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KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT
FIRST SESSION

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
REPORT ON THE ELECTION CAMPAIGN FINANCING BILL, 2013

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

OCTOBER, 2013



1.0 PREFACE

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order No. 199, it is my pleasure and duty to present to the House, the Committee's Report on the Election Campaign Financing Bill, 2013.

1.1 COMMITTEE MEMBERSHIP

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16th May, 2013 comprising of the following members:

1. Hon. Samuel Chepkonga, M.P.,Chairperson
2. Hon. Priscilla Nyokabi, M.P.Vice-Chairperson
3. Hon. Muriithi Waiganjo, M.P
4. Hon. Ndirangu Waihenya, M.P
5. Hon. Florence Kajuju, M.P
6. Hon. Kang'ata Irungu, M.P
7. Hon. Benson Mutura, M.P
8. Hon. Olago Aluoch, M.P
9. Hon. John Njoroge M.P
10. Hon. William Cheptumo, M.P
11. Hon. Njoroge Baiya, M.P
12. Hon. Mohamed Abdi, M.P
13. Hon. Kangongo Bowen, M.P
14. Hon. Sammy Koech, M.P
15. Hon. Moses Cheboi, M.P
16. Hon. Paul Bii, M.P
17. Hon. Charles Gimose, M.P
18. Hon. Johanna Ngeno, M.P
19. Hon. Boniface Otsiula, M.P
20. Hon. David Ouma Ochieng, M.P
21. Hon. Neto Agostinho, M.P
22. Hon. Dr. Christine Ombaka, M.P
23. Hon. Kaluma Peter, M.P
24. Hon. Fatuma Ibrahim, M.P
25. Hon. Ben Momanyi Orori, M.P
26. Hon. Munuve Mati John, M.P
27. Hon. Ken Okoth, M.P
28. Hon. T.J Kajwang', M.P
29. Hon. Mutua Mutemi, M.P

1.2 Mandate of the Committee

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of standing order 216 (5) which outline functions of the Committee as being:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the Programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a Cabinet Secretary;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of Law and Justice
- c) The Judiciary

- d) Public prosecutions
- e) Elections
- f) Ethics, Integrity and anti-corruption and
- g) Human rights

1.3 Committee Meetings

The Committee held three sittings on 17th and 27th September, 2013 and 22nd October, 2013. The Committee attended a consultative workshop during which the Bill was considered in accordance with the standing orders of the National Assembly.

The Election Campaign Financing Bill, 2013 was read a first time on 6th August, 2013 and stood committed to the Committee. The National Assembly adjourned and went on recess on 15th August, 2013 and thus the Committee did not proceed and report as expected. This Report contains deliberations of the Committee on the Bill and the rationale behind the proposed amendment

Finally it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to introduce this report to the House, so that it may enrich debate on the Bill.

SIGNED..........

Hon. Samuel Chepkong'a, MP

(Chairperson)

Committee on Justice and Legal Affairs

DATE.....*23rd October, 2013*.....

PROPOSED AMENDMENTS TO THE ELECTION CAMPAIGN FINANCING BILL, 2013

CLAUSE 2

Amended

CLAUSE 3(1)(a)

Amended

CLAUSE 3 (1) (b)

Amended

CLAUSE 3(1)(d)

Amended

CLAUSE 3(1)(h)

Amended

CLAUSE 4(2)

Amended

CLAUSE 5

Amended

CLAUSES

6(a), (b),6(2),(3),(4), (5),(6) and (7)

Amended

PART IV: CAMPAIGN EXPENSES

Amended

CLAUSE 17(4)

Amended

CLAUSE 18(2),(3)

Amended

CLAUSE 19 (2)(c),(i),(4)

Amended

CLAUSE 20

Amended

PART VI – OFFENCES

Amended

CLAUSE 21

Amended

MISCELLANEOUS

CLAUSE 24, 25,26,27,28

Amended

MATRIX OF PROPOSED AMENDMENTS

CLAUSE No.	MARGINAL NOTE	PROPOSED AMENDMENT	JUSTIFICATION
2	Interpretation	<p>(a) In the definition of the term "contribution", delete the word "money" and substitute therefor the words "monetary and non-monetary contributions including";</p> <p>(b) In the definition of the term "organisation", delete the words "or a corporate body";</p> <p>(c) Insert the following definitions in the proper alphabetical sequence -</p> <p>"monetary contribution" means an amount of money contributed to a campaign financing account that is not repayable;</p> <p>"non-monetary contribution" means the market value of a service, other than volunteer labour, or of property or of the use of property or money to the extent that they are provided without charge or at less than their market value;</p> <p>"expenditure period" means the period for regulating election campaign financing prescribed under section 5;</p>	<p>Amendment on definitions to address -</p> <ul style="list-style-type: none"> • bar contributions by corporations; • to clarify "in-kind donations; monetary and non-monetary contributions have been used instead; <p>Additional definition to clearly spell out the period under regulation;</p>

PART II - FUNCTIONS OF THE COMMISSION

Delete the words "FUNCTIONS OF THE COMMISSION" and substitute therefor with the words "ADMINISTRATION OF CAMPAIGN FINANCING"

3(1)(a)		Delete the words "campaign expenditure committees" and substitute therefor the words "authorized persons" under this Act".	Most amendments to this Part II and to Part III are as a result of removing the proposed candidate committees and transferring their functions to the candidate or authorized agent of the candidate.
3(1)(b)		Insert the words "authorized persons" immediately after the word "committees".	
3(1)(d)		Insert the words "set limits and" at the beginning of the paragraph.	
3(1)(h)		Delete paragraph (h) and substitute therefor the following new paragraph- (h) provide and enforce a framework for the regulation of media coverage.	The original provision is subsumed in paragraph (f). The new paragraph provides for media coverage.
New Paragraph		Insert the following new paragraph immediately after paragraph (h)- (i) perform such other functions as may be necessary for the purposes of this Act.	

4(2)	Powers of the Commission	Insert the words "and with prior notice" immediately after the word "time" appearing in the fourth line.		
4(5)		Insert the words ", issue such orders or impose such sanctions" immediately after the word "action".		
PART III: REGULATION OF EXPENDITURE				
Delete the words " PART III: REGULATION OF EXPENDITURE"				
5	Party campaign expenditure rules.	Delete clause 5 and substitute therefor the following new clause -	<p>5. The Commission shall publish rules to regulating election campaign financing -</p> <p>(a) at least twelve months before the general election, in the case of a general election; and</p> <p>(b) at such time as the Commission may determine, for purposes of a by-election or a referendum.</p>	To provide for rules to guide the operation of the campaign expenditures.
6	Expenditure committees.	Delete - (a) the marginal note and substitute therefor the following new marginal note -		

		<p>authorized persons; and</p> <p>(b) delete subclause (1) and substitute therefor the following new subclause -</p> <p>Authorized persons</p> <p>(1) For purposes of regulating election campaign financing during the expenditure period, the authorized persons shall be -</p> <p>(a) a candidate;</p> <p>(b) agent of the candidate;</p> <p>(c) political party campaign financing committee; and</p> <p>(d) referendum campaign financing committee.</p>	<p>The "authorized persons" take over the role of the candidates committees that have since been removed.</p>
		<p>Insert the following new sub-clauses immediately after sub-clause (1) -</p> <p>(1A) The political party campaign financing committee under subsection (1)(c) shall consist of persons nominated by the governing body of that political party, three of whom shall be signatories to the party campaign financing account.</p> <p>(1B) The referendum campaign financing committee under subsection (1)(d) shall consist of persons nominated by the referendum committee established under section 51(1) of the Elections Act, three of whom shall be signatories to the referendum campaign financing account.</p> <p>(1C) A candidate, a political party or a referendum committee shall, as soon as reasonable, notify the Commission</p>	

		of any changes in the authorized persons, the membership of the committee or in the details of such persons or such members.	
6(2)		Delete - (a) the word "committees" in sub-clause (2) and substitute therefor the words "authorized persons"; and (b) the word "three" in paragraph (a) and substitute therefor the word "eight".	To extend the regulation period to 8 months prior to the general election.
6(3)		Delete subclause (3) and substitute therefor the following new subclause - (3) Each of the authorized persons referred to in subsection (1) shall open campaign financing account and shall submit details of that account to the Commission at the time of registration under subsection (2).	
6(4), (5), (6) and (7)		Delete subclauses (4), (5), (6) and (7) and substitute therefor the following new sub-clause - (4) There shall be deposited into the campaign financing account referred to under subsection (3) - (a) contributions by the candidate; (b) contributions by a political party; and (c) monetary contributions received from any other lawful source.	
New clause		Delete clauses 7, 8, 9, 10 and 11 and insert therefor the following new clause immediately after clause 6 -	The amendment consolidates the functions

		<p>Role of authorized persons.</p>	<p>6A. The authorized persons shall—</p> <ul style="list-style-type: none"> (a) open a campaign financing account into which all the money received in respect of the election campaign of that candidate, political party or referendum committee shall be deposited; (b) be a signatory to the campaign financing account; (c) advise the candidate, the party or the referendum committee on all financial matters related to campaign expenditures; (d) manage the campaign financing account of the candidate, the party or the referendum committee and keep the books of accounts updated and available for inspection; (e) prepare and submit reports as required under this Act; and (f) perform such other functions as required by this Act. 	<p>of the committees in clauses 7 - 11 and the roles of authorized persons. This avoids drafting inelegancies that make the law cumbersome to read.</p>
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PART IV: CAMPAIGN EXPENSES			
Delete the words "PART IV: CAMPAIGN EXPENSES" and substitute therefor the words "PART III: CONTRIBUTIONS AND DONATIONS"			
12, 13, 14, 15 and 16		Delete clauses 12, 13, 14, 15 and 16	The amendment is aimed at swapping the order of the Parts - Part III: Contributions and Donations to precede Part IV: Campaign Expenses.
New clause		Insert the following new clauses immediately after clause 16-	
	Sources of Campaign finances.	<p>16A. (1). The sources of funds for purposes of financing party nomination, election or referendum campaign are —</p> <p>(a) contributions received from any person, political party, or any other lawful source;</p> <p>(b) contributions from a lawful source not being from a foreigner, a foreign government, a foreign inter-governmental organization or non-governmental organization; and</p> <p>(c) contributions from a harambee.</p>	This consolidates all contributions envisaged by clauses 15 and 16.

Proposed Amendment

PART III: CONTRIBUTIONS AND DONATIONS

New clause	Limits of Contributions	<p>16B (1). The Commission shall, at least twelve months before the general election, publish a notice in the Gazette prescribing -</p> <ul style="list-style-type: none"> (a) the total limits of contributions; (b) the limit of contributions from a single source; (c) the limit of paid-up media coverage; and (d) the limit of a loan forming part of the contribution, <p>that a candidate, a political party or a referendum committee may receive during the expenditure period</p>	
		<p>(2) Except where contribution is from a candidate to the candidate campaign financing account, or from a political party or a referendum committee to that political party or that referendum committee campaign financing account, no contribution from a single source shall exceed ten per cent of the total contributions received by that candidate, political party or referendum committee.</p>	
		(3) The Commission shall prescribe the limit	

			beyond which contributions received by a candidate, a political party or a referendum committee from a single source may be disclosed.	
17(4)	Anonymous contributions or contributions from an illegal source.	Delete clause (4).		Sanctions are moved to the Part on Offences
18(2)	Prohibition on contributions.	Delete the word "or" in line one and substitute therefor the words "or a public officer" immediately after the word "institution".		To prohibit contributions from a state officer
18(3)		Insert the words "within forty eight hours of the receipt" immediately after the word "shall" in line three and insert the words "and submit the contribution" after the word "receipt" in line four.		Introduces a time limit of 48 hours within which to report receipt of prohibited contributions.
New subclause		Insert the following new subclauses immediately after - subclause(3) - (3A) A candidate who or a political party or a referendum committee which contravenes the provisions of subsection (1) commits an offence.		

19(2)(c)	Support by an organization.	Delete the word "expenditure" and substitute therefor the word "campaign financing".	
19(2)(c)(i)		Delete the word "three" and substitute therefor the word "eight".	
19(4)		Delete the word "expenditure committee" and substitute therefor the word "authorized person".	This amendment takes into account the removal of candidates committees.
New clause		Insert the following new clauses immediately after clause 19 -	The provision is moved from clause 12.
	Disclosure sources	19A. (1) A candidate who or a political party or a referendum committee which receives contributions under this Act shall issue a receipt for any contribution exceeding five thousand shillings and keep a record of every contribution received.	This provision was moved from Part IV.
		(2) Where contributions are received from a harambee, the authorized person shall keep a record of - (a) the specific details of the harambee including the venue, date and	

			<p>organizer of the harambee; and</p> <p>(b) a record of all individual contributions or donations collected at the harambee, in the prescribed form.</p>	
			<p>(3) A candidate, a political party and a referendum committee shall disclose the amount and source of contributions received for campaign for a nomination, an election or a referendum, as the case may be.</p>	
			<p>(4) The disclosure referred to in subsection (3), shall specify -</p> <p>(a) the sources of the contributions;</p> <p>(b) the amount of funds in the campaign financing account of the candidate, the political party or the referendum committee;</p> <p>(a) the monetary and non-monetary contributions received and the details of the donors; and</p> <p>(b) where the contribution is in the form of a loan, the source and terms of such loan</p>	

				<p>(5) The disclosure referred to in subsection (3) shall be made to the Commission -</p> <p>(a) at least seven days before the nomination day; and</p> <p>(b) at least seven days before the election or the referendum day, as the case may be.</p>	
				<p>(6) The disclosure of funds under this section shall for purpose of this Act and in the absence of any other factors, be sufficient evidence that the candidate, the political party or the referendum committee has complied with the requirement for disclosure of funds.</p>	
				<p>(7) The disclosure of funds shall be confidential and shall not be divulged except where such information is the subject of a complaint or an investigation or is the subject of proceedings in a court of law.</p>	
				<p>(8) A candidate who or a political party or a referendum committee which fails to disclose funds or donations as required under this Act</p>	

		<p>shall be disqualified from contesting in the election or from campaigning in the referendum.</p>	
20	Surplus campaign funds.	<p>Delete clause 20 and substitute therefor the following new clause immediately after clause 19 -</p> <p>20(1).A candidate, a political party or a referendum committee, shall -</p> <p>(a) within one month after the date of the election, notify the Commission of any surplus campaign funds held in the expenditure account;</p> <p>(b) within two months after the date of the election, submit the surplus campaign funds to -</p> <p>(i) in the case of a political party campaign finance committee, to the political party;</p> <p>(ii) in the case of a party candidate, to the political party that nominated the candidate; and</p> <p>(iii) in the case of an independent candidate or a referendum committee campaign finance committee, to a charitable organization preferred by that independent candidate or that referendum committee, as the case may be, which has been in existence for at least three years;</p> <p>(c) within three months after the date of the election,</p>	<p>Surplus funds from political party candidates and from the political parties to be submitted to the respective political parties, while those from independent candidates and referendum committees to be submitted to the Commission, for onward transmission to charitable organization preferred by the independent candidates and referendum committee, which must have existed for at least 3 years prior to that date.</p>

		report to the Commission in respect of the action taken under this section.	
		(2) A candidate who or a campaign finance committee which fails to, within three months after the date of the election, notify the Commission, submit the surplus campaign funds and report of the action in accordance with this section, commits an offence and shall not be eligible to contest in the next election.	
	Insert a new Part with the words "PART IV: CAMPAIGN EXPENSES" immediately after clause 20.		This Part should follow Part III: Contributions and Donations for logical flow.
New clause		Insert the following new clauses immediately after clause 20 -	The provision was formerly clause 14, with amendments on the time period.
	Spending limits	20A.(1) The Commission shall, at least twelve months before an election, by notice in the Gazette set out the spending limits prescribing the total amount that a candidate, a political party or a referendum committee may spend during an expenditure period, including the limit for media coverage.	

			<p>(2) Except for contribution by a candidate into his or her own campaign financing account, any contribution from a person, organisation or any other lawful source contributed to a candidate, a political party or a referendum committee campaign financing account, shall not exceed the limit of the total contribution prescribed under subsection (1).</p>	
			<p>(3) The Commission may, by notice in the Gazette, vary the spending limits referred to in subsection (1).</p>	
			<p>(4) The Commission shall, in setting the spending limits referred to in subsection (1), take into consideration –</p> <ul style="list-style-type: none"> (a) the difference in the geographical size of the electoral area; (b) the type of election; (c) the population in the electoral area; (d) the number of party members in the electoral area; and (e) the communication infrastructure in the electoral area. 	

						<p>(5) Subsection (4)(d) shall only apply for the purposes of setting spending limits for party nomination expenditure of a party candidate.</p>	
						<p>(6) Where a candidate, a political party or a referendum committee exceeds the spending limit prescribed under this section, that candidate, political party or referendum committee shall file a report with the Commission specifying the reasons for exceeding the limit.</p>	
						<p>(7) A candidate who, a political party or a referendum committee which exceeds the spending limit prescribed under this section fails to report this fact to the Commission, that candidate, political party or referendum committee commits an offence.</p>	
<p>New clause</p>		<p>Authorized expenditures</p>				<p>20B. The Commission shall, at least twelve months before an election, by notice in the Gazette set out the authorized items or activities for which campaign expenses may be incurred, including the cost of -</p>	<p>The amendment provides for allowable expenses during election campaigns</p>

			<p>(a) venue where campaign activities are undertaken;</p> <p>(b) publicity material for campaigns;</p> <p>(c) advertising for the campaigns;</p> <p>(d) campaign personnel; and</p> <p>(e) transportation in respect of campaign activities.</p>	
New clause		Media Coverage	<p>20C.(1) The Commission shall, after consultations with the political parties, the officers responsible for the state owned media services and authorities responsible for the regulation of media in Kenya, set out the limit of media coverage of a candidate, political party or a referendum committee, which shall include -</p> <p>(a) paid up advertisement; and</p> <p>(b) free broadcasting spots or coverage in the print media.</p>	
			<p>(2) The Commission shall establish mechanisms to monitor media coverage for purposes of campaign as may be necessary to enforce the limits set out in subsection (1).</p>	
			<p>(3) Where a candidate, a political party, a referendum committee or a media house is</p>	

			found to be in breach of the provisions of subsection (1), commits an offence.	
PART VI - OFFENCES				
Delete the words "PART VI: OFFENCES" and substitute therefor with the words "PART V: DISPUTE RESOLUTION AND OFFENCES"				
New clause			Insert the following new clause immediately after clause 20 -	The amendment provides for dispute resolution mechanisms.
		Dispute resolution	<p>20A(1). Any person may lodge a complaint with the Commission alleging that a breach of this Act has been committed.</p> <p>(2) The Commission, may on its own initiative, investigate a breach of this Act.</p> <p>(3) Where a complaint has been filed or a breach detected under this section, the Commission shall hear and determine that complaint -</p> <p>(a) within seven days, if filed before an election; and</p> <p>(b) within fourteen days, if filed after an</p>	

			<p>election.</p> <p>...(4) In determining this complaint and, subject to section 4, the Commission shall have the powers to -</p> <p>(a) request for the attendance of any person believed to have information related to the complaint; or</p> <p>(b) call for any information believed to be relevant in the determination of the complaint.</p> <p>.... (5) Where the Commission makes a finding that there is a breach of a provision under this Act, the Commission may make any of the following orders -</p> <p>(a) order the rectification of any record;</p> <p>(b) issue a formal warning;</p> <p>(c) impose a fine as specified under the Regulations;</p> <p>(d) prohibit the errant candidate, political party or referendum committee from campaigning for a specified period or within a specified area;</p> <p>(e) prohibit media coverage of the errant</p>	
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			<p>candidate, political party or referendum committee within a specified period;</p> <p>(f) disqualify the errant candidate, political party or referendum committee from contesting in that election or referendum, as the case may be.</p> <p>(6) Where the offence is discovered after an election and an order of disqualification is made, the candidate or the political party shall be disqualified from contesting in the subsequent by-election or general election.</p> <p>(7) Where an order of disqualification is made under this section, the order shall be -</p> <p>(a) registered in the High Court, in the case of presidential, parliamentary, governor elections or referendum; and</p> <p>(b) registered in the Resident Magistrate's Court, in the case of county assembly elections.</p>	
21			<p>(a) Insert the words "or negligently" immediately after the word "knowingly" in paragraphs (c), (d), (e) and (f);</p> <p>(b) Delete the proviso and substitute therefor with the following new proviso -</p>	

commits an offence and shall be liable on conviction to a fine not exceeding -

- (i) five million shillings, in the case of a presidential election or referendum;
- (ii) two million shillings, in the case of a parliamentary or governor election; and
- (iii) one million shillings, in the case of county assembly election.

PART VII - MISCELLANEOUS

Delete the words "PART VII" and substitute therefor with the words "PART VI"

24	Registration and dissolution of expenditure committees.	<p>(a) Delete the words "expenditure committees" appearing in the marginal note and in subclause (1) and substitute with the words "authorized persons";</p> <p>(b) Delete subclause (2).</p>	The amendment is necessitated by the removal of candidate expenditure committees.
25	Records	<p>Insert the following new subclause immediately after subclause (1) -</p> <p>(1A) The Commission may make public in such manner and form as it may determine any information provided to the Commission under this Act</p>	
26	Audit of accounts	Delete clause 26 and substitute with the following new clause -	

		<p>26(1) The Commission may order the audit of the campaign financing accounts under this Act.</p> <p>(2) The Commission shall prescribe the threshold and the conditions for the audit under subsection (1).</p>	
27	Claims and objections	Delete clause 27.	Provided for in the newly created Dispute resolution.
28	Provisions on delegated powers	<p>(a) Delete the words "provisions on delegated powers" in the marginal note and substitute therefor with the word "Regulations";</p> <p>(b) Insert the words "the limits and" immediately after the word "prescribing" in paragraph (c);</p> <p>(c) Delete the words "claims and objections" appearing in paragraph (g) of clause (2) and substitute therefor with the word "complaints".</p>	