



LAWS OF KENYA

**THE POLITICAL PARTIES BILL,
2011**

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

THE POLITICAL PARTIES BILL, 2011**ARRANGEMENT OF CLAUSES**

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THE POLITICAL PARTIES BILL, 2011

A Bill for

AN ACT of Parliament to provide for the registration, regulation and funding of political parties and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Political Parties Act, 2011 and shall come into operation on such date as the Minister may by notice in the Gazette, appoint.

Interpretation.

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

“branch” means any devolved unit of a political party;

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

“coalition” means an alliance of two or more political parties formed for the purpose of pursuing a common goal and is governed by a written agreement deposited with the Registrar;

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

“election” means the act of selecting by vote of a person or persons from among a number of candidates to fill an office or to membership of any political party and includes a presidential, parliamentary or county election;

“founding members of a political party” means the

persons who form a political party and have contributed or offered to contribute either in cash or kind to the initial assets of the party in respect of the first year of its existence;

"Fund" means the Political Parties Fund established by section 23;

"Gazette" includes a County Gazette published in each County;

"governing body" means the committee responsible for administering the affairs of a political party;

"merger" means where two or more political parties consolidate their operations and combine all officers, structure, and other functions of the political parties;

"office holder" in relation to a political party means any person who is elected by the members of the political party to hold office and registered with the Registrar of Political Parties;

"political party" has the meaning assigned to it in Article 260 of the Constitution;

"public officer" has the meaning assigned to under Article 260 of the Constitution;

"Registrar" means the Registrar of political parties appointed under section 32;

"State" means the Republic of Kenya as by law established; and

"Tribunal" means the Political Parties Dispute Tribunal established under section 35.

PART II—REGISTRATION AND REGULATION OF POLITICAL PARTIES

Formation of political parties.

3. (1) Political parties may, subject to the provisions of the Constitution and this Act, be formed in Kenya to

further purposes which are not contrary to the Constitution or any written law.

(2) A citizen of Kenya who has attained the age of eighteen years may, subject to the provisions of this Act and any other written law, contest for an elective position in a political party in which he is a member.

Requirements of a political party.

4. (1) An association of persons or an organisation shall not operate or function as a political party unless it has been registered in accordance with the provisions of this Act.

(2) The Registrar shall not register an association of persons or an organisation as a political party if such association or organisation does not meet the requirements set out in Article 91 of the Constitution.

Provisional registration of a political party.

5. (1) An association of persons or organisation applying to be registered as a political party may apply to the Registrar for provisional registration.

(2) Upon application for registration under subsection (1), the Registrar shall, within thirty days of the association or organisation fulfilling the conditions prescribed in section 6, issue that association or organisation with a certificate of provisional registration.

(3) A political party that has been provisionally registered under subsection (2) shall, not later than one hundred and eighty days from the date of provisional registration, apply to the Registrar for full registration.

(4) The Registrar shall, within seven days of receipt of an application under sub-section (3), publish a notice in the Gazette and in at least two newspapers having nationwide circulation inviting objections from any person or any other party concerning the registration of the name, symbol or colour of the party or any other issue relating to the registration of the political party.

(5) The provisional registration of a political party which has not applied for full registration shall lapse at the expiry of one hundred and eighty days from the date of issue of the certificate of the provisional registration

(6) The provisional registration of a political party which has applied for full registration, shall be valid until the political party is issued with a certificate of full registration or until the application of the political party to be registered has been rejected.

(7) A political party that has been provisionally registered under subsection (2) shall not be entitled to participate in an election.

Application for provisional registration.

6. (1) An application for the provisional registration of a proposed political party shall be in writing and signed by the applicant.

(2) An application for provisional registration shall—

(a) include signed minutes of the first meeting of the founding members of the party;

(b) set out the name of the party;

(c) if the party wishes to use for the purposes of this Act an abbreviation of its name, set out that abbreviation;

(d) be accompanied by a copy of the constitution of the proposed party which shall comply with the provisions of section 9;

(e) include an undertaking to be bound by this Act and the Code of Conduct set out in the First Schedule; and

(f) be accompanied by the prescribed fee.

(3) An application for provisional registration shall include a request for the registration of the symbol of the party.

Conditions of full registration.

7. (1) An application for full registration of a political party shall be in writing and signed by an authorized official of the political party.

(2) A provisionally registered political party shall be qualified to be fully registered if —

(a) it has recruited as members, not fewer than one thousand registered voters from each of more than half of the counties;

(b) the members referred to in paragraph (a) reflect regional and ethnic diversity, gender balance and representation of minorities and marginalised groups;

(c) it has on its governing body—

(i) not more than one member from one county; and

(ii) not more than two-thirds of the members from one gender; and

(iii) reflects regional and ethnic diversity, gender balance and representation of minorities and marginalized groups;

(d) it has demonstrated that a member of its governing body meets the requirements of Chapter Six of the Constitution and the laws relating to ethics;

(e) it has submitted to the Registrar—

(i) a list of the names, addresses and identification particulars of all its members;

(ii) the location of its head office, which shall be a registered office within Kenya and a postal address to which notices and other communication may be sent; and

(iii) the location and addresses of the branch offices of the political party, which shall be in more than half of the counties; and

(f) it has established branch offices in more than half of the counties;

(g) it has undertaken to be bound by this Act and the Code of Conduct set out in the First Schedule.

(3) A person is disqualified from being a member of the governing body if that person-

(a) is an undischarged bankrupt;

(b) has been convicted of a criminal offence and sentenced to imprisonment for a period of not less than six months;

(c) has been suspended for a period of six months for violating the code of conduct of the party; or

(d) is an appointed State officer.

(4) The Registrar shall, within thirty days of an application under subsection (2), issue a certificate of full registration to a provisionally registered political party which has fulfilled the conditions of full registration.

(5) A person who is not a citizen of Kenya shall not be appointed to any office or be a member of a political party in Kenya.

Parties with certain names not to be registered.

8. The Registrar may refuse an application for the registration of a political party if the name of the party or the abbreviation of the name or symbol that it wishes to use for the purposes of this Act—

(a) is obscene or offensive;

(b) is the name, or is an abbreviation of another political party that is registered under this Act; or

(c) so nearly resembles the name or symbol, or an abbreviation of the name of another political party registered under this Act or any other legal entity registered under any other written law.

Contents of constitution or rules of a political party.

9. (1) The constitution or rules of every political party shall provide for all the matters specified in the Second Schedule to this Act.

(2) The Registrar may, by notice in writing, require a political party to amend its name, constitution or rules within three months after the date of the notice to comply with the Constitution, this Act and any other written law.

(3) The notice referred to in subsection (2) shall specify the areas of non-compliance, the nature of the amendment and the reason for such amendment.

(4) If a political party does not comply with a notice issued under subsection (2), that political party shall be deregistered.

Coalitions.

10. (1) Two or more political parties may form a coalition before an election and shall deposit the coalition agreement with the Registrar.

(2) A coalition agreement under subsection (1) shall be deposited with the Registrar at least three months before that election.

(3) A coalition agreement shall set out the matters specified in the Third Schedule.

Mergers.

11. (1) A political party may merge with another political party.

(2) A political party shall not merge with another political party unless the merger is in accordance with the constitution, rules and procedures of the political parties.

(3) The decision to merge shall be in writing and shall be duly executed by the party officials authorized to execute agreements on behalf of the political parties.

(4) The governing body of each political party that intends to merge under sub-section (2) shall-

- (a) determine the constitution, rules, regulations and the principles which shall form the basis of the merger and the registration of the new political party; and
 - (b) sign the merger agreement and the particulars for the new party to be registered under this Act.
- (5) The merger agreement signed under subsection (4) (b) shall be deposited with the Registrar within twenty-one days of the signing of the agreement.
- (6) The political parties which have merged into a new political party under this section shall stand dissolved upon registration of the new political party.

Restrictions on public officers in political a party.

12. (1) A public officer shall not—

- (a) be eligible to be a founding member of a political party;
- (b) be eligible to hold office in a political party;
- (c) engage in political activity that may compromise or be seen to compromise the political neutrality of that person's office; or
- (d) publicly indicate support for or opposition to any political party or candidate in an election.

(2) Subsection (1) shall not apply to the President, Deputy President, a Member of Parliament, Governor, Deputy Governor or a member of a county assembly.

Disqualification from holding office in a political party.

13. A person disqualified from holding public office under the Constitution, this Act or any other written law shall not hold office in the governing body of a political party or be its founding member.

Resignation from political party.

14. (1) A member of a political party who intends to resign from the political party shall give a thirty-days written notice prior to his resignation to—

(a) the political party;

(b) the Clerk of the relevant House of Parliament, if he is a member of any of the two houses of Parliament; or

(c) the clerk of a county assembly, if he is a member of a county assembly.

(2) The resignation of the member of the political party shall take effect upon the expiry of the thirty days notice.

(3) The political party or the clerk of the relevant House shall notify the Registrar of such resignation.

(4) A person shall not be a member of more than one political party at the same time.

(5) A person who, while being a member of a political party—

(a) forms another political party;

(b) joins in the formation of another political party;

(c) joins another political party;

(d) in any way or manner, publicly advocates for the formation of another political party;

(e) promotes the ideology, interests or policies of another political party; or

(f) campaigns for another political party, or a candidate of another political party,

commits an offence.

(6) Subsection (5) (e) and (f) shall not apply to a member of a political party in relation to the common objective of a coalition.

(7) The Registrar shall –

(a) where it becomes evident that a person is acting in breach of subsection (5); or

(b) upon application by the political party of which a person alleged to have contravened subsection (5) is a member; and

(c) after due inquiry into the conduct of the person establishes the allegations to be true,

declare that the person has ceased to be a member of that political party.

(8) A person who by virtue of any written law is for the time being disqualified from being nominated for election as an elected member of Parliament or a member of a county assembly shall not be eligible to hold office in a political party during the time that he is disqualified.

(9) A member of a political party may only be expelled from that political party if the member has infringed the constitution or rules of the party and after the member has been afforded a fair opportunity to be heard in accordance with the internal party disputes resolution mechanisms as prescribed in the constitution of the party.

(10) Any person who suppresses or attempts to suppress any lawful political activity of another person commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

Rights and privileges of political party.

15. (1) A political party which has been provisionally registered shall be entitled—

(a) to hold and address public meetings in any area in Kenya for the purposes of publicizing the party and recruiting members;

(b) to the protection and assistance of the State security

agencies for the purposes of facilitating peaceful and orderly meetings; and

(c) to the provision by the State of fair opportunity to present the party's programmes to the public by ensuring equitable access to the State owned media.

(2) Provisional registration shall not entitle any political party to organize or hold public meetings in connection with any election or to propose or campaign for any candidate in any election.

(3) A political party which contravenes the provision of sub-section (2) commits an offence.

(4) Where a political party is aggrieved by the decision of the Registrar under sub-section (5), it may appeal against such decision to the Tribunal.

Corporate status of political party and declaration of assets etc.

16. (1) A political party which has been fully registered under this Act shall be a body corporate with perpetual succession and a common seal and shall be capable, in its own name of-

(a) acquiring and disposing of property;

(b) suing and being sued; and

(c) doing or performing all such acts and things as a body corporate may by law do or perform.

(2) A political party shall, within sixty days after being issued with a certificate of full registration under section 7, submit to the Registrar a written declaration giving details of all assets and expenditure including, all contributions, donations or pledges of contributions or donations, whether in cash or in kind, made or to be made to the initial assets of the party by its founding members in respect of the first year of its existence.

(3) A declaration submitted to the Registrar under subsection (2) shall—

(a) state the sources of all funds and other assets of the political party;

(b) contain such other relevant particulars as the Registrar may prescribe; and

(c) be supported by a statutory declaration made by the person designated to issue such a declaration by the governing body of the political party.

(4) The Registrar shall, within thirty days after the receipt of the declaration required under subsection (2), cause the declaration to be published in the Gazette and in at least one daily newspaper having nationwide circulation.

(5) Notwithstanding any other penalty prescribed by this Act or any other written law, the Registrar shall, subject to section 21(2) deregister a political party which—

(a) fails to comply with this section; or

(b) submits a declaration, which is false in any material particular.

Records of political party.

17. (1) A political party shall maintain at its head office and at each of its county office in the prescribed form, an accurate and authentic record of—

(a) a register of its members in a form prescribed in the Second Schedule;

(b) a copy of the constitution of the political party;

(c) a copy of the policies and plans of the political party;

(d) particulars of any contribution, donation or pledge of a contribution or donation, whether in cash or in kind, made by the founding members of the political party;

(e) estimates of the expenditure of the political party in accordance with the laws relating to public finance management;

(f) particulars of any property that belongs to the political party and the time and mode of acquisition of the property;

(g) the latest audited books of accounts of the political party which shall be in accordance with the principles of accounting having regard to the purpose of this Act, showing-

(i) the sources of the funds of the political party and names, addresses and such other contact details as the Registrar may require of any persons who have contributed thereto;

(ii) membership dues paid;

(iii) donations in cash or in kind;

(iv) indirect contributions to the party and all receipts and disbursements, including income and expenditure transactions of the political party;

(v) all the financial transactions and records of assets and liabilities of the political party; and

(h) such other relevant particulars as the Registrar may prescribe.

(2) A person, who interferes with, damages or destroys the records of a registered political party commits an offence.

(3) A member of a political party may, during working hours and on payment of the prescribed fee, inspect the records of a political party maintained at its head or county office.

Duty of political party to inform Registrar.

18. (1) The Registrar may, issue a written notice, in the prescribed form, to any office holder of a political party to furnish for inspection by the Registrar, the records required to be maintained under section 17, or such other information as is reasonably required by the Registrar to

ensure compliance with the provisions of this Act.

(2) The Registrar may make copies of or take extracts from any records or other information furnished to the Registrar under this section.

(3) A political party or an office-holder shall comply with a notice issued by the Registrar under subsection (1).

(4) A political party or an office holder who fails to comply with the notice under this section commits an offence.

Public meetings of political party.

19. A political party intending to hold a public meeting in any area shall comply with the provisions of the laws relating to public meetings.

Notification of changes, alterations in constitution etc. of political party.

20. (1) Where a fully registered political party intends to change or amend—

- (a) its constitution;
- (b) its rules and regulations;
- (c) the title, name or address of any party official; or
- (d) its name, symbol, slogan or colour,

it shall notify the Registrar of its intention and the Registrar shall, within fourteen days after the receipt of the notification, cause a notice of the intended change or alteration to be published in the Gazette.

(2) The political party giving notification under sub-section (1) shall publish such notification in at least two daily newspapers having nationwide circulation.

(3) Upon the expiry of thirty days from the date of publication of the notice in subsection (1), the political party may effect the change or alteration in accordance with its Constitution and rules.

Deregistration of political party.

21. (1) The Registrar may deregister a political party if the political party—

(a) has contravened the provisions of Article 91 of the Constitution;

(b) does not promote free and fair nomination of candidates;

(c) does not adhere to the law relating to the nomination of candidates;

(d) does not respect the national values and principles of the Constitution;

(e) obtained its registration in a fraudulent manner;

(f) has instigated or participated in the commission of an election offence; or

(g) has acted contrary to the provisions of section 26.

(2) The Registrar shall, before deregistering a political party—

(a) inform the political party, in writing, of the particulars of the breach or contravention;

(b) inform the political party, in writing, of the intention to deregister the political party; and

(c) direct the political party to remedy the breach or contravention within ninety days or otherwise show cause why the party should not be deregistered.

(3) The Registrar may suspend the registration of a political party to enable that political party to remedy the breach specified in the notice issued by the Registrar under subsection (2).

(4) A political party that has been suspended under subsection (3) shall not be entitled to any of the rights

and privileges specified in section 15.

(5) The Registrar shall deregister a political party which has not remedied the breach or complied with the Act as required by the Registrar under subsection (2).

(6) The Registrar shall deregister a political party which has been declared to be a prohibited organisation under the provisions of any written law.

Effect of deregistration.

22. (1) Where a political party is deregistered under this Act, no person shall—

(a) summon a meeting of members or officers of the political party other than for purposes of winding up of the political party;

(b) attend or make a person attend a meeting in the capacity of a member or officer of the political party;

(c) publish a notice or advertisement relating to a meeting of the political party;

(d) invite persons to support the political party;

(e) make a contribution or loan to funds held or to be held by or for the benefit of the political party or accept a contribution or loan; or

(f) give a guarantee in respect of such funds.

(2) Where a political party that has been deregistered under section 21 had representatives elected to Parliament, Senate or County Assembly, such representatives shall continue to serve for the remainder of their term as independent candidates.

PART III—FUNDING AND ACCOUNTS OF POLITICAL PARTIES

Political Parties Fund.

23. There is established a Fund to be known as the

Political Parties Fund, which shall be administered by the Registrar.

Sources of moneys in the Fund.

24. (1) The sources of the Fund are—

- (a) such funds as may be provided by Parliament; and
- (b) contributions and donations to the Fund from any other lawful source.

(2) The balance of the Fund at the end of the financial year shall be retained for the purposes for which the Fund is established subject to any law relating to public finance.

Distribution of the Fund.

25. (1) The Fund shall be distributed as follows-

- (a) ninety per cent proportionately by reference to the total number of votes secured by each political party in the preceding general election; and
- (b) ten percent for the administration expenses of the Fund.

(2) For purposes of distributing the funds under subsection (1), political parties in a coalition shall be funded as one entity subject to provisions of the coalition agreement deposited with the Registrar.

Purposes of the Fund.

26. (1) Moneys allocated to a registered political party from the Fund shall be used for purposes compatible with democracy including—

- (a) promoting the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities;
- (b) promoting active participation by individual citizens in political life;

(c) covering the election expenses of the political party and the broadcasting of the policies of the political party;

(d) the organisation by the political party of civic education in democracy and other electoral processes;

(e) bringing the party's influence to bear on the shaping of public opinion; and

(f) administrative and staff expenses of the political party which shall not be more than thirty per cent of the moneys allocated to the party:

Provided that not less than thirty per cent of the moneys allocated to a political party under section 25 shall be used for the purposes referred to in subsection (1) (a).

(2) The moneys allocated to a political party shall not be used for any other purposes other than those specified in this Act.

(3) Moneys allocated to a political party from the Fund shall not be used—

(a) for paying directly or indirectly remuneration, fees, rewards, allowances or any other benefit to a member or supporter of the political party, other than a member of staff;

(b) to finance or as a contribution to any matter, cause, event or occasion directly or indirectly in contravention of any code of ethics binding on public officers;

(c) directly or indirectly for the purposes of establishing any business or acquiring or maintaining any right or financial interest whatsoever in any business or in any immovable property; or

(d) for any other purpose incompatible with the promotion of a multiparty democracy and the electoral processes, or with the Constitution.

(4) A person who contravenes the provisions of this section commits an offence.

Other sources of funds.

27. (1) The sources of other funds for a political party are—

(a) membership fees;

(b) voluntary contributions from a lawful source;

(c) donations, bequests and grants from any other lawful source, not being from a non-citizen, foreign government, inter-governmental or non-governmental organisation; and

(d) the proceeds of any investment, project or undertaking in which the political party has an interest.

(2) A foreign agency, or a foreign political party which shares an ideology with a political party registered in Kenya, may provide technical assistance to that political party.

(3) Technical assistance under subsection (2) shall not include provision of any assets to the political party.

(4) A political party shall disclose to the Registrar full particulars of all funds or other resources obtained by it from any source.

Offences related to sources of funds.

28. (1) A political party which receives funds from a non-citizen contrary to section 27 (1) (c) commits an offence.

(2) Subject to subsection (6), no person or organisation shall, in any one year, contribute to a political party an amount, whether in cash or in kind exceeding five percent of the total expenditure of the political party.

(3) The total expenditure referred to in subsection (2) shall be in relation to the audited accounts of the political party, of previous year.

(4) A person who or an organisation which contravenes subsection (2) commits an offence.

(5) A political party that receives an amount exceeding the amount specified in subsection (2) commits an offence and shall, in addition to the penalty imposed by this Act, forfeit that amount to the State.

(6) Subsections (2) and (5) shall not apply to any contribution or donation whether in cash or kind, made by any founding member of the political party as his contribution to the initial assets of the party within the first year of its existence.

(7) An official of a political party or other person required to disclose to the Registrar, on behalf of a political party, the funds or other resources of that political party, who fails to disclose, or gives false information in relation to the funds or resources obtained by the political party, commits an offence and shall on conviction be liable to a fine equal to the amount or the value of the resources not disclosed or in relation to which false information was given, or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Publishing sources of funds.

29. (1) A political party shall, within ninety days of the end of its financial year, publish-

(a) the sources of its funds stating—

(i) the amount of money received from the Fund;

(ii) the amount of money received from its members and supporter; and

(iii) the amounts and sources of the donations given to the party;

(b) the income and expenditure of the party; and

(c) the assets and liabilities of the political party.

(2) The publication referred to in sub-section (1) shall be in at least two newspapers having nationwide circulation.

(3) A political party which contravenes this section commits an offence.

(4) Notwithstanding the provisions of subsection (3), a political party that fails to comply with this section shall, during the period of non compliance, be disqualified from receiving moneys from the Fund.

Declaration of assets, liabilities and expenditure in relation to elections.

30.(1) A political party shall, within ninety days before a general election, submit to the Registrar a register of its members and a statement of its assets and liabilities in the prescribed form.

(2) Notwithstanding any other penalty provided in this Act or in any other written law, the Registrar shall deregister a political party which—

(a) fails to comply with this section; or

(b) submits a statement which is false in any material particulars.

Audit of political parties accounts.

31. (1) A political party shall keep proper books and records of account of the income, expenditure, assets and liabilities of the political party.

(2) A political party shall, within three months after the end of each financial year submit to the Auditor-General the accounts of the political party in respect of that year.

(3) The accounts of every political party shall be audited annually by the Auditor-General and shall be submitted to the Registrar and tabled in the National Assembly.

(4) The Registrar may at any time request the Auditor-General to carry out an audit of the accounts of a political party.

(5) Any person shall be entitled, to inspect the audited accounts filed by a political party and, upon payment of a

fee prescribed by the Registrar be issued copies of the audited accounts.

PART IV— OFFICE OF THE REGISTRAR OF POLITICAL PARTIES

Establishment of the Office of the Registrar.

32. (1) There is established the office of the Registrar of Political Parties.

(2) The office of Registrar shall be a State office within the meaning of Article 260 of the Constitution.

(3) The Office of Registrar shall be independent and shall not be subject to direction or control of any person or authority.

(4) A person shall not be appointed as Registrar unless that person-

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

(b) has knowledge and experience in finance and management.

Functions of the Registrar.

33. The functions of the Registrar shall be to—

(a) register, regulate, monitor, investigate and supervise political parties to ensure compliance with this Act;

(b) manage the Fund;

(c) ensure publication of audited annual accounts of political parties;

(d) verify and make publicly available the list of all members of political parties;

-
- (e) maintain a register of political parties and the symbols of the political parties;
 - (f) ensure and verify that no person is a member of more than one political party and notify the Commission of his findings;
 - (g) support the establishment and operations of a liaison framework between political parties and the Commission in matters relating to elections;
 - (h) investigate complaints received under this Act; and
 - (i) perform such other functions as may be conferred by this Act or any other written law.

Procedure for appointment.

34. (1) The President shall, within seven days of the commencement of this Act, or of the occurrence of a vacancy in the Office of Registrar by notice in the Gazette, in at least two newspapers of national circulation and in at least two national radio and television stations, declare vacancies in the Office of Registrar and invite applications.

(2) An application under subsection (1) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any –

- (a) qualified person; or
- (b) person, organisation or group of persons proposing the nomination of any qualified person.

(3) The names of all applicants under subsection (2) shall be published in the Gazette.

(4) The Public Service Commission shall, within seven days of the expiry of the period prescribed under subsection (2), convene a Committee comprising of representatives from the –

- (a) Cabinet Office;
- (b) Office of the Prime Minister;

(c) Ministry of Justice, National Cohesion and Constitutional Affairs;

(d) State Law Office;

(e) Ministry of State for Public Service; and

(f) Public Service Commission,

for the purposes of considering the applications and short listing at least three persons qualified for appointment as Registrar.

(5) The Public Service Commission shall within seven days of receipt of applications under subsection (2), consider the applications, interview and shortlist at least three persons qualified for appointment as Registrar and shall forward the names of the selected candidates to the President for nomination.

(6) The President shall, within seven days of receipt of the names forwarded under subsection (5), nominate one person for appointment as Registrar, and shall forward the name of the person nominated to the National Assembly.

(7) The National Assembly shall, within fourteen days of receipt of the name of the nominee under subsection (6) consider the nomination and may approve or reject the nomination.

(8) Where the National Assembly approves the nominee, the Speaker shall within seven days of the approval forward the name of the approved person to the President for appointment.

(9) The President shall, within seven days of the receipt of the name of the approved nominee from the National Assembly, by notice in the Gazette, appoint that person as Registrar.

(10) Where the National Assembly rejects any nomination, the Speaker shall, within three days of the rejection, communicate the decision of the National

Assembly to the President to submit fresh nominations.

(11) Where a nominee is rejected by Parliament under subsection (10), the President shall, within seven days, submit to the National Assembly a fresh nomination from amongst the persons short listed and forwarded by the Public Service Commission under subsection (5).

(12) If Parliament rejects all or any subsequent nominee submitted by the President for approval under subsection (9), the provisions of subsections (5) and (6) shall apply.

(13) Despite the foregoing provisions of this section, the President in consultation with the Prime Minister may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

Establishment of Political Parties Liaison Committee.

35. (1) There is established a Political Parties Liaison Committee.

(2) The Political Parties Liaison Committee shall be established at the national and county levels.

(3) The principal function of the Political Parties Liaison Committee is to provide a platform for dialogue between the Commission and political parties.

(4) The Political Parties Liaison Committee shall perform such other functions as may be prescribed by the Commission.

PART VI—THE POLITICAL PARTIES DISPUTES TRIBUNAL

Establishment of Tribunal.

36. (1) There is established a Tribunal to be known as the Political Parties Disputes Tribunal.

(2) The Tribunal shall consist of the following members, appointed by the Judicial Service Commission—

- (a) a chairperson who shall be a person qualified to be appointed a judge of the High Court; and
 - (b) four other members one of whom shall be an advocate of the High Court of five years standing.
- (3) The Chairperson and members of the Tribunal shall serve on part-time basis.
- (4) The Chairperson and the members shall hold office for a term of six years.
- (5) A person shall not be qualified to be appointed as a member of the Tribunal if that person is a member of the public service or takes an active part in the activities of a political party.
- (6) The quorum of the Tribunal shall be three members one of whom shall be an advocate.

Jurisdiction of Tribunal.

37. (1) The Tribunal shall determine—

- (a) disputes between the members of a political party;
 - (b) disputes between a member of a political party and a political party;
 - (c) disputes between political parties;
 - (d) disputes between an independent candidate and a political party;
 - (e) disputes between coalition partners;
 - (f) appeals from decisions of the Registrar under this Act.
- (2) Notwithstanding subsection (1), the Tribunal shall not hear or determine a dispute under paragraphs (a) to (e) unless the dispute has been heard and determined by the internal political party or coalition dispute resolution mechanism, as the case may be.

Determination of disputes.

38. (1) The Tribunal shall determine any dispute before it expeditiously, but in any case shall determine a dispute within a period of three months from the date the dispute is lodged.

(2) An Appeal shall lie from the decision of the Tribunal to the High Court on points of law and facts.

(3) The decision of the High Court on an appeal made under this section shall be final.

(4) A decision of the Tribunal shall be enforced in the same manner as a decision of a Magistrates Court.

(5) The Tribunal shall regulate its own procedure.

Removal of member of Tribunal.

39. The Judicial Service Commission may remove a member of the Tribunal if the member—

(a) becomes an undischarged bankrupt;

(b) is convicted of a criminal offence;

(c) is incapacitated by reason of prolonged physical or mental illness from performing the duties of the office;

(d) violates the Constitution;

(e) is otherwise unable or unfit to discharge the functions of the office.

Staff of the Tribunal.

40. The Judicial Service Commission shall appoint the Secretary and such other staff of the Tribunal necessary for the proper functioning of the Tribunal.

Expenses of the Tribunal.

41. (1) The remuneration of the staff of the Tribunal and

the expenses of the Tribunal shall be paid out of monies allocated by the National Assembly.

(2) The Chairperson and members of the Tribunal shall be paid such allowances and be reimbursed such expenses as shall be determined by the Judicial Service Commission on the recommendation of the Salaries and Remuneration Commission.

(3) Pending the establishment of the Salaries and Remuneration Commission, the Chairperson and members of the Tribunal shall be paid such allowances and be reimbursed such expenses as shall be determined by the Judicial Service Commission in consultation with Treasury.

PART VI—GENERAL PROVISIONS

Offences.

42. (1) A person who-

(a) fails to furnish particulars or information required to be furnished by a political party or by him under this Act;

(b) makes a statement which he knows to be false or which he has no reason to believe to be true; or

(c) recklessly makes a false statement under this Act,
commits an offence.

(2) Where a political party commits an offence under this Act, every principal officer of that political party shall also be deemed to have committed the offence.

(3) Where an offence under this Act is committed by a body of persons other than a political party—

(a) in the case of a body corporate other than a partnership, every director and the secretary of the body corporate shall also be deemed to have committed the offence; and

(b) in the case of a partnership, every partner shall be deemed to have committed the offence.

(4) A person does not commit an offence under subsection (1) or (2) if that person proves to the satisfaction of the court or tribunal that the act in respect of which such person is charged was committed without his consent or connivance, and that he exercised all diligence to prevent the commission of that act as he ought to have exercised, having regard to all the circumstances.

(5) Where a political party commits an offence under this Act, the Registrar shall have the power to—

(a) issue a warning and require the political party to conform to this Act within a specified period;

(b) suspend the registration of the political party for a period not exceeding twelve months; or

(c) withhold funds to the political party for a period not exceeding twelve months.

General penalty.

43. A person convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings or a term of imprisonment not exceeding two years or both.

Cognizable offence.

44. An offence under this Act shall be cognizable by the police.

Winding up political party.

45. (1) The Registrar shall, upon the deregistration of a political party or its declaration as a prohibited organisation under any law, notify the Attorney-General.

(2) The Attorney-General shall, upon receipt of such notice, make an application for the winding up and dissolution of that political party, and the disposition of the property, assets, rights and liabilities of the political party.

(3) The High Court shall make such orders as appear to it to be just and equitable in the circumstances of the case.

Regulations.

46. (1) The Registrar may make regulations generally for the better carrying out of provisions of this Act.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), the Registrar may make regulations—

(a) prescribing the manner of registration of political parties under this Act;

(b) regulating the activities of political parties that are registered under this Act;

(c) regulating or restricting the use or changes of names of political parties;

(d) prescribing the forms, which may be used for carrying out the provisions of this Act;

(e) for securing the submission to the Registrar of accounts relating to the assets and liabilities, income and expenditure of political parties;

(f) prescribing the fees in respect of anything to be done under this Act;

(g) requiring the submission to the Registrar of annual or other periodical returns relating to the constitution, objects and membership of political parties;

(h) prescribing the management of the Fund and the rate and manner in which funding may be granted to political parties;

(i) prescribing and regulating the forms to be used and the procedure to be followed in the winding-up of any political party; or

(j) prescribing the management and conduct of the affairs

of the Political Parties Liaison Committee;

(k) prescribing anything which is required to be prescribed or is necessary to give effect to this Act.

Repeal of No 10 of 2007.

47. The Political Parties Act, 2007 is repealed.

Transitional provisions.

48. (1) Notwithstanding the provisions of this Act—

(a) a political party existing immediately before the commencement of this Act shall be required to comply with the provisions of this Act, within one hundred and eighty days from the commencement date; but shall be exempt from payment of the initial registration fees;

(b) section 8 shall not apply to a political party existing immediately before the commencement of this Act;

(c) the register of Political Parties maintained under the repealed Political Parties Act shall be deemed to have been prepared under this Act;

(d) the Registrar, members of the Tribunal, holding office immediately before the commencement of this Act, as the case may be, shall continue to hold office until a Registrar and members of the Tribunal are appointed under this Act;

(e) all records, assets and liabilities of the former office of the Registrar and the Tribunal shall be records, assets and liabilities for the respective offices established under this Act;

(f) all proceedings that were pending before the Tribunal under the repealed Act shall continue as proceedings before the Tribunal established under this Act; and

(g) the provisions of section 9(4) shall not apply until after the first elections after the commencement of this Act;

(h) the criteria for distribution of the Fund provided under section 30(3) of the Political parties Act, 2007, shall apply until after the first general elections under the Constitution;

(i) until after the first elections under the Constitution, references in this Act to the expression "Cabinet Secretary" shall be construed to mean "Minister".

(2) For the avoidance of doubt, a political party existing before the commencement of this Act shall not be deemed to have contravened the Constitution.

(3) The provisions of section 29(2) of the Sixth Schedule to the Constitution shall apply with respect to the appointment of the Registrar before the first general election thereunder.

FIRST SCHEDULE

(s.6 (2)(e))

CODE OF CONDUCT FOR POLITICAL PARTIES

1. Political parties shall, pursuant to Articles 91 and 92 of the Constitution and section 8 of this Act, subscribe and observe this code of conduct.
2. This code of conduct shall regulate the behavior of members and office holders of political parties, aspiring candidates, candidates and their supporters, promote good governance and eradicate political malpractices.
3. Political competition and co-operation shall be regulated under this code of conduct on the basis of rule of law and universally accepted best practices.
4. Political Parties shall-
 - (a) promote policy alternatives responding to the interests, the concerns and the needs of the citizens of Kenya;
 - (b) respect and uphold the democratic process as they compete for political power so as to implement their policies;
 - (c) promote consensus building in policy decision making on issues of national importance.
5. Every political party shall –
 - (a) respect the right of all persons to participate in the political process including youth, minorities and marginalized groups;
 - (b) respect and promote gender equity and equality, human rights and fundamental freedoms; and
 - (c) be tolerant and inclusive in all their political activities.
6. Every political party shall-
 - (a) respect, uphold and defend the Constitution of Kenya;
 - (b) respect and uphold this Act and any other written law relating to elections and political parties;
 - (c) respect, uphold and defend their respective party constitutions, party election rules, party nomination rules and any other party rules and regulations developed and agreed

upon in accordance with this code of conduct;

(d) respect, uphold and promote human dignity, equity, social justice, inclusiveness and non-discrimination and protection of the marginalized;

(e) respect, uphold and promote human rights and the rule of law;

(f) promote national patriotism and national unity;

(g) respect, uphold and promote democratic values and principles, performing inclusive participation of party members and accountable representation in governance for the development of the country;

(h) respect, uphold and promote good governance, integrity, respect, tolerance, transparency and accountability;

(i) promote cooperation in the political competition;

(j) promote sharing and devolution of power and resources;

(k) respect, uphold and promote democratic practices through regular free, fair and credible elections within the party and among others have a democratically elected governing body and party organs;

(l) respect, uphold and promote democratic practices through free, fair and credible party nominations;

(m) respect, uphold and promote leadership and integrity as prescribed in the constitution of Kenya; and

(n) perform transparency and accountability in all its legislation and regulations, structures, procedures and performance.

7. A political party shall not-

(a) engage in or encourage violence by its members or supporters;

(b) engage in or encourage any kind of intimidation of opponents, any other person or any other party;

(c) engage in bribery or any other form of corruption;

(d) accept or use illicit or illegal money;

(e) accept or use public resources other than those allocated to

the party through the political party fund;

(f) use state owned or any other specified categories of broadcasting media or any rally, party meeting or event or any other publication or statement to malign, discredit or assassinate the character of another party, its leadership, candidates or member;

(g) obstruct, disrupt, break-up or in any other way whatsoever interfere with a meeting, rally or demonstration of another party or its leadership; and

(h) establish or maintain a para-military force, militia or similar organisation or having any links with such organisations.

8. A political party shall promote inter-party relations by-

(a) ensuring free competition among political parties in respect of different political views and principles;

(b) fostering trust and confidence through mechanisms for co-operation;

(c) managing and mitigating political differences through constructive dialogue enhancing harmony among the parties; and

(d) promoting national reconciliation and building national unity.

SECOND SCHEDULE

(s. 9(1))

CONTENTS OF THE CONSTITUTION OR RULES OF A POLITICAL PARTY

1. The name of the Party and any abbreviation.
2. The logo and symbol of the party and party colours.
3. The objects of the political party.
4. Clearly defined vision, mission, guiding principles and values.
5. The physical and postal address of the registered office.
6. The physical and postal addresses of all county offices.
7. Membership requirements including-

- (a) the eligibility criteria;
- (b) subscription fees for joining the party and for being a member of the party;
- (d) the criteria for resignation from party membership or ceasing to be a member; and
- (e) the rights and duties of members of the party;
- (f) membership details to be contained in the register including identification details, region, ethnicity, gender and county
- (g) the procedure for conducting the annual general meeting or the other general meetings of the political party, including matters which may only be decided upon by a meeting of the party members or, as the case may be, of the county representatives of the party.

8. Governing body requirements-

- (a) the name of the governing body;
- (b) the eligibility criteria for election to the governing body;
- (c) the positions, titles and term of office;
- (d) the rights and duties of members of the governing body;
- (e) the procedure for the election of members of the governing body and other party organs, including committees;
- (f) guidelines for the operations of the governing body and its committees;
- (g) quorum;
- (h) frequency of meetings;
- (i) decision making powers; and
- (j) guidelines for meetings: procedures of convening meetings; procedure of meetings and the official recording of resolutions passed at meetings.

9. A list of party management structure of the political party and systems to be documented at the party offices including-

- (a) the employee details and terms of employment;

(b) the party human resource, financial and audit and administration and management policies and procedures; and

(c) the party sub- branches within each county.

10. The forming of party branches, including in the diaspora, and their roles and responsibilities.

11. The financial structure and system including-

(a) the roles and responsibilities of individual party officials, organs and governing bodies with regard to the finances of the political party;

(b) the periodical audit of accounts of the political party; and

(c) the purposes for which the funds may be used, and in particular the prohibition against the distribution of funds among members.

12. The general organisation structure and management of the party, including the county structures and systems and county governing bodies.

13. The establishment and management of National Assembly, Senate and County Assemblies Caucuses.

14. The disciplinary measures against a member or official of a political party including-

(a) the methods and procedure of disciplinary action;

(b) possible disciplinary actions and reasons;

(c) criteria for various disciplinary actions; and

(d) consequences of each action for the national and county levels.

15. The right to inspect the books or list of members of the political party by a member of the party or a member of the public.

16. The officials of the party authorized to sign on behalf of the party-

(a) documents presented to the registrar including membership register, mergers, coalitions and other reports to the registrar;

(b) the accounts of the party;

- (c) the annual report of the party;
- (d) the financial reports of the party;
- (e) any report or document of the party required under this Act or any other written law;
- (f) the nomination certificates for any nomination or election of a member of the political party;
- (g) a coalition agreement.

17. The policy documents which the party will develop and on which the party will perform including the manner and procedures in which they will be developed, approved and implemented.

18. The policy reporting documents and their regularity which the party will produce including the manner and the procedures in which they will be developed, approved and publicized.

19. Asset management policies and procedures, the custody and investment of the funds and property of the party, and the designation of the persons responsible for them.

20. The party nomination rules and regulations with respect to elections of the party and rules governing the preparation of party lists.

21. Provisions for the amendment of the name, constitution, and rules of the party.

22. Rules for mergers and coalitions including-

(a) the circumstances and criteria for mergers and coalitions; and

(b) the procedure and guidelines for such mergers and coalitions as approved by an annual general meeting of the political party.

23. Provisions on dissolution of the party, including –

(a) provisions on the disposal of the property of the political party; and

(b) the manner of and procedures to be followed for the dissolution of the party or any branch of the party .

24. Internal party dispute resolution mechanism.

25. Democratic practices that cover gender, affirmative action for minorities and marginalized groups.

26. Reflect democratic practices covering human rights and gender.

27. The manner of implementing national values and principles of governance as provided in the Constitution.

THIRD SCHEDULE

(s. 10(4))

BASIC REQUIREMENTS FOR COALITION AGREEMENT

1. A Coalition agreement shall adhere to the rules and procedures of the political parties relating to the formation of coalitions.

2. A coalition agreement shall be sanctioned by the governing body of the political parties entering into the coalition and shall-

(a) be in writing and duly executed by authorized national party officials; and

(b) be commissioned by a Commissioner of Oaths.

3. A Coalition agreement shall state-

(a) the parties which are members of the coalition;

(b) the policies and objectives of the coalition;

(c) the overall structure of the coalition;

(d) the general organisation structure and management of the coalition, including the county structures and systems and county governing bodies;

(e) the criteria or formula for sharing of positions in the coalition structure, roles and responsibilities within the coalition;

(f) the coalition election rules;

(g) the coalition nomination rules;

(h) the decision making structure, rules and procedures;

(i) the policy initiation, policy consultation and policy decision

making structure, rules and procedures;

(j) the Code of Conduct of the coalition including the values and the principles guiding the performance of the individuals and the members parties within the coalition;

(k) the dispute resolution mechanisms and procedures;

(l) the enforcement and sanction mechanisms and procedures for breach of any of the provisions of the agreement;

(m) procedures for appeal to the Tribunal;

(n) the role of the governing body and party organs of the individual member parties of the coalition in the running of the affairs of the coalition including the links and the mechanisms and procedures accordingly;

(o) the formula and the mechanisms for sharing of funds from the Political Party Fund to the respective member of the coalition; and

(p) the grounds upon which the coalition may be dissolved including the mechanisms and procedures to be followed.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to repeal and replace the Political Parties Act, No. 10 of 2007 which provided for the registration, regulation and funding of political parties. The Bill is prepared pursuant to Article 92 of the Constitution and seeks to provide for the registration and regulation of political parties, the roles and functions of political parties, the establishment and management of the Political Parties Fund and other matters necessary for the management of political parties.

PART I contains preliminary provisions.

PART II provides for the formation and registration of political parties. It also provides for the formation of coalitions and mergers by political parties. This part regulates the activities of members of a political party as well as the manner in which they conduct the affairs of the political party. Clause 21 provides for circumstances under which a political party may be de-registered by the Registrar of Political Parties while clause 22 outlines the effect of de-registration on a political party.

PART III provides for the funding of political parties. Clause 23 establishes the Political Parties Fund to be administered by the Registrar of Political Parties. This part regulates the source of

funds of a political party party, the distribution and the purpose for which the Fund may be used. Clause 30 makes it compulsory for a political party to declare its assets and liabilities ninety days before a general election while clause 31 provides for the manner in which a political party shall keep and audit its accounts.

PART IV provides for the establishment of the office of the Registrar, the appointment and the functions of the Registrar. The Office of the Registrar of Political Parties shall be independent and not under the direction of any person or authority. Clause 35 provides for the establishment of the Political Parties Liaison Committee at national and county levels, to provide for a platform for dialogue between political parties and the Independent Electoral and Boundaries Commission.

PART V provides for the establishment of the Political Parties Disputes Tribunal which shall determine disputes relating to a political party.

PART VI makes provision for general matters relating to political parties including penalties for offences committed under the Act, the winding up of political parties, the making of regulations as well as transitional provisions.

The First Schedule provides for the code of conduct of political parties.

The Second Schedule outlines the matters which should be provided for in the constitution or rules of a political party.

The Third Schedule provides for the basic requirements for a coalition agreement.

The enactment of this Bill will occasion additional expenditure of public funds which will be provided for through the estimates.

