

THE POPULAR VERSION OF THE POLITICAL PARTIES ACT

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CHAPTER 1: INTRODUCTION AND BACKGROUND

Meaning, Purpose and History of Political Parties

Meaning of a political party

A political party is defined as an association or organization of people with similar political aims and opinions, aimed at proposing or supporting candidates for national or county election, with a view to forming or influencing the formation of the Government.

Purpose of Political Parties

The key role of political parties is to enhance democratic participation through political mobilization by encouraging the public to participate in elections by enabling citizens to express interest in Presidential, Parliamentary and County Governments. .

Political parties are also instrumental in formulating public policies, recruitment and selection of political leaders.

Historical Evolution of Political Parties in Kenya

After negotiations for Kenyan independence at the Lancaster Conference in 1962, two political parties, Kenya African Democratic Union (KADU) and Kenya African National Union (KANU), were formed. In the national elections of May 1963, KANU won a majority of seats in both houses of parliament. KADU dissolved voluntarily in 1964 and joined KANU. In March 1966, Kenya People's Union (KPU) was formed as a result of ideological differences, leadership struggles, and the repression of dissent within KANU. However, KPU was banned in 1969. Kenya became *a de facto* single state from this time until 1982 when the Constitution was amended on 9th June 1982 to make *a de jure* single party state. In December 1991 Parliament repealed Section 2A of the Constitution, paving the way for the reemergence of multiparty politics and ending KANU's monopoly in power.

For many years, there was no specific law governing political parties in Kenya. Political Parties were registered by the Registrar of Societies under the Societies Act (Cap.108), a law which governed the registration of all associations including women organizations and football clubs. In effect, political parties were private associations. The democratic space of 1991 resulted in the proliferation of many political parties, which were weak and poorly institutionalized.

The absence of an effective legal framework for the registration, regulation, management and funding of political parties meant that political parties were personal outfits without legal personality or perpetual succession. Basically, political parties belonged to individuals and some people speculatively formed parties with the aim of selling them for monetary gain. There was therefore no legal framework for promoting democratic inclusion of the people in government.

Parliament unsuccessfully attempted four times between 1993 and 1994 to enact a law that would provide independent registration and funding of political parties. The liberalization of the registration of political parties in Kenya resulted in the formation of many political parties that wrangled, split and formed new outfits with similar names and/or symbols. Prior to the 2007 General Election there were 168 registered parties and 117 participated in the general election. It is against this background that the Political Parties Act 2007 was enacted. The objective of the Act was to provide for the registration, regulation and funding of political parties. The Act came into force on 1st July, 2008 and the Office of Registrar of Political Parties was established. All Political Parties registered under the Societies Act were required to register afresh under the new law within 180 days. This led to the reduction of political parties registered from 168 to 47 by 2009.

The passing of the Constitution of Kenya, 2010 introduced a new paradigm for management and administration of political parties. It recognizes political parties as important institutions in the promotion of democracy. The Constitution not only guarantees the right to freedom of association of every person and the right to freely make political choices including the right to form and participate in the activities of a political party but also sets out basic requirements for political parties and requires Parliament to enact legislation to provide for key aspects with regard to political parties (see the Chapter below). Following this Constitutional requirement, the Political Parties Act, 2011 was enacted.

CHAPTER 2: LEGAL AND INSTITUTIONAL FRAMEWORK FOR POLITICAL PARTIES IN KENYA

The primary laws governing the formation, management and administration of political parties are the Constitution of Kenya, 2010 and the Political Parties Act, 2011. There are, however, other laws that have bearing on the operations of political parties namely, the Elections Act, 2011; the Election Offences Act, 2016, the Election Campaign Financing Act, 2013, the National Cohesion and Integration Act, 2008 and the Independent Electoral and Boundaries Commission Act, 2011.

Legal Frameworks for Political Parties

The Constitution of Kenya, 2010

The Constitution of Kenya, 2010 lays the foundation for the legal framework of political parties. The Constitution affirms the sovereign and the right of the people of Kenya to determine the form of governance of the country and recognizes the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and rule of law.

Article 4 of the Constitution Kenya declares that Kenya is a multi-party democratic State founded on national values and principles of governance.

Article 27 requires the State to take measures to ensure that no more than two-thirds of the members of elective or appointive bodies are of the same gender.

Article 38 provides for political rights and guarantees every citizen the freedom to make political choices including the right to form, or participate in forming, a political party, to participate in the activities of, or recruit members for a political party and to campaign for a political party or cause.

Article 91 of the Constitution sets out basic requirements for formation of political parties and requires that a political party should not:

- (a) be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis;
- (b) engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;
- (c) establish or maintain a paramilitary force, militia or similar organisation;
- (d) engage in bribery or other forms of corruption; or

- (e) accept or use public resources to promote its interests or its candidates in elections (except as provided by law).

Article 92 specifically requires Parliament to enact legislation to provide for regulation of election campaigns, regulations, roles and functions of political parties and establishment and management of political parties fund.

These Constitutional requirements have been given effect through the Political Parties, the Elections Act, 2011; the Election Offences Act, 2016, the Election Campaign Financing Act, 2013, the Independent Electoral and Boundaries Commission Act, 2011 and Public Finance Management Act, 2012.

The Political Parties Act, 2011

The Political Parties Act (the Act) came into force on 1st November, 2011. Since its enactment the Political Parties Act, 2011 has been amended three times vide the following Acts of Parliament: the Political Parties (Amendment) Act No. 18 of 2014, the Political Parties (Amendment) Act No. 21 of 2014 and the Political Parties (Amendment) Act No. 14 of 2016.

The Act provides for:

- (a) Registration process (requirements for provisional and conditions for full registration);
- (b) Membership of political parties-restrictions of public officers and disqualification from holding office of political party, resignations;
- (c) Corporate status of registered political parties;
- (d) Coalitions;
- (e) Mergers;
- (f) Contents or rules of political parties;
- (g) Records of political parties;
- (h) Public meetings of political parties;
- (i) Deregistration and effect of deregistration;
- (j) Political Parties Fund;
- (k) Purpose and distribution of the Fund;
- (l) Accounting and audit;
- (m) Office of the Registrar of Political Parties;
- (n) Political Parties Dispute Tribunal;
- (o) Winding up of political parties;
- (p) Offences and general penalty;
- (q) Regulations.

The Act is supported by various Regulations which form part of the political parties law in Kenya. These include:

1. The Political Parties Dispute Tribunal (procedure) Regulations, 2017
The purpose of these Regulations is to set out the procedure to facilitate just, expeditious and impartial determination of disputes affecting political parties.

2. Political Parties (Funding) Regulations, 2014
The purpose of these regulations is to provide for the administration and management of the political parties Fund.
3. The Political Parties (Liaison Committee) Regulations
4. The Political Parties (Registration) Regulations

The Elections Act, 2011

The Elections Act, 2011 is the primary law governing the conduct of elections in Kenya. The key issues that relate to political parties in the Act are:

(i) Nomination of candidates by a political party

A political party nominates its candidates for an election at least ninety days before a general election in accordance with its constitution and nomination rules. In case of any other election, the Independent Election and Boundaries Commission (the Commission) issues a notice, to specify the day or days upon which political parties should nominate candidates to contest in a presidential, parliamentary or county election in accordance with the party's constitution or rules, which are at least fifty-five days before the election.

A political party is not allowed to change the nomination of a candidate after the nomination of that person has been received by the Commission.

In the event of the death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party is allowed to substitute such a member after notifying him or her of the intention to do so.

A political party is supposed to hear and determine all intra party disputes arising from political party nominations within thirty days.

(ii) Submission of party nomination rules

A political party submits its Nomination Rules to the Commission at least six months before the nomination of its candidates. Once the Commission receives the Nomination Rules, it reviews the Rule to ensure the Party has complied with the prescribed regulations within fourteen days and if satisfied with the Rules, issue a Certificate of Compliance to the Party. Where a Party has not complied, the Commission will require the party to amend the Rules to ensure compliance within fourteen days.

Once a Party has complied with the Regulations, the Commission then publishes in the Gazette the Regulations outlining the guidelines to be complied with and the process by which political parties nominate candidates for nomination. Any amendment to the nomination rules will only be effective ninety days after submission of the amendments to the Commission.

(iii) Submission of party membership lists

A political party that nominates a person for an election must submit to the Commission a membership list of the party, in case of a general election, at least one hundred and twenty days before the date of the election and in the case of a by-election, forty-five days before the date of

the by-election. There after the Commission is required to publicize the membership lists as received from political parties.

(iv) Appointment of agents

A political party is expected to appoint an agent for its candidates at each polling station. Where a political party does not nominate an agent in a particular station, the nominated candidate may appoint an agent of his or her choice. An independent candidate must appoint his own agent.

(v) Nomination of political party candidates

A person qualifies to be nominated by a political party for presidential, parliamentary and county elections if that person is selected in accordance with the party's Rules and Constitution and the party certifies the nomination to the Commission.

Upon the request of a political party, the Commission conducts and supervises the nomination of candidates by the political party for presidential, parliamentary or county elections.

Where the Commission receives multiple requests to conduct and supervise nomination of candidates, the Commission conducts and supervises the nomination of candidates for presidential, parliamentary or county elections for all the requesting political parties; on the same day, in the same polling centers and in different polling streams for each participating political party. Parliament is required to appropriate monies to ensure the commission has the capacity to conduct and supervise such nominations. Every political party must submit the names of the party candidates who have been selected to participate in the general elections at least sixty days before the elections.

A political party must, at least twenty-one days before the nomination day, submit to the Commission the names of the persons contesting in its party primary and the date of its party primary. The Commission publishes, 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.

A candidate for a presidential, parliamentary or county election must be selected by persons who are members of the respective political parties and whose names appear on the party membership list as submitted to the Commission.

Every political party is required to notify the Commission of the name of the person authorized by the party to certify to the Commission that a person has or persons have been selected by the party and the person or persons so named must deposit his or their specimen signature with the Commission in such manner as the Commission may require. The authorized person or persons certifies that a candidate has been nominated by the party in writing.

(vi) Nomination of party lists members

The election of members for the National Assembly, Senate and county assemblies for party list seats is on the basis of proportional representation.

The Commission published regulations prescribing guidelines to be complied with in preparation of party lists. Upon receipt of the party list from a political party, the Commission reviews the list to ensure compliance with the prescribed regulations and issue the political party with a certificate

of compliance or require the political party to amend the party list to ensure such compliance failure to which the Commission will reject the list.

The party lists submitted to the Commission are valid for the term of Parliament. The lists should not be amended during the term of Parliament or the county assembly, as the case may be, for which the candidates are elected.

A person who is nominated by a political party must be a person who is a member of the political party on the date of submission of the party list by the political party. The party list should not contain a name of a candidate nominated for an election.

(vii) Submission of party lists

A political party is required to submit its party list to the Commission at least forty-five days before the date of the general election.

(viii) Allocation of special seats

A party list submitted by a political party must have:

- (a) twelve members nominated by parliamentary political parties according to their proportion of members of the National assembly to represent special interest including the youth, persons with disabilities and workers;
- (b) sixteen women members nominated by political parties according to their proportion of elected members of the senate;
- (c) two members , one man and one woman representing the youth;
- (d) two members, one man and one woman representing persons with disability;
- (e) the number of special seat members necessary to ensure that not more than two thirds of the membership of the County assembly are of the same gender; and
- (f) the number of members of marginalized groups, including persons with disability and the youth.

A party list submitted under the above mentioned categories must contain alternates between male and female candidates in the priority in which they are listed. The party list marginalized groups must prioritize a person with disability, the youth and any other candidate representing a marginalized group.

Thirty days after the declaration of the election results, the Commission designates, from each qualifying list, the party representatives on the basis of proportional representation.

(ix) Access to and obligation of media

A political party participating in an election has the right to have access to the state owned media services during the campaign period.

(x) Electoral code of conduct

Political parties and every person who participates in an election or referendum under the Constitution and the Election Act are required to subscribe to and observe the Electoral Code of Conduct as set out in the Act.

The Code applies to every political party participating in the election of a president, a Member of Parliament, a county governor, a member of a county assembly every candidate and every leader, chief agent or agent. —

The object of the Code is to promote conditions conducive to the conduct of free and fair elections and a climate of tolerance in which political activity may take place without fear, coercion, intimidation or reprisals.

All registered political parties and other persons bound by the Code must endeavor to promote the object of the code to enable free political campaigning and open public debate to take place in all parts of Kenya during an election period. They are required to:

- (a) adhere to the values and principles of the Constitution;
- (b) give wide publicity to the Code of Conduct ;
- (c) promote voter education campaigns;
- (d) condemn, avoid and take steps to prevent violence and intimidation;
- (e) instruct their candidates, office-bearers, agents, members and persons who support the political party of their obligations under this Code;
- (f) promote gender equality;
- (g) promote ethnic tolerance;
- (h) promote cultural diversity;
- (i) promote the fair representation of special interest groups;
- (j) generally affirm the rights of all participants in an election to:
 - (i) express divergent political opinions;
 - (ii) debate and contest the policies and programmes of other parties;
 - (iii) canvass freely for membership and support from voters;
 - (iv) hold public meetings;
 - (v) attend public meetings convened by others;
 - (vi) distribute non-offensive electoral literature and campaign materials;
 - (vii) publish and distribute non-offensive notices and advertisements;
 - (viii) erect non-offensive banners, placards and posters;
 - (ix) remove all banners, placards and posters erected during the election period;
 - (x) promote free electoral campaigns by all lawful means; and

- (xi) co-operate with the Commission and the relevant Government agencies and other authorities in the investigation of issues and allegations arising during the election period.

Political parties are expected throughout an election period to:

- (a) publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage, or for any other reason;
- (b) refrain from any action involving violence or intimidation;
- (c) ensure that no arms or weapons of any kind are carried or displayed at political meetings or any march, demonstration or other event of a political nature;
- (d) refrain from campaigning in places of worship or during burial ceremonies;
- (e) co-operate and liaise in good faith with other parties to avoid organizing public meetings, demonstrations, rallies or marches to take place at the same time and venue as similar political events organized by other parties;
- (f) do nothing to impede the right of any party, through its candidates, canvassers and representatives, to have reasonable access to voters for the purposes of conducting voter education, fund raising, canvassing membership and soliciting support;
- (g) avoid plagiarizing the symbols, colours or acronyms of other parties; and to discourage and, if possible, prevent the removal, disfigurement or destruction of political campaign materials of any party;
- (h) refrain from offering any document or reward to any person in consideration of such person either joining or not joining any party; attending or not attending any political event; voting or not voting (either at all, or in any particular manner); or accepting, refusing or withdrawing such person's nomination as a candidate in the election;
- (i) refrain from any attempt to abuse a position of power, privilege or influence, including parental, patriarchal, state or traditional authority for political purposes including any offer of reward or threat of penalty;
- (j) avoid any discrimination based on race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth in connection with the election and political activity;
- (k) in relation to the Commission:
 - (i) acknowledge the authority of the Commission in the conduct of the election or referendum;
 - (ii) ensure the attendance and participation of representatives at meetings of any party liaison committee and other forums convened by or on behalf of the Commission;
 - (iii) implement the orders and directions of the Commission;

- (iv) facilitate the Commission's right of access through official observers and other representatives to all public political meetings or other electoral activities;
 - (v) co-operate in the official investigation of issues and allegations arising during an election period;
 - (vi) take all reasonable steps to ensure the safety of observers and other representatives of the Commission from exposure to insult, hazard or threat in the course of their official duties;
 - (vii) to establish and maintain effective lines of communication with the Commission; and
 - (viii) to abide by the provisions of this Code;
- (l) reassure voters with regard to the impartiality of the Commission and the secrecy and integrity of the ballot, and to reaffirm that no one should know how any other person has voted;
 - (m) take reasonable steps to discipline and restrain their party office bearers, employees, candidates, members and persons who support the political party who—
 - (i) infringe the Code;
 - (ii) engage in activities of commission or omission which constitute offences under the electoral laws or otherwise fail to observe the Code; and
 - (iii) contravene or fail to comply with any provision of the electoral laws;
 - (n) agree for party office bearers, employees, candidates members and persons who support the political party to submit to the disciplinary procedures of the Commission for any violation of this Code; and
 - (o) without prejudice to the right to present a petition to an election court, accept the final outcome of the election and the Commission's declaration and certification of the results thereof.

Where, in the opinion of the Commission, any political party or referendum infringes any provision of the Code, the Commission may impose upon that political party one or more of the following penalties or sanctions which any or all may be suspended on specific conditions:

- (i) a formal warning;
- (ii) a fine determined by the Commission;
- (iii) notwithstanding the provisions of any other written law, an order prohibiting the political party, whether permanently or for a specified period, from utilizing any public media time, through the television or radio broadcasting service of such media as have been or may be allocated to the political party for electoral purposes;
- (iv) an order prohibiting the political party, referendum committee or candidate from:

- (a) holding particular public meetings, demonstrations or marches, or any kind of meeting, demonstration or march;
- (b) entering any specified electoral area for purposes of canvassing for membership, or for any other electoral purpose;
- (c) erecting placards or banners, or from publishing and distributing campaign literature;
- (d) publishing or distributing campaign literature and electoral advertising or limiting the rights of the political party to do so, and such prohibition or limitation shall be notified to the relevant regulating officers under the Public Order Act (Cap. 56) in the affected places or electoral areas for purposes of the Act; or
- (e) in the case of the leader, candidate, an office-bearer or member of a political party or person who supports the political party or referendum committees impose any one or more of the penalties or sanctions.

A fine imposed by the Commission under the Code must be registered in the High Court. The Commission may either of its own motion or in consequence of any report made to it, institute proceedings in the High Court as may be appropriate in the case of any alleged infringement of the Code by a political party or by the leader, any office-bearer or member of a political party or person who supports a political party or any candidate and where the Court finds the infringement of the provisions of the Code:

- (a) in the case of a political party, any act or omission involving violence, intimidation or a gross or systematic violation of the rights of any political party, candidate or voter, the Court may, in addition to or in substitution for any other penalty or sanction make an order cancelling the right of such party to participate in the election concerned; or
- (b) in the case of the leader, any office-bearer or member of a political party or person who supports the political party or of any candidate, that any act or omission involving violence or intimidation or gross or systematic violation of the rights of any political party candidate or voter, the Court may in addition to or in substitution of any other penalty or sanction, make an order disqualifying, in the case of a person who is a candidate, that person from being a candidate or deleting the name of that candidate from the list or lists of candidates concerned.

Every registered political party, candidate and agent:

- (a) must respect the role of the media before, during and after an election or referendum conducted under this Act;
- (b) may not prevent access by members of the media to public political meetings, marches, demonstrations and rallies; and
- (c) must take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or persons who supports the candidate or political party.

The Commission is mandated to set up the Electoral Code of Conduct Enforcement Committee which comprises of not less than five members of the Commission and is chaired by a member appointed by the Chairperson; the Commission may nominate a member of its staff to be the secretary to the Committee. The Chairperson of the committee must be a person who is qualified to hold the office of Judge of the High Court.

Every candidate, official and agent is expected to acknowledge the authority of the Committee to enforce the provisions of the Code on behalf of the Commission, ensure compliance with summons issued to the party, its candidates or representatives by the Committee, co-operate in the official investigation of issues and allegations arising at election period and respect and comply with the orders issued by the Committee.

Every registered political party referendum committee, candidate and agent must:

- (a) ensure security and full participation of women and persons with disabilities as candidates and voters;
- (b) respect the right of women to communicate freely with political parties, committees and candidates;
- (c) facilitate the full and equal participation of women in political activities;
- (d) ensure free access of women and persons with disabilities to all public political meetings, marches, demonstrations, rallies and other public political events; and
- (e) take reasonable steps to ensure that women are free to engage in any political activity.

The Commission may establish peace committees in every constituency during an election and referendum period.

Other Laws

The Elections Offences Act, 2016

The main purpose of the Election Offences Act, 2016 is to provide for election offenses and related purposes. With regard to political parties, the Act makes it an offence:

- (a) for any person to bribe, use undue influence, force or to use national security organ to induce a person to vote for a particular political party;
- (b) for public officer to engage in the activities of a political party or to use public resources to support a political party; and
- (c) for an officer of a political party to participate in an election without subscribing to the Electoral Code of Conduct.

The Election Campaign Financing Act, 2013

The Election Campaign Financing Act, 2013 seeks to regulate contributions, donations and expenditure by political parties during election campaigns. The Act was suspended until after the 2017 general elections. It gives the IEBC the mandate to:

- (a) keep a register of authorised persons;

- (b) supervise candidates, political parties, referendum committees and authorised persons in relation to campaign expenses;
- (c) set spending limits and enforce compliance with such limits;
- (d) set limits and verify sources of contributions to a candidate, a political party or a referendum committee;
- (e) monitor and regulate campaign expenses;
- (f) provide a framework for the reporting of campaign expenses;
- (g) advise a candidate, a political party or a referendum committee on any matter relating to campaign expenses; and
- (h) provide and enforce a framework for the regulation of media coverage;
- (i) perform such other functions as may be necessary for the purposes of the Act.

The Act further requires political parties intending to contest in elections to set up party expenditure committee to:

- (a) open a party expenditure committee account into which all the money in respect of the election campaign of that party shall be deposited;
- (b) be signatories to the party expenditure committee account;
- (c) advise the political party on all financial matters related to the party nomination or to the party campaign expenditure;
- (d) manage the party expenditure committee account of the political party and keep the books of account updated and available for inspection;
- (e) receive party nomination and campaign expenditure reports from each party candidate;
- (f) monitor the campaign expenditure of the party candidate and ensure that the party candidate complies with party nomination and campaign expenditure rules;
- (g) compile the expenditure reports received from the party candidates and submit to the Commission the preliminary nomination expenditure report and the final campaign expenditure report; and
- (h) submit to the Commission the final campaign expenditure report of the political party.

The National Cohesion and Integration Act, 2008

The National Cohesion and Integration Act, 2008 encourages national cohesion and integration by outlawing:

- (a) discrimination on ethnic grounds;
- (b) discrimination by victimization;
- (c) harassment on basis ethnicity;
- (d) discrimination in employment;
- (e) discrimination in employment;
- (f) discrimination in membership of organizations;
- (g) discrimination by agencies;
- (h) discrimination in access to and distribution of public resources;
- (i) discrimination in property ownership, management and disposal; and
- (j) hate speech.

Institutional Framework for Regulation of Political Parties

Office of the Registrar of Political Parties

The Act establishes the Office of the Registrar of Political Parties. The Office is headed by the Registrar of Political Parties (the Registrar). The Registrar is deputized by three Assistant Registrars, of whom not more than two should be of the same gender. The Office of the Registrar engage such staff, experts or consultants as are necessary for the proper and effective discharge of its functions.

A person who serves as a Registrar or Assistant Registrar is not qualified to contest for election as a Member of Parliament or a county assembly, or as a member of a governing body of a political party for a period of five years after ceasing to be the Registrar or Assistant Registrar.

The Registrar is mandated to register, regulate, monitor, investigate and supervise political parties to ensure compliance with the Act.

Other functions of the Registrar include:

- (a) administering of the Political Parties Fund;
- (b) coordinating with members of Political Parties Liaison Committee;
- (c) ensuring publication of audited annual accounts of political parties;
- (d) maintenance of a register of political parties and symbols of the political parties;
- (e) ensuring and verifying that no person is a member of more than one political party; and

- (f) investigating complaints received under the Political Parties Act, 2011.

Terms of service of the Registrar and assistant registrar

The Registrar and Assistant Registrars serve for a non-renewable term of six years and are not qualified for re-appointment.

Vacancy in the Office of the Registrar of Political Parties or the Assistant Registrar

Whenever a vacancy arises in the Office of the Registrar of Political Parties or the Assistant Registrar, the President appoints the Registrar of Political Parties or the Assistant Registrar from the names of nominees forwarded by the Public Service Commission, with the approval of the National Assembly.

Removal of Registrar or Assistant Registrar

The Registrar or an Assistant Registrar may be removed from office only on grounds of:

- (a) serious violation of the Constitution or of the Act;
- (b) non-compliance with Chapter Six of the Constitution;
- (c) inability to perform the functions of office arising from mental or physical incapacity;
- (d) bankruptcy;
- (e) incompetence; or
- (f) gross misconduct.

Procedure for removal from office

A person desiring the removal of the Registrar or an Assistant Registrar is required to present a petition to the Public Service Commission in writing, setting out the alleged facts constituting the grounds for the removal of the Registrar or of the Assistant Registrar.

The Public Service Commission considers the petition and, if it is satisfied that it contains sufficient ground for removal from office outlined above, it then forwards the petition to the President.

On receipt and examination of the petition, the President may suspend the Registrar or Assistant Registrar pending the outcome of the petition and appoint a tribunal to investigate further into the allegations and recommend further action.

The Tribunal should consist of:

- (a) a Chairperson who is nominated by the Judicial Service Commission, who is a person qualified to hold office as a judge of a superior court in Kenya ;
- (b) two other persons, a man and a woman, nominated by the Law Society of Kenya and are qualified to hold office as a judge of a superior court in Kenya ;
- (c) two persons, a man and a woman, nominated by the Association of Professional Societies in East Africa and have knowledge and experience in public affairs and are competent to assess the facts in respect of the particular ground for removal.

The Tribunal is expected to investigate the matter expeditiously, report on the facts and make a binding recommendation to the President who enforces the recommendation within thirty days. A person who is suspended following these proceedings will continue, while on suspension, to receive one-half of the remuneration and benefits of the office.

Qualification for appointment to the office of the Registrar or as an Assistant registrar

A person is qualified to be appointed as a registrar or assistant registrar if the person holds a degree from a university recognized in Kenya and has proven knowledge and experience in finance, management, political science, law, governance or public administration. In the case of the Registrar the person should have at least fifteen years post qualification experience in the relevant areas of expertise and, in the case of an Assistant Registrar, at least ten years post qualification experience in the relevant area of expertise. The person must be of high moral character and integrity and has satisfied the requirements of Chapter Six of the Constitution

Disqualification for appointment as a Registrar or Assistant Registrar

A person is disqualified to hold office as a registrar or assistant registrar if the person has, at any time within the preceding five years, held office or stood for election as a Member of Parliament or a county assembly or as a member of a governing body of a political party.

Oath of office

The Registrar and Assistant Registrars are required to take and subscribe to the oath or affirmation of office.

Political Parties Liaison Committee

The Political Parties Act establishes the Political Parties Liaison Committee at the national and county level. The purpose of the Committee is to provide a platform for dialogue between the Registrar of Political Parties, the Independent Electoral and Boundaries Commission (IEBC) and political parties. The role of the Committee is further emphasized in the Independent Electoral and Boundaries Commission Act 2011 and the Elections Act 2011. The Electoral Code of Conduct requires political parties to attend and participate in Political Parties Liaison Committee Meetings.

Political Parties Dispute Tribunal

In the recent past, disputes within and between political parties in Kenya have often been referred to the courts. Even though this practice in various cases led to acceptable outcomes, it also led to a situation where important political issues were decided over not by politicians but by judges. It, moreover, paralyzed political decision making and at times even threatened the independence of the courts.

To bring political decisions back to political powers, the Act first calls for political parties to establish in their constitutions, their own internal dispute resolution mechanisms. Internal disputes relating to nominations are be dealt with primarily by parties themselves.

Only when all resolution mechanisms within the party have been exhausted and the dispute still remains unsolved, can members of political parties call upon an external dispute resolution mechanism. This mechanism deals with disputes between political parties.

The Act establishes the Political Parties Dispute Tribunal. The Tribunal consists of the following members, appointed by the Judicial Service Commission:

- (a) a chairperson who is a person qualified to be appointed a judge of the High Court; and

- (b) six other members, three of whom are Advocates of the High Court of seven years standing and three other professionals with outstanding governance, administrative, social, political, economic and other record.

The Chairperson and members of the Tribunal hold office for a non-renewable term of six years and serve on part-time basis. ,

The quorum of the Tribunal is three members, one of whom should be an advocate.

A person is not qualified to be appointment as a member of the tribunal unless the person has met the leadership and integrity requirement under Chapter Six of the Constitution. A person who serves in the public service or takes an active part in activities of a political party is not qualified to be appointed as a member of the tribunal.

Mandate of the Tribunal

The mandate of the tribunal includes, to hear and determine:

- (a) disputes between members of a political party;
- (b) disputes between a member of a political party and a political party;
- (c) disputes between political parties;
- (d) disputes between an independent candidate and a political party;
- (e) disputes between coalition partners;
- (f) appeals from decisions of the Registrar; and
- (g) disputes arising out of party primaries.

The Tribunal has no mandate to hear or determine a dispute between members of a political party, a dispute between a member of a political polity and a political party, a dispute between political parties and a dispute between an independent candidate and a political party unless the dispute has been heard and determined by the internal political party dispute resolution mechanisms.

Determination of disputes

The Tribunal determines any dispute before it within a period of three months from the date the dispute is lodged. A decision of the Tribunal is enforced in the same manner as a decision of a Magistrates Court. An Appeal from the decision of the Tribunal is determined by the High Court on points of law and facts and further appeal is determined by the Court of Appeal and the Supreme Court.

Removal of member of Tribunal

The Judicial Service Commission may remove a member of the Tribunal if the member becomes an undischarged bankrupt, is convicted of a criminal offence, is incapacitated by reason of prolonged physical or mental illness from performing the duties of the office, violates the Constitution or unable or unfit to discharge the functions of the office.

Staff of the Tribunal

The Judicial Service Commission is mandated to appoint the Secretary and such other staff of the Tribunal necessary for the proper functioning of the Tribunal.

Expenses of the Tribunal

The remuneration of the staff of the Tribunal and the expenses of the Tribunal are paid out of monies allocated by the National Assembly to the Judiciary Fund. The Chairperson and members of the Tribunal are paid such allowances and reimbursed such expenses as determined by the Judicial Service Commission on the recommendation of the Salaries and Remuneration Commission.

CHAPTER 3: FORMATION AND REGISTRATION PROCEDURES OF POLITICAL PARTIES

An association of persons of 18 years and above or an organization that wishes to operate or function as a political party must apply to the Registrar for registration.. No association or organisation can operate or function as a political party unless it has been registered. The Registrar cannot register an association or organisation unless it meets the requirements set out under Article 91 of the Constitution

Once registered a political party must promote inclusiveness, democracy and participation of the people in the formulation of its policies and nomination of candidates for elections.

Political Parties Registration Process

The Registration of a political party is undertaken in two levels namely; provisional registration and full registration.

Provisional Registration

To apply for provisional registration, an association or organization must submit an application for name search of a political party to the Registrar of political parties. After the name is approved, the applicant will submit an application for provisional registration. The name of a political party includes its full name, short-form name or abbreviation and logo.

The Registrar may refuse an application for the registration of a political party if the name of the political party, the abbreviation of the name or the symbol that it wishes to use is obscene or offensive, is the name or abbreviation of another political party that is already registered or nearly resembles the name or symbol, or abbreviation of the name of another registered political party or other legal entity registered under any other written law.

Application for provisional registration

An application for provisional registration of a proposed political party must be :

- (a) be in writing and signed by the applicants of whom not more than two-thirds shall be of the same gender;
- (b) include signed minutes of the first meeting of the founding members of the political party;
- (c) set out the name of the party;
- (d) if the party wishes to use an abbreviation of its name, set out that abbreviation;
- (e) be accompanied by a copy of the Constitution of the proposed party which must comply with the requirements of the Act
- (f) include a request for the registration of the emblem and symbol of the party;
- (g) include an undertaking to be bound by the Act and the Code of Conduct; and

(h) be accompanied by prescribed fee.

Upon receipt of an application for provisional registration, the Registrar publishes a notice in the Gazette and in at least two newspapers with nationwide circulation, inviting objections from any person or any other political party concerning the registration of the name, symbol, color of the political party, or any other issue relating to the registration of the political party within fourteen days.

Provisional certificate of registration

After verifying that an association's application for registration is complete, the Registrar issues the association or organisation with a certificate of provisional registration within 30 days of the application.

A political party that has been provisionally registered must apply to the Registrar for full registration, within 180 days from the date of provisional registration..

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

Rights of a provisionally registered political party

A political party that has been provisionally registered is not entitled to participate in an election.

A political party that has been provisionally registered is entitled:

- (a) to hold and address public meetings in any area in Kenya for the purposes of publicizing the political party and recruiting members;
- (b) to the protection and assistance of the State security agencies for the purposes of facilitating peaceful and orderly meetings; and
- (c) to the provision by the State, of fair opportunity to present the political party's programmes to the public by ensuring equitable access to the State-owned media.

A political party which contravenes the requirements for provisional registration will not qualify for full registration.

Full Registration

A political party that has been provisionally registered must apply to the registrar for full registration, within one hundred and eighty days from the date of provisional registration.

The provisional registration of a political party which does not apply for full registration lapses at the expiry of 180 days from the date of issue of the certificate of the provisional registration.

Application for Full Registration

An application for full registration of a political party must be in writing and signed by an authorized official of the political party.

Conditions of full registration

A provisionally registered political party is qualified to be fully registered if meets the following conditions:

- (a) it has recruited as members, not fewer than one thousand (1000) registered voters from each of more than half of the counties;
- (b) the recruited members reflect regional and ethnic diversity, gender balance and representation of special interest groups;
- (c) the composition of its governing body reflects regional and ethnic diversity, gender balance and representation of special interest groups;
- (d) not more than two-thirds of the members of its governing body are of the same gender;
- (e) it has demonstrated that members of its governing body meet the requirements of Chapter Six of the Constitution and the laws relating to ethics;
- (f) it has submitted to the Registrar:
 - (i) a list of the names, addresses and identification particulars of all its members;
 - (ii) the location of its head office, which shall be a registered office within Kenya and a postal address to which notices and other communication may be sent;
 - (iii) the location and addresses of the branch offices of the political party, which shall be in more than half of the counties; and
 - (iv) the disaggregated data of its membership based on each of the components of the special interest groups;
- (g) it has undertaken to be bound by the Act and the Code of Conduct.

Certificate of full registration

Within 30 days of application for full registration, and upon a provisional registered political party fulfilling the conditions of full registration, the Registrar issues a certificate of full registration to the political party.

Corporate status of a fully registered political party

A political party which has been fully registered becomes a body corporate with perpetual succession and a common seal and shall be capable, in its own name, of:

- (a) acquiring and disposing of property;
- (b) suing and being sued; and
- (c) doing or performing all such acts and things as a body corporate may by law do or perform.

CHAPTER 4: DEREGISTRATION OF A POLITICAL PARTY

The Registrar is mandated to deregister a political party that contravenes or breaches certain fundamental provisions. Before the Registrar deregisters a political party however, certain procedures have to be followed to allow the party room to remedy the breach.

Grounds for deregistration

The Registrar may deregister a political party, if that party:

- (a) has been founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis, is engaged in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person, establish or maintain a paramilitary force, militia or similar organisation engaged in bribery or other forms of corruption or accept or use public resources to promote its interests or its candidates in elections (except as provided by law).
- (b) does not promote free and fair nomination of candidates;
- (c) does not adhere to the law relating to the nomination of candidates;
- (d) does not respect the national values and principles of the Constitution;
- (e) obtained its registration in a fraudulent manner;
- (f) has instigated or participated in the commission of an election offence;
- (g) has acted contrary to the provisions on funding by not adhering to the legal requirements on the political parties fund;
- (h) does not have representation of special interest groups; or
- (i) does not maintain the requirements on the conditions for full registration.

The Registrar has power to deregister a political party in the following circumstances:

- (a) within 3 months it fails to comply with a notice by the Registrar requiring the political party to amend its name, Constitution or rules;
- (b) it has not presented a candidate in two consecutive general elections;
- (c) within 60 days after being issued with a certificate of full registration fails to submit or submits false declaration to the Registrar giving details of all assets and expenditure including all contributions, donations or pledges of contributions or donations, whether in cash or in kind, made or to be made to the initial assets of the political party by its founding members in respect of the first year of its existence; or

- (d) within 60 days before a general election, fails to submit or submits false statement to the Registrar a register of its members and a statement of its assets and liabilities in the prescribed form.

Where a political party commits an offence under the Act, the Registrar may:

- (a) issue a warning and require the political party to comply within a specified period;
- (b) suspend the registration of the political party for a period not exceeding twelve months;
- (c) withhold funds to the political party for a period not exceeding twelve months; or
- (d) deregister the political party.

Procedure for deregistration

Before the Registrar deregisters a party, he is required to

- (a) inform the political party, in writing, of the particulars of the breach or contravention;
- (b) inform the political party, in writing, of the intention to deregister the political party; and
- (c) direct the political party to remedy the breach or contravention within ninety days or otherwise show cause why the party should not be deregistered.

If a party fails to rectify the omission or does not convince the Registrar that the infraction was not the result of any negligence or lack of good faith on its part within ninety days, the Registrar may deregister the party.

If a registered party becomes deregistered, the Registrar shall publish, within 14 days, a notice of deregistration in the Kenya Gazette. This notice will specify the effective date of deregistration.

If a political party is declared to be a prohibited organization under any other law, the Registrar has the power to deregister such a party.

Consequences of deregistration

After deregistration of a party, the Registrar changes the status of the party from “registered” to “deregistered” in the Registry of Political Parties. The deregistered party loses all the entitlements of a registered political party. After deregistration, no one may

- (a) summon a meeting of members or officers of the political party other than for purposes of winding up the political party or for purposes of challenging the deregistration 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 except for purposes of a meeting to wind up the 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.

Where a political party that has been deregistered had representatives elected to Parliament, or county assembly, such representatives are allowed to continue to serve for the remainder of their term as independent candidates or as members of other political parties.

Where deregistration of a political party is occasioned by a willful act or willful omission of a person who is a Member of Parliament or of a member of county assembly, that person is expected to cease to be a member of Parliament or of the county assembly.

Winding up of a political party

Upon deregistration, the Registrar publishes a notice in the Gazette and notifies the Attorney-General for purposes of winding up of the political party.

Re-registration of deregistered Parties

A registered party that is deregistered by the Registrar may choose to (re)apply for registration. The party can reapply by submitting an application to Registrar using the same process as if it were applying for the first time.

Voluntary Deregistration

A registered political party may voluntarily apply for deregistration. The Registrar may only accept the application to deregister a party if it is signed by the party leader and any two party officers.

Suspension of Registration

The Registrar may suspend the registration of a political party, for a period not exceeding 12 months, to enable that political party to remedy the breach and to be in compliance with the requirements for registration. A political party that has been suspended for failure to comply with the registration requirements is not entitled to any of the rights and privileges for registered parties.

Grounds of Suspension

A political party may be suspended if it fails to comply to the requirements for registration or commits an offence under the Act. The objective of suspension is to enable the political party to remedy the breach specified in the notice issued by the Registrar.

Consequences of Suspension

If the registration of a political party has been suspended because of remedying a breach in the requirements for registration, the political party will not be entitled to any of the rights and privileges for a fully registered political party.

CHAPTER 5: MEMBERSHIP OF A POLITICAL PARTY

Eligibility for Membership

A person who is a Kenyan citizen and at least 18 years is qualified to be a member of a political party.

How to Become a Member

A political Party being a corporate legal entity with its own rights and responsibilities has the right to decide who and the requirements one needs to satisfy before becoming a member. .

A political party constitution must contain membership requirements including the requirements of being a member, the fees payable for being a members of the Party, the procedure of resignation, the rights and duties of the members, membership details to be contained in the register including identification details, region, ethnicity, disability, gender and county and procedure of conducting Annual General Meeting of the party.

Recruitment of members

Recruitment of members must be voluntary and it is an offence to register a person as a member of a political party without their consent.

Before a political party is registered, it is required to:

- (a) recruit not fewer than one thousand registered voters from each of more than half of the counties. The recruited members should reflect regional and ethnic diversity, gender balance and representation of special interest groups;
- (b) ensure not more than two-thirds of the members of its governing body are of the same gender;
- (c) compile a list of the names, addresses and identification particulars of all its members should be submitted to the Registrar; and
- (d) Work out the disaggregated data of its membership based on each of the components of the special interest groups.

Disqualification from holding office in a political party

A person disqualified from holding public office under the Constitution, the Act or any other written law is disqualified to hold office in the governing body of a political party or be its founding member.

Rights of a Member

A member of a political party has several rights including the right to:

- (a) participate in the activities of a political party;
- (b) campaign for a political party or cause;
- (c) contest for leadership positions in a party; and

- (d) to run as a candidate in party nomination for candidates for general election and by-election.

Roles of members of a political party

Political party members form the core of a political party. They implement the traditional roles of a political party in society, such as:

- (a) mobilize citizens for party support;
- (b) engage with and educate citizens on policies;
- (c) recruit and elect political party leaders;
- (d) nominate party candidates for general election and by-election;
- (e) formulate public policy views;
- (f) be educated for future leadership (sustainability of the party);
- (g) represent citizens when nominated and elected to the legislative and executive arms of government; and
- (h) pay membership fees.

Special interest groups

These include:

- (a) women;
- (b) persons with disabilities;
- (c) youth;
- (d) ethnic minorities; and
- (e) marginalized communities.

Restrictions on public officers in a political party

Public officers are prohibited from participating in the affairs of a political party. This means a public officer is not allowed to be a founding member of a political party, to hold office in a political party, to engage in political activity that may compromise or be seen to compromise the political neutrality of that person's office or publicly indicate support for or opposition to any political party or candidate in an election.

This provision does not, however, apply to the President, Deputy President, a Member of Parliament, a Governor, a Deputy Governor or a member of a county assembly.

Disqualification from being a member of governing body of a political party

Any person who is non-citizen of Kenya, an undischarged bankrupt, has been convicted of a criminal offence and sentenced to imprisonment for a period of not less than six months, has been suspended for a period of six months for violating the code of conduct of the political party is disqualified from holding public office under the Constitution, the political parties Act or any other written law or has contravened the provisions of Chapter Six of the Constitution is disqualified from being a member of the governing body of a political party.

Ceasing being a Member a Political Party

There are four ways a person can cease being a member of a party:

- (a) resignation;
- (b) expulsion;
- (c) through “deeming”; and
- (d) natural attrition.

Resignation

A member of a political party who intends to resign from the party, may do so by giving a written notice before his or her resignation to the political party, the clerk of the relevant House of Parliament, if the member is a member of Parliament or the clerk of a county assembly, if the member is a member of a county assembly

The resignation is effective once the notice has been received by the political party and the clerk, both who must notify the registrar.

The political party of which the person is a member, the member, or the clerk of the relevant House of Parliament or of a county assembly of which the person is a member is required to notify the Registrar of such resignation within seven days and in turn, the Registrar removes the name of such member from the membership list of that political party.

Expulsion A member of a political party may cease being a member through expulsion from the party. The party Constitution bounds the members of the political party. A member may only be expelled from that political party if the member has infringed the Constitution of the political party and after the member has been afforded a fair opportunity to be heard in accordance with the internal party disputes resolution mechanisms as prescribed in the Constitution of the party

A party constitution must contain disciplinary procedures conforming to fair administrative action requirements as set out under Article 47 of the Constitution.

Deeming Provisions

Another way a person may cease from being a member of a political party is by way of deeming. A member of a political party is deemed to have resigned from the political party if that that the member:

- (a) forms another political party;
- (b) joins in the formation of another political party;
- (c) joins another political party;
- (d) in any way or manner, publicly advocates for the formation of another political party; or
- (e) promotes the ideology, interests or policies of another political party.

A political party whose member is deemed to have resigned shall in accordance with the procedure set out in the constitution of that political party, notify the Registrar of such decision within seven days.

CHAPTER 6: CONSTITUTION OR RULES OF A POLITICAL PARTY

The Act requires that the constitution or rules of every political party must provide for all the matters specified below. In addition the constitution or rules of every political party must ensure that not more than two-thirds of the membership of all party organs, bodies and committees, in aggregate, are of the same gender.

Where a political party does not conform to any aspect required by the Act, the Registrar may, by notice in writing, require the political party to amend its constitution or rules within three months and if the political party does not comply, it shall be deregistered.

Matters which must be provided for under the constitution or rules of a political party

The Constitution or rules of every political party must provide for all the following matters:

- (a) the name of the political party and any abbreviation;
- (b) the logo and symbol of the political party and party colours;
- (c) the objects of the political party;
- (d) clearly defined vision, mission, guiding principles and values;
- (e) the physical and postal address of the registered office;
- (f) membership requirements including:
 - (i) the eligibility criteria;
 - (ii) subscription fees for joining the party and for being a member of the party;
 - (iii) the criteria for resignation from party membership or ceasing to be a member; and
 - (iv) the rights and duties of members of the party;
 - (v) membership details to be contained in the register including identification details, region, ethnicity, disability, gender and county; and
 - (vi) the procedure for conducting the annual general meeting or the other general meetings of the political party, including matters which may only be decided upon by a meeting of the party members or, as the case may be, of the county representatives of the party;
 - (vii) the requirement for continuous updating of the membership register.
- (g) The Governing body requirements include;

- (i) the name of the governing body;
 - (ii) the eligibility criteria for election to the governing body;
 - (iii) the positions, titles and term of office;
 - (iv) the rights and duties of members of the governing body;
 - (v) the procedure for the election of members of the governing body and other political party organs, including committees;
 - (vi) guidelines for the operations of the governing body and its committees;
 - (vii) quorum;
 - (viii) frequency of meetings;
 - (ix) decision making powers; and
 - (x) guidelines for meetings; procedures of convening meetings; procedure of meetings and the official recording of resolutions passed at meetings.
- (h) A list of political party management structure of the political party and systems to be documented at the political party offices including:
- (i) the employee details and terms of employment;
 - (ii) the party human resource, financial and audit and administration and management policies and procedures; and
 - (iii) the party sub-branches within each county.
- (i) The forming of political party branches, including in the diaspora, and their roles and responsibilities.
- (j) The financial structure and system including:
- (i) the roles and responsibilities of individual political party officials, organs and governing bodies with regard to the finances of the political party;
 - (ii) the annual statutory and other audits of accounts of the political party; and
 - (iii) the purposes for which the funds may be used, and in particular the prohibition against the distribution of funds among members.

- (k) The general organization structure and management of the political party, including the county structures and systems and county governing bodies.
- (l) The establishment and management of National Assembly, Senate and County Assemblies Caucuses.
- (m) The disciplinary measures against a member or official of a political party including:
 - (i) the methods and procedure of disciplinary action in accordance with Articles 47 and 50 of the Constitution;
 - (ii) possible disciplinary actions and reasons;
 - (iii) criteria for various disciplinary actions; and
 - (iv) Consequences of each action for the national and county levels.
- (n) The right to inspect the books or list of members of the political party by a member of the party or a member of the public.
- (o) The authorized officials of a political party shall sign on behalf of the political party:
 - (i) documents presented to the Registrar including membership register, mergers, and other reports to the Registrar;
 - (ii) the accounts and bank accounts of the political party;
 - (iii) the audited annual accounts and financial statements of the political party;
 - (iv) any report or document of the political party required under the Act or any other written law; and
 - (v) the nomination certificates for any nomination or election of a member of the political party.
- (p) The policy documents which the political party will develop and on which the political party will perform including the manner and procedures in which they will be developed, approved and implemented.
- (q) The policy reporting documents and their regularity which the political party will produce including the manner and the procedures in which they will be developed, approved and publicized.
- (r) Asset management policies and procedures, the custody and investment of the funds and property of the political party, and the designation of the persons responsible for them.

- (s) The political party rules and regulations with respect to:
 - (i) elections of the party officials;
 - (ii) nomination of candidates for elections; and
 - (iii) nomination of candidates to political party lists.
- (t) Provisions for the amendment of the name, symbol, party colours, Constitution, and rules of the political party.
- (u) Rules for mergers including:
 - (i) the circumstances and criteria for mergers; and
 - (ii) the procedure and guidelines for such mergers as approved by an annual general meeting of the political party.
- (v) Rules for entering into coalitions.
- (w) Provisions on dissolution of the political party, including:
 - (i) provisions on the disposal of the property of the political party; and
 - (ii) the manner of and procedures to be followed for the dissolution of the political party or any branch of the party.
- (x) Internal party dispute resolution mechanism in accordance with Article 47 and 50 of the Constitution.
- (y) Democratic practices that cover gender, affirmative action for minorities and marginalized groups.
- (z) Reflect democratic practices covering human rights and gender.
- (aa) The manner of implementing national values and principles of governance as provided in the Constitution.

CHAPTER 7: MERGERS AND COALITIONS

MERGERS

A merger is the consolidation or amalgamation of a political party or the combination of two or more political parties into a single party.

A political party may merge with another political party by forming a new political party or merging into an already registered political party.—

A merger may occur at any time other than during the period beginning 30 days before the issue of a writ for an election and ending on an election day.

Purposes of mergers

Political parties may merge to:

- (a) gain more votes during elections;
- (b) gain more cabinet posts;
- (c) rebrand the political party's image;
- (d) strengthen the policy agenda through a stronger and bigger party;
- (e) represent and attract more members through a bigger party;
- (f) raise more (public and private) funds, also because funds no longer have to be spent on challenging each other; and
- (g) keep an undesired third party out of government.

Procedure for applying for a merger

For a political party to merge, it must comply with the provisions of the Constitution, the Political Parties Act and the Political Parties Rules and Regulations. The decision to merge must be in writing and duly executed by the political party officials authorized to execute agreements on behalf of the political parties.

The governing body of each political party that intends to merge determines the constitution, rules, regulations and the principles which will form the basis of the merger in accordance with the constitutions of the respective political parties and sign the merger agreement.

The merger agreement signed must be deposited with the Registrar within twenty-one days of the signing of the agreement.

Upon receipt of the merger instrument, the Registrar immediately withdraws and cancel the certificates of registration of all the political parties that have merged and gazette the dissolution of the merged parties within seven days and a certificate of full registration issued to the new political party.

Upon receipt of the merger instrument, the Registrar gazettes within seven days the dissolution of the parties that have resolved to dissolve and the registered party the parties have merged into.

Membership of merged political party

Where a party merges, a member of the political party that has merged with another political party will be deemed to be a member of the new political party.

A member who is a President, Deputy President, Governor or Deputy Governor, Member of Parliament or member of a County Assembly, and does not desire to be a member of the new political party registered after the merger will continue to serve in such elected office for the remainder of the term, and may join another political party or choose to be an independent member within thirty days of the registration of the new party.

Effects of a merger

Where political parties have merged and are dissolved the particulars including their names, symbol, logo, slogan and colours are removed from the register of political parties and such names, symbols, logos, slogans and colours shall not be available for registration by any person as a political party in the subsequent election following the merger.

If the merging parties wish to register and use any of the merging parties' names, symbols, logos, slogans and colours, such registration is permitted.

The records, assets and liabilities, rights and obligations of all the dissolved political parties will be the records, assets and liabilities, rights and obligations of the new political party including their entitlement to the Political Parties Fund.

COALITIONS

A coalition means an alliance of two or more political parties formed for the purpose of pursuing a common goal. A coalition is governed by a written agreement which is deposited with the Registrar. Coalitions enable constituent political parties to pursue a common goal.

Coalitions are different from mergers in that parties in spite of their cooperation remain independently identifiable legal entities with their own leadership, constitutions, members etc.

Political parties may sign coalition agreements before elections (pre-election coalitions) or after elections (post-election coalitions)

Purpose of Coalitions Parties form coalitions to enhance chances of achieving certain goals such as winning elections and forming a government or strengthening their role as opposition.

Coalition agreements

A coalition agreement must adhere to the rules and procedures of the political parties relating to the formation of coalitions. It must be authorized by the governing body of the political parties entering into the coalition. The Coalition agreement must be in writing and duly executed by authorized national party officials and be commissioned by a commissioner of Oaths. :

A coalition agreement must state:

- (a) the parties which are members of the coalition;
- (b) the policies and objectives of the coalition;
- (c) the overall structure of the coalition;
- (d) the general organisation structure and management of the coalition, including the county structures and systems and county governing bodies;
- (e) the formula for sharing of positions in the coalition structure, roles and responsibilities within the coalition;
- (f) the coalition election rules;
- (g) the coalition nomination rules;
- (h) the decision making structure, rules and procedures;
- (i) the process and mechanisms upon which the coalition agreement may be amended;
- (j) the policy initiation, policy consultation and policy decision making structure, rules and procedures;
- (k) the Code of Conduct of the coalition including the values and the principles guiding the performance of the individuals and the members parties within the coalition;
- (l) the dispute resolution mechanisms and procedures;
- (m) the enforcement and sanction mechanisms and procedures for breach of any of the provisions of the agreement;
- (n) procedures for appeal to the Tribunal;
- (o) the role of the governing body and political party organs of the individual member parties of the coalition in the running of the affairs of the coalition including the links and the mechanisms and procedures accordingly;
- (p) the formula and the mechanisms for sharing of funds from the Political Party Fund to the respective member of the coalition; and
- (q) the grounds upon which the coalition may be dissolved including the mechanisms and procedures to be followed.

Types of Coalitions

Political parties may form coalitions before or after elections. Coalitions formed before elections are referred to as pre-election coalitions whereas those formed after election are called post-election coalitions.

Pre-election coalition

This is a coalition agreement entered into before an election. The coalition agreement must be deposited with the Registrar at least three months before the election. In a pre-election coalition, parties agree on the intention to form a government with each other if they receive enough votes in the up-coming elections.

Pre-election coalitions may include:

- (a) pure announcement to work together;
- (b) loose electoral cooperation, such as encouraging voters to vote for an ally;
- (c) announcement of a joint policy platform;
- (d) negotiation of mutual withdrawals: meaning a candidate of one party in one electoral area and a candidate of the other party in another electoral area so that the two partners are not competing against each other in any electoral area.

Post-election coalition

This is a coalition agreement entered into after an election. The coalition agreement must be deposited with the Registrar within 21 days of the signing of the coalition agreement. Post-election coalitions are normally government coalitions that determine who will be their partners in government and under what terms they will cooperate and the joint policies that the government will implement. :

Coalition agreements typically include components such as portfolio allocation, government formation, coalition decision rules, mechanisms of collective decision-making, the government's policy programme, electoral cooperation and cabinet termination and duration.

Consequences of Forming a Coalition

Each party in the coalition is still recognized as a legal entity and has an independent legal existence from that of its coalition partner(s). It still is entitled to rights and has to fulfil its responsibilities and liabilities under the Act and other laws.

A coalition:

- (a) need not register a coalition name, but may use such other name in popularizing the coalition;
- (b) need not register a coalition slogan, logo or colours but may use such particulars in popularizing the coalition;
- (c) may use the logo, symbol and colours of its constituent political parties;
- (d) does not receive funds from the political parties fund but each party will;

- (e) may only admit as its members registered political parties;
- (f) need not recruit individual members except through its constituent political parties;
and
- (g) no candidate shall be nominated on a coalition ticket.

Amending of the coalition agreement

A coalition agreement can be amended and must follow the provisions for coalition agreement as stipulated in the Act and the provisions spelt out in the original coalition agreement.

Ending of Coalition

Since a coalition is governed by the coalition agreement, a coalition may come to an end as per the provisions spelt out in the coalition agreement.

CHAPTER 8: POLITICAL PARTY MANAGEMENT FRAMEWORK

CONSTITUTION OR RULES OF A POLITICAL PARTY

The Constitution or Rules of a political party is the governing tool for a political party. A political party must conform to the provisions of its Constitution or Rules. Where a political party does not conform to any aspect of the Constitution, the Registrar may issue a notice to the party and require it to amend its constitution or rules within three months and if the political party does not comply, it shall be deregistered.

The Constitution or rules of every political party provides for all the following matters:

- (a) the name of the political party and any abbreviation;
- (b) the logo and symbol of the political party and party colours;
- (c) the purpose of the political party;
- (d) clearly defined vision, mission, guiding principles and values;
- (e) the physical and postal address of the registered office;
- (f) membership requirements including:
 - (i) the requirement for membership;
 - (ii) the fees payable for joining the party and for being a member of the party. subscription fees for joining the party and for being a member of the party;
 - (iii) the procedure for resignation from party membership or ceasing to be a member; and
 - (iv) the rights and duties of members of the party;
 - (v) membership details to be contained in the register including identification details, region, ethnicity, disability, gender and county; and
 - (vi) the procedure for conducting the annual general meeting or the other general meetings of the political party, including matters which may only be decided upon by a meeting of the party members or, as the case may be, of the county representatives of the party;
 - (vii) the requirement for continuous updating of the membership register.
- (g) The governing body requirements include:
 - (i) the name of the governing body;
 - (ii) the requirements for election to the governing body;

- (iii) the positions, titles and term of office;
 - (iv) the rights and duties of members of the governing body;
 - (v) the procedure for the election of members of the governing body and other political party organs, including committees;
 - (vi) guidelines for the operations of the governing body and its committees;
 - (vii) quorum;
 - (viii) frequency of meetings;
 - (ix) decision making powers; and
 - (x) guidelines for meetings; procedures of convening meetings; procedure of meetings and the official recording of resolutions passed at meetings.
- (h) A list of political party management structure of the political party and systems to be documented at the political party offices including:
- (iv) the employee details and terms of employment;
 - (v) the party human resource, financial and audit and administration and management policies and procedures; and
 - (vi) the party sub-branches within each county.
- (i) The forming of political party branches, including in the diaspora, and their roles and responsibilities.
- (j) The financial structure and system including:
- (i) the roles and responsibilities of individual political party officials, organs and governing bodies with regard to the finances of the political party;
 - (ii) the annual statutory and other audits of accounts of the political party; and
 - (iii) the purposes for which the funds may be used, and in particular the prohibition against the distribution of funds among members.
- (k) The general organization structure and management of the political party, including the county structures and systems and county governing bodies.

- (l) The establishment and management of National Assembly, Senate and County Assemblies Caucuses.
- (m) The disciplinary measures against a member or official of a political party including:
 - the methods and procedure of disciplinary action;
 - (i) possible disciplinary actions and reasons;
 - (ii) criteria for various disciplinary actions; and
 - (iii) Consequences of each action for the national and county levels.
- (n) The right to inspect the books or list of members of the political party by a member of the party or a member of the public.
- (o) The authorized officials of a political party shall sign on behalf of the political party:
 - (i) documents presented to the Registrar including membership register, mergers, and other reports to the Registrar;
 - (ii) the accounts and bank accounts of the political party;
 - (iii) the audited annual accounts and financial statements of the political party;
 - (iv) any report or document of the political party required under the Act or any other written law; and
 - (v) the nomination certificates for any nomination or election of a member of the political party.
- (p) The policy documents which the political party will develop and on which the political party will perform including the manner and procedures in which they will be developed, approved and implemented.
- (q) The policy reporting documents and their regularity which the political party will produce including the manner and the procedures in which they will be developed, approved and publicized.
- (r) Asset management policies and procedures, the custody and investment of the funds and property of the political party, and the designation of the persons responsible for them.
- (s) The political party rules and regulations with respect to:
 - (i) elections of the party officials;

- (ii) nomination of candidates for elections; and
- (iii) nomination of candidates to political party lists.
- (t) Provisions for the amendment of the name, symbol, party colours, Constitution, and rules of the political party.
- (u) Rules for mergers including:
 - (i) the circumstances and requirements for mergers; and
 - (ii) the procedure and guidelines for such mergers as approved by an annual general meeting of the political party.
- (v) Rules for entering into coalitions.
- (w) Provisions on dissolution of the political party, including:
 - (i) provisions on the disposal of the property of the political party; and
 - (ii) the manner of and procedures to be followed for the dissolution of the political party or any branch of the party.
- (x) Internal party dispute resolution mechanism.
- (y) Democratic practices that cover gender, affirmative action for minorities and marginalized groups.
- (z) Reflect democratic practices covering human rights and gender.
- (aa) The manner of implementing national values and principles of governance as provided in the Constitution.

Records of a political party

Party documents are fundamental for party institutionalizing, inclusive participation, education of party members and the public at large, accountability and transparency and responsible representation. Therefore all political parties must have accurate and authentic records of the following other party documents:

- (a) political party constitution or rules;
- (b) political party election rules;
- (c) political party nomination rules and procedures;

- (d) code of conduct for political parties;
- (a) an updated and accurate party membership register at the head office;
- (b) names and contact details of party officials and party elected representatives to public offices;
- (c) party budget, particulars of contributions including membership dues paid, latest audited accounts as well as particulars of properties.
- (d) documents required during election period including list of party aspirants, nominated candidates, party list members (election period);
- (e) any other party policy document(s) including party strategic plan, manifestoes etc.

County Office

For a party to be registered, it is required to open party county offices in at least half of the counties. More importantly, the office should be functional. Party county offices are there to provide the services of the party to its members and the public at large.

A political party must maintain at its head office and at each of its county office in the prescribed form, an accurate and authentic record of:

- (a) register of its members in the prescribed form;
- (b) a copy of the Constitution of the political party;
- (c) a copy of the policies and plans of the political party;
- (d) particulars of any contribution, donation or pledge of a contribution or donation, whether in cash or in kind, made by the founding members of the political party;
- (e) an estimates of the expenditure of the political party in accordance with the laws relating to public finance management;
- (f) particulars of any property that belongs to the political party and the time and mode of acquisition of the property;
- (g) the latest audited books of accounts of the political party, showing:
 - (i) the sources of the funds of the political party and names, addresses and such other contact details as the Registrar may require of any persons who have contributed thereto;
 - (ii) membership dues paid;

- (iii) donations in cash or in kind;
- (iv) indirect contributions to the party and all receipts and disbursements, including income and expenditure transactions of the political party;
- (v) all the financial transactions and records of assets and liabilities of the political party; and
- (vi) such other relevant particulars as the Registrar may prescribe.

A member of a political party may, during working hours and on payment of the prescribed fee, inspect and obtain copies of the records of a political party maintained at its head office or county office. A person, who interferes with, damages or destroys the records of a registered political party commits an offence.

Inspection of records of political parties

The Registrar may issue a written notice, , to the Chairperson or Secretary-General of a political party to furnish the records required to be maintained or such other information as is reasonably required by the Registrar to ensure compliance for inspection purposes.

The Chairperson or Secretary-General of a political party must comply with the inspection notice issued by the registrar. A political party that fails to comply with the notice commits an offence.

Public meetings of political party

A fully registered political party is supposed to hold meetings of the party organs at national and county level A political party intending to hold a public meeting must comply with the provisions of the laws relating to public meetings.

CHAPTER 9: FINANCIAL ADMINISTRATION

The Act has very elaborate provisions on political parties funding and accounting. The reason is to ensure that funds are used prudently. The Political Parties Fund promotes accountability, transparency and fair competition between parties. This, in essence is aimed to curb corrupt practices while promoting several constitutional rights.

The Act also provides for distribution of the fund, restriction of sources, disclosure and audit of the Fund. The purposes for which the fund is to be distributed are set out in the Act and are identified simply as those compatible with democracy.

Sources of Funds for Political Parties

The sources of funds for a political party include:

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

Political Parties Fund

The Act establishes the Political Parties Fund, which is administered by the Registrar. The State allocates money for the Political Parties Fund to be used in funding political parties that meet the requirements set out in the Act.

Origin and Rationale

Political parties require financial resources to sustain and operate a basic party structure. Initially, the major sources of funds for political parties in Kenya are members' contributions, donations from well-wishers and fund raising activities. These sources are important to demonstrate that political parties are rooted in society and engage with their members as much as possible instead of being dependent predominantly on state funding.

The Political Parties Act 2007 established the Political Parties Fund, funded by the State, and administered by the Registrar. The Fund has been retained in the Political Parties Act 2011. The goal of the Fund is to assist political parties fulfil their roles in a democratic society, especially in non-election periods.

Purposes of the Fund

Political Parties are required to spend money allocated from the Fund in the following ways:

- (a) at least thirty percent (30%) of the Funds to promote the representation in Parliament and in the county assemblies of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities;
- (b) promoting active participation by individual citizens in political life;
- (c) covering the election expenses of the political party and the broadcasting of the policies of the political party;
- (d) the organisation by the political party of civic education in democracy and other electoral processes;
- (e) bringing the political party's influence to bear on the shaping of public opinion; and
- (f) at most thirty percent (30%) on administrative and staff expenses

Sources of the Political Parties Fund

Sources of the Funds include;-

- (a) such funds not being less than zero point three per cent of the revenue collected by the national government as may be provided by Parliament; and
- (b) contributions and donations to the Fund from any other lawful source.

The balance of the Fund at the end of the financial year is retained for the purposes of funding lawful activities of the political party.

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

A political party is required to, within ninety days of the end of its financial year, publish:

- (a) the sources of its funds stating:
 - (i) the amount of money received from the Fund;
 - (ii) the amount of money received from its members and supporters; and
 - (iii) the amount and sources of the donations given to the party;
- (b) the income and expenditure of the political party; and
- (c) the assets and liabilities of the political party.

The publication should be in at least two newspapers having nationwide circulation. A political party which contravenes this requirement commits an offence. A political party that fails to comply

with this section will be disqualified from receiving moneys from the Fund during the period of non-compliance.

Restrictions on use of Funds

Political parties are prohibited from spending money from the Fund:

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

Political parties are required to ensure accountability and transparency in its procurement processes. The Act makes it an offence for a political party to use funds in other ways other than that stipulated in the Act.

Eligibility for Funding

Not all fully registered political parties are entitled to receive funding. A political party must meet the following requirements before it qualifies to access funds in the Fund:

- (a) secure at least five per cent of the total number of votes at the preceding general elections; and
- (b) promote affirmative action in the sense that no more than two-thirds of its registered office bearers are of the same gender.

Further, a political party is not entitled to receive funding from the Fund if:

- (a) the party does not secure at least three per cent of the total number of votes at the preceding general elections;
- (b) more than two-thirds of its registered office bearers are of the same gender;
- (c) the party does not have, in its governing body, representation of special interest groups; or
- (d) the party does not have at least:
 - (i) twenty elected members of the National Assembly;

- (ii) three elected members of the Senate;
- (iii) three elected members who are governors; and
- (iv) forty members of county assemblies.

Distribution of the Fund

The Fund is distributed as follows:

- (a) eighty per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election;
- (b) fifteen per cent of the Fund proportionately to political parties qualifying under paragraph (a) based on the number of candidates of the party from special interest groups elected in the preceding general election; and
- (c) five per cent for the administration expenses of the Fund.

With regard to distribution of funds, the total number of votes secured by a political party is 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.

Disbursement Requirements

The Registrar is required to issue a notice to all political parties, at the beginning of each financial year, to submit their applications for funding in prescribed forms by presenting the following particulars:

- (a) Work plan of activities/programmes the political party intends to undertake and the timelines;
- (b) Procurement plan outlining the items the political party intends to purchase and the timelines
- (c) Audited financial statements;
- (d) Actual income and expenditure statement;
- (e) Declaration of Signatories to Political Parties Fund Account; and
- (f) Application for Funding of a Political Party

The Registrar may withhold the Funds due to a party if that party fails to comply with these requirements.

Offences related to sources of funds

A political party which receives funds from a non-citizen contrary to the provisions of the Act commits an offence.

It is an offence for both a political party and a person or organization in any one year, to receive and contribute, respectively to a political party an amount, whether in cash or in kind exceeding five per cent of the total expenditure in relation to the audited expenditure, of the previous year of the political party.

A political party that receives an amount exceeding the five per cent of the total expenditure in relation to the audited expenditure, of the previous year of the political party commits an offence and shall, in addition to the penalty imposed by the Political Parties Act, forfeit that amount to the State. This provision does not, however, apply to contribution or donation made by a founding member of the political party as a contribution to the initial assets of the party within the first year of its existence.

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

Declaration of assets, liabilities and expenditure in relation to elections

A political party must submit to the Registrar a register of its members and a statement of its assets and liabilities at least sixty days before a general election, It is an offence for a political party to fail to submit the statement or to submit a statement with false information.

Audit of political parties accounts

A political party must prepare proper books and records of account of the income, expenditure, assets and liabilities of the political party. Within three months after the end of each financial year, the party is required to submit to the Auditor-General the accounts of the party in respect of that year.

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

Any person is entitled to inspect the audited accounts filed by a political party and, upon payment of a fee prescribed by the Registrar be issue copies of the audited accounts.

Accounts and audit of the Office of Registrar

The Office of Registrar of Political Parties is required to keep proper books of account of the income, expenditure and assets of the Office. Within a period of three months after the end of a financial year, the Office submits to the Auditor-General, the accounts of the Office together with:

- (a) a statement of the income and expenditure of the Office during that year; and
- (b) a statement of the assets and liabilities of the Office during that year.

All accounts kept by the registrar and the political parties must be audited by the Auditor-General at least once in every financial year.

Contributions

Political parties are allowed to receive contributions. In fact, contributions can enhance the strength of a party in Kenyan society and help it to design and implement its policies. However, a contribution may also lead to undue influence of the contributor over the party, advantage the interests of the contributor over those of (other) members of the party and thus harm its independent decision making powers. To avoid this, contributors and parties must adhere to strict rules and always be transparent.

Types of Contribution

A contribution may be monetary or non-monetary.

Monetary contributions

A monetary contribution is an amount of money provided that is not repayable.

Non-monetary contributions

A non-monetary contribution is the commercial value of a service or of property, or the use of property or money to the extent that they are provided without charge or at less than their commercial value.

Eligible Contributors

Contributions, donations, bequests and grants must be from a lawful source. Only a Kenyan citizen or an individual who is lawfully in Kenya may make a contribution to a registered party in Kenya. When a party receives a non-monetary contribution from an individual, it must obtain complete documentation about the commercial value of the goods or services donated, and the name and address of the donor.

A foreign agency, or a foreign political party which shares an ideology with a political party registered in Kenya, may provide technical assistance but not assets to that political party. The Technical assistance should not include provision of any assets to the political party.

Acceptance of a Contribution

A monetary contribution is deemed to be accepted when it comes into the hands of the political party. A non-monetary contribution is deemed to be accepted when the political party authorizes the use of the property or service.

Contribution Limit

There is no defined limit on how much a person may contribute to a political party.

Ineligible Contributions

Political parties are not entitled to receive the following contributions whether monetary or nonmonetary:

- (a) contributions from a non-citizen;
- (b) contributions from a foreign government; and
- (c) contributions from an inter-governmental or non-governmental organization.

CHAPTER 10: REPORTING REQUIREMENTS

This section contains general information about the non-financial and financial reporting requirements of registered parties throughout the year and for the specific purposes of general elections and by-elections.

The secretary general of a registered party is responsible for administering its financial transactions and for reporting on them in accordance with the Act.

Non-Financial Reporting

Changes that must be reported to the Registrar

A fully registered political party is required to notify the Registrar of its intention to change or amend:

- (a) its Constitution;
- (b) its rules and regulations;
- (c) the title, name or address of any party official;
- (d) its name, symbol, slogan or colour; or
- (e) the address and physical location of the head office or country office,

The Registrar is required to publish in the Gazette such intentions, within 14 days after the receipt of the notification.

Upon the expiry of 14 days from the date of publication of the notice the political party may, after taking into account any representations received from the public, proceed to the change or alter its constitution and rules. After the expiry of another the 14 days, the political party must notify the Registrar of the decision taken and the actual changes given effect.

The political party giving such notification is also required to publish it in at least two daily newspapers having nationwide circulation.

Change of Office Bearers

An "office bearers" is defined to means national and county officials elected or nominated by a political party in accordance with the party constitution. Where an office bearer of a registered political party ceases to hold office or a person is appointed to be an office bearer of a registered political party, the political party is required to notify the Registrar within 30 days.

Notice of Change of Location or Head Office or Postal Address

Where a registered political party changes the location of its head office or changes its postal address, it must notify the Registrar, within 14 days of such change

Financial Reporting

Upon Registration

After being issued with a certificate of full registration and within sixty (60) days of the date of registration, a political party is required to submit to the Registrar a written declaration giving details of all assets and expenditure including all contributions, donations or pledges of contributions or donations, whether in cash or in kind, made or to be made to the initial assets of the political party by its founding members in respect of the first year of its existence within sixty days.

The declaration should:

- (a) state the sources of all funds and other assets of the political party;
- (b) contain such other relevant particulars as the Registrar may prescribe; and
- (c) be supported by a statutory declaration made by the person designated to issue such a declaration by the governing body of the political party.

The Registrar is required to publish the declaration in the Gazette and in at least one daily newspaper having nationwide circulation within thirty days of receipt. The registrar may deregister a political party which fails to submit the declaration or submits a declaration which is false in any material particular.

Annual Financial Reporting

Within ninety (90) days after the end of its financial year (which must be government financial year), a political party must publish in two newspapers having nationwide circulation:

- (a) its sources of funds;
- (b) its income and expenditure; and
- (c) its assets and liabilities.

In Relation to Elections

Electoral periods are when parties often receive and spend most of their resources. In order for the Registrar to verify that all parties run fair and transparent nomination and electoral processes during this period, it is important that every political party opens its records to the Registrar on time. A political party is required to submit to the Registrar a register of its members and a statement of its assets and liabilities, at least ninety days before a general election

Audit of Accounts

The Political Parties Fund is financed by taxpayers and, therefore, it has to be audited to ensure that money allocated is used prudently and in accordance with the objective for which it was allocated. A political party must submit to the Auditor-General its accounts, within three months after the end of each financial year.. The Auditor-General is then required to audit the accounts and submit them to the Registrar for tabling in the National Assembly.

CHAPTER 11: POLITICAL PARTIES CODE OF CONDUCT

A political party must meet requirements that include subscribing to and upholding the code of conduct for political parties. Before a political party is issued with a certificate of full registration, it must undertake to be bound by the Political Parties Act, 2011 and the Code of Conduct set out in the Act.

A code of conduct defined as a set of rules or principles outlining the responsibilities of or proper practices for an individual, party or organization. The Political Parties Code of Conduct regulates the behaviour of members and office holders of political parties, aspiring candidates, candidates and their supporters, with a view to promoting good governance and eradicating political malpractices. The Code requires political parties to subscribe to it and observe its provisions.

The Code seeks to regulate political competition and co-operation on the basis of rule of law and universally accepted best practices. It requires political parties to:

- (a) promote policy alternatives responding to the interests, concerns and needs of the citizens of Kenya;
- (b) respect and uphold the democratic process as they compete for political power so as to implement their policies;
- (c) promote consensus building in policy decision making on issues of national importance;
- (d) develop and implement measures for the progressive realization of representation and participation of the special interest groups in decision-making organs; and
- (e) implement the affirmative action programmes, policies and strategies relating to political representation contemplated under Article 27(6) of the Constitution.

Every political party is required to:

- (a) respect the right of all persons to participate in the political process including special interest groups;
- (b) respect and promote gender equity and equality, human rights and fundamental freedoms; and
- (c) be tolerant and inclusive in all their political activities.
- (d) respect, uphold and defend the Constitution of Kenya;
- (e) respect and uphold the Political Parties Act and any other written law relating to elections and political parties;

- (f) respect, uphold and defend their respective political party Constitutions, political party election rules, political party nomination rules and any other political party rules and regulations developed and agreed upon in accordance with this code of conduct;
- (g) respect, uphold and promote human dignity, equity, social justice, inclusiveness and non-discrimination and protection of the marginalized;
- (h) respect, uphold and promote human rights and the rule of law;
- (i) promote national patriotism and national unity;
- (j) respect, uphold and promote democratic values and principles, performing inclusive participation of party members and accountable representation in governance for the development of the country;
- (k) respect, uphold and promote good governance, integrity, respect, tolerance, transparency and accountability;
- (l) promote co-operation in the political competition;
- (m) promote sharing and devolution of power and resources;
- (n) respect, uphold and promote democratic practices through regular free, fair and credible elections within the political party and among others have a democratically elected governing body and political party organs;
- (o) respect, uphold and promote democratic practices through free, fair and credible political party nominations;
- (p) respect, uphold and promote leadership and integrity as prescribed in the Constitution of Kenya; and
- (q) perform transparency and accountability in all its legislation and regulations, structures, procedures and performance.

A political party is not allowed to

- (a) engage in or encourage violence by its members or supporters;
- (b) engage in or encourage any kind of intimidation of opponents, any other person or any other political party;
- (c) engage in influencing peddling, bribery or any other form of corruption;
- (d) accept or use illicit or illegal money;

- (e) accept or use public resources other than those allocated to the political party through the political party fund;
- (f) advocate hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm;
- (g) obstruct, disrupt, break-up or in any other way whatsoever interfere with a meeting, rally or demonstration of another political party or its leadership;
- (h) establish or maintain a para-military force, militia or similar organisation or having any links with such organisations; and
- (i) use State resources for partisan campaigns.

A political party is required to promote inter-party relations by:

- (a) ensuring free competition among political parties in respect of different political views and principles;
- (b) fostering trust and confidence through mechanisms for co-operation;
- (c) managing and mitigating political differences through constructive dialogue enhancing harmony among the parties; and
- (d) promoting national reconciliation and building national unity.

Consequences of Violating the Code of Conduct

A person cannot be a member of a governing body of a political party if the person has been suspended for a period of six months for violating the Code of Conduct of the Political Party. Violation of the Code may lead to deregistration of a political party

Offences and Penalties

It is an offence for a person to fail to furnish particulars or information required to be furnished by a political party under the Act or recklessly make a false statement regarding a political party.

It is also an offence for a person who suppresses or attempts to suppress any lawful political activity of another person and on conviction the person is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

Where a political party commits an offence under the Act, every principal officer of that political party will be deemed to have committed the offence.

A person convicted of an offence under the Act for which no penalty is prescribed is liable, on conviction, to a fine of not less than one million shillings or to imprisonment for a term of not less than two years, or to both.