

Paper Laid by Chair CROC  
25/8/2011

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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT

FOURTH SESSION (2011)

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THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT  
COMMITTEE

REPORT

ON THE ELECTIONS BILL, 2011.

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Clerk's Chambers,  
Parliament Buildings,  
NAIROBI.

AUGUST, 2011

Mr. Speaker Sir,

The Constitutional Implementation Oversight Committee is a select committee established under Section 4 of the Sixth Schedule of the Constitution with a mandate of overseeing the implementation of the Constitution and which among other things:-

- (a) shall receive regular reports from the Commission on the Implementation of the Constitution on the implementation of this Constitution including reports concerning—
- (i) the preparation of the legislation required by this Constitution and any challenges in that regard;
  - (ii) the process of establishing the new commissions;
  - (iii) the process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff;
  - (iv) the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Schedule; and
  - (v) any impediments to the process of implementing this Constitution;
- (b) coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by this Constitution; and
- (c) take appropriate action on the reports including addressing any problems in the implementation of this Constitution.

## COMMITTEE MEMBERSHIP

The Committee as constituted by the House on 5<sup>th</sup> October, 2010 comprise the following members:-

- |  |                         |
|--|-------------------------|
| 1. The Hon. Hussein Mohammed Abdikadir, M.P. | <b>Chairperson</b>      |
| 2. The Hon. Millie Odhiambo, M.P.            | <b>Vice-Chairperson</b> |
| 3. The Hon. Beth Mugo, EGH, M.P.             |                         |
| 4. The Hon. Chirau Ali Mwakwere, EGH, M.P.   |                         |
| 5. The Hon. Martha Wangari Karua, EGH, M.P.  |                         |
| 6. The Hon. (Prof.) Phillip Kaloki, M.P.     |                         |
| 7. The Hon. (Dr.) Kilemi Mwiria, M.P.        |                         |
| 8. The Hon. Charles Kilonzo, M.P.            |                         |

9. The Hon. Ekwee Ethuro, M.P.
10. The Hon. Cecily Mbarire, M.P.
11. The Hon. (Dr.) Eseli Simiyu, M.P.
12. The Hon. Moriasi Ombui, M.P.
13. The Hon. Amina Abdalla, M.P.
14. The Hon. David M. Ngugi, M.P.
15. The Hon. Ababu Namwamba, M.P.
16. The Hon. Danson Mwazo, M.P.
17. The Hon. Sophia Abdi, M.P.
18. The Hon. (Dr.) Joyce Laboso, M.P.
19. The Hon. Joseph Kasaine Nkaiserry, M.P.
20. The Hon. Charles Onyancha, M.P.
21. The Hon. Alfred Khang'ati, M.P.
22. The Hon. John Mbadi, M.P.
23. The Hon. Elizabeth Ongoro, M.P.
24. The Hon. Rev. Julius Murgor, M.P.
25. The Hon. Lucas K. Chepkitony, M.P.
26. The Hon. Benedict Fondo Gunda, M.P.
27. The Hon. Rachel Shebesh, M.P.

**Mr. Speaker Sir,**

The Elections Bill, 2011 was read a First Time on 23<sup>rd</sup> August, 2011 and referred to the relevant Committee in accordance with the Standing Orders. Debate on the Bill during the Second Reading was done on 24<sup>th</sup> August, 2011.

**Mr. Speaker Sir,**

The Committee dissolved itself into three (3) sub-committees in order to effectively scrutinize the five bills before the Committee. The sub-committees then reported to the Committee where the proposals on amendments were adopted.

**Acknowledgements**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty and privilege, on behalf of Constitutional Implementation Oversight Committee, to present and commend this report on the proposed amendments to the Elections Bill, 2011 to the House in accordance with Standing Order 111.

SIGNED.....

HON. HUSSEIN MOHAMMED ABDIKADIR, M.P  
CHAIRPERSON

DATE: 25/08/2011.....

25<sup>th</sup> August 2011

The Clerk,  
National Assembly,  
Parliament Buildings,  
P.O. Box 41842-00100,  
**NAIROBI.**

**THE ELECTIONS BILL, 2011 – NOTICE OF PROPOSED COMMITTEE STAGE  
AMENDMENTS**

**NOTICE** is given that I intend to move the following amendments to the Elections Bill, 2011 at the Committee Stage-

***Clause 2***

**THAT** clause 2 of the Bill be amended by deleting the definition of “party list” and substituting therefor the following new definition-

“party list” means a party list prepared by a political party and submitted to the Commission pursuant to and in accordance with Article 90 of the Constitution and sections 29, 35, 36, 37 and 38 .

***Clause 5***

**THAT** clause 5 of the Bill be amended-

- (a) in sub-clause (1) by deleting the word “may” appearing after the words “under this Act” and substituting therefor the word “shall”;
- (b) in paragraph (a) of sub-clause (1) by inserting the words “or an election under Article 138(5) of the Constitution” after the words “general election”;
- (c) by inserting the following new sub-clause after sub-clause (1)-

“(1A)Despite sub-section (1), where an election petition is filed in respect of an electoral area, between the date of the filing of the petition and the date of the by-



election, where a court determines that a by-election is to be held, a voter shall not be allowed to transfer his or her vote to the affected electoral area”.

(d) in sub-clause (4) by deleting the word “amendment” appearing after the words “to the Commission for” and substituting therefor the words “inclusion in the Principal Register of Voters”.

### ***Clause 6***

**THAT** clause 6 of the Bill be amended-

(a) in sub-clause (2) by inserting the words “at least” after the words “for a period of”;  
and

(b) in sub-clause (3) by inserting the words “being not less than thirty days before an election” after the words “as soon as practicable thereafter”.

### ***Clause 10***

**THAT** clause 10 of the Bill be amended by inserting the words “a valid voter’s card issued to the person in respect of that registration and” after the words “and who produces”.

### ***Clause 12***

**THAT** clause 12 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause-

“Subject to the Constitution, a claim under sub-section (1) shall be determined by the registration officer in the prescribed manner, and appeal shall lie in the prescribed manner, to the Principal Magistrates Court on matters of fact and law and to the High Court, on matters of law”.

### ***Clause 13***

**THAT** clause 13 of the Bill be deleted.





**Clause 14**

**THAT** clause 14 of the Bill be amended-

- (a) in sub-clause (1) by deleting the words “three months” appearing after the words “under this Act at least” and substituting therefor the words “forty-five days”;
- (b) in sub-clause (3) by deleting the words “each political party” appearing after the words “days upon which” and substituting therefor the words “political parties”;  
and
- (c) by inserting the following new sub-clause-  
“(4) In nominating the candidates for an election under sub-section (1), a political party shall ensure that not more than two-thirds of its nominees are of the same gender”.

**Clause 15**

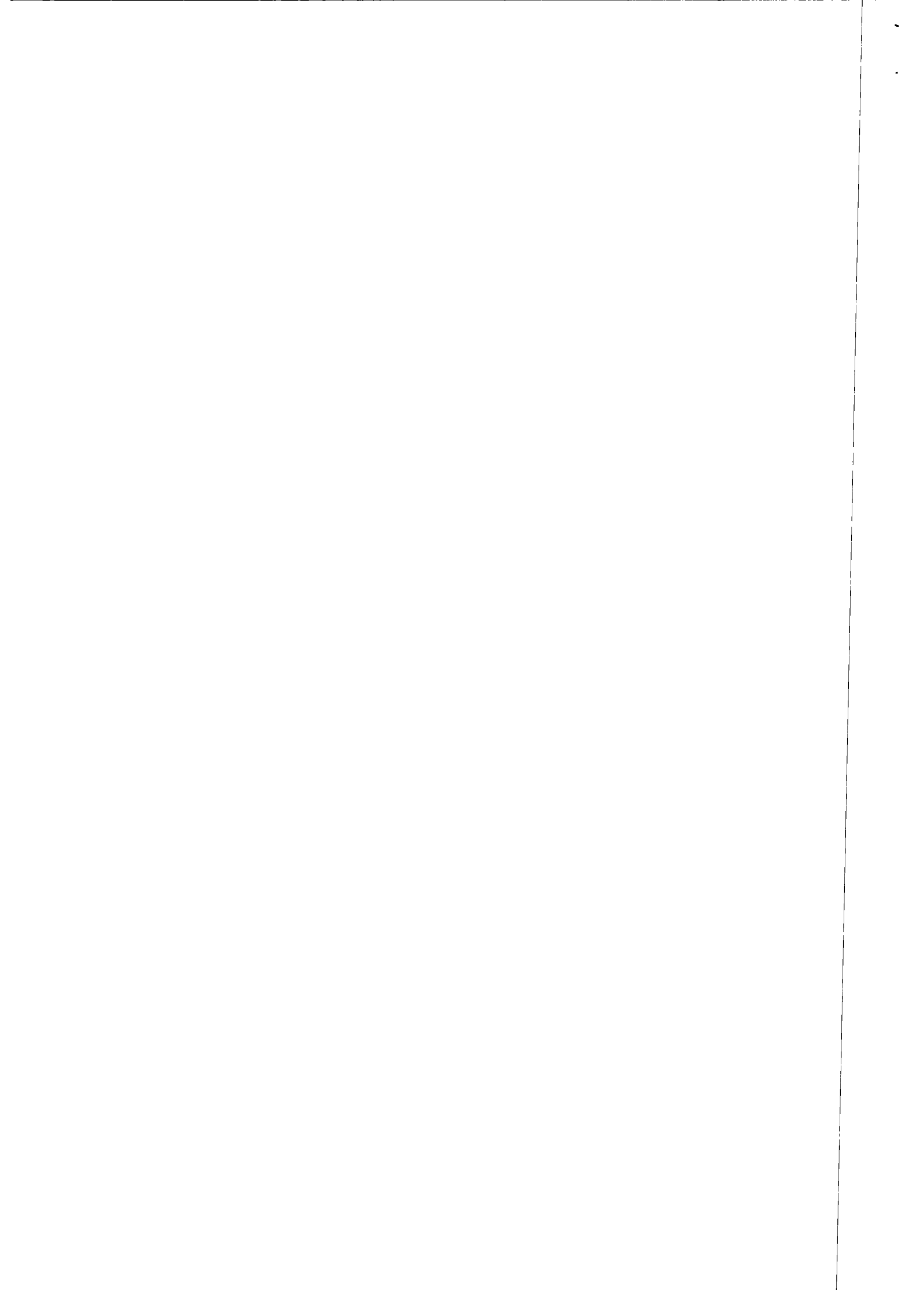
**THAT** clause 15 of the Bill be amended in sub-clause (1)-

- (a) by deleting the words “at least two newspapers” appearing after the words “in the Gazette and in” and substituting therefor the words “electronic and print media”;  
and
- (b) by inserting the following new paragraph after paragraph (a)-  
“(ab) in the case of an election under Article 138(5) of the Constitution, at least twenty-one days before the date of the election;”.

**Clause 16**

**THAT** clause 16 of the Bill be amended by inserting the following proviso after sub-clause (1)-

“Provided that in the event of death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party may substitute its candidate before the date of presentation of nomination papers to the Commission”.



**Clause 17**

**THAT** clause 17 of the Bill be amended-

- (a) in sub-clause (1) by deleting the words “at least two newspapers” appearing after the words “in the Gazette and in” and substituting therefor the words “electronic and print media”; and
- (b) by deleting sub-clause (2) and substituting therefor the following new sub-clause-  
“(2) The notice referred to under sub-section (1) shall be in the prescribed form and shall specify-
  - (a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;
  - (b) the day for the nomination of candidates for the parliamentary election; and
  - (c) the day or days on which the poll shall be taken for the election, which shall not be less than twenty-one days after the day specified for the nomination under paragraph (b)”.

**Clause 18**

**THAT** clause 18 of the Bill be amended-

- (a) in sub-clause (1) by deleting the words “at least two newspapers” appearing after the words “in the Gazette and in” and substituting therefor the words “electronic and print media”; and
- (b) by deleting paragraph (a) of sub-clause (2) and substituting therefor the following-  
“(a) the day for the nomination of candidates for the county governor election”.

**Clause 19**

**THAT** clause 19 of the Bill be amended by inserting the following -

“Provided that in the event of death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated



candidate, the political party may substitute its candidate before the date of presentation of nomination papers to the Commission”.

**Clause 20**

**THAT** clause 20 of the Bill be amended-

- (a) in sub-clause (1) by deleting the words “at least two newspapers” appearing after the words “in the Gazette and in” and substituting therefor the words “electronic and print media”; and
- (b) by deleting sub-clause (2) and substituting therefor the following new sub-clause-  
“(2) The notice referred to under sub-section (1) shall be in the prescribed form and shall specify-
  - (a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;
  - (b) the day for the nomination of candidates for the county elections; and
  - (c) the day or days on which the poll shall be taken for the county election, which shall not be less than twenty-one days after the day specified for the nomination under paragraph (b)”.

**Clause 21**

**THAT** clause 21 of the Bill be amended- by deleting the words “other media” appearing after the words “in the electronic and” and substituting therefor the words “print media of national circulation”.

**Clause 22**

**THAT** clause 22 of the Bill be amended in sub-clause (3) by inserting the following new paragraphs after paragraph (d)-

- “(e) where the office holder seriously violates the Constitution ;
- (f) in the case of gross misconduct on the part of the office holder;



- (g) where the office holder is incapable, owing to physical or mental infirmity, to perform the functions of the office;
- (h) where the office holder is bankrupt; and
- (i) where the office holder is sentenced to a term of imprisonment of six months or more”.

***Clause 23***

**THAT** clause 23 of the Bill be amended by deleting the marginal note and substituting the following new marginal note-

“Qualifications for nomination of candidates”.

***Clause 24***

**THAT** clause 24 of the Bill be amended in sub-clause (1) by inserting the following new paragraph after paragraph (b)-

“(ba) holds a degree from a recognized university;”; and

***Clause 25***

**THAT** clause 25 of the Bill be amended by renumbering paragraphs (d) and (e) as items (i) and (ii), respectively.

***Clause 27***

**THAT** clause 27 of the Bill be amended-

- (a) by re-numbering the existing provision as sub-clause (1); and
- (b) by inserting the following new sub-clause after sub-clause (1)-

“(2) Sub-section (1) shall not apply to a fundraising for a person who is contesting an election under this Act or to a fundraising for a political party.

***Clause 30***

**THAT** clause 30 of the Bill be amended-





- (a) in sub-clause (1) by deleting the words “the supporters of” appearing at the beginning of the clause and substituting therefor the words “the persons who nominate”; and
- (b) in sub-clause (2) by deleting the words “the supporters of” appearing at the beginning of the clause and substituting therefor the words “the persons who nominate”.

***Clause 32***

**THAT** clause 32 of the Bill be amended-

- (a) in sub-clause (1) by deleting paragraph (a); and
- (b) by deleting sub-clause (2).

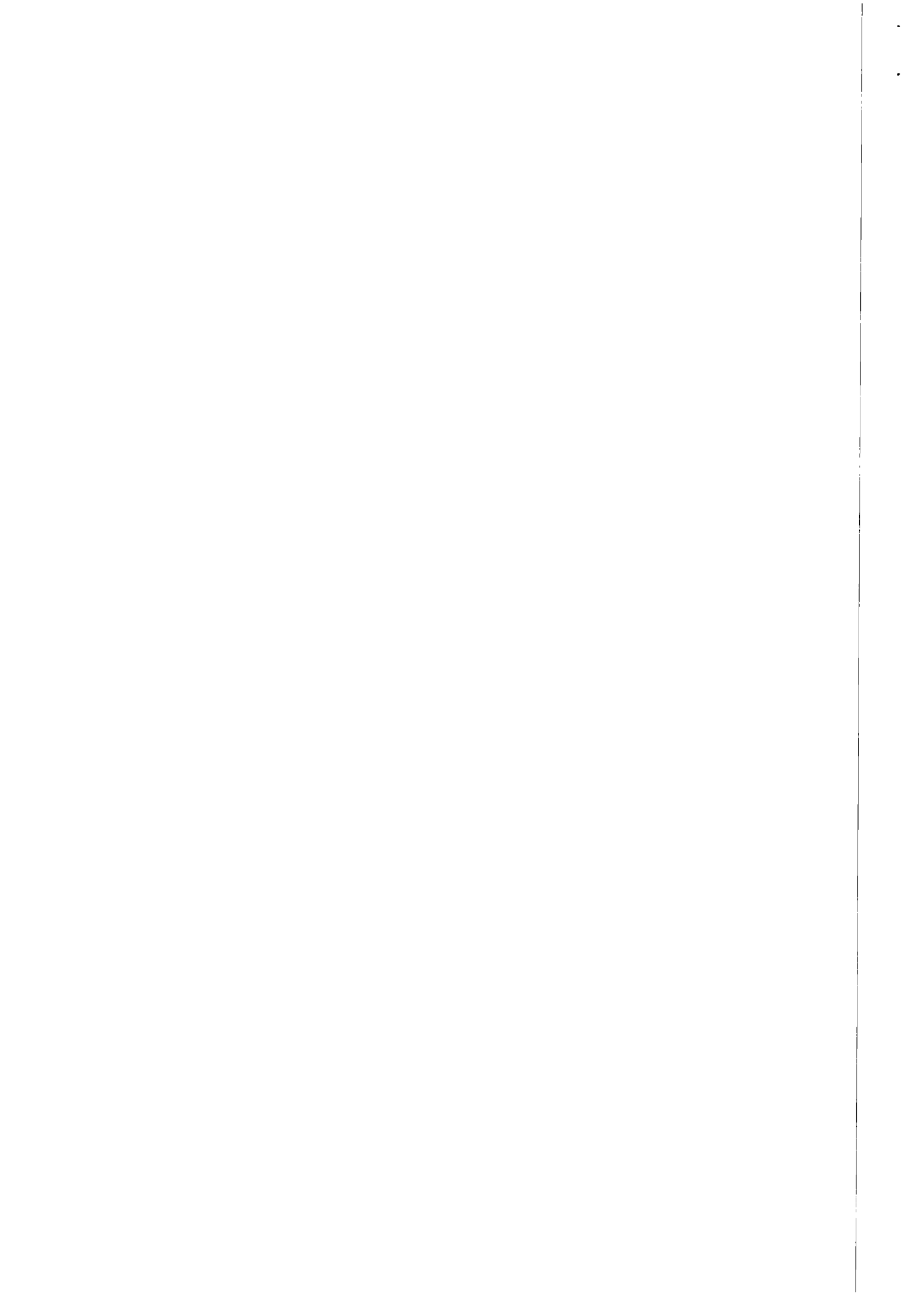
***Clause 36***

**THAT** clause 36 of the Bill be amended by inserting the words “on the same day as the day designated for submission to the Commission by political parties of nominations of candidates for an election” after the words “submit its party list to the Commission”.

***Clause 37***

**THAT** sub-clause (1) of clause 37 of the Bill be amended-

- (a) in paragraph (a), by deleting the words “twenty four” appearing after the words “shall include” and substituting therefor the word “twelve”;
- (b) in paragraph (b), by deleting the words “thirty two” appearing after the words “shall include” and substituting therefor the word “sixteen”;
- (c) in paragraph (c), by deleting the word “four” appearing after the words “shall include” and substituting therefor the word “two”;
- (d) in paragraph (d), by deleting the word “four” appearing after the words “shall include” and substituting therefor the word “two”;
- (e) in paragraph (e) by deleting the word “twice” appearing after the words “candidates reflecting”; and



(f) in paragraph (f) of sub-clause (1) by deleting the words “and the youth” appearing after the words “persons with disability”.

***Clause 40***

**THAT** clause 40 of the Bill be amended by-

- (a) deleting the words “seven days” appearing after the words “an election within” and substituting therefor the word “immediately”; and
- (b) by deleting sub-clause (3) and substituting therefor the following new sub-clause-  
“(3) The Commission shall announce the provisional and final results in the order in which the tallying of the results is completed”.

***Clause 43***

**THAT** clause 43 of the Bill be amended by inserting the following new sub-clauses after sub-clause (4)-

“(5) A public officer who intends to contest an election under this Act shall resign from public office at least seven months before the date of the election”.

(6) This section shall not apply to-

- (a) the President;
- (b) the Prime Minister;
- (c) the Deputy President;
- (d) a member of Parliament;
- (e) a county governor;
- (f) a deputy county governor;
- (g) a member of a county assembly.

***Clause 46***

**THAT** clause 46 of the Bill be amended by-

- (a) deleting sub-clause (2) and substituting therefor the following new sub-clause-  
“(2) A member of Parliament may be recalled where the member-



(a) is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;

(b) is found, after due process of the law, to have mismanaged public resources;

(c) is convicted of an offence under this Act.

(b) inserting the following new sub-clause after sub-clause (5)-

“(6) A person who unsuccessfully contested an election under this Act shall not be eligible, directly or indirectly, to initiate a petition under this section”.

### ***Clause 47***

**THAT** clause 47 of the Bill be amended-

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause-

“(1) A recall under section 46 shall be initiated by a petition which shall be filed with the Commission and which shall be-

(a) in writing;

(b) signed by a petitioner who-

(i) is a voter in the constituency or county in respect of which the recall is sought; and

(ii) was registered to vote in the election in respect of which the recall is sought;

(c) accompanied by an order of the High Court issued in terms of section 46(3)”;

(b) in paragraph (b) of sub-clause (2) by deleting all the words appearing after the words “represent at least” and substituting therefor the words “thirty per cent of the registered voters”;

(c) in paragraph (c) of sub-clause (2) by deleting the words “prescribed fee” and substituting therefor the words “the fee prescribed for an election petition”; and

(d) in sub-clause (3) by deleting all the words appearing after the words “shall contain the names of” and substituting therefor the words “at least fifteen per cent



of the voters in more than half of the wards in the county or the constituency, as appropriate”.

***Clause 49***

**THAT** clause 49 of the Bill be amended by deleting the word “vote” appearing after the words “number of voters who” and substituting therefor the word “concur”.

***Clause 50***

**THAT** clause 50 of the Bill be amended in sub-clause (5) by deleting the words “in the electronic media and in at least one newspaper” and substituting therefor the words “in the print and electronic media”.

***Clause 51***

**THAT** clause 51 of the Bill be amended in sub-clause (1) by deleting the words “in the electronic media and in at least one newspaper” and substituting therefor the words “in the print and electronic media”.

***Clause 52***

**THAT** clause 52 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause-

“(1) Where a referendum question requires a “yes” or no “answer”, persons intending to campaign for or against the referendum question shall form such national referendum committees and constituency referendum committees as are necessary”.

***Clause 58***

**THAT** clause 58 of the Bill be amended-

- (a) in sub-clause (3) by inserting the words “a member or officer of the Commission or” at the beginning of the sub-clause; and





(b) by deleting sub-clause (4).

***Clause 60***

**THAT** sub-clause (1) of clause 60 of the Bill be amended-

- (a) in paragraph (h) by inserting the words “where required under this Act or any other law to declare the result of an election” at the commencement of the paragraph; and
- (b) in paragraph (i) by inserting the words “except in the case of a member, officer or person authorized so to do,” at the commencement of the paragraph.

***Clause 61***

**THAT** clause 61 of the Bill be amended-

- (a) in paragraph (a) of sub-clause (2) by deleting the word “voting station” appearing after the words “secrecy of the” and inserting therefor the word “ballot”;
- (b) in sub-clause (6) by deleting the word “voting” appearing after the word “secrecy of the” and substituting therefor the word “ballot”; and
- (c) in sub-clause (7) by deleting the word “voting” appearing after the word “secrecy of the” and substituting therefor the word “ballot”.

***Clause 64***

**THAT** clause 64 of the Bill be amended by deleting paragraph (a) of sub-clause (1).

***Clause 65***

**THAT** clause 65 of the Bill be amended in paragraph (c) of sub-clause (1) by inserting the word “unlawfully” after the words “in any manner”.

***Clause 68***

**THAT** clause 68 of the Bill be amended-

- (a) in sub-clause (1) by-



- (i) deleting paragraph (c);
  - (ii) deleting paragraph (n); and
  - (iii) in paragraph (o) by deleting the word “false” appearing after the words “in any manner whatsoever”.
  - (iv) in item (iii) of paragraph (o) by inserting the word “unlawfully” after the word “otherwise”; and
- (b) by deleting sub-clause (2).

**Clause 70**

**THAT** clause 70 of the Bill be amended-

- (a) by inserting the following new clause after clause (1)-

“(1A) Upon the filing of an election petition in respect of an electoral area and prior to the conclusion of a by-election in respect of that electoral area where a court determines that a by-election is to be held, it shall be an offence to-

- (a) knowingly register voters in the electoral area in which the by-election is to be held;
- (b) knowingly cause the registration of voters in the electoral area in which the by-election is to be held; or
- (c) transfer voters in substantial numbers to the electoral area in which a by-election is to be held.

- (b) in sub-clause (6) by deleting the word “votes” appearing after the words “for the purpose of conveying the” and substituting therefor the word “voters”.

**Clause 72**

**THAT** clause 72 of the Bill be deleted.

**Clause 74**

**THAT** clause 74 of the Bill be amended-



- (a) in sub-clause (1) by deleting the word “incites” appearing after the words “engages in or” and substituting therefor the words “knowingly aids or abets”; and
- (b) in sub-clause (5) by inserting the words “where the presidential candidate knowingly abets or aids in the election offence.

***Clause 75***

**THAT** clause 75 of the Bill be amended-

- (a) in sub-clause (1) by inserting the words “of such a nature as to make it impossible for an election to proceed” after the words “where election offences”; and
- (b) by deleting sub-clause (4).

***Clause 76***

**THAT** clause 76 of the Bill be amended-

- (a) by renumbering the present provision as sub-clause (1); and
- (b) by inserting the following new sub-clauses after sub-clause (1)-
  - “(2) An electoral dispute under sub-section (1) shall be determined within seven days of the lodging of the dispute with the Commission.
  - (3) Notwithstanding sub-section (2), where a dispute under sub-section (1) relates to a prospective nomination or election, the dispute shall be determined before the date of the nomination or election, whichever is applicable”.

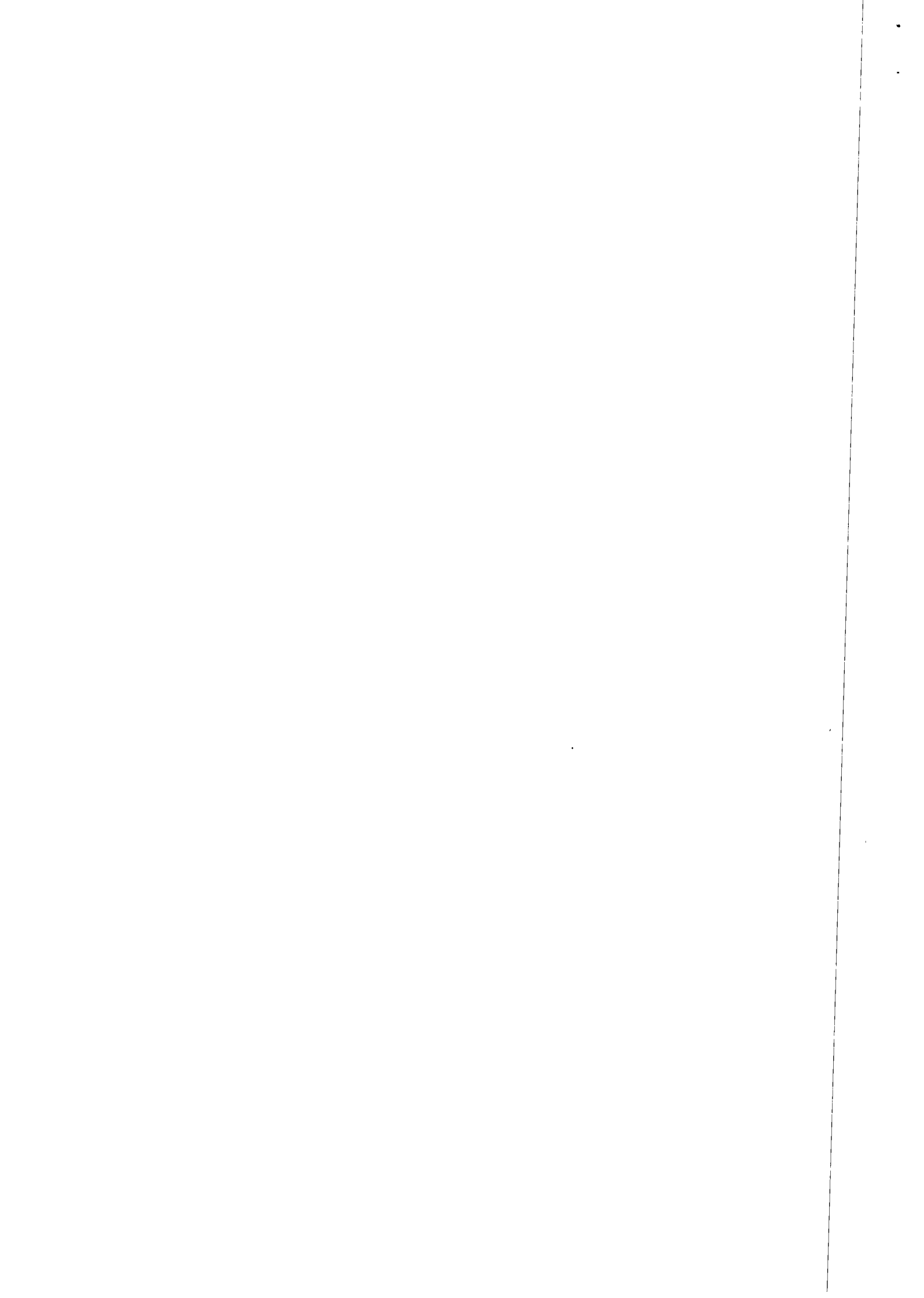
***Clause 85***

**THAT** clause 85 of the Bill be amended by inserting the word “a minor” after the words “by reason of”.

***Clause 86***

**THAT** clause 86 of the Bill be deleted and substituted with the following new clause-

“An election court shall award the costs of and incidental to a petition and such costs shall follow the cause.



***Clause 108***

**THAT** clause 108 of the Bill be amended by inserting the following new sub-clause after sub-clause (2)-

“(3) A person who is convicted of an offence under this Act shall not be eligible for election or nomination in an election under this Act for a period of ten years following the date of conviction”.

***Clause 109***

**THAT** clause 109 of the Bill be amended by inserting the following new sub-clause after sub-clause (2)-

“(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 an election campaign”.

***Clause 111***

**THAT** clause 111 of the Bill be amended in paragraph (z) of sub-clause (1) by inserting the words “with reasonable grounds” after the word “provide”.

***Second Schedule***

**THAT** the Second Schedule be amended by-

- (a) deleting item (e) of paragraph 6; and
- (b) deleting paragraph 9.

**Hon. Abdikadir Hussein Mohamed, M.P.**



