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## UCHAGUZI 2022: JOINT CIVIL SOCIETY STATEMENT ON THE ELECTION CAMPAIGN FINANCING STANDOFF

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### FOR IMMEDIATE PRESS RELEASE

Nairobi, 15<sup>TH</sup> August 2021

#### Introduction

Kenya's elections are not only the most expensive elections in the region, but also the second most expensive election in the world. Election observation reports and expert analysis over the years have highlighted the need to cap spending limits as a measure of lowering electioneering costs so that a level playing field for effective participation by Kenyans in the elections either as voters or candidates is achieved.

Unmitigated sources of money and uncontrolled spending continue to disenfranchise voters and candidates in the electoral processes. Wide income disparities between the rich and the poor have further conspired to make the opportunity of submitting oneself as a candidate for political office a reserve of the well to do economically and the well resourced. It has further created an appetite for corruption for those interested in ascending to leadership and decision making through contesting for political office. The result is that leadership positions risk being the preserve of a few elite club members at the exclusion of majority of Kenyans. Huge spenders of money during election campaigns tend to engage in corrupt practices in order to recover back their campaign monies and deprive voters effective and efficient service delivery during post-election periods.

#### About the Election Campaign Financing Legal Regime in Kenya and the present standoff.

In order to address these concerns, our Constitution and the ECFA have provisions namely:

- a) Article 88(4) (i) of the Constitution sets out as part of the mandate of the IEBC *"The regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect to any election"*.
- b) Section 29 of the Election Campaign Financing Act (ECFA) empowers the Independent Electoral and Boundaries Commission (IEBC) to make Regulations



for the better performance of its functions under the Act, and such regulations shall be laid before the National Assembly for approval before they are gazetted.

- c) In accordance with Section 29 of the Act, the Commission developed the Election Campaign Financing Regulations in 2016 with intention of operationalizing the Act, which were rejected in December 2016 by Parliament. In January 2017, the ECFA was deferred to 2022. Consequently, the 2017 elections were held without a legal regime to regulate the use of campaign money.
- d) The 2016 draft regulations were again submitted by the IEBC to National Assembly on 27<sup>th</sup> July 2021 and again, re-submitted on 5<sup>th</sup> August 2021 when asked to rename them as '2021 Regulations'.
- e) Further, on 9<sup>th</sup> August 2021, the IEBC gazetted contributions and spending limits for political parties and candidates, for purposes of the general elections scheduled to be held on 9<sup>th</sup> August 2022 as espoused in Article 88 (4) (i) of the Constitution of Kenya, Section 12, 18 and 19 of the Election Campaign Financing Act, 2013 and section 4 (i) of the Independent Electoral and Boundaries Commission Act, 2011.
- f) However, the National Assembly Committee on Delegated Legislation nullified these limits arguing that they were intended to be published as part of the regulations and citing lapse of legal timelines within which they ought to have been submitted by the IEBC. In addition, the Committee faulted the Commission for publishing the limits before approval by the National Assembly.

**Based on the above and taking cognizant of the constitutional requirement on regulation of use of money, we, representatives from the institutions hereunder, wish to issue the following observations and recommendations for the purposes of the 2022 uchaguzi.**

1. That the IEBC acted within its mandate in tabling the spending limits as prescribed under Sections 12, 18 and 19 of the Election Campaign Financing Act 2013. This is what the Commission did this week on the 9<sup>th</sup> day of August 2021. Some of the arguments coming from different political quarters seem to suggest that IEBC requires the approval of Parliament to release the gazette notice on the spending limits. Nothing can be further from the truth. Only the regulations require parliamentary approval. Article 88(4)(i) of the Constitution demands that IEBC regulates money spent by candidates in elections. Section 12 of the Election Campaign Finance Act requires IEBC to gazette spending limits. These provisions are self-executing and it is our considered view that they do not require any further Regulations.



2. For the second consecutive election, the National Assembly is opting to postpone the application of the Regulations to the elections. We opine that this position is self-serving and therefore demand that the National Assembly consider the Regulations as a matter of public interest and apply the parameters provided under Standing Order # 210 including whether the regulations tabled are in accordance with the provisions of the Constitution and the Elections Campaign Financing Act.
3. We urge the National Assembly to adopt the spending limits as gazetted by the IEBC. In the alternate, let the National Assembly give any feedback they might have for consideration by the Commission on these limits. This option is within the mandate of the Commission and the National Assembly and is part of public input and feedback. The Commission reserves the right to vary the gazette limits, if at all, based on additional feedback and/or views from the public.
4. We urge the National Assembly to delink spending limits from the General Regulations as the two processes, while similar in substance, are independent of each other.
5. Parliament needs to speedily consider and enact the Election Campaign Financing (Amendment) Bill 2020 which seeks to address concerns raised by Parliament in 2017 whereof they cited the Act as un-implementable (notably this too would have informed further review of the 2016 Regulations). This will adequately enable the Commission fulfill its mandate as per the law.
6. The debate moving forward should be on the appropriateness of the limits set out by the Commission and the mechanism that IEBC will use to manage and ensure compliance of the process.
7. We urge citizens to reject the growing culture of receiving or asking for handouts which has immensely contributed to and emboldened the political class against spending limits as they are convinced that ordinary citizens lack moral authority to challenge them.
8. We call upon the citizens to support the regulations of campaign financing in the country as a means of addressing the exclusion, inequality and inequity that continues to be perpetuated by the increasing cost of politics, at the expense of good governance and development.
9. Finally, elections are meant to accord voters and candidates the free and safe space of making informed choices and decision making while participating in elections. Money has altered the outcome of election results hence undermining confidence in our elections and democracy.



## Conclusion

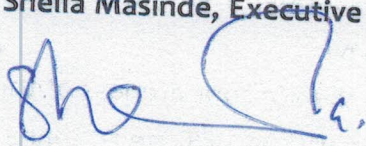
There is a legitimate public interest in regulating Election Campaign Finance for the 2022 elections. While money is necessary to support candidate emergence, un-controlled use of money may have the twin potential of altering public choice processes producing leaders of dubious integrity as we have witnessed in past elections. The lack of regulation and use of illicitly acquired money continues to exclude youth, women, PWDs and other already disenfranchised groups. Further, if we do not regulate the use of money in the forthcoming 2022 elections, incidents of voter bribery, electoral violence and other electoral malpractices will continue unabated.

The implementation of the Election Campaign Financing Act has faced implementation hurdles since its enactment. A delay of more than two electoral cycles since 2013 without implementation raises grave concerns about subversion of the Constitution of Kenya 2010, which demands regulation of the use of money in elections. The historical justification and the constitutional and legal requirement for regulating the use of money in elections are well documented, and we cannot delay any further the implementation of the law on campaign financing.

## Signed by

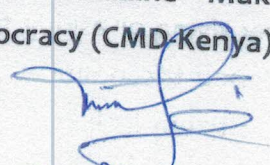
1. Name: Sheila Masinde, Executive Director, Transparency International Kenya (TI-Kenya)

Sign:



2. Name: Frankline Mukwanja, Executive Director, Center for Multiparty Democracy (CMD-Kenya)

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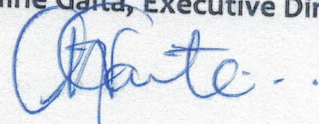
3. Name: Mulle Musau, National Coordinator, Elections Observation Group (ELOG)

Sign:



4. Name: Caroline Gaita, Executive Director, Mzalendo Trust

Sign:



5. Name: Joshua Changwony, Executive Secretary, Constitution and Reform Education Consortium (CRECO)

Sign:

