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ELEVENTH PARLIAMENT

*(FIFTH SESSION)*

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REPORT OF THE JOINT PARLIAMENTARY SELECT COMMITTEE TO REVIEW  
THE PROCEDURE AND RULES FOR ELECTION OF MEMBERS TO THE EAST  
AFRICAN LEGISLATIVE ASSEMBLY

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APRIL 2017

## Table of Contents

LIST OF ACRONYMS/ABBREVIATIONS .....	ii
1.0 PREFACE .....	3
REVIEW OF THE PROCEDURE FOR THE ELECTION OF MEMBERS TO EALA .....	6
2.1 PROCEDURE FOR CONDUCT OF ELECTIONS .....	6
2.1.1 <i>Option 1: Joint Voting</i> .....	6
2.1.2 <i>Option 2: Separate Voting</i> .....	7
2.2 OBSERVATIONS BY THE COMMITTEE ON THE MODE OF ELECTIONS.....	7
2.3 RECOMMENDATIONS BY THE COMMITTEE.....	9
REVIEW OF THE RULES FOR ELECTION OF MEMBERS TO EALA .....	10
3.1 INTRODUCTION.....	10
2.2 OBSERVATIONS BY THE COMMITTEE .....	10
PUBLIC PARTICIPATION .....	11
TIMELINES .....	12
THE DRAFT RULES FOR EALA ELECTIONS, 2017 AS UNANIMOUSLY ADOPTED BY THE JOINT PARLIAMENTARY COMMITTEE: .....	14
ANNEXURE 1: DRAFT RULES.....	22
ANNEXURE 2: PROPOSED NOMINATION FORM.....	23
ANNEXURE 3: CORRESPONDENCE.....	24
ANNEXURE 4: MINUTES.....	25
ANNEXURE 5: MEMORANDA FROM THE PUBLIC .....	26

## LIST OF ACRONYMS/ABBREVIATIONS

EAC	East African Community
EALA	East African Legislative Assembly
KNA	Kenya National Assembly
M.P.	Member of Parliament

## 1.0 PREFACE

1. The East African Legislative Assembly is established under Article 9 of the Treaty for the Establishment of the East African Community (EAC) as one of the key organs and institutions of the Community.
2. Articles 50 and 51 of the EAC Treaty provides for Election of Members of the Assembly and the Tenure of Office of Elected Members respectively. Specifically, Article 51(1) provides that an elected member of the Assembly shall hold office for five years and is eligible for re-election for a further term of five years. The current Assembly was elected in 2012.
3. Additionally, section 4(1) and (2) of the East African Legislative Assembly Elections Act, 2011 provides that the election of Members to the Assembly shall be conducted in accordance with the rules of procedure of the Legislatures of the Partner States. The Act also requires that the elections ought to be conducted **within** ninety (90) days before the expiry of the date of the outgoing Assembly. **Therefore, the meaning** of “**within 90 days**” as stated in section 4 of the EALA Elections Act, 2011 means any date between 4<sup>th</sup> March and 3<sup>rd</sup> June, 2017. The Parliament of Kenya is therefore required to conduct the election of its members to EALA by 3<sup>rd</sup> June 2017.
4. The Clerk to the East African Legislative Assembly (EALA) has written to the Speakers of the Parliaments in the partner States requesting them to cause to be held the election of the members of the next Legislative Assembly in accordance with Article 50 of the Treaty for the Establishment of the East African Community and section 4(2) of the East African Legislative Assembly Elections Act, 2011. Article 50(1) provides as follows –  
*(1) The National Assembly of each Partner State shall elect, not from among its members, nine-members of the Assembly, who shall represent as much as it is feasible, the various political parties represented in the National assembly, shades of opinion, gender and other special interest groups in that Partner State, in accordance with such procedure as the National Assembly of each Partner State may determine.*
5. By a Motion adopted by the National Assembly and the Senate on 1<sup>st</sup> and 2<sup>nd</sup> March 2017 respectively, the Houses of Parliament established a Joint Parliamentary Select Committee consisting of the following Members –

### **The National Assembly**

- 1) The Hon. Katoo Ole Metito, MGH, EGH, M.P.
- 2) The Hon. Samuel Chepkong'a, M.P.

- 3) The Hon. Wanjiku Muhia, M.P.
- 4) The Hon. Ali Wario, M.P.
- 5) The Hon. Florence Mutua, M.P.
- 6) The Hon. Daniel Maanzo, M.P.
- 7) The Hon. Wafula Wamunyinyi, M.P.

**The Senate**

- 1) Sen. Kimani Wamatangi, M.P.
- 2) Sen. Peter Mositet, M.P.
- 3) Sen. Kipchumba Murkomen, M.P.
- 4) Sen. Mshenga Mvita, M.P.
- 5) Sen. Mutula Kilonzo Jnr., M.P.
- 6) Sen. Elizabeth Ongoro, M.P.
- 7) Sen. Henry Tiolo Ndiema, M.P.

**6. The mandate of the Joint Parliamentary Select Committee is as follows –**

- (a) to review the procedure and rules for election of Members of EALA contained in the Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2012 in light of Kenya’s bicameral nature;
- (b) on the basis of the review in (a) above, propose appropriate procedures and rules for election of persons to represent the Republic of Kenya at EALA;
- (c) within fourteen days, submit a report to the Houses of Parliament containing the revised rules of procedure;
- (d) suggest appropriate timelines for purposes of notifications, nominations and elections; and
- (e) consider the nominees, oversee the election process and report to the House within the timelines stipulated in the Elections Rules.

7. The Committee held three (3) sittings, considered and adopted the Rules and its Work Plan.

8. Below is the approved Committee Work Plan: -

<b>Activity</b>	<b>Date</b>
Public Hearing on Election Rules	31 <sup>st</sup> March - 4 <sup>th</sup> April, 2017
Adoption of Report on Election Rules	5 <sup>th</sup> April, 2017
Tabling of Report on Election Rules in both Houses	5 <sup>th</sup> April, 2017

9. The Joint Committee presents this Report to this House of Parliament and recommends it to -

- (i) adopt this Report so as to give the proposed rules of procedure force of law;
- (ii) approve the separate voting as the preferred mode of election; and
- (iii) to note and observe the timelines proposed.

10. The Committee wishes to record its appreciation to the Office of the Speakers and the Clerks of the respective Houses for facilitation in fulfilment of its mandate. The Committee is also grateful to members of the public who responded to our request for submission of Memoranda on the draft EALA Election Rules, 2017. Further, the Committee is grateful to the Committee Secretariat for the services they rendered to the Committee. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.

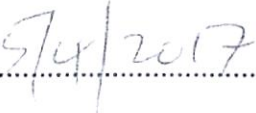
11. On behalf of the Members of the Joint Parliamentary Select Committee to Review the Procedure and Rules for Election of Members to the East African Legislative Assembly, I wish to table this Report, pursuant to Rule 9(7) of the Houses of Parliament (Joint Sittings) Rules.

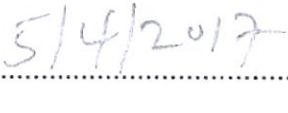
Signed: 

Hon. Katoo Ole Metito, MGH, EGH, M.P.  
Co-Chairperson

Signed: 

Sen. Kipchumba Murkomen, M.P.  
Co-Chairperson

Date: 

Date: 

# REVIEW OF THE PROCEDURE FOR THE ELECTION OF MEMBERS TO EALA

## 2.1 Procedure for Conduct of Elections

12. Taking into account the bicameral nature of the Kenyan Parliament, the Committee considered two possible options for conducting elections: joint voting versus separate voting by Houses of Parliament.

### 2.1.1 Option 1: Joint Voting

13. The Committee noted that for consonance, the election process be jointly undertaken by both Houses of Parliament, sitting as a single electoral college. The justification for a joint process is as follows:-

- i. **Precedence:** Parliament of Rwanda, the only other bicameral Legislature in East Africa, already set a precedent. Rwanda has been conducting the election of its Members to the EALA jointly, way before Kenya, which would be taking that route for its maiden time. As such, Kenya may draw vital lessons from the salient features of the procedure of Rwanda's joint voting and the success thereof;
- ii. **Single Electoral College:** The joint approach presents the unique opportunity for Parliament to collapse itself into a single electoral college, manned by Returning Officer, Presiding Officer and conducting the election at a single time;
- iii. **Synchronized arrangements:** A joint approach is beneficial in the sense that it allows a synchronized approach in terms of rules, logistics, timing and uniformity of the processes and activities constituting the election process;
- iv. **Breaking ties:** The option also favours Parliament in the sense that it hastens prompt breaking of a tie. The processes of tallying and communions between Houses would lengthen any process of breaking a tie among two or more candidates;
- v. **Dispute resolution:** In a joint approach, resolution of disputes is easier and uniformly applied by the Speakers of the two Houses (presiding officers). This is supported by the fact that there is no room for varied interpretation and application of rules of determination on questions that may arise, considering that it is done at once by the Presiding Officer(s). These include matters of eligibility and qualifications of candidates, among others, which may be addressed variedly were they to be raised and determined separately;

- vi. **Representation quotas:** since the election is expected to take into account relative majorities of the Coalitions in Parliament and representation of the youth, women and persons with disabilities, a joint approach would be less difficult to achieve representation quotas for each category. If the process is done separately, the election results, when combined may turn out to exclude one or more categories stated above;
- vii. **Centrality:** On the overall, a joint approach also allows for centrality of the entire process by eliminating unnecessary replication of similar processes in both Houses; and
- viii. **Time-economical:** Further, the joint approach is economical time on the other. It eliminates the processes of separate tallying and conveying of results between the Houses. A separate process may extend the elections to more than one sitting, or even a day;

### **2.1.2 Option 2: Separate Voting**

- 14. The Committee also considered the option of each House of Parliament conducting elections separately, as two polling stations in a single election with the following justifications: -
  - (i) Separate voting will retain the identity of each House;
  - (ii) The two Houses will be equivalent to two polling stations with the relevant Clerk of the House serving as the Presiding Officer and each Speaker serving as the Returning Officer.
- 15. The election slots are political party-based and as such, it is expected that political parties will have whipped its membership to vote for particular candidates and the results would be same in both houses.
- 16. The main disadvantage of separate voting is that it will consume more time and may require a dispute resolution mechanism in the event that the two Houses do not agree on the members to be voted.

### **2.2 Observations by the Committee on the Mode of Elections**

- 17. In considering the holding of a separate voting the committee noted as follows –
  - (i) Comparative analysis with other East African countries with a bicameral parliament, for example, Rwanda. It was noted that the EALA Treaty and the EALA Election Act set out the requirements to be met by the respective National Assemblies of the Partner States but left it to each Parliament to determine the procedure for election. It was therefore agreed that different Parliaments would adopt a procedure that they determined would be



- the best for the conduct of their respective elections, and hence, the Parliament of Kenya should adopt a procedure that it saw best to regulate its elections under the Treaty;
- (ii) On the legal implications of separate voting with two Houses of Parliament with different Standing Orders, the Committee considered the two options for conduct of elections i.e. joint voting with the two Houses of Parliament carrying out the voting as a single electoral college and separate voting, with each House of Parliament constituting a polling station. The Committee noted that the outcome of the elections would be the same as the total votes in both Houses with respect to each candidate would be tallied in order to determine the overall winner;
- (iii) **On the legal status of political coalitions *vis-à-vis* Legal Notice on the EALA Elections Act, 2011**, the Committee noted that the Treaty requires the elected members, to represent, among other thing and “as much as it is feasible, the various political parties represented in the National Assembly”. However, such representation should be based on the proportional representation of the parties in Parliament. Each party would therefore be required to nominate three times the number of candidates that the party may elect to EALA for the purpose of the election. The Committee agreed that it would be necessary to ensure that an opportunity is granted to other interested persons, not representing political parties to also contest in nomination process and the election to the EALA Parliament.
- (iv) **On the place of independent candidates in the election process**, the Committee noted that the Treaty required that Article 50 of the Treaty required that the election of contestants to EALA should have representation as much as it is feasible from “various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in that Partner State, in accordance with such procedure as the National Assembly of each Partner State may determine”. In Reference No. 7 of 2012, Antony Calist Komu versus The Attorney General of the United Republic of Tanzania, the East African Court of Justice, considered an application challenging the election of candidates to EALA by the National Assembly of Tanzania on the grounds that the elections violated Article 50 of the Treaty and in particular, that the categories of persons representing political parties did not distinguish the existence of the official opposition political party and other opposition political parties as categories which

ought to have had representatives in EALA. In considering the application, the Court held as follows –

“[Under] Article 50(1), each category of representation should as much as feasible be a separate and distinct category from each other. To lump all categories under “any political party which is entitled to sponsor candidates” and then grant that one category the preserve to bring candidates for the other categories, so that ultimately every candidate and eventual representative would be affiliated to a political party, whether or not represented in the National Assembly, as opposed to say shades of opinion, gender and other special interest groups, would be a clear violation of Article 50(1) of the Treaty.”

### **2.3 Recommendations by the Committee**

18. Following careful consideration, the Joint Committee **recommended** as follows:

- (i) **THAT**, the respective Houses conduct **separate voting**, held concurrently with each House acting as a polling station.
- (ii) **THAT**, the two Houses retain their distinct decision-making processes;
- (iii) **THAT**, a Gazette be prepared concurrently as the newspaper for the timelines to concur with the Legal Notice;
- (iv) **THAT**, the notices in both the Gazette and the Newspapers should indicate the requirements for elections and that each candidate must submit proof of qualification for election.

# REVIEW OF THE RULES FOR ELECTION OF MEMBERS TO EALA

## 3.1 Introduction

19. The current Elections Rules which were adopted by the National Assembly in April 2012 and published in the Kenya *Gazette* through *Legal Notice* No. 31 of 11<sup>th</sup> May, 2012, were formulated in the context of a unicameral Parliament and does not therefore consider the bicameral nature of Kenya's Legislature under the Constitution. The Rules, therefore, require a review to conform to the bicameral nature of the Kenyan Parliament.
20. The need for the review of the rules for elections of EALA members arose from: -
- i. The need to conform to the Constitution, Standing Orders and the Treaty for the establishment of the East African Community.
  - ii. Judicial Consideration at the East African Court of Justice in Arusha in a case challenging the nomination of nine nominees to EALA in 2006; and
  - iii. The bicameral nature of Parliament.

## 2.2 Observations by the Committee

21. In its consideration of a review of the Rules for election of Members to EALA, the Committee was guided by the following: -
- i. The existing Rules published in 2012;
  - ii. The Court ruling;
  - iii. The Constitution of Kenya;
  - iv. The Treaty for the Establishment of the EAC;
  - v. The Standing Orders of the Houses of parliament;
  - vi. Precedence in other jurisdictions; and
  - vii. Election laws.
22. Following the decision by the Joint Committee to adopt the separate voting, the Committee considered the Rules and observed as follows:
- (i) **Rule 2:** Provide for definition of "Presiding Officer" and "Returning Officer" as follows:
- "presiding officer" means the Clerk of the National Assembly and the Clerk of the Senate;
- "returning officers" means the Speaker of the National Assembly and the Speaker of the Senate

- (ii) **Rule 4:** It was noted that the publication of the Gazette and the newspaper advertisement should be done on the same day;
- (iii) **Rule 6:** It was noted that the term “shades of opinion” as contained in the Treaty was not clear. It was however agreed that rather than set out how to measure shades of opinion, it be left as it was in the Rules and that the Committee would, during the vetting process, determine how to determine its variables;
- (iv) It was noted that the Joint Committee would be required to carry out the necessary vetting including ensuring that the candidates had been cleared by the relevant agencies for compliance and suitability in accordance with the Constitution and the relevant laws;
- (v) **Sub-Rule (2) of Rule 12:** Insert the words “in the respective House” immediately after the word “nominees” and immediately before the word “within”. It was also agreed that this sub-Rule appears towards the end of the Rule.  
Re-number sub-Rule (2) to be sub-Rule (6);
- (vi) **Rule 13:** while it was noted that the candidates would be allowed to campaign, it was resolved that sub-Rule (2) and (3) be deleted as it was not necessary for the Committee to meet with the nominees after having vetted them under Rule 12;
- (vii) **Rule 16:** Provide for clarity such that a ballot shall remain valid if a voter elects less than the number of candidates allocated per Party.
- (viii) **Rule 18:** it should be clear that the results shall be recorded and read out to the respective Houses.

23. The Committee thereafter unanimously adopted the following Rules without amendments: - Rule. 1, 3, 5, 7, 8, 9, 10, 11, 14, 15, 17,19, 20, 21, 22, 23, 24, 25 and 26.

### **PUBLIC PARTICIPATION**

- 24. Pursuant to Article 118 of the Constitution, the Joint Committee, on Friday, 31<sup>st</sup> March, 2017, invited the public to submit memoranda in consideration of the Rules for election Members to EALA.
- 25. By close of business on Tuesday, 4<sup>th</sup> April, 2017, the Committee had received memorandum from a Mr. John Kubai M’Akwalu, resident of Tigania East Constituency, Meru County dated 21<sup>st</sup> March, 2017.
- 26. Mr. M’Akwalu, petitioned Parliament to, among others,;

- i. ensure that each political party submits a list of candidates of the members of the East African Legislative Assembly with five per cent (5%) of such members being distinctly disabled; and
- ii. allow independent candidates to apply and participate in the election of Members to EALA.

27. The Committee met on Wednesday, 5<sup>th</sup> April, 2017, and considered the memorandum and incorporated their views in the Draft Election Rules, 2017.

### TIMELINES

28. Having considered and approved the procedure and the Rules, the Committee adopted the Timelines for purposes of notifications, nominations and elections as set below: -

	<b>Activity</b>	<b>Timelines</b>
1.	Establishment of a Joint Parliamentary Select Committee on Nomination of Membership to EALA	1 <sup>st</sup> and 2 <sup>nd</sup> March, 2017
2.	1 <sup>st</sup> Meeting of the Joint Meeting	29 <sup>th</sup> March, 2017
3.	The proposed Rules to be publicized in the Newspapers	4 <sup>th</sup> April, 2017
4.	<b>Joint Committee to consider the Proposed Rules and table its Report on or before 28<sup>th</sup> March, 2017</b>	<b>5<sup>th</sup> April, 2017</b>
5.	<b>Both Houses to adopt the Draft Rules</b>	<b>6<sup>th</sup> April, 2017</b>
6.	Publication of the adopted Rules in the <i>Kenya Gazette</i>	10 <sup>th</sup> April, 2017
7.	Returning officer to advertise in the <i>Gazette</i> calling for application of membership to the EALA. Interested persons have 7 days to submit applications	10 <sup>th</sup> April, 2017
8.	Close of submission of applications	18 <sup>th</sup> April, 2017
9.	Nomination Day	25 <sup>th</sup> April, 2017
10.	Returning Officer to Gazette the Election Date	25 <sup>th</sup> April, 2017
11.	Candidates or Leaders of Minority and Majority Parties in Parliament to submit nomination papers to the Returning	2 <sup>nd</sup> May, 2017 8.30am – 4pm

	<b>Activity</b>	<b>Timelines</b>
	Officer within 7 days	
12.	Returning Officer to transmit the names to the Joint Committee	5 <sup>th</sup> May, 2017
13.	Joint Committee to consider the nominations and Report to the Houses	12 <sup>th</sup> May, 2017
<b>14.</b>	<b>Election Date</b>	<b>16<sup>th</sup> May, 2017</b>
<b>15.</b>	Publication and Transmission of names to EALA	18 <sup>th</sup> May, 2017

7.0 The Draft Rules for EALA Elections, 2017 as unanimously adopted by the Joint Parliamentary Committee:

**THE DRAFT EAST AFRICAN LEGISLATIVE ASSEMBLY ELECTIONS  
(ELECTION OF MEMBERS OF THE ASSEMBLY) RULES, 2017**

LEGAL NOTICE NO. ....

**THE EAST AFRICAN LEGISLATIVE ASSEMBLY ELECTIONS ACT, 2017**

IN EXERCISE of the powers conferred by section 12 of the East African Legislative Assembly Elections Act, the Parliament of Kenya makes the following Rules —

**THE EAST AFRICAN LEGISLATIVE ASSEMBLY ELECTIONS (ELECTION OF  
MEMBERS OF THE ASSEMBLY) RULES, 2017**

**PART I - PRELIMINARY**

Citation.

1. These Rules may be cited as the East African Legislative Assembly Elections (Election of Members of the Assembly) Rules, 2017.

Interpretation.

2. In these Rules, the parliamentary words and expressions used have the same meaning as that assigned to them in the Standing Orders of the respective House of Parliament and unless the context otherwise requires—

“candidate” means a person who is nominated to vie for election to the East African Legislative Assembly;

“election” means an election to the East African Legislative Assembly;

“joint committee” means a committee established by the National Assembly and the Senate for the purposes of elections conducted under these Rules;

“nomination” means nomination as a candidate to vie for election to the East African Legislative Assembly;

“party” means a parliamentary political party or coalition of parliamentary political parties;

“presiding officer” means the Clerk of the National

Assembly and the Clerk of the Senate;

“returning officers” means the Speaker of the National Assembly and the Speaker of the Senate; and

“voter” means a member of the National Assembly or the Senate but does not include the Speaker of the either House of Parliament.

## PART II – QUALIFICATIONS AND NOMINATION OF CANDIDATES

Qualification for election.

No. 24 of 2011.

Notification of election and nomination date.

Application for nomination.

Number of nominees of each party.

3. A person shall not qualify to vie for election unless he or she meets the requirements for election set out under Article 50(2) of the Treaty for the Establishment of the East African Community, Article 99 of the Constitution and section 22 of the Elections Act.

4. Where an election is to be held under these Rules, the returning officer shall, by notice in the *Gazette* and in at least two newspapers of national circulation –

- (a) notify the public and invite interested qualified persons to apply, within a period of seven days from the date of the notice, for nomination by a party; and
- (b) appoint a nomination day, which shall be within a period of seven days from the expiry of the period prescribed under paragraph (a) for the receipt of applications for nomination.

5. A person who qualifies for nomination shall submit his or her application for nomination to the specified political party of his or her choice and in the manner specified in the notice published under rule 4.

6. (1) A party shall be entitled to nominate for election under these Rules any number of candidates not exceeding three times the figure arrived at by multiplying the number of elected members of Parliament of that party by nine and dividing the result by the total number of elected Members of Parliament.

(2) In nominating its candidates, each party shall, as much as it is feasible, consider the need for fair representation of the various political parties in Parliament, regional balance, shades of opinion, and other special interest groups in Kenya and shall ensure that at least one third of its nominees are of either



gender.

Pre-nomination  
briefing.

7. The returning officers may, before the expiry of the period prescribed under rule 4(b) invite leaders of the majority party or the leader of the minority party of all parties entitled to nominate candidates for a pre-nomination briefing on the nomination requirements under the Treaty for the Establishment of the East African Community, the East Africa Legislative Assembly Elections Act, 2011 and under these Rules.

Nomination of  
candidates.

8. (1) Upon the nomination of a candidate under these Rules, the respective political party or the nominee shall submit the of the nominee in the form prescribed in the Schedule to the returning officer in the manner prescribed under rule 9.

(2) The nomination of a candidate by a political party shall not be valid unless the candidate or political party submits to the returning officer, the prescribed form duly filled and certified by the leader of the majority party or the leader of the minority party in the manner set out in the form.

(3) Each party shall nominate candidates through a transparent and democratic process and shall keep a written record of the proceedings at which the final decision to nominate any candidate was made.

Delivery of  
nomination  
papers.

9. On the day of nomination, at any time not later than four o'clock in the afternoon, the nominee, the leader of the majority party or the leader of the minority party, as the case may be, of all parties entitled to nominate candidates shall deliver nomination papers of the candidate or candidates nominated by the party to the returning officer.

Withdrawal or  
death of a  
candidate.

10. (1) A candidate may, not later than four o'clock in the afternoon of the day following the nomination day, withdraw his or her candidature by notice in writing signed and delivered to the returning officer with a copy to the party leader of the party that nominated the candidate.

(2) No withdrawal of a candidate shall be accepted after the expiry of the period prescribed under sub-rule (1).

(3) Where the returning officer receives information to the effect that a candidate has died and the information is received after four o'clock in the afternoon of the nomination day, and before the election day, the election shall proceed, but

the voters shall be informed of such death.

(4) The party which nominated a candidate who dies or for any other reason ceases to be a candidate before the election day, may notwithstanding rule 9, nominate another person in place of the candidate.

Inspection of nomination papers.

**11.** Subject to such conditions as the returning officers may prescribe, any person may, during office hours within two working days after the nomination day, inspect the nomination papers of any candidate and may lodge a complaint with the returning officers in relation to a candidate's nomination.

Forwarding of nomination papers to joint committee.

**12.** (1) Within three days after the expiry of the period provided for in rule 9, the returning officers shall forward to the joint committee, for its consideration, the names and nomination papers of all duly nominated candidates together with any complaint that may have been received under rule 11.

(2) The joint committee may, in considering nomination papers under sub-rule (1), invite the respective nominee to appear before the committee, in order to verify any information affecting his or her qualification to vie for elections under these Rules.

(3) The joint committee may, upon considering the nomination papers of a candidate make a recommendation for the rejection of the papers of the candidate if it is apparent from the contents of the papers that the candidate is not qualified to vie for election.

(4) The joint committee may make a recommendation for the rejection of all nominations and order a fresh nomination if it is apparent from the list of nominees that it shall not be possible, upon the holding of elections, to have, as much as is feasible, a fair representation of the various political parties in Parliament, regional balance, shades of opinion, gender and other special interest groups in Kenya and to ensure that at least not more than two thirds of the persons elected are of the same gender.

(5) The joint committee shall consider the nomination papers and table its report on the nominees in both Houses of Parliament within a period of seven days from the date of receipt of the papers.

(6) In the event that Parliament approves the recommendation of the joint committee for a fresh nomination.

the returning officer may shorten the periods specified under rule 4.

### PART III – ELECTION CAMPAIGNS AND VOTING

Campaigns by nominees.

**13.** An aspiring candidate may approach and seek the support of a Member of Parliament or Senator entitled to vote before the nomination day and may, if nominated, continue to do so after the nomination day.

Publication of election date.

**14.** (1) The returning officers shall, by notice published in the Gazette and in at least two newspapers of national circulation appoint a date and a venue for the holding of the election by the respective Houses of Parliament which shall be not more than fourteen days after the nomination day.

(2) The date and time for election appointed under sub-rule (1) shall be the same for the National Assembly and the Senate.

Ballot paper.

**15.** (1) Each returning officer shall prepare and at the time appointed for the election, issue to each voter one ballot paper on which shall be written in alphabetical order, the names of all duly nominated candidates, their gender, age and county clustered under the heading of the names of the respective parties that nominated them.

(2) A voter shall be required to cast a specified number of votes, which shall be clearly indicated on the ballot paper, in respect of the candidates nominated by each party.

(3) The number of votes cast under sub-rule (2) in respect of each party shall be the figure arrived at by multiplying the number of Members of Parliament in the National Assembly or Senators in the Senate, as the case may be, of that party by nine and dividing the result by the total number of Members of Parliament or Senators in the respective Houses of Parliament.

Voting.

**16.** (1) The voting in each House shall be conducted under the general supervision of the respective Speaker, in the place appointed by the Speaker.

(2) On receiving a ballot paper, a voter shall secretly record his or her votes by putting a mark against the names of the nine candidates that the voter wishes to elect as members of

the East African Legislative Assembly, in the respective proportions specified under sub-rule (3) of rule 14.

(3) A voter shall cast as many votes as the number of candidates to be elected and in proportion to the number of candidates required to be elected from each party in accordance with rule 15(3).

(4) Where a voter places a mark against the names of more than one candidate for any particular position being voted for, in a manner that occasions an aggregate exceeding the numbers specified in sub rule (3), the ballot paper shall be regarded as a spoilt vote and shall be counted as such during the tallying.

(5) The ballot paper of a voter shall not be regarded as spoilt where the voter casts a number of votes that falls below the number of candidates to be elected in an election conducted under these Rules.

(6) A voter who unintentionally spoils a ballot paper while voting is in progress shall, on surrendering the spoilt ballot paper, be issued with a replacement ballot paper.

Counting of votes.

**17.** (1) Immediately after all voters have cast their votes, the respective Speakers shall appoint two members to act as counting agents for all the candidates.

(2) The respective returning officers shall, in the presence of the counting agents as witnesses, count the votes cast.

Declaration of results.

**18.** When the votes have been counted and the results of the election have been ascertained—

- (a) each returning officer shall report to the respective House the results of the election together with the number of votes recorded for each candidate under the cluster of each party at the end of the election exercise;
- (b) the Speaker of each House shall send a message to the other House communicating the results of the election in their respective House;
- (c) the Speaker shall announce to the respective House, the results of the election received from the other House; and
- (d) the Speaker of the National Assembly shall declare to be duly elected as members of the East African Legislative Assembly, nine persons who receive the

highest number of votes.

Publication and transmission of names.

19. Within seven days after the Speaker of the National Assembly declares the duly elected members of the East African Legislative Assembly under rule 18(d), —

(a) the returning officers shall publish the names in the *Gazette*; and

(b) the Speakers of the respective Houses shall jointly transmit to the Clerk of the East African Legislative Assembly the names of the elected members as published in the *Gazette*.

Custody of ballot papers.

20. The returning officers of the respective Houses of Parliament shall ensure safe custody of all ballot papers and other documents relating to the conduct of the election and shall cause all such documents to be destroyed after the expiration of six months from the election day.

#### PART IV – VOIDANCE OF ELECTION

Determination of validity of candidate's election.

21. (1) Any dispute that may arise as to whether a person is an elected member of the East African Legislative Assembly or whether a seat in the Assembly is vacant shall be determined by the High Court.

(2) A person aggrieved by the outcome of an election under these Rules may file a petition to the High Court within seven days after the date of the publication of the names of elected persons in the *Gazette*.

Procedure for voidance of elections.

22. The procedure, jurisdiction and grounds for election petitions in respect of a Member of Parliament shall apply *mutatis mutandis* for a Member of the East African Legislative Assembly elected under these Rules.

#### PART V - MISCELLANEOUS

Filling of vacancy.

23. Where the seat of a member elected under these Rules becomes vacant, the Speakers shall, upon receipt of notification of the vacancy from the Speaker of the East African Legislative Assembly, facilitate the election of a member to replace the member in accordance with the procedure set out under these Rules.

Matters not specifically

24. If any matter arises which is not specifically

provided for. provided for in these Rules, the respective Speakers shall make a ruling directing what is to be done and in making such a ruling, the Speakers shall be guided by the practice and procedure normally followed in similar situations with regard to the conduct of elections in Parliament.

Supercession. **25.** These Rules supersede any previous rules, procedure or practice for the election of members to the East African Legislative Assembly.

Revocation of L.N. 154 of 2001 and L.N. 31 of 2012. **26.** The Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2001 and the Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2012 are revoked.

Made on the.....2017

**EKWEE ETHURO,**  
**Speaker of the Senate.**

**JUSTIN MUTURI,**  
**Speaker of the National Assembly.**

## ANNEXURE 1: DRAFT RULES

LEGAL NOTICE NO. ....

**THE EAST AFRICAN LEGISLATIVE ASSEMBLY ELECTIONS ACT,  
2011**

**IN EXERCISE** of the powers conferred by section 12 of the East African Legislative Assembly Elections Act, the Parliament of Kenya makes the following Rules —

**THE EAST AFRICAN LEGISLATIVE ASSEMBLY ELECTIONS  
(ELECTION OF MEMBERS OF THE ASSEMBLY) RULES, 2017**

**PART I - PRELIMINARY**

Citation.

1. These Rules may be cited as the East African Legislative Assembly Elections (Election of Members of the Assembly) Rules, 2017.

Interpretation.

2. In these Rules, the parliamentary words and expressions used have the same meaning as that assigned to them in the Standing Orders of the respective House of Parliament and unless the context otherwise requires—

“candidate” means a person who is nominated to vie for election to the East African Legislative Assembly;

“election” means an election to the East African Legislative Assembly;

“joint committee” means a committee established by the National Assembly and the Senate for the purposes of elections conducted under these Rules;

“nomination” means nomination as a candidate to vie for election to the East African Legislative Assembly;

“party” means a parliamentary political party or coalition of parliamentary political parties;



“presiding officers” means the Clerk of the National Assembly and the Clerk of the Senate;

“returning officers” means the Speaker of the National Assembly and the Speaker of the Senate; and

“voter” means a member of the National Assembly or the Senate but does not include the Speaker of either House of Parliament.

## PART II – QUALIFICATIONS AND NOMINATION OF CANDIDATES

Qualification for election.

No. 24 of 2011.

Notification of election and nomination date.

Application for nomination by a political party.

Number of nominees of each party.

3. A person shall not qualify to vie for election unless he or she meets the requirements for election set out under Article 50(2) of the Treaty for the Establishment of the East African Community, Article 99 of the Constitution and section 22 of the Elections Act.

4. Where an election is to be held, the presiding officers shall, by notice in the *Gazette* and in at least two newspapers of national circulation –

(a) notify that fact and invite interested qualified persons to apply, within a period of seven days from the date of the notice, for nomination to be elected as a member of the East African Legislative Assembly ; and

(b) appoint a nomination day, which shall be within a period of seven days from the expiry of the period prescribed under paragraph (a) for the receipt of applications for nomination.

5. A person who qualifies for nomination shall submit his or her application for nomination to the specified political party of his or her choice in the manner specified in the notice published under rule 4.

6. (1) A party shall be entitled to nominate for election under these Rules any number of candidates not exceeding three times the figure arrived at by multiplying the number of elected members of Parliament of that party by such number as Joint Committee shall determine and dividing the result by the total number of elected Members of Parliament.

(2) In nominating its candidates, each party shall, as much as it is feasible, take into account the need for fair representation of the various political parties in Parliament, regional balance, shades of opinion, gender and other special interest groups in Kenya and shall ensure that at least one third of its nominees are women.

Pre-nomination briefing.

7. The presiding officers may, before the expiry of the period prescribed under rule 4(b) invite the respective leader of the majority party and the leader of the minority party of all parties entitled to nominate candidates for a pre-nomination briefing on the nomination requirements under the Treaty for the Establishment of the East African Community, the East Africa Legislative Assembly Elections Act, 2011 and under these Rules.

Nomination of candidates by a political party.

8. (1) Upon the nomination of a candidate under these Rules, the respective political party or the nominee, as the case may be, shall submit the particulars of the nominee in the form prescribed in the First Schedule to the presiding officer in the manner prescribed under rule 10.

(2) The nomination of a candidate by a political party shall not be valid unless the candidate or political party submits to the presiding officer, the prescribed form duly filled and certified by the leader of the majority party or the leader of the minority party, as the case may be, in the manner set out in the form.

(3) Each party shall nominate candidates through a transparent and democratic process and shall keep a written record of the proceedings at which the final decision to nominate any candidate was made.

Nomination of candidates independent of a political party.

9. A person intending to vie for election independent of a political party shall submit his or her duly filled nomination form in the format prescribed in Second Schedule to a presiding officer in the manner specified in the notice published under rule 4 and in accordance with rule 10.

Delivery of nomination papers.

10. On the day of nomination, at any time not later than four o'clock in the afternoon, an independent candidate or a nominee, the leader of the majority party or the leader of the minority party, as the case may be, of all parties entitled to nominate candidates shall deliver nomination papers of the

candidate or candidates nominated by the party to the presiding officer.

Withdrawal or death of a candidate.

**11.** (1) A candidate may, not later than four o'clock in the afternoon of the day following the nomination day, withdraw his or her candidature by notice in writing signed and delivered to the presiding officer, and in the case of a candidate nominated by a political party, with a copy to the party leader of the party that nominated the candidate.

(2) No withdrawal of a candidate shall be accepted after the expiry of the period prescribed under sub-rule (1).

(3) Where the presiding officer receives information that a candidate has died and the information is received after four o'clock in the afternoon of the nomination day, and before the election day, the election shall proceed, but the voters shall be informed of such death.

(4) In the case of a party nominee, the party which nominated the candidate who dies or for any other reason ceases to be a candidate before the election day, may notwithstanding rule 10, nominate another person in place of the candidate.

Inspection of nomination papers.

**12.** Subject to such conditions as the presiding officers may prescribe, any person may, during office hours for two working days from the nomination day, inspect the nomination papers of any candidate and may lodge a complaint with the presiding officers in relation to a candidate's nomination.

Forwarding of nomination papers to joint committee.

**13.** (1) Within three days after the expiry of the period provided for in rule 10, the presiding officers shall forward to the joint committee, for its consideration, the names and nomination papers of all duly nominated candidates together with any complaint that may have been received under rule 12.

(2) The joint committee may, in considering nomination papers under sub-rule (1), invite to appear before the committee, the respective nominee in order to verify any information affecting his or her qualification to vie for elections under these Rules.

(3) The joint committee may, upon considering the nomination papers of a candidate make a recommendation for the rejection of the papers of the candidate if it is apparent from

the contents of the papers that the candidate is not qualified to vie for election.

(4) The joint committee may make a recommendation for the rejection of all nominations and order a fresh nomination if it is apparent from the list of nominees that it shall not be possible, upon the holding of elections, to have, as much as is feasible, a fair representation of the various political parties in Parliament, regional balance, shades of opinion, gender and other special interest groups in Kenya and to ensure that at least not more than two thirds of the persons elected are of the same gender.

(5) The joint committee shall consider the nomination papers and table its report on the nominees in both Houses of Parliament within a period of seven days from the date of receipt of the papers.

(6) In the event that Parliament approves the recommendation of the joint committee for a fresh nomination, the presiding officer may shorten the periods specified under rule 4.

### PART III – ELECTION CAMPAIGNS AND VOTING

Campaigns by nominees.

**14.** An aspiring candidate may approach and seek the support of a Member of Parliament entitled to vote before the nomination day and may, if nominated, continue to do so after the nomination day.

Publication of election date.

**15.** (1) The presiding officers shall, by notice published in the Gazette and in at least two newspapers of national circulation appoint a date and a venue for the holding of the election by the respective Houses of Parliament which shall be not more than fourteen days after the nomination day.

(2) The date and time for election appointed under sub-rule (1) shall be the same for the National Assembly and the Senate.

Ballot paper.

**16.** (1) Each presiding officer shall prepare and at the time appointed for the election, shall issue to each voter one ballot paper on which shall be written in alphabetical order, the names of all duly nominated candidates, their gender, age and county clustered under the heading of the names of the

respective parties that nominated them.

(2) A voter shall be required to cast a specified number of votes, which shall be clearly indicated on the ballot paper, in respect of the candidates nominated by each party.

(3) The number of votes cast under sub-rule (2) in respect of each party shall be the figure arrived at by multiplying the number of Members of Parliament of that party by the number determined by the Joint Committee and dividing the result by the total number of Members of Parliament.

Voting.

**17.** (1) The voting in each House shall be conducted under the general supervision of the respective Speaker, who shall be the returning officer, in the place appointed by the Speaker.

(2) On receiving a ballot paper, a voter shall secretly record his or her votes by putting a mark against the names of the nine candidates that the voter wishes to elect as members of the East African Legislative Assembly, in the respective proportions specified under sub-rule (3) of rule 15.

(3) A voter shall cast as many votes as the number of candidates to be elected and in proportion to the number of candidates required to be elected as shall be determined by the Joint Committee.

(4) Where a voter casts more votes than the number of candidates required to be elected with respect to a category of candidates, the ballot paper of that voter shall be regarded as spoilt.

(5) The ballot paper of a voter shall not be regarded as spoilt where the voter casts a number of votes that falls below the number of candidates to be elected in an election conducted under these Rules.

(6) A voter who accidentally spoils a ballot paper while voting is in progress shall, on surrendering the spoilt ballot paper, be issued with a replacement ballot paper.

Counting of votes.

**18.** (1) Immediately after all voters have cast their votes, the respective returning officer shall appoint two members to act as counting agents for all the candidates.

(2) The respective presiding officer shall, in the presence of the counting agents as witnesses, count the votes cast.

Declaration of results.

**19.** When the votes have been counted and the results of the election have been ascertained—

- (a) each presiding officer shall record the results of the tally and report to the respective House the results of the election together with the number of votes recorded for each candidate under each cluster at the end of the election exercise;
- (b) the returning officer in each House shall the upon reporting the results of the elections under paragraph (a), send a message to the other House communicating the results of the election in the respective House;
- (c) the returning officer shall announce to the respective House, the results of the election in the other House; and
- (d) the returning officer in the National Assembly shall declare to be duly elected as members of the East African Legislative Assembly, nine persons who receive the highest number of votes.

Publication and transmission of names.

**20.** Within seven days after the declaration of the duly elected members of the East African Legislative Assembly under rule 19(d),—

- (a) the presiding officers shall publish the names in the *Gazette*; and
- (b) the returning officers shall jointly transmit to the Clerk of the East African Legislative Assembly the names of the elected members as published in the *Gazette*.

Custody of ballot papers.

**21.** The presiding officers of the respective Houses of Parliament shall ensure safe custody of all ballot papers and other documents relating to the conduct of the election and shall cause all such documents to be destroyed after the expiration of six months from the election day.

## PART IV – VOIDANCE OF ELECTION

Determination of validity of candidate's election.

22. Any question that may arise as to whether a person is an elected member of the East African Legislative Assembly or whether a seat in the Assembly is vacant shall be determined by the High Court.

Procedure for voidance of elections.

23. The procedure, jurisdiction and grounds for election petitions in respect of a Member of Parliament shall apply *mutatis mutandis* for a Member of the East African Legislative Assembly elected under these Rules.

## PART V - MISCELLANEOUS

Filling of vacancy.

24. Where the seat of a member elected under these Rules becomes vacant, the Speakers shall, upon receipt of notification of the vacancy from the Speaker of the East African Legislative Assembly, facilitate the election of a member to replace the member in accordance with the procedure set out under these Rules.

Matters not specifically provided for.

25. If any matter arises which is not specifically provided for in these Rules, the respective Speakers shall make a ruling directing what is to be done and in making such a ruling, the Speakers shall be guided by the practice and procedure normally followed in similar situations with regard to the conduct of elections in Parliament.

Supercession

26. These Rules supercede any previous rules, procedure or practice for the election of members to the East African Legislative Assembly.

Revocation of L.N. 154 of 2001 and L.N. 31 of 2012.

27. The Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2001 and the Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2012 are revoked.

Made on the.....2017.

JUSTIN MUTURI,  
Speaker of the National Assembly.

EKWEE ETHURO,  
Speaker of the Senate.



## ANNEXURE 2: PROPOSED NOMINATION FORM

### SCHEDULE

#### NOMINATION FORM FOR ELECTION OF A MEMBER OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY

I, the undersigned, being the party leader/party whip of the parliamentary party shown below hereby certify the nomination of the under mentioned person as a candidate at the said election.

Candidates Name in Full	Age	Address	County	Occupation or Description

Full Names.....

Parliamentary Political Party.....

Party Office Held (Party Leader/Party Whip).....

.....

*Signature of Party Leader/Party Whip*

And I, the aforesaid.....

do hereby consent to my nomination as a candidate for election as a member of the East African Legislative Assembly and hereby certify that I am in all respects qualified for nomination as such candidate.

I have attached herewith

- a) a photocopy of my national identity card/passport; and
- b) my detailed curriculum vitae showing my educational and other qualifications.

.....

*Signature of Candidate*

Dated the .....April 2017

**ANNEXURE 3: CORRESPONDENCE**



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

*1/ Njoroge*

*To have a good  
ful outcome*

*give a copy*

*to the*

*AG*

*to*

*Prime  
and*

*make*

*Committee*

*held*

*27/3*

*Mr. Njoroge  
Please take  
also share with  
the Justice  
a brief on  
the proposed  
Special  
January  
proposed  
27/3*

Our Ref: AG/LDD/1101/1/56

March 22, 2017



Michael Sialai, EBS  
Clerk of the National Assembly  
Parliament Buildings  
P.O Box 41842-00100  
NAIROBI



Dear Sir,

REF: ADVISORY ON THE REVIEW OF THE PROCEDURE AND RULES FOR  
ELECTION OF MEMBERS OF THE EALA

It has come to my attention that the National Assembly on 1<sup>st</sup> March 2017 and the Senate on 2<sup>nd</sup> March 2017 passed a motion to set up a joint select committee comprising both Members of Parliament and Senators for the aforementioned purpose.

The process of reviewing the Rules in a view to including the Senate in the broader definition of the words "National Assembly" as contained in the East African Community (Election of Members of the Assembly) Rules, 2012 and in pursuit of conformity of the Rules with the Kenyan Constitution, 2010 as debated and agreed in both Houses comes at a very appropriate time.

I wish to point out to the Committee that there is a need to ensure that the Rules adhere to the general principles for electoral systems in Kenya as set out in Article 81 of the Constitution. Also worth noting is Section 4 of East



African Community (Election of Members of the Assembly) Rules, 2012 sets out the general principles for consideration by member states in election of their Representatives to the Assembly.

My Office would like the opportunity to review the Rules and Regulations in order to confirm their conformity to the Constitution and the EAC Treaty at the appropriate time. This will undoubtedly help to mitigate against any litigation matters that could arise locally and/or regionally over the election of Kenyan members to the EALA.



GITHU MUIGAI, EGH, SC  
ATTORNEY GENERAL

cc

The Chairman,  
Joint Committee reviewing the Procedure and  
Rules for Election of Members of the EALA  
Parliament Buildings  
P.O Box 41842-00100  
NAIROBI

## ANNEXURE 4: MINUTES

**MEETING OF THE FIRST SITTING OF THE JOINT SELECT COMMITTEE TO REVIEW THE PROCEDURE AND RULES FOR ELECTION OF MEMBERS OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY HELD ON 29TH MARCH, 2017 AT 3.30 P.M. IN COMMITTEE ROOM NO.7, MAIN PARLIAMENT BUILDINGS**

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**PRESENT**

Hon. Katoo Ole Metito, M.P. - Co-Chairperson  
Sen. Kipchumba Murkomen, M.P - Co-Chairperson  
Sen. Kimani Wamatangi, M.P.  
Hon. Samwel Chepkonga, M.P.  
Hon. Wanjiku Muhia, M.P.  
Sen. Mshenga Mvita, M.P.  
Hon. Ali Wario, M.P.  
Sen. Mutula Kilonzo Jnr, M.P.  
Hon. Florence Mutua, M.P.  
Sen. Henry Tiole Ndiema, M.P.  
Hon. Wafula Wamunyinyi, M.P.

**APOLOGIES**

Hon. Daniel Maanzo, M.P.  
Sen. Peter Mositet, M.P.  
Sen. Elizabeth Ongoro, M.P.

**IN ATTENDANCE**

**Secretariat**

Mr. Rana Tiampati - Principal Clerk Assistant (KNA)  
Ms. Elizabeth Muhia - Principal Legal Counsel (Senate)  
Mr. Dima Dima - Senior Legal Counsel (KNA)  
Ms. Josephine Kusinyi - Senior Legal Counsel (Senate)  
Ms. Susan Maritim - First Clerk Assistant (KNA)  
Mr. Charles Ngatia - Third Clerk Assistant (Senate)  
Ms. Grace Wahu - Research Assistant III (Senate)  
Mr. Reuben Chesire - Sergeant-at-Arms (Senate)  
Mr. Nimrod Ochieng - Audio Officer (KNA)

**MIN/JCEALA/001/2017**

**PRELIMINARIES**

The meeting was called to order at half past three o'clock and thereafter opened with prayer and introductions.

**MIN/JCEALA/002/2017**

**REMARKS BY THE CLERKS OF THE HOUSES OF PARLIAMENT**

The Clerk's Representative (National Assembly) welcomed Members to the meeting and briefed them on the Committee's mandate.

By a motion adopted by the National Assembly and the Senate on 1<sup>st</sup> and 2<sup>nd</sup> March, 2017 respectively, the Houses of Parliament established a Joint Committee consisting of seven (7) members from each House, with the following **mandate**–

- a) to review the procedure and rules for election of Members of EALA contained in the Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2012 in light of Kenya's bicameral nature;
- b) on the basis of the review in (a) above, propose appropriate procedures and rules for election of persons to represent the Republic of Kenya at EALA;
- c) suggest appropriate timelines for purposes of notifications, nominations and elections; and
- d) consider the nominees, oversee the election process and report to the House within the timelines stipulated in the Elections Rules.

The Committee is expected to, within fourteen days, submit a report to the Houses of Parliament containing the revised rules of procedure.

**MIN/JCEALA/003/2017**

#### **ELECTION OF CHAIRPERSON**

After ascertaining that majority of the members were present, the Clerk's representative conducted the election of the Chairpersons as follows:

Hon. Kato Ole Metito, MP is the Co-Chairperson representing the National Assembly following the House's approval of the Motion for the establishment of the Joint Committee.

Sen. Kipchumba Murkomen, MP was unanimously elected Co-Chairperson representing the Senate having been proposed by Sen. Kimani Wamatangi, MP and seconded by Sen. Mshenga Mvita, MP.

The two Co-Chairpersons thereafter took the chair.

**MIN/JCEALA/004/2017**

#### **CONSIDERATION OF THE MODE OF ELECTIONS**

Following consideration of its mandate, the Committee deliberated on the merits and demerits of holding joint vs separate election of Members to EALA and resolved to conduct **separate elections**, having been proposed by Hon. Wanjiku Muhia and seconded by Sen. Henry Ndiema.

**MIN/JCEALA/005/2017**

#### **CONSIDERATION OF RULES FOR SEPARATE ELECTIONS**

Following a proposal by Hon. Florence Mutua and seconded by Hon. Mutula Kilonzo Jnr, the Committee resolved to amend the day's agenda to include consideration of Rules for Separate Elections. However, the matter was deferred to the next sitting.

**MIN/JCEALA/006/2017**

#### **ANY OTHER BUSINESS**

No other business arose.

**MIN/JCEALA/007/2017**

#### **DATE OF THE NEXT MEETING**

The next meeting will be held on **Thursday, 30<sup>th</sup> March, 2017 at 9.00 a.m.** in Committee Room No.7, Main Parliament Buildings.

**MIN/JCEALA/008/2017**

#### **ADJOURNMENT**

There being no other business, the meeting was adjourned at half past four o'clock until Thursday, 30<sup>th</sup> March, 2017 at 9.00 a.m.

Signed.....  
Hon. Kato Ole Metito, M.P.  
Co-Chairperson

Date..... 5/4/2017

Signed.....  
Sen. Kipchumba Murkomen, M.P.  
Co-Chairperson

Date..... 5/4/2017



MEETING OF THE SECOND SITTING OF THE JOINT PARLIAMENTARY  
SELECT COMMITTEE TO REVIEW THE PROCEDURE AND RULES FOR  
ELECTION OF MEMBERS OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY  
(EALA) HELD ON 30TH MARCH, 2017 AT 9.00 A.M. IN COMMITTEE ROOM NO.7,  
MAIN PARLIAMENT BUILDINGS

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**PRESENT**

Hon. Katoo Ole Metito, M.P. -Co-Chairperson  
Sen. Kipchumba Murkomen, M.P - -Co-Chairperson  
Hon. Wanjiku Muhia, M.P.  
Sen. Peter Mositet, M.P.  
Sen. Mshenga Mvita, M.P.  
Hon. Ali Wario, M.P.  
Sen. Mutula Kilonzo Jnr, M.P.  
Hon. Florence Mutua, M.P.  
Hon. Wafula Wamunyinyi, M.P.

**APOLOGIES**

Hon. Daniel Maanzo, M.P.  
Sen. Elizabeth Ongoro, M.P.  
Sen. Kimani Wamatangi, M.P.  
Hon. Samwel Chepkonga, M.P.  
Sen. Henry Tirole Ndiema, M.P.

**IN ATTENDANCE**

**Secretariat**

Ms. Mary Chesire - Deputy Director, Committee Services (Senate)  
Mr. Rana Tiampati - Principal Clerk Assistant (KNA)  
Ms. Elizabeth Muhia - Principal Legal Counsel (Senate)  
Mr. Dima Dima - Senior Legal Counsel (KNA)  
Ms. Susan Maritim - First Clerk Assistant (KNA)  
Mr. Charles Ngatia - Third Clerk Assistant (Senate)  
Ms. Grace Wahu - Research Assistant III (Senate)  
Mr. Reuben Chesire - Sergeant-at-Arms (Senate)  
Mr. Nimrod Ochieng - Audio Officer (KNA)

MIN/JCEALA/009/2017

**PRELIMINARIES**

The meeting was called to order at half past nine o'clock and thereafter opened with prayer by Sen. Mvita Mshenga, M.P.

MIN/JCEALA/010/2017

## ADOPTION OF AGENDA

The agenda of the meeting was adopted with amendments after it was proposed and seconded by Sen. Peter Mositet, M.P. and Sen. Mvita Mshenga, M.P. respectively as follows;

Prayer

1. Introduction
2. Adoption of the Agenda;
3. Consideration of the East African Legislative Assembly Elections (Election of Members of the Assembly) Rules, 2017;
4. Consideration of Committee time lines and meeting schedule;
5. Any Other Business;
6. Date of next meeting;
7. Adjournment.

MIN/JCEALA/011/2017

## CONSIDERATION OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY ELECTIONS (ELECTION OF MEMBERS OF THE ASSEMBLY) RULES, 2017

The Principal Legal Counsel took the Committee through the draft Rules for Election of

Members to EALA. Reference was made to the following documents:

- a) Articles 50 and 51 of the Treaty for the establishment of the East African Community,
- b) Articles 2 and 99 of the Constitution of Kenya;
- c) Sections 22 and 24 of the Elections Act, 2011;
- d) The Standing Orders of the Senate; and
- e) The Standing Orders of the National Assembly.

The Committee proposed the following amendments to draft Rules: -

- a) **Rule 2-** Provide for definition of <sup>Retiring</sup> "Presiding Officer" who shall be the Speaker of each of the respective House of Parliament;
- b) **Rule 4-** it was noted that publication of the draft Rules in the Gazette and the newspaper advertisement should be done concurrently;
- c) **Rule 6-** it was noted that the term "shades of opinion" as contained in the Treaty was not clear. It was however agreed that rather than set out how to measure shades of opinion, it be left as it was in the Rules and that the Committee would, during the vetting process, decide how to determine its variables;
- d) It was noted that the Joint Committee would be required to carry out the necessary vetting including ensuring that the candidates had been cleared by

the relevant agencies such as KRA and EACC in order to determine whether they qualify for election in accordance with existing legislation;

e) **Rule. 12 (2) -**

Insert the words “in the respective House” immediately after the word “nominees” and immediately before the word “within”. It was also agreed that this sub-rule appears towards the end of the Rule.

Renumber sub-Rule (2) to be sub Rule (6);

- f) **Rule 13-** while it was noted that the candidates would be allowed to campaign, it was resolved that sub-Rules (2) and (3) be deleted as they were not necessary for the Committee to meet with the nominees after having vetted them under Rule 12;
- g) **Rule 16-** Provides for clarity such that a ballot shall remain valid if a voter elects less than the number of candidates allocated per Party; and
- h) **Rule 18-** it should be clear that the results shall be recorded and read out to the respective Houses.

**MIN/JCEALA/012/2017**

**ADOPTION OF ELECTION RULES**

The Committee considered and unanimously adopted the following Rules without amendments: - Rule. 1, 3, 5, 7, 8, 9, 10, 11, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 after they were proposed and seconded by Hon. Florence Mutua, M.P. and Sen. Mvita Mshenga, M.P., respectively.

**MIN/JCEALA/013/2017**

**CONSIDERATION OF COMMITTEE TIME LINES AND MEETINGS SCHEDULE**

The Committee considered the timelines as follows;

<b>Activity</b>	<b>Date</b>
Public hearing on Election Rules	31 <sup>st</sup> March - 4 <sup>th</sup> April, 2017
Adoption of Report on Election Rules	5 <sup>th</sup> April, 2017
Tabling of Report on Election Rules in both Houses	5 <sup>th</sup> April, 2017
Debate on the Report in both Houses	6 <sup>th</sup> April, 2017

**MIN/JCEALA/ 014/2017**

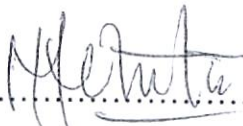
**DATE OF THE NEXT MEETING**

The next meeting will be held on **Wednesday, 5<sup>th</sup> April, 2017 at 10.00 a.m.** in Committee Room No.7, Main Parliament Buildings.

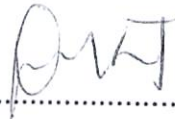
MIN/JCEALA/ 015/2017

ADJOURNMENT

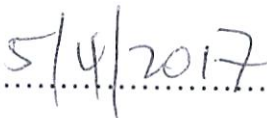
There being no other business, the meeting was adjourned at quarter past eleven o'clock until Wednesday, 5<sup>th</sup> April, 2017 at 10.00 a.m.

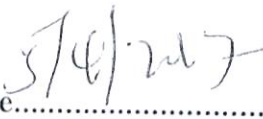
Signed.....

Hon. Katoo Ole Metito, M.P.  
Co-Chairperson

Signed.....

Sen. Kipchumba Murkomen, M.P  
Co-Chairperson

Signed.....

Date.....

**MEETING OF THE THIRD SITTING OF THE JOINT PARLIAMENTARY SELECT COMMITTEE TO REVIEW THE PROCEDURE AND RULES FOR ELECTION OF MEMBERS OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA) HELD ON 5TH APRIL, 2017 AT 10.00 A.M. IN COMMITTEE ROOM NO.7, MAIN PARLIAMENT BUILDINGS**

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**PRESENT**

Hon. Katoo Ole Metito, M.P. -Co-Chairperson  
Sen. Kipchumba Murkomen, M.P. -Co-Chairperson  
Hon. Wanjiku Muhia, M.P.  
Hon. Samwel Chepkong'a, M.P.  
Sen. Mshenga Mvita, M.P.  
Hon. Ali Wario, M.P.  
Sen. Mutula Kilonzo Jnr., M.P.  
Hon. Wafula Wamunyinyi, M.P.  
Sen. Peter Mositet, M.P.

**APOLOGIES**

Sen. Elizabeth Ongoro, M.P.  
Hon. Florence Mutua, M.P.  
Hon. Daniel Maanzo, M.P.  
Sen. Kimani Wamatangi, M.P.  
Sen. Henry Tiolo Ndiema, M.P.

**IN ATTENDANCE**

**Secretariat**

Ms. Mary Chesire - Deputy Director, Committee Services (Senate)  
Mr. Rana Tiampati - Principal Clerk Assistant (KNA)  
Ms. Elizabeth Muhia - Principal Legal Counsel (Senate)  
Ms. Susan Maritim - First Clerk Assistant (KNA)  
Mr. Charles Ngatia - Third Clerk Assistant (Senate)  
Ms. Grace Wahu - Research Assistant III (Senate)  
Mr. Nimrod Ochieng - Audio Officer (KNA)

**MIN/JCEALA/016/2017**

**PRELIMINARIES**

The meeting was called to order at half past ten o'clock and thereafter opened with prayer by Sen. Kipchumba Murkomen, M.P.

**MIN/JCEALA/017/2017**

**ADOPTION OF AGENDA**

The agenda of the meeting was adopted with amendments after it was proposed and seconded by Sen. Mutula Kilonzo, Jnr., M.P. and Hon. Wafula Wamunyinyi, M.P. respectively as follows:

Prayer

1. Introduction
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the previous Sitting;
4. Matters Arising;
5. Consideration of Memoranda on the draft EALA Rules, 2017;
6. Consideration of the Draft EALA Rules, 2017;
7. Adoption of Report on the East African Legislative Assembly Elections (Election of Members of the Assembly) Rules, 2017;
8. Any Other Business;
9. Date of next meeting;
10. Adjournment.

**MIN/JCEALA/018/2017**

**CONFIRMATION OF MINUTES OF THE  
PREVIOUS SITTINGS**

Minutes of the first sitting held on 29<sup>th</sup> March, 2017 were confirmed as a true record of the proceedings after they were proposed and seconded by Sen. Mvita Mshenga, M.P. and Sen. Mutula Kilonzo Jnr., M.P., respectively.

Minutes of the second sitting held on 30<sup>th</sup> March, 2017 were confirmed with amendments as a true record of the proceedings after they were proposed and seconded by Sen. Mutula Kilonzo Jnr., M.P. and Hon. Wafula Wamunyinyi, M.P. respectively.

**MIN/JCEALA/019/2017**

**CONSIDERATION OF MEMORANDA ON  
DRAFT EALA RULES**

The Committee was informed that a Mr. John Kubai M’Akwalu, a resident of Tigania East Constituency, Meru County petitioned Parliament to, among others,

- i. ensure that each political party submits a list of candidates of the members of the East African Legislative Assembly with five per cent (5%) of such members being distinctly disabled; and
- ii. allow independent candidates to apply and participate in the election of Members to EALA.

The Committee met on Wednesday, 5<sup>th</sup> April, 2017, and considered the memorandum and incorporated their views in the Draft Election Rules, 2017.

On the place of independent candidates in the election process, the Committee noted that the Treaty required that Article 50 of the Treaty required that the election of contestants to EALA should have representation as much as it is feasible from “various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in that

category the preserve to bring candidates for the other categories, so that ultimately every candidate and eventual representative would be affiliated to a political party, whether or not represented in the National Assembly, as opposed to say shades of opinion, gender and other special interest groups, would be a clear violation of Article 50(1) of the Treaty."

**MIN/JCEALA/020/2017      CONSIDERATION OF DRAFT EALA RULES**

The Committee considered the amended draft rules and made further amendments as follows: -

**Rule 2:** Provide for definition of "Presiding Officer" and "Returning Officer" as follows:

- i. "presiding officer" means the Clerk of the National Assembly and the Clerk of the Senate;
- ii. "returning officers" means the Speaker of the National Assembly and the Speaker of the Senate

**Rule 4** – Delete the word 'special' appearing before the word 'gazette'

**Rule 6-** Delete the word KRA and EACC appearing immediately after the word

'agencies' and insert the following wording 'to comply with the Constitution of Kenya and other relevant laws.

**MIN/JCEALA/021/2017      ADOPTION OF ELECTION RULES**

The Committee considered the following Rules as amended: - Rule. 2, 4, 6, 12, 13, 16, and 18 and unanimously adopted them.

**MIN/JCEALA/022/2017      ADOPTION OF REPORT ON ELECTION RULES, 2017**

The Committee considered and unanimously adopted the Report on the East African Legislative Assembly Elections (Election of Members of the Assembly) Rules, 2017 and resolved to table the report on Wednesday, 5<sup>th</sup> April, 2017 in both Houses of Parliament.

**MIN/JCEALA/ 023/2017                      ADJOURNMENT**

There being no other business, the meeting was adjourned at half past eleven o'clock until further notice.

Signed.....  
Hon. Katoo Ole Metito, MGH, EGH, M.P.  
Co-Chairperson

Signed.....  
Sen. Kipchumba Murkomen, M.P  
Co-Chairperson

Date.....  
Signed..... 5/4/2017

Date..... 5/4/2017

ANNEXURE 5: MEMORANDA FROM THE PUBLIC



REPUBLIC OF KENYA



ELEVENTH PARLIAMENT

PARLIAMENT

JOINT COMMITTEE ON REVIEW OF RULES FOR ELECTION OF THE EAST  
AFRICAN LEGISLATIVE ASSEMBLY MEMBERS

Article 50 of the Treaty for the Establishment of the East African Community and Rule 9 of the Houses of Parliament (Joint Sittings) Rules.

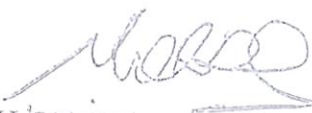
RECEIPT OF MEMORANDA ON THE DRAFT EAST AFRICAN LEGISLATIVE  
ASSEMBLY ELECTIONS (ELECTION OF MEMBERS OF THE ASSEMBLY) RULES, 2017

Pursuant to the provisions of Article 118 of the Constitution, the Joint Committee on Review of Rules for Election of the East African Legislative Assembly Members, invites interested members of the public and organizations to submit any representations that they may have on the above Rules.

The representations shall be by submission of written memoranda, to be received on or before Tuesday, 4<sup>th</sup> April, 2017 at 5:00 p.m. The written submissions may be forwarded to either-

1. the Clerk of the Senate, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, First Floor, Main Parliament Buildings, Nairobi or emailed to [csenate@parliament.go.ke](mailto:csenate@parliament.go.ke);  
or
2. the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the National Assembly, First Floor, Main Parliament Buildings, Nairobi or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke).

A copy of the draft East African Legislative Assembly Elections (Election of Members of the Assembly) Rules, 2017 can be accessed from the website: [www.parliament.go.ke](http://www.parliament.go.ke).

  
CLERK OF THE SENATE / SECRETARY,  
PARLIAMENTARY SERVICE  
COMMISSION.

  
CLERK OF THE NATIONAL ASSEMBLY.

Handwritten notes: "Please deal" and "27/03/17" written over the title.

The Clerk of the Senate

Parliament Buildings

P.O. Box 41842 – 00100

NAIROBI

Email: csenate@parliament.go.ke



Handwritten notes: "DLPS Please deal" and "24/3/17" written over the circular stamp.

RE: PETITION TO THE SENATE CONCERNING [the representation of persons with disabilities]

I, the undersigned,

A Citizen of the Republic of Kenya, and a resident of [Tigania-east constituency of Meru county];

DRAW the attention of the Senate to the following:

1. The continued discrimination and marginalization of persons with disabilities.

1.1 THAT, discrimination starts from the political parties since the existing political parties give priority to non-disabled persons in most of their nominations/appointments.

1.2. THAT, since the reinstatement of the east African legislative assembly, no disabled person has ever been nominated to it by any political party.

1.3. THAT, no light has been shed on whether an interested individual can submit the application as a member of the east African legislative assembly independently without going through a political party.

2. The existing gaps in the law.

2.1. THAT, no legislation has been passed to give effect to section 54/2---100 of the constitution and show a clear procedure on how the country can go about the issues addressed in those sections.

2.2. THAT, the procedure of nominating representatives of persons with disabilities in elective posts is not well spelt out. In addition to that, Nominated leaders are too few and have no fund assigned to them, to help persons with disabilities.

3. Slow implementation of the existing laws/policies concerning the persons with disabilities.

3.1. That, the persons with disabilities act, cap. 133 of 2003 and its subsequent amendments has some of its sections not implemented up to this date. For example: section 20. "Special and non-formal education The Council shall work in consultation with the relevant agencies of Government to make provisions in all districts for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment where possible of Braille and recorded libraries for persons with visual disabilities." And section 30. "Legal system (1) The Attorney-General, on consultation

with the Council and the Law Society of Kenya, shall make regulations providing for free legal services for persons with disabilities with respect to the following— (a) matters affecting the violation of the rights of persons with disabilities or the deprivation of their property; (b) cases involving capital punishment of persons with disabilities; and (c) such matters and cases as maybe prescribed in the regulations made by the Attorney-General. (2) The Chief Justice shall make rules providing for— (a) the exemption, for persons with disabilities, from the payment of fees in relation to matters or cases described in subsection (1); and (b) the provision, to persons with disabilities who attend court, of free sign language interpretation, Braille services and physical guide assistance. (3) Accused persons who are denied bail shall be entitled to be held in custody in facilities modified in accordance with regulations made by the Minister. (4) The Chief Justice shall endeavour to ensure that all suits involving persons with disabilities are disposed of expeditiously having due regard to the particular disability and suffering of such persons.”

4. THAT, none of these issues raised in this Petition is pending in any court of Law, Constitutional or any other legal body.


WHEREFORE, your humble petitioner pray that the Senate-

1. To ensure that each political party submits a list of candidates of the members of the East Africa legislative Assembly with the 5% of such members being distinctively disabled.
- X 2. The senate through the speaker to invoke standing order number (1) to alter the allocation of the slots of the Kenyan nominees to the institution mentioned in no.1 above so as to allow independent applicants who are not aligned to any political party since the constitution allows for the participation of independent candidates in political affairs.
3. To undertake the necessary legal amendments to provide for full representation of the persons with disabilities in all elective posts in line with section 54 and section 100 of the constitution of Kenya.
4. to amend the constitution and create special electoral units at all levels so as to facilitate the empowerment of disabled persons through their own elected leaders.
- X 5. to institute a powerful and standing commission to ensure the implementation of all the laws and motions passed by senate, national assembly and the 47 county assemblies.

Dated Tuesday, 21<sup>st</sup> march 2017.

No	NAME	ADDRESS	I.D. No.	MOB. No.	SIGNATURE
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The representation of persons with disabilities]

1	John Kubai M'akwalu.	P.O BOX 12-60605, Muthara	25027408.	0718250750	
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Email: johmakwalu@gmail.com

# REPUBLIC OF KENYA



## HOUSES OF PARLIAMENT

### REPORT OF THE JOINT PARLIAMENTARY SELECT COMMITTEE TO REVIEW THE PROCEDURE AND RULES FOR ELECTION OF MEMBERS TO THE EAST AFRICAN LEGISLATIVE ASSEMBLY

#### ADOPTION LIST

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 5<sup>TH</sup> APRIL, 2017

	HON. MEMBER/SENATOR	SIGNATURE
1.	Hon. Katoo Ole Metito, M.P. – Co-Chairperson	
2.	Sen. Kipchumba Murkomen, M.P. – Co-Chairperson	
3.	Hon. Samwel Chepkonga, M.P.	
4.	Sen. Kimani Wamatangi, M.P.	
5.	Hon. Wanjiku Muhia, M.P.	
6.	Hon. Ali Wario, M.P.	
7.	Sen. Peter Mositet, M.P.	
8.	Hon. Florence Mutua, M.P.	
9.	Sen. Mshenga Mvita, M.P.	
10.	Hon. Daniel Maanzo, M.P.	
11.	Sen. Mutula Kilonzo Jnr, M.P.	
12.	Hon. Wafula Wamunyinyi, M.P.	
13.	Sen. Elizabeth Ongoro, M.P.	
14.	Sen. Henry Tiolo Ndiema, M.P.	