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**REFERENDUM BILL, 2020**

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**A Bill for**

**AN ACT of Parliament to provide for the conduct of a referendum and for connected purposes**

**ENACTED** by the Parliament of Kenya as follows—

**PART I—PRELIMINARY**

Short title and commencement

**1.** (1) This Act may be cited as the Referendum Act, 2020.

(2) The provisions of this Act shall come into operation on such date as the Cabinet Secretary may, by notice in the Gazette, appoint.

Interpretation

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

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

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to the conduct of a referendum;

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

“constituency” means one of the constituencies into which Kenya is divided under Article 89 of the Constitution;

“petition” means an application to the election court under the Constitution or under this Act;

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“polling station” has the meaning assigned to it under the Elections Act;

“register of voters” has the meaning assigned to it under the Elections Act;

“referendum” means a poll held under this Act;

“referendum committee” means a national or a parliamentary constituency committee comprising of persons intending to support or oppose a referendum question;

“referendum officer” means a person appointed by the Commission for the purpose of conducting a referendum;

“referendum option” means one of the preferences upon which voters shall vote in a referendum under this Act;

“referendum question” means a question upon which voters shall vote in a referendum under this Act;

“voter” has the meaning assigned to it under the Elections Act.

Application of the  
Elections Act to  
referendum

**3.** (1) For purposes of conducting a referendum under this Act, the provisions of the Elections Act relating to—

- (a) eligibility to vote;
- (b) registration of voters;
- (c) compilation and maintenance of registers;
- (d) inspection of the register;
- (e) updating of the register;
- (f) transfer of registration;
- (g) determination of questions as to registration;
- (h) making and determining claims to be registered and objections to registration;
- (i) appointment of officers to preside at polling stations;
- (j) designation of polling stations;
- (k) place and manner in which votes may be cast;
- (l) design and handling of ballot papers;
- (m) grounds for postponement of elections;
- (n) conduct of campaigns; and
- (o) election offences,

shall apply in the same manner as if a referendum was a general election.

(2) The procedure for the conduct of an election under the Elections Act shall apply with necessary modifications to the conduct of a referendum.

**PART II—CONDUCT OF REFERENDUM**

Referendum to amend the Constitution by parliamentary initiative

4. Whenever it is necessary to hold a referendum to amend the Constitution by parliamentary initiative in relation to a matter specified in Article 255 (1) of the Constitution, the President shall within fourteen days of the receipt of the Bill from Parliament, by notice in the Gazette, direct the Commission to conduct a referendum.

Referendum to amend the Constitution by popular initiative

5. (1) For purposes of a referendum to amend the Constitution by popular initiative pursuant to Article 257 of the Constitution the promoters of the popular initiative shall collect not less than one million signatures of registered voters of whom—

(a) not more than one third shall be from one county; and

(b) voters in each of at least half of the counties shall be represented.

(2) The signatures shall be delivered to the Commission in the prescribed form and specified timelines.

(3) Upon receipt of the list of supporters under subsection (2), the Commission shall—

(a) verify that the initiative is supported by at least one million registered voters and meets the criteria set out under subsection (1);

(b) satisfy itself that the initiative meets the requirements of Article 257 of the Constitution; and

(c) submit the draft Bill to each county assembly for consideration within three months after the date it was submitted by the Commission.

(4) The draft Bill formulated by the promoters of the popular initiative together with the list of names and signatures of the supporters shall be made public.

(5) If the Commission finds that the requirements of Article 257 of the Constitution have not been met, it shall declare that the draft Bill has failed and shall not submit the draft Bill to the county assemblies.

(6) If the draft Bill is approved by a majority of the county assemblies and introduced in Parliament pursuant to Article 257 (7),

Parliament shall publicize the Bill and facilitate public discussion before passage.

(7) If the Speakers of the two Houses do not receive a response from a county assembly within the three months stipulated under Article 257 (6), the Bill will be deemed as not approved in respect of that county assembly.

(8) If one or both Houses of Parliament fail to pass the Bill—

(a) the Bill shall lapse if it does not relate to a matter specified in Article 255(1) of the Constitution; and

(b) the proposed amendment shall be submitted to the people in a referendum if it relates to a matter specified in Article 255(1) of the Constitution.

(9) After passing of the Bill by both Houses of Parliament, the Speakers of the two Houses shall jointly submit the Bill to the President who shall, before assenting to the Bill, by proclamation direct the Commission to conduct within ninety days, a national referendum for approval of the Bill.

(10) The Commission shall conduct a referendum within ninety days for from the date of the proclamation.

(11) Upon conclusion of the referendum, the chairperson of the Commission shall certify to the President within seven days of declaration of the referendum results whether the Bill has been approved in the referendum.

(12) The President shall within thirty days of approval of the Bill, assent to the Bill.

Bill to amend the Constitution relating to a matter specified in Article 255(1) of the Constitution

**6.** (1) A Bill to amend the Constitution relating to a matter specified in Article 255(1) of the Constitution shall be formulated in a participatory and inclusive manner taking into account all opinions and recommendations.

(2) To the extent possible, all opinions and recommendations that are not opposing shall be contained in a single Bill.

(3) Where, in the case of an amendment to the Constitution by popular initiative, there is a divergent general suggestion, the promoters of that initiative shall formulate it into a separate draft Bill.

(4) Where, in the case of an amendment to the Constitution by parliamentary initiative, there is a divergent draft Bill, Parliament shall

consider all the draft Bills and may—

- (a) merge them into one draft Bill;
- (b) approve one draft Bill and disapprove the other; or
- (c) approve all the draft Bills for submission to the people in a referendum.

(5) Where more than one draft Bill is to be submitted to the people in a referendum, each of the draft Bills shall constitute an option with a separate symbol and answer.

(6) A voter in a referendum may only vote for one option.

Other forms of  
referenda

**7.** (1) Whenever it is necessary to hold a national referendum on any issue, other than a referendum to amend the constitution, the President may, by notice in the Gazette, proclaim and direct the Commission to conduct a referendum.

(2) A county government may conduct a local referendum on among other local issues—

- (a) county laws and petitions; or
- (b) planning and investment decisions affecting the county for which a petition has been raised and duly signed by at least twenty five percent of the registered voters where the referendum is to take place.

(3) The Elections Act, 2011 shall apply, with necessary modifications, with regard to a local referendum.

(4) Where an issue to be decided in a referendum has been referred to the Commission under subsection (1), the Commission shall conduct a referendum in accordance with this Act.

An Act of Parliament  
for specific referendum

**8.** (1) A referendum may be conducted on the basis of an Act of Parliament which shall specify—

- (a) nature and purpose of the referendum;
- (b) the referendum question or option;
- (c) persons eligible to vote in the referendum;
- (d) public education and sensitization;

Procedure before  
conduct of  
referendum

- (e) use of public funds; and
- (f) any other matter specific to the referendum.

(2) Where Parliament enacts a law under subsection (1), it shall specify the wording of the referendum question or option.

(3) This section shall apply to a county assembly with necessary modifications.

9. (1) Where the Commission—

(a) receives a notification from the President under Article 256(5)(a) or

(b) a draft Bill from the promoters of a popular initiative under Article 257 of the Constitution,

the Commission shall, within twenty one days, frame the question or option to be determined during the referendum.

(2) The Commission shall, within seven days after framing the question or option, refer the question or option to the relevant House for approval.

(3) If the Parliament approves the question or option submitted under subsection (2), the Speakers of the two Houses shall jointly, within seven days, notify the Commission of the decision of the relevant House.

(4) Where Parliament fails to approve the question or option submitted by the Commission, the House shall, within seven days refer the question or option back to the Commission together with its recommendations.

(5) The Commission shall, after receiving the recommendations of the relevant House under subsection (4) within seven days, review the question or option.

(6) The Commission shall, within seven days after reviewing the question or option, resubmit the question or option to the relevant House for approval.

(7) If the relevant House approves the question or option or fails to approve the question or option submitted under subsection (6), the Speaker of the relevant House shall, within seven days, notify the Commission of the decision of the relevant House.

(8) Upon receiving the decision of the relevant House, the Commission shall, within seven days, publish the question or option in the *Gazette* and in the electronic media and a newspaper of national



circulation.

(9) A referendum question shall be so worded that each voter may express an opinion on the question or option by making a mark after the word “yes” or “no” on the ballot paper.

(10) Where there are two or more Bills, a referendum option shall be so worded that each voter may express an opinion on the option by making a mark after the option ballot paper.

(11) The Commission may assign a symbol for each answer to the referendum question or option as it may consider necessary.

(12) A symbol assigned under subsection (11) shall not resemble that of a political party or of an independent candidate used in a preceding election.

Notice of holding referendum

**10.** (1) The Commission shall, within fourteen days after publication of the question or option referred to in section 9, publish in the *Gazette* and in the electronic media and a newspaper of national circulation, a notice of the holding of the referendum specifying the particulars set out in subsection (2).

(2) The notice shall contain the following particulars—

- (a) the nature of the referendum;
- (b) the referendum question, questions or option and the answer or answers;
- (c) the symbols assigned for each answer to the referendum question or option;
- (d) the day on which the referendum is to be held which shall be at least ninety days from the date of the publication of the notice;
- (e) the polling time of the referendum;
- (f) the day by which the referendum committees must have registered with the Commission; and
- (g) the day and time by which campaign in support of or in opposition to the referendum question or option shall start and cease respectively.

Referendum committees

**11.** (1) Persons intending to campaign for or against the referendum question shall form one national referendum committee and may form one referendum committee in every constituency.

(2) Where there is more than one referendum question, persons intending to campaign for or against each referendum question shall form one national referendum committee each and may form one committee each in every constituency.

(3) A referendum committee formed under subsection (1) or under subsection (2) shall apply to the Commission for registration in the prescribed form.

(4) An application under subsection (3) shall be accompanied by information showing that the applicant adequately represents persons campaigning for or against the referendum question or option.

(5) The national referendum committees shall control and regulate their respective constituency referendum committees.

(6) The Schedule of this Act shall regulate the conduct of members of referendum committees, leaders, chief agents and members of referendum committees.

Appointment of chief agent

**12.** (1) Every referendum committee that intends to apply for registration under this Act shall, before applying, appoint a leader, a chief agent and the members of the committee.

(2) The Commission shall maintain a register of the leaders, chief agents and committee members of the 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 subsection (1) shall be responsible for the affairs of the registered referendum committee and shall provide a sample signature to the Commission.

(4) The Commission may prescribe timelines for the appointment of chief agents and lodging of registration applications.

Costs of referendum committee

**13.** (1) Each referendum committee shall bear its own costs during its existence.

(2) Where public money is used to finance the activities of referendum committees, it shall be distributed equally among the registered referendum committees.

(3) The provisions of the Election Campaign Financing Act, 2013 relating to formation referendum expenditure committees, regulation of expenditure, contributions and donations, resolution of disputes shall apply to financing of referendums.

Voting threshold

**14.** (1) A question shall be approved by a referendum if—

- (a) at least twenty percent of the registered voters in each of at least half of the counties vote in the referendum; and
- (b) the amendment is supported by simple majority of the citizens voting in the referendum.

(2) If there is more option in a referendum and one option is approved and the other is not, the referendum process shall proceed as though the approved option were the only option and the disapproved option shall be disregarded.

General power of the Commission

**15.** Nothing in this Act precludes the Commission from taking any administrative measures to ensure effective conduct of the referendum.

**PART III—REFERENDUM PETITIONS.**

Election petition procedures to apply to referendum petition

**16.** (1) Unless specifically provided for in this Act, the procedure applicable to an election petition shall apply to a referendum petition.

(2) A petition—

- (a) to question the validity of referendum shall be filed within twenty eight days after the date of declaration of the results of the referendum and served within fifteen days of presentation;
- (b) to seek a declaration concerning any matter relating to the referendum shall be presented within twenty-eight days after the proclamation of the referendum or occurrence the event complained against whichever is later.

(3) A referendum petition shall be heard and determined within six months of the date of lodging the petition.

Referendum petition

**17.** (1) The conduct, result and validity of a referendum may be challenged by petition to the High Court.

(2) A petition challenging the conduct, result or validity of a referendum shall—

- (a) set out the facts relied upon to invalidate the referendum;
- (b) identify the specific matter or matters on which the petitioner relies as justifying the grant of relief;
- (c) contain a request for the relief to which the petitioner

claims to be entitled; and

(d) be filed in the High Court within twenty-one days of the declaration of the notice of the results of the referendum in the Gazette.

(3) A referendum petition may be presented on any of the following grounds—

(a) in respect of the result of the voting in all the constituencies or in any one constituency, that corrupt practices prevailed at or in relation to the voting at the referendum in that constituency, or that there was an error or misconduct, whether by act or omission, on the part of a referendum officer or other person; or

(b) in respect of the declared result of the referendum, that there was an error in the counting or tallying of the votes cast in the referendum.

Persons who may present referendum petition

**18.** (1) A referendum petition may be presented in the High Court by—

(a) in the case of a petition in respect of the result of the voting in a constituency, a person who voted lawfully or had a right to vote in that constituency at the referendum;

(b) in the case of a petition in respect of the declared result of the referendum, a person who voted at the referendum or had a right to vote at the referendum; or

(c) the Commission.

(2) A petitioner who presents a referendum petition shall serve all the respondents to the petition within seven days of filing the petition.

(3) A petitioner shall publish a notice of the petition in the Gazette and in at least one newspaper of national circulation, within fourteen days after the petition is filed.

(4) A petition may be served personally upon the respondent or by advertisement in a newspaper with national circulation.

(5) A petition that has not been served within the stipulated timelines shall be struck out.

Respondents to referendum petition

**19.** (1) Where, at the hearing of a referendum petition, a person is alleged to have been guilty of a corrupt practice in relation to the referendum, or where a copy of a referendum petition is served on a

particular person on the direction of the High Court, the High Court may, on the application of that person, add or name that person as a respondent to the petition.

(2) Where, at the trial of a referendum petition presented by the Commission, a question of law arises in relation to action or omission by a referendum officer, the High Court may, on the application of the Commission, name the referendum officer as a respondent to the petition.

Filing of referendum petition

**20.** (1) A referendum petition shall be signed by every petitioner or by an advocate acting on their behalf, if more than one.

(2) Whenever a referendum petition is presented under this section, the Registrar of the High Court shall, in writing, inform the Commission the filing.

Composition of Court

**21.** (1) A referendum petition shall be heard and determined by a bench of three judges appointed by the Chief Justice.

(2) An appeal from the High Court in a referendum petition shall lie to the Court of Appeal on matters of law only and shall be—

(a) filed within thirty days of the decision of the High Court; and

(b) heard and determined within six months of the filing of the appeal.

(3) An appeal under subsection (2) shall act as a stay of the results of a referendum until the appeal is heard and determined.

Operation of declared result of issue submitted to referendum

**22.** (1) Where a referendum petition is not presented to the High Court within the time specified in section 16 (2) (d), the declared result of referendum shall—

(a) have effect from the date on which the result is declared;

(b) be final and not be challenged in any court of law; and

(c) be conclusive evidence of the voting at the referendum and of the result of the referendum.

(2) Nothing in this section shall be construed as preventing or delaying the coming into operation of any law in respect of which a referendum is held pursuant to the provisions of the Constitution or any other law if—

(a) it is stated in the declared result of the referendum that the provisions of the Act are supported by the votes of a majority of the persons entitled to vote in the referendum; and

(b) the question raised by any referendum petition or, if more than one, by all referendum petitions presented to the High Court in respect of such referendum would not, if decided in favour of the petitioner or petitioners, as the case may be, lead to a declaration by the Commission that the votes of a majority of the citizens voting in the referendum did not support the provisions of the said referendum.

Duty of Registrar to make list of referendum petitions

**23.** (1) Subject to the provisions of subsection (2), the Registrar of the High Court shall make a list of all the referendum petitions filed under this Part in the order in which they are filed, and shall keep in the Registrar’s office, a copy of the list which shall be open for inspection by any person who applies to inspect the list.

(2) A referendum petition shall, unless the High Court orders otherwise, be tried in the order in which it appears on the list made by the Registrar under subsection (1).

(3) Where more than one petition is presented relating to the same referendum, all such petitions shall be dealt with as one petition as far as the inquiry into the referendum is concerned.

Practice procedure and security for costs  
Cap. 21.

**24.** (1) Subject to the provisions of section 38, the Rules Committee constituted under the Civil Procedure Act, may make rules generally to regulate the practice and procedure of the High Court with respect to the filing of referendum petitions, including rules—

(a) specifying—

- (i) the time within which any requirement of the rules is to be complied with;
- (ii) the costs of and incidental to the filing and the trial of a referendum petition; and
- (iii) the fees to be charged in respect of proceedings of a referendum petition; and

(b) generally with regard to any other matter relating to a referendum petition as the Chief Justice may deem necessary.

(2) A petitioner shall deposit one million shillings as security for costs of a petition presented under this Act, within ten days of presenting the petition.

(3) Where, a petitioner does not deposit security for costs as required under subsection (2), the referendum petition shall be struck out.

(4) The High Court may, make such order as to costs as it may

deem fit and just in respect of any referendum petition dismissed under this section.

Death of petitioner

**25.** (1) Where there are two or more petitioners and one or more of the petitioners dies at any time before the final order of the court hearing the petition, the surviving petitioner or petitioners shall be entitled to continue with the petition.

(2) Upon death of a petitioner under subsection (1), any qualified person may apply to the court to be substituted as the petitioner.

Hearing of referendum petition

**26.** (1) A referendum petition shall be—

(a) heard and determined within six months from the date of presentation of a petition; and

(b) heard in open court.

(2) The High Court may, in respect of the trial of a referendum petition, exercise such powers within its civil jurisdiction as it may deem appropriate.

(3) A referendum petition may be withdrawn by the petitioner on notice to the other parties and the High Court, subject to any order of the Court as to costs.

Powers of a court to summon witnesses in a referendum petition

**27.** (1) A court hearing a referendum petition may, at the hearing of the petition—

(a) order any person who appears to the court to be concerned in or affected by the referendum petition to attend as a witness at such hearing; and

(b) examine any witness or any person who is present at the hearing even if the witness or person is not called as a witness by any party to the proceedings:

Provided that after examination by the court, the witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

(2) Where a person is ordered to attend as a witness under subsection (1), the Court may direct that a copy of the referendum petition be served on that person.

(3) A person who is called as a witness at the trial of a referendum petition shall not be excused from answering any question relating to any offence connected with the referendum on the ground that the answer thereto may incriminate them or on the ground of privilege.

(4) Notwithstanding subsection (3)—

- (a) a witness who answers every question which they are required to answer under this section to the satisfaction of the court, and the answers to which may tend to incriminate them, shall not be liable to prosecution for any offence committed by them in connection with the referendum and in respect of which they are so examined, and shall be entitled to receive a certificate of indemnity issued by the Registrar stating that the person is discharged from liability and shall not be prosecuted for that offence; and
- (b) an answer by a witness to a question before the Court under this section shall not, except in the case of any criminal proceedings for giving false evidence in respect of such evidence, be admissible as evidence in any civil or criminal proceedings against them.

(5) Where a person has received a certificate of indemnity under subsection (4), and legal proceedings are, at any time, brought against that person for an offence to which the certificate relates, the court having cognizance of the case shall, on proof of the certificate of indemnity, stay such proceedings.

(6) All reasonable expenses incurred by any person in attending at or appearing before the High Court to give evidence as a witness at the trial of a referendum petition shall be paid to such person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

Secrecy of the ballot

**28.** A voter who has cast a ballot at a referendum shall not, in proceedings to question the referendum be required to state how he voted.

Examination of votes.

**29.** (1) The High Court on its own motion or on an application by a petitioner may, during the hearing of a referendum petition, order for a scrutiny of votes to be carried out in such manner as the High Court may determine.

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(2) The provisions of section 82 of the Elections Act shall apply with respect to scrutiny of votes under this section.

(3) The Commission shall be responsible for the custody of all the ballot boxes.

Powers of Court

**30.** (1) At the conclusion of the hearing of a referendum petition challenging the conduct or result of the referendum, the High Court



may—

- (a) dismiss the petition;
- (b) declare the published result to be incorrect and direct the publication of the correct results;
- (c) declare the referendum to be void; or
- (d) uphold the petition in whole or in part.

(2) Without limiting the generality of this section, the High Court may exercise its powers to declare a referendum void on the ground that this Act or the regulations made under this Act were contravened during the referendum, and such contravention has seriously affected the result of the referendum.

(3) The Registrar of the High Court shall, within seven days, deliver to the Commission a certified copy of any decision made by the High Court under subsection (1).

(4) The Registrar of the High Court shall, at the conclusion of the proceedings in respect of a referendum petition, submit to the Commission a certificate under the Registrar's hand, stating that the hearing of the referendum petition has been concluded, and the Commission shall, upon receipt of such certificate, declare and publish the result of the referendum in accordance with the findings of the High Court.

(5) A declaration made by the Commission under subsection (4) shall be final, shall not be challenged in any court, and shall be conclusive evidence of the voting at the referendum to which it relates and of the result of such referendum.

(6) Where the High Court declares a referendum void, the Commission shall conduct a fresh referendum within sixty days.

Petition expenses

**31.** (1) Subject to the provisions of this section, all costs, charges and expenses of and incidental to the presentation and hearing of a referendum petition shall be borne in such manner and in such proportions as the High Court may order, and in particular, any costs which, in the opinion of the High Court, have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.

(2) Where in the hearing of a referendum petition a person appears to the High Court to have been guilty of any corrupt practice relating to the referendum, the High Court may, after giving that person an

opportunity to make a statement to show why the order should not be made, order the whole or a portion of the costs of or incidental to the trial of the referendum petition to be paid by that person to such person or persons as the High Court may determine.

(3) Money deposited as security shall, when no longer needed as security for costs, be returned to the person in whose name it is deposited or to any person entitled to receive the money by order of the High Court, which may be made upon motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the High Court may require.

Certification of referendum

**32.** (1) A Court shall at the conclusion of hearing of a referendum petition in addition to any other orders, send to the Director of Public Prosecution and Commission a report in writing indicating whether an election offence is likely to have occurred in connection with the referendum.

(2) Upon receipt of the report under subsection (1) the Director of Public Prosecutions shall—

- (a) direct investigation to be carried out by the Inspector General of the National Police Service; and
- (b) based on the outcome of the investigations, commence prosecution or close the matter.

**PART IV—GENERAL PROVISIONS**

Retention and public inspection of documents  
Cap. 19.

**33.** (1) All documents relating to the referendum shall be forwarded to and retained in safe custody by the Commission for a period of six months after the results of the referendum have been declared and shall, subject to the provisions of the Public Archives and Documentation Service Act, and unless the Commission or the High Court otherwise directs, be destroyed.

(2) Documents retained under this section, 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 prescribed by the Commission.

(3) For the purpose of an inspection under subsection (2), the referendum officer shall unseal the documents concerned in the presence of a witness, who shall not be the person making the inspection and the referendum officer and the witness shall keep the documents under their scrutiny until they are resealed by the referendum officer in the presence

of the witness after the inspection is completed.

(4) The provisions of this section shall not apply to documents that concern a pending referendum petition unless there is a court order granting such authority.

Offences by  
referendum officials

**34.** A referendum officer or other person who, having a duty to perform under this Act fails to so perform, without reasonable cause, commits an offence, and shall on conviction be liable to a fine not exceeding one million thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

Application of the  
Elections Offences  
Act  
No. 27 of 2016  
Duty to co-operate

**35.** The provisions of Election Offences Act, 2016, relating to election offences, shall apply with necessary modifications to a referendum.

**36.** (1) It shall be the duty of every public officer and public or private entity to co-operate with the Commission in its activities during a referendum and not to hinder the Commission in carrying out its functions.

(2) It shall be the duty of police officers in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of a referendum and to protect and uphold the rights of all persons under any written law relating to the referendum.

(3) Notwithstanding the provisions of the law relating to the National Police Service or any other written law, a police officer assigned duties during the conduct of a referendum shall be deemed to be a referendum officer for purposes of this Act and subject to direction and instruction of the Commission.

(4) It shall be the duty of—

- (a) all officers of the county administration, in their respective administrative units;
- (b) all persons in charge of county government facilities;
- (c) persons in charge public of facilities;
- (d) all referendum committees and members of the public;
- (e) all persons in charge of public utilities including teachers in charge of public schools used as polling centres;
- (f) the Registrar of Persons; and

(g) the Registrar of Political Parties,

to give the Commission and its officers the support and collaboration necessary for the Commission to execute the activities relating to the conduct of a referendum.

General penalty

**37.** A person who contravenes a provision in this Act for which a penalty has not been provided for, commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.

Powers of arrest and prosecution

**38.** (1) A member of the Commission or any officer designated by the Commission may order the arrest of a person who commits an offence under this Act.

(2) The Commission shall have the power to prosecute any offences under this Act and impose sanctions against a person who commits an offence under this Act pending the hearing and determination of the offence.

(3) A member of the Commission or any person designated by the Commission shall have the power to impound or to order the impounding of any state resources that are used in a referendum campaign.

Referendum Code of Conduct

**39.** (1) The Electoral Code of Conduct set out under section 110 shall apply to a referendum under this Act.

(2) Every referendum committee and every person who participates in a referendum under the Constitution and this Act shall subscribe to and observe the Electoral Code of Conduct set out in the Second Schedule to the Elections Act.

(3) Any person who contravenes the Electoral Code of Conduct commits an offence.

(4) The trial of an offence under this section shall be without prejudice to any proceedings in or consequent upon a petition.

Regulations

**40.** (1) The Commission may make regulations generally for the better carrying out of the purposes and provisions of this Act.

(2) The regulations under subsection (1) may prescribe—

(a) the forms required under this Act;

(b) the verification of signatures of persons supporting a referendum.

(c) the conduct of referendum generally; and

Consequential  
amendments

(d) any other matter required to be prescribed under this Act.

**41.** (1) The Elections Act, No. 24 of 2011 is amended—

(a) in section 2 by—

(i) deleting paragraph (b) of the definition of the term “agent”;

(ii) deleting the term “or in a referendum” appearing in the definition of the word “ballot box”;

(iii) deleting the term “or a referendum” appearing in the definition of the term “observer”;

(iv) deleting the definition of the term “referendum”;

(v) deleting the definition of the term “referendum committees”;

(vi) deleting the definition of the term “referendum officer”;

(vii) deleting the definition of the term “referendum question”;

(viii) deleting the words “or a referendum” appearing in the definition of the term “returning officer”;

(b) in section 41 by deleting the words “and referendum” appearing in subsection (4);

(c) in Part V by repealing it;

(d) in section 68 (1) (a) by—

(i) deleting the words “referendum committee” appearing immediately after the word “candidate”;  
and

(ii) deleting the words “or a referendum” appearing immediately after the word “election”;

(e) in sections 88 to 104 (Referendum Petitions) both sections inclusive, by repealing them;

(f) in section 105 by deleting the words “or referendum”

appearing in subsection (3)

(g) in section 109 by deleting the term “referendum” appearing in subsections (1) (dd) and (1) (ee).

(2) The County Governments Act, 2012 is amended by repealing section 90.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of objects and reasons**

The principal object of this Bill is to consolidate the law relating to conduct of referendums, to provide for a transparent and fair process in order to obtain a clear expression of the will of people, by establishing the procedures for the conduct of referendums, providing for the referendum committees and establishing a level playing field for the opposers and supporters of the referendum question, by providing for equal public funding and by limiting expenditure in a reasonable manner for the public good, to afford the people an opportunity to make decisions based on information from both points of view.

The structure of the Bill is as follows:

**Clauses 1 to 3** provide for preliminary matters including the short title, interpretation and the application of the Elections Act to referendum.

**Clause 4** provides for the proclamation of a referendum to amend the Constitution in relation to matters specified in Articles 255 (1) and 257 (10) of the Constitution. Upon proclamation, the Independent Electoral and Boundaries Commission shall conduct a referendum in 90 days and if the Bill is approved, the President assents to it within seven days,

**Clause 5** provides conduct of referendum by popular initiative while clause 6 provides for the manner of preparing the Bill to amend the Constitution

**Clause 7** provides for other forms of referendum including county referendums.

**Clause 8** provides that a referendum could also be initiated through an Act of Parliament. This section contemplates separate law for a specific referendum. Such law shall specify the wording of the referendum question or option.

Clause 10 provides for the referendum notice. The notice shall contain key particulars including the nature and purpose of the referendum, the referendum question(s) or options, the symbols assigned for each answer, the date of the referendum, polling time, date of registration of referendum committees the campaign period for the referendum.

Clause 11 provides for formation and registration of referendum committees.

Clause 12 provides for the appointment of the chief agent for every referendum committee.

Clause 13 provides for costs of referendum committees and invokes the relevant sections of the Election Campaign Financing Act, 2013.

Clause 14 provides for the approval threshold in a referendum which is at least twenty percent of the registered voters in each of at least half of the counties vote in the referendum and the majority of the citizens voting in the referendum.

Clause 15 provides for a general power of the Commission to take administrative measures to ensure successful conduct of a referendum.

Clauses 16 to 32 provide for referendum petitions including application procedures, persons who may present petitions, respondents, composition of the Court, security for costs, hearing of petitions, examination of votes and petition expenses

Clauses 33 to 41 provides for general provisions including dealing with the documents, offences and general penalty, application of the Election Offences Act, 2016, duty to cooperate, prosecutions and arrests, regulations and consequential amendments.

**Statement on the limitation of fundamental rights and freedoms**

The Bill does not limit fundamental rights and freedoms.

**Statement on how the bill concerns county governments**

This Bill concerns county governments in terms of Article 110(1) (a) of the Constitution.

**Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution**

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the ....., 2020.

.....  
*William Kipkiror Cheptumo*  
**Chairperson**  
**Judicial and Legal Affairs Committee**  
**National Assembly**

