



THE 5TH NATIONAL JLOS FORUM

“THE AMENDED ELECTORAL LAWS: AN OPPORTUNITY FOR FREE AND FAIR ELECTIONS”

**PRESENTED ON BEHALF OF THE HONOURABLE ATTORNEY GENERAL AND
MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS**

BY

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Introduction

An exhaustive legal framework is pivotal in not only executing the mandate of the Electoral Commission but also for the conduct of free and fair elections.

The electoral laws that were amended through a consultative process with most of the stakeholders are:

- The Presidential Elections Act, No.16 of 2005;
- The Parliamentary Elections Act, No.17 of 2005;
- The Electoral Commission Act, Cap.243; and
- The Political Parties and Organizations Act, No.18 of 2005
- The National Women Council Act Cap 318
- National Youth Council Act Cap 319

Pending before Parliament now is the Code of Conduct (Regulations) for Political Parties.

The amendments aimed at filling the existing gaps that characterized some of the electoral laws and others were as a result of court judgments that impacted on the existing enabling electoral laws.

NEW REFORMS OF ELECTORAL LAWS

THE PRESIDENTIAL ELECTIONS ACT, 2005, ACT NO. 16 OF 2005.

Reforms introduced by the Presidential Elections (Amendments) Act 2010, Act No.14 of 2010.

1. The Presidential Elections Act, 2005 was amended in the following manner -

(a) Section 3. Aspirant consultations

Subsection (1), the time limit of 12 months for which one was to consult in preparation for his or her nomination as a presidential candidate was removed from the principal Act.

(b) Section 6. Information to be given to returning officers

The Act was amended in subsection (2) by prescribing reasonable time frame of not later than twenty four hours before the polling date needed for the commission to transmit the ballot papers to each returning officer after the nomination day.

(c) Section 15. Allocation of Symbols and colours

Subsection (1) (C) which provided for the commission to allocate such symbol or colour was repealed.

(d) Section 16 Commission to appoint polling day and tallying places.

The time frame for appointing the polling day and tallying places in the country was increase from seven to ten days.

(e) section 17 on withdrawal of candidates

A new subsection (2) was introduced to provide for the party's Secretary-general to notify the Electoral Commission that such a person has been sponsored as a candidate by the party.

(f) Section 19A. Withdrawal of candidates for election

This new provision provides for the declaration of the remaining candidate unopposed where other candidates withdraw for election.

(g) Section 22. Security, protection and facilitation of candidates

A new subsection (1a) was introduced to provide for the consultation process regarding the candidate's security detail by the Commission.

(h) Section 27. Use of Government resources.

The section was amended by substituting subsection (1), prohibiting a candidate from using government resources for the purpose of campaigning and by prescribing penalty for such under new subsection (4).

(i) Section 28A. Packing and dispatch of election materials.

A new section 28A was introduced to provide for the presence of the representatives of the respective candidates during the dispatch of the election materials.

(j) Section 33 Polling agents of candidates

Subsection (3) was amended to provide for the polling agent of a candidate to be availed a space at the table to crosscheck the voters register book against the voter's card or any other identification provided. It further repealed subsection (4) relating to the allowance paid to the polling agent.

(k) Section 35. Provides for procedure for handling ballot paper to vote.

The amendment to section 35 provides for a person who does not have the voter's card or his photograph not appearing on his or her card, to be given the ballot paper to vote. This is only if he or she is able to prove.

(l) Section 39. Special procedure for voting for persons in institutions and restricted areas.

The section provides for the manner on how people who cannot make it to the polling stations can vote. The section also prohibits the creation of polling stations for army and any other security personnel.

(m) Section 42. Presiding officers to appoint election constables.

This section was amended by substitution to restrict a member of the Internal Security Organisation and the External Security Organisation from being appointed as an election constable.

(n) Section 52. Collection of results.

Subsection (1) was substituted and it requires the presiding officer to deliver the declared results with the sealed box to the designated officer of the commission.

(o) Section 56. Returning officer to transmit return and documents to commission

Subsection (2) (b) which specified the time frame of seven days for which the returning officer is expected to compile and submit a report of the election to the commission was repealed.

(p) Section 64. Offence of bribery

At present the section only prescribes the offence of bribery; this has been expanded by way of amendment to ban fundraising, donations and similar activities by candidates, candidates' agents and Political Parties and Organisations during the campaign period.

PARLIAMENTARY ELECTIONS ACT OF 2005, ACT NO. 17 OF 2005.

Reforms introduced by the Parliamentary Elections (Amendments) Act 2010, Act No.12 of 2010.

The Parliamentary elections Act of 2005 was amended in the following ways:

(a) Section 11. Procedure for the nomination of candidates

Subsection (2) was substituted to require a candidate's nomination paper be endorsed and sealed by the party or organization sponsoring him or her.

(b) Section 18. Commission to appoint polling day and tallying places

Subsection (3) was amended by increasing the days for which the returning officer is to fix a list of the names of all presiding officers and polling assistants and the name and list of the polling stations from seven to ten.

(c) Section 19A. Withdrawal of candidates for election

A new section 19A was introduced to provide for the declaration of the remaining candidate unopposed by the returning officer, where other candidates withdraw for election.

(d) Section 28A. Packing and dispatch of election materials.

A new section 28A provides for the duly appointed representatives of candidates required to be present during the packing and dispatch of election materials and the commission

(e) Section 38. Special procedure for voting of persons in institutions and restricted area.

Section 38 was repealed and replaced to provide for special procedure for voting in institutions such as sanatoria and homes for the aged, areas of operation, and restricted areas during the election process.

(f) Section 41. Presiding officers to appoint election constable.

As a way of ensuring that polling is done in a free and secure environment, a new section 41 was introduced to provide for the appointment of the election constables other than a police officer, to maintain order at the polling station throughout polling day. Such a constable must not be a military personnel, a member of the Internal or External Security Organisation.

(g) Section 51. Collection of results.

Section 51(1) was substituted to require the presiding officer deliver the results in a sealed box to the sub county or division headquarters to the designated officer of the commission together with the report book for transmission to the returning officer. Previously it was the duty of the returning officer to appoint persons to collect the results from the

designated collecting centers who delivered the results to the returning officer.

(h) Section 58. Declaration of winning candidate.

Subsection (2) (b) which provided for the transmission of the election report by the returning officers to the commission was repealed and a new subsection (2a) introduced to prohibit a presiding officer from failing to cause to post a copy of a field and signed declaration, the amendment also provided for the punishment in case of a breach.

(i) Section 59. Declaration of results and reports by the commission.

The section was amended to provide for the period of forty eight hours within which the results should have been declared and published at the close of the polling.

(j) Section 66. Appeals.

The section was amended to provide the mode of appeals in respect to application for leave to appeal against the decision of the lower courts in respect to electoral petitions. It spelt out the time frame of six months for which court is to hear such an application. The decision of the appeal court shall be final.

(k) Section 68. Bribery.

Section 68(7) prohibits a person from fundraising or giving of donations to voters during campaigning.

ELECTORAL COMMISSION ACT, CAP 140

Reforms introduced by the Electoral Commission (Amendments) Act 2010, Act No.15 of 2010.

The Electoral Commission Act was amended in the following areas-

(a) Section 5. Secretary and other staff of the commission

Section 5 was amended by introducing a new subsection (3a) to provide for the term of office of the Secretary of the Commission to

be held on a contract of 5 years renewable once. The rationale was to promote accountability, transparency and independence of the Commission.

(b) Section 18A. Commission to transmit voters register to political parties and organizations.

A new section 18A was introduced to provide for the period of two weeks before the polling day within which the commission is supposed to have transmitted the voters register containing photographs of the voters to be used on the polling day, to political parties and organizations.

(c) Section 25. Display of copies of the voters rolls; objections to the rolls.

Section 25 was amended by providing for a time frame of 10 days within which one is expected to have raised any objection or complaints in relation to the names recommended by the tribunal to be included or deleted from the voters roll or any other corrections to be made. In case of a by-election the display of voters roll shall take place ten days.

In addition, the amendment provides for a period of 6 days for the display of the returns to give the public an opportunity to scrutinize the names recommended for deletion from or inclusion in the voters' register.

(d) Section 25(5) was also revised; by introducing the composition of the membership of the Tribunal and the appointment being done by a Magistrate Grade 1 of the area and not the returning officer as it is in the Act.

(e) Section 27. Power to issue duplicate voter cards.

Section 27(3) was amended by requiring a person who needs a duplicate card to obtain it from the Electoral Commission. This was done by increasing the number of days from seven days to at least ninety days before polling day.

THE POLITICAL PARTIES AND ORGANISATIONS ACT, 2005 ACT NO. 18 OF 2005

Reforms introduced by the Political Parties and Organisations (Amendments) Act 2010, Act No.13 of 2010.

The Political Parties and Organisations Act was amended in the following areas –

(a) Section 11. Notification of change or alterations in constitution, etc.

Section 11(4) of the Act was amended to provide for the change in the physical location of a political party or organizations, and that such a change to be published in the Gazette and thereafter notifying the Electoral commission.

(b) Section 20. National consultative forum for political parties and organisations.

Section 20 provided for the creation of the National Consultative Forum but did not provide for the office of a chairperson and the vice chairperson of the forum to perform its statutory functions. In order to address the lacuna in the law, an amendment was introduced by a new section 20A to provide for the term and office of the chairperson and vice chairperson of the Forum and how he or she may be removed from office by vote of no confidence by the members of the forum.

THE NATIONAL YOUTH COUNCIL ACT. CAP. 319

Reforms introduced by the National Youth Council (Amendments) Act 2010, Act No.9 of 2010.

The National Youth Council was amended in the following areas-

(a) Section 6A. Electoral commission to designate period for registration.

A new section 6A was introduced to provide for the Electoral Commission by a statutory instrument to designate a period for

registration. It is required under the law the commission to specify the time frame for youth registration and within which the voter's register is to be updated.

(b) Section 6B. Electoral commission to settle disputes.

The amendment provides for the mode of settling disputes by the Electoral Commission.

(c) Section 9A. Sponsorship of a candidate by a political party or organisation

A new section 9A was introduced to provide for the mode of nomination of candidates by a political party or organisation sponsoring him or her. Where a candidate is not sponsored by a party, he or she becomes an independent candidate.

(d) Section 27. Regulations.

Section 27 which provided for the presiding officer to keep order at the polling station was repealed and replaced to provide for the Minister's powers to make Regulations and prescribe penalties in case of breach where possible. This did not affect the cross reference in the Act.

THE NATIONAL WOMEN'S COUNCIL ACT. CAP 318

Reforms introduced by the National Women's Council (Amendments) Act 2010, Act No.10 of 2010.

The National Women's Council Act was amended in the following areas-

(a) Section 6A. Electoral commission to maintain voters register designate period for registration.

A new section 6A was introduced to provide for the Electoral Commission by a statutory instrument to designate a period for registration of women who want to participate in the women council elections at all levels. It is required under the law to specify the time

frame for women registration and within which the voter's register is to be updated.

(b) Section 6B. Electoral commission to settle electoral disputes.

The amendment provides for the mode of settling disputes by the Electoral Commission.

(a) Section 7. Establishment and composition of women's committees.

The section provided for the establishment and composition of women's committees. This was substituted in subsection (1) (f) (i) by replacing district council with district women's committee.

(b) Section 7A. Sponsorship of candidates by political organizations or Political parties.

A new section 7A was introduced to provide for the mode of nomination of candidates by a political party or organization sponsoring him or her. Where a candidate is not sponsored by the party, she becomes an independent candidate.

(c) Section 23. Regulations

The section was substituted by expanding the powers of the minister to make Regulations for the implementation of the Act. This did not affect in any way the issue of cross reference.

Conclusion

The amendments were mainly a result of impracticability in implementing some of the provisions of the law, gap filling and recommendations from court judgments and the overall aim is to enhance transparency in the electoral process and consequently attain free and fair elections.