

12th August, 2005

Legislative Supplement No. 37)

LEGAL NOTICE NO. 100

THE CONSTITUTION OF KENYA REVIEW ACT
(Cap. 3A)

ARRANGEMENT OF REGULATIONS

Regulation

PART I – PRELIMINARY

- 1- citation
- 2- interpretation

PART II- MATTERS PRELIMINARY TO THE REFERENDUM

- 3- Returning Officers
- 4- Appointment of other referendum officers
- 5- Register of electors
- 6- Right to vote
- 7- Polling areas and polling stations
- 8- Use of schools as polling stations
- 9- Notice of holding Referendum
- 10- Application of Cap.7 and Cap.66

PART III- REFERENDUM COMMITTEES

- 11- Referendum Committees
- 12- Registration of referendum Committees
- 13- Appointment of chief agent
- 14- Appointment of agents
- 15- Rights and duties of agents
- 16- Referendum campaign period
- 17- Voting procedure
- 18- Equipment of polling stations

PART IV – PROVISIONS RELATING TO VOTING

- 19- Admission to polling stations.
- 20- Keeping order at polling station.
- 21- Postponement of polling.

- 22- Communication with voters at polling station
- 23- Sealing of ballot boxes
- 24- Ballot papers
- 25- General voting procedure
- 26- Assisted voters
- 27- Evidence of identity
- 28- Procedure on close of poll
- 29- Votes to be counted at the polling station
- 30- Preparation and counting of votes
- 31- Void ballot papers
- 32- Recount
- 33- Rejected ballot papers
- 34- Sealing of ballot papers
- 35- Constituency referendum results
- 36- Returns of referendum
- 37- Publication of referendum results
- 38- Retention and public inspection of document
- 39- Offences by referendum officials.

PART V - MISCELLANEOUS PROVISIONS

- 40- Voting of patients, pastoralists etc
- 41- Accreditation of referendum observers
- 42- Attendance of agents

SCHEDULE - Forms

IN EXERCISE of the powers conferred by Section 34 of the Constitution of Kenya Review Act, the Electoral Commission of Kenya in consultation with the Constitution of Kenya Review Commission and the Parliamentary Select Committee on Constitutional Review makes the following Regulations-

PART I - PRELIMINARY

Citation

1. These Regulations may be cited as the Constitution of Kenya Review (Referendum) Regulations, 2005.

Interpretation

2. In these Regulations, unless the context otherwise requires-

Cap 3A Act; "Act" means the Constitution of Kenya Review

"agent" means a person duly appointed by a referendum committee for the purposes of these Regulations and includes a counting agent;

"chief agent" in respect of a registered referendum committee, means the person recorded in the register maintained by the Electoral Commission under regulation 13 as the person responsible for the affairs of the referendum committee;

"constituency" means one of the constituencies into which Kenya is divided under section 42 of the Constitution;

Cap.66 "corrupt practice" has the meaning assigned to it in the Election Offences Act;

"election offence" means a corrupt practice, an illegal practice or any offence under the Election Offences Act;

"elector" means a person whose name is included in the current register of electors;

"electoral number", in relation to a voter, means the number shown against the name of that voter in the register of voters for constituency;

"the Electoral Commission" means the Electoral Commission of Kenya established by section 41 (1) of the Constitution;

"elector's card" means a card issued to an elector as evidence of his registration in the register of electors;

"illegal practice" means an offence so designated, and punishable under Part IV of, the

Election Offences Act;

"oppose" in respect of a referendum question means to be in favour of voting against the referendum question specified in section 28(2) of the Act;

"petition" means an application to the High Court under section 28B of the Constitution of Kenya Review Act;

Cap.3A

"police officer" means a member of the Kenya Police Force or of the Administration Police; or any other person assigned, by the Electoral Commission, the duties that are performed by a police officer under these regulations.

"polling area" means one of the areas into which a constituency is divided under regulation 7, or, if the Electoral Commission has declared a constituency to be a single polling area, that constituency;

"polling station" means any room, place, vehicle or vessel set apart and equipped for the casting of votes by electors at an election;

"polling time" means seven o'clock in the morning to five o'clock in the afternoon of the polling day;

"presiding officer" means a person appointed under regulation 4 to preside at a polling station;

Cap.3A

"referendum" means the process under the Constitution of Kenya Review Act, in the ratification of the proposed new Constitution of Kenya as specified in section 28(1) of the Act;

"referendum committee" means any group of persons that intends to support or oppose the referendum question during the referendum period;

"returning officer" means a returning officer, presiding officer and any other person appointed by the electoral commission to perform referendum duties under these Regulations;

"referendum period" means the period beginning on the day on which the text of the referendum question is published and ending on polling day at the referendum;

"referendum question" means the question upon which the people shall vote in the referendum as specified in section 28(2) of the Act;

"register" means a current register of persons entitled to vote at an election prepared in accordance with section 4 of the National Assembly and Presidential Elections Act;

"returning Officer" means a person appointed under regulation 3 for the purpose of conducting the referendum in a constituency;

"voter" in relation to the referendum, means a person whose name is included in the current register of electors.

"support" in respect of a referendum question, means to be in favour of voting for the referendum question specified in section 28(2) of the Act.

PART II – MATTERS PRELIMINARY TO A REFERENDUM

Returning officers.

3.(1) The Electoral Commission shall appoint a returning officer for each constituency and may appoint such deputy returning officers for the constituencies as it may consider necessary.

(2) A returning officer may preside at a polling station and in that case he shall, for the purposes

of these Regulations, be deemed to be the presiding officer of that station.

(3) The returning officer shall, in consultation with the Electoral Commission, appoint presiding officers and deputy presiding officers to preside at a polling station.

(4) A deputy returning officer shall, subject to the general direction and control of the returning officer to whom he is a deputy, have all the power, and may perform all the duties, of the returning officer under these Regulations.

(5) A deputy presiding officer may perform any act (including the asking of any question) which the presiding officer is required or authorized to perform by these Regulations; but no deputy presiding officer shall have power to order the arrest of any person, or the exclusion or removal of any person from a polling station.

(6) Every appointment of a returning officer and a deputy returning officer under this regulation shall be published in the Gazette and in such other manner as the Electoral Commission may deem necessary.

Appointment of other officers.

4.(1) The Electoral Commission shall appoint such other referendum officers with such designations as it may deem necessary to assist the Electoral Commission in the conduct of the referendum and such referendum officers may, subject to the general or special directions of the Electoral Commission, exercise any or all of the duties and powers conferred or imposed upon the Electoral Commission by the Constitution, the National Assembly and Presidential Elections Act and this Act.

(2) The referendum officer shall take such oath of office as the Electoral Commission may specify.

(3) Referendum officers shall, in performing their duties and functions under these Regulations, act impartially and not in any way show favour to any side in a referendum.

5. The register of electors prepared under the National Assembly and Presidential Elections Act for the election of members to the parliament and of the president, as revised from time to time, shall be the register of voters for the purpose of the referendum.

Register of electors
Chapter 7.

6. Every person whose name is entered in the register of electors for a particular constituency who is entitled to vote in a parliamentary and presidential election and who produces, an elector's card issued to him in respect of that registration, shall on identification be entitled to vote at the referendum;

Right to vote.

Provided that nothing in this regulation shall entitle a person who is prohibited from voting by any written law to vote.

Polling areas and polling stations.

7.(1) The Electoral Commission shall-

- (a) divide each constituency in which the referendum is to be held into polling areas or, if it thinks fit, declare any particular constituency to be a single polling area;
- (b) assign to each polling area a distinguishing number or letter or a combination of number and letter;
- (c) appoint a place or places or designate a vehicle or vehicles or a vessel or vessels at which the polling station or stations for each polling area shall be established; and

(2) Where any damage is caused to a school by reason of its being used as a polling station under this regulation, the Government shall either make good the damage or defray any expenses incurred by persons having control of the school in making the damage good.

Notice of holding referendum

9.(1) The Electoral Commission shall, within fourteen days, after publication of the proposed new Constitution by the Attorney General under Section 27 (3) of Constitution of Kenya Review Act by notice in the Gazette specify—

Cap.3A.

(a) the referendum question; **Yes or No**

(b) the day on which the referendum is to be held; **21/11/05**

(c) the polling time of the referendum; **7-5pm**

(d) the referendum period which shall not be less than twenty-one days after the date of the publication of the notice; **30 days**

(e) the day by which the referendum committees specified in regulation 12 must have registered with the Electoral Commission and

(f) the day and time by which campaign in support of or in opposition to the referendum question shall cease. **21 days**

(2) A notice published by the Electoral Commission under paragraph (1) shall be in Form 1 set out in the First Schedule.

(3) Within twenty-one days after publication of the notice under paragraph (1), the returning officer of

(d) publish in the Gazette a notice specifying —

(i) the polling areas established for each constituency, which may be done by specifying the registration units which they respectively comprise;

(ii) the distinguishing number or letter, or combination thereof, assigned to each polling area; and

(iii) the place or places appointed or the vehicle or vehicles, vessel or vessels designated for the establishment of a polling station or stations for each polling area.

(2) In determining the boundaries of any polling area, the Electoral Commission shall have regard to geographical considerations and any other factors affecting the facility of communication between various places within the polling area.

(3) Subject to paragraph (2), the Electoral Commission may alter a division, assignment or appointment made under paragraph (1) and shall thereupon publish a notice in the Gazette specifying the alteration.

(4) The Electoral Commission may, if it considers it desirable, appoint a single polling station for two or more polling areas.

8.(1) The Electoral Commission may use, free of charge, any public school within the meaning of the Education Act or any part of the school as a polling station.

Use of schools as polling stations
Cap.211.

every constituency shall notify the public of a referendum in Form 2 set out in the First Schedule.

(4) On publication of the notice specified in paragraph (1) in the Gazette by the Electoral Commission the registration of voters shall be suspended.

10.(1) The National Assembly and Presidential Elections Act and Regulations made thereunder shall, with necessary modifications, apply to the conduct of the referendum.

(2) The Election Offences Act shall apply with respect to the referendum as though it were an election within the meaning of the Act.

PART III - REFERENDUM COMMITTEES

Referendum Committees.

11.(1) Persons intending to support or oppose the referendum question may form one national committee and one committee in each parliamentary constituency which committees shall be known as referendum committees.

(2) A referendum committee formed under this regulation shall subscribe to and abide by the Electoral Code of Conduct provided for under Section 34A of the National Assembly and Presidential Elections Act and set out in the Fourth Schedule thereto, in the manner the Electoral Commission shall direct in writing.

Cap.7

Registration of referendum committees

12.(1) A referendum committee may apply for registration for the purposes of a referendum by filing with the Electoral Commission, at any time during the referendum period, an application in accordance with this regulation.

(2) An application under paragraph (1) shall-

(a) be accompanied by information or

statements showing that the applicant adequately represents those campaigning for or against the referendum question; and

(b) be made within the period specified by the Electoral Commission.

(3) An application for registration shall be signed by the leader of the referendum committee and shall-

(a) set out-

(i) the full name of the committee;

(ii) the full name, address and telephone number of the leader of the committee;

(iii) the name, address and telephone number and title of each officer of the committee;

(iv) the address and telephone number of the office of the committee to which communication may be addressed; and

(v) the name, address and telephone number of the chief agent of the committee.

(b) indicate the electoral areas in which the committee intends to support or oppose the referendum question; and

(c) be accompanied by a statement signed by the chief agent that he has accepted the appointment as chief agent.

(4) On receipt of an application for registration

of a referendum committee, the Electoral Commission shall examine the application and determine whether the committee can be registered and shall-

- (a) if the committee can be registered, register it and so inform the person who signed the application; or
- (b) if the committee cannot be registered, inform the person who signed the application that the committee cannot be registered and state the reasons why it cannot be registered.

(5). A referendum committee cannot be registered if-

- (a) the application does not comply with this regulation;
- (b) the name of the committee so resembles the name of a previously registered referendum committee that the committee is likely to be confused with that previously registered committee; or

(c) the Electoral Commission is not satisfied that the applicant adequately represent those campaigning for a particular outcome

(6). A referendum committee cannot be registered if the name or logo of the committee is the name or logo of a political party or so resembles such a name or logo that the committee is likely to be confused with the party.

(7). For the purposes of paragraph (6), the name of a party means-

- (a) the full name of the party; or
- (b) any name, or abbreviation of a name, used to identify the party in election documents.

(8). Where a referendum committee is registered and any information given by the committee pursuant to paragraph (2), ceases to be applicable or accurate, the referendum committee shall forthwith send a report in writing, signed by the leader or chief agent of the committee, to the Electoral Commission setting out the information necessary to bring the information up to date.

(9). The registration of a referendum committee for the purposes of a referendum is valid only for the referendum.

Appointment
of chief
agent

13.(1). Every referendum committee that intends to apply for registration under regulation 11 shall, before applying, appoint a chief agent.

(2). The Electoral Commission shall maintain a register of the chief agents of registered referendum committees in which shall be recorded the name, address and telephone number of the chief agent of each such committee.

(3). The chief agent of a referendum committee appointed under paragraph (1) shall be responsible for the affairs of the registered referendum committee and shall provide a sample of his signature to the Electoral Commission.

Appointment of
agents.

14.(1) The chief agents of all the registered referendum committees in an electoral area shall be present when voting is taking place at each polling area.

(2) Each agent appointed under paragraph (1) shall, for the purposes of proceedings at the polling station, have all the rights and obligations of a candidate agent specified under the National Assembly and

Chapter 117, Presidential Elections Act for that polling station by the Electoral Commission.

(3) Every person appointed pursuant to this regulation shall be appointed in writing and shall take such oath of office as the Electoral Commission may specify.

15.(1) An agent appointed under regulation 14 shall when present, be entitled to-

- (a) witness the opening and closing procedures and processes of a polling station;
- (b) examine the serial numbers of the ballot boxes before the commencement of the polling and after the close of the polling;
- (c) examine electors' registers;
- (d) verify whether a person who has applied for a ballot paper to vote is qualified to vote at a polling station;
- (e) be furnished with the names of the election officials at a polling station and constituency tallying centre;
- (f) put a security seal on the ballot box;
- (g) object, to the presence of any person, other than a person lawfully present at the polling station or tallying centre;
- (h) take note of all the activities taking place in a polling station including the conduct of the poll, the observance of the polling regulations, the conduct of the count of the votes and the observance of the counting

regulations and in that connection the agent shall be entitled to take notes, object to the relevant referendum officers preferably in writing, when the agent considers that to be appropriate; and

- (i) perform any other function or carry out any other responsibility conferred on an agent by these Regulations or by the Act.
- (2) An agent shall comply with these Regulations and in particular shall-
- (a) submit to the authority of the presiding officer and deputy presiding officer at the polling station and the returning officer and deputy returning officer at the constituency tallying centre;
 - (b) comply with lawful orders given by the returning officer, deputy returning officer, presiding officer and deputy presiding officer;
 - (c) not communicate with any voter in the polling station except as authorized by these Regulations;
 - (d) not interfere with the poll or counting process in any manner which is not authorized by these Regulations; and
 - (e) not willfully damage, destroy or in any way endanger any document or other property of the Electoral Commission which comes into the agent's possession or which the agent is entitled to use, examine or handle.
- (3) The returning officer, deputy returning officer, presiding officer, or deputy presiding officer

may suspend for a period of time or expel completely an agent from the place the agent is attached to perform the agent's functions if the agent repeatedly flouts these Regulations in a manner which threatens to interfere or actually interferes with the voting process at that place:

Provided that the referendum officer shall alert the agent of a breach every time it occurs and offer the agent an opportunity to defend himself.

(4) Where a referendum officer suspends or expels an agent under this regulation, the referendum officer shall serve the agent with a written order to that effect and inform the relevant referendum committee of the action taken.

16.(1) Any person or referendum committee supporting or opposing the referendum question may carry out campaigns to support or oppose the referendum question within the referendum period.

(2) All campaigns referred to in paragraph (1) shall cease twenty-four hours before the start of polling.

PART IV - PROVISIONS RELATING TO VOTING

Voting Procedure.

17. (1) Voting at the referendum shall be by secret ballot wherein the votes shall consist of ballot papers, and shall be held in accordance with the provisions of these Regulations.

(2) No person shall vote in an area other than that in respect of which that person is registered as an elector.

(3) No person shall cast more than one vote at referendum.

(4) The Electoral Commission shall by notice in the Gazette assign symbols for the answers to the referendum question on the ballot paper.

Equipment of polling stations.

18.(1) The returning officer shall provide each presiding officer with such number of ballot boxes and ballot papers as the returning officer considers necessary for the effective carrying out of the provisions of these Regulations relating to the referendum.

(2) Every ballot box shall be constructed-

(a) with an aperture which is large enough to receive a ballot paper but which is no larger;

(b) so as to be capable of being sealed so that ballot papers cannot be taken out of the box so long as the seal is unbroken; and

(c) so that the ballot boxes shall bear serial numbers of the polling stations, which serial numbers shall be posted prominently and in full view of voters at every polling station.

(3) The returning officer shall provide each polling station with-

(a) materials to enable voters to mark their ballot papers in elections where marking is necessary;

(b) instruments for stamping the official mark on ballot papers;

(c) a seal of the Electoral Commission suitable for the purposes of regulations 25 (2);

(d) a bottle or container of indelible ink suitable for the purposes of regulation 25 (3) (c);

(e) a copy of the register of electors or such part thereof as contains the names of the voters entitled to vote at that polling station; and

(f) a sufficient number of compartments in which voters can mark their votes screened from observation.

Admission to polling stations.

19. (1) The presiding officer shall regulate the number of voters to be admitted to the polling station at the same time, and shall exclude all other persons except -

- (a) agents;
- (b) referendum officers on duty;
- (c) police officers on duty;
- (d) persons necessarily assisting blind or incapacitated voters; and
- (e) accredited observers and representatives of the print and electronic media approved or accredited by the Electoral Commission.

(2) The presiding officer shall admit to the polling station not more than two agents from each group of registered referendum committee but he may refuse admission to a person claiming to be an agent if that person does not produce a letter of appointment as an agent signed by the chief agent of that referendum committee.

(3) No person shall be admitted to vote at any polling station other than where that person is registered as a voter.

Keeping order at the polling station.

20. (1) It shall be the duty of the presiding officer to keep order at the polling station.

(2) The presiding officer may order the dispersal of any gathering of persons which appears to him to be preventing free ingress to, or egress from, the polling station or to be intimidating or interfering with voters, and any such order shall be sufficient authority for a police officer, or any other person authorized by the order, to effect the dispersal.

(3) The power conferred on a presiding officer and a police officer under paragraph (1) shall not be limited to the area covered by the polling station only but shall encompass a radius of four hundred meters from the centre of the polling station.

(4) If any person misbehaves in a polling station, or fails to obey the lawful instructions or orders of the presiding officer, he may immediately be removed, by order of the presiding officer, or by a police officer, and a person so removed shall not re-enter the polling station during the continuance of the poll without the permission of the presiding officer.

Postponement of polling.

21. (1) Notwithstanding the terms of any notice or writ issued under the Act or these regulations, a presiding officer may postpone or adjourn the proceedings at his polling station where they are interrupted by a riot, open violence, flood, natural catastrophe shortage of equipment or other materials at a polling station or other administrative difficulty or other cause, but where he does so he shall start or re-start the proceedings at the earliest practicable moment.

(2) The discretionary powers of a presiding officer under paragraph (1) shall include power in the circumstances therein mentioned to transfer in the proceedings to another polling station in the same constituency, and where he does so-

- (a) he shall advertise the fact as specified in Form 3 set out in the First Schedule or in such manner as he thinks sufficient to bring it to the notice of voters; and
- (b) the polling area for the polling station from which the proceedings are transferred shall, for all the purposes of these Regulations, be deemed to be part of the polling area of the polling station to which the proceedings are transferred.

(3) A presiding officer may extend the hours of polling at his polling station where polling has been interrupted under this regulation or for other good cause, and shall, where polling in that polling station has started late, extend the hours of polling by the amount of time which was lost in so starting late.

Communication with voters at polling station.

22. No person other than a referendum officer or police officer on duty shall, except with the authority of the presiding officer, communicate with a voter who is in, or in the immediate precincts of a polling station for the purpose of voting; but this regulation shall not prevent the companion of a blind or incapacitated voter from communicating with that voter.

Sealing of ballot Boxes.

23.(1) Immediately before the commencement of the poll, the presiding officer shall show the ballot box or ballot boxes to those persons lawfully present in the polling station to so ascertain that the box or boxes are empty, and shall thereupon close the box or boxes so that they may not be opened without breaking the seal.

(2) After a ballot box is sealed under paragraph(1) the presiding officer shall cause it to be so

placed in the polling station that it can at all times be in the view of himself, deputy presiding officer and of the agents present.

(3) On the adjournment of the poll in a polling station to another day, or on the close of the poll at one station with a view to transferring a ballot box to another station, and at any other time when the ballot box is not in use for the purpose of receiving ballot papers, the presiding officer shall close the aperture used for the insertion of the ballot papers into the box and place his seal on it in such a manner as to prevent the insertion of ballot papers without breaking the seal.

(4) After a ballot box has been sealed under paragraph(3), the seal shall not be broken or the aperture opened until broken and opened in the presence of those persons lawfully present in the polling station where polling is about to resume.

Ballot papers.

24.(1) Ballot papers for use at the referendum shall be in Form 4 set out in the First Schedule.

(2) Every ballot paper for use at the referendum shall -

- (a) contain the question being voted on in English and Kiswahili languages;
- (b) be capable of being folded up;
- (c) have a number, or combination of letter and number, printed on the front;
- (d) have attached a counterfoil with the same number or combination printed thereon; and
- (e) contain a different and distinct symbol for each answer to the referendum question to be voted on.

(3) The presiding officer shall allow those persons lawfully present at the polling station before polling commences to inspect the ballot papers provided for use at the polling station and note the serial numbers thereon.

General voting procedure.

25.(1) Before the delivery of a ballot paper to a voter -

- (a) the back of the ballot paper shall be stamped with the official mark of the Electoral Commission;
- (b) the number and name of the voter as stated in the copy register shall be called out; and
- (c) the name of the voter shall be deleted from the register but the electoral number of the voter shall be retained as a proof that a ballot paper has been delivered to the voter.

(2) Upon receiving a ballot paper, a voter shall submit his elector's card to be impressed with the seal of the electoral Commission leaving a permanent impression on the card.

(3) A voter shall, upon receiving a ballot paper under paragraph (2) -

- (a) go immediately into one of the compartments of the polling station and there secretly mark his ballot paper by putting a cross, a tick or any other mark in the box and column provided against the symbol of the side for whom he wishes to vote; and

(b) fold it up so as to conceal his vote and shall then put the ballot paper into the ballot box in the presence of the presiding officer and in full view of the persons lawfully present;

(c) submit to having a particular one of his fingers immersed or dipped in ink of a distinctive colour which, so far as is possible, is sufficiently indelible to leave a mark for the period of the referendum, and

(d) after voting immediately leave the polling station.

(4) No person other than a person acting under regulation 26 shall be present in a compartment of a polling station while a voter is therein for the purpose of marking his ballot paper and any person who contravenes this paragraph commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or both.

(5) A person who knowingly fails to place a ballot paper issued to him (not being a spoilt ballot paper) into a ballot box before leaving the place where the box is situated, commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both.

(6) Any referendum officer who deliberately refuses to mark or stamp any ballot paper commits an offence and is liable on conviction to fine not exceeding fifty thousand shilling or to imprisonment for a term not exceeding one year or to both.

Assisted voters.

26.(1) On the application of a voter who declares

that he is unable to read or write, or who is incapacitated by reason of blindness or other physical cause, from voting in the manner prescribed in these Regulations, the presiding officer shall permit the voter to be assisted by a person of the voters own free choice.

(2) No person other than the person chosen by the voter shall enter the compartment whilst the voter is casting his vote.

(3) The person chosen by the voter is not required to be qualified to vote but is required to have attained the age of eighteen years.

(4) The following shall apply with respect to a person who assists a voter under this regulation.

(a) the person shall assist only one voter; and

(b) the person shall submit to having his left thumb immersed or dipped in ink of a distinctive colour which, so far as is possible is sufficiently indelible to leave a mark for a period of the referendum.

(5) The presiding officer may make such inquiries as he may deem necessary in order to establish that the voter and his chosen assistant satisfy the provisions of this regulation.

(6) The presiding officer, may where the voter has no assistant of his choice, and upon request by the voter cause the vote of the voter to be cast on his behalf.

(7) Where the presiding officer grants the request of a voter under this regulation, the presiding officer shall record in the copy register against the name of the voter the fact that the voter was assisted and the reason for the assistance.

(8) Any person who contravenes the provisions of this regulation commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding three months or both.

27. A presiding officer shall require a person applying for a ballot paper to produce his identity card issued under the Registration of Persons Act or a valid Kenyan passport and the elector's card issued by the Electoral Commission.

Evidence of identity.

Cap.107

28.(1) Immediately after the close of the poll at his polling station the presiding officer shall make a written statement of -

Procedure on close of poll.

(a) the number of ballot papers issued to him under regulation 18;

(b) the number of ballot paper, other than spoiled ballot papers used;

(c) the number of spoilt ballot papers; and

(d) the number of ballot papers remaining unused.

(2) Immediately after the completion of the statement under paragraph (1), the presiding officer, in the presence persons lawfully present shall make up into separate packets-

- (a) the spoilt ballot papers, if any;
- (b) the marked copy register;
- (c) the counterfoils of the used ballot papers; and
- (d) the statement specified in paragraph (1)

and shall seal each of the packets with his own seal and that of Electoral Commission.

Votes to be counted at the polling station.

29.(1) Immediately after complying with the provisions of regulation 28 the presiding officer shall in the presence of agents proceed to count the votes for that polling station.

(2) No agent shall be deemed to be a counting agent unless at least thirty six hours before the close of the poll in the referendum, the name and address of the agent and his appointment as such by the registered referendum committee has been submitted to the presiding officer and a presiding officer shall not allow a person whose name and address and authorization has not been so submitted to attend to a counting of votes notwithstanding that the appointment of that person is otherwise in order.

(3) Notwithstanding the provisions of this regulation, a presiding officer shall not be obliged to admit more than two counting agents of all the registered referendum committees to the counting of votes in the electoral area or constituency.

(4) The Electoral Commission shall admit observers and representatives of the media duly approved or accredited by the Electoral Commission to attend the proceedings of the counting of votes.

(5) If a vehicle or vessel is appointed for a polling station and weather conditions exist, immediately after the presiding officer complies with the provisions of regulation 28 that may interfere with the counting of votes, the Electoral Commission may allow the vehicle or vessel to be moved to a place where the votes can be counted.

Preparation and counting of votes.

30.(1) In pursuance of the provisions of regulation

29, the presiding officer shall, in the presence of the persons lawfully present at the polling station-

(a) open each ballot box and empty its contents onto the counting table or any other facility provided for the purpose and, with the assistance of counting clerks, proceed to count the votes polled supporting the referendum question and opposing the referendum question separately, and;

(b) record the total number of votes cast in support of the referendum question and the votes cast in opposition to the referendum question.

(2) Each ballot paper shall be counted as follows:-

(a) the presiding officer shall in respect of every ballot paper, announce the side in whose favour the vote was cast;

(b) display to the persons lawfully present the ballot paper sufficiently for them to ascertain the vote; and

(c) put the ballot paper at the place on the counting table, or other facility provided for this purpose, set for the side in whose favour it was cast.

(3) An agent shall have a right to:-

(a) dispute the inclusion in the count of a ballot paper; or

(b) object to the rejection of a ballot paper, where upon the presiding officer may decide to uphold

or reject the complaint and act as provided under this regulation.

- (4) The presiding officer and the present agents at the counting of votes shall then sign the declaration in Form 5 set out in the First Schedule, which shall state -
- (a) the name of the polling station;
 - (b) the total number of registered voters for the polling station;
 - (c) the total number of valid votes cast;
 - (d) the number of votes cast in support of the referendum question and in opposition for the referendum question;
 - (e) the number of votes that were rejected; and
 - (f) the number of disputed votes.
- (5) The presiding officer shall -
- (a) immediately announce the results of the voting at the polling station before communicating them to the returning officer;
 - (b) request each registered referendum committee agent present to append their signature or write down reasons for the refusal to sign the declaration of the results of the count of the votes at the polling station;
 - (c) provide each agent with a copy of the declaration of the results; and
 - (d) affix a copy of the declaration of the results at the public entrance to the polling station or at any place convenient and visible to the public at the polling station.

(6) Where any of the agents refuses or fails to sign the declaration form, the presiding officer shall record the fact of their refusal or failure to sign.

(7) Where the agent refuses or fails to record the reasons for refusal or failure to sign the declaration form the presiding officer shall record the fact of their refusal or failure to sign the form.

(8) the refusal or failure of any agent to sign a declaration form under paragraph 6 or to record the reasons for their refusal to sign as required under regulation 7 shall not by itself invalidate the results announced under paragraph 5.

(9) The absence of a registered referendum committee agent at the signing of a declaration form or the announcement of results under paragraph 8 shall not by itself invalidate the results announced

(10) A presiding officer shall, so far as practicable proceed continuously with the counting of votes.

(11) A presiding officer shall not commence to count votes unless he is of the opinion that he can conveniently complete the count and any recount if it appears to be likely, without a break.

(12) The presiding officer shall place the ballot paper and other documents relating to the election under the Electoral Commission seal and shall otherwise take all due and proper precautions for the security of such papers and documents.

31.(1) During the counting of votes at the referendum any ballot paper-

- (a) which does not bear the official mark;
- (b) on which there has been voting for more than one choice; or

Void ballot papers.

- (c) on which anything is written or so marked as to be uncertain for which side the vote has been cast; or
- (d) which bears a serial number different from the serial number of the respective polling station and which cannot be verified from the counterfoil of ballot papers used at that polling station,

shall subject to paragraph (2) be void and shall not be counted.

(2) A ballot paper on which a vote is marked:-

- (a) elsewhere than in a proper place; or
- (b) by more than one mark

shall not by that reason only thereof be void if the intention of the voter is clear and the manner in which the paper is marked does not itself identify the voter and it is not shown that the voter can be identified thereby.

Recount.

32. A registered referendum committee agent, if lawfully present when the counting or any recount of votes is completed, may require the presiding officer to have the votes rechecked and recounted or the presiding officer may of his own initiative have the votes recounted.

Provided that the recount of votes shall not take place more than twice.

Rejected ballot papers.

33.(1) Every rejected ballot paper shall be marked with word "rejected" by the presiding officer and, if an objection is made by a registered referendum committee agent to the rejections, the presiding officer shall add the words "rejection objected to".

(2) The presiding officer shall mark every ballot paper which he counted but whose validity has been disputed or questioned by a registered referendum committee agent with word "disputed" but such ballot papers shall be treated as valid for the purpose of the declaration of referendum results at the polling station.

(3) After the counting of votes is finally concluded, the presiding officer shall draw up a statement showing the number of rejected ballot papers under such of the following head of rejection as may be applicable-

- (a) want of an official mark;
- (b) voting in support of and in opposition to the referendum question;
- (c) writing or a mark by which the voter might be identified; and
- (d) unmarked or void for uncertainty.

and any registered referendum committee agent shall, if he so desires, be allowed to copy that statement.

Sealing of ballot papers.

34.(1) Upon the completion of the count (including any recount) the presiding officer shall seal in separate packets -

- (a) the counted ballot papers which are not disputed;
- (b) the rejected ballot papers together with the statement relating thereto; and
- (c) the disputed ballot papers.

(2) The presiding officer shall allow the agents who are then present to affix their own seals on the packets specified in regulation 28

(3) The presiding officer shall put the three packets together with the statement made under regulation 28 and the declaration of results made under regulation 30 in the used ballot box after first demonstrating to the agents present that it is empty, then seal the ballot box with the Electoral Commission's seal and let the agents present or any of them affix their own seals on the ballot box if they so wish.

(4) The presiding officer shall as soon as is practicable deliver to the returning officer for the constituency the ballot box containing the items listed under paragraph (3)

Constituency referendum results.

35.(1) Immediately after the results of the poll for all of polling stations in a constituency have been received by the returning officer, he shall, in the presence of registered referendum committee agents present-

- (a) examine the ballot papers marked "rejected" "rejection objected to" and "disputed" and confirm or vary the decisions of the presiding officers with regard to the validity of these ballot papers;
- (b) publicly announce to persons present the total number of valid votes cast for each side in the referendum;
- (c) publicly declare to the persons present the side that has received the greater number of votes in the referendum and therefore the winning side;

(d) complete Form 6 set out in the First Schedule in which he shall declare the-

- (i) name of the constituency;
- (ii) total number of registered voters;
- (iii) votes cast in support of and in opposition to the referendum question;
- (iv) number of rejected votes cast in support of and in opposition of side in each polling station;
- (v) aggregate number of votes cast in the constituency; and
- (vi) aggregate number of rejected votes; and

(e) sign and date the form and-

- (i) give to the registered referendum committee's agents present a copy of the form; and
- (ii) deliver to the Electoral Commission the original of Form 6.

(2) The results of the referendum in constituency shown in Form 6 shall be subject confirmation by the Electoral Commission after a tally of all the votes cast in the referendum.

(3) The decisions of the returning officer on the validity or otherwise of a ballot paper or vote under the regulation shall be final except in a referendum petition

Return of
referendum.

36. (1) The returning officer shall as soon as practicable, forward to the Electoral Commission the results of the referendum.

(2) Upon receipt of constituency referendum results under paragraph (1) the Electoral Commission shall hold the Constituency results until the results to the referendum in every constituency have been received.

Provided that the Electoral Commission may declare the results of the referendum before all the constituencies have delivered their results if in its opinion the results that have not been received would not make a difference as to the results.

Publication of
referendum results

37.(1) The Electoral Commission shall on receipt of results of the referendum from all constituencies under regulation 36 and within forty-eight hours from the close of the final polling in the referendum:-

- (a) announce to the public the total number of valid votes cast supporting or opposing the referendum question;
- (b) declare whether or not the proposed constitution has been ratified by a simple majority;
- (c) publish a notice in the Gazette indicating the results of the referendum in each Constituency; and
- (d) publish in the Gazette a certificate in the form set out in the Second

Schedule declaring the results of the referendum and confirming whether or not the proposed new Constitution has been ratified in accordance with the provisions of the Act.

(2) For all purposes of the referendum, the results published in the Gazette shall be the official results of the referendum.

(3) Where the referendum results in a tie the electoral Commission shall proceed to hold a fresh referendum.

PART V – MISCELLANEOUS PROVISIONS

Retention and public
inspection of
document.

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

Cap. 19

(2) Documents retained under this regulation, other than ballot papers and their counterfoils, shall be made available for inspection by any member of the public, upon a request made by him or her, at such time and subject to such conditions as may be decided by the Electoral Commission.

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

by the returning officer in the presence of the witness after the inspection is completed.

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

Offences by referendum officials.

39. A referendum officer or other person who, having a duty to perform under these Regulations, is, without reasonable cause, guilty of an act or omission in breach of his official duty shall be guilty of an offence and liable to a fine not exceeding ten thousand shilling or to imprisonment for a term not exceeding three months or both.

Young by patients, pastor:thesis etc

40. The Electoral Commission may make special provisions for Kenyan citizens who are out of the country or who would not be able to vote on the voting day because of essential duties, patients in hospitals, persons admitted in sanatoria or homes for the aged and similar institutions, persons who lead nomadic life on account of vagaries of climate, physically disabled persons and expectant mothers.

Accreditation of referendum observers.

41. (1) The Electoral Commission may at the referendum accredit officials of the Constitution of Kenya Review Commission, individuals, associations, organizations, or institutions who or which are manifestly non-partisan to act as referendum observers.

(2) The Electoral Commission shall issue guidelines for referendum observers, consistent with internationally accepted standards for free and fair referendum, which shall be binding on referendum observers upon accreditation by the Electoral Commission.

(3) Without prejudice to the generality of paragraph (2) the guidelines issued thereunder may specify the procedures for the accreditation of referendum observers.

(4) The Electoral Commission may revoke the accreditation it has granted to any referendum observers where it is satisfied that the referendum observer is partisan.

(5) No person, association, organization or institution shall observe any referendum unless the person, association, organization or institution has been accredited by the Electoral Commission

(6) All the accredited referendum observers shall submit to the Electoral Commission a written report of their individual or group observation not later than six months after the date of the announcement of the referendum results in respect of the referendum observed.

Attendance of agents.

42. Where in these Regulations expressions are used requiring, authorizing, or implying that any act or thing is to be done in the presence of polling or counting agents, those expressions shall be regarded as reference to the presence of such agents as may be authorized to attend and have in fact attended at the time and place where the act or thing is being done and the mere non-attendance of any agent at that time and place shall not, if any act or thing is otherwise lawfully done, invalidate that act or thing.