



## ELECTIONS CAMPAIGN FINANCING REGULATIONS, 2020

### EXPLANATORY MEMORANDUM

#### Introduction

1. This explanatory memorandum has been prepared by the Independent Electoral and Boundaries Commission and is laid before the House in pursuance of Section 29 of the Elections Campaign Financing Regulations 2020.
2. The explanatory memorandum contains information in relation to the development of the Election Campaign Financing Regulations 2020, a statutory instrument developed by the Commission in accordance with the 2013 Act, for the purpose of consideration by the Committees of Delegated Legislation of the National Assembly and the Senate.

#### Description

3. The statutory instrument is concerned with the implementation of the Elections Campaign Financing Regulations 2013 and specifically to provide for administration of the campaign financing regime, regulation of contributions and expenditures relating to election campaigns by political parties and candidates, regulation of financing of referendum campaigns, reporting and disclosure.
4. Specifically, this instrument:
  - a. Outlines the principles and objects of campaign financing regulations and overarching considerations by persons who bear duties under the Act;
  - b. Outlines the powers of the IEBC, the establishment, composition and registration of authorized persons as provided by section 6 of the Act;
  - c. Provides for regulation of campaign expenditures by setting out permissible sources of campaign financing, prohibited sources of campaign financing, regulation of loans advanced for purposes of campaign financing, regulation of harambees and the powers of the authorized persons and the Commission in relation to contributions.
  - d. Provides for regulation of campaign expenditures by setting out permissible election expenses and incurring of expenses.
  - e. Provides for reporting and disclosure of contributions and expenditures including preparation of preliminary and final reports, presentation to the Commission, consideration by the Commission and rectification of such reports.

## **Constitutional and Legislative Background**

1. Article 4(1) of the Constitution, provides that the mandate of the IEBC include, among others, *“the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election”*. The Electoral Campaign Finance Act, 2013 provides The Electoral Campaign Financing Act 2013 seeks to implement Article 88(4)(i) by making provisions for the regulation, management, expenditure and accountability of election campaign funds during election and referendum campaigns; and for connected purposes. The Act provides for an administrative and compliance provisions based on self regulation by candidates and parties, under supervision and enforcement by the IEBC.
5. The Electoral Campaign Financing Act, 2013 is an Act of Parliament to provide for the regulation, management, expenditure and accountability of election campaign funds during election and referendum campaigns; and for connected purposes. The Act, seeks to achieve this overall objective through the following mechanisms:
  - Establishing an administrative regime that provides specific responsibilities for political parties and candidates, and facilitates supervision and enforcement by the IEBC.
  - Regulating sources and limits of contributions and donations which may be received by political parties and candidates;
  - Regulating the election expenses and to empower the Commission to set limits on expenditure in accordance with Article 88(4)(I) of the Constitution;
  - To provide a framework for transparency and accountability through a mechanism of reporting, disclosure of election campaign finance.
  - To establish mechanisms for enforcement and dispute resolution.

## **Policy Background**

6. Electoral Campaign Finance is a necessary yet challenging reform initiative, often lends itself to policy considerations and priorities which are not invariably mutually reinforcing or which may be irreconcilable by other constitutional principles for an open and democratic society. The overreaching objectives and standards of campaign finance regulation are:
  - (a) To afford access or approximately equal opportunity for eligible persons to stand and compete in elections particularly through public funding;
  - (b) Preventing political actors from corrupting elections or monopolizing the electoral process through the abuse of state resources;
  - (c) Preventing the biased and partisan use of enforcement mechanisms against political opponents;
  - (d) To prevent “dirty money” obtained through corruption or organized crime from infiltrating the political system and thereby influencing public decision making; and

- (e) Demanding that parties and candidates be transparent about how they collect and spend their money; and
- (f) Enforcement of other electoral offences.

7. These considerations have informed the body of Kenyan electoral legislation in various ways. Under the Political Parties Act, 2011 there is a regime of public funding for political parties. The Elections Act makes provisions relating to curtail use of public resources in campaigns. The 2013 Act makes comprehensive and substantive provisions relating to regulation of campaign financing.

#### **Extent**

8. The statutory instrument applies in the Republic of Kenya. There are specific provisions relating to prevention of foreign sources of funding in accordance with the 2013 Act.

#### **Impact**

9. The costs and benefits associated with implementation of Act and the statutory instrument are taken into account in the 2016-17 budget of the Commission.

#### **Compliance with the Constitution and the Act**

10. The draft statutory instrument complies with the powers of the Commission under section 29 of the Act and the Constitution.

#### **Stakeholder Consultations**

11. The Commission has taken initiative and facilitated broad stakeholder consultations to consider various drafts of the regulation. The consultations were with the:

- a. political parties on 16-18<sup>th</sup> March 2016;
- b. ministries, departments and agencies (MDAs) on 22-24<sup>th</sup> March 2016;
- c. media practitioners and editors guild on 19<sup>th</sup> April 2016;
- d. civil society organizations on 20<sup>th</sup> April 2016; and
- e. Other (MDAs) government institutions on 19<sup>th</sup> July 2016.

12. On 16-18<sup>th</sup> March, 2016, the Commission met political parties at Manzoni Lodge. The political parties recommended that the Act be amended to fill gaps and duplication, that the Commission designs mechanisms to enforce the Act more so with regard to contributions and expenditures limits and that the Commission builds capacity to enable better prosecute those violating the provisions of the Act.

13. THE COMMISSION MET ministries, departments and agencies (MDAs) on 22-24<sup>th</sup> March 2016. They recommended that the Commission builds capacity to enable better

prosecute those violating the provisions of the Act and designs mechanisms to enforce the Act more so with regard to contributions and expenditures limits.

14. The Commission met media practitioners and editors guild on 19<sup>th</sup> April 2016. After introducing the legal and institutional architecture for campaign finance in Kenya, focus turned to the issue of media adverting and campaign financing. The participants recommended: introducing an Inflation index for purpose of adjusting contribution and expenditure limits; creation of public awareness about the law; and, designing structures and mechanisms to ensure compliance with the Act.
15. The Commission met the civil society on 20<sup>th</sup> April 2016. The discussions centered on: contributions and limits; mechanisms for monitoring use of public resources; affirmative action; coalitions and campaign financing; access to information; capacity of the Commission to regulate campaign finance; and, the interaction the Act and the Constitution. The participants recommended that the regulations must: Set out a criteria for setting limits, require political parties and candidates to publish their assets, not over-regulate political parties and candidates; and Factor in coalitions.
16. The Commission met participants drawn from ministries, departments and agencies including the National Treasury, Kenya Revenue Authority, and, Ethics and Anti-Corruption Commission on 19<sup>th</sup> July 2016. The purpose of the meeting was to devise the formula/criteria for setting expenditure limits. The meeting agreed that the base for setting expenditure limits ought to be the constituencies. The figure from the constituencies has to be used in computing figures for the other electoral areas.

### **Election Campaign Financing Regulations 2020**

17. The Regulations are attached

**REPUBLIC OF KENYA**  
**SUBSIDIARY LEGISLATION**  
**The Election Campaign Financing Regulations, 2020**

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	<b>IN EXERCISE</b> of the powers conferred by Section 29 of the Election Campaign Financing Act, 2013, the Independent Electoral and Boundaries Commission makes the following Regulations.
	<b>PART I: PRELIMINARY</b>
Citation	1. These regulations may be cited as the Election Campaign Financing Regulations, 2016.
Interpretation	<p>2. In these regulations, unless the context otherwise requires –</p> <p>“Act” means the Election Campaign Financing Act ;</p> <p>“Agent” means any person other than a candidate who has oral or written authority, either express or implied, to receive contributions or make or authorize the making of expenditures on behalf of a candidate.</p> <p>“Authorised persons” shall have the meaning assigned to it under Section 6 Act.</p> <p>“Candidate” has the meaning assigned to it in the Elections Campaign Financing Act and includes independent candidates.</p> <p>“Closing date” means the date through which any report or statement to be filed under the Act is required to be complete</p> <p>“Expenditure” is any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by a person for the purpose of influencing an election</p> <p>“Expenditure committee” refers to party expenditure committee, independent candidate expenditure committee and referendum expenditure committee.</p> <p>"Form" means a form appended as a Schedule to these Regulations including such modifications as may be issued by the Commission from time to time.</p> <p>“Harambee” shall have the meaning assigned to “collections” under section 2 of the Public Collections Act, CAP 106 of the Laws of Kenya.</p> <p>“Independent expenditure” means expenditure by a supporting organisation for a communication expressly advocating the support of or opposition to a clearly identified candidate, political party or referendum committee which</p>

	<p>is made with the cooperation or with the prior consent of a candidate, political party or referendum committee.</p> <p>“Market-value” in relation to any service, property or use of property means the price which might reasonably be expected to be paid for the service, property or use of property in the open market prevailing at the time of such provision.</p> <p>“Property” includes any description of property, and reference to the provision of property accordingly include the supply of goods and services.</p> <p>“Political party” has the meaning assigned to it in Article 260 of the Constitution</p> <p>“Supporting Organisation” is used in relation to the organisation described in section 15 of the Act and means a person or organisation that receives contributions and incurs campaign expenditure but does not include a political party, candidate, or expenditure committee.</p>
<b>PART II: ADMINISTRATION</b>	
Principles of Administration	<p>3. The administration of these regulations shall be based on the following guiding principles:</p> <ul style="list-style-type: none"> <li>(a) Fair administration of the Act and Regulations;</li> <li>(b) Transparency, including adequate public information regarding all relevant information;</li> <li>(c) Promotion of fair, transparent and competitive political campaigns;</li> <li>(d) Prevention of corrupt practices in political campaigns or undue influence based on illegal campaign financing; and,</li> <li>(e) Prevention of electoral offences;</li> </ul>



campaign financing period	<p>4. (1) The Commission shall concurrently publish a notice for start of the expenditure period and a notice for expenditure limits</p> <p>(2) The expenditure period is:</p> <p>(a) In the case of a general election, within an expenditure period beginning at last six months prior to the date scheduled for the General Elections until 14 days following declaration of results.</p> <p>(b) In the case of a by-election, from the date of declaration of the vacancy up to 7 days following the declaration of the results.</p> <p>(c) In the case of a referendum, from the date of publication of the referendum question by the Commission under section 45(6) of the Elections Act until 7 days following the declaration of the referendum results.</p>
Role of authorised persons	<p>5. (1) The authorised persons are designated by the political party, candidate or referendum committee to:</p> <p>(a) serve as the recipient of all contributions, incur and discharge all expenditures; and</p> <p>(b) make returns and file reports of contributions and expenditures;</p> <p>(c) perform such other functions as are designated by the Act and these Regulations.</p> <p>(2) The authorised persons shall subject to the Act and these Regulations, be under the control and direction of the candidate, political party or referendum committee as the case may be.</p>
Conduct of authorised persons.	<p>6. (1) In undertaking their duties, an authorised person shall –</p> <p>a) maintain good ethical standards and avoid conflict of interest;</p> <p>b) be available for consultation with the Commission in relation to compliance with the Act and these Regulations;</p> <p>c) work in the interest of the party, and/or the candidate in relation to management of campaign finance;</p> <p>d) keep the candidate, the party and the Commission informed in relation to any relevant information; and</p> <p>e) keep themselves adequately informed regarding the requirements of the Act and the Regulations including any directives of the Commission.</p>

<p>Notice of Appointment of authorised persons.</p>	<p>7. (1) The political party, candidate or the referendum committee shall give notice of appointment of authorised persons to the Commission in <b>ECF Form 1</b>.</p> <p>(2) The notice of appointment of an agent shall include:</p> <ul style="list-style-type: none"> <li>i. The name of the individuals;</li> <li>ii. Name, postal address, identification card number, and personal identification number of authorised persons;</li> <li>iii. Date of appointment; and</li> <li>iv. The banking details for the campaign financing account;</li> <li>v. Signed consent to the appointment; and,</li> <li>vi. Signed declaration, set out in <b>ECF Form 2</b>, that the individual is eligible for appointment</li> </ul> <p>(3) The notice of appointment of political party campaign financing committee and referendum campaign financing committee shall include:</p> <ul style="list-style-type: none"> <li>(i) The name of the committee;</li> <li>(ii) Name, postal address, identification card number, and personal identification number of each member of the committees;</li> <li>(iii) The date the committee was formed.</li> <li>(iv) The banking details for the campaign financing account</li> <li>(v) A signed form of consent by members of the committee; and,</li> <li>(vi) Signed declaration, set out in <b>ECF Form 2</b>, that a member is eligible for appointment.</li> </ul> <p>(4) The Notice in paragraph 1 shall be given within 14 days after publication of the expenditure period in accordance with Regulation 3.</p>
<p>Commission to Register Authorised Persons</p>	<p>8. (1) Upon receiving the written notice referred to in Regulation 7, the Commission shall register the authorised persons.</p> <p>(2) Upon receipt of the notice referred to in sub-regulation (1) the Commission shall consider the same and decide whether the authorised person have been appointed and within the time and in the manner required by the Act and these Regulations.</p> <p>(3) Where the Commission determines that the authorised persons have not been appointed and constituted in the manner required by the Act and these rules, it shall, by notice, require the candidate, the political</p>

	<p>party or the referendum committee appoint the authorised persons as the case may be as prescribed by the Commission.</p> <p>(4) The candidate, the political party or the referendum committee shall submit a fresh notice of appointment within a period of seven (7) days or such other time as the Commission may prescribe.</p>
Registration of supporting organisations.	<p>9. (1) An organisation that intends to campaign in support of, contribute to or otherwise directly incur expenditure in support of a political party, a candidate or referendum committee under section 15 of the Act shall notify the Commission within seven days of receiving consent from a political party, a candidate or referendum committee in <b>ECF Form 3</b> set out in the Schedule.</p> <p>(2) The notice under sub-regulation 1 shall specify:</p> <ul style="list-style-type: none"> <li>(i) the name and registered office of the organisation;</li> <li>(ii) Postal and Physical Address of the organisation.</li> <li>(iii) the members of the organisation;</li> <li>(iv) at least three individuals authorised by the organisation to seek donations and incur expenditures on behalf of the organisation;</li> <li>(v) A signed consent from each of the three individuals accepting such appointment;</li> <li>(vi) The names, postal addresses, ID numbers and PIN numbers of each of the three individuals under paragraph d.</li> <li>(vii) the bank account that shall be used for the purposes of the election campaigns;</li> <li>(viii) a declaration by the party, candidate or authorised person that the organisation is permitted to campaign on behalf of the party or candidate;</li> <li>(ix) a letter of consent by the persons authorised to transact on behalf of the organisation for the purposes of the election campaigns; and,</li> <li>(x) any other information that may be required by the Commission.</li> </ul>
Publication of authorised persons	<p>10. (1) Every political party, candidate, or referendum committee shall keep a record and publicise the names of their authorised persons.</p> <p>(2) A political party, national referendum or candidate shall be considered to have publicised the names of its authorised persons if the names are displayed in their respective offices or electronically through their official website.</p>

<p>Change of authorised persons</p>	<p>11. (1) A political party, candidate or referendum committee a registered supporting organisation may replace an authorised person by giving notice to the Commission.</p> <p>(2) Replacement as an authorised person under this regulation shall not exempt a person from responsibility in relation to his or her duties while in office under the Act or these regulations.</p> <p>(3) An authorised person may be replaced for the following reasons –</p> <ul style="list-style-type: none"> <li>(a) Incapacity or infirmity as determined by a medical practitioner;</li> <li>(b) Where in the opinion of the candidate, political party or referendum committee such authorised person is incompetent to continue serving the functions under the Act and these regulations;</li> <li>(c) Failure to comply with the Act, regulations or directives of the commission or guidelines issued by the political party, candidate or referendum committee; or</li> <li>(d) Any other conduct that in the opinion of the candidate, political party or referendum is inconsistent with the objectives of the campaign.</li> </ul> <p>(3) The notice in paragraph (1) shall indicate the reason for replacement of the authorised person.</p>
<p>Campaign Financing Accounts</p>	<p>12. (1) A political party, candidate or their authorised persons shall open, for the sole purpose of the political party’s elections campaigns or candidate’s electoral campaign, or referendum campaign as the case may be, a separate bank account in a Kenya Financial Institution as defined in section 2 of the Banking Act CAP 488 of the Laws of Kenya.</p> <p>(2) The name of the account shall be –</p> <ul style="list-style-type: none"> <li>(a) Under the name of the party if open by the party officials so authorised in accordance with the party constitution;</li> <li>(b) Under the name of the candidate to be operated by the candidate jointly with at least one other authorised person; or</li> <li>(c) Under the joint names of the authorised persons.</li> </ul>

	<p>(3) All financial transactions in relation to the political party, referendum committee or candidate's campaign that involves the payment or receipt of money shall be paid from or deposited to the account.</p> <p>(4) Within 30 days after an election or referendum or upon the withdrawal or death of a candidate, the candidate or the authorised person shall close the account and submit a copy of the bank statement to the Commission once all unpaid claims and surplus electoral funds have been dealt with in accordance with this Act.</p> <p>(5) The authorised person shall keep the candidate, political party or referendum committee informed regarding all transactions in relation to the Campaign Financing Accounts and seek approvals as may be necessary.</p> <p>(6) The authorised person shall submit to the Commission an original copy of the Bank Statement with the Final Campaign Financing Report.</p>
<b>PART IV: CONTRIBUTIONS AND DONATIONS</b>	
Source of contributions.	<p>13. (1) Sources of contributions for the purposes of elections or referendum include:</p> <ul style="list-style-type: none"> <li>(i) Those set out in section 11 of the Act;</li> <li>(ii) Funds received under section 25 of the Political Parties Act;</li> <li>(iii) Supporting organisation contributions;</li> <li>(iv) Self-financing contributions; and</li> <li>(v) Loan</li> </ul>
Loans.	<p>14. (1) Money provided by way of a loan to the candidate or political party shall form part of the contribution for campaign finance provided the loan is borrowed from a financial institution authorized under section 2 of the Banking Act or any other law to issue loans or to transact business at terms and interest rates available to members of the public.</p> <p>(2) Any loan provided by any person other than an institution authorized to provide loans shall be considered as ordinary contributions.</p> <p>(2) The political party or candidate must keep a record of the amount of the loan, the terms and conditions for repayment of the loan.</p>

Contributions to be Made to Authorised Persons	15. (1) All contributions for the purpose of meeting campaign expenses or election expenses or both incurred by, or on behalf of a candidate, political party or referendum committee shall be provided to that candidate, political party or referendum committee or their authorised person.
Authorised Persons to Prepare Record of Contributions	<p>16. (1) The authorised persons shall prepare a report in <b>ECF Form 4</b> for each contribution containing information that is sufficiently detailed so as to substantiate that funds were received and shall include for each contribution the following:</p> <p>(2) In the case of an individual-</p> <ol style="list-style-type: none"> <li>i. The full name of the contributor.</li> <li>ii. The postal address, identification number, PIN and residence of the contributor.</li> <li>iii. Occupation and employer</li> <li>iv. The date and amount of each contribution</li> <li>v. A receipt of the contribution given to the contributor with a copy kept in the candidate's records.</li> <li>vi. The signature of the contributor for each contribution.</li> </ol> <p>(3) In the case of non-individual contributors-</p> <ol style="list-style-type: none"> <li>(i) The name and registration details</li> <li>(ii) The postal address, identification number, PIN and residence of the contributor PIN and residence of the contributor.</li> <li>(ii) Nature of activities of organisation.</li> <li>(iii) The date and amount of each contribution</li> <li>(iv) the date and amount of each contribution</li> <li>(v) a receipt given to the contributor with a copy kept in the candidate's records</li> <li>(vi) Signature of the contributor for each contribution, no matter how the contribution was received.</li> </ol> <p>(4) Where the candidate, political party or referendum committee receives contributions through harambee, the authorised person must:</p> <ol style="list-style-type: none"> <li>a. Record a description of the event or call for the Harambee;</li> <li>b. State the date of the functions;</li> <li>c. Keep a record of all donors in relation to the Harambee;</li> <li>d. Keep a record of the particulars of each donor who contributes more than Kenya Shillings Twenty Thousands;</li> </ol>

	<ul style="list-style-type: none"> <li>e. Record the total amount of the contributions from those contributing less than Kenya Shillings Twenty Thousands;</li> <li>f. Cause the donations received from the Harambee to be deposited in the campaign financing account; and</li> <li>g. In any case comply with the Public Collections Act, chapter 106, Laws of Kenya.</li> </ul>
Contributions by proxy.	<p>17. (1) If the contribution mentioned was made by a contributor through a proxy, such proxy must disclose to the relevant authorised person-</p> <ul style="list-style-type: none"> <li>i. the name of the contributor; and</li> <li>ii. the postal address, identification number and PIN of the contributor; and</li> <li>iii. whether the contributor is a person not resident in Kenya; and</li> <li>iv. The amount of the contribution.</li> </ul> <p>(2) Where the proxy does not disclose or is unable to disclose the information required under this regulation, then the contribution shall be treated as anonymous under the Act and these regulations.</p>
Authorised Persons to Issue Receipts	<p>18. Any person who receives contributions under these regulations shall –</p> <ul style="list-style-type: none"> <li>(i) in the case of contributions exceeding Kenya Shillings Twenty Thousands, issue a receipt and keep a copy of such receipt.</li> <li>(ii) In the case of any other contribution, record the identity of the contributor and the amount of the contribution.</li> </ul>
Submission of Contributions from Anonymous Sources	<p>19. (1) Every candidate, political party or referendum committee shall, in accordance with section 13 of the Act, report and submit anonymous contributions to the Commission.</p> <p>(2) Any amount sent to the Commission in pursuance of subparagraph (1) shall be remitted to the National Treasury within a period of fourteen (14) days.</p>
Limits on Contributions	<p>20. (1) The Commission shall in accordance with Section 12, gazette the limits beyond which contributions from a single source must be disclosed.</p>

	(2) The Commission may by notice published in the Kenya Gazette, vary any limits to donations under paragraph (1) or impose any other limits as it deems necessary.
<b>PART V: REGULATION OF EXPENDITURE</b>	
Authorised persons as Campaign Expenditure Committees	<p>21. (1) For the purposes of these regulations, a candidate, political party or referendum committee as the case may be, may designate the authorised persons appointed in accordance with regulation 7 as the campaign expenditure committee.</p> <p>(2) Where a candidate, political party or referendum committee elects to appoint a separate Campaign Expenditure Committee, the name of such Committee and particulars thereof set out in Regulation 7 shall be submitted to the Commission at the same time as the submission of particulars for the appointment of authorised persons.</p> <p>(3) For the purpose of these regulations, any act done by an authorised person or campaign expenditure committees shall be not invalidated solely due to the designation of such Committee.</p>
Claims for payment outside expenditure period.	<p>22. (1) The expenditure committees or the respective authorised persons shall notify the Commission of all payments made prior to the commencement of the expenditure period under regulation 21.</p> <p>(2) An authorised person shall not discharge any claim for payment made after the conclusion of the expenditure period prescribed under regulation 21 unless a notification and justification for such payment is made to the Commission at least 7 days prior to making such payment.</p>
Record of election expenditures.	<p>23. (1) The authorised persons shall prepare and maintain a record of all expenditures.</p> <p>(2) The record of expenditures maintained under paragraph 1 shall include the following:</p> <ul style="list-style-type: none"> <li>(a) The date on which the election expense was incurred or authorised;</li> <li>(b) the nature of the expenditure;</li> <li>(c) the amount of the expenditure—</li> </ul>



	<p>(i) the amount paid; (ii) the amount outstanding</p> <p>(d) the date of payment;</p> <p>(e) the name and address of the payee;</p> <p>(f) the serial number of invoices, in case of amount paid;</p> <p>(g) the serial number of invoices, if any, in case of amount outstanding;</p> <p>(h) the name and address of the person to whom the amount outstanding is payable</p> <p>(i) a statement of all disputed claims of which the authorised person is aware;</p> <p>(j) a statement of all unpaid claims (if any) of which the authorised person is aware in respect of which an application has been made, or is about to be made, to the Commission;</p> <p>(k) a declaration by the authorised persons that the information provided is the true reflection of the transactions in relation to the campaigns.</p> <p>(l) A record under this regulation must be supported by – (a) all invoices or receipts relating to the payments made; and (b) in the case of constructive campaign expenditure under Regulation 21, any declaration falling to be made with respect to that expenditure</p> <p>(m) An invoice shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain an invoice.</p> <p>(n) All invoices shall be lodged along with the account of election expenses, arranged according to the date of payment and serially</p>
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		<p>numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (f) of sub-rule (1).</p> <p>(2) It shall not be necessary to give the particulars mentioned in item (e) of sub-rule (1) in regard to items of expenditure for which invoices have not been obtained under sub-rule (2).</p>
Expenditures supporting organisations	by	<p>24. (1) A supporting organisation may under section 15 receive contributions and incur campaign expenditure for campaign purposes.</p> <p>(2) A supporting organisation shall, through its authorised persons, maintain a record of all expenditures incurred purposes of promoting the cause of a political party, candidate or referendum side. Any of the following purposes, by or with its own authority.</p> <p>The record under paragraph 2 shall include all administrative charges incurred by the supporting organisation.</p>
Limits Expenditure	on	<p>25. (1) The Commission shall by an order issued in the Kenya Gazette prescribe limits of permissible expenditures that shall apply to different elections in accordance with the criteria set out in section 18 of the Act.</p> <p>(2) The Commission may by a notice in Kenya Gazette vary the limits prescribed under paragraph 1.</p> <p>(3) The election expenses limit that is allowed for a candidate in a constituency shall form the base from which limits for other electoral areas and political parties shall be computed.</p> <p>(4) (a) The total expenditure limits for a constituency shall be arrived at by tabulating the aggregate estimated costs of allowable election expenses including costs of --</p> <ol style="list-style-type: none"> <li>i. Venues</li> <li>ii. publicity materials</li> <li>iii. Advertising and media</li> <li>iv. Campaign personnel</li> <li>v. Campaign Agents</li> <li>vi. Election agents</li> <li>vii. Transportation</li> <li>viii. Administrative costs</li> <li>ix. Communication</li> <li>x. Candidate expenses</li> </ol>

- xi. Mobilisation
- xii. Security
- xiii. Accommodation, and
- xiv. Other allowable expenses not exceeding 30 percent of the total expenditures in paragraph (a).

- (b) The total arrived at by tabulating the estimate costs under paragraph 4(a) shall be the applicable limit for all constituencies with a population within the range of plus or minus thirty percent of the national quota in accordance with the latest Boundaries Delimitation Report published in the Kenya gazette.
- (c) Where a constituency population falls at least 40% below the population quota, the expenditure limit shall be 30% below the sum arrived at under paragraph 4(a) and (b).
- (d) Where a constituency population falls at least 40% above the population quota, the Commission may increase the expenditure limit by not more than 20% of the amount applicable under paragraph 3(a) and (b).
- (e) In the case of sparsely populated constituencies, the expenditure limit shall be the sum under paragraph 4(a) and (b) plus the sum arrived at by multiplying each square kilometre by which the constituency area is in excess of the constituency area of the national average by Kshs 100.00.
- (5) The expenditure limits for county assembly wards shall be 30% of the respective constituency.
- (6) The expenditure limits for county-wide elections shall be the sum of the applicable limits of all the constituencies falling within the County minus 30% thereof.
- (7) The expenditure limit for the Presidential elections shall be the sum of all constituencies nationally minus 40%.
- (8) The expenditure limit for any by-election shall be the gazetted limit for the relevant election in the previous general election minus 20%.
- (9) In the case of political parties, the limit shall be the limit applicable for Presidential Elections minus 30%.
- (10) The limit for referendum committees shall be the amount applicable for presidential elections in the preceding general election plus 50%.
- (11) Support by organisations shall be considered to fall within the limit provided under this regulation.

**PART V: REPORTING AND DISCLOSURE**

Expenditure reports.	<p>26. (1) The authorised persons shall prepare and file preliminary expenditure report and final expenditure report using ECF Form 5.</p> <p>(2) The reports prepared under paragraph (1) shall include:</p> <p>(a) A donations and contributions report indicating:</p> <ul style="list-style-type: none"><li>i. All cash contributions received by the political party, candidate or referendum committee;</li><li>ii. All in kind contributions received by the political party, candidate or referendum committee;</li><li>iii. Reports of all harambee contributions held under the authority of the political party, candidate or referendum committee;</li><li>iv. Anonymous contributions indicating the action taken by the authorised person in relation to such contributions; and</li><li>v. All receipts and other supporting documents as may be prescribed by the Commission.</li></ul> <p>(b) An expenditure report indicating:</p> <ul style="list-style-type: none"><li>(i) All election expenses incurred by or on behalf of a political party, candidate or referendum committee;</li><li>(ii) All constructive election expenses and a statement on how the monetary value was attributed;</li><li>(iii) Expenses incurred for the purposed of media campaigns, advertisements or promotions; and</li><li>(iv) All receipts, invoices and other supporting documents as may be prescribed by the Commission.</li></ul> <p>(c) Any other particulars as may be prescribed by the Commission.</p> <p>(4) A statement by the authorised person that the report is a true and fair reflection of the records kept and is in compliance with the Act and these regulations;</p> <p>(5) A balance sheet;</p> <p>(6) A bank statement showing complete record of all bank transactions;</p> <p>(7) An auditor's report prepared under regulation 29.</p>
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	<p>(8) The expenditure reports shall be in accordance with <b>ECF Form 5</b> set out in the Schedule or such other format as may be prescribed by the Commission.</p> <p>(9) The Commission shall prescribe electronic format for preparation and submission of records and reports under this regulation.</p>
<p>Scrutiny of expenditure reports by the Commission.</p>	<p>27. (1) Upon receipt of expenditure reports, the Commission shall review the report and may:---</p> <ul style="list-style-type: none"> <li>(a) Seek any further information as it may require for the purposes of making the return accurate;</li> <li>(b) Require that any errors be rectified;</li> <li>(c) Order further audit or review of the report and the candidate or the political party's books;</li> <li>(d) Undertake investigation of any person where it considers that a breach or an offence may have been committed.</li> </ul> <p>(2) In undertaking the review under paragraph 1, the Commission shall consider the following:</p> <ul style="list-style-type: none"> <li>(a) Whether the authorised person has lodged the expenditure account of election expenses within the time and in the manner required by the Act and these rules.</li> <li>(b) If during the review of the reports the Commission finds mistakes or technical omissions, will notify the authorised person, so in a period of ten days since the notification, they should present the clarification or rectification.</li> <li>(c) Where the Commission decides that a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act and these rules it shall by notice in writing call upon the candidate to show cause why he should not be face the sanctions set out in section 23 of the Act.</li> <li>(d) Any contesting candidate who has been called upon to show cause under sub-rule (5) may within twenty days of the receipt of such notice submit in respect of the matter a representation in writing to the Commission, together with a complete account of his election expenses if he had not already furnished such an account.</li> </ul>

	<p>(3) If, after considering the representation submitted by the candidate and after such inquiry as it thinks fit, the Commission is satisfied that the candidate has no good reason or justification for the failure to lodge his account, it invoke the provisions of section 23 of the Act.</p>
Surplus funds	<p>28. (1) A candidate, political party, referendum committee or their relevant authorised persons shall, at the time of submitting the Final Report as required under Section 10 of the Act, submit to the Commission a report of surplus funds received.</p> <p>(2) The report of surplus funds shall include the following details:</p> <ol style="list-style-type: none"> <li>a) the amount of surplus funds received;</li> <li>b) a statement on how the funds have been dealt with including particulars of receipt by the persons required to receive the funds under Section 17 of the Act;</li> <li>c) A declaration that the funds have been dealt with in a manner that does not conflict with Section 17 of the Act.</li> <li>d) A declaration by the candidate, the relevant governing party of the political party or the respective authorised persons that the information contained in the report is true and does not otherwise conceal any material information.</li> <li>e) Any other information as may be prescribed by the Commission.</li> </ol> <p>(3) Failure to comply with Section 17 or these Regulations shall be considered a breach.</p>
Auditor's report on returns	<p>29. (1) Where the campaign expenses incurred by or on behalf of a registered party or candidate in the relevant election exceeds Kenya Shillings five million (Kshs. 5,000,000), an audited report must be prepared by a registered auditor on the return in respect of that expenditure period.</p> <p>(2) An auditor under this Regulation shall be independent and appointed competitively, provided that an auditor so appointed by a political party may be responsible for multiple expenditure reports by the party or relating to multiple candidates where such candidates have entered into a written agreement to procure the services of one auditor.</p>

Certificate of compliance	30. Where the Commission is satisfied that the returns have been prepared in compliance with the Act and these Regulations it shall issue a certificate of compliance in ECF FORM 6 set out in the Schedule.
Public Disclosure of Accounts and other Records	31. (1) The authorised persons shall publish the records and reports stipulated by these regulations in such form as may be prescribed by the Commission.  (2) Any person shall, on payment of such fee as may be fixed by the Commission, be entitled to inspect any such account and whenever necessary to obtain attested copies of such account or of any part thereof.
Nil return	32. If an authorised person considers that there is no relevant information to disclose, such authorised person must file a nil return.
<b>PART VI: DISPUTE RESOLUTION</b>	
Overriding objective	33. (1) The overriding objective of this part is to facilitate just, expeditious, proportionate, affordable resolution of election disputes under the Act and the Regulations. (2) The Commission or Court exercising powers under this part shall, in the exercise of their powers under the Act or in the interpretation of any of the provisions of these rules seek to give effect to the overriding objective. (3) Any person who is the subject of a complaint under this part or their advocates shall have the obligation to assist the Commission, or the court to further the overriding objective and to that effect to participate in the process in the determination of the complaint and to comply with the directions and orders of the Commission, or the court. (4) For the purpose of furthering the overriding objective specified, the commission or court as the case may be and all the parties before it shall conduct the proceedings for the purpose of attaining the following aims— (a) the just determination of the proceedings; and (b) the efficient and expeditious disposal of the complaint in accordance with time limits provided in the Act or these Regulations. (5) The commission or court as the case may be, may where a party has breached the overriding objective, issue orders, impose sanctions and penalties, as the Commission or the Court may consider just and fit including an order for payment of costs.

Complaints to the Commission	<p>34. (1) The Commission shall have jurisdiction in accordance with section 21 of the Act to determine complaints arising from this Act or these Regulations.</p> <p>(2) The Commission may on its own initiative investigate a breach of the Act or these Regulations.</p>
Dispute Resolution Committee	35. The dispute resolution committee designated by the Commission shall exercise the powers of the Commission under this part.
Procedure of lodging a complaint	<p>36. (1) A person who alleges that a breach of the Act has occurred shall lodge a complaint in <b>ECF Form 7</b> set out in the Schedule with the Commission.</p> <p>(2) The complaint shall set out –</p> <ul style="list-style-type: none"> <li>a) the name of the complainant;</li> <li>b) the name of any respondent to the complaint which shall be either the Commission, political party, candidate or authorised person under the Act;</li> <li>c) the particulars of the complaint numbered consecutively in paragraph form setting out the circumstances relating to the complaint;</li> <li>d) the prayers sought by the complainant;</li> <li>e) a declaration that the matters complained of are true to the knowledge and belief of the complainant.</li> <li>f) the petition shall be accompanied by sworn statement by the complainant and any witness providing information relevant to the determination of the complaint.</li> </ul> <p>(2) Within twenty four hours after receiving the complaint, the Commission shall cause the complaint to be served on the respondent or their authorised person.</p> <p>(3) Service under this part shall be personal or to the physical address of the political party, candidate or the authorised person in accordance with the Act.</p>
Response to the complaint	<p>37.(1) Within forty eight hours upon being served with a complaint, the respondent may oppose the complaint by filing and serving a response.</p> <p>(2) The response to a complaint shall be in <b>ECF Form 8</b> set out in the Schedule.</p>



	<p>(3) Where a respondent has not filed a response in accordance with paragraph (1) the Commission may make adverse findings and make such orders as may be necessary in the interest of justice.</p> <p>(4) Upon receiving the response, the Commission shall cause the response and the witness statements to be served on the complainant and any other party to the complaint.</p>
Withdrawal of complaint and joinder of parties	<p>38. (1) At any time after the filing of the response, the complainant may with leave of the Commission, withdraw the complaint.</p> <p>(2) The Commission may order that a person not mentioned in the complaint or in the response to a complainant be enjoined as a party in the complaint.</p> <p>(3) Where a person is enjoined in accordance with these Regulations, the Commission shall order that they are served with copies of the complaint, the response and all witness statements.</p>
Summary determination	<p>39. (1) Within twenty four hours following filing of the response, the Commission may consider the make determination on the face of the record and make such orders as it deems fit in accordance with the Act or these Regulations.</p> <p>(2) Where the Commission makes a summary determination, it shall forward to the parties its written determination setting out the reasons.</p>
Summary dismissal	<p>40. The Commission may dismiss a complaint summarily where there is no evidence</p>
Hearing of the complaint	<p>41. (1) The Commission may, upon receipt of the response, give notice in <b>ECF Form 9</b> set out in the Schedule that the parties appear before it for the purpose of hearing the complaint.</p> <p>(2) The members of the Commission presiding at the hearing may make enquiries and issue such orders as are necessary for the efficient determination of the complaint.</p> <p>(3) The Committee may in making an inquiry under this regulation, make an order for appearance of any person as may be necessary for the purpose of the inquiry.</p> <p>(4) The Committee may make orders or summon the appearance of any witness or presentation of any information necessary for determination of the complaint in Form ECF 10.</p>

	(5) Within twenty four hours following the hearing, the Commission may deliver in writing a summary of its determination and reserve a reasoned ruling which shall be delivered within three days of the conclusion of the hearing.
Orders	42. (1) Upon the conclusion of the hearing, the Commission may make the orders set out in section 21(5) of the Act. (2) The Commission's determination shall be in writing and shall set out the reasons thereof.
<b>PART VIII: MISCELLANEOUS</b>	
Notices	43. (1) Where, under these Regulations, notice is to be given or a report is to be furnished to the Commission, the notice or report shall be taken to be so lodged, given or furnished if it is - (a) delivered in person to an officer; or (b) left at the office of an officer; or (c) sent by registered post addressed to an officer in his official capacity.
Effects of Weekends and Public Holidays on Filing of Reports	44. If the date on which a report is required to be filed occurs on a weekend or a public holiday, the report shall be filed no later than the first working day after the date it would otherwise be due that is not a public holiday
Retention of documents	45. (1) The Commission shall retain all documents and reports relating to elections campaign finance in safe custody for a period of three years after the results of the elections have been declared. (2) The Commission dispose of information and documents in accordance with Public Archives and Documentation Service Act.
Power of the Commission to issue Directives	46. (1) Subject to the Act and these Regulations, the Commission shall have power to, by notice in the Gazette, provide for measures the to ensure the regime on election campaign financing works effectively and may issue guidelines, directives and orders from time to time in that regard.  (2) Where any form is provided as a schedule under these regulations, the Commission may notwithstanding the particulars thereof, may by a directive make such variations as it may deem appropriate for the full implementation of the Act and these regulations and such modification shall take effect as a modification or replacement of the relevant form.

Integration of technology.	47.(1) Where a record, report, notice or information is to be kept or submitted to the Commission under these regulations, the Commission shall provide for keeping of such records by electronic means. (2) The records, reports or notices kept or submitted in accordance with regulation (1), shall have the same effect as they were kept or submitted in print. (3) The Commission shall make directives and issue guidelines for keeping of records and submission of reports by electronic means.

**SCHEDULE 1: ELECTORAL CAMPAIGN FINANCING FORMS (ECF FORMS)**

ECF FORM 1

Reg. 7(1)

ELECTION CAMPAIGN FINANCING REGULATIONS 2020

**NOTICE OF APPOINTMENT OF AUTHORISED PERSONS**

<b>Section 1:</b>	
<b>Election</b>	<b>Political Party or Candidate</b>
<b>Election Year</b>	<b>Date of Election</b>
<b>Nature (MP/MCA/Governor/Senator):</b>	<b>Electoral Area:</b>

<b>Section 2: Authorised persons</b>		
Name of Authorised person :		
Nature of authorised person: (Whether agent/referendum campaign financing committee/political party campaign financing committee/candidate campaign financing committee		
Postal address:	Code:	Telephone:
Email:		
Date of appointment:	Building and street:	

<b>Section 3: Appointing Authority</b>	
State who appointed authorised person:	

<b>Section 4: Members of Committee</b>
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Name	Postal address	ID Number	PIN number	Gender	Telephone & email	Signature

<b><u>Section 5: Officials (These must be members of committee in section 4 above</u></b>	
<u>Chairperson:</u>	<u>Phone number:</u>
<u>Treasurer:</u>	<u>Phone number:</u>

<b><u>Section 6: Bank Details</u></b>	
<u>Bank</u>	<u>Branch</u>
<u>Account number:</u>	<u>Currency:</u>
<u>Signatories:</u>	<u>Postal address:</u>

I..... hereby designate the following authorised person(s) as my agent/campaign financing committee/referendum committee for the .....elections

.....  
Signature of appointing authority:

.....  
Date

ELECTION CAMPAIGN FINANCING REGULATIONS 2020

**DECLARATION IN SUPPORT OF A NOTICE OF APPOINTMENT AS AN  
AUTHORISED PERSON**

I, the authorised person, whose signature is subscribed hereto, do hereby solemnly declare as follows—

That we are eligible to serve and have agreed to serve as agent/members of political party campaign financing committee or referendum financing committee for .....(candidate/political party/referendum committee)

That we have read all of the applicable laws relating to campaign financing and reporting requirements and we certify that we have examined the notice of appointment and to the best of our knowledge and belief it is true, correct and complete.

Made this ..... day of ..... 20.....

Names and signatures of authorised persons:

Name	ID/Passport number	Signature

Before me

Commissioner of Oaths/Magistrate

## ELECTION CAMPAIGN FINANCING REGULATIONS 2020

**NOTIFICATION BY SUPPORTING ORGANISATION OR PERSON WISHING TO SUPPORT A POLITICAL PARTY, REFERENDUM COMMITTEE OR A CANDIDATE**

<b>Section A: Name of organisation</b>		
Postal address:	Telephone:	Email:
Date of formation		

<b>Section B: Indicate who you are supporting:</b>

<b>Section C: Responsible person</b>		
Name:		Email:
Postal address:	Telephone:	Signature:

<b>Section D: Consent of candidate/political party/referendum committee</b>	
I hereby authorize the following name person, WHO is not my authorised person, to receive and expend funds on behalf of my candidacy.	
Signature	Date:

## ELECTION CAMPAIGN FINANCING REGULATIONS 2020

## CONTRIBUTIONS ACCOUNT

Schedule	Description	Amount	Surplus
A	Political Parties Fund		
B	Self- financing		
C	Family		
D	Individual		
E	Supporting organisation		
F	Harambee		
G	Non-monetary contributions		
H	Family		
I	Anonymous		
J	Illegal		
K	Others		

## Schedule A-Political Parties Fund

## Schedule B-Self-Financing

Serial No.	Name & address of contributor	Registration No., PIN & ID	Amount	Mode of contribution (cheque/cash/mpesa/in-kind)	Remarks

## Schedule C-Family

Serial No.	Name & address of contributor	Registration No., PIN & ID	Amount	Mode of contribution (cheque/cash/mpesa/in-kind)	Remarks

## Schedule D-individual



<b>Serial No.</b>	<b>Name &amp; address of contributor</b>	<b>Registration No., PIN &amp; ID</b>	<b>Amount</b>	<b>Mode of contribution (cheque/cash/mpesa/in-kind)</b>	<b>Remarks</b>

Schedule E-Supporting Organisations

<b>Serial No.</b>	<b>Name &amp; address of contributor</b>	<b>Registration No., PIN &amp; ID</b>	<b>Amount</b>	<b>Mode of contribution (cheque/cash/mpesa/in-kind)</b>	<b>Remarks</b>

Schedule F-Harambee

<b>Serial No.</b>	<b>Name &amp; address of contributor</b>	<b>Registration No., PIN &amp; ID</b>	<b>Amount</b>	<b>Mode of contribution (cheque/cash/mpesa/in-kind)</b>	<b>Remarks</b>

ELECTION CAMPAIGN FINANCING REGULATIONS 2020

**EXPENDITURE REPORTS**

**Contributions**

**XX**

**Expenditure**

**XX**

Advertising

Salaries

Venues

**Surplus**

**xx**

CERTIFICATE OF COMPLIANCE

Name of the Election.....  
.....

Candidate or Political Party.....

Names of Authorised Persons

Name	ID/Passport number	Signature

The Commission hereby certifies that the above named candidate/political party and the authorized persons have duly complied with the requirements of reporting under the Elections Campaign Financing Act in accordance with Regulation 32(2) of the Regulations.

NB: This Certificate is subject to further action by the Commission in accordance with its powers under the Act.

Signed .....

Chairperson

ELECTION CAMPAIGN FINANCING REGULATIONS 2020

**COMPLAINT FORM**

**(To be used to file a complaint alleging a violation of the Act)**

<b>Section 1: Complainant</b>	
Your Name:	Telephone number:
Postal address	Code:
Town/City	

<b>Section 2: Complainant</b>	
Your Name:	Telephone number:
Postal address	Code:
Town/City	

<b>Section 3: Alleged Violation</b>	
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**State section of the ECF Act allegedly violated**

**Explain how those sections were violated**

**Provide evidence that supports allegations (attach copies of documents and other information):**

<b>Section 4: Certification</b>	
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I certify that to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of this complaint is supported by evidence.

Signature of complainant:

Date:

ELECTION CAMPAIGN FINANCING REGULATIONS 2020

**RESPONSE TO COMPLAINT FILED**

**(To be used to respond to complaint alleging violation of the Act)**

<b>Section 1: Respondent</b>	
Your Name:	Telephone number:
Postal address	Code:
Town/City	

<b>Section 2: Complainant</b>	
Your Name:	Telephone number:
Postal address	Code:
Town/City	

<b>Section 3: Why Alleged Violation is Untrue</b>	
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**Explain why the complaint is untrue**

<b>Section 4: Certification</b>	
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I certify that to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of this response is supported by evidence.

Signature of respondent:

Date:

ELECTION CAMPAIGN FINANCING REGULATIONS 2020

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION**

**ELECTION CAMPAIGN FINANCING ACT**

**COMPLAINT NO.....OF.....**

.....PLAINTIFF

VERSUS

.....DEFENDANT

**To:**

**HEARING NOTICE**

**TAKE NOTICE** that the above matter is scheduled for hearing on ..... at .....in the forenoon or soon thereafter.

**TAKE FURTHER NOTICE** that in default of your attendance as aforesaid, the hearing may still proceed as the Commission shall deem fit.

**DATED** at Nairobi this                      day of                      20.....

**Signature**

.....

ELECTION CAMPAIGN FINANCING REGULATIONS 2020

**FORM OF SUMMONS FOR ATTENDANCE INTO AN INQUIRY**

TO: .....

You are hereby summoned to appear at..... (Place), upon the..... day of .....20.....before the Commission when the following complaint/charge which has been preferred against you will be considered:

Should you fail to appear, the Commission or the Committee appointed to hear the charge may consider and deal with the charge in your absence in accordance with the Regulations.

Should you desire your letter dated..... (or any further written communication which you wish to make) to constitute your explanation or defence, please notify me to that effect as soon as possible, and not later than ....., but you are hereby warned that any such communication may be used in evidence.

GIVEN under the hand of the.....on this..... day of ..... 20.....

Signature

.....

ELECTION CAMPAIGN FINANCING REGULATIONS 2020

**FORM OF SUMMONS TO APPEAR BEFORE THE COMMISSION AS A WITNESS**

TO..... (Name of person summoned and his address)

You are hereby summoned to appear at .....

(place), on ..... (date and time), before the Commission established in terms of the Act, to give evidence respecting .....

(If the person summoned is to produce any book, (specify the book, record, document or thing) record, document or thing, add) and you are required to bring with you .....

GIVEN under the hand of the Commission this ..... day of .....20.....

Signature

.....

.....

W.W. Chebukati  
Chairperson, IEBC