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REPUBLIC OF KENYA


THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON:

THE CONSIDERATION OF THE ELECTION OFFENCES
(AMENDMENT) (NO. 2) BILL, 2024
(SENATE BILL NO. 28 OF 2024)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 29 MAY 2025	
DAY: Thursday	
TABLED BY:	Hon. George Mwangi, MP Chairperson JLA-C
CLERK-AT THE-TABLE:	Hartina Ahmed

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

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TABLE OF CONTENTS

Table of Contents	i
List of Abbreviations and Acronyms.....	ii
List of Annexures	iii
Chairperson's Foreword	iv
CHAPTER ONE	I
1 Preface	I
1.1 Establishment of the Committee.....	I
1.2 Mandate of the Committee	I
1.3 Committee Membership	3
1.4 Committee Secretariat	4
CHAPTER TWO.....	5
2 Overview of the Election Offences (Amendment) (No. 2) Bill (<i>Senate Bill No. 28 of 2024</i>).....	5
2.1 Background.....	5
2.2 Summary of Legal Provisions	5
CHAPTER THREE.....	6
3 Public Participation and Stakeholder Engagement on the Bill	6
3.1 Legal Framework on Public Participation	6
3.2 Memoranda Received on the Bill.....	6
CHAPTER FOUR	9
4 COMMITTEE OBSERVATIONS.....	9
CHAPTER FIVE.....	10
5 Committee Recommendations	10
CHAPTER SIX	11
6 Schedule of Amendments.....	11

LIST OF ABBREVIATIONS AND ACRONYMS

CMD	-	Centre for Multiparty Democracy
ELGIA	-	Electoral Law and Governance Institute for Africa
FORD	-	Forum for the Restoration of Democracy
IEBC	-	Independent Electoral and boundaries Commission
KLRC	-	Kenya Law Reform Commission
MCA	-	Member of County Assembly
MCCP	-	Maendeleo Chap Chap Party
MP	-	Member of Parliament
NADCO	-	National Dialogue Committee
ODM	-	Orange Democratic Movement
OAG	-	Office of the Attorney-General
ORPP	-	Office of the Registrar of Political Parties

LIST OF ANNEXURES

- Annexure 1: Adoption Schedule
 - Annexure 2: Minutes
 - Annexure 3: Election Offences (Amendment) (No. 2) Bill (Senate Bill No. 28 of 2024)
 - Annexure 4: Advertisement inviting the public to submit memoranda on the Bill
 - Annexure 5: Letter from the Clerk of the National Assembly inviting stakeholders to attend the public participation forum
 - Annexure 6: Memoranda by Stakeholders
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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Election Offences (Amendment) (No. 2) Bill (*Senate Bill No. 28 of 2024*). The Bill having been passed in the Senate on 19th November, 2024 and forwarded to the National Assembly was read a First Time in the House on 3rd December, 2024 and was thereafter committed to the Committee in line with Standing Order 143(2) of the National Assembly Standing Orders.

The Bill seeks to give effect to some of the recommendations by NADCO on the issues of electoral justice electoral integrity. The Bill amends the Election Offences Act, Cap 66 to enhance the offences by members and staff of the IEBC; offences relating to elections; and offences relating to the use of technology in elections.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Committee placed an advertisement in the print media on 6th December 2024 inviting the public to submit memoranda by way of written statements on the Bill. In addition, the Committee vide letter Ref. No. NA/DDC/JLAC/2025/017 dated 10th April 2025 invited key stakeholders to submit views on the Bill and attend a public participation forum on 17th April 2025. The memoranda were to be received on or before 20th December 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received seven memoranda.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the IEBC, OAG, KLRC, ORPP, CMD, *Kituo cha Sheria* and the CRADLE for submitting memoranda on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6) of the National Assembly Standing Orders, it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Election Offences (Amendment) (No. 2) Bill (*Senate Bill No. 28 of 2024*).

It is my pleasure to report that the Committee has considered the Election Offences (Amendment) (No. 2) Bill (*Senate Bill No. 28 of 2024*) and has the honour to report back to the National Assembly with the recommendation that the **House approves the Bill with amendments**.

Hon. George Gitonga Murugara, CBS, MP
Chairman, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

I PREFACE

I.1 Establishment of the Committee

- I. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - ii. To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
 - iii. To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
 - iv. To study and review all legislation referred to it;
 - v. To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
 - vi. To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - vii. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
 - viii. To examine treaties, agreements and conventions;
 - ix. To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;
 - x. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - xi. To examine any questions raised by Members on a matter within its mandate.
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I.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider: -
 - a) The Judiciary;
 - b) Tribunals;
 - c) Access to Justice;
 - d) Public prosecutions;
 - e) Ethics, Integrity and Anti-corruption;
 - f) Correctional services;
 - g) Community service orders and witness protection;
 - h) Constitutional Affairs;
 - i) Sovereign immunity;
 - j) Elections including referenda;
 - k) Human rights;
 - l) Political parties; and
 - m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversights the following Ministries, Departments and Agencies:
- a) State Department of Correctional Services;
 - b) State Law Office and Department of Justice;
 - c) The Judiciary;
 - d) Judicial Service Commission;
 - e) Office of the Director of Public Prosecutions;
 - f) Ethics and Anti-Corruption Commission;
 - g) Independent Electoral and Boundaries Commission;
 - h) Commission on Administrative Justice;
 - i) Office of the Registrar of Political Parties;
 - j) Witness Protection Agency;
 - k) Kenya National Commission on Human Rights;
 - l) Kenya Law Reform Commission; and
 - m) Council of Legal Education.

1.3 Committee Membership

4. The Committee was reconstituted by the House on 5th March 2025 and comprises the following Members:

Chairperson

Hon. Murugara George Gitonga, MP
Tharaka Constituency
UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Hon. Gladys Boss, MGH, MP
Uasin Gishu Constituency
UDA Party

Hon. Maalim Farah, EGH, MP
Dadaab Constituency
WDM-Kenya

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Francis Kajwang' Tom Joseph, CBS, MP
Ruaraka Constituency
ODM Party

Hon. Wetang'ula Timothy Wanyoyi, CBS, MP
Westlands Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, EBS, MP
Rarieda Constituency
ODM Party

Hon. Muchira Michael Mwangi, MP
OI Jorok Constituency
UDA Party

Hon. Eric Muchangi Karemba, MP
Runyenjes Constituency
UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Mogaka Stephen M., MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa County (CWR)
Jubilee Party

Hon. CPA Zuleka Hulbale Harun, MP
Nominated Member
UDM Party

1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Mr. Abdikafar Abdi
Clerk Assistant III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Omar Abdirahim
Fiscal Analyst I

Ms. Vivienne Ogega
Research Officer III

Mr. John Nduaci
Serjeant-At-Arms

Mr. Meldrick Sakani
Audio Officer III

Ms. Mary Kamande
Public Communications Officer III

Mr. Calvin Karung'o
Media Relations Officer III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

2 OVERVIEW OF THE ELECTION OFFENCES (AMENDMENT) (NO. 2) BILL (SENATE BILL NO. 28 OF 2024)

2.1 Background

6. The Bill seeks to give effect to some of the recommendations by NADCO to address the issues of electoral justice and electoral integrity.
7. The Bill having been passed in the Senate on 19th November, 2024 and forwarded to the National Assembly, the Rt. Hon. Speaker caused the Bill to be read a First Time in the House on 3rd December, 2024 and was thereafter committed to the Committee in line with Standing Order 143(2) of the National Assembly Standing Orders.

2.2 Summary of Legal Provisions

8. The Bill seeks to amend the Election Offences Act (hereinafter referred to as “the Act”) to enhance the offences by members and staff of IEBC; offences relating to elections and offences relating to the use of technology in elections.
9. In particular—
 - (a) **Clause 1** of the Bill provides for the short title.
 - (b) **Clause 2** of the Bill amends section 6 of the Act on offences by members and staff of IEBC. It seeks to clarify the offence of failure to declare the results of an election as required by Article 138(10) of the Constitution and section 39 of the Elections Act.
 - (c) **Clause 3** of the Bill amends section 13 of the Act on offences relating to elections by making it an offence when a person makes or publishes any false statement of a candidate or political party. It also seeks to enhance the offence of interfering with free political canvassing and campaigning.
 - (d) **Clause 4** of the Bill amends section 17 of the Act on offences relating to the use of technology in elections by introducing the offence of wilfully communicating information electronically which may induce or compel a person from exercising their political rights.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

10. Article 118 (1)(b) of the Constitution provides that:
“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”
11. The National Assembly Standing Order 127 (3) and (3A) stipulates that:
“(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including-
(a) inviting submission of memoranda;
(b) holding public hearings;
(c) consulting relevant stakeholders in a sector; and
(d) consulting experts on technical subjects.
(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

3.2 Memoranda Received on the Bill

12. Pursuant to the aforementioned provisions of the law, the Committee placed an advertisement in the print media on 6th December 2024 inviting the public to submit memoranda by way of written statements on the Bill on or before 20th December 2024 at 5.00 pm (East African Time). Further, the Committee vide letter Ref. No. NA/DDC/JLAC/2025/017 dated 10th April 2025 invited key stakeholders to submit views on the Bill and attend a public participation forum on Thursday 17th April 2025.
13. To this end, KLRC, ORPP, CMD, *Katiba* Institute, the CRADLE and ELGIA attended the public participation forum on Thursday 17th April 2025. Upon request, IEBC appeared before the Committee on Tuesday 22nd April 2025 to submit their views.
14. The Committee received seven memoranda from IEBC, OAG, ICRK, ORPP, CMD, ELGIA, *Kituo cha Sheria* and the CRADLE. The memoranda are annexed to this report as Annexure 6.
15. The stakeholders submitted as follows:

Clause 2

16. **ORPP** agreed with the proposal but noted the need to qualify the failure to declare results so that the failure is linked to intention.
17. **CMD** and *Kituo cha Sheria* proposed amending the new paragraph (h) to include criminalize unreasonable delays in declaring presidential election results to foster credibility and prevents interference. They further proposed including a definition of the term ‘unreasonable delay’ to minimize mischief.

18. **CMD** proposed amending paragraph (k) to criminalize collusion of staff of the Commission with any other person to prevent any mischief to conduct or hold an election in an ungazetted polling station.
19. **IEBC** proposed the deletion of the amendments to the offences by member and staff of IEBC. They argued that the offences as amended are overly prescriptive and that external factors which are outside the control of the Commission or staff that may occasion the delay in declaration of election results.
20. **OAG** proposed that the word “fails to” be substituted with “does not” in the elections created under the proposed new paragraphs (h) and (ha). Further, the offence of colluding for purposes of giving an undue advantage should be expanded to other persons.

Committee Observation

21. The Committee observed that Article 138(10) of the Constitution requires the chairperson of IEBC to declare the results of the presidential election within seven days after the election. Additionally, section 39 of the Elections Act requires the Commission including the constituency returning officers and county returning officers to declare certain election results. Therefore, there is need to extend the offence with respect to declaration of elections results to when there is unreasonable delay. What constitutes unreasonable delay is subjective therefore, it may be difficult to define.

Clause 3

22. **IRCK** noted that the new proposed paragraph (f)(i) excludes age and disability which are considered major inhibitors for effective participation in public processes including elections hence its proposal to amend the provision to include them.
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Committee Observation

23. The Committee observed that grounds upon which a person may influence voters leading to interference with free political canvassing and campaigning are inexhaustible. The use of the words “or any other ground of discrimination” covers all other grounds that have not been mentioned.

New Proposals

24. **Kituo cha Sheria** proposed the introduction of provisions to protect IEBC staff who report electoral offences by colleagues to encourage a culture of transparency and accountability within the Commission.
25. The **CRADLE** proposed introducing a digital interference offence to penalize unauthorized access to or tampering with electronic transmission systems to mitigate digital threats to electoral credibility. The CRADLE also proposed criminalizing failure to report acts of bribery to embed ethical responsibility and active participation in combating electoral corruption among officers
26. The CRADLE further proposed the creation of an offence for destruction or concealment of election-related records and evidence to protect the evidentiary chain critical historical integrity of elections.

Committee Observation

27. On the introduction of provisions to protect IEBC staff who report electoral offences by colleagues, the Committee observed that section 15 of the IEBC Act protects the staff of

IEBC from any action for acts done in good faith for purpose of executing the functions, powers and duties of IEBC.

28. On the introduction of the offence of digital interference, the Committee observed that this offence is provided for under sections 6 and 17 of the Election Offences Act.

General Submissions

29. **KLRC** was of the view that harsh penalties may discourage IEBC staff from working under pressure or in volatile regions. Furthermore, regions with logistical challenges may occasion unintentional delays.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

30. Upon reviewing the Bill and the submissions received, the Committee made the following observations:

- (a) the legislative proposal recommended by NADCO sought to enhance the offences by members and staff of IEBC including introducing the offence of conducting an election in an ungazetted polling station as well as the offence of altering of declared election results. However, the Senate passed the Bill with the following changes—
 - (i) altered the amendment on the proposed offence of failing or unreasonably delaying the declaration of election results;
 - (ii) deleted the proposed offence of conducting or holding an election in an ungazetted polling station;
 - (iii) altered the amendment of interfering, altering or causing another person to interfere or alter declared results by extending the offence to election materials;
 - (iv) added amendments to section 13 of the Elections Offences Act on offences relating to elections; and
 - (v) added an amendment to section 17 of the election Offences Act on offences relating to the use of technology in elections.
 - (b) the Bill seeks to strengthen the legal framework governing election offences by expanding the list of offences which have undermined public trust in the electoral systems and compromised the credibility of election outcomes.
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CHAPTER FIVE

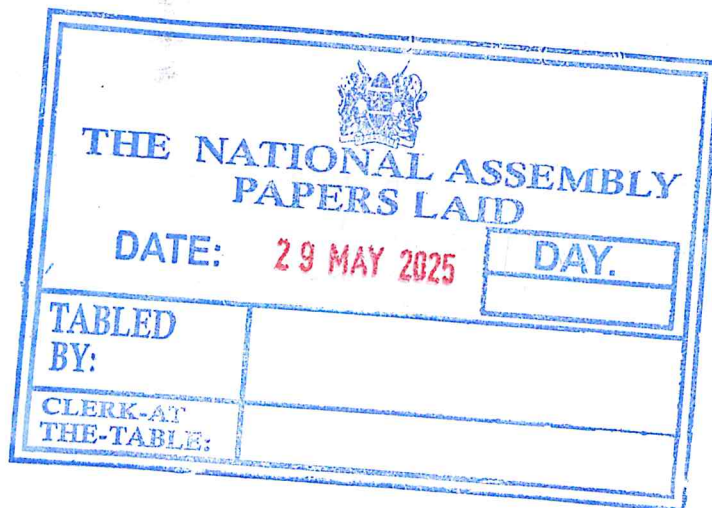
5 COMMITTEE RECOMMENDATIONS

31. The Committee, having considered the Election Offences (Amendment) (No. 2) Bill (Senate Bill No. 28 of 2024) and the submissions from members of the public and stakeholders, recommends that the House **approves the Bill** with the amendments contained in the Schedule of Amendments.

SIGNED.......... DATE.....*29.5.2025*.....

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRMAN

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS



CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

32. In view of the observations made, the Committee proposed the following amendment to the Bill—

CLAUSE 2

THAT Clause 2 of the Bill be amended by—

(a) deleting paragraph (a) and substituting therefor the following new paragraph—

(a) in paragraph (h), by inserting the words “or unreasonably delays” immediately after the word “fails”;

Justification: Paragraph (h) refers to the requirements to declare the results of an election under the Elections Act which already acknowledges the role of the chairperson of the IEBC to declare the results of a presidential election within 7 days as well as the role of other staff of IEBC to declare the results of elections immediately after close of polling. Therefore, there is no need to cascade the offence.

Also, the addition of unreasonable delay in declaring election results as an offence is necessary to consider the instances where a member of staff of IEBC exceeds the reasonable time frame for declaring the results of an election.

(b) deleting paragraph (c) and substituting therefor the following new paragraph—

(c) by inserting the following new paragraphs immediately after paragraph (m)—

(n) conducts or holds an election in a polling station which has not been published in the Gazette and publicised through electronic and print media of national circulation and other easily accessible medium;

(o) knowingly or intentionally interferes or alters declared results or knowingly or intentionally causes another person to interfere or alter declared results.

Justification: Regulation 7 of the Elections (General) Regulations requires the IEBC to appoint a place at which the polling station for each electoral area shall be established. Further, IEBC is required to publish in the Gazette the polling station(s) which have been established. Therefore, there is need to create an offence against staff of IEBC to deter the conduct of an election in polling stations which are not in the Gazette notice issued for that purpose.

In addition, the offence of destroying or concealing an election material by a member or staff of IEBC may be introduced separately from the offence of interfering or altering declared results of an election.

CLAUSE 4

THAT the Bill be amended by deleting Clause 4.



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION OF THE ELECTION OFFENCES (AMENDMENT) (NO. 2) BILL (SENATE BILL NO. 28 OF 2024)

We, the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this Report of the Committee on the Election Offences (Amendment) (No. 2) Bill (Senate Bill No. 28 of 2024) and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson

2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chair

3. Hon. Gladys Boss, MGH, MP

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4. Hon. Farah Maalim, EGH, MP

.....

5. Hon. Silvanus Osoro Onyiego, CBS, MP

.....

6. Hon. Tom Joseph Francis Kajwang', MP

.....

7. Hon. Muchangi Karemba, CBS, MP

.....

8. Hon. Timothy Wanyonyi Wetangula, CBS, MP

9. Hon. (Dr.) Otiende Amollo, SC, MP

.....

10. Hon. Michael Mwangi Muchira, MP

.....

11. Hon. Aden Daud, EBS, MP

12. Hon. John Okwisia Makali, MP

.....

13. Hon. Stephen M. Mogaka, MP

.....

14. Hon. Amina Udgoon Siyad, MP

15. Hon. CPA Zuleka Hulbale Harun, MP

