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20/12/16

Paper Laid on
Tuesday 20th December
2016 by Hon William
Chepuriro Chair Delegated
Legislation

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THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION (2016)



SELECT COMMITTEE ON DELEGATED LEGISLATION

REPORT ON:

THE ELECTION CAMPAIGN FINANCING REGULATIONS, 2016

Directorate of Committee Services,
The National Assembly,
Parliament Buildings,
NAIROBI

December, 2016

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LIST OF ABBREVIATIONS AND ACRONYMS

- CEO - Chief Executive Officer
IEBC - Independent Electoral and Boundaries Commission

1.0 CHAIRPERSON'S FOREWORD

In exercise of powers conferred by Article 88(4) of the Constitution of Kenya and Section 29 of the Election Campaign Financing Act, 2013 and the Independent Electoral Boundaries Commission (IEBC) Act, the Independent Electoral and Boundaries Commission (IEBC) was required to make the Elections Campaign Financing Regulations.

Article 88 (4) (i) of the constitution provides as follows:-

88(4) *''The Independent Electoral and Boundaries Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution and any other elections as prescribed by an Act of Parliament and, in particular for –*

- (i) *the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;''*

Section 29 (i) of the Election Campaign Financing Act states as follows:-

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

The draft regulations were submitted to the House in June, 2016. The Committee discussed the regulations with the Independent Electoral and Boundaries Commission (IEBC) on 24th and 25th June, 2016 at a retreat held in Mombasa. The Committee and the Commission agreed on changes to the draft regulations and the Commission was advised to incorporate them in the second draft and resubmit it to the House for further action.

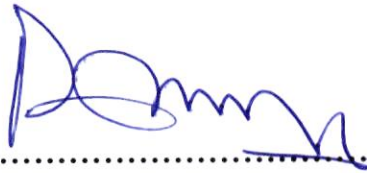
During the sitting of 19th December, 2016 held at Parliament Buildings, the Chief Executive Officer/Secretary, Independent Electoral and Boundaries Commission (IEBC), Mr. Ezra Chiloba appeared before the Committee and expressed concern on practicability of making and implementing the regulations.

The Committee considered and adopted its report at a sitting held on 19th December, 2016 at 5.00 p.m. in Committee Room 9, Main Parliament Building. The adoption of the report was proposed by Hon. Dan Maanzo and seconded by Hon. Neto Agostinho. There was no dissenting voice to the adoption. Minutes of sittings of the Committee as well list of Members present during adoption are annexed hereto as appendices 1 and 2.

The Committee expresses gratitude to the Speaker for the support and direction the House under his leadership has accorded Committees in the discharge of their mandate. The Committee also wishes to record its appreciation to the office of the Clerk of the National Assembly and the Directorates of Committees and Legal

Services for providing technical support which was vital in the execution of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation, and pursuant to Standing Order No. 199, it is my pleasure and duty to present to the House the Committee's report on the draft Election Campaign Financing Regulations, 2016 for debate and approval.

Signed..........Date.....20/12/16.....

**HON WILLIAM CHEPTUMO, M.P.
CHAIRPERSON, SELECT COMMITTEE ON DELEGATED
LEGISLATION**

2.0 EXECUTIVE SUMMARY

The draft Election Campaign Financing Regulations, 2016 were submitted to the House in June, 2016 and immediately committed to the Select Committee on Delegated Legislation for scrutiny and report to the House. The scrutiny of the regulations was guided by Article 88 (i) of the Constitution of Kenya, Part IV of the Statutory Instruments Act, Section 29(1) of the Election Campaign Financing Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

Upon deliberations on the regulations, the Committee recommends to the House:-

- (i) Not to approve them for publication because they contravene section 5 of the Election Campaign Financing Act, 2013 and section 13 (a) of the Statutory Instruments Act, 2013;
- (ii) Amend relevant sections of the Elections Campaign Financing Act, 2013 particularly sections 5 and 18 to give proper timelines for compliance to enable IEBC submit fresh regulations for approval.

3.0 PREFACE

3.1 Committee's mandate

The Select Committee on Delegated Legislation is established pursuant to provisions of Standing Order No. 210 and its mandate is to consider in respect of any statutory instrument whether it:-

- (a) *Is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;*
- (b) *Infringes on fundamental rights and freedoms of the public;*
- (c) *Contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;*
- (d) *Contains imposition of Taxation;*
- (e) *Directly or indirectly bars the jurisdiction of the court;*
- (f) *Gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;*
- (g) *Involves expenditure from the consolidated fund or other public revenues;*
- (h) *Is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;*
- (i) *Appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;*
- (j) *Appears to have had unjustifiable delay in its publication or laying before Parliament;*
- (k) *Makes rights, liberties or obligations unduly dependent upon non-renewable decisions;*
- (l) *Makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;*
- (m) *Inappropriately delegates legislative powers;*
- (n) *Imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;*
- (o) *Appears for any reason to infringe on the rule of law;*
- (p) *Inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and,*
- (q) *Accords to any other reason that the Committee considers fit to examine.*

Standing Order No. 210(4) provides that if the Committee:-

- (a) *Resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument.*
- (b) *Does not accede to the statutory instrument, the Committee may recommend to the House that the Assembly resolves that all or part of the statutory instrument be annulled and if the instrument:-*

- (i) *is not made under a legislation concerning counties and a resolution is passed by the Assembly within twenty days on which it next sits after the instrument laid before it under paragraph (2), that all or part of the statutory instrument be annulled, the instrument of part thereof shall henceforth stand annulled; and*
- (ii) *is made under a legislation concerning counties the Clerk shall within seven days of the resolution transmit a message to the Senate.*

Standing Order No. 210(5) provides that:-

The Clerk shall submit the resolution under paragraph 4(b) (i) to the relevant state department or the authority that published the statutory instrument.

3.2 Committee Membership

The Committee was constituted on 21st May, 2013 and as at the time of adopting this report comprised:-

Hon. William Cheptumo, M.P.	-	<i>Chairperson</i>
Hon. Joseph Gitari, M.P.	-	<i>Vice Chairperson</i>
Hon. Alfred Keter, M.P.		
Hon. Hassan Aden Osman, M.P.		
Hon. Timothy W. Wanyonyi, M.P.		
Hon. George Theuri, M.P.		
Hon. Elisha Busienei, M.P.		
Hon. (Eng) Shadrack Manga, M.P.		
Hon. Yusuf Hassan, M.P.		
Hon. Michael Kisoi, M.P.		
Hon. Mohamed Adan Huka, M.P.		
Hon. John M. Waiganjo, M.P.		
Hon. Paul K. Bii, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Tom J. Kajwang', M.P.		
Hon. Simba Arati, M.P.		
Hon. Rachael A. Ameso, M.P.		
Hon. Vincent Musau, M.P.		
Hon. William Kisang', M.P.		
Hon. Neto Agostinho, M.P.		
Hon. Paul Koinange, M.P.		
Hon. Ibrahim Abdi Saney, M.P.		
Hon. Eusilah Ng'eny, M.P.		
Hon. Nicholas Ngi'kor Nixon, M.P.		
Hon. Bernard Shinali, M.P.		
Hon. Kabando Wa Kabando, M.P.		
Hon. Daniel Maanzo, M.P.		
Hon. Junet Nuh Sheikh, M.P.		
Hon. Kamoti Mwamkale, M.P.		

3.3 Committee secretariat

George Gazemba	-	Senior Clerk Assistant
Wilson Dima	-	Senior Legal Counsel
Abdullahi Aden	-	First Clerk Assistant
Halima Hussein	-	Third Clerk Assistant

4.0 INTRODUCTION AND BACKGROUND INFORMATION

4.1 Making of the Regulations and Committal to the Select Committee on Delegated Legislation

In exercise of powers conferred by Article 88(4) of the constitution of Kenya and Section 29 of the Election Campaign Financing Act, 2013 and the Independent Electoral Boundaries Commission Act, IEBC) was required to make the Election Campaign Financing Regulations.

Article 88 (4) (i) of the constitution provides as follows:-

88(4) "The Independent Electoral and Boundaries Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution and any other elections as prescribed by an Act of Parliament and, in particular for –

(ii) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;"

Section 29 (i) of the Election Campaign Financing Act states as follows:-

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

The regulations were submitted to the House in June, 2016. The Committee discussed them with the Independent Electoral and Boundaries Commission (IEBC) on 24th and 25th June, 2016 at a retreat held in Mombasa. The Committee and the Commission agreed on changes to the regulations and the Commission was advised to incorporate them and resubmit them for further action. The regulations incorporating the changes as agreed with the Committee have since been resubmitted for consideration pursuant to section 29 (1) of the Election Campaign Financing Act, 2013 and Section 11 of the Statutory Instruments Act, 2013.

Part I of the Regulations is on preliminary matters which include citation and interpretations. Part II is on administration and provides for principles of administration. Part III is on registration of authorized persons and provides for their role, appointment, registration, publication and change. Part IV is on contributions and donations and provides for source of contributions, loans, records, proxies and limits.

Part V of the regulations is on regulation of expenditure and makes provision for formation of expenditure committees, election expenses, constructive campaign expenditure, record of election expenditure and limits of expenditure. Part VI is on reporting and disclosure and provides for expenditure reports, scrutiny of

campaign expenditure reports by the Commission, surplus funds, auditor's report on returns, certificate of compliance, public disclosure of records and nil returns.

Part VII of the regulations is on dispute resolution and provides for complaints to the Commission, dispute resolution committee, procedure for lodging complaints, summary dismissal, hearing of complaints and orders. Part VIII is on miscellaneous and makes provision for notices, effects of weekends and public holidays on filing reports, retention of documents, power of the Commission to issue directives and integration technology. The regulations also contain various forms in schedule I and 2.

The regulations were accompanied by an Explanatory Memorandum as required by Section 11 of the Statutory Instruments Act, 2013.

5.0 CONSIDERATION OF THE REGULATIONS

The Committee considered the Regulations at three (3) sittings held on 24th and 25th June, 2016 at Pridelnn Paradise Hotel in Mombasa and on 19th December, 2016 in the morning and afternoon in Committee Room 9, main Parliament Building, Nairobi. The first and second sittings were attended by IEBC.

At the meeting held on 24th and 25th June, 2016, the Committee deliberated on the regulations with IEBC and agreed on amendments. The proposed amendments are in form of a matrix on minutes attached hereto as appendix 1.

The meeting also agreed as follows:-

- (i) That IEBC develops an explanatory memorandum to provide details of public participation;
- (ii) That IEBC consults the Kenya Revenue Authority on regulation of campaign donations and capture findings in the regulations; and
- (iii) That IEBC conducts an Impact Assessment of the Campaign Finance Regulations.

During the sitting held on 19th December, 2016 at Parliament Buildings, The C.E.O/Secretary, IEBC, Mr. Ezra Chiloba appeared before the Committee and submitted as follows:-

- (i) In compliance with section 5 of the Elections Campaign Financing Act, 2013, the regulations were supposed to be approved by the House twelve (12) months before the 2017 general elections date. The timeline was not right considering that political parties would not have held their party nominations and determined candidates to represent them in the elections, whereas the Act and the regulations make reference to candidates. The committee noted a clear distinction between candidates and aspirants.

- (ii) The twelve (12) months timeline was not fair to civil servants who are prohibited by law under Section 43 (5) of the Elections Act from engaging in political activities until they have resigned from office. The law allows them to resign six (6) months before the elections date and the twelve (12) months timeline in essence meant them resigning twelve (12) months before elections;
- (iii) Transition of Commissioners had adversely affected decision making and operations at IEBC and that it was difficult for the Commission to make some decisions without substantive Commissioners thereby posing serious challenges in regulation making;
- (iv) In view of the challenges under (i) to (iii) above, it would appear the Act on which election regulations are made is defective and there is need to address this challenge by amending Section 5 of the Election Campaign Financing Act to reduce the timeline from twelve (12) to at least six (6) months to enable civil servants eyeing elective positions comply.

6.0 COMMITTEE'S OBSERVATIONS

Arising from proceedings and the submissions by the Commission Secretary and Chief Executive Officer, IEBC Mr. Ezra Chiloba on 19th December, 2016, the Committee made the following observations:-

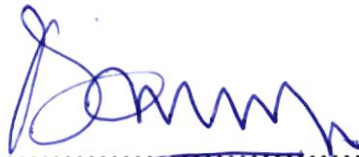
- (i) The twelve (12) months timeline and procedure for making election campaign financing regulations as required by Section 5 of the Elections Campaign Financing Act, 2013 have not been complied with.
- (ii) Even if the House was to approve the regulations for publication, in their current form, their implementation cannot be realized in view of breach of section 5 of the Election Campaign Financing Act and Section 13(a) of the Statutory Instruments Act, 2013.
- (iii) The regulations are in contravention of section 13 (a) of the Statutory Instruments Act because they are not in accord with the Act pursuant to which they are made. In particular they contravene section 5 of the Election Campaign Financing Act;
- (iv) The regulations are in contravention of section 13 (a) of the Statutory Instruments Act, 2013 because they are not in accord with other written laws. In particular, they are in conflict with section 43 (5) of the Elections Act which requires public officers who intend to run for elective positions to resign six (6) months before elections;
- (v) The transition of Commissioners had posed administrative and organizational challenges at IEBC thereby making it difficult to make regulations and other statutory instruments within required timelines;
- (vi) In view of the observations under (i) to (iii) above and the significance of having the Election Campaign Financing

Regulations in place before the 2017 general elections, there is urgent need to amend section 5 of the Election Campaign Financing Act, 2013 with a view to reducing the timeline from twelve (12) to at least six (6) months as proposed by the IEBC CEO/Secretary.

7.0 RECOMMENDATIONS

Based on the observations made herein, the Committee recommends to the House as follows:-

- (i) Not to approve for publication the Election Campaign Financing Regulations, 2016 because they contravene Section 5 of the Election Campaign Financing Act, 2013 and Section 13(a) of the Statutory Instruments Act, 2013;**
- (ii) Amend relevant sections of the Election Campaign Financing Act, 2013 particularly sections 5 and 18 to give proper timelines for compliance to enable IEBC submit fresh regulations for approval.**

Signed..........Date.....20.12.16.....

**HON WILLIAM CHEPTUMO, M.P.
CHAIRPERSON, SELECT COMMITTEE ON DELEGATED
LEGISLATION**

APPENDIX 1

**MINUTES OF THE FIFTIETH SITTING OF THE SELECT COMMITTEE
ON DELEGATED LEGISLATION HELD ON TUESDAY, 19TH
DECEMBER, 2016, AT 5.00 P.M. IN THE COMMITTEE ROOM 9, MAIN
PARLIAMENT BUILDING**

PRESENT:-

Hon. William Cheptumo, M.P.	-	Chairperson
Hon. Joseph Gitari, M.P.	-	Vice Chairperson
Hon. Neto Agostinho, M.P.	-	Chairing
Hon. Yusuf Hassan, M.P.		
Hon. Michael Kiso Manthi, M.P.		
Hon. Rachael Ameso, M.P.		
Hon. Tom J. Kajwang', M.P.		
Hon. Bernard Shinali, M.P.		
Hon. Daniel Maanzo, MP.		
Hon. Simba Arati, M.P.		
Hon. Paul Koinange, M.P.		
Hon. Saney Abdi Ibrahim, M.P.		
Hon. Eusilah Jepkosgei, M.P.		
Hon. William Kisang', M.P.		
Hon. John Waiganjo, M.P.		
Hon. Alfred Keter, M.P.		

ABSENT:-

Hon. Elisha Busienei, M.P.
Hon. Kabando wa Kabando, M.P.
Hon. George Theuri, M.P.
Hon. Vincent Musau, M.P.
Hon. Nicholas Nixon, M.P.
Hon. Timothy W. Wanyonyi, M.P.
Hon. Junet Sheikh Nuh, MP.
Hon. Shadrack Manga, M.P.
Hon. Paul Bii, M.P.
Hon. Charles Gimose, M.P.
Hon. Mohamed Aden Huka, MP.
Hon. Hassan Aden, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

George Gazemba - Senior Clerk Assistant

**MIN No. DL/157/2016: CONSIDERATION AND ADOPTION OF
REPORT ON THE ELECTION CAMPAIGN
FINANCING REGULATIONS, 2016**

The Committee considered and adopted its report on the Election Campaign Financing Regulations, 2016 with recommendations to the House as follows:-

- (i) Not to approve for publication the Election Campaign Financing Regulations, 2016 because they contravene section 5 of the Election Campaign Financing Act, 2013 and Section 13(a) of the Statutory Instruments Act, 2013 ; and
- (ii) Amend relevant sections of the Elections Campaign Financing Act, 2013 particularly sections 5 and 18 to enable IEBC submit fresh regulations for approval.

MIN No. DL/158/2016: ADJOURNMENT

There being no Any Other Business to transact, the Chairperson adjourned the meeting at five minutes past six in the evening.

SIGNED.....
(CHAIRPERSON)

DATE.....
19/12/16

MINUTES OF THE FORTY NINTH SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 19TH DECEMBER, 2016, AT 11.00 A.M. IN THE COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

PRESENT:-

Hon. William Cheptumo, M.P.	–	Chairperson
Hon. Joseph Gitari, M.P.	–	Vice Chairperson
Hon. Neto Agostinho, M.P.		
Hon. Yusuf Hassan, M.P.		
Hon. Michael Kiso Manthi, M.P.		
Hon. Rachael Ameso, M.P.		
Hon. Tom J. Kajwang', M.P.		
Hon. Bernard Shinali, M.P.		
Hon. Daniel Maanzo, MP.		
Hon. Simba Arati, M.P.		
Hon. Paul Koinange, M.P.		
Hon. Saney Abdi Ibrahim, M.P.		
Hon. Eusilah Jepkosgei, M.P.		
Hon. William Kisang', M.P.		
Hon. John Waiganjo, M.P.		
Hon. Alfred Keter, M.P.		

ABSENT:-

Hon. Elisha Busienei, M.P.
Hon. Kabando wa Kabando, M.P.
Hon. George Theuri, M.P.
Hon. Vincent Musau, M.P.
Hon. Nicholas Nixon, M.P.
Hon. Timothy W. Wanyonyi, M.P.
Hon. Junet Sheikh Nuh, MP.
Hon. Shadrack Manga, M.P.
Hon. Paul Bii, M.P.
Hon. Charles Gimose, M.P.
Hon. Mohamed Aden Huka, MP.
Hon. Hassan Aden, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

George Gazemba	-	Senior Clerk Assistant
Wilson Dima	-	Senior Legal Counsel
Abdullahi Aden	-	First Clerk Assistant
Doreen Karani	-	Legal Counsel I

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

Ezra Chiloba	-	Chief Executive Officer/Secretary,
Praxidis Kipkorei	-	Director
Salome Oyugi	-	Manager Political Parties and Campaign Finance
Moses Kipkorei	-	Manager, CEO's Office
Wafula Wakoko	-	Legal Officer

MIN No. DL/154/2016:- **PRELIMINARIES**

The sitting commenced with a word of prayer from the chairperson himself.

MIN No. DL/155/2016: **CONSIDERATION OF THE ELECTION CAMPAIGN FINANCING REGULATIONS, 2016**

Mr. Ezra Chiloba, Chief Executive Officer/Secretary, Independent Electoral and Boundaries Commission (IEBC) submitted as follows:-

- (i) The regulations were supposed to be submitted to the House and be approved twelve (12) months before the 2017 general elections date. The timeline was not right considering that political parties would not have held their party nominations and determined candidates to represent them in the elections, whereas the Act and the regulations make reference to candidates. The committee noted a clear distinction between candidates and aspirants.
- (ii) The twelve (12) months timeline was not fair to civil servants who are prohibited by law from engaging in political activities until they have resigned from office. The law allows them to resign six (6) months before the elections date and the twelve (12) months

timeline in essence meant them resigning twelve (12) months before elections.

- (iii) The Acts on which election regulations were made were defective and regulations made before amendment of the Acts would pose implementation challenges. This had significantly contributed to delay by IEBC in submitting regulations to the House for approval noting that there were also other regulations which IEBC had not yet submitted to the House for approval.
- (iv) Transition of Commissioners had adversely affected decision making and operations at IEBC and that it was difficult for the Commission to make some decisions without substantive Commissioners thereby posing serious challenges in regulation making.
- (v) Section 5 of the Election Campaign Financing Act be amended to reduce the timeline from twelve (12) to at least six (6) months to enable civil servants eyeing elective positions comply.

The Committee would be reconvening later in the evening to make a decision on the fate of the regulations and adopt its report on the same.

MIN No. DL/156/2016: ADJOURNMENT

There being no Any Other Business to transact, the Chairperson adjourned the meeting at five minutes past three in the afternoon till five in the evening.

SIGNED.....

(CHAIRPERSON)

DATE.....
19/12/16

MINUTES OF THE TWENTY SEVENTH SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON FRIDAY, 24TH JUNE, 2016 AT 10.00 A.M. AT PRIDEINN PARADISE HOTEL, MOMBASA

PRESENT:-

Hon. William Cheptumo, M.P.	–	Chairperson
Hon. Joseph Gitari, M.P.	–	Vice Chairperson
Hon. Tom J. Kajwang, M.P.		
Hon. George Theuri, M.P.		
Hon. Kabando Wa Kabando, M.P.		
Hon. Elisha Busienei, M.P.		
Hon. John Waiganjo, M.P.		
Hon. Michael Kiso Manthi, M.P.		
Hon. Simba Arati, M.P.		
Hon. Bernard Shinali, M.P.		

ABSENT:-

Hon. Vincent Musau, M.P.
Hon. Hassan Aden, M.P.
Hon. Mohamed Aden Huka, M.P.
Hon. Paul Koinange, M.P.
Hon. Alfred Keter, M.P.
Hon. Saney Abdi Ibrahim, M.P.
Hon. Shadrack Manga, M.P.
Hon. Yusuf Hassan Abdi, M.P.
Hon. Eusilah Jepkosgei, M.P.
Hon. Paul Bii, M.P.
Hon. William Kisang', M.P.
Hon. Charles Gimose, M.P.
Hon. Nicholas Nixon, M.P.
Hon. Rachael Ameso, M.P.
Hon. Neto Agostinho, M.P.
Hon. Timothy W. Wanyonyi, M.P.
Hon. John Waluke, M.P.
Hon. Daniel Maanzo, M.P.
Hon. Junet Nuh Sheikh, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

Florence Abonyo	-	Director, Committee Services
George Gazemba	-	Senior Clerk Assistant
Ahmed Kadhi	-	Clerk Assistant I
Doreen Karani	-	Legal Counsel I
Christine Odhiambo	-	Legal Counsel

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(IEBC)**

Lilian Mahiri Zaja	-	Commissioner and Vice Chairperson
Kule Galma	-	Commissioner
Muthoni Wangai	-	Commissioner
Ezra Chiloba	-	Chief Executive Officer/Secretary
Marjan Hussein	-	Deputy Commission Secretary, Supply Services
Osman Hussein	-	Director, Finance
Rasi Masoud	-	Director, Voter Education and Partnership
Obadiah Keitany	-	Director, Risk and Compliance
Michael Oyalo	-	Manager, Strategy and Evaluation
Mahamoud Jabane	-	Manager, Legal Services
Ms. Salome Oyugi	-	Manager, Political Parties and Campaign Finance
Christine Owiye	-	Manager, Investigations
Moses Kipkogei	-	Manager, CEO's Office
Mr. Nyamori Bosire	-	Private Consultant on election matters
Ruth Makuthu	-	Legal Officer
Wafula Wakoko	-	Legal Officer

MIN No. DL/78/2016:-

**CONSIDERATION OF THE ELECTIONS
CAMPAIGN FINANCE REGULATIONS, 2016**

The Committee deliberated on the regulations with IEBC and agreed on amendments. The proposed amendments are in form of a matrix attached hereto.

The meeting also agreed as follows:-

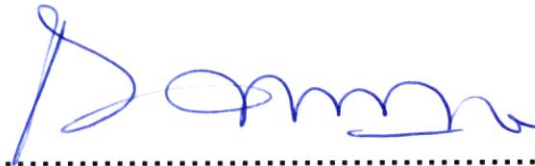
- (i) That IEBC develops an explanatory memorandum to provide details of public participation;
- (ii) That IEBC consults the Kenya Revenue Authority on regulation of campaign donations and capture findings in the regulations;
- (iii) That IEBC conducts an Impact Assessment of the Campaign Finance Regulations;
- (iv) To reconvene in three weeks time to review the final draft regulations.

MIN No. DL/79/2016:-

ADJOURNMENT

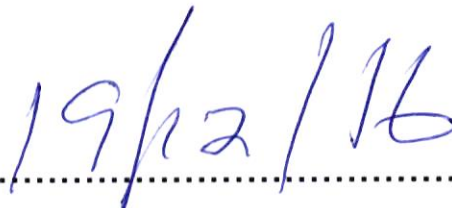
There being no other business to transact, the meeting was adjourned at twelve minutes past five in the evening.

SIGNED.....



(CHAIRPERSON)

DATE.....



Members further raised issue with the proposal for Commission to audit expenditure that exceeds Kshs. 5 million noting that such amount was too low and sought justification for why amounts below 5 million would not be subject to audit.

The Commission informed members that the proposed limit was based on views received from political party secretary generals at the workshop held from 16th-18th March, 2016 at Maanzoni Lodge, Machakos. It was proposed that the Commission review figures based on candidate expenditures.

5.0. DELIBERATIONS AND DISCUSSIONS

Further deliberations and discussions are as tabulated hereunder:

A.	QUESTION/ISSUE	RESPONSE
1.	Lack of clarity in definition of the term "Authorized persons"	Section 6(1) of the ECF stipulates who Authorized persons are and thus the Regulations have simply employed the meaning provided under ECF.
2.	Regulation of media and challenges around regulation of social media.	i. Clarity on role of Commission in setting media coverage limits but has no mandate to regulate the media. ii. Commission to explore collaboration with NCIC to regulate social media.
3.	Reference to the referendum in the Regulations yet there is no proper legal framework for referenda	The regulations are informed by provisions of the Act which was enacted at the premise of the referendum law under the Elections Act, 2011.
4.	The rationale of pegging Ksh,250 per voter as a basis for setting expenditure limits	The Ksh.250 is not a bribe but the amount of that may be expended in the strategies employed approaching one voter.

5.	Practicability of issuing receipts for Ksh.20, 000 donations.	The requirement provided in the Act is based on the need for accountability and thus necessary.
6.	Whether a candidate/party is required to have a distinct bank account for campaigns only	The law requires all monies for campaign purposes to be held in Authorized persons accounts thus connoting management of bank accounts
7.	Use of a geographical area as one of the factors of determining spending limits in light of such consideration having already been taken into account during delimiting boundaries.	The ECF establishes the factors to be considered-Section 18 provides that the Commission shall, in prescribing spending limits take into consideration among other factors the geographical features. Commission nonetheless takes note of concern raised for further review.
8.	Whether the Regulations are a product of stakeholder consultations	The Commission has engaged state actors, political parties, the media and the civil society.
9.	How the Commission purposes to deal with non-monetary contributions	The market value of non-monetary contributions shall be used to gauge the value of contribution.
B	QUESTION/ISSUE	PROPOSAL
10.	Capacity of the Commission to enforce its mandate under the ECF across the country.	Commission to conduct feasibility study on its capacity/resources required to enforce its mandate.
11.	Anomaly with provision on Receipt of contributions from harambees yet the public officers are barred from receiving and or participating in harambees.	Reconcile Section 11 of the ECF, Section 26 of the Elections Act, Public Officer Ethics Act, 2003 and the Constitution of Kenya, 2010 so as to avoid unconstitutionality.
12.	Appointment of authorized persons	i. Provide for the criteria for appointing and replacing Authorized

		<p>persons in order to avoid uncalled for dismissal of Authorized persons.</p> <p>ii. Provide for reasons and or circumstances under which an Authorized person may be replaced.</p> <p>iii. Provide that in case Authorized persons incur expenses and fail to pay up, they should be liable (not the candidate, party or referendum committee).</p> <p>iv. Interrogate the practicability of a candidate not being as signatory to an account and thus cannot access monies to expend for campaign purposes.</p>
13.	The formulae used for setting limits beyond which contributions from a single source must be disclosed	<p>Section 12(3) of the ECF provides that 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.</p> <p>Commission to interrogate the formulae to be employed based on law and political environment.</p>
14.	Practicability and strenuous cost on the political class to adhere by the regulations i.e. the paper work.	To be interrogated further.
15.	Constructive expenditure vis-a-vis expenditure limits.	i. Commission to derive a fair method of coming up with the value of constructive expenditure noting the

		divergence in electoral area. (i.e the cost of hiring a hall in Westlands area is higher than the cost in Baringo.)
16.	The time of reference for donations and contributions.	Commission to provide in the regulations.
17.	Life span of bank accounts opened for campaigning purposes.	Commission to provide in the regulations.
18.	How to handle Money and Power brokers	Commission to provide in the regulations.
19.	Practicability of enforcing Regulation 21(2) (a) on regulation of candidates yet by 8 th January, the Commission may not know who candidates are.	<ul style="list-style-type: none"> i. Commission to interrogate the applicable timelines ii. Commission to harmonize the expenditure period and the legal requirement for civil servants to resign six months before elections.
20.	Relationship between campaign expenditure period and Regulation 19(1) which provides for the Commission to gazette limits beyond which contributions from a single source must be disclosed.	Commission to interrogate the synergy between the expenditure period and the 12 months period prescribed under Section 12 of ECF on gazettment of limits.
Amendment of specific provisions in the regulations		
	Provision	Proposal
21.	Regulation 2 with respect to the necessity, if any, in defining the word "person".	Interrogate whether there is need to retain the definition of the term "person"
22.	Regulation 3	Recast the provision to avoid ambiguity.
23.	Regulation 4	Delete Regulation 4 as it is not necessary given that the Commission already has power the power under Section 29 of the Act to prepare written guidelines, forms

		and samples e.t.c
24.	Regulation 6	<ul style="list-style-type: none"> i. Recast with reference to 'principles' and not duties as intended. ii. Renumber for proper flow. <p>i.e The paragraph numbered (1) (a) should be the opening sentence of the section and should read– "In undertaking their duties in terms of Regulation 5, an authorised person shall be governed by the principle of–"</p>
25.	Regulation 7	Provide clarity on the use of the word "Agent"
26.	Regulation 8(1)	Delete the word "may" and replace with the "shall"
27.	Regulation 9(1)	Provide the time frame within which an organization which intends to campaign in support of, contribute to or otherwise directly incur expenditure in support of a political party, a candidate or referendum committee should notify the Commission
28.	Regulation 12	<ul style="list-style-type: none"> i. Listing the Kenyan government under the permissible classes of contributors is ambiguous; use another word. ii. There is no need to list out trade unions under classes of contributors and donors; the provision might be misinterpreted as the legal permission to use trade union funds for campaigns without the members' approval. iii. The definition of the term "property" as contained in Regulation 12 (3) be moved to the

		interpretation section as the term "property" is should not only be confined to Regulation 12 as it is used generally in the ECF.
29.	Regulation 15	<ul style="list-style-type: none"> i. Replace the word 'public collections' with 'harambee' as the Act makes reference to 'harambee'. ii. Recast 15(6) as the provision is not clear. iii. Under 15(4) (e), aggregate the amounts below Ksh.20, 000 and issue receipts.
30.	Regulation 17	The provision is unclear-should speak to section 16(1) the Act by specifying that the amount for which a receipt must be issued is an amount exceeding Ksh.20, 000.
31.	Regulation 20	Specify the number of persons to be appointed as members of the campaign expenditure committee in order to align with the requirements of sections 7, and 9.
32.	Regulation 23	Redraft to offer clarity.
33.	Regulation 37	The Commission already has power to make directions; there is no need to repeat this.
34.	Regulation 44	<ul style="list-style-type: none"> i. Typographical error as the words 'where under the regulations' have been repeated twice. ii. The term officer in this section is ambiguous as this term is not defined in the regulations.

35.	Enabling provision of the Regulations	The enabling provision should refer to section 29 of the Act only as it is the provision that mandates the Commission to make Regulations. The inclusion of Article 88 of the Constitution is unnecessary.
36.	Forms under the Regulations	<ul style="list-style-type: none"> i. Refer to forms as a schedule (i.e, edit form 1 to schedule 1 ii. Provide different schedules for contribution and expenditure. iii. Rename each Form with reference to the Section in Act that creates the Form.

6.0. WAY FORWARD

Following deliberations it was agreed that the Commission;

1. Develop an explanatory memorandum to provide the details of public stakeholder engagements by the Commission and furnish the Committee with all Reports illustrating stakeholder consultations.
2. Consult the Kenya Revenue Authority regarding regulation of campaign donations.
3. Conduct an Impact Assessment of the Campaign Finance Regulations

In conclusion it was further agreed that the Commission and the Committee to convene in the next three weeks (from 26th June, 2016) to review the final draft.

APPENDIX 2


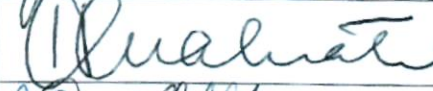
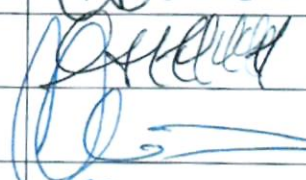


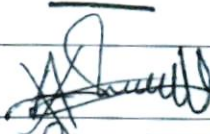

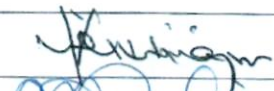

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

ATTENDANCE SCHEDULE

DATE... 19/12/16
COMMITTEE ROOM 9
MAIN BUILDING

NO	NAME	
1.	Hon. William Cheptumo, M.P. - Chairperson	
2.	Hon. Joseph Gitari, M.P. - Vice Chairperson	
3.	Hon. John Waiganjo, M.P.	
4.	Hon. Yusuf Hassan, M.P.	
5.	Hon. Paul Koinange, M.P.	
6.	Hon. George Theuri, M.P.	—
7.	Hon. Kabando wa Kabando, M.P.	—
8.	Hon. Elisha Busienei, M.P.	—
9.	Hon. Alfred Keter, M.P.	
10.	Hon. Eusilah Jepkosgei, M.P.	
11.	Hon. Hassan Aden Osman M.P.	—
12.	Hon. Paul Bii, M.P.	—
13.	Hon. Mohamed Aden Huka, M.P.	—
14.	Hon. William Kisang, M.P.	
15.	Hon. Benard Shinali, M.P.	
16.	Hon. Shadrack Manga, M.P.	—
17.	Hon. Charles Gimose, M.P.	—
18.	Hon. Vincent Musau, M.P.	—

19.	Hon. Kamoti Mwamkale, MP	—
20.	Hon. Nicholas Nixon, M.P.	—
21.	Hon. Michael Kiso Manthi, M.P.	<i>[Handwritten signature]</i>
22.	Hon. Rachael Ameso, M.P.	<i>[Handwritten signature]</i>
23.	Hon. Saney Abdi Ibrahim, M.P.	<i>[Handwritten signature]</i>
24.	Hon. Simba Arati, M.P.	<i>[Handwritten signature]</i>
25.	Hon. Neto Agostinho, M.P.	<i>[Handwritten signature]</i>
26.	Hon. Wetangula Timothy Wanyonyi, M.P.	<i>[Handwritten signature]</i>
27.	Hon. T. J. Kajwang, M.P	<i>[Handwritten signature]</i>
28.	Hon. Junet Sheikh Nuh, MP	<i>[Handwritten signature]</i>
29.	Hon. Daniel Maanzo, MP	<i>[Handwritten signature]</i>



GEORGE GAZEMBA
For: CLERK OF THE NATIONAL ASSEMBLY

APPENDIX 3