is reasonable as it seeks to fill a lacuna in the law however the Committee the Committee was of the view that the period of 48 hours within which to lodge a dispute with the Commission was too short and there was need to increase the same to 72 hours from the date of the publication of the notice.	The Committee recommends that the proposal in clause 22 of the Bill be amended to increase the time within which to lodge a dispute with the Commission from 48 to 72 hours from the date of the publication of the notice.
23	Proposed amendment provides that a determination of the High Court on appeal for a dispute involving member of county assembly shall be final.		The Committee noted that the concerns regarding election petitions for Members of the County Assembly. In the case of <i>Hamdia Yaroi Shek Nuri v Faith Tumaini Kombe, Amani National Congress & Independent Electoral and Baoundaries Commission [2019] eKLR</i> , the Supreme Court held that Section 75 of the Elections Act, as presently worded, does not confer a second right	The Committee recommends that the proposal in clause 23 of the Bill be adopted to conform with the court rulings

			of appeal to the Court of Appeal in petitions challenging the election of Members of County Assemblies. These appeals should thus end at the High Court.	
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COUNCIL OF GOVERNORS

20	Delete paragraph (e) which proposes the deletion of subsection (1G).		The Committee noted that in the case of HC 548 of 2017 Nairobi-Katiba Institute and 3 others versus the Attorney-General and 2 others the Court held that a declaration be and is hereby issued that sections 39(1C) (a), 39(1D), 39(1E), 39(1F), 39(1G), and the entire section 83 of the Elections Act, 2011 are constitutionally invalid. The Committee noted the need to recast section 39 of the Elections Act, 2011 to conform the court decision.	The Committee recommends that the proposal in clause 20 be dropped and substituted with a new provision to conform the court decision
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COUNTY ASSEMBLIES FORUM

5	Amend to provide for both constituency and County	The Forum appreciates Parliament for providing clear grounds for the transfer of registration of a Voter from one constituency to another. Elections in Kenya have been marred by migration of voters from one constituency to another in order to influence the voter turnout of a constituency which leads to	The concern by the County Assemblies Forum is already provided for in the provision since a person seeking to transfer registration to another county will still have to meet the requirements as regards constituencies since every part of the country must fall within the geographical jurisdiction of a specific constituency. The Committee noted that the intention of this proposal was to limit mass transfers of voters.	The Committee recommends that the clause be deleted as it did not comply with Article 24 (2) of the Constitution on how to limit rights
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		circumventing the electoral wishes of original occupants of a constituency. Parliament should include County under the clause as this problem also faces Counties.	The Committee was of the view that this provision did not comply with Article 24 (2) of the Constitution on how to limit rights. Further, the Committee was of the view that this provision was not reasonable as provided under Article 38 (3) of the Constitution	
20	Seeks to amend section 39 of the Act to provide for the flow of election results for a presidential election result from the presiding officer.	There is need to be cautious about this clause as it might raise integrity and credibility issues after elections due to the close timing to General Elections.	The Committee noted that in the case of HC 548 of 2017 Nairobi-Katiba Institute and 3 others versus the Attorney-General and 2 others the Court held that a declaration be and is hereby issued that sections 39(1C) (a), 39(1D), 39(1E), 39(1F), 39(1G), and the entire section 83 of the Elections Act, 2011 are constitutionally invalid. The Committee noted the need to recast section 39 of the Elections Act, 2011 to conform the court decision.	The Committee recommends that the proposal in clause 20 be dropped and substituted with a new provision to conform with the court decision
21	Seeks to amend Section 44A of the principal Act, to provide for complimentary mechanisms for voter identification and transmission of election results by adding “and transmission of election results” immediately after the words “identification of Voters”	There is need to be cautious about this clause as it might raise integrity and credibility issues after elections due to the close timing to General Elections.	The Committee was of the view that there is need to have a complementary mechanism for transmission of election results which would be provided in the Regulations. However, as the Regulations directly affect the Members of Parliament. It would be important that they are tabled and approved by Parliament before they take effect	The Committee recommends that the proposal in clause 21 be dropped and substituted with a new clause to provide for a complementary mechanism for transmission of election results

23	Amend to 75 (5) to allow determination of Court of Appeal to be final on matters of laws.	What is the basis of limiting the Member of County Assembly to High Court as the last appellant court? An MCA has a right to access justice until all available options are exhausted. All other elective seats except the president can appeal to the Court of Appeal. The Forum kindly request this limitation be removed in totality.	The Committee noted that in the <i>Hamdia Yaro v Shek Nuri v Faith Tumaini Kombe, Amani National Congress & Independent Electoral and Boundaries Commission [2019] eKLR</i> , the Supreme Court held that Section 75 of the Elections Act, as presently worded, does not confer a second right of appeal to the Court of Appeal in petitions challenging the election of Members of County Assemblies.	The Committee recommends that the proposal in clause 23 of the Bill be adopted to conform with the court rulings
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CIVIL SOCIETY PARLIAMENTARY ENGAGEMENT NETWORK (CSPEN)

2	On the new definition of “nomination” and the deletion of “nomination day”	There was need to have comprehensiveness of definitions/motives. *Black’s Law Dictionary defines Nomination as an appointment or designation of a person to fill an office or discharge a duty. The act of suggesting or proposing a person by name as a candidate for an office.	The Committee noted that the use of the word nomination in the Act creates confusion since it is used interchangeable to mean part primaries and registration of candidates for purposes of participating in a general election	The Committee adopted the proposal as published in the Bill
	On the new definition of “political party”	The definition of a political party under Art. 260 of the Constitution, meaning an association contemplated under Part 3 of Chapter 7 (Basic requirements of a political party & legislation on	The definition aligns it with the definition in the Political Parties (Amendment) Act, 2022	The Committee adopted the definition of political parties as published in the Bill

		political parties). The proposed amendments are aligned with Political Parties (Amendment) Act, 2022 and in line with the definition as encapsulated under the Constitution.		
	On the insertion of a new definition which is “registration of a candidate”	This is one of the recommendations of IEBC to the extent that the Elections Act, 2011 does not use the term “Party Primaries” at all. The Election Laws (Amendment) Act of 2016 and 2017 use the term “party primaries”. It uses the term “party nomination” to mean “registration of candidates” for election. This calls for harmonization of the laws to cure the incoherence and uncertainty.	The definition of registration of candidates distinguishes the process of nomination of candidates by political parties hence introducing clarity	The Committee adopted the definition of registration of candidates as published in the bill
3	On the requirement to have a “valid” Kenyan passport in order to register as a voter CSPEN proposes that this amendment should be deleted. In the alternative, it should be defined to avoid its ambiguous nature. The Bill also has to make a distinction between authenticity and validity. Who determines if the passport is authentic? Further, the section should	The proposed amendment is contentious as the question of the validity of a passport was unnecessary as the same was only required to be used as a verification document of identity and citizenship and not for purposes of travel where validity of the	Section 5 deals with the registration of voters. Section 3 deals with the right to vote whereby sub section (2) provides that <i>a citizen shall exercise the right to vote if the citizen is registered in the Register of Voters</i> . An expired passport is not a valid document and thus the amendment is for purposes of emphasis on the need to have a valid document.	The Committee recommends that the proposal be adopted as it ensures in case a person chooses to register as a voter using his or her passport, such passport must be “valid”

	be widened to allow a person to register as a voter even using a driving licence or any other legally recognised document without imposing unnecessary restrictions.	document would arise.		
4	<p>(a) The proposed deletion of section 6 (2) is welcome.</p> <p>(b) However, the wording of subsection (1) needs to be amended to ensure that the timeframe for the opening of the Principal Register of Voters is specified and not left at the discretion of the IEBC. In particular, the wordings “except for such period of time as the Commission may consider appropriate” need to be deleted.</p> <p>(c) On this basis, there are two legislative options. Either the discretion bestowed upon the IEBC needs to be removed and left to the Act to define or it is left to the IEBC entirely to decide. It should not be both as it causes confusion.</p> <p>(d) There should also be a distinction between “inspection” and “rectification”. Our recommendation is that the rectification period should be at least 1 month to the election but the inspection period</p>	<p>Sec. 4 of the Election Act dictates that there be a register in respect of every polling station, ward, constituency, county and voters residing outside Kenya.</p> <p>Sec. 5(1) of the Elections Act, provides that voter registration is a continuous process. Prior to the amendments introduced to the Elections Act in 2016, there was confusion as to the status of the Register of Voters. In the cases of <i>Diana Kethi Kilonzo & another v Independent Electoral & Boundaries Commission & 10 others</i> [2013] eKLR and <i>Raila Odinga & 5 Others v. Independent Electoral and Boundaries Commission & 3 Others</i> (2013) eKLR, the court recognized that the register of voters is not a single document, but is an</p>	<p>The Committee was of the view that there was need to distinguish between the inspection of the Register of Voters and rectification of the Register of Voters.</p>	<p>The Committee recommends the proposal in Clause 4 of the Bill be dropped and substituted with a new clause to ensure that the inspection of the Register of Voters should be continuous but rectification needs to be limited in the case of an election or referendum</p>

	<p>should be all through.</p> <p>(e) The opening of a data portal on IEBC would be crucial towards the attainment of this and promoting trust in the Register.</p>	<p>amalgam of several parts prepared to cater for diverse groups of electors.</p> <p>Sec. 4(2) of the Elections Act as read together with Regulation 12(3) of the Elections (Registration of Voters) Regulations, 2012 requires the Commission to compile the register of voters comprising of components under section 4 of the Act. However, the law does not assign a name to the compiled register.</p> <p>Section 2(d) of the Elections Laws (Amendment) Act No. 36 of 2016 deleted the definition “Principal Register of Voters” and substituted it with ‘register of voters’. The intention was to cure the problem of multiplicity of registers that was experienced during the 2013 elections.</p>		
5	Delete	<p>Is this an affront to the conditions to register as a voter as espoused under Art. 38(1) (2) & (3) and 83 of the Constitution? IEBC Recommendation in its Post Evaluation Report had</p>	<p>The Committee noted that the intention of this proposal was to limit mass transfers of voters.</p> <p>The Committee was of the view that this provision did not comply with Article 24 (2) of the Constitution on how to</p>	<p>The Committee recommends that the clause 5 of the Bill be deleted as it did not comply with Article 24 (2) of the Constitution on how to limit rights</p>

		<p>proposed an amendment to the Elections Act to prohibit prospective candidates from voting in electoral areas other than those in which they are registered as voters, its recommendation did not touch on voters but prospective candidates. The proposed amendment is contentious and it contravened Article 38(1) (2) (3) and 81 of the Constitution of Kenya, it infringed on individual political rights while intending to cure a moral issue.</p>	<p>limit rights. Further, the Committee was of the view that this provision was not reasonable as provided under Article 38 (3) of the Constitution</p>	
6	In support	<p>The proposed amendment is in order as it was meant for the first election after the amendment.</p>	<p>The amendment seeks to clean up spent provisions of the Act and is reasonable.</p>	<p>The Committee recommends that the proposal in clause 6 of the Bill be agreed to as published in the Bill</p>
7	In support	<p>In line with the terminologies as used in the Political Parties (Amendment) Act, 2022.</p>	<p>The proposal is consequential one definition of the words “nomination” and “registration of candidates”</p>	<p>The Committee recommends that the proposal in clause 7 of the Bill be agreed to as published in the Bill</p>
8	In support	<p>This is one of the recommendations of IEBC to the extent that the Elections Act does not use the term “Party Primaries” at all, the Election</p>	<p>The proposal is consequential one definition of the words “nomination” and “registration of candidates”</p>	<p>The Committee recommends that the proposal in clause 8 of the Bill be agreed to as published in the Bill</p>

		Laws (Amendment) Act of 2016 and 2017 use the term party primaries. It uses the term “party nomination” to mean registration of candidates for election. This calls for harmonization of the laws to cure the incoherence and uncertainty.		
9	In support	Proposal in line with the Political Parties (Amendment) Act, 2022.	The proposal is consequential one definition of the word “nomination” and “registration of candidates”	The Committee recommends that the proposal in clause 9 of the Bill be agreed to as published in the Bill
10	In support	Proposal in line with the Political Parties (Amendment) Act, 2022.	The proposal is consequential one definition of the word “nomination” and “registration of candidates”	The Committee recommends that the proposal in clause 10 of the Bill be agreed to as published in the Bill
11	In support	Proposal in line with the Political Parties (Amendment) Act, 2022.	The proposal is consequential one definition of the word “nomination” and “registration of candidates”	The Committee recommends that the proposal in clause 11 of the Bill be agreed to as published in the Bill
12	In support	Proposal in line with the Political Parties (Amendment) Act, 2022.	The proposal is consequential one definition of the word “nomination” and “registration of candidates”	The Committee recommends that the proposal in clause 12 of the Bill be agreed to as published in the Bill

13	Delete paragraph (b) (ii) as it is unconstitutional		The Committee was of the view that this proposal was an attempt to amend the Constitution through legislation. It also did not comply with Article 24 (2) of the Constitution on how to limit rights and was not reasonable as provided under Article 38 (3) of the Constitution	The Committee recommends that clause 13 of the Bill be amended by deleting paragraph (b) (ii) as the proposal did not comply with Article 24 (2) of the Constitution on how to limit rights and was not reasonable as provided under Article 38 (3) of the Constitution.
14	Delete paragraph (b) (ii) as it is unconstitutional	IEBC proposed an amendment to the Elections Act to prohibit prospective candidates from voting in electoral areas other than those in which they are registered as voters. There is need for clarification whether this was constitutional or a recommendation to deal with a morally untidy situation. As the bare minimum constitutional requirement was that one be a registered voter, the same needed to be maintained. The voters should have the option of selecting their preferred candidate on the ballot as opposed to arbitrary restrictions that may have negative	<p><i>The Committee was of the view that this proposal was an attempt to amend the Constitution through legislation. It also did not comply with Article 24 (2) of the Constitution on how to limit rights and was not reasonable as provided under Article 38 (3) of the Constitution.</i></p> <p><i>To curb the mischief of a person contesting in an election yet they had not registered as a voter at the time of the occurrence of the vacancy, the Committee has addressed this in its proposal under clause 3.</i></p>	The Committee agreed with the proposal by the stakeholder and recommended deletion of paragraph (b) (ii).

		ramifications on their right to vote.		
15	In support and the certification should also apply to the coalition nomination rules.	Proposal in line with the Political Parties (Amendment) Act, 2022.	The Committee noted that a similar amendment to paragraph (a) had been passed in the Political Parties (Amendment) Act, 2022 (section 31 (b)).	The Committee recommends that the clause 15 of the Bill be amended by deleting paragraph (a) as the same has already been provided for the Political Parties (Amendment) Act, 2022
16	In support	Proposal in line with the Political Parties (Amendment) Act, 2022 and election timelines. IEBC had proposed an amendment to Sec. 27 and 28 of the Elections Act to require the Commission to receive Political Party Membership Lists and Nomination Rules from ORPP to ensure consistency and authenticity. This has not been effected and as such parties will still be required to submit this to IEBC.	The Committee noted that a similar provision to paragraph (a) was passed in the Political Parties (Amendment) Act, 2022 (section 31 (b)).	The Committee recommends that the proposal in clause 16 of the bill be deleted as has already been catered for in the Political Parties (Amendment) Act, 2022
17	In support	IEBC had made a proposal to seek a repeal of sec 31 (2) of the Elections Act, 2011 to remove the conflict of interest where the Commission conducts and supervises party primaries, then sits	The Committee noted ed that the proposed for deletion fair as it would ensure that political parties grow democratically and be able to manage their affairs without the involvement of the Commission	The Committee agreed to carry the proposal in clause 17 of the Bill since it delineates the roles and responsibilities of the Commission and political parties during nomination.

		thereafter later to determine disputes arising in the said primaries. The proposed amendment is welcome. However, there are concerns that the nominations process will be marred with confusion and ultimately wind up as not free and fair contrary to Constitutional ideals.		
18	In support	Proposal in line with the Political Parties (Amendment) Act, 2022.		The Committee agreed to the clause as published
19	In support	Proposal in line with the Political Parties (Amendment) Act, 2022.		The Committee agreed to the clause as published
20		The addition of section 39 (c) and (d) defeated the spirit of the <i>Maina Kiai</i> case that declared the transmission of results from a polling station as final. Furthermore, the clause was contentious as it would occasion delays in the announcement of the presidential results as the same needed to be tabulated at the constituencies by the Returning	The Committee noted that in the case of HC 548 of 2017 Nairobi- Katiba Institute and 3 others versus the Attorney-General and 2 others the Court declared sections 39(1C) (a), 39(1D), 39(1E), 39(1F), 39(1G), and the entire section 83 of the Elections Act, 2011 constitutionally invalid. The Committee noted the need to recast section 39 of the Elections Act, 2011 to conform the court decision.	Committee recommends that the proposal in clause 20 be dropped and substitute with a new provision to conform the court decision

		<p>Officers. The provision also requires the Presiding Officers to only send “images” and not “results” which is not practical. If Presiding Officers declare final results and presidential tallying is based on results from POs, then there is no need for them to send only images. The proposal contained in the Bill is even murkier than what was in the Act. It also increases the risk of result tampering and discrepancies between ROs results and PO images. There are concerns that there may be a deliberate failure of the electronic system to ensure that the manual transmission is used. The provision also conflicts with clause 20 (e) which requires the commission to use results from the POs to tally, verify and declare results yet the POs will not be sending any results directly to the commission.</p>		
21		<p>The contention on this clause is that with its adoption</p>	<p>The Committee was of the view that there is need to have a complementary</p>	<p>Committee recommends that the proposal in</p>

		we risk having two parallel results. It diminishes the requirement to have simultaneous transmission of results which was specifically meant to ensure there was no room for manipulation of results.	mechanism for transmission of election results which would be provided in the Regulations. However, as the Regulations directly affect the Members of Parliament. It would be important that they are tabled and approved by Parliament before they take effect	clause 21 be dropped and substitute with a new clause to provide for a complementary mechanism for transmission of election results
22	Amend the timeline	The proposed timeline may be limiting as it may <i>not</i> constitute sufficient time for litigants to prepare themselves and gather evidence required for their causes of action.	The Committee noted that the provision is reasonable as it seeks to fill a lacuna in the law however the Committee the Committee was of the view that the period of 48 hours within which to lodge a dispute with the Commission was too short and there was need to increase the same to 72 hours from the date of the publication of the notice.	The Committee recommends that the proposal in clause 22 of the Bill be dropped and replaced with a new clause to increase the time within which to lodge a dispute with the Commission from 48 to 72 hours from the date of the publication of the notice.
23	In support	The proposed amendment is justified, litigation has to end at some point as the existing avenues of appeal were enough.	The Committee noted that the concerns regarding election petitions for Members of the County Assembly. In the case of <i>Hamdia Yaro</i> <i>Shek Nuri v Faith Tumaini Kombe, Amani National Congress & Independent Electoral & Boundaries Commission</i> [2019] eKLR, the Supreme Court held that Section 75 of the Elections Act, presently worded, does not confer a second right of appeal to the Court of Appeal in petitions challenging the election	The Committee recommends that the proposal be adopted as published in the Bill to conform with the court rulings

			Members of Court Assemblies. These appeals should thus end at the High Court.	
ELECTORAL LAW AND GOVERNANCE INSTITUTE FOR AFRICA (ELGIA)				
2		<p>The Bill seeks to introduce the meaning of registration of candidates in section 2 of the Elections Act to align the Act with the definition of nomination in the Political Parties Act as Amended in 2022. This provision clarifies the meaning of nomination to align with practice and the Amendments introduced by the Political Parties (Amendment) Act, 2021. The amendments purpose to achieve the proper understanding of nomination as a two stage process which include:</p> <p>(a) nomination by political parties in the first instance; and</p> <p>(b) Submission of political party nominees and registration of candidates by the IEBC.</p> <p>Several clauses of the Amendment Bill are intended to clean up the provisions in the</p>	<p>The Committee noted the use of the word nomination in the Act creates confusion since it is used interchangeably to mean party primaries and registration of candidates for purposes of participation in a general election</p>	<p>The Committee agreed with the provision as published in the bill</p>

		Principal Act to bring clarity on use of nomination and registration of candidates as a consequence of this Amendment.		
		Clause 5 Amends Section 7 of the Elections Act to provide for qualifications or pre-conditions for a voter seeking to transfer their place of registration. The Principal Act did not provide for qualifications for registration of voters based on interest or residence contained in the old CAP 7. These were seen as potentially curtailing or limiting the Article 38 rights. The current amendment should justify and specify the extent of this proposed limitation.	The intention of the proposal in clause 5 is to limit mass transfers of voters. The Committee was of the view that this provision did not comply with Article 24 (2) of the Constitution on how to limit rights. Further, the Committee was of the view that this provision was not reasonable as provided under Article 38 (3) of the Constitution. The proposal in clause 7 of the Bill is a consequential one on definition of the words “nomination” and “registration of candidates”.	The Committee recommends that the clause 5 of the Bill be deleted as it did not comply with the provision of Article 24 (2) of the Constitution on how to limit rights.
15		Clause 15 amends Section 27 of the Act to provide that political parties shall submit to the Commission the Nomination Rules certified by the Registrar of Political Parties. The current section does not have certification by the Registrar of Political Parties as a precondition.	The Committee noted that similar a similar provision was passed in the Political Parties (Amendment) Act, 2022	The Committee recommends that clause 15 of the Bill be amended by deleting paragraph (a) as the same has already been provides for the Political Parties (Amendment) Act, 2022

		<p>Clause 15(b) requires Coalition Political Parties to submit their Nomination Rules certified by the Registrar to the Commission. These are consequential amendments to bring the Elections Act in accord with the Political Parties Act as amended by the Political Parties (Amendment) Act, 2021.</p>		
16		<p>Clause 16 seeks to amend Section 28 of the Act to require political parties to submit their membership lists certified by the Registrar of Political Parties. This provision aligns the Elections Act with the powers of the Registrar in respect to the nomination process provided under the Political Parties (Amendment) Act, 2021.</p>	<p>The Committee noted that a similar amendment to paragraph (a) was passed in the Political Parties (Amendment) Act, 2022 (section 31 (b)).</p>	<p>The Committee recommends that the proposal in clause 16 of the bill be deleted as a similar amendment was passed as a consequential amendment to the Elections Act, 2011 and thus this is already catered for in the Political Parties (Amendment) Act, 2022</p>
20		<p>The current amendment to Section 39 contained in the Elections (Amendment) Act 2022 is presented as an innocent initiative to provide clarifications on the sequence of collation of the Presidential Results. The position</p>	<p>In the case of <i>HC 548 of 2017 Nairobi Katiba Institute and 3 others versus the Attorney-General and 2 others</i> the Court held that a declaration be and is hereby issued that sections 39(1C) (a), 39(1D), 39(1E), 39(1F), 39(1G), and the entire section 83 of the</p>	<p>Committee recommends that the proposal in clause 20 be dropped and substitute with a new clause to conform with the court decision</p>

	<p>is however sufficiently provided for in the current Section 39 and the Regulations. At any rate the amendment as drafted attempts to introduce a nuanced recast of the proper reading of Section 39 by the Courts in previous decisions.</p> <p>The Amendment Act re-introduces the word “verify” which has been the subject of controversy and whose import has been perhaps put beyond doubt by the Courts in the three determinations <i>(Maina Kiai (2017) High Court and Court of Appeal, Raila Odinga 2 (2017) – Supreme Court and Katiba Institute (2017) – High Court</i>. The amendment also only specifies image of the polling station declaration form for electronic transmission. In practice the Presiding Officers transmits both the tabulation contained in the polling station forms and the image of the declaration form. This provides a double check and instantaneous cumulative tally of</p>	<p>Elections Act, 2011 are constitutionally invalid. Further, in <i>CA 105 of 2017 Nairobi IEBC versus Maina Kiai and 5 others</i> the Court held that section section 39 (2) and (3) of the Act are unconstitutional. Therefore one cannot rely on section 39 as is currently in the statute book and there is need to amend the same to fill the gaps.</p>	
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		<p>the presidential results as the results are declared across the country. To this extent, the Amendment Act, ostensibly attempts to enact the minority opinion in Raila Odinga 2017. It seeks to achieve a significant recast of the result transmission through what seem on the phase of it as a “minor” or “innocent” clarification of the process. It attempts a nuanced overreach of the Courts reading of the current Section.</p>		
21		<p>Amendment to Section 44A of the Elections Act: Clause 21 clarifies that Transmission of Results is one of the elements of elections for which the Kenya Integrated Elections Technology (KIEMS) shall apply. This clarification is consistent with the current practice and scope of KIEMS.</p> <p>This note takes the view that the Courts have emphatically declined attempts at reversal of the interpretation of Article 86. In relation to Result</p>	<p>The Committee was of the view that there is need to have a complementary mechanism for transmission of election results which would be provided in the Regulations. However, as the Regulations directly affect the Members of Parliament. It would be important that they are tabled and approved by Parliament before they take effect</p>	<p>The Committee recommends that the proposal in clause 21 be dropped and substituted with a new clause to provide for a complementary mechanism for transmission of election results</p>

		<p>Transmission, the Amendment which should commend itself is to have the Presidential Results be tabulated at County Level before being brought to the National Tally Centre. This allows each county returning officer to return Presidential Results with a confirmation on which candidates have obtained more than 25% of votes in their county. This also introduces efficiency in the declaration and minimises activity at the National Tallying Centre. Most Tallying Centres at each County would process results for less than ten constituencies while the national tallying centre will deal with only 47 counties. This minimises error, introduces transparency and limits indeterminacy of having ROs queue up at the national tallying centre for processing.</p>		
22		<p>Clause 22 of the Bill Amends Section 74 of the Act to provide a time limit of 48 hours after registration of</p>	<p>The Committee noted that the provision is reasonable as it seeks to fill a lacuna in the law however the Committee was of the view that the period of 48</p>	<p>The Committee recommends that the proposal in clause 22 of the Bill be amended and replaced with a new provision to</p>

		<p>candidates. This provision is intended to bring clarity and take account of strict timeframes in nomination, registration of candidates and determination of disputes. It is important to close dispute resolution process within the strict time frames in order to generate the final list of candidates for the elections.</p>	<p>hours within which to lodge a dispute with the Commission was too short and there was need to increase the same to 72 hours from the date of the publication of the notice.</p>	<p>increase the time within which to lodge a dispute with the Commission from 48 to 72 hours from the date of the publication of the notice.</p>
23		<p>Clause 23 seeks to amend Section 75 of the Act to provide that the determination of the High Court sitting on appeal on a decision of the Magistrates Courts shall be final. This provision clarifies and enacts the determinations by the Courts in past judgments and proposals by the Judiciary – See Lemanken Aramat Petition 2017. This amendment is intended to limit appeal process to one level and bring finality to post election dispute resolution.</p>	<p>The Committee noted that the concerns regarding election petitions for Members of the County Assembly. In the case of Hamdia Yaroï Shek Nuri v Faith Tumaini Kombe, Amani National Congress & Independent Electoral and Baoundaries Commission [2019] eKLR, the Supreme Court held that Section 75 of the Elections Act, as presently worded, does not confer a second right of appeal to the Court of Appeal in petitions challenging the election of Members of County Assemblies. These appeals should thus end at the High Court.</p>	<p>The Committee recommends that the proposal be adopted as published in the Bill to conform with the court rulings</p>

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS

34. The Committee, having considered the Bill clause by clause and submissions by the various stakeholders made the following observations;

- a) The Elections (Amendment) Bill, 2022 seeks to amend the Elections Act, 2011 to comply with the decisions of the Court and also to align the Act with the current electoral practices.
- b) The Bill seeks to distinguish between the “nominations” of a candidate by a party to be its flag bearer during an election from the “registration” of a candidate by the Commission to contest in an election. These activities are referred to interchangeably in the Act yet they refer to different events.
- c) The Bill seeks to limit the transfer of registration by a voter from one constituency to another unless the voter is ordinarily resident, carrying on business, employed or possesses land or a residential building for at least six months immediately preceding the date of the application of registration. This proposal is meant to limit mass transfer of voters during elections.
- d) However, the Committee is of the view that this provision does not comply with Article 24 (2) of the Constitution on how to limit fundamental rights. Further, the Committee is of the view that this provision is not reasonable as provided under Article 38 (3) of the Constitution.
- e) The Committee observed that the Act provides that during a by-election, the registration of voters is suspended country-wide. The Committee is of the view that the suspension should only apply to the affected electoral area.
- f) Further, the Committee noted that although a person cannot register as a voter in such an area, a person can register elsewhere and contest as a candidate as happened during the Kibra by-election whereby Mr. Mac Donald Mariga was able to contest but could not vote. The Committee is of the view that this is unfair and thus there is need to amend the law to avert such instances.
- g) The Committee observed that the Bill provides that for one to be eligible to contest as a Member of Parliament or Member of County Assembly, they must be registered as voter at the time of the occurrence of the vacancy.
- h) The Committee is of the view that though the concern is valid, the proposal is an attempt to amend the Constitution through legislation. It also does not comply with Article 24 (2) of the Constitution on how to limit rights and is not reasonable as provided under Article 38 (3) of the Constitution. The issue should be addressed through an amendment in the Bill to a different section.
- i) The Committee observed that the Bill under clause 16 had a provision that was intended stop a candidate from participating in the nominations of a political party

and thereafter contesting as an independent candidate as the date of submission of a party membership list was to be the same as the date for one to contest as an independent candidate as provided under Article 85 of the Constitution.

- j) The Committee observed that the law prohibits a person from party hopping and thus it would be fair to also stop a person from moving from a party to contest as an independent. However, the Committee is of the view that as the political parties are still young and may have not fully developed their dispute resolution organs, it would only be fair to allow an aggrieved party to still contest in the election as an independent candidate.
- k) Further, the Committee noted that the election cycle is already underway and parties were required to have submitted their membership list by March 26, 2022 which date has already passed. As such, this amendment is tantamount to changing the rules of the game midway and would be unfair to potential candidates. The IEBC should consider bringing this proposal at the commencement of the next term of Parliament for the country to be well aware of the requirement early in the process.
- l) The Committee observed that there was need to distinguish between the inspection of the Register of Voters and rectification of the Register of Voters. The inspection of the Register of Voters should be at all times but rectification needs to be limited in the case of an election or referendum.
- m) The Committee observed that the Bill proposes to de-link party nominations from the IEBC and therefore only leaves the IEBC to handle disputes arising from nominations. This is because the Commission is not viewed as a neutral party by conducting nominations, adjudicating on disputes arising from the nominations then ultimately conducting the elections.
- n) The Committee observed that although the Commission publishes a *Gazette Notice* with the names of all persons who have been cleared by the Commission to contest an election, this provision is not anchored in the Act but Regulations. There is need to anchor this in the Act especially as the amendments also provide that an aggrieved person must file an electoral dispute with the Commission within 72 hours of the publication of this Notice.
- o) The Committee observed that the Bill under clause 20 proposes amendments concerning the declaration of presidential results. The Committee is of the view that there is need to amend the whole section 39 that provides for the determination and declaration of results by the Commission to comply with the Court in the case of *HC 548 of 2017 Nairobi- Katiba Institute and 3 others versus the Attorney-General and 2 others* which held that sections 39(1C) (a), 39(1D), 39(1E), 39(1F), 39(1G), and the entire section 83 of the Elections Act, 2011 are constitutionally invalid.
- p) The Committee supports the need to have a complementary mechanism for transmission of election results whose details will be provided in the Regulations. However, as the Regulations directly affect the Members of Parliament, it would

be important that they are tabled and approved by Parliament before they take effect.

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATIONS

35. The Committee, having considered the Bill clause by clause and submissions by the various stakeholders proposes the following amendments to the Elections (Amendment) Bill, (National Assembly Bill No. 3 of 2022);

CLAUSE 1

THAT the Bill be amended by deleting Clause 1 and substituting therefor the following new Clause—

Short title and commencement. 1. This Act may be cited as the Elections (Amendment) Act, 2022 and shall come into force upon publication in the *Gazette*.

Justification: The election cycle is already underway and this law is envisaged to apply during this cycle. There is need, therefore, to provide that this Bill to shall take effect immediately once assented to.

CLAUSE 2

THAT Clause 2 of the Bill be amended by inserting the following new paragraph immediately after paragraph (c)—

“(ca) inserting the word “valid” immediately before the words “Kenyan passport” in the definition of “identification document”.

Justification: The Bill in clause 3 proposes to provide that in case a person chooses to register as a voter using his or her passport, such passport must be “valid”. However, the Bill did not include a proposal to amend the definition of “identification document” in the interpretation section and thus the need for this amendment for consistency in the Act.

CLAUSE 3

THAT the Bill be amended by deleting clause 3 and substituting therefor the following new Clause—

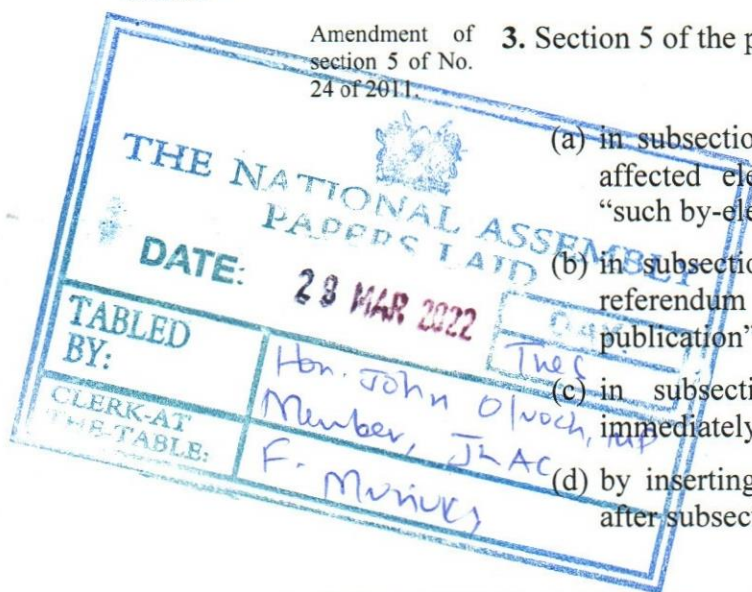
Amendment of section 5 of No. 24 of 2011. 3. Section 5 of the principal Act is amended—

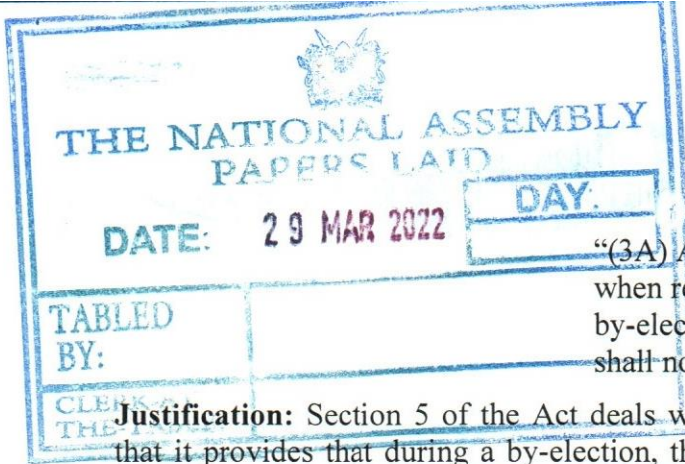
(a) in subsection (1)(b) by inserting the words “within the affected electoral area” immediately after the words “such by-election”;

(b) in subsection (1)(ba) by inserting the words “of the referendum question” immediately after the word “publication”

(c) in subsection (3) by inserting the word “valid” immediately before the words “Kenyan passport”;

(d) by inserting the following new subsection immediately after subsection 3—





“(3A) A person who registers as a voter during the period when registration of voters is suspended for purposes of a by-election as contemplated under subsection (1) (b) shall not be eligible to contest in the by-election”.

Justification: Section 5 of the Act deals with registration of voters. The Committee observed that it provides that during a by-election, the registration of voters is suspended country-wide. The Committee was of the view that the suspension should only apply to the affected electoral area.

Further, it was noted that although a person cannot register as a voter in such an area, a person can register elsewhere and contest as a candidate as happened during the Kibra by-election whereby Mr. Mac Donald Mariga was able to contest but could not vote. The Committee was of the view that this is unfair and thus there was need to amend the law to avert such instances.

The amendment also proposes to insert some missing words with respect to a referendum.

CLAUSE 4

THAT the Bill be amended by deleting clause 4 and substituting therefor the following new clause –

Amendment of section 6 of No. 24 of 2011.

4. Section 6 of the principal Act is amended—

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

“(1) The Commission shall cause the Register of Voters to be opened for inspection by members of the public at all times.

(1A) The Commission shall rectify the particulars of voters at all times except—

- (a) in the case of a general election or an election under Article 138(5) of the Constitution, during the sixty-day period before the date of the election;
- (b) in the case of a by-election, between the date of the declaration of the vacancy of the seat concerned and the date of such by-election; or
- (c) in the case of a referendum, between the date of the publication of the referendum question and the date of the referendum”.

(b) by deleting subsection (2).

Justification: The Committee was of the view that there was need to distinguish between the inspection of the Register of Voters and rectification of the Register of Voters. The inspection of the Register of Voters should be at all times but rectification needs to be limited in the case of an election or referendum.

CLAUSE 5

THAT the Bill be amended by deleting clause 5.

Justification: Clause 5 of the Bill proposed that a voter may not transfer his or her registration to vote six months to the election unless he or she was ordinarily resident, carrying on business,

employed or possessed land or a residential building in the constituency that he or she intends to transfer her registration. The intention of this proposal was to limit mass transfers of voters.

The Committee was of the view that this provision did not comply with Article 24 (2) of the Constitution on how to limit rights. Further, the Committee was of the view that this provision was not reasonable as provided under Article 38 (3) of the Constitution.

CLAUSE 13

THAT clause 13 of the Bill be amended by deleting paragraph (b) (ii).

Justification: The proposal was to the effect that a person does not qualify to contest as a Member of Parliament unless they were registered as a voter at the time of the occurrence a vacancy. Section 24 of the Act deals with the qualification and disqualification for nomination as a member of Parliament. This section mirrors Article 99 of the Constitution.

The Committee was of the view that this proposal was an attempt to amend the Constitution through legislation. It also did not comply with Article 24 (2) of the Constitution on how to limit rights and was not reasonable as provided under Article 38 (3) of the Constitution.

To curb the mischief of a person contesting in an election yet they had not registered as a voter at the time of the occurrence of the vacancy, the Committee has addressed this in its proposal under clause 3.

CLAUSE 14

THAT clause 14 of the Bill be amended by deleting paragraph (b) (ii).

Justification: The proposal was to the effect that a person does not qualify to contest as a member of county assembly unless they were registered as a voter at the time of the occurrence a vacancy. Section 25 of the Act deals with the qualification and disqualification for nomination as a member of county assembly. This section mirrors Article 193 of the Constitution.

The Committee was of the view that this proposal was an attempt to amend the Constitution through legislation. It also did not comply with Article 24 (2) of the Constitution on how to limit rights and was not reasonable as provided under Article 38 (3) of the Constitution.

To curb the mischief of a person contesting in an election yet they had not registered as a voter at the time of the occurrence of the vacancy, the Committee has addressed this in its proposal under clause 3.

CLAUSE 15

THAT clause 15 of the Bill be amended by deleting paragraph (a).

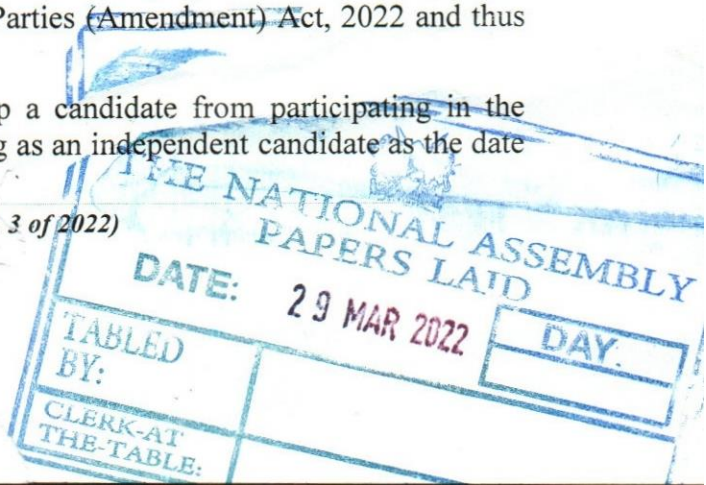
Justification: A similar amendment had been proposed as a consequential amendment to the Elections Act, 2011 in the Political Parties (Amendment) Act, 2022 and thus this is already catered.

CLAUSE 16

THAT the Bill be amended by deleting Clause 16.

Justification: On paragraph (a), a similar amendment had been proposed as a consequential amendment to the Elections Act, 2011 in the Political Parties (Amendment) Act, 2022 and thus this is already catered for.

On paragraph (b), this provision was intended to stop a candidate from participating in the nominations of a political party and thereafter contesting as an independent candidate as the date



of submission of a party membership list is the same as the date for one to contest as an independent candidate as provided under Article 85 of the Constitution.

The law prohibits a person from party hopping and thus it would be fair to also stop a person from moving from a party to contest as an independent. However, the Committee was of the view as the political parties are still young and may have not fully developed their dispute resolution organs, it would only be fair to allow an aggrieved party to still contest in the election as an independent.

It is worth noting that the election cycle is already underway and parties were required to have submitted their membership list by March 26, 2022 which date has already passed. As such, this amendment is tantamount to changing the rules of the game midway and would be unfair to potential candidates. The IEBC should consider bringing this proposal at the commencement of the next term of Parliament for the country to be well aware of the requirement early in the process.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 19-

Insertion of new section in No. 24 of 2011.

19A. That the principal Act is amended by inserting the following new section immediately after section 33—

Publication of registered candidates.

33A. The Commission shall publish in the Gazette the names of political party candidates and independent candidates registered to contest in an election.

Justification: The Committee noted that although the Commission publishes this Gazette Notice, it was not anchored in the Act but Regulations. There is therefore need to anchor this in the Act especially as the amendments also provide that an aggrieved person must file an electoral dispute with the Commission within 72 hours of the publication of this Notice.

CLAUSE 20

THAT, the Bill be amended by deleting Clause 20 and substituting therefor the following new Clause—

Repeal and replacement of section 39 of No. 24 of 2011.

20. The principal Act is amended by repealing section 39 and substituting therefor the following new section—

Determination and declaration of results.

39. (1) The Commission shall determine, declare and publish the results of an election immediately after close of polling.

(2) The Commission shall appoint constituency returning officers to be responsible for—

(a) tallying, announcement and declaration, in the prescribed form, of the final results from each polling station in a constituency for the election of a member of the National Assembly and members of the county

assembly;

- (b) collating and announcing the results from each polling station in the constituency for the election of the President, county Governor, Senator and county women representative to the National Assembly; and
- (c) submitting, in the prescribed form, the collated results for the election of the President to the national tallying centre and the collated results for the election of the county Governor, Senator and county women representative to the National Assembly to the respective county returning officer.

(3) The Commission shall appoint county returning officers to be responsible for tallying, announcement and declaration, in the prescribed form, of final results from constituencies in the county for purposes of the election of the county Governor, Senator and county women representative to the National Assembly.

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


- (a) electronically transmit and physically deliver the tabulated results of the election, in the prescribed form, from a polling station to the constituency tallying centre and to the national tallying centre;
- (b) tally and verify the results received at the constituency tallying centre and the national tallying centre; and
- (c) publish the polling result forms on an online public portal maintained by the Commission.

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

(6) The Commission shall establish a mechanism for the live-streaming of results as announced at polling stations.

(7) The chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

(8) The Chairperson may declare a candidate elected as the President before all the constituencies have

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TABLED BY: Hon. John Oluoch, MP Member, JLAC	
CLERK-AT THE-TABLE: F. Monici	

transmitted their results if the Commission is satisfied the results that have not been received will

not affect the result of the election.

(9) The Commission shall announce the final results in the order in which the tallying of the results is completed.

Justification: In the case of HC 548 of 2017 Nairobi- Katiba Institute and 3 others versus the Attorney-General and 2 others the Court held that a declaration be and is hereby issued that sections 39(1C) (a), 39(1D), 39(1E), 39(1F), 39(1G), and the entire section 83 of the Elections Act, 2011 are constitutionally invalid. The Committee has therefore recasted section 39 of the Elections Act, 2011 to conform with the above court case as follows:

- (a) Subsection (1) has been retained as there was no contention or orders against it;
- (b) Subsection (1A) now the proposed subsection (2) has been retained as there was no contention or orders against it;
- (c) Subsection (1B) now the proposed subsection (3) has been retained as there was no contention or orders against it;
- (d) Subsection (1C) (a) now the proposed subsection (4) (a) was declared unconstitutional on the grounds that, there is no requirement for the results to be transmitted in any prescribed form which was an essential requirement. According to the Judge, this was an essential safeguard that guaranteed verifiability, transparency and accountability of the election results transmitted from polling centres to the constituency and national tallying centres. This was made even more troubling by the fact that results would also be physically delivered to the constituency and national tallying centres but in no particular prescribed form. The Committee has amended this paragraph by inserting the words "in the prescribed form" to comply with the Court.

Paragraphs (b) and (c) have been retained as there were no orders against them;

- (e) Subsection (1D) now the proposed subsection (5) was declared unconstitutional on the grounds that it is vague when read together with subsections (1E) and (1F). Vagueness in a statutory provision makes the provision void.

The Committee has not included subsections (1E) and (1F) in its amendments thus removing the vagueness that existed then. It is also worth noting that on the face of it, this provision mirrors Article 138 (3) (c) of the Constitution.

- (f) Subsections (1E) and (1F) have not been carried by the Committee in line with the court's judgement.
- (g) Subsection (1G) now the proposed subsection (6) was declared unconstitutional as it made live streaming of results from polling stations of no value when it comes to the finality of the declared results. The Judge stated that "If the intention of the legislature was that results streamed live from the primary source should not matter when it comes to the final tally, why should the country invest heavily in technology as provided for in section 44 of the Act, have results streamed live from polling stations for public information only?" Live streaming of election results is one way of conforming to the constitutional principles of transparency and accountability. Citizens should be able to

compare the live transmitted results with the final declared results to confirm the accuracy of the election results”

In light of these, the Committee has amended the provision so that the Commission should livestream final results only.

- (h) Subsection (1h) now the proposed subsection (7) has been retained as there was no contention or orders against it;
- (i) Subsection (2) now the proposed subsection (8) has been retained as there was no order against it; and
- (j) Subsection (3) now the proposed subsection (9) has been retained as there was no order against it.

CLAUSE 21

THAT the Bill be amended by deleting Clause 21 and substituting therefor the following new clause—


Repeal and replacement of section 44A of No. 24 of 2011. 21. The principal Act is amended by repealing section 44A and substituting therefor the following new section –

Complementary mechanism for identification of voters and transmission of election results.

44A. (1) Notwithstanding the provisions of section 44, the Commission shall put in place a complementary mechanism for identification of voters and transmission of election results that is simple, accurate, verifiable, secure, accountable and transparent to ensure that the Commission complies with the provisions of Article 38 of the Constitution.

(2) The Commission shall make Regulations for the better carrying into effect the provisions of this section.

(3) Regulations made under subsection (2) shall be tabled and approved by Parliament within 30 day after coming into force of this Act.

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 28 MAR 2022	DAY: Tues
TABLED BY:	Hon. John Olago, MP Member, JLAC
CLERK OF THE TABLE:	F. MUVUKI

Justification: The Committee was of the view that there is need to have a complementary mechanism for transmission of election results which would be provided in the Regulations. However, as the Regulations directly affect the Members of Parliament. It would be important that they are tabled and approved by Parliament before they take effect.

CLAUSE 22

THAT Clause 22 of the Bill be amended by deleting the proposed new subsection (1A) and substituting therefor the following new subsection—


“(1A) An electoral dispute under subsection (1) shall be lodged with the Commission within seventy-two hours of the date of publication of the notice under section 33A”.

Justification: The Committee was of the view that the period of 48 hours within which to lodge a dispute with the Commission was too short and there was need to increase the same to 72 hours from the date of the publication of the notice.

Signed..........Date.....29/3/2022.....

 HON. CLEMENT MUTURI KIGANO, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 29 MAR 2022	DAY: Tues
TABLED BY:	Hon. Oluo Johny MP Member, JLAC
CLERK-AT THE-TABLE:	F-Muriuki

ANNEXURE 1








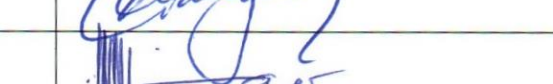





ADOPTION LIST

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ADOPTION LIST FOR THE REPORT ON THE ELECTIONS (AMENDMENT) BILL, (NA BILL NO. 3 OF 2022)

DATE: TUESDAY 29TH MARCH, 2022

VENUE: CPA ROOM

NO.	NAME	SIGNATURE
1.	Hon. Clement Muturi Kigano, M.P. – Chairperson	
2.	Hon. Francis Tom Kajwang' M.P - Vice-Chairperson	
3.	Hon. Emmanuel Wangwe, M.P.	
4.	Hon. Junet Sheikh Nuh Mohamed, M.P	
5.	Hon. John Olago Aluoch, MP.	
6.	Hon. Peter Opondo Kaluma, MP.	VIA ZOOM
7.	Hon. Roselinda Soipan Tuya, MP.	
8.	Hon. Mwamkale Kamoti, MP.	VIA ZOOM
9.	Hon. Zuleikha Hassan, MP.	via Zoom
10.	Hon. Josephine Naisula Lesuuda, M.P.	
11.	Hon. George Gitonga Murugara, MP.	
12.	Hon. Adan Haji Yussuf, MP.	
13.	Hon. Japheth Kiplangat Mutai, MP.	
14.	Hon. Anthony Githiaka Kiai, MP.	
15.	Hon. Jennifer Shamalla, MP.	VIA ZOOM
16.	Hon. John Kiarie Waweru, MP.	
17.	Hon. Hon. Dan Rono, MP.	
18.	Hon. Anthony Oluoch, M.P.	VIA ZOOM
19.	Hon. Robert Gichimu Githinji, M.P	VIA ZOOM

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