



## LAWS OF KENYA

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# THE CONSTITUTION OF KENYA REVIEW ACT

## CHAPTER 3A

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## CHAPTER 3A

6 of 2009.

## THE CONSTITUTION OF KENYA REVIEW ACT

*Commencement: 22<sup>nd</sup> December, 2008***AN ACT of Parliament to facilitate the completion of the review of the Constitution of Kenya, and for connected purposes**

ENACTED by the Parliament of Kenya as follows—

## PART I—PRELIMINARY

**1.** This Act may be cited as the Constitution of Kenya Review Act, 2008 and shall come into force upon its publication in the Gazette which shall not be later than fourteen days from the date of assent. Short title and commencement.

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

“Commission” means the Constitution of Kenya Review Commission established under the expired Act;

“Constitutional Conference” means the National Constitutional Conference established under the expired Act;

“core functions” means the activities of the Committee of Experts from the date of appointment to the last day of civic education under section 35;

“Director” means the director appointed under section 17;

“existing draft constitutions” means the Proposed New Constitution 2005, and the document commonly known as the Bomas Draft produced by the National Constitutional Conference on 15<sup>th</sup> March, 2004 under the expired Act;

“expired Act” means the Constitution of Kenya Review Act which expired on 31<sup>st</sup> January 2006;

“National Dialogue and Reconciliation Committee” means the Committee established under auspices of the Panel of Eminent African Personalities to resolve the crisis arising from the December, 2007 elections;

“member” means a member of the Committee of Experts appointed under section 8;

“Minister” means the Minister for the time being responsible for matters relating to constitutional affairs;

“Panel of Eminent African Personalities” means the African Union Panel of Eminent African Personalities spearheading the mediation of the crisis arising from the December 2007 elections;

“Parliamentary Select Committee” means the Parliamentary Select Committee on the Review of the Constitution ;

“Proposed New Constitution 2005” means the Proposed New Constitution of Kenya submitted to the referendum on 21<sup>st</sup> November 2005 under the expired Act.

Object and purpose of the Act.

**3.** The object and purpose of this Act is to—

- (a) provide a legal framework for the review of the Constitution of Kenya;
- (b) provide for the establishment of the organs charged with the responsibility of facilitating the review process;
- (c) establish mechanisms for conducting consultations with stakeholders;
- (d) provide a mechanism for consensus-building on contentious issues in the review process; and
- (e) preserve the materials, reports and research outputs gathered under the expired Act.

Objects and purpose of constitutional review process.

**4.** The object and purpose of the review of the Constitution is to secure provisions therein—

- (a) guaranteeing peace, national unity and integrity of the Republic of Kenya in order to safeguard the well-being of the people of Kenya;
- (b) establishing a free and democratic system of Government that guarantees good governance, constitutionalism, the rule of law, human rights, gender equity, gender equality and affirmative action;
- (c) recognizing and demarcating divisions of responsibility among the various state organs including the executive, the legislature and the judiciary so as to create checks and

balances between them and to ensure accountability of the Government and its officers to the people of Kenya;

- (d) promoting the peoples' participation in the governance of the country through democratic, free and fair elections and the devolution and exercise of power;
- (e) respecting ethnic and regional diversity and communal rights including the right of communities to organise and participate in cultural activities and the expression of their identities;
- (f) ensuring the provision of basic needs of all Kenyans through the establishment of an equitable frame-work for economic growth and equitable access to national resources;
- (g) promoting and facilitating regional and international co-operation to ensure economic development, peace and stability and to support democracy and human rights;
- (h) strengthening national integration and unity;
- (i) creating conditions conducive to a free exchange of ideas;
- (j) ensuring the full participation of people in the management of public affairs; and
- (k) committing Kenyans to peaceful resolution of national issues through dialogue and consensus.

**5.** The organs through which the review of the Constitution shall be completed are — Organs of review.

- (a) the Committee of Experts;
- (b) the Parliamentary Select Committee;
- (c) the National Assembly; and
- (d) the referendum.

**6.** In the exercise of the powers or the performance of the functions conferred by this Act, the organs specified in section 4 shall — Guiding principles.

- (a) ensure that the national interest prevails over regional or sectoral interests;
- (b) be accountable to the people of Kenya;

- (c) ensure that the review process accommodates the diversity of the people of Kenya including socio-economic status, race, ethnicity, gender, religious faith, age, occupation, learning, persons with disabilities and the disadvantaged;
- (d) ensure that the review process—
- (i) provides the people of Kenya with an opportunity to actively, freely and meaningfully participate in generating and debating proposals to review and replace the Constitution;
  - (ii) is guided by the principle of stewardship and responsible management;
  - (iii) is, subject to this Act, conducted in an open manner; and
  - (iv) is guided by respect for the principles of human rights, equality, affirmative action, gender equity, and democracy;
- (e) ensure that the outcome of the review process faithfully reflects the wishes of the people of Kenya.

Parliamentary Select Committee.

**7. (1)** The National Assembly shall establish, in accordance with its standing orders, a select committee to be known as the Parliamentary Select Committee on the Review of the Constitution (hereinafter referred to as the “Parliamentary Select Committee”) consisting of twenty-seven members, to assist the National Assembly in the discharge of its functions under this Act.

(2) In constituting the Parliamentary Select Committee, the National Assembly shall ensure regional and gender balance in the composition of the Committee.

## PART II—ESTABLISHMENT AND COMPOSITION OF COMMITTEE OF EXPERTS

Establishment and membership of the Committee of Experts.

**8. (1)** There is established a committee to be known as the Committee of Experts.

(2) The Committee of Experts shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—



- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging, or disposing of movable and immovable property; and
- (c) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The provisions of the State Corporations Act shall not apply to the Committee of Experts.

(4) The Committee of Experts shall comprise of nine persons nominated by the National Assembly and appointed by the President, of whom—

- (a) three shall be non-citizens of Kenya nominated by the National Assembly from a list of five names submitted to the Parliamentary Select Committee by the Panel of Eminent African Personalities, in consultation with the National Dialogue and Reconciliation Committee; and
- (b) six shall be citizens of Kenya nominated by the National Assembly in accordance with the procedure prescribed in the First Schedule.

(5) The Attorney-General and the Director shall be *ex officio* members of the Committee of Experts without the right to vote.

(6) In nominating persons for appointment as members of the Committee of Experts, the nominating bodies shall have regard to—

- (a) the experience and academic qualifications of the applicants;
- (b) the principle of gender equality; and
- (c) with respect to persons nominated under subsection (4) (b), Kenya's national character and diversity.

(7) The Parliamentary Select Committee shall ensure regional and gender balance in the persons recommended for appointment as members of the Committee of Experts.

**9.** (1) The Panel of Eminent African Personalities in consultation with the National Dialogue and Reconciliation Committee shall, within fourteen days of the commencement of this Act, submit the names of

Procedure for appointing non-citizen members.

five nominees to the Parliamentary Select Committee, for onward transmission to the National Assembly.

(2) The Parliamentary Select Committee shall rank and provide comments regarding each of the nominees under sub section (1) to the National Assembly.

(3) The National Assembly shall, upon receipt of the recommendations of the Parliamentary Select Committee under subsection (2), nominate three persons for appointment as members of the Committee of Experts and shall submit the list of nominees to the Minister.

Qualification for appointment as member.

**10.** (1) To qualify for nomination for appointment as a member of the Committee of Experts a person shall have proven knowledge of and experience in at least one of the following areas —

- (a) comparative constitutional law;
- (b) systems and structures of democratic governments;
- (c) human rights;
- (d) women and gender issues;
- (e) land and land law;
- (f) governance, ethics and accountability;
- (g) public finance and administration;
- (h) electoral systems and designs for democratic elections;
- (i) anthropology; or
- (j) mediation and consensus building.

(2) Notwithstanding the provisions of subsection (1), no person shall be qualified for appointment as a member of the Committee of Experts —

- (a) unless such person —
  - (i) is of sound mind; and
  - (ii) is of high moral character and integrity;

(b) if such person—

- (i) is an undischarged bankrupt;
- (ii) was a commissioner of the Constitution of Kenya Review Commission established under the expired Act; or
- (iii) is a member of the National Assembly or holds or is acting in any office in the public service.

**11.** (1) The Minister shall, within seven days of the appointment of the Committee of Experts, convene its first meeting at which the Committee of Experts shall elect the chairperson and the deputy chairperson from amongst its members.

Chairperson and  
deputy chairperson.

(2) The positions in the Committee of Experts specified in subsection (1) shall be held by persons of opposite gender.

(3) The chairperson shall—

- (a) preside over all meetings of the Committee of Experts;
- (b) be the spokesman of the Committee of Experts; and
- (c) supervise and direct the work of the Committee of Experts.

(4) In the absence of the chairperson, the vice-chairperson shall perform the functions of the chairperson under subsection (3).

**12.** The term of office of a member of the Committee of Experts shall be from the date of appointment under section 8 and shall, unless the office falls vacant earlier owing to any reason specified in section 13, terminate on the dissolution of the Committee of Experts.

Tenure of office.

**13.** (1) The office of a member of the Committee of Experts shall fall vacant if the person—

Vacancy.  
6 of 2009, Sch.

- (a) dies;
- (b) resigns from office in writing to the president;
- (c) is removed from office in accordance with the provisions of section 14;
- (d) is adjudged bankrupt;

- (e) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
- (f) is in breach of the code of conduct prescribed under section 20;
- (g) without reasonable excuse, fails to attend three consecutive meetings of the Committee;
- (h) is by reason of physical or mental infirmity, unable to discharge his duties as a member; or
- (i) is for any other reason, unable or unwilling to act as a member of the Committee of Experts,

and in any case to which paragraphs (e), (f), (g) and (h) apply, the breach, failure, inability or unwillingness is noted by the Committee of Experts in its records and supported by a resolution of two-thirds majority of the members and the person is informed of the termination of the appointment in writing through the director, or where the affected person is the director, through the chairperson.

(2) The President shall notify every vacancy in the Gazette within seven days of the occurrence of the vacancy.

(3) *(Deleted by 6 of 2009, Sch.)*

(4) No act or proceedings of the Committee of Experts shall be invalid by reason only of a vacancy or defect in the composition of the Committee of Experts.

**14.** (1) The chairperson or a member of the Committee of Experts may be removed from office by the President for misbehavior or misconduct in contravention of the Public Officer Ethics Act, 2003 in accordance to the procedure provided for under subsections (2) to (7).

(2) A person who wishes to have a member of the Committee of Experts removed from office for misbehavior or misconduct may apply for removal of the member of the Committee of Experts to the President through the Minister, and such application shall be copied to the chairperson.

(3) Where the chairperson is the subject of an application for removal from office, the application under subsection (2) shall be made to the President through the minister and copied to the vice-chairperson.

(4) The Minister shall, within seven days of receipt of the application, forward the application to the Parliamentary Select Committee to inquire into the matter.

(5) The Parliamentary Select Committee shall inquire into the matter and make recommendations to the President as to whether or not the chairperson or the member of the Committee of Experts ought to be removed from office.

(6) In undertaking the inquiry under subsection 5, the Parliamentary Select Committee shall afford the concerned person an opportunity to be heard.

(7) Where the question of removing the chairperson or a member of the Committee of Experts has been referred to the Parliamentary Select Committee under subsection (4), the President may suspend the chairperson or the member of the Committee of Experts concerned.

(8) The suspension shall cease to have effect if the Parliamentary Select Committee recommends that the chairperson or the member of the Committee of Experts, as the case may be, should not be removed from office.

(9) A member of the Committee of Experts shall be removed from office if two thirds of the members of the Parliamentary Select Committee vote to remove the member.

**15.** (1) Where a vacancy occurs in the membership of the Committee of Experts under section 14, the President shall appoint a replacement—

Filling of vacancy.  
6 of 2009, Sch.

(a) where the vacancy is in respect of a citizen of Kenya, the Parliamentary Select Committee shall, within twenty-one days of the notification under section 13 (2), submit to the President through the Minister, the name of a person qualified under this Act and nominated by that Committee to fill the vacancy.

(b) where the vacancy is in respect of a non-citizen of Kenya, from either of the other two names submitted by the Panel of Eminent African Personalities giving due regard to the rankings and comments of the Parliamentary Select Committee:

Provided that the Parliamentary Select Committee shall ensure that the appointment of a replacement under this section

shall not result in regional or gender imbalance in the Committee of Experts contrary to section 8 (7).

(2) A member of the Committee of Experts who is appointed in place of a member whose office has become vacant under this section shall hold office for the remainder of the term of office of that member of the Committee of Experts.

Independence of the Committee of Experts.

**16.** In the performance of its functions under this Act, the Committee of Experts shall not be subject to the control of any person or authority.

The Director.

**17.** (1) There shall be a Director of the Committee of Experts who shall be appointed by the Parliamentary Select Committee on such terms and conditions of service as the Parliamentary Select Committee may, in consultation with the Minister, determine.

(2) Paragraphs 1, 2 and 3(a) of the first Schedule shall apply with necessary modifications with respect to the appointment of the Director.

(3) The Director shall be the chief executive of the Secretariat and the accounting officer of the Committee of Experts and shall serve on a full-time basis.

(4) The Director shall be responsible for the—

- (a) the day to day administration and management of the affairs of the Committee of Experts;
- (b) the co-ordination of the studies, research and evaluations of the Committee of Experts;
- (c) the recording of the proceedings of the Committee of Experts;
- (d) custody of all records and documents of the Committee of Experts; and
- (e) performance of such other duties as may be assigned by the Committee of Experts from time to time.

(5) The Director may be removed from office by the Parliamentary Select Committee only for—

- (a) inability to perform the functions of his office arising out of physical or mental incapacity;

(b) misbehavior or misconduct; or

(c) incompetence.

**18.** (1) The staff of the Committee of Experts shall comprise—

Staff of the  
Committee of  
Experts.

(a) four deputy directors appointed by the Committee of Experts each of who shall be responsible for one of the following—

(i) research, drafting and technical support;

(ii) finance and Administration;

(iii) mobilization, logistics and outreach;

(iv) civic education and public information.

(b) such officers and other staff as the Committee of Experts may appoint to assist it in the discharge of its functions under this Act; and

(c) such public officers as may be seconded to the Committee of Experts upon its request.

(2) A public officer who is seconded to the Committee of Experts under subsection (1), shall, during the secondment, be deemed to be an officer of the Committee of Experts and subject to its direction and control.

(3) The reputable human resource firm referred to under paragraph 3 of the first schedule shall in addition to any other functions it may be required to discharge, advice on recruitment of the Director and staff of the Committee of Experts.

**19.** (1) A member of the Committee of Experts and the Director shall each, according to their religious or other beliefs—

Oath of office.

(a) make and subscribe to the oath prescribed in the Second Schedule; or

(b) make the solemn affirmation in the form prescribed in the Second Schedule before the Chief Justice, prior to embarking on their duties.

(2) Every oath and affirmation made and subscribed to under

this section shall be deposited with the Director and with the Chief Justice.

Code of Conduct.

**20.** (1) For the better discharge of the functions of the organs of the review process specified in section 5 and the Secretariat, the code of conduct prescribed in the Third Schedule shall apply.

(2) A person who breaches the provisions of the code of conduct shall—

- (a) in the case of a member of the Committee of Experts or the director, subject to the provisions of section 13 (1) (f), be disqualified from holding office as such; and
- (b) in the case of a member of staff of the Committee of Experts, be liable to such disciplinary action as the Committee of Experts may prescribe.

Protection from personal liability.

**21.** No matter or thing done by a member of the Committee of Experts or any officer, employee or agent of the Committee of Experts shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Committee of Experts, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

Liability of the Committee of Experts for damages.

**22.** The provisions of section 21 shall not relieve the Committee of Experts of the liability to pay compensation for damage to any person for any personal or proprietary interest sustained by the person as a result of the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

### PART III—FUNCTIONS AND POWERS OF THE COMMITTEE OF EXPERTS

Functions of the Committee of Experts.  
6 of 2009, Sch.

**23.** The Committee of Experts shall—

- (a) identify the issues already agreed upon in the existing draft constitutions;
- (b) identify the issues which are contentious or not agreed upon in the existing draft constitutions;
- (c) solicit and receive from the public written memorandum and presentations on the contentious issues;
- (d) undertake thematic consultations with caucuses, interest groups and other experts;



- (e) carry out or cause to be carried out such studies, researches and evaluations concerning the Constitution and other constitutions and constitutional systems;
- (f) articulate the respective merits and demerits of proposed options for resolving the contentious issues;
- (g) make recommendations to the Parliamentary Select Committee on the resolution of the contentious issues in the context of the greater good of the people of Kenya;
- (h) prepare a harmonized draft Constitution for presentation to the National Assembly;
- (i) facilitate civic education throughout the review process in order to stimulate public discussion and awareness of constitutional issues;
- (j) liaise with the Electoral Commission of Kenya to hold a referendum on the Draft Constitution; and
- (k) do such other things as are incidental or conducive to the attainment of the objects and principles of the review process.

**24.** The Committee of Experts shall have all powers necessary for the execution of its functions under this Act.

Powers of the Committee of Experts.

**25.** (1) Subject to this section, the Committee of Experts shall regulate its own procedure.

Procedure of the Committee of Experts.

(2) The Committee of Experts shall hold such number of meetings in such places, at such times and in such manner as the Committee of Experts shall consider necessary for the discharge of its functions under this Act.

(3) The quorum of the Committee of Experts shall be two-thirds of its members.

(4) All decisions the Committee of Experts shall be determined by consensus, but in the absence of consensus, decisions of the Committee of Experts shall be determined by a two-thirds majority of the members present and voting.

**26.** (1) The Committee of Experts shall keep a verbatim record of the proceedings of every meeting of the Committee of Experts.

Records of the Committee of Experts.

(2) The Committee of Experts shall consult with the Kenya Broadcasting Corporation and other licensed broadcasting stations and media houses, in order to secure suitable—

- (a) allocation of air-time and space for purposes of disseminating information about the activities of the Committee of Experts through the electronic and print media; and
- (b) provision of a sign language inset or subtitles in all television programmes aired for purposes of paragraph (a), all newscasts, civic educational programmes and in all other programmes covering the constitutional review process.

(3) Where a broadcasting station is consulted by the Committee of Experts under subsection (2), the station shall make suitable arrangements to air the programmes specified by the Committee of Experts.

Civic education.

**27.** (1) The Committee of Experts shall, in furtherance of the completion of the review process, facilitate and promote civic education in order to stimulate public discussion and awareness.

(2) The Committee of Experts shall ensure that civic education materials are made available in a form accessible to the various categories of persons with disabilities.

#### PART IV—REPORT OF THE COMMITTEE OF EXPERTS AND ACTION THEREON

Completion of work.  
6 of 2009, Sch.

**28.** (1) The Committee of Experts shall complete its work within a period of twelve months from the date of its appointment.

(2) For the purposes of this section “work” means the core functions of the Committee of Experts within the meaning of section 2.

Reference materials.

**29.** In the performance of its functions under this Act, the Committee of Experts shall draw upon the views and materials collected or prepared by the various organs of review under the expired Act, including but not limited to—

- (a) the summary of the views of Kenyans collected and collated by the Commission;
- (b) the various draft constitutions prepared by the Commission and the Constitutional Conference;
- (c) the Proposed New Constitution, 2005;

- (d) documents reflecting political agreement on critical constitutional questions, such as the document commonly known as the Naivasha Accord;
- (e) analytical and academic studies commissioned or undertaken by the Commission or the Constitutional Conference.

**30.** (1) The Committee of Experts shall study all existing draft constitutions and such other material as it may consider appropriate and prepare a report which shall identify—

National discussion of draft Constitution.

- (a) the issues that are not contentious and are agreed upon; and
- (b) the issues that are contentious and not agreed upon.

(2) The Committee of Experts shall invite representations from the public, interest groups and experts on the contentious issues and prepare a harmonized draft Constitution with the issues that are not contentious identified as agreed and closed and the issues that are contentious identified as outstanding.

**31.** (1) Without prejudice to the powers vested in the organs of review under this Act, the Committee of Experts shall convene a reference group of thirty representatives chosen by the interest groups identified in the Fourth Schedule to facilitate the consultations referred to in section 30.

Reference Group.

(2) The interest groups identified in the Fourth Schedule shall each nominate one person to the Reference Group.

**32.** (1) The Committee of Experts shall—

- (a) upon preparation of its report and the harmonized draft Constitution referred to in section 30—
  - (i) publish the draft Constitution for a period of thirty days; and
  - (ii) ensure that the report and the draft Constitution are made available to the public;
- (b) upon the expiry of the period provided for in paragraph (a)
  - (i), review the draft Constitution and incorporate the views of the public; and
- (c) within twenty one days of the expiry of the period provided

Approval of draft Constitution by Parliamentary Select Committee.

for in paragraph (a) (i), present the draft Constitution and the report to the Parliamentary Select Committee for deliberation and consensus building on the contentious issues on the basis of the recommendations of the Committee of Experts.

Debate of draft Constitution by the National Assembly. 6 of 2009, Sch.

**33.** (1) The Parliamentary Select Committee shall, within twenty-one days, resubmit the draft Constitution and the report presented to it under section 32 (c) to the Committee of Experts, together with the recommendations agreed upon as a result of its deliberations, and the Committee of Experts shall revise the draft Constitution taking into account the achieved consensus.

(2) The Committee of Experts shall submit the revised draft Constitution and its final report to the Parliamentary Select Committee within twenty one days.

(3) The Parliamentary Select Committee shall, within seven days of receipt of the report and the draft constitution under subsection (2), table the report and draft Constitution before the National Assembly.

(4) The National Assembly shall, within thirty days of the tabling of the draft Constitution under subsection (3), debate it and—

- (a) approve the draft Constitution without amendment and submit it to the Attorney-General for publication; or
- (b) propose amendments to the draft Constitution and submit the draft constitution and proposed amendments to the Attorney-General, who shall, within seven days, submit them to the Committee of Experts for consultation and redrafting.

(5) Where the National Assembly submits the draft Constitution to the Committee of Experts for consultation and redrafting under subsection (4) (b), the Committee of Experts shall, within seven days of receipt of the draft Constitution, consider the proposed amendments and submit the draft Constitution to the National Assembly.

(5A) The National Assembly shall consider the draft Constitution submitted under subsection (5) in accordance with the provisions of section 47A (2) (b) of the Constitution.

(6) If the National Assembly fails to approve the draft Constitution in accordance with subsections (4) and (5), a joint meeting between the Parliamentary Select Committee and the Committee of Experts shall be convened by the chairperson of the Committee of Experts to consider the issue or issues and to make recommendations to the National Assembly.

(7) In considering issues not approved by the National Assembly, the meeting convened under sub section (6) shall invite the Reference Group to make recommendations on how the issue or issues may be resolved.

(8) The meeting convened under subsection (7) shall be held in consecutive sessions over a period of not more than seven days and shall be chaired by the chairperson of the Committee of Experts.

(9) Upon decision of the meeting, the Committee of Experts shall, within seven days, revise the draft Constitution and submit a report and the new draft Constitution to the National Assembly.

(10) The National Assembly shall within twenty-one days approve the draft Constitution and submit it to the Attorney-General for publication.

**34.** (1) The Attorney-General shall, within thirty days after receipt of the draft Constitution from the National Assembly under section 33, publish the draft Constitution.

Publication of the proposed Constitution. 6 of 2009, Sch.

(2) The Attorney-General shall not effect any alteration to the draft Constitution, except for editorial purposes, in consultation with the Parliamentary Select Committee.

(3) The Interim Independent Electoral Commission shall, within sixty days of the publication of the draft Constitution hold a referendum on the Proposed Constitution.

**35.** (1) The Committee of Experts shall, upon publication of the Proposed Constitution referred to in section 34, facilitate civic education on the Proposed Constitution for a period of thirty days.

Civic education on Proposed New Constitution.

(2) The Committee of Experts shall involve non-state actors in the delivery of civic education.

(3) The provincial administration shall co-operate with and provide support to the Committee of Experts and non-state actors providing civic education on the draft Constitution.

**36.** The Committee of Experts shall ensure that all documents, materials, publications, reports, recommendations and proposed draft laws arising from the review process are maintained in a form that is accessible and usable by members of the public.

Maintenance of records.

## PART V — THE REFERENDUM

The Referendum  
question.  
6 of 2009, Sch.

**37.** (1) The Interim Independent Electoral Commission shall within seven days of the publication of the draft Constitution by the Attorney-General under section 34, frame and publish the question to be determined by the referendum.

(2) The question referred to in subsection (1) shall be framed in consultation with the Parliamentary Select Committee.

(3) The question to be submitted to the referendum shall require the voter to indicate whether the voter approves or does not approve the Proposed New Constitution and shall be so framed as to require the answer “Yes” or the answer “No.”

(4) The voting at a referendum shall be by secret ballot.

Conduct of  
Referendum.  
6 of 2009, Sch.

**38.** The Interim Independent Electoral Commission shall organize, conduct and supervise a referendum held under this Act.

Notice of holding  
referendum.  
6 of 2009, Sch.

**39.** (1) The Interim Independent Electoral Commission shall, within fourteen days after publication of the question under section 37 (2) by notice in the Gazette specify—

(a) the day on which the referendum is to be held;

(b) the polling time of the referendum;

(c) the referendum campaign period.

(2) The returning officer of every constituency shall notify the public of the referendum within twenty one days of publication of the notice by the Interim Independent Electoral Commission.

(3) The Interim Independent Electoral Commission shall on publication, of the notice specified in paragraph (1), suspend the registration of voters.

Right to vote in  
Referendum.

**40.** A person whose name is entered in the register of voters shall, unless prohibited from voting by any written law, be entitled to vote at the referendum.

Procedure for  
conduct of  
referendum.

**41.** The procedure for conducting elections to the National Assembly shall apply with necessary modifications to the conduct of a referendum under this Act.

**42.** The code of conduct applicable to elections under the National Assembly and Presidential Elections Act shall apply to the conduct of the referendum and shall bind all persons participating in the referendum.

Code of conduct.

**43.** (1) The Interim Independent Electoral Commission shall publish the result of the referendum in the Gazette within two days of the holding of the referendum.

Process of ratification.  
6 of 2009, Sch.

(2) If no petition is made under section 44 challenging the conduct or result of the referendum within the time limit for making such petitions, the result of the referendum shall be final upon the expiry of that time limit.

(3) If a petition is made under section 44 challenging the conduct or result of the referendum within the time limit for making petitions, the result of the referendum shall not be final until all such petitions are finally disposed of.

**43A.** The President, shall by notice in the Gazette, promulgate the new Constitution not later than fourteen days after the publication of the final result of the referendum.

Proclamation of new Constitution.  
6 of 2009, Sch.

**44.** (1) The conduct or result of the referendum may be challenged only by petition to the Interim Independent Constitutional Dispute Resolution Court established by Section 60A of the Constitution made within fourteen days after the publication of the result of the referendum under section 43.

Petition to court to challenge referendum.  
6 of 2009, Sch.

(2) A petitioner shall give notice of the petition to the Attorney-General and the Interim Independent Electoral Commission within seven days after the petition is made and the Attorney-General shall publish a notice of each petition of which notice has been received, in the Gazette within seven days of the expiry of the period prescribed in subsection (1).

(3) The petitioner shall within seven days after the petition is made deposit two million shillings with the court as security against costs.

(4) If security is not given in accordance with subsection (3), the petition shall be dismissed.

**45.** (1) The judges of the Interim Independent Constitutional Court shall elect one of their number to be the Presiding Judge of the Court.

Composition and operations of Court.  
6 of 2009, Sch.

(2) The Court may engage such staff as may be necessary for the performance of its functions and may, in its absolute discretion,

request for secondment of staff from the Judiciary or other sections of the public service.

(3) The Court shall regulate its own procedure.

(4) Without prejudice to subsection (3), the Court shall enjoy the status of the High Court of Kenya, and in this regard, the rules of practice and procedure applicable to the High Court shall apply to the Court subject to necessary modification provided.

(5) A petition under section 44 shall be determined by a panel of five judges appointed by the Presiding Judge.

(6) Unless otherwise ordered by the Presiding Judge, interlocutory matters shall be dealt with by a single judge from the panel.

Powers of court.  
6 of 2009, Sch.

**46.** (1) On a petition under section 44 challenging the conduct or result of the referendum the Court may—

- (a) dismiss the petition;
- (b) declare the published result to be incorrect;
- (c) order the Interim Independent Electoral Commission to repeat the polling in any place or places; or
- (d) annul the result of the referendum.

(2) The court shall not annul the result of the referendum unless it is satisfied that the applicable law has not been complied with and such non-compliance has materially affected the result of the referendum.

Determination on  
priority basis.

**47.** (1) The hearing of a petition shall not commence until after the expiry of seven days after the publication by the Attorney-General of the notices referred to in section 44.

(2) A petition presented under section 44 shall be heard and determined by the Court on a priority basis, and in any event within fourteen days of the commencement of the hearing.

Court decision is  
final.

**48.** The determination by the Court of a petition under section 44 shall be final.

Withdrawal of  
petition.

**49.** A petition under section 44 may be withdrawn by the applicant on notice to the other parties and the Court, subject to any order of the Court as to costs.



**50.** The following provisions of the National Assembly and Presidential Elections Act shall apply, with necessary modifications, to a petition under section 44—

Certain provisions of Cap.7 to apply.

- (a) section 22;
- (b) section 23(1);
- (c) section 25;
- (d) section 26; and
- (e) section 29.

**51.** Subject to sections 44 to 50 the Chief Justice may give directions with respect to the procedure for a petition under section 44.

Other procedure.

#### PART VI—EXPENSES OF THE REVIEW PROCESS

**52.** (1) The expenses incurred by the Committee of Experts and the referendum in accordance with this Act shall be charged on and issued out of the Consolidated Fund without further appropriation than this Act.

Funds for expenses of the review process.

(2) Without prejudice to subsection (1), there may be made to the Committee of Experts grants, gifts, donations or bequests towards the achievement of the objects of the review process specified in section 4.

(3) The Committee of Experts shall not accept any grant, gift, donation or bequest made on any condition that the Committee of Experts performs any function or discharge any duty or obligation other than duties under this Act.

**53.** (1) There is established a Fund to be known as the Constitution of Kenya Review Fund which shall be administered, on behalf of the Committee of Experts, by the Director.

Constitution of Kenya Review Fund.

(2) There shall be paid into the Fund—

- (a) such monies as may be appropriated out of the Consolidated Fund pursuant to this Act; and
- (b) any grants, gifts, donations or bequests received under section 52 (2).

(3) There shall be paid out of the Fund all payments in respect of

any expenses incurred in pursuance of the provisions of this Act.

Cap. 412.

(4) The Director shall, in administering the Fund, consult with the Permanent Secretary to the Treasury and, subject to provisions of the Exchequer and Audit Act, manage the Fund in such manner as promotes the objects and purposes of this Act.

(5) Upon the dissolution of the Committee of Experts under section 60, any assets to the credit of the Constitution of Kenya Review Fund shall, subject to any condition attached to a gift, donation or bequest, be credited to the Consolidated Fund.

Remuneration  
and allowances of  
Members.

**54.** The Minister shall, in consultation with the Minister in charge of finance, determine the remuneration and allowances of members and shall scrutinize and approve the budget of the Committee of Experts.

Accounts and audit.

No. 12 of 2003.

**55.** The accounts of the Constitution of Kenya Review Fund shall be kept, audited and reported upon to the National Assembly in accordance with the Public Audit Act.

#### PART VII—GENERAL PROVISIONS

Disobedience of  
summons.

**56.** Any public officer who, without lawful cause, fails to appear before the Committee of Experts pursuant to any summons by the Committee of Experts under section 16 (2) commits an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding three months, or to both.

Privileges and  
immunities of  
members and the  
Director during  
office.

**57.** (1) A member or the Director shall not be liable to any civil action suit for or in respect of any matter or thing done or omitted to be done in good faith as a member or as the Director.

(2) A member of the Committee of Experts or the Director shall not be liable to arrest under civil process while participating in any meeting of the Committee of Experts.

(3) No person who appears before the Committee of Experts shall, whether such appearance is in pursuance of any summons by the Committee of Experts under this Act or not, be liable to any criminal or civil proceedings, or to any penalty or forfeiture whatsoever in respect of any evidence or information given to the Committee of Experts by such person.

Regulations.  
6 of 2009, Sch.

**58.** (1) The Committee of Experts shall make Regulations generally for the better carrying out of its functions under this Act.

(2) Without prejudice to the generality of subsection (1),

regulations under this section may—

- (a) prescribe anything required by this Act to be prescribed;
- (b) subject to this Act, prescribe the procedure for—
  - (i) electing the chairperson, and deputy chairperson and filling any vacancies arising in respect thereof;
  - (ii) facilitating and promoting the provision of civic education;
  - (iii) resolution of any disputes arising under this Act; or
- (c) prescribe the disciplinary procedures applicable to members and staff of the Committee of Experts.

(3) The Interim Independent Electoral Commission may make Regulations prescribing any matter relating to the holding of the referendum.

**59.** This Act shall bind the Government.

Act to bind the Government.

PART VII—DISSOLUTION OF ORGANS OF REVIEW AND  
FINAL PROVISIONS

**60.** (1) If the final result of the referendum is that the people of Kenya have ratified the draft Constitution; the Committee of Experts shall stand dissolved forty-five days after the day the President proclaims the new Constitution to be law and this Act shall thereupon lapse.

Dissolution of Committee of Experts.

(2) If the final result of the referendum is that the people of Kenya have not ratified the draft Constitution, the Committee of Experts shall stand dissolved forty-five days after that result becomes final.

(3) During the period prescribed in subsections (1) and (2), the Committee of Experts shall ensure that its affairs are wound up in an orderly manner and, in particular, shall ensure that—

- (a) those aspects of its work that will be of value to other institutions are preserved, documented and transferred; and
- (b) its files and records are preserved and transferred to the Kenya National Archives and Documentation Service.

(4) Upon the dissolution of the Committee of Experts under

subsections (1) and (2), any assets and liabilities of the Committee of Experts, other than assets described in subsection 53 (5), shall become assets and liabilities of the Government.

(5) The terms of members shall expire upon the dissolution of the Committee of Experts.

## FIRST SCHEDULE

(s. 8)

### PROCEDURE FOR NOMINATING MEMBERS OF THE COMMITTEE OF EXPERTS BY THE PARLIAMENTARY SELECT COMMITTEE

1. The Parliamentary Select Committee shall, within fourteen days of the commencement of this Act, by advertisement in at least three daily newspapers with national circulation, invite applications from persons qualified under this Act for nomination as members of the Committee of Experts.

2. Application under paragraph 1 shall be forwarded to the Parliamentary Select Committee within twenty-one days of the advertisement.

3. The Parliamentary Select Committee shall, within seven days of the expiry of the period prescribed under paragraph 2 and with the assistance of a reputable human resource firm—

(a) consider all the applications received under paragraph (2);  
and

(b) recommend to the National Assembly suitably qualified persons for nomination as members of the Committee of Experts.

4. The Parliamentary Select Committee shall rank and provide comments regarding each of the nominees to the National Assembly.

5. The National Assembly shall, upon receipt of the recommendations of the Parliamentary Select Committee under paragraph 3, nominate six persons for appointment as members of the Committee of Experts and shall submit the list of nominees to the Minister for onward transmission to the President.

6. The Minister shall within seven days of receipt of the names of the nominees under paragraph 5 forward the names of the persons nominated in accordance with that paragraph together with the names of the persons nominated under section 9 of the Act to the President

who shall, within seven days of receipt of the names, by notice in the Gazette, appoint them to be members of the Committee of Experts.

7. In nominating or appointing persons as members of the Committee of Experts, the National Assembly and the President shall have regard to Kenya’s national character and diversity and gender equity.

**SECOND SCHEDULE** (s .19)

OATH OF OFFICE OF A MEMBER

I ..... being appointed a member under the Constitution of Kenya Review Act do solemnly swear that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such member I shall not be influenced by any political party, religious society or other organization or person which may have nominated me for appointment. So help me God.

.....  
MEMBER

.....  
CHIEF JUSTICE

SOLEMN AFFIRMATION OF A MEMBER

I ..... being appointed a member under the Constitution of Kenya Review Act do solemnly declare and affirm that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such member I shall not be influenced by any political party, religious society or other organization or person which may have nominated me for appointment.

.....  
MEMBER

.....  
CHIEF JUSTICE

OATH OF OFFICE OF THE DIRECTOR

I ..... being appointed the Director under the Constitution of Kenya Review Act do solemnly swear that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such Director, I shall not be influenced by any political, religious or other interest, or by any person. So help me God.

.....  
DIRECTOR

.....  
CHIEF JUSTICE

SOLEMN AFFIRMATION OF THE DIRECTOR

I ....., being appointed the Director under the Constitution of Kenya Review Act do solemnly and sincerely declare and affirm that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such Director, I shall not be influenced by any political, religious or other interest, or by any person.

.....  
DIRECTOR

.....  
CHIEF JUSTICE

**THIRD SCHEDULE**

(s. 20)

CODE OF CONDUCT FOR MEMBERS AND STAFF OF THE  
COMMITTEE OF EXPERTS*Impartiality and Independence of Members*

1. Every member of the Committee of Experts shall serve impartially and independently and perform the functions of his office in good faith and without fear, favour or prejudice.

2. No member of the Committee of Experts may—

(a) by his or her membership, association, statement, conduct or in any other manner jeopardize the perceived independence of the member, or in any other manner prejudice the credibility, impartiality, independence or integrity of the Committee of Experts ;

(b) make private use of or profit from any confidential information gained as a result of being a member of the Committee of Experts.

*Disclosure of Conflicting Interests*

3. If a member of the Committee of Experts is directly or indirectly interested in any contract, proposed contract or other matter before the Committee of Experts, such member shall disclose the fact and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

4. This Code shall apply with necessary modifications to the staff of the Committee of Experts.

**FOURTH SCHEDULE**

(s.31) 6 of 2009, Sch.

ORGANIZATIONS TO CHOOSE REPRESENTATIVES  
TO THE REFERENCE GROUP**Religious Sector:**

1. Supreme Council of Kenya Muslim (SUPKEM).
2. National Council of Churches of Kenya (NCCCK).
3. Kenya Episcopal Conference (KEC).
4. Evangelical Alliance of Kenya (EAK).

5. Hindu Council of Kenya (HCK).
6. Seventy Day Adventist (SDA).
7. Organization of Africa Instituted Churches (OAIC).
8. National Muslim Leadership Forum (NAMLEF).
9. African Independent Pentecostal Church of Africa (AIPCA).

**Women Organizations:**

10. Maendeleo ya Wanawake Organization (MYWO).
11. National Council of Women of Kenya (NCWK).
12. Federation of Women Lawyers (FIDA).

**Private Sector:**

13. Central Organization of Trade Unions (COTU).
14. Kenya Private Sector Alliance (KEPSA).
15. Kenya National Union of Teachers (KNUT).
16. Federation of Kenya Employers (FKE).

**Professional Groups:**

17. Association of Professional Societies in East Africa (APSEA).
18. Law Society of Kenya (LSK).
19. Kenya Magistrate and Judges Association (KMJA).
20. Kenya Medical Association (KMA).

**Special Interests:**

21. United Disabled Persons of Kenya (UDPK).
22. Kenya Alliance for the Advancement of the Right of the Child (KAARC).
23. The Cradle – The Children’s Foundation.
24. Kenya Society for the Blind.

**Civil Society:**

25. NGO Council.
26. National Convention Executive Council (NCEC).
27. Youth Agenda.
28. Kenya Human Rights Commission.

**Others:**

29. Media Council of Kenya.
30. Association of Local Government Authorities of Kenya.



## SUBSIDIARY LEGISLATION

[Subsidiary]

**THE CONSTITUTION OF KENYA REVIEW (GENERAL)  
REGULATIONS, 2009**

L.N. 127/2009.

## PART I—PRELIMINARY

1. These Regulations may be cited as the Constitution of Kenya Review (General) Regulations, 2009 and shall come into force on publication in the Gazette. Citation.

2. In these Regulations unless the context otherwise requires— Interpretation.

“Act” means the Constitution of Kenya Review Act, 2008;

“Committee” means the Committee of Experts as established under section 8 of the Act;

“interest group” means an organization set out under the Fourth Schedule of the Act for the purposes of providing members for the reference group;

“meeting of the Committee” includes expert consultations, thematic discussions and workshops;

“office of the Committee” means the office of the chairperson and the deputy-chairperson of the Committee;

“reference group” has the meaning given to it by section 31 (1) of the Act;

“secretariat” means the Director, the deputy directors and the staff of the Committee;

“select committee” means the Parliamentary Select Committee established by the National Assembly in accordance with section 7 of the Act;

“staff of the Committee” means all persons employed or engaged by the Committee whether permanent or temporary, to perform any function for which the Committee is established and includes staff to whom regulation 6 applies.

## PART II—THE SECRETARIAT

3. In the furtherance of the performance of his functions and duties under the Act, the Director shall— Functions of the Director.

(a) supervise the day-to-day operations and functions of the secretariat;

(b) send timely written notices of all meetings of the Committee to the members;

[Subsidiary]

- (c) ensure that the verbatim records of the proceedings are accurately recorded using print, electronic or any other media approved by the Committee;
- (d) ensure that Members have access to the minutes and records of the meetings of the Committee;
- (e) facilitate the deposit of the records of the Committee with the documentation centre;
- (f) ensure that the decisions of the Committee are followed up and implemented;
- (g) provide secretariat and any other required service to all subcommittees of the Committee;
- (h) keep custody of all records and property of the Committee; and
- (i) perform any other function that may be assigned to him by the Committee.

The deputy directors. 4. (1) The Committee shall employ deputy directors, who shall be persons qualified under section 18(1) (a) of the Act for that appointment.

(2) The Committee shall employ the deputy directors through open advertisement and competitive interviews.

(3) Nothing in paragraph (2) shall prevent the Committee from recruiting any deputy director through secondment from Government departments or other public agencies or through any other means:

Provided that such deputy director meets the criteria set out by the Committee.

(4) In employing the deputy directors, the Committee shall have regard to Kenya's national character, diversity and gender equity.

(5) The deputy directors shall assist the Director in the day-to-day performance of the Director's functions under the Act.

The staff of the Committee. 5. (1) The Committee may in accordance with section 18 (1) (b) of the Act, recruit such number of staff as it may determine.

(2) The vacant positions on the staff of the Committee shall be advertised in the print media and recruitment shall be done by way of competitive interviews through criteria that shall be set out by the Committee.

(3) Nothing in paragraph (2) shall prevent the Committee from recruiting any member of its staff through secondment from Government departments or other public agencies or through any other means:

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Provided that such member of staff meets the criteria set out by the Committee of experts.

(4) All staff of the Committee shall be subject to the directions and supervision of the Committee.

(5) In recruiting the staff of the Committee, the Committee shall have regard to Kenya's national character, diversity and gender equity.

6. (1) The Director may, on the instruction of the Committee, recruit such number of temporary staff as may be required for the effective performance of specific functions of the Committee. Recruitment of temporary staff.

(2) Except as the Committee may otherwise determine, any member of staff recruited on a temporary basis shall not be retained in the service of the Committee—

(a) for a continuous period exceeding three months; or

(b) for a cumulative period exceeding six months.

7. Under the directions of the Committee, the Director shall ensure that the staff of the Committee enjoy the benefits determined by the Committee. Welfare of staff.

8. (1) The Committee shall take disciplinary action against any member of staff of the Committee who— Discipline of staff.

(a) fails to adhere to lawful instruction issued by the Committee;

(b) contravenes the provisions of the Act or the Public Officers Ethics Act; or

(c) compromises the functions or integrity of the Committee.

(2) The Committee shall, by resolution, establish disciplinary procedures governing the conduct of all staff of the Committee whether or not such members of staff are seconded to the Committee from other organizations.

(3) In establishing the disciplinary procedures set out in paragraph (2), the Committee shall ensure that—

(a) specific measures for protection of members of staff against any form of harassment are clearly provided; and

(b) reference is made to the Public Officers Ethics Act.

No. 4 of 2003.

### PART III—THE STATUS OF MEMBERS

9. (1) The members of the Committee shall receive such remuneration and allowances, as shall be determined under the Act. Remuneration of the members.

[Subsidiary]

(2) Such remuneration and allowances shall be paid without delay.

(3) The Committee shall arrange for full medical cover and adequate insurance cover for all its members.

Security of members.

10. (1) The Committee shall ensure that all members are provided with adequate security throughout their tenure of office.

(2) The Committee shall by resolution determine the nature of the extent of the security to be provided under this regulation.

Removal of a member or the Director.

11. (1) Where any member of the Committee has reason to believe that a member is in breach of section 13 (1) (f), (g), (h) and (i) of the Act, that member may—

- (a) where the allegation relates to paragraph (f), prepare a detailed statement specifying the various acts constituting the alleged breach of the code of conduct by the member;
- (b) where the allegation relates to paragraph (g), require the Director to produce the record of attendance of the meetings of the Committee not being meetings of the sub-committees by that member;
- (c) where the allegation relates to paragraph (h), obtain certified copies of the medical records of the member indicating that the member is unable to discharge his duties by reason of physical or mental infirmity; or
- (d) where the allegation relates to paragraph (i), prepare a brief that indicates unequivocally, that the member is unwilling or unable to act as a member.

(2) Where a member of the Committee has reason to believe that the Director is in breach of section 17 (5) (a), (b), and (c) of the Act, that member may—

- (a) where the allegation relates to paragraph (a), obtain certified copies of medical records of the Director indicating that the Director is unable to discharge his duties by reason of physical or mental incapacity;
- (b) where the allegation relates to paragraph (b), prepare a detailed statement specifying the various acts constituting the alleged misconduct or misbehavior by the Director; or
- (c) where the allegation relates to paragraph (c), prepare a brief detailing the alleged acts constituting the alleged incompetence:

Provided that an act or omission shall be considered misconduct or misbehavior under paragraph (b) if it is in contravention of the Public Officers Ethics Act.

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(3) Any statement, record, certificate or brief prepared in support of any allegation made under paragraphs (1) and (2) shall be—

- (a) furnished in advance to the member or the Director by the Chairperson, seven days before the Committee meeting at which the matter is to be tabled:

Provided that if the member or the Director does wish to be accorded a preliminary hearing before the meeting, such a hearing shall be convened by the Chairperson within seven days of the making of such request;

- (b) presented before a meeting of the Committee convened specifically for that purpose.

(4) During the hearing, the Committee shall accord the member or Director in question an opportunity to be heard.

(5) The Committee shall resolve the dispute mentioned in paragraph (4) by a two-thirds majority.

(6) Where the Committee finds that the member has contravened any provision of the Act, the Committee shall recommend to the President that the tenure of office of that member be terminated, and in the case of the Director, the Select Committee shall be informed.

#### PART IV—THE SUB-COMMITTEES OF THE COMMITTEE

12. (1) The Committee shall exercise its functions and the duties through the working sub-committee, *ad hoc* sub-committees and the panels. Sub-committees of the Committee.

(2) The Committee shall by resolution determine the number, composition, organization and functions of sub-committees.

(3) The Director shall provide secretariat services to all sub-committees.

(4) Notwithstanding the provisions of this regulation, the Committee may establish, within itself, such sections, units or departments as may be necessary for the proper discharge of its functions.

13. (1) Except as the Committee may determine, sub-committees shall— Duties, meetings etc. of the sub-committee.

(a) be convened by the Chairperson of the Committee or the Director on the instructions of the Chairperson;

(b) meet as often as may be necessary to discharge their functions under these Regulations;

(c) ensure that proper records of their proceeding are prepared and lodged with the secretariat; and

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(d) submit any decisions made in the course of their deliberations to the Committee for approval.

(2) The quorum for the transaction of the business of any sub-committee shall be simple majority of its members.

## PART V—THE PROCEDURE AND POWER OF THE COMMITTEE

Election to offices of the Committee.

14. (1) The chairperson and deputy-chairperson of the Committee shall be elected at a meeting of the Committee specifically convened for that purpose:

Provided that nothing in this regulation shall prevent the Committee from transacting any other business at such a meeting.

(2) Elections to the offices specified under paragraph (1) shall be conducted in a manner agreed upon by the Committee.

Vacancy in the office of the Committee.

15. The offices of the chairperson and deputy-chairperson of the Committee shall fall vacant if the office bearer—

(a) ceases to be a Member of the Committee of Experts through any of the grounds stated in section 13 (1); or

(b) resigns from office and notifies the Minister in writing:

Provided that such resignation shall not stop the member from continuing to hold office as a member of the Committee.

Removal from offices.

16. (1) A chairperson or deputy-chairperson may be removed from office by the members of the Committee for—

(a) inability to perform the functions of the office;

(b) incompetence;

(c) misbehavior or misconduct:

No. 4 of 2003.

Provided that an act or omission shall be considered misconduct or misbehavior if it is in contravention of the Public Officers Ethics Act.

(2) Where a member or group of members of the Committee has reason to believe that the chairperson or deputy-chairperson should be removed from office under one or more of the grounds outlined in paragraph (1), the member or group of members may prepare a detailed written statement specifying the acts or omissions that constitute the said inability, incompetence, misbehavior or misconduct.

(3) If the allegation relates to the chairperson, the statement shall be submitted to the deputy-chairperson, and if the allegation relates to the deputy-chairperson, the statement shall be given to the chairperson.

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(4) The office bearer to whom the statement is submitted shall—

- (a) supply a copy of the statement to the person against whom the allegations are made; and
- (b) convene a special meeting of the Committee to consider the allegations.

(5) The office bearer against whom the allegation is made shall—

- (a) be supplied with the statement at least seven days before the Committee meeting; and
- (b) be accorded an opportunity to be heard.

(6) After full deliberation on the matter, the Committee may, with the supporting vote of six members, resolve that the office holder in question be removed from office.

(7) The Committee shall communicate to the Minister the decision in paragraph (6), and hold a new election for the office.

17. (1) Except as it may otherwise decide, the Committee shall meet as often as may be necessary to transact any business for which the Committee is established:

Meetings of the Committee.

Provided that in every month, the Committee shall meet at least twice.

(2) Except as may otherwise be provided in these Regulations, all the meetings of the Committee shall be convened by the Director on the instructions of the Chairperson.

(3) The Director shall maintain a record of attendance for all meetings.

(4) In furtherance of section 25 (4) of the Act, where a decision is reached by way of consensus or by way of voting, the dissension by a member shall be clearly recorded in the record of proceedings if the member dissenting directs so.

18. (1) All hearings, thematic and expert consultations conducted by the Committee shall be—

The conduct of hearings, thematic and expert consultations.

- (a) held at a venue and at time determined by the Committee;
- (b) conducted in a manner and language or languages as the participants find acceptable; and
- (c) deemed to be properly constituted if presided over or convened by a Member with the authority of the Committee:

Provided that upon the written request of any person appearing before it,

## [Subsidiary]

the Committee shall, if circumstances so warrant, meet in private for the whole or part of the meeting in question.

(2) The Committee may for the better conduct of meetings held in public or private, divide itself into two or more panels and determine the programme and itinerary of any such panels.

(3) The Committee may, in addition to any other meetings that it may conduct, hold hearings and expert consultations as it may in the course of its work consider necessary.

## Additional means of information gathering.

19. (1) The Committee shall solicit views and obtain such information or data as it may require through any methods and instruments not requiring the convening of formal meetings or hearings as it may determine.

(2) The information or data generated by the Committee under paragraph (1) shall, unless the Committee otherwise specifies, be submitted in any form or language.

## Engagement of experts and consultations.

20. (1) For the effective fulfilment of the objectives and purposes for which it is established, the Committee may authorize the Director to engage such number of experts and consultants as it may require.

(2) The experts and consultants engaged under paragraph (1) shall—

- (a) not by reason of such engagement, become members of the staff of the secretariat;
- (b) be engaged in their individual capacities and in recognition of their personal expertise in specific areas; and
- (c) be engaged on such terms and conditions as the Committee may determine.

## Issuance of summons.

21. (1) The Committee may issue summons requiring any public officer to appear before it and testify in respect of any matter to which that person is privy.

(2) All summons issued by the Committee shall—

- (a) be in the name of the Director;
- (b) be transmitted in such form as the Committee may by resolution determine.

## Preparation, receipt and analysis of memoranda.

22. (1) The Committee shall, by resolution, determine the form and manner in which memoranda, information or any other data shall be prepared and transmitted to it:

Provided that such form or language shall not preclude any person from preparing and transmitting such memoranda, information or any other data in any other manner due to their gender, age, disability, level of education, location,



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socioeconomic background or other reason.

(2) All information or any other data whether oral or documentary, obtained by or surrendered to the Committee, shall be deposited with the secretariat.

(3) The secretariat shall, upon receipt of the information or data, cause them to be compiled and analyzed and the results of such analysis transmitted to the Committee for consideration.

(4) The Committee shall, by resolution, set out ways of determining what issues are contentious and what are non-contentious.

23. (1) The Committee shall establish a documentation centre in the form and location as by resolution it may decide.

Establishment of documentation centre.

(2) The documentation centre shall be managed in a manner and by such number of staff as the Committee may assign.

(3) The Committee shall pay such allowances to staff assigned to the documentation centre as it may determine.

(4) All documents and materials deposited at the documentation centre shall remain the property of the Committee and be open for perusal by the public.

24. (1) In furtherance of the objectives set out in Section 23 (d) of the Act, the Committee may issue guidelines for undertaking thematic consultations.

Establishment of guidelines for thematic consultations.

(2) Views expressed through the thematic consultations shall be transmitted to the Committee in a form or language that the Committee shall determine:

Provided that such form or language shall not preclude any person from transmitting their views in any other manner due to their gender, age, disability, level of education, location, socioeconomic background or any other reason.

(3) Nothing in this regulation shall prevent any person or groups of persons from transmitting their views to the Committee otherwise than through thematic consultations.

25. (1) The Committee shall facilitate the institutionalization and active articulation of civic education activities in all parts of the country.

The conduct of civic education activities.

(2) Notwithstanding the generality of paragraph (1), the Committee shall—

(a) harmonize the content of the curricula used by the civic educators in furtherance of civic education;

(b) ensure that the curricula is provided in a form and language that

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is accessible and understood by every person; and

- (c) provide such facilitation as the process of civic education may require.

Convening and engaging the reference group.

26. (1) Each interest group shall, within seven days of the gazettelement of the list of interest groups specified in the Fourth Schedule of the Act, send in writing to the Committee of Experts, the name of the person it has nominated as its representative.

(2) An interest group may with proper cause change its representative to the reference group:

Provided that such change shall be communicated in writing to the Committee providing evidence that the change is necessary and the Committee agrees to the change.

(3) The Committee of Experts shall—

- (a) engage a reference group only at the stages and purposes outlined in the Act; and
- (b) determine the procedure, time, and venue for meeting the reference group.

(4) The reference group shall—

- (a) only perform functions outlined in the Act;
- (b) adhere to the code of conduct, principles, objectives and purposes set out in section 20 of the Act; and
- (c) stand dissolved immediately upon conclusion of the meeting specified in section 33 (8) of the Act.

#### PART VI—THE FINANCES OF THE COMMITTEE

The Constitution of Kenya Review Fund.

27. (1) All funds, monies, or other finances appropriated to or otherwise intended for use of the Committee shall be held in the Constitution of Kenya Review Fund established under section 53 of the Act.

(2) The Fund shall not be managed, administered, or disbursed for any other purpose except in accordance with the Act and other relevant statutes.

Accounts of the Fund.

28. (1) The Fund shall be held in two principal bank accounts—

- (a) a Public Fund Account to be opened in a bank that the Committee shall, with the approval of the Treasury appoint;
- (b) a Private Fund Account to be opened in a bank that the Committee may appoint:

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Provided that nothing in this paragraph shall prevent the Committee from establishing more than one Private Fund Account where it is necessary for the effective performance of its functions under the Act.

(2) Notwithstanding paragraph (1), before establishing any bank account, the Committee shall record a formal resolution authorizing the opening of such account.

(3) There shall be deposited into the Public Fund Account such monies as have been appropriated out of the Consolidated Fund.

(4) There shall be deposited into the Private Fund Account all monies received by the Committee in the form of grants, gifts, donations and bequests other than those specifically required to be deposited into the Public Fund Account.

29. Any interest earned from any of the Fund Accounts shall unless otherwise specified by the contributor to the fund, be rolled over into the principal sum held in the relevant Fund Account. Interest accruing into the Accounts.

30. The Committee may, if requested by the Treasury or any other person or agency which may have made a contribution to any of the accounts of the Fund, order an examination or independent enquiry into the accounts of the Fund: Auditing of the Fund.

Provided that the cost for conducting the audit shall be met by the Treasury, person or agency requesting for the audit.

31. The rules governing the management, administration and disbursement of the Fund shall be as set out in the Schedule to these Regulations. Rules of the management.

#### PART VII—MISCELLANEOUS

32. All staff of the Committee of Experts shall be bound by the Code of Conduct set out in the Third Schedule of the Act. Code of Conduct.

### SCHEDULE

#### RULES FOR THE MANAGEMENT OF THE FUND

1. The Fund shall be managed and administered in accordance with the following rules—

(1) The Director shall be responsible for the day-to-day management of the Fund and under supervision of the Committee, shall ensure that—

(a) a proper income and expenditure account is prepared and presented to the Committee at intervals of every two months;

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(b) books of account and all other relevant documents are available for inspection by any member or other parties entitled to inspect them; and

(c) the provisions of rule 6 are complied with.

(2) The Committee shall prepare and approve a comprehensive estimate of its expenditure on a quarterly basis and such estimate shall specify—

(a) the line items of expenditure which the Committee expects to incur during that period;

(b) the specific Fund Account or Accounts out of which each line item is to be funded;

(c) the source or sources from which the monies drawn from a Fund Account supporting that line item are derived; and

(d) the projected cash flow for that period.

(3) All expenditure of the Committee other than that required to be met from any particular Fund Account shall be charged to the Public Fund Account.

(4) The signatories to all Fund Accounts shall be the chairperson, the Director, the deputy-chairperson and one Member nominated by the Committee.

(5) All withdrawals of monies from the Fund Account shall carry the signature of the Director and that of any two of the signatories designated in paragraph 4.

(6) Subject to the provisions of paragraphs 4 and 5, the following procedure shall be followed in respect of any expenditure to be incurred out of any of the Fund Accounts—

(a) only the Director shall have power to commit or incur expenditure out of any Fund Account;

(b) payments shall be made by way of vouchers prepared by a member of staff of the Committee other than the Director or a Deputy Director and certified by the Director or a Deputy Director designated specifically for that purpose;

(c) no purchase orders shall be committed or issued without prior confirmation of funding in respect of that particular expenditure;

(d) all cash books shall be written up and balanced daily;

(e) bank reconciliation shall be prepared and received monthly; and

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(f) any imprests issued to any Committee or member of staff of the Committee of Experts shall be surrendered fully before any subsequent imprest is issue to the same imprest holder.

(7) All procurements by or on behalf of the Committee, shall be made in accordance with the provisions of the Public Procurement and Disposal Act, 2005.

**THE INTERIM INDEPENDENT CONSTITUTIONAL  
DISPUTE RESOLUTION COURT (PRACTICE AND  
PROCEDURE) RULES, 2010**

L.N. 52/2010.

PART I—PRELIMINARY

1. These Rules may be cited as the Interim Independent Constitutional Dispute Resolution Court (Procedure) Rules, 2010. Citation.

2. In these Rules, unless the context otherwise requires— Interpretation.

“Act” means the Constitution of Kenya Review Act 2008;

“Chamber” means a panel of three judges;

“Constitution” means the Constitution of the Republic of Kenya;

“Court” means the Interim Independent Constitutional Dispute Resolution Court and includes a panel of five judges, a Chamber, or a single Judge;

“intervener” means a person who makes an application to the Court under Part IV of these Rules;

“Judge” means a Judge of the Court;

“party” includes the petitioner, the respondent and any person joined to the proceedings as a petitioner or a respondent or an intervener;

“pleading” includes the petition, statement of the petitioner, the statement of response by the respondent, the request to intervene, the statement of intervention, and any motion or reply thereto;

“petition” includes a cross-petition;

“Presiding Judge” means the Presiding Judge elected as such under Section 45(1) of the Act;

“prescribed” means prescribed in the Schedule;

“Register” means the register maintained by the Registrar under Rule 5(1) (a);

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“Registrar” means the person appointed or designated as Registrar by the Court;

“Registry” means the registry of the Interim Independent Constitutional Dispute Resolution Court.

Application of the rules and procedure of the High Court.

3. The practice and procedure of the Court shall, except as hereinafter provided, be that applicable to proceedings in the High Court.

## PART II—ADMINISTRATION OF THE COURTS

Presiding Judge.

4. The Presiding Judge shall co-ordinate the work of the Court and shall in addition be responsible for—

- (a) constituting such chamber or chambers of the Court as may be necessary for the fair and expeditious business of the Court;
- (b) assigning the business of the Court to the Judges;
- (c) supervising the activities of the Registrar and the Registry; and
- (d) exercising all other functions of the Court under Section 60A of the Constitution, the Act and these Rules.

The Registrar.

5. (1) The Registrar shall act in accordance with the instructions of the presiding Judge and shall, in particular, be responsible for—

- (a) the establishment and maintenance of the Register, in which shall be recorded all pleadings and supporting documents, and the decisions of the Court;
- (b) the acceptance, transmission, service and custody of documents in accordance with these rules;
- (c) the enforcement of decisions of the Court;
- (d) certifying that any order, direction or decision is an order, direction or decision of the Court, the Presiding Judge or a Judge, as the case may be;
- (e) causing to be kept records of the proceedings and minutes of the meetings of the Court and such other records as the Court may direct; and
- (f) undertaking any duties assigned by the Court for benefit of the Court.

(2) The Registrar may, with the authorization of the Presiding Judge, consider and dispose of procedural or administrative matters in accordance with these Rules:

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Provided that a party may within seven days of any exercise by the Registrar of the functions pursuant to subrule (2) request in writing that the exercise of such functions be reviewed by the Court.

(3) The Registrar shall have, in addition to any powers specifically given by or under these Rules, such powers as are generally provided under Order XLVIII of the Civil Procedure Rules, with such modifications as may be necessary.

(4) The Presiding Judge may authorize a member of staff to perform any administrative function of the Registrar, in the absence of the Registrar.

6. The address for service of documents on the Court shall as specified in the First Schedule, or such other address as may be notified by the Registrar in the Gazette and or by other appropriate means. Court address for service.

7. (1) In any proceedings before the Court, a party may appear in person or be represented by— Representation.

(a) an advocate of the High Court of Kenya; or

(b) in the case of a corporate body or a firm, an officer of the corporate body or firm duly authorized in writing by such body or firm.

(2) Notwithstanding the provisions of sub rule (1), a party may, with the leave of the Court, appoint any other person knowledgeable in the subject matter of any proceedings before the Court to represent him in such proceedings.

(3) Nothing in these Rules shall be construed as preventing the Registrar, based on criteria pre-determined by the Court, from assigning an advocate to represent an indigent party in any proceedings before the Court.

(4) For the avoidance of doubt, no proceedings before the Court shall be found to be incompetent for the reason only that they have been commenced by a party in person or through a representative other than an advocate.

8. (1) The language of the Court shall be English. Language.

(2) Notwithstanding sub-rule (1), the Court may, taking into account all the circumstances, grant the assistance of a competent interpreter to a party or witness who does not understand or speak the language used at the hearing.

(3) The judgments and rulings of the Court shall be prepared in the English language but may be translated, on request by a party, into the Kiswahili language.

9. There shall be paid to the Court such fees, including fees for service by the Court of any petition, statement or process, as are prescribed in the Second Schedule to these Rules. Filing fees.

## [Subsidiary]

## PART III—APPLICATION OF RULES AND JURISDICTION OF THE COURT

Court to uphold the principle of substantial justice.

10. (1) The Court shall interpret these Rules in a manner that promotes the principle of substantial justice without undue regard to technicalities.

(2) Any irregularity resulting from failure to comply with any provision of these Rules shall not of itself render the proceedings void or invalid where the irregularity does not occasion a miscarriage of justice.

(3) Where any irregularity comes to the attention of the Court, the Court may, and shall if it considers that any person may have been prejudiced by the irregularity, give such directions as it deems just, to rectify or waive the irregularity before reaching its decision.

(4) The Presiding Judge may, by Certificate under his hand, correct any errors of a clerical nature in any document recording a direction, order or decision of the Court, arising from an accidental slip or omission.

Court may rule on jurisdiction.

11. (1) The Court shall have power to rule on its own jurisdiction, including objections as to the competency of any matter before it or as to the whether a petition raises matters that are within the exclusive jurisdiction of the Court.

(2) A question as to whether the Court has jurisdiction to hear and determine any matter shall be heard by a Chamber except in proceedings relating to the conduct or result of the referendum which shall be heard by a panel of five judges.

(3) The decision of a Chamber or the panel of five judges made pursuant to this Rule shall be final and shall not be subject to review or appeal.

## PART III—PETITIONS, SERVICE AND RESPONSE

Petitions.

12. Any person who is aggrieved by a matter related to the constitutional review process as specified under the Act may petition the Court in accordance with these Rules.

Commencing proceedings.

13. (1) Subject to this Rule, proceedings before the Court shall be commenced exclusively by an original petition, supported by a verifying affidavit.

(2) Applications for inclusion of parties and any other applications shall, if filed before the filing of a petition, be by originating notice of motion.

(3) All applications other than those specified herein shall be by motion in the petition.

(4) The Registrar may, subject to practice directions issued by the Presiding Judge, permit a petition or other pleadings to be lodged by electronic means.



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14. (1) A petition shall be in the Form A set out in the Third Schedule, and shall contain—

Petition to state orders sought.

- (a) a concise statement of the facts;
- (b) a summary of the grounds for the petition, identifying in particular—
  - (i) the statutory provision under which the petition is brought; and
  - (ii) the extent to which the petitioner contends that the issue under review was based on an error of fact or law;
- (c) a concise presentation of the arguments supporting each of the grounds of the petition;
- (d) the relief sought in the petition and any directions sought pursuant to these Rules; and
- (e) a schedule listing all the documents annexed to the petition.

(2) The petition shall be signed and dated by the petitioner or the petitioner's recognized representative, and shall state—

- (a) the name and address of the petitioner;
- (b) the name and address of the petitioner's recognized representative, where applicable, and
- (c) the name and address of the respondent.

(3) Unless the Court otherwise directs, the signed original of the petition shall be accompanied by eight copies thereof, certified by the petitioner or their recognized representative as conforming to the original:

Provided that the petitioner shall provide sufficient copies to be served on every party.

(4) A petitioner shall file the petition with the Registrar, who shall acknowledge receipt thereof by date-stamping it with the date of its presentation, and such date shall be recognized as the date of filing.

15. (1) Unless otherwise directed by or with leave of the Court, a petitioner shall establish by affidavit or orally—

Matters to be included in accompanying affidavit.

- (a) whether there are previous proceedings between the parties and, if so, the nature of the proceedings; and
- (b) whether there are any current proceedings relating to the constitutional review process in any court, in which the petitioner or the respondent are parties;

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- (c) the particulars of any orders currently in force between the parties, including the courts by which they were made;
- (d) the steps that have been taken to inform the respondent or the respondent's legal representative of the petitioner's intention to file the petition or the reasons why no such steps were taken;
- (e) the nature and immediacy of the damage or harm which may result if the order is not made;
- (f) if an *ex parte* order is sought, why the making of the order is a matter of urgency and why an abridgement of the time for service of the petition and the fixing of an early hearing date would not be more appropriate;
- (g) if the petition relates in any manner to any financial matter, the capacity of the petitioner to give an undertaking as to damages; and
- (h) all other relevant facts, matters and circumstances relied on by the petitioner in support of the petition.

(2) Subrule (1) (d) shall not apply with respect to an application for an interim injunction.

(3) This rule shall apply with necessary modifications to interlocutory and other applications.

Supporting documents and fees.

16. (1) A petitioner shall, together with the petition, deliver to the Court—

- (a) as far as practicable, a copy of every document or report they intend to rely on; and
- (b) the prescribed fees.

(2) The petitioner may, with the leave of the Court, deliver any other document or report upon which they intend to rely for the purposes of the petition.

(3) The manner and form of a supporting or verifying affidavit shall be as prescribed by the Court.

(4) A supporting document shall be annexed to the affidavit.

(5) An annexure to an affidavit shall—

- (a) be paginated; and
- (b) bear a statement signed by the person before whom the affidavit is made identifying it as the particular annexure mentioned in the affidavit.

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(6) If there is more than one annexure, the pagination shall be consecutive until the last page of the annexure and identified by page number in the affidavit.

(7) An exhibit shall—

- (a) be marked with the title and number of the proceedings to which it relates;
- (b) Where it is a document, be paginated; and
- (c) bear a statement signed by the person before whom the affidavit is made identifying it as the particular exhibit mentioned in the affidavit.

17. If the Court considers that a petition does not comply with rules 13 to 15, or is materially incomplete, or is unduly prolix or lacking in clarity, the Court may give such directions as may be necessary to ensure that those defects are remedied.

Defective petitions.

18. (1) The Court may, at any stage in the proceedings, after giving the parties an opportunity to be heard, reject a petition in whole or in part if—

Power to reject a petition.

- (a) it considers that the petition discloses no valid ground to be heard;
- (b) it considers that the petitioner does not have, or does not represent those who have, a sufficient interest in the decision;
- (c) it is satisfied that the petitioner has habitually and persistently and without any reasonable ground—
  - (i) instituted vexatious proceedings before the Court, whether against the same respondent or different respondents; or
  - (ii) made vexatious applications in any proceedings before the Court; or
- (d) the petitioner fails to comply with any rule, direction, or order of the Court;
- (e) the petition is materially incomplete, or is unduly prolix or lacking in clarity, and the petitioner has failed to remedy the defects directed by the Court under Rule 17.

(2) When the Court rejects a petition it may make any consequential order it considers appropriate.

19. (1) A party may, by a written notice, object to a petition within seven days from the date of receipt of the petition, on the ground that—

Preliminary objections.

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- (a) the Court lacks jurisdiction to entertain the petition; or
- (b) the petition is incompetent having regard to a specified point of law.

(2) The notice of preliminary objection shall contain a concise statement of the ground or grounds of objection.

(3) The objector shall serve a copy of the notice of preliminary objection on the respondent within seven days of the date of its filing.

(4) The petitioner may file written submissions in response to the objection within seven days from its date of service under sub-rule (3).

(5) The Court may decide the preliminary objection without receiving any further arguments thereon from the parties.

## Amendment of a petition.

20. (1) The petitioner may amend the petition with the leave of the Court, which shall be subject to such terms as the Court may deem fit.

(2) The Court shall not grant leave under this rule unless—

- (a) the matter intended to be included in the petition was not within the knowledge of the petitioner at the time the petition was filed; or
- (b) it was not practicable at the time of filing the petition to include such matter in the petition.

## Withdrawal of a petition.

21. (1) The petitioner may withdraw the petition—

- (a) with the leave of the Court, or
- (b) at any time before the petition proceeds to a hearing, with the leave of the Presiding Judge.

(2) The Court may grant leave under sub-rule (1) on such terms as it deems fit.

## Notification on filing of a petition.

22. (1) Subject to rules 16 and 17, the Registrar shall as soon as practicable upon the filing of a petition publish a notice of the fact of such publication in the Gazette and in any other manner the Presiding Judge may direct.

(2) The notice referred to in sub rule (1) shall state—

- (a) that a petition has been filed;
- (b) the name of the petitioner;
- (c) the name of the respondent;
- (d) the legal provision to which the petition relates;

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- (e) the particulars of the relief sought by the petitioner;
- (f) a summary of the matters in issue; and
- (g) that any person who considers that they have sufficient interest may apply to intervene in the proceedings, in accordance with these Rules, within such time as shall be specified in the notice.

23. (1) The petitioner shall, within seven days of filing the petition, serve the petition and the supporting documents on the respondent. Service of a petition.

(2) Service of a petition may be personal or by advertisement in two newspapers with national circulation.

(3) Nothing in these Rules shall preclude the Court, in the interest of justice, from—

- (a) authorizing service of a document in a manner that is not expressly provided for in these Rules; or
- (b) finding that a document served in a manner not expressly provided for in these Rules has been duly served;

24. (1) The respondent may deliver to the Court a statement of response in the prescribed form containing the particulars prescribed under this rule within ten days from the date of service of the petition on the respondent. Statement of response and cross petition.

(2) Where the respondent intends to contend at the hearing of the petition that the matter in issue or any part thereof be reversed, either in the event of the petition being allowed in whole or in part, or in any other event, the statement of response shall include a cross petition to that effect.

(3) Where no statement of response is received from the respondent, the Court may proceed to hear the petition.

(4) The statement of response shall—

- (a) state the name and address of the respondent;
- (b) state the name and address of the respondent's recognized representative, where applicable; and
- (c) be signed and dated by the respondent, or a recognized representative.

(5) The statement of response shall contain—

- (a) the grounds of cross petition, if any;
- (b) a concise presentation of the arguments of fact and law upon which

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the respondent shall rely;

(c) the relief sought by the respondent and any directions sought pursuant to these Rules; and

(d) a schedule listing all the documents annexed to the response.

(6) There shall be annexed to the statement of response a copy of every document and report on which the respondent intends to rely.

(7) The signed original of the statement of response shall be accompanied by eight copies thereof duly certified by the respondent or recognized representative as conforming to the original, provided that the respondent shall provide sufficient copies to be served on every party.

(8) The provisions of rules 16, 17 (except rule 18 (1) (b) and (c)) and 19 shall apply, with the necessary modifications, to the statement of response.

(9) The respondent shall, within seven days of filing the statement of response, serve the same and the supporting documents on the petitioner.

Service of other documents etc.

25. (1) Any document, other than a petition, required to be sent to or served on any person under these Rules may be—

(a) delivered personally at the person's address for service;

(b) sent to the person's address for service by registered post;

(c) where authorized by the Court, sent to the person by facsimile or electronic mail or other similar means;

(d) served through such other means as may be authorized by the Court.

(2) A document which is sent or served in accordance with these Rules shall be deemed to have been received by or served on that person—

(a) in the case of personal delivery, on the day of delivery;

(b) when sent by registered post, on the third day after it was posted;

(c) in the case of a facsimile transmitted on a business day before 5 p.m. on that day or in any other case on the business day after the day on which it is transmitted;

(d) in the case of electronic mail or similar means, on the second day after the day on which it is transmitted;

(e) where any other method of service is permitted under subrule (1), such time as shall be specified by the Court.

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(3) If a document [other than a facsimile] is served after 5 p.m. on a business day, or at any time on a Saturday, Sunday or a public holiday, the document shall be deemed to have been served on the next business day.

(4) For the purposes of these Rules “business day” means any day except Saturday, Sunday or a public holiday.

(5) Address for service for the purposes of sub rule (1) shall be—

- (a) in the case of a document directed to the Court or to the Registrar, the Court address as specified in the First Schedule;
- (b) in the case of a document directed to the petitioner or to their recognized representative, the address stated in the petition or such other address as may be subsequently notified to the Court;
- (c) in the case of a document addressed to the respondent, the address stated in the response or such other address as may be subsequently notified to the Court;
- (d) in the case of a document to an intervener, the address stated in the request to intervene or such other address as may be subsequently notified to the Court.

(6) Anything required to be sent to or served on a company shall be duly sent or served if it is served on a director or secretary of the company.

(7) Anything required to be sent or delivered to or served on a partnership is duly sent or served if it is sent to or served on any one of the partners for the time being.

(8) The Court may dispense with service of a document if the interests of justice so require.

(9) A person required to serve any document under these Rules shall, by affidavit, provide proof of service thereof, indicating the steps taken to serve the document and, the date and manner of service.

#### PART VI—CASE MANAGEMENT

26. (1) Upon the expiry of ten days after close of pleadings, the Court shall on notice to the parties hold a Status Conference for the purposes of securing the just, expeditious and economical conduct of the proceedings. Status Conference and directions.

(2) The Court may, at the Status Conference give directions—

- (a) as to the manner in which the proceedings are to be conducted, including any time limits to be observed in the conduct of the oral hearing;
- (b) that the parties file a response, reply, rejoinder or other additional pleadings or particulars;

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- (c) for the preparation and exchange of skeleton arguments;
- (d) requiring persons to attend and give evidence or to produce documents;
- (e) as to the evidence which may be required or admitted in proceedings before the Court and the extent to which it shall be oral or written;
- (f) as to the submission in advance of a hearing of any witness statements or expert reports;
- (g) as to the examination or cross-examination of witnesses;
- (h) as to the fixing of time limits with respect to any aspect of the proceedings;
- (i) as to the abridgement or extension of any time limits, whether or not expired;
- (j) for the disclosure between, or the production by, the parties of documents or classes of documents;
- (k) for the appointment and instruction of experts, whether by the Court or by the parties and the manner in which expert evidence is to be given;
- (l) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Court;
- (m) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person; and
- (n) as to the place of hearing of the petition.

(3) The Court may, in particular, of its own motion—

- (a) put questions to the parties;
- (b) invite the parties to make written or oral submissions on certain aspects of the proceedings;
- (c) ask the parties or third parties for information or particulars;
- (d) ask for documents or any papers relating to the case to be produced;
- (e) summon the parties or their recognized representatives to appear before the Court.



(4) A request for directions shall be made in writing within ten days after the close of pleadings and shall be served by the requesting party on any other party who might be affected by such directions and shall be determined by the Court taking into account the observations of all the parties.

27. (1) Where given a party to any proceedings under these Rules fails to comply with any direction given by the Court, the Court may, in addition to other powers available to it before or at the hearing, dismiss the whole or any part of the petition, or, as the case may be, strike out the whole or any part of a respondent's statement of response, and, where appropriate, give such directions as are necessary in the circumstances.

Failure to comply with directions.

(2) Notwithstanding the provisions sub-rule (1), the Court shall not so dismiss a petition or strike out a statement of response or give such a direction unless it has first sent to the party who has not complied with the direction a notice to show cause why it should not do so.

(3) The notice referred to under sub-rule (2) shall expire within five days.

28. Where person to whom a direction (including any summons) is addressed had no opportunity of objecting to the making of such direction, such a person may apply to the Court to vary it or set it aside, but the Court shall not do so without first notifying the person who had requested for the directions and considering any representations made by such party.

Varying or setting aside of directions.

29. (1) A petition challenging the conduct or result of the referendum shall be heard by the Court on a priority basis, and in any event within fourteen (14) days of the commencement of the hearing.

Referendum petition to be heard on priority basis.

(2) No application made in a petition on the conduct or result of the referendum shall be heard by the Court after the commencement of the hearing on the petition.

#### PART IV—INTERVENTION AND CONSOLIDATION

30. (1) If it appears to the Court, whether on the application of a party or on its own motion, that it is desirable that any person be made a party to the proceedings, the Court may order such person to be joined as a party and may give such directions relating thereto as may be just, including directions as to the delivery and service of documents.

Joinder of parties and interventions.

(2) Any person who considers that they have sufficient interest in the outcome of a petition may make a request to the Court for permission to intervene in the proceedings.

(3) A request under sub-rule (2) shall be in writing and shall be sent or delivered to the Registrar within the period referred to in rule 22 (2) (g).

(4) The proposing intervener shall serve a copy of the request for

[Subsidiary]

intervention on every party to the proceedings, and such other party may respond to the request, in writing, to the Registrar within seven days of service.

(5) A request for permission to intervene shall state—

- (a) the title of the proceedings to which that request relates;
- (b) the name and address of the person wishing to intervene;

(6) The request for intervention shall contain—

- (a) a concise statement of the matters in issue in the proceedings which affect the person making the request;
- (b) the name of any party whose position the person making the request intends to support; and
- (c) a succinct presentation of the reasons for making the request.

(7) If the Court is satisfied, having taken into account the response of the party that the intervening party, has a sufficient interest, it may permit the intervention on such terms and conditions as it deems fit.

(8) On granting permission in accordance with this rule, the Court shall give all such consequential directions as it considers necessary with regard, in particular, to—

- (a) the service on the intervener of the pleadings;
- (b) the filing and service of the of a statement of intervention by the intervener; and
- (c) if appropriate, the filing of a reply to the statement of intervention by any of the parties.

(9) The statement of intervention and any reply thereto shall contain—

- (a) a succinct presentation of the facts and arguments supporting the intervention;
- (b) the relief sought by the intervener; and
- (c) a schedule listing all the documents annexed to the intervention and, as far as possible, a copy of every document on which the intervener relies.

(10) The provisions of rules 16, 18 (except rule 18 (1) (b) and (c)) and 19 shall apply, with the necessary modifications, to the statement of response.

Consolidation.

31. (1) Where two or more proceedings are pending in respect of the same decision, or which involve the same or similar issues, the Court may, on

[Subsidiary]

the request of a party or of its own motion, order that the proceedings or any particular issue or matter raised in the proceedings be consolidated or heard together.

(2) Before making an order under this rule, the Court shall invite the parties to the relevant proceedings to submit their representations if any.

#### PART V—INTERLOCUTORY AND URGENT APPLICATIONS

32. (1) A person seeking final, interim or procedural orders, shall together with the application for the same, file an affidavit stating the facts relied on.

Affidavit to accompany application for orders.

(2) An affidavit shall not be required in an application for interim or a procedural orders if the evidence relied on is in an affidavit filed in the pending proceedings.

33. (1) Where an interlocutory application in a petition is made, it shall state—

Applications in a petition.

(a) the name and address of the person making the application; and

(b) the names and addresses for service of all persons affected by the order which is sought.

(2) The application and supporting affidavit shall be served on all persons against whom the order is sought.

(3) A petition for final orders may include an application for interim or procedural orders.

(4) A petitioner may not file an application for an interim or procedural order unless a petition for a final order has been made in the proceeding.

34. (1) The Court may make an order on an interim basis—

Power to make interim orders and to take interim measures.

(a) suspending, in whole or part, the effect of any decision which is the subject matter of a petition or any other proceedings before it; or

(b) granting any remedy which the Court would have the power to grant in its final decision.

(2) Without prejudice to the generality of the foregoing, if the Court considers that it is necessary as a matter of urgency for the purpose of—

(a) preventing substantial loss or irreparable damage to a particular person or category of persons; or

(b) protecting the public interest, the Court may make such orders or give such directions as it considers appropriate for that purpose.

(3) The Court shall exercise its power under this rule taking into account all the relevant circumstances, including—

[Subsidiary]

- (a) the urgency of the matter;
- (b) the effect on the party making the request if the relief sought is not granted; and
- (c) the effect on any interested party or the constitutional review process if the relief is granted.

(4) A party shall apply for an order or directions under sub rules (1) and (2) by sending to the Registrar a request for interim relief in the specifying the matter set out under sub-rule (5).

(5) The request for interim relief shall state—

- (a) the subject matter of the proceedings;
- (b) in the case of a request for a direction pursuant to sub rule (2), the circumstances giving rise to the urgency;
- (c) the factual and legal grounds establishing a prima facie case for the granting of interim relief by the Court; and
- (d) the relief sought.

(6) Upon making a request for interim relief, the party shall within seven days thereof send a copy of the request to all the other parties to the proceedings.

(7) Any party served with a copy of a request for interim relief under sub rule (6) may, within seven days of service, submit written or oral observations on the request to the Court.

(8) The Court shall fix a date for the hearing of the request for interim relief or give the parties such directions as may be necessary for disposing of the request.

(9) The Court may, for the purposes of this rule, join any party to the proceedings.

(10) Subject to sub rule (9), an order or direction for interim relief may be made against a person who is not a party to the proceedings, provided that no such order may be made unless that person has been given an opportunity to be heard.

(11) Where the urgency of the case so requires, the Court may dispense with a written request for interim relief or grant the request for interim relief before the response of the other parties have been submitted.

(12) The hearing of an application for an interim order may be heard in chambers.

[Subsidiary]

35. (1) Where the parties agree the terms on which to settle proceedings, either wholly or in part, the parties may request the Court to make a consent order. Consent orders.

(2) A request for a consent order shall be made by sending or delivering to the Registrar—

(a) a draft consent order; and

(b) a statement signed by all the parties to the proceedings or their recognized representatives requesting that an order be made in accordance with the draft consent order.

(3) The Court may enter the consent order in the record of its proceedings.

#### PART VII—DECISIONS OF THE COURT

36. (1) All decisions of the Court shall be in writing and shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision upon each separate issue. Delivery of the decision.

(2) A Judge may pronounce a judgment written and signed but not pronounced by his predecessor or by another Judge.

(3) A decision on an interlocutory matter shall be signed by or on behalf of the Judge who heard the matter, and a decision on a petition or matter shall be signed by the Judge who presided over the panel that made the decision or, in their absence, by any other Judge forming part of the panel.

(4) The concurring, separate or dissenting opinion of a Judge shall be recorded in the decision at the time the decision is announced.

(5) The decision of the Court shall be delivered in public on a date scheduled for that purpose, but in any case not later than fourteen days after the conclusion of the proceedings.

(6) The Registrar shall cause the decision of the Court to be published in the Gazette and may bring it to the attention of the public in such other manner as he may deem appropriate.

37. A decision on a petition on the conduct or result of the referendum shall be signed by or on behalf of all the judges who heard the petition, provided that the Judges shall be at liberty to make separate or joint opinions. Decision on referendum petition to be signed by all judges.

38. A decision on a petition to challenge the conduct or result of the referendum shall not be subject to review. Decision on referendum petition not reviewable.

39. Judgments and orders of the Court shall be executed and enforced in the same manner as judgments and orders of the High Court. Enforcement of orders.

## [Subsidiary]

Review of Court's decision.

40. (1) A request to the Court for review of its decision may be made, in writing, to the Registrar within twenty one days of delivery of the Court's decision.

(2) The request for review shall be signed and dated by the party or his recognized representative and shall—

- (a) state the name and address of the party and of any representative of the party;
- (b) identify the Court decision to which the request relates;
- (c) state the grounds on which the party intends to rely in the request for review;

(3) The Court shall not grant a request for review under this rule unless the request is based—

- (a) on the discovery of a new and important matter which was not within the knowledge of or could not have been produced by the applicant at the time the decision or order sought to be reviewed was made, where such lack of knowledge on the part of the applicant was not due to lack of due diligence; or
- (b) on some mistake or error apparent on the face of the record; or
- (c) on any other sufficient ground.

(4) The Court may grant a stay of execution of any decision or order pending hearing and final determination of an application for review.

Decision of the Court on request for review.

41. (1) The decision of the Court on the request made under subrule (1) may be made in the absence of the parties unless special circumstances render a hearing desirable.

(2) The decision of the Court, under this Rules, together with the reasons for that decision, shall be in writing.

(3) Where the decision is made in the absence of any party the Registrar shall notify that party of such decision.

## PART VIII—GENERAL AND SUPPLEMENTARY

Costs.

42. (1) The Court may at any stage of the proceedings, at its discretion or on application by a party, make any order it thinks fit in relation to the payment of costs by one party to another in respect of the whole or part of the proceedings.

(2) The Court may direct any party against whom an order for costs is made to pay such costs to any other party in a lump sum or such proportion of the costs as may be just.

[Subsidiary]

(3) Where the Court makes an order for costs under this rule, the Court may—

- (a) assess the costs at the time of making the order; or
- (b) direct that the costs be assessed by the Presiding Judge.

(4) Unless the Court otherwise orders, interest shall be payable on outstanding costs at the rate of twelve percent (12%) per annum.

43. (1) The Court may make payments for expenses to witnesses summoned to appear before it in such amounts as it may consider appropriate.

Expenses for attendance by witness.

44. (1) The Court may appoint a person with special knowledge or experience on any issue which is the subject matter of the proceedings before the Court to assist the Court in such proceedings.

Power to appoint an expert.

(2) The person appointed under sub rule (1) may be paid such allowances as the Court may determine.

45. (1) The proceedings of the Court shall be open to the public save where the Court, for sufficient cause, otherwise directs, taking into account—

Hearing to be in public.

- (a) information the disclosure of which would in the Court's opinion be contrary to the public interest;
- (b) commercial information the disclosure of may or might, in the Court's opinion, significantly harm the legitimate business interests of the undertaking to which the information relates;
- (c) information relating to the private affairs of an individual, the disclosure of which may, in the Court's opinion, significantly harm their interests.

46. (1) The Court shall sit at such times and in such places as the Presiding Judge may direct.

Sittings and procedure at hearings.

(2) Notwithstanding the provisions of sub-rule (1) the Court may sit—

- (a) on a Saturday or Sunday; or
- (b) on a day that is a public holiday if seized of a matter of extreme urgency.

(3) Unless the Court otherwise directs, no witness of fact or expert evidence shall be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any directions of the Court.

47. The Registry shall be open for business from 8.30 am to 4.30 pm but may be open at other times for urgent business at the direction of the Presiding Judge.

Registry hours.

**[Subsidiary]**

An advocate may only withdraw in special circumstances.

48. (1) Where there are exceptional circumstances compelling an advocate to withdraw from acting for a party in any proceedings, the advocate may apply to withdraw from record by filing an application for leave to withdraw, and serving the application on each other party in the proceedings.

(2) An advocate may serve an application for leave to withdraw by post to the last known residential or business address of the party.

(3) Where a party's advocate withdraws from the record, the party's last known residential or business address is the address for service until—

(a) the party appoints another advocate; or

(b) the party files a notice of address for service.

(4) Unless and until a notice of change of advocates is filed and served on every party to the petition or proceedings and on the former advocate, the former advocate shall be considered the advocate for the party until the determination of the petition or the proceedings.

(5) A party who has previously engaged an advocate may be granted leave to act in person.

(6) Where there is a change of advocate, or where a party is granted leave to act in person having previously engaged an advocate after the determination of the petition or the proceedings, such change or intention to act in person shall not be effected without an order of the Court upon an application with notice to the advocate on record.

Summonses to be signed by Registrar.

49. Summonses issued by the Court shall be endorsed by and bear the signature of the Registrar.

Court may adopt alternative dispute resolution.

50. The Court may of its own motion or at the request of the parties adopt and implement any appropriate means of alternative dispute resolution and may make any order necessary to facilitate such means of dispute resolution.

Court may proceed in absence of parties.

51. The Court may, if it considers it appropriate in the interests of justice to do so, proceed to determine a case in the absence of a party.

Proceedings during death, illness or resignation of judge.

52. If by reason of death, illness, resignation from the Court, or for any other reason, a Judge is unable to continue sitting in a part-heard matter for a period exceeding fourteen days, the Presiding Judge may assign the matter to another judge and order either a rehearing or the continuation of the proceedings.

Disqualification of judge.

53. (1) A Judge may not sit in proceedings in which he has a personal interest or concerning a matter in which he has any association.

(2) Where a Judge finds himself in circumstances outlined under sub-rule (1), the Judge shall immediately withdraw from the proceedings.



[Subsidiary]

(3) Where a Judge withdraws from any proceedings, the Presiding Judge shall assign the proceedings to another Judge.

(4) Any party to proceedings may apply for the disqualification of a Judge to whom sub-rule (1) and (2) apply before a Chamber comprising Judges other than the judge sought to be disqualified.

(5) A party seeking to disqualify a judge shall raise the matter orally with the Judge they seek to have disqualified.

54. The Court may, for sufficient cause shown, extend the time prescribed by these Rules for doing any act or taking any proceedings upon such terms and conditions, if any, as may appear just and expedient. Extension of time.

55. (1) All the Judges of the Court shall hold in plenary meetings as often as may be necessary for— Plenary meetings of the Court.

(a) the election of the Presiding Judge;

(b) the amendment of these Rules;

(c) deliberation on any matter relating to the internal functioning of the Court; or

(d) exercising any other functions provided for under the Constitution, the Act or these Rules.

(2) The Presiding Judge shall preside at all plenary meetings of the Court at which he is present and in the absence of the Presiding Judge, the Deputy Presiding Judge, if any, shall preside, and in the absence of both, the Judges present may pick one of their number to preside.

(3) Unless a unanimous decision is reached, a decision on any matter before the plenary shall be by a majority of votes of the Judges present and in case of an equality of votes, the Presiding Judge or the Judge presiding shall have a casting vote.

56. (1) A person who habitually and without any reasonable cause, files proceedings against the same or different respondents may be declared a vexatious litigant by the Court. Vexatious or frivolous proceedings.

(2) Where a declaration referred to under sub-clause (1) is in force, the Court may disregard any proceedings instituted by the person declared to be a vexatious litigant.

57. The Court shall have the same power to punish for contempt of court as is for the time being possessed by the High Court, and that power shall extend to upholding the Court's authority and dignity. Court to have power to punish for contempt.

58. The Presiding Judge shall cause to be taken notes of all proceedings before the Court, or may direct that the record of any proceedings before the Court be taken by shorthand notes or tape-recording or, other electronic means. Recording of proceedings.

**[Subsidiary]**

Prescribed forms. 59. (1) The forms prescribed in the Third Schedule to these Rules shall, with such modifications as may be necessary, be used for the purposes of filing petitions, responses or any interlocutory matters.

Practice directions. 60. The Presiding Judge may from time to time issue special rules of practice and procedure of the Court, which shall have the same status with these Rules.

General power of the Court. 61. (1) Subject to these Rules, the Court may regulate its own procedure.

(2) Nothing in these Rules shall limit or otherwise affect the inherent power of the Court conferred by Section 60A of the Constitution either on its own motion or on the application of a party to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

**FIRST SCHEDULE**

(R.6)

## ADDRESS FOR SERVICE

The Interim Independent Constitutional Dispute  
Resolution Court  
P.O. Box 103732-00101  
Nairobi.

2nd Floor  
Kenyatta International Conference Centre,  
Harambee Avenue  
Nairobi.

**SECOND SCHEDULE**

(R.9)

## FEES

**Filing fees**

<i>Document</i>	<i>Fees (KSh.)</i>
Petition	5,000
Response	500
Reply	500
Notice of Motion	1,000
Certificate of urgency	200
Affidavit (4 folios or less and extra folio at KSh. 100)	100
Affidavit of service	100
Annextures (per annexure)	20

THIRD SCHEDULE

FORM A

(R. 59)

PETITION

REPUBLIC OF KENYA

IN THE INTERIM INDEPENDENT CONSTITUTIONAL DISPUTE RESOLUTION COURT AT .....

IN THE MATTER OF ALLEGED CONTRAVENTION OF SECTION [insert section] OF THE CONSTITUTION OF KENYA/THE CONSTITUTION OF KENYA REVIEW ACT/(other Act of Parliament) [delete whichever is inapplicable, and in case you are alleging contravention of another Act, indicate the Act of Parliament].....

CONSTITUTIONAL PETITION NO. .... OF ..... BETWEEN

A.B. [insert names of parties] ..... PETITIONER(S) AND

C.D. [insert names of parties] .....RESPONDENT[S]

To:

The Interim Independent Constitutional Dispute Resolution Court

- 1. The humble petition of AB is as follows ..... [set out, in consecutive paragraphs the specific issues contended by [each of the] petitioner[s] referring where necessary to the section of the Constitution or the Constitution of Kenya Review Act, or other Act of Parliament or decided cases relied upon.]
2. [briefly set out the points of law raised]
3. [briefly set out the facts necessary to enable the Interim Independent Constitutional Dispute Resolution Court to properly decide the point[s] of law raised]
4. [set out in summary of the grounds for the petition]
5. [set out succinctly presentation of the arguments supporting each of the grounds of the petition]
6. The question(s) for the decision of the Interim Independent Constitutional Dispute Resolution Court is ..... [state the question(s)].
7. The relief sought by the petitioner is .....

DATED this .....day of .....20.....

Signed ..... Petitioner/Advocate for the Petitioner

Drawn & Filed by: AB (or his Advocates) (Full name and address)

To be served upon: CD (Full name and address)

[Subsidiary]

FORM B

(R. 24)

STATEMENT OF RESPONSE

REPUBLIC OF KENYA

IN THE INTERIM INDEPENDENT CONSTITUTIONAL DISPUTE RESOLUTION COURT AT .....

IN THE MATTER OF ALLEGED CONTRAVENTION OF SECTION (insert section) OF THE CONSTITUTION OF KENYA/THE CONSTITUTION OF KENYA REVIEW ACT/(other Act of Parliament) [delete whichever is inapplicable, and in case you are alleging contravention of another Act, indicate the Act of Parliament] .....

CONSTITUTIONAL PETITION NO. .... OF ..... BETWEEN

A.B. (insert names of parties)..... PETITIONER(S) AND

C.D. [insert names of parties] ..... RESPONDENT[S]

To:

The Interim Independent Constitutional Dispute Resolution Court

STATEMENT OF RESPONSE (AND CROSS PETITION) BY THE [FIRST] RESPONDENT

- 1. The humble Response of CD of (state the address of the respondent and the name and address of the respondent’s recognized representative, where applicable) is as follows ..... (set out, in consecutive paragraphs the specific issues contended by (each of the) respondent (s) referring where necessary to the section of the Constitution or the Constitution of Kenya Review Act, or other Act of Parliament or decided cases relied upon.) ..... statement of response containing the particulars prescribed under this rule within ten days from the date on which the respondent is served with the petition.
2. (briefly set out
(a) the grounds of cross petition, if any;
(b) a concise presentation of the arguments of fact and law upon which the respondent will rely; and
(c) the relief sought by the respondent and any directions sought).
3. (briefly set out the facts necessary to enable the Interim Independent Constitutional Dispute Resolution Court to properly decide the point[s] of law raised).
4. The Respondent question(s) for the decision of the Interim Independent Constitutional Dispute Resolution Court is .....(state the question(s)).

DATED this .....day of ..... 20.....

Signed ..... Respondent/Advocate for the Respondent

Drawn & Filed by:

CD (or his Advocates) (Full name and address]

To be served upon:

AB (Full name and address)

FORM C

(R. 59)

NOTICE OF MOTION

REPUBLIC OF KENYA

IN THE INTERIM INDEPENDENT CONSTITUTIONAL DISPUTE  
RESOLUTION COURT AT .....

IN THE MATTER OF ALLEGED CONTRAVENTION OF SECTION  
*(insert section)* OF THE CONSTITUTION OF KENYA/THE  
CONSTITUTION OF KENYA REVIEW ACT/*(other Act of Parliament)*  
[*delete whichever is inapplicable, and in case you are alleging contravention  
of another Act, indicate the Act of Parliament*].

CONSTITUTIONAL PETITION NO. .... OF .....

BETWEEN

A.B. *(insert names of parties)*..... PETITIONER(S)

AND

C.D. [*insert names of parties*] .....RESPONDENT[S]

To:

**The Interim Independent Constitutional Dispute Resolution Court**

NOTICE OF MOTION

**Take Notice that AB (the petitioner herein) shall on.....day  
of.....2010 move the Honourable Court for ORDERS: [*set out, in  
consecutive paragraphs the specific interlocutory orders/reliefs sought.***

**This Application** is founded on the following grounds and provisions  
of law (*set out the grounds and legal provisions*)

**And supported** by the affidavit of EF sworn on the day of 2010 herein  
attached.

DATED this .....day of .....20.....

**Signed** .....  
**Applicant/Advocate for the Applicant**

**Drawn & Filed by:**  
**AB (or his Advocates)** (Full name and address)

To be served upon:  
CD (Full name and address)

[Subsidiary]

FORM D

(R. 59)

AFFIDAVIT

REPUBLIC OF KENYA

IN THE INTERIM INDEPENDENT CONSTITUTIONAL DISPUTE  
RESOLUTION COURT AT .....

IN THE MATTER OF ALLEGED CONTRAVENTION OF SECTION  
(*insert section*) OF THE CONSTITUTION OF KENYA/THE  
CONSTITUTION OF KENYA REVIEW ACT/(*other Act of Parliament*)  
[*delete whichever is inapplicable, and in case you are alleging contravention  
of another Act, indicate the Act of Parliament*].....

CONSTITUTIONAL PETITION NO. .... OF .....

BETWEEN

A.B. (*insert names of parties*) ..... PETITIONER(S)

AND

C.D. [*insert names of parties*] .....RESPONDENT[S]

To:

**The Interim Independent Constitutional Dispute Resolution Court**

AFFIDAVIT

**I, EF of [state physical and postal address] make oath and state as follows:**

*(state in consecutive paragraphs the matters of fact deponed to in support of the Notice of Motion)*

I make this affidavit in support of the Application by AB herein dated the .....day of .....2010 believing the matters deponed to be true within my knowledge, information and belief sources and grounds whereof are disclosed herein.

Sworn by the said EF at .....

this ..... day of .....20.....

In the presence of

**Commissioner for Oaths**

**Drawn & Filed by:**

**AB** (*or his Advocates*) (Full name and address)

**To be served upon:**

**CD** (Full name and address)

**THE CONSTITUTION OF KENYA REVIEW (REFERENDUM)  
REGULATIONS, 2010**

L.N. 66/2010.

## ARRANGEMENT OF REGULATIONS

## PART I—PRELIMINARY

*Regulation*

- 1—Citation.
- 2—Interpretation.

## PART II—MATTERS PRELIMINARY TO REFERENDUM

- 3—Returning Officers.
- 4—Appointment of other referendum officers.
- 5—Register of voters.
- 6—Right of vote.
- 7—Polling areas and polling stations.
- 8—Use of schools as polling stations.
- 9—Referendum question and notice of referendum.
- 10—Application of Cap. 7 and Cap. 66.

## PART III—REFERENDUM COMMITTEES

- 11—Referendum committees.
- 12—Registration of referendum committees.
- 13—Appointment of chief agents.
- 14—Appointment of agents
- 15—Rights and duties of agents.
- 16—Referendum campaign period.

## PART IV—PROVISIONS RELATING TO VOTING

- 17—Voting procedure.
- 18—Equipment of polling stations.
- 19—Admission to polling stations.
- 20—Keeping order at polling station.
- 21—Postponement of polling.
- 22—Communication with voters at polling station.
- 23—Sealing of ballot boxes.
- 24—Ballot papers.
- 25—General voting procedures.
- 26—Assisted voters.
- 27—Procedure on close of poll.
- 28—Voters to be counted at the polling station.
- 29—Preparation and counting of votes.
- 30—Void ballot papers.
- 31—Recount.
- 32—Rejected ballot papers.

[Subsidiary]

- 33—Sealing of ballot papers.
- 34—Constituency referendum results.
- 35—Return of referendum.
- 36—Publication of referendum results.
- 37—Retention and public inspection of document.
- 38—Offences by referendum officials.

PART V—MISCELLANEOUS PROVISIONS

- 39—Voting of patients, pastoralists, etc.
- 40—Accreditation of referendum observers.
- 41—Attendance of agents.
- 42—General powers of Commission.

SCHEDULES

FIRST SCHEDULE

Forms

SECOND SCHEDULE

Certificate of Results of Referendum



[Subsidiary]

**THE CONSTITUTION OF KENYA REVIEW (REFERENDUM)  
REGULATIONS, 2010**

L.N. 66/2010,  
L.N. 118/2010.

PART I—PRELIMINARY

1. These Regulations may be cited as the Constitution of Kenya Review (Referendum) Regulations, 2010. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the Constitution of Kenya Review Act, 2008; No. 9 of 2008.

“agent” means a person duly appointed by a referendum committee for the purposes of these Regulations and includes a counting agent;

“chief agent” in respect of a registered referendum committee, means the person recorded in the register maintained by the Commission under the regulation 13 as the person responsible for the affairs of the referendum committee;

“Commission” means the Interim Independent Electoral Commission established by section 41 of the Constitution;

“constituency” means one of the constituencies into which Kenya is divided under section 42 of the Constitution;

“corrupt practice” means any offence mentioned and punishable under the provisions of Part III of the Election Offences Act; Cap. 66.

“election offence” means a corrupt practice, an illegal practice or any offence under the Election Offences Act;

“elector” means a person whose name is included in the current register of voters;

“elector’s card” means a card issued to an elector as evidence of the person’s registration in the register of voters ;

“illegal practice” means an offence so designated and punishable under part IV of the Election Offences Act;

“oppose” in respect of a referendum question means voting not to approve the referendum question specified in section 37 of the Act;

“Parliamentary Select Committee” means the Parliamentary Select Committee on the Review of the Constitution;

“petition” means an application filed under section 44 (1) of the Act to the Interim Independent Constitutional Dispute Resolution Court established under section 60A of the Constitution;

## [Subsidiary]

“police officer” means a member of the Kenya Police Force or of the Administration Police; or any other person assigned, by the Commission, the duties that are performed by a police officer under these Regulations;

“polling area” means one of the areas into which a constituency is divided under regulation 7, or, if the Commission has declared a constituency to be a single polling area, that constituency;

“polling station” means any room, place, vehicle or vessel set apart and equipped for the casting of votes by electors at an election;

“polling time” means the period between seven o’clock in the morning and five o’clock in the afternoon of the polling day and includes the time taken to vote by voters who were present in a polling station by five o’clock;

“presiding officer” means a person appointed under the regulation 4 to preside at a polling station;

“referendum” means the process of the ratification of the proposed new Constitution of Kenya specified under Part V of the Act;

“referendum committee” means any group of persons that intends to support or oppose the referendum question during the referendum period;

“referendum officer” means a returning officer, presiding officer and any other person appointed by the Commission to perform referendum duties under these Regulations;

“referendum period” means the period beginning on the day on which the text of the referendum question is published and ending on polling day of the referendum;

“referendum question” means the question upon which the people shall vote in the referendum as specified in section 37 of the Act;

“register” means the register of voters specified under section 41A (d) of the Constitution;

“returning officer” means a person appointed under regulation 3 for the purpose of conducting the referendum in a constituency;

“voter” in relation to the referendum, means a person whose name is included in the current register of voters;

“support” in respect of referendum question, means voting to approve the referendum question specified in section 37 of the Act.

## PART II—MATTERS PRELIMINARY TO REFERENDUM

## Returning Officers.

3. (1) The Commission shall appoint a returning officer for each constituency and may appoint such deputy returning officers for the constituencies as it may consider necessary.

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

(3) The returning officer shall, in consultation with the Commission, appoint presiding officers and deputy presiding officers to preside at a polling station.

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

(5) A deputy presiding officer may perform any act which the presiding officer is required or authorized to perform by these Regulations; but no deputy presiding officer shall have power to order the arrest of any person or the exclusion or removal of any person from a polling station.

(6) Every appointment of a returning officer and a deputy returning officer under this regulation shall be published in the Gazette and in such other manner as the Commission may deem necessary.

4. (1) The Commission shall appoint such other referendum officers with such designations as it may deem necessary to assist in the conduct of the referendum and such referendum officers, may, subject to the general or special directions of the Commission, exercise any or all of the duties and powers conferred or imposed upon the Commission by the Constitution, the National Assembly and Presidential Act and this Act.

Appointment of other officers.

(2) The referendum officer shall take such oath of office as the Commission may specify.

(3) Referendum officers shall, in performing their duties and functions under these Regulations, act impartially and not in any way show favour to any side in a referendum.

5. The register of voters prepared under the National Assembly and Presidential Elections Act for the election of members to the parliament and of the president, as revised from time to time, shall be the register of voters for the purpose of the referendum.

Register of voters.

6. (1) A registered voter in a particular constituency is entitled to vote at the referendum unless otherwise disqualified from voting by any other written law.

Right to vote and evidence of identity.

(2) A presiding officer shall require a person applying for a ballot paper to produce the person's identity card issued under the Registration of Persons Act or a valid Kenyan passport and the elector's card issued by the Commission.

7. (1) The Commission shall—

Polling areas and polling stations.

## [Subsidiary]

- (a) divide each constituency in which the referendum is to be held into polling areas or, if it thinks fit, declare any particular constituency to be a single polling area;
- (b) assign to each polling area a distinguishing number or letter or a combination of number and letter;
- (c) 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 polling area shall be established; and
- (d) publish in the Gazette a notice specifying—
  - (i) the polling areas established for each constituency, which may be done by specifying the registration units which they respectively comprise;
  - (ii) the distinguishing number or letter, or combination thereof, assigned to each polling area; 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 polling area.

(2) In determining the boundaries of any polling area, the Commission shall have regard to geographical considerations and any other factors affecting the facility of communication between various places within the polling area.

(3) Subject to sub-regulation (2), the Commission may alter a division, assignment or appointment made under sub regulation (1) and shall thereupon publish a notice in the Gazette specifying the alteration.

(4) The Commission may, if it considers it desirable, appoint a single polling station for two or more polling areas.

## Use of public facilities.

8. (1) The Commission may use, free of charge, any public facility as a polling station.

(2) Where any damage is caused to a public facility by reason of its being used as polling station under this regulation, the Commission shall either make good the damage or defray any expenses incurred by persons having control of the facility in making the damage good.

## Referendum question and notice of referendum.

9. (1) Subject to section 37 (2), the Commission shall, in consultation with the Parliamentary Select Committee, within seven days after publication of the draft Constitution by the Attorney-General under section 34 (1) of the Act, frame the referendum question.

(2) The Commission shall publish the referendum question, by notice in the Gazette in accordance with section 37 (1).

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(3) A notice published by the Commission under sub-regulation (2) shall be in Form 1 set out in the First Schedule.

(4) The Commission shall, within fourteen days after publication of the question by notice in the Gazette, specify—

- (a) the referendum question;
- (b) the symbols assigned for the answers to the referendum question on the ballot paper;
- (c) the day on which the referendum is to be held;
- (d) the polling time of the referendum;
- (e) the referendum campaign period; and
- (f) the day by which the referendum committees specified in regulation 12 must have registered with the Commission.

(5) A notice published by the Commission under sub-regulation (4) shall be in Form 2 set out in the First Schedule.

(6) The returning officer of every constituency shall, within twenty one days after publication of the notice under sub-regulation (2), notify the public of the referendum in Form 3 set out in the First Schedule.

(2) On publication of the notice specified in sub- regulation (2) in the Gazette by the Commission the registration of voters shall be suspended.

10. (1) The National Assembly and Presidential Elections Act and Regulations made thereunder shall, with necessary modifications, apply to the conduct of the referendum.

Application of Cap. 7 and Cap. 66.

(2) The Election Offences Act shall apply with respect to the referendum as though it were an election within the meaning of the Act.

### PART III—REFERENDUM COMMITTEES

11. (1) Persons intending to support or oppose the referendum question may form one national committee and one committee in each parliamentary constituency which committees shall be known as referendum committees.

Referendum Committees.

(2) A referendum committee formed under this regulation shall subscribe to and abide by the Electoral Code of Conduct provided for under section 34A of the National Assembly and Presidential Elections Act and set out in the Fourth Schedule thereto, in the manner the Commission shall direct in writing.

Cap. 7.

12. (1) A referendum committee may apply for registration for the purposes of a referendum by filing with the Commission, at any time during the referendum period, an application in accordance with this regulation.

Registration of referendum committees.

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(2) An application under sub-regulation (1) shall—

- (a) be accompanied by information and statements showing that the applicant adequately represents those campaigning for or against the referendum question; and
- (b) be made within the period specified by the Commission.

(3) An application for registration shall be signed by the leader of the referendum committee and shall—

- (a) set out—
  - (i) the full name of the committee;
  - (ii) the full name, address and telephone number of the leader of the committee;
  - (iii) the name, address and telephone number and title of each officer of the committee;
  - (iv) the address and telephone number of the office of the committee to which communication may be addressed; and
  - (v) the name, address and telephone number of the chief agent of the committee;
- (b) indicate the electoral areas in which the committee intends to support or oppose the referendum question; and
- (c) be accompanied by a statement signed by the chief agent that the agent has accepted the appointment as chief agent.

(4) On receipt of an application for registration of a referendum committee, the Commission shall examine the application and determine whether the committee can be registered and shall—

- (a) if the committee can be registered, register it and inform the person who signed the application; or
- (b) if the committee cannot be registered, inform the person who signed the application that the committee cannot be registered and state the reasons thereof.

(5) A referendum committee shall not be registered if—

- (a) the application does not comply with these Regulations;
- (b) the name of the committee so resembles the name of a previously registered referendum committee that the committee is likely to be confused with that previously registered committee; or

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(d) the Commission is not satisfied that the applicant adequately represents those campaigning for a particular outcome.

(6) A referendum committee shall not be registered if the name or logo of the committee is the name or logo of a political party or so resembles such a name or logo that the committee is likely to be confused with the party.

(7) For the purpose of sub regulation (6), the name of a party means—

(a) the full name of the party; or

(b) any name, or abbreviation of a name, used to identify the party in election documents.

(8) Where a referendum committee is registered and any information given by the committee pursuant to sub regulation (2) ceases to be applicable or accurate, the referendum committee shall forthwith send a report in writing, signed by the leader or chief agent of the committee, to the Commission setting out the information necessary to bring the information up to date.

(9) The registration of a referendum committee for the purposes of a referendum is valid only for that referendum.

13. (1) Every referendum committee that intends to apply for registration under regulation 12 shall, before applying, appoint a chief agent.

Appointment of chief agent.

(2) The Commission shall maintain a register of the chief agents of registered referendum committees in which shall be recorded the name, address and telephone number of the chief agent of each such committee.

(3) The chief agent of a referendum committee appointed under sub regulation (1) shall be responsible for the affairs of the registered referendum committee and shall provide a sample signature to the Commission.

14. (1) The chief agents of all the registered referendum committees in an electoral area or constituency may appoint not more than two agents to be present when voting is taking place at each polling area.

Appointment of agents.

(2) Each agent appointed under sub-regulation (1) has, for the purposes of proceedings at the polling station all the rights and obligations of a candidate's agent specified under the National Assembly and Presidential Elections Act for that polling station by the Commission.

Cap. 7.

(3) Every person appointed pursuant to this regulation shall be appointed in writing and shall take such oath of office as the Commission may specify.

15. (1) An agent appointed under regulation 14 shall when present, be entitled to—

Rights and duties of agents.

(a) witness the opening and closing procedures and processes of a polling station;

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- (b) examine the serial numbers of the ballot boxes before the commencement of the polling and after the close of the polling;
- (c) examine electors' registers;
- (d) verify whether a person who has applied for a ballot paper to vote is qualified to vote at a polling station;
- (e) be furnished with the names of the election officials at a polling station and constituency tallying centre;
- (f) put a security seal on the ballot box;
- (g) object, to the presence of any person, other than a person lawfully present at the polling station or tallying centre;
- (h) take note of all the activities taking place in a polling station including the conduct of the poll, the observance of the polling regulations, the conduct of the count of the votes and the observance of the counting regulations and in that connection the agent shall be entitled to take notes, object to the relevant referendum officers preferably in writing, when the agent considers that to be appropriate; and
- (i) perform any other function or carry out any other responsibility conferred on an agent by these Regulations or by the Act.

(2) An agent shall comply with these Regulations and in particular shall—

- (a) submit to the authority of the presiding officer and deputy presiding officer at the polling station and the returning officer and deputy returning officer at the constituency tallying centre;
- (b) comply with lawful orders given by the returning officer, deputy returning officer, presiding officer and deputy presiding officer;
- (c) not communicate with any voter in the polling station except as authorised by these Regulations;
- (d) not interfere with the poll or counting process in any manner which is not authorised by these Regulations; and
- (e) not willfully damage, destroy or in any way endanger any document or other property of the Commission which comes into the agent's possession or which the agent is entitled to use, examine or handle.

(2) The returning officer, deputy returning officer, presiding officer, or deputy presiding officer may suspend for a period of time or expel completely an agent from the place the agent is attached to perform the agent's functions



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if the agent repeatedly flouts these Regulations in a manner which threatens to interfere or actually interferes with the voting process at that place:

Provided that the referendum officer shall alert the agent of a breach every time it occurs and offer the agent an opportunity to defend such conduct.

(3) Where a referendum officer suspends or expels an agent under this regulation, the referendum officer shall serve the agent with a written order to that effect and inform the relevant referendum committee of the action taken.

16. (1) Any person or referendum committee supporting or opposing the referendum question may carry out campaigns to support or oppose the referendum question within the referendum period. Referendum campaign period.

(2) All campaigns referred to in sub regulation (1) shall cease twenty-four hours before the start of polling.

#### PART IV — PROVISIONS RELATING TO VOTING

17. (1) Voting at the referendum shall be by secret ballot wherein the votes shall consist of ballot papers, and shall be held in accordance with the provisions of these Regulations. Voting procedure.

(2) No person shall vote in an area other than that in respect of which that person is registered as an elector.

(3) No person shall cast more than one vote at the referendum.

18. (1) The returning officer shall provide each presiding officer with such number of ballot boxes and ballot papers as the returning officer considers necessary for the effective carrying out of the provisions of these Regulations relating to the referendum. Equipment of polling stations. L.N. 118/2010.

(2) Every ballot box shall be constructed—

- (a) with an aperture which is large enough to receive a ballot paper but which is no larger;
- (b) 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; and
- (c) so that the ballot boxes shall bear serial numbers of the polling stations, which serial numbers shall be posted prominently and in full view of voters at every polling station.

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

- (a) materials to enable voters to mark their ballot papers where marking is necessary;
- (b) instruments for stamping the official mark on ballot papers;

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- (c) a seal of the Commission suitable for the purposes of regulation 25 (2);
- (d) a container of indelible stain marker pen suitable for the purposes of regulation 25 (3) (c);
- (e) a copy of the register of voters or such part thereof as contains the names of the voters entitled to vote at that polling station;
- (f) a sufficient number of compartments in which voters can mark their votes screened from observation; and
- (g) any other equipment necessary for the conduct of voting at the polling station.

Admission to polling stations.

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

- (a) agents;
- (b) referendum officers on duty;
- (c) police officers on duty;
- (d) persons necessarily assisting blind or incapacitated voters; and
- (e) accredited observers and representatives of the print and electronic media approved or accredited by the Commission.

(2) The presiding officer shall admit to the polling station not more than two agents from each group of registered referendum committee but the presiding officer may refuse admission to a person claiming to be an agent if that person does not produce a letter of appointment as an agent signed by the chief agent of that referendum committee.

(3) No person shall be admitted to vote at any polling station other than where that person is registered as a voter.

Keeping order at the polling station.

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

(2) The presiding officer may order the dispersal of any gathering of persons which appears to the officer to be preventing free ingress to, or egress 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.

(3) The power conferred on a presiding officer and a police officer under sub regulations (1) and (2) shall not be limited to the area covered by the polling

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station only but shall encompass a radius of four hundred meters from the centre of the polling station.

(4) Notwithstanding the provisions of the Police Act, police officer assigned duties during the conduct of a referendum shall be deemed to be an election official for purposes of the Act and subject to direction and instruction of the Commission. Cap. 84.

(5) If any person misbehaves in a polling station, or fails to obey the lawful instructions or orders of the presiding officer, the person may immediately be removed, by order of the presiding officer, or by a police officer, and a person so removed shall not re-enter the polling station during the continuance of the poll without the permission of the presiding officer.

21. (1) Notwithstanding the terms of any notice or writ issued under the Act or these Regulations, a presiding officer may postpone or adjourn the proceedings at the polling station if they are interrupted by a riot, violence, natural catastrophe, shortage of equipment or other cause, but the proceedings shall be resumed as soon as practicable. Postponement of polling.

(2) The powers of a presiding officer under sub-regulation (1) shall include the power to transfer the proceedings to another polling station in the same constituency, and in such a case—

(a) the presiding officer shall advertise the fact as specified in Form 4 set out in the First Schedule or in such manner as the presiding officer thinks sufficient to bring it to the notice of voters; and

(b) the polling area for the polling station from which the proceedings are transferred shall, for all the purposes be deemed to be part of the polling area of the polling station to which the proceedings are transferred.

(3) A presiding officer may extend the hours of polling at the polling station where polling has been interrupted under this regulation or for other good cause, and shall, where polling in that polling station is delayed, extend the period of polling to recover any lost time.

22. No person other than a referendum officer or police officer on duty shall, except with the authority of the presiding officer, communicate with a voter who is in, or in the immediate precincts of a polling station for the purpose of voting; but this regulation shall not prevent the companion of a blind or incapacitated voter from communicating with that voter. Communication with voters at polling station.

23. (1) Immediately before the commencement of the poll, the presiding officer shall show the ballot box or ballot boxes to those persons lawfully present in the polling station to so ascertain that the box or boxes are empty, and shall thereupon close the box or boxes so that they may not be opened without breaking the seal. Sealing of ballot boxes.

(2) After a ballot box is sealed under sub-regulation (1) the presiding officer shall cause it to be so placed in the polling station that it can at all times be

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in the view of the officer, the deputy presiding officer and the agents present.

(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 the ballot box is not in use, the presiding officer shall close the aperture used for the insertion of the ballot papers into the box and place an official seal on it in such a manner as to prevent the insertion of ballot papers without breaking the seal.

(4) After a ballot box has been sealed under sub-regulation (3), the seal shall not be broken or the aperture opened until broken and opened in the presence of those persons lawfully present in the polling station where polling is about to resume.

(5) In every circumstance where the presiding officer is required to affix an official seal on a ballot box, the agents of each committee shall be entitled to affix their seals.

Ballot papers.

24. (1) Ballot papers for use at the referendum shall be in Form 5 set out in the First Schedule.

(2) Every ballot paper for use at the referendum shall—

- (a) contain the question being voted on in English and Kiswahili languages;
- (b) be capable of being folded up;
- (c) have a number, or combination of letter and number, printed on the front;
- (d) have attached a counterfoil with the same number or combination printed thereon; and
- (e) contain a different and distinct symbol for each answer to the referendum question to be voted on.

(3) The presiding officer shall allow those persons lawfully present at the polling station before polling commences to inspect the ballot papers provided for use at the polling station and note the serial numbers thereon.

General voting  
procedures.  
L.N. 118/2010.

25. (1) Before the delivery of a ballot paper to a voter—

- (a) the back of the ballot paper shall be stamped with the official mark of the Commission;
- (b) the number and name of the voter as stated in the copy register shall be called out; and
- (c) the name of the voter shall be deleted from the register but the electoral number of the voter shall be retained as a proof that a

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ballot paper has been delivered to the voter.

(2) Upon receiving a ballot paper, a voter shall submit the elector's card to be impressed with the seal of the Commission leaving a permanent impression on the card.

(3) A voter shall, upon receiving a ballot paper under subregulation (2)—

- (a) immediately proceed into one of the compartments of the polling station and while there, secretly mark the ballot paper by putting a cross, a tick or any other mark in the box and column provided against the symbol of the side for whom the voter wishes to vote;
- (b) fold it up so as to conceal the vote and put the ballot paper into the ballot box in the presence of the presiding officer, in full view of the persons lawfully present;
- (c) submit to having one of the voter's fingers marked using stin marker pen of a distinctive colour which, so far as is possible, is sufficiently indelible to leave a mark for the period of the referendum; and
- (d) immediately after voting, leave the polling station.

(4) No person other than a person acting under regulation 26 shall be present in a compartment of a polling station while a voter is therein for the purpose of marking the ballot paper and any person who contravenes this sub-regulation commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or both.

(5) A person who knowingly fails to place a ballot paper issued to the person (other than a spoilt ballot paper) into a ballot box before leaving the place where the box is situated, commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both.

(6) A referendum officer who deliberately refuses to mark or stamp any ballot paper commits an offence and is liable on conviction to fine not exceeding fifty thousand shilling or to imprisonment for a term not exceeding one year or to both.

26. (1) On the application of a voter who declares to be unable to read or write, or who is incapacitated by reason of blindness or other physical cause from voting in the manner prescribed in these Regulations, the presiding officer shall permit the voter to be assisted by a person of the voter's own choice.

Assisted voters.

(2) No person other than the person chosen by the voter shall enter the compartment whilst the voter is casting his vote.

(3) 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.

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

- (a) the person shall assist only one voter; and
- (b) the person shall submit to having the left thumb immersed or dipped in ink of a distinctive colour which, so far as is possible is sufficiently indelible to leave a mark for the period of the referendum.

(5) The presiding officer may make such inquiries as the officer may deem necessary in order to establish that the voter and the chosen assistant satisfy the provisions of this regulation.

(6) The presiding officer, may where the voter has no Assistant, and upon request by the voter cause the vote of the voter to be cast on the voter's behalf.

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

(8) A person who makes a false statement in relation to their incapacity, together with any officer or agent who knowingly permits or assists that person to be assisted commits an offence.

(9) A person who contravenes the provisions of this regulation commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding three months or both.

Procedure on close of poll.

27. (1) Immediately after the close of the polling station the presiding officer shall make a written statement of—

- (a) the number of ballot papers issued to the officer under regulation 18;
- (b) the number of ballot paper, other than spoiled ballot papers used;
- (c) the number of spoilt ballot papers; and
- (d) the number of ballot papers remaining unused.

(2) Immediately after the completion of the statement under sub-regulation (1), the presiding officer, in the presence of persons lawfully present shall make up into separate packets—

- (a) the spoilt ballot papers, if any;
- (b) the marked copy register;

(c) the counterfoils of the used ballot papers; and

(d) the statement specified in sub regulation (1),

and shall seal each of the packets with an official seal of the Commission.

28. (1) Immediately after complying with the provisions of regulation 27 the presiding officer shall in the presence of agents proceed to count the votes for that polling station. Votes to be counted at the polling station.

(2) No agent shall be deemed to be a counting agent unless at least thirty six hours before the close of the poll in the referendum, the name and address of the agent and the appointment letter as such by the registered referendum committee has been submitted to the presiding officer and a presiding officer shall not allow a person whose name and address and authorization has not been so submitted to attend to a counting of votes notwithstanding that the appointment of that person is otherwise in order.

(3) Notwithstanding the provisions of this regulation, a presiding officer shall not be obliged to admit more than two counting agents of all the registered referendum committees to the counting of votes in the electoral area or constituency.

(4) The Commission shall admit observers and representatives of the media duly approved or accredited by the Commission to attend the proceedings of the counting of votes.

(5) If a vehicle or vessel is appointed for a polling station and weather conditions that may interfere with the counting of votes exist, immediately after the presiding officer complies with the provisions of regulation 27, the Commission may allow the vehicle or vessel to be moved to a place where the votes can be counted.

29. (1) In pursuance of the provisions of regulation 28, the presiding officer shall, in the presence of the persons lawfully present at the polling station— Preparation and counting of votes.

(a) open each ballot box and empty its contents onto the counting table or any other facility provided for the purpose and, with the assistance of counting clerks, proceed to count the votes polled supporting the referendum question and opposing the referendum question separately; and

(b) record the total number of votes cast in support of the referendum question and the votes cast in opposition to the referendum question.

(2) Each ballot paper shall be counted as follows—

(a) the presiding officer shall in respect of every ballot paper, announce the side in whose favour the vote was cast;

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- (b) display to the persons lawfully present 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 side in whose favour it was cast.

(3) 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,

whereupon the presiding officer may decide to uphold or reject the complaint and act as provided under this regulation.

(4) The presiding officer and the agents present at the counting of votes shall then sign the declaration in Form 6 set out in the First Schedule, which shall state—

- (a) the name and code of the polling station;
- (b) the total number of registered voters for the polling station;
- (c) the total number of valid votes cast;
- (d) the number of votes cast in support of the referendum question and in opposition for the referendum question;
- (e) the number of votes that were rejected; and
- (f) the number of disputed votes.

(5) The presiding officer shall—

- (a) immediately announce the results of the voting at the polling station before communicating them to the returning officer;
- (b) request each registered agent of a referendum committee present to append their signature or write down reasons for the refusal to sign the declaration of the results of the count of the votes at the polling station;
- (c) provide each 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 visible to the public at the polling station.



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(6) Where any of the agents refuses or fails to sign the declaration form, the presiding officer shall record the fact of their refusal or failure to sign.

(7) Where the 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 form.

(8) The refusal or failure of any agent to sign a declaration form under sub-regulation (6) or to record the reasons for their refusal to sign as required under sub-regulation 7 shall not by itself invalidate the results announced under sub-regulation (5).

(9) The absence of a registered agent of a referendum committee at the signing of a declaration form or the announcement of results under sub regulation (8) shall not by itself invalidate the results announced.

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

(11) A presiding officer shall not commence to count votes unless the officer is of the opinion that the process can conveniently be completed without a break.

(12) The presiding officer shall place the ballot paper and other documents relating to the election under the Commission seal and shall otherwise take all due and proper precautions for the security of such papers and documents.

30. (1) During the counting of votes at the referendum any ballot paper— Void ballot papers.

- (a) which does not bear any mark;
- (b) on which there has been voting for more than one choice; or
- (c) on which anything is written or marked as to be uncertain for which side the vote has been cast; or
- (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,

shall subject to sub regulation (2) be void and shall not be counted.

(2) If the intention of the voter is clear, a ballot paper shall not be void by reason only that it is marked—

- (a) elsewhere than in a proper place; or
- (b) by more than one mark.

(3) Nothing in sub-regulation (2) shall validate a ballot paper that is marked in a manner that the voter can be identified.

## [Subsidiary]

Recount.

31. A registered agent of a referendum committee may, upon completion of counting of votes, require the presiding officer to have the votes rechecked and recounted or the presiding officer may on his own initiative have the votes recounted but no recount of votes shall take place more than twice.

Rejected ballot papers.

32. (1) Every rejected ballot paper shall be marked with word “rejected” by the presiding officer and, if an objection is made by a registered agent of a referendum committee, the presiding officer shall add the words “rejection objected to”.

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

(3) When the counting of votes is concluded, the presiding officer shall prepare a statement showing the number of rejected ballot papers on the basis of the following grounds—

- (a) want of an official mark;
- (b) voting, both in support of, and in opposition to the referendum question;
- (c) unauthorized writing or a mark by which the voter might be identified; and
- (d) unmarked or void for uncertainty.

(4) An agent of a registered referendum committee shall be entitled to a copy of that statement.

Sealing of ballot papers.

33. (1) On completion of the counting of the ballot papers, the presiding officer shall seal in separate packets—

- (a) the counted ballot papers which are not disputed;
- (b) the rejected ballot papers together with the statement relating thereto; and
- (c) the disputed ballot papers.

(2) The presiding officer shall allow the agents who are then present to affix their own seals on the packets specified in regulation 29.

(3) The presiding officer shall put the three packets together with the statement made under regulation 29 and the declaration of results made under regulation 29 (4) in the used ballot box after first demonstrating to the agents present that it is empty, then seal the ballot box with the Commission’s seal and let the agents present or any of them affix their own seals on the ballot box if they so wish.

(4) The presiding officer shall as soon as is practicable deliver to the returning officer for the constituency the ballot box containing the items listed under sub-regulation (3).

34. (1) Immediately after the results of the poll for all polling stations in a constituency have been received by the returning officer, the returning officer shall, in the presence of registered agents of referendum committees and observers present—

Constituency  
referendum results.

- (a) examine the ballot papers marked “rejected”, “rejection objected to” and “disputed” and confirm or vary the decisions of the presiding officers with regard to the validity of those ballot papers;
- (b) publicly announce to persons present the total number of valid votes cast for each side in the referendum;
- (c) publicly declare to the persons present the side that has received the greater number of votes in the referendum and therefore the winning side;
- (d) complete Form 7 set out in the First Schedule in which Constituency referendum results the officer shall declare the—
  - (i) name of the constituency;
  - (ii) total number of registered voters;
  - (iii) votes cast in support of and in opposition to the referendum question;
  - (iv) number of rejected votes cast in support of and in opposition to the referendum question in each polling station;
  - (v) aggregate number of votes cast in the constituency; and
  - (vi) aggregate number of rejected votes; and
- (e) sign and date the form and—
  - (i) give a copy of the form to the registered referendum committee’s agents; and
  - (ii) deliver the original of Form 6 to the Commission.

(2) The results of the referendum in a constituency shown in Form 6 shall be subject to confirmation by the Commission after a tally of all the votes cast in the referendum.

(3) The decision of the returning officer on the validity or otherwise of a ballot paper or vote under this regulation shall, subject to verification by the

## [Subsidiary]

Commission, be final except, where a referendum petition has been filed.

Return of  
referendum.

35. (1) The returning officer shall as soon as practicable, forward to the Commission the results of the referendum.

(2) Upon receipt of constituency referendum results under sub-regulation (1) the Commission shall hold the Constituency results until the results to the referendum in every constituency have been received:

Provided that the Commission may declare the results of the referendum before all the constituencies have delivered their results, if in its opinion the results that have not been received would not make a difference to the results of the referendum.

Publication of  
referendum results.

36. (1) The Commission shall on receipt of results of the referendum from all constituencies under regulation 34 and within forty eight hours from the close of the final polling in the referendum—

- (a) announce to the public the total number of valid votes cast supporting or opposing the referendum question;
- (b) declare whether or not the proposed constitution has been ratified by—
  - (i) more than fifty per cent of the valid votes cast; and
  - (ii) at least twenty-five percent of the votes cast in at least five of the eight provinces;
- (c) publish a notice in the *Gazette* indicating the results of the referendum in each Constituency; and
- (d) publish in the *Gazette* a certificate in the form set out in the Second Schedule declaring the results of the referendum and confirming whether or not the proposed new Constitution has been ratified in accordance with the provisions of the Act.

(2) For all purposes of the referendum, the results published in the *Gazette* shall be the official results of the referendum.

(3) Where the referendum results in a tie the Commission shall proceed to hold a fresh referendum.

## PART V—MISCELLANEOUS PROVISIONS

Retention and  
public inspection of  
document.  
(Cap. 19.)

37. (1) All documents relating to the referendum shall be forwarded to and retained in safe custody by the Commission of Kenya for a period of six months after the results of the referendum have been declared and shall, subject to the provisions of the National Archives Act, and unless the Commission or the High Court otherwise directs, be destroyed.

[Subsidiary]

(2) Documents retained under this regulation, other than ballot papers and their counterfoils, shall be made available for inspection by any member of the public, upon request, at such time and subject to such conditions as may be decided by the Commission.

(3) For the purpose of an inspection under sub-regulation (2), the returning officer shall unseal the documents concerned in the presence of a witness, who shall not be the person making the inspection and the returning officer and the witness shall keep the documents under their scrutiny until they are resealed by the returning officer in the presence of the witness after the inspection is completed.

(4) The provisions of this regulation shall not apply to documents that concern a pending referendum petition unless there is a court order granting such authority.

38. A referendum officer or other person who, having a duty to perform under these Regulations fails to so perform, without reasonable cause, commits an offence, and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Offences by  
referendum officials.

39. The Commission may make special provisions for Kenyan citizens who are out of the country or who would not be able to vote on the voting day because of essential duties, patients in hospitals, persons admitted in sanatoria or homes for the aged and similar institutions, persons who lead nomadic life on account of vagaries of climate, physically disabled persons and expectant mothers.

Voting under special  
circumstances.

40. (1) An individual who, or an association, organization, or institution which intends to act as referendum observer, shall, not later than two months before the referendum date, apply to the Commission for accreditation.

Accreditation  
of referendum  
observers.

(2) No person, association, organization or institution shall observe any referendum unless the person, association, organization or institution has been accredited by the Commission.

(3) The Commission may at the referendum accredit individuals who or officials of associations, organizations, or institutions which are manifestly non-partisan to act as referendum observers.

(4) The Commission shall issue guidelines for referendum observers, consistent with internationally accepted standards for free and fair referendum, which shall be binding on referendum observers upon accreditation by the Commission.

(5) Without prejudice to the generality of sub-regulation (4), the guidelines issued thereunder may specify the procedures for the accreditation of referendum observers.

(6) The Commission may revoke the accreditation it has granted to any referendum observers where it is satisfied that the referendum observer is partisan.

[Subsidiary]

(7) All the accredited referendum observers shall submit to the Commission a written report of their individual or group observation not later than six months after the date of the announcement of the referendum results in respect of the referendum observed.

Attendance of agents. 41. Where in these Regulations expressions are used requiring, authorizing, or implying that any act or thing is to be done in the presence of polling or counting agents, those expressions shall be regarded as a reference to the presence of such agents as may be authorized to attend and have in fact attended at the time and place where the act or thing is being done and the mere non-attendance of any agent at that time and place shall not, if any act or thing is otherwise lawfully done, invalidate that act or thing.

General powers of Commission. 42. Nothing in these Regulations shall be construed as preventing the Commission from making further administrative measures, policy guidelines and regulations to ensure effective conduct of the referendum.

L.N. 118/2010. FIRST SCHEDULE ((r. 9 (3))

FORM 1

THE CONSTITUTION OF KENYA REVIEW ACT (No. 9 of 2008)

THE CONSTITUTION OF KENYA REVIEW (REFERENDUM) REGULATIONS, 2010

THE INTERIM INDEPENDENT ELECTORAL COMMISSION

REFERENDUM QUESTION

- 1. It is hereby notified that a referendum will be held on the proposed new Constitution of Kenya on the ..... 20..... from 6.00 a.m. to 5.00 p.m.
2. The question to be voted upon in the referendum is as follows:—
.....
.....

Dated the ..... 20 .....

.....
Chairman,
Interim Independent Electoral Commission.

[Subsidiary]

FORM 2

(r. 9 (5)) L.N. 118/2010.

THE CONSTITUTION OF KENYA REVIEW ACT  
(No. 9 of 2008)

THE CONSTITUTION OF KENYA REVIEW (REFERENDUM)  
REGULATIONS, 2010

THE INTERIM INDEPENDENT ELECTORAL COMMISSION

NOTICE OF REFERENDUM

1. It is hereby notified that a referendum will be held on the proposed new Constitution of Kenya on the ..... 20 ..... from 6.00 a.m. to 5.00 p.m.
  2. The question to be voted upon in the referendum is as follows:  
.....
  3. Any person or group of persons wishing to campaign during the referendum period must form a referendum committee and register with the Interim Independent Electoral Commission before the ..... 20 .....
  4. All campaigns in support of or against the referendum shall cease twenty-four hours before 7.00 a.m. of the polling day.
  5. Every referendum committee participating in the referendum shall subscribe to and abide by the Electoral Code of Conduct as provided for under section 34A of the National Assembly and Presidential Elections Act and set out in the Fourth Schedule thereto.
- Dated the .....20.....

.....  
*Chairman,*  
*Interim Independent Electoral Commission.*

FORM 3

(r. 9 (6)) L.N. 118/2010.

THE CONSTITUTION OF KENYA REVIEW ACT  
(No. 9 of 2008)

THE CONSTITUTION OF KENYA REVIEW (REFERENDUM)  
REGULATIONS, 2010

THE INTERIM INDEPENDENT ELECTORAL COMMISSION

NOTICE OF REFERENDUM BY RETURNING OFFICER

1. It is hereby notified that a referendum shall be held on the proposed new Constitution of Kenya on the .....20..... from 7.00 a.m. to 5.00 p.m.
  2. The question to be voted upon in the referendum shall be—  
.....
  3. Voting shall take place at the polling stations where each voter is registered.
- Dated the .....
- Name of Returning Officer.....ID No.....
- Constituency.....

[Subsidiary]

FORM 4 (r. 21 (2) (a))

THE CONSTITUTION OF KENYA REVIEW ACT  
(No. 9 of 2008)

THE CONSTITUTION OF KENYA REVIEW (REFERENDUM)  
REGULATIONS, 2010

THE INTERIM INDEPENDENT ELECTORAL COMMISSION

TRANSFER OF POLLING STATION

This is to notify the voters for ..... polling station  
No ..... of ..... Constituency that the above  
polling station has been transferred to .....

The reason(s) for the transfer is (are) as follows:

1. ....
2. ....
3. ....

Name of Returning Officer ..... ID No. ....

Constituency.....

Dated the ..... 20 .....

.....  
*Presiding Officer*

FORM 5 (r. 21 (2) (a))

THE CONSTITUTION OF KENYA REVIEW ACT  
(No. 9 of 2008)

THE CONSTITUTION OF KENYA REVIEW (REFERENDUM)  
REGULATIONS, 2010

THE INTERIM INDEPENDENT ELECTORAL COMMISSION

BALLOT PAPER

Name of constituency/Jina la Constituency ..... No. ....

QUESTION/SWALI

.....  
.....

ANSWER/JIBU	SYMBOL/ALAMA	VOTER'S MARK/ALAMA YA MPIGA KURA
YES/NDIYO		
NO/LA		

INSTRUCTIONS TO VOTER

1. Mark the box beside the Symbol of your choice with any mark.
2. Fold the paper through the centre, left to right, so as to conceal your vote.
3. Make no other mark whatsoever on the paper.
4. Put the ballot into the ballot box.



FORM 6

(r. 21 (2) (a))

THE CONSTITUTION OF KENYA REVIEW ACT  
(No. 9 of 2008)

THE CONSTITUTION OF KENYA REVIEW (REFERENDUM)  
REGULATIONS, 2010

THE INTERIM INDEPENDENT ELECTORAL COMMISSION

DECLARATION OF REFERENDUM RESULTS

POLLING STATION .....

CONSTITUENCY .....

- 1. Total number of registered voters: .....
- 2. Total number of valid votes cast: .....
- 3. Total number of rejected votes: .....
- 4. Total number of disputed votes: .....
- 5. Total number of valid votes cast for and against the referendum question:

No. of valid votes cast: FOR .....

No. of valid votes cast: AGAINST .....

6. Declaration:

We, the undersigned, being present when the results of the count were announced, do hereby declare that the results shown above are a true and accurate count of the ballots in.....Polling station

7. Presiding Officer's statutory comments:

.....  
.....

Presiding officer: Name: ..... ID No. ....

Signature .....

AGENTS

<i>Name</i>	<i>Signature</i>	<i>In case of refusal to sign, reasons for refusal</i>
1. ....	.....	.....
2. ....	.....	.....
3. ....	.....	.....
4. ....	.....	.....
5. ....	.....	.....
6. ....	.....	.....
7. ....	.....	.....
8. ....	.....	.....



SECOND SCHEDULE

FORM 8

(r. 34 (1) (d))

THE CONSTITUTION OF KENYA REVIEW ACT  
(No. 9 of 2008)

THE CONSTITUTION OF KENYA REVIEW (REFERENDUM)  
REGULATIONS, 2010

THE INTERIM INDEPENDENT ELECTORAL COMMISSION

CERTIFICATE OF RESULTS OF REFERENDUM

The Interim Independent Electoral Commission certifies that the proposed new Constitution of Kenya has been/has not been ratified.

The results of the referendum are as follows:

For (in figures) ..... (in words) .....

Against (in figures) ..... (in words) .....

Dated the ....., 20 .....

.....  
*Chairman,*  
*Interim Independent Electoral Commission.*

