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PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY


TWELFTH PARLIAMENT-FOURTH SESSION

THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

REPORT ON THE CONSIDERATION OF THE PUBLIC FUNDRAISING

APPEALS BILL, (NATIONAL ASSEMBLY BILLS NO 66), 2019

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THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 24 SEP 2020	DAY: Thursday MORNING (2ND SITTING)
TABLED BY:	Hon. Peter Kaluma V. Claiperson
CLERK-AT-THE-TABLE:	A. Musandu

Directorate of Committee Services

The National Assembly,  
Parliament Buildings,  
NAIROBI

SEPTEMBER, 2020



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## LIST OF ANNEXTURES

**Annexure 1:** Copy of newspaper advert inviting the public to submit written memorandum on the Bill and notifying public of public hearings in 17 counties.

**Annexure 2:** Copy of newspaper advert on the Bill notifying public of public hearings in 17 counties.

**Annexure 3:** Signed list of the Members who attended the sitting that considered and adopted the report on the Bill.

**Annexure 4:** Minutes of the Committee sitting on consideration of the Bill and adoption of the Report.

**Annexure 5:** Written submissions received from stakeholders

## **CHAIRPERSON'S FOREWORD**

The Public Fundraising Appeals Bill, (National Assembly Bills No. 66) of 2019 is a Bill prepared and sponsored by the Constitutional Implementation Oversight Committee (CIOC) through its Chairperson, Hon. Jeremiah Kioni, M.P.

The Bill was published in the Kenya Gazette on 17<sup>th</sup> September, 2019 as (National Assembly Bills No. 66 of 2019). It was introduced in the National Assembly through First Reading on 1<sup>st</sup> of October, 2019 and was subsequently committed to the CIOC for consideration, facilitation of public participation and reporting to the House, pursuant to provisions of Standing Order 127(6).

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3) of the National Assembly Standing Orders, the Committee through an advertisement in the local daily newspaper of 7<sup>th</sup> October, 2019 (annex 1), invited the public to make representations and submissions on the Bill and on 1<sup>st</sup> November, 2019 the Committee further notified the public of its program to carry out public hearings on the Bill in 17 counties. The Committee thereafter planned and conducted public hearings in the 17 counties in the country where it received diverse views from members of the public. The Committee further held meetings with various stakeholders where submissions were received and considered, before retreating to consider the representations and adopt this report.

The Committee held a total of 20 sittings to consider the Bill. Seventeen (17) of the meetings were held to hear views from members of the public and three (3) meetings were conducted in-house to consider the memoranda from stakeholders and adopt this report.

The Committee conducted public hearings in the following counties to collect their views on the Bill:

- a) Kakamega;
- b) Bungoma;
- c) Vihiga;
- d) Kisumu;
- e) Siaya;

- f) Kericho;
- g) Laikipia;
- h) Nyandarua;
- i) Nakuru;
- j) Garissa;
- k) Embu;
- l) Kitui
- m) Mombasa
- n) Kwale;
- o) Kilifi;
- p) Lamu.
- q) Nairobi

May I take this opportunity to thank members of the public from the 17 counties listed above for setting aside time from their schedules to attend the hearings organized by the Committee and sharing their views on the Bill. I also appreciate the institutional stakeholders who submitted written memorandum on the Bill as their representations were invaluable to the Committee in consideration of the Bill.

I also wish to thank all Members of the Committee for their input and invaluable contributions during the stakeholder hearings on the Public Fundraising Appeals Bill, (National Assembly Bills No. 66), 2019. The Committee also takes this opportunity to thank the office of the Speaker and that of the Clerk of the National Assembly for the logistical support accorded to the Committee during the exercise.

On behalf of the Constitutional Implementation Oversight Committee (CIOC) and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and duty to present to the House the Report of the Committee on its consideration of the Public Fundraising Appeals Bill, 2019.

Hon. Jeremiah Kioni, M.P.

**CHAIRPERSON, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT  
COMMITTEE**

# CHAPTER 1

## 1.0 PREFACE

### 1.1 Establishment and Mandate

1. The Constitutional Implementation Oversight Committee (CIOC) is a National Assembly Select Committee constituted under Section 4 of the Sixth Schedule to the Constitution of Kenya. The Committee is responsible for overseeing the implementation of the Constitution and among other things-
  - i. Receive regular reports from the Commission on the Implementation of the Constitution (CIC) on the implementation of the Constitution of Kenya, 2010 including reports concerning: -
    - (a) the preparation of the legislation required by the Constitution and any challenges in that regard;
    - (b) the process of establishing the new commissions;
    - (c) The process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff.
    - (d) The devolution of powers and functions to the counties under the legislation contemplated in section 15 of the sixth Schedule;
    - (e) Any impediments to the process of implementing this Constitution.
  - ii. Coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant Parliamentary committees to ensure the timely introduction and passage of the legislation required by the Constitution; and
  - iii. Take appropriate action on the reports including addressing any problems in the implementation of the Constitution.

### 1.2 Committee Membership

2. The Committee was constituted in December, 2017 and consists of the following Members:

Hon. Jeremiah Kioni, M.P (Chairperson)  
Ndaragwa Constituency  
**Jubilee Party**

Hon. Fred Kapondi (**Vice Chairperson**)  
Mt. Elgon Constituency  
**Jubilee Party**

Hon. (Dr.) Naomi Shaban, MP  
Taveta Constituency  
**Jubilee Party**

Hon. Wafula Wamunyinyi, MP  
Kanduyi Constituency  
**FORD Kenya**

Hon. Raphael B.S. Wanjala, MP  
Budalangi Constituency  
**Orange Democratic Movement Party**

Hon. Dr. Christine Ombaka, MP  
Siaya County  
**Orange Democratic Movement Party**  
Hon. Charles Gimose, MP  
MP for Hamisi Constituency  
**FORD Kenya Party**

Hon. Tom J. Kajwang, MP  
Ruaraka Constituency  
**Orange Democratic Movement Party**

Hon. Ayub Savula, MP  
Lugari Constituency  
**African National Congress Party**

Hon. Peris Tobiko, MP  
Kajiado East Constituency  
**Jubilee Party**

Hon. Anthony Oluoch, MP  
Mathare Constituency  
**Orange Democratic Movement Party**

Hon. Gideon Koske, M.P.  
Chepalungu Constituency  
**Chama Cha Mashinani (CCM) Party**

Hon. Bernard Okoth, M.P.  
Kibra Constituency  
**Orange Democratic Movement Party**

Hon. Abdi Shurie, MP  
Balambala County  
**Jubilee Party**

Hon. (Col.) Geoffrey King'ang'i, MP  
Mbeere South Constituency  
**Jubilee Party**

Hon. Simon Ng'ang'a King'ara, MP  
Ruiru Constituency  
**Jubilee Party**

Hon. Sarah P. Korere, M.P.  
Laikipia North Constituency  
**Jubilee Party**

Hon. Jane Njiru, MP  
Embu County  
**Jubilee Party**

Hon. Daniel Rono, M.P.  
Keiyo South Constituency  
**Jubilee Party**

Hon. Joshua Cheyegon, MP  
Baringo Central Constituency  
**Maendeleo Chap Chap Party**

Hon. Japheth Mutai, MP  
Bureti Constituency  
**Jubilee Party**

Hon. Fabian Muli, MP  
Kangundo Constituency  
**Muongano Party**

Hon. Halima Muccheke, M.P.  
Nominated Member  
**Jubilee Party**



### 1.3 Committee Secretariat

3. The Committee's secretariat comprises of the following officers:-

1	Mr. Edward Libendi	Senior Legal Counsel & Clerk of the Committee
2	Ms. Christine Odhiambo	Legal Counsel I
3	Ms. Mary Luka Lemerelle	Clerk Assistant III
4	Mr. Allan Gituku	Sergeant-At-Arms

### 1.4 Adoption of the Committee Report

4. We, the Members of the Constitutional Implementation Oversight Committee have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached list (Annexure 3).

## CHAPTER 2

### 2.0 INTRODUCTION AND BACKGROUND

#### 2.1 Background

5. The Constitutional Implementation Oversight Committee is mandated by section 4 of the sixth schedule to prepare any legislation required to implement the Constitution and address any impediments to the process of implementation of the Constitution of Kenya.
6. The Committee in the execution of its mandate noted that the Public Collections Act, Chapter 106 of the laws of Kenya, which was the main law that regulated fundraisings was archaic and not aligned to the Constitution. The Act for instance was not alive to the changes in the provincial administration and still had references to the former administrative structures such as the Divisions, districts and provinces.
7. The Committee, noting that the *harambee spirit* coined by the founding fathers was meant as a rallying call for Kenyans to pull resources together for purposes of development, was concerned that the same was now being abused by persons for selfish gains. The concerns included the following:
  - (i) That monies raised at fundraisers were not disclosed to the people who fundraised with the excuse that it was a security risk and therefore prone to corruption;
  - (ii) The monies raised were used for purposes other than those for which people were called to fundraise;
  - (iii) Administrative expenses in some fundraising cases were always more than the monies that went to the actual cause. e.g. in cases of medical and funeral

appeals, the monies that are raised are used for defraying costs of organising the fundraising appeal;

(iv) There were fraudulent fundraising appeals in some cases where parties raised money for non-existent causes like funeral expenses when there was no dead person.

(v) Individuals had also developed a liking for raising funds from the public for uplifting their social status like purchase of high end cars.

8. The Committee therefore in a bid to address the above issues among others, drafted the Public Fundraising Appeals Bill, 2019 as a Committee Bill sponsored through its Chairperson, Hon. Jeremiah Kioni, M.P. The Bill was published in the Kenya Gazette on 24<sup>th</sup> July, 2019 as (National Assembly Bills No. 60 of 2019). The Bill was introduced in the National Assembly through First Reading on 1<sup>st</sup> of October, 2019 and was subsequently committed to the CIOC for consideration, facilitation of public participation and reporting to the House, pursuant to provisions of Standing Order 127(6).

## 2.2 HIGHLIGHTS OF THE PUBLIC FUNDRAISING APPEALS BILL, 2019

9. The principal object of the Bill is to regulate public collections popularly called *harambees* and to align the Public Collections Act, Chapter 106 of the Laws of Kenya with the Constitution. It therefore proposes to repeal the Public Collections Act of 1960 and in its place have a robust legal framework of addressing pertinent issues in public collections.

10. Below is a highlight of the provisions contained in the Bill:

### PART I - PRELIMINARIES

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**9** | *Constitutional Implementation Oversight Committee Report on Consideration of the Public Fundraising Appeals Bill, 2019.*

11. The objects of the Bill include:

- (a) provide a structured process for conducting fundraising appeals and for making contributions in relation to an appeal;
- (b) provide a regulatory framework for transparency and accountability in the conduct of fundraising appeals;
- (c) ensure that the public has sufficient information to make informed decisions in making voluntary contributions in accordance with the Act;
- (d) protect the public from fraudulent, misleading and coercive fundraising appeals;
- (e) provide a framework for the establishment of social development funds and such other funds and investments that may provide sustained incomes for the benefit of the public; and
- (f) provide a platform for the provision of fiscal incentives as a means of encouraging donations and voluntary contributions in relation to fundraising appeals.

## **PART II – ESTABLISHMENT OF PUBLIC FUNDRAISING APPEALS COMMITTEE**

12. This part proposes the establishment of a body called the Public Fundraising Appeals Committee consisting of the Principal Secretary responsible for planning and social development or his nominee, two persons who are not public officers, with knowledge and experience in social development and philanthropy, one person nominated by the Council of Governors, one person nominated by the Public Benefits Organizations Regulatory Authority and a Director appointed by the Public Service Commission from the Ministry responsible for planning and social development.
13. The Public Fundraising Appeals Committee established in Part 2 is charged with the following functions:

- a) Collaborate with county executive committee members in the performance of their functions;
- b) Oversee the conduct of fundraising appeals;
- c) Receive, vet and process applications for the issuance of a license to conduct a public fundraising appeal where such appeal is a national appeal or publicly or is publicly made to members of the public in more than one county;
- d) Investigate any complaints, misuse of funds raised through a fundraising appeal or any issue relating to the conduct of a fundraising appeal;
- e) Maintain a register of persons licensed by it to conduct a public fundraising appeal;
- f) Establish mechanisms for the promotion of transparency and accountability in the conduct of fundraising appeals; and
- g) Promote the establishment of endowment funds and such other funds and investments that may provide sustained incomes for the benefit of the public.

14. The Bill provides that the Public Fundraising Appeals Committee may establish sub-committees for effective performance of its functions and may co-opt into the sub-committees persons with knowledge and skills relevant for performance of the sub-committee's function.

15. The Bill proposes that the Public Fundraising Appeals Committee will have a secretariat domiciled at the Ministry responsible for social development which shall consist of a Director appointed by the Public Service Commission, who shall be its secretary and chief executive officer.

### **PART III-REGULATION OF FUNDRAISING APPEALS AT THE COUNTY LEVEL OF GOVERNMENT**

16. The Bill proposes that the County Policing Authority established under section 41 of the National Police Service Act in each county, shall be responsible for the administration of the Act at the county level. It is therefore proposed to be the body to perform at the county level, the functions performed at the national level by the Public Fundraisings Appeal Committee. To ensure that the County Policing Authority discharges its functions effectively, it is vested with powers to oversee the conduct of fundraising appeals and to monitor compliance with the Act by persons licensed to conduct public fundraising appeals.

#### **PART IV-FUNDRAISING APPEALS**

17. Public fundraising appeals are defined in this part as the soliciting or receiving of money on the basis of a representation that the money is not solely for the profit or benefit of the persons soliciting or on behalf of whom he/she is soliciting and that the money or benefit is to be utilized for public good.

18. The following activities are excluded from constituting fundraising appeals and therefore not under the ambit of the Act:

- a) Soliciting or receiving any money or benefit in relation to any raffle, lottery or gambling;
- b) Money or property collected by registered religious associations such as tithes and offerings;
- c) Soliciting a person to become a member of an organization or club and pay membership fee;
- d) Soliciting money or benefit by or on behalf of an organization from a person who is or was a member of the organization and the soliciting is made on the basis of a

representation that the money or benefit will be applied for a benevolent or philanthropic purpose.

19. Fundraisings are also classified under this part into the following categories:

- a) Public fundraising appeals for purposes of a public benefit;
- b) Public fundraising appeals for purposes of a private benefit; and
- c) Private fundraising appeals where solicitation is made from members of the family or relatives of a beneficiary.

20. Part IV also has provisions seeking to bar elected or nominated Members of Parliament or County Assemblies from participating in fundraising appeals during their tenure as legislators and creates an offence for such violation. It also seeks to make it an offence for any person to conduct fundraising appeals without a valid license issued by the County Policing Authority.

21. It proposes that an application for a license to conduct a fundraising appeal shall be submitted to the authority at least 21 days before the date of the fundraising appeal and submitted in a prescribed form, unless where special circumstances exist which warrant an exemption. The Authority is given 10 days from the date of receiving the application within which to consider the application and respond to the applicant.

22. The Bill provides that the Authority may refuse to issue to an applicant, a license to conduct a fundraising appeal, for reasons among them the following:

- a) where the application for a license contains false or misleading information;
- b) there are significant omissions in the application for a license;
- c) the purpose for which the fundraising appeal is to be done is unlawful.

The Authority is required to communicate in writing to the applicant the decision of refusal to issue them with the license within three days of the decision.

23. The Bill gives the County Policing Authority powers to impose conditions on the applicant or license and power to cancel a license issued under the Act, provided that in the cases of cancellation, the Authority is required to issue a compliance notice in the prescribed form to the licensed person.

Appeals by persons aggrieved by decisions of the County Policing Authority shall lie with the National Committee (the Public Fundraising Appeals Committee).

#### **PART V-RECORDS AND ACCOUNTS OF A FUNDRAISING APPEAL**

24. One of the objects of the Bill is to ensure transparency and accountability in public fundraisings. The Bill therefore requires every person who conducts public fundraising appeals to keep accurate records of the funds received, details of persons who contributed, name and address of bank into which the monies raised are deposited, full details to which the funds raised are used and any expenditure related to the fundraising appeal.
25. The fundraising manager is required to submit to the Authority, a summary of the records pertaining to the fundraising appeal conducted by him or her within 30 days from the date of the conduct of the fundraising appeal.

The Bill proposes to allow the Cabinet Secretary for finance to grant tax incentives to persons who make voluntary contributions towards a fundraising appeal.

### **: CHAPTER 3**

#### **3.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL**



26. Article 118 (1) (b) of the Constitution of Kenya provides as follows-

*“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”*

27. Standing Order 127(3) provides as follows-

*“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”*

28. In line with the Constitution and Standing Orders, the Constitutional Implementation oversight Committee, in the local daily newspapers of 7<sup>th</sup> October, 2019, invited the public to make submissions they had on the Bill and on 1<sup>st</sup> November, 2019, notified the public of its intention to hold public hearings in 17 counties in the country on the Bill (*see annexures 1 and 2*).

29. In order to facilitate comprehensive public hearings within the limited amount of time available, the Members of the Committee resolved to constitute sub- committees to engage the public in the various counties.

30. The Committee resolved and undertook public hearings on the Bill in the following seventeen (17) counties:

(i) Nairobi,

(ii) Kitui,

(iii) Embu,

(iv) Garissa,

(v) Laikipia,

(vi) Nyandarua,

(vii) Nakuru,

(viii) Kakamega,

(ix) Kisumu,

(x) Bungoma,

(xi) Vihiga,

(xii) Kericho,

(xiii) Siaya,

(xiv) Mombasa,

(xv) Kwale,

(xvi) Kilifi and

(xvii) Lamu

31. During the hearings, members of the public either individually or representing institutions and organizations made oral presentations and/ or submitted memoranda which the Committee took into account while considering the Bill.
32. The written submissions received are attached to this report as annexure 5.
33. A comprehensive list of members of the public who attended the public hearings in the various counties is attached to this report as annexure 6.
34. The Committee also invited submissions from specific institutional stakeholders among them the Office of Attorney General and Department of Justice and the Kenya Law Reform Commission. By the time of compiling this report, the Committee had however not received submissions from the two offices.

#### **Oral Submissions by members of the public**

35. Members of the public had divergent views on the Bill with a majority from the places visited supporting fundraisings citing the important nature of *harambees* and arguing against any form of regulation that could have the effect of stopping fundraisings.
36. The following indicates in summary the comments and proposals received by the Committee from members of the public in the places they visited:

- (i) That there should be no regulation of whatever nature on the conduct of Public Fundraisings. This is because, the vulnerable poor Kenyans have been depending on funds raised through fundraising appeals for payment of basic services like medical services and therefore, any attempt to regulate the same would only be a blow to the poor citizens;
- (ii) That the County Policing Authority is not operational in all the counties, therefore using it as a licensing body would lead to implementation challenges;
- (iii) That there should be a certain threshold of public fundraising appeals that should be left to be regulated by chiefs, assistant chiefs or village elders who are closer to the people and in order to reduce the bureaucracies;
- (iv) That the process of obtaining a license should be simplified, fast and should avoid unnecessary bureaucracies so that the period between application and processing of application and giving a verdict is reduced from the minimum given of 10 days to a shorter period;.
- (v) That the Bill has the effect of making the fundraising process expensive due to the licenses proposed to be levied;
- (vi) That the requirement of solicitation of funds to only be made by a fund raising manager for public fundraising appeals meant extra expenses to pay their fees and it also made it impossible for any other persons to undertake such solicitations;
- (vii) That the Bill to include a ban on fundraising for projects that ideally should be financed by the government or from public funds like the National Government Constituencies Development Fund (NG-CDF) which led to double allocation and misappropriation of funds.

- (viii) That there be included in the membership of the Public Fundraising Committee persons with disabilities since a significant number of beneficiaries of fundraisers were usually persons with disabilities;
- (ix) That members of the public be involved in the nomination/appointment of persons to be appointed to the Board of the Committee since the Committee would have a direct impact on the people who are the beneficiaries of the fundraising appeals;
- (x) That the Public Fundraising Committee establish a subcommittee in every sub county to ensure accessibility of its services to the public and that the subcommittee members be sourced from local persons who knew the locals well;
- (xi) That everyone in Kenya should be allowed to participate in public fundraising Appeals and locking out politicians would prevent them from discharging their social responsibilities, excluding MPs and MCAs would amount to discrimination against them;
- (xii) The members of the public were concerned whether or not the licenses would attract a fee, which would be an unnecessary expense to them and argued for the licenses to be issued at no fee or very minimal fee but that some categories should be issued free of charge;
- (xiii) That the conditions intended to precede granting of licenses should not be such that they discourage conduct of fundraisings.
- (xiv) Some people were of the view that the requirement and process of obtaining a license proposed in the Bill was too rigorous, punitive and cumbersome especially the fundraising for small causes. The proposal was that a threshold be set for the requirement of a license;

(xv) That some fundraising appeals are prompted by emergencies like funerals and medical appeals thus no time to obtain a license as provided for in the Bill. That the timeframe for obtaining such licenses should be reduced or waived altogether;

(xvi) Some were concerned about the requirement to state the expected amount to be raised during the application for a license. This is because the Bill did not contemplate what happens in the circumstances where the actual amount raised exceeded the expectation;

(xvii) That the period of ten days within which the application for licenses shall be dispensed with is long and should be reduced to 5 days. This is owing to the fact that fundraisings are normally premised on emergencies which need to be addressed within the shortest time. Therefore the license should not be the cause for delay in commencing the process.

(xviii) That since monies involved in such fundraisings are from members of the public, there should be very harsh penalties for those that take undue advantage of public fundraising appeals and imprisonment term should be enhanced to ten years at least; and

(xix) Some members of the public submitted that the Bill did not adequately regulate fundraising appeals conducted through social media like *WhatsApp* which left it open to abuse, yet it is the most common means used to make solicitations for funds today.

### 3.2 DEDAN KIMATHI UNIVERSITY OF TECHNOLOGY

37. During the public hearing held in Laikipia, a representative of Dedan Kimathi University submitted a memorandum to the Committee on the Bill highlighting the following:

- (i) That Public Universities are established under the Universities Act, 2012. Under the Section 44 (3) of the Act, public universities can appeal to the general public for subscriptions, donations or bequests for the benefit of the university.
- (ii) Under Section 45 (1) ( c ) , the funds of a public University comprise of all monies from any other sources provided for or donated or lent to the public university.
- (iii) Further, under Section 60 ( c ), a University has powers to receive any grants, donations or endowments on behalf of the university and make legitimate disbursements there from.
- (iv) The Act also establishes the Universities fund under section 53 which comprises of such sums as may be received by the board in the forms of donations. The fund also comprises of endowments grants and gifts from whatever source designated for the fund.
- (v) From the above provisions of the Universities Act it was therefore apparent that Universities can fundraise for the benefit of the University, can receive donations for the benefit of the University and can establish endowment funds;
- (vi) The Universities Act however provides for an elaborate system of ensuring accountability and transparency in the way that universities use the money at their disposal. In this regard, universities are under section 47 expected to keep proper books of account in relation to its income, expenditure and assets. In addition, the

accounts should be audited and reported upon in accordance with the provisions of section 47(3) of the Public Audit Act.

(vii) He concluded by saying that all the money that the University receives from any form of fundraising in form of grants or donations as well as endowment funds are subjected to scrutiny by the Auditor General. He therefore recommended that *Soliciting or receiving subscriptions, donations, bequests, endowment funds, gifts and grants that are authorized under the Universities Act 2012 or any other law be exempted from provisions of the Public Fundraising Appeals Bill.*

### **3.3 STRATHMORE UNIVERSITY FOUNDATION**

38. The Executive Director Strathmore University Foundation submitted a written memorandum on the Bill and appeared before the Committee to clarify the contents of the memorandum.

39. He explained that Strathmore University Foundation is an institution that engages in fundraising and resources mobilization for the advancement and sustainability of higher learning in Kenya and therefore likely to be affected by the Bill.

40. He had the following comments and proposals regarding the Bill:

- (i) That in Clause 21 on the issuance of a license for a particular fundraising appeal, an exemption be given to institutions that conduct fundraising appeals on an annual basis so that they are granted annual or long term licenses for durations to be determined by the Cabinet Secretary;
- (ii) In Clause 27 which provides for issuance of one license for each event and the expiry of a license issued by the County Policing Authority upon the conduct of the fundraising appeal, that the clause be amended to provide that the license issued

caters for multiple fundraising appeals and that the expiry period be after one year or a longer period.

- (iii) That there be an exception in clause 39 that seeks to cap administrative expenses related to a fundraising appeal to 5% of the targeted amount so as to accommodate exceptional circumstances where the amounts used may exceed the 5% threshold.
- (iv) That there be an amendment to clause 44 to accommodate people who like contributing to causes anonymously, but while still maintaining oversight over the donations.



## CHAPTER 4

### 4.0 CONSIDERATION OF THE BILL BY THE COMMITTEE AND PROPOSED COMMITTEE STAGE AMENDMENTS TO THE BILL

41. The Committee met and considered the Bill and the proposals submitted by members of the public and stakeholders that met with the Committee. Below is the analysis of the submissions and the decision by the Committee on each proposal:

#### 4.1 ANALYSIS OF THE STAKEHOLDER VIEWS BY THE COMMITTEE

**a) Proposal that there be no regulation on the conduct of Public Fundraising Appeals**

42. The Committee noted that there has been an abuse on the process of fundraising appeals with people raising money for social status enrichment and some raising funds for non-existent causes and even where there were justifiable reasons, there was no transparency or accountability. That the current regime of fundraising is regulated by the Public Collections Act of 1960 which needed to be aligned with the Constitution of Kenya

**b) Proposal to remove the County Policing Authority as a licensing body**

43. Regarding the above proposal, the Committee was of the opinion that since the National Police Service Act that had established the Authorities had come into effect, the operationalization and establishment of the County Policing Authority would within time be effected in the whole country.

**c) Proposal to simplify process of application and processing of licenses**

44. On the proposal by the public to simplify the process of application and grant of licenses and the reduction of the period from the time of application of license to the time of grant, the Committee was supportive of the view arguing that some fundraising appeals were of an urgent nature to address emergencies thus the period given of minimum 10 years was long and needed to be revised.

**d) Proposal to have greater role of Chiefs and assistant chiefs, in licensing**

45. The Committee observed that Clause 51 provides that the County Policing Authority shall decentralize their services to the wards and village units established in accordance with section 48 of the County Governments Act.
46. This therefore brought licensing services of fundraising proposals closer to the people. However, the Committee agreed with the public that there was need for implementers of the law not to introduce unnecessary bureaucracies in application and processing of licenses.
- e) Proposal to exclude Members of Parliament and Members of County Assemblies from participating in fundraisings**
47. The Committee agreed with the submissions arguing that prohibiting Members of Parliament and county assemblies from participating in fundraising appeals would amount to undue discrimination against them.
- f) Proposal to address situations where the raised amount exceeds the targeted amount**
48. The Committee was of the view that amending Clause 21(3) to factor in the proposed amendment to address what happens if amounts raised in a fundraising were higher was inconsequential and therefore rejected the proposal.
- g) Proposal to exempt Universities from the Provisions of the Bill as proposed by Dedan Kimathi University of Technology**
49. The Committee considered the proposal from Dedan Kimathi University of Technology in which the Director had proposed exemption of public universities which do fundraisings and receive donations or have endowment funds for purposes of research from provisions of the Bill, on the basis that raising and use of the funds is governed by the Universities Act.
50. The Committee agreed with the proposal to exempt the Universities from provisions of section 17 on the basis that the raising and use of funds by Universities was audited by the Auditor General which ensured transparency and accountability.
- h) Proposal by Strathmore University Foundation on grant of a one year or long term license to Institutions which do regular fundraisings for purposes of Higher learning.**
51. The Committee considered the proposal and argued that it would be a challenge to implement the law where there were different types of licenses for fundraising appeals. However since, the fundraising was by institutions recognized for educational purposes, it

agreed to relook into the proposals of creating longer term licenses but enhancing the oversight mechanisms over the funds raised by the organizations.

#### **4.2 COMMITTEE STAGE AMENDMENTS TO THE PUBLIC FUNDRAISING APPEALS BILL, 2019**

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52. The Committee having considered the Bill and stakeholder submissions, makes the following recommendations of amendments to the Public Fundraising Appeals Bill, 2019—

**NOTICE** is given that the Chairperson of the Constitutional Implementation Oversight Committee, Hon. Jeremiah Kioni, M.P., intends to move the following amendments to the Public Fundraising Appeals Bill, 2019 at the Committee Stage—

##### **LONG TITLE**

**THAT**, the Bill be amended by deleting the Long title and substituting therefor the following new Long title—

“AN ACT of Parliament to establish a regulatory mechanism at the national and county levels for the collection of money and property from the public; and for connected purposes”

##### **CLAUSE 1**

**THAT**, clause 1 of the Bill be amended by deleting the words “Fundraising Appeals” and substituting therefor the word “Collections”.

##### **CLAUSE 2**

**THAT**, the Bill be amended by deleting clause 2 and inserting the following new clause—

Interpretation. 2. In this Act, unless the context otherwise provides—

No. 11A of section 41 of the National Police Service Act;  
2011.

“beneficiary”, in relation to a public collection, means —

- (a) any person, class of persons or cause listed as beneficiary by the person conducting the public collection when applying for registration; or
- (b) any person who is acting on behalf of such a person, cause or class of persons referred to under paragraph (a);

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to social protection;

“Ministry” means the Ministry responsible for matters relating to social protection;

“National Committee” means the Public Collection Committee established under section 4;

“person” includes a company, association or other body of persons whether incorporated or unincorporated;

“public collections” means an appeal to the public or any section of the public, made by means of visits from premises to premises or of soliciting in a public place or at a public meeting, or by any or all such means, to give, whether for consideration or not, money or other property, not being—

- (a) money or property due or about to fall due from the donors under or by virtue of any written law, contract or other legal obligation; or
- (b) money or property collected by or under the authority of a recognized representative of a religion or religious community for—
  - (i) the upkeep of any recognized place of religious worship or house of prayer; or

(ii) any purely religious or charitable purpose;

and “public collections manager” means, in relation to a public collection, a person who makes such an appeal by any of the said means;

“public collections manager” means a person who is licensed under section 26 to conduct a public collection and who has the managerial or financial responsibility in relation to the public collection;

“register” means the register of public collections kept by the National Committee and the County Policing Authority under section 35;

### **CLAUSE 3**

**THAT**, clause 3 of the Bill be amended—

- (a) in paragraph (a) by deleting the words “fundraising appeals” and substituting therefor the words “public collections”;
- (b) in paragraph (b) by deleting the words “fundraising appeals” and substituting therefor the words “public collections”;
- (c) in paragraph (d) by deleting the words “fundraising appeals” and substituting therefor the words “public collections”;
- (d) in paragraph (f) by deleting the words “fundraising appeals” and substituting therefor the words “public collections”;
- (e) in paragraph (g) by deleting the words “fundraising appeals” and substituting therefor the words “public collections”;

### **PART II**

THAT, the Bill be amended by deleting the title to Part II of the bill and inserting therefor the following new title—

**“PART II- ESTABLISHMENT OF PUBLIC COLLECTIONS COMMITTEE”**

**CLAUSE 4**

THAT, clause 4 of the Bill be amended—

(a) by deleting sub-clause (1) and inserting therefor the following new sub-clause—

Establishment of the  
Public Collections  
Committee.

4. (1) There is established the Public Collections Committee which shall consist of—

- (a) the Principal Secretary for the time being responsible for social protection or a person deputed by him or her in writing;
- (b) two persons not being public officers, who have knowledge and experience in social protection, appointed by the Cabinet Secretary by notice in the Gazette;
- (c) one person nominated by the Council of County Governors established under section 19 of the Inter-Governmental Relations Act;
- (d) one person nominated by the Public Benefits Organisations Regulatory Authority established under section 34 of the Public Benefits Organisation Act; and
- (e) the Director appointed under section 11, who shall be the secretary to the National Committee.

No. 2 of 2012.

No. 18 of 2013.

(b) by inserting the following new sub-clause immediately after sub-clause (4)—

“(5) The members of the National Committee shall appoint the chairperson and vice-chairperson from among themselves at the first meeting.”

## CLAUSE 5

**THAT**, the Bill be amended by deleting clause 5 and inserting the following new clause—

- Functions of the National Committee.
5. The functions of the National Committee shall be to—
- (a) collaborate with the Authority in the performance of their functions under this Act;
  - (b) oversee the conduct of public collections;
  - (c) receive, vet and process applications for the issuance of a licence to conduct a public collection where such collection is a national collection or is publicly made to members of the public in more than one county;
  - (d) investigate any complaints, misuse of funds raised through a public collection or any issue relating to the conduct of a public collection under this Act;
  - (e) conduct inspections of records and audits relating to public collections conducted under this Act;
  - (f) maintain a national register of persons licensed by it to conduct a public collection under paragraph (c);
  - (g) establish mechanisms for the promotion of transparency and accountability in the conduct of public collections under this Act;
  - (h) carry out sensitization and education awareness regarding the conduct of public collections and the promotion of transparency and accountability in the conduct of public collections;
  - (i) review applications submitted to it under section 34;
  - (j) promote the establishment of endowment funds and such other funds and investments that may provide sustained incomes for the benefit of the public;
  - (k) monitor the implementation of, and enforce the provisions of, this Act; and
  - (l) perform such other functions as may be necessary for the

implementation of the provisions of this Act.

**CLAUSE 6**

**THAT**, clause 6 of the Bill be amended in paragraph (a) by deleting the words “fundraising appeal” and substituting therefor the words “public collection”.

**CLAUSE 7**

**THAT**, clause 7 of the Bill be amended in sub-clause (3) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) a public officer serving in the Ministry, nominated by the Cabinet Secretary;”

**CLAUSE 9**

**THAT**, clause 9 of the Bill be amended—

- (a) in sub-clause (1) by inserting the word “First” immediately after the words “in accordance with the”; and
- (b) in sub-clause (2), by inserting the word “First” immediately after the words “Except as provided in the”

**CLAUSE 10**

**THAT**, clause 10 of the Bill be amended in sub-clause (2) by deleting the words “fundraising appeals” and substituting therefor the words “public collections”

**CLAUSE 11**

**THAT**, clause 11 of the Bill be amended in sub-clause (1) by deleting the words “planning and social development” and substituting therefor the words “social protection”



### **PART III**

**THAT**, the Bill be amended by deleting the title to Part III and substituting therefor the following new title—

“PART III- REGULATION OF PUBLIC COLLECTIONS AT THE COUNTY LEVEL”

### **CLAUSE 13**

**THAT**, clause 13 of the Bill be amended—

**(a) by deleting sub-clause (2) and inserting the following new sub-clause—**

“(2) Notwithstanding the generality of subsection (1), the County Policing Authority shall –

- (a) receive, vet and process applications for the issuance of a licence to conduct a public collection within the county;
- (b) regulate the conduct of public collections within the county;
- (c) investigate any complaints, misuse of funds raised through a public collection or any issue relating to the conduct of a public collection under this Act within the county;
- (d) carry out inspections of records and audits relating to a public collection within the county conducted under this Act;
- (e) maintain a register of all licenses issued to a person conducting a public collection within the county under this Act;
- (f) monitor and evaluate the conduct of public collections within the county; and
- (g) perform such other functions as may be necessary for the implementation of this Act.”

(b) by deleting sub-clause (3) and inserting the following new sub-clause—

“(3) The County Policing Authority shall have all the powers necessary for the proper discharge of the functions under this Act and without prejudice to the generality of the foregoing, shall have the power to —

- (a) oversee the conduct of public collections carried out under this Act within the county;
- (b) require any information from any person conducting or intending to conduct a public collection within the county under this Act;
- (c) require at any time, before the issuance of a licence and at any time after being issued with a licence such information as it may consider necessary; and
- (d) monitor the compliance by persons licensed under this Act, of the provisions of this Act.”

#### **PART IV**

**THAT**, the Bill be amended by deleting the title to Part IV and substituting therefor the following new title—

“PART IV- CONDUCT OF PUBLIC COLLECTIONS”

#### **CLAUSE 15**

**THAT**, the Bill be amended by deleting clause 15 and inserting the following new clause—

Classification of public collections. 15. Public collections shall be classified as—

- (a) public collections which shall consist of solicitations made by a public collections manager to members of the public or a section of the public for a public benefit and which shall be licensed as such under this Act;
- (b) public collections which shall consist of solicitations made by a public collections manager to members of the public or a section of the public for a private benefit and which shall be licensed as such under this

Act; and

- (c) private collections which shall consist of solicitations made by a person or class of persons on behalf of a person or class of persons to the members of the family of, or relatives of such person for the benefit of such person, subject to section 16(1).

#### **CLAUSE 16**

**THAT**, clause 16 of the Bill be amended—

(a) in sub-clause (1)—

- (i) in the opening sentence by deleting the words “fundraising appeal” and substituting therefor the words “public collections”;
- (ii) in paragraph (a) by deleting the word “or” appearing at the end of the sentence and substituting therefor the word “and”;
- (iii) in paragraph (b) by deleting the word “good” and substituting therefor the word “purpose”.

(b) in sub-clause (2) by deleting the words “fundraising appeal” and substituting therefor the words “public collection”

#### **CLAUSE 17**

**THAT**, clause 17 of the Bill be amended—

- (a) by deleting the words “fundraising appeal” appearing in the opening sentence and substituting therefor the words “public collection”;
- (b) by inserting the following new paragraph immediately after paragraph (b)—

“(ba) soliciting or receiving subscriptions, donations, bequests, endowment funds, gifts and grants that are authorized under the Universities Act or any other written law”

#### **CLAUSE 18**

**THAT**, clause 18 of the Bill be amended by deleting the words “fundraising appeal” and substituting therefor the word “collection”

#### **CLAUSE 19**

**THAT**, clause 19 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “fundraising appeal” and substituting therefor the words “public collection”;
- (b) in sub-clause (2) by deleting the words “fundraising appeals” and substituting therefor the words “public collections”;
- (c) in sub-clause (5) by deleting the words “fundraising appeals” and substituting therefor the words “public collections”;
- (d) in sub-clause (6) by deleting the words “fundraising manager” and substituting therefor the words “public collections manager”;
- (e) in sub-clause (7) by deleting the word “section” and substituting therefor the word “Act”.

#### **CLAUSE 20**

**THAT**, the Bill be amended by deleting clause 20 and inserting the following new clause—

Prohibition on state officers. 20. A state officer who takes part in a public collection shall not—

shall not—

- (a) use the office or place of work as a venue for

- soliciting or making public collections; or
- (b) obtain money from a person by using his or her official position in any way to exert pressure.

## CLAUSE 21

**THAT**, the Bill be amended by deleting clause 21 and inserting the following new clause—

Application for a licence. **21.** (1) A person shall not conduct a public collection unless the person has applied for, and obtained a licence in accordance with the provisions of this Act.

(2) A person who intends to conduct a public collection shall submit to the National Committee or the relevant County Policing Authority, an application for a licence at least twenty one days before the date for the conduct of the public collection.

(3) An application under subsection (2) shall be in such form as the National Committee or the relevant County Policing Authority shall determine and shall be submitted together with the following information—

- (a) the full names and address of the person intending to conduct the public collection;
- (b) the purpose of the public collection;
- (c) the necessity of conducting the public collection;
- (d) the date on which the public collection is to be conducted;
- (e) the names and contact details of the persons assisting in conducting the public collection;

- (f) the amount intended to be raised through the public collection;
- (g) the estimated expenses to be incurred in conducting the public collection;
- (h) a statement regarding whether any monies have been received with respect to the matter pertaining to the public collection from any person prior to the date of the proposed public collection;
- (i) the place at which the public collection is intended to be made;
- (j) the expected timeframe for the public collection; and
- (k) such other information as may be necessary.

(4) Where an applicant for a licence under subsection (2) is not the intended beneficiary of the public collection, the application shall be submitted together with—

- (a) the name of every person on whose behalf the person intends to conduct a public collection;
- (b) the common features shared by the class of persons for whose benefit the person intends to conduct a public collection, and the means by which the money or benefit is to be transmitted to that class or is to be distributed among the individual members of that class;
- (c) if any intended public collection is not to be

conducted for the immediate direct benefit of one or more people, a description of the cause for which the public collection is to be conducted, and the means by which the money or benefit will be applied to the cause;

(d) in the case of —

- i. an adult who is the intended beneficiary, the consent of such adult;
- ii. an adult who is the intended beneficiary but who lacks legal capacity to consent, the consent of a legally appointment guardian; or
- iii. a child who is the intended beneficiary, the consent of the parents or guardian of the child;

No. 4 of 2003.  
No. 24 of 2011.

(e) a declaration that the intended public collection does not violate the provisions of the Public Officer Ethics Act, the Elections Act or the provisions of any other written law.

(5) Where the intended beneficiary of a public collection is an organisation or the members of such organisation, an application for a licence under subsection (2) shall be submitted together with the consent of a duly authorised representative of the organisation.

## CLAUSE 22

**THAT**, the Bill be amended by deleting clause 22 and substituting therefor the following new clause—

Urgent applications.

**22.** (1) The National Committee or the relevant County Policing Authority may dispense with the period specified under section 21(2) where the National Committee or the relevant County Policing Authority is satisfied that special circumstances exist to warrant the exemption.

(2) An application submitted under subsection (1) shall contain a statement specifying the special circumstances warranting the application.

(3) The National Committee or the relevant County Policing Authority shall consider the application and may, in granting a licence, impose such conditions as it considers appropriate.

#### **CLAUSE 23**

**THAT**, clause 23 of the Bill be amended in sub-clause (1) by inserting the words “National Committee or the” immediately after the word “The”.

#### **CLAUSE 25**

**THAT**, clause 25 of the Bill be amended in sub-clause (1) by inserting the words “National Committee or the” immediately after the word “The”.

#### **CLAUSE 26**

**THAT**, clause 26 of the Bill be amended—

- (a) in the opening sentence by deleting the words “relevant committee” and substituting therefor the words “National Committee or the relevant County Policing Authority”;



(b) in paragraph (b) by deleting the words “fundraising appeal” wherever it appears and substituting therefor the words “public collection”.

#### **CLAUSE 27**

**THAT**, clause 27 of the Bill be amended—

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

“(1) The National Committee or the relevant County Policing Authority shall issue to an applicant one licence in relation to the conduct of each public collection under this Act.”

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) A licence issued under subsection (1) shall, unless otherwise specified by the National Committee or the relevant County Policing Authority, automatically expire upon the conduct of the public collection to which the licence issued relates.”

#### **CLAUSE 28**

**THAT**, the Bill be amended by deleting clause 28 and inserting the following new clause—

Refusal to issue licence. 28. (1) The National Committee or the relevant County Policing Authority may refuse to issue to an applicant, a licence to conduct a public collection where—

(a) the application for a licence does not comply with this Act;

(b) the applicant —

(i) is an undischarged bankrupt; or

- (ii) has been found guilty of an offence under this Act;
- (c) the application for a licence contains false or misleading information;
- (d) there are significant omissions in the application for a licence or the application is incomplete in a significant way;
- (e) the consent of a beneficiary of an intended public collection has not been supplied;
- (f) in the case of an intended public collection on behalf of a class of beneficiaries, the description of the class is too vague, or the class is insufficiently identified; or
- (g) the purpose for which the public collection is to be conducted is unlawful or incompatible with public interest.

(2) The National Committee or the relevant County Policing Authority may refuse to license a person as a public collection manager if the person is not, in the opinion of the National Committee or the relevant County Policing Authority, a fit and proper person to be licensed as a public collections manager.

(3) In the case of a refusal, the National Committee or the relevant County Policing Authority shall notify the applicant in writing of the refusal within three days of the decision and by giving reasons for the refusal.

## CLAUSE 29

**THAT**, the Bill be amended by deleting clause 29 and inserting the following new clause—

Conditions for issuance of a licence. **29.** (1) The National Committee or the relevant County Policing Authority may, in issuing a licence to an applicant under section 26, impose such conditions on the applicant in relation to the conduct of the public collection.

(2) The National Committee or the relevant County Policing Authority may, from time to time, issue guidelines relating to the imposition of conditions under subsection (1).

## CLAUSE 30

**THAT**, the Bill be amended by deleting clause 30 and inserting the following new clause—

Grounds for cancellation of a licence. **30.** The National Committee or the relevant County Policing Authority may, subject to the provisions of section 31, cancel a licence issued under this Act where—

- (a) there are reasonable grounds to believe that the public collections manager is likely to be pursuing an unlawful cause or purpose prejudicial to the peace, welfare or good order of the public;
- (b) the person conducting the public collection fails to comply with the provisions of this Act;
- (c) a person fails to submit any additional information that the National Committee or the relevant County Policing Authority may require to ensure compliance with this Act;
- (d) the National Committee or the relevant County Policing Authority determines that the person submitted false information or statements at the time of application for a licence; or
- (e) the National Committee or the relevant County

Policing Authority determines that the licence was obtained fraudulently or through a misrepresentation of facts.

### CLAUSE 31

**THAT**, the Bill be amended by deleting clause 31 and inserting the following new clause—

Notice of non-compliance. 31. (1) The National Committee or relevant County Policing Authority shall, before cancelling the licence under section 30, issue to the applicant a compliance notice in the prescribed form.

(2) A compliance notice specified under subsection (1) shall—

(a) be in writing;

(b) notify the applicant of the non-compliance and the steps required to be taken in order to comply; and

(c) inform the applicant of the period within which the applicant is required to comply with the notice.

(3) The National Committee or the relevant County Policing Authority may, upon request by an applicant and where there are sufficient grounds, extend the period of compliance for such period as it may consider necessary to ensure compliance.

### CLAUSE 32

**THAT**, the Bill be amended by deleting clause 32 and inserting the following new clause—

Revocation of licence. 32. (1) Where an applicant receives a notice under section 31

and fails to comply with such notice, the National Committee or the relevant County Policing Authority shall—

(a) revoke the licence;

(b) notify the applicant in writing of —

(i) the revocation of the licence and the reasons for the revocation; and

(ii) the date on which the licence was cancelled; and

(c) amend the register accordingly.

(2) For purposes of this Act, a cancellation of a licence shall take effect on the date on which the licence is cancelled by the National Committee or the relevant County Policing Authority.

### CLAUSE 33

**THAT**, the Bill be amended by deleting clause 33 and inserting the following new clause—

Duties of a public collections manager on revocation. **33.** Where the National Committee or the relevant County Policing Authority revokes a licence under section 32, the public collections manager—

(a) shall stop any public collection activities that the public collections manager was undertaking immediately before the revocation took effect;

(b) shall not, without the written consent of the National

Committee or the relevant County Policing Authority, pay out or otherwise distribute or deal with any asset obtained as a result of the public collection;

(c) shall submit to the National Committee or the relevant County Policing Authority, an inventory of the assets of any public collection conducted by the public collections manager within seven days of the revocation; and

(d) subject to paragraph (c), ensure that any assets obtained as a result of the public collection are distributed as soon as is practicable to the intended beneficiaries of the public collection.

#### **CLAUSE 34**

**THAT**, clause 34 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “the Authority” and substituting therefor the words “a County Policing Authority”;

(b) by inserting the following new sub-clause immediately after sub-clause (3)—

“(4) A person aggrieved by the decision of the National Committee may, within thirty days of the notification of the decision, appeal to the High Court.”

#### **CLAUSE 35**

**THAT**, the Bill be amended by deleting clause 35 and inserting the following new clause—

Register of public collections. 35. (1) The National Committee and the County Policing Authority in each county shall keep and maintain a register of —

(a) all licensed public collections within their respective jurisdictions;

- (b) all licensed public collections managers within their respective jurisdiction;
- (c) all cancelled licences within their respective jurisdiction; and
- (d) such other particulars as the National Committee or the relevant County Policing Authority may from time to time determine.

(2) A person may inspect any of the registers under subsection (1) and may obtain a copy of, or an extract from the register upon payment of such fee as the National Committee or the relevant County Policing Authority shall determine.

**CLAUSE 36**

**THAT**, clause 36 of the Bill be amended in sub-clause (1) by deleting the words “Each Authority” and substituting therefor the words “The National Committee and each County Policing Authority”.

**CLAUSE 37**

**THAT**, the Bill be amended by deleting clause 37 and inserting the following new clause—

False statements.      **37.** A person who makes an application under this Act containing any matter which is false in any material fact known to that person, commits an offence.

**CLAUSE 38**

**THAT**, clause 38 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “fundraising” and substituting therefor the word “collection”;

- (b) in sub-clause (2) by deleting the words “fundraising appeal” and substituting therefor the words “public collection”;
- (c) in sub-clause (3) by deleting the expression “(1) and substituting therefor the expression “(2)”;

**CLAUSE 39**

**THAT**, clause 39 of the Bill be amended by deleting the words “fundraising appeal” and substituting therefor the words “public collection”.

**PART V**

**THAT**, the Bill be amended by deleting the title to Part V and substituting therefor the following new title—

“PART V- RECORDS AND ACCOUNTS OF A PUBLIC COLLECTION”

**CLAUSE 40**

**THAT**, the Bill be amended by deleting clause 40 and inserting the following new clause—

Financial records of a public collection. **40.** (1) A public collections manager shall keep a record reflecting the income and expenditure relating to the public collection including —

- (a) details of the persons who make contributions in relation to the public collection and the amounts contributed by each person;
- (b) the name, number and address of the bank into which the monies raised in relation to the public collection were deposited;



- (c) full details of all funds and assets received as a result of the public collection;
- (d) full details of the use to which the funds and assets received were put to;
- (e) full details of—
  - (i) the amount applied to the purposes or objects of the public collection and how it was distributed;
  - (ii) any expenditure on assets;
  - (iii) any expenditure on wages, salaries, commissions and other remuneration in relation to the public collection;
  - (iv) any other administrative expenses and other expenditure related to the public collection; and
  - (v) such other information as the National Committee or the relevant County Policing Authority may determine.

(2) A public collections manager shall ensure that the records are kept in a way that enables them to be conveniently and properly audited.

(3) A public collections manager shall ensure that accounts containing a summary of the records required by subsection (1) are finalised within three months of—

- (a) the date on which the public collection ends, if the public collection runs for six months or less; or
- (b) after every six months if the public collection runs for more than six months.

(4) For the purposes of this section, a public collection ends on the occurrence of the first of these events—

- (a) if the public collection is being conducted by a person whose licence has been cancelled, on the date of the cancellation of the licence;
- (b) in any other case, one month after the last significant solicitation for money or a benefit is made in relation to the public collection.

(5) Records relating to any proceeds received after the date a public collection ends but before the accounts for the last period of the appeal are finalised shall be included in those accounts.

(6) If the public collections manager continues to administer any funds or assets received as a result of a public collection after the public collection ends, the person shall ensure that accounts containing a summary of the records required under subsections (1) and (2) are finalised within one month of the receipt of the funds.

(7) A person to whom subsection (6) applies shall ensure that accounts containing a summary of the records required by subsections (1) and (2) are finalised within two months of the date the last of the funds or assets ceased to be administered by the person.

(8) A person who fails to comply with the provisions of this section commits an offence.

#### CLAUSE 41

**THAT**, the Bill be amended by deleting clause 41 and inserting the following new clause—

Other records relating to a public collection. **41.** A public collections manager shall keep the following records—

- (a) the name and address of each person who participates in the public collection as an assistant to the public collections manager;

- (b) the name and address of each person who gained a financial advantage from the public collection, other than as a person for whose benefit the public collection was held or other than as a supplier of goods or services, and details of the reason for, and nature and amount of, that financial advantage;
- (c) the—
  - (i) name and address of every person; or
  - (ii) name or description of every class of people on whose behalf the public collection was made;
- (d) copies of the consents required under this Act, where applicable;
- (e) the dates on which the public collection started and concluded;
- (f) any other records that may be specified by the National Committee or the relevant County Policing Authority.

**CLAUSE 42**

**THAT**, the Bill be amended by deleting clause 42 and inserting the following new clause—

Storage of records.

**42.** (1) A public collections manager shall ensure that any records or accounts that the he or she is required to keep under this Part are stored at all times at the address or the registered office or principal place of business of the public collections manager.

(2) A public collections manager shall keep and maintain the records or accounts of a public collection for a period of at least three years after the date on which the public collection

ends.

(3) A public collections manager who fails to keep proper records in accordance with this section commits an offence.

#### CLAUSE 43

**THAT**, the Bill be amended by deleting clause 43 and inserting the following new clause—

Duty to provide reports  
and information.

**43.** (1) Every public collections manager shall submit to the National Committee or the relevant County Policing Authority a summary of the records relating to the public collection conducted by him or her and prepared in terms of this Act within thirty days from the date of the conduct of the public collection.

(2) Notwithstanding subsection (1), the National Committee or the relevant County Policing Authority may require a public collections manager to submit to it, such other information, record or document that it may require in order to enable the National Committee or the relevant County Policing Authority to determine whether the public collections manager has complied with the provisions of this Act.

(3) A public collections manager shall submit the information or document required under subsection (2) within a period of seven days of such request.

(4) A public collections manager who fails to comply with the provisions of this section commits an offence.

#### CLAUSE 44

**THAT**, clause 44 of the Bill be amended—

- (a) by deleting the words “fundraising appeal” appearing in the opening sentence and substituting therefor the words “public collection”;
- (b) by deleting paragraph (b).

**CLAUSE 45**

**THAT**, clause 45 of the Bill be amended—

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

“(1) The National Committee and the County Policing Authority in each county may appoint such number of inspectors as they may consider necessary for purposes of carrying out inspections in relation to public collections.”
- (b) by deleting sub-clause (2);
- (c) in sub-clause (3) by deleting the words “fundraising appeal” and substituting therefor the words “public collection”

**CLAUSE 46**

**THAT**, the Bill be amended by deleting clause 46 and inserting the following new clause—

- Conduct of inspection.      **46.** (1) An inspector appointed under section 45 may, at any reasonable time, enter and inspect the premises of a public collections manager to ensure compliance with this Act.
- (2) An inspection under subsection (1) shall be conducted—
- (a) with the prior written approval of the National Committee or the relevant County Policing Authority; and
  - (b) after giving the public collections manager a seven days’ notice of the intended inspection.
- (3) An inspector may, in conducting an inspection

under subsection (1) —

- (a) enter any premises and inspect any books, records or documents required to be kept under this Act or relating to a public collection, expenditure or distribution of contributions;
- (b) inspect, photocopy, print out, or copy onto disk any documents, whether held in electronic or paper form; or
- (c) remove any document, whether in its original form or as an electronic or paper copy.

(4) Where any original documents are removed from the premises of a public collections manager under subsection (2)(c), the inspector who removes the documents shall—

- (a) leave at the premises of the public collections manager, a list of the documents removed; and
- (b) return the documents to the premises as soon as practicable unless doing so would prejudice any investigation being or to be carried out by the National Committee or the relevant County Policing Authority.

(5) An inspector exercising any power under this section shall, at the time of inspection, possess the appropriate written authorisation, and evidence of identification, and shall produce them to the public collections manager or, as the case may be, the person having possession or control of the books, records, or accounts concerned—

(a) before first entering the premises; and

(b) whenever subsequently reasonably required to do so by the person in charge.

(6) A person who obstructs an inspector in the conduct of an inspection under this section commits an offence.

#### **CLAUSE 47**

**THAT**, clause 47 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “fundraising appeal” and substituting therefor the words “public collection”; and

(b) by deleting sub-clause (3) and substituting therefor the following new sub-clause—

“(3) Despite subsection (2), a person who makes a false representation in terms of this section shall surrender to the National Committee or the relevant County Policing Authority, any collections or donations received in the course of the public collection activity.”

#### **CLAUSE 48**

**THAT**, the Bill be amended by deleting clause 48 and inserting the following new clause—

Misappropriation of funds.     **48.** A person who applies the funds received pursuant to a public collection for a purpose other than for which the public collection was held commits an offence.

#### **CLAUSE 50**

**THAT**, the Bill be amended by deleting clause 50.

## CLAUSE 51

**THAT**, clause 51 of the Bill be amended in sub-clause (1) by deleting the words “The Authority” and substituting therefor the words “The County Policing Authority in each county”.

## CLAUSE 52

**THAT**, the Bill be amended by deleting clause 52 and inserting the following new clause—

Social development funds. **52.** (1) The National Committee and each County Policing Authority shall, in compliance with the provisions on the establishment of public funds as set out in the Public Finance Management Act, set up a Social Development Fund which shall contain—

- (a) funds or proceeds from sale of assets surrendered to the Authority;
- (b) licence fees received by the Authority; and
- (c) any other donations made to the Authority.

(2) The funds specified in subsection (1) shall be utilized in promoting social development in the area of operation of the National Committee or the relevant County Policing Authority.

(3) The National Committee or any County Policing Authority which utilizes the funds under subsection (1) for any other purpose without the approval of the Cabinet Secretary commits an offence and its members shall be held jointly and severally liable for the offence.

(4) The Cabinet Secretary shall issue guidelines for the utilization of the monies contained in the funds established under this section.



**CLAUSE 54**

**THAT**, clause 54 of the Bill be amended in sub-clause (2)—

- (a) by deleting the word “fundraisers” appearing in paragraph (a) and substituting therefor the words “public collections”; and
- (b) by deleting the words “relevant Authority” appearing in paragraph (f) and substituting therefor the words “National Committee or the relevant County Policing Authority”.

**CLAUSE 55**

**THAT**, clause 55 of the Bill be amended by deleting the words “relevant Authority” and substituting therefor the words “National Committee or the relevant County Policing Authority”.

**CLAUSE 56**

**THAT**, the Bill be amended by deleting clause 56.

**SECOND SCHEDULE**

**THAT**, the Bill be amended by deleting the Second Schedule and inserting the following new Schedule—

**SECOND SCHEDULE (s. 59)**

**CONSEQUENTIAL AMENDMENTS**

- |                                  |           |   |
|----------------------------------|-----------|---|
| The National Police Service Act. | s. 41 (9) | Insert the following new paragraphs immediately after paragraph (k) —   |
| No. 11A of 2011.                 |           | (l) receive, vet and process applications for the issuance of a licence to conduct a public collection within the county; |
|                                  |           | (m) regulate the conduct of public collections within the   |

county;

(n) investigate any complaints, misuse of funds raised through a public collection or any issue relating to the conduct of a public collection under this Act within the county;

(o) carry out inspections of records and audits relating to a public collection conducted under the Public Collections Act;

(p) maintain a register of all licenses issued to a public collections manager under the Public Collections Act; and

(q) monitor and evaluate the conduct of public collections within the county.

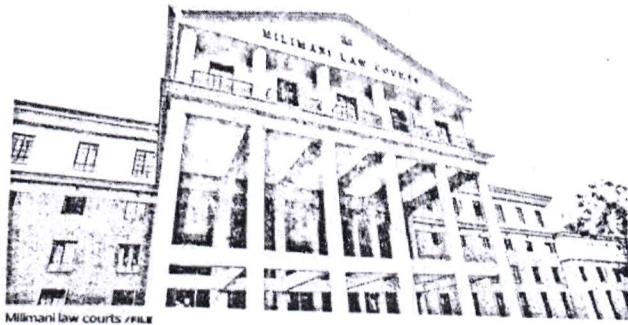
A large, dark, handwritten signature in black ink, appearing to be 'Jeremiah Kioni', is written over a series of horizontal scribbles.

**HON. JEREMIAH KIONI, MP,**  
**Chairperson, Constitutional Implementation Oversight Committee**

## **Annexure 1:**

Copy of newspaper advert inviting the public to submit written memorandum on the Bill and notifying public of public hearings in 17 counties.

NEWS JUDICIARY



Millimani law courts /FILE

ELUSIVE JUSTICE

# Widow, 70, battles for Sh150m property

Millimani judge recuses herself, directs case to be heard by Justice David Majanja on November 8

FAITH NYASUGUTA @TheStarKenya



Widow Alice Wanjiru /FILE

Justice Mary Kasango has opted out of a case involving a 70-year-old widow battling to save her Sh150 million property allegedly auctioned by a bank over a loan.

Instead, Kasango directed that the case be heard by Justice David Majanja on November 8 after trial failed to start yesterday.

Alice Wanjiru claims in the past seven years she has battled to keep her property that was illegally sold to an investment company based on a false claim that she defaulted on repaying a Sh65 million loan.

"It was a well-calculated scheme by Paulo Microfinance Bank Ltd to defraud me of my hard-earned property. They failed to disclose my monthly financial statements, refused to account for the money they collected from my premises and ended up selling it at a throwaway price," she says.

In her affidavit, Wanjiru says she bought the three-storey building situated in Jonsaga, Huruma Estate in Nairobi, in 1991 from Jason Mwangi at Sh16 million.

For the purposes of acquiring loans to finance construction proj-

ects, she opened an account with Paulo Microfinance. "Between March 2013 and May 2015, I applied for various loans amounting to Sh65 million to finance working capital and construction of a seven-storey building."

According to Wanjiru, trouble began when the manager handling her bank account was transferred to Ongata Rongai branch.

"I continued to repay until January 2017 when Antique served me with a default notice and gave me 45 days redemption period," she says.

She says in March 2017, an auction advert was circulated under instructions from the bank to recover Sh73 million when the statements indicated she only had an outstanding loan of Sh7 million.

obstructing a police officer executing duties.

Prosecutor Erick Masila said Aboud was one of the wanted terror suspects as published in a notice in June last year.

"The accused person was among terror suspects planning to attack the Coast region, and has been hiding in Tanzania since February 2013 after two of his accomplices were shot," Masila said.

**'HE IS AMONG SUSPECTS PLANNING TO ATTACK COAST REGION'**

CRACKDOWN ON AL SHABAAB

## Terror suspect to know bail ruling today

HILLARY MAKOKHA/ A terror suspect nursing gunshot wounds in Mombasa will today know whether he will be granted bail.

The prosecution has applied to the court to deny Salim Aboud All bail pending the hearing of the case against him.

Aboud is charged with three counts of being a member of al Shabaab, attempting to attack a police officer with a knife and

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - (THIRD SESSION)

In the matters of consideration by the National Assembly:-

1. The Constitution of Kenya (Amendment) Bill, (National Assembly Bills No. 60 of 2019)
2. The Public Fundraising Appeals Bill (National Assembly Bill No. 66 of 2019)

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) requires the Select Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House.

The Constitution of Kenya (Amendment) Bill, (National Assembly Bills No. 60 of 2019) seeks to amend the Constitution of Kenya in order to enforce the principle of separation of powers so as to allow parliament and county assemblies to discharge their functions without interference by the courts on matters under consideration or being proceeded with by Parliament, County Assemblies or any of their committees in line with international practice where Courts only intervene after Parliament has executed its mandate.

The Public Fundraising Appeals Bill (National Assembly Bill No. 66 of 2019) seeks to regulate public collections or harambees; to repeal the Public Collections Act and in its place have a more robust legal architecture in addressing pertinent issues in public collections. It also seeks to provide a framework for transparency and accountability in the conduct of fundraising appeals, avail proper safeguards to curb corruption that arises in voluntary collections and ensuring that organizers of public fundraisings account for the monies raised.

The aforementioned Bills have undergone First Reading pursuant to Standing Order 127(3) of the National Assembly and stands committed to Constitutional Implementation Oversight Committee (CIOC) for consideration and reporting to the House.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee will be undertaking public hearings on the said bills in the following counties from 9.00 am - 4.00 pm:-

No.	County	Venue	Date
1.	Bungoma	Red Cross Hall	Friday, 8th November, 2019
2.	Kisumu	New Nyanza Regional Headquarters	Friday, 8th November, 2019
3.	Siaya	Nyawara Social Hall	Saturday, 9th November, 2019
4.	Kakamega	Salvation Army Social Hall	Saturday, 9th November, 2019
5.	Vihiga	Hamisi Social Hall	Sunday, 10th November, 2019
6.	Kericho	Holy Trinity Academy Hall	Sunday, 10th November, 2019
7.	Laikipia	Nanyuki Social Hall	Friday, 15th November, 2019
8.	Embu	Embu Municipal Hall	Friday, 15th November, 2019
9.	Nyandarua	Nyandarua Social Hall	Saturday, 16th November, 2019
10.	Kitui	Katulani Social Hall	Saturday, 16th November, 2019
11.	Garissa	Garissa Library	Sunday, 17th November, 2019
12.	Nakuru	Nakuru Old Town Hall	Sunday, 17th November, 2019
13.	Mombasa	Kenya School of Government Hall	Friday, 22nd November, 2019
14.	Kilifi	Makao Kinnasi Social Hall	Friday, 22nd November, 2019
15.	Kwale	Mkongeni Social Hall	Saturday, 23rd November, 2019
16.	Lamu	Mwanaarafa Social Hall	Saturday, 23rd November, 2019
17.	Nairobi	County Hall	Monday, 2nd December, 2019

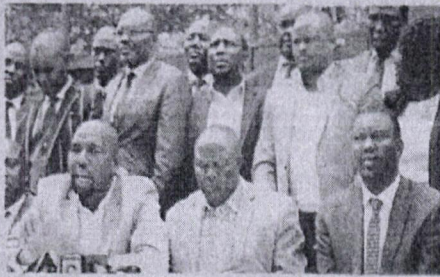
The Clerk of the National Assembly therefore invites interested members of the public and organizations to attend the public hearings and submit their views or make oral presentations regarding the said Bills.

Copies of the Bills may be downloaded from Parliamentary website: <http://www.parliament.go.ke/the-national-assembly/house-business/bills>

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

## **Annexure 2:**

Copy of newspaper advert on the Bill notifying public of public hearings in 17 counties.



Rift Valley leaders led by (seated) Senate Majority Leader Kipchumba Murkomen (left) and governors Paul Chepkwony (Kericho) and Jackson Mandago (Uasin Gishu) address the media on Mau eviction in Nairobi, yesterday. P.D. GERALD OTHMANA

# Leaders: We'll sue Kenya at the ICC over Mau eviction

Kalenjin politicians claim residents have been rendered homeless and helpless in their legitimate homesteads

by Eric Wainaina  
W@Ewainaina

Elected leaders from the Kalenjin community yesterday threatened to sue the government at the International Criminal Court, over what they claimed was "deliberate abuse, torture, dispossession, humiliation and other atrocious crimes" in the ongoing Maasai Mau eviction.

The leaders claimed the crimes were being meted on the residents by police officers assigned to carry out the evictions of people who have failed to heed a government directive to vacate the forest by yesterday.

This came even as the leaders dared President Uhuru Kenyatta to publicly state his position about a notice by his regional officers that they "settle in the Maasai Mau complex who resist will be forced to their initial counties of origin".

In a notice dated October 23, Olengeburua assistant county commissioner Ogaso Bruno, has said, "any attempt to ignore this notice (to vacate with immediate effect), will invite forceful dispersal to enable all the victims to their initial counties of origin".

But speaking after a three-hour closed door meeting at a city hotel yesterday, the leaders described what has been happening in the land reclamation exercise as "cavalier and guerrilla-like operation".

In a statement read on their behalf by Kericho Governor Paul Chepkwony, the leaders said they were in the process of compiling the cases of violation of human rights by the government.

"We shall continue to document all abuse of fundamental human rights with a view to ultimately pursuing accountability through available legal means locally and internationally,"

## MAU NOTICE, EVICTION

● In August, the State issued the 10,000 families who have lived in the Mau forest since the 1970s with a notice to leave. The grace period expired yesterday.

● A tree planting exercise is scheduled for today at Nkoben, Itmetiok, Dlolunga and Sisian.

● In July last year, nearly 7,700 people were evicted from the forest, which saw over 12,000 acres of the forest reclaimed.

read the statement in part.

The meeting was attended by governors Jackson Mandago (Uasin Gishu), Stanley Kipchumba Murkomen (Elgeyo Marakwet) and his Kericho counterpart Aaron Cheruiyot and more than 20 MPs, including Nelson Koeth (Belgut) and Oscar Sudi (Kapseret).

The "brutal" exercise, Chepkwony said had reduced some residents of Narok South to homeless and helpless squatters in their legitimate homes, adding that their efforts to seek audience with the president over the matter have been futile.

Since the reclamation exercise started, the matter has elicited emotive political debate, with leaders from the Kalenjin communities, including crying foul that the government was being inhuman to "their people".

Last week, Cheruiyot, who together with MP Koeth, have been vocal on the matter, threatened that if the government fails to go slow on the evictions, the community would react viciously allegedly because they were being pushed to the wall.

## Source of livelihoods

In the second phase eviction whose voluntary vacation grace period ended yesterday, the government was planning to evict 10,000 families, who it claims were irregularly allocated some 17,161 acres of forest land, with a symbolic tree planting event scheduled for today.

The targeted areas include Nkoben, Itmetiok, Ojolunga, Enokishomi, Enosokon, Nkaroni and Sisian.

Environment Cabinet Secretary Keriko Tobik is expected to kick off the planting of 10 million trees in area vacated by the farmers who had been accused of degrading the Mau Water tower, a source of livelihoods for millions of people in Kenya and beyond.

Last week, Rift Valley Regional Commissioner George Ntembeya said the exit notice will not be extended.

In July last year, nearly 7,700 people were evicted from the forest, which saw over 12,000 acres of the forest reclaimed.

The Mau is the largest water tower in the country, supporting millions of human and wildlife in Kenya and beyond and conservancies and government officials have been accused the leaders of dragging politics to the exercise.

"It is that the position of the government that all people from this country should return to their counties of origin to their ancestral land? And so we want to tell the president that if this is the official position of the government, he should declare the deadline on when everyone will return," Emurua Dikir MP Johanna Nguno said.

## REPUBLIC OF KENYA



### THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT – THIRD SESSION

In the matters of consideration by the National Assembly:-

1. The Constitution of Kenya (Amendment) Bill, (National Assembly Bills No. 60 of 2019)
2. The Public Fundraising Appeals Bill (National Assembly Bill No. 66 of 2019)

#### NOTIFICATION FOR PUBLIC HEARINGS BY THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE (CIOC)

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) requires the Select Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House.

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The aforementioned Bills have undergone First Reading pursuant to Standing Order 127(3) of the National Assembly and stands committed to Constitutional Implementation Oversight Committee (CIOC) for consideration and reporting to the House.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee will be undertaking public hearings on the said bills in the following counties from 9.00 am - 4.00 pm:-

	COUNTY	VENUE/TOWNS	DATE
1.	Bungoma	Red Cross Hall	Friday, 8 <sup>th</sup> November, 2019
2.	Kisumu	New Nyanza Regional Headquarters	Friday, 8 <sup>th</sup> November, 2019
3.	Siaya	Nyawara Social Hall	Saturday, 9 <sup>th</sup> November, 2019
4.	Kakamega	Salvation Army Social Hall	Saturday, 9 <sup>th</sup> November, 2019
5.	Vihiga	Hamisi Social Hall	Sunday, 10 <sup>th</sup> November, 2019
6.	Kericho	Holy Trinity Academy Hall	Sunday, 10 <sup>th</sup> November, 2019
7.	Lakopia	Nanyuki Social Hall	Friday, 15 <sup>th</sup> November, 2019
8.	Embu	Embu Municipal Hall	Friday, 15 <sup>th</sup> November, 2019
9.	Nyandarua	Nyandarua Social Hall	Saturday, 16 <sup>th</sup> November, 2019
10.	Kitui	Katulani Social Hall	Saturday, 16 <sup>th</sup> November, 2019
11.	Garissa	Garissa Library	Sunday, 17 <sup>th</sup> November, 2019
12.	Nakuru	Nakuru Old Town Hall	Sunday, 17 <sup>th</sup> November, 2019
13.	Mombasa	Kenya School of Government Hall	Friday, 22 <sup>nd</sup> November, 2019
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16.	Lamu	Mwanarafa Social Hall	Saturday, 23 <sup>rd</sup> November, 2019
17.	Nairobi	County Hall	Monday, 2 <sup>nd</sup> December, 2019

The Clerk of the National Assembly therefore invites interested members of the public and organizations to attend the public hearings and submit their views or make oral presentations regarding the said Bills.

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MICHAEL R. SIALA, EBS  
CLERK OF THE NATIONAL ASSEMBLY

### **Annexure 3:**

Signed list of the Members who attended the sitting that considered and adopted the report on the Bill.

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FOURTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

ADOPTION LIST - PUBLIC FUNDRAISING APPEALS BILL, 2019

Date: 17/09/2020

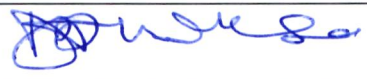

Venue: CONTINENTAL HOUSE, 4<sup>TH</sup> FLOOR

Time in: 10:30am

Time Out: 12:20pm

	HON. MEMBER	SIGNATURE
1.	Hon. Jeremiah Kioni, M.P. (Chairman)	
2.	Hon. Peter Kaluma, M.P	
3.	Hon. (Dr.) Naomi Shaban, M.P	
4.	Hon. (Dr.) Christine Ombaka, M.P.	
5.	Hon. T.J Kajwang, M.P	
6.	Hon. Charles Gimose, M.P.	
7.	Hon. Yusuf Abdi, M.P	
8.	Hon. Abdi Shurie, M.P.	
9.	Hon. Anthony Oluoch, M.P.	
10.	Hon. (Col.) Geoffrey Kingangi, M.P	
11.	Hon. Raphael B. S. Wanjala, M.P	
12.	Hon. Simon Nganga Kingara, M.P.	



	HON. MEMBER	SIGNATURE
13.	Hon. Halima Mucheke, M.P.	
14.	Hon. Japheth Mutai, M.P.	
15.	Hon. Peris Tobiko, M.P.	
16.	Hon. Daniel Rono, M.P.	
17.	Hon. Fabian K. Muli, M.P.	
18.	Hon. Benard Okoth, M.P.	
19.	Hon. Joash Nyamoko, M.P.	
20.	Hon. Moses Kirima, M.P.	
21.	Hon. Didmus Barasa, M.P.	
22.	Hon. Purity Ngirici, M.P.	
23.	Hon. Catherine Wambilianga, M.P.	

Name: Mary Lemerde

Signature: ML

Committee Clerk

Name: .....

Signature: .....

Director, Committees

## **Annexure 4:**

Minutes of the Committee sitting on consideration of the Bill and adoption of the Report.

**MINUTES OF THE FIFTH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON FRIDAY, 6<sup>TH</sup> MARCH, 2020 AT THE SERENA HOTEL, MOMBASA COUNTY AT 10.00 A.M.**

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**PRESENT**

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. (Dr.) Christine Ombaka, M.P.
3. The Hon. T.J Kajwang', M.P
4. The Hon. Wafula Wamunyinyi, M.P.
5. The Hon. Charles Gimose, M.P.
6. The Hon. Jane Njiru, M.P.
7. The Hon. Japheth Mutai, M.P.
8. The Hon. Fabian K. Muli, M.P.
9. The Hon. Simon Ng'ang'a King'ara, M.P.
10. The Hon. Daniel Rono, M.P.
11. The Hon. Peris Tobiko, M.P.
12. The Hon. Abdi Shurie, M.P.
13. The Hon. Anthony Oluoch, M.P.
14. The Hon. Benard Okoth, M.P.

**APOLOGIES**

15. The Hon. Fred Kapondi, M.P. - Vice-Chairman
16. The Hon. (Dr.) Naomi Shaban, M.P.
17. The Hon. (Col.) Geoffrey Kingangi, M.P.
18. The Hon. Sarah Korere, M.P.
19. The Hon. Raphael B. S. Wanjala, M.P.
20. The Hon. Joshua Chepyegon, M.P.
21. The Hon. Ayub Savula, M.P.
22. The Hon. Gideon Koske, M.P.
23. The Hon. Halima Mucheke, M.P.

**SECRETARIAT**

1. Mr. Edward Libendi - Senior Legal Counsel & Clerk CIOC
2. Ms. Mary Lemerelle - Clerk Assistant
3. Ms. Christine Odhiambo - Legal Counsel
4. Mr. Allan Gituku - Serjeant-at-Arms
5. Mr. Allan Nandasaba - Intern

**MIN.NO.CIOOC/2020/023**

**PRELIMINARIES**

The Chairman called the meeting to order at five minutes past ten O'clock (10.05 a.m.) and commenced it with a word of prayer. Agenda was adopted as consideration of reports on two Bills (the Constitution of Kenya (Amendment) (No.3) Bill, 2019 and the Public Fundraising Appeals Bill, 2019) and foreign travel reports of the Committee to the Federal Republics of Germany and Nigeria.

The Chairman informed the meeting that the Committee would consider possible amendments to the Public Fundraising Appeals Bill, 2019 and the Constitution of Kenya (Amendment) Bill, 2019 having concluded public hearings in seventeen Counties

**MIN.NO.CIOOC/2020/024**

**CONFIRMATION OF MINUTES**

Confirmation of minutes of the previous sitting was deferred.

**MIN.NO.CIOOC/2019/025**

**THE CONSTITUTION OF KENYA (AMENDMENT) (NO.3) BILL, 2019**

Members considered the Bill and the proposals from Members of the public and institutional stakeholders like the Office of the Attorney General and agreed as follows:

- (i) The proposal on not varying the remuneration and benefits for Members and former Members of Parliament for the lifetime of the Members was said to be offensive and needed amendment so that it just reflects the term of the Members and not lifetime. Members therefore proposed that the clause be deleted.
- (ii) Amendment of Article 165-The meeting argued that the Judiciary should indeed respect the principle of separation of powers and should not interfere with parliamentary processes and that intervention should only be after the process has been concluded in parliament or county assemblies.
- (iii) Article 127 –It was noted that the wording ‘subject to clause 6(a)’ is not clear and needed improvement. The meeting proposed that the use of the word ‘facilities’ in Article 127 could be substituted to cater for other purposes such as Constituency Development Fund and Members’ subsistence allowances.

**Committee resolution**

After further deliberations, Members were informed that Constitutional Amendment Bills may not be amended on the floor of the House and were to be enacted as they came or rejected in their original form.

The Committee agreed with the submissions arguing that prohibiting Members of Parliament and county assemblies from participating in fundraising appeals would amount to undue discrimination against them.

**f) Proposal to address situations where the raised amount exceeds the targeted amount**

The Committee was of the view that amending Clause 21(3) to factor in the proposed amendment to address what happens if amounts raised in a fundraising were higher was inconsequential and therefore rejected the proposal.

**g) Proposal to exempt Universities from the Provisions of the Bill as proposed by Dedan Kimathi University of Technology**

The Committee considered the proposal from Dedan Kimathi University of Technology in which the Director had proposed exemption of public universities which do fundraisings and receive donations or have endowment funds for purposes of research from provisions of the Bill, on the basis that raising and use of the funds is governed by the Universities Act.

The Committee agreed with the proposal to exempt the Universities from provisions of section 17 on the basis that the raising and use of funds by Universities was audited by the Auditor General which ensured transparency and accountability.

**h) Proposal by Strathmore University Foundation on grant of a one year or long term license to Institutions which do regular fundraisings for purposes of Higher learning.**

The Committee considered the proposal and argued that it would be a challenge to implement the law where there were different types of licenses for fundraising appeals. However since, the fundraising was by institutions recognized for educational purposes, it agreed to relook into the proposals of creating longer term licenses but enhancing the oversight mechanisms over the funds raised by the organizations.

**MIN.NO.CIOC/2019/027    ANY OTHER BUSINESS**

There was no any other business.

**MIN.NO.CIOC/2019/028    ADJOURNMENT**

There being no other business the meeting was adjourned at eight minutes to One O'clock (12.52pm).The next sitting will be held at 2.30pm.

SIGN...  DATE ...17.09.2020.

**THE HON. JEREMIAH KIONI, M.P.  
CHAIRMAN**

Members therefore resolved that the Bill be withdrawn and to be reintroduced after incorporating the amendments agreed upon by the Members. The secretariat to prepare a letter to the Speaker seeking to withdraw the Bill.

**MIN.NO.CIOC/2019/026 PUBLIC FUNDRAISING APPEALS BILL, 2019**

After considering proposals from various stakeholders and submissions by members of the public, the Committee observed as follows:

**a) Proposal that there be no regulation on the conduct of Public Fundraising Appeals**

The Committee noted that there has been an abuse on the process of fundraising appeals with people raising money for social status enrichment and some raising funds for non-existent causes and even where there were justifiable reasons, there was no transparency or accountability. That the current regime of fundraising is regulated by the Public Collections Act of 1960 which needed to be aligned with the Constitution of Kenya

**b) Proposal to remove the County Policing Authority as a licensing body**

Regarding the above proposal, the Committee was of the opinion that since the National Police Service Act that had established the Authorities had come into effect, then its operationalization and establishment of the County Policing Authority would within time be effected in the whole country.

**c) Proposal to simplify process of application and processing of licenses**

On the proposal by the public to simplify the process of application and grant of licenses and the reduction of the period from the time of application of license to the time of grant, the Committee was supportive of the view arguing that some fundraising appeals were of an urgent nature to address emergencies thus the period given of minimum 10 years was long and needed to be revised.

**d) Proposal to have greater role of Chiefs and assistant chiefs, in licensing**

The Committee observed that Clause 51 provides that the County Policing Authority shall decentralize their services to the wards and village units established in accordance with section 48 of the County Governments Act.

This therefore brought licensing services of fundraising proposals closer to the people. However, the Committee agreed with the public that there was need for implementers of the law not to introduce unnecessary bureaucracies in application and processing of licenses.

**e) Proposal to exclude Members of Parliament and Members of County Assemblies from participating in fundraisings**

**MINUTES OF THE SIXTH SITTING (FOURTH SESSION) OF THE  
CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON  
FRIDAY, 6<sup>TH</sup> MARCH, 2020 AT THE SERENA HOTEL, MOMBASA AT 2.30 P.M.**

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**PRESENT**

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. (Dr.) Christine Ombaka, M.P.
3. The Hon. T.J Kajwang', M.P
4. The Hon. Wafula Wamunyinyi, M.P.
5. The Hon. Charles Gimose, M.P.
6. The Hon. Jane Njiru, M.P.
7. The Hon. Fabian K. Muli, M.P.
8. The Hon. Simon Ng'ang'a King'ara, M.P.
9. The Hon. Daniel Rono, M.P.
10. The Hon. Peris Tobiko, M.P.
11. The Hon. Abdi Shurie, M.P.
12. The Hon. Anthony Oluoch, M.P.
13. The Hon. Benard Okoth, M.P.

**APOLOGIES**

14. The Hon. Fred Kapondi, M.P. - Vice-Chairman
15. The Hon. (Dr.) Naomi Shaban, M.P.
16. The Hon. Ayub Savula, M.P.
17. The Hon. (Col.) Geoffrey Kingangi, M.P.
18. The Hon. Japheth Mutai, M.P.
19. The Hon. Sarah Korere, M.P.
20. The Hon. Raphael B. S. Wanjala, M.P.
21. The Hon. Joshua Chepyegon, M.P.
22. The Hon. Gideon Koske, M.P.
23. The Hon. Halima Mucheke, M.P.

**SECRETARIAT**

1. Mr. Edward Libendi - Senior Legal Counsel & Clerk CIOC
2. Ms. Mary Lemerelle - Clerk Assistant
3. Ms. Christine Odhiambo - Legal Counsel
4. Mr. Allan Gituku - Serjeant-at-Arms
5. Mr. Allan Nandasaba - Intern

**MIN.NO.CIOC/2020/029**

**PRELIMINARIES**

The Chairman called the meeting to order at fifteen minutes to three o'clock (2.45 p.m.) and commenced it with a word of prayer. Agenda of the meeting was adopted as consideration and adoption of reports of the Committee on study visits to the Federal Republics of Germany and Nigeria.

**MIN.NO.CIOC/2020/030**

**CONFIRMATION OF MINUTES**

Confirmation of minutes of previous sittings was deferred.

**MIN.NO.CIOC/2019/031**

**CONSIDERATION AND ADOPTION OF REPORTS ON STUDY VISIT TO ABUJA, NIGERIA AND GERMANY**

**(i) Federal Republic of Nigeria**

The meeting reviewed the report and adopted it after having been proposed by Hon. (Dr.) Christine Ombaka, M.P and seconded by Simon King'ara, M.P.

**(ii) Germany**

The meeting reviewed the report and adopted it after having been proposed by Hon. Peris Tobiko, M.P and seconded by Hon.Abdi Shurie, M.P.

**MIN.NO.CIOC/2019/032**

**ANY OTHER BUSINESS**

There was no any other business.

**MIN.NO.CIOC/2019/033**

**ADJOURNMENT**

There being no other business the meeting adjourned at fifteen minutes to four O'clock (3.45pm).The next sitting will be held on Saturday 7<sup>th</sup> March,2020 at 9.00 am.

SIGN.....



DATE .....17.09.2020.....

**THE HON. JEREMIAH KIONI, M.P.  
CHAIRMAN**



**MINUTES OF THE SEVENTH SITTING (FOURTH SESSION) OF THE  
CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON  
SATURDAY, 7<sup>TH</sup> MARCH, 2020 AT THE SERENA HOTEL, MOMBASA AT 9.00A.M.**

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**PRESENT**

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. (Dr.) Christine Ombaka, M.P.
3. The Hon. T.J Kajwang', M.P
4. The Hon. Wafula Wamunyinyi, M.P.
5. The Hon. Charles Gimose, M.P.
6. The Hon. Simon Ng'ang'a King'ara, M.P.
7. The Hon. Daniel Rono, M.P.
8. The Hon. Peris Tobiko, M.P.
9. The Hon. Abdi Shurie, M.P.
10. The Hon. Anthony Oluoch, M.P.
11. The Hon. Fabian K. Muli, M.P.
12. The Hon. Jane Njiru, M.P.
13. The Hon. Benard Okoth, M.P.

**APOLOGIES**

14. The Hon. Fred Kapondi, M.P. - Vice-Chairman
15. The Hon. (Dr.) Naomi Shaban, M.P.
16. The Hon. (Col.) Geoffrey Kingangi, M.P.
17. The Hon. Sarah Korere, M.P.
18. The Hon. Japheth Mutai, M.P.
19. The Hon. Raphael B. S. Wanjala, M.P.
20. The Hon. Joshua Chepyegon, M.P.
21. The Hon. Ayub Savula, M.P.
22. The Hon. Gideon Koske, M.P.
23. The Hon. Halima Mucheke, M.P.

**SECRETARIAT**

1. Mr. Edward Libendi - Senior Legal Counsel & Clerk CIOC
2. Ms. Mary Lemerelle - Clerk Assistant
3. Ms. Christine Odhiambo - Legal Counsel
4. Mr. Allan Gituku - Serjeant-at-Arms
5. Mr. Allan Nandasaba - Intern

**MIN.NO.CIOC/2020/034                      PRELIMINARIES**

The Chairman called the meeting to order at fifteen minutes to three o'clock (2.45 p.m.) and commenced it with a word of prayer.

**MIN.NO.CIOC/2020/035      CONFIRMATION OF MINUTES**

Confirmation of minutes of the previous sitting was deferred.

**MIN.NO.CIOC/2019/036      CONSIDERATION OF MEMORANDA ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO.3) BILL, 2019 AND THE PUBLIC FUNDRAISING APPEALS BILL, 2019**

The Committee noted that it had received submissions of memoranda from the office of the Attorney General and Prof. Tom Ojienda on the Constitution of Kenya (Amendment) (N0.3) Bill, 2019 and the Public Fundraising Appeals Bill, 2019.

The meeting however noted that some issues raised in the proposals had been dispensed off by the Committee.

**MIN.NO.CIOC/2019/037      COMMITTEE RESOLUTION**

The meeting resolved that two letters be addressed to the Speaker of the National Assembly for the Chairman's signature;

- (i) To seek authority to withdraw the Constitution of Kenya, Amendment (No.3) Bill, 2019 and seeking reintroduction of the Bill.
- (ii) To seek authority to mandate the Constitutional Implementation oversight Committee to oversight over Constitutional Commissions.

**MIN.NO.CIOC/2019/038      CONSIDERATION AND ADOPTION OF COMMITTEE REPORT ON THE PUBLIC FUNDRAISING APPEALS BILL, 2019**

The Members reviewed the report and unanimously adopted it as a true reflection of the Committee's deliberations after having been proposed and seconded by Hon. Hon. Wafula Wamunyinyi, M.P and Hon. (Dr.) Christine Ombaka, M.P respectively.

**MIN.NO.CIOC/2019/039      ANY OTHER BUSINESS**

There was no any other business.

MIN.NO.CIOC/2019/040

ADJOURNMENT

There being no other business the meeting was adjourned at fifteen minutes past One O'clock (1.15 pm). The next sitting will be held on Saturday at 2.30 pm.

SIGN.....



DATE .....

17.09.2020

**THE HON. JEREMIAH KIONI, M.P.**

**CHAIRMAN**

## **Annexure 5:**

Written submissions received from stakeholders

*RB ENJOI*  
~~K. B. ENJOI~~  
 Please read

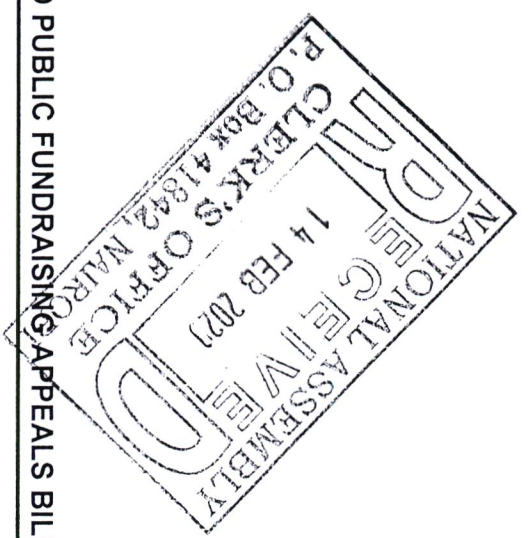
11<sup>th</sup> December 2019  
 FA  
 18/12/20

The Clerk of the National Assembly,  
 Parliament Buildings, Parliament Road,  
 NAIROBI.  
 Email: [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)

**RE: MEMORANDUM ON THE PROPOSED PUBLIC FUNDRAISING APPEALS BILL, 2019**

We refer to the above-noted matter and the call for public participation on the Bill which was supposed to take place on Monday, 2<sup>nd</sup> December 2019.

We are an institution that engages in fundraising and resources mobilization for the advancement and sustainability of high learning in Kenya. In the backdrop of this, we believe the proposed Public Fundraising Appeals Bill 2019 which has noble intentions may consequently affect the industry especially for like-minded institutions and as such, we wish to make our little contribution with a bid to assist the National Assembly in developing this legislative piece. The outline of our proposed amendments to the Bill are as outlined below:



**Strathmore University  
 Foundation**

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18 FEB 2020

CLAUSE	CONTENTS	PROPOSED AMENDMENT	RATIONALE
21	<p>(1) A person shall not conduct a public fundraising appeal unless the person has applied for, and obtained, a license in accordance with the provisions of this Act</p> <p>(2) A person who intends to conduct a public fundraising appeal shall submit to the relevant County Policing Authority, an application for a license at least twenty-one days before the date for the conduct of the fundraising appeal form as the National Committee shall determine and shall be submitted together with the following information</p> <p>(a) the full names and address of the person intending to conduct the fundraising appeal;</p> <p>(b) the purpose of the fundraising appeal;</p> <p>(c) the necessity of conducting the fundraising appeal;</p> <p>(d) the date on which the fundraising is to be conducted;</p>	<p>Addition of a sub-clause to read as follows:</p> <p>(6) Institutions that conduct fundraising appeals on an annual basis shall be granted an annual licenses or other long term licenses as may be determined by the Minister from time to time.</p>	<p>There are institutions that are meant to engage in charitable purposes and MAY wish to engage in public fundraising appeals. These kinds of institutions if registered as fundraising managers should at least have long-term or annual licenses to reduce the workload of frequent applications for licenses every other time.</p>

*SS*

**THE NATIONAL ASSEMBLY  
 RECEIVED**  
 18 FEB 2020  
 DIRECTOR COMMITTEE SERVICES  
 Time:..... Sign:.....



<p>(e) the names and contact details of the persons assisting in conducting the appeal;</p> <p>(f) the amount intended to be raised through the appeal;</p> <p>(g) the estimated expenses to be incurred in conducting the fundraising appeal;</p> <p>(h) a statement regarding whether any monies have been received with respect to the matter pertaining to the fundraising appeal from any person prior to the date of the proposed fundraising appeal;</p> <p>(i) the place at which the collection is intended to be made;</p> <p>(j) the expected timeframe for the appeal; and</p> <p>(k) such other information as may be necessary.</p> <p>(4) Where an applicant for a license under subsection (2) is not the intended beneficiary of the fundraising appeal, the application shall be submitted together with —</p> <p>(a) the name of every person on whose behalf the person intends to conduct a fundraising appeal;</p> <p>(b) the common features shared by the class of persons for whose benefit the person intends to conduct a fundraising appeal, and the means by which the money or benefit is to be transmitted to that class or is to be distributed among the individual members of that class;</p> <p>(c) if any intended appeal is not to be conducted for the immediate direct benefit of one or more people, a description of the cause for which the appeal is to be conducted, and the means by which the money or benefit will be applied to the cause;</p> <p>(d) in the case of —</p> <p>(i) an adult who is the intended beneficiary, the consent of such adult;</p>		
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# Strathmore University Foundation

	<p>(ii) an adult who is the intended beneficiary but who lacks legal capacity to consent, the consent of a legally appointment guardian; or</p> <p>(iii) a child who is the intended beneficiary, the consent of the parents or guardian of the child;</p> <p>(e) a declaration that the intended fundraising appeal does not violate the provisions of the Public Officer Ethics Act, the Elections Act or the provisions of any other written law.</p> <p>(5) Where the intended beneficiary of a fundraising appeal is an organization or the members of such organization, an application for a license under subsection (2) shall be submitted together with the consent of a duly authorized representative of the organization.</p>		
27	<p>(1) The County Policing Authority shall issue to an applicant one license in relation to the conduct of each fundraising appeal under this Act.</p> <p>(2) A license issued under subsection (1) shall, unless otherwise specified by the relevant County Policing Authority, automatically expire upon the conduct of the fundraising appeal to which the license issued relates.</p> <p>(3) Notwithstanding subsection (2) the expiry of the license shall not relieve the licensed person from the obligations imposed under this Act.</p>	<p>Introduction of a new sub-clause that reads as follows:</p> <p>(4) Notwithstanding the provisions under subsection (1) &amp; (2) license issued under Section 21(6) shall cater for multiple fundraising appeals and shall expire at the end of every year or a longer specified time period.</p>	<p style="text-align: center;">✓</p>
39	<p>Not more than five per cent of the targeted amount to be raised shall be utilized in defraying administrative expenses related to the fundraising appeal.</p>	<p>Addition of an exception to this to read as follows: Not more than five per cent of the targeted amount to be raised shall be utilized in</p>	<p>This amendment is to accommodate exceptional circumstances where amounts used in administrative expenses may exceptionally exceed the 5% threshold and as such there needs to be an additional sum.</p>



	<p>40. (1) Every person who conducts a fundraising appeal shall keep a record reflecting the income and expenditure relating to the appeal including —</p> <p>(a) details of the persons who make contributions in relation to the fundraising appeal and the amounts contributed by each person;</p> <p>(b) the name, number and address of the bank into which the monies raised in relation to the fundraising appeal were deposited;</p> <p>(c) full details of all funds and assets received as a result of the appeal;</p> <p>(d) full details of the use to which the funds and assets received were put to;</p> <p>(e) full details of —</p> <p>(i) the amount applied to the purposes or objects of the appeal and how it was distributed;</p> <p>(ii) any expenditure on assets;</p> <p>(iii) any expenditure on wages, salaries, commissions and other remuneration in relation to the appeal;</p> <p>(iv) any other administrative expenses related to the appeal;</p> <p>(v) any other expenditure related to the appeal; and (vi) such other information as the Committee may determine.</p>	<p>defraying administrative expenses related to the fundraising appeal. However, in exceptional circumstances the expenses can be spent up to a maximum of 10% subject to notification to the appropriate regulatory authority.</p>	<p>Addition of the Clause (f) to read as follows: Notwithstanding the provisions of sub-section, a &amp; b above, the contact details of anonymous donors shall be separately kept from the details of the other donors and only accessed upon exceptional regulatory intervention where a criminal offence is being investigated.</p>	<p>This is to allow for anonymous donors who would wish to donate in secret but also allow oversight in situations where criminal offences are suspected of being committed through the donation or its sources.</p>
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**Foundation**

<p>44. A person who makes a contribution to a Declaration of fundraising appeal shall — (a) specify the source of the contribution; and (b) declare such contribution in the income tax returns submitted by such person pursuant to the Income Tax Act.</p>	<p>Addition to the Clause to read as follows: Subject to Clause 40(f), A person who makes a contribution to a Declaration of fundraising appeal shall — (a) specify the source of the contribution; and (b) declare such contribution in the income tax returns submitted by such person pursuant to the Income Tax Act.</p>	<p>This is to provide for anonymous donors but still maintaining oversight over people who donate their funds to philanthropic ends.</p>
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We humbly pray that you consider our proposals to the amendment of the highlighted Clauses. We are amenable to a meeting to clarify our position and we look forward to your kindest consideration of our proposals.

Yours sincerely,

**JAMES KIMEU**  
**EXECUTIVE DIRECTOR**  
**STRATHMORE UNIVERSITY FOUNDATION**

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REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

AG/LDD/578/1/86

6<sup>th</sup> March 2020

The Clerk of the National Assembly  
Parliament Buildings  
P. O. Box 41842-00100,  
**NAIROBI.**

**RE: THE PUBLIC FUNDRAISING APPEALS BILL, 2019**

Reference is made to your letter under Ref. No.: KNA/DCS/CIOC/2020(04) dated 26<sup>th</sup> February 2020 requesting for our comments on the above-captioned Bill.

We have reviewed the Bill and our comments on the Bill are contained in the enclosed matrix for your consideration.

**L. M. MURILA**  
**CHIEF STATE COUNSEL**  
**For: ATTORNEY-GENERAL**

- Copy to: 1. P. Kihara Kariuki, EGH  
**ATTORNEY-GENERAL**
2. Mr. Kennedy Ogeto CBS  
**SOLICITOR GENERAL**

## COMMENTS ON THE PUBLIC FUNDRAISING APPEALS BILL, 2019

Provisions in the Bill	Stakeholder proposals	Rationale
Title	The Public Fundraising Bill, 2019 The Public Collection Bill,2019	The title of the Bill limits the scope of the Bill to the appeal and not the whole process of fundraising. The proposed titles will encompass the whole scope of the Bill: the appealing for, collection of and management of the collected funds.
Long Title	An Act of Parliament to regulate fundraising at national and county levels of Government; to promote transparency and accountability in the raising of funds and for connected purposes	Clarity.
Clause 2	Delete the definition of the term "Authority" and define the term "County Policing Authority".	The term used in the Bill is County Policing Authority, not "Authority".
	In the definition of" beneficiary "insert the word "fundraising "before the word "appeal".	Use of the defined term.
	"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to social protection.	<p>The definition in the Bill combines the functions of two Cabinet Secretaries- Planning and Social Protection. Responsibility should be given to one person.</p> <p>The fundraising appeal envisioned in the Bill does not appear to be for planning purposes but for social development. Executive Order No.1 of 2018 specifies that the Ministry of Labour and Social Protection, State Department for Social Protection is responsible for community mobilization and social assistance programmes.</p>

	<p>Delete the definition of the term "county register" and insert the following term in proper alphabetical sequence:</p> <p>"register" means the register maintained under section 35.</p>	<p>Section 35 provides for the register maintained by the Authority and not the county executive committee member.</p>
	<p>Delete the definition of the term "fundraising appeal" and substitute therefor the following new definition:</p> <p>"fundraising appeal" means an appeal to raise funds conducted in accordance with section 16.</p>	<p>This definition makes a cross reference to clause 15 which does not define the term but provides for different categories of fundraising appeals.</p> <p>Clause 16 provides a clearer definition.</p>
	<p>In the definition of the term "fundraising manager" delete the expression "is licensed under section 26 to conduct" and substitute therefor the word "conducts".</p>	<p>To provide clarity.</p>
	<p>Delete the definition of the term "National Register".</p>	<p>Section 35 provides for the register maintained by the Authority and not by the National Committee. Each county is required to establish a county policing authority.</p>
	<p>Insert the definition of a public collection entity</p>	<p>This is to ensure clarity where there is reference to a public collection entity in the Act.e.g clause 19(5).</p>
Clause 3	<p>In paragraph (a) insert the word "fundraising" immediately before the word "appeals".</p>	<p>For consistent reference to the term "fundraising appeals" as the defined term.</p>
	<p>In paragraph (c) by deleting the word "voluntary".</p>	<p>To ensure that the public are well informed when making any contribution.</p>
	<p>Delete paragraph (e).</p>	<p>The establishment of public funds is already provided for under the Public Finance Management Act,</p>

		2012.
Clause 4	In sub-clause (1), delete the words " a body " and substitute " a National Committee"	For Clarity
	In sub-clause (1) (a), delete the words "planning and"	For clarity on the responsible Principle secretary
	In sub-clause (1), delete paragraph (d).	The Public Benefits Organisation Act has not yet been commenced therefore this post as a member of the National Committee cannot be filled.
	In sub-clause (1) (e), delete the words "who shall be the secretary to the National Committee".	To ensure compliance with Mwongozo which provides that the Secretary and the Director of the Board of a state corporation shall be two separate people.
	In sub-clause (1) insert a provision on the chairperson of the National Committee.	To ensure that there is a chairperson to chair the meetings of the National Committee.
Clause 5	In paragraph (a) delete the words "count executive committee members" and substitute therefor the words "the Authority.	The implementation of this Bill at the county level is by the Authority and not the county executive committee members.
	In paragraph (i) delete the word "appeals" and substitute therefor the word "reviews".	This provision makes a cross reference to clause 34 which provides for reviews rather than appeals to the National Committee.
	Number the provision after paragraph (k) as paragraph (l).	This provision is one of the functions of the National Committee it should be numbered accordingly.
Clause 11	In sub-clause (1) delete the words "planning and social development " and substitute therefor the words "social protection"	For clarity on the responsible Ministry.
Clause 13	In sub-clause (2) (d) and (e), insert reference to the county.	For clarity in light of the provisions relating to the National

		Committee under clause 5 (e) and (f).
	In sub-clause (3) (b) and (d), insert reference to the county.	For clarity in light of the provisions relating to the National Committee under clause 5 (e) and (f).
Clause 18	Does this provision provide that a person who solicits for funds from friends, associates or colleagues has to be licenced under this Act? For instance in the case of fundraising for a funeral?	The scope of the contributors is limited.
Clause 19	It is not clear whether a "public collection entity" and a "fundraising manager" are the same or different people.	To provide clarity on whether the Bill licences public collection entities or fund managers or both or if a fund manager is also a public collection entity.
	In sub clause (6) there is a reference to the obligations of a fundraising manager.	There is no provision providing for the obligations of a fundraising manager in the Bill.
Clause 20	Insert provisions to specify the justification why the rights of the Members of Parliament and of the County Assemblies under this Bill are limited.	To ensure this Bill is consistent with Article 24 of the Constitution.
	In sub-clause (2), insert the words "commits an offence and "immediately after the word "section".	This is to create an offence. The clause specifies a penalty without creating the offence.
Clause 21	In sub-clause (3) (d), insert the word "appeal "immediately after the word "fundraising".	Reference to the defined term.
	In sub-clause (3) (e), (f) and (j), insert the word "fundraising "immediately before the word "appeal".	Reference to the defined term
	In sub-clause (4) specify which applicants require the declaration specified in paragraph (e) when applying for a licence.	To clarify whether all persons require this declaration or only specific applicants, such as politicians or members of the public service.
	In sub-clauses (2) and (3) insert the	To provide for the application,

	words "The National Committee or" immediately before the words "the relevant County Policing Authority".	issuance of a licence by the National Committee in accordance with clause 5 (c).
Clause 22	In sub-clause (1) insert the words "The National Committee or" at the beginning of the sub-clause.	To provide for the processing of urgent applications by the National Committee and the issuance of a licence in accordance with clause 5(c).
	In sub-clause (3) insert the words "The National Committee or" at the beginning of the sub-clause.	To provide for the processing of urgent applications by the National Committee and the issuance of a licence in accordance with clause 5(c).
Clause 23	In sub-clause (1) insert the words "The National Committee or" at the beginning of the sub-clause.	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
Clause 25	In sub-clause (1) insert the words "The National Committee or" at the beginning of the sub-clause.	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
Clause 26	Delete the words "relevant committee" and substitute the words "National Committee or the relevant County Policing Authority".	The term "Committee" is not defined.  To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
Clause 27	In sub-clause (1) insert the words "the National Committee or the relevant" immediately before the word "County".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
	In sub-clause (2) insert the words "the National Committee or" immediately before the word "relevant".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
Clause 28	In sub-clause (1) insert the words "the National Committee or the relevant" immediately before the word "County".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
	In sub-clause (2) insert the words "the National Committee or" immediately before the word "relevant".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).



	Delete the word " a person as a fundraiser" and substitute " an applicant"	The term "fundraiser" is used but not defined.
	In sub-clause (3) insert the words "the National Committee or the relevant" immediately before the word "County".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
	In sub-clause (1) insert the words "the National Committee or relevant" immediately before the word "County".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
Clause 30	Insert the words "the National Committee or the relevant" immediately before the word "County".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
	Complete paragraph (c).	Paragraph (c) is not complete.
	In paragraphs (d) and (e) delete the word "Authority" and substitute "County Policing Authority".	The term 'Authority: is defined but the term "County Policing Authority" used in the Bill
Clause 31	In sub-clause (1) insert the words "the National Committee or the relevant County Policing" immediately before the word "Authority".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
	In sub-clause (3) insert the words "the National Committee or the relevant County Policing" immediately before the word "Authority".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
Clause 32	In sub-clause (1) insert the words "the National Committee or the relevant County Policing" immediately before the word "Authority".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
	In sub-clause (2) insert the words "the National Committee or the relevant County Policing" immediately before the word "Authority".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
Clause 33	Insert the words "the National	To provide for the issuance of a

	Committee or the relevant County Policing" immediately before the word "Authority".	licence by the National Committee in accordance with clause 5 (c).
Clause 34	Insert provisions for applications for the review of decisions made by the National Committee.	To provide a corresponding provision for the decisions of the National Committee as that of the County Policing Authorities.
Clause 35	Insert provisions of a register maintained by the National Committee.	To provide for the maintenance of a register by the National Committee in accordance with clause 5 (f).
Clause 36	In sub-clause (1) insert the words "the National Committee or the relevant County Policing" immediately before the word "Authority".	To provide for the issuance of a licence by the National Committee in accordance with clause 5 (c).
Clause 40	In sub-clause (1) delete the words "person who conducts a fundraising appeal" and substitute therefor the words "fundraising manager".	For consistent reference since the fundraising manager bears the managerial and financial responsibility in relation to a fundraising appeal.
	In sub-clause (2) delete the words "person conducting a fundraising appeal" and substitute therefor the words "fundraising manager".	For consistent reference since the fundraising manager bears the managerial and financial responsibility in relation to a fundraising appeal.
	In sub-clause (3) delete the words "person conducting a fundraising appeal" and substitute therefor the words "fundraising manager".	For consistent reference since the fundraising manager bears the managerial and financial responsibility in relation to a fundraising appeal.
	In sub-clause (6) delete the words "person who conducted a fundraising appeal" and substitute therefor the words "fundraising manager".	For consistent reference since the fundraising manager bears the managerial and financial responsibility in relation to a fundraising appeal.
Clause 44	Delete paragraph (b).	This would be better placed as part of the Finance Bill since it is proposes to amend the Income Tax Act to specify what contributions are to be declared by a taxpayer in their returns.

Clause 45	Delete sub-clauses (1) and (2).	<p>Article 234 of the Constitution does not provide that the Public Service Commission shall appointment inspectors in relation to fundraising appeals.</p> <p>Section 59 of the County Governments Act does not provide that the County Public Service Boards shall appointment inspectors in relation to fundraising appeals.</p>
Clause 50	Delete the whole provision.	<p>Section 13 of the Income Tax Act provide for the exemption of certain income such as charitable contributions from being tax.</p>
Clause 52	Delete the whole provision.	<p>Section 6 (f) of the Public Finance Management Act, 2012 provides for that Act shall prevail in case of any inconsistency between it and any other legislation on the establishment of public funds.</p> <p>Section 24 of this Act provides for the establishment of national government public funds and section 116 for the establishment of county public funds.</p>



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## **PUBLIC PARTICIPATION REPORT ON THE FUNDRAISING BILL BY DeKUT**

The University Management has gone through the Fundraising Appeals Bill, 2019 and as part of the public participation process; we would wish to make some recommendations to the bill.

Public Universities are established under the Universities Act 2012. Under the Section 44 (3) of the Act, public universities can appeal to the general public for subscriptions, donations or bequests for the benefit of the university.

Under Section 45 (1) ( c ) , the funds of a public University comprise of all monies from any other source provided for or donated or lent to the public university.

Further, under Section 60 ( c ) , a University has powers to receive any grants, donations or endowments on behalf of the university and make legitimate disbursements there from.

The Act also establishes the universities fund under section 53. The fund under section 53 (3) b comprises of such sums as may be received by the board in the forms of donations. The fund also comprises of endowments grants and gifts from whatever source designated for the fund (section 53 (3) e).

From the above provisions of the Universities Act it is apparent that:-

- a) Universities can fundraise for the benefit of the University

- b) Universities can receive donations for the benefit of the University
- c) Universities can establish endowment funds
- d) Universities fund include fundraised money and endowments

The Act provides for an elaborate system of ensuring accountability and transparency in the way that universities use money that is at their disposal. In this regard, universities are under section 47 expected to keep proper books of account in relation to its income, expenditure and assets. In addition, the accounts should be audited and reported upon in accordance with the provisions of the Public Audit Act (section 47(3)).

**This being the case, the implication is that all the money that the University receives from any form of fundraising in form of grants or donations as well as any funds that are managed by the university as endowment funds are subjected to scrutiny by the Auditor General. This audit process assures the proper and transparent use of these fundraised monies.**

Since the systems are in place under the Universities Act to ensure universities utilise the fundraised monies properly, they should be exempted from the provisions of the Fundraising Bill under section 17 of the Bill. We propose that the exemption should read as follows: *Soliciting or receiving subscriptions, donations, bequests, endowment funds, gifts and grants that are authorized under the Universities Act 2012 or any other law.*

In addition, University also receives endowment funds which are supposed to support University's objectives which include research, innovation, technology advancement and other developments in the University e.g infrastructure developments.

Its proposed that the Endowment fund should be managed by a board of trustees which should ensure transparency and accountability in the management of the endowment fund. The Board of Trustees should be managed by the University Management Board

Its further proposed that the University can customize the process under part 5 of the Fundraising Bill in the management of the endowment fund but apart from