MEMORANDUM ON THE ELECTION LAWS (AMENDMENT) (NO.3) BILL, 2015

The Parliamentary Initiatives Network (PIN) is a forum for non-state actors in Kenya with a programmatic interest in the work of Parliament. PIN brings together eighteen Kenyan organizations including civil society, professional associations, think tanks and research institutions that focus on supporting parliamentary business. Its mandate extends to providing information and research support to the Kenyan Parliament in its oversight, legislative and representation roles, as well as designing tools to help Parliament systematically monitor and track the implementation of decisions, policies and laws in line with the Constitution of Kenya. The recommendations contained in the below memorandum emanate from a consultative meeting, bringing together PIN members under the Representation thematic group including the Institute for education in Democracy (IED), Transparency International, Kenya Chapter, The Institute for Social Accountability (TISA), Centre for Governance and Development (CGD), Mzalendo Trust and the International Commission of Jurists (ICJ) Kenya Chapter.

The Election Laws (Amendment) (No. 2) Bill, 2015 proposes to amend the Elections Act 2011 and the Independent Electoral and Boundaries Commission Act 2011 to enhance the effectiveness of electoral systems ahead of the 2017 general elections. Following our review, PIN proposes the following amendments to the bill.

1. Memorandum to review provisions in the Amendment Bill

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<tr>
<th>PRINCIPAL ACT</th>
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<tr>
<td>The Elections Act No. 24 of 2011</td>
<td>Section 13 Nomination of candidates by a political party (1) A political party shall nominate its candidates for an election under this Act at least forty-five</td>
<td>5. Section 13 of the Elections Act, 2011 is amended- (a) In subsection (1) by deleting the words “forty-five” days after the words “at least” and substituting therefor the word “ninety”.</td>
<td>1. Increase the number of days proposed upon which a political party shall nominate its candidates before a general election from the proposed “ninety” days to “one-hundred and twenty” days. This is based on the fact that adequate time is required to be afforded to a political party and nominated</td>
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days before a general election under this Act in accordance with its constitution and nomination rules.

candidates to deal with disputes that arise from the nomination process. The mandate for dispute resolution for disputes arising from the nomination process is vested in multiple institutions including intra-party dispute mechanisms, the Independent Electoral and Boundaries Commission and also the Judiciary. The process will thus require more time than provided for in the amendment.

2. Correction of the grammatical error in the word “therefor” appearing immediately after “and substituting” and replacing it with the correct word which is “therefore”.

| The Elections Act No. 24 of 2011 | Section 13 Nomination of candidates by a political party (2) A political party shall not change the candidate nominated after the nomination of that person has been received by the Commission: 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 to deal with disputes that arise from the nomination process. The mandate for dispute resolution for disputes arising from the nomination process is vested in multiple institutions including intra-party dispute mechanisms, the Independent Electoral and Boundaries Commission and also the Judiciary. The process will thus require more time than provided for in the amendment.

2. Correction of the grammatical error in the word “therefor” appearing immediately after “and substituting” and replacing it with the correct word which is “therefore”.

5. Section 13 of the Elections Act, 2011 is amended-

(b) by inserting the following new subsection immediately after subsection (2)-

“(2A) A political party shall hear and determine all intra party disputes arising from political party nominations within forty days.”

The new subsection 2A should be amended to clarify the period when the forty days starts counting. e.g. “(2A) A political party shall hear and determine all intra party disputes arising from political party nominations within forty days after the nominations.” OR “(2A) A political party shall hear and determine all intra party disputes arising from political party nominations within forty days after the filing of the complaint by the aggrieved party.”
candidate, the political party may after notifying the candidate that the party seeks to substitute, where applicable, substitute its candidate before the date of presentation of nomination papers to the Commission.

| The Elections Act No. 24 of 2011 | Section 13 Nomination of candidates by a political party | 5. Section 13 of the Elections Act, 2011 is amended-
(c) in subsection 3 by deleting the words “forty-five” after the words “at least” and substituting therefor the words “fifty-five”.
1. Increase the number of days from the proposed “fifty-five” to “sixty days” before such other election to give political parties adequate time for dispute resolution.
   This is implies, for instance, in the case of a by-election which is supposed to happen ninety days after the occurrence of a vacancy in a particular elective seat, then a party will have thirty days to undertake the nomination process, and thus giving enough time for dispute resolution and the electoral commission to prepare for such an election.
2. Correction of the grammatical error in the word “therefor” appearing immediately after “and substituting” and replacing it with the correct word which is “therefore”.

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### Memorandum in support of specific provisions in the Amendment Bill

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<tr>
<td>The Elections Act</td>
<td>Section 5</td>
<td>3. Section 5 of the Elections Act 2011 is amended -</td>
<td>The consortium is in support of this amendment (deletion) as this will prevent manipulation of the elections.</td>
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<tr>
<td>No. 24 of 2011</td>
<td>Registration of voters</td>
<td>(c) by deleting subsection 3A</td>
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<td>(3A) Despite subsection (3), a citizen who has attained the age of eighteen years and has registered for an identification card and is in the possession of an acknowledgement of registration certificate shall, upon application, be registered as a voter using the acknowledgement of registration certificate, but may only vote using an identification card.</td>
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**DISSENTING VOICE ON THIS ISSUE:**

A few members felt that this provision should be retained since it guarantees, protects and facilitates the realization of Article 38 right – right for every adult citizen to be registered as a voter.

There should however be an introduction of a proviso that, “if the person registered using the acknowledgement of registration certificate acquires his or her national identity card before the
The closure of the ‘inspection period’ for the register, then that person shall furnish the electoral commission with his or her identity card number and his or her records shall be updated in the register of voters.

Another proviso should then follow that the electoral commission shall thereafter clean the register and delete all names without updated identification number details from the final register.

The consortium is in support of this amendment and is making a proposal that it be made categorical that a member of parliament / county assembly performs the following key roles:

| The Elections Act No. 24 of 2011 | Section 22 Qualifications for nomination of candidates | 7. Section 22 of the Elections Act, 2011 is amended – (a) In subsection (1) by deleting paragraph (b) and substituting therefor the following new paragraph – | The consortium is in support of this amendment and is making a proposal that it be made categorical that a member of parliament / county assembly performs the following key roles; |
(b) holds a certificate, diploma or other post secondary school qualification acquired after a period of at least three months study, recognized by the relevant Ministry and in such manner as may be prescribed by the Commission under this Act.

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“(b) holds –
(i) In the case of a Member of Parliament, a degree from a university recognized in Kenya; or
(ii) In the case of member of a county assembly, a post-secondary school diploma from an institution recognized in Kenya.
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(b) by inserting the following new sub-sections immediately after subsections (1)-(I)

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(IA) Notwithstanding subsection (1), in the general elections after the 2017 general elections, a member of a county assembly may only be
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| a) Representation |
| b) Oversight |
| c) Legislation |

The roles of oversight and legislation are technical roles that require Members with certain high level academic qualifications. These roles need to be entrusted to people with the capacity to comprehend the technical aspects of oversight and legislation e.g. drafting, understanding budget policy statements, etc.
nominated for an election if the person is a holder of a degree from a university recognized in Kenya.”

(1B) The provisions of this section apply to qualifications to nomination for a party list member under section 34.”