

Annex 1: Joint Memorandum to Senate on Political Party (Amendment) Bill 2021



JOINT MEMORANDUM ON THE POLITICAL PARTIES (AMENDMENT) BILL, 2021 National Assembly Bill No. 56 of 2021

INTRODUCTION

Pursuant to the provisions of Article 91 and 92 of the Constitution of Kenya, 2010, and the National Assembly Bill No.56 of 2021, one of the laws contemplated under Articles 91 and 92 is the Political Parties Act 2011 which provides for the institutional, legal and regulatory framework for registration, regulation and funding of political parties in Kenya. The Act is the primary legal reference for the management of political parties in accordance with the Articles mentioned herein.

With respect to the same, we the representatives from the institutions hereunder, wish to make submissions on the said Bill with an objective of enhancing intra and inter political party democracy in the Kenya.

THE OBJECTS OF THE BILL

The Political Parties (Amendment) Bill, 2021 is an act of Parliament to amend *the Political Parties Act (No. 11 of 2011)* to give further effect to Article 91 and 92 of the Constitution by amending the Political Parties Act and for connected purposes. The understanding of the representative institutions hereunder is that the Bill once enacted, the object and purpose is to amend the provisions of electoral and related laws to give further effect to Article 91 and 92 of the Constitution.

WE NOTE THE FOLLOWING: Noting that the Bill has already been passed and forwarded to Senate for consideration, we opine that the amendment is timely and comes at a time when Kenya is gearing up for the 2022 General Elections as it seeks to *inter alia* regulate coalitions and the formula for sharing funds. Coalitions have greatly been associated with a significant drop in violence and increased chances of credible, peaceful, free and fair elections.

Further, it promotes the representation of Special Interest Groups (SIGs)¹ in elective posts by allocating fifteen percent of the Political Parties Fund to political parties based on the number of candidates from SIGs elected in the preceding general election. We commend the above-mentioned amendments and it is our sincere view that the **below** proposals will be factored into the deliberations of the Political Parties (Amendment) Bill, 2021.

Clause	Provisions	Proposals/ Recommendations
Clause 2: Interpretation	Amends the definition section of the Act, to mean an association of citizens with an identifiable ideology or programme that is constituted for the purpose of influencing public policy or nominating candidates to contest elections; and includes a coalition of political party/s.	This is an opportune proposal as it seeks to expand the definition of a political party to include a coalition(s). The amendment broadens the definition of a political party to include coalition agreements which have been the norm in our elections.
Clause 4A: Roles and functions of a political party	The clause sets out the roles and functions of a political party which had not been provided for under the Political Parties Act 2011. In particular, it makes provision for: <ul style="list-style-type: none"> a) The recruitment and enlistment of members; b) Nomination of candidates; c) The promotion of representation in Parliament and County Assemblies of special interest groups; d) Civic education on political and electoral system; e) Promotion of national unity; f) Promotion of public participation; and g) Shaping, influencing and articulating public policy issues. 	The use of “may” under this clause in setting out the roles and functions of political parties has the implication that the same are optional. Thus, we propose that the legislative language be coached in a manner that clearly sets out the obligations of political parties to perform the roles and functions as set out.
Clause 5(b): Roles and	The subclause increases the registration period for political parties from 180days to 270 days	This proposal is commendable as it widens the Kenyan democratic space. It allows for easier formation of political parties.

¹ Women, persons with disabilities, youth, ethnic and other minorities and marginalized communities

functions of a political party		
Clause 6(a)	The amendment proposes to insert a subsection (d) (a) that mandates a political party to craft a statement of ideology before application of a provisional certificate	This is a good proposal however, it does not make provisions for existing political parties to ensure they have a statement of ideology, websites and slogans in place. This therefore makes for an uneven playing field for political parties.
Clause 7 (6)(7) and (9)	The provisions are geared towards establishing the conduct of political coalitions. In particular, it ensures that a member of a coalition cannot become a member of a separate coalition	The provisions will cure the problems of coalitions for convenience that fold immediately after elections. It also ensures that coalitions are governed by principles and rules. Conversely, more research is required on coalition political parties and the implications to democracy in Kenya.
Clause 14	The amendment suggests an insertion of suspension alongside deregistration	The amendment is a good recommendation but it should specify which contraventions should constitute suspension and which should constitute deregistration. We recommend that any contravention of the constitution lead to suspension and or deregistration of the political party. We also propose the change of the wording from 'may' to 'shall'.
Clause 17	This provision allocates fifteen per cent of the political parties Fund to political parties based on the number of candidates of the party from special interest groups elected in the preceding general election.	We view fifteen percent as significant to encourage political parties to ensure the participation of special interest groups. We propose clarity on the total number of votes referred to in the proposed amendment subsection (1a) which does not specify the category of votes to a- Presidential, Member of Parliament, Member of County Assembly votes or a sum total of all the votes.
Clause 21	The amendment suggests deletion of subsection 3 of the Principal Act which requires political parties to be audited annually by the Auditor General.	Deleting the subsection will create room for abuse. We propose that the subsection remains as is to hold leaders accountable for their political party choices. Optionally, there should be a requirement to get political parties audited by an auditor of good standing with ICPAK and file the reports with the

		Registrar of Political Parties. Political parties, by the nature of their formation and functions, are public organizations and should be subject to some form of accountability.
Clause 23	The clause amends section 34B of the principal Act and provides for use of technology by the registrar of political parties	The amendments to recognize (the) political parties management information system in the law are a welcome move that seals any legal loopholes that could be exploited to undermine mandate of the office of the registrar of political parties.

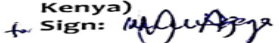
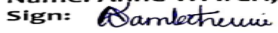
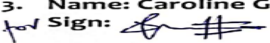
Clause 24 and Part IVA	<p>This clause provides for party nominations. It amends the principal Act to ensure parties only nominate candidates –</p> <p>(a) makes and deposits a self-declaration form in the prescribed form under the Leadership and Integrity Act, 2012;</p> <p>(b) possesses the qualifications to hold the elective office as specified in the Constitution and any other relevant written law; and</p> <p>(c) meets such other requirements as may be prescribed by the constitution and nomination rules of the political party.</p>	<p>We propose the adoption of this amendment as it provides for standardized party nomination process and is in line with Chapter 6 of the Constitution.</p> <p>Further, this proposal is commendable as it seeks to cure the issue of <i>forum shopping</i> in electoral dispute resolution processes by making provisions for internal dispute resolution mechanisms. The amendments to have parties exhaust internal party dispute resolution mechanisms before filing their complaints with the Political Parties Dispute Tribunal is a welcome move.</p> <p>However, there should be requirements for political parties to have elaborated internal dispute resolution mechanisms in their constitution to ensure that members have adequate avenues to have their complaints heard and determined.</p>
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We hope these observations will be considered.

Conclusion

There is need for sanity in the political party processes in Kenya ahead of the 2022 including how political party coalitions are managed. We believe that this Bill will go a long way in institutionalizing political parties' processes and enhance participation of members in these processes.

Signed for and on behalf of the following:

1. Name: Sheila Masinde, Executive Director, Transparency International Kenya (TI-Kenya)
for Sign: 
2. Name: Anne W. Ireri, Chairperson, Elections Observation Group (ELOG)
Sign: 
3. Name: Caroline Gaita, Executive Director, Mzalendo Trust
for Sign: 
4. Name: Joshua Changwony, Executive Director, Constitution and Reform Education Consortium (CRECO)
Sign:
5. Name: Franklin Mukwanja, Executive Director, Center for Multiparty Democracy (CMD-Kenya)
Sign: 