

## **AUDIT REPORT ON THE ACTS ENACTED BY PARLIAMENT AND ASSENTED TO BY 26<sup>TH</sup> AUGUST 2011**

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The Commission for the Implementation of the Constitution (CIC) is established under section 5 (1) of the sixth Schedule of the Constitution of Kenya 2010. Subsequently under section 5 (6), the Commission is mandated to *(i) monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the Constitution and (ii) Co-ordinate with the Attorney-General and the Kenya Law Reform Commission in preparing for tabling in Parliament, the legislation required to implement this Constitution;*

Additionally Article 261 (4) provides as follows:-

*For the purposes of clause (1), the Attorney-General in consultation with the Commission on the Implementation of this Constitution, shall prepare the relevant Bills for tabling before Parliament, as soon as reasonably practicable, to enable Parliament to enact the legislation within the period mentioned.*

The Commissioners were sworn in on 4<sup>th</sup> January 2011 and commenced work immediately.

### **Objective of the Report**

The primary purpose of this report is to highlight the legislative issues of concern in the laws passed and assented to by the His Excellency President during this period. The report highlights the issues which, in CIC's opinion, are:

- a) In conflict with the letter and spirit of the Constitution.
- b) May not be strictly in conflict with the letter of the constitution but may bring about conflicts with the spirit of the constitution.

### **Steps adopted for processing of bills**

At a meeting between CIC and stakeholders involved in the implementation of the Constitution of Kenya 2010, it was agreed that the following steps be followed in processing bills required to implement the constitution:

1. The implementing Ministry or relevant ministry prepare the first draft of the Bill through a participatory approach and submit the bill to the Attorney General and the Kenya Law Reform Commission.
2. The Attorney General and the Kenya Law Reform commission undertake a technical review of the bill and submit their revised copy to CIC.
3. CIC audits the draft bill against the letter and spirit of the constitution; the relation between a bill and other bills or laws; the extent to which a bill is coherent and technically sound; and the impact of each bill on the two levels of government before submitting its revised copy to the Attorney General and the Kenya Law Reform Commission.

### **The internal method adopted by CIC in processing bills.**

- a) Posting of the draft bill on CIC website and invitation of comments from members of the public
  - b) Technical discussion of the bill in a in a CIC committee.
  - c) Facilitation of stakeholder consultations attended by representatives from public service, civil society, religious based organizations, the private sector and other Non-State Actors. The extent of such consultations varied from bill to bill and was determined by the level of consultations done by the lead ministry or other stakeholders on the bill or issue. Some consultations were carried out at county level while others were carried out centrally in Nairobi.
  - d) Discussion of the bill in the full commission plenary meeting.
4. CIC then invites the Attorney General, Kenya Law Reform Commission and the Ministry or department concerned to a roundtable discussion of any issues raised on the bill. This objective of the discussion is at reach a consensus on the substance of the bill.
  5. Following this consensus CIC forwards the bill to the Attorney General to undertake the final technical drafting after which the Attorney General forwards the bill to cabinet.
  6. The cabinet considers the bill and publishes it where they did not find any need for material change. Where a change in the substance of the bill was proposed by cabinet, the bill is to be re-submitted by the Attorney General to CIC to cross check that the amendments by cabinet are in line with the letter and spirit of the constitution. The finalized bill is then published and debated in parliament.
  7. Where CIC realizes that the published bill has issues of concern with regard to compliance with the constitution, CIC writes advisories to the Speaker of the National Assembly, Clerk to the National Assembly and the relevant parliamentary committees to alert them of any clause(s) that is problematic.
  8. After the bills are passed into law, CIC undertakes an audit of the bill passed by parliament and where there is a provision that is unconstitutional, CIC writes an advisory to His Excellency the President advising against assent and giving the reason(s) for the advice.
  9. After assent to the bills by the President, CIC writes to advise the Attorney General and the relevant authorities of any laws containing clauses that are not compliant with the constitution.

### **Bills processed and enacted in the period ended 26<sup>th</sup> August 2011**

In exercise of this mandate CIC held planning meetings with other constitutionally mandated implementation partners including the Attorney General, the Kenya Law Reform Commission, the Ministry of Justice National,

Cohesion and Constitutional Affairs and the Constitutional Implementation Oversight Committee (CIOC). The meetings identified the priority laws to be passed as provided in the Fifth schedule to the constitution and other laws related particularly to the next general elections. The following Bills were considered as priority by CIC and other stakeholders in the implementation of the constitution.

1. The Judicial Services Bill, 2011
2. The Vetting of Judges and Magistrates Bill, 2011
3. The Supreme Court Bill, 2011
4. The Independent Electoral and Boundaries Commission Bill, 2011
5. The Independent Offices (Appointment) Bill, 2011
6. The Salaries and Remuneration Commission Bill {returned by President on CIC advice}
7. The Kenya National Human Rights Commission Bill, 2011
8. The Commission on Administrative Justice Bill, 2011
9. The National Gender and Equality Commission Bill, 2011
10. The Political Parties Bill, 2011
11. The National Police Service Bill, 2011
12. The Independent Ethics and Anti-Corruption Commission Bill, 2011
13. The Power of Mercy Bill, 2011
14. The Commission on Revenue Allocation Bill, 2011
15. The Employment and Labour Relations Court Bill, 2011
16. The Elections Bill, 2011
17. The Kenya Citizenship and Immigration Bill, 2011
18. The Urban Areas and Cities Bill, 2011
19. The Land and Environmental Court Bill, 2011
20. The Contingencies Fund and County Emergency Funds Bill, 2011[1]
21. The National Government Loans Guarantee Bill, 2011[1]

Out of the above bills, 21 were enacted into law by 26<sup>th</sup> August 2011. The bills include all the constitutionally scheduled bills listed in the 5<sup>th</sup> schedule. By the time of writing this report, 5 bills are with parliament and CIC has 19 bills that will be processed as part of the scheduled bills for the second year ending 26<sup>th</sup> August 2012.

### **CHALLENGES EXPERIENCED BY CIC IN THE PROCESS**

In undertaking its mandate on the legislative agenda, CIC experienced a number of challenges. The major challenges are listed below.

1. A number of draft bills were submitted late. This made it difficult to conduct effective consultations with stakeholders.
2. In the case of the bills relating to finance, a disagreement between the Ministries involved caused undue delays.
3. In some cases, bills stayed too long with certain stakeholders. This limited the time available to process the bills



<b>CONSTITUTIONAL ISSUES</b>			
<b>i) Kenya National Commission on Human Rights Act 2011</b>			
<b>Section No.</b>	<b>Provision in the Act</b>	<b>CIC proposal.</b>	<b>Justification.</b>
8( c)	The Functions of the Commission shall be to- “(c) monitor, investigate and report on the observance of human rights in all spheres of life in the Republic”	Amend by inserting the following words at the end of the sub-section:  <i>“including observance by the national security organs”</i>	As currently drafted, the section has limited the constitutional powers of the Commission as provided for by Article 59(2)d of the Constitution and may be seen as limiting the Commission’s mandate with respect to security organs.
8	The Act as it currently is, has omitted to provide for the responsibility of KNCHR with regards to participation in the development of Standards on progressive realization of socio-economic rights. This mandate is however vested in the National Commission on Gender and Equality.	Amend the section to include clause 8(l) that provides KNCHR with the mandate to  <i>“work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights specified in Article 43 of the constitution and other written laws</i>	The KNCHR is mandated to monitor implementation of the UN Convention on Economic, Social and Cultural Rights. By including this provision in the National Commission on Gender and Equality and not in the Kenya National Commission on Human Rights, it purports that KNCHR does not have the mandate.  In addition, although the mandate of setting standards to achieve progressive realization of Socio-Economic Rights is vested in the Executive, the KNCHR is further mandated to monitor the implementation of socio-economic rights.
30	“The Commission shall not investigate (b) a criminal offence;”	Amend the Act by deleting section 30 (b) which provides that the Commission shall not investigate	The mandate of Article 59 commissions includes investigation of human rights violations whether of

		“(b) a criminal offence”	<p>a criminal or civil nature. For instance the Commission has jurisdiction to monitor implementation of the UN Covenant on Civil and Political Rights (ICCPR) which includes matters of a criminal nature and the UN Convention against Torture and Other Cruel Inhuman Degrading Treatment (CAT), whose entire jurisdiction is about criminal offences.</p> <p>Limitation provided in (b) purports to limit the commission’s investigation mandate of such matters which is unconstitutional</p>
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**i) Kenya Citizenship and Immigration Act 2011**

<b>Section No.</b>	<b>Provision in the Act</b>	<b>CIC proposal.</b>	<b>Justification.</b>
7	<p>“A person born outside Kenya shall be a citizen by birth if on the date of birth, that person’s mother or father was or is a citizen <u>by birth.</u>”</p>	<p>Amend by either deleting the entire Section 7</p> <p>Or and preferably reverting to the earlier provision as was agreed during the roundtable which was:</p> <p><i>“A person born outside Kenya shall be a citizenship by birth if on the date of the birth that person’s parent, grandparent or great grandparent was or is a citizen.”</i></p>	<p>As it currently reads, section 7 merely reiterates the provision of section 6.</p> <p>In any case, if Section 7 purports to provide for such limitation, it would still be unconstitutional for limiting the rights of persons born out of Kenya as it restricts their parents’ status to that of <i>citizens by birth</i> (as italicized and underlined) contrary to the provisions of the constitution.</p> <p>The clause agreed upon during the roundtable was intended to give effect to Article 14(3) of the Constitution on limitation to descent.</p>

			It provides a reasonable limitation that extends to the great grandparents which is reasonable and comparable to other jurisdictions.
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**PROPOSALS THAT WOULD ADD VALUE TO PROVISIONS IN THE ACT**

**i) Kenya National Commission on Human Rights Act 2011**

<b>Section No.</b>	<b>Provision in the Act</b>	<b>CIC proposal.</b>	<b>Justification.</b>
10(3)	<p>“10 (3) A person shall not be qualified for appointment as the chairperson or a member if such person:-</p> <p>(a) is a member of Parliament or a County Assembly;</p> <p>(b) is a member of a local authority;</p> <p>(c) is a undischarged bankrupt; or</p> <p>(d) has been removed from office for contravening the provisions of the Constitution or any other law.”</p>	<p>Amend the act by inserting a subsection 10(3)e:</p> <p>‘Is a member of the governing body of a political party.’</p>	<p>Whereas the appointing panel would be expected to implement article 77(2) which limits members of executive committees of political parties, (“any appointed state officer shall not hold office in a political party”), we believe it would have been good to provide this clarity in the legislation.</p>

**ii) Kenya Citizenship and Immigration Act 2011**

<b>Section No.</b>	<b>Provision in the Act</b>	<b>CIC proposal.</b>	<b>Recommendation.</b>
33(2)d	<p>“For purposes of this Act, an inadmissible person is a person who is not a Kenyan citizen and who (d) is adjudged insolvent”</p>	<p>Amend subsection 33(2)d to change “is adjudged insolvent” to:</p> <p>“is adjudged bankrupt”</p>	<p>Insolvency refers to a company and not an individual. This amendment would ensure clarity and consistency with other legislation.</p>

**EDITORIAL COMMENTS**

<b>i) Kenya Citizenship and Immigration Act 2011</b>			
<b>Section No.</b>	<b>Provision in the Act</b>	<b>CIC proposal.</b>	<b>Recommendation.</b>
40 (1)	“Committee means the Permit Determination Committee established under section 7 of the Kenya Citizens and Foreign National Management Service Act 2011”	Amend clause 40 (1) which provides a definition for the term “Committee”, by repositioning the definition under clause 2 of the bill, on interpretation	This amendment will ensure that the Act is properly aligned.



**NATIONAL POLICE SERVICE ACT, 2011**

**CONSTITUTIONAL ISSUES**

Section	Provisions in the Act	CIC proposal	Justification
4	The maximum number of officers shall be determined by the <b>National Security Council in consultation with the National Police Service Commission.</b>	Insert the following new section:  The maximum number of officers shall be determined by the <b>National Police Service Commission in consultation with the National Security Council.</b>	Article 246(3) gives the National Police Service Commission the overall control over the recruitment and appointment of members of the Service.
5	The composition of the Service shall, <b>so as far is reasonably practicable—</b>  (a) uphold the principle that not more than two-thirds of the appointments shall be of the same gender; and  (b) reflect the regional and ethnic diversity of the people of Kenya.	Delete the words “so as far is reasonably practicable”  Insert a new subsection (2) to read as follows:  (2) The service shall take measures including affirmative action programmes and policies to ensure the realization of subsection (1).	To ensure conformity to the letter and spirit of the Constitution.  The provision violates the gender, ethnic and regional balance principles in Articles 27(8) and 246(4) of the Constitution which is intended for immediate realization and not progressive realization.
13.(7)	(7) For purposes of appointment of the Deputy Inspector General before the establishment of the Commission, the procedure set out in the Third Schedule shall apply, except that the provisions in the Schedule requiring approval by Parliament shall not apply.	Delete section 13(7).	The National Police Service Commission shall undertake the recruitment of the DIGs.  Delete the section as it serves no purpose.  To comply with Article 245(3) of the Constitution which states that the Commission shall recommend DIGs for appointment by the President.

16	<p><b>16.</b> Where the Inspector-General is suspended from office under section 15 or incapable of performance of his or her functions, the President may appoint the Cabinet Secretary to act as the Inspector-General, for a period not exceeding three months.</p>	<p>The section has prolonged the replacement, by the Cabinet-Secretary, to three (3) months</p> <p>Delete the words “The Cabinet Secretary” and substitute therefore “The Commission shall appoint one of the Deputy Inspector-Generals”</p>	<p>The section violates 245(2)(b) and (4).</p> <p>The Inspector-General has independent command over the service, to ensure the independence is maintained and noninterference by the executive, the replacement, in the absence of the IG, should be by a DIG, appointed by the Commission.</p>
40.7	<p>(7) Each station shall have a facility to receive, record and report complaints against police misconduct.</p>	<p>Insert the following: “Each station shall have a facility to receive, record and report complaints against police misconduct and <b>report these to the Independent Policing Oversight Authority.</b>”</p>	<p>It violates Article 244 of the Constitution.</p> <p>To comply with Article 244 of the Constitution and guarantee effective oversight, and to promote transparency and accountability.</p>
108(1)	<p><b>The President may,</b> on the application of the Government of a reciprocating country, order such number of police officers as the President may think fit to proceed to that country for service therein for the purpose of assisting the police service of that country in a temporary emergency.</p>	<p>Delete the subsection and substitute therefore the following new subsection:</p> <p>The President may, on the application of the Government of a reciprocating country, order such number of police officers as the <b>Inspector General may, in consultation with the Commission, and in accordance with the relevant laws</b> think fit to proceed to that country for service therein for the purpose of assisting the police service of that country in a temporary emergency.</p>	<p>The Inspector-General has the independent command of the Service pursuant to Article 245(2) of the Constitution. It is unconstitutional to take away the powers of the Inspector-General enshrined in the Constitution, through an Act of Parliament.</p>

109(1)	<p><b>The President may</b> make application to the Government of a reciprocating country for police officers of that country to be sent to Kenya for service therein for the purpose of assisting the Service in a temporary emergency.</p>	Delete the words “the president” and substitute therefore the words “ <b>Upon request of the Inspector-General,</b> ” immediately before the words “the President may”	<p>The Inspector-General has the independent command of the Service pursuant to Article 245(2) of the Constitution.</p> <p>It also ensures that the request is need based and the Inspector General is consulted. It contravenes Article 245(2) of the Constitution.</p>
Fifth Schedule 9(a)	<p>Arrest and Detention Rules.</p> <p><b>9.</b> A detained person shall have the right to—</p> <p>(a) communicate with and receive visits of members of the family subject only to reasonable conditions and restrictions (when exceptional needs of the investigation so require) which shall be spelt out in the Standing Orders subject to <b>the approval from the Ministry;</b></p>	Delete the words “subject to the approval from the Ministry”	<p>To ensure that the independence of the Service from the executive as envisioned under Article 245 of the Constitution is guaranteed.</p> <p>It is unconstitutional to interfere with the independence of the Service. The Executive, through the Cabinet Secretary should only offer policy directions.</p>
<b>PROPOSALS THAT WOULD ADD VALUE TO PROVISIONS IN THE ACT</b>			
11(2)(b)	<p>(2) A person is qualified for appointment as Deputy Inspector-General if the person—</p> <p>(a) is a Kenyan citizen;</p> <p>(b) holds a degree from</p>	Delete the words ‘or equivalent qualifications’	<p>‘Equivalent qualifications’ are not specified. This creates unwanted confusion and hence arbitrariness in its application.</p> <p>It is also not possible to</p>

	<p>a university recognized in Kenya or equivalent qualifications;</p> <p>DIG should possess a degree from a university recognized in Kenya. The paragraph was amended to include the following words: 'or equivalent qualifications'</p>		<p>aggregate the many courses into a degree.</p>
12(11)		<p>Insert the following subsection: (11) reads: "In submitting a new nominee under subsection (10), the President shall within seven days, submit to Parliament a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under subsection (5)."</p>	<p>To ensure that the process is not subjected to abuse or inordinate delays.</p> <p>And also ensure prudent way of using public resources pursuant to Chapter Twelve, Article 201(d) of the Constitution.</p> <p>And for purposes of consistency.</p>
13(7)	<p>(7) For purposes of appointment of the Deputy Inspector General before the establishment of the Commission, the procedure set out in the Third Schedule shall apply, except that the provisions in the Schedule requiring approval by Parliament shall not apply.</p> <p>On the appointment of the DIGs before the Commission has been set up the Third Schedule shall apply. The following words have been inserted in subsection (7)</p>	<p>Amend subsection (7) to insert the requirement that Parliament shall be involved.</p> <p>Delete the provision where you require the application of the Third Schedule as far as the appointment of the DIGs is concerned.</p>	<p>Article 132 (2) requires that the president shall appoint or remove any State officers with the approval of the National Assembly.</p>

17(1)(a)	A Deputy Inspector-General may be removed from office only for—  (a) serious violation of the Constitution or any other law, including a contravention of Chapter Six of the Constitution;	Delete the word “serious” appearing in 17(1)(a).	Any violation of the Constitution amounts to a violation, the degree notwithstanding. The word “serious” is irrelevant and subjective and may attract unnecessary litigation.
18	The Inspector-General shall be appointed for one term of four years and shall not be eligible for reappointment.	Insert the following new subsection:  (2) The Deputy Inspector General shall be appointed for one term of six years and shall not be eligible for reappointment.	It is important that the term of office of the DIGs be provided for in the Act for purposes of certainty.
23 and 26	The functions of the Deputy Inspectors- General KPS and APS. Functions of the two DIGs are dissimilar.	Under Article 243 KPS and APS are equal services under the National Police Service.	Harmonize the functions of the two DIGS for consistency and to avoid unnecessary competition in the Service. They are equal services.
29(8)	(8) The Director of Criminal Investigations shall be—  (a) the chief executive officer of the Directorate;  (b) responsible for—  (i) implementing the decisions of the Inspector-General;  (ii) efficient administration of	Insert the following words:  “The CID Director shall be an accounting officer”	This will ensure that the Director complies with requirements of sections 36-39. And also to comply with Article 226 of the Constitution on designation of the accounting officer and to ensure independence of the Directorate.

	<p>the Directorate;</p> <p>(iii) the day-to-day administration and management of the affairs of the Directorate; and</p> <p>(iv) the performance of such other duties as may be assigned by the Inspector General, the Commission, or as may be prescribed by this Act, or any other written law.</p>		
38	<p><b>38.</b> (1) At least three months before the commencement of each financial year, the Director of Criminal Investigations shall cause to be prepared estimates of the revenue and expenditure of the Directorate for that year.</p> <p>(2) The annual estimates shall make provision for all the estimated expenditure of the Directorate for the financial year concerned, and in particular shall provide for-</p> <p>(a) the payment of salaries , allowances and other charges in respect of the staff of the Directorate;</p>	<p>Insert the following words:</p> <p>“subject to the relevant laws on public finance management”</p>	<p>The law on public finance management is still under formulation. There is a likelihood that many aspects of public finance management may change. It is important therefore, to subject finance related matters in this Act to the relevant law.</p>

	<p>(b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Directorate;</p> <p>(c) the maintenance of the assets of the Directorate;</p> <p>(d) the funding of operations, training, research and development of the activities of the Directorate;</p> <p>(e) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Directorate may think fit.</p> <p>(3) The annual estimates shall be approved by the Directorate before the commencement of the financial year to which they relate, and shall be submitted to the Cabinet Secretary for approval, and after the Cabinet Secretary has given approval the</p>		
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	Directorate shall not increase any sum provided in the estimates without the consent of the Cabinet Secretary.		
38(3)	(3) The annual estimates shall be approved by the Directorate before the commencement of the financial year to which they relate, and shall be submitted to the Cabinet Secretary for approval, and after the Cabinet Secretary has given approval the Directorate shall not increase any sum provided in the estimates without the consent of the Cabinet Secretary.	Delete the words Cabinet secretary whenever it appears and substitute therefore the words “Inspector General”	The Inspector General is the officer responsible for all aspects of the Service.
41(1)(a) and (c)	<b>41.(1)</b> There shall be established a County Policing Authority in respect of each county which shall comprise—  (a) the Governor or a member of the County Executive Committee appointed by the Governor, who shall be the chairperson;  (b) county representatives appointed by the Inspector-General, who shall comprise the heads of the National Police Service, the National Intelligence Service and the Directorate of Criminal Investigations at the county level;	Delete subsection (1) (a) and (c).  i.e. the provisions on the county governor and the two nominees of the County Assembly.	The provisions contradict the Constitution (Article 6) which provides that the two governments are distinct.



41(1)(b)	(b) county representatives appointed by the Inspector-General, who shall comprise the heads of the Kenya Police Service, the Administration Police Service, the National Intelligence Service and the Directorate of Criminal Investigation at county level.	Recast the sub-clause to provide that the heads of the Kenya Police Service, Administration Police Service, National Intelligence Service and Directorate of Criminal Investigation at county level to be members of the County Policing Authority by virtue of their offices and also the IG to appoint his or her representative.	The IG does not have powers to appoint a representative of the NIS. The heads of the respective services to be members of the CPA by virtue of their office and the IG to appoint his or her representative.
41(3)	The names of members nominated under subsection (1) (e) shall be forwarded to the County Security Committee for vetting and subsequent thereto, the County Assembly for approval.	“The names of members nominated under subsection (1) (e) shall be forwarded to the County Assembly for vetting after which the names shall be submitted to the Governor who shall appoint not fewer than seven nor more than ten members.”	Insert the approval by the County Assembly.  The section be amended wherever the County Security Committee appears.  The County Security Committees have not been established nor have their structures been identified in this Act yet they have been given statutory significance. Approval of the members of the County Policing Authorities referred to under subsection (1)(e) should be done by the County Assemblies.
65(3)	The head of the Kenya Police Service in the County shall maintain records of all barriers erected under subsection (1) and the reasons therefore in their respective county and submit these to the respective community policing	Replace the words <b>community policing association</b> with the <b>County Policing Authority</b> .	Community policing association has not been defined or used anywhere in the Bill.  For purposes of clarity.

	associations.		
65(6)	<p>(6) Members of the public may lodge complaints about the barriers with the County Commander or the Authority.</p> <p>Power to erect barriers. Subsection (6) makes reference to a “county commander”</p>	Insert a constitutionally appropriate alternative or define a county commander.	The phrase has not been used elsewhere in the Act.
76	<p>Retirement from the Service.</p> <p><b>76.</b> (1) A Police officer below the rank of Deputy-Inspector-General shall retire from the Service on attaining the age of sixty years but may, with the approval of the Commission, be permitted to retire on attaining the age of fifty years.</p> <p>(2) Where the officer retires after serving for more than twenty years and before attaining fifty years, in terms of subsection (1), the benefits payable shall be calculated as if the officer had retired after twenty years of service.</p> <p>(3) An officer below the rank of sergeant may voluntarily retire from the service upon completion of twelve or twenty years of service.</p> <p>(4) Subject to subsection (2), where the officer is interdicted from duty in accordance with the Service</p>	Section 76 is self contradicting. The section be amended to remove the contradictions.	For purposes of clarity.

	<p>Standing Orders or any other written law, the officer's appointment as such does not cease only because of such interdiction.</p> <p>(5) While a police officer is interdicted from duty, the police officer's powers, privileges and benefits as a police officer shall be suspended, but the officer continues to be subject to the same discipline and penalties, and to the same authority, as if the officer had not been interdicted.</p>		
104(3)	(3) The monies paid for the private use of the police as specified in subsection (1) shall be paid to the Treasury.	Delete the phrase "Treasury" and substitute therefore "Consolidated fund".	There is a possibility that Treasury as an institution may change. It would be better to use the Consolidated fund which is provided for in the Constitution.
105	<p>Where the Inspector-General reasonably considers that the deployment of additional officers in any place is necessary—</p> <p>(a)for the safety of the private property of any person;</p> <p>(b) in the interests of any person; or</p> <p>(c)that there is a reasonable apprehension of a breach of the peace in connection with any</p>	Delete the words "reasonably" Appearing in the first line of section 105.	To avoid ambiguity and for purposes of clarity.

	<p>such private property;</p> <p>the Inspector-General may station officers for duty on such property place and for such period as the Inspector-General may consider necessary.</p>		
109	<p>Service of police officers of reciprocating country in Kenya.</p> <p><b>109.</b>(1) The President may make application to the Government of a reciprocating country for police officers of that country to be sent to Kenya for service therein for the purpose of assisting the Service in a temporary emergency.</p> <p>(2) Whenever police officers from a reciprocating country are present in Kenya in pursuance of an application made under subsection (1)—</p> <p>(a) the police officers shall be under the command of a senior officer of the Service;</p> <p>(b) they shall have and may exercise the powers, and shall be liable to perform the duties, of police officers of equivalent rank in the Service, and shall for that purpose be deemed to be members of the Service;</p>	<p>Insert a new subsection to read as follows:</p> <p>(3) The Inspector-General shall make regulations on the use of firearms or security equipments of foreign services in Kenya.</p>	<p>To ensure regulated use of firearms by police officers of reciprocating country in Kenya.</p>

	(c)any contract of service between such an officer and his Government may be enforced in Kenya in the same way and with the same effect as if it were made between the officer and the Government of Kenya.		
109(2)(a)	(a) Service of police officers of reciprocating country in Kenya. the police officers shall be under the command of a senior officer of the Service;	Delete the words “senior officer in the service” and substitute with the correct rank.	For purposes of clarity.
109(2)(c)	(c) any contract of service between such an officer and his Government may be enforced in Kenya in the same way and with the same effect as if it were made between the officer and the Government of Kenya.	Insert the the words: “subject to the constitution in paragraph (c) so that it reads subject to the constitution , any contract of service between such an officer and his Government may be enforced in Kenya in the same way and with the same effect as if it were made between the officer and the Government of Kenya.	To ensure conformity with the contracts of the reciprocating country with the Constitution and other laws of Kenya.
Sixth Schedule 8(c)	Conditions as to the use of force and conditions as to the use of firearms.  <b>8.</b> The Cabinet Secretary in consultation with the Inspector-General shall make further regulations on the use of firearms which shall include regulations:	Recast the section.	For purposes of clarity.

	<p>(a) that specify the circumstances under which police may carry firearms and the type of firearms and ammunition permitted;</p> <p>(b) that prohibit firearms and ammunition that cause unwarranted injury or present unwarranted risk;</p> <p>(c) to regulate the control, storage and issuing of firearms, including procedures that ensure that officers are accountable for the weapons and ammunition issued to them (in principle; don't allow to take fire arms home and officers are provided by their superior with a fixed amount of ammunition and have to explain at any time when requested if bullets are missing);</p>		
<p>Eighth Schedule (c)</p>	<p>Offences Against Discipline.</p> <p>(c)uses threatening or insubordinate or disrespectful language, word, act or demeanour to a police officer senior to him in rank;</p>	<p>Redraft the paragraph to state as follows:</p> <p>(c)use of threatening or disrespectful language words act or demeanour to a police officer;</p> <p>(d)insubordination of a senior police officer;</p>	<p>For clarity purposes.</p>

**ETHICS AND ANTI CORRUPTION COMMISSION ACT, 2011**

**CONSTITUTIONAL ISSUES**

Section	Provisions in the Act	CIC Proposal	Justification
3(3)	There is established an Ethics and Anti-Corruption Commission.	The headquarters of the Commission be provided for:  Insert a new subsection (3) to read as follows:  (3) The headquarters of the Commission shall be in the Capital City of Kenya, but the Commission shall ensure access to its services in all parts of the Republic in accordance with Article 6(3) of the Constitution.	This is to ensure consistency with other Commission laws as all other Commissions established after promulgation of the Constitution, have a similar provision.
6 (2)	The joint forum of religious organizations referred to in subsection (1)(h) shall consist of representatives of –  (a) the Supreme Council of Kenya Muslims; (b) the Kenya Episcopal Conference; (c) the National Council of Churches of Kenya; (d) the Evangelical Fellowship of Kenya; and (e) the Hindu Council of Kenya.	Provide for the Public Service Commission to facilitate the forum in making the nomination of a representative.	This proposal is intended to ensure that there is no delay in the nomination of a member of the panel, in the event that the forum is unable to meet.
6(1)		Insert a new subsection 2A to read as follows:  (2A) Notwithstanding subsection	To ensure separation of powers between arms of government.

		(1)(d), the representative of the Judicial Service Commission shall not be a judicial officer.	
11 (1) (a) i.e. (iii)- (iv)	<b>11.(1) In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall—</b>  (a) in relation to State officers,—  (i) develop and promote standards and best practices in integrity and anti-corruption;  (ii) develop a code of ethics;	Insert the following new paragraph:  “(iii) develop procedures that give effect to Chapter Six of the Constitution;”	The rationale is that under Article 79, the Commission is mandated to ensure compliance with, and enforcement of the provisions of Chapter six, which includes disciplinary procedures under Article 75 and procedures required under Article 80(a)
11(o)	On the certificate of compliance with Chapter Six.	Insert a new paragraph (o) to read as follows:  “upon request, issue a certificate of compliance or any other evidence to show that a person has complied with Chapter Six of the Constitution;”.	The rationale is that the Commission is specifically mandated by Article 79 of the Constitution to ensure compliance with Chapter Six of the Constitution.
11(3)	<b>(3) The Commission may cooperate and collaborate with other State organs and agencies in the prevention and investigation for corruption.</b>	Insert the word “prosecution” immediately after the words “agencies in the”	Allows the Commission to cooperate with other Government agencies that have prosecutorial powers.
33 (2)	Provides for the regulations	Insert a new paragraph (b) to	To comply with Chapter Six of



(b)	that the Commission may make	read as follows: “disciplinary procedures as provided for under Chapter Six of the Constitution.	the Constitution.
Insertion of a new section.		<p>Insert a new section, to establish a duty on public officers to cooperate with the Commission.</p> <p>The section to read as follows:</p> <p>“A public officer, State organ or State office shall at all times cooperate with the Commission in ensuring that the mandates of the Commission as required under Chapter Six of the Constitution, this Act or any other written law are achieved, and in particular–</p> <ul style="list-style-type: none"> <li>(a) respond to any inquiry made by the Commission;</li> <li>(b) furnish the Commission with periodic reports as to the status of compliance and enforcement of Chapter Six of the Constitution;</li> <li>(c) provide any other information that the Commission may require in the performance of its functions under the Constitution and any other written law.</li> </ul> <p>(2) An public officer who breaches any of the provisions</p>	<p>The Commission for the implementation of the Constitution Act, 2011 has similar provision, which imposes a duty on public officers, State officers and State organs to cooperate with CIC.</p> <p>With regards to the enforcement of, and compliance with Chapter Six of the Constitution, the Commission will certainly require cooperation with other State organs. CIC considers the clause necessary in a bid to ensuring that the spirit and letter of the Constitution, and in particular Article 79, are achieved.</p>

		of this Act shall be deemed to be in contempt of Parliament and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.	
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**Commission on Revenue Allocation Act, 2011:**

Section	Provisions of the Act	CIC proposal	Justification
2	Definition of revenue: "Revenue" means all taxes imposed by the national government under Article 209 of the Constitution and any other revenue (including investment income) that may be authorized by an Act of Parliament, but excludes revenues referred to under Articles 209(4) and 206(1)(a)(b) of the Constitution	The definition of the phrase "revenue" be amended by deleting the word "means" and substituting therefor with the word "include"	<p>The definition of revenue is a fundamental issue and forms the backbone of Chapter 11 and 12 of the Constitution in the Context of Devolution and Revenue sharing.</p> <p>The survival of the county governments shall for the most part be hinged on revenue received from the nationally raised revenue hence the need to apply a liberal meaning to revenue.</p>
5(2)	The chairperson and members of the Commission shall, pursuant to Article 250(5) of the Constitution, serve on a part-time basis.	<p>CIC proposes that the subsection be deleted and substituted for.</p> <p>"Any of the members of the Commission may serve on a part time basis"</p>	To avoid any conflict with article 250(5) of the Constitution, it is imperative that the Act does not limit the discretion already guaranteed by the Constitution.
5(3)	The chairperson and members of the Commission shall be non-executive and shall perform their functions in accordance with Article 216 of the Constitution	CIC proposes that the subsection be deleted.	The concept of non-executive membership can undermine the spirit of the Constitution as envisaged under Chapter Fifteen and may incapacitate the Commission's ability to carry out its mandate.
6(1)(3)	(1) A person shall be qualified for appointment as the chairperson or a member if the person— (a) holds a degree from a university or an equivalent	The words "an equivalent professional qualification" should be done away with from the statute.	The imprecision in the term equivalent can be abused as it lacks necessary certainty. It is also not consistent with qualifications

	professional qualification recognized in Kenya;		members of other commissions
27	For the avoidance of doubt and notwithstanding any other provision of this Act, the provisions of this Act shall apply without prejudice to the appointment and terms and conditions of service of the chairperson and members of the Commission in office at the commencement of this Act.	It is important that this section be recast to read as follows;  “For the avoidance of doubt, the appointment and terms and conditions of service of the chairperson and members of the Commission, shall continue to apply without prejudice of this Act.”	A plain reading of this section shows ambiguity hence the need to reword the same.
<b>The Independent Offices (Appointment) Act, 2011</b>			
4 (1)(e)	A person shall be qualified for appointment as Auditor General or the Controller of the Budget if such persons (among other things)... is a member in good standing of a professional body for accountants recognized by law”	The requirements in Section should be deleted	The Act, through this section, expands the qualification of the Auditor General and the Controller of Budget which have no constitutional backing. The requirement that the nominees be members of good standing of the professional bodies is ambiguous and heaps on these bodies the discretion of determining the qualification of who would be appointed members to constitutional offices.

<b>THE ELECTIONS ACT, 2011</b>			
<b>CONSTITUTIONAL ISSUES</b>			
<b>Section</b>	<b>Provision in the Act</b>	<b>CIC Proposal</b>	<b>Justification</b>
1	This Act may be cited as the Elections Act, 2011 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint	Delete the words “shall come into operation on such date as the Minister may, by notice in the Gazette, appoint” so that it reads:  “This Act may be cited as the Elections Act, 2011 and shall come into operation on gazzettment”	Section 9 of the Interpretation and General Provisions Act (Cap 2) provides that an Act shall come into operation either on the day on which it is published in the Gazette or on a day or time specified in the Act.  Therefore, the date of enactment of this Act should not be subject to ministerial direction.
2	“nomination” means the submission to the Commission of the name of a candidate in accordance with the Constitution and this Act	Amend to read:  ““nomination” means the nomination by a political party and the submission to the Commission of the name of a candidate in accordance with the Constitution and this Act;”	The word nomination is used in three different ways in the Constitution and in the Act; hence its definition in the preliminary should not reduce it into only one of the three meanings.  As such, the definition should show clarity in three different types of nominations as follows:  (a) nomination of a candidate by a political party to vie for elective seats  (b) nomination of candidates into a party list as provided for in Article 90  (c) Presentation of papers to the Commission from the nominations under (a) & (b) above.
2	“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	Amend to read:  “party list” means a party list of candidates nominated by a political party through an election conducted and supervised by the Commission and submitted to the	Article 90 does not ask a political party to prepare a party list. They are required to nominate and the nominations shall be conducted and supervised by the Commission

	sections 29, 34, 35, 36 and 37;	Commission pursuant to and in accordance with Article 90 of the Constitution and sections 29, 34, 35, 36 and 37	
(5) (1) (a)	<p>(5) (1) Registration of voters and revision of the register of voters under this Act shall be carried out at all times except—</p> <p>(a) in the case of a general election or an election under Article 138(5) of the Constitution, between the date of commencement of the ninety day period immediately before the election and the date of such election;</p>	<p>Insert the words, ‘thirty day’ in order to capture the election under Article 138 (5), so that it reads:</p> <p>“(1) Registration of voters and revision of the register of voters under this Act shall be carried out at all times except—</p> <p>(a) in the case of a general election or an election under Article 138(5) of the Constitution, between the date of commencement of the ninety day or thirty day period immediately before the election and the date of such election;”</p>	The provision as it currently stands is not possible given that the election under article 138 (5) is within 30 days
13 (2)	<p>A political party shall not change the candidate nominated after the nomination of that person has been received by the Commission:</p> <p>Provided that in the event of the 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 after notifying the candidate that the party seeks to substitute, where applicable its candidate</p>	<p>A) Delete the words “or of the violation of the electoral code of conduct by the nominated candidate” ;</p> <p>B) Also amend to read:</p> <p>“A political party shall not change the candidate nominated:</p> <p>2) Provided that in the event of the death, resignation or incapacity of the nominated candidate,</p> <p>(a) before the date of presentation of nomination papers to the Commission, the political party may after notifying the candidate that the party seeks to substitute where applicable, nominate an alternative candidate subject to the Constitution, regulations set out by the Commission and the</p>	<p>The provision contradicts and makes some penalties ineffective – specifically, the punishment for violation of elections code of conduct and Articles 81, 84 and 91,</p> <p>1) The provision contradicts itself in that it gives provisions for both before and after the submission of papers to the Commission. The provision should only allow for substitution of candidates before the submission of papers to the Commission;</p> <p>2)The provision makes some penalties ineffective, specifically:</p> <p>(i) the punishment for violation of elections code of conduct (see 15, 18, 57, 68, 72 and 110 of this Act)</p> <p>(ii)consequences of deregistration under the Political Parties Act ( Sections 8, 21, 30 &amp; 45)</p>

	<p>before the date of presentation of nomination papers to the Commission.</p>	<p>party rules;</p> <p>(b) after the nomination by the political party of the person has been received by the Commission, the political party may after notifying the candidate that the party seeks to substitute where applicable, nominate an alternative candidate, subject to the Constitution, regulations set out by the Commission and the party rules”</p> <p>C) Add a new subsection 3 to read:</p> <p>“Subject to Article 138 (8) of the Constitution, sub-section (2) (b) shall not apply to the nomination of a presidential candidate.”</p>	<p>(iii) Articles 81, 84, 91 and 138 of the Constitution.</p> <p>(iv) Article 138 (8) (b) specifies that in the event of death of a presidential or deputy presidential candidate, an election shall be cancelled and a new election held.</p>
13 (3)	<p>Notwithstanding subsection (1), in the case of any other election, the Commission shall by notice in the prescribed form, specify the day or days upon which political parties shall nominate candidates to contest in a presidential, parliamentary or county election in accordance with its constitution or rules, which shall not be more than twenty-one days after the date of publication of such notice.</p>	<p>1)Substitute ‘county election’ for governor &amp; county assembly elections;</p> <p>2)Redraft to capture the three levels of nomination at the party level, to the commission and for party lists;</p> <p>3)Delete the word ‘or’ between the words ‘constitution’ and ‘rules’ and substitute with the word ‘and’;</p> <p>So that the sub-section should now read:</p> <p>“Notwithstanding subsection (1), in the case of any other election, the Commission shall by notice in the prescribed form, specify the day or days upon which political parties shall</p> <p>(a) nominate and submit to the Commission the names of candidates to contest in a presidential, parliamentary or</p>	<p>1) The constitution does not recognize the term ‘county election’</p> <p>2) The process relating to political parties nomination is not well articulated. The role of the Commission as stipulated in Article 88 (4) of the Constitution is not defined in the Act.</p> <p>3) The provisions of the Constitution are not optional. As it reads, the word ‘or’ may be interpreted to mean either the Constitution or the rules of the political party can be followed, while in fact, the rules of the political party must conform with the constitution.</p>

		<p>county governor or county assembly election;</p> <p>(b) nominate candidates into party lists in accordance with Article 90 of the Constitution and submit to the Commission the names of the nominated candidates;</p> <p>in accordance with its constitution and rules, which shall not be more than twenty-one days after the date of publication of such notice.”</p>	
14 (2) (a)	<p>The notice referred to in subsection (1) shall be in the prescribed form and shall specify—</p> <p>the nomination day for the presidential election;</p>	<p>Capture the two levels of nomination required for a presidential candidate, i.e. nomination through elections at the party level and the submission of papers to the Commission, so that it reads:</p> <p>“The notice referred to in subsection (1) shall be in the prescribed form and shall specify—</p> <p>the days for nomination and submission to the Commission the names of candidates for the presidential election;”</p>	<p>Given that there are two levels of nominations used within Constitution (Articles 82, 88) in reference to a presidential nominee, it is unclear which nomination is being referred to; hence, the recommendation gives clarity to this.</p>
15 (1)	<p>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, the political party may substitute its candidate, the political party may substitute its</p>	<p>1) Delete the words “or of the violation of the electoral code of conduct by the nominated candidate” ;</p> <p>2) Amend the subsection to capture the events to occur before and after presentation of papers to the commission as follows:</p> <p>“(a) A presidential candidate or a political party shall not at any time change the person nominated as a deputy presidential candidate after the</p>	<p>The provision contradicts and makes some penalties ineffective – specifically, the punishment for violation of elections code of conduct and Articles 81, 84, 91.</p> <p>Article 138 (8) (b) specifies that in the event of death of a presidential or deputy presidential candidate, an election shall be cancelled and a new election held.</p>



	<p>candidate before the date of presentation of nomination papers to the Commission.</p>	<p>nomination of that person has been received by the Commission.</p> <p>(b) In the event of death, resignation or incapacity of the nominated candidate before the date of presentation of nomination papers to the Commission, the presidential candidate or political party may after notifying the candidate that the party seeks to substitute where applicable, substitute its deputy presidential nominee”</p>	
16 (2)	<p>The notice referred to under subsection (1) shall be in the prescribed form and shall specify—</p> <p>(a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;</p> <p>(b) the day for the nomination of candidates for the parliamentary election;</p>	<p>Capture the three levels of nomination required for a parliamentary election candidate, i.e. nomination through elections at the party level, party list and the submission of papers to the Commission, so that it reads:</p> <p>“The notice referred to under subsection (1) shall be in the prescribed form and shall specify—</p> <p>(a) the days upon which political parties shall nominate candidates and submit a party list in accordance with Article 90 of the Constitution;</p> <p>(b) the days for the nomination and submission of names of candidates for the parliamentary election;</p>	<p>There are three levels of nomination of candidates to vie for seats in a parliamentary election. As such, this should be well captured to be in line with the Constitution.</p>
17 (2)	<p>(2) The notice referred to in subsection (1) shall be in the prescribed form and shall specify—</p> <p>(a) the day for the nomination of candidate for the</p>	<p>Capture the two levels of nomination required for a candidate to vie for governorship, i.e. nomination through elections at the party level and the submission of papers to the Commission so that it reads:</p>	<p>Given that there are two levels of nominations used within Constitution (Articles 82 and 88) in reference to a county governor nominee, it is unclear which nomination is being referred to; hence, this recommendation gives clarity to this.</p>

	county governor election;	<p>“The notice referred to in subsection (1) shall be in the prescribed form and shall specify—</p> <p>“the days for the nomination and submission to the commission the name of candidates nominated for the county governor election;”</p>	
18	<p>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.</p>	<p>Delete the phrase “or of the violation of the electoral code of conduct by the nominated candidate”</p> <p>Amend the to read:</p> <p>(a) before the date of presentation of nomination papers to the Commission, the political party may after notifying the candidate that the party seeks e, where applicable, to substitute its candidate subject to the Constitution, regulations set out by the Commission and the party rules</p> <p>(b) after the nomination of the person has been received by the Commission, the political party may after notifying the candidate that the party seeks where applicable, substitute its candidate, subject to the Constitution, regulations set out by the Commission and the party rules.”</p>	<p>The provision contradicts and makes some penalties ineffective – specifically, the punishment for violation of elections code of conduct and Articles 81 and 84 of the constitution</p> <p>While recognizing the provisions of Article 6 of the Constitution, which would require that this provision should be similar to the provisions proposed for amendment to section 15 of this Act, i.e. for the change of a deputy presidential nominee candidate, there may be too many repeat elections in case of multiple deaths, resignations or incapacity after the presentation of papers to the Commission and hence turn out to be costly.</p>
<u>New Section</u> Removal of County Governor	The Act does not provide the procedure for removal of a county governor.	<p>Insert the provision for removal of county governor as previously provided for as follows:</p> <p>“(1) A member of a county assembly, supported by at least one third of the members of the Assembly, may move a motion for the removal of the county</p>	<p>This is a constitutional requirement to give effect to Article 181 (2) of the Constitution. The people of Kenya have a constitutional right to remove their representatives at both levels of government and there should be a similar provision for removal of a county governor as there is for</p>

		<p>governor from office on any of the grounds specified in Article 181 of the Constitution.</p> <p>(2) If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly, the speaker of the county assembly shall, within seven days of a resolution by the county assembly, convene a meeting of the county assembly to hear charges against the county governor.</p> <p>(3) The county governor shall continue to perform the functions of the office of governor pending the outcome of the proceedings required by this section.</p> <p>(4) The county assembly may, by resolution, appoint a special committee comprising eleven of its members to investigate the matter.</p> <p>(5) A special committee appointed under subsection (4) shall-</p> <p>(a) investigate the matter; and</p> <p>(b) report to the county assembly within ten days whether it finds the particulars of the allegations against the county governor to have been substantiated.</p> <p>(6) The county governor shall have the right to appear and be represented before the special committee during its investigations.</p> <p>(7) If the special committee reports that the particulars of any allegation against the county governor –</p> <p>(a) have not been substantiated,</p>	<p>the impeachment of the President.</p>
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		<p>further proceedings shall not be taken under this section in respect of that allegation; or</p> <p>(b) have been substantiated, the county assembly shall, after according the county governor an opportunity to be heard, vote on the charges.</p> <p>(8) If at least two-thirds of the members of the county assembly vote to uphold any charge, the county governor shall cease to hold office.</p>	
19 (2)	<p>The notice referred to under subsection (1) shall be in the prescribed form and shall specify—</p> <p>(a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;</p> <p>(b) the day for the nomination of candidates for county elections; and</p>	<p>Capture the three levels of nomination required for county assembly election candidates, i.e. nomination through elections at the party level, party list and the submission of papers to the Commission, so that it reads:</p> <p>“The notice referred to under subsection (1) shall be in the prescribed form and shall specify—</p> <p>(a) the days upon which political parties shall nominate candidates and submit a party list in accordance with Article 90 of the Constitution;</p> <p>(b) the days for the nomination and submission to the Commission the names of candidates for county assembly elections; and</p>	<p>There are three levels of nomination of candidates to vie for seats in county election. As such, this should be well captured to be in line with the Constitution.</p>
22	<p>(1) A person may be nominated as a candidate for an election under this Act only if that person—</p> <p>(a) is qualified to be elected to that office under the Constitution</p>	<p>1) Clarify the exact meaning of ‘post-secondary school’ qualification</p> <p>2) Add two subsections to capture the vetting and clearance aspect for candidates as follows:</p> <p>“(c) has been issued with a</p>	<p>(1) A post-secondary school qualification could be a certificate for any training received after secondary school, from as short a duration as a three day training course to a certificate in a professional study, to a diploma or a university degree. Clarity is</p>

	and this Act; and  (b) holds a post secondary school qualification recognised in Kenya.	certificate of clearance by the Ethics and Anti-Corruption Commission;  (d) has been vetted by a body authorised to do so.”	necessary on the exact level of qualification required here.  (2) Given that candidates vying for elective seats in this Act are going to be state officers, compliance with the ethical values and principles articulated in Chapter 6 of the Constitution must be a pre-qualification for nomination as a candidate. Vetting should be done by a relevant body and a certificate of clearance issued by the Ethics and Anti-corruption Commission.
24(1)(b)	Unless disqualified under subsection (2), a person qualifies for nomination as a member of Parliament if the person—  (b) satisfies any educational, moral and ethical requirements prescribed by the Constitution and this Act	Delete the words 'this Act' and replace with 'an Act of Parliament' so that subsection (b) it reads  “satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament”	Other Acts of Parliament may prescribe moral and ethical requirements. As this is a direct copy of Article 99 (b) of the Constitution, there is need to use the exact wording of the Constitution. The use of ‘this Act’ may negate the provisions of other relevant Acts of Parliament in the vetting process for candidates who wish to vie for seats in parliament.
25 (1)(b)	Unless disqualified under subsection (2), a person qualifies for nomination as a member of a county assembly if the person—  satisfies any educational, moral and ethical requirements prescribed the Constitution and this Act.	Delete the words 'this Act' and replace with 'an Act of Parliament' so that subsection (b) it reads  “Unless disqualified under subsection (2), a person qualifies for nomination as a member of a county assembly if the person—  satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament”	Other Acts of Parliament may prescribe moral and ethical requirements. As this is a direct copy of Article 193 (b) of the Constitution, there is need to use the exact wording of the Constitution. The use of ‘this Act’ may negate the provisions of other relevant Acts of Parliament in the vetting process for candidates who wish to vie for seats in parliament.
34	The election of members for the National Assembly, Senate and county	1) Delete subsections (34) (2), (3) and (4)  2) Add a new provision:	The proposed amendments are to ensure conformity with Article 90 of the Constitution.

	<p>assemblies for party list seats specified under Articles 97 (1) (c) and 98 (1) (b) (c) and (d) and Article 177 (1) (b) and (c) of the Constitution shall be on the basis of proportional representation and in accordance with Article 90 of the Constitution.</p>	<p>“The Commission shall be responsible for the conduct and supervision of elections of candidates for seats specified under subsection (1)”</p> <p>3) Amend subsection 5 to read:</p> <p>“A political party which nominates a candidate for election for the seats specified in subsection (1) shall submit to the Commission a party list in order of the priority in which they are listed.”</p> <p>4)Amend subsection (6) to include the provisions of subsection (2), (3), and (4) as follows:</p> <p>“The party lists submitted to the Commission under this section shall be in accordance with the constitution, the regulations prepared by the Commission in line with section 109 (d) and nomination rules of the political party concerned”</p> <p>5) Add a new subsection:</p> <p>“The Commission and an authorized officer of the political party shall sign off the names listed in the party list”</p>	
34 (6)	<p>The party lists submitted to the Commission under this section shall be in accordance with the constitution or nomination rules of the political party concerned.</p>	<p>Delete the word ‘or’ and replace with ‘and’, so that it reads:</p> <p>“The party lists submitted to the Commission under this section shall be in accordance with the constitution and nomination rules of the political party concerned.”</p>	<p>The rules of a political party relating to the nomination of candidates must be in line with the Constitution.</p>
34 (9)	<p>The party list may not contain a name of any</p>	<p>Delete the word ‘may’ and substitute with ‘shall’ and</p>	<p>The party list is only for nomination of candidates in line</p>

	<p>Presidential or Deputy Presidential candidate nominated for an election under this Act.</p>	<p>amend the provision to read: The party list shall not contain a name of any candidate nominated to vie for a seat under Articles 97 (1)(a) and (b), 98 (1)(a), 137, 177 (1)(a) and 180 (1) of the Constitution</p>	<p>with article 97 (1) (c), 98 (1) (b), (c), (d) and 177 (1) (b), (c). This is an affirmative action principle to promote the representation in parliament of women, persons with disability, youth, and marginalised communities.</p> <p>As such, persons already nominated to vie for competitive elections cannot also be nominated into the party lists for special seats under Article 90 of the Constitution.</p> <p>Moreover, to provide for only the presidential and the deputy presidential candidates not to appear in the party list is discriminatory against candidates and hence violating the values of Articles 10, 91 (1) (d) to (h) and 92 (i). The provision will violate the national values and principles of fairness, equality before the law, democracy and social justice.</p>
<p>39 (2)</p>	<p>Before determining and declaring the final results of an election under subsection (1), the Commission may announce the provisional results of an election.</p>	<p>Delete the word 'may' and substitute it with 'shall' so that the provision reads: Before determining and declaring the final results of an election under subsection (1), the Commission shall announce the provisional results of an election.</p>	<p>This violates Article 86 (b) &amp; (c) of the Constitution. At every election, the Independent Electoral and Boundaries Commission shall ensure that—</p> <p>(b) the votes cast are counted, tabulated and the results announced promptly by the presiding officer at each polling station;</p> <p>(c) the results from the polling stations are openly and accurately collated and promptly announced by the returning officer;</p> <p>The above two constitutional provisions suggest that the announcement of provisional results by the Commission is not</p>

			optional.
43 (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.	1) Amend to read: “Except for sub-section 43 (1) (d), 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.	Only sub-section 43 (1) (d) should not apply to the named persons. State resources should not be used by any person to initiate development projects at least three months before a general election.
45 (3)	A recall of a member of Parliament under subsection (1) shall only be initiated upon a judgment or finding by the High Court confirming the grounds specified in subsection (2).	Delete this provision.	The provision violates the sovereign power of the people as stipulated in Article 1 of the Constitution and limits the constitutional right under Article 104 of the electorate to recall. It is the right of the people to initiate a recall election, and if all requirements are met, a recall election should be held.
45 (4)	A recall under subsection (1) shall only be initiated twenty-four months after the election of the member of Parliament and not later than twelve months immediately preceding the next general election.	i) Delete the phrases: “twenty-four months” and replace with “at any time ii) Delete the phrase: “not later than twelve months immediately preceding the next general election”, so that the sub-section reads: “Subject to Article 104 of the Constitution, a recall under subsection (1) shall be initiated at any time after the election of the member of Parliament”	The provision violates the sovereign power of the people as stipulated in Article 1 and of the Constitution and limits the constitutional right under Article 104 of the electorate to recall. The Constitution gives power to the electorate to be able to initiate a recall election any time after the election of a member of parliament. As such, A recall election cannot be limited to only two out of five years of the life of an MP in parliament.



45 (5)	A recall petition shall not be filed against a member of Parliament more than once during the term of that member in Parliament	Delete this provision	The sovereign power of the people as stipulated in Article 1 and of the Constitution and limits the constitutional right under Article 104 of the electorate to recall. If an MP is in breach of sub-section 45 (2) the member should be recalled immediately, notwithstanding any previous petitions of a recall for the MP.
45 (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	Delete this provision	This limits the constitutional right of a citizen to file for a petition to recall an MP. An unsuccessful contestant of an election will be a member of the electorate like any other citizen, and as such should be able to file a petition.
46 (1) (c)	A recall under section 45 shall be initiated by a petition which shall be filed with the Commission and which shall be—  (c) accompanied by an order of the High Court issued in terms of section 45(3).	Delete this provision	As it currently stands, this provision violates the sovereign power of the people as stipulated in Article 1 of the Constitution. It is the right of the people to initiate a recall election, and if all requirements are met, a recall election should be held.
46 (2) (c)	The petition referred to in subsection (1) shall—  be accompanied by the fee prescribed for an election petition.	Delete this provision	As the electorate has a constitutional right to initiate a petition for the recall of a member of parliament, this right should not be pegged to a fee

57 (2)	(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.	In line with Article 83 (1) (c) of the Constitution, delete the phrase “in that election or in the next election” and insert “in any election in the proceeding five years” so that it reads:  “(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 any election in the proceeding five years”	As it stands, the provision could lead to a violation of Article 83 (1) (c) as :  (i) if there are no by-elections, a person may be barred from voting for a longer period than five years.  (ii) if there are by-elections, a person may be barred from voting for a shorter period of time than five years.
78 (2)	A person who presents a petition to challenge an election shall deposit—  (a) one million shillings, in the case of a petition against a presidential candidate;  (b) five hundred thousand shillings, in the case of a petition against a member of Parliament or a county governor; or  (c) one hundred thousand shillings, in the case of a petition against a member of a county assembly.	Delete the stipulated fees and amend the sub-section to read:  “A petitioner who presents a petition to challenge an election shall deposit a fee as may be prescribed by the Court”	If stipulated in law, such fees could be too prohibitive to the ordinary Kenyan citizen and could be a violation of access to Justice under Article 48 of the Constitution,
109 (d)	(d) to provide for the manner of nomination , allocation and re-allocation of special seats and mechanisms for resolving disputes arising out of such nomination, allocation and re-allocation;	Add a new subsection as follows: (i) to provide for the manner of nomination, allocation and re-allocation of special seats and mechanisms for resolving disputes arising out of such nomination, allocation and re-allocation; (ii) to provide for the manner of nomination for the seats under 82 (1) (d) and the manner of	This is to ensure that the mentioned Articles are captured in legislation as required by the Constitution

		compliance with Articles 84, 88 (4) (d) and (k) and 91 (h) of the Constitution	
<b>PROPOSALS THAT WOULD ADD VALUE TO PROVISIONS IN THE ACT</b>			
<b>Section</b>	<b>Provision in the Act</b>	<b>CIC Proposal</b>	<b>Justification</b>
32 (2)	The Commission shall, upon receipt of the symbol submitted to it under subsection (1) approve or reject the symbol	Clearly define the period of time within which the Commission can approve or reject the symbol for independent candidates  This could be captured in regulations.	It is not clear in what timeframe after submission of papers the Commission approves or rejects the symbols.  In the interest of fairness so as to protect the rights of independent candidates, and to avoid delays which may be caused due to re-submissions, the period referred to should be clearly defined.
<u>New subsection</u>		On the Prime Minister, add a transitional subsection (7) to read:  “(7) Sub-section 43 (6) (b) shall only apply until after the first general election held under the Constitution of Kenya 2010 and this Act.”	The office of the Prime Minister will only exist until after the first general election held under the Constitution of Kenya, 2010. As such, any reference made to the Prime Minister in this Act should clearly allude to this fact.
109 (v)	prescribe the procedure for advance voting for special categories including patients admitted in hospital, pastoralists, armed forces, elections officers and other citizens of Kenya providing essential services;	Amend to read:  “Until such a time when elections can be carried out on the same day, prescribe the procedure for advance voting for special categories including patients admitted in hospital, pastoralists, armed forces, elections officers and other citizens of Kenya providing essential services.”	The general election is mentioned as taking place on a specific day in the following Articles of the Constitution: 101 (1), 136 (2) (a), 177 (1)(a) and 180(1). This is a violation of the constitution. While all voting should take place on the same day, the right of all persons to vote should be resected. Hence, for the purpose of clarity, the recommendation provides for a scenario where the rights of persons with disabilities and other special needs is protected while at the same time striving for technological advancements which will eventually provide for all voting to take place on the same

			day.
<b>EDITORIAL COMMENTS</b>			
<b>Section</b>	<b>Provision in the Act</b>	<b>CIC Proposal for Amendment</b>	<b>Justification</b>
2, 5, 7, 69, 72 and 109,	Use of the term 'electoral area'	Delete the word 'area' and instead insert 'unit' so that it reads 'electoral unit'	The Constitution uses the term 'electoral unit'
108	All candidates and political parties participating in an election shall be allocated reasonable airtime on state radio and television broadcasting services during the campaign period.	Delete 'radio and television' and to amend the provision to be line with the Constitution, so as to read:  "All candidates and political parties participating in an election shall be allocated reasonable airtime on state owned broadcasting media during the campaign period."	Article 92 of the Constitution refers to broadcasting media. The specification of 'radio and television' limits other forms of broadcasting media services. There is need for the provision in the Act to conform to the constitutional provision
109 (1) (s) Conformity with language used in the Constitution	The Commission may make regulations generally for the better carrying out of the purposes and provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, may make regulations to—  provide for the allocation by the Commission, in a just and equitable manner of the use of state owned radio and television broadcasting services during any election period;	Delete 'radio and television' and to amend the provision to be line with the Constitution, so as to read:  "provide for the allocation by the Commission, in a just and equitable manner of the use of state owned broadcasting media during any election period"	Article 92 of the Constitution refers to broadcasting media. The specification of 'radio and television' limits other forms of broadcasting media services. There is need for the provision in the Act to conform to the constitutional provision.

**THE POLITICAL PARTIES ACT, 2011**

**CONSTITUTIONAL ISSUES**

Section	Provision in the Act	CIC Proposal	Justification
1	This Act may be cited as the Political Parties Act, 2011 and shall come into operation on such date as the Cabinet Secretary may by notice in the Gazette, appoint.	Delete the phrase “and shall come into operation on such date as the Cabinet Secretary may by notice in the Gazette, appoint.”	Section 9 of the Interpretation and General Provisions Act (Cap 2) provides as follows: An Act shall come into effect either on the day on which it is published in the Gazette or on a day or time specified in the Act.  Therefore, the day of enactment of this Act should not be subject to ministerial direction.
11 (7)	Where a political party merges with another political party, a member of the political party that has merged with another political party who is a member of Parliament or of a county assembly, and who does not desire to be a member of the political party formed after the merger shall continue to serve as a member of Parliament or of the county assembly, and may join another political party or choose to be an independent member for the remainder of the term of the member.	Delete the phrase “shall continue to serve as a member of Parliament or of the county assembly, and may join another political party or choose to be an independent member for the remainder of the term of the member,” and amend the provision to read:  “Where a political party merges with another political party, a member of the political party that has merged with another political party who is a member of Parliament or of a County Assembly, and who does not desire to be a member of the political party formed after the merger shall be deemed to have resigned from the political party and may seek	This provision is unconstitutional in terms of Articles 10, 38, 85, 91, 99, 101, 103, 193, 194 because :  <ul style="list-style-type: none"> <li>▪ A member of parliament or a county assembly who does not desire to be a member of the political party formed after a merger shall be deemed to have resigned from the party within the meaning contemplated under Article 103 (1) (e) and (3) and 194 (1) (e) and the office declared vacant;</li> <li>▪ Section 14 (5) of the Political Parties Act provides for the circumstances under which a member of a political party shall be deemed to have resigned from the party, specifically paragraph (c), which provides “<i>joins another political party</i>” and paragraph (e) which provides, “<i>promotes the ideology, interests or policies of another political party.</i>”</li> <li>▪ Section 11 (7) of this Act is inconsistent with Article 101(4) of the Constitution which</li> </ul>

		<p>a fresh mandate from the electorate through a by-election either as an independent candidate or as a member of another political party.”</p>	<p>provides that whenever a vacancy occurs in the office of a member of parliament, a by-election shall within ninety days of the vacancy.</p> <ul style="list-style-type: none"> <li>▪ One of the basic requirements of a political party under Article 91 (1) (e) of the Constitution is that it should abide by democratic principles of good governance; hence political party decisions must be subscribed to fully by all its members;</li> <li>▪ The spirit of Articles 10 (2) (a) and 38 (2) of the Constitution is that the will expressed by the electorate, by voting for a candidate belonging to a particular party, should be respected.</li> <li>▪ Articles 99 (1) (c) and 193 (1) (c) provide that a person is elected into parliament or a county assembly either through a political party or as an independent candidate; hence, a sitting member cannot simply join another party or declare oneself an independent member without being subjected to an election.</li> <li>▪ Articles 85 provides for the grounds under which a person is eligible to be elected into parliament and a County Assembly as an independent candidate.</li> </ul>
17 (3)	<p>A member of a political party may, during working hours and on payment of the prescribed fee, inspect and obtain copies of the records of a political party</p>	<p>Delete the requirement for members to pay a fee to inspect the party’s records, so that the provision reads, “A member of a political</p>	<p>This provision violates Article 35 on access to information as relates to achieving the political rights provided in section 38 (1) (b).</p>

	<p>maintained at its head office or county office.</p>	<p>party may, during working hours, inspect the records of the political party maintained at its head office or county office and upon payment of a prescribed fee, obtain copies of the records.”</p>	<p>A fee should only be payable if a member wants to make copies of records.</p>
<p>22 (2)</p>	<p>Where a political party that has been deregistered under section 21 had representatives elected to Parliament, or County Assembly, such representatives shall continue to serve for the remainder of their term as independents or as members of other political parties.</p>	<p>Delete the phrase “such representatives shall continue to serve for the remainder of their term as independents or as members of other political parties,” and amend the provision to read:</p> <p>“Where a political party that has been deregistered under section 21 had representatives elected to Parliament, or County Assembly, the office of such representatives shall be deemed to be vacant and the representatives may seek a fresh mandate from the electorate through a by-election either as an independent candidate or as a member of another political party.”</p>	<p>This provision is unconstitutional as per Articles 10, 85, 91, 99, 103, 193, 194</p> <ul style="list-style-type: none"> <li>▪ Article 91 of the constitution provides that political parties are a platform through which democratic values shall be practiced. Allowing elected members whose party has been deregistered to continue being in office is a violation of this provision and may negate the national values and principles of Article 10</li> <li>▪ By virtue of Articles 99 (1) (c) and 193 (1) (c) of the Constitution, a person is disqualified from being a member of parliament or county assembly;</li> <li>▪ If a political party is deregistered, a member of the political party should seek fresh mandate from the electorate through a by-election either as an independent candidate or as a member of another political party;</li> <li>▪ In the interest of fairness and democracy, it is important that once a party is deregistered, its members should not be allowed to continue enjoying the benefits</li> </ul>

			of party membership.
24 (1) (a)	<p>The sources of the Fund are—</p> <p>(a) such funds not being less than zero point three per cent of the revenue collected by the national government as may be provided by Parliament</p>	<p>Delete the phrase “not being less than” and in instead insert “not exceeding”:</p> <p>(a) The sources of the Fund are—</p> <p>“such funds not exceeding zero point three per cent of the revenue collected by the national government as may be provided by Parliament”</p>	<p>Articles 217 and 218 provide for how funds should be allocated on a yearly basis. The current provision is unconstitutional to the extent that it allocates specific percentage of national revenue to political parties.</p> <p>The provision of the Act may result in a situation that means that political parties are entitled to a limitless fraction of the national government revenue.</p>
(25) (1)	<p>(1)The Fund shall be distributed as follows-</p> <p>(a) ninety five per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election; and</p> <p>(b) five percent for the administration expenses of the Fund.</p>	<p>Insert criteria that provides for the determination of party entitlements to the Political Parties Fund on the basis of affirmative action and the promotion of participation of marginalised groups.</p> <p>For example:</p> <p>(a)twenty percent shall be distributed equally among all political parties;</p> <p>(b)seventy five percent shall be distributed proportionately based on the votes secured in the preceding general election as follows—</p> <p>(i) ten percent to political parties which secured at least one senate, national assembly or governor seat;</p> <p>(ii) ten percent to political parties which secured at least two percent of the total parliamentary votes cast;</p> <p>(iii) ten percent to political parties which secured at</p>	<p>The provision lacks any incentive to political parties through funding to uphold the letter and spirit of the Constitution with respect to promoting affirmative action in as far as minorities and marginalized groups are concerned, as required by Articles 27, 54 (2), 55 (b), 56 (a) and 100 which contemplate affirmative action to enable disadvantaged groups take part in national affairs.</p> <p>In the case of women, this will also help to administratively solve part of the challenge of how Article 81 (b) shall be complied with in as far as Article 97) is concerned.</p> <p>Moreover Article 91 (e) and (g) and Article 100 require parliament to enact legislation to promote the representation in parliament of women, persons with disability, youth, ethnic and other minorities and marginalized communities.</p> <p>The Political Parties Act, 2011 is one such legislation and the</p>



		<p>least four percent of the total county votes cast;</p> <p>(iv) ten percent to political parties whose women candidates secured at least four seats in the National Assembly, excluding the women nominated under Article 90 and the women elected under Article 97(1) (b) of the Constitution;</p> <p>(v) ten percent to political parties whose women candidates secured at least two seats in the Senate, not being the seats referred to under Article 90 and the women elected under Article 98 (1) (b), (c) and (d) of the Constitution;</p> <p>(vi) ten percent to political parties whose women candidates secured at least twelve seats in the county assembly ,excluding the women nominated under Article 90 and Article 177 (1) (b) of the Constitution;</p> <p>(vii) ten percent to political parties whose women candidates secured at least twelve seats in the National Assembly, excluding the women nominated under Article 90 and the women elected under Article 97 (1) (b) of the Constitution ;</p> <p>(viii) three percent to political parties whose women candidates secured at least six seats in the Senate, excluding the women nominated under Article 90 and the women</p>	<p>Political Parties Fund is one way through which parties are obligated to comply with the Constitution. Each and every entity is required to meet the requirements, especially those relating to values and the bill of rights, of the Constitution</p>
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		<p>elected under Article 98(1) (b), (c) and (d) of the Constitution;</p> <p>(ix) two percent to support parties which are provisionally registered;</p> <p>(c) five percent for the administration expenses of the Fund</p>	
<p><u>New subsection</u></p> <p>25 (4)</p>	Not provided	<p>Insert a new subsection (4) to read:</p> <p>“The distribution of funds under subsection (1) (b) shall be revised annually”</p>	<p>Each political party’s elected members in the elective bodies may change from year to year depending on successful election petitions, recalls, and by-elections. It is therefore important that these changes be reflected in the allocation of funds so as to reflect the constitutional principle of fairness and the right of the people as per Article 104. Moreover, Articles 217 and 218 of the Constitution allocates funds on an annual basis so parties which obtain funds from the consolidated fund should adhere to the same spirit.</p>
37 (3)	The Public Service Commission shall consider the petition and, if it is satisfied that it discloses the existence of a ground under subsection (1), it shall send the petition to the President	<p>Delete the phrase “consider the petition and, if it is satisfied that it discloses the existence of a ground under subsection (1), it shall”, so that it reads:</p> <p>“The Public Service Commission shall send the petition to the President”</p>	The Public Service Commission should not determine whether or not the grounds for removal of the registrar have been satisfied. Instead, the PSC should simply receive the petitions and send them to the president.
44 (2)	The Chairperson and members of the Tribunal shall be paid such allowances and be reimbursed such expenses as shall be determined by the Judicial Service	<p>Delete the provision that the words “shall be determined by the Judicial Service Commission which determine on”,</p> <p>and amend to read as</p>	<p>Members of the tribunal established under this Act are defined as judicial officers within the meaning of Article 260 of the Constitution.</p> <p>Under Article 172 (1)(b)(i), the JSC cannot determine, review or</p>

	Commission which determine on the recommendation of the Salaries and Remuneration Commission.	follows: “The Chairperson and members of the Tribunal shall be paid such allowances and be reimbursed such expenses upon consideration of the recommendation of the Salaries and Remuneration Commission.	make recommendations on salaries of judicial officers.
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**PROPOSALS THAT WOULD ADD VALUE TO PROVISIONS IN THE ACT**

Section	Provision in the Act	CIC Proposal	Justification
14 (2)	<p>(1) A member of a political party who intends to resign from the political party shall give a thirty-days written notice prior to his resignation to—</p> <p>(a) the political party;</p> <p>(b) the Clerk of the relevant House of Parliament, if the member is a member of Parliament; or</p> <p>(c) the clerk of a county assembly, if the member is a member of a county assembly.</p> <p>(2) The resignation of the member of the political party shall take effect upon receipt of such notice by the political party or clerk of the relevant House or county assembly.</p>	<p>Harmonize sub-section 14 (2) to 14 (1) by deleting the phrase, “receipt of such notice by the political party or clerk of the relevant House or County Assembly” and amend as follows:</p> <p>“The resignation of the member of the political party shall take effect from the date of communication of its acceptance by the Political Party or the Clerk of the relevant House of Parliament or County Assembly or on the expiry of the notice period, whichever is earlier.”</p>	<p>The provision of section 14 (2) contradicts and nullifies the thirty day notice prescribed in section 14 (1).</p> <p>Sub-section (1) is a mandatory requirement that any member of a political party who intends to resign shall give a thirty days’ notice.</p> <p>The thirty day notice is necessary in any setup, for example, for purposes of handing over office.</p>
18 (1)	The Registrar may, issue a written notice, in the prescribed form, to the chairperson or secretary-general of a political party to furnish for inspection by	<p>Delete the words ‘to the chairperson or secretary-general’ and amend as follows:</p> <p>“The Registrar may, issue a</p>	<p>This is to ensure that any person authorized for the given activity is covered by the provision.</p> <p>Parties are not required to designate their office holders as</p>

	the Registrar, the records required to be maintained under section 17, or such other information as is reasonably required by the Registrar to ensure compliance with the provisions of this Act.	written notice, in the prescribed form, to the chairperson, secretary-general or an authorised office holder of a political party to furnish for inspection by the Registrar, the records required to be maintained under section 17, or such other information as is reasonably required by the Registrar to ensure compliance with the provisions of this Act.”	chairman or secretary.
26 (1) (c)	(1) Moneys allocated to a registered political party from the Fund shall be used for purposes compatible with democracy including—  covering the election expenses of the political party and the broadcasting of the policies of the political party;	Amend this sub-section for clarity by adding a sub-section that states that political party funds shall not be used to directly campaign for a candidate, as follows:  “limited to covering the election expenses of the political party and the broadcasting of the policies of the political party, and not for the direct financing of a candidate’s campaign”	This provision does not expressly bar use of the funds to cover campaign expenses; hence, parties may assume that they can use political party funds for directly campaigning for a candidate.

**EDITORIAL COMMENTS**

<b>Section</b>	<b>Provision in the Act</b>	<b>CIC Proposal</b>	<b>Justification</b>
25 (2)	(2)Notwithstanding subsection (1), a political party shall not be entitled to receive funding from the Fund if-  (a) the party does not secure at least five per cent of the total number of votes at the preceding general elections  (b) more than two-thirds	(1) Amend the term ‘office bearers’ to ‘office holder’  (2) Amend the section to read:  “(2)Notwithstanding subsection (1), a political party shall not be entitled to receive funding from the Fund only if-  (a) the party does secures at	(1) To avoid confusion, there needs to be a consistency of language used throughout the Act as in section 2 and paragraph 2 of the First Schedule.  (2) To ensure that there is consistency in the constitutional language and the language used in the Act.

	of its registered office bearers are of the same gender.	least five per cent of the total number of votes at the preceding general elections  (b) not more than two-thirds of its registered office holders are of the same gender.”	
41 (4)  Cap 80  Cap 75	The Tribunal shall apply the rules of evidence and procedure under the Evidence Act and the Civil Procedure Code, with the necessary modifications, while ensuring that its proceedings do not give undue regard to procedural technicalities.	Delete ‘Civil Procedure Code’ and amend to ‘Criminal Procedure Code’	Cap 75 of the Laws of Kenya is the Criminal Procedure Code

<b>THE INDEPENDENT ELECTORAL AND BONDARIES COMMISSION ACT, 2011</b>			
<b>CONSTITUTIONAL PROVISIONS</b>			
<b>Section</b>	<b>Provision in the Act</b>	<b>CIC Proposal</b>	<b>Justification</b>
20 (1)	Members and employees of the Commission shall be paid such remuneration or allowances as the Salaries and Remuneration Commission shall determine	Amend the provision to reflect the fact that the Commission should only make recommendation of salaries, as opposed to determination of salaries of employees of the Commission	The Salaries and Remuneration Commission has (a)The authority to set the salaries and allowances of state officers (Article 230 (4) (a)) (b)The Commission has no authority to set the salaries of public officers. It only has the authority to advise the national and county governments (Article 230 (4) (b) on such salaries.
Section (2) (1) of the Fifth Schedule	The Commission shall, in addressing the issues arising out of the first review –  (a) use as its primary reference material the report of the	Add a subparagraph (c) to reflect the fact that the Commission may use that in addition to the mentioned reports, the Commission shall use other reports as it may find necessary, as	The provisions of this section are unconstitutional because:  (a) It directs the Commission on the manner in which it will carry out its constitutional mandate contrary to Article 249 (2) which

	<p>former Boundaries Commission on the first review as adopted by the National Assembly; and</p> <p>(b) use as its secondary reference material the report of the Parliamentary Committee on the report of the former Boundaries Commission on the first review.</p>	<p>follows, i.e.</p> <p>“The Commission shall, in addressing the issues arising out of the first review –</p> <p>(a) use as its primary reference material the report of the former Boundaries Commission on the first review as adopted by the National Assembly; and</p> <p>(b) use as its secondary reference material the report of the Parliamentary Committee on the report of the former Boundaries Commission on the first review; and</p> <p>(c) any other relevant material</p>	<p>grants the Commission independence from any person or authority. The import of Article 249 (2) is that when carrying out its mandate, the Commission is only subject to the constitution. It is admitted that the manner in which the Commission carries out its functions can also be determined by legislation as provided in Article 88 (5) and that such legislation would include the current Act. Such legislation however cannot take away or limit a right given to the Commission by the Constitution.</p> <p>(b) If retained in the form proposed, the Section would hinder the Commission from curing any defects of a constitutional nature that may be contained in the Boundaries Commission report or the Parliamentary report.</p>
Paragraph (2) (2) (a) of the Fifth Schedule	<p>The issues arising out of the first review are - re-distribution of such wards or administrative units in the affected constituencies as may be appropriate;</p>	<p>Delete the term ‘administrative units’ so that it reads:</p> <p>“The issues arising out of the first review are - re-distribution of such wards in the affected constituencies as may be appropriate;”</p>	<p>This Section mandates the Commission to review administrative units whereas Article 89, which grants the IEBC the mandate of reviewing boundaries, makes no mention of administrative units, and indeed, the term is not used in the Constitution</p>
Paragraph (2) (2) (b) of the Fifth Schedule	<p>subject to the Constitution, addressing issues of new 89(6) of the Constitution but at the same time ensuring that such a process shall –</p> <p>(i) take into account the provisions of</p>	<p>Delete the specificities of this paragraph, i.e. sub-paragraphs (i) to (iv) so that it reads as in the IEBC Bill, 2011, i.e.</p> <p>“addressing issues of new constituencies falling outside the population quota as provided for in Article 89 (6) in reference to the national</p>	<p>The paragraph directs the Commission on the manner in which it should carry out its constitutional mandate and prescribes limits on how that mandate will be exercised without any constitutional basis, which is a violation of Article 249 (2) on the independence of Commissions</p>

	<p>Article 89(7)(b) of the Constitution that requires progressive efforts and not instant demographic equality of all towards attaining the population quota in each constituency and ward for the purposes of the first review;</p> <p>(ii) not be subject to new definitions of cities, urban areas and sparsely populated areas or to new population figures</p> <p>(iii) be subject to the use of enumerated national census figures and not projected figures.</p>	<p>census data”</p>	
<p>Paragraph (3) (6) of the Fifth Schedule</p>	<p>Within fourteen days of the expiry of the period provided for in sub-paragraph (5), the Commission shall, taking into account the resolutions of the National Assembly under sub-paragraph (5), prepare and submit its final report outlining the matters set out in sub-paragraph (1)(a) for publication in the Gazette.</p>	<p>Amend to be in line with the provisions of the IEBC Bill, 2011, as follows:</p> <p>“Within fourteen days of the expiry of the period provided for in sub-paragraph (5), the Commission shall, after considering the views received under paragraphs (2) and (5), prepare and submit its final report outlining the matters set out in sub-paragraph (1)(a) for publication in the Gazette.</p>	<p>This Section purports to direct the Commission on what should be included in the Boundaries report by providing that, in its final report, the Commission will “take into account” the resolutions of the National Assembly before preparing its final report for gazettment. This Section is an affront to the Commission’s independence that is protected under Article 249(2)b.</p> <p>Since parliament will have taken a primary role in the setting up of the Commission, and will have expressed its sentiments through the Parliamentary Report, and considering the contentious and personalized nature of the boundaries issue, the constitution anticipates that the Commission shall be guided only by the</p>

			<p>Constitution in determining boundaries.</p> <p>Where members of Parliament give any recommendations on the Boundaries report, these can only be considered by the Commission but they are not binding on the Commission as the Section suggests. Members of Parliament, like all other people of Kenya shall in any event have an opportunity to challenge the report in a court as provided for in paragraph 4 and 5 of the Fifth schedule.</p>
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**PROPOSALS THAT WOULD ADD VALUE TO PROVISIONS IN THE ACT**

<b>Section</b>	<b>Provision in the Act</b>	<b>CIC Proposal</b>	<b>Justification</b>
Section 5 and Paragraphs 3, 4, 5 and 6 of the First Schedule	<p><b>Section 5 of the Act</b></p> <p>(1) The Commission shall consist of a chairperson and eight other members appointed in accordance with Article 250(4) of the Constitution and the provisions of this Act.</p> <p>(2) Subject to section 35, the chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.</p> <p>(3) The procedure set out in the First Schedule shall apply, with the necessary modifications, whenever there is a vacancy in the Commission.</p> <p>(4) The chairperson and</p>	<p>Amend the Act by including a provision that states that all appointing authorities must ensure that the constitutional requirement of Article 250 (4) is respected in the appointments.</p>	<p>The Act does not state that the panel, Parliament and President should take into account the provisions of Article 250 (4) as read with Articles 10, 21(3), 56 and 232 of the constitution. These constitutional provisions require that in appointing members of Constitutional Commissions the appointing authorities must ensure that the Commissions <b>taken as a whole</b> (when considered with appointments to other Commissions) reflect gender equity, regional, ethnic and other diversities of the people of Kenya.</p>



members of the Commission shall perform their functions as provided in the Constitution, and the secretariat shall perform the day to day administrative functions of the Commission.

**First Schedule**

**Par 3:** The National Assembly shall, upon receipt of the names of the nominees, consider them and –

(a) approve one of the nominees; or

(b) reject both of the nominees

**Par (4):** The Clerk of the National Assembly shall notify the respective nominating bodies of the approval or rejection under subparagraph (3).

**Par (5):** If the National Assembly approves a nominee, the Clerk of the National Assembly shall forward the name of the nominee to the President and the President shall appoint the nominee as a member of the Selection Panel.

**Par (6):** If the National Assembly rejects the names of both nominees submitted by a nominating body, the Clerk of the National Assembly

	<p>shall request the nominating body to submit the names of new nominees to the National Assembly for consideration and subparagraphs (2), (3), (4) and (5) shall apply, with necessary modifications, to the consideration of the new nominees.</p>		
<p>Paragraph 1 and 2 of the First Schedule</p>	<p>(1) Within fourteen days of the commencement of this Act, the President shall, in consultation with the Prime Minister and with the approval of the National Assembly, appoint a Selection Panel comprising –</p> <p>(a) two persons, being one man and one woman, nominated by the President;</p> <p>(b) two persons, being one man and one woman, nominated by the Prime Minister;</p> <p>(c) one person nominated by the Judicial Service Commission;</p> <p>(d) one person nominated by the Kenya Anti- Corruption Advisory Board; and</p> <p>(e) one person nominated by the Association of Professional Societies of</p>	<p>Make a provision to ensure that appointing authorities take into account gender, ethnic, regional and other diversities while making nominations to the Selection Panel.</p>	<p>It is necessary that the appointing authorities ensure that the constitutional requirement respecting gender, ethnic, regional and other diversities plus the national values and principles of Article 10 are respected in the make-up of the selection panel. This requirement is not expressly stated in the Act but is nevertheless applicable.</p>

	<p>East Africa</p> <p>(2) The respective nominating bodies under sub-paragraph 1(c),(d) and (e) shall, for purposes of making their nominations, each propose and submit two names of nominees, being one man and one woman, to the Clerk of the National Assembly</p>		
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<b>THE URBAN AREAS AND CITIES ACT, 2011</b>			
<b>PROPOSALS THAT WOULD ADD VALUE TO PROVISIONS IN THE ACT</b>			
<b>Section</b>	<b>Provision in the Act.</b>	<b>CIC proposal.</b>	<b>Justification.</b>
Sec 8 (3)	Omitted	<p>Import subsection 13 (3), with necessary modifications, so that it reads:</p> <p>“The board of a municipality shall, while appointing members of the ad hoc committee, ensure gender equity, representation of persons with disability, youth and marginalized groups.”</p>	<p>To comply with Article 27(8) of the constitution which requires that constitutional provisions on gender balance are met.</p> <p>Also for consistency with similar provisions in this Act.</p>
	“The ad hoc committee shall comprise of relevant professionals in good standing nominated by the following institutions...”	Provide for the maximum number that forms the committee. A total of 7 member represented by the professional bodies provided in the section.	<ul style="list-style-type: none"> <li>▪ To ensure that appointments to ad hoc committees is not subjected to abuse or have inordinate numbers of members.</li> <li>▪ Ensure prudent way of using public resources pursuant to Chapter Twelve, Article 201(d)</li> </ul>

			<p>of the Constitution.</p> <ul style="list-style-type: none"> <li>▪ To ensure values and principles of public service as provided in Article. 232 (b) for efficient, effective and economic use of resources are adhered to.</li> <li>▪ For consistency.</li> </ul>
Sec. 30 (2)	<p>In appointing a manager under subsection (1) the body responsible for county public service shall ensure—</p> <p>(a) gender equity;</p> <p>(b) the inclusion of minorities and marginalised communities; and</p> <p>(c) the person satisfies the requirements of Chapter six of the Constitution.</p>	Add category of persons with disability under sub-section 2	<ul style="list-style-type: none"> <li>▪ To ensure that appointments do not discriminate against persons with disability.</li> <li>▪ To ensure Article. 27 (4) of the constitution is satisfied through avoidance of indirect and direct discrimination against any person on any grounds including disability.</li> <li>▪ For consistency</li> </ul>
Sec. 5(1) (a)	“...has a population of at least five hundred thousand residents according to the final gazetted results of the last population census carried out by an institution authorized under any written law, preceding the grant.”	“...has a population of at least five hundred thousand residents according to the final gazetted results of the last population census carried out by an institution authorized under any written law, preceding the grant <b>of city status.</b> ”	Add the words ‘of city status’ after ‘grant’. For clarity
Sec. 11 (b)	“recognition of the principal and agency	“recognition of the principal and agency relationship	To provide for town committees as towns are part of the urban

	relationship between the boards of urban areas and cities and their respective county governments including”	between the municipality boards <b>or town committees</b> of urban areas and cities and their respective county governments including”	areas envisioned in the constitution.
Sec 16(j)	“A member of a board shall cease to hold office if the member—  (j) engages in any gross misbehaviour or gross misconduct;”	“A member of a board shall cease to hold office if the member—  (j) engages in gross misconduct.”	Delete the phrase “gross misbehavior” for consistency
Sec. 17(5)(a)	“The chairperson shall—  (a) except in the case of a city county, be the head of the board;”	Delete this provision	This provision seems to contradict the earlier provision on composition of cities and municipality governing body and its management.  If the provision is left as it is, then the city county board is without leadership. The Act does not go on to elaborate who heads the city county board.

#### EDITORIAL COMMENTS

Section No.	Provision of the Act.	CIC proposal.	Justification.
Part III, no. 27	“Management city county”	Amend to read:  “management <b>of a county city</b> ”	For clarity
Part V, no. 42	Annual review of integrated and development Plan	Delete the word ‘and’ so that it reads:  “annual review of <b>integrated development plan</b> ”	For clarity . In any case what is meant is an integrated development plan
Part VII, no. 56	Existing bye-laws and orders of local authority	Delete the word ‘bye’ and substitute with ‘by’ so that it	Correct grammar

		reads:  “ <b>Existing by-laws</b> and orders of local authority”	
Sec 18. (3)	“A resident of a city or municipality may file a writing petition with a board for the removal of a chairperson or vice chairperson.	“Delete the word “writing” with the word “written” so that it reads:  “A resident of a city or municipality may file a <b>written</b> petition with a board for the removal of a chairperson or vice chairperson.”	Correct grammar
Sec 21 (t)	“make bye-laws or make recommendations for issues to be included in bye-laws	“make <b>by-laws</b> or make recommendations for issues to be included in <b>by-laws</b> ”	Correct grammar
Sec 23(2)	“Notwithstanding subsection (1), the chairperson may, and upon request in writing by at least one-third of the members of the board shall, convene a special meeting to transaction any urgent business of the board.”	<ul style="list-style-type: none"> <li>▪ Delete the word ‘shall’ after the word board in the third line</li> <li>▪ Delete the word ‘transaction’ in the last line and replace with the word ‘transact’ so that it reads:</li> </ul> <p>“Notwithstanding subsection (1), the chairperson may, and upon request in writing by at least one-third of the members of the board, convene a special meeting to <b>transact</b> any urgent business of the board.”</p>	Correct grammar
Sec. 25	“The chairperson, vice chairperson and members of a board	Add the phrase ‘or committee in the case of town’ after the	To cater for town committees

	shall not receive a salary from the board but shall be paid such allowances and benefits as the county executive committee shall, with the approval of the county assembly, and on the advice of the Salaries and Remuneration Commission, determine.”	word board, so that it reads:  “The chairperson, vice chairperson and members of a board <b>or committee in the case of town</b> shall not receive a salary from the board but shall be paid such allowances and benefits as the county executive committee shall, with the approval of the county assembly, and on the advice of the Salaries and Remuneration Commission, determine.”	
Sec. 26 (c)	A board may –  (c)include persons who are not members of the board in any committee .	Add the words “of its “ between the words “any “and “committee” and make the word” committee” plural, so that it reads:  “A board may –  (c)include persons who are not members of the board in any <b>of its committees”</b>	Correct grammar
Sec. 33(4)	“Where a board decides to contract a private entity for the delivery of services, it shall do so in accordance with the Public Procurement and Disposal Act, 2005.”	“Where a board decides to contract a private entity for the delivery of services, it shall do so in accordance with the Public Procurement and Disposal Act, 2005 <b>or its successor</b> /the relevant law.”	For clarity
Sec. 38	“A city or urban area shall prepare an integrated city or urban area municipal development plan in	Delete the word ‘municipality’ after the words ‘urban area’ so that it reads:  “A city or urban area shall	For clarity

	accordance with the Third Schedule to this Act.”	prepare an integrated city or municipal development plan in accordance with the Third Schedule to this Act.”	
Sec. 40( c)	“the determination of any affirmative action measures to be applied for inclusion of communities referred to under paragraph (b) to access funds from the equilization funds.”	Delete the last word ‘funds’ and replace with ‘fund’ so that it reads:  “the determination of any affirmative action measures to be applied for inclusion of communities referred to under paragraph (b) to access funds from the equilization fund”	Correct grammar
Sec. 43 (2)	Where an urban area or city has a joint venture with another entity, the monies allocated for the joint venture shall be determined by a joint budget.	Recast:  (2) Where an urban area or city enters in a joint venture with another entity, the monies allocated for the joint venture shall be determined by a joint budget.	For clarity in expression of the provision.
Sec. 43 (3)	“No payment shall be made out of the funds of a board or town committee unless it has been provided for in the approved annual or revised or supplementary estimates of expenditure and authorized by a board.”	Add the words ‘or town committee’ at the end so that it reads:  “No payment shall be made out of the funds of a board or town committee unless it has been provided for in the approved annual or revised or supplementary estimates of expenditure and authorized by a board <b>or town committee</b> ”	To cater for town committees that will manage towns.
Sec 45 (4)	The annual estimates approved by the board	Delete the word ‘its’ before the word ‘approval’ so that it	Correct grammar.



	or town committee under subsection (3) shall be submitted to the county governor for submission to the county assembly for its approval.	reads: “The annual estimates approved by the board or town committee under subsection (3) shall be submitted to the county governor for submission to the county assembly for its approval.”	
Sec 52 (1)(a)	No act, matter or thing done or omitted to be done by—  (a) the chairperson or vice chairperson of a city or municipality;	There is no chairperson or vice chairperson of a municipality or city. Instead we have chairperson and vice chairperson of a board of a city or municipality. Therefore, amend to read:  “the chairperson or vice chairperson of a <b>board of a city</b> or municipality;	For clarity.
Sec. 54	During the transition period assessment shall be undertaken on the existing urban areas and cities in order to ascertain whether they meet the criteria for classification as urban areas or cities under this Act, and shall be classified accordingly.	During the transition period assessment shall be undertaken by any authority under law on the existing urban areas and cities in order to ascertain whether they meet the criteria for classification as urban areas or cities under this Act, and shall be classified accordingly.	For clarity.
Second schedule sec 1 (1) ( C )	(1) Subject to paragraph (2), residents of a city or urban area have the right to—  (c) be informed of decisions of a board,	Add the word ‘town committee’ after the word ‘board’  “(1) Subject to paragraph (2), residents of a city or urban	To cater for the responsibility of the town committee to its residents to be informed of the committees decisions.

	affecting their rights, property and reasonable expectations;	area have the right to—  (c) be informed of decisions of a board <b>or town committee</b> affecting their rights, property and reasonable expectations;”	
Sec. 1 (1) (g)	“have access to services which the city or municipality provides. “	Either add the words ‘urban areas’ after the word ‘or’ or add the word ‘town’ after the words ‘municipality’ and ‘provides’ so that it reads:  either:  “have access to services which the city or urban area.” Or  “have access to services which the city, municipality or <b>town</b> provides.”	To cater for towns under urban areas.

<b>THE ENVIRONMENT AND LAND COURT ACT, 2011</b>			
<b>PROPOSALS THAT WOULD ADD VALUE TO PROVISIONS IN THE ACT</b>			
<b>Section</b>	<b>Provision of the Act</b>	<b>CIC proposal</b>	<b>Justification</b>
2	“environment” means the totality of nature and natural resources, including the cultural heritage and infrastructure essential for social-economic activities	Delete the definition of environment and substitute it with the following new definition:  “environment” means the physical and social factors of the surroundings of human beings and includes land, water, atmosphere, climate, sound, odour, taste, energy, waste management, coastal and marine pollution, the biological factors of animals and plants as well as cultural values, historical sites, and	The new definition is informed by the Draft International Covenant on Environment and Development, Fourth Edition (2010) and is more progressive.

		monuments and aesthetics”	
4(3)	(3) The Court shall have and exercise jurisdiction throughout Kenya and shall pursuant to section 26, ensure reasonable and equitable access to its services in every county.	Delete the words “and shall pursuant to section 26, ensure reasonable and equitable access to its services in every county” appearing immediately after the word “Kenya”.  The new sub section should read as follows:  (3) The Court shall have and exercise jurisdiction throughout Kenya.	It adds no value to refer to section 26 of the Act in this section.
10	A person shall be qualified for appointment as Registrar if the person — (a) is an advocate of the High Court of Kenya and has, since admission to the Roll of Advocates —  (i) become eligible for appointment as a Judge of the High Court;  (ii) served for at least eight years as a professionally qualified magistrate; or  attained at least eight years’ experience as a distinguished academic or legal practitioner or such experience in other relevant legal field; and...”	Delete paragraph (a)(i).  The new section should now read as follows:  “10. (1) A person shall be qualified for appointment as Registrar if the person — (a) is an advocate of the High Court of Kenya and has, since admission to the Roll of Advocates —  (i) served for at least eight years as a professionally qualified magistrate; or  (ii) attained at least eight years experience as a distinguished academic or legal practitioner or such experience in other relevant legal field; and...”	The qualification in paragraph (a) (i) should only apply to the Chief Registrar.  It also contradicts paragraph (a) (ii) and (iii) which lowers qualification for the Registrar.

THE INDUSTRIAL COURT ACT, 2011			
PROPOSALS THAT WOULD ADD VALUE TO PROVISIONS IN THE ACT			
Section	Provision of Act	CIC proposal	Justification
	<p>PART V – <b>EMPLOYMENT AND LABOUR RELATIONS RULES COMMITTEE</b></p> <p>SCHEDULE – PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE <b>EMPLOYMENT AND LABOUR RELATIONS RULES COMMITTEE</b></p>	<p>Delete the words “<b>EMPLOYMENT AND LABOUR RELATIONS RULES COMMITTEE</b>” appearing in the arrangement of sections and substitute it with the words “<b>INDUSTRIAL COURT RULES COMMITTEE</b>”.</p> <p><b>PART V – INDUSTRIAL COURT RULES COMMITTEE</b></p> <p>SCHEDULE – PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE <b>INDUSTRIAL COURT RULES COMMITTEE</b></p>	<p>The name of the rules committee should be amended to reflect the court which it is established to make rules for.</p>
2	<p>“Committee” means the <b>Employment and Labour Relations Rules Committee</b> established under section 23;</p>	<p>Delete the words “<b>Employment and Labour Relations Rules Committee</b>” appearing in the definition of committee and substitute it with the words “<b>Industrial Court Rules Committee</b>”.</p> <p>“Committee” means the <b>Industrial Court Rules Committee</b> established under section 23;</p>	<p>The name of the rules committee should be amended to reflect the court which it is established to make rules for.</p>
5(3)	The Principal Judge	Delete the words “for a	This section is inconsistent with

	<p>shall hold office <b>for a term of not more than five years and shall be eligible for re-election for one further term of five years.</b></p>	<p><b>term of not more than five years and shall be”</b> appearing after the word office and substitute it with the words <b>“for a non-renewable term of five years.”</b></p> <p>The new section should read as follows:</p> <p>The Principal Judge shall hold office <b>for a non-renewable term of five years.</b></p>	<p>Section 6(1) of the Judicial Service Act, 2011.</p> <p>Section 6(2) of the Judicial Service Act provides that the President of the Court of Appeal and the Principal Judge shall, in consultation with the Chief Registrar, be responsible to the Chief Justice for the administration of the Court of Appeal and other superior courts respectively, other than the Supreme Court.</p>
10(1)	<p>A person shall be qualified for appointment as Registrar if the person —</p> <p>(a) is an advocate of the High Court of Kenya and has, since admission to the Roll of Advocates —</p> <p><b>(i) become eligible for appointment as a Judge of the High Court;</b></p> <p>(ii) served for at least eight years as a professionally qualified magistrate; or</p> <p>attained at least eight years experience as a distinguished academic or legal</p>	<p>Delete paragraph (a)(i).</p> <p>The new section should now read as follows:</p> <p>“A person shall be qualified for appointment as Registrar if the person —</p> <p>(a) is an advocate of the High Court of Kenya and has, since admission to the Roll of Advocates —</p> <p>(i) served for at least eight years as a professionally qualified magistrate; or</p> <p>(ii) attained at least eight years experience as a distinguished academic or legal practitioner or such experience in other relevant legal field;</p>	<p>The qualification in paragraph (a)(i) should only apply to the Chief Registrar.</p> <p>It also contradicts paragraph (a) (ii) and (iii) which lowers qualification for the Registrar.</p>

	practitioner or such experience in other relevant legal field; and..."	and..."	
10		<p>Insert new paragraph (c) immediately after paragraph (b).</p> <p>The new paragraph should read as follows:</p> <p><b>(c)meets the requirements of Chapter Six of the Constitution.</b></p>	<p>This is a standard clause which has been used in many of Acts passed by Parliament as a minimum qualification for appointment of all public officers.</p> <p>Chapter 6 of the Constitution sets out the principles of leadership and integrity which every public officer should uphold.</p>
23	<b>23.</b> There is established the <b>Employment and Labour Relations Rules Committee.</b>	<b>23.</b> There is established the <b>Industrial Court Rules Committee.</b>	The name of the rules committee should be amended to reflect the court which it is established to make rules for.

## RECOMMENDATIONS

To ensure the effective implementation of the Constitution, CIC makes the following recommendations aimed at providing a remedy for the challenges outlined above:

1. All agencies implementing the constitution should adopt a systematic and integrated approach to the implementation process within their agencies. They should involve all their staff and prioritize the implementation of the Constitution in their work with a view to ensuring that legislation is prepared within the timelines provided in the Constitution.
2. Targeted training should be rolled out to educate implementing agencies on the letter and spirit of the Constitution and their role with regard to implementation of the Constitution.
3. Implementing agencies must uphold the principles and values enshrined in the Constitution including public participation in developing legislation required to implement the Constitution.
4. Implementing agencies should ensure involvement of CIC at the earliest opportunity in the review of their policies and administrative procedures as well as at an early stage during the development of the bills. This will ensure that the focus remains on the bill and the content therein, and the interest of the

people of Kenya guides the process. Public participation should also be an integral component of the legislative review and development process.

5. Political leaders and the Executive should demonstrate stewardship to facilitate the smooth implementation of the Constitution. In addition, statements of commitment by leaders should be demonstrated in action. Political leaders should avoid public statements that have the effect of undermining the implementation of the constitution.