

**JOINT MEMORANDUM BY NATIONAL WOMEN SERVING  
ORGANIZATIONS, LEADERS AND CHAMPIONS TO THE SENATE OF  
KENYA REGARDING ISSUES ON THE POLITICAL PARTIES  
(AMENDMENT) BILL 2023 AND OTHER BILLS BEING CONSIDERED BY  
THE SENATE**

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**May 2, 2024**

The Clerk of Senate

Parliament Buildings

P. O. Box 41842

00100 Nairobi

**1. Preamble**

Honorable Chair and Honorable Committee Members,

We respond to your invitation sent out by the Clerk of Senate inviting the input of the Public on the following Bills;

- a) The statutory Instruments (Amendment) Bill (National Assembly Bills No. 5 of 2023)
- b) The Election Offences (Amendment) Bill (Senate Bills No. 9 2024)
- c) The Statutory Instruments (Amendment) Bill (Senate Bill No. 10 2024)
- d) The Elections (Amendment) Bill (Senate Bills No. 11 of 2024)
- e) The Political Parties (Amendment) Bill, (Senate Bills No. 13 of 2024)

As women serving organizations in Kenya, leaders and champions of gender equality, peace building and national cohesion, good governance and a strong democracy and independent governance institutions in Kenya, we have considered the Bills and hereby submit our considered findings, commentary, analysis and response to the Bills.

The good governance principles undergirding our democracy are outlined in Article 10 of the constitution. We believe that any reform must be geared towards the improvement of the functioning of our institutions, processes and practices as a country.

## **2. OUR CONCERNS AND APPRECIATION OF THE POLITICAL PARTIES (AMENDMENT) BILL, (Senate Bills No. 13 of 2024)**

- i) The concern of Political Parties about the control of ORPP by the Executive by being under the AG's Office. Several of our members across the country have raised their misgivings about the way in which the Registrar seems to act in favor of the ruling Party and against others which has led to political parties pushing for an Independent Political Parties Regulatory Commission with practically no regulatory mandate over Political Parties.
- ii) The Concern by Political Parties regarding the ORPP decision making processes has also fueled the calls for the introduction of the IPPRC. Our collective concern is that in seeking to have more say in decision making at the ORPP, Political Parties want to have a way out of accountability and transparency to the people of Kenya who fund the Parties with tax payers' money. How will Kenyans have Political Parties operate transparently and accountably if they will basically control how they are registered, how they are funded when they are funding themselves away from public scrutiny with minimal oversight and regulation?
- iii) The regulatory function of the proposed IPPRC is almost non-existent. It is our finding that the IPPRC as established under the Amendment Bill is largely a Commission controlled by the majority and minority coalition Member Political Parties. The proposed law is very weak on how the commission will carry out the regulation of political parties having deleted the current section 34 (a) regulatory mandate vested in the ORPP.
- iv) Funding and structures/reach of the ORPP and the contemplated IPPRC is a concern: As the women of Kenya who suffer most in the Political Party processes in Kenya, and who have seen fewer and fewer women offering themselves for political office due to the largely personalized political party systems, we are concerned that the amendments have not addressed the lack of ORPP structures and services across the country. This is what we hoped would be addressed in the amendments. Unfortunately, we have seen amendments that want to kill ORPP and introduce a structure that will seriously personalize political matters even further by giving them more power to become more insular, less transparent and less accountable to the public in the format of the proposed IPPRC.
- v) State officers are still officials and leaders of political parties: One of the biggest challenges with political parties is the fact that Senators, MPs, Governors, MCAs and even Cabinet Secretaries are owners of Political Parties that they finance, control and direct. In a situation where a Governor

for example is the owner of a political party in his country and is the one doling out nomination certificates to his or her favourite friends, how do women who are popular on the ground but are not the darling of a governor going to have a chance of being elected against all the odds. This amendment which we hoped would be addressed is not addressed. The IPPRC will fertilize the environment where all these State Officers control political parties even the more. This is one of the more important reforms we expected to see suggested to the Political Parties Act at this stage.

- vi) Qualifications and disqualifications of proposed IPPRC Commissioners are not provided for in the proposed Amendments. We expected this to be so clearly outlined in the amendments in order to ensure that the constitution of Kenya provisions in Article 10 and in Chapter six for example are met and upheld. We risk setting up a body that is headed by State Officers, individuals with questionable backgrounds and known criminal records.
- vii) Party Primaries management by a Commission controlled by the Political Parties will not yield fairness: Our Political Parties have not demonstrated that they can manage political party primaries well. We had hoped that this was to be a major focus of both amendments to the Political Parties Act and to the elections and IEBC Acts. ORPP needs to be strengthened to support political parties to conduct free, fair, inclusive and peaceful party primaries in the interest of our democracy and particularly for women's participation, safety and wellness. If we get the proposed IPPRC, the situation will only worsen for Kenyan women.
- viii) What is a parliamentary and non-parliamentary Political Party and How do non-Parliamentary Political Parties interests get secured under the proposed new arrangement of the IPPRC? We urge Senate to define this as clearly as possible to remove any vagueness.
- ix) The lack of transitional and saving clauses for the ORPP staff, assets, records, data and information: What becomes of the current staff, the records, assets and information of the ORPP? This is an important matter that must be considered before we make a move forward. Senators are required to uphold prudence and all the principles in Article 10 of our constitution when making policy, laws and decisions in the interest of the public.
- x) What is the standing and fate of the Registrar and Deputy Registrar who enjoy security of tenure for a few more years? Are we likely to see the country shelling out millions to compensate public officers for the outstanding term of the contract due to the formation of a new body instead of strengthening the ORPP and improving our democratic system and processes through amendments to the political Parties Act?

- xi) The amendments do not provide for a Secretariat or a CEO for the proposed commission therefore there is largely no institutional structure underpinning this proposed IPPRC.
- xii) Transitional arrangements for the current existing coalition political Parties with the deletion of Section of the 2A is yet another concern for us as women of Kenya.

### **3. OUR RECOMMENDATIONS TOWARDS THE POLITICAL PARTIES (AMENDMENTS) BILL, 2023**

Honorable Senators, after consulting widely as the women of Kenya we now make the following recommendations:

1. That Senate entirely withdraws the Political Parties (Amendment) Bill, 2024 as proposed by the NADCO team which is under consideration by the Senate. This is because it creates serious governance, operational and structural challenges to the political party registration, regulation, funding system and ecosystem instead of resolving them. We are convinced that the proposals for overhauling the ORPP in favor of the creation of the IPPRC are inimical to good governance and consolidation of our democracy. The challenges that ORPP has had so far have not been addressed by the proposed Amendments. Instead, the amendments create new challenges with the proposed IPPRC.

2. Create a Board to oversight the work of the Registrar

We recommend that Parliament considers establishing a Board for ORPP which will oversight the Registrar of Political Parties. Such a Board should be representative of Political Parties and other Stakeholders;

- a) The qualifications and disqualifications of the individuals to join the Board should be meritorious to ensure that the Board performs the oversight and advisory functions over the Registrar without usurping the mandate of the Registrar of Political Parties.
  - b) The Board be representative especially in observing the democratic principles such as the inclusion of women, youth, Persons with disability, marginalized communities. The Not more than two thirds gender principle be observed strenuously.
3. To resolve the undue influence over the ORPP by the government of the day because ORPP is naturally an office in the Attorney General's Office, Senate should institute reforms to move the away the domiciling of the ORPP out of the Attorney General's Office. It is our considered submission that with the establishment of the Board we propose to oversight and strengthen the operations

of the ORPP, that the independence of the Office be shall be secured to inspire trust and confidence in the ORPP. The proposed Board should help the ORPP to submit their reports directly to Parliament and away from the Executive.

4. We recommend the assured funding to the Registrar of Political Parties to enable the Office to devolve its functions and bolster its operations in the interest of better run and managed Political Parties and political party processes such as democratic political party primaries.
5. To enable the ORPP to streamline and oversee well carried out Political Party primaries, amend the Political Parties Act to provide for this mandate to be carried out by the ORPP. The IEBC has election officers across the country in every one of the 290 constituencies. ORPP should be supported to at least have county level officers who should among other functions monitor and enforce the campaign financing law and regulations (as the case is in Tanzania) alongside overseeing the conduct of Political Parties processes.
6. The regulatory function in Section 34 (a) of the Political Parties Act ought to be strengthened with vigour under the revamped ORPP with an Oversight Board. The amendments to the Act have totally blunted the regulatory mandate ven for the proposed IPPRC. If Senate were to settle for the IPPRC, then Section 34 (a) regulatory function has to be reinstated for the proposed commission to have any teeth to perform its regulatory mandate.
7. Introduce amendments to remove State officers as initiators, sponsors and officials of Political parties in Kenya except for the State President and Deputy who are essentially Politicians and should be involved in the Political Party processes. Kindly note that in country where the Presidential System of government is prevailing such as in the US, state officers keep away from the political party management and direction.

#### **4. ON THE OTHER BILLS BEFORE THE SENATE**

##### **4.1** The statutory Instruments (Amendment) Bill (National Assembly Bills No. 5 of 2023)

**Honorable Members,** we have considered the Amendments to the Statutory Instruments Act in the Bill as presented by the Honorable Kimani Ichung'wah, the Leader of the Majority Party and support the amendments.

##### **4.2** The Election Offences (Amendment) Bill (Senate Bills No. 9 2024)

Honorable Senators, we support the amendments to the Election Offences as provided for in the Amendment Bill.

#### 4.3 The Statutory Instruments (Amendment) Bill (Senate Bill No. 10 2024)

**Honorable Senators,** we have scrutinized the Statutory Instruments (Amendment) Bill and fully endorse the amendments except that we propose as follows;

Clause (5) A person liable for an offence under subsection (4) shall be personally liable for the fine and public funds shall not be used to pay such a fine.

In Addition, the law should provide for such a person being removed from office for incompetence or dutiful negligence.

#### 4.4 The Elections (Amendment) Bill (Senate Bills No. 11 of 2024)

**Honorable Senators,** we are in support of the amendments proposed by the NADCO to the Elections Act. In particular, we support the following amendments;

- Clause 15: This amends Section 31 to remove IEBC from the process of conducting Party Primaries- this is a welcome development to our electoral law and process.
- Clause 19 is of great interest to us as women of Kenya because it touches on the nomination to the Party Lists as provided for in section 34 of the Act where a new sub-section 8A has provided that to be nominated, one has to be a registered voter in one of the Wards of the County and 8B ensures equitable representation of all the Wards in the County. This is very important for women of Kenya who have witnessed women from outside our counties getting rewarded with nominations yet they are not voters in our counties.
- Clause 23- Amendment of Section 44 to ensure that all technology is vested in the Commission is important for our democracy to ensure that the IEBC will no longer plead helplessness for not owning the technology it uses in elections.
- 33- Section 87 is amended to introduce 87A, 87B, 87C providing for the evaluation of the electoral process after elections by Parliament appointing evaluators to do the evaluation outlining what the parameters of the evaluation.

These are important reforms to our election law which we support strongly.

## 5. CONCLUSION

**Honorable Members,** we pledge our full support to you as you process these Bills and will be more than willing to submit further information if it shall be required. We continue to note as follows;

- a) The NADCO process which generated some of the Bills has failed to offer leadership to both Houses of Parliament on the need to take measures to ensure that the not more than two-thirds gender rule is adhered to in all elective, nominative, and appointed positions in the Republic of Kenya. The Supreme Court Advisory and the Justice Maraga decree that Parliament be dissolved because it is unconstitutionally constituted even ignored by the President Uhuru Kenyatta administration are still in effect and have force of law in Kenya.
- b) We appreciate the efforts that the drafters of the Bills have made to ensure that this principle is considered in amendments
- c) We continue to pledge our full support to Parliament In the performance your duties and onerous mandate in the interest of our democracy and progress as a country.

We thank you,  
God bless Kenya

**Signed by Undersigned Organizations**

1. Centre for Rights Education and Awareness
2. Community Advocacy and Awareness Trust
3. Siasa Place
4. University of Nairobi Women Economic Empowerment Hub
5. We Believe Community Organization
6. Hummingbird Grassroots
7. Premier Peak Leadership Foundation
8. Progressive Modern Care Coalition
9. Hope on Feet
10. Gears for Change Initiative

## 11.NABWEE