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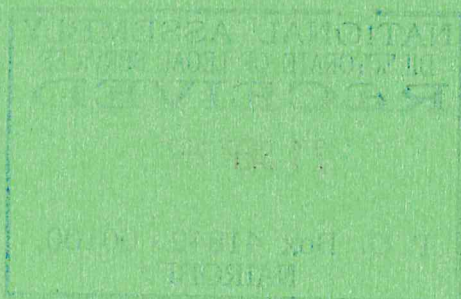
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The Election Campaign Financing (Amendment) Bill, 2021 973





**THE ELECTION CAMPAIGN FINANCING
(AMENDMENT) BILL, 2021**

A Bill for

AN ACT of Parliament to amend the Election Campaign Financing Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

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|-----------|---|--|
| 1. | This Act may be cited as the Election Campaign Financing (Amendment) Act, 2021. | Short title. |
| 2. | Section 2 of the Election Campaign Financing Act, (in this Act referred to as “the principal Act”), is amended by deleting the definition of the expression “expenditure committee”. | Amendment of section 2 of No. 42 of 2013. |
| 7.
3. | The principal Act is amended by repealing section | Repeal of section 7 of No. 42 of 2013. |
| 8.
4. | The principal Act is amended by repealing section | Repeal of section 8 of No. 42 of 2013. |
| 9.
5. | The principal Act is amended by repealing section | Repeal of section 9 of No. 42 of 2013. |
| 10.
6. | The principal Act is amended by repealing Section | Repeal of section 10 of No. 42 of 2013. |
| 7. | The principal Act is amended by deleting section 16 and substituting therefor the following new section 16— | Amendment of section 16 of No. 42 of 2013. |
| 16. | <p>16. (1) A candidate, political party and a referendum committee shall disclose the amount and source of contributions received for campaign for a nomination, an election or a referendum, as the case may be.</p> <p>(2) A candidate who, or a political party or referendum committee which fails to disclose funds or donations as required under this Act commits an offence</p> | |
| 17.
8. | The principal Act is amended by repealing section | Repeal of section 17 of No. 42 of 2013. |

Disclosure of funds.

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21. 9. The principal Act is amended by repealing section 21 of No. 42 of 2013. Repeal of section 21 of No. 42 of 2013.
25. 10. The principal Act is amended by repealing section 25 of No. 42 of 2013. Repeal of section 25 of No. 42 of 2013.
11. Section 26 of the principal Act is amended in subsection (3) by inserting the words “if required by the Commission” immediately after the words “shall.” Amendment of section 26 of No. 42 of 2013.
27. 12. The principal Act is amended by repealing section 27 of No. 42 of 2013. Repeal of section 27 of No. 42 of 2013.
28. 13. The principal Act is amended by repealing section 28 of No. 42 of 2013. Repeal of section 28 of No. 42 of 2013.
14. Section 29 of the principal Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraphs (h) — Amendment of section 29 of No. 42 of 2013.
- (i) prescribe the manner of audit of accounts relating to the campaign expenses of a candidate, a political party or a referendum committee;
 - (j) prescribe the procedure for claims objecting to any matter related to campaign finance expenditures submitted by a candidate, political party or a referendum committee; and.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Elections Campaign Financing Act, 2013 to align its provisions with the Elections Act, 2011 and further propose amendments that will enable its implementation as the current provisions do not take cognizance of current socio economic and political structures which has hindered the full implementation of the law.

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

The Bill does not contain any provisions limiting any fundamental rights or freedom.

Statement on how the Bill concerns county governments

The Bill may affect the functions of County governments as set out in the Fourth Schedule to the Constitution and is therefore a Bill concerning counties.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

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

Dated the 10th August, 2021.

JEREMIAH KIONI,
Member of Parliament.

Section 2 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Interpretation

2. (1) In this Act, unless the context otherwise requires-

“anonymous donation” means a donation which the recipient is, unable to ascertain the identity of the donor;

“bank” means a bank as defined under the Banking Act (Cap. 488);

“candidate” means a person contesting for an elective post;

“campaign expenses” means expenses incurred by a candidate, a political party, a referendum committee or an organisation registered by the Commission to campaign in support of a candidate, a political party or a referendum committee during an election period;

“campaign financing” means resources spent by a candidate or a political party during an election period for purposes of campaign;

“campaign period” has the meaning assigned to it under the Elections Act (No. 24 of 2011);

“Commission” means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

“contribution” means monetary and non-monetary contributions including loans, donations, grants, gifts, property, services provided to a candidate or political party, and money spent on behalf of a candidate, political party or referendum committee in paying any expenses incurred directly or indirectly, but does not include volunteer services;

“election” means a presidential, parliamentary or county election, and includes a referendum and a by-election;

“election expenses” means all funds expended or expenses incurred in respect of the conduct and management of a nomination process, election campaign by a political party or a candidate or a referendum campaign and include—

- (a) in relation to a nomination process, all expenses incurred by a political party or a candidate during the nomination process;
- (b) in relation to an election campaign, all expenses incurred by a political party or candidate for the purpose of an election campaign; and

(c) in relation to a referendum, all expenses incurred by referendum committees for the purpose of a referendum campaign;

“election period” has the meaning assigned to it under the Elections Act;

“expenditure account” means a bank account opened by a candidate, a political party or a referendum committee for purposes of depositing contributions received by that candidate, political party or referendum committee during an election period or a referendum campaign period as the case may be;

“expenditure committee” means a committee established by a candidate, a political party or a referendum committee to regulate spending by a candidate, a political party or a referendum committee during an election or a referendum campaign period as the case may be;

“expenditure period” means the prescribed period for regulating election campaign financing;

“expenditure report” means a report of expenses incurred by a candidate, a political party, or a referendum committee during a nomination or election period or a referendum campaign period;

“harambee” means the public collection of monies or other property in aid support of an election or referendum campaign; “illegal source” means a contribution from an unlawful source;

“monetary contribution” means a non-repayable amount of money contributed to a campaign financing account;

“nomination day”, in respect of an election, means the day gazetted by the Commission as the day for the nomination of candidates for that election;

“non-monetary contribution” means the market value of a service, other than volunteer labour, or of property or of the use of property or money to the extent that they are provided without charge or at less than their market value;

“organisation” includes a club, group, foundation, business or a registered society;

“party campaign expenditure rules” means rules of a political party intended to guide the political party in matters related to campaign expenses during an election period;

“party candidate” means a candidate who is sponsored by a political party to contest in an election;

“political party” means a political party registered under the Political Parties Act (No. 11 of 2011);

“party nomination” means the process where a political party nominates candidates to be sponsored by that political party to contest in an election;

“public resource” includes—

- (a) monies intended for public use;
- (b) a vehicle or equipment owned by or in the possession of the State, a state organ, statutory corporation or a company in which the State owns a controlling interest; or
- (c) premises owned or occupied by the State, a state organ, statutory corporation or a company in which the State owns a controlling interest;

“referendum committee” has the meaning assigned to it under the Elections Act;

“Registrar” means the Registrar of Political Parties appointed under the Political Parties Act (No. 11 of 2011);

“spending limit” means the maximum threshold of money a candidate, political party or referendum committee may expend during a nomination, election or referendum campaign and includes the expenditure incurred by any person or organization on behalf of a candidate, political party or referendum committee;

“technical assistance” means support in knowledge, skills and ideas provided to a candidate, political party or referendum committee in connection with an election or referendum campaign;

“volunteer services” means the rendering of personal services related to the campaign activities of a candidate, political party or a referendum committee during an election or referendum period, without compensation.

Section 7 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Party expenditure committee

7. (1) A political party intending to contest in an election shall, in accordance with the constitution and rules of the political party, constitute a party expenditure committee which shall consist of nine members—

- (a) three of whom shall be persons nominated by the governing body of that political party, of whom one shall be the secretary-general of the party;
- (b) not more than one of whom shall be from one region; and
- (c) not more than two-thirds of whom shall be of one gender.

(2) The appointment of members of the referendum expenditure committee referred to in subsection (1) shall take into account regional and other diversity of the people of Kenya.

(3) The members of a party expenditure committee shall not include members of a party candidate expenditure committee.

(4) The party expenditure committee referred to in subsection (1) shall—

- (a) open a party expenditure committee account into which all the money in respect of the election campaign of that party shall be deposited;
- (b) be signatories to the party expenditure committee account;
- (c) advise the political party on all financial matters related to the party nomination or to the party campaign expenditure;
- (d) manage the party expenditure committee account of the political party and keep the books of account updated and available for inspection; and (e) receive party nomination and campaign expenditure reports from each party candidate;
- (e) monitor the campaign expenditure of the party candidate and ensure that the party candidate complies with party nomination and campaign expenditure rules;
- (f) compile the expenditure reports received from the party candidates and submit to the Commission the preliminary nomination expenditure report and the final campaign expenditure report; and
- (g) submit to the Commission the final campaign expenditure report of the political party.

(5) A political party shall, as soon as reasonable, notify the Commission of any changes in the membership of the party expenditure committee.

Section 8 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Independent candidate expenditure committee

8. (1) An independent candidate intending to contest in an election, shall, constitute an independent candidate expenditure committee.

(2) The independent candidate expenditure committee referred to in subsection

(1) shall consist of three members nominated by the candidate.

(3) The independent candidate expenditure committee shall—

- (a) open an independent candidate expenditure committee account into which all the money in respect of the election campaign of that candidate shall be deposited;
- (b) be signatories to the independent candidate expenditure committee account;
- (c) advise the independent candidate on all financial matters related to the campaign expenditure; and
- (d) manage the candidate expenditure committee account of the independent candidate and keep the books of account updated and available for inspection;
- (e) receive expenditure reports from the independent candidate; and
- (f) compile and submit to the Commission the final campaign expenditure report of the independent candidate with respect to the election period.

Section 9 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Referendum expenditure committee

9. (1) A national referendum committee intending to campaign in a referendum shall constitute a referendum expenditure committee which shall consist of nine members—

- (a) three of whom shall be persons nominated by the national committee established under section 51 of the Elections Act;
- (b) not more than one of whom shall be from one region; and
- (c) not more than two-thirds of whom shall be of one gender.

(2) The appointment of members of the referendum expenditure committee referred to in subsection (1) shall take into account regional and other diversity of the people of Kenya.

(3) The referendum expenditure committee referred to in subsection (1) shall—

- (a) open a referendum expenditure committee account into which all the money in respect of the referendum campaign shall be deposited;
- (b) be signatories to the referendum expenditure committee account;
- (c) advise the national committee on all financial matters related to referendum campaign expenditure;
- (d) manage the referendum expenditure committee account of the relevant national committee and keep the books of account updated and available for inspection; and
- (e) receive campaign expenditure reports from each constituency committee;
- (f) monitor the campaign expenditure of the national committee and the constituency committees and ensure that the committees comply with campaign expenditure rules; and
- (g) compile and submit to the Commission the preliminary nomination expenditure report and the final campaign expenditure report.

(5) A national committee shall, as soon as reasonable, notify the Commission of any changes in the membership of the referendum expenditure committee.

Section 10 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Submission of expenditure reports

10. (1) A party candidate shall submit to the political party of that candidate and to the Commission—

- (a) a preliminary nomination expenditure report, within twenty-one days of the political party nomination; and
- (b) the final expenditure report within, three months after elections.

(2) A political party shall within three months after the elections submit a final expenditure report to the Commission.

(3) An independent candidate shall within three months after the election, submit the final expenditure report to the Commission.

(4) A referendum committee shall, within three months after the referendum submit the final expenditure report to the Commission.

(5) The expenditure reports submitted under subsections (1)(b), (2), (3), and

(4) shall include records showing all transactions and income and expenditure statement.

Section 16 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Disclosure of funds

16. (1) A candidate who, or a political party or a referendum committee which, receives contributions under this Act shall issue a receipt for any contribution exceeding twenty thousand shillings.

(2) Where contributions are received from a harambee, the authorised person shall keep a record of the specific details of the harambee including the venue, date, organiser of the harambee and total contributions.

(3) A candidate, political party and a referendum committee shall disclose the amount and source of contributions received for campaign for a nomination, an election or a referendum, as the case may be.

(4) The disclosure of funds under this section shall, for purposes of this Act and in the absence of any other factors, be sufficient evidence that the candidate, political party or referendum committee has complied with the requirement for disclosure of funds.

(5) The disclosure of funds shall be confidential and details of such funds shall not be divulged except where such information is the subject of a complaint or an investigation, or is the subject of proceedings in a court of law.

(6) A candidate who, or a political party or referendum committee which fails to disclose funds or donations as required under this Act commits an offence.

Section 17 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Surplus campaign funds

17. (1) A candidate, political party or a referendum committee shall—

- (a) within three months after the date of an election or referendum, notify the Commission of any surplus campaign funds held in the expenditure committee;
- (b) within three months after the date of an election or referendum, submit the surplus campaign funds to—
 - (i) in the case of a political party campaign finance committee, to the political party;
 - (ii) in the case of a party candidate, to the political party that nominated the candidate for purposes of the activities of the youth, women and persons with disability;
 - (iii) in the case of an independent candidate or a referendum committee, to a charitable organisation preferred by that independent candidate or referendum committee, as the case may be;
- (c) within three months after the date of an election or referendum, report to the Commission in respect of the action taken under this section.

Section 21 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Dispute resolution

21. (1) Any person may lodge a complaint with the Commission alleging that a breach of this Act has been committed.

(2) The Commission may investigate a breach of this Act.

(3) Where a complaint has been filed or a breach detected under this section, the Commission shall hear and determine that complaint—

- (a) within seven days, if filed before an election;
- (b) within fourteen days, if filed after an election.

(4) In determining a complaint, and subject to section 4, the Commission shall have the powers to—

- (a) request for the attendance of any person believed to have information related to the complaint;
- (b) call for any information believed to be relevant in the determination of the complaint.

(5) Where the Commission makes a finding that there is a breach of a provision of this Act, the Commission may make any of the following orders—

- (a) order the rectification of any record;
- (b) issue a formal warning;
- (c) impose a fine as may be specified under the regulations;
- (d) prohibit the errant candidate, political party or referendum committee from campaigning for a specified period or within a specified area;
- (e) prohibit media coverage of the errant candidate, political party or referendum committee within a specified period;
- (f) disqualify the errant candidate, political party or referendum committee from contesting in that election or referendum, as the case may be.

(6) Where the offence is discovered after an election and an order of disqualification is made, the candidate or the political party shall be disqualified from contesting in the subsequent by- election or general election.

(7) Where an order of disqualification is made under this section, the order shall be—

- (a) registered in the High Court, in the case of presidential, parliamentary, governor elections or referendum; and
- (b) registered in the resident magistrate's court in the case of county assembly elections.

Section 25 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Registration and dissolution of expenditure committees

25. (1) The Commission shall prescribe the procedures for the registration and dissolution of expenditure committees.

(2) The expenditure committees shall stand dissolved on submission of the final expenditure reports referred to in section 10.

Section 26 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Records

26. (1) For purposes of financial accountability under this Act, a candidate, a political party, a referendum committee or an organization registered to campaign in support of a candidate, a political party or a referendum committee shall keep records of—

- (a) funds received for campaign expenses indicating the amount and the nature of funds received;
- (b) names, postal, physical and electronic addresses of contributors;
- (c) funds spent for nomination expenditure and campaign expenditure, as the case may be; and
- (d) in case of an organization registered to campaign in support of a candidate, a political party or a referendum committee, the name of the candidate, the political party or the referendum committee that the organization supported.

(2) The Commission shall on request, make available for inspection information submitted by a candidate, a political party or a referendum committee under this Act.

(3) A request for information referred to under subsection (2) shall be subject to confidentiality requirements of the Commission.

Section 27 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Audit of accounts

27. The Auditor-General may, on the request of the Commission, audit the accounts relating to the campaign expenses of a candidate, a political party or a referendum committee.

Section 28 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Claims and objections

28. (1) A person who objects to any matter related to campaign finance expenditures submitted by a candidate, political party or a referendum committee may file a claim to the Commission in the prescribed form and manner and within the prescribed time.

(2) The claim submitted under subsection (1), shall be determined within—

- (a) seven days, if filed before an election; and
- (b) fourteen days, if filed after an election

Section 29 of the Elections Campaign Financing Act, 2013 which it is proposed to amend—

Provisions on delegated powers

29. (1) The Commission may make regulations for the better performance of its functions under this Act, and such regulations shall be laid before the National Assembly for approval before they are published in the Gazette.

(2) In particular and without prejudice to the generality of the power conferred by subsection (1), the Commission may make regulations—

- (a) providing for spending limits for the different elections;
- (b) providing guidelines for expenditure rules for political parties and independent candidates;
- (c) prescribing the manner in which contributions may be made;
- (d) prescribing procedures for disclosure of the amount of contributions made to a candidate or to a party, the nature of these contributions and the intended expenditures by a candidate or a party;
- (e) prescribing mechanisms and procedures for reporting on and monitoring the spending limits;
- (f) prescribing the manner in which records shall be prepared and maintained;
- (g) prescribing procedures for the determination of claims and objections; and
- (h) prescribing anything which is required to be prescribed for purposes of this Act.