

ICPAK, 37TH ANNUAL SEMINAR

Election Campaign Financing:

Re-looking at the critical tenets-

Is it time to implement the Law ahead of 2022 General Elections?



Overview

- ❑ Conceptual framework on election campaign financing
- ❑ Policy and legal framework on campaign financing in Kenya
- ❑ Gaps and Challenges in Policy and Legal Framework for Regulating Campaign Financing in Kenya
- ❑ Conclusion – **is it/is it not time to implement the law?**

CONCEPTUAL FRAMEWORK ON ELECTION CAMPAIGN FINANCING

Motive

- Motives and focus for regulating vary considerably:
 - preventing abuse;
 - enhancing fair political competition;
 - empowering voters; and
 - strengthening political parties as effective democratic actors.
- Preventing financial and electoral process abuse is the driving force behind legal regulations such as limits on donations and prohibitions on sources of funds.
- The risk of political corruption and the distorting effects money can have on politics can be limited with this kind of regulation.
- Enhancing fair political competition and levelling the playing field can be done by providing political parties with public funds, using positive action to enhance representation of under-represented groups, or by putting a ceiling on election expenditure.

- Key Pillar of Democracy: Political competition based on freedom of choice.
 - Competition demonstrated through election or a referendum.
 - Competition entails mobilization of citizens through a campaign process so as to influence individuals' decision making in favor of a given political/policy position or ideology.
- Managing a political campaign whether for election purposes or referendum has cost implications:

Sources of campaign funding

- **IDEAL:** Political Party membership
- **Reality:** Private funding

Public Funding under the PPA

Challenges of source and use of campaign finances

- Campaign financing is a core component of electoral process but subject to abuse by financiers:
 - Ulterior motives such as seeking political favors after financing campaigns
 - Seeking to launder money in the guise of campaign financing
 - Acquired wealth illegally or unlawfully and seeking to influence the outcome of a democratic process
 - Backing of foreign governments that seek to sabotage democratic process locally
 - Linked to serious criminal activities such as drug trafficking, arms trade and terrorism

Use of finances....

- Voter bribery and other electoral malpractices
- Unequal playing field among political competitors - undue advantage over those with limited financial resources.
- Commercialization of democratic process - main focus of campaign process is competition of financial expenditures as opposed to ideologies.
- High costs of managing a campaign - Potential political leaders shun participation in elective politics
- Abuse of media space as political parties or candidates with high financial resources dominate media space which is generally expensive

Regulation of campaign financing core areas

- **Disclosure and reporting:** Relates to contributions to political parties, campaign committees and candidates; respective expenditures; sources of contributions
- **Contribution limits:** Relates to caps on max amount a person or a single source can contribute; limitations to citizens and foreigners; different elective positions
- **Public financing:** Ltd to direct public funding of political parties(PPA); allocation of airtime in state owned media

POLICY & LEGAL FRAMEWORK ON CAMPAIGN FINANCING IN KENYA

- A new concept that is yet to take full operationalization.
- The CoK lays the foundation for campaign financing in Kenya.
 - Art. 88 (4) (i) grants power to IEBC) to regulate the amount of money that may be spent by or on behalf of a candidate or party in respect of any election.
 - Art. 91 (2) (e) provides for prohibition of political parties from accepting or using public resources to promote party interests or supporting candidates in elections.
 - Further, Art. 92 (a) provides for enactment of legislation to provide for reasonable and equitable allocation of airtime, establishment of political parties fund, restriction of use of public resources to promote interests of political parties (which may include campaign financing)

Campaign Financing Act No. 42 of 2013

- Provides for the statutory framework for regulating campaign financing in Kenya.
- The framework deals with regulation of contributions limits, disclosure and reporting and campaign expenditures.
- Amended 2017:
 - Section 1A inserted
 - Regulations developed - commencement date 2022.
- Campaign Financing Act (Amend) Bill 2018:
 - To address emerging policy and legislative gaps that hinder effective implementation of the Act.

GAPS & CHALLENGES IN POLICY & LEGAL FRAMEWORK FOR REGULATING CAMPAIGN FINANCING IN KENYA

- Scope of the Law: Actual meaning, similarity and differences between Election and Referendum; Need to explicitly/expressly cover both.
- Financial institutions – No provision for other financial intermediaries; Include microfinance banks regulated under the Microfinance Banks Act, No. 19 of 2006.
- Enforcement timelines- When should rules be set? Opportunity for political interests to take precedence since political class would seek the absence of the rules.
- Nature of political campaigns – Centralized approach as opposed to diverse interest groups especially for referendum campaigns
- Structures – Established without regard to existing arrangements e.g. political party governing body; Provide for relationship, coordination and integration with mainstream structures; Put in place prudential guidelines to be followed by political actors in a campaign and leave the details of how to establish appropriate structures for financial management to the actors: Provide for mechanisms that facilitate compliance with the legal requirements.

- Sources: Direct vs indirect financing from foreign sources;
Contradictory provisions on capping contributions and their sources;
Minimum threshold on amounts (disclosure & reporting efficiency);
- Authorized expenditures: Include other core costs such as administrative costs for office rentals and management, communication, professional services and media.
- Stakeholder consultations: Public participation and citizen engagement cannot be ignored in a such an important process

CONCLUSION

- Implementation is long overdue
- It is a constitutional obligation
- There is no sufficient political goodwill to implement:
 - Unholy alliance between the politician and voter:
 - Unholy alliance between business and political elites
 - Majority of current and aspiring politicians (especially women + youth) want the law enforced but overwhelmed by the influence of the moneyed few
- **YOU CAN MANIPULATE THE WILL OF THE PEOPLE THROUGH MONEY**

- Strengthening political parties is often the most difficult goal to meet. Professionals need to help foster strong and democratic political parties with strong links to their members to support party programs, and in general providing legislation that is coherent and functioning.
- The financial regulation of political parties and candidates is an area in which enforceability is critical to the credibility of the effort to control political corruption. In general, legislation that cannot be enforced should not be enacted. It is good practice to draft laws with their implementation in mind, also looking at the resources available to the body that will monitor and enforce the laws.
- Is the Elections Campaign Financing enforceable in its current form

THANK YOU

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