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THE ELECTION OFFENCES ACT

NO. 37 OF 2016

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COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

NO. 37 OF 2016

ELECTION OFFENCES ACT

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NO. 37 OF 2016

ELECTION OFFENCES ACT

[Date of assent: 13th September, 2016.]

[Date of commencement: 4th October, 2016.]

AN ACT of Parliament to provide for election offences; and for connected purposes

[Act No. 37 of 2016, Act No. 34 of 2017.]

1. Short title

This Act may be cited as the Election Offences Act, 2016.

2. Interpretation

In this Act, unless the context otherwise requires—

"ballot box" means a transparent container with a slot on the top sufficient to accept a ballot paper in an election or in a referendum but which prevents access to the votes cast until the closing of the voting period;

"ballot paper" means paper used to record the choice made by a voter and shall include an electronic version of a ballot paper or its equivalent for purposes of electronic voting;

"candidate" means a person contesting for an elective post;

"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;

"county" means one of the counties into which Kenya is divided under Article 6 (1) of the Constitution and specified in the First Schedule to the Constitution;

"election" means a presidential, parliamentary or county election and includes a by-election;

"election court" means the Supreme Court in exercise of the jurisdiction conferred upon it by Article 163 (3)(a) or the High Court in the exercise of the jurisdiction conferred upon it by Article 165 (3)(a) of the Constitution or the Resident Magistrate's Court designated by the Chief Justice in accordance with section 75 of the Elections Act, 2011 (No. 24 of 2011);

"election period" means the period between the publication of a notice by the Commission for a presidential, parliamentary or county election under sections 14, 16, 17 and 19 of the Elections Act, 2011 and the Gazettement of the election results;

"referendum committee" has the meaning assigned to it under the Elections Act, 2011;

"Register of Voters" has the meaning assigned to it under the Elections Act, 2011;

"voter" means a person whose name is included in a current register of voters;

"ward" means an electoral area within a county delimited in accordance with Article 89 of the Constitution.

3. Offences relating to register of voters

A person who—

- (a) without authority makes, prepares, prints or is in possession of a document or paper purporting to be a register of voters;
- (b) knowingly makes any false statement on, or in connection with any application to be registered in any register of voters; or
- (c) aids, abets, counsels or procures the commission of or attempts to commit any of the offences referred to in paragraphs (a) and (b),

commits an offence and is liable on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding six years, or to both.

4. Offences relating to multiple registration as a voter

(1) A person who—

- (a) being registered as a voter in a register of voters applies to be registered as a voter—
 - (i) in any other register of voters, otherwise than in substitution of his subsisting registration; or
 - (ii) in the same register of voters;
- (b) having applied to be registered in a register of voters which application has not been either granted or rejected, applies to be registered in the same register of voters or in another register of voters;
- (c) simultaneously makes two or more applications to be registered as a voter; or
- (d) having been disqualified by an election court, applies to be registered as a voter,

commits an offence is liable on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

(2) Any person who commits an offence under subsection (1) shall, in addition to the penalty provided in subsection (1), not be eligible to vote in that election or in the next election.

(3) A member or officer of the Commission or a person who aids another person to register as a voter more than once commits an offence and is liable on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

(4) A candidate who aids a person to register as a voter more than once, commits an offence and is liable on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both and shall not be eligible to contest in the ongoing general election.

5. Offences relating to voting

A person who—

Election Offences

- (a) forges, counterfeits, defaces or destroys any ballot paper or the official perforation, stamp or mark on any ballot paper;
- (b) without authority supplies any ballot paper to any person;
- (c) sells or offers for sale any ballot paper to any person;
- (d) purchases or offers to purchase any ballot paper from any person;
- (e) not being a person entitled to be in possession of any ballot paper which has been marked with any official perforation, stamp or mark has any such ballot paper in his possession;
- (f) puts into any ballot box anything other than the ballot paper which he is authorised by law to put in;
- (g) without authority takes out of a polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
- (h) not being an election official and not being authorised, removes election material from a polling station before, during or after an election;
- (i) without authority destroys, takes, opens, disposes of or otherwise interferes with any election material in use or intended to be used for the purposes of an election;
- (j) without authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election;
- (k) for the purposes of an election, manufactures, constructs, imports, has in his possession, supplies or uses, or causes to be manufactured, constructed, imported, supplied or used, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at any election;
- (l) not being authorised to do so under this Act, makes any mark on any ballot paper issued to any person other than to himself;
- (m) votes at any election when they are not entitled to vote;
- (n) votes more than once in any election;
- (o) interferes with a voter in the casting of his vote in secret;
- (p) pretends to be unable to read or write so as to be assisted in voting; or
- (q) pretends to be visually impaired or suffering from any other disability so as to be assisted in voting,

commits an offence and is liable on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six years or to both.

6. Offences by members and staff of the Commission

A member of the Commission, staff or other person having any duty to perform pursuant to any written law relating to any election who—

- (a) makes, in any record, return or other document which they are required to keep or make under such written law, an entry which they know or have reasonable cause to believe to be false, or do not believe to be true;
- (b) permits any person whom they know or have reasonable cause to believe to be able to read or write to vote in the manner provided for persons unable to read or write;

- (c) permits any person whom they know or have reasonable cause to believe not to be visually impaired or a person with disability to vote in the manner provided for persons who are visually impaired or persons with disability, as the case may be;
- (d) wilfully prevents any person from voting at the polling station at which they know or have reasonable cause to believe such person is entitled to vote;
- (e) wilfully rejects or refuses to count any ballot paper which they know or have reasonable cause to believe is validly cast for any candidate in accordance with the provisions of such written law;
- (f) wilfully counts any ballot paper as being cast for any candidate which they know or have reasonable cause to believe was not validly cast for that candidate;
- (g) interferes with a voter in the casting of his vote in secret;
- (h) where required under the Elections Act (No. 24 of 2011) or any other law to declare the result of an election, fails to declare the results of an election;
- (i) except in the case of a member, officer or person authorised to do so, purports to make a formal declaration or formal announcement of an election result;
- (j) without reasonable cause does or omits to do anything in breach of his official duty;
- (k) colludes with any political party or candidate for purposes of giving an undue advantage to the political party or candidate;
- (l) wilfully contravenes the law to give undue advantage to a candidate or a political party on partisan, ethnic, religious, gender or any other unlawful considerations; or
- (m) fails to prevent or report to the Commission or any other relevant authority, the commission of an electoral offence committed under this Act,

commits an offence and is liable on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years or to both.

[Act No. 34 of 2017, s. 11.]

7. Maintenance of secrecy at elections

(1) An election officer, candidate, agent or other person who—

- (a) without authority, obtains or attempts to obtain, in a polling station, information as to the candidate for whom any voter in the station is about to vote or has voted;
- (b) communicates at any time to any person, any information obtained in a polling station as to the candidate for whom any voter in the station is about to vote or has voted; or
- (c) discloses the serial number of the ballot paper issued to any voter at the station,

commits an offence.

(2) Every election officer, candidate, or agent in attendance at the counting of votes who fails to maintain or aids in violating the secrecy of the ballot or attempts

to ascertain at such counting the number of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper, commits an offence.

(3) A person attending any proceedings relating to an election and who, without lawful excuse—

- (a) communicates, before the poll is closed, to any person any information obtained at those proceedings as to any official perforation, stamp or mark to be used in connection with any paper;
- (b) communicates to any person at any time any information obtained at those proceedings as to the number of ballot papers issued to any person;
- (c) attempts to ascertain at the proceedings in connection with the receipt of ballot papers, the number on any ballot paper;
- (d) attempts to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings; or
- (e) captures an image of any marked ballot for purposes of financial gain or for showing allegiance,

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.

8. Personation

(1) A person, who at an election—

- (a) applies for a ballot paper in the name of another person, or of a fictitious person;
- (b) having voted once at any such election, votes again or applies at the same election for a ballot paper in his own name;
- (c) votes with the knowledge that he is not entitled to vote in that election; or
- (d) presents himself as an election official knowing that he is not,

commits the offence of personation, which shall be cognizable.

(2) For the purposes of this section, a person who has applied for a ballot paper for the purpose of voting shall be deemed to have voted.

9. Bribery

(1) A person who, during an election period—

- (a) directly or indirectly offers a bribe to influence a voter to—
 - (i) vote or refrain from voting for a particular candidate or political party;
 - (ii) attend or participate in or refrain from attending or participating in any political meeting, march, demonstration or other event of a political nature or in some other manner lending support to or for a political party or candidate;
- (b) in any manner unlawfully influences the result of an election;
- (c) directly or indirectly, in person or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate

or to refrain from becoming a candidate or to withdraw if they have become candidates,

commits an offence.

(2) A person who, during an election period, accepts or agrees to accept a bribe that is offered in the circumstances described in subsection (1) commits an offence.

(3) A person who commits an offence under this section shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding six years or to both.

10. Undue influence

(1) A person who, directly or indirectly in person or through another person on his behalf uses or threatens to use any force, violence including sexual violence, restraint, or material, physical or spiritual injury, harmful cultural practices, damage or loss, or any fraudulent device, trick or deception for the purpose of or on account of—

- (a) inducing or compelling a person to vote or not to vote for a particular candidate or political party at an election;
- (b) inducing or compelling a person to refrain from becoming a candidate or to withdraw if he has become a candidate; or
- (c) impeding or preventing a person from being nominated as a candidate or from being registered as a voter,

commits the offence of undue influence.

(2) A person who induces, influences or procures any other person to vote in an election knowing that the person is not entitled to vote in that election commits an offence.

(3) A person who directly or indirectly by duress or intimidation—

- (a) impedes, prevents or threatens to impede or prevent a voter from voting; or
- (b) in any manner influences the result of an election,

commits an offence.

(4) A person who directly or indirectly by duress, intimidation or otherwise compels or induces any voter who has already voted at an election—

- (a) to inform that person or any other person of the name of the candidate or political party for which the voter has voted; or
- (b) to display the ballot paper on which the voter has marked his vote,

commits an offence.

11. Use of force or violence during election period

A person who, directly or indirectly in person or by any other person on his behalf, inflicts or threatens to inflict injury, damage, harm or loss on or against a person—

- (a) so as to induce or compel that person to support a particular candidate or political party;
- (b) on account of such person having voted or refrained from voting; or
- (c) in order to induce or compel that person to vote in a particular way or refrain from voting,

commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding six years or to both.

12. Use of national security organs

A candidate or any other person who uses a public officer, or the national security organs to induce or compel any person to support a particular candidate or political party commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding six years or to both.

13. Offences relating to elections

A person who—

- (a) prints, publishes, distributes or posts up, or causes to be printed, published, distributed or posted up, any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of the printer and publisher;
- (b) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of withdrawal of any other candidate at such election;
- (c) forges, defaces or destroys any nomination paper, or delivers to a returning officer any nomination paper knowing it to be forged;
- (d) interferes with election material by removing destroying, concealing or mutilating or assists in the removal, destruction, concealment or mutilation of any such material save on the authority of the Commission or under the provisions of the Elections Act (No. 24 of 2011);
- (e) directly or indirectly prints, manufactures or supplies or procures the printing, manufacture or supply of any election material in connection with the election save on the authority of the Commission;
- (f) interferes with free political canvassing and campaigning by—
 - (i) using language which is threatening, abusive or insulting or engages in any kind of action which may advocate hatred, incite violence or influence the voters on grounds of ethnicity, race, religion, gender or any other ground of discrimination;
 - (ii) directly or indirectly, using the threat of force, violence, harassment or otherwise preventing the conduct of any political meeting, march, demonstration or other event of a political nature or any other person from attending or participating therein;
 - (iii) creating a material disruption with the intention of preventing a political party from holding a public political meeting;
 - (iv) impeding, preventing or threatening to impede or prevent the right of any representative of any political party from gaining access, in the manner and during the hours prescribed to voters in any particular area, whether public or private for the purposes of canvassing and campaigning and soliciting membership and support; or
 - (v) impeding, preventing or threatening to impede or prevent a member of the Commission, a representative of the Commission or any other authorised person or organisation

engaged in voter education from gaining access, in the refuses or fails to effect a direction, instruction or lawful order issued by or on behalf of the Commission;

- (g) refuses or fails to leave an election counting centre or any area designated by the Commission for electoral purposes when so ordered in accordance with the Elections Act;
- (h) enters or remains in an election centre or in any area designated by the Commission for electoral purposes in contravention of Elections Act;
- (i) obstructs or hinders any elections officer, candidate or agent in the execution of their lawful duties;
- (j) makes a false statement or furnishes false particulars in any statement which is required under Elections Act knowing the statement or particulars to be false or without reasonable grounds for believing the same to be true; or
- (k) publishes, repeats or disseminates in any manner whatsoever, information with the intention of—
 - (i) disrupting or preventing the election;
 - (ii) creating hostility or fear in order to influence the process or outcome of the election; or
 - (iii) otherwise unlawfully influencing the process or outcome of the election, or aids, abets counsels or procures the commission of or attempts to commit any such offence; or
- (l) forges, defaces or destroys any campaign or promotional material of an opposing candidate or political party,

commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.

14. Use of public resources

(1) Except as authorised under this Act or any other written law, a candidate, referendum committee or other person shall not use public resources for the purpose of campaigning during an election or a referendum.

(2) *Deleted by Act No. 34 of 2017, s. 12.*

(3) For the purposes of this section, the Commission shall, in writing require any candidate, who is a member of Parliament, a county governor, a deputy county governor or a member of a county assembly, to state the facilities attached to the candidate or any equipment normally in the custody of the candidate by virtue of that office.

(4) A person who is requested to supply information required under subsection (3) shall submit the information within a period of fourteen days from the date of the notice.

(5) The provisions of subsection (3) shall apply with necessary modifications, to an employee of a statutory corporation or of a company in which the Government owns a controlling interest.

(6) A person who fails to comply with the provisions of this section commits an offence and is liable on conviction to a fine not exceeding two million shillings or imprisonment for a term not exceeding six years or to both.

(7) A member of the Commission, any person designated by the Commission or any authorised agency shall have the power to impound or to order the impounding of any state resources that are unlawfully used in an election campaign.

[Act No. 34 of 2017, s. 12.]

15. Participation in elections by public officers

(1) A public officer who—

- (a) engages in the activities of any political party or candidate or act as an agent of a political party or a candidate in an election;
- (b) publicly indicates support for or opposition against any party, side or candidate participating in an election;
- (c) engages in political campaigns or other political activity; or
- (d) uses public resources to initiate new development projects in any constituency or county for the purpose of supporting a candidate or political party in that constituency or county,

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.

(2) A person who knowingly aids in contravention of subsection (1) 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 such fine and imprisonment.

(3) A candidate who knowingly aids in contravention of subsection (1) shall not be eligible to contest in the election.

16. Unlawful expenditure

(1) A person who makes payment, contracts for payment or gives any other consideration of any kind for the purpose of promoting or procuring the election of a candidate at any election—

- (a) on account of the conveyance of voters to or from the poll, whether for the hiring of vehicles, vessels or animals of transport of any kind whatsoever, or for railway fares, or otherwise; or
- (b) to or with a voter on account of the use of any house, land, building, or premises for the exhibition of any address, bill or notice, or on account of the exhibition of any address bill or notice,

commits an offence.

(2) A person who, 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—

- (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,

commits an offence.

(3) A person who knowingly receives payment under the circumstances provided for under subsection (1) commits an offence.

(4) A person who lets, lends or employs a vehicle, vessel, aircraft, or animal of transport knowing that it is intended to be used to convey voters to and from a poll commits an offence.

(5) A person who hires, borrows or uses a vehicle, vessel, aircraft, or animal of transport knowing that it is intended to be used to convey voters to and from a poll commits an offence.

(6) Nothing in subsection (4) or subsection (5) shall prevent an owner of a vehicle, vessel or animal of transport of any kind from letting, hiring or being employed or used by a voter or several voters at their joint cost for the purpose of conveying the voters to or from a poll.

(7) Notwithstanding anything in this section—

- (a) where it is the ordinary business of a voter as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such voter if made in the ordinary course of business, shall not be deemed to be an offence within the meaning of this section; and
- (b) where voters are unable at an election to reach their polling stations from their place of residence without crossing the sea or a tributary thereof or a river, means may be provided for conveying the voters to their polling stations or to enable them to cross in order to reach their polling stations.

(8) The means of conveyance referred to in subsection (7)(b) shall be made available equally to all voters who wish to be conveyed to vote.

17. Offences relating to the use of technology in elections

A person who, in relation to the electoral process—

- (a) steals or intentionally causes damage to electronic equipment;
- (b) knowingly or intentionally conceals, destroys, alters or knowingly or intentionally causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network;
- (c) with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person, destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility;
- (d) accesses the whole or any part of a computer system without authorisation;
- (e) intercepts, by technical means and without authorisation, any non-public transmission of computer data to, from, or within a computer system including electromagnetic emissions from a computer system carrying such computer data;
- (f) intentionally or recklessly alters or interferes with the functioning of a computer or computer network by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data or a computer program, electronic document, or electronic data message without authority, including by the introduction or transmission of viruses;
- (g) uses, produces, sells, procures, imports, distributes, or otherwise makes available, without lawful authority—

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- (i) a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences under this Act; or
- (ii) a computer password, access code, or similar data by which the whole or any part of a computer system may be accessed with intent that it be used for the purpose of committing an offence under this Act;
- (h) knowingly inputs, alters, or deletes computer data with the intent that the result be considered or acted upon for legal purposes as if it were authentic, regardless of whether or not the data is directly readable and intelligible; or
- (i) intentionally acquires, uses, misuses, transfers, alters or deletes another person's identification information,

commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years or to both.

18. Employers to allow employees reasonable period for voting

(1) Every employer shall, on polling day, allow a voter in his employ a reasonable period for voting, and no employer shall make any deduction from the pay or other remuneration of any such voter or impose upon or exact from them any penalty by reason of his absence during such period.

(2) An employer who directly or indirectly refuses, or by intimidation, undue influence, or in any other manner interferes with the granting to any voter in his employ of a reasonable period for voting as specified in subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six years or to both.

(3) This section shall not extend to such categories of employees as the Commission may, from time to time by notice in the *Gazette* designate, or to an employee who at the election in question is acting as an election officer within the meaning of the Elections Act.

(4) The provisions of this section shall bind the Government.

19. Aiding and abetting offences

(1) A person who aids, abets, counsels or procures the commission of or attempts to aid, abet, counsel, or procure the commission of an offence specified in this Act commits an offence.

(2) An offence under subsection (1) shall be cognizable.

20. Breach of Electoral Code of Conduct

(1) Every officer of a political party and every nominated candidate who, attempts to participate in or participates in an election without subscribing to the Electoral Code of Conduct commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six years or to both.

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

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

21. Powers of prosecution

The Director of Public Prosecutions shall have the power to order investigations and to prosecute offences under this Act.

22. Proceedings to be commenced within two years

(1) The Director of Public Prosecutions shall commence a proceeding in relation to an offence under this Act within twelve months of the date of the election to which the offence relates.

(2) In the case of an offence arising out of the determination of an electoral Court under section 87 of the Elections Act, 2011, the time provided under subsection (1) shall start to run from the date of final judgment.

23. Power to appoint special magistrates

(1) The Chief Justice may, by notification in the *Gazette*, appoint as many special Magistrates as may be necessary to hear and determine matters relating to offences under this Act.

(2) Notwithstanding anything contained in the Criminal Procedure Code (Cap. 75), a special Magistrate shall, as far as practicable, hold the trial of an offence under this Act on a day-to-day basis until completion.

24. General penalty

(1) 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.

(2) An offence under this Act relating to an election shall, with necessary modifications, be an offence during a referendum.

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

25. Repeal of Part VI of No. 24 of 2012

The Elections Act is amended by repealing Part VI.

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