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31/03/22

REPUBLIC OF KENYA



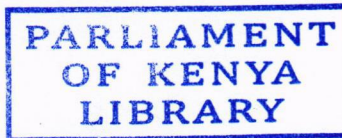
TWELFTH PARLIAMENT (SIXTH SESSION)

PAPERS LAID THE SENATE	
DATE	05/04/2022
TABLED BY	DLM
COMMITTEE	—
CLERK AT THE TABLE	MR. AMOLD

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND  
HUMAN RIGHTS

*Rt. Hon. Speaker*  
*You may approve*  
*for tabling.*  
*31/03/22*  
*Approved*  
*31/03/2022*

REPORT ON THE ELECTION CAMPAIGN FINANCING (AMENDMENT)  
BILL (SENATE BILLS NO. 51 OF 2021)



Clerk's Chambers,  
First Floor,  
Parliament Buildings,  
**NAIROBI.**

*DC-EG*  
*Recommended & Forwarded*  
*31/03/22* March, 2022

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**FOREWORD BY THE CHAIRPERSON**

1. The Election Campaign Financing (Amendment) Bill (Senate Bills No 51 of 2021) seeks to amend the Election Campaign Financing Act, 2013 to give full effect to Article 88(4) (i) of the Constitution which bestows the Independent Electoral and Boundaries Commission (IEBC) with the responsibility to regulate the amount of money that may be spent by or on behalf of a candidate or party in respect of any election.
2. The Standing Committee on Justice, Legal Affairs and Human Rights considered the Bill at length. A call for submission of memoranda was placed in two newspapers with national circulation on Friday 5<sup>th</sup> November, 2021. The advertisement was also posted on the Parliament website and social media platforms. However, the Committee did not receive submissions from the public and stakeholders.
3. Based on its deliberations, the Committee has made various observations and recommendations on the Bill as set out in Chapter Three of this Report. Additionally, the Committee will present Committee stage amendments with a view of strengthening the provisions of the Bill for consideration by this House.
4. The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in undertaking this important assignment.
5. It is now my pleasant duty, pursuant to standing order 143 (1), to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Election Campaign Financing (Amendment) Bill (Senate Bills No. 51 of 2021).

Signed.....

Date *29<sup>th</sup> March 2022*.....

**SEN. ERICK OKONG'O MOGENI, SC, MP,  
CHAIRPERSON,  
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN  
RIGHTS**

## PREFACE

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the standing 218 of and the Second Schedule to the Senate Standing Orders, and is mandated to: -

*'consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.'*

The Committee is comprised of –






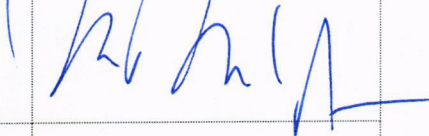

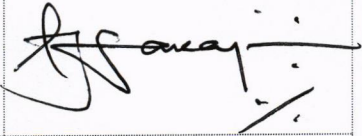

- 1) Sen. Erick Okong'o Mogeni, SC, MP - Chairperson
- 2) Sen. (Canon) Naomi Jillo Waqo, MP - Vice Chairperson
- 3) Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP
- 4) Sen. James Orengo, EGH, SC, MP
- 5) Sen. Fatuma Dullo, CBS, MP
- 6) Sen. Mutula Kilonzo Junior, CBS, MP
- 7) Sen. (Dr) Irungu Kang'ata, CBS, MP
- 8) Sen. Johnson Sakaja, CBS, MP
- 9) Sen. Isaac Ngugi Githua, MP

The Minutes of the Sittings of the Committee in considering the Election Campaign Financing (Amendment) Bill (Senate Bills No. 51 of 2021) are attached to this Report collectively as *Annex 1*.



**ADOPTION OF THE REPORT ON THE ELECTION CAMPAIGN FINANCING  
(AMENDMENT) BILL (SENATE BILLS NO. 51 OF 2021), 2021.**

**We, the undersigned Members of the Senate Standing Committee on Justice, Legal Affairs and Human Rights, do hereby append our signatures to adopt this Report –**

Sen. Erick Okong’o Mogeni, SC, MP	-Chairperson	
Sen. (Canon) Naomi Jillo Waqo, MP	-Vice-Chairperson	
Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP	-Member	
Sen. James Orengo, EGH, SC, MP	-Member	
Sen. Fatuma Dullo, CBS, MP	-Member	
Sen. Mutula Kilonzo Junior, CBS, MP	-Member	
Sen. (Dr) Irungu Kang’ata, CBS, MP	-Member	
Sen. Johnson Sakaja, CBS, MP	-Member	
Sen. Isaac Ngugi Githua, MP	-Member	

## CHAPTER ONE: INTRODUCTION

### A. Background on the Elections Campaign Financing (Amendment) Bill, 2021

1. The Election Campaign Financing (Amendment) Bill (Senate Bills No. 51 of 2021) is sponsored by Sen. Ledama Olekina, MP. A copy of the Bill is attached to this Report as *Annex 2*.
2. The Bill was published on 3<sup>rd</sup> September, 2021 and was read a First Time in the Senate on Tuesday 2<sup>nd</sup> November 2021. Following the First Reading in the Senate, it stood committed, pursuant to Standing Order 140(1), to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.
3. The Standing Committee on Justice, Legal Affairs and Human Rights considered the Bill at length. A call for submission of written memoranda was placed in two newspapers of national circulation on Friday, 5<sup>th</sup> November, 2021 and is attached in this report as *Annex 3*. The advertisement was also posted on the Parliament website and social media platforms. However, the Committee did not receive submissions from the public and stakeholders.
4. Based on its deliberations, the Committee has made various observations and recommendations as set out at Chapter Three of this Report. Additionally, the Committee has presented Committee Stage amendments for consideration by this House with a view of strengthening the provisions of the Bill (*Annex 4*).

### B. Objective of the Bill

5. The Election Campaign Financing (Amendment) Bill, 2021 Bill seeks to amend the Election Campaign Financing Act, 2013 to give full effect to article 88(4) (i) of the Constitution which bestows the Independent Electoral and Boundaries Commission (IEBC) with the responsibility to regulate the amount of money that may be spent by or on behalf of a candidate or party in respect of any election.

### C. Overview of the Bill

6. The Bill proposes the following –



- (i) Clause 2 of the Bill proposes to amend section 2 of the Act by deleting the definition of the terms - expenditure account, expenditure committee, and expenditure report.
- (ii) Clause 3 of the Bill proposes to insert a new section 2A to provide for the objects of the Act. These objects are to make provisions for IEBC to regulate the amount of money that may be spent during election or a referendum, promote transparency and accountability in election campaign financing, and establish a structure for political parties and candidates to report their campaign financing.
- (iii) Clause 4 of the Bill proposes to replace the existing heading of Part III with a new heading 'Regulation of Campaign Expenditure and Restriction on Donations'. The proposed new heading merges Parts III and IV which provides for 'Regulation of Expenditure' and 'Contributions and Donations', respectively.
- (iv) Clause 5 of the Bill proposes to delete section 5 of the Bill which empowers IEBC to make election campaign financing rules and replace it with a new section providing for restriction on incurring campaign expenditure by a party. Under the new clause only a party treasurer, deputy party treasurer, or a person authorized by the party treasurer or deputy party treasurer can authorize campaign expenditure on behalf of a party.
- (v) Clauses 6 of the Bill proposes to amend sections 6 of the Act to remove provisions providing for campaign financing committee and campaign financing account. It amends subsection (1)(c) by replacing 'political party campaign financing committee' with 'an agent of a political party', deleting subsection (1)(d), deleting subsections (2), (3), (6) and (7).
- (vi) Clauses 7, 8, and 9 of the Bill proposes to repeal sections 7, 8, and 9 of the Act which provide for the requirement to constitute party expenditure committee, independent candidate expenditure committee, and referendum expenditure committee, respectively. Clause 10 on its part proposes to repeal section 10 of the Act which provides for submission of expenditure reports to IEBC within three months after conclusion of an election or a referendum.
- (vii) Clause 11 of the Bill proposes to repeal the heading of Part IV. The Bill proposes to merge part III and Part IV.

- (viii) Clause 12 of the Bill proposes to delete section 11 of the Act which provides for sources of campaign finances and substitute with a new section which sets out the type of contributions and donations a party can accept. These are donations from a registered voter, a body corporate carrying on business in Kenya, unincorporated body carrying on business mainly in Kenya with a main office in Kenya, and contributions from harambees.
- (ix) Clause 13 of the Bill proposes to revise section 12 of the Act which empowers IEBC to prescribe limits on campaign finances at least twelve months before a general election. The new section removes time limits and the requirement that no contribution from a single source shall exceed twenty percent of the total contributions received.
- (x) Clause 14 of the Bill proposes to insert a new subsection (4A) in section 14, which sets out prohibition contributions, to prohibit receipt of donations or contributions from foreign government.
- (xi) Clause 15 of the Bill proposes to amend section 15 of the Act by deleting subsection (1) which require contributions to be deposited in an expenditure account, deleting subsection (2)(c) which require an organisation which intends to campaign in support of a candidate, a political party or a referendum committee to open a campaign financing account into which the contributions shall be deposited, and insert a new subsection (2A) requiring an organisation which intends to campaign in support of a candidate, a political party or a referendum committee to specify the authorised signatories of the campaign financing account opened by such an organisation.
- (xii) Clause 16 of the Bill proposes to amend section 17 of the Act which provides for surplus of campaign funds by deleting expenditure committee in subsection (1)(a), and requiring surplus campaign money to be channeled to a political party through that party's organ authorized to receive funds.
- (xiii) Clause 17 of the Bill revises section 18(1) of the Act which empowers IEBC to set spending limits by removing the requirement that such limits be set at least twelve months before an election and bringing on board a by-election.



(xiv) Clause 18 of the Bill proposes to repeal section 19 of the Act which provides for authorized expenditure of campaign funds. While clause 19 of the Bill proposes to repeal section 20 of the Act which provides for registration and dissolution of expenditure committees.

(xv) Clause 20 of the Bill proposes to delete section 27 of the Act which provides for auditing of accounts relating to campaign expenses by the Auditor-General and substitute with a new section which provide for keeping of records and self-auditing of such accounts, and making returns to IEBC.

(xvi) Clause 21 of the Bill proposes to insert a new section 27A and 27B which provides for preparing of donation reports on quarterly basis and submitting them to the IEBC. However, during a general election, such reports shall be prepared on a monthly basis.

#### **D. Consequences of the Bill**

7. The Election Campaign Financing Act was enacted in the year 2013 with a view to provide for the regulation, management, expenditure and accountability of election campaign funds during election and referendum campaigns. However, the law has never been implemented.
8. Regulation of campaign financing plays a very important role in an electoral process. The proposed amendments seek to strengthen the regulation of campaign financing in order to ensure free and fair elections in the country by, among others, -
  - a) removing the requirement for independent candidates, political parties, and referendum committees to establish campaign expenditure committees to manage campaign funds on their behalf; and
  - b) removing the requirement for the Auditor-General to audit campaign financing and require candidates, political parties and referendum committees to receive, account for, and report to IEBC on compliance with the set limits.

## CHAPTER TWO: PUBLIC PARTICIPATION

### A. Invitation and consideration of stakeholder submissions on the Bill

9. The Standing Committee on Justice, Legal Affairs and Human Rights, pursuant to Article 118 of the Constitution and Standing Order 140, invited submissions from members of the public on the Bill via an advertisement placed in two newspapers of national circulation on Friday 5<sup>th</sup> November, 2021 (*Annex 3*). The advertisement was also posted on the Parliament website and social media platforms.
10. However, the advertisement did not receive submissions and therefore the Committee proceeded to consider the Bill without the input from members of the public and stakeholders.



## CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

### A. Committee Observations

11. The Election Campaign Financing Act was enacted in the year 2013 with a view to provide for the regulation, management, expenditure and accountability of election campaign funds during election and referendum campaigns. However, the law has never been implemented.
  
12. Regulation of campaign financing plays a very important role in an electoral process. In the Kriegler Report it was noted that “*unregulated political finance should not be allowed in a young democracy, where it can easily have adverse impacts on an election*”. This was prompted by observations on the inadequacy of regulation of campaign financing in the 2007 General Elections. Some of the malfeasances noted in the Report included-
  - (a) *the use, for campaign or party objectives, of money that a political office holder has received from a corrupt transaction;*
  - (b) *unauthorised use of state resources by parties for political purposes which are a common feature of ruling parties’ campaigns in many democratic countries, i.e. the resources available to office holders, national and local, are blatantly used for electioneering, use of state-owned vehicles to ferry electors to governing party rallies and party supporters employed on the public payroll and expected to spend their time on political campaigning;*
  - (c) *acceptance of money in return for an unauthorised favour or promise of a favour in the event of election to an office (quid pro quo donations);*
  - (d) *contributions from disreputable sources; and*
  - (e) *spending of money on illegal purposes such as vote-buying or unfair purposes such as treating voters (especially ordinary voters) by giving food, drinks and/or accommodation.*
  
13. The proposed amendments seek to strengthen the regulation of campaign financing in order to ensure free and fair elections in the country.
  
14. Section 29 of the Election Campaign Financing Act empowers the Independent Electoral and Boundaries Commission to make regulations for implementation of the Act. pursuant to section 29(1), regulations made by the Independent Electoral and Boundaries Commission are required to be laid before the National Assembly for approval before they are published in the Gazette.

15. The Committee observed that regulation of campaign financing encompasses elections at both national and county levels of government. Therefore, regulations made for the better implementation of the Election Campaign Financing Act is a matter that concerns counties which ought to be laid before both the National Assembly and the Senate for approval.

**B. Committee Recommendations**

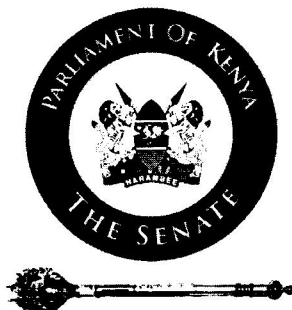
16. Arising from the above observations, the Committee recommends that section 29 of the Election Campaign Financing Act be amended to provide that regulations made under the Act shall be approved by both the National Assembly and the Senate.

17. The text of the proposed amendment is set out at *Annex 4* of this Report.



## ANNEXES

- Annex 1:** Minutes of the Committee in considering the Bill.
- Annex 2:** The Election Campaign Financing (Amendment) Bill (Senate Bills No 51 of 2021)
- Annex 3:** Advertisement for submission of memoranda placed in the Daily Nation and Standard newspapers on Friday, 5<sup>th</sup> November, 2021
- Annex 4:** Committee stage amendments to the Election Campaign Financing (Amendment) Bill (Senate Bills No 51 of 2021)



**TWELFTH PARLIAMENT | SIXTH SESSION**

**MINUTES OF THE TWENTY THIRD SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON TUESDAY, 8<sup>TH</sup> MARCH, 2022, AT 8:20AM.**

**PRESENT**

- |  |                            |
|--|----------------------------|
| 1. Sen. (Canon) Naomi Jillo Waqo, MP   | - Vice Chairperson         |
| 2. Sen. Mutula Kilonzo Junior, CBS, MP | - Member                   |
| 3. Sen. (Dr) Irungu Kang'ata, CBS, MP  | - Member                   |
| 4. Sen. Johnson Sakaja, CBS, MP        | - Member <b>(Chairing)</b> |
| 5. Sen. Isaac Ngugi Githua, MP         | - Member                   |

**ABSENT WITH APOLOGY**

- |  |               |
|--|---------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP         | - Chairperson |
| 2. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member      |
| 3. Sen. James Orengo, EGH, SC, MP            | - Member      |
| 4. Sen. Fatuma Dullo, CBS, MP                | - Member      |

**SECRETARIAT**

- |                         |   |
|-------------------------|---|
| 1. Mr. Charles Munyua   | - Clerk Assistant                           |
| 2. Mr. Said Osman       | - Research Officer                          |
| 3. Mr. Moses Kenyanchui | - Legal Counsel                             |
| 4. Mr. Mitchell Otoro   | - Legal Counsel                             |
| 5. Ms. Lucianne Limo    | - Media Relations Officer                   |
| 6. Ms. Purity Orutwa    | - Clerk Assistant ( <i>Taking minutes</i> ) |
| 7. Mr. Daniel Ominde    | - Pupil                                     |
| 8. Ms. Sandra Alusa     | - Intern                                    |
| 9. Mr. Titus Michubu    | - Pupil                                     |

**MIN. NO. 111/2022**

**PRAYER**

The sitting commenced with a word of prayer by Sen. Johnson Sakaja, CBS, MP.

**MIN. NO. 112/2022**

**ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Isaac Ngugi Githua, MP.

**MIN. NO. 113/2022      CONSIDERATION OF LEGISLATIVE BUSINESS  
BEFORE THE COMMITTEE AND PROPOSED WORK  
PLAN FOR MARCH, 2022**

The Committee was taken through and noted the status of Bills, Statements and Petitions before the Committee.

To enable the Committee to make progress on the consideration of the business pending before it, the Committee resolved to undertake a working retreat, in Mombasa County, on 14<sup>th</sup> – 19<sup>th</sup> March, 2022.

**MIN. NO. 114/2022      THE LIFESTYLE AUDIT BILL (SENATE BILL NO.36 OF  
2021)**

The Committee resumed consideration of the Lifestyle Audit Bill (Senate Bill No. 36 of 2021). It was noted that the Bill had since been considered at Committee of the Whole stage, where no amendments were moved, and was scheduled for Division at Committee and Third Reading stage.

Members were informed that, in the event the Committee came up with proposed amendments on time, a request could be made to have the Bill recommitted to Committee stage where the Committee amendments on the Bill would be moved.

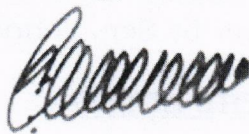
**MIN. NO. 115/2022      THE ELECTION CAMPAIGN FINANCING  
(AMENDMENT) BILL (SENATE BILLS NO. 51 OF 2021)**

The Committee commenced consideration of the Bill and was informed that no submissions were received then further proceeded to discuss the Bill and the proposed amendments thereon.

The Committee was taken through the draft report of the Bill and adopted it, having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. (Dr) Irungu Kang'ata, CBS, MP

**MIN. NO. 116/2022      ADJOURNMENT**

There being no other business, the sitting was adjourned at 8:55am. The next sitting will be held on Wednesday, 9<sup>th</sup> March, 2022 at 8.00 am.



SIGNED: .....  
(CHAIRPERSON)

DATE: ..... 30/03/2022 .....

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 170 (Senate Bills No. 51)*

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REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**SENATE BILLS, 2021**

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**NAIROBI, 3rd September, 2021**

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CONTENT

Bill for Introduction into the Senate—

PAGE

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**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—

**1.** This Act may be cited as the Election Campaign Financing (Amendment) Act, 2021.

**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 following terms—

- (a) expenditure account;
- (b) expenditure committee; and
- (c) expenditure report.

**3.** The principal Act is amended by inserting the following new section immediately after section 2—

Objects.

**2A.** The object of this Act is to—

- (a) make provision for the Commission to regulate the amount of money that may be spent by or on behalf of—
  - (i) a candidate or political party in respect of any election; or
  - (ii) a referendum committee in respect of a referendum.
- (b) promote transparency and accountability in election campaign financing; and
- (c) establish a structure for political parties and candidates to report their campaign financing.

Short title.

Amendment to  
section 2 of  
No. 42 of  
2013.

4. The principal Act is amended by deleting the title to Part III and substituting therefor the following title—

Amendment of title to Part III of No. 42 of 2013.

**PART III—REGULATION OF CAMPAIGN  
EXPENDITURE AND RESTRICTION OF  
DONATIONS**

5. The principal Act is amended by deleting section 5 and substituting therefor the following new section—

Amendment to section 5 of No. 42 of 2013.

Restriction on incurring campaign expenditure.

5. (1) No campaign expenditure shall be incurred by or on behalf of a political party unless it is incurred with the authority of—

- (a) the treasurer of the party;
- (b) a deputy treasure of the party; or
- (c) a person authorised in writing by the treasurer or a deputy treasurer.

(2) A person who, without reasonable excuse, incurs any expenses in contravention of subsection (1), commits an offence.

6. Section 6 of the principal Act is amended—

Amendment to section 6 of No. 42 of 2013.

- (a) in subsection (1) by—
  - (i) deleting paragraph (c) and substituting therefor the following new paragraph—
    - (c) an agent of a political party; and
  - (ii) deleting paragraph (d);
- (b) by deleting subsection (2);
- (c) by deleting subsection (3);
- (d) in subsection (4) by deleting the words “a political party or a referendum campgaing financing committee” appearing immediately after the words “A candidate” and substituting therefor the words “or a political party”;

(e) by deleting subsection (6); and

(f) by deleting subsection (7).

7. The principal Act is amended by deleting section 7. Deletion of section 7 of No. 42 of 2013.
8. The principal Act is amended by deleting section 8. Deletion of section 8 of No. 42 of 2013.
9. The principal Act is amended by deleting section 9. Deletion of section 9 of No. 42 of 2013.
10. The principal Act is amended by deleting section 10. Deletion of section 10 of No. 42 of 2013.
11. The principal Act is amended by deleting the heading to Part IV of the Act. Amendment to Part IV of No. 42 of 2013.
12. The principal Act is amended by deleting section 1 and substituting therefor the following new section — Amendment to Section 11 of No. 42 of 2013.

Restrictions to contributions and donations.

**11.** (1) A political party shall not accept a donation if—

- (a) the donation is not made by permissible donor; or
- (b) the party is unable to ascertain the identity of the donor.

(2) For the purposes of subsection (1), the following are permissible donors—

- (a) an individual registered as a voter;
- (b) a registered body corporate carrying on business within Kenya;
- (c) an unincorporated body of two or more persons which carries on businesses or other activities wholly or mainly in the Kenya and has its main office in Kenya; and

(d) contributions from a harambee.

13. The principal Act is amended by deleting section 12 and substituting therefor the following new section— Amendment to section 12 of No. 42 of 2013.

Limits to  
contributions and  
donations.

**12 (1)** The Commission shall prescribe and, from time to time, revise a code of practice on limits regarding —

- (a) total contributions;
- (b) contributions from a single source;
- (c) paid up media coverage; or
- (d) loan forming part of contributions which a candidate or a political party may receive during the expenditure period.

(2) The Commission shall prescribe and, from time to time, revise the maximum contribution donated or received by a candidate or a political party from a single source.

**14.** Section 14 of the principal Act is amended by inserting the following subsection immediately after subsection (4) —

Amendment to  
Section 14 of No.  
42 of 2013.

(4A) A candidate, a political party or a referendum committee shall not receive any donation made directly from a foreign government.

**15.** Section 15 of the principal Act is amended —

Amendment to  
section 15 of No.  
42 of 2013.

- (a) by deleting subsection (1);
- (b) in subsection (2) by deleting paragraph (c); and
- (c) by inserting the following new subsection immediately after subsection (2) —

(2A) The request under subsection (2)(a) shall specify the authorised signatories of the campaign financing account opened by that organisation who shall be authorised persons under this Act.

**16.** Section 17 of the principal Act is amended in subsection (1)—

Amendment to  
Section 17 of No.  
42 of 2013.

- (a) by deleting the words “held in expenditure committee” appearing immediately after the words “surplus campaign funds” in paragraph (a); and
- (b) by deleting subparagraph (b)(i) and substituting therefor the following new subparagraph—



- (i) The political party organ authorised to receive funds on behalf of the political party in accordance with the Political Parties Act and the party constitution.

**17.** Section 18 of the Principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment to section 18 of No. 42 of 2013.

(1) The Commission shall prescribe and, from time to time, revise a code of practice on campaign spending limits in relation to a candidate, political party and referendum campaign committee during —

- (a) an general election;
- (b) a by election; and
- (c) a referendum.

**18.** The principal Act is amended by deleting section 19.

Deletion of section 19 of No. 42 of 2013.

**19.** The principal Act is amended by deleting section 25.

Deletion of section 25 of No. 42 of 2013.

**20.** The principal Act is amended by deleting section 27 and substituting therefor the following new section—

Amendment to Section 27 of No. 42 of 2013.

Accounts and audit

**27.** (1) A candidate or a political party or a referendum committee shall be responsible for -

- (a) keeping records of all income and expenditure relating to electoral campaigns; and
- (b) auditing its accounts and make returns to the Commission.

(2) The Commission may conduct an independent audit of the accounts of a candidate, a political party or a referendum committee if it deems it necessary.

**21.** The principal Act is amended by inserting the following new sections immediately after section 27—

Donation reports.

**27A** (1) The treasurer of a political party shall prepare and submit to the Commission a report with respect of each of the following periods—

- (a) January to March;
- (b) April to June;
- (c) July to September; and
- (d) October to December.

(2) Despite subsection (1) during a general election period, every political party participating in an election shall prepare a report under this subsection in respect of every thirty days commencing from the date of publication of a notice by the Commission for the general election and ending on the date of gazettelement of the election results.

(3) A donation report shall contain the following particulars in respect of all reportable donations—

- (a) full value of the donation;
- (b) full name and address of individual donor;
- (c) nature of organisation if it is not an individual;
- (d) registered name of corporate donor;
- (e) location and address of head office; and
- (f) any other required particular as may be stipulated by the Commission.

(4) A political party that does not intend to have candidates for a particular general election need not make reports under this section.

Declaration by  
treasurer in donation  
report.

**27B.** Every donation report shall be submitted to the Commission and shall be accompanied by a declaration made by the

treasurer stating that, to the best of the treasurer's knowledge and belief that—

- (a) all donations recorded in the report as having been accepted by the party from permissible donors; and
- (b) during the reporting period—
  - (i) no other donations required to be recorded in the report have been accepted by the party; and
  - (ii) no donation from any person or body other than a permissible donor has been accepted by the party.

**MEMORANDUM OF OBJECTS AND REASONS****Statement of Objects**

The principal object of this Bill is to amend the elections Campaign Financing Act, 2013 to give full effect to article 88(4) (i) of the Constitution which bestows the Independent Electoral and Boundaries Commission with the responsibility to regulate the amount of money that may be spent by or on behalf of a candidate or party in respect of any election.

The proposed amendments are intended to—

- (a) regulate the amount of money that are spent during election campaigns
- (b) remove the requirement for independent candidates, political parties, and referendum committees to establish campaign expenditure committees to manage campaign funds on their behalf.
- (c) compel the Commission to establish donation and spending limits for election campaigns.
- (d) remove the requirement for the Auditor General to audit campaign financing and require candidates, political parties and referendum committees to receive, account for, and report to the Commission on compliance with the set limits.

This Bill deletes provisions establishing party expenditure committees, independent candidate expenditure committees and referendum expenditure committees. It provides for the power of the Commission to set donation limits. It removes the requirement of the Auditor-General to audit campaign funds and provides for candidates and political parties to account for and report to the Commission for their compliance. It also provides for making quarterly reports by political parties throughout the year and monthly reports during election period. The reports shall be accompanied by a statutory declaration by the treasurer.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedom**

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

**Statement on how the Bill concerns county governments**

The Bill concerns county governments as it contains provisions relating to election financing by candidates running for office at both the

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national and county levels. The Bill is therefore a special Bill concerning county governments in terms of Article 110 (2) (a) (i) of the Constitution.

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

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

Dated the 5th July, 2021.

LEDAMA OLE KINA,  
*Senator.*



*Sections proposed to be amended—*

## **2. Interpretation**

(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.

### **PART III – REGULATION OF EXPENDITURE**

#### **5. Election campaign financing rules**

The Commission shall make rules to regulate election campaign financing—

- (a) in the case of a general election, at least twelve months before the election; and
- (b) in the case of a by-election

#### **6. Authorised persons**

(1) For purposes of regulating election campaign financing during the expenditure period, the authorised persons shall be —

- (a) a candidate;
- (b) an agent of the candidate;
- (c) political party campaign financing committee; and
- (d) referendum campaign financing committee.

(2) The political party campaign financing committee referred to in sub-section (1)(c) shall consist of persons nominated by the governing body of that political party, three of whom shall be signatories to the party campaign financing account.

(3) The referendum campaign financing committee referred to in sub-section (1) (d) shall consist of persons nominated by the referendum committee established under section 51(1) of the Elections Act, three of whom shall be signatories to the referendum campaign financing account.

(4) A candidate, a political party or a referendum campaign financing committee shall, as soon as reasonable, notify the Commission of any changes in the authorised persons, the membership of the committee or in the details of such persons or such members.

(5) The authorised persons referred to in subsection (1) shall be registered by the Commission —

- (a) for a general election, at least two months before the general election; or
- (b) for a by-election, within seven days after the notice of a vacancy issued by the relevant Speaker.
- (c) for a referendum, within fourteen days after the publication of the referendum question by the Commission.

(6) Each of the authorised persons referred to in subsection (1) shall open a campaign financing account and shall submit details of that account to the Commission at the time of registration under subsection (2).

(7) There shall be deposited into the campaign financing account referred to in subsection (3) —

- (a) contributions by a candidate;
- (b) contributions by a political party;
- (c) contributions received from any other lawful source.

## **7. Party expenditure committee**

(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;
- (f) monitor the campaign expenditure of the party candidate and ensure that the party candidate complies with party nomination and campaign expenditure rules;
- (g) 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
- (h) 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.

**8. Independent candidate expenditure committee**

(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.

**9. Referendum expenditure committee**

(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.

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

#### **10. Submission of expenditure reports**

(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.

#### **PART IV – CONTRIBUTIONS AND DONATIONS**

##### **11. Sources of campaign finances**

The sources of funds for purposes of financing party nomination, election or referendum campaign are—

- (a) contributions received from any person, political party or any other lawful source;
- (b) contributions from a lawful source, not being directly from a foreign government; and
- (c) contributions from a harambee.

##### **12. Limits to contributions**

(1) The Commission shall, at least twelve months before a general election, by notice in the Gazette, prescribing limits on—

- (a) total contributions;
- (b) contributions from a single source;
- (c) paid-up media coverage;
- (d) loan forming part of a contribution, which a candidate, political party or referendum committee may receive during the expenditure period.

(2) Except where contribution is from a candidate to that candidate's campaign financing account, or from a political party or a referendum committee to that political party's or referendum committee's campaign financing account, no contribution from a single source shall exceed twenty percent of the total contributions received by that candidate, political party or referendum committee.

(3) The Commission shall prescribe the limit beyond which contributions received by a candidate, a political party or a referendum committee from a single source may be disclosed.

##### **14. Prohibition on contributions**

(1) A candidate, a political party or a referendum committee shall not receive any contribution or donation, in cash or in kind from the State, a State institution or agency or any other public resource.

(2) A State, a state institution or a public officer shall not use any public resource to—

- (a) support or to campaign in support of a candidate, a political party or a referendum committee; or
- (b) support any organisation that is supporting or campaigning for a candidate, political party or a referendum committee.

(3) A candidate who or a political party or a referendum committee which receives any campaign support referred to in subsection (1) shall, within forty eight hours of the receipt, report such receipt and submit the contribution to the Commission.

(4) A candidate who or a political party or a referendum committee which does not report receipt of support in accordance with subsection (2) shall be disqualified from contesting in that election or in the referendum, campaigning as the case may be.

(5) Public resources referred to under subsection (1) shall not include public funding provided for the Political Party Fund established under the Political Parties Act.

(6) A candidate who or a political party or a referendum committee which contravenes subsection (1) commits an offence.

### **15. Support by an organisation**

(1) Any person who, or an organisation which contributes to a candidate, a political party or a referendum committee shall channel such contributions through the expenditure accounts specified under sections 7, 8, 9 and 10.

(2) An organisation which intends to campaign in support of a candidate, a political party or a referendum committee shall—

- (a) in writing, seek consent to campaign from the candidate, the political party or the referendum committee as the case may be the organisation intends to campaign in support of;
- (b) register with the Commission; and
- (c) open a campaign financing account into which the contributions shall be deposited, in the case of—
  - (i) a candidate or a political party committee, at least eight months before the polling day; or
  - (ii) a referendum committee, at the time of registration of that committee.

(3) The money spent by an organisation to campaign in support of a candidate, a political party or a referendum committee shall be within the spending limits specified under this Act.

(4) An organisation which campaigns in support of a candidate or a political party contesting in an election or a referendum committee shall, within one month after the election, submit its final report to the respective authorised person.

### **17. Surplus campaign funds**

- (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.

### **18. Spending limits**

(1) The Commission shall, at least twelve months before an election, by notice in the Gazette, prescribe the spending limits including the total amount that a candidate, political party or referendum committee may spend during an expenditure period, including the limit for media coverage.

(2) Except for contribution by a candidate into his or her own campaign financing account, any contribution from a person, organisation or any other lawful source contributed to a candidate, a political party or a referendum committee campaign financing account shall not exceed the limit of the total contribution prescribed under subsection (1).

(3) The Commission may, by notice in the Gazette, vary the spending limits prescribed under subsection (1).

(4) The Commission shall, in prescribing spending limits under subsection (1), take into consideration—

- (a) geographical features and urban centres;
- (b) the type of election;
- (c) the population in an electoral area;
- (d) the number of party members in an electoral area;
- (e) the communication infrastructure in an electoral area.

(5) Subsection (4)(d) shall only apply with respect to party nomination expenditure of a party candidate.

(6) Where a candidate, political party or a referendum committee exceeds the spending limits prescribed under this section due to unforeseeable and extraneous circumstances, the candidate, political party or referendum committee shall file a report with the Commission specifying the reasons for exceeding the limit, with such time as the Commission may prescribe and the Commission shall determine if such spending was justifiable.

(7) A candidate who, or a political party or referendum committee which, exceeds the prescribed spending limits and fails to report this fact to the Commission commits an offence.

#### **19. Authorised expenditures**

The Commission shall, at least twelve months before an election, by notice in the Gazette, prescribe the nature of authorised items or activities for which campaign expenses may be incurred, including the cost of—

- (a) venue where campaign activities may be undertaken;
- (b) publicity material for campaigns;
- (c) advertising for the campaigns;
- (d) campaign personnel;
- (e) transportation in respect of campaign activities; and
- (f) any other justifiable expenses.

#### **25. Registration and dissolution of expenditure committees**

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



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

**27. Audit of accounts**

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.

# REPUBLIC OF KENYA



## TWELFTH PARLIAMENT | FIFTH SESSION THE SENATE

### INVITATION FOR SUBMISSION OF MEMORANDA

At the sittings of the Senate held on Tuesday, 2<sup>nd</sup> November, 2021 and Wednesday, 3<sup>rd</sup> November, 2021, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 140 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The Memoranda may be sent **by email** on the address: [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke) and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Friday, 19<sup>th</sup> November, 2021 at 5.00 p.m.**

	<b>Bill</b>	<b>Committee Referred To</b>	<b>Email Address</b>
a)	The Election Campaign Financing (Amendment) Bill (Senate Bills No. 51 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	<a href="mailto:senatejlahrc@parliament.go.ke">senatejlahrc@parliament.go.ke</a>
b)	The Kenya Medical Supplies Authority (Amendment) Bill (Senate Bills No. 53 of 2021)	Standing Committee on Health	<a href="mailto:senatehealth@gmail.com">senatehealth@gmail.com</a>
c)	The Irrigation (Amendment) Bill (National Assembly Bills No. 12 of 2021)	Standing Committee on Agriculture, Livestock and Fisheries	<a href="mailto:senatescalf@parliament.go.ke">senatescalf@parliament.go.ke</a>

The Bills may be found on the Parliament website at <http://www.parliament.go.ke/the-senate/senate-bills>.

**J.M. NYEGENYE, CBS,  
CLERK OF THE SENATE.**

7<sup>th</sup> March, 2022

The Clerk of the Senate  
Parliament Buildings  
NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE ELECTION CAMPAIGN  
FINANCING (AMENDMENT) BILL, SENATE BILLS NO. 51 OF 2021**

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NOTICE is given that Sen. Erick Okong’o Mogeni, the Chairperson to the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Election Campaign Financing (Amendment) Bill, Senate Bills No. 51 of 2021, at the Committee Stage —

**CLAUSE 6**

THAT clause 6 of the Bill be amended by —

(a) deleting paragraph (a)(ii) and substituting therefor the following new paragraph —

(i) deleting paragraph (d) and substituting therefor the following new paragraph

—

(b) an agent of a referendum committee.

(b) by deleting paragraph (d) and substituting therefor the following new paragraph

—

(d) deleting subsection (4) and substituting therefor the following new subsection

-

(4) A candidate, a political party or a referendum committee shall, within seven days, notify the Commission of any changes in the authorised persons or in the details of such persons.

**CLAUSE 12**

THAT clause 12 of the Bill be amended in the proposed new section 11(1) by deleting the words “A political party” appearing at the beginning of the section and substituting therefor the words “A candidate, political party or referendum committee”.

**NEW CLAUSE 22**

THAT the Bill be amended by inserting the following new clause immediately after clause 21 —

Amendment of section 29  
of No. 42 of 2013.

**22.** Section 29 of the principal Act is amended in subsection (1) by inserting the words “and the Senate” immediately after the words “the National Assembly”.

Dated 7<sup>th</sup> day of March, 2022



Erick Okong'o Mogeni,  
*Chairperson,*  
*Standing Committee on Justice, Legal Affairs and Human Rights.*