

(Legislative Supplement No. 28)

LEGAL NOTICE NO. 69

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (PARTY PRIMARIES AND PARTY LISTS)
REGULATIONS, 2017

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THE ELECTIONS ACT, 2011

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THE ELECTIONS (PARTY PRIMARIES AND PARTY LISTS) REGULATIONS, 2017

IN EXERCISE of the powers conferred by sections 27 (2) (B), 34 (6B) and 109 of the Elections Act, 2011, the Independent Electoral and Boundaries Commission makes the following Regulations—

PART I—PRELIMINARY

1. These Regulations may be cited as the Elections (Party Primaries and Party Lists) Regulations, 2017 and shall come into operation upon publication in the *Gazette*.

Citation.

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

Interpretation.

“Act” means the Elections Act, 2011;

“Commission” means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

“Election Board” means the political party organ in charge of party primaries and party nomination of party lists;

“party list” means a list prepared in accordance with these Regulations for purposes of filling the seats specified under Articles 97 (1) (c), 98 (1) (b), (c), (d), and 177 (1) (b) and (c) of the Constitution;

“party primary” means the process through which a political party elects or selects its candidates for an election but does not include a party list;

“party nomination of party lists” means the process through which a political party elects or selects its candidates for party lists;

“Registrar of Political Parties” has the meaning assigned to it under the Political Parties Act; and

No. 11 of 2011

“special interest groups” includes—

- (a) women;
- (b) persons with disabilities;
- (c) youth;

- (d) ethnic and other minorities; and
- (e) marginalized communities.
3. These Regulations shall apply to party primaries and party nomination of party lists. Application.
4. The conduct of party primaries and party nomination of party lists shall— Guiding principles.
- (a) be democratic, free and fair;
- (b) provide equal opportunities for all eligible candidates;
- (c) not discriminate against any eligible candidate;
- (d) be inclusive and participatory;
- (e) be open, transparent and accountable;
- (f) be credible; and
- (g) be peaceful.
5. Every registered member of a political party has the right to access any information held by that political party relating to — Access to information-
- (a) the party's nomination rules and procedures of the political party;
- (b) the members of the party's Election Board;
- (c) the criteria relied on by the party to nominate the party list members;
- (d) the register of members of the party; and
- (e) the party's constitution or similar document.
6. (1) Every political party shall, upon submission of the nomination rules and procedures to the Commission pursuant to section 27 of the Act— Political party nomination rules and procedures.
- (a) make them available and accessible to the members of the party with specific considerations to members with disabilities;
- (b) place a copy at the party's head office and branch offices; and
- (c) post them on the party's website.
- (2) The nomination rules and procedures under sub-regulation (1) shall provide for—
- (a) the procedure to be employed in party primary and nomination of party lists for identifying aspiring candidates to stand for election in every electoral area;
- (b) a mechanism for ensuring that every aspiring candidate meets the requirements of the law to stand for the respective position; and
- (c) the conduct of party primaries and nomination of party lists.
- (3) The nomination rules and procedures shall prescribe—
- (a) the criteria, procedures and circumstances under which non-competitive nomination methods, including direct nominations and consensus may be employed; and

(b) the structure and mandate of the party's Election Board.

(4) Upon submission of the party nomination rules and procedures, the Commission shall verify that the rules conform to the constitution of the political party, the Act and these Regulations.

(5) Where the Commission determines that the party nomination rules and procedures do not conform to the requirements of the constitution of the political party, the Act and these Regulations, the Commission may require the political party to review and amend the party nomination rules and procedures so that they conform to the constitution of the political party, the Act and these Regulations.

7. (1) Every political party shall prepare and communicate to its members a party nomination code of conduct at least thirty days before the conduct of party primaries or nomination of the party list, whichever is the earlier.

Parties' nomination
Code of Conduct.

(2) Every political party shall require an aspiring candidate to sign and ascribe to the party's nomination code of conduct set out in Form 1 of the Schedule.

PART II—PARTY PRIMARY AND PARTY NOMINATION OF THE PARTY LIST CONDUCTED BY THE POLITICAL PARTY

8. (1) Every political party shall appoint a national Election Board and may appoint county Election Boards in respect of every county where the party is offering candidates for election.

Parties' Election
Board.

(2) The mandate and scope of operation of the election boards shall, in addition to the functions set out under regulation 10, be as stipulated in the nomination rules and procedures of the political party.

(3) An Election Board shall comprise of not more than seven and not less than three members including one person to represent special interest groups.

9. (1) A person is qualified to be appointed as a member of a party's Election Board if that person—

Qualification of a
member of a party's
Election Board.

- (a) is a member of the political party;
- (b) is eligible to vote at an election;
- (c) has not been convicted of an election offence; and
- (d) satisfies the requirements of Chapter Six of the Constitution on leadership and integrity.

(2) A political party shall—

- (a) lay out the composition and the term of office of members of Election Boards;
- (b) have rules, procedures and criteria for identifying and appointing the members of the Election Boards; and
- (c) ensure that no more than two-thirds of the members of the Election Boards are of the same gender.

10. (1) An Election Board shall be responsible for conducting or supervising party primaries and party nomination of party lists and any other related activities for purposes of selection of candidates to participate in an election.

Functions of
Election Boards.

(2) The Election Board shall notify members of the party of the date by which applications must be received, the date, time and venue of the party primary.

(3) The nomination officials appointed by an Election Board shall conduct the party primary, tally the votes and present the results to an Election Board.

(4) An Election Board shall declare the results in Form 2 set out in the Schedule and shall require the aspiring candidates or their agents to be present to sign the Form as acceptance of the process and the result.

(5) Where an aspiring candidate or an agent fails to sign the Form after having been offered an opportunity to do so, the failure to sign shall not affect the validity of the result.

(6) The aspiring candidate or agent shall be given an opportunity to write down on the Form 1 set out in the Schedule reasons for refusal to sign the Form.

11. A person may be removed as a member of a party's Election Board if that person —

- (a) resigns from the party;
- (b) defects from the party;
- (c) violates the party's constitution, nomination rules or the party nomination code of conduct;
- (d) has declared interest in a particular nomination;
- (e) is physically or mentally incapacitated;
- (f) is convicted of an election offence or a criminal offence which carries a sentence of more than six months of imprisonment without the option of a fine; or
- (g) has been found by a court to have violated the provisions of Chapter Six of the Constitution.

Removal of a member of a party's Election Board.

12. (1) A vacancy may arise in an Election Board where a member—

- (a) resigns in writing;
- (b) dies; or
- (c) is removed from the Election Board under Regulation 11.

Vacancy in a party's Election Board.

(2) The party shall, within seven days after the occurrence of the vacancy under sub regulation (1), fill in the vacancy with a person with similar qualifications.

13. The members of an Election Board shall, save as the party's constitution may otherwise provide, serve in office until—

- (a) the party has submitted its list of names of the party candidates who have been selected to participate in an election; or
- (b) any disputes arising out of the party primary or party nomination of the party list have been heard and determined,

Tenure of a party's Election Board.

whichever is later.

14. (1) Every political party may, at least two weeks before a party primary or nomination of the party lists, announce the fees to be levied by the party on every aspiring candidate. Fees.
- (2) The fees charged by a political party under sub regulation (1)—
- (a) shall be made known to the party members;
 - (b) may be graduated or waived to take into account special interest groups; and
 - (c) may be different for party primaries and for party nomination of party lists.
15. (1) An aspiring candidate shall submit to an Election Board of their party, a duly filled application in Form 3 set out in the Schedule together with — Application for nomination.
- (a) a signed commitment to the political party's constitution, policies and principles;
 - (b) a self-declaration form as prescribed under the Leadership and Integrity Act, 2012; No. 19 of 2012.
 - (c) copies of the person's national identity card or valid passport;
 - (d) copies of the candidate's academic qualifications from the relevant institutions;
 - (e) evidence of registration as a member of the party; and
 - (f) a receipt or other evidence of payment of nomination fees.
- (2) Where an aspiring candidate intends to be nominated on the ground that the candidate is a person with disability, the candidate shall, in addition to the requirements specified under sub regulation (1), submit an application in Form 4 set out in the Schedule which shall be certified by the National Council for Persons with Disabilities.
- (3) A person who wishes to be nominated by a political party to represent the youth shall be a person who has attained the age of eighteen years but has not attained the age of thirty five years and such person shall provide documentary proof of his or her age.
16. (1) A party primary shall be conducted in accordance with the nomination rules and procedures of the party and the candidate who obtains the highest number of votes shall be declared the party nominee for the position. Conduct of a party primary.
- (2) Where only one aspiring candidate applies to be nominated in any elective position, no party primary shall be conducted
- (3) An Election Board shall in writing certify and declare the aspiring candidate under sub regulation (2) as the party nominee.
- (4) Upon conclusion of the party primary, the authorized party officials shall certify the list of nominees and submit it to the Commission
- (5) Upon receipt of the list by the Commission, the list shall not be altered.

17. (1) Where the political party is required to issue a notice to its members regarding any exercise in the conduct of a party primary or nomination of party list, the party shall—

Notices.

- (a) notify its members at least seven days before the date of the exercise; and
- (b) publish the notice in its website.

(2) A notice issued by a political party under sub regulation (1) shall state—

- (a) the date and venue of the exercise;
- (b) the persons eligible to participate in the exercise;
- (c) the party official who shall be responsible for the exercise;
- (d) the duration of the exercise;
- (e) where any aggrieved party may file any grievances regarding the exercise;
- (f) the party official who shall hear and determine any appeal in relation to the exercise;
- (g) the fees, if any, that should be paid;
- (h) the date by which eligible persons must perform any act in relation to the exercise; and
- (i) any other relevant detail pertaining to the exercise.

18. (1) Every political party shall, at the time of submission of nominees to the Commission, file a statutory declaration signed by the person authorized to certify that candidates to the effect that the political party has complied with the nomination rules and procedures of the party in the conduct of the party primary.

Statutory declaration for conduct of party primaries.

(2) The statutory declaration under sub-regulation (1) shall be in Form 5 set out in the Schedule.

19. (1) An aspiring candidate in a party primary or an applicant for nomination to a party list may appoint an agent to represent his or her interests during the exercise.

Role of agents of nomination candidates.

(2) An agent shall be appointed in writing by the candidate and shall—

- (a) be a registered member of the political party;
- (b) be issued with an appointment letter by the aspiring candidate identifying him or her as the agent of that candidate; and
- (c) have access to information relating to the party primary.

(3) An agent may represent one candidate at a time but where candidates so agree, he or she may represent more than one candidate, provided that the candidates are not vying for the same elective seat.

20. (1) A party list shall contain the names of all the persons who would stand elected if the party were to be entitled to all the seats available under Articles 97(1)(c), 98(1)(b),(c), (d) and 177(1) (b) and (c) and shall alternate between male and female candidates.

Party lists.

(2) A party list submitted under sub regulation (1) shall ensure fair representation to take into consideration the principles of Article 81(b) and Article 100 of the Constitution.

21. (1) The person authorized by the political party to certify that candidates have been nominated shall submit to the Commission the list of nominees and the party list together with a declaration in Form 6 set out in the Schedule, stating that the party's nominations and preparation of party lists have complied with the Constitution, the Act and party nomination rules and procedures of the political party in the conduct of the party nomination to party lists.

Statutory declaration for conduct of party nomination to party lists.

(2) Where, after scrutiny of the lists, the Commission is of the opinion that a party list does not conform to the requirements of Articles 97 (1) (c), 98 (1) (b), (c), (d), and 177 (1) (b) and (c) of the Constitution, the Act or these Regulations, the Commission shall require the political party to review and amend the party list so that it conforms to the requirements of the law and guidelines by the Commission.

PART III—PARTY PRIMARIES CONDUCTED BY THE COMMISSION

22. This Part applies where a political party requests the Commission to conduct and supervise a party primary in accordance with Article 88 of the Constitution.

Application of Part.

23. (1) A political party that requests the Commission to supervise its party primary shall be responsible for the preparatory work including —

Political party to be responsible for the preparatory work.

- (a) notifying the members of the date, time and venue for the party primary;
- (b) inviting, receiving and processing applications from aspiring candidates;
- (c) preparing a list of members eligible to vote in each party primary from the party membership list submitted to the Commission in accordance to section 28 of the Act.
- (d) preparing the list of aspiring candidates in the party primary;
- (e) designing and production of ballot papers in accordance with the specification of the commission; and
- (f) doing anything else required to be done in preparation of the party primary.

(2) The Commission's role in party primary shall be limited to the supervision, conduct, announcement and declaration of the results of the party primary on the day set aside for the primary and shall not participate in the preparation of party lists save as authorised under the law.

24. (1) The party primary under regulation 23 shall be conducted—

Conduct of Party primaries.

(a) on a date to be agreed between the party and the Commission; or

(b) where the Commission receives multiple requests, the procedure stipulated under section 31 (2E) of the Act shall apply.

(2) The Commission shall issue every eligible voter with a ballot on verification—

(a) of a voters identity through the production of a national identity card or a passport;

(b) that the voter is a registered member of the party; and

(c) that the voter has not voted in that party primary.

(3) A party primary conducted and supervised by the Commission shall be—

(a) through a secret ballot; and

(b) determined by a majority of valid votes cast by the eligible voters.

(4) A voter who inadvertently spoils a ballot paper may, with the approval of the returning officer and on satisfaction of the returning officer of the inadvertence, be supplied with another ballot paper and the spoiled ballot paper shall be immediately cancelled and the counterfoil thereof marked accordingly.

(5) The Commission shall promptly tally the votes for each candidate after the close of the voting during a party primary.

(6) The Commission shall determine whether or not a ballot is rejected.

(7) The Commission shall publicly announce and declare the candidate who has obtained the highest number of valid votes to be duly nominated and shall issue a certificate to the duly nominated candidate.

(8) In the event of a tie among the top candidates, the Commission shall hold a fresh party primary and the candidates in that party primary shall be only the candidates who garnered the highest number of votes.

25. (1) On announcement and declaration of the results of the party primary, the Commission shall submit the results of the party primary to the Election Board of the party.

Commission to submit party primary results to the Election Board.

(2) The Election Board shall certify the list of nominees and the party authorized official shall formally submit the list to the Commission.

PART IV—MISCELLANEOUS

26. (1) The Commission shall reject a party list or a name on the party list submitted by a political party where —

Commission to reject party list if it does not conform to law.

- (a) the party list does not conform to the requirements of the Constitution, the Act or these Regulations; or
- (b) the period for submitting revised party lists has lapsed.

(2) Where the Commission rejects a party list or a nominee on the party list, it shall require the political party to resubmit the party list or nominee within such period as the Commission may specify.

(3) A political party resubmitting a party list under sub regulation (2) shall resubmit a declaration under Regulation 18 to the effect that the political party has complied with the nomination rules and procedures of the party relating to the nomination of the names contained in the list.

(4) In the event that a political party fails to resubmit the party list or a name on the party list after it has been rejected under sub-regulation (1), the party shall not be considered in the allocation of seats.

(5) A person who has been nominated on a party list may decline the nomination by informing the political party and the Commission in writing, and the Commission shall replace that name with the next name of the same gender on the party list.

27. (1) Every political party shall establish an internal dispute resolution mechanism in relation to the party primaries and party list.

Dispute resolution.

(2) The dispute resolution mechanism of a party shall be independent of the party leadership and other party institutions.

(3) The decisions of the dispute resolution mechanism shall be made—

- (a) after hearing all parties;
- (b) after taking into account all the relevant documents relating to the dispute;
- (c) by applying the rules of natural justice;
- (d) where the mechanism involves a panel, a panel comprising of an odd number of members where the decision is by majority of the members of the panel; and
- (e) in writing.

(4) The dispute resolution mechanism of a party shall hear and determine all nomination disputes not later than ninety days before the date of general election.

28. The contravention of any of the provisions of the Election Offences Act, 2016 or the breach of the Electoral Code of Conduct shall constitute electoral malpractice in relation to a party primary and party nomination of party lists.

Electoral malpractices.

<i>Polling station code</i>	<i>Name of Polling station</i>	<i>Aspiring Candidate 1</i>	<i>Aspiring Candidate 2</i>	<i>Aspiring Candidate 3</i>	<i>Aspiring Candidate 4</i>	<i>Total Valid Votes</i>	<i>Rejected Ballots</i>
Total							

Aggregated Results

<i>No.</i>	<i>Name of Aspiring Candidate</i>	<i>Valid Votes in Figure</i>	<i>Valid Votes in Words</i>
01			
02			
03			
04			
05			
06			
07			

Signatures of Aspiring Candidates or Agents

<i>No.</i>	<i>Name of Aspiring Candidate or Agent</i>	<i>ID/Passport No.</i>	<i>Tel. Contact</i>	<i>Signature</i>	<i>Date</i>
1					
2					
3					
4					
5					
6					
7					
8					
9					

Ward / Constituency / County Returning Officer:

ID Number:

Signature:

Date:

FORM 3

(r. 15 (1))

APPLICATION FOR NOMINATION BY A POLITICAL PARTY

Coloured Passport size photo on white background
--

APPLICATION FOR (name of party)

NOMINATION FOR (name of position /party list)

Particulars of the Aspiring Candidate

	<i>Particulars of Aspiring Candidate</i>
Name in Full	
Occupation	
National Identity Card or Passport No.	
Sex	
Date of Birth	
Physical address	
Postal address	
County	
Constituency	
Ward	
Voters Card Number	
Party membership number	
Telephone contacts	1. 2.

If the application is for party nomination on a party list.

Name of party list	
Ethnic Community of the aspiring candidate (only for national lists)	
Category of Special Interest Group Women Youth Person with Disability (type of disability) Ethnic minority Marginalized community	
Represent workers (only for 12 members list for National Assembly)	

And I the aforementioned do hereby apply to the party nominee for (position/party list) and hereby certify that I am in all respects qualified for nomination as such candidate.

Signature of Aspiring Candidate.....

Dated the

FORM 4

(r.15(2))

DECLARATION CERTIFYING DISABILITY.

Iof..... (name of institution) do certify that (name of the aspiring candidate seeking nomination representing person with disability) holding ID/Passport number is a person living with disability, more specifically (type of disability) for the last(no of years/months).

I make this declaration conscientiously as I sign this form.

Declared atthis.....day of 20

Signature of Deponent—

Name

Profession.....

Work station.....

ID / Passport No.

Phone number.....

Signature

FORM 5

(r. 18 (2))

STATUTORY DECLARATION OF COMPLIANCE IN PARTY PRIMARY

I / we, the authorized person(s), do solemnly and sincerely certify that in the party primary process in which—

..... (name of nominee)

..... ID/Passport number

was declared the winner and the party nominee for (position)

the party primary was conducted in accordance with all relevant party laws, rules and regulations related to party nominations.

And I / we make this declaration conscientiously believing in values and principles guiding us in our political party.

Declared atthis.....day of 20

Signature of Declarant(s)—

1. Name
- ID / Passport No.
- Signature
2. Name
- ID / Passport No.
- Signature

FORM 6

(r. 21 (1))

**STATUTORY DECLARATION OF COMPLIANCE IN PARTY PARTY
NOMINATION OF PARTY LIST**

I / we, the authorized person(s), do solemnly and sincerely certify that in the nomination process in which party candidates was nominated on
(name of party list)

the party nomination process was conducted in accordance with all relevant party laws, rules and regulations related to party nominations.

And I / we make this declaration conscientiously believing in values and principles guiding us in our political party.

Declared atthis.....day of 20

Signature of Deponent(s) –

1. Name
- ID / Passport No.
- Signature
2. Name
- ID / Passport No.
- Signature

WAFULA CHEBUKATI,
Chairperson,
Independent Electoral and Boundaries Commission.