

SPECIAL ISSUE

Kenya Gazette Supplement No. 99 (Senate Bills No. 28)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2014

NAIROBI, 27th June, 2014

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**SCHEDULE—PROVISIONS AS TO THE
CONDUCT OF BUSINESS AND AFFAIRS OF
THE COMMITTEE AND COUNTY
COMMITTEES**

THE PUBLIC FUNDRAISING APPEALS BILL, 2014**A Bill for**

AN ACT of Parliament to provide for the establishment of regulatory mechanisms at the national and county levels which oversee the conduct of fundraising appeals; to provide for the licensing and regulation of fundraisers; the promotion of transparency and accountability in the carrying out of fundraising appeals to foster greater philanthropy and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Public Fundraising Appeals Act, 2014. Short title

2. In this Act unless the context otherwise requires— Interpretation

“beneficiary”, in relation to a fundraising appeal, means —

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

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to planning and social development;

“county executive committee member” means the county executive committee member in each county for the time being responsible for matters relating to planning and social development;

“county register” means the register which a county committee is required to keep under section 40;

“county committee” means the County Fundraising Appeals Committee established in each county under section 12;

“fundraising appeal” has the meaning assigned to it under section 20;

“fundraising manager” means a person who is licensed under section 31 to conduct a fundraising appeal and who has the managerial or financial responsibility in relation to the appeal;

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

“national register” means the register which the National Committee is required to keep under section 40;

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

“relevant committee” means the National Committee or a county committee.

3. The objects and purposes of this Act are to —

- (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 this 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;

Object and purposes of the Act.

- (f) establish a framework of standards for persons and entities involved in the conduct of fundraising appeals; and
- (g) 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

4. (1) There is established a body to be known as the Public Fundraising Appeals Committee which shall consist of —

Establishment of the Public Fundraising Appeals Committee.

- (a) the Principal Secretary for the time being responsible for planning and social development or a person deputed by him or her in writing;
- (b) two persons not being public officers, who have knowledge and experience in social development and philanthropy, 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 10, who shall be the secretary to the National Committee.

No. 2 of 2012.

No. 18 of 2013.

(2) The persons under subsections (1)(b), (c) and (d) shall hold office for a term of three years renewable for one further term.

(3) A person shall be qualified for appointment under subsection (1)(b) if that person —

- (a) holds a degree from a university recognised in Kenya; and

- (b) meets the requirements of Chapter Six of the Constitution.

(4) The members of the National Committee shall be paid such allowances as the Cabinet Secretary shall determine in consultation with the Salaries and Remuneration Commission.

5. The functions of the National Committee are to —

Functions of the Committee.

- (a) collaborate with and oversee the county committees in the performance of their functions under this Act;
- (b) oversee the conduct of fundraising appeals;
- (c) receive, vet and process applications for the issuance of a licence to conduct a public fundraising appeal where such appeal is a national appeal 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 appeals under this Act;
- (e) conduct inspections of records and audits relating to fundraising appeals conducted under this Act;
- (f) maintain a national register of persons licensed by it to conduct a public fundraising appeal under paragraph (c);
- (g) establish mechanisms for the promotion of transparency and accountability in the conduct of fundraising appeals under this Act;
- (h) carry out sensitization and education awareness regarding the conduct of fundraising appeals and the promotion of transparency and accountability in the conduct of fundraising appeals;
- (i) promote the establishment of endowment funds and such other funds and investments that may provide sustained incomes for the benefit of the public;

- (j) monitor the implementation of, and enforce the provisions of, this Act; and
- (k) perform such other functions as may be necessary for the implementation of the provisions of this Act.

6. The National Committee shall have all the powers necessary for the proper discharge of its functions under this Act and without prejudice to the generality of the foregoing, shall have the power to —

Powers of the National Committee.

- (a) require any information from any person conducting or intending to conduct a fundraising appeal under this Act;
- (b) 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
- (c) monitor the compliance, by persons licensed under this Act, of the provisions of this Act.

7. (1) The office of a member of the National Committee appointed under section 4 (1)(b) and (c) shall become vacant if the member —

Vacation of office of member.

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent, without reasonable cause, from three consecutive meetings of the National Committee;
- (e) resigns in writing addressed to the Cabinet Secretary;
- (f) is removed from office by the Cabinet Secretary for—

- (i) being unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (ii) failing to declare his or her interest in any matter being considered or to be considered by the Committee; or

(g) dies.

(2) Before the removal of a member under subsection (1)(f), the Cabinet Secretary shall appoint an ad hoc committee to —

- (a) investigate the circumstances giving rise to the proposed removal; and
- (b) make recommendations on whether or not the member should be removed from office.

(3) An ad hoc committee appointed under subsection (2) shall, in the discharge of its functions, observe the rules of natural justice.

8. (1) The National Committee may establish such sub-committees as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

Delegation by the National Committee.

(2) The National Committee may co-opt to sit in a sub-committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the committee.

(3) The National Committee may, by resolution either generally or in any particular case, delegate to any sub-committee or to any member, officer, employee or agent of the National Committee, the exercise of any of the powers or the performance of any of the functions of the National Committee under this Act or under any other written law.

9. (1) Subject to subsection (2), the business and affairs of the National Committee shall be conducted in accordance with the Schedule.

Conduct of affairs of the business of the Committee.

(2) Except as provided in the Schedule, the National Committee may regulate its own procedure.

10. (1) The National Committee shall not later than three months after the end of each financial year prepare and submit to the Cabinet Secretary a report on its activities in the immediately preceding year, and the Cabinet Secretary shall, as soon as may be practicable, after receiving the report, cause copies of the report to be laid before the Parliament.

Reports of the
Committee.

(2) A report prepared under subsection (1) shall contain a comprehensive statement of the monetary value of all the donations received by beneficiaries in the entire country through fundraising activities.

11. (1) The Cabinet Secretary shall designate an appropriate department within the Ministry responsible for planning and social development to serve as the Secretariat of the National Committee.

Secretariat.

(2) The Secretariat shall consist of —

- (a) the Director appointed by the Public Service Commission who is responsible for matters relating to community development within the Ministry; and
- (b) such public officers within the Ministry as the Cabinet Secretary may assign and whom the Cabinet Secretary shall consider necessary for the proper performance of the functions of the secretariat under this Act.

12. The functions of the Secretariat shall be to —

Functions of the secretariat.

- (a) provide technical and administrative services to the National Committee;
- (b) implement, the decisions, strategies and programmes of the National Committee;
- (c) recommend proposals and offer advice to the National Committee for the formulation and implementation of programmes of the National Committee; and
- (d) perform such other functions as may be assigned to it by the National Committee.

**PART III — COUNTY FUNDRAISING
APPEALS COMMITTEES**

13. (1) There is established in each county, a County Fundraising Appeals Committee which shall work in consultation with the National Committee.

County fundraising appeals committees.

(2) Each county committee shall consist of —

- (a) one person designated by the county executive committee member to be appointed by the Governor and who shall be the chairperson to the committee;
- (b) three persons representing community interests appointed by the Governor; and
- (c) one ex-officio member nominated by the National Committee

(3) The persons under subsection (2) shall be appointed by the Governor, with the approval of the county assembly, by notice in the Gazette for a term of three years renewable for one further term.

(4) The members of the county committee under subsection (2) shall appoint from amongst their number, a member who shall serve as the secretary to the county committee.

(5) The business and affairs of the county committees shall be conducted in accordance with the Schedule.

(6) Except as provided in the Schedule, the county committees may regulate their own procedures.

14. The members of the county committees shall be paid such allowances as the county executive committee member in the county shall, in consultation with the Salaries and Remuneration Commission, determine.

Terms and conditions of service.

15. (1) A person shall be qualified for appointment as the chairperson to a county committee if the person —

Qualifications for appointment as chairperson.

- (a) has a degree from a university or equivalent professional qualification from an institution recognised in Kenya;
- (b) has knowledge and at least ten year experience in matters relating to public administration and social development; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be qualified for appointment as a member to the county committee if such person —

- (a) has a secondary school qualification or equivalent qualification from an institution recognised in Kenya;
- (b) has knowledge and at least three year experience in matters relating to finance or public administration; and
- (c) meets the requirements of Chapter Six of the Constitution.

16. (1) The functions of the county committees shall be to —

Functions of county committees.

- (a) receive, vet and process applications for the issuance of a licence to conduct a public fundraising appeal within the county;

- (b) regulates the conduct of fundraising appeals within the county;
- (c) investigate any complaints, misuse of funds raised through a fundraising appeal or any issue relating to the conduct of a fundraising appeal under this Act within the county;
- (d) carry out inspections of records and audits relating to a fundraising appeal conducted under this Act;
- (e) maintain a register of all licenses issued to a person conducting a fundraising appeal under this Act;
- (f) monitor and evaluate the conduct of fundraising appeals within the county; and
- (g) perform such other functions as may be necessary for the implementation of this Act.

17. The county committees shall have all the powers necessary for the proper discharge of their functions under this Act and without prejudice to the generality of the foregoing, shall have the power to —

Powers of county committees.

- (a) oversee the conduct of fundraising appeals carried out under this Act within the county;
- (b) require any information from any person conducting or intending to conduct a fundraising appeal 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.

18. (1) The office of a member of the county committee appointed under section 13 shall become vacant if the member —

Vacancy.

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent, without reasonable cause, from three consecutive meetings of the committee;
- (e) resigns in writing addressed to the Governor;
- (f) is removed from office by the Governor for —
 - (i) being unable to perform the functions of his office by reason of mental or physical infirmity; or
 - (ii) failing to declare his interest in any matter being considered or to be considered by the committee; or
- (g) dies.

(2) Before the removal of a member under subsection (1)(f), the Governor shall appoint an ad hoc committee to —

- (a) investigate the circumstances giving rise to the proposed removal; and
- (b) make recommendations on whether or not the member should be removed from office.

(3) An ad hoc committee appointed under subsection (2) shall, in the discharge of its functions, observe the rules and natural justice.

19. (1) The expenses of a county committee shall be defrayed out of moneys that may, in the future, be provided by the county assembly for that purpose.

Revenue and expenditure of the committees.

(2) All fees and other moneys received by a county committee shall be paid into the Revenue Fund.

20. (1) Every county committee shall submit—

Reports of the county committees.

(a) a quarterly report to the county executive committee member,; and

(b) an annual report, to the National Committee,

of its activities in the prescribed manner together with its financial records in such manner as the county executive committee member and the National Committee may specify.

(2) The county executive committee member shall submit copies of the quarterly report submitted to him or her under subsection (1)(a) to the County Assembly.

(3) Each County Assembly shall consider the report submitted to it under subsection (2) and submit a copy of the report to the Senate within three months of receipt of the report.

PART IV—FUNDRAISING APPEALS

21. Fundraising appeals shall be classified as —

Classification of fundraising appeals.

(a) public fundraising appeals which shall consist of solicitations made by a fundraising 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 fundraising appeals which shall consist of solicitations made by a fundraising 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 fundraising appeals 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.

22. (1) A person conducts a fundraising appeal if the person solicits or receives money or a benefit on the basis of a representation that —

Conduct of fundraising appeal.

- (a) the soliciting or receiving of the money or benefit is not solely for the profit or commercial benefit of that person or any other person or cause on whose behalf the person is soliciting or receiving the money or benefit; or
- (b) the money or benefit is to be utilised for public good.

(2) A person who solicits or receives money or a benefit under subsection (1) conducts a fundraising appeal whether or not—

- (a) such person made the representation;
- (b) the representation made under subsection (1) was direct or indirect;
- (c) the money or benefit, or such proportion of the money or benefit is applied for the benefit of the person or cause on whose behalf it is solicited or received;
- (d) such person solicits or receives the money or benefit as an ongoing activity or in relation to a particular period of time;
- (e) such person solicits or receives the money or benefit as a volunteer or is paid for doing so.

23. Despite the provisions of section 22, the following activities do not constitute a fundraising appeal for the purposes of this Act—

Exemptions.

- (a) soliciting or receiving any money or benefit in relation to any raffle, lottery or other activity authorised or permitted under the Betting, Lotteries and Gaming Act or any other relevant law;

Cap. 131.

- (b) money or property collected by or under the authority of a recognized representative of a religion or religious community for normal collections such as tithes and offerings.
- (c) soliciting a person to become a member of an organisation or to pay the joining or membership fee of an organisation;
- (d) the soliciting or receipt of any money or benefit by, or on behalf of, an organisation from a person—
 - (i) who is, or was, a member of the organisation; or
 - (ii) who is in the process of becoming a member of the organisation; or
 - (iii) who is a relative of, or who is personally acquainted with, any person referred to in subparagraph (i) or (ii)—

even if the money or benefit is solicited or received on the basis that it will be applied for purposes other than the benefit of the organisation;

- (e) soliciting or receiving money or a benefit exclusively or predominantly from among people sharing a common employer or principal or place of work if the soliciting or receiving —
 - (i) is carried out by one of those people; and
 - (ii) is made on the basis of a representation that the money or benefit will be applied for a benevolent or philanthropic purpose connected directly with another of those people or with the immediate family of another of those people;
- (f) soliciting or receiving money or a benefit—
 - (i) from the National government, a county

government or a state agency;

- (ii) for or on behalf of a public benefits organisation registered under the Public Benefits Organisations Act, a corporation, partnership or trust that is permitted to donate money or benefits for non-profit or non-commercial purposes by its memorandum of incorporation, articles of association, partnership agreement, trust deed or other empowering document; and

- (g) any other activity that the Cabinet Secretary may prescribe.

24. The provisions of this Part shall not apply to a private fundraising appeal where the solicitation is made from members of the beneficiary's nuclear family or relatives and does not extend to members of the public.

Non-application of Part to private fundraising appeals.

25. (1) An individual person or a body corporate or an entity registered as a public collection entity under this Act may conduct a fundraising appeal under this Act.

Persons who may conduct a fundraising appeal.

(2) A person may make an application to the county committee to be registered as a public collection entity for the purpose of conducting fundraising appeals within the county under this Act.

(3) The Cabinet Secretary shall, in consultation with the National Committee, make Regulations for the registration of public collection entities under this Act.

(4) A public collection entity may, from time to time, conduct fund raising appeals for a public purpose or on behalf of beneficiaries under this Act and may, for that purpose, receive money on behalf a beneficiary or for an intended public purpose under this Act.

(5) The obligations imposed on a fundraising manager under this Act shall apply to a public collection entity registered under this Act.

(6) In this section, "public purpose" means —

- (a) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, gender, disability or any other interest ;

- (b) the advancement of community development, including agriculture, water sanitation, rural or urban livelihoods and regeneration;
- (c) the promotion of health, including the prevention or relief of sickness, disease or human suffering;
- (d) the advancement of conflict resolution or reconciliation;
- (e) the integration of those who are marginalized, and the promotion of their full participation, in society;
- (f) the promotion of economic, environmental, social or cultural development;
- (g) disaster prevention, preparedness and mitigation; and
- (h) advocating on issues of general public interest or the interest or well-being of the general public or a class of individuals or organizations.

26. (1) A person shall not conduct a public fundraising appeal unless the person has applied for, and obtained, a licence in accordance with the provisions of this Act

Application for a licence.

(2) A person who intends to conduct a public fundraising appeal shall submit to the relevant committee, an application for a licence at least thirty days before the date for the conduct of the fundraising appeal.

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

- (a) the full names and address of the person intending to conduct the fundraising appeal;
- (b) the purpose of the fundraising appeal;
- (c) the date on which the fundraising is to be conducted;

- (d) the names and contact details of the persons assisting in conducting the appeal;
 - (e) the amount intended to be raised through the appeal;
 - (f) the estimated expenses to be incurred in conducting the fundraising appeal;
 - (g) the place at which the collection is intended to be made;
 - (h) the expected timeframe for the appeal; and
 - (i) such other information as may be necessary.
- (4) Where an applicant for a licence under subsection (2) is not the intended beneficiary of the fundraising appeal, the application shall be submitted together with —
- (a) the name of every person on whose behalf the person intends to conduct a fundraising appeal;
 - (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;
 - (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;
 - (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;

(e) a declaration that the intended fundraising appeal does not violate the provisions of the Public Officers Ethics Act or the provisions of any other written law.

(5) Where the intended beneficiary of a fundraising appeal 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.

27. (1) The relevant committee may dispense with the period specified under section 26(2) where the committee is satisfied that special circumstances exist to warrant the exemption.

Urgent applications.

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

(3) The relevant committee shall consider the application and may, in granting a licence, impose such as the committee considers appropriate.

28. (1) The relevant committee shall, within ten days upon receipt of an application under section 26—

Consideration of application.

(a) examine the documents submitted to it; and

(b) if it considers it necessary, call for such further information or consent or carry out such a query as it may consider necessary for the determination of the application.

29. A member of the National Committee or a county committee shall not receive any inducement to process an application made under this Act.

Inducements to committees

(2) A member the National Committee or a county committee or an employee of either committee who solicits for or receives a bribe or any other inducement for purposes of approving an application commits an offence.

(3) A person who offers a bribe or any other inducement to a member of the National Committee or a county committee or an employee of either committee for purposes of having an application considered positively commits an offence.

30. (1) The relevant committee may require a person submitting an application for licensing to provide the committee with any consent required by another person or body to enable the committee to obtain from the other person or body information to check or confirm any information set out in the application.

Requirement for consent.

(2) A reference in this Part to seeking further information in relation to an application includes a reference to requiring the provision of any consent referred to in subsection (1).

31. Where the relevant committee is satisfied that the applicant meets the requirements for the issuance of a licence, the committee may, subject to the provisions of this Act, —

Issuance of a licence.

- (a) issue to the applicant, a licence under this Act within ten days of receipt of the application; and
- (b) enter the name of the applicant, the beneficiary and such other particulars in relation to the fundraising appeal as it may consider necessary in the register of fundraising appeals kept for that purpose.

32. (1) The county committee shall issue to an applicant one licence in relation to the conduct of each fundraising appeal under this Act.

Duration of licence

(2) A licence issued under subsection (1) shall, unless otherwise specified by the relevant committee, automatically expire upon the conduct of the fundraising appeal to which the licence issued relates.

(3) Notwithstanding subsection (2) the expiry of the licence shall not relieve the licensed person from the obligations imposed under this Act.

33. (1) The county committee may refuse to issue to an applicant, a licence to conduct a fundraising appeal where —

Refusal to issue a licence.

- (a) the application for a licence does not comply with this Act;
- (b) the applicant —
 - (i) is an undischarged bankrupt;
 - (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 appeal has not been supplied;
- (f) in the case of an intended appeal 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 fundraising appeal is to be conducted is unlawful or incompatible with public interest.

(2) The relevant committee may refuse to license a person as a fundraiser if any person named in the application as an fundraising manager is not, in the opinion of the county committee, a fit and proper person to be associated with a fundraising appeal.

(3) In the case of a refusal, the county committee shall notify the applicant in writing of the refusal within three days of the decision .

34. (1) The relevant committee may, in issuing a licence to an applicant under section 31 impose such

Conditions of issuance of a licence.

conditions on the applicant in relation to the conduct of the fundraising appeal.

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

35. The relevant committee may, subject to the provisions of section 36, cancel a licence issued under this Act where —

Grounds for cancellation of a licence.

- (a) it has reasonable cause to believe that the fundraising appeal 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 fundraising appeal fails to comply with the provisions of this Act;
- (c) the person to submit any additional information that the committee may require under this Act or requested by the committee in order to ensure compliance with this Act; or
- (d) the committee determines that the person submitted false information or statements at the time of application for a licence.

36. (1) The relevant committee shall, before cancelling the licence under section 35 issue to the licenced person, a compliance notice in the prescribed form.

Notice of non-compliance.

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

- (a) be in writing;
- (b) notify the licensed person of the noncompliance and the steps it is required to take in order to comply; and
- (c) inform the person of the time period within which it is required to comply with the notice.

(3) The relevant committee may, upon request by a licensed person and where there are sufficient grounds shown by the person, extend the period of compliance for such period as it may consider necessary to ensure compliance.

37. (1) Where a person receives a notice under section 36 and fails to comply with such notice, the county committee shall —

Revocation of a licence.

- (a) revoke the licence;
- (b) notify the licensed person in writing of —
 - (i) the revocation and the reasons for it; 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 takes effect on the date on which the licence is cancelled by the relevant committee.

38. Where the relevant committee revokes the licence of a person, such person —

Duties of a fundraiser on revocation.

- (a) shall stop any fundraising activities that the person was undertaking immediately before the revocation took effect;
- (b) shall not, without the written consent of the relevant committee, pay out, or otherwise distribute or deal with, any asset obtained as a result of any fundraising appeal that the person conducted while registered as a fundraiser;
- (c) shall submit to the relevant committee, an inventory of the assets of any fundraising appeal being conducted by the person within seven working days of the revocation; and
- (d) subject to paragraph (c), shall ensure that any assets obtained as a result of the appeal are

distributed as soon as is practicable to the intended beneficiaries of the appeal.

39. (1) A person who is aggrieved by the decision of the county committee under this Part may, within thirty days of being notified of the decision, apply to the National Committee for a review of the decision.

Application for review.

(2) An application for review shall be in such form as the Cabinet Secretary may, prescribe.

(3) The National Committee shall determine an application under subsection (1) within fifteen days of receipt of the application under subsection (1) and may confirm, vary or reverse the decision under review.

40. (1) Each committee shall keep and maintain a register of —

Register of licensed fundraising appeals.

- (a) all persons who are licensed to conduct a fundraising appeal in the county;
- (b) all persons whose licence has been cancelled; and
- (c) such other particulars as the Committee may from time to time determine.

(2) Any person may inspect the register and obtain a copy of, or an extract from the relevant committee upon payment of such fee as the National Committee shall determine.

41. (1) Each committee shall ensure that the integrity of the register under its custody is maintained at all times.

Alteration of register.

(2) A person who falsifies an entry in a register or wrongfully alters an entry in the register commits an offence.

42. If an application made under section 26 or pursuant to section 27 contains any matter which is false in any material fact known to any person signing it, that person commits an offence.

False statements.

43. (1) A person who conducts a public fundraising appeal shall keep accurate records of the funds or benefits received.

Receipts.

(2) A person conducting a fundraising appeal shall, upon request, give a receipt to a person making a monetary contribution.

(3) A receipt issued under subsection (1) shall be in such form and contain such information as the Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for finance, determine.

44. 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.

Maximum expenditure

PART V — RECORDS AND ACCOUNTS OF A FUNDRAISING APPEAL

45. (1) Every person who conducts a fundraising appeal shall keep a record reflecting the income and expenditure relating to the appeal including —

Financial records of a fundraising appeal.

- (a) details of the persons who make contributions in relation to the fundraising appeal and the amounts contributed by each person;
- (b) full details of all funds and assets received as a result of the appeal;
- (c) full details of the use to which the funds and assets received were put to;
- (d) full details of—
 - (i) the amount applied to the purposes or objects of the appeal and how it was distributed;
 - (ii) any expenditure on assets;
 - (iii) any expenditure on wages, salaries, commissions and other remuneration in relation to the appeal;
 - (iv) any other administrative expenses related to the appeal;
 - (v) any other expenditure related to the appeal; and
 - (vi) such other information as the Committee may determine.

(2) The person conducting an appeal shall ensure that the records are kept in a way that enables them to be conveniently and properly audited.

(3) The person conducting the appeal shall ensure that accounts containing a summary of the records required by subsections (1) are finalised within three months of—

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

(4) For the purposes of this section, an appeal ends on the occurrence of the first of these events—

- (a) if the appeal 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 appeal.

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

(6) If the person who conducted an appeal continues to administer any funds or assets received as a result of an appeal after the appeal 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.

46. A fundraising manager shall keep the following records—

Other records relating to a fundraising appeal.

- (a) the name and address of each person who participates in the appeal as an assistant to the fundraising manager;
- (b) the name and address of each person who gained a financial advantage from the appeal, other than as a person for whose benefit the appeal 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 appeal was made;
- (d) copies of the consents required under this Act, where applicable;
- (e) the dates on which the appeal started and finished;
- (f) any other records that may be specified by the Committee.

47. (1) A fundraising manager shall ensure that any records or accounts that the person 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 person or of the designated person.

Storage of records.

(2) A person under section (1) shall keep and maintain the records or accounts of a fundraising appeal for a period of at least three years after the date the appeal ends.

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

48. (1) Every fundraising manager shall submit to the county committee a summary of the records pertaining to the fundraising appeal conducted by him or her and prepared under section 45 and the records kept by him or her under section 46 within three months from the date of the conduct of the appeal.

Duty to provide reports and information.

(2) Notwithstanding subsection (1), the relevant committee may require a fundraising manager to submit to it, such other information, record or document that it may in order to enable the committee to determine whether the person has complied with the provisions of this Act.

(3) A person under subsection (1) shall submit the information or document required by committee under subsection (1) within a period of seven days of such request.

(4) A person who fails to submit the records under subsection (1) or fails to comply with a request under subsection (2) commits an offence.

49. (1) The Public Service Commission may, at the request of the National Committee, appoint such inspectors as it may consider necessary for carrying out of inspections in relation to fundraising appeals and the performance of such other functions as the National Committee may assign to them.

Inspectors.

(2) Each County Public Service Board may, at the request of the county committee appoint such number of inspectors as it may consider necessary for the conduct of inspections and the carrying out of such functions as the committee shall consider appropriate.

50. (1) An inspector may, at any reasonable time, enter and inspect the premises of a fundraising manager to ensure compliance with this Act.

Conduct of inspections.

(2) An inspection under subsection (1) shall not be conducted unless the inspector has, with the approval of the county committee, issued to the fundraising manager, a notice of at least seven days prior to the carrying out of the inspection.

(3) An inspector may, in conducting an inspection under subsection (1) —

- (a) enter and inspect any books, records or documents required to be kept under this Act or relating to a fundraising appeal, 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 specified in paragraph (b), whether in its original form or as an electronic or paper copy.

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

(a) leave at the entity or premises of the fundraiser, a list of the documents removed; and

(b) return the documents, or a copy of them, to the centre as soon as practicable unless to do so would prejudice any investigation being or to be carried out by the Committee or county committee.

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

(a) on 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 commits an offence.

51. (1) A person who, in conducting or participating in a fundraising appeal, makes a false representation to the members of the public in soliciting for funds or makes a false statement to another person that misleads or deceives, or that is likely to mislead or deceive—

(a) the other person; or

False information in conducting a fundraising appeal.

- (b) anyone else to whom the other person may make, repeat or give the representation or oral or written statement,

commits an offence.

(2) It shall be a defence for a person under subsection (1) to show —

- (a) that she or he reasonably believed that the representation or statement was not misleading or deceptive, and was not likely to mislead or deceive; or
- (b) that the statement was an accurate repetition of information supplied by another person, and that the person repeating or passing on the statement had no reasonable grounds to doubt that the information was true.

(3) Despite the provision of subsection (2) above, the person shall be required to surrender to the county committee any collections or donation received in the course of the fundraising activity.

MISCELLANEOUS PROVISIONS

52. (1) For the avoidance of doubt, nothing in this Act may be construed as providing for or dealing with-

Non-money Bill
status.

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or
- (e) matters incidental to any of those matters.

(2) There may be established a fund which shall consist of monies specified under subsection (3).

(3) Any expenses that may be occasioned in the implementation of this Act shall be provided from —

- (a) such gifts, grants or donations as may be given;
- (b) such monies as may, in the future, be provided by the National Assembly for defraying the expenses incurred in the implementation of this Act; and
- (c) such other monies that may lawfully accrue in the discharge of the functions under this Act, not being monies accruing pursuant to Article 114 of the Constitution.

53. (1) The Cabinet Secretary shall, in accordance with the appropriate law, and in consultation with the Cabinet Secretary responsible for finance, grant to persons who make voluntary contributions pursuant to a fundraising appeal, such tax incentives on their contributions, as shall be considered necessary for the advancement of voluntary contributions in the Republic.

Tax incentives.

(2) The Cabinet Secretary shall operationalize subsection (1) within sixty days of commencement of this Act.

54. (1) The county committees shall decentralise their services to the wards and village units established in accordance with section 48 of the County Governments Act.

Decentralisation of services.

No. 17 of 2012.

(2) The National Committee shall create regional offices for the better carrying out of its functions under this Act.

55. Each committee established under this Act shall set up a Social Development Fund which shall contain-

Social development funds.

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

(2) The funds in subsection (1) shall be utilized in promoting social development in the area of operation of the committee.

(3) A committee which utilizes the funds under subsection (2) 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.

56. A person who commits an offence under this Act for which no penalty is prescribed shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years or both.

General penalty.

57. (1) The Cabinet Secretary may, in consultation with the National Committee, make regulations generally for the better carrying out of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may in consultation with the National Committee make regulations —

- (a) for the licensing of fundraisers;
- (b) for the determination of applications for review;
- (c) for adequate monitoring mechanisms to ensure transparency and accountability under this Act;
- (d) in consultation with the Cabinet Secretary responsible for finance, for the exemption of persons in relation to activities and funds raised for a public purpose, from tax liabilities under this Act;
- (e) for the conduct of sensitization programmes and the publication and dissemination of information under this Act; and
- (f) for charges and fees to be paid to the relevant committee under this Act.

(3) For the purposes of Article 94(6) of the Constitution —

(a) the authority of the Cabinet Secretary to make regulations shall be limited to the implementation of the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and

Cap. 2.
No. 23 of 2013.

(b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to regulations made under this Act.

58. Where a period for performance of any action has been prescribed in this Act, a person may apply to the relevant committee, in the prescribed format, for extension of the timeline.

Extension of time.

59. (1) A member of the National Committee, a county committee or an employee of the National Committee or a county committee shall not receive any gift or favour from an Applicant or a person licenced under this Act if the licence is still in operation.

Prohibition of receipt of gifts.

(2) A person who contravenes the provisions of subsection(1) above commits an offence.

60. The Public Collections Act is repealed.

Repeal of Cap. 106.

61. All directions, certificates of authority orders and approvals issued under the Public Collections Act and subsisting or valid immediately before the commencement of this Act, shall be deemed to have been given, issued or made under this Act.

Transitional provisions.

SCHEDULE

(s. 8)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE NATIONAL COMMITTEE AND THE COUNTY COMMITTEES

1. (1) The National Committee shall meet at such place in Kenya or as the chairperson may determine and the meetings shall be convened by the chairperson.

Meetings.

(2) A County Committee shall meet at such place in the relevant county, as the chairperson may determine and the meetings shall be convened by the chairperson.

(3) A Committee shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting.

(4) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member by the Director.

(5) The chairperson may, at his or her discretion or at the written request made by at least half of the members of the Committee and within seven days of the request, convene an extraordinary meeting at such time and place as he or she may appoint.

(6) Meetings shall be presided over by the chairperson or in his or her absence by the vice-chairperson.

(7) The members of a Committee shall elect a vice-chairperson from among themselves-

(a) at the first sitting of the Committee; and

(b) whenever a vacancy arises in the office of the vice-chairperson.

(8) Where the chairperson or vice-chairperson is absent, the members shall appoint from among themselves, a person to chair the meeting of the Committee.

(9) The Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Committee.

(10) A person invited under subparagraph (8) above shall declare whether he or she or a person or an organization associated with the person has an interest in any matter under consideration by the Committee.

2. (1) If any person has a personal or fiduciary interest in a project, proposed contract or any matter before the Committee, and is present at a meeting of the Committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the

Conflict of
interest.

commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

3. (1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members of the Committee.

Quorum.

(2) Where the persons present at a meeting of the Committee do not constitute the quorum necessary to hold a meeting under this Act or where by reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the Committee shall postpone the consideration of the matter in question until there is a quorum.

4. A question before the Committee shall be decided by simple majority of the members present and voting and the chairperson shall, in the case of an equality of votes, have a casting vote.

Voting.

5. The Committee shall-

Rules of Procedure and minutes

(a) determine rules of procedure for the conduct of its business; and

(b) keep minutes of its proceedings and decisions.

6. For purposes of this schedule, unless the context otherwise requires, the word 'committee' refers to either the National Committee or a county committee

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to provide for the establishment of regulatory mechanisms at the national and county levels which oversee the conduct of fundraising appeals, to provide for the licensing and regulation of fundraisers; the promotion of transparency and accountability in the conduct of fundraising appeals.

The Bill is developed against the need to maintain the altruistic rationale that public appeals (*Harambees*) serve in the Kenyan society while addressing the shortcomings that have accompanied this process.

The Bill seeks to replace the *Public Collections Act, Chapter 106, Laws of Kenya*, whose institutional architecture does not align with the devolved structures of the Kenyan constitution and is not sufficiently robust to address corruption tendencies associated with voluntary contributions. Further, the Public collections Act excludes from its purview, charitable and religious purposes yet this forms a large component of harambees.

The Bill is also based on the need to reduce the culture of dependency that harambees have imbued in society, extending even essentially private affairs to the larger public. The Bill seeks to restrict appeal for private matters within the circle of family and friends and have public appeals for public purposes. Its passage will promote the use of devolved structures as entities for promoting structured social development by ensuring that the conduct of public appeals are approved by assessing their links to the needs and priorities of the counties and their decentralized structures.

To support voluntary contributions, it is imperative that the state grants incentives to such givers. The current regulatory regimes are limited in their tax incentives and essentially excludes private individuals. This Bill will provide frameworks within which tax incentives can be issued to voluntary contributions.

The Bill-

- (a) establishes a Fundraising Appeals Committee which, among other functions, regulates and monitors the conduct of fundraising appeals and establishes mechanisms for the promotion of

transparency and accountability in the conduct of fundraising appeals;

- (b) creates county fundraising appeals committee whose functions include regulating, monitoring and evaluating fund raising appeals within the county;
- (c) defines fundraising appeals, indicates who can undertake a fundraising appeal and lays out procedures for applying for permits, conditions to be fulfilled and consequences of not following these conditions;
- (d) defines and excludes private fundraising appeals from its provisions; and
- (e) stipulates records and accounts of fundraising appeals that must be retained.

The Schedule contains provisions for the conduct of business and affairs of the National Committee and the County Committees.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does delegates legislative powers only to the extent of giving effect to the provisions of the Bill it does not limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill makes provision for regulation of fundraising appeals at the national and county levels of Government. The Bill therefore concerns county governments in terms of Article 110(a) of the Constitution as it affects the functions and powers of County Governments set out in the Fourth Schedule.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Clause 52 of the Bill specifically removes the Bill from the ambit of the matters listed under Article 114 of the Constitution. The clause further provides that any expenses that may be occasioned by the implementation of the Act are to be provided from such gifts, grants or donations as may be given or from such monies as the National Assembly may, in the

future, provide for the defraying of such expenses. The Bill also provides that a fund may be established for the purposes of the custody of such funds. The Bill does not therefore appropriate funds for the implementation of the Act; any appropriation would be effected through separate legislation which would be introduced and enacted in terms of Article 114 of the Constitution. This Bill is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated 22nd May, 2014

ANYANG' NYONG'O,
*Chairman, Senate Ad Hoc Committee on Legislation on
Harambee (Voluntary Contribution).*