

PARLIAMENT OF KENYA
THE SENATE
SENATE BILLS DIGEST
THE PUBLIC FUNDRAISING APPEALS BILL, 2024
(SENATE BILLS NO. 36 OF 2024)

Sponsor: Senate Majority Leader
Date of Publication: 12th July, 2024
Date of First Reading: 1st August, 2024
Committee referred to: Standing Committee on Labour and Social Welfare
Type of Bill: Ordinary Bill

1. PURPOSE OF THE BILL

The principal object of the Bill is to provide for the establishment of regulatory mechanisms at the national and county levels which oversee the conduct of fundraising appeals, to provide for the licensing and regulation of fundraisers; the promotion of transparency and accountability in the conduct of fundraising appeals and also the regulation of the conduct by State and public officers in the participation in public fundraising appeals and in the administration of this legislation.

2. BACKGROUND OF THE BILL

The original spirit of Harambee was that individuals would voluntarily contribute their resources in form of cash, although labour and other materials were also welcome towards the provision of a communal good. The Harambee motto in independent Kenya became more than a motto, it symbolised Kenyan unity, patriotism and, most importantly, the future.

Yet, what started as an altruistic way to unify the nation has often bred corruption, with government officials sometimes soliciting donations for their own means and trying to evoke harambee to enact public programmes paid by private donations.

Harambee contributions are often times used as a ticket for politicians to buy their way into public offices only for them to compensate themselves by engaging in corruption once elected to public office.

Current Law

The Public Collections Act, Cap.106, was enacted in 1960 to provide for the regulation of collections of money and property from the public. The Act has however been overtaken by events and has been unable to address issues of corruption associated with harambees.

The Public Officer Ethics Act, Cap. 185B, was enacted to advance the ethics of public officers and outlawed the personal involvement of public officers in organizing harambees.

The rationale for the Bill

The Bill therefore, seeks to replace the Public Collections Act, Chapter 106, Laws of Kenya, whose institutional architecture does not align with the devolved structures of the Kenyan constitution and is not sufficiently robust to address corruption tendencies associated with public fundraising appeals. Further, the Public Collections Act excludes from its purview, charitable and religious purposes yet this forms a large component of harambees.

The Bill is also based on the need to reduce the culture of dependency that harambees have imbued in society, extending even essentially private affairs to the larger public. The Bill seeks to restrict its application to private fundraising appeals except where such appeals fall within public appeals for public purposes.

3. OVERVIEW OF THE BILL

Object and purpose

The objects and purposes of the Bill are to —

- (a) provide a regulatory framework for ensuring transparency and accountability in the conduct of fundraising appeals;

- (b) protect the public from fraudulent, misleading and coercive fundraising appeals and provide a framework to ensure that the public has sufficient information to make informed decisions in making voluntary contributions;
- (c) establish a framework of standards for persons and entities involved in the conduct of fundraising appeals; and
- (d) provide a platform for the provision of fiscal incentives as a means of encouraging donations and voluntary contributions in relation to fundraising appeals.

Role of Cabinet Secretary

Under the Bill the Cabinet Secretary responsible for social development shall oversee the implementation of the Bill and shall, for this purpose, among other things —

- (a) collaborate with county executive committee members in the performance of their functions;
- (b) oversee the conduct of public fundraising appeals national appeal or is publicly made to members of the public in more than one county;
- (c) receive, vet and process applications for the issuance of a permit to conduct a public fundraising appeal where such appeal is a national appeal or is publicly made to members of the public in more than one county;
- (d) investigate any complaints, misuse of funds raised through a fundraising appeal or any issue relating to the conduct of a fundraising appeals;
- (e) conduct inspections of records and audits relating to fundraising appeals conducted;
- (f) maintain a national register of persons licensed by it to conduct a public fundraising appeal;
- (g) establish mechanisms to enable the transparent conduct of fundraising appeals under the Bill and accountability on the part of the persons conducting the appeals; and
- (h) carry out sensitization and education awareness regarding the conduct of fundraising appeals; ...

The County Executive Committee Member responsible for social development within each county shall, among other functions—

- (a) receive, vet and process applications for the issuance of a permit to conduct a public fundraising appeal within the county;
- (b) regulate the conduct of public fundraising appeals within the county; and
- (c) investigate any complaints, misuse of funds raised through a fundraising appeal or any issue relating to the conduct of a public fundraising appeal within the county...

Both the Cabinet Secretary and the County Executive Committee Members are expected to table annual reports to Parliament and county assemblies respectively on the activities relating to fundraising appeals.

Classification of fundraising appeals(Harambees).

The Fundraising appeals in the Bill are classified into —

- (a) public fundraising appeal which shall consist of solicitations made to members of the public or a section of the public for a public or private benefit; and
- (b) private fundraising appeal which shall consist of solicitations made by a person or class of persons on behalf of a person or class of persons to the members of the family of, or relatives of such person for the benefit of such person.

Who can conduct a fundraising appeal(Harambee)?

An individual, a body corporate or an entity registered as a public collection entity under the Bill may conduct a fundraising appeal under the Bill.

What is a Public purpose?

Public purpose is defined in the Bill as —

- (a) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, gender, disability or any other interest;
- (b) the advancement of community development, including agriculture, water sanitation, rural or urban livelihoods and regeneration;

- (c) the promotion of health, including the prevention or relief of sickness, disease or human suffering;
- (d) the advancement of conflict resolution or reconciliation;
- (e) the integration of those who are marginalized, and the promotion of their full participation, in society;
- (f) the promotion of economic, environmental, social or cultural development;
- (g) the promotion of education;
- (h) disaster prevention, preparedness and mitigation; and
- (i) advocating on issues of general public interest or the interest or well-being of the general public or a class of individuals or organizations.

Are state officers and allowed to participate in or conduct a fundraising appeal (Harambee)?

- (1) A State officer or an appointed public officer shall not participate in a fundraising appeal or conduct a public fundraising appeal during his or her term as a State officer.
- (2) A person who intends to vie for a public office shall not participate in a public fundraising appeal within the period of three years preceding a general election.
- (3) A state officer or an appointed public officer who contravenes these provisions of the Bill shall be liable to a fine not exceeding five million shillings.
- (4) A person who intends to vie for a public office and participates in a public fundraising appeal within the period of three years preceding a general election to commits an election offence.

Do I need a Permit to conduct a public fundraising appeal (Harambee)?

For one to conduct a public appeal fundraising (Harambee), they must obtain a permit. So a person shall not conduct a public fundraising appeal(Harambee) unless the person has applied for, and obtained, a permit.

A person who intends to conduct a public fundraising appeal shall submit to the Cabinet Secretary or the respective county executive committee member, as the case may be, an

application for a permit at least fourteen days before the date for the conduct of the fundraising appeal(Harambee).

What information should one provide in an application for a permit?

Information to be included in an application for a permit include—

- (a) the full names and address of the person intending to conduct the fundraising appeal;
- (b) the purpose of the fundraising appeal;
- (c) the necessity of conducting the fundraising appeal;
- (d) the date on which the fundraising is to be conducted;
- (e) the names and contact details of the persons assisting in conducting the appeal;
- (f) the amount intended to be raised through the appeal;
- (g) the estimated expenses to be incurred in conducting the fundraising appeal;
- (h) a statement regarding whether any monies have been received with respect to the matter pertaining to the fundraising appeal from any person prior to the date of the proposed fundraising appeal;
- (i) the place at which the collection is intended to be made; and
- (j) the expected timeframe for the appeal.

Who issues a permit?

Where the Cabinet Secretary or county executive committee member is satisfied that the applicant meets the requirements for the issuance of a permit, he or she may, —

- (a) issue to the applicant, a permit under this Act within ten days of receipt of the application; and
- (b) enter the name of the applicant, the beneficiary and such other particulars in relation to the fundraising appeal as it may consider necessary in the register of fundraising appeals kept for that purpose.

When does a Permit expire?

A permit shall automatically expire upon the conduct of the fundraising appeal to which the permit issued relates.

Declaration of source of contribution.

A person who makes a contribution to a fundraising appeal shall specify the source of the contribution.

A person who receives funds as a beneficiary or for the benefit of a beneficiary who is a child pursuant to a fundraising appeal shall declare such contribution in the income tax returns submitted by such person pursuant to the Income Tax Act.

Maximum administrative expenditure

Not more than five per cent of the targeted amount to be raised shall be utilized in defraying administrative expenses related to the fundraising appeal.

Financial records of a public Fundraising Appeal(Harambee)

Every person who conducts a fundraising appeal shall keep a record reflecting the income and expenditure relating to the appeal including —

- (a) details of the persons who make contributions in relation to the fundraising appeal and the amounts contributed by each person;
- (b) the name, number and address of the bank into which the monies raised in relation to the fundraising appeal were deposited;
- (c) full details of all funds and assets received as a result of the appeal;
- (d) full details of the use to which the funds and assets received were put to;
- (e) full details of—
 - (i) the amount applied to the purposes or objects of the appeal and how it was distributed;
 - (ii) any expenditure on assets;
 - (iii) any expenditure on wages, salaries, commissions and other remuneration in relation to the appeal;
 - (iv) any other administrative expenses related to the appeal; and
 - (v) any other expenditure related to the appeal.

General Penalty

A person who commits an offence under this Act for which no penalty is prescribed is liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years or both.

Are there fundraising Appeals (Harambees) that are exempted from the requirements of a Permit?

The Bill does not apply to a private fundraising appeal (Harambee) where the solicitation is made from members of the beneficiary's nuclear family or relatives and does not extend to members of the public.

The following activities, among others, do not constitute a fundraising appeal for the purposes of this Act—

- (a) soliciting or receiving any money or benefit in relation to any raffle, lottery or other activity authorised or permitted under the Betting, Lotteries and Gaming Act or any other relevant law;
- (b) money or property collected by or under the authority of a recognized representative of a religious association registered under the Societies Act for normal collections such as tithes and offerings or the purpose of carrying out developments or projects for the benefit of the association; and
- (c) soliciting a person to become a member of an organisation or to pay the joining or membership fee of an organisation.

Other provisions of the Bill

The Bill also provides for—

- (a) grounds for cancellation of permits;
- (b) cancellation of permits;
- (c) duties of a fundraiser on cancellation;
- (d) register of permitted fundraising appeals;
- (e) keeping of accurate records of the funds or benefits received in a public fundraising appeal;
- (f) inspectors to ensure compliance with the Act if enacted into law;
- (g) fiscal incentives;
- (h) regulations; and
- (i) repeal of Public Collections Act.

4. CONSEQUENCES OF THE BILL

The Bill will provide a framework for regulating the conduct of public fundraising appeals(Harambees) by both the National and county governments, promote transparency and accountability in the carrying out of fundraising appeals(Harambees), and regulate the conduct of public officers in relation to public fundraising appeals (Harambees).

5. WAY FORWARD

What next?

Pursuant to standing order 145 of the Senate Standing Orders, the Standing Committee on Labour and Social Welfare shall facilitate public participation and shall take into account the views and recommendations of the public when the committee submits its report to the Senate.

What is expected of the members of public?

The members of the public are expected to present their views to the Standing Committee on Labour and Social Welfare for its consideration.

Next step

The Bill was Read a First Time in the Senate on 1st August, 2024. Pursuant to standing order 148 of the Senate Standing Orders, the Committee is required to submit its report to the Senate within thirty (30) calendar days of the committal of the Bill to the Committee, therefore, by 1st September, 2024.

Note:

1. This Digest reflects the Bill as published and does not cover any subsequent amendments to the Bill made after its publication.
2. The Digest does not have any official legal status.