

## SECOND SCHEDULE

[Sections 51(6), 110(1).]

### ELECTORAL CODE OF CONDUCT

(1) This Code shall be subscribed to by—

- (a) every political party participating in the election of a president, a member of Parliament, a county governor, a member of a county assembly;
- (b) every candidate; and
- (c) every leader, chief agent, agent or official of a referendum committee. (2) This Code shall, in so far as it is applicable, bind the Government and every political party, leader, office bearer, agent and member of a political party or a person who supports a political party, and every candidate nominated under the electoral laws for any election.

(3) All registered political parties and referendum committees shall execute this Code through the hand of their respective registered officials to signify their acceptance to be bound by the provisions of this Code and their commitment to strive to ensure that their members and any person who supports the political party abide by the code at all stages of elections and referendum.

2. In this Code, unless the context otherwise requires—

“**Committee**” means the Electoral Code of Conduct Enforcement Committee;

“**electoral area**” means a ward, county or constituency;

“**election court**” means the Supreme Court in exercise of the jurisdiction conferred upon it by Article 163(3)(a), the High Court in the exercise of the jurisdiction conferred upon it by Article 165(3)(a) of the Constitution, or the High Court in the exercise of the jurisdiction conferred upon it by this Act;

“**electoral laws**” means the Constitution, the Elections Act and subsidiary legislation made thereunder as they relate to the presidential, parliamentary, county elections and the referendum.

3. The object of this Code is to promote conditions conducive to the conduct offered and fair elections and a climate of tolerance in which political activity may take place without fear, coercion, intimidation or reprisals.

4. All registered political parties and other persons bound by this Code shall endeavor to promote the object of the code to enable free political campaigning and open public debate to take place in all parts of Kenya during an election period.

5. Registered political parties, referendum committees, officials of political parties and referendum committees and candidates do, by subscribing to this Code, further commit themselves to—

- (a) adhere to the values and principles of the Constitution;
- (b) give wide publicity to this Code;
- (c) promote voter education campaigns;
- (d) condemn, avoid and take steps to prevent violence and intimidation;
- (e) instruct their candidates, office-bearers, agents, members and persons who support the political party of their obligations under this Code;
- (f) promote gender equality;

- (g) promote ethnic tolerance;
- (h) promote cultural diversity;
- (i) promote the fair representation of special interest groups;
- (j) generally, affirm the rights of all participants in an election to—
  - (i) express divergent political opinions;
  - (ii) debate and contest the policies and programs of other parties;
  - (iii) canvass freely for membership and support from voters;
  - (iv) subject to the Public Order Act (Cap. 56) hold public meetings; (v) attend public meetings convened by others;
  - (vi) distribute non-offensive electoral literature and campaign materials;
  - (vii) publish and distribute non-offensive notices and advertisements;
  - (viii) erect non-offensive banners, placards and posters;
  - (ix) remove all banners, placards and posters erected during the election period;
  - (x) promote free electoral campaigns by all lawful means; and
  - (xi) co-operate with the Commission and the relevant Government agencies and other authorities in the investigation of issues and allegations arising during the election period.

**6.** All those bound by this Code shall, throughout an election period—

- (a) publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage, or for any other reason;
- (b) refrain from any action involving violence or intimidation;
- (c) ensure that no arms or weapons of any kind are carried or displayed at political meetings or any march, demonstration or other event of a political nature;
- (d) refrain from campaigning in places of worship or during burial ceremonies;
- (e) co-operate and liaise in good faith with other parties to avoid organizing public meetings, demonstrations, rallies or marches to take place at the same time and venue as similar political events organized by other parties;
- (f) do nothing to impede the right of any party, through its candidates, canvassers and representatives, to have reasonable access to voters for the purposes of conducting voter education, fund raising, canvassing membership and soliciting support;
- (g) avoid plagiarizing the symbols, colors or acronyms of other parties; and to discourage and, if possible, prevent the removal, disfigurement or destruction of political campaign materials of any party;
- (h) refrain from offering any document or reward to any person in consideration of such person either joining or not joining any party; attending or not attending any political event; voting or not voting (either at all, or in any particular manner); or accepting, refusing or withdrawing such person's nomination as a candidate in the election;

- (i) refrain from any attempt to abuse a position of power, privilege or influence, including parental, patriarchal, state or traditional authority for political purposes including any offer of reward or threat of penalty;
- (j) avoid any discrimination based on race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth in connection with the election and political activity;
- (k) in relation to the Commission—
  - (i) acknowledge the authority of the Commission in the conduct of the election or referendum;
  - (ii) ensure the attendance and participation of representatives at meetings of any party liaison committee and other forums convened by or on behalf of the Commission;
  - (iii) implement the orders and directions of the Commission;
  - (iv) facilitate the Commission's right of access through official observers and other representatives to all public political meetings or other electoral activities;
  - (v) co-operate in the official investigation of issues and allegations arising during an election period;
  - (vi) take all reasonable steps to ensure the safety of observers and other representatives of the Commission from exposure to insult, hazard or threat in the course of their official duties;
  - (vii) to establish and maintain effective lines of communication with the Commission; and
  - (viii) to abide by the provisions of this Code;
- (l) reassure voters with regard to the impartiality of the Commission and the secrecy and integrity of the ballot, and to reaffirm that no one should know how any other person has voted;
- (m) take reasonable steps to discipline and restrain their party office bearers, employees, candidates, members and persons who support the political party who— (i) infringe this Code;
  - (ii) engage in activities of commission or omission which constitute offences under the electoral laws or otherwise fail to observe this Code; and
  - (iii) contravene or fail to comply with any provision of the electoral laws;
- (n) agree for party office bearers, employees, candidates' members and persons who support the political party to submit to the disciplinary procedures of the Commission for any violation of this Code; and
- (o) without prejudice to the right to present a petition to an election court, accept the final outcome of the election and the Commission's declaration and certification of the results thereof.

7. Where, in the opinion of the Commission, any political party or referendum committee participating in any election or referendum or the leader, office-bearer or member of a political party or person who supports the political party or referendum committee or any candidate at any election, in any way infringes any provision of this Code, the Commission may—

- (a) in the case of a political party and, subject to sub-paragraph (b), and in the case of the leader, any office-bearer or member of a political party or person who supports the political party referendum committee or candidate, impose upon that political party one or more of the following penalties or sanctions which any or all may be suspended on specific conditions—
- (i) a formal warning;
  - (ii) a fine determined by the Commission;
  - (iii) notwithstanding the provisions of any other written law, an order prohibiting the political party, whether permanently or for a specified period, from utilizing any public media time, through the television or radio broadcasting service of such media as have been or may be allocated to the political party for electoral purposes;
  - (vi) an order prohibiting the political party, referendum committee or candidate from—
    - (aa) holding particular public meetings, demonstrations or marches, or any kind of meeting, demonstration or march;
    - (bb) entering any specified electoral area for purposes of canvassing for membership, or for any other electoral purpose;
    - (cc) erecting placards or banners, or from publishing and distributing campaign literature;
    - (dd) publishing or distributing campaign literature and electoral advertising or limiting the rights of the political party to do so, and such prohibition or limitation shall be notified to the relevant regulating officers under the Public Order Act (Cap. 56) in the affected places or electoral areas for purposes of the Act;
    - (ee) in the case of the leader, candidate, an office-bearer or member of a political party or person who supports the political party or referendum committees impose any one or more of the penalties or sanctions referred to in subparagraph (a)(i) or (ii) of this paragraph;
- (b) Where a political party, referendum committee, leader or any office bearer, member or person who supports the political party, referendum committee or any candidate at an election fails, neglects or refuses to comply with the orders of the Commission issued under paragraph 7(a), the Commission shall impose upon the defaulting party any of the following sanctions which may be suspended on specific conditions—
- (i) in case of fine imposed, prohibit the defaulting party from participating in ongoing and future elections as candidates in case of a defaulting candidate or prohibit the political party or the referendum committee official from participating in ongoing elections and referendum, and future elections or referendum or any activity facilitated by the Commission until such fine has been paid;
  - (ii) in case of failure to comply with any other sanctions imposed, cancel the right of such political party or candidate to participate in the next election; and
  - (iii) file execution proceedings in the High Court to enforce the recovery of the fine.
8. A fine imposed by the Commission under this Code shall be registered in the High Court.
9. Without prejudice to the provisions of paragraph 7, the Commission may either of its own motion or in consequence of any report made to it, institute proceedings in the High Court as may

be appropriate in the case of any alleged infringement of this Code by a political party or by the leader, any office-bearer or member of a political party or person who supports a political party or any candidate and where the Court finds the infringement of the provisions of this Code—

- (a) in the case of a political party, any act or omission involving violence, intimidation or a gross or systematic violation of the rights of any political party, candidate or voter, the Court may, in addition to or in substitution for any other penalty or sanction specified in paragraph 7(a), make an order cancelling the right of such party to participate in the election concerned; or
- (b) in the case of the leader, any office-bearer or member of a political party or person who supports the political party or of any candidate, that any act or omission involving violence or intimidation or gross or systematic violation of the rights of any political party candidate or voter, the Court may in addition to or in substitution of any other penalty or sanction specified in paragraph 7(a)(i) and (ii), make an order disqualifying, in the case of a person who is a candidate, that person from being a candidate or deleting the name of that candidate from the list or lists of candidates concerned.

**10.** In making its decision regarding appropriate penalties or sanctions, the Commission or, as the case may be, the High Court shall have regard to any other legal consequences that may result from civil or criminal proceedings instituted by reason of the same occurrence.

**11.** The High Court shall ensure that any proceedings initiated under paragraph 9 are dealt with in priority to all other matters brought before it, and that the decision of that Court is given before the date of the election concerned.

**12.** The procedure of the High Court in cases falling within the provisions of this Code shall, without prejudice to paragraph 9, be in accordance with such Rules of Procedure as shall from time to time be promulgated by the Chief Justice.

**13.** Every registered political party, referendum committee, candidate and agent—

- (a) shall respect the role of the media before, during and after an election or referendum conducted under this Act;
- (b) may not prevent access by members of the media to public political meetings, marches, demonstrations and rallies; and
- (c) shall take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or persons who supports the candidate or political party.

**14.** Every media house and its representative shall—

- (a) adhere to the media professional ethics in its coverage of public meetings, campaign rallies and demonstrations;
- (b) during the prescribed hours of polling, not publish or distribute the result of an exit poll taken in that election or referendum; (c) adhere to any media regulations issued by the Commission; and
- (d) abide by the provisions of this Act.

**15.** (1) The Commission shall set up the Electoral Code of Conduct Enforcement Committee which shall comprise of not less than five members of the Commission and shall be chaired by a

member appointed by the Chairperson; the Commission may nominate a member of its staff to be the secretary to the Committee.

(2) The Chairperson of the committee shall be a person who is qualified to hold the office of Judge of the High Court.

(3) Every candidate, official and agent shall—

- (a) acknowledge the authority of the Committee to enforce the provisions of this Code on behalf of the Commission;
- (b) ensure compliance with summons issued to the party, its candidates or representatives by the Committee;
- (c) co-operate in the official investigation of issues and allegations arising at election period; and
- (d) respect and comply with the orders issued by the Committee.

(4) The Committee shall issue summons to the person, political party or referendum committee against whom a complaint has been received as having infringed the provisions of this Code and any other person who the Commission has reason to believe to have infringed the provisions of this Code to attend its meetings. The meetings will be convened at any place which the Committee may deem fit.

(5) In its proceedings, the Committee may examine the person summoned and may allow a person to have legal representation.

(6) The committee shall not be bound by the provisions of the Criminal Procedure Code (Cap. 75) or the Evidence Act (Cap. 80) in its proceedings.

(7) Every person who is summoned by the Committee and who attends the meetings of the Committee shall be accorded the right to be heard.

(8) The Committee shall exercise the powers provided under this Code to punish any person found to have infringed this Code.

(9) The Committee shall deliver its verdict expeditiously and inform the parties of the decision.

(10) Notwithstanding the provisions of this Code, any complaint submitted in writing alleging any irregularity with any establishment of the electoral process at any stage if not satisfactorily resolved by the peace committee shall be examined and determined by the Committee.

**16.** Every registered political party referendum committee, candidate and agent shall—

- (a) ensure security and full participation of women and persons with disabilities as candidates and voters;
- (b) respect the right of women to communicate freely with political parties, committees and candidates;
- (c) facilitate the full and equal participation of women in political activities;
- (d) ensure free access of women and persons with disabilities to all public political meetings, marches, demonstrations, rallies and other public political events; and
- (e) take reasonable steps to ensure that women are free to engage in any political activity.

**17.** (1) The Commission may establish peace committees in every constituency during an election and referendum period.

(2) Every political party, referendum committee, candidate, official and agent shall—

- (a) acknowledge the activity of peace committee established at the constituency level by the Commission;
  - (b) ensure attendance of the peace committee meetings convened at the constituency level on behalf of the Commission; and
  - (c) co-operate in the official investigation initiated by the peace committee on issues and allegation arising at the election period.
- (3) The peace committee shall have power to—
  - (a) reconcile warring parties;
  - (b) mediate political disputes in the constituencies;
  - (c) liaise with government security agencies in the constituency and report suspected election malpractices; and
  - (d) report any violation of this Code to the Committee for appropriate action.
- 18.** This Code shall take effect from the date of dissolution of parliament until polling day.
- 19.** Any person may complain about the breach of this Code.