KENYA NATIONAL COMMISION ON HUMAN RIGHTS

ADVISORY ON THE ELECTION LAWS (AMENDMENT) (NO.3) BILL, 2015

SUBMITTED TO

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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Introduction

The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution (NHRI) established under Kenyan law and in line with the Paris Principles with the mandate to promote the respect, protection and observance of human rights in Kenya. As part of its activities to realize this goal, KNCHR reviews legislation and policy to ensure compliance with the Constitution of Kenya, 2010 and international human rights standards and principles. KNCHR also has the mandate to give advice to the Kenyan government on issues of human rights.

This advisory focuses on the Election Laws Amendment Bill, 2015 which amends various laws concerning elections to give effect to Article 81 of the Constitution.

General Comments

1. KNCHR welcomes the Election Laws Amendment Bill, 2015 as it will give effect to the Constitution and will have an effect on the exercise of political rights as provided for in Article 38 of the Constitution.

2. KNCHR appreciates the fact that the Bill focuses on enhancing the time frames for identification of candidates and rules of nomination. This is a good move to give clarity to the voters on which candidates are vying and the party they are vying under.

3. The Amendment Act is also good since it aims at correcting some mistakes that were identified in the Elections Act, 2011.
C. PROPOSALS

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<th>CLAUSE &amp; SECTION</th>
<th>PROPOSAL</th>
<th>JUSTIFICATION</th>
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<td>Education and Certificates</td>
<td><strong>Clause 7</strong> seek to amend <strong>section 22</strong> of principal Act to require that a person seeking nomination for an election should possess, as minimum qualifications, a degree in the case of parliamentary elections and a diploma in the case of county assemblies election.</td>
<td>This is a good clause since it seeks to improve the cadre of leaders that get into public office. However, in light of this, the State should enhance and ensure access to tertiary education for all Kenyans. This will improve competitiveness of Kenyans from marginalized areas. Education is a fair way of giving people a chance to compete. The people will benefit from good representation both at the national and county level. Kenya needs leaders who can express themselves on behalf of their people. It is important to add a requirement based on Article 10 of the Constitution on the</td>
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<td>In addition the clause states that post- secondary diploma qualification for a member of the county assembly shall be upgraded to a degree subsequently after 2017 elections.</td>
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national values and principles of governance.

- Chapter 6 of the Constitution should also be mentioned specifically as a requirement. Section 22 of the Parent Act has a general statement on adherence to the Constitution.
- Perhaps for the marginalized communities it will be proper to introduce a section as an exception to the general rule on the level of education.

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<th>Submission of Party Membership List</th>
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<td><strong>Clause 9</strong> amends <strong>Section 28</strong> of the principal Act by deleting the section and substituting therefor the following— A political party that nominates a person for an election under this Act shall submit to the Commission a party membership list of the party — (a) In the case of</td>
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<td>The Clause should be reviewed to increase the time for submission of party lists to six months prior to the election to be in tandem with the requirement for the resignation of public officers who wish to vie for elective posts which is set at least 6 months before elections.</td>
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<td>This is good and progressive law. This provision seeks to limit party hoping at the last minute.</td>
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<td>This is also a deliberate intention to support and strengthen the political parties in Kenya. The letter and spirit of the Constitution is for the strengthening</td>
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a general election, at least sixty days before the date of the general elections; and (b) In the case of a by-election, forty-five days before the date of the by-election

- This will promote Article 10 of the Constitution on the sustainable development, with regard to political parties. Without this kind of law, it is easy for political parties to disintegrate after each 5 year term.
- Looking at best practice from other jurisdictions, such as America they have maintained their political parties for a very long time in history.

### Number of Voters Per Poll Station

- **Clause 13** amends the principal Act, by inserting section 38A that for the purpose of providing efficient and effective conduct of elections, the number of voters per

- This provision is important since it seeks to introduce more polling stations and minimize the time one spends in a queue to encourage more people to vote. It will also be easier to monitor the elections when people are voting to

- Generally the number of minutes on a day when people vote from 6am to 6pm is 720 minutes in total.
- If each person will use 10 minutes to vote then this requires 700 minutes, not forgetting the time wasted when
A polling station shall not exceed seven hundred. To reduce issues of rigging votes and promote transparency, shifting from one voter to another. There will be increased efficiency in the voting process.

- This is a good progress and therefore it will reduce congestion at the polling stations.
- In fact for future purpose, the number can be reduced to 600 voters per polling station.

### Hearing of Petitions

- **Clause 24** amends **Section 87** of the principal Act by deleting the section and substituting that the judiciary to in future, while determining electoral petitions, to also declare whether an electoral offence was committed. The new clause will require an election court to send o DPP and the IEBC a report in writing indicating whether an

- The section requiring the Commission to debar the candidate from contesting the elections is not clear. Will the debarment be in an ongoing election or at a future election? The Clause should be clear on this.

- There is need to include paragraph (c), that requires the Commission to publish the debarment of a candidate in a daily newspaper with wide circulation.

- This is with respect to Article 35 of the Constitution, since the public needs to be informed of the debarment of a candidate so that they can make informed choices on their representation.
An election offence is likely to have occurred in connection with the election. The DPP will then cause investigations and subsequently commence prosecutions.
CONCLUSION

The Election (Amendment) Bill 2015 seeks to amend the Elections Act to enhance the conduct of free and fair elections. KNCHR welcomes the changes that are aimed at by this Bill since it enhances political rights for all Kenyans as provided for under Article 38 of the Constitution.

There is need to look at the implementation of these amendments with regard to the time left before the Election Day. Which actions will be effected immediately and which will be effected after the next elections? For instance the issue of having 700 voters per polling station, should be looked at since the registration by IEBC is already going on. Will this be effective in the coming election and how will it be implemented with the need for additional polling stations? Therefore, there is need for Parliament to expedite the enactment of this Amendment Bill. The advantage of early enforcement will ensure that issues of budget for the changes in the Election Act are well planned and catered for.