

The Representation of Special Interest Groups Laws (Amendment) Bill, 2019



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 52 of 2019)

**THE REPRESENTATION OF SPECIAL INTEREST GROUPS
LAWS (AMENDMENT)BILL, 2019**

(A Bill published in the Kenya Gazette Supplement No. 107 of 2019 and passed by the National Assembly, with amendments, on March 11th, 2020)

N.A. /B/No. 52/2019

**THE REPRESENTATION OF SPECIAL INTEREST GROUPS
LAWS (AMENDMENT) BILL, 2019**

A Bill for

AN ACT of Parliament to amend various laws to give further effect to Article 100 of the Constitution; to promote the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Representation of Special Interest Groups Laws (Amendment) Act, 2019.

Object and purpose of the Act.

2. (1) The object and purpose of this Act is to amend the provisions of electoral and related laws to give further effect to Article 100 of the Constitution on the promotion of the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities.

(2) Without prejudice to the generality of subsection (1), this Act seeks to—

- (a) enhance the funding of special interests groups through assured disbursements from the Political Parties Fund;
- (b) require political parties to allocate funds disbursed from the Political Parties Fund to election campaign activities of special interest groups through publicity and other measures;
- (c) mandate the National Gender and Equality Commission with the function of promoting the sensitization of the public on the right of special interest groups to participate in the electoral process;;
- (d) provide a forum for harnessing political will to support the representation in

Parliament of special interest groups;

- (e) require political parties to enhance the representation of special interest groups in elective bodies by ensuring that their nomination lists comply with the provisions of Article 54(2) and 81(b) of the Constitution;
- (f) require the Independent Electoral and Boundaries Commission to ensure lists submitted by political parties seeking to participate in a parliamentary election comply with the provisions of Article 54(2) and 81(b) of the Constitution; and
- (g) enhance the capacity of special interest groups to participate in the electoral process.

PERSONS WITH DISABILITIES ACT, 2003

Amendment of
section 7 of No. 14
of 2003.

3. Section 7(1) of the Persons With Disabilities Act, 2003 is amended in paragraph (b) by inserting the following new subparagraphs immediately after subparagraph (viii)—

- “(ix) promote the inclusion of persons with disabilities in the decision-making bodies of public institutions;
- (x) collaborate with the Independent Electoral and Boundaries Commission to build capacity of persons with disabilities to take part in electoral processes both as voters and candidates; and
- (xi) provide a platform to advocate for accessibility of electoral infrastructure including technology, voter registration and polling stations;”

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION ACT, 2011

Amendment of
section 2 of No. 9
of 2011.

4. Section 2(1) of the Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following definition in proper alphabetical sequence—

“special interest groups” means the following groups specified under Article 100 of the Constitution—

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

Amendment of
section 4 of No. 9
of 2011.

5. Section 4 of the Independent Electoral and Boundaries Commission Act, 2011 is amended—

- (a) in paragraph (a) by inserting the words “and disaggregation of the data on the voters roll on the basis of all categories of special interest groups” immediately after the word “voters”;
- (b) in paragraph (g) by inserting the words “to all voters including special interest groups” immediately after the word “education”;
- (c) by inserting the following new paragraph immediately after paragraph (k)—

“(ka) the conduct and regulation of the process by which parties conduct the nominations of the party lists in line with Article 90 of the Constitution.”;
- (d) in paragraph (m) by inserting the words “including the use of communication modes accessible to special interest groups” immediately after the word “functions”.
- (e) by inserting the following new paragraph immediately after paragraph (m)—

“(ma) the establishment of criteria for the identification of marginalized communities, ethnic and other minorities for all electoral purposes to provide a basis for segregation of data;”

Amendment of section 27 of No. 9 of 2011.

6. Section 27 of the Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new subsection immediately after subsection (1)—

“(1A)The Commission shall ensure that the information specified under subsection (1) is published and publicised using modes that are accessible to special interest groups.”

POLITICAL PARTIES ACT, 2011

Amendment of section 2 of No. 11 of 2011

7. Section 2 of the Political Parties Act, 2011 is amended—

(a) by deleting the definition of “ethnic minorities” and substituting with the following definition—

“ethnic and other minorities” means a group that is not the dominant one in a given society and includes racial minorities;”

(b) by deleting the definition of “special interest groups” and substituting with the following definition—

“special interest groups” means the following groups specified under Article 100 of the Constitution—

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

Amendment of section 20 of No. 11 of 2011.

8. Section 20 of the Political Parties Act, 2011 is amended—

(a) in subsection (2) by inserting the words

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“and on its website in a manner and form that is accessible to all persons including special interest groups” immediately after the word “circulation”;

- (b) by inserting the following new subsection immediately after subsection (2)—

(2A) A political party shall ensure that information specified under subsection (2) is published and publicised in a manner accessible to persons with disabilities.

Amendment of section 26 of No. 11 of 2011.

10. Section 26(1) of the Political Parties Act, 2011 is amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) promoting the representation in Parliament and in the county assemblies of special interest groups through—

- (i) civic education;
- (ii) capacity building;
- (iii) facilitating party candidates in campaigns;
- (iv) publicity; and
- (v) such other measures as may be approved by the Registrar.”

Amendment of section 29 of No. 11 of 2011.

11. Section 29 of the Political Parties Act, 2011 is amended in subsection (1) by inserting the words “including details of the amount allocated and expended on each category of the special interest groups” immediately after the word “party” appearing in paragraph (b).

Insertion of new section 30A in No. 11 of 2011.

12. The Political Parties Act, 2011 is amended by inserting the following new section immediately after section 30—

Report on promotion of representation of special interest groups.

30A. A political party shall within thirty days of the end of each financial year submit to the Registrar a report of its activities promoting the representation of

special interest groups in Parliament and in the county assemblies.

Amendment of the First Schedule to No. 11 of 2011.

14. The First Schedule to the Political Parties Act, 2011 is amended—

(a) in paragraph 5—

(i) by deleting subparagraph (a) and substituting therefor the following new subparagraph—

“(a) respect, protect and ensure the right of all persons including special interest groups to participate in the political process;”

(ii) by inserting the word “safeguard” immediately after the word “respect” appearing in subparagraph (b);

(b) in paragraph 6 by deleting the word “marginalized” appearing in subparagraph (d) and substituting therefor the words “special interest groups”.

NATIONAL GENDER AND EQUALITY COMMISSION ACT, 2011

Amendment of section 2 of No. 15 of 2011.

15. Section 2(1) of the National Gender and Equality Commission Act, 2011 is amended by inserting the following new definitions in proper alphabetical sequence—

““Electoral Code of Conduct” means the Electoral Code of Conduct set out under the Second Schedule to the Elections Act, 2011;

“special interest groups” means the following groups specified under Article 100 of the Constitution—

- (a) women;
- (b) persons with disabilities;
- (c) youth;
- (d) ethnic and other minorities; and

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(e) marginalised communities.”

Amendment of
section 8 of No. 15
of 2011.

16. Section 8 of the National Gender and Equality Commission Act, 2011 is amended by—

(a) renumbering the existing provision as subsection (1);

(b) inserting the following new paragraph immediately after paragraph (h)—

“(ha) overseethe preparation and implementation of measures necessary to give effect to Article 100 of the Constitution, including—

(i) monitoring the framework for the promotion of representation of the special interest groups in Parliament, county assemblies and other elective positions; and

(ii) supporting special interest groups in presenting complaints relating to compliance with the Electoral Code of Conduct.”

(c) inserting the following new subsections after subsection (1)—

“(2)The Commission shall liaise with all relevant public institutions to develop and implement measures to achieve the progressive realisation of representation of special interest groups in public institutions, which measures may include—

(a) monitoring, facilitating and advising on capacity building programmes of special interests groups to enable them participate in elections; and

(b) enhancing the understanding and attitudes of communities to accept the capabilities and participation of special interest groups as their equals.

(3) The Commission shall develop guidelines to assist public institutions to comply with the provisions of subsection (2).

(4) All public institutions shall, for purposes of reporting and monitoring, submit to the Commission their plans and measures in compliance with the provisions of this section on an annual basis.”

Amendment of section 2 of No. 24 of 2011.

16A. Section 2 of the Elections Act, 2011 is amended by inserting the following new definition in its proper alphabetical sequence—

“special interest groups” means the following groups specified under Article 100 of the Constitution—

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

ELECTIONS ACT, 2011

Amendment of section 13 No. 24 of 2011.

17. Section 13 of the Elections Act, 2011 is amended by—

(a) inserting the following new subsection immediately after subsection (1)—

“(1A) Every political party

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participating in an election shall during party nominations ensure that at least—

- (a) one-third of its nominees for parliamentary and county assembly elections are of either gender; and
- (b) five percent of its nominees for parliamentary and county assembly elections are special interest groups.”

- (b) inserting the following new subsections immediately after subsection (3)—

“(3A) The Commission shall not accept the list of candidates nominated under this section by a political party unless it is satisfied that the political party has complied with subsection (1A).”

(3B)The provisions of subsection (1A) and (3A) shall lapse twenty years after its commencement, subject to subsection (3C).

(3C) Parliament may enact legislation suspending the effect of subsection (3B) for a further fixed period of years.”

Amendment of
section 35 of No.
24 of 2011.

18. Section 35 of the Elections Act, 2011 is amended by—

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new subsection immediately after subsection (1)—

“(2) The party list shall be submitted together with a statutory declaration signed by the person authorised to certify that the candidates were nominated by the party in accordance with the prescribed regulations and the relevant Constitution

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of the party.”

Amendment of
section 40 of No.
24 of 2011.

19. Section 40 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (1)—

“(1A) In providing voter education, the Commission shall—

- (a) ensure the participation of special interest groups in its programmes; and
- (b) sensitize voters on the inclusion of special interest groups in the electoral process.”

Amendment of the
Second Schedule
to No. 24 of 2011.

21. The Second Schedule to the Elections Act, 2011 is amended by deleting paragraph 16 and substituting therefor the following paragraph—

“**16.** Every registered political party and referendum committee, candidate and agent shall—

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

in any political activity.”

**ELECTION CAMPAIGN FINANCING ACT,
2013**

Amendment of
section 2 of No. 42
of 2013.

22. Section 2 of the Election Campaign Financing Act, 2013 is amended by inserting the following definition in its proper alphabetical sequence—

““special interest groups” means the following groups specified under Article 100 of the Constitution—

- (a) women;
- (b) persons with disabilities;
- (c) youth;
- (d) ethnic and other minorities; and
- (e) marginalised communities;”

Amendment of
section 18 of No.
42 of 2013.

23. Section 18(4) of the Election Campaign Financing Act, 2013 is amended by inserting the following new paragraph immediately after paragraph (e)—

“(f) candidates belonging to special interest groups.”

ELECTION OFFENCES ACT, 2016

Insertion of a new
section 11A in
No.37 of 2016.

24.Section 13 of the Election Offences Act is amended in paragraph (f)(i) by inserting the words “disability, youth, membership to an ethnic or other minority group or marginalized community” immediately after the word “gender”.

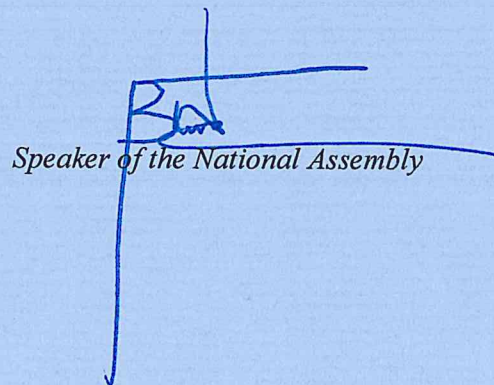
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I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 11th March, 2020.



Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.



Speaker of the National Assembly

