

**CONSOLIDATED ELECTION REGULATIONS**

**ELECTIONS (GENERAL) REGULATIONS**, as amended in April 2017, unofficial document - consolidated by <http://RoGGKenya.org>, uploaded on July 11, 2017. At that time the consolidated regulations had not been amended. For the originals search <http://kenyalaw.org> or <http://www.iebc.or.ke>

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**ELECTIONS (GENERAL) REGULATIONS, 2012**

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No. 24 of 2011

[Rev. 2017]

*Elections*

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**ELECTIONS (GENERAL) REGULATIONS, 2012**

[L.N. 128/2012.]

## PART I – PRELIMINARY

**1. Citation**

These Regulations may be cited as the Elections (General) Regulations, 2012.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

“**Act**” means the Elections Act, 2011;

“**acknowledgement slip**” means a document issued by the returning officer acknowledging application for registration;

“**agent**” means a person appointed under section 30 of the Act;

“**authorised official of the party**” in relation to a person required to sign the nomination paper of a candidate means an official of a party authorised in that behalf in accordance with section 31(3) of the Act;

“**campaign**” means the promotion of a candidate or political party for the purposes of an election during the campaign period;

“**close of nominations**” means **four o'clock in the afternoon of the last nomination** day for respective elections;

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

“**copy register**” means the copy of the Register of Voters or part thereof supplied to a polling station under regulation 61(4)(a) or its electronic version;

“**county returning officer**” means a returning officer appointed pursuant to regulation 4;

“**election officer**”, means a person appointed by the Commission to assist in conducting an election under these Regulations and includes a returning officer, deputy returning officer, a presiding officer, a deputy presiding officer, a clerk or an interpreter;

“**electoral number**”, in relation to a voter, means the number shown against the name of that voter in the Register of Voters for his or her constituency;

“**nomination paper**” means nomination papers delivered, in accordance with these Regulations, to the appropriate officer by or on behalf of a person intending to contest as a candidate at an election;

“**police officer**” means a police officer assigned to perform the duties that are performed by a police officer under these Regulations;

“**party primary**” means the process through which a political party elects or selects a candidate for an election but does not include a party list;

“**political party candidate**” means a candidate nominated by a political party to contest an election under the Act;



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“**polling day**” means the election date as stipulated in the Constitution or such other date set for an election by the Commission;

“**polling station diary**” means a record of all the activities at a polling station on the polling day;

“**presiding officer**” means a person appointed under regulation 5 to preside at a polling station;

“**rejected ballot paper**” means a ballot paper rejected in accordance with regulation 78;

“**returning officer**” has the meaning assigned to it under the Act and includes, a county returning officer appointed under regulation 4;

“**spoilt ballot paper**” means a ballot paper accepted as spoilt by the presiding officer under regulation 71;

“**stray ballot paper**” means ballot a paper cast in the wrong ballot box.

“**subscriber**” in relation to a nomination paper, means any supporter whose name appears on the nomination paper other than the authorised official of a political party.

## PART II – MATTERS PRELIMINARY TO ELECTIONS

### 3. Constituency returning officers and other staff

(1) The Commission shall appoint a Constituency returning officer for each constituency and may appoint such number of deputy constituency returning officers for each constituency as it may consider necessary.

(2) Prior to appointment under paragraph (1), the Commission shall provide the list of persons proposed for appointment to political parties and independent candidates at least fourteen days prior to the proposed date of appointment to enable them make any representations.

(3) The constituency returning officer shall be responsible for—

- (a) conducting elections at the constituency level;
- (b) receiving nomination papers in respect of candidates nominated for the post of National Assembly and Ward representative;
- (c) tallying, announcing and declaring, in the prescribed form, 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; announcing results from the constituency for purposes of the election of the President, Senator, Governor, woman representative to the National Assembly, member of National Assembly and county representatives;
- (d) collating and announcing the results from each polling station in the constituency for the election of the President, county Governor, Senator and county woman representative to the National Assembly (c); and
- (e) submitting, in Form 34B, the collated results for the election of the President to the national tallying center and the collated results for the election of the county Governor in Form 37B, Senator in Form 38 B and county woman representative to the National Assembly in Form 39B, to the respective county returning officer; and.

(4) Every appointment under this regulation shall be done transparently and competitively and thereafter published in the *Gazette* and in such other manner as the Commission may deem necessary in order to widely publicize the appointment.



(5) A deputy constituency returning officer shall, subject to the general direction and control of the returning officer to whom he or she is a deputy, have all the power, and may perform all the duties, of the returning officer under these Regulations.

(6) The Commission shall appoint such other staff as it may deem necessary for the purpose of conducting elections.

#### 4. Appointment of county returning officers

1. The Commission shall appoint county returning officers to be responsible for—

**(1A)** The Commission shall transparently and competitively appoint a deputy county returning officer who shall, subject to the general direction and control of the county returning officer to whom he or she is a deputy, have all the power, and may perform all the duties, of the county returning officer under these Regulations.

- (a) receiving nomination papers in respect of candidates nominated for the post of Governor or county woman representative to the National Assembly and the Senate;
- (b) tallying results from constituencies in the county for purposes of the election of the county Governor, Senator and county women representative to the National Assembly;
- (c) the declaration and announcement of results tallied under paragraph (b); and (d) such other functions as may be assigned by the Commission.

(2) Prior to appointment under subregulation (1), the Commission shall provide the list of persons proposed for appointment to political parties and independent candidates at least fourteen days prior to the proposed date of appointment to enable them make any representations.

(3) Every appointment under this regulation shall be done transparently and competitively and thereafter published in the *Gazette* and in such other manner as the Commission may deem necessary in order to widely publicize it.

(4) The county elections coordinator shall not be appointed as the returning officer or the deputy returning officer of the county in which he or she is deployed.

#### 5. Presiding at polling station, oath of secrecy, etc.

(1) The Commission shall transparently and competitively appoint a presiding officer for every polling station and may similarly appoint such number of deputy presiding officers as may be necessary.

**(1A)** The functions of a presiding officer shall be—

- (a) presiding over elections at an assigned polling station;
- (b) tallying, counting and announcement of results at the polling station;
- (c) submitting polling station results to the Constituency returning officer; and
- (d) electronically transmitting presidential results to the constituency, counties and national tallying centers.

(2) Prior to appointment under subregulation (1), the Commission shall provide the list of persons proposed for appointment to political parties and independent candidates at least fourteen days prior to the proposed date of appointment to enable them make any representations.





[Subsidiary]

(3) A returning officer may preside at a polling station and in that case the returning officer shall, for the purposes of these Regulations, be deemed to be the presiding officer of that station.

(4) A deputy presiding officer may perform any act, including the asking of any question, which a presiding officer is required or authorized to perform by these Regulations.

(5) The returning officer shall require every presiding officer, deputy presiding officer, clerk, interpreter and agent authorised to attend at a polling station, as soon as he or she has made the oath of secrecy prescribed by the Act, to make before the returning officer, a declaration that the officer making the declaration understands that he or she shall not prompt any voter whom he or she is empowered by these Regulations to assist, and shall strictly follow the provisions of these Regulations, and any instructions which may lawfully be given to him or her relating to the election concerned.

(6) The declaration under subregulation (4) shall be in Form 1 set out in the Schedule.

(7) Every agent appointed by a candidate for the purposes of these Regulations shall at all times during the performance of the duties authorized by the candidate wear the official badge or insignia of the political party sponsoring the candidature of the candidate at the election or an insignia previously approved by the Commission for independent candidates.

#### **6. Appointment of polling clerks**

(1) The Commission shall appoint such number of polling clerks for each constituency as it may consider necessary.

(2) The Commission shall make the list of the persons appointed under subregulation (1) available to political parties and independent candidates within fourteen days from the date of appointment to enable them raise any objections.

(3) The list of the persons appointed under subregulation (1) shall be displayed prominently at the offices of the Commission within the constituency.

#### **7. Electoral areas and polling stations**

(1) The Commission shall—

- (a) assign to each electoral area a distinguishing number or letter or a combination of number and letter;
- (b) appoint a place or places or designate a vehicle or vehicles or a vessel or vessels at which the polling station or stations for each electoral area shall be established; and
- (c) publish in the *Gazette* and publicise through electronic and print media of national circulation and other easily accessible medium, a notice specifying—
  - (i) the polling stations established for each constituency, which may be the same as the registration centres which they respectively comprise;
  - (ii) the distinguishing number or letter, or combination thereof, assigned to each polling station; and
  - (iii) the place or places appointed or the vehicle or vehicles, vessel or vessels designated for the establishment of a polling station or stations for each electoral area.

(2) In determining the number of polling stations and the location of any polling station, the Commission shall have regard to geographical considerations, accessibility for persons with special needs, (including persons with disabilities), population and any other factors affecting communication between places within the electoral area.

(3) Subject to subregulation (2), the Commission may alter the number of polling stations and the location of any polling station made under subregulation (1), and shall thereupon publish a notice in the *Gazette* specifying the alteration at least three months before the date of any election.

## 8. Use of schools and other public facilities for elections

(1) The Commission may use, free of charge, for the purposes of polling—

- (a) a room or rooms in any public school within the meaning of the Education Act (Cap. 211) or any part of the school as a polling station;
- (b) such other facilities belonging to, and maintained by, public bodies.

(2) Where, as a result of the use of any facility under this regulation, any damage is caused to a school or facility belonging to or maintained by a public body, the Commission shall make good the damage, or compensate the school or facility, as the case may be.

(3) The Commission may, with prior arrangement with the owner and subject to the Public Procurement and Disposal Act (Act No. 3 of 2005) use private facilities where in the opinion of the Commission, the public facilities are unavailable, inadequate or unsuitable for purposes of polling.

(4) The Commission may not designate as a polling station, any place which, by its nature may compromise the freedom of any voter to exercise his or her right to vote.

## 9. Party symbol

(1) The Commission shall, by notice in the *Gazette* and through electronic and print media of national circulation and other easily accessible medium notify the public of the distinctive symbol for use by each political party candidate at elections.

(2) The political party symbol shall be the symbol by which the respective party is registered under the Political Parties Act (Act No. 11 of 2011).

(3) Each political party in a coalition of political parties shall use its own symbol.

## 10. Independent candidate name and symbol

(1) The Commission shall by notice in the *Gazette* and through electronic and print media of national circulation and other easily accessible medium, publish the names and symbol approved for each independent candidate.

**(1A)** The name of the independent candidate referred to in sub regulation (1) shall be the same as the name appearing in the identification document used by the independent candidate to register as a voter.

(2) The symbols published under subregulation (1) shall be *gazetted* at the same time as the list of persons nominated to contest the election.

(3) The symbol of an independent candidate shall be submitted in an electronic and print format as prescribed by the Commission together with the candidates details in Form 11P set out in the Schedule.

## 11. Vacancy notices and notices for elections

(1) A notice issued by the Commission for presidential elections under section 14(1) of the Act shall be in Form 2 set out in the Schedule.

(2) A notice of a vacancy in the National Assembly or Senate shall be in Form 3 set out in the Schedule.

(3) A notice of a vacancy in the county assembly shall be in Form 4 set out in the Schedule.

[Subsidiary]

(4) A notice issued by the Commission for parliamentary elections under section 16(1) of the Act shall be in Form 5 set out in the Schedule.

(5) A notice issued by the Commission for country governor elections under section 17(1) of the Act shall be in Form 6 set out in the Schedule.

(6) A notice issued by the Commission for county assembly elections under section 19(3) of the Act shall be in Form 7 set out in the Schedule.

## 12. Publication of notice of election

(1) The Commission shall publish a notice of the holding of the respective elections in the *Gazette* and in the electronic and print media of national circulation as set out in the Act and through other easily accessible medium.

(2) Immediately after the publication of a notice under section 14(1) of the Act, the returning officer of every constituency shall notify the holding of a presidential election in Form 8 set out in the Schedule.

(3) Immediately after publication of a notice under section 16(1), 17(1) and 19(1) of the Act, a returning officer shall notify the day or days on which each political party shall nominate candidates to contest parliamentary, county governor or county assembly elections and the holding of a parliamentary, county governor or county assembly election, which shall specify the place at which, and the time during which, nomination papers for parliamentary, county governor and county assembly elections may be obtained.

(4) For purposes of sub regulation (3) a notice—

- (a) for the election of a member of Parliament shall be in Form 9 set out in the Schedule;
- (b) for the election of county governor shall be in Form 10 set out in the Schedule; and
- (c) for the election of a member of a county assembly shall be in Form 11 set out in the Schedule.

(5) After the publication of a notice under sub regulation (3), the returning officer of every constituency shall proceed to hold the relevant election according to the terms of the notice and in accordance with these Regulations.

### PART III – NOMINATION OF CANDIDATES BY POLITICAL PARTIES AND PARTICIPATION OF INDEPENDENT CANDIDATES IN ELECTIONS

## 13. Parties to observe qualifications, etc.

(1) A political party that intends to nominate a candidate for an elective post under the Act shall observe the provisions of the Constitution, the Act and any other written law in respect of the qualifications and disqualifications for that office.

**(1A)** A political party whose nomination rules have been declared void by the Commission under section 27 (2B) of the Act shall not participate in the elections

(2) The Commission shall reject a candidate submitted by a political party for any elective post if the candidate is not qualified or eligible for election under the Constitution, the Act or any other written law.

(3) Each political party shall issue a nomination certificate, duly signed by the authorized party officials, to the candidate nominated to participate in the elections.

(4) The Commission shall reject a nomination certificate which has any alterations.

Submission of

Party membership

**13A.** Each political party shall submit to the Commission a party membership list as prescribed in

lists.	Form 11A in the Schedule.
Submission of details by parties for primaries.	<b>13B.</b> Each political party shall submit to the Commission the date, venue and names of persons contesting in party primaries in both printed and electronic format set out in Forms 11B, 11C, 11D, 11E, 11F and 11G.
Submission of names.	<b>13C.</b> Every political party shall submit the names of the party candidates who have been selected to participate in the general elections in both printed and electronic format as prescribed in Forms 11H, 11I, 11J, 11K, 11L and 11M set out in the Schedule.

#### 14. Party to submit list of candidates

(1) Each political party intending to present a candidate in an election shall, after its nominations and on such date or within such period as the Commission may designate, submit a list of persons nominated as candidates indicating the elective posts to which they are seeking election.

(2) The list referred to in sub regulation (1) shall be in the prescribed Forms set out in sub-regulation 13C

(3) The list submitted under this regulation shall be signed by the authorised official of the political party.

(4) Each political party shall submit only the name of one person as their candidate for a presidential election or for any electoral area as defined in the Act.

#### 15. Certain requirements for independent candidates

A person who is a Kenyan citizen, and who intends to contest for an elective post as an independent candidate shall—

- (a) obtain and file with the Commission a clearance certificate from the Registrar of Political Parties certifying that the person has not been a member of any political party for at least three months immediately before the date of the election; and
- (b) file with the Commission a form of intention to contest, in the Form 11N.

#### PART IV – NOMINATION OF PRESIDENTIAL CANDIDATES

#### 16. Manner of nomination of political party presidential candidate

(1) A political party candidate at a presidential election shall be nominated by a political party by and delivery to the Commission on the day fixed for the nomination of candidates at that election, an application for nomination in Form 12 set out in the Schedule.

(2) An application for nomination under this regulation shall be—

- (a) signed by the candidate, and the authorised official of the party; and
- (b) delivered to the Commission personally by the candidate or by an official of the party.

**17. Manner of nomination of independent presidential candidate**

(1) An independent candidate at a presidential election shall deliver to the Commission on the day fixed for the nomination of candidates at that election, an application for nomination in Form 12 set out in the Schedule.

(2) An application for nomination under this regulation shall—

- (a) signed by the candidate, and by two persons who have nominated the candidate in accordance with section 29(2) of the Act;
- (b) delivered to the Commission personally by the candidate or by any of the two persons referred to in paragraph (a).

**18. Supporters of nomination of presidential candidate and statutory declaration**

(1) The person delivering an application for nomination under regulation 16 or 17 shall at least five days to the day fixed for nomination, deliver to the Commission a list bearing the names, respective signatures, identity card or passport numbers of at least two thousand voters registered in each of a majority of the counties, in standard A4 sheets of paper and in an electronic form.

(2) The sheets of paper delivered under this regulation shall—

- (a) be serially numbered;
- (b) each have at the top, in typescript, the wording at the top of Form 12; and
- (c) be accompanied by copies of the identification document of the voters referred to in sub regulation (1).

(3) There shall be delivered to the returning officer together with the application for nomination, a statutory declaration in Form 13 set out in the Schedule, made not earlier than one month before the nomination day.

**19. Nomination fees of presidential candidates**

An application for nomination for candidature at a presidential election shall be accompanied by a non-refundable nomination **fee, in banker's draft of—**

- (a) one hundred thousand shillings for a candidate who is a youth, a woman or a person with disability; and
- (b) two hundred thousand shillings for any other candidate.

**20. Certain obligations of independent candidates for the office of president**

(1) Every independent candidate contesting for the office of president shall establish and maintain a functioning office in Kenya.

(2) The office contemplated in sub regulation (1) shall be established and be available for inspection by the Commission not later than forty-five days prior to the elections.

**21. Declaration of no contest: Presidential election**

If at the close of nominations for a presidential election, only one candidate is validly nominated, the Commission shall publish a notice in the *Gazette* showing the name of the candidate so nominated and stating that the presidential election shall not be held, and the Commission shall declare the candidate elected as President in Form 14.

## PART V – NOMINATION OF CANDIDATES FOR NATIONAL ASSEMBLY



**22. Nomination of political party candidates for National Assembly**

**A political party candidate at a parliamentary election for the National Assembly or county woman representative shall be nominated by a political party by delivery, to the returning officer on the day fixed for the nomination of candidates at that election, of an application for nomination in Form 15 set out in the Schedule.**

**23. Nomination of independent candidates for National Assembly**

**An independent candidate at a parliamentary election for the National Assembly or the county woman representative shall deliver to the returning officer, on the day fixed for the nomination of candidates at that election, an application for nomination in Form 15 set out in the Schedule.**

**24. Supporters of nomination of candidate for National Assembly**

**(1) The person delivering an application for nomination under regulation 23 shall at the same time deliver to the returning officer for each elective post, standard A4 sheets of paper bearing the names, respective signatures and identity card numbers of at least one thousand voters registered in the constituency or county, as the case may be.**  
**(2) The sheets of paper delivered under sub regulation (1) shall—**

- a) be serially numbered;
- b) each have at the top, in typescript, the wording at the top of Form 15; and
- c) accompanied by copies of the identification documents of the voters referred to in sub regulation (1).

Nomination of  
County  
Woman representative of

**24A. Where the nomination is for a county**

the National Assembly, woman representative of the National Assembly, the candidate shall make an application for nomination in

Form 15A as prescribed in the Schedule.

**25. Nomination fees for candidate for National Assembly**

**An application for nomination for candidature at a parliamentary election shall be accompanied by a non-refundable nomination fee, in banker's draft, of—**

- (a) ten thousand shillings for a candidate who is a youth, woman or person with disability; and
- (b) twenty thousand shillings for any other candidate.

**PART VI – NOMINATION OF CANDIDATES FOR SENATE****26. Nomination of political party candidate for Senate**

**A political party candidate at an election for the Senate shall be nominated by a political party by delivery, to the county returning officer on the day fixed for the nomination of candidates at that election, of an application for nomination in Form 16 set out in the Schedule.**

**27. Nomination of independent candidate for Senate**

**An independent candidate at an election for the Senate shall be nominated by delivery to the county returning officer on the day fixed for the nomination of candidates at that election, of an application for nomination in Form 16 set out in the Schedule.**



[Subsidiary]

**28. Supporters of nomination of candidate for Senate**

(1) The person delivering an application for nomination under regulation 27 shall at the same time deliver to the returning officer, standard A4 sheets of paper bearing the names, respective signatures and identity card numbers of two thousand registered voters in the county.

(2) The sheets of paper delivered under sub regulation (1) shall—

- (a) be serially numbered;
- (b) each have at the top, in typescript, the wording at the top of Form 16; and
- (c) be accompanied by copies of the identity cards of the voters referred to in sub regulation (1).

**29. Nomination fees for candidate for Senate**

An application for nomination for candidature at a Senate election shall be accompanied by a non-refundable nomination fee, in banker's draft, of—

- (a) twenty-five thousand shillings for a candidate who is a youth, woman or person with disability; and
- (b) fifty thousand shillings for any other candidate.

**PART VII – NOMINATION OF COUNTY GOVERNOR CANDIDATES****30. Nomination for political party candidate for county governor**

A political party candidate for election as county governor shall be nominated by the political party by delivery, to the county returning officer, on the day fixed for the nomination of candidates at that election, of an application for nomination in Form 17 set out in the Schedule.

**31. Nomination of independent candidates for county governor**

(1) An independent candidate at a county governor election shall deliver to the returning officer on the day fixed for the nomination of candidates at that election, an application for nomination in Form 17 set out in the Schedule.

**32. Supporters of nomination of county governor candidate**

(1) The person delivering an application for nomination under regulation 31 shall at the same time deliver to the returning officer standard A4 sheets of paper bearing the names, respective signatures and identity card numbers of five hundred voters registered in the county.

(2) The sheets of paper delivered under subregulation (1) shall—

- (a) be serially numbered; and
- (b) each have at the top, in typescript, the wording at the top of Form 17.
- (c) be accompanied by copies of the National identification cards of the voters referred to in sub regulation (1).

**33. Nomination fees for county governor candidates**

An application for nomination for candidature at a county governor election shall be accompanied by a non-refundable nomination fee, in banker's draft, of—

- (a) twenty-five thousand shillings for a candidate who is a youth, woman or person with disability; and

- (b) fifty thousand shillings for any other candidate.

PART VIII – NOMINATION OF CANDIDATES FOR COUNTY ASSEMBLY MEMBER

**34. Nomination of political party candidate for county assembly member by political parties**

A political party candidate at a county assembly election shall be nominated by a political party by delivery to the returning officer on the day fixed for the nomination of candidates at that election, of an application for nomination in Form 18 set out in the Schedule.

**35. Nomination of independent candidate for county assembly**

An independent candidate at a county assembly member election shall deliver to the returning officer on the day fixed for the nomination of candidates at that election, of an application for nomination in Form 18 set out in the Schedule.

**36. Supporters of nomination of candidate for county assembly**

(1) The person delivering a nomination application under regulation 35 shall at the same time deliver to the returning officer, standard A4 sheets of paper bearing the names, respective signatures and identity card numbers of five hundred voters registered in the ward.

(2) The sheets of paper delivered under sub regulation

(1) shall—

- (a) be serially numbered;
- (b) each have at the top, in typescript, the wording at the top of Form 18; and
- (c) be accompanied by copies of the identity cards of the voters referred to in sub regulation (1).

**37. Nomination fees for candidate for member of county assembly**

An application for nomination for candidature at a county assembly member election shall be accompanied by a non-refundable nomination fee, in banker's draft of—

- (a) two thousand five hundred shillings for a candidate who is a youth, woman or person with disability; and
- (b) five thousand shillings for any other candidate.

PART IX – GENERAL PROVISIONS ON  
NOMINATION OF CANDIDATES AND REFERENDUM

**38. General requirements: political party candidates**

A nomination paper submitted by a political party candidate to the Commission shall—

- (a) contain the candidate's name as it appears in the register of voters;
- (b) be signed by the candidate and by a proposer and seconder who shall be voters registered in the respective electoral areas, and who shall be members of the political party, and by an authorised official of the political party; and
- (c) be delivered to the returning officer personally by the candidate or by a person authorised by the candidate in that behalf on the day set for the nomination.

**39. General requirements: independent candidates**

A nomination paper submitted by an independent candidate to the Commission shall—

- (a) **contain the candidate's name as it appears in the voter register;**
- (b) show the voter registration number of each of the subscribers thereto;
- (c) be signed by the candidate, and by a proposer and seconder who shall be voters registered in the respective electoral areas but who shall not be members of any political party;
- (d) show the respective electoral area and voters number of the proposer and the seconder; and
- (e) be delivered to the returning officer personally by the candidate himself or herself or by a person authorized in that behalf by the candidate on the day set for the nomination of that election.

**40. Independent candidates to supply physical address**

Every independent candidate for elections shall provide a physical address located in the respective electoral area for purposes of physical service of documents.

**41. Statutory declaration for purposes of nomination**

A person nominated to contest in a parliamentary or county election shall submit to the returning officer together with the application for nomination a statutory declaration in Form 19 set out in the Schedule.

**42. Supply of nomination forms**

A returning officer shall supply free of charge to any voter of his or her electoral area an application for nomination upon a request made by the voter or on behalf of the voter at such place and time as is specified in a notification under regulation 11.

**43. Validity of nomination papers**

(1) Where a candidate has applied for nomination in accordance with these Regulations, unless the returning officer holds a nomination paper invalid in accordance with these Regulations, or the candidate withdraws his or her candidature, or proof is **given to the satisfaction of the returning officer of the candidates' death, the candidate** named therein shall stand validly nominated.

(2) A returning officer shall hold a nomination paper invalid on any of the following grounds—

- (a) that the particulars of the candidate or supporters contained in the nomination paper are not as required by the Act or these Regulations in respect of that elective post;
- (b) that the nomination paper is not subscribed as required by these Regulations in respect of that elective post;
- (c) that the candidate is not qualified to be, or is disqualified by law from being nominated or elected to the elective post for which nomination is sought;
- (d) that so many of the supporters as would reduce the number of qualified supporters to less than the required number of supporters are not qualified to be supporters;
- (e) that the candidate was not nominated by a political party under section 13 of the Act;
- (f) **that the candidate's name is not on the list submitted by the political party** under section 35 of the Act;

- (g) that the nomination paper was presented after the prescribed period had lapsed;
- (h) that the nomination paper was not accompanied by the prescribed fee; (i) that the person stands nominated as a candidate in another electoral area; or
- (j) that the candidate is disqualified under any other written law.

(3) A returning officer shall give his or her decision on an objection to a nomination paper as soon as practicable after the objection is made.

(4) Where a returning officer decides that a nomination paper is invalid, the returning officer shall record that decision and the reasons therefor on the nomination paper, add his or her signature thereto and return the invalid nomination paper to the candidate or its presenter.

(5) Notwithstanding that a returning officer has held nomination papers invalid, the returning officer may admit the nomination papers once the reason rendering the nomination papers invalid has been addressed.

#### **44. Withdrawal of candidature before nomination**

A candidate whose nomination papers have been delivered to the returning officer may, before the close of nominations, by notice in writing signed by him or her before the returning officer and presented to the returning officer, withdraw his or her candidature.

#### **45. Multiple subscribers, etc.**

(1) No person shall be a subscriber to more than one nomination paper in respect of different candidates in the same election and if any person subscribes to more than one nomination paper such subscription shall be inoperative on nomination papers:

Provided that this subregulation shall not apply to the subscription of a person by reason only of his or her having subscribed a nomination paper of a candidate who has died or who has withdrawn his or her candidature before a second nomination paper subscribed by that person has been delivered to the returning officer.

(2) For purposes of verifying the names of the members of the political party on the party membership list provided by a political party for purposes of these Regulations, such names shall be confirmed against the party membership list submitted to, and kept by, the Registrar of Political Parties and the party membership list submitted to the Commission pursuant to section 28 of the Act.

#### **46. Ethical requirements**

A candidate shall obtain and submit a self-declaration form as prescribed under the Leadership and Integrity Act, 2012.

[Act No. 19 of 2012.]

#### **47. Ascertainment of educational qualifications**

(1) For purposes of ascertaining the educational qualification of persons for an elective post, a person seeking nomination shall submit to the Commission certified copies of certificates of the educational qualification.

(2) Where the body that issued the certificate is not based in Kenya, a candidate shall be required to seek authentication of that body with the Kenya National Examinations Council, in the case of form four certificates, or the Commission for University Education, in the case of university degrees.

#### **48. Attendance at delivery of nomination papers**

(1) No person shall be entitled to attend the proceedings taking place during the time fixed for the delivery of nomination papers unless that person is—

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- (a) a candidate;
- (b) a person nominated as deputy to the candidate, where applicable;
- (c) an agent; or
- (d) present for the purpose of assisting the returning officer at the request of the returning officer.

(2) Only two persons shall be entitled to attend the proceedings under subregulation(1) at any one time, in respect of any one candidate, whether one of the two persons is the candidate himself or herself or not.

(3) A person entitled to attend proceedings under this regulation shall also be entitled to inspect and to object to the validity of any nomination paper delivered in his or her presence.

(4) Nothing contained in this regulation shall prevent the returning officer from authorizing observers or members of the press duly approved or accredited by the Commission from attending the nomination proceedings.

#### **49. Death of candidate**

Where after the close of the nomination, and before the poll is commenced, proof is given to the satisfaction of the returning officer of the death of a person who has been duly nominated, all the proceedings with reference to the election in that electoral area shall cease and shall be commenced afresh as if the notice had been received on the day on which proof of the death was given, or in the case of a general election or an election involving other electoral areas, the day following the announcement of the last election results:

Provided that no fresh nomination shall be necessary in the case of a person already duly nominated for the election affected by this regulation whose nomination shall remain valid.

#### **50. Disruption of nomination**

(1) Where the proceedings of a nomination in an electoral area are interrupted by riots, violence, floods or other natural disaster, the proceedings in that electoral area shall be suspended for that day.

(2) If the day referred to in subregulation (1) is the last day for the delivery of nomination papers, the nomination proceedings in that electoral area shall be continued on the next day as if that were the last day for the delivery thereof.

(3) **The “last day” referred to in subregulation (2) shall be treated for purposes of these Regulations as being the last day (subject to any further application of this rule in the event of interruption on that day):**

Provided the returning officer shall advertise the postponing of the nominations in such manner as the returning officer considers sufficient to bring it to the notice of the public.

(4) A returning officer may extend the hours of nomination at the electoral area where nomination has been interrupted and shall, where nomination started late, extend the hours of nomination by the amount of time which was lost in so starting late.

#### **51. Nomination certification, etc.**

(1) The chairperson of the Commission shall issue a candidate who is validly nominated to contest in a presidential election with a certificate in Form 20 set out in the Schedule.

(2) The returning officer shall issue a candidate who is validly nominated to contest in a parliamentary, county governor or county assembly with a certificate in Form 21 set out in the Schedule.

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(3) If, after the closure of nomination no person stands validly nominated, the returning officer shall certify accordingly to the Commission in Form 22 set out in the Schedule; and certify accordingly to the Commission in Form 22 set out in the Schedule; and

(3A) Where after the closure of nomination no person stands validly nominated under sub regulation (3), the Commission shall publish a notice in the *Gazette* cancelling the holding of the election concerned.

(4) If, after the close of nominations, only one candidate is validly nominated, the returning officer shall—

- (a) declare the candidate to be nominated; and
- (b) certify accordingly to the Commission in Form 23 set out in the Schedule.

(5) Upon receipt of a certificate under subregulation (1) or (2), the Commission shall publish a notice in the *Gazette* and, where two or more certificates are received at substantially the same time, such notice may be a composite one.

(6) If, after the close of nominations, two or more candidates stand validly nominated, the returning officer shall publish a statement and post it prominently at a place at the **returning officer's office where the public has full access and at such other places as the Commission may deem necessary in Form 24 set out in the Schedule stating—**

- (a) the names, in alphabetical order of surnames, addresses and occupations or descriptions of such candidates as given in their nomination papers;
- (b) the name of the subscribers to the nomination papers;
- (c) the day or days upon which, and the hours during which, the poll will be taken;
- (d) the situation of each polling station and the description of the voters entitled to vote at each polling station; and
- (e) the location of each tallying centre.

## 52. Withdrawal of candidature after nomination

1. A candidate who has been nominated may withdraw his or her candidature by delivering to the respective returning officer a notice to that effect in Form 24A not later than three days after nomination.

2. Where there are only two nominated candidates and one candidate withdraws, the remaining candidate shall be declared duly elected in accordance with regulation 53.

## 53. Declaration of no contest: Other elective posts

If at the close of nominations for any elective post only one candidate is validly nominated in respect of that elective post in an electoral area, the Commission shall declare the candidate duly elected and publish a notice in the *Gazette* to that effect.

Swearing in of an elected candidate **53A.** Where a candidate has been duly elected the speaker of the relevant assembly shall swear in the candidate within seven days of the date of the election.

### PART X – NOMINATIONS FOR PARTY LISTS

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## 54. Submission of political party list for allocation of special seats

(1) Each political party shall submit to the Commission a party list of all persons who would stand elected if the party were entitled to seats in the National Assembly, Senate or the County Assembly, as the case may be on the basis of proportional representation in accordance with Article 90 of the Constitution and sections 34, 35, 36 and 37 of the Act.

(2) The party list referred to in subregulation (1) shall contain the name, address, age, sex, disability and category of disability, phone number, occupation, identity card number or passport number and colored passport size photograph image, elective post sought and such other qualifications as are provided under the Constitution and the Act in the prescribed Form 24B.

(3) A party list submitted under subregulation (1) shall be in accordance with section 36 of the Act, and shall be—

- (a) signed by the authorised official of the political party submitting the party list; and

(b) be submitted in hard copy, in electronic form and such other form that the Commission may specify.

(4) Each political party list nominee shall after nomination, submit to the Commission a letter stating his or her intention to serve if nominated.

(4A) Each political party list nominee representing persons with disabilities shall submit, to the Commission, a certification from the National Council for Persons with Disabilities.

(5) The Commission may reject a nominee submitted by a political party for any elective post if that nominee is not qualified to be elected to the office for which the nomination is sought as specified under the Constitution or the Act.

(6) The rejection by the Commission of a nominee under this regulation shall not invalidate the entire party list submitted by the political party.

(7) The Commission, after making the decision to reject a nominee, inform the political party concerned of that decision and request that political party to submit another name within such time as the Commission shall determine.

(8) The Commission shall publish the final party list in at least two newspapers with nationwide circulation.

#### **55. Party list to be prepared in accordance with party rules**

(1) The party list contemplated under regulation 54 shall be prepared in accordance with the nomination rules of the political party.

(2) The Commission shall within fourteen days of receipt reject any party list that does not comply with the requirements of the Constitution, the Act or these Regulations.

(3) The political party whose party list or nominee has been rejected by the Commission under subregulation (2) shall resubmit the party list or nominee within seven days from the date that the party list was rejected under sub regulation (2); and.

(3A) Where a political party fails to amend the party list or resubmit the list as directed by the Commission, the Commission shall reject the party list.

(4) A political party submitting a party list under regulation 54 shall submit a declaration to the effect that the political party has complied with its rules relating to the nomination of the names contained in the list.



## 56. Commission to publish formula for allocation of seats

(1) The Commission shall before the election to which a party list applies, publish in the *Gazette* and publicise through electronic and print media of national circulation and other easily accessible medium, the formula for allocating the seats to the respective political parties.

(2) The formula for allocation of seats to the respective political parties from the partylists shall be the number of seats won by a political party divided by the total number of seats multiplied by available seats for allocation in the respective House.

Re-allocation of special seats from the party list **56A.** (1) Where a political party expels a member elected through a party list during the term of Parliament or County Assembly as the case may be, the party shall be required to submit—

- (a) a resolution or decision of the party;
- (b) a notification by the Registrar of Political Parties effecting the expulsion;
- (c) a declaration of vacancy from the relevant Speaker; and
- (d) a court order sanctioning the expulsion where applicable, to the Commission for re-allocation.

Resignation of a member

elected through party list **56B.** Where a member elected through a party list resigns during the term of Parliament or County Assembly as the case may be, the party shall be required to submit—

- (a) the resignation letter of the member; and
- (b) a declaration of vacancy from the relevant Speaker; to the Commission for re-allocation.

## PART XI – PROVISIONS RELATING TO THE CAMPAIGN PERIOD

### 57. Appointment of national and county chief elections agents

(1) Every political party shall at least fourteen days to the date of the election submit to the Commission the names of one national chief agent and forty-seven county chief agents.

(2) Every independent candidate at a presidential election shall fourteen days to the date of the election submit to the Commission the names of one national chief agent and forty-seven county chief agents.

## PART XII – PROVISIONS ON VOTING AT ELECTIONS

### 59. Election procedure

(1) Every election shall be by secret ballot and shall be held in accordance with the provisions of the Constitution, the Act and these Regulations.

(2) A voter shall cast his or her vote by use of a ballot paper or electronically.

(3) No person shall cast more than one vote at any particular election.

(4) No person shall vote in a polling station other than that in respect of which that person is registered to vote.

### 60. Electronic voting

Where the Commission intends to conduct an election by electronic means, it shall, not later than three months before such election, publish in the *Gazette* and publicise through electronic and print media of national circulation and other easily accessible medium, guidelines that shall apply in such voting.



## 61. Election material at polling station

(1) The returning officer shall provide each presiding officer with such number of ballot boxes and ballot papers necessary for the effective carrying out of the provisions of these Regulations relating to the election concerned.

(2) Every ballot box shall be—

- (a) fairly transparent or translucent;
- (b) be colour coded prominently and distinctively to identify the respective elective post and shall correspond with the colour of the ballot paper for that elective post;
- (c) constructed with an aperture which is large enough to receive a ballot paper; (d) clearly labelled with the text of the respective elective post;
- (e) constructed so as to be capable of being sealed so that ballot papers cannot be taken out of the box so long as the seal is unbroken;
- (f) constructed so that the ballot boxes shall bear serial numbers of the polling station and which serial numbers shall be posted prominently and in full view of voters at every polling station.

(3) The ballot box shall be designed in such way as to facilitate voting during the election.

(4) The returning officer shall provide each polling station with—

- (a) both electronic and hard copy of the Register of Voters or such part thereof as contains the biometric data and alpha numerical details of the voters entitled to vote at that polling station;
- (b) materials to enable voters to mark their ballot papers in elections where marking is necessary;
- (c) instruments for stamping the official mark on ballot papers;
- (d) material for the marking of the voters fingers;
- (e) a seal of the Commission suitable for the purposes of regulation 69(1)(g);
- (f) sufficient number of compartments in which voters can mark their votes secretly; and
- (fa) sufficient number of compartments in which voters can mark their votes secretly with special consideration for persons with disabilities.
- (g) such other materials for the better carrying out of polling.

## 62. Admission to polling station

(1) The presiding officer shall regulate the number of voters to be admitted to the polling station at the same time, and may exclude all other persons except—

- (a) a candidate;
- (b) a person nominated as a deputy to the candidate, where applicable;
- (c) authorised agents;
- (d) members of the Commission and election officers on duty;

- (e) police officers on duty;
- (f) persons necessarily assisting or supporting voters with special needs or assisted voter; and
- (g) observers and representatives of the print and electronic media accredited by the Commission.

(2) Notwithstanding subregulation (1), the presiding officer shall admit to the polling station not more than one agent for each candidate or political party.

(3) The absence of agents shall not invalidate the proceedings at a polling station.

(4) Every agent appointed by an independent candidate or political party for the purposes of these Regulations shall at all times during the performance of the duties authorized by the independent candidate or political party display the official badge supplied by the Commission.

(5) No person shall be admitted to vote at any polling station other than that allotted to that person under regulation 59(4).

(6) No person shall be admitted into a polling station if that person is wearing a badge or has any dressing, signifying symbols or other indication of support for any political party, a candidate in the election or a referendum committee.

### **63. Keeping order at polling station**

(1) It shall be the duty of the presiding officer to keep order at his or her polling station.

(2) The presiding officer may order the removal of any person who misconducts himself or herself at the polling station, or fails to obey any lawful instructions or orders of the presiding officer and such person shall be removed by the police officer present.

(3) A person removed from the polling station under subregulation (2) shall not re-enter the polling station during the continuance of the poll without the permission of the presiding officer.

(4) A person removed from a polling station under subregulation (2) may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody for an offence by a police officer without a warrant.

(5) The presiding officer may order the dispersal of any gathering of persons which appears to the presiding officer to be preventing free entry to, or exit from, the polling station or to be intimidating or interfering with voters, and any such order shall be sufficient authority for a police officer, or any other person authorized by the order, to effect the dispersal.

(6) The power conferred on a presiding officer and a police officer under subregulation(5) shall not be limited to the area covered by the polling station only but shall extend to a radius of not more than four hundred meters from the centre of the polling station.

(7) The powers conferred by this regulation shall not be exercised so as to prevent any voter who is entitled to vote at the polling station from having an opportunity to peaceably vote at that polling station.

### **64. Adjournment, etc., of polling by the presiding officer**

(1) Notwithstanding the terms of any notice issued under the Act or these Regulations, a presiding officer may, after consultation with the returning officer, adjourn the proceedings at his or her polling station where they are interrupted by a riot, violence, natural disaster or other occurrence, shortage of equipment or other materials or other administrative difficulty, but where the presiding officer does so, the presiding officer shall re-start the proceedings at the earliest practicable moment.

(2) The discretionary powers of a presiding officer under subregulation (1) shall include a power in the circumstances therein mentioned to transfer the proceedings to another polling station or public facility in the same constituency, and where presiding officer does so—

- (a) the presiding officer shall advertise the fact in such manner as is sufficient to bring it to the notice of voters; and
  - (b) the electoral area for the polling station from which the proceedings are transferred shall, for all the purposes of these Regulations, be deemed to be part of the electoral area of the polling station to which the proceedings are transferred.
- (3) A presiding officer shall, in consultation with the returning officer—
- extend the hours of polling at the polling station where polling has been interrupted under this regulation or for other valid cause; and
  - where polling in that polling station has started late, extend the hours of polling by the amount of time which was lost in so starting late.

(4) Where hours of polling have been extended as contemplated under subregulation(3), the presiding officer shall give a detailed report on the clear facts justifying such extension of hours.

Postponement of an **64A** (1) The Commission may, where a date election by the Commission. has been appointed for holding an election, postpone the election in a constituency, county or ward for such period as it may consider necessary where —

- (a) there is reason to believe that a serious breach of peace is likely to occur if the election is held on that date; and
- (b) it is impossible to conduct the elections as a result of a natural disaster or other emergencies.

(2) Where an election is postponed under sub regulation (1), the election shall be held at the earliest practicable time.

(3) Notwithstanding the provisions of this regulation, the Commission may declare the results if satisfied that the result of the elections will not be affected by the votes yet to be received and tallied from the affected polling stations.

## 65. Communication at polling station

(1) No person other than an election officer or police officer on duty shall, except with the authority of the presiding officer, have any communication whatsoever with a voter who is in, or in the immediate precincts of, a polling station for the purpose of voting.

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(2) This regulation shall not prevent the companion of an assisted or supported voter from communicating with that voter.

(3) Every election officer, candidate or agent attending at a polling station shall not communicate, unless for a purpose authorized by law, any information as to the name or number on the Register of Voters of any voter who has or has not applied for a ballot paper or voted at that station.

(4) A presiding officer may, upon request, divulge to a candidate or agent of a candidate the total number of voters who have voted at the station at any time before the poll is closed.

## 66. Polling time

(1) Subject to regulation 64, voting shall commence at 6 o'clock in the morning and end at 5 o'clock in the afternoon on the polling day.

(2) Notwithstanding subregulation (1), a person who is on a queue for the purposes of voting before 5 o'clock in the afternoon shall be allowed to vote despite the fact that the voting time may extend to after 5 o'clock.

(3) The voting by Kenyan citizens residing outside Kenya shall be carried out during the Kenyan time specified in subregulation (1).

## 67. Sealing of ballot boxes, etc.

(1) The presiding officer shall, immediately before the commencement of the poll—

- (a) show the ballot box or ballot boxes to those persons lawfully present in the polling station;
- (b) allow those of the candidates, agents and any voter as may wish, to do so, to ascertain that the box or boxes are empty; and
- (c) close the box or boxes with seals so that they may not be opened without breaking the seal.

(2) After a ballot box is sealed under subregulation (1) the presiding officer shall cause it to be so placed in the polling station that it can at all times be in the view of himself or herself or a deputy presiding officer and of the candidates or the agents.

(3) On the adjournment of the poll in a polling station to another day, or on the close of the poll at one station with a view to transferring a ballot box to another station, and at any other time when a ballot box is not in use for the purpose of receiving ballot papers, the presiding officer shall close up the aperture used for the insertion of the ballot papers into the box and place his or her seal on it in such a manner as to prevent the insertion of ballot papers without breaking the seal.

(4) After a box has been sealed under subregulation (3), the seal shall not be broken nor the aperture opened except in the presence of the candidates or agents present in the polling station where polling is about to re-commence.

(5) Where a presiding officer affixes his or her seal on a ballot box or aperture thereof under this regulation, the presiding officer shall permit any candidate or agent who so wishes to affix his or her seal on the box or aperture.

## 68. Ballot papers

(1) Ballot papers for an election—

- (a) for use at a presidential election shall be in Form 25 set out in the Schedule;
- (b) for use at a National Assembly election shall be in Form 26 set out in the Schedule;

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- (c) for use at a county woman representative to the National Assembly election shall be in Form 27 set out in the Schedule;
- (d) for use at a Senate election shall be in Form 28 set out in the Schedule;
- (e) for use at an election for governor shall be in Form 29 set out in the Schedule;
- (f) for use at a county assembly member election shall be in Form 30 set out in the Schedule;
- (g) for use in referendum shall be in Form 31 set out in the Schedule.

(2) Where an election is in respect of more than one elective post, each ballot paper shall be printed on paper of a different colour which is prominent and distinctive from those for use in the other elective posts.

(3) The persons validly nominated under these Regulations shall have their names included in the ballot papers for an election in the same order as they appeared in a notice published in accordance with regulation 51(5).

(4) Every ballot paper for use at an election shall—

- (a) contain the name and symbol of the candidate validly nominated;
- (b) contain a photograph of the candidate where applicable;
- (c) be capable of being folded up;
- (d) have a serial number, or combination of letter and number, printed on the front; and
- (e) have attached a counterfoil with the same number or combination printed thereon.

(5) The presiding officer shall before polling commences, allow the candidates or agents who are present at the polling station to inspect the ballot papers provided for use at the polling station and to note the serial numbers thereon.

**69. Voting procedure**

(1) Before issuing a ballot paper to a voter, an election official shall—

- (a) require the voter to produce an identification document which shall be the same document used at the time of registration as a voter;
- (b) ascertain that the voter has not voted in that election;
- (c) call out the number and name of the voter as stated in the polling station register;
- (d) require the voter from the printed copy register to place his or her fingers on the fingerprint scanner and cross out the name of the voter once the image has been retrieved;
- (e) in case the electronic voter identification device fails to identify a voter the presiding officer shall—
  - (i) invite the agents and candidates in the station to witness that the voter cannot be identified using the device;
  - (ii) complete verification Form 32A in the presence of agents and candidates;
  - (iii) identify the voter using the printed Register of voters; and
  - (iv) once identified proceed to issue the voter with the ballot paper to vote.

(2) A voter shall, in a multiple election, be issued with the ballot papers for all elections therein at the same time and shall after receiving the ballot papers—

- (a) cast his or her votes in accordance with regulation 70 without undue delay;
- (b) submit to having one finger as prescribed by the Commission immersed, dipped or marked in ink of a distinctive colour which, so far as is possible, is sufficiently indelible to leave a mark for the period of the election;
- (c) where a voter has no finger, make a mark on the next most suitable part of the body; and
- (d) upon collecting his or her identification documents, immediately leave the polling station.

(3) A person who knowingly fails to place a ballot paper issued to him or her (not being a spoilt ballot paper) into a ballot box before leaving the place where the box is situated commits an offence under the Act.

(4) An election officer who deliberately refuses to stamp any ballot paper commits an offence.

(5) The presiding officer may, where a voter so requests, explain the voting procedure to such voter.

## 70. Method of voting

(1) A voter shall, upon receiving a ballot paper under regulation 69(2)—

- (a) go immediately into one of the compartments of the polling station and secretly mark his or her ballot paper by putting a cross, a tick, thumbprint or any other mark in the box and column provided for that purpose against the name and the symbol of the candidate for whom that voter wishes to vote; and
- (b) fold it up so as to conceal his or her vote, and shall then put the ballot paper into the ballot box in the presence of the presiding officer and in full view of the candidates or agents.

(2) The voter shall after following the procedure specified in subregulation (1) put each ballot paper into the ballot box provided for the election concerned.

(3) No replacement of a ballot paper under this regulation may be done more than twice in respect of any particular voter.

## 71. Spoilt ballot papers

A voter who has inadvertently dealt with his or her ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering it to the presiding officer and providing to the satisfaction of such officer the fact of the inadvertence, obtain another ballot paper in the place of the ballot paper so delivered and the spoilt ballot paper shall be immediately cancelled and the counterfoil thereof marked accordingly.

## 72. Assisted voters

(1) On the application of a voter who is, by reason of a disability or being unable to read or write, and therefore unable to vote in the manner prescribed in these Regulations, the presiding officer shall permit the voter to be assisted or supported by a person of the **voter's own free choice, and who shall not be** a candidate or an agent.

(2) Where the person who applies to be assisted is not accompanied by a person who is qualified to assist him or her, the presiding officer shall assist such voter, in the presence of the agents.

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(3) The presiding officer may make such necessary and respectful inquiry in order to establish that the voter and the person the voter has chosen to assist him or her satisfies the provisions of this regulation.

(4) The person chosen by the voter is not required to be qualified to vote but is required to have attained the age of eighteen years.

(5) The following shall apply with respect to a person who assists a voter under this regulation—

- (a) the person shall, before assisting or supporting the voter, make a declaration of secrecy before the presiding officer in Form 32 set out in the Schedule;
- (b) a person who breaches his or her declaration commits an offence under the Act;
- (c) the person shall assist or support only one voter at that election and have a mark as proof of assisting or supporting a voter.

(6) Where a presiding officer grants the request of a voter under this regulation, the presiding officer shall record in the polling station register against the name of the voter the fact that the voter was assisted and the reason for the assistance.

(7) No person other than a person acting under this regulation shall be present in a compartment of a polling station while a voter is in the compartment for the purpose of marking his or her ballot paper and any person who contravenes this subregulation commits an offence.

#### PART XIII – COUNTING OF VOTES AND DECLARATION OF RESULTS

### 73. Procedure on close of polling

(1) At the end of voting, the presiding officer shall declare the polling station closed and shall proceed to seal the ballot boxes in the presence of the candidates or agents and observers at his or her polling station.

(2) Immediately after the close of the polling at his or her polling station, the presiding officer shall make in the polling station diary a written statement of—

- (a) the number of ballot papers issued to him or her under regulation 61;
- (b) the number of ballot papers, other than spoilt ballot papers, issued to voters;
- (c) the number of spoilt ballot papers; and
- (d) the number of ballot papers remaining unused.

(3) Immediately after the completion of the statement under subregulation (2), the presiding officer, in the presence of the candidates or agents shall seal in separate tamper proof envelopes—

- (a) the spoilt ballot papers, if any;
- (b) the marked copy register, where necessary;
- (c) the counterfoils of the used ballot papers; and
- (d) the statement specified in subregulations, and shall seal each of the envelopes with his or her own seal and the seal of the Commission and shall allow any candidate or agent who may wish to do so, to affix his seal to the envelope and any statement recorded under these regulations.

(4) After complying with the provisions of this regulation, the presiding officer shall, as soon as practicable, deliver the ballot boxes, and the tamper proof sealed envelopes to the returning officer who shall take charge thereof.



**74. Attendance at counting of votes**

(1) No agent shall be deemed to be an agent for the purposes of counting unless, at least forty eight hours before the close of the poll in that election, the candidate or political party, as the case may be, has submitted to the presiding officer—

- (a) the name and address of the agent; and
- (b) a letter of the appointment of the agent.

(2) A presiding officer shall not allow a person whose name, address and authorization has not been so submitted to attend at a counting of votes notwithstanding that the appointment of that person is otherwise in order.

(3) A presiding officer shall not be obliged to admit more than one agent of any one political party, candidate or referendum committee, as the case may be, to the counting venue.

(4) The presiding officer shall permit into the counting venue—

- (a) a candidate;
- (b) a person nominated as a deputy to the candidate, where applicable;
- (c) members of the Commission and election officers on duty;
- (d) agents appointed under subregulation (1);
- (e) police officers on duty;
- (f) observers and representatives of the media duly approved or accredited by the Commission.

(5) If a vehicle or vessel is designated as a polling station and weather conditions exist, immediately after the presiding officer complies with the provisions of regulation 74, which may interfere with the counting of votes, the returning officer may allow the vehicle or vessel to be moved to another appropriate place for the counting of the votes.

**75. Commencement and sequence of the count**

(1) The presiding officer shall, in the presence of the candidates or agents, proceed to arrange the counting venue, assign duties to the clerks and begin to count the votes for that polling station.

(2) The presiding officer shall carry out the counting of votes for the respective elective posts in the following order—

- (a) president;
- (b) member of the National Assembly;
- (c) member of the County Assembly;
- (d) senator;
- (e) county woman representative in the National Assembly; and
- (f) county governor.

(3) A presiding officer shall, so far as practicable, proceed continuously with the counting of votes.

(4) A presiding officer shall not commence the counting or recount of votes unless the presiding officer is of the opinion that the count or recount, as the case may be, can conveniently be completed without a break.

(5) Subject to subregulation (2), the counting of votes cast by Kenyan citizens residing outside Kenya shall be carried out after the close of polling time in Kenya and in accordance with the time of counting in Kenya.



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(6) At the end of voting and before counting of the ballots and in the presence of candidates and agents, the presiding officer shall enter in the polling station diary the number of persons identified during polling using the printed register of voters.

## 76. Counting of votes

- (1) The presiding officer shall, in the presence of the candidates or agents—
  - (a) open each ballot box and empty its contents onto the counting table or any other facility provided for the purpose and, shall cause to be counted the votes received by each candidate; and
  - (b) record the total number of votes cast in favour of each candidate.
- (2) Each ballot paper shall be counted as follows—
  - (a) the presiding officer shall in respect of every ballot paper, announce the candidate in whose favor the vote was cast;
  - (b) display to the candidates or agents the ballot paper sufficiently for them to ascertain the vote; and
  - (c) put the ballot paper at the place on the counting table, or other facility provided for this purpose, set for the candidate in whose favor it was cast.
- (3) The presiding officer shall record the count of the vote in a tallying sheet in Form 33 set out in the Schedule.
- (4) A candidate or an agent shall have a right to—
  - (a) dispute the inclusion in the count, of a ballot paper; or
  - (b) object to the rejection of a ballot paper, where upon the presiding officer may decide to uphold or reject the complaint and act as provided under regulation 80.

## 77. Rejection of ballot papers, etc.

- (1) At the counting of votes at an election, any ballot paper—
  - (a) which does not bear the security features determined by the Commission;
  - (b) on which votes are marked, or appears to be marked against the names of, more than one candidate;
  - (c) on which anything is written or so marked as to be uncertain for whom the vote has been cast;
  - (d) which bears a serial number different from the serial number of the respective polling station and which cannot be verified from the counterfoil of ballot papers used at that polling station; or
  - (e) is unmarked,

shall, subject to subregulation (2), be void and shall not be counted.

- (2) A ballot paper on which a vote is marked—
  - (a) elsewhere than in the proper place;
  - (b) by more than one mark; or
  - (c) which bears marks or writing which may identify the voter, shall not by that reason only be void if an intention that the vote shall be for one or other of the candidates, as the case may be, clearly appears, and the manner in

which the paper is marked does not itself identify the voter and it is not shown that the voter can be identified thereby.

### 78. Rejected ballot papers

(1) **Every rejected ballot paper shall be marked with the word “rejected” by the presiding officer, and, if an objection is made by a candidate or an agent to the rejection, the presiding officer shall add the words “rejection objected to” and shall be treated as rejected for the purpose of the declaration of election results at the polling station.**

(2) The presiding officer shall mark every ballot paper counted but whose validity has **been disputed or questioned by a candidate or an agent with the word “disputed” but such** ballot paper shall be treated as valid for the purpose of the declaration of election results at the polling station.

(2A) The presiding officer shall make a decision on the validity of the disputed ballot paper under sub regulation (2) and award it to a candidate and such decision shall be final.

(3) After the counting of votes is concluded, the presiding officer shall draw up a statement in Form 41 set out in the Schedule showing the number of rejected ballot papers under such of the following heads of rejection as may be applicable—

- (a) want of security feature;
- (b) voting for more than one candidate;
- (c) writing or mark by which the voter might be identified; or
- (d) unmarked or void for uncertainty, and any candidate, counting agent or observer shall, if he or she so desires, be allowed to copy that statement.

### 79. Candidates, etc. to sign declaration

(1) The presiding officer, the candidates or agents shall sign the declaration in respect of the elections.

(2) For purposes of sub regulation (1), the declaration for—

- (a) Presidential election results shall be in Form 34A set out in the Schedule; and
- (b) National Assembly, County women representatives, Senator, Governor and county assembly elections shall be in Forms 35A, 36A, 37A, 38A, and 39A set out in the Schedule.

(2A) The presiding officer shall—

- (a) immediately announce the results of the voting at the polling station before communicating the results to the returning officer;
- (b) request each of the candidates or agents present to append his or her signature;
- (c) provide each political party, candidate, or their agent with a copy of the declaration of the results; and
- (d) affix a copy of the declaration of the results at the public entrance to the polling station or at any place convenient and accessible to the public at the polling station.

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(3) The presiding officer shall—

- (a) immediately announce the results of the voting at that polling station before communicating the results to the returning officer;
- (b) request each of the candidates or agent then present to append his or her signature;
- (c) provide each political party, candidate, or their agent with a copy of the declaration of the results; and
- (d) affix a copy of the declaration of the results at the public entrance to the polling station or at any other place convenient and accessible to the public at the polling station.

(4) Where any candidate or agent refuses or otherwise fails to sign the declaration form, the candidate or agents shall be required to record the reasons for the refusal or failure to sign.

(5) Where a candidate or an agent refuses or fails to record the reasons for refusal or failure to sign the declaration form, the presiding officer shall record the fact of their refusal or failure to sign the declaration form.

(6) Where any candidate or agent of a candidate is absent, the presiding officer shall record the fact of their absence.

(7) The refusal or failure of a candidate or an agent to sign a declaration form under subregulation (4) or to record the reasons for their refusal to sign as required under this regulation shall not by itself invalidate the results announced under subregulation (2)(a).

(8) The absence of a candidate or an agent at the signing of a declaration form or the announcement of results under subregulation (2) shall not by itself invalidate the results announced.

election results.

(9) After complying with the provisions of this regulation, the presiding officer shall, as soon as practicable, deliver the ballot boxes, the tamper proof envelopes to the returning officer who shall take charge thereof.

and

**80. Recount**

(1) A candidate or agent, if present when the counting is completed, may or the require the presiding officer to have the votes rechecked and recounted presiding officer may on his or her own initiative, have the votes recounted:

Provided that the recount of votes shall not take place more than twice.

(2) No steps shall be taken on the completion of a count or recount of votes until the candidates and agents present at the completion of the counting have been given a reasonable opportunity to exercise the right given by this regulation.

Sealing of ballot boxes **81.** (1) Upon completion of a count ,including a by presiding officer. recount, the presiding officer shall seal in each respective ballot box—

- (a) valid votes;
- (b) rejected ballots sealed in a tamperproof envelope;
- (c) unused ballot papers sealed in a tamperproof envelope;

- (d) counterfoils of used ballot papers sealed in a tamperproof envelope;
  - (e) copy of election results declaration forms; and
  - (f) stray ballot papers in a tamperproof envelope.
- (2) The presiding officer shall deliver, to the returning officer—
- (a) the sealed ballot boxes;
  - (b) the statements made under regulations 78 and 79;
  - (c) copy of the Register of Voters; and (d) polling station diary.

## 82. Provisional results to be transmitted electronically

(1) The presiding officer shall, before ferrying the actual results of the election to the returning officer at the tallying venue, submit to the returning officer the results in electronic form, in such manner as the Commission may direct.

(2) The results submitted under subregulation (1) shall be provisional and subject to confirmation after the procedure described in regulation 76.

Tallying and **83.** (1) Immediately after the results of the poll announcement of from all polling stations in a constituency have been received by the returning officer, the returning officer shall, in the presence of candidates or agents and observers, if present—

- (a) tally 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) disregard the results of the count of a polling station where the total valid votes exceeds the number of registered voters in that polling station;
- (c) disregard the results of the count of a polling station where the total votes exceeds the total number of voters who turned out to vote in that polling station;
- (d) collate and publicly announce to the persons

present 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;

- (e) complete the relevant Form 35B and 36B for the respective elective position set out in the Schedule in which the returning officer shall declare, as the case may be, the—
- (i) name of the respective electoral area;
  - (ii) total number of registered voters;
  - (iii) votes cast for each candidate or referendum side in each polling station;
  - (iv) number of rejected votes in each polling station;
  - (v) aggregate number of votes cast in the respective electoral area; and
  - (vi) aggregate number of rejected votes;
- (f) sign and date the relevant forms and publicly declare the results for the position of—
- (i) member of County Assembly;
  - (ii) member of National Assembly; and
- (g) issue certificates to persons elected in the county assembly and National Assembly elections in Forms 36C and 35C respectively set out in the Schedule;
- (h) deliver to the county returning officer the collated results for the election of the county Governor, Senator and countywomen
-

representative to the  
National Assembly; and

- (i) deliver to the Chairperson of the Commission the collated results for the election of the President to the national tallying centre.

(4) The Chairperson of the Commission shall tally and verify the results received at the national tallying centre.

(1) .

#### 84. Venue of final tallying

(1) A final tallying of results for the respective elective posts shall be at a venue gazetted by the Commission for that purpose.

(2) A tallying centre shall be selected subject to the following requirements—

- (a) the presidential elections tallying centre shall be located in Nairobi;
- (b) the county tallying centre shall be located at the county headquarters;
- (c) the constituency tallying centre shall be located at the constituency or district headquarters;
- (d) all tallying centres shall be located at public buildings.

#### 85. Persons allowed into tallying centres

(1) The returning officer shall allow the following persons to be present at the tallying centre—

- (a) the presiding officers and other election officials on duty;
- (b) a candidate;
- (c) a person nominated as a deputy to the candidate, where applicable;
- (d) a member of the Commission;
- (e) authorized agents;
- (f) a police officer on duty;
- (g) duly accredited election observers; and
- (h) duly accredited media persons.

(2) Notwithstanding the provisions of this regulation, the returning officer shall not be obliged to admit more than one agent per candidate or political party to the tallying venue.

Safe keeping of election **86.** (1) After the final tallying and materials. announcement of results, the returning officer shall keep in safe custody the following documents—

- (a) copies of all election result declaration forms;
- (b) copies of the register of voters sealed and labelled; and
- (c) the Electronic Voter Identification Device.

(2) The returning officer shall—

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- (a) put the polling station diaries in a separate ballot box, seal and label the box; and
- (b) keep the sealed ballot boxes and all materials relating to the election in safe custody for such period as may be required under these Regulations and the Act.

(1) .

Returns of persons  
elected.

**87.** (1) The constituency returning officer shall, as soon as practicable—

- (a) deliver to the county returning officer all  
Forms 37B, 38B and 39B from the respective constituencies and the collated results; and
- (b) deliver to the National tallying centre all the Form 34B from the respective polling stations and the summary collation forms.

(2) The county returning officer shall upon receipt of the results from the constituency returning officers as contemplated under regulation (1)—

- (a) tally and announce the results for the county governor, senator and county woman representative to the National assembly;
- (b) complete Forms 37C, 38C and 39C set out in the Schedule in which the county returning officer shall declare, as the case may be, the—
  - (i) name of the respective electoral area;
  - (ii) total number of registered voters;
  - (iii) votes cast for each candidate or referendum side in each polling station;
  - (iv) number of rejected votes for each constituency;



- (v) aggregate number of votes cast in the respective electoral area; and
  - (vi) aggregate number of rejected votes; and
  - (c) sign and date the relevant forms and publicly declare the results for the position of—
    - (i) county Governor;
    - (ii) Senator; and
    - (iii) county woman representative to the National Assembly; and
  - (d) issue certificates to persons elected in the county Governor, Senator, county woman representative to the National Assembly in Forms 37D, 38D and 39D respectively set out in the Schedule.
- (3) Upon receipt of Form 34A from the constituency returning officers under sub regulation (1), the Chairperson of the Commission shall—
- (a) verify the results against Forms 34A and 34B received from the constituency returning officer at the national tallying centre;
  - (b) tally and complete Form 34C;
  - (c) announce the results for each of the presidential candidates for each County;
  - (d) sign and date the forms and make available a copy to any candidate or the national chief agent present;
  - (e) publicly declare the results of the election of the president in accordance with Articles 138(4) and 138(10) of the Constitution;
  - (f) issue a certificate to the person elected president in

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Form 34D set out in the  
Schedule; and

- (g) deliver a written notification of the results to the Chief Justice and the incumbent President within seven days of the  
declaration;

Provided that the Chairperson of the Commission may declare a candidate elected as the President before all the Constituencies have delivered their results if in the opinion of the Commission the results that have not been received will not make a difference with regards to the winner on the basis of Article 138(4)(a) and (b) of the Constitution; and

- (h) in the case of the other elections, whether or not forming part of a multiple election, publish a notice in the Gazette, which may form part of a composite notice, showing the name or names of the person or persons elected.

(4) Where no candidate is elected in a presidential election a fresh election shall be held within thirty days after the previous election in accordance with Article 138 of the Constitution and the Commission shall for that purpose, issue a notice in the Gazette to that effect.

(6) Where a County Governor, Parliamentary or County Assembly election results in a tie, the Commission shall proceed to conduct fresh elections without notifying the speaker within thirty days, in accordance with the Act and these Regulations.

(7) The Commission shall certify to the clerk of each respective House of Parliament the candidates who have been elected in the parliamentary election.

(8) The Commission shall, after delivery of a written notification of the results of the presidential election to the Chief Justice and the incumbent President as required by Article 138(10)(b) of the Constitution, issue and deliver a certificate in Form

34D set out in the Schedule to the candidate who has been elected President.

#### PART XIV – PRESIDENTIAL FRESH ELECTION

##### **88. Notice of fresh election of president**

(1) Where pursuant to Article 138(5) of the Constitution, no candidate is elected as president, the Commission shall at the time of publishing the results, publish a notice in the *Gazette* indicating that no candidate has been elected president.

(2) The Commission shall within two days of the notice under subregulation (1), publish a notice for a fresh election for president in Form 40 set out in the Schedule.

##### **89. Procedure at a fresh election**

These Regulations shall, with the necessary modifications and adaptations, apply to a fresh election under this Part.

##### **90. Special voting**

(1) The Commission may make provision for the voting, by election officials, observers, patients admitted in hospital, older members of the society, members of the defence and security forces on duty, prisoners and nomadic pastoralists and other persons who by reason of any special need, including disability, are unable to access a polling station.

(2) The Commission may, from time to time publish notices on the manner and procedure of the conduct of special voting and such notice shall be read as if part of these Regulations.

##### **96. Collaborations**

(1) The Commission may collaborate with such public and private entities as may be suitable for purposes of ensuring effective conduct of elections and referendum.

(2) The collaboration arrangements in subregulation (1) shall be governed by the terms of a partnership agreement between the Commission and the respective entity.

Reference to LN.

(3) The agreement shall stipulate the terms and conditions on the engagement and shall conform to, and respect, the provisions of the Constitution, the Act and these Regulations.

##### **96A. Regulations 94, 95 and 96 shall be read**

127/2012. together with the Elections (Voter Education) Regulations, 2012.

##### **97. Non-attendance by candidates, etc. not to invalidate proceedings**

(1) Where in these Regulations expression is used requiring, authorizing, or implying that, any act is to be done in the presence of the candidates or agents, that expression shall be regarded as reference to the presence of such candidates or agents as may be required or authorized to attend.

(2) The mere non-attendance of any candidate or agents at the time and place as contemplated under subregulation (1) shall not, if any act is otherwise lawfully done, invalidate that act.

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**98. Power of Commission to issue directives**

(1) Subject to the Act and these Regulations, the Commission shall have power to, by notice in the *Gazette*, provide for measures to ensure efficient and fair elections and referendum and may issue directives from time to time in that regard.

(2) Where the Commission issues directives under subregulation (1), the Commission shall ensure that such directives are published in such manner as to reach the persons who may be affected or whose compliance or action may be required.

**100. Procedure at a referendum**

These Regulations shall, with the necessary modification and adaptations, apply to a referendum held under the Act.

**101. Revocation of L.N. 227/1992**

The Presidential and Parliamentary Election Regulations, 1992, are revoked.