

**SELECTION OF CANDIDATES TO STATE OFFICES AND PUBLIC
OFFICES**

BILL, 2012

ARRANGEMENT OF CLAUSES

Clause

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SCHEDULE - Procedure for Selection.

A Bill for

AN ACT of Parliament to give effect to Articles 80 and 232 of the Constitution, to provide for the principles applicable to the selection of candidates to be appointed to State offices and public offices, to provide for and regulate the powers and functions of selection panels, and for connected purposes.

NOW THEREFORE BE IT ENACTED by the Parliament of Kenya, as follows—

PART I — PRELIMINARY

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- Short title. **1.** This Act may be cited as the **Selection of Candidates to State offices and public offices Act**.
- Interpretation. **2.** In this Act, unless the context otherwise requires—
- “appointment” means appointment to a State office or a public office;
- “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to leadership and integrity;
- “candidate” means a person who has been nominated or otherwise proposed for appointment;
- “investigation” means any investigation conducted under this Act;
- “public office” has the meaning assigned to it in the Constitution;
- “selection” includes any process of short-listing, interview or nomination of candidates by a selection panel;
- “selection panel” means the body or committee established under an Act of Parliament for selection of candidates;

“State office” has the meaning assigned to it in the Constitution.

Precedence over other laws.

3. The provisions of this Act shall apply notwithstanding any other provision in any other written law.

Application of Act.

4. (1) This Act shall apply to the selection of candidates to be appointed to State offices and public offices.

(2) Every selection panel shall adapt the principles set out in this Act, taking into account the mandate of the panel under the Act of Parliament which establishes it.

PART II —SELECTION OF CANDIDATES

Object and purpose of selection.

5. (1) The object and purpose of selection shall be to ensure that —

(a) persons appointed to State offices or public offices, as the case may be, satisfy the requirements of Chapter Six

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of the Constitution;

- (b) persons appointed to State offices or public offices, as the case may be, satisfy such academic and moral probity standards as may be required for the relevant position;
- (c) selection is done in a transparent, accountable, fair and respectful manner;
- (d) persons appointed to State offices or public offices, as the case may be, are treated fairly and their dignity respected in the selection process; and
- (e) public participation and input has been accorded its due weight in determining suitability of candidates.

Powers of selection panel.

6. (1) A selection panel shall have all the powers necessary for the execution of its functions under the Constitution, this Act and any other written law.

(2) Without prejudice to the generality of sub section (1), a selection panel shall have the power —

- (a) to gather relevant information, including

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requisition of reports, records, documents or any information from any source, including governmental authorities, and to compel the production of such information as and when necessary;

(b) to interview any individual, group or members of any organizations or institutions; and

(c) to hold inquiries for the purposes of performing its functions under this Act or any other written law.

(3) In the performance of its functions, a selection panel—

(a) may inform itself in such manner as it thinks fit;

(b) may receive on oath, written or oral statements;

(c) shall not be bound by strict rules of evidence; and

(d) shall not be subject to the direction or control of any person or authority.

(4) In the conduct of selection every selection panel shall adopt the procedure set out in the Schedule.

(5) Persons serving in a selection panel shall carry out their functions independent of any institution or other influence from the organisations to which they belong.

7. (1) Every selection panel shall ensure that—

Transparency,
accountability and
public participation in
selection process.

(a) the selection process is transparent, and that the public is fully informed of any decision taken and the reason for that decision;

(b) all decisions and the reasons thereof are properly documented;

(c) the record of decisions taken and the reasons thereof are, on request, made available to the candidates and any authority required by law to act on the recommendations of the selection panel;

(d) with respect to the Constitutional Commissions and independent

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offices, the **selection** process and outcome fully comply with Article 250(4) of the Constitution, **and**

- (e) where the principle of affirmative action has been applied and has informed any decision of a **selection** panel, information to that effect shall be made available to the candidates and the public.

(2) A **selection** panel **may** invite **relevant** information from members of the public.

(3) Information **invited for under subsection (2)** may be—

(a) oral or written; **or**

(b) received by **a the** panel in public, in camera or delivered anonymously.

(4) A **selection** panel shall allow to be presented to it only such information as would be useful in determining the suitability of the candidate it is considering for State Office **or public office, as the case may be.**

(5) On invitation of information from the public **under** subsection (2), **the selection** panel

shall ensure that adequate information is availed to the public regarding the nature of the expected public participation, and afford the public reasonable **time for participation**.

(6) The selection panel shall publish, in the Gazette and in at least two newspapers with national circulation, the names—

- (a) of all the applicants, prior to the consideration of the applications, and
- (b) of the **candidates shortlisted for interview**.

Factors to be assessed. **8.** (1) With respect to every candidate appearing before it, **the selection panel shall assess—**

- (a) whether the candidate meets the constitutional criteria for appointment to the **State office or the public office** to which the appointment is proposed;
- (b) whether the candidate has complied with the **set criteria and requirements of the selection**;
- (c) the candidate's academic qualifications;

- (d) whether the candidate satisfies the requirements of Chapter Six of the Constitution;
- (e) the candidate's professional suitability and requisite experience; and
- (f) the candidate's fidelity to the national values and principles of governance as set out in Article 10 of the Constitution, as demonstrated by past conduct, whether in public office or not.

Certain public institutions to provide information.

9. (1) A selection panel shall seek information regarding each candidate from the following public institutions, in accordance with the respective mandate of such institutions—

- (a) the Ethics and Anti-Corruption Commission;
- (b) the Kenya Revenue Authority;
- (c) the National Intelligence Service;
- (d) the Commission on Administrative Justice;
- (e) the respective regulatory body

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responsible for profession to which the candidate is a member or would ordinarily be expected to be a member;

(f) any professional disciplinary body responsible for disciplinary matters in the profession that the candidate belongs to or would ordinarily be expected to belong to;

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(g) credit reference bureau licensed under the Banking Act; and

(h) such other institution as the selection panel may deem necessary to seek such information from.

(2) A selection panel shall require such further information from any candidates if such information is relevant to determine the suitability of that candidate for the appointment.

(3) An institution required to provide information under subsection (1) shall provide such information within such time as the selection panel shall require.

(4) A candidate shall be given opportunity to challenge, including by production of evidence, any negative information provided against that candidate under

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subsection (3).

Principles of fairness. **10. (1)** Through the entire selection process, every selection panel shall observe, and the person presiding thereof shall ensure that—

- (a) the privacy of persons undergoing the selection is respected, unless the revelation of any matter is of sufficient importance to warrant limitation of the right to privacy, and is for purposes of determining the integrity and suitability of the particular candidate;
- (b) the dignity of candidates is not abused;
- (c) the selection applies the same standards to all the candidates;
- (d) the proceedings of selection are open to the public, and that members of the public are accorded adequate opportunity to present their views, in particular, views that may show that the candidate may not be suitable for the office that they are being selected for;
- (e) the members of the selection panel do not unduly attack the reputation of, intimidate

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or ridicule, candidates or members of the public or witnesses who offer to give views before the panel;

- (f) **the members of the selection panel** do not publicly prejudge the outcome of the **selection** process by showing either support or disapproval of a candidate in the course of the **selection**; and
- (g) **the members of the selection panel** declare any interest they may have in the candidature of any individual.

(2) Where **it is disclosed that any member of a selection panel** has a conflict of interest in relation to the candidacy of a person whose **selection** is before the panel, the **member** shall forthwith withdraw from the deliberations of the panel in respect of that candidate **if** the panel determines **that** such interest may interfere with **its** deliberations as to the suitability of the candidate in question.

Report on selection.

11. Every selection panel shall, after a selection is completed, prepare a report on the selection which shall indicate—

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- (a) the outcome and the respective strengths and weaknesses of each of the shortlisted applicants;
- (b) the nature of public participation and the verdict of the selection panel on any issues raised by the public; and
- (c) all the factors considered in the selection of the successful candidates including ethnic balance, gender and any affirmative action reasoning that may have influenced the decision of the panel.

Investigations.

12. (1) Where in the course of selection, an issue arises, or an allegation is made before the selection panel that, in the opinion of the panel, raises reasonable doubts on the suitability of the candidate for the appointment or nomination or as to the veracity of any claim by the candidate, the panel shall request an immediate investigation to determine the veracity of such allegations.

(2) For the purpose of conducting any investigation under subsection (1), the selection panel may utilize the services of any officer or investigation agency of the

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Government.

(3) Any officer or agency whose services are utilized under subsection (2) shall, subject to the direction and control of the selection panel,—

- (a) summon and enforce the attendance of any person and examine that person;
- (b) require the discovery and production of any document; and
- (c) require any public record or copy thereof from any office.

(4) The provisions with respect to exemption from liability shall apply in relation to any statement made by a person, not being the person under investigation, before any officer or agency during an investigation under subsection (1), as they apply in relation to any statement made by a person in the course of giving evidence before a selection panel.

(5) The officer or agency whose services are utilised under subsection (1) shall submit a written report to the selection panel within such period as may be specified by the panel.

(6) The selection panel shall satisfy itself about the correctness of the facts stated and the conclusion, if

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any, arrived at in the report submitted to it under subsection (5), and for this purpose the panel may make such inquiry as it thinks fit, including the examination of the officer or agency who conducted the investigation.

Statement made by persons to a selection panel, etc.

13. No statement made by a person, not being the person under investigation, in the course of giving evidence before a selection panel during the selection shall subject that person to, or be used against that person in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement—

- (a) is made in reply to the question which the person is required by the panel to answer; or
- (b) is otherwise relevant to the subject matter of the selection.

Persons to be heard.

14. If at any stage of selection, a selection panel—

- (a) considers that the conduct of any person is relevant, and that it is necessary to inquire into the conduct of that person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the proceedings of the panel, the panel shall give to that person reasonable opportunity of being heard before it.

Protection from personal liability.

15. (1) An employee or any person acting or discharging duties or functions of a **selection** panel shall not be personally liable to any civil action or other proceedings for damages on account, or in respect, of any act **done** or omitted to be done in good faith.

(2) This section shall not relieve the **selection** panel from any liability to any person for any wrongful act or omission of the panel.

(3) For **the** purposes of liability under this section, where a **selection** panel is not a body corporate, the liability shall lie with the Government.

High Court may order release of confidential information.

16. The High Court may, on application by any person, order the release to the public confidential information of individuals if such release would serve the wider public interest of ensuring that no candidate who does not merit appointment to a State

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office or public office, as the case may be, gets appointed thereto, and that the information sought to be released is of sufficient relevance and gravity to warrant the release.

Application in the High Court by dissatisfied person.

17. Any person dissatisfied with the manner of the conduct of the business of a selection panel in the course of selection under any written law may file an application in the High Court for determination of whether the selection was in accordance with the Constitution, this Act or any other Act of Parliament.

Regulations.

18. (1) The Cabinet Secretary may make regulations prescribing anything which may be prescribed under this Act generally, and for the better carrying into effect the object and purposes of selection under the Constitution, this Act and any other written law.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for—

(a) the Code of Conduct for the selection panel;

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- (b) scoring standardization to be followed by the selection panel during selection; and
- (c) any other matter required under the Constitution, this Act or any other written law.

SCHEDULE—PROCEDURE FOR SELECTION

S. 6(4).

The following procedure shall apply for selection—

1. Where the **selection** panel is charged with short listing and interviewing candidates, that panel shall, before any application is opened,-
 - (a) determine the number of candidates to be short listed and the short listing criteria;
 - (b) prepare a detailed interview and scoring **criteria tools** including score sheets and core questions; **and**
 - (c) prepare all the short listing tools **as included in paragraph 2.**
2. The short listing tools in paragraph 1(c) shall include—
 - (a) a register containing names of all applicants, their folio numbers, basic requirements including correctly filled application forms, certificates and testimonials; ;
 - (b) a register that contains—

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- (i) names;
- (ii) folio numbers;
- (iii) qualifications, including any degree obtained and discipline;
- (iv) years of work experience;
- (v) any matter regarding the requirements of Chapter Six of the Constitution; and
- (vi) information received from institutions mentioned in section 7 of the Act-

of all applicants who have been shortlisted and proceeded to the next stage.

- 3. In the ranking of the candidates, merit should be the principal consideration followed by any rationalization relating to affirmative action on any ground.
- 4. All applications should be opened in the presence of at least two panellists of the selection panel, and shall be properly recorded.
- 5. Full documentation of all the processes of selection shall be maintained and included in the final report of the selection.
- 6. All documentation related to the appointment shall be preserved.
- 7. A verbatim record of the proceedings of selection shall also be kept.
- 8. The secretary to the selection panel shall be a Certified Public Secretary of good professional standing.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to give further effect to the respective constitutional requirements regarding transparency, integrity, accountability, public participation and merit in the appointment of candidates to State offices and public offices in Kenya. It seeks to ensure that the selection process of determining suitable candidates to the State offices and public offices is transparent, accountable and reasonable. It also seeks to make the selection process as fair as possible, and to accord the candidates' respect of their dignity and protection of their privacy.

PART I contains preliminary matters which include the interpretation, overriding clause and application clause.

PART II provides for the object and purpose of selection, powers of selection panels, and other principles of selection of candidates to be followed by any selection panel constituted under any Act of Parliament.

The enactment of this Bill will not occasion additional expenditure of the public funds.

Dated _____, 2012

HON. XXX MP

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