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PARLIAMENT OF KENYA





THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-THIRD SESSION

THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT  
COMMITTEE

REPORT ON THE CONSIDERATION OF THE REPRESENTATION OF  
SPECIAL INTEREST GROUPS LAWS (AMENDMENT) BILL, 2019  
(NATIONAL ASSEMBLY BILLS NO. 52 OF 2019)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 12 SEP 2019	Day: THURSDAY
TABLED BY:	HON. JEREMIAH KIONI CHAIRPERSON, CIOC
CLERK AT THE TABLE:	

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

SEPTEMBER, 2019

1 | *Constitutional Implementation Oversight Committee Report on Consideration of the Representation of Special Interest Groups Laws (Amendment) Bill, 2019.*

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## CHAIRPERSON'S FOREWORD

The Representation of Special Interest Groups Laws (Amendment) Bill, (National Assembly Bills No. 52) of 2019 is sponsored by the Constitutional Implementation Oversight Committee (CIOC) through its Chairman, Hon. Jeremiah Kioni, M.P.

The Bill was published in the Kenya Gazette on 3<sup>rd</sup> July, 2019 (as National Assembly Bills No. 52 of 2019). The Bill was introduced in the National Assembly through First Reading on 4<sup>th</sup> July, 2019 and was subsequently committed to the CIOC for consideration, facilitation of public participation and reporting to the House, pursuant to provisions of Standing Order 127(6).

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3) of the National Assembly Standing Orders, the Committee through an advertisement in the local daily newspaper of 11<sup>th</sup> July, 2019 (annex 1), invited the public to make representations on the Bill. The Committee held meetings with various stakeholders where submissions were received and considered. The Committee also invited the stakeholders who made oral representations and clarifications before retreating to consider the representations and adopt this report.

In total, the Committee held a total of 10 sittings to consider the Bill, 6 with stakeholders and 4 in-house to consider the submissions from stakeholders and adopt this report.

The Committee consulted and held deliberations with the following stakeholders on the Bill:

- a) The Independent Electoral and Boundaries Commission (IEBC);
- b) The Office of the Registrar of Political Parties;
- c) The National Gender and Equality Commission;
- d) The Kenya Law Reform Commission;

- e) The Office of the Attorney General and Department of Justice (OAG & DoJ);
- f) The National Council for Persons with Disabilities;
- g) The Political Parties Liaison Committee; and
- h) The Kenya National Commission on Human Rights (KNCHR).

May I take this opportunity to thank all Members of the Committee for their input and invaluable contributions during the stakeholder hearings on the Representation of Special Interest Groups Laws (Amendment) Bill, (National Assembly Bills No. 52) of 2019. The Committee also takes this opportunity to thank the offices of the Speaker and that of the Clerk of the National Assembly for the logistical support accorded to the Committee during the exercise.

On behalf of the Constitutional Implementation Oversight Committee (CIOC) and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and duty to present to the House the Report of the Committee on its consideration of the Representation of Special Interest Groups Laws (Amendment) Bill, 2019.



Hon. Jeremiah Kioni, M.P.

**CHAIRPERSON, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT  
COMMITTEE**



## LIST OF ANNEXTURES

**Annexure 1:** Copy of newspaper advert inviting the public to submit written memorandum on the Bill.

**Annexure 2:** Minutes of the Committee sitting on consideration of the Bill and adoption of the Report.

**Annexure 3:** Signed list of the Members who attended the sitting that considered and adopted the report on the Bill.

**Annexure 4:** Written submissions received from stakeholders

# CHAPTER 1

## 1.0 PREFACE

### 1.1 Establishment and Mandate

1. The Constitutional Implementation Oversight Committee (CIOC) is a National Assembly Select Committee constituted under Section 4 of the Sixth Schedule to the Constitution of Kenya. The Committee is responsible for overseeing the implementation of the Constitution and among other things-
  - i. Shall receive regular reports from the Commission on the Implementation of the Constitution (CIC) on the implementation of the Constitution of Kenya, 2010 including reports concerning: -
    - (a) the preparation of the legislation required by the Constitution and any challenges in that regard;
    - (b) the process of establishing the new commissions;
    - (c) The process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff.
    - (d) The devolution of powers and functions to the counties under the legislation contemplated in section 15 of the sixth Schedule;
    - (e) Any impediments to the process of implementing this Constitution.
  - ii. Coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant Parliamentary committees to ensure the timely introduction and passage of the legislation required by the Constitution; and
  - iii. Take appropriate action on the reports including addressing any problems in the implementation of the Constitution.



## 1.2 Committee Membership

2. The Committee consists of the following Honourable Members:

NO.	NAME	CONSTITUENCY	PARTY
1.	Hon. Jeremiah Kioni, M.P. – <i>Chairman</i>	Ndaragua	Jubilee
2.	Hon. Fred Kapondi, M.P – <i>Vice Chairman</i>	Mt. Elgon	Jubilee
3.	Hon. (Dr.) Naomi Shaban, M.P.	Taveta	Jubilee
4.	Hon. Wafula Wamunyinyi, M.P.	Kanduyi	FORD Kenya
5.	Hon. T. J. Kajwang, M.P.	Ruaraka	ODM
6.	Hon. Ayub Savula, M.P.	Lugari	ANC
7.	Hon. Raphael B. S. Wanjala, M.P.	Budalangi	ODM
8.	Hon. Charles Gimose, M.P.	Hamisi	FORD Kenya
9.	Hon. Peris Tobiko, M.P.	Kajiado East	Jubilee
10.	Hon. Sarah P. Korere, M.P.	Laikipia North	Jubilee
11.	Hon. Abdi Shurie, M.P.	Balambala	Jubilee
12.	Hon. Fabian K. Muli, M.P.	Kangundo	Muungano
13.	Hon. (Col.) Geoffrey King'angi, M.P.	Mbeere South	Jubilee
14.	Hon. Gideon Koske, M.P.	Chepalungu	CCM
15.	Hon. Halima Mucheke, M.P.	Nominated	Jubilee
16.	Hon. Jane Njiru, M.P.	Embu County	Jubilee
17.	Hon. Joshua Chepyegon, M.P.	Baringo Central	Jubilee
18.	Hon. Japheth Mutai, M.P.	Bureti	Jubilee
19.	Hon. Simon Ng'ang'a King'ara, M.P.	Ruiru	Jubilee
20.	Hon. Daniel Rono, M.P.	Keiyo South	Jubilee
21.	Hon. Anthony Aluoch, M.P.	Mathare	ODM
22.	Hon. Christine Ombaka, M.P.	Siaya County	ODM

### 1.3 Committee Secretariat

3. The Committee's secretariat comprises of the following officers:-

1.	Mr. Edward Libendi	Senior Legal Counsel & Clerk of the Committee
2.	Ms. Christine Odhiambo	Legal Counsel I
3.	Ms. Mary Luka Lemerelle	Clerk Assistant III
4.	Mr. Allan Gituku	Sergeant-At-Arms

### 1.4 Adoption of the Committee Report

4. We, the Members of the Constitutional Implementation Oversight Committee have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached list (Annexure 3).



## CHAPTER 2

### 2.0 INTRODUCTION AND BACKGROUND

#### 2.1 Background

5. Article 100 of the Constitution requires Parliament to enact legislation to promote the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalized communities. The fifth Schedule to the Constitution details what pieces of legislation are to be enacted by Parliament and by what time period in order to give effect to the various provisions of the Constitution.

6. According to the fifth schedule, the legislation required to implement article 100 of the Constitution in order to promote representation in Parliament of the Special Interest Groups, was supposed to have been enacted within five years of promulgation of the Constitution; that is by 2015.

7. The Committee in exercise of its mandate of overseeing implementation of the Constitution noted that there was no specific piece of legislation enacted to give effect to the said article 100 of the Constitution. It therefore sought the comments of the Office of the Attorney General, the Kenya Law Reform Commission, the Office of the Registrar of Political Parties and the Independent Electoral and Boundaries Commission (IEBC) on the reasons for failure to implement Article 100 of the Constitution and or challenges faced in implementation of the said Article 100.

8. In its engagement with the above stakeholders, the Committee learnt that the Constitutional Implementation bodies namely the Commission for the Implementation of the Constitution (CIC), the Office of the Attorney General and Department of Justice (OAG & DoJ), the Kenya Law Reform Commission (KLRC), the Independent Electoral and Boundaries Commission (IEBC) and the ORPP had in 2015 held a series of meetings to discuss how to implement Article

100 of the Constitution. That following those meetings, it was agreed that there was no need to develop a separate law on promoting the representation of the special interest groups since the same could be achieved by amending the existing laws.

4. Consequently, the 11<sup>th</sup> Parliament developed and enacted various amendments to the Political Parties Act, 2011 and the Elections Act, 2011 to:-

(a) Encourage political parties to nominate candidates from special interest groups (SIGs) on the grounds that balanced party primary nominations would increase their electoral chances;

(b) To reserve seats to be used to ensure the representation of the SIGs in the legislature.

9. The Committee observed that though the amendments were passed into law, they had not been conclusive therefore not realizing fully, the letter and spirit of Article 100 on promotion of representation of the special interest groups in Parliament. This was evident with the little numbers of the said categories of SIGs elected or nominated to Parliament in 2017. The amendments made by the 11<sup>th</sup> Parliament to the electoral laws with the goal of giving effect to Article 100 included the following:

## 2.2 Amendments to the Political Parties Act, 2011

10. Amendment to the Political Parties Act, 2011 was done by the 11<sup>th</sup> Parliament through the Political Parties (Amendment) (No. 2) Act, 2016 as follows:

(i) It amended section 2 of the Act by inserting the following definitions in the interpretation of terms:

(a) *“ethnic minorities” means a group that is not the dominant one in a given society;*

(b) *“Marginalized community” has the meaning assigned to it under Article 260 of the Constitution;*



- (c) *“party primary” means the process through which a political party elects or selects its candidates for a forthcoming general election or for a by-election;*
  - (d) *“special interest groups” include women; persons with disabilities; youth; ethnic minorities; and marginalized communities; and*
  - (e) *“youth” has the meaning assigned to it under Article 260 of the Constitution.*
- (ii) Requirement that political parties promote the values of inclusiveness, democracy and participation of the people through amendment to section 3 of the Act to introduce the following new subsection (1A):
- “(1A) A political party shall promote inclusiveness, democracy and participation of the people in the-*
- (a) formulation of its policies; and*
  - (b) nomination of candidates for elections”;*
- (iii) To ensure promotion of participation of youth in political party affairs by amending section 3 of the Act to introduce the following new subsection (2):
- “(2) A citizen of Kenya who has attained the age of eighteen years may, subject to the provisions of this Act and any other law-*
- (a) Form or participate in the formation of a political party; or*
  - (b) Contest for an elective position in a political party in which the person is a member”.*
- (iv) Requirement that a political party provides a disaggregated data of its membership based on each of the components of the special interest groups as a condition of full registration;

*Section 7 of the Act was amended to require a provisionally registered political party to provide disaggregated data of its membership based on each of the components of the special interest groups as a condition of full registration. This*

amendment was intended to ensure that recruitment of Members of political parties involved the special interest groups which would in turn influence their electoral chances.

- (v) Requirement that political party constitutions provide for gender parity through amendment to section 9 of the Act by introducing the following new subsection:

*“(1A) The constitution or rules of every political party shall ensure that not more than two-thirds of the membership of all party organs, bodies and committees, in aggregate, are of the same gender”.*

- (vi) Requirement that political parties hold meetings of the party organs at national and county level in order to involve their members at the grass root level, through the following amendment:

*19. (1) A fully registered political party shall hold meetings of the party organs at national and county level in accordance with the party constitution.*

*(2) A political party intending to hold a public meeting shall comply with the provisions of the laws relating to public meetings.*

- (vii) Requirement that failure to include special interest groups in the membership of a political party may lead to its deregistration.

Section 21 of the Act was amended by including the following as grounds for deregistration of a political party:

*“(h) does not have representation of special interest groups;”*

*“(i) does not maintain the requirements set out under section 7;” and*

*“(j) has contravened the provisions of Article 81(b) of the Constitution”.*

- (viii) Requirement that a political party that does not have representation of special interest groups within its governing body shall not be eligible for funding under the political parties fund.



Section 25(2) of the Act was amended by inserting the following paragraph after subsection (2):

*A political party shall not be entitled to receive funding from the fund if --*

*“(ba) the party does not have, in its governing body, representation of special interest groups”.*

### **2.3 Amendments to the Elections Act, 2011**

11. The Election Laws (Amendment) Act, 2016 made the following amendments to the Elections Act with regard to the promotion of representation of special interest groups:

(i) Requirement to maintain a public web portal for inspection of the register of voters by amending section 6 of the Act to introduce the following new subsection:

*(2) The Commission shall, for purposes of subsection (1), maintain a public web portal for inspection of the register of members of the public.*

(ii) Requirements relating to nomination of political party candidates by amending section 31 of the Act as follows:

*(a) Providing that the IEBC shall, upon the request of a political party, conduct and supervise the nomination of candidates by the political party for presidential, Parliamentary or county elections in accordance with Article 88 of the Constitution.*

*(b) Requiring every political party to submit the names of the party candidates who have been selected to participate in the general elections at least sixty days before the elections.*

*(c) Requiring every political party to, at least twenty-one days before the nomination day, submit to the Commission the names of the persons contesting in its party primaries and the date of its party primaries.*

*(d) Requiring the Commission to publish, in the Gazette the names of the persons contesting in a party primary and the date of the party primary within seven days of receipt of the names of party candidates.*

(iii) Facilitation of persons with special needs including persons with disabilities to vote by amending section 104 of the Act as follows:

*The Commission shall, for the purpose of ensuring that persons with special needs including persons with disabilities realize their right to vote-*

*(a) Put in place appropriate infrastructure including special voting booths; and*

*(b) Have in each polling station such officers as the Commission considers necessary to facilitate voting.*

12. Having enacted the above amendment laws to supplement the Constitutional requirements of 47 women elected from each county, the twelve nominated Members to the National Assembly and the 16 nominated women Senators and the four nominees of the Senate; two from persons with disabilities and two from the youth, the 11<sup>th</sup> Parliament had reason to believe that the letter and spirit of Article 100 would be realized.

13. However due to some reasons, come the 2017 General elections, there was no significant increase especially in the elected Members of Parliament of the special interest groups. The Constitutional Implementation Oversight Committee (CIOC) therefore considered it fit to enact a Bill seeking to buttress the earlier amendments and to ensure that the objects of Article 100 are realized in the electoral cycle.

14. The Committee toyed with the idea of enacting a stand-alone piece of legislation to give effect to the said article but noted that to implement the said Article 100, various existing statutes needed to be considered and amended making it practically impossible to do it



through a stand-alone legislation. The Committee therefore resolved to propose further amendments to various existing laws in order to give further effect to Article 100 of the Constitution of Kenya.

15. The Representation of Special Interest Groups Laws (Amendment) Bill, 2019 was therefore prepared by the Committee and published in the Kenya Gazette on 3<sup>rd</sup> July, 2019 (as National Assembly Bills No. 52 of 2019). The Bill was introduced in the National Assembly through First Reading on 4<sup>th</sup> July, 2019 and was subsequently committed to the CIOC for consideration, facilitation of public participation and giving a report to the House, pursuant to provisions of Standing Order 127(6).

## CHAPTER 3

### 3.0 HIGHLIGHTS OF THE REPRESENTATION OF SPECIAL INTEREST GROUPS LAWS (AMENDMENT) BILL, 2019

16. The principal object of the Bill is to give further effect to Article 100 of the Constitution, to promote the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalized communities.
  
17. The Bill proposes amendments to the following laws:
  - i.) The Independent Electoral and Boundaries Commission (IEBC) Act, 2011 (Act No. 9 of 2011);
  - ii.) The Political Parties Act, 2011 (Act No. 11 of 2011);
  - iii.) The Elections Act, 2011 (Act No. 24 of 2011);
  - iv.) The National Gender and Equality Commission Act, 2011 (Act No. 15 of 2011);
  - v.) The Election Campaign Financing Act (Act No. 42 of 2013); and
  - vi.) The Election Offences Act (Act No. 37 of 2016).

### 3.1 The Independent Electoral and Boundaries Commission (IEBC) Act (Act No. 9 of 2011)

18. The Bill seeks to amend the IEBC Act, 2011 to achieve the following:
  - a) Include in the interpretation section (section 2) the definition of special interest groups listed in Article 100 of the Constitution namely women, persons with disabilities (PWDs), youth, ethnic and other minorities and marginalized communities
  - b) In Section 4 to include in the functions of the Commission the following:



- i. In preparation of voters roll, the IEBC to disaggregate the data for all categories of special interest groups so that anyone looking at the voters roll is able to know the number of women, PWDs, ethnic minorities and marginalized communities;
  - ii. Power to prepare the party lists for nomination purposes. This may be through a process to be decided by regulations;
  - iii. To use voter education means that reach all voters including the special interest groups;
  - iv. To use technology and communication modes that are accessible to the Special interest groups.
- c) Section 27 mandates the Commission to publish and publicize all important information within its mandate using modes accessible to special interest groups.

### **3.2 The Political Parties Act (Act No. 9 of 2011)**

19. The Bill seeks to amend the Political Parties Act, (Act No. 9 of 2011) as follows:

- (i) To amend section 2 on interpretation section to redefine ethnic minorities as a group that is not dominant in a given society including racial minorities and substitute the definition of special interest groups with the definition contained in Article 100 of the Constitution;
- (ii) Amend section 20 to require a political party intending to change its constitution, rules, name or symbol to not only publish the notification in two dailies but also on its website and in a manner and form that can be accessed by special interest groups persons;
- (iii) Section 25 to provide a new formulae for distribution of the Political Parties Fund as follows:

- a) 53% of the fund between the largest and 2<sup>nd</sup> largest political parties or coalition of parties;
  - b) 20% of the fund among all other parties not getting from the 53%;
  - c) 20% of fund to political parties according to number of candidates elected from special interest groups ;
  - d) 5% of fund for administration expenses; and
  - e) 2 % of fund for administration expenses of the Political Parties Liaison Committee (PPLC).
  - f) It also lays down the criteria for qualification that for a party to be entitled to the funds, it should have five elected MPs, one elected Governor and twelve elected MCAs.
- (iv) To amend section 26 (1) to specify the items to which the money allocated to political parties from the fund for promotion of representation of special interest groups in Parliament and County Assemblies can be applied.
  - (v) To amend section 29 to require that when a political party publishes its income and expenditure at the end of the year, it includes details about the amount allocated and expended on each category of the special interest groups.
  - (vi) Introducing a new section 30A to require a political party to submit to the Registrar at the end of each financial year a report of its activities promoting representation of special interest groups in Parliament and county assemblies.
  - (vii) To amend section 49 to prescribe the formula for the distribution of the 20% funds allocated to political parties according to the number of special interest group Members elected to Parliament from each party.
  - (viii) To amend the First Schedule on Code of Conduct of Political Parties to impose an obligation on the political parties not only to respect the right of all persons to



participate in the political process but also to require the parties to protect that right and ensure all persons including special interest groups participate.

### **3.3 The Elections Act, 2011 (Act No. 24 of 2011)**

20. The Bill seeks to amend the Elections Act, (act No. 24 of 2011) as follows:

- i) Amend section 13 to require political parties participating in elections to ensure that during party nominations, one-third of the candidates who go for primaries are of either gender and five percent are persons with disabilities. It also seeks to oblige the IEBC not to accept the list of candidates nominated by a political party unless the above criterion is complied with.
- ii) Amend section 35 to require political parties while submitting the list of the nominees on the party list to IEBC to ensure that the list is accompanied with a statutory declaration signed by the person authorized by the party to certify that the candidates were nominated by the party and minutes of the party's election board.
- iii) Amend section 40 to impose an obligation on the IEBC while providing voter education, to ensure participation of special interest groups in its programmes and to sensitize voters on inclusion of these special interest groups.
- iv) Amend section 41 to require political parties participating in elections to procure access to media by its special interest group candidates.
- v) Amend the second schedule on the Electoral Code of Conduct to require political parties, candidates or agents to ensure security and full participation of special interest group persons and to ensure free access of special interest group persons to all public political meetings, marches, demonstrations and other public political events.

### **3.4 The National Gender and Equality Commission Act, 2011 (Act No. 15 of 2011)**

21. The Bill seeks to amend the National Gender and Equality Commission (NGEC) Act, (Act No. 15 of 2011) as follows:

- (i) Amend section 2 to incorporate the definition of special interest groups found in Article 100 of the Constitution of Kenya;
- (ii) To amend section 8 to include in the functions of the NGEC the role of monitoring the framework for the promotion of representation of special interest groups in elective positions in the legislature and liaising with other public institutions in developing and implementing measures to realize representation of special interest groups in public institutions. It also seeks to require public institutions to submit to the Commission on an annual basis their plans and measures in compliance with this section.

### **3.5 The Election Campaign Financing Act, 2013 (Act No. 42 of 2013)**

22. The Bill seeks to amend the Election Campaign Financing Act, (Act No. 42 of 2013) as follows:

- (i) To Amend section 2 to incorporate the definition of special interest groups found in Article 100 of the Constitution of Kenya; and
- (ii) To amend section 18 to require the IEBC to take into consideration candidates from special interest groups when prescribing the spending limits applicable to election campaigns.

### **3.6 The Election Offences Act, 2016 (Act No. 37 of 2016)**

23. The Bill proposes to amend the Election Offences Act, (Act No. 37 of 2016) by amending section 13 of the Act to criminalize the use of demeaning or derogatory



language targeted at special interest groups during the election process. This is meant to cushion the SIGs so that they can participate in the electoral process without intimidation.

## CHAPTER 4

### 4.0 PUBLIC PARTICIPATION IN CONSIDERATION OF THE BILL

#### 4.1 Legal framework

24. Article 118 (1) (b) of the Constitution of Kenya provides that:

*“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees”*

Standing Order 127(3) as read together with Standing Order 127 (6)(a) requires *The Select Committee to which a Bill is committed to facilitate public participation and take into account the views of the public when the Committee makes its report to the House.*

#### 4.2 Request for memoranda from the public

25. In line with the Constitution and the Standing Orders, the Committee put out an advert in the local dailies of 11<sup>th</sup> July, 2019 (attached as annexure 1) inviting the public to give their written submissions on the Bill. The Committee also invited stakeholders it considered important in preparation of the Bill to send written submissions and appear and make oral clarifications on the Bill. Following the appeals, the Committee received written responses and also met with representatives of the following organizations:

- a) The Independent Electoral and Boundaries Commission (IEBC);
- b) The Office of the Registrar of Political Parties;
- c) The National Gender and Equality Commission;
- d) The Kenya Law Reform Commission;
- e) The Attorney General;
- f) The National Council for Persons With Disabilities;
- g) The Political Parties Liaison Committee; and
- h) The Kenya National Commission on Human Rights (KNCHR).



26. The table below presents in summary form the submissions received from the stakeholders above (*attached as annex 4*) and an analysis of the submissions by the Committee:

**4.3 Analysis of stakeholder submissions on the representation of special interest groups laws (amendment) bill, 2019**

Clause	Stakeholder	Proposed Amendment	Justification	Analysis
2	<b>National Gender and Equality Commission</b>	Insert a new addition to cater for affirmative action, and lower or waiver subscription fees for special interest groups.  (No specific proposed amendment)	To encourage special interest groups to fully participate in the electoral process	No specific amendment proposed.  Further, legislating on the fees to be charged by political parties would amount to micro-managing the political parties.
	<b>Kenya Law Reform Commission</b>	Delete.	The long title is broad enough and captures the purpose of the Bill and it is Kenya's tradition of amendment of Acts to discard the objects and purpose clause once the principal Acts are updated or revised.	Clause 2 serves the purpose of highlighting the object and purpose intended to be achieved by the Bill. The objects clause serves to explain what the Bill sets out to achieve. It does not seek to amend substantive provisions in the various Acts.  Once the various amendments as contained in the Bill are updated in the relevant parent Acts, clause 2 of the Bill would remain in isolation. In as much as the objects clause will remain in the amendment Act, this is similar to the transitional provisions

				which also remain in the Amendment Act.
<b>Kenya National Commission on Human Rights</b>	<ul style="list-style-type: none"> <li>• Insert a new paragraph in subsection (2)- “to give further effect to Article 54(2), 55(b) and 56(a) to ensure that persons with disabilities, youth and minorities and marginalized groups participate and are represented in the political sphere of life.”</li> <li>• Delete subclause (2)(c)</li> </ul>	-	<p>Sub-clause (2)(f) provides for the giving effect to Article 54(2) of the Constitution, therefore this Article should not be included in the proposed new paragraph.</p> <p>Articles 55(b) and 56(a) provide for the need for the youth and marginalized groups to be given opportunities to participate and be represented in governance and in other spheres of life, therefore these may also be included in the objects clause of the Bill.</p> <p>However, these aspects are already adequately covered under Article 100 of the Constitution.</p> <p>Article 88(4)(g) of the Constitution mandates the IEBC to conduct voter education.</p> <p>Sub-clause (2)(c) of the Bill does not amend any of the specific Acts, but merely provides what the Bill seeks to achieve. This will therefore not cause any conflict in the discharge of mandates between the IEBC and the NGEC.</p>	<p>Section 8(h) of the NGEC Act gives the mandate to the NGEC to co-ordinate and advise on public education programmes for the creation of a culture of respect for the principles of equality and freedom from discrimination. This provision is sufficient and</p>



			inclusive to cater for the targeted interventions on voter education for special interest groups.	Sub-clause (2) should therefore be redrafted to eliminate any ambiguity, as-  <i>“mandate the National Gender and Equality Commission with the function of promoting the sensitization of the public on the right of special interest groups to participate in the electoral process;”</i>
	<b>Independent Electoral and Boundaries Commission</b>	Amend clause 2(2)(c) to read-  “mandate the National Gender and Equality Commission in partnership with the Independent Electoral and Boundaries Commission and other institutions to facilitate civic and voter education in sensitizing the public on the right of special interest groups to participate in the electoral process;”	-	This proposed amendment by IEBC is not necessary since sub-clause (c) will be redrafted as highlighted above.
3	<b>Kenya National Commission</b>	Delete paragraph (ix) and substitute therefor the following-	The amendment as proposed in the Bill goes beyond the	Article 100 of the Constitution provides that Parliament shall enact

<p><b>on Human Rights</b></p>	<p>“(ix) promote the inclusion of persons with disabilities in Parliament”</p>	<p>scope and limit of the present Bill which is the representation of special interest groups in Parliament.</p>	<p>legislation to promote the representation in Parliament of-</p> <ul style="list-style-type: none"> <li>(a) women;</li> <li>(b) persons with disabilities;</li> <li>(c) youth;</li> <li>(d) ethnic and other minorities; and</li> <li>(e) marginalized communities.</li> </ul> <p>However, the National Council for Persons with Disabilities represents the interests of persons with disabilities in all spheres of life, not just in Parliament.</p>
<p><b>Independent Electoral and Boundaries Commission</b></p>	<p>Introduce the following new paragraphs immediately after paragraph (ix)-</p> <p>“(xa) in collaboration with IEBC, build capacity of persons with disabilities to take part in electoral processes both as voters and contestants;</p> <p>(xb) provide a platform to champion and advocate for accessibility of electoral infrastructure such as technology,</p>	<p>-</p>	<p>The amendments seek to introduce additional functions of the National Council for Persons with Disabilities in regards to access of persons with disabilities in electoral matters. These additional functions serve to encourage the participation of persons with disabilities in electoral processes.</p>



		registration and polling centres, polling officials or as prescribed by any other law.”		
4				
5	<b>Political Parties Liaison Committee</b>	Delete paragraph (b) and substitute therefor the following new amendment- (b) in paragraph (b) by inserting the words “in conjunction with political parties to all voters including special interest groups” immediately after word “education”	-	This proposed amendment would obligate political parties to conduct voter education in conjunction with the IEBC, and this goes against the provisions of Article 88(4)(g) of the Constitution which mandates only the IEBC to conduct voter education.
	<b>Independent Electoral and Boundaries Commission</b>	<ul style="list-style-type: none"> <li>Delete paragraph (b) and substitute therefor the following new amendment- (b) in paragraph (b) by inserting the words “in accessible formats to all voters including the different categories of special interest groups” immediately after the word “education”</li> </ul>	-	<p>The proposed amendment serves no purpose as it merely restates what is already provided in the Bill.</p> <p>This proposed amendment is necessary since the various categories of special interest groups may need different communication modes. The term “special interest groups” would thus cater for the various categories eg the deaf, blind, illiterate, ethnic natives etc.</p>

		<ul style="list-style-type: none"> <li>• 5(d)- delete the words “persons with disabilities” and substitute therefor the words “special interest groups”</li>   <li>• Insert a new paragraph in section 4 to read-  “the establishment of a criteria for the identification of marginalized communities, ethnic and other minorities for all electoral purposes to provide a basis for segregation of data”</li>   <li>• 5(c)- insert the following new paragraph immediately after the proposed new paragraph (ka)-  “(kb) the Commission shall publish names of party list nominees in formats that are accessible to all</li> </ul>		<p>The amendments seek to introduce additional functions of the IEBC in regards to special interest groups.</p> <p>The proposal introduces the requirement of the IEBC to publish party lists in formats accessible to all special interest groups. This proposal may be adopted but should be moved to section 35 of the Elections Act (clause 18 of the Bill).</p>
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		categories of special interest groups after final submission of party lists, I line with the established timelines”		
6	<b>Independent Electoral and Boundaries Commission</b>	<ul style="list-style-type: none"> <li>• (1A)- Delete the words “persons with disabilities” and substitute therefor the words “special interest groups”</li> <li>• Insert the following new paragraph immediately after paragraph (1A)- “(1B) Set up inter agency platforms to provide information to all categories of special interest groups in line with constitutional requirements on access to information and the Freedom of Information Act of 2016.”</li> </ul>	-	<p>This proposed amendment ensures accessibility to all persons within the special interest groups, and not just persons with disabilities.</p> <p>Section 5 of the Access to Information Act mandates every public entity to facilitate access to information held by such entity.</p> <p>Subsection (2) of the Act provides that the information shall be disseminated taking into consideration the need to reach persons with disabilities, the cost, local language, the most effective method of communication in that local area, and the information shall be easily accessible and available free or at cost taking into account the medium used.</p> <p>This proposed new amendment is therefore not necessary as it would mandate the IEBC to perform a function which is to be performed by all</p>

				public entities.
7				
8	<b>Political Parties Liaison Committee</b>	Delete	-	No justification provided for the deletion.  The provision should however be redrafted to provide that a political party shall make the publication on its website where applicable, that is in case the political party has a website.
	<b>Independent Electoral and Boundaries Commission</b>	<ul style="list-style-type: none"> <li>• 8(a)- Delete the words “special interest groups” and substitute therefor the words “all the different categories of special interest groups”</li> <li>• 8(b)- Delete the words “persons with disabilities” and substitute therefor the words “all the different categories of special interest groups”</li> </ul>	-	This amendment serves no purpose as it merely restates what is already stated in the Bill.
9	<b>National Gender and Equality Commission</b>	<ul style="list-style-type: none"> <li>• 9(b)- Amend paragraph (c)(i) to provide for five elected members of the National Assembly and the Senate.</li> </ul>	<ul style="list-style-type: none"> <li>• To avoid conflict</li> </ul>	Article 93(1) of the Constitution provides that Parliament consist of both the National Assembly and the Senate. A member of Parliament therefore means either a member of the



		<ul style="list-style-type: none"> <li>• Introduce an oversight authority in the distribution of the Political Parties Fund</li> </ul>	<ul style="list-style-type: none"> <li>• To ensure that special interest groups benefit from the Fund.</li> </ul>	<p>National Assembly or a member of the Senate.</p> <p>Section 34(b) provides that one of the functions of the Registrar of Political Parties is to administer the Political Parties Fund. Further, Article 201(d) of the Constitution provides that public money shall be used in a prudent and responsible way. Section 32 of the Act provides for the Audit of the Fund by the Auditor-General.</p> <p>It is therefore not necessary to establish a separate oversight mechanism in respect of the Political Parties Fund.</p>
<b>Office of the Registrar of Political Parties</b>	<p>Amend subsection (1)(a) to read-</p> <p>“(a) fifty three percent of the Fund proportionately shared between the political parties that meet the threshold set out in section 25(2) of the <u>Bill</u>, in reference to the total number of votes secured by each political party’s presidential, parliamentary, governor and county assembly candidates in the</p>	<ul style="list-style-type: none"> <li>• The Act establishes a Political Parties Fund and not a Coalitions Fund.</li> <li>• The requirements outlined under section 25(2) make reference to political party’s records and not coalitions.</li> <li>• Section 25(3) provides that for purpose of computation it is</li> </ul>	<p>The framing of subsection (1)(a) was informed by the language used in Article 108(2) and (3) which provides for party leaders. In terms of this Article, the leader of majority party a person who is the leader in the National Assembly of the largest party or coalition of parties.</p> <p>In as much as the Constitution makes reference and gives recognition to coalitions of</p>	

	preceding general elections.”	the total number of votes obtained by a political party in the elections to be considered and not the votes of a coalition of parties. <ul style="list-style-type: none"> <li>Coalitions are not registered entities and do not have bank accounts unlike political parties for audit purposes under sec 31 of the Act.</li> </ul>	parties, it is important to note that coalitions are not legal entities therefore there would be challenges in regards to disbursement of funds to coalitions, as well as accountability of the funds by the coalitions.
	Amend (1)(b) to provide the basis of sharing the twenty per cent of the Fund proportionately among the political parties that participated in the preceding elections in reference to the total number of votes secured at the last general election by the party’s presidential, governor, parliamentary and county assembly candidates.	To eliminate ambiguity as regards the basis of sharing of the Fund	This amendment is not necessary since subsection (3) of the Act already provides that the determination shall be based on the total number of votes secured by a political party computed by adding the total number of votes obtained in the preceding general election by a political party in the election for the President, members of Parliament, county governors and members of county assemblies. There is however need to amend subsection (3) of the Act to provide correct cross-referencing in light of the amendment to subsection (1).
	Amend (1)(e)- by	The Bill provides that	Section 34 of the Act



		deleting the word “administration” and substituting therefor the words “dialogue operations”	two per cent of the fund shall be for the administration expenses of the PPLC yet it has already provided that five percent of the fund shall be for the administration of the fund in totality.	<p>provides that the function of the Registrar is to administer the Political Parties Fund.</p> <p>Section 38 establishes the Political Parties Liaison Committee at the national and county levels, whose function is to provide a platform for dialogue between the Registrar, Commission and political parties.</p> <p>The administration expenses of the Fund and that of the Political Parties Liaison Committee are therefore two separate entities under the Office of the Registrar of Political Parties.</p> <p>However, it may be important to note that both are administered under the Office of the Registrar of Political Parties.</p> <p>Further, the proposed amendment is ambiguous as it is not clear what dialogue operations means.</p>
<b>Kenya Law Reform Commission</b>	Reword the opening sentence in subsection (2) to read-	“Despite subsection (1), a political party shall be entitled to be funded under this section if—”	To eliminate uncertainty	This proposed amendment is not in line with proper drafting, by strating the sentence with “Despite” then concluding with a proviso.

<p><b>Kenya National Commission on Human Rights</b></p>	<p>Amend subsection (1)(a) to provide for the largest and second largest party or coalition of parties in Parliament.</p>	<p>To include the Senate</p>	<p>This amendment may be necessary so as to include the Senate in the determination of the largest party or coalition of parties.</p>
<p><b>Political Parties Liaison Committee</b></p>	<p>Amend subsections (1) and (2) to read-</p> <p>(1) The fund shall be distributed as follows-</p> <p>(a) fifty percent of the fund proportionately shared between the largest party in the National Assembly and the second largest in the National Assembly;</p> <p>(b) fifteen percent of the fund proportionately shared among all the other parties except the parties that qualify in subsection (a);</p> <p>(c) fifteen percent of the fund shared equally amongst all registered political parties;</p> <p>(d) ten percent of the fund proportionately shared to political parties based on the number of</p>	<p>-</p>	<p>The amendment proposes to change the amounts of the Fund allocated for the various uses.</p> <p>The amendment further seeks to change the eligibility criteria to the Fund. Specifically, the amendment proposes to amend the proposed criteria in paragraph (c), to provide that a party must have participated in the preceding general elections, must have had at least five candidates, and must have managed to get at least one elected member either at the national or county level.</p> <p>The amendment seeks to lower the threshold for eligibility to receive funding from the Fund.</p>



		<p>candidates of the party from special interest groups elected in the preceding general elections;</p> <p>(e) five percent for the administration expenses of the fund; and</p> <p>(f) five percent for the operation of the Political Parties Liaison Committee.</p> <p>(2) Apolitical party shall be entitled to receive funding for the fund if—</p> <p>(a) not more than two thirds of its registered office bearers are of the same gender;</p> <p>(b) the party has in its governing body, representation of special interest groups; and</p> <p>(c) the party—</p> <p style="padding-left: 40px;">(i) participated in the last general election;</p> <p style="padding-left: 40px;">(ii) the party fielded at least five candidates</p>		
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		ates in at least five counties; and (iii)the party managed to get at least one elected member at the national or county level.		
10	<b>Independent Electoral and Boundaries Commission</b>	(a)(i)- Delete the word "civic" and substitute therefor the word "political"	-	The term "civic education" denotes the type of education given to citizens to ensure that they are enabled to participate effectively in promoting the good governance of the country. The amendment is therefore not necessary.
	<b>Office of the Registrar of Political Parties</b>	Introduce a new amendment- new subsection (1)(ff) to read- "(ff) catering for the PPLC dialogue operational activities and expenses in line with the PPLC work plan."	The Bill does not include the operations of PPLC activities under the section outlining the purposes of the Fund.	The amendment seeks to introduce an additional purpose in respect of funds allocated to a political party.  However this amendment may not be necessary since the new section 25(1)(e) as proposed in the Bill already provides that two per cent of the Fund shall be for the administration expenses of



				the Political Parties Liaison Committee, which is under the Office of the Registrar of Political Parties.
11	<b>Office of the Registrar of Political Parties</b>	Delete the title and replace with- “Publishing the sources, allocation and expenditure of the fund.”	The Bill proposes the publication of the amount allocated under that title.	Marginal notes are not amended in legislation.
12	<b>Kenya Law Reform Commission</b>	Delete “s” appearing in the word “sections”	Typographical error	The amendment is necessary to correct a grammatical error.
	<b>Independent Electoral and Boundaries Commission</b>	<ul style="list-style-type: none"> <li>Delete “the representation of special interest groups” and substitute therefor the words “all categories of special interest groups”</li> <li>Insert the following new subsection in the proposed new section 30A- “Where a political party has challenges in promoting participation of special interest groups it will be required to explain in detail how it plans to overcome such</li> </ul>	-	<p>This amendment is not necessary as it merely restates what is already provided in the Bill.</p> <p>The amendment is not necessary since it is envisaged that a report submitted by a political party shall contain the challenges as well as w to address the challenges.</p>

		challenges”		
13	<b>Office of the Registrar of Political Parties</b>	Delete.	The proposal amounts to micromanagement of political parties yet they are institutions. The proposals under section 29 take care of the same.	This deletion may be necessary since the share of the Fund given to political parties based on the number of special interest groups is supposed to act as an incentive to the political party to encourage participation of special interest groups in electoral processes. Further, the proposed new subsection (1)(c) already provides that the twenty per cent of the Fund shall be shared by the political parties proportionately based on their number of elected persons within the special interest groups.
	<b>Independent Electoral and Boundaries Commission</b>	Insert the words “all the different categories of” before the words “special interest groups”	-	This amendment is not necessary as it merely restates what is already provided in the Bill.
14	<b>Independent Electoral and Boundaries Commission</b>	(a)(i)- Insert the words “all the different categories of” before the words “special interest groups”	-	This amendment is not necessary as it merely restates what is already provided in the Bill.
15				
16	<b>National Gender and Equality Commission</b>	16(c)- delete the word “progressive”	The word is elusive	The amendment as contained in the Bill borrows from the language used in Article 54(2) of the Constitution which provides that the State shall ensure the progressive



				implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.
	<b>Kenya Law Reform Commission</b>	Delete	The Commission (NGEC) is given "oversight" and "monitoring" powers in relation to electoral matters. Oversight and monitoring imply regulatory and supervisory powers. It is not clear how these powers will be exercised in view of the fact that IEBC is constitutionally independent and sole electoral management body in the country.	The mandate given to NGEC in the amendment as contained in the Bill only serves to cater for the needs of the special interest groups. Therefore this mandate does not conflict with the elections monitoring mandate of the IEBC.
	<b>Kenya National Commission on Human Rights</b>	Delete the proposed new subsections (3) and (4)	The matters fall outside the parameters of Article 100 that specifically seeks the promotion of representation of special interest groups in Parliament.	The proposed new subsections (3) and (4) as contained in the Bill do not offend the Constitution or any other law. They merely serve to ensure the protection of the interests of the special interest groups.
17	<b>National Gender and Equality Commission</b>	17(a)- Amend paragraph (b) by deleting "persons with disabilities" and substituting with "special interest groups"	To ensure all persons referred to in Article 100 are catered for.	The amendment in the Bill is necessary to ensure that reference is made to all the various categories of persons defined as special interest groups in terms of Article 100 of the Constitution.

	<b>Kenya National Commission on Human Rights</b>	Introduce an amendment in section 2 of the Elections Act to define the term “special interest groups”	The term has been used in various amendments to the Act but has not been defined.	The amendment may be adopted so as to define the term “special interest groups” as has been done in the other Acts amended within the Bill.
18	<b>National Gender and Equality Commission</b>	New subsection 2- the caucus of the special interest groups in political parties should nominate the candidates under the special interest groups	To ensure transparency of the process.	This amendment may not be necessary since there might not be an entity within each political party known as the caucus of the special interest groups. It would also amount to micro-managing the political parties.
19	<b>Political Parties Liaison Committee</b>	Amend the opening sentence in the proposed new subsection (1A) to read- “In providing voter education the Commission <b>in conjunction with political parties</b> shall-”	-	This amendment would mandate political parties to participate in voter education. This goes against Article 88(4)(g) of the Constitution which mandates the IEBC to conduct voter education.
	<b>Independent Electoral and Boundaries Commission</b>	Insert the words “all the different categories of” before the words “special interest groups”	-	This amendment is not necessary as it merely restates what is already provided in the Bill.
20	<b>Kenya Law Reform Commission</b>	Delete	It contradicts the spirit of section 41 of the Elections Act which read together with section 8 of the Kenya Broadcasting Corporation Act, applies only to state owned free air time	Section 41 of the Elections Act limits access only to state owned media. Further, the workability of the new subsection needs to be relooked as it may cause unforeseen financial burden on the part of political parties.



			coverage and requirement to balance coverage time between different political opinions.  The Elections Campaign Financing Act addresses the matters relating to funding the media coverage during campaigns.	
	<b>Political Parties Liaison Committee</b>	Amend the proposed new subsection (2A) to read- “A political party participating in an election shall facilitate the access of its special interest groups candidates to media coverage”	-	The proposed amendment proposes to delete the obligation imposed on political parties to provide free access to media coverage to the special interest groups.
	<b>Independent Electoral and Boundaries Commission</b>	Insert the words “all the different categories of” before the words “its”	-	This amendment is not necessary as it merely restates what is already provided in the Bill.
21	<b>Political Parties Liaison Committee</b>	Amend paragraph (d) by deleting the word “free”	-	The proposed amendment proposes to delete the obligation imposed on political parties to provide free access to meetings to the special interest groups.
	<b>Independent Electoral and Boundaries Commission</b>	(a) to (e)- Insert the words “all the different categories of” before the word “to”	-	This amendment is not necessary as it merely restates what is already provided in the Bill.

22				
23	<b>Independent Electoral and Boundaries Commission</b>	Insert the words "all the different categories of" before the word "to"	-	This amendment is not necessary as it merely restates what is already provided in the Bill.
24	<b>Kenya National Commission on Human Rights</b>	Introduce new offences in the Election Offences Act to include- (a) abuse and misuse of children and school property; (b) disruption of learning in schools; (c) hate speech, violence and harassment of special interest groups; and (d) sexual violence.	To introduce more offences relating to elections.	Pursuant to Standing Order 133(5), the proposed amendments may not be necessary as they deal with a different subject and would unreasonably expand the subject of the Bill, whose object is to give effect to the provision of Article 100 of the Constitution.



## CHAPTER 5

### 5.0 RECOMMENDATIONS AND WAY FORWARD

#### 5.1 PROPOSED COMMITTEE STAGE AMENDMENTS TO THE REPRESENTATION OF SPECIAL INTEREST GROUPS LAWS (AMENDMENT) BILL, 2019

27. The Committee having considered the stakeholder submissions, recommends the following amendments to the Bill—

##### 28. CLAUSE 2

(1) **THAT**, Clause 2(2) of the Bill be amended by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) mandate the National Gender and Equality Commission with the function of promoting the sensitization of the public on the right of special interest groups to participate in the electoral process;”

##### **Justification**

(2) It is important to align the objects and purpose of the Bill, as regards the mandate of the National Gender and Equality Commission, to the parent Act, namely the National Gender and Equality Commission Act, No. 15 of 2011. This Act provides that the mandate of the Commission is to promote gender equality and freedom from discrimination in line with Article 27 of the Constitution. This will ensure that there is no conflict of mandates between the National Gender and Equality Commission and the Independent Electoral and Boundaries Commission.

## 29. CLAUSE 3

(1) **THAT**, Clause 3 of the Bill be amended by inserting the following new paragraphs immediately after the proposed new paragraph (ix)—

“(x) collaborate with the Independent Electoral and Boundaries Commission to build capacity of persons with disabilities to take part in electoral processes both as voters and contestants;”

“(xi) provide a platform to advocate for accessibility of electoral infrastructure including technology, voter registration and polling stations;”

### Justification

(2) This amendment serves to introduce additional functions of the National Council for Persons with Disabilities, and these functions serve the purpose of encouraging the participation of persons with disabilities in electoral processes.

## 29. CLAUSE 5

(1) **THAT**, Clause 5 of the Bill be amended—

(a) in paragraph (d) by deleting the words “persons with disabilities” and substituting therefor the words “special interest groups”;

(b) by inserting the following new paragraph immediately after paragraph (d)—

“(e) by inserting the following new paragraph immediately after paragraph (m)—

(ma) the establishment of criteria for the identification of marginalized communities, ethnic and other minorities for all electoral purposes to provide a basis for segregation of data;”



## **Justification**

(2) This amendment seeks to ensure that communication modes used by the Independent Electoral and Boundaries Commission shall be modes that are accessible to address all the various communication challenges that may be encountered by the special interest groups.

(3) Further, the amendment seeks to give the Independent Electoral and Boundaries Commission the mandate of coming up with a criteria for the classification of the marginalized and ethnic communities.

## **30. CLAUSE 6**

(1) **THAT**, Clause 6 of the Bill be amended by deleting the words “persons with disabilities” appearing in the proposed new subsection (1A) and substituting therefor the words “special interest groups”.

## **Justification**

(2) This amendment seeks to ensure that communication modes used by the Independent Electoral and Boundaries Commission shall be modes that are accessible to address all the various communication challenges that may be encountered by the special interest groups.

## **31. CLAUSE 8**

(1) **THAT**, Clause 8 of the Bill be amended in paragraph (a) by inserting the words “where applicable” immediately after the words “and on its website”.

## Justification

(2) The amendment seeks to eliminate the mandatory requirement to have a political party to make any notification on any change of its particulars on its website. This is because not all political parties may have a website in existence. The amendment will therefore ensure that a political party, in addition to making such notifications in two newspapers of nationwide circulation, may also publish such notification on its website, in the event that such website exists.

## 32. CLAUSE 9

(1) **THAT**, Clause 9 of the Bill be amended—

(a) in paragraph (a), by deleting the proposed new paragraph (a) and substituting therefor the following new paragraph—

“(a) fifty three per cent of the Fund proportionately shared between the largest party and the second largest party;”

(b) by deleting the word “and” appearing in paragraph (c)(ii) and substituting therefor the word “or”;

“(c) by inserting the following new subsection immediately after subsection (3)—

(4) A political party that receives funds under this section shall ensure that at least twenty five per cent of the funds are disbursed to its branch offices.

## Justification

(2) The amendment seeks to ensure that the fifty three per cent share of the Fund shall be shared between the largest and the second largest party based on the criteria specified in subsection (3) of the Act. Subsection (3) provides that this determination shall be made by computing the total number of votes secured by a political party by adding the total number



of votes obtained in the preceding general election by a political party in the election for the President, members of Parliament, County Governors and members of County Assemblies.

(3) This will eliminate the challenge posed by distribution of funds to coalitions which are not legal entities. Since coalitions are not legal entities, they are under no obligation to account for the funds, unlike the registered political parties which must account to the Registrar of Political Parties on the use of the funds.

(4) The amendment further seeks to ensure that other political parties also have a share of the Fund, so as to promote their participation in elections. To ensure the participation of special interest groups in electoral processes, there is need to have more actors than just the largest party and the second largest party. This will in turn result to the political parties promoting the participation of special interest groups to participate in elections.

(5) To encourage the sharing of the Fund to the political parties, the amendment also seeks to lower the threshold for eligibility of a political party to receive funding from the Fund. In terms of the amendment, a political party shall be eligible to the funding if the party attains elected members at any of the levels of representation, either in Parliament, Governors or County Assemblies.

(6) The amendment also seeks to mandate every political party that receives funding from the Fund to ensure that a share of its funds is given to its branch offices, in line with the spirit of devolution. This will ensure smooth administrative operations of the political party at all levels.

### 33. CLAUSE 12

(1) **THAT**, Clause 12 of the Bill be amended by deleting the word “sections” and substituting therefore the word “section”.

#### **Justification**

(2) The amendment is necessary to correct a typographical error.

### 34. CLAUSE 13

(1) **THAT**, the Bill be amended by deleting Clause 13.

#### **Justification**

(2) The deletion of Clause 13 seeks to eliminate the provision that the Registrar shall prescribe regulations prescribing the formula for the distribution of the allocation of the fund to special interest groups. This is because such a provision would amount to the micro-management of the political parties. Further, the share to be given to the political parties based on their number of elected persons within the special interest groups is an incentive to the political parties, and is not to be distributed to the specific individuals within the special interest groups.

### 35. CLAUSE 17

(1) **THAT**, Clause 17 of the Bill be amended in paragraph (a) by deleting the words “persons with disabilities” appearing in the proposed new subsection (1A)(b) and substituting therefor the words “special interest groups”



### **Justification**

(2) This amendment is necessary so as to cater for all persons specified under Article 100 as forming part of the special interest groups. This is because prescribing a specific percentage for persons with disabilities to be met by the political parties would prejudice the other categories of persons within the special interest groups.

### **36. CLAUSE 18**

(1) **THAT**, Clause 18 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) inserting the following new subsections immediately after subsection (1)—

“(2) A political party shall submit the party list under subsection (1) together with a statutory declaration signed by the person authorized to certify that the candidates were nominated by the party and the minutes of the approval of the list by the election board of the political party.

(3) The Commission shall publish the party lists submitted under subsection (1) in formats that are accessible to the special interest groups in line with the established timelines.”

### **Justification**

(2) The amendment is necessary to ensure that the party lists submitted by the political parties to the Independent Electoral and Boundaries Commission shall be made accessible to all persons within the special interest groups.

### **36. CLAUSE 20**

(1) **THAT**, the Bill be amended by deleting Clause 20.

## Justification

(2) The deletion of this Clause is necessary since mandating the political parties to procure and fund the special interest groups to media coverage may pose unforeseen financial burden to the political parties. It would also amount to discrimination against all other persons not falling within the ambit of special interest groups, but who may need financial or some other form of assistance.

## 37. CLAUSE 21

(1) **THAT**, Clause 21 of the Bill be amended in the proposed new paragraph 16(d) by deleting the word “free”

## Justification

(1) This amendment will ensure that political parties are not obligated to ensure free access to meetings for all persons within the special interest groups. This provision as it is would also amount to micro-management of the political parties.

## 38. NEW CLAUSE

(1) **THAT**, the Bill be amended by inserting the following new Clause immediately after Clause 16—

Amendment 16A. Section 2 of the Elections Act, No. 24 of 2011 is amended by inserting of section 2 the following new definition in its proper alphabetical sequence—

of No. 24 of 2011. “special interest groups” means the following groups specified under Article 100 of the Constitution—

(a) women;



- (b) persons with disabilities;
- (c) youth;
- (d) ethnic and other minorities; and
- (e) marginalised communities.

**Justification**

The amendment seeks to introduce the definition of the term “special interests groups” which has been used in the Act but has not been defined.

SIGNED ..... 

**HON. JEREMIAH KIONI, M.P.**  
**CHAIRPERSON, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT**  
**COMMITTEE**

DATE..... 11/09/2019.....





Annex 1

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - THIRD SESSION

In the matters of consideration by the National Assembly -

1. The Statutory Instruments (Amendment) Bill (National Assembly Bill No. 13 of 2019)
2. The Representation of Special Interest Group Laws (Amendment) Bill (National Assembly Bill No. 52 of 2019)

SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". The National Assembly Standing Order 127 requires the Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House.

The Statutory Instruments (Amendment) Bill (National Assembly Bill No. 13 of 2019) seeks to amend section 12 (5) of the Statutory Instruments Act, 2013 in order to remove the provision that exempts rules and regulations made by courts of competent jurisdiction.

The Representation of Special Interest Group Laws (Amendment) Bill (National Assembly Bill No. 52 of 2019) seeks to implement Article 100 of the Constitution of Kenya which requires Parliament to enact legislation to promote the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalized groups. Further the Bill seeks to make amendments to various existing laws in order to give effect to Article 100 of the Constitution.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127 and stand committed to the Departmental Committee on Justice and Legal Affairs and the Constitutional Implementation Oversight Committee respectively for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1) (b) of the Constitution and Standing Order 127, the Committees invite interested members of the public to submit any representations they may have on the aforementioned Bills. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, First Floor, Main Parliament Buildings, Nairobi, or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke) to be received on or before Wednesday, 17<sup>th</sup> July, 2019 at 5:00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - THIRD SESSION

In the matters of consideration by the National Assembly -

1. The Equalization Fund Bill, (National Assembly Bill No. 43 of 2019)
2. The Early Childhood Education Bill, 2018 (Senate Bill No. 26 of 2018)

SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". The National Assembly Standing Order 127 requires the Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House.

The Equalization Fund Bill, 2019 seeks to institute the Equalisation Fund as established under Article 216 of the Constitution. The Bill proposes the establishment of a Board to administer the fund in instances where the fund is directly used for the provision of basic services such as water, roads, health facilities and electricity to marginalised areas, in order to bring the provision of such services to nearly the same standards as those enjoyed by other areas in the country. The bill further proposes to establish Local Equalisation Fund Committees in each ward in marginalised areas as determined by the Commission on Revenue Allocation, pursuant to Article 216 (4) of the Constitution.

The Early Childhood Education Bill, 2018 (Senate Bill No. 26 of 2018) seeks to provide a framework for the establishment of systems for the administration of early childhood education within a county, and for connected purposes.

The aforementioned Bills have undergone First Reading pursuant to Standing Order 127 and stand committed to the Budget and Appropriations Committee and the Departmental Committee on Education and Research respectively for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1) (b) of the Constitution and Standing Order 127 the Committees invite interested members of the public to submit any representations they may have on the aforementioned Bills. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, First Floor, Main Parliament Buildings, Nairobi, or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke) to be received on or before Wednesday, 17<sup>th</sup> July, 2019 at 5:00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

Telephone: +254 716647700  
Email: [info@emcassembly.go.ke](mailto:info@emcassembly.go.ke)  
Website: [www.emcassembly.go.ke](http://www.emcassembly.go.ke)



Elgeyo Marakwet County Assembly  
P.O. Box 53 - 30700  
ITEN.

ELGEYO/MARAKWET COUNTY ASSEMBLY

The County Assembly Service Board of Elgeyo/Marakwet County invites applications from suitably qualified Kenyan citizens to fill the following vacant positions;

NO.	POSITION	NO. OF POSTS	JOB GROUP
1.	Chairperson Internal Audit Committee	1	
2.	Member Audit Committee	1	
3.	Legal Counsel	1	M
4.	Research Officer	1	M
5.	ICT Officer	1	L
6.	Communication Officer	1	L
7.	Transport Officer	1	L
8.	Supervisor or Hospitality Officer,	1	J
9.	Chief Chef	1	H
10.	Commissionaire	1	H
11.	Accountant/Cashier	1	H
12.	Waiter Assistant	1	F
13.	Service waiters	3	G

For more information on the job description, duties and responsibilities and other requirements, visit our website; [www.emcassembly.go.ke](http://www.emcassembly.go.ke).

Persons interested in filling the above positions should submit their applications together with detailed curriculum vitae, certificates, testimonials in sealed envelopes or send to office Email: [info@emcassembly.go.ke](mailto:info@emcassembly.go.ke) OR hand delivered to Elgeyo/Marakwet County Assembly, ITEN so as to reach us on or before 26<sup>th</sup> July 2019 5:00pm to:-

The Secretary  
County Assembly Service Board  
Elgeyo/Marakwet County Assembly  
P.O Box 53 - 30700  
ITEN.

EMCA is an equal opportunity employer and values diversity. Women, Youth, Minorities and persons with Disabilities are encouraged to apply. Any form of canvassing will lead to automatic disqualification. Only shortlisted candidates will be contacted.



CAREER OPPORTUNITY

The Standard Group PLC is a multi-media organization with investments in media platforms spanning newspaper print operations, television, radio broadcasting, digital and online services, as well as outdoor advertising. The Standard Group is recognized as a leading multi-media house in Kenya with a key influence in matters of national and international interest. Our various media platforms include: The Standard newspaper, KTN, KTN News, Radio Maisha, The Nairobiian weekly newspaper, think Outdoor (billboard advertising), Standard Digital, Farmers TV, KTN Burudani, Spice FM and Wybez Radio. As part of strengthening our operations, Sales and Distribution department is looking for a smart, creative and ambitious individual to join the team.

REGIONAL SALES MANAGER

Reporting to the General Manager - Sales & Distribution

OVERALL PURPOSE OF THE JOB:

The role will be responsible for all sales and distribution activities in your assigned region and work to grow your revenue base.

PRIMARY RESPONSIBILITIES:

- Leading sales and distribution teams to deliver sales and revenue targets and improving market share.
- Identifying distribution gaps, testing new ideas and drive penetration into new markets
- Tracking performance and proactively taking corrective measures.
- Working with key stakeholders to optimize route to market
- Working with the marketing division for execution of marketing programs within agreed calendar and timelines.
- Reviewing regional expenses and recommending improvements.
- Developing a strong customer/partner relationships to help drive commercialization
- Developing and maintaining a clear understanding of the market and regulatory trends as well as key drivers and barriers affecting product distribution in selected markets.

PERSON SPECIFICATIONS

Academic Qualifications:

- Bachelor's degree in Sales and Marketing or its equivalent from a recognized institution

Professional Qualifications

- Relevant professional qualifications from a recognized institution as applicable;

- Membership in a relevant professional body

Experience

- Minimum of 10 years relevant experience in Fast Moving Consumer Goods (FMCG).

Skills and Attributes

- Strategic planning and Goal setting/directional to ensure organisation survives in long term
- Passion and aggression
- Persistent, unyielding, and results driven.
- Team player and good supervisory skills
- Demonstrate outstanding interpersonal and leadership skills.

- Must understand function/discipline planning requirements.

If you possess the above qualifications and the drive to meet the challenge, please send your application to [www.standardmedia.co.ke/recruitment](http://www.standardmedia.co.ke/recruitment) not later than 20th July 2019.

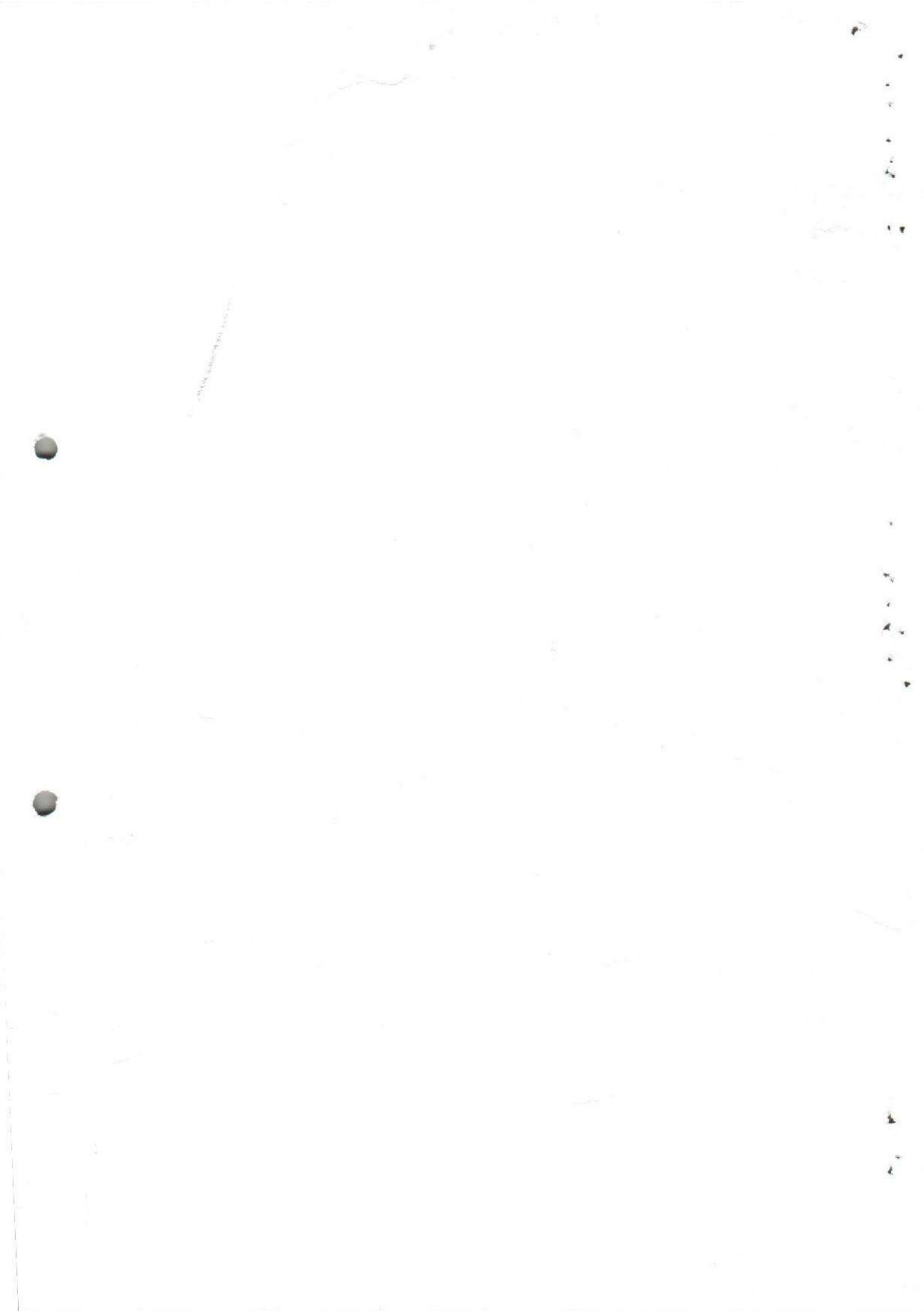
The Standard Group is an equal opportunity employer and as such, canvassing of any form will lead to automatic disqualification.

Please note that ONLY shortlisted candidates will be contacted.

WE DO NOT CHARGE A FEE FOR THE RECRUITMENT PROCESS.









**MINUTES OF THE 35<sup>TH</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION  
OVERSIGHT COMMITTEE HELD ON THURSDAY, 22<sup>ND</sup> AUGUST, 2019 AT  
ENGLISH POINT MARINA HOTEL, MOMBASA AT 2.00 P.M.**

---

**PRESENT**

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. Wafula Wamunyinyi, M.P.
3. The Hon. (Dr.) Christine Ombaka, M.P.
4. The Hon. (Col.) Geoffrey King'ang'i, M.P.
5. The Hon. Anthony Oluoch, M.P.
6. The Hon. Simon Ng'ang'a King'ara, M.P.
7. The Hon. Japheth Mutai, M.P.
8. The Hon. Raphael B. S. Wanjala, M.P.
9. The Hon. Halima Mucheke, M.P.
10. The Hon. Joshua Chepyegon, M.P.
11. The Hon. Abdi Shurie, M.P.
12. The Hon. Jane Njiru, M.P.
13. The Hon. Fabian K. Muli, M.P.
14. The Hon. Peris Tobiko, M.P.
15. The Hon. Daniel Rono, M.P.

**APOLOGY**

16. The Hon. Fred Kapondi, M.P. - Vice-Chairman
17. The Hon. (Dr.) Naomi Shaban, M.P.
18. The Hon. Charles Gimose, M.P.
19. The Hon. Gideon Koske, M.P.
20. The Hon. Sarah Korere, M.P.
21. The Hon. Ayub Savula, M.P.
22. The Hon. T.J Kajwang', M.P.

**SECRETARIAT**

1. Mr. Edward Libendi - Senior Legal Counsel & CIOC Clerk
2. Ms. Mary Lemerelle - Clerk Assistant III
3. Ms. Christine Odhiambo - Legal Counsel
4. Ms. Mary Otieno - Office Assistant

**MIN.NO.CIOC/2019/203**

**PRELIMINARIES**

The Chairman called the meeting to order at half past two O'clock (2.30 pm) and commenced it after a word of prayer by Hon. Halima Mucheke, M.P.

**MIN.NO.CIOC/2019/204**

**CONFIRMATION OF MINUTES**

Minutes of the 34<sup>th</sup> sitting of the meeting held on Thursday, 22<sup>nd</sup> August, 2019 was confirmed as a true record of the proceedings having been proposed and seconded by the Hon. Abdi Shurie, M.P. and Hon. Anthony Oluoch, M.P. respectively.

**MIN.NO.CIOC/2019/205**

**MATTER ARISING**

There were no matters arising from the previous sitting minutes

**MIN.NO.CIOC/2019/206**

**CONSIDERATION AND ADOPTION OF THE  
REPORT OF THE COMMITTEE ON  
CONSIDERATION OF THE REPRESENTATION OF  
SPECIAL INTEREST GROUPS LAWS  
(AMENDMENT) BILL, 2019**

The Committee considered the report of the Committee on consideration of the Bill which had factored in the proposed amendments to the Bill that the Committee would introduce at the Committee of the Whole House stage.

Members present unanimously adopted the report after it was proposed by the Hon. Wafula Wamunyinyi, M.P. and seconded by Hon. Daniel Rono, M.P.

**MIN.NO.CIOC/2019/207**

**ANY OTHER BUSINESS**

There was no any other business.

**MIN.NO.CIOC/2019/208**

**ADJOURNMENT**

There being no other business, the meeting adjourned at Four O'clock (4.00 pm).

SIGN.....  
THE HON. JEREMIAH KIONI, M.P.

DATE ..... 22/08/2019  
CHAIRPERSON



**MINUTES OF THE 34<sup>TH</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION  
OVERSIGHT COMMITTEE HELD ON THURSDAY, 22<sup>ND</sup> AUGUST, 2019 AT  
ENGLISH POINT MARINA HOTEL, MOMBASA AT 9.00 A.M.**

---

**PRESENT**

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. Wafula Wamunyinyi, M.P.
3. The Hon. (Dr.) Christine Ombaka, M.P.
4. The Hon. (Col.) Geoffrey King'ang'i, M.P.
5. The Hon. Anthony Oluoch, M.P.
6. The Hon. Simon Ng'ang'a King'ara, M.P.
7. The Hon. Japheth Mutai, M.P.
8. The Hon. Raphael B. S. Wanjala, M.P.
9. The Hon. Halima Mucheke, M.P.
10. The Hon. Joshua Chepyegon, M.P.
11. The Hon. Abdi Shurie, M.P.
12. The Hon. Jane Njiru, M.P.
13. The Hon. Fabian K. Muli, M.P.
14. The Hon. Peris Tobiko, M.P.
15. The Hon. Daniel Rono, M.P.

**APOLOGY**

16. The Hon. Fred Kapondi, M.P. - Vice-Chairman
17. The Hon. (Dr.) Naomi Shaban, M.P.
18. The Hon. Charles Gimose, M.P.
19. The Hon. Gideon Koske, M.P.
20. The Hon. Sarah Korere, M.P.
21. The Hon. Ayub Savula, M.P.
22. The Hon. T.J Kajwang', M.P

**SECRETARIAT**

1. Mr. Edward Libendi - Senior Legal Counsel & CIOC Clerk
2. Ms. Mary Lemerelle - Clerk Assistant III
3. Ms. Christine Odhiambo - Legal Counsel
4. Ms. Mary Otieno - Office Assistant

**MIN.NO.CIOC/2019/197**

**PRELIMINARIES**

The Chairman called the meeting to order at twenty minutes past nine o'clock (9.20 am) and commenced it after a word of prayer by Hon. Daniel Rono, M.P.

**MIN.NO.CIOC/2019/198**

**CONFIRMATION OF MINUTES**

Minutes of the 33<sup>rd</sup> sitting of the meeting held on Wednesday, 21<sup>st</sup> August, 2019 was confirmed as a true record of the proceedings having been proposed and seconded by the Hon. Raphael Wanjala, M.P. and Hon. Joshua Chepyegon, M.P. respectively.

**MIN.NO.CIOC/2019/199**

**CONSIDERATION OF THE REPRESENTATION OF  
SPECIAL INTEREST GROUP LAWS (AMENDMENT)  
BILL, 2019**

The Committee made further recommendations to the Bill as follows;

**(i). Clause 9 of the Bill be amended**

(a) in paragraph (a), by deleting the proposed new paragraph (a) and substituting therefor the following new paragraph-

“(a) fifty three per cent of the Fund proportionately shared between the largest party and the second largest party;”

(b) in paragraph (b), by deleting the word “and” appearing in the proposed new paragraph (c)(ii) and substituting therefor the word “or”;

(c) by inserting the following new paragraphs immediately after paragraph (b)—

“(c) by inserting the following new subsection immediately after subsection (3)—

(4) A political party that receives funds under this section shall ensure that at least twenty five per cent of the funds are disbursed to its branch offices.

“(d) in subsection (3), by deleting the expression “(2)(a)” and substituting therefor the expression “(b)”.

The rationale being to ensure that the fifty three per cent share of the Fund shall be shared between the largest and the second largest party based on the criteria specified in subsection (3) of the Act. It was observed that coalitions are not legal entities and are under no obligation to account for the funds, unlike the registered political parties which must account to the Registrar of Political Parties on the use of the funds.

It was further observed that the amendment would also ensure that other political parties also have a share of the Fund and mandates every political party that receives funding from the Fund to ensure that a share of its funds is given to its branch offices, in line with the spirit of devolution.



(ii). **Clause 12 of the Bill be amended by deleting the word “sections” and substituting therefor the word “section”.** The rationale being to correct a typographical error.

(iii). **Clause 13 of the Bill be amended by deleting clause 13.**

The rationale being to eliminate the prescribing the formula for the distribution of the allocation of the fund to special interest groups as this was observed to amount to the micro-management of the political parties. Further, it was observed that the share to be given to the political parties based on their number of elected persons within the special interest groups is an incentive to the political parties, and is not to be distributed to the specific individuals within the special interest groups.

(iv). **Clause 17 of the Bill be amended in paragraph (a) by deleting the words “persons with disabilities” appearing in the proposed new subsection (1A)(b) and substituting therefor the words “special interest groups”**

The rationale being to cater for all persons specified under Article 100 as forming part of the special interest groups. It was observed that prescribing a specific percentage for persons with disabilities to be met by the political parties would prejudice the other categories of persons within the special interest groups.

(v). **Clause 18 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph-**

“(b) inserting the following new subsections immediately after subsection (1)—

(2) A political party shall submit the party list under subsection (1) together with a statutory declaration signed by the person authorized to certify that the candidates were nominated by the party and the minutes of the approval of the list by the election board of the political party.

(3) The Commission shall publish the party lists submitted under subsection (1) in formats that are accessible to the special interest groups in line with the established timelines.”

The rationale being to ensure that the party lists submitted by the political parties to the Independent Electoral and Boundaries Commission shall be made accessible to all persons with the special interest groups.

(vi). **Clause 20 of the Bill be amended by deleting clause 20: mandating the political parties to procure and fund the special interest groups to media coverage**

The rationale being to circumvent unforeseen financial burden posed to political parties. It was also observed that the clause would amount to discrimination against all other persons not falling within the ambit of special interest groups, but who may need financial or some other form of assistance.

(vii). **Clause 21 of the Bill be amended in the proposed new paragraph 16(d) by deleting the word “free”**

The rationale being to ensure that political parties are not obligated to provide free access to meetings, for all persons within the special interest groups. This provision as it is would also amount to micro-management of the political parties.

(viii). **Insertion of a new clause immediately after clause 16**

16 A. Section 2 of the Elections Act, No.24 of 2011 is amended by inserting the following new definition in its proper alphabetical sequence;

“special interest groups” means the following groups specified under Article 100 of the Constitution:

Women;

persons with disabilities;

youth;

ethnic and other minorities; and

marginalised communities

**MIN.NO.CIOC/2019/200      ADOPTION OF COMMITTEE AMENDMENTS TO THE REPRESENTATION OF SPECIAL INTEREST GROUP LAWS (AMENDMENT) BILL, 2019**

The committee adopted the recommendations to the amendments of the Bill having been proposed and seconded by Hon. Dr. Christine Ombaka, M.P and Hon. Japheth Mutai, M.P respectively.

**MIN.NO.CIOC/2019/201      ANY OTHER BUSINESS**

There was no any other business.

**MIN.NO.CIOC/2019/202      ADJOURNMENT**

There being no other business, the meeting adjourned at half past twelve o'clock (12.30 pm).

SIGN.....  
THE HON. JEREMIAH KIONI, M.P.

DATE ..22/05/2019  
CHAIRPERSON



**MINUTES OF THE 33<sup>RD</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION  
OVERSIGHT COMMITTEE HELD ON WEDNESDAY, 21<sup>ST</sup> AUGUST, 2019 AT  
ENGLISH POINT MARINA HOTEL, MOMBASA AT 2.00 P.M.**

---

**PRESENT**

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. Wafula Wamunyinyi, M.P.
3. The Hon. (Dr.) Christine Ombaka, M.P.
4. The Hon. (Col.) Geoffrey King'ang'i, M.P.
5. The Hon. Anthony Oluoch, M.P.
6. The Hon. Simon Ng'ang'a King'ara, M.P.
7. The Hon. Japheth Mutai, M.P.
8. The Hon. Raphael B. S. Wanjala, M.P.
9. The Hon. Halima Mucheke, M.P.
10. The Hon. Joshua Chepyegon, M.P.
11. The Hon. Abdi Shurie, M.P.
12. The Hon. Jane Njiru, M.P.
13. The Hon. Fabian K. Muli, M.P.
14. The Hon. Peris Tobiko, M.P.
15. The Hon. Daniel Rono, M.P.

**APOLOGY**

16. The Hon. Fred Kapondi, M.P. - Vice-Chairman
17. The Hon. (Dr.) Naomi Shaban, M.P.
18. The Hon. Charles Gimose, M.P.
19. The Hon. Gideon Koske, M.P.
20. The Hon. Sarah Korere, M.P.
21. The Hon. Ayub Savula, M.P.
22. The Hon. T.J Kajwang', M.P

**SECRETARIAT**

1. Mr. Edward Libendi - Senior Legal Counsel & CIOC Clerk
2. Ms. Mary Lemerelle - Clerk Assistant III
3. Ms. Christine Odhiambo - Legal Counsel
4. Ms. Mary Otieno - Office Assistant

**MIN.NO.CIOC/2019/192**

**PRELIMINARIES**

The Chairman called the meeting to order at fifteen minutes past two o'clock (2.15 pm) and commenced it with a word of prayer. Agenda of the meeting was adopted as consideration of stakeholders' submissions from individual institutions on the Representation of Special Interest Group Laws (Amendment) Bill, 2019.

The chairman reminded the meeting that the committee has had previous engagements with stakeholders and received memoranda from 7 institutions; Office of the Attorney General & Department of Justice (OAG&DJ), Kenya Law Reform Commission(KLRC), Independent Electoral and Boundaries Commission (IEBC), Registrar of Political Parties (RPP), National Gender and Equality Commission (NGEC), Political Parties Liaison Committee (PPLC), Kenya National Commission on Human Rights (KNCHR) and National Council of Persons with Disabilities (NCPWD).

**MIN.NO.CIOC/2019/193**

**CONFIRMATION OF MINUTES**

Confirmation of minutes of the previous meeting was deferred.

**MIN.NO.CIOC/2019/194**

**CONSIDERATION OF THE REPRESENTATION OF  
SPECIAL INTEREST GROUP LAWS (AMENDMENT)  
BILL, 2019**

The Committee considered all the stakeholders' submissions and made the following recommendations to the Bill:

**(i). Clause 2 (2) of the Bill be amended by deleting paragraph (c) and substituting with the following new paragraph-**

“(c) mandate the National Gender and Equality Commission with the function of promoting the sensitization of the public on the right of special interest groups to participate in the electoral process;”

The rationale being to align the objects and purpose of the Bill and ensure there is no conflict of mandates between National Gender and Equality Commission and the Independent Electoral and Boundaries Commission, as regards the mandate of the National Gender and Equality Commission, to the parent Act, namely the National Gender and Equality Commission Act, No. 15 of 2011 whose mandate is to promote gender equality and freedom from discrimination in line with Article 27 of the Constitution.

**(ii). Clause 3 of the Bill be amended by inserting the following new paragraphs immediately after the proposed new paragraph (ix)-**

“(x) collaborate with the Independent Electoral and Boundaries Commission to build capacity of persons with disabilities to take part in electoral processes both as voters and contestants;”



“(xi) provide a platform to advocate for accessibility of electoral infrastructure including technology, voter registration and polling stations;”

The rationale being to introduce additional functions of the National Council for Persons with Disabilities which would serve the purpose of encouraging the participation of persons with disabilities in electoral processes.

**(iii). Clause 5 of the Bill be amended-**

- (a) in paragraph (d) by deleting the words “persons with disabilities” and substituting therefor the words “special interest groups”;
- (b) “by inserting the following new paragraph immediately after paragraph (m)-
  - (ma) the establishment of criteria for the identification of marginalized communities, ethnic and other minorities for all electoral purposes to provide a basis for segregation of data;”

The rationale being to ensure that communication modes used by the Independent Electoral and Boundaries Commission shall be in modes that are accessible to address all the various communication challenges that may be encountered by the special interest groups.

Further, it was observed that the amendment would give the Independent Electoral and Boundaries Commission the mandate of coming up with a criteria for the classification of the marginalized and ethnic communities.

**(iv). Clause 6 of the Bill be amended by deleting the words “persons with disabilities” appearing in the proposed new subsection (1A) and substituting with the words “special interest groups”.**

The rationale being to ensure that communication modes used by the Independent Electoral and Boundaries Commission shall be in modes that are accessible to address all the various communication challenges that may be encountered by the special interest groups.

**(i). Clause 8 of the Bill be amended in paragraph (a) by inserting the words “where applicable” immediately after the words “and on its website”.**

The rationale being to eliminate the mandatory requirement to have a political party to make any notification on any change of its particulars on its website, as not all political parties may have a website in existence. It was observed that the amendment will therefore ensure that a political party, in addition to making such notifications in two newspapers of nationwide circulation, may also publish such notification on its website, in the event that such website exists.

MIN.NO.CIOC/2019/195 ANY OTHER BUSINESS

There was no any other business.

MIN.NO.CIOC/2019/196 ADJOURNMENT

There being no other business the meeting adjourned at fifteen minutes past four o'clock (4.15 pm). The next sitting will be on 22<sup>nd</sup> August, 2019 at 9.00 am.

SIGN.....

THE HON. JEREMIAH KIONI, M.P.

DATE ... 22/08/2019

CHAIRPERSON



REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (THIRD SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

ATTENDANCE REGISTER AT THE ADOPTION  
OF THE REPORT

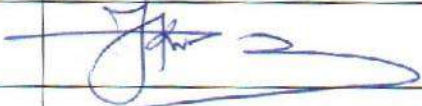
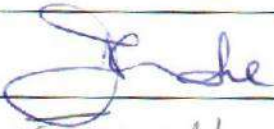
Date: 22/08/2019

Venue: MARINA ENGLISH POINT HOTEL

Time in: 2.00 P.M

Time out: 4.30 P.M

	HON. MEMBER	SIGNATURE
1.	Hon. Jeremiah Kioni, M.P. (Chairman)	
2.	Hon. Fred Kapondi, M.P. (Vice Chairman)	
3.	Hon. (Dr.) Naomi Shaban, M.P.	
4.	Hon. (Dr.) Christine Ombaka, M.P.	
5.	Hon. Wafula Wamunyinyi, M.P.	
6.	Hon. Charles Gimose, M.P.	
7.	Hon. Anthony Oluoch, M.P.	
8.	Hon. Abdi Shurie, M.P.	
9.	Hon. (Col.) Geoffrey Kingangi, M.P.	
10.	Hon. Raphael B. S. Wanjala, M.P.	
11.	Hon. Simon Nganga Kingara, M.P.	
12.	Hon. Halima Mucheke, M.P.	

	HON. MEMBER	SIGNATURE
13.	Hon. Sarah P. Korere, M.P.	—
14.	Hon. Jane Njiru, M.P.	—
15.	Hon. Japheth Mutai, M.P.	
16.	Hon. Peris Tobiko, M.P.	—
17.	Hon. Daniel Rono, M.P.	—
18.	Hon. Joshua Chepyegon, M.P.	
19.	Hon. Fabian K. Muli, M.P.	
20.	Hon. Gideon Koske, M.P.	—
21.	Hon. Ayub Savula, M.P.	—
22.	Hon. T.J Kajwang, M.P.	—



REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (THIRD SESSION)

THE NATIONAL ASSEMBLY



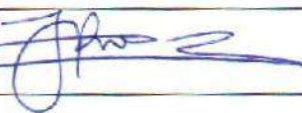
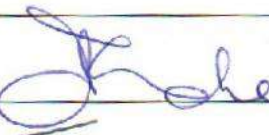



CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

ATTENDANCE REGISTER

Date: 22/08/2019 Venue: MARINA ENGLISH POINT HOTEL

Time in: 9:00 A.M Time out: 12:45 PM

	HON. MEMBER	SIGNATURE
1.	Hon. Jeremiah Kioni, M.P. (Chairman)	
2.	Hon. Fred Kapondi, M.P (Vice Chairman)	
3.	Hon. (Dr.) Naomi Shaban, M.P	
4.	Hon. (Dr.) Christine Ombaka, M.P.	
5.	Hon. Wafula Wamunyinyi, M.P.	
6.	Hon. Charles Gimose, M.P.	
7.	Hon. Anthony Oluoch, M.P.	
8.	Hon. Abdi Shurie, M.P.	
9.	Hon. (Col.) Geoffrey Kingangi, M.P	
10.	Hon. Raphael B. S. Wanjala, M.P	
11.	Hon. Simon Nganga Kingara, M.P.	
12.	Hon. Halima Mucheke, M.P.	

	HON. MEMBER	SIGNATURE
13.	Hon. Sarah P. Korere, M.P.	
14.	Hon. Jane Njiru, M.P.	
15.	Hon. Japheth Mutai, M.P.	
16.	Hon. Peris Tobiko, M.P.	
17.	Hon. Daniel Rono, M.P.	
18.	Hon. Joshua Chepyegon, M.P.	
19.	Hon. Fabian K. Muli, M.P.	
20.	Hon. Gideon Koske, M.P.	
21.	Hon. Ayub Savula, M.P.	
22.	Hon. T.J Kajwang, M.P.	

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REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (THIRD SESSION)

THE NATIONAL ASSEMBLY



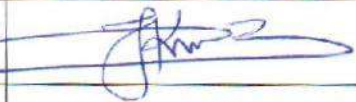


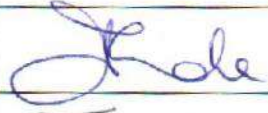
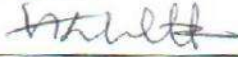



CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

ATTENDANCE REGISTER

Date: 21/08/2019 Venue: MARINA ENGLISH POINT HOTEL

Time in: 2.00 P.M Time out: 4.30 P.M

	HON. MEMBER	SIGNATURE
1.	Hon. Jeremiah Kioni, M.P. (Chairman)	
2.	Hon. Fred Kapondi, M.P (Vice Chairman)	
3.	Hon. (Dr.) Naomi Shaban, M.P	
4.	Hon. (Dr.) Christine Ombaka, M.P.	
5.	Hon. Wafula Wamunyinyi, M.P.	
6.	Hon. Charles Gimose, M.P.	
7.	Hon. Anthony Oluoch, M.P.	
8.	Hon. Abdi Shurie, M.P.	
9.	Hon. (Col.) Geoffrey Kingangi, M.P	
10.	Hon. Raphael B. S. Wanjala, M.P	
11.	Hon. Simon Nganga Kingara, M.P.	
12.	Hon. Halima Mucheke, M.P.	

	HON. MEMBER	SIGNATURE
13.	Hon. Sarah P. Korere, M.P.	
14.	Hon. Jane Njiru, M.P.	
15.	Hon. Japheth Mutai, M.P.	
16.	Hon. Peris Tobiko, M.P.	
17.	Hon. Daniel Rono, M.P.	
18.	Hon. Joshua Chepyegon, M.P.	
19.	Hon. Fabian K. Muli, M.P.	
20.	Hon. Gideon Koske, M.P.	
21.	Hon. Ayub Savula, M.P.	
22.	Hon. T.J Kajwang, M.P.	

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INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



# OPERATIONALIZATION OF ARTICLE 100 OF THE CONSTITUTION OF KENYA

8<sup>th</sup> MAY, 2019

## A. Introduction.

- I. Democratic governance demands that to some extent political representation should mirror the population from which it is drawn which includes men, women, the youth, Persons with Disabilities (PWDs), ethnic and other minorities and marginalized communities. This ideal remains an enigma both in appointive and elective positions.
- II. The Constitution takes cognizance of this reality and deliberately seeks to bridge this gap and remedy the situation by providing that measures including affirmative action programmes, policies and legislation be put in place to promote the representation of women, youth, PWDs, ethnic minorities and other marginalized groups in Parliament

### Article 100 of the Constitution provides-

'Parliament shall enact legislation to promote the representation in Parliament of Women, Persons with Disabilities, Youth, Ethnic and other Minorities and Marginalized Communities.'

### Article 81(b) of the Constitution provides-

'The electoral system shall comply with the following principles-

- (b) not more than two-thirds of the members of elective public bodies shall be of the same gender.

- III. These provisions provide strong guarantees for equality and non-discrimination and bind the State in ensuring that public policy and decisions include equity, inclusiveness, equality, non-discrimination and protection of the marginalized, among others.



- IV. An analysis of the deficiencies in the various frameworks that have sought to address the attainment of fair representation illustrates the need for urgent policy and legislative intervention. Several proposals for fair representation in Parliament have been made following the new constitutional dispensation. Notably, some of the proposals were floated before the enactment of the election related laws in 2011.
- V. To-date, Parliament is yet to enact the law envisaged under Article 100 of the Constitution. The two-thirds gender principle also remains elusive as Parliament again, is yet to enact the necessary legislation to realize this principle as per the Supreme Court Advisory in -The Matter of the Principle of Gender Representation in the National Assembly and the Senate {2012} eKLR (Advisory Opinion No. 2 of 2011).

The pertinent question therefore is- in the absence of legislation what has the Independent Electoral and Boundaries Commission done to promote representation of the marginalized and minorities?

#### B. Implementation of the principles of Article 100

- VI. The Commission has played a central role in the attempt to provide legislative interventions:
- 1) On the 3rd of February 2014, the Attorney General of Kenya constituted a Working Group to implement the Supreme Court Advisory Opinion on the Two-thirds gender principle. The working group was tasked to develop a practicable framework towards realization of the two thirds framework in political representation. The membership comprised of: -
    - Attorney General's Office

- Ministry of Devolution and Planning (Directorate on Gender)
- National Gender and Equality Commission (NGEC) (Convener)
- Commission on Administrative Justice (CAJ)
- Independent Electoral and Boundaries Commission
- Office of the Registrar of Political Parties
- Commission on the Implementation of the Constitution
- Parliament:
  - a) Committees on the Implementation of the Constitution
  - b) Justice and Legal Affairs
- Kenya Women's Parliamentary Association and
- FIDA –Kenya representing Civil Society.

The TWG considered three broad frameworks on the implementation of the two thirds gender principle namely: -Equality, Policy and Legislation; Amendment of existing Legislations i.e. Elections Act and Political Parties Act ; and Constitutional Amendment to introduce –Self-regulating Gender Top up mechanism in Parliament.

2) In 2015, the Attorney General of Kenya additionally constituted a Working Group spearheaded by the Directorate of Gender in the Ministry of Devolution and planning to develop proposals to inform the legislation anticipated under Article 100 of the Constitution. This consultative and participatory process drew technical membership from:-

- The Ministry of Devolution and Planning
- The National Gender and Equality Commission
- Attorney General's Office,
- Commission on the Implementation of the Constitution (CIC),
- Independent Electoral and Boundaries Commission (IEBC),
- Commission on Administrative Justice, (CAJ)



- National Youth Council,
- United Persons with Disabilities of Kenya, the National Council for Persons with Disabilities(NCPWD),
- Centre for Minority Rights (CEMIRIDE)and
- Youth Agenda
- Kenya Women’s Parliamentary Association (KEWOPA),
- Office of the Registrar of Political Parties ( ORPP)
- Federation of Women Lawyers (FIDA -Kenya).
- Ministry of Labour, Social Security and Services,
- Ministry Interior and Coordination of National Government
- Ministry of Sports, Culture and Arts,
- Ministry of Information, Communication and Technology
- Ministry of Education, Science and Technology,

The TWG developed ‘The National Equality Policy’ which aims to promote equality and non-discrimination by providing equal opportunities for all persons in Kenya in the political, economic, cultural and social spheres. While it seeks to give effect to the strong equality principles and guarantees entrenched in the Constitution of Kenya 2010, the same is yet to be adopted.

- VII. One of the Constitutional objects and principles under Articles 10 & 27 of the Constitution in general and in particular Articles 81(b) and 100, was to eliminate all forms of discrimination in the electoral system which has for long occasioned injustice to minorities. It is for this reason that Article 90 of the Constitution on proportional representation as read together with Articles 97(b); 98 (b), (c) and (d) and 177 (1), (b) & (2) were enacted as deliberate legislative interventions.

- VIII. The constitutional mandate of the Commission as ordained by Article 88(4) of the Constitution and the obligation to ensure that the conduct of elections promotes representation of marginalized groups as governed by Article 100 and ensure application of the two-third gender principle is a demonstration of the constitutional mechanisms adopted towards the constitutional aspirations.
- IX. To this end, the Commission has despite the limitations posited above, made concerted efforts to actualize responsive political party processes that meet the required principles. **Articles 88(4), (d)** (constitutional mandate of the Commission to regulate political party's nominations) and **Article 90 of the Constitution** (allocation of party lists seats on the basis of proportional representation by use of party lists) provide the necessary platform to enable the Commission enforce the necessary mechanisms.
- X. Guided by the provisions of Article 88(4), (d) of the Constitution, Section 27 and 109 (1), (c) of the Elections Act, 2011, the Commission developed Guidelines to regulate political party primaries and nominations and enacted The Elections (Political Party Primaries and Party List) Regulations 2017. It was the Commission's position that all political party nomination rules submitted for purposes of the 2017 General elections conform to the democratic standards set to promote representation of women, youth, PWDs, marginalized and ethnic minorities.
- XI. Further, with amendments to the electoral laws, the Commission required Political parties to formulate the right policies that mainstream equality and equity. However, there have been limitations and inability of the Commission to move to actualize these principles where the political parties fail to afford necessary opportunities for the actualization of those principles.



- XII. Political parties should at first instance play an important role in narrowing the under representation gap by taking deliberate steps within their internal processes to put in place measures that are in line with achieving the spirit behind Articles 81(b) and Article 100 of the Constitution. They too bear the constitutional obligation to abolish all forms of discrimination within them, and embrace gender equality, equity and promote inclusiveness.
- XIII. There are no appropriate mechanisms in place at the moment to enforce compliance and realization of these principles entirely. The deliberate legislative design of Articles 97 (1), (c), 98 (1) (b) (c) (d) and 177(1) (b) (c) for party list nomination processes read together with Section 34 (6A) of the Elections Act provide an opportunity for issuance of sanctions in case of non-compliance by political parties. The Commission developed the Political Party Primaries and Party List Regulations, 2017 and ensured compliance by all political parties, the same however does not apply in the case of conduct of primaries for elective posts and it is for this reason that the characteristic nature of political parties takes center stage.
- XIV. The Commission has further developed and implemented various strategies aimed at boosting participation of women, youth PWDs, Marginalised and ethnic Minorities:
- i. Mainstreaming affirmative action programmes in the electoral process to ensure that the youth, PWDs and women are represented and participate in political life.
  - ii. Creation of awareness on the rights, potentials and abilities of women, youth, persons with disabilities and other marginalized groups through targeted voter education.

- iii. In collaboration with CSOs and FBOs, build the capacity of women, PWDs, youth and other marginalized groups on leadership and governance.
  - iv. Enhanced knowledge and understanding of principles that govern Party List Nominations under Article 100 of the Constitution.
  - v. Building the capacity of legislators on electoral law-making, lobbying, continued advocacy and consensus building.
  - vi. Ensuring that training and election materials and venues are available to persons with various disabilities.
  - vii. Building the capacity of police officers on electoral offences in order to enforce accountability for electoral offences and other forms of political hooliganism.
  - viii. Monitoring the enforcement of existing electoral laws and policies that address political representation and participation.
  - ix. Conducted research and collected data disaggregated by sex, age and disability in order to monitor trends in the participation of all demographic groups in politics and governance processes and provide the necessary administrative measures.
  - x. Targeted Mobilization and training of women (under the gender and Governance programme with support of UN-Women) on the affirmative action provisions in the law.
  - xi. Consultative meetings with Political Parties to sensitize them on the electoral processes and gender parity laws including media engagement.
- XV. The Constitution has given the Commission the mandate to manage and regulate the nomination process of political parties and in so doing we are able to demand compliance to the extent of our regulation with particular reference to the conduct of party list nominations which guarantees nomination for special seat members as prescribed under Article 100 of the Constitution.



XVI. Through enhanced regulation of party list nominations, the Commission was able to ensure that all political parties presented names of youth, women, PWDS, marginalized and ethnic minorities as nominees in their party list for the National Assembly and the County Assemblies. Political Parties that did not comply with the requirements were advised accordingly and the list subjected for further review to ensure compliance.

XVII. However, the law that enables us to enforce party lists does not provide for full implementation of Article 100 of the Constitution on nominations for elective positions.

### C. Challenges

XVIII. A number of challenges continue to impact on implementation:

- Lack of direct legislation to empower actualization of Article 100. (Short of a direct legislation that addresses elective positions or seeks to improve on the gains around special seats in Parliament, the Commission is unable to ensure effective enforcement).
- Lack of goodwill from political players and legislators
- Lack of strict adherence to the legal requirements by political parties.

XIX. While a lot of strides were made to improve representation of special groups by use of party lists through enhanced regulation, some unique challenges were encountered in the processes of allocating nominees from the party lists, generally;

- The formula for allocation of special seats is not exhaustive in terms of ensuring all special interest groups are represented. Whereas Section 36

(3) of the Elections Act further states that the marginalized groups party list shall prioritize a person with disability, the youth and any other candidate representing a marginalized group, allocation is in proportion to the number of seats won by a party thus often results in imbalanced representation in the house.

- Article 177 (1) (c) of the Constitution provides that the county assembly shall comprise the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament. The order of priority of these categories remains at the discretion of the political parties noting that allocation would be based on the order submitted by the party.
- Clarification is needed on the determination of ethnic minorities in the context of elections. In the absence of laws as governed by Article 100, Political parties stress for recognition of internal autonomy in the determination of regional diversity and representation of marginalised groups.
- Political Parties lack structured membership that targets special interest groups.

#### D. Recommendations

1. Review provisions of the electoral laws that provide for proportional representation as governed by Article 90 of the Constitution to address the challenges.
2. Enactment of necessary laws to address the gaps ( Article 81(b); Article 100)
3. Build the capacity of the electorate/Special Interest Groups.
4. Implementation of the judgement issued in HCC PETITION NO. 19 OF 2017- KATIBA INSTITUTE-VS-IEBC (The Commission has since communicated the same to Political Parties -on the declaration that political parties are bound by the provisions of Articles 10, 19, 20, 27, 28, 56, 81(b) and 91(1) of the

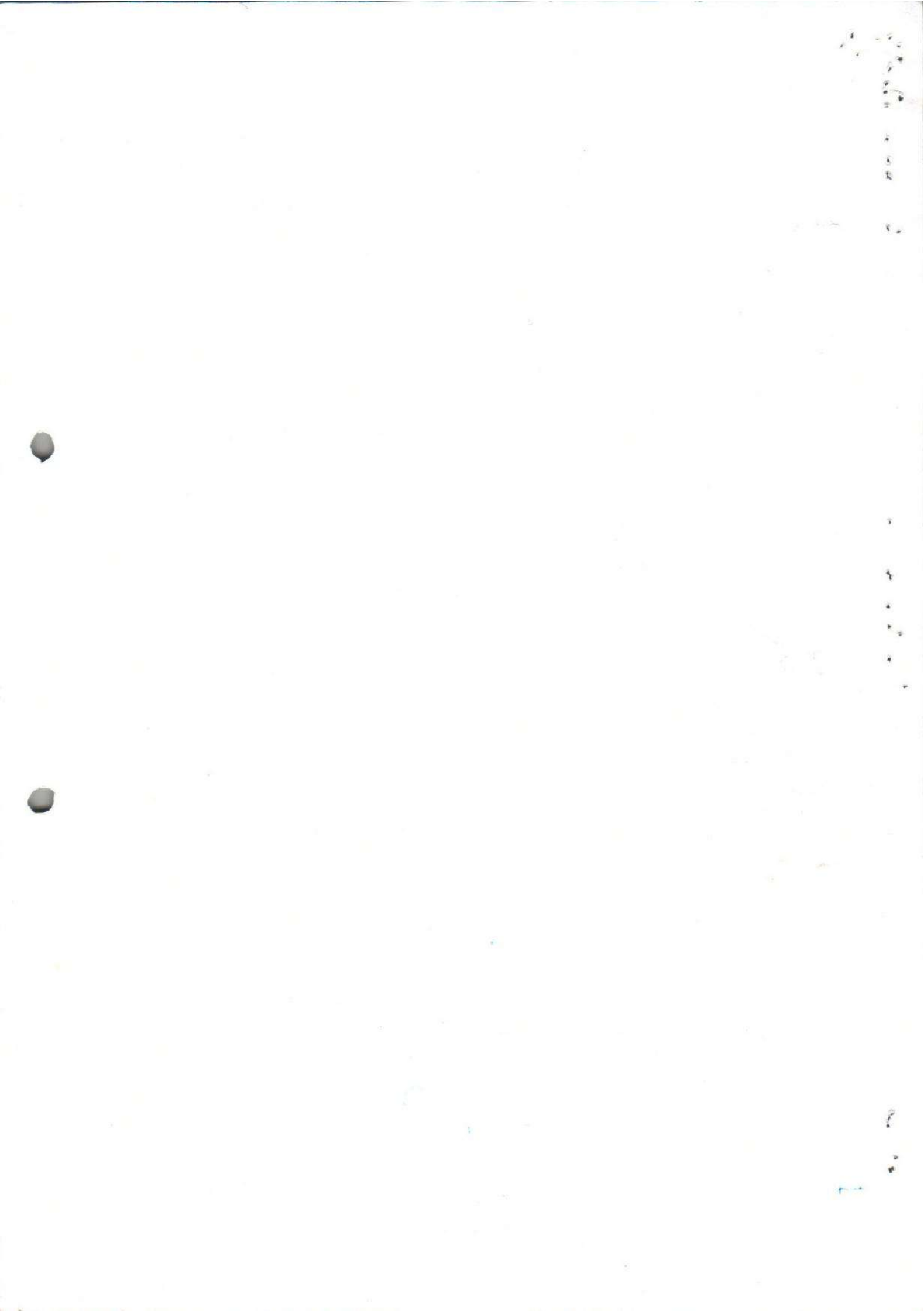


Constitution thus duty bound to abide by the tenets of the Constitution and put in place the necessary measures to ensure that equality is achieved.

#### E. Conclusion

- XX. The Constitution demands of Parliament to put in place legislative measures in compliance with Article 100 of the Constitution.
- XXI. Actualization of Articles 81(b) and 100 will require an amalgamation of different factors. A concerted effort is needed to target all strategies for equitable political participation.
- XXII. The Commission will continue to participate in engagements with various stakeholders with a view to ensuring equitable political representation.

  
W.W CHEBUKATI  
CHAIRMAN





# KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI  
Telephone: Nairobi, +254-20-2241186/2241201  
Fax: +254-20-2225786  
www.info@klrc.go.ke

When replying please quote

Ref. No. .... **KLRC/RES/45 Vol. XIV**  
and Date



KENYA LAW REFORM COMMISSION  
REINSURANCE PLAZA  
3RD FLOOR  
TAIFA ROAD  
P.O. Box 34999-00100  
NAIROBI, KENYA

.....16<sup>th</sup> July, 2019.....

The Clerk of the National Assembly  
CLERK'S CHAMBERS  
Parliament Buildings  
NAIROBI

Att: Mr. Jeremiah Ndombi

Dear *Jeremiah,*

RE: COMMENTS ON THE PROPOSED REPRESENTATION OF SPECIAL INTEREST  
GROUPS LAWS (AMENDMENT) BILL, 2019

Please refer to your letter Ref.No. NA/DCS/CIOC/2019(27) dated 10<sup>th</sup> July, 2019 on the  
above subject.

Enclosed herewith please find the Commission's comments on the Proposed  
Representation of Special Interest Groups Laws (Amendment) Bill, 2019 for further  
action.

We thank you for your continued support and cooperation.

Yours *Sincerely,*

Joash Dache, MBS  
SECRETARY/CEO

Encls.

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## COMMENTS ON THE PROPOSED REPRESENTATION OF SPECIAL INTEREST GROUPS LAWS (AMENDMENT) BILL, 2019

### I. BACKGROUND: MANDATE OF THE COMMISSION

- 1.1. The Kenya Law Reform Commission is established under the Kenya Law Reform Commission Act as the statutory body responsible for review of all the law and making recommendations for its reform. The review of the law involves ensuring its conformity to the Constitution, harmonization, simplification, modernization, accessibility and cost-effectiveness in its application. The Commission, together with the Office of the Attorney General and the defunct CIC have the Constitutional mandate of preparing, for tabling in Parliament, the legislation required to implement the Constitution (section 5 (6) (b) of the Sixth Schedule).
- 1.2. In March this year, the Commission presented to the CIOC the relevant amendments to the Political Parties Act that had been enacted by the previous House as a way of addressing the requirements of Article 100. (Ref. The Political Parties (Amendment) (No. 2) Act, 2016).
- 1.3. The proposed Representation of Special Interest Groups Laws (Amendment) Bill, 2019 is welcome in so far as seeks to further promote the representation of special interest groups in Parliament and county assemblies.

### 2. COMMENTS AND SUGGESTIONS ON THE PROPOSED BILL

#### 2.1. Clause 2 Objects and purpose of the Bill

This clause is not necessary since the long title is broad enough and captures the purpose of the Bill. Kenya's tradition of amendment Acts is that they are discarded once the principal Acts are updated or revised. If this clause is retained as it is, it will remain the only section of the Act when all other sections are moved to the respective principle Acts. We propose to delete the section.

#### 2.2. Clause 9: Amendment of Section 25 of the Political Parties Act (Distribution of the Fund)

The wording of clause 9 (b) appears to conflict with the proposed subsection (2). Under paragraph (b), twenty per cent of the Fund shall be distributed "*proportionately among*

*all other political parties.*" Subsection (2) gives another criterion for funding which introduces uncertainties. The proviso in that section does not resolve the uncertainties.

It is not clear what the policy position is:

(a) Is it the intention of the Bill to distribute 20% of the Fund to all political parties?

or

(b) Is the 20% available for distribution to political parties meeting the criteria set out under sub section (2)?

(c) What is the basis of exempting subsection (2) (c) (see proviso)?

Depending on the policy, clause 9 (b) should be reworded by inserting the words "*qualifying under subsection (2)*" at the end.

Subsection (2) should then be reworded to read:

*"Despite subsection (1) a political party shall be entitled to be funded under this section if—*

(a)...."

(b)....

### 2.3. Clause 12 typographical error

Delete "s" appearing in the word in "sections"

### 2.4. Clause 16 Amendment of Section 8 of the NGEC Act

The Commission (NGEC) is given "oversight" and "monitoring" powers in relation to electoral matters. Oversight and monitoring imply regulatory and supervisory powers. It is not clear how these powers will be exercised in view of the fact that IEBC is constitutionally independent and the sole electoral management body in the country.

It is proposed that the Committee considers deleting this clause.

### 2.5. Clause 20 Insertion of the new (2A) under section 41 of the Elections Act

The section requires a political party to procure and fund access to media for special interest groups. This section contradicts the spirit of section 41 of the Elections Act which, read together with section 8 of the Kenya Broadcasting Corporation Act, applies only to State owned free air time coverage and the requirement to balance coverage time between different political opinions. The section is therefore not necessary. The Elections Campaign Financing Act addresses the matters relating to funding of media coverage during campaigns.





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**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

**ADVISORY ON THE REPRESENTATION OF SPECIAL INTEREST GROUPS LAW  
(AMENDMENT) BILL, 2019**

**TO**

**THE NATIONAL ASSEMBLY CONSTITUTIONAL IMPLEMENTATION OVERSIGHT  
COMMITTEE THROUGH THE CLERK OF THE NATIONAL ASSEMBLY**

---

**PRESENTED BY COMMISSIONER GEORGE MORARA  
VICE CHAIRPERSON**

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**DATED: 25<sup>TH</sup> JULY 2019**

Kenya National Commission on Human Rights  
1st Floor, CVS Plaza, Lenana Road  
P.O. Box 74359-00200  
NAIROBI, KENYA  
Tel: 254-20-2717908 /2717256/2712664  
Fax: 254-20-2716160  
Website: [www.knchr.org](http://www.knchr.org)  
Email: [haki@knchr.org](mailto:haki@knchr.org)

## A. INTRODUCTION

1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution with a broad mandate to promote a culture of respect of human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the United Nations *Paris Principles* on the establishment and functioning of independent national human rights institutions commonly referred to as the Paris Principles and as such enjoys an “A” status accreditation.
2. The National Commission under **Article 249** of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the issuance of advisories.
3. It is in this regard, that the National Commission issues this advisory on the proposed Representation of Special Interest Groups Law (Amendment) Bill, 2019. The Commission notes that the Bill seeks to review various laws to give further effect to Article 100 of the Constitution on the promotion of the *representation in Parliament* of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities.
4. The preamble to the Constitution of Kenya, 2010 espouses the aspirations of the people of Kenya ‘for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law’.
5. The Constitution of Kenya, 2010 (Article 100) requires that Parliament enacts a law in order to promote the representation in Parliament of marginalized groups:- Women, Persons with disabilities, youth, ethnic and other minorities and marginalized communities. Notably, the Constitution uses the term, ‘shall’ which places a mandatory obligation on the law makers. The enactment of such law is long overdue and past the constitutional timelines (within five years from the effective date) stipulated under Article 261(1) as read together with the Fifth Schedule to the Constitution.
6. It was anticipated that a stand-alone comprehensive legislative frame work would be put in place to specifically govern the representation of marginalized groups. Such a move is not only a neater way of addressing this issue but would afford room for comprehensiveness on all marginalized groups – women , persons with disabilities, youth, ethnic and other minorities as well as marginalized communities.



7. The Representation of Special Interest Groups Laws(Amendment) Bill, 2019 dated 3rd July 2019 by the National Assembly seeks to review various laws to give further effect to Article 100 of the Constitution to promote the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalized communities.

## **B. ADVISORY**

8. The National Commission notes the positive move toward the recognition of accessibility of information for persons with disabilities.
9. The Commission proposes an additional objective of the Bill to read '*to give further effect to Article 54 (2), 55 (b) and 56 (a) to ensure that persons with disabilities, youth and minorities and marginalised groups participate and are represented in the political sphere of life.*'

10. In this advisory, the National Commission addresses itself to the proposed amendments on the following legislations;

### **a) National Gender and Equality Commission**

11. **Clause 2(2)(c) and Clause 16** of the Bill seek to mandate the National Gender and Equality Commission (NGEC) with the function of conducting and facilitating civic and voter education to sensitise the public on the rights of special interest groups to participate in the electoral process.
12. We take note of section 8 (g) of the constitutive Act of the National Gender and Equality Commission that gives the mandate *to co-ordinate and advise on public education programmes for the creation of a culture of respect for the principles of equality and freedom from discrimination*'. We submit that this provision is sufficient and inclusive to cater for targeted interventions on voter education for special interest groups and that the same should be in complementarity with the Independent Electoral and Boundaries Commission which has the constitutional and statutory mandate to carry out voter education (Article 88 (4)(g) of COK and Section 4 (g) of the IEBC Act respectively).
13. We further note that there are other existing frameworks that touch on voter education. Section 40 of the Elections Act mandates the IEBC to establish mechanisms for the provision of continuous voter education through partnerships with state and non-state agencies. The Elections (Voter Education) Regulations, 2017 (Legal Notice 70 of 2017) fully dedicates itself to voter education. It is hence our submission that these frameworks provide an opportunity for institutions such as the NGEC to conduct civic



and voter education targeted at special interest groups without necessarily having the same legislated and amendment undertaken on its functions under Section 8.

14. The KNCHR welcomes the proposed amendment to Section 8 of the NGEC Act on empowering the NGEC to oversight and monitor the framework for the promotion of special interest groups in Parliament, county assemblies and other elective positions and supporting them in presenting complaints relating to the electoral code of conduct. We however note that provisions of clause 16 (3) and (4) of the bill fall outside the parameters of Article 100 that specifically seeks the promotion of representation of special interest groups in Parliament and hence would propose the omission of the same.

**b) Persons with Disabilities Act, 2003**

15. The Bill seeks to amend **Section 7(1)** of the Act to require the National Council for Persons with Disabilities to, 'promote the inclusion of persons with disabilities in the decision-making bodies of public institutions.

16. The National Commission notes that the proposed amendment goes beyond the scope and limit of the present bill which is specific to the representation of special interest groups in parliament. We are therefore proposing replacing the same with the following: "Promote the inclusion of persons with disabilities in Parliament".

17. We further note that it is the constitutional mandate of the Public Service Commission ("PSC") to establish and abolish offices in the public service, appoint persons to hold or act in those offices, and confirm appointments; promote values and principles referred to in Articles 10 and 232 throughout the public service; develop human resources in the public service amongst other roles (**Article 234(2)**). These roles are reiterated in the Public Service Commission Act, 2017 (No. 10 of 2017). Indeed, the PSC has the power (under section 5 of the PSC Act to 'conduct audits in a public institution in order to establish the level of compliance of such institutions with the values and principles in Articles 10 and 232 of the Constitution' [*such principles include representation of Kenya's diverse communities; inclusiveness and protection of the marginalised*]). **Article 232(i)** is categorical on affording adequate and equal opportunities for appointment, training and advancement for men and women; members of all ethnic groups and persons with disabilities. Furthermore, the Public Service Commission is mandated in **Section 36(3)(c)** of the PSC Act to ensure that in making appointments or promotions, at least five percent of the appointments constitute persons with disabilities. The PSC is also the body tasked with making regulations 'to give effect to the requirements of the Constitution regarding



*inclusiveness in terms of gender, Kenya's diverse communities, persons with disabilities and the youth.'*

18. Pursuant to its mandate, the PSC has been conducting and publishing annual evaluation of public service compliance with the national values and principles of governance and the values of public service. Should the PSC deem it appropriate, it may delegate such authority in writing to the NCPD or other body or authority and in line with **Article 234(5)** of the Constitution and **section 31** of the PSC Act. The PSC has also put in place a Diversity Policy for the Public Service (2016) to manage diversity at attracting and retaining a diversity-friendly work place. The KNCHR therefore recommends the strengthening of the enforcement powers of the PSC to ensure its recommendations on the representation of special interest groups in the public service are implemented.
19. In relation to the proposed amendment to the functions of the National Council for Persons with Disabilities, KNCHR also notes that there are already on-going efforts to amend the Persons with Disabilities Act, 2003 in its entirety. In this regard, in July 2018, Cabinet approved the Persons with Disabilities Bill 2017, and the same has been transmitted to the Attorney General, and will ultimately be brought before the national assembly. Thus, any piecemeal and parallel amendments to this Act may be in futility and may not ultimately serve the best interests of this group. We therefore recommend for the fast-tracking of the proposed Persons with Disabilities Act to ensure the issues are addressed holistically.

**c) Political Parties Act, 2011**

20. The Bill proposes fifty-three percent of the Fund proportionately shared between the largest party or coalition of parties in the National Assembly and the second largest party or coalition of parties in the National Assembly. Further, the Bill proposes that the fund shall be used to promote the representation in parliament and county assemblies of special interest groups through *inter alia* civic education.
21. The Commission is of the view that the term promote does not create a sanction and therefore there are no consequences in the event that the funds are not used as intended. We further submit that this proposed clause is too broad and leaves room for abuse on the actual realization. We therefore propose that this promotion should be geared towards a measurable percentage of all the five categories of the Article 100 special interest groups and with clear timelines towards the realization. These percentages should, to the best extent possible, reflect the national demographics of the total population of the Republic of Kenya.



22. In addition, KNCHR opines that the proposed section as it stands excludes the Senate, which is part of Parliament as enshrined in Article 93 (1) of the Constitution. It should therefore be amended to read that the fund should be distributed between the largest and second largest party or coalition of parties in parliament.

**d) Elections Act, 2011**

23. The bill should introduce in Section 2 of the Election Acts the definition of Special Interest Groups which should have the same meaning as that provided for under Article 100 of the Constitution noting that it introduces the terminology in the proposed amendments.

24. Clause 17 appears to limit itself to gender and persons with disabilities and leaves out the other categories of special interest groups i.e. youth, ethnic and other minorities and marginalized communities. The KNCHR therefore proposes that the amendment should cover all the categories of special interest groups to ensure that they participate and are represented in the political spheres of life in line with Articles 54(2) 55(b) and 56 (a) of the Constitution. As proposed above, there should be a framework that should measure the representation of the other three special interest groups i.e. youth, ethnic and other minorities and marginalized communities and the proposal is to adopt a formula that reflects percentages against the demographics on the national population.

25. The KNCHR further recommends the amendment of the definition under the Elections (Voter Education) regulations on voter education to mean: *'all forms of information or communication whose purpose is to educate members of the public including **special interest groups** and citizens residing outside Kenya on their rights and responsibilities in the electoral process'*

**e) Election offences Act**

26. The KNCHR having monitored past general elections notes that there is need to protect children and public schools from abuse and misuse of school property. We therefore recommend the creation of an offence against the use of children in campaigns, the disruption of learning and the use of school property / premises to host political rallies.

27. The commission further proposes amending the election offence act to introduce a substantive offence on hate speech, violence, intimidation, harassment against special interest groups that undermine their effective participation in election.



28. In addition, we propose amending the election offences act to have a stand-alone offence on electoral related sexual violence and stringent sanctions on the perpetrators including barring from participating in elections, deregistration of political parties, nullifying of elections, suspending campaigns to deter such violations.

### C. GENERAL OBSERVATIONS/CONCLUSION

29. The KNCHR welcomes the positive amendments in recognising the rights of special interest groups to be represented in Parliament and in the County Assemblies. The legislation is long overdue.
30. While noting the proposed legislation as a progressive step in enhancing representation of special interest groups in Parliament, the Commission notes the absence of express mechanisms to ensure representation of the youth, ethnic and other minorities as well as marginalised communities and therefore calls for incorporation of the same.
31. The Bill should further provide for prioritization of nominees with disabilities, youth, ethnic and other minorities and marginalized groups for all the nominative seats under Articles 97(1)(c), 98(1)(b), (c) and (d), and for the members of county assemblies under Article 177(1)(b) and (c). The language of the Constitution is inclusive and the same should not be limited to women, youth, persons with disability and workers but should holistically also include ethnic and other minorities as well as marginalised communities. This can be achieved by amending Section 34 and 36 of the Elections Act to ensure all the five categories of the Article 100 special interest groups are alternated and prioritised in the party lists. The more reason as to why a stand-alone legislative framework would have been a better move.
32. In conclusion, the KNCHR welcomes the move to give effect to Article 100 of the Constitution and reiterates the need to include all five categories of the Article 100 special interest groups to ensure their realistic representation in Parliament both through elective and nominative seats.

SIGNED BY:

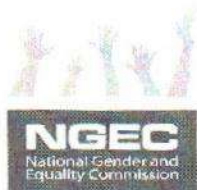


GEORGE MORARA

VICE CHAIRPERSON, KENYA NATIONAL COMMISSION ON HUMAN RIGHTS







# **MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE REPRESENTATION OF SPECIAL INTEREST GROUPS, LAWS (AMENDMENT) BILL 2019**

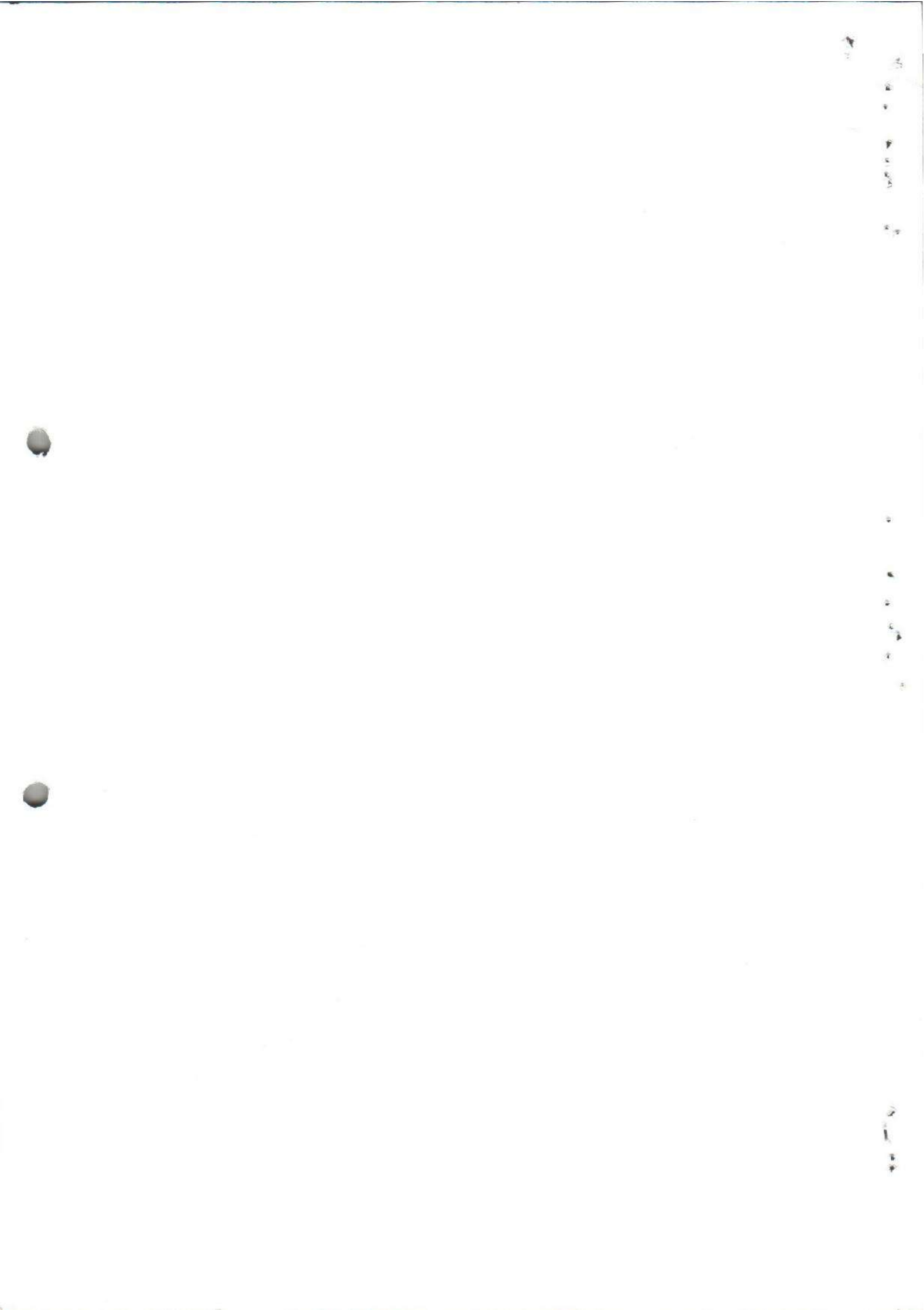
## **1. INTRODUCTION**

- 1.1 The law on Article 100 was to be enacted within 5 years of the promulgation of the Constitution i.e. on the 27/7/2015 as per the Fifth Schedule. It is only this law, and the legislation of two-thirds, that are pending a decade after passing the 2010 Constitution.
- 1.2 The Commission appreciates that the Amendment Bill No. 52 of 2019 largely fortifies (provides for) representation of the Special Interest Groups and acknowledges that this is the most least invasive, cost-effective and feasible mechanism of ensuring promotion of representation of women, youth, persons with disabilities, ethnic and other minorities, and the marginalized communities.
- 1.3 To this end the Commission presents a memoranda of key issues in the sections of the proposed bill for consideration by the National Assembly. Our presentation is limited to specific sections of the bill. We have also included in this memoranda additional issues that may not fall in the sections of the proposed bill but which the National Assembly should consider in the revised bill. We would like to inform you that some of the suggestions and comments presented herein are from our stakeholders largely representing special interest groups

## **2 OBSERVATIONS AND SUGGESTIONS BY SECTIONS OF THE BILL**

### **SECTION 2**

The Commission propose a new addition to the section 2 (2) to cater for Affirmative Action. In this regard, the Act should seek to lower and or waiver the subscription fee for Special Interest Groups (SIGs) in the membership into political parties. This will encourage SIGs to fully participate in the electoral processes. We propose the figures to be as follows;





S/ N O	SIGs	POLITICAL SEAT WITH A PROPOSED NOMINATION FEE					
		MCA	WOMEN REP	MP	SENATORIAL	GUBARNATORIAL	PRESIDENTIAL
1	WOMEN	10,000	50,000	50,000	50,000	250,000	500,000
2	YOUTH	10,000	50,000	50,000	50,000	150,000	250,000
3	(PWDs)	5,000	25,000	25,000	25,000	100,000	150,000

## SECTION 9

The proposed amendment in section 9(1)(b) provides that for political parties to receive funding from the Political Parties Fund, they must among other requirements have at least five (5) members of Parliament. This sets the stage for protracted conflicts which may delay disbursements. This is because; 'Parliament' under the Constitution comprises Senate and National Assembly. The question that arises then is if the figure 5 is generic in the sense that if a party attains it in either house, is that sufficient? Or should the figure be distributed between the two houses and in what ratio? Unless of course we say that this should be left to regulations. There is need for detailed clarification here.

Further, the Commission proposes to have an oversight authority in the distribution of the Political Parties Fund to ensure Special Interest Groups benefit from the fund and to also have an oversight role on the leadership of political parties to ensure representation of SIG's

## SECTION 16 (2)

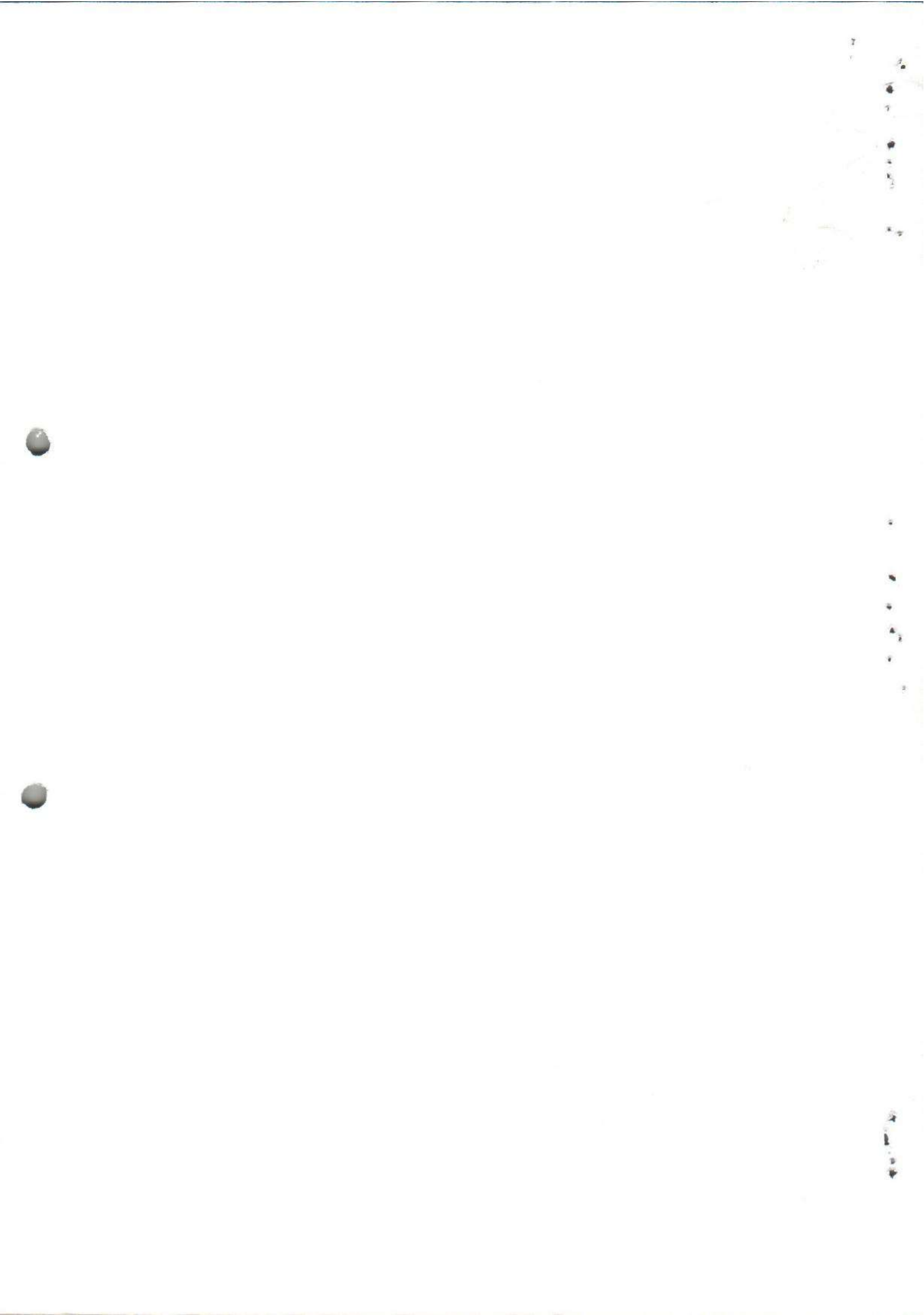
In section 16(2) remove the word PROGRESSIVE. The word is elusive.

## SECTION 17

The amendment section should be consistent with Article 100 of the Constitution. In this instance, all the SIGS should be provided for in the amendments. Currently, the section only mentions gender and Persons with Disability in exclusion of the other SIGs.

## SECTION 18

In a bid to ensure representation of special interest groups in party lists, section 18 should make provision directing the Caucus of the special interest groups in political parties to nominate their candidates. This process should not be left with party leaders. There should be emphasis on transparency of the process and a report on how concerned party caucuses came up with their representatives.





## **SECTION 22**

In addition to the proposed amendments to the Election Campaign Financing Act 2013 contained explicitly in sections 22 and 23 of the Bill No 52 of the 2019, the commission proposes one more amendment.

We propose to amend section 6 of the Election Campaign Financing Act 2013 to provide for campaign financing of SIGs based on a criteria that may defined in the regulations.

Evidence shows that SIGs often fall in the lowest quintile of incomes and don't have the financial capacity to mount adequate campaigns without compromising their basic livelihood.

### **3. NEW PROPOSALS**

#### **1. Second Schedule (electoral code of conduct)**

Children are right bearers who need protection and guidance. In the Bill (Offences relating to elections) there are no specific penalties that dissuade the use of children in electioneering and political gain. This should come out clearly to minimize the use of children in campaigns/rallies and guarantee their exclusion in such a process.

#### **2. Second Schedule (electoral code of conduct)**

The Electoral Code of conduct section 16 excludes the express mention of all SIGs and only singles out women and Persons with Disabilities. The youth have been left out. It almost suggests that youth should not get guarantees in security at elections. We propose that such guarantees apply expressly to all SIGs, the youth included.

#### **3. Assisted voting and accessibility of voting stations**

- a) The Commission notes that section 104 of the Elections Act provides for facilitation of persons with special needs including persons with disabilities. This section should also provide for measures on Assisted Voting for all SIGs including the elderly and visually impaired persons. In addition to this, accessibility of voting stations should also be considered.
- b) The Age of voting should also be restated in section 3 of the Elections Act. This is to emphasize the Age of consent is same across board. That only persons who attain the age of majority/capacity can vote and give consent.

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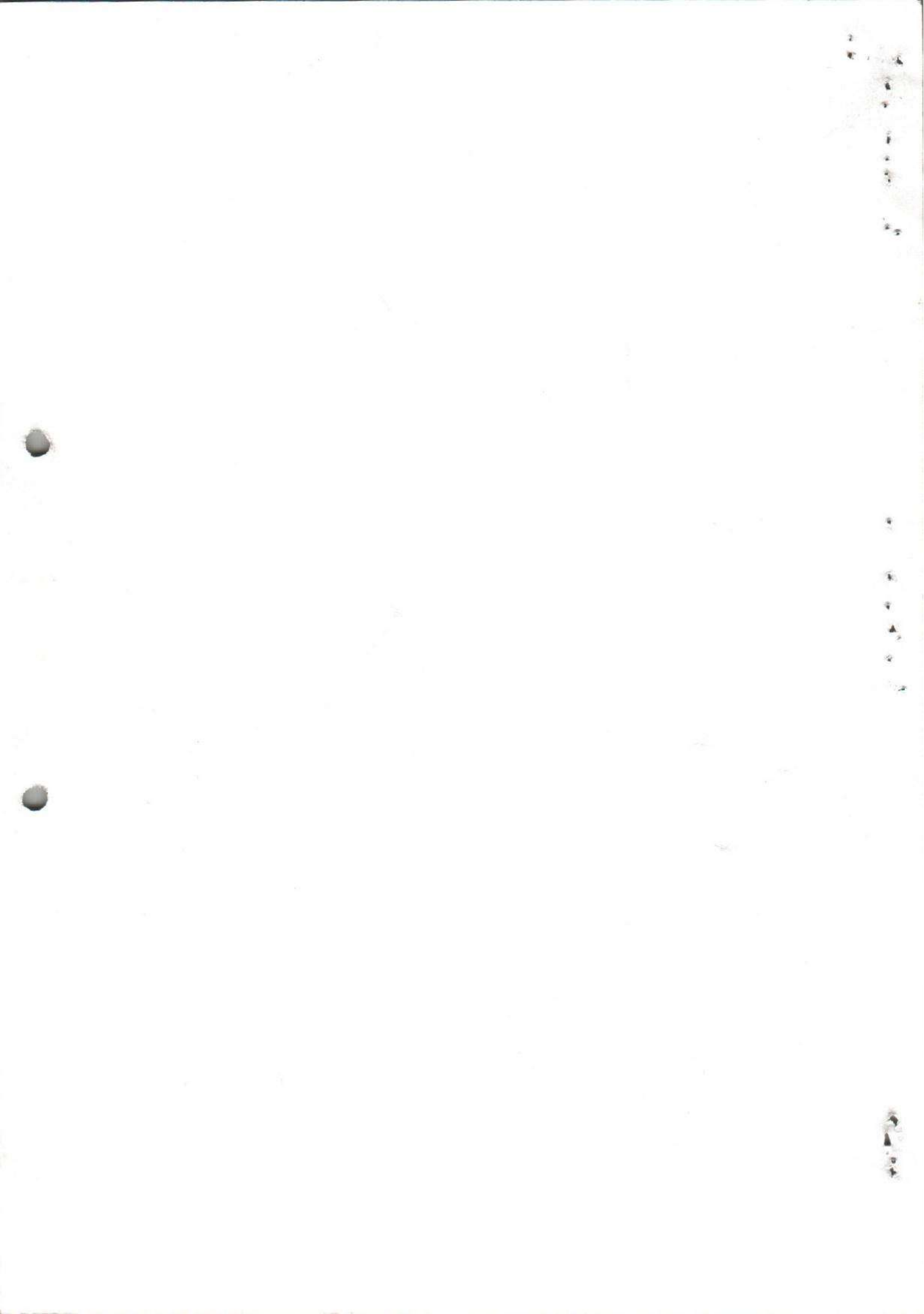


- c) Amend Section 4 of the Elections Act to compel IEBC to establish designated voting booths for PWDs and elder members of society. This will essentially ensure accessibility of gazetted polling stations by PWDs and older members of society.
  
- d) The Representation of Special Interest Groups Laws no 52 of 2019 are silent on proportionality in representation of the various Special Interest groups. We suggest that nomination of various SIGs should tally with the how they (SIGs) are registered as members of political parties and in the overall voter register. A minimum of 15% for youth is proposed as part of the amendments to the Elections Act to provide clear reservation for the youth representation at National and County Assembly Levels. Also that proportionality in representation by gender should conform to the Constitutional provisions.

#### **4. CONCLUSION**

The Commission appreciates that the Representation of Special Interest Groups Laws no 52 of 2019 largely fortifies representation of the Special Interest Groups but goes ahead to note with concern that the Bill degrades the letter, spirit and intent of the Constitution on legislation contemplated under Article 100.

The Constitution contemplated a substantive Act which would then trigger facilitative amendments to other relevant laws. The danger of this approach is that someone may move to court to have the amendments struck down.







## National Council for Persons With Disabilities

WAIYAKI WAY, P.O. BOX 66577 - 00800, TEL. 2375994/2314621, NAIROBI  
Email: [ncpwds@africaonline.co.ke](mailto:ncpwds@africaonline.co.ke)

NCPWD/LD/1 VOL.I (236)

17<sup>th</sup> July, 2019

The Clerk  
National Assembly  
Clerk's Chambers  
Parliament Buildings  
P.O. Box 41842 - 00100  
**NAIROBI**

Dear Sir,

**RE: INVITATION TO A MEETING TO CONSIDER THE REPRESENTATION OF SPECIAL  
INTEREST GROUPS LAWS (AMENDMENT) BILL, 2019**

---

The above subject refers.

The National Council for Persons with Disabilities wishes to inform you that we have reviewed the aforementioned Bill and we confirm that we are satisfied with the amendments therein particularly those touching on Persons with disabilities. We therefore seek for your directions whether our attendance is still necessary.

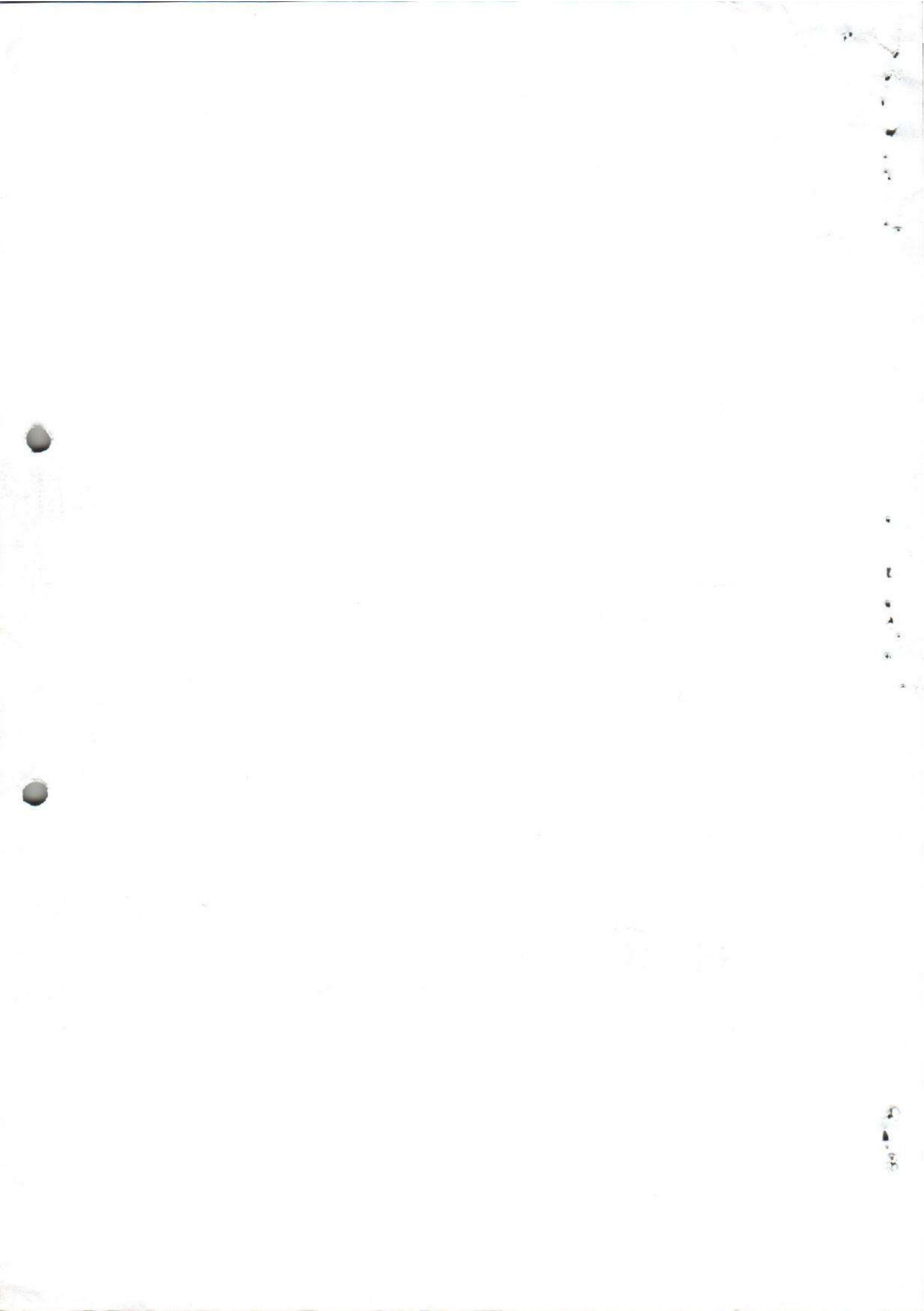
The Council is however, honored by the tremendous work done by the Select Committee on Constitutional Implementation Oversight Committee.

Thank you.

Peter Chebii

For: Executive Director.









Republic of Kenya

Telephone: +254(0)204022000  
Email: [registrar@orpp.or.ke](mailto:registrar@orpp.or.ke)  
Website: [www.orpp.or.ke](http://www.orpp.or.ke)  
When replying please quote

Lion Place, 1<sup>st</sup> Floor  
Off Waiyaki Way  
P.O Box 1131-00606  
Sarit Centre, Nairobi.

Ref: RPP/ORG/34 VOLIII (58)

Date: 16<sup>th</sup> July, 2019

Clerk of the National Assembly,  
Parliament Building,  
P.O. Box 41842-00100,  
**NAIROBI.**

**For Attention to: The Chair, Constitutional Implementation Oversight Committee**

Dear Sir,

**RE: REPRESENTATION OF SPECIAL INTEREST GROUPS LAWS (AMENDMENT)  
BILL 2019**

Reference is made to your letter dated 10<sup>th</sup> July 2019 with regards to the subject matter.

Please find enclosed a matrix on our observations and recommendations on the proposed amendments to the Political Parties Act, 2011 in readiness for the meeting scheduled to take place on 17<sup>th</sup> July 2019.

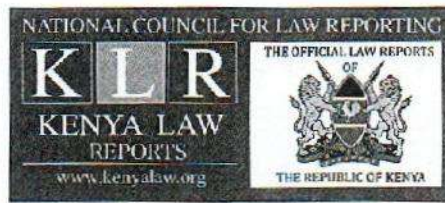
Yours faithfully,

**Ann N. Nderitu, MBS**  
Registrar of Political Parties









LAWS OF KENYA

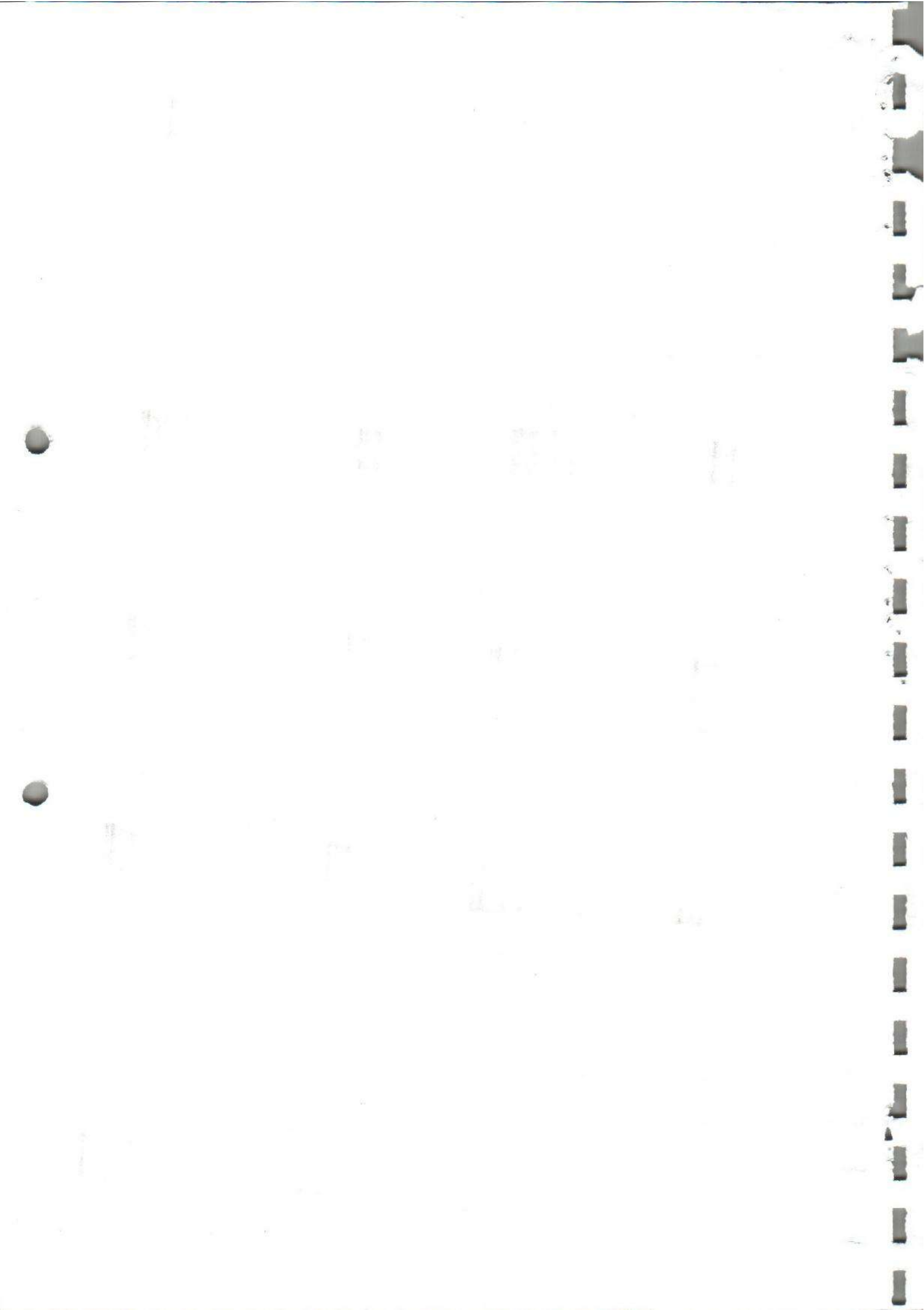
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**THE POLITICAL PARTIES ACT**

CHAPTER 7A

Revised Edition 2010 (2007)  
Published by the National Council for Law Reporting  
with the Authority of the Attorney General

[www.kenyalaw.org](http://www.kenyalaw.org)





broadcasting of the policies of the political party;

- (c) ensuring continuous vital links between the people and organs of State;
- (d) the organization by the political party of civic education in democracy and other electoral processes;
- (e) bringing the party's influence to bear on the shaping of public opinion; and
- (f) not more than twenty-five per cent for the administrative expenses of the party.

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

- (a) for paying directly or indirectly remuneration, fees, rewards, or any other benefit to a member or supporter of the political party;
- (b) to finance or as a contribution to any matter, cause, event or occasion directly or indirectly in contravention of any code of ethics binding on public officers;
- (c) directly or indirectly for the purposes of establishing any business or acquiring or maintaining any right or financial interest whatsoever in any business or in any immovable property, except where the right or interest in the immovable property is to be used by the party solely for ordinary party political purposes; or
- (d) for any other purpose incompatible with the promotion of a multiparty democracy and the electoral processes.

(3) The Fund shall be distributed as follows—

- (a) fifteen percent shall be distributed equally among political parties;
- (b) eighty percent shall be distributed proportionately by reference to the total number of votes secured at the last general election by each political party's presidential, parliamentary and civic candidates; and
- (c) five per cent for the administration expenses of the Fund:

27. Where the registration of a political party is cancelled under this Act or by virtue of decisions taken under any other law, no person shall—

Effect of cancellation of registration.

- (a) summon a meeting of members or officers of the political party;
- (b) attend or make a person attend a meeting in the capacity of a member or officer of the political party;
- (c) publish a notice or advertisement relating to a meeting of the political party;
- (d) invite persons to support the political party;
- (e) make a contribution or loan to funds held or to be held by or for the benefit of the political party or accept a contribution or loan; or
- (f) give a guarantee in respect of such funds.

#### PART V—FUNDING AND ACCOUNTS OF POLITICAL PARTIES

28. There is established a Fund to be known as the Political Parties Fund, which shall be administered by the Registrar.

Political Parties Fund.

29. (1) The sources of the Fund are—

- (a) such funds as may be provided by the Minister of Finance in the annual estimates; and
- (b) contributions and donations to the Fund from any other source.

Sources of moneys in the Fund.

(2) The moneys in the Fund not immediately required for payment to political parties shall be invested in such securities as may be approved by Treasury.

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

Purposes of the Fund.

- (a) promoting active participation by individual citizens in political life;
- (b) covering the election expenses of the political party and the



Provided that—

- (i) where a presidential candidate is supported by more than one political party, only the votes cast for parliamentary and civic candidates of the respective parties shall be taken into account in calculating the amount payable to the respective parties; and
- (ii) in the case of a political party with corporate member parties which opt for joint nomination of parliamentary and civic candidates, its share of the Fund under paragraph (b) shall be further distributed proportionately to the member parties in reference to the total number of votes secured at the last general election by each parliamentary and civic candidate belonging to the party.

(3A) For the purposes of paragraph (ii) of the proviso to subsection (3), a political party with corporate member parties which opt for joint nomination of parliamentary or civic candidates shall, on the date for the nomination of candidates, indicate to the Commission the party to which each candidate belongs.

(4) No political party shall benefit from the Fund if its registered national office bearers do not reflect at least a third of either gender.

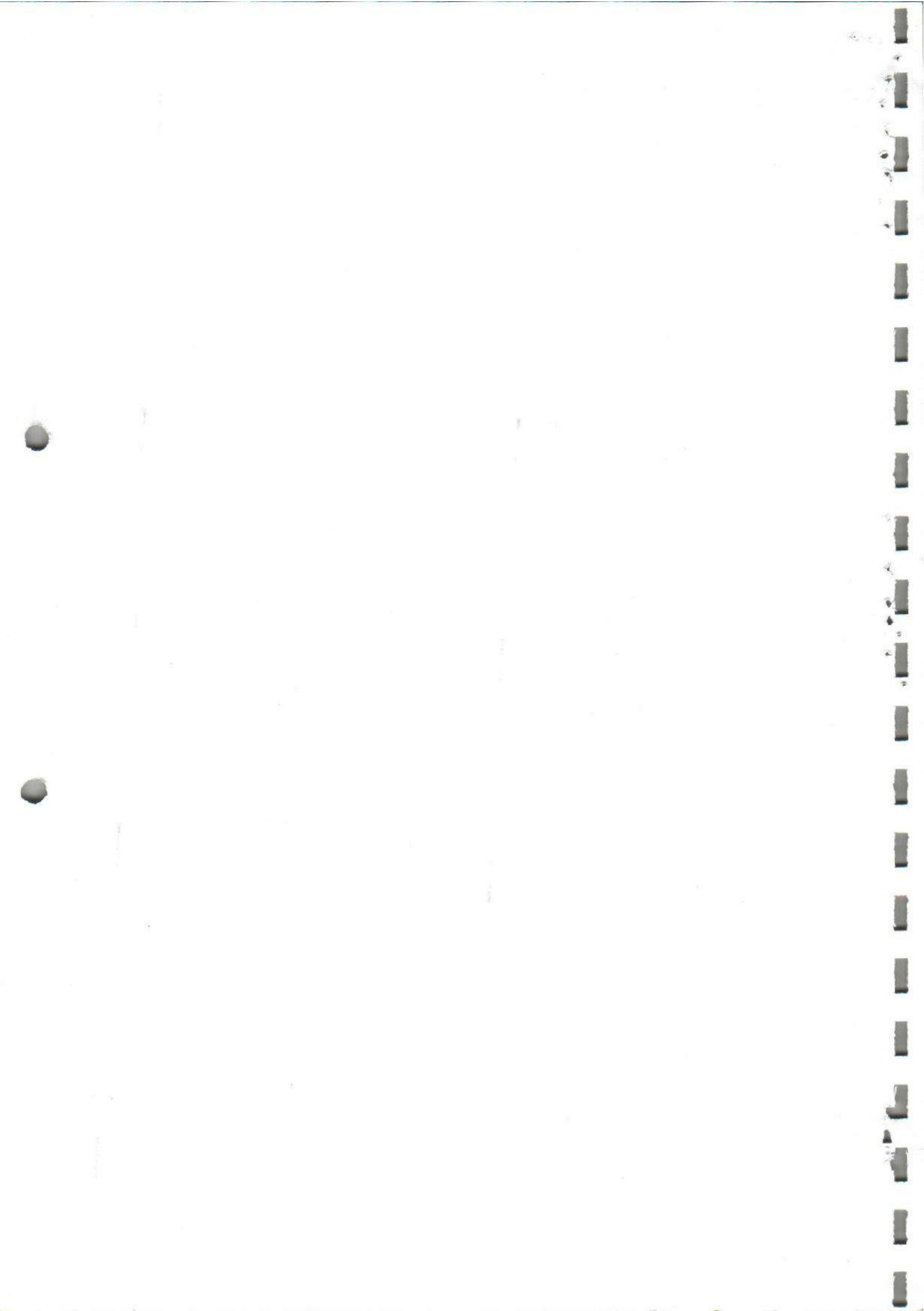
31. (1) The sources of other funds for a political party are—

Other sources of funds.

- (a) membership fees;
- (b) voluntary contributions;
- (c) donations, bequests and grants from any other source, not being a foreign government, inter-governmental or non-governmental organization; and
- (d) the proceeds of any investment, project or undertaking in which the political party has an interest.

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

(3) Subject to subsection (4) no person shall, in any one year, contribute to a political party an amount, whether in cash or kind, exceeding five million shillings, and, in addition to any penalty that may be imposed under section 41 against a person who contravenes this subsection, any amount in excess of five million shillings or its equivalent value in kind contributed by that person shall be forfeited to







## **POLITICAL PARTIES LIAISON COMMITTEE (PPLC)**

C/o Office of the Registrar of Political Parties, Lions Place,  
1st Floor, Karuna Close, Waiyaki Way, Westlands,  
P.O Box 1131-00606 Sarit Center, Nairobi Kenya.

16<sup>th</sup> July 2019

**Hon. Jeremiah Kioni,**  
Chairperson,  
Constitutional Implementation Oversight Committee (CIOC),  
National Assembly,  
Clerk's Chamber, Parliament Buildings,  
P.O Box 41842-00100  
Nairobi, Kenya.

Dear Sir,

**Ref: KNA/DSC/CIOC/2019(28) – SPECIAL INTEREST GROUPS LAWS (AMENDMENT)  
BILL 2019 SUBMISSION**

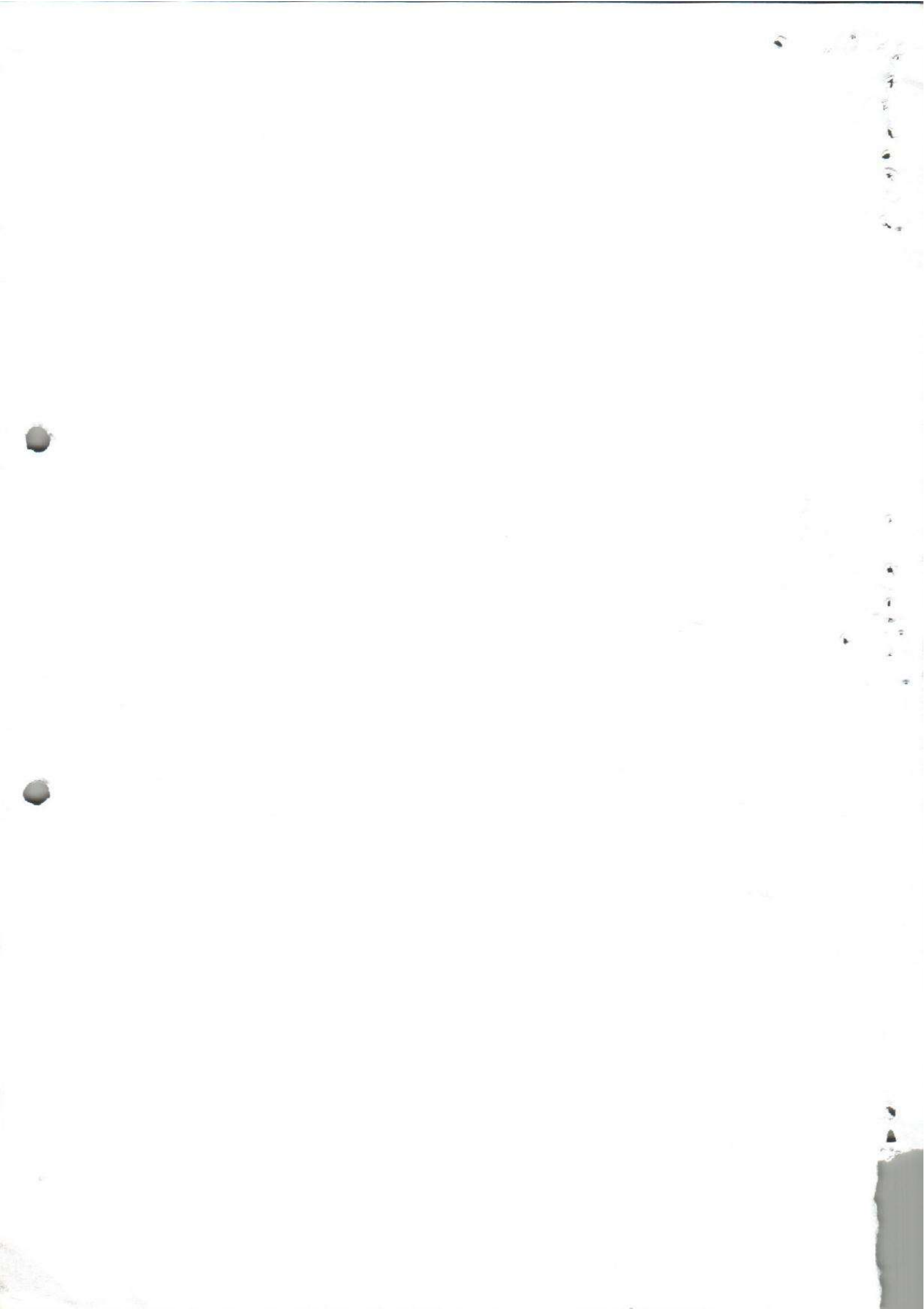
Political Parties Liaison Committee ("PPLC") wishes to thank you and accept your invitation to the meeting to consider The Representation of Special Interest Groups Laws (Amendment) Bill, 2019.

Attached is our submission as per your request in readiness for the meeting at your premises on Thursday 18<sup>th</sup> July 2019 at 11.00 am.

We look forward to the meeting and contributing to this very important bill.

Yours, Sincerely,

**MR. IRUNGU NYAKERA, CBS  
CHAIRPERSON,  
POLITICAL PARTIES LIAISON COMMITTEE.**







**POLITICAL PARTIES LIAISON COMMITTEE (PPLC)**

**COMMENTS ON PROPOSED AMENDMENTS TO THE KENYA GAZETTE SUPPLEMENT NO.107: THE REPRESENTATION OF SPECIAL INTEREST GROUPS LAWS (AMENDMENT BILL, 2019)**

The Political Parties Liaison Committee ("PPLC") has scrutinized the proposed amendments to cater for the special interest groups and wish to make the following proposals and recommendations.

	CITATION	CURRENT PROPOSAL BY CIOC	PROPOSED AMMENDMENTS BY PPLC
1	Section 7(1) of the Persons with Disability Act	(ix) promote the inclusion of persons with disabilities in the decision making bodies of public institutions.	The amendments should be adopted as they are.
2	<b>IEBC ACT</b> i) Section 2(1) of the IEBC Act, 2011  ii) Section 4 (a) (g) (ka) of the IEBC Act, 2011  iii) Section 27 (1) of the IEBC Act	"Special interest group" means the following groups specified under Article 100 of the Constitution.  Proposal to expand the mandate of the Commission on voters' register, voter education, nominations of party list and communication.  Inserting Section (1A) to read, "The Commission shall ensure that the information specified in Subsection 1 is published and publicized using modes that are accessible to persons with disabilities.	The amendments should be adopted as they are.  In paragraph (g) by inserting the words, "in conjunction with political parties to all voters including special interest groups immediately after, "education." "  The amendments should be adopted as they are.
3	<b>The Political Parties Act, 2011</b>  i) Section 2 of the Political Parties Act, 2011	Deleting the definition of: "ethnic minorities" to ethnic and other minorities means a group that is not the dominant one in a given society and includes racial minorities; "special interest groups" means the groups specified under Article 100 of the Constitution.	The amendments should be adopted as they are



POLITICAL PARTIES LIAISON COMMITTEE (PPLC)

ii) Section 20 (2) of the Political Parties Act, 2011	Amendment by inserting the words, "and on its website in a manner and form that is accessible to immediately after the word "circulation". Inserting Subsection 2A to read, "the political party shall ensure that information specified under subsection (2) is published and publicized in a manner accessible to persons with disabilities	The amendments should not be adopted
iii) Section 25 of the Political parties, 2011	Amendments on distribution of the political parties' fund.	The Fund shall be distributed as follows – (1) a) fifty per cent of the Fund proportionately shared between the <b>largest party in the National Assembly and the Second largest party</b> in the national assembly; b) Fifteen per cent of the Fund proportionately shared among all the other parties except the parties that qualify in Subsection (a); c) Fifteen per cent of the fund shared equally amongst all registered political parties; d) Ten per cent of the fund proportionately shared to political parties based on the number of candidates of the party from special interest groups elected in the preceding general elections; e) Five percent for the administration expenses of the Fund; and f) Five percent for the operation of the Political Parties Liaison Committee (2) A political party shall be entitled to receive funding for the fund if:





## POLITICAL PARTIES LIAISON COMMITTEE (PPLC)

iv) Section 26, 29, 30, 49 (2) and the First Schedule	Amendments of the distribution of the Fund for the benefit of special interest groups	<p>a) Not more than two – thirds of its registered office bearers are of the same gender;</p> <p>b) The party has in its governing body, representation of special interest groups; and</p> <p>c) The party –</p> <ul style="list-style-type: none"><li>i. Participated in the last general election;</li><li>ii. The party fielded at <u>least five candidates in at least five counties</u>; and</li><li>iii. The party managed to get at least <u>one elected member at the national or county level.</u></li></ul> <p>The amendments may be adopted as they are.</p>
4 Elections Act, 2011 i) Section 13 and 35 of Elections Act ii) Section 40 of the Elections Act	<p>Amendments to the Elections Act on party nomination lists submitted to the Commission to ensure they are in compliance with Article 100 of the Constitution.</p> <p>Amendments on voter education to cater for special interest groups.</p>	<p>The PPLC is seeking an advisory opinion from the Supreme Court and therefore would recommend that the current Sections are retained with no amendment.</p> <p>(1A) In providing voter education the Commission <b>in conjunction with Political Parties</b> shall –</p> <ul style="list-style-type: none"><li>(a) Ensure the participation of special interest groups in its programmes.</li><li>(b) Sensitize voters on the inclusion of special interest groups in the electoral process</li></ul>



**POLITICAL PARTIES LIAISON COMMITTEE (PPLC)**

	iii) Section 41 of the Elections Act	Amendment to the provision of media coverage for the benefit of the Special Interest groups.	(2A) A political party participating in an election shall <b>facilitate</b> the access of its special interest groups candidates to media coverage
	iv) Paragraph 16, Second schedule to the Elections Act, 2011	Amendments for the benefit of special interest group by political parties	The PPLC recommends the adoption of the proposed amendments with a slight amendment to part (d) by removal of the word 'free' to read as follows: d) Ensure access of persons belonging to special interest groups to all public political meetings, matches, demonstrations, rallies and other public political events.
5	<b>Election Campaign Financing Act, 2013</b> Section 2 and Section 18 (4)	Amendments on definition of special interest groups and inclusion of candidates belonging to special interest groups.	The amendments may be adopted as they are.
6	<b>Election Offences Act, 2016</b>  Section 13 (f) (i)	Amendment to include persons with disability, youth, ethnic minority and marginalized community	The amendments may be adopted as they are.