INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

REGULATORY IMPACT ASSESSMENT

in respect of

(1) THE ELECTION CAMPAIGN FINANCING REGULATIONS, 2026

made under Section 29 of the Election Campaign Financing Act (Cap. 7A)

AND

(2) THE ELECTION CAMPAIGN FINANCING (NOTICE ON CONTRIBUTIONS AND SPENDING LIMITS FOR CANDIDATES AND POLITICAL PARTIES FOR PURPOSES OF THE GENERAL ELECTION SCHEDULED TO BE HELD ON 10TH AUGUST, 2027)

prescribed under Sections 12, 18 and 19 of the Election Campaign Financing Act (Cap. 7A)

Prepared pursuant to Section 5 of the Statutory Instruments Act (Cap. 2A)

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EXECUTIVE SUMMARY

This Regulatory Impact Assessment is prepared jointly in respect of two statutory instruments that the Independent Electoral and Boundaries Commission proposes to make and publish together ahead of the 2027 General Election: the Election Campaign Financing Regulations, 2026 (made under Section 29 of the Election Campaign Financing Act, Cap. 7A) and the Notice prescribing contributions, spending limits and authorized expenditures for the 2027 General Election (issued under Sections 12, 18 and 19 of the same Act).

The two instruments are assessed together because they form a single, interdependent regulatory package. The Notice fixes the ceilings, the Regulations build the machinery by which compliance with those ceilings is monitored and enforced while their distinct legal character is preserved throughout and given separate treatment in the discrete Regulatory Impact Statements that accompany this Assessment.

PART 1: INTRODUCTION AND BACKGROUND

Election campaign financing sits at an uncomfortable but unavoidable intersection of democratic practice: elections cannot be contested without financial resources, yet money, left unregulated, has a well-documented tendency to distort the very contest it is meant to serve. Candidates and political parties require financial resources to engage agents, print publicity material, hold rallies and reach an electorate spread across 47 counties, some of them among the most sparsely populated and least connected areas in the country. Regulating that expenditure is not, therefore, an act of hostility towards political participation; it is what makes participation meaningful for candidates of modest means, and it is what allows voters to decide a contest on the strength of ideas rather than the depth of a candidate's pocket. Left unchecked, campaign spending becomes a vector through which the wealthy and the politically connected entrench themselves, and through which proceeds of corruption and organized crime can be laundered into public office under the cover of a democratic mandate.

1.1 The Regulation-Making Authority and Legal Mandate

The Commission's authority to regulate election campaign financing is not delegated by ordinary statute alone; it is anchored directly in the Constitution. Article 88(4)(i) of the Constitution of Kenya, 2010 confers upon the Commission the function of regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election. That constitutional mandate is given statutory texture by Section 4(i) of the Independent Electoral and Boundaries Commission Act, Cap 7C and by the Election Campaign Financing Act, Cap 7A ("**the ECF Act**") itself, which was enacted specifically to operationalize the provisions of Article 88(4)(i) of the Constitution.

Four provisions of the ECF Act carry the weight of this Assessment. Section 12 obliges the Commission, at least twelve (12) months before a General Election, to prescribe by Gazette Notice the limits on total contributions, contributions from a single source, paid-up media coverage and loans forming part of a contribution. Section 18 obliges the Commission on the same timeline, to prescribe the spending limits applicable to candidates, political parties and referendum committees, including the limit for media coverage, having regard to geographical features and urban centres, the type of election, the population of the electoral area, the number of party members in the area, and the state of communication infrastructure. Section 19 obliges the Commission to prescribe the nature of authorized items or activities for which campaign expenses may be incurred. Section 29 empowers the Commission to make regulations generally for the better carrying into effect of the Act, including rules on expenditure, contributions, disclosure, monitoring and record-keeping.

It bears emphasis that Sections 12, 18 and 19 are self-executing statutory duties: they do not depend on the Regulations for enforcement and the Commission is obliged to discharge them regardless of the state of the Section 29 rule-making process. The Regulations, by contrast, furnish the administrative architecture namely; registration of authorized persons, campaign financing accounts, reporting templates, dispute resolution procedures, within which the limits set under Sections 12, 18 and 19 are given practical effect. The two instruments are complementary, not duplicative: whereas one establishes the expenditure ceiling, the other provides the regulatory framework and mechanisms to operationalize, enforce and audit compliance with the prescribed limits.

1.2 Requirements of the Statutory Instruments Act, 2013

The Statutory Instruments Act, Cap 2A ("the SIA") is the framework legislation governing the making, scrutiny, publication and operation of subsidiary legislation in Kenya, and it is against its requirements that this Assessment is prepared. Section 5 requires a regulation-making authority to conduct public consultation, drawing on the expertise of persons with relevant knowledge and ensuring that persons likely to be affected by a proposed instrument have an adequate opportunity to comment on its content.

Sections 6 and 7 provide that where a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, before making the instrument, prepare a regulatory impact statement addressing its objectives, its effect, the alternative means of achieving the same objectives, and an assessment of costs and benefits. Section 8 requires notification of the regulatory impact statement, and prescribes the manner and duration of public comment, including a heightened duty of accessible publication where the instrument is likely to have a significant impact on a particular group of people.

Neither instrument under consideration qualifies for the narrow exemption in Section 9 of the SIA, which excuses the preparation of a regulatory impact statement only where the proposed legislation is confined to matters of a purely administrative, machinery or drafting character, or to matters that do not operate to the disadvantage of any person other than a government entity. Spending and contribution limits are, by design, disadvantageous in the technical sense contemplated by Section 9: they cap what a candidate, party or referendum committee may lawfully raise and spend, and a breach is a criminal offence under Sections 22 and 23 of the ECF Act.

The Regulations, for their part, create fresh compliance obligations namely; appointment and registration of authorized persons, dedicated campaign accounts, quarterly reporting, audit thresholds, that are plainly legislative in character. Both instruments therefore fall squarely within sections 6 to 8, and this Assessment, together with the discrete Regulatory Impact Statements prepared for each instrument and the accompanying Certificate of Compliance, is intended to discharge that obligation.

1.2 What Regulatory Impact Assessment is and why it matters

Regulatory Impact Assessment is the discipline of ensuring that regulation is informed by evidence rather than assumption. It requires regulators to demonstrate not the existence of a regulatory problem, but also that the proposed regulatory intervention is a necessary, proportionate and effective alternative. Properly conducted, it compels the regulator to provide clear objectives, canvass alternative approaches honestly rather than arbitrarily, weigh costs against benefits in a manner that can withstand external scrutiny and to subject its reasoning to genuine public participation.

Its value is not confined to legal compliance: a defensible, evidence-based RIA is what allows Parliament's Committee on Delegated Legislation, the courts, the media and the public to trust that a statutory instrument reflects considered judgment rather than administrative convenience. In the specific context of election campaign financing, where the Commission has previously been found by the High Court to have defaulted on its obligations, the rigor of this Assessment carries particular weight: it is, in a real sense, the Commission's demonstration that the default identified in 2022 has been remedied.

PART 2: ASSESSMENT OF THE EXTENT AND NATURE OF THE PROBLEM

2.1 Historical Perspective

The ECF Act was assented to on 24th December 2013, after the 4th March 2013 General Election had already been conducted, and Parliament subsequently suspended its commencement until after the 2017 General Election. Even after the Act came into force, no Regulations were enacted under Section 29 to operationalize the Act.

The Commission published the contribution and spending limits by Gazette Notice in 2016 and again on 9th August 2021 ahead of the 2017 and 2022 General Elections respectively. However, the 2021 notice (Gazette Notice No. 8024) was revoked on 8th October 2021 following a Parliamentary resolution, leaving the 2022 General Election like the 2013 and 2017 elections before it was conducted without an operative and enforceable campaign financing regime. In January 2017, Parliament enacted amendments to the Election Campaign Financing Act, introducing section 1A, which suspended the operation of the Act until the 2022 General Election. Consequently, the Spending and Contribution Limits that had been published in August 2016 ceased to have an effective statutory foundation during the period of suspension. The Commission has had regard to its own historical account of this trajectory, as reflected in the record before the High Court in ***Katiba Institute & 3 Others v Independent Electoral and Boundaries Commission & 3 Others; Law Society of Kenya & Another (Interested Parties), Consolidated Constitutional Petitions Nos. E540 and E546 of 2021, [2022] KEHC (KLR)***, and on independent academic and civil-society commentary tracing the same decade of dormancy. The consequence, documented in post-2022 civil society reporting, is that Kenya has now conducted three consecutive general elections without an enforced campaign spending regime, notwithstanding a decade-old constitutional and statutory command that such a regime exist. A gap through which unregulated, opaque and on the available evidence, frequently cash-based campaign spending has flowed largely outside the reach of any oversight institution.

2.2 The Challenge IEBC has faced since 2013

The Commission's difficulty in operationalizing the ECF Act has not been a difficulty of legal authority, the constitutional and statutory mandate has been unambiguous throughout, but a compounding difficulty of institutional capacity, political economy and sequencing. Regulations require extensive technical costing work of the kind described at Part 3 below, work that depends on reliable population, land-area and cost data that has not always been readily available in the years immediately following a boundary delimitation exercise. Spending limits, once published, have attracted resistance from the very political actors who benefit from an

unregulated environment, a dynamic starkly illustrated by the revocation of the 2021 Gazette notice through a parliamentary resolution. And the Commission has, across three electoral cycles, been required to prioritize its finite institutional capacity against the more immediately pressing demands of boundary delimitation, voter registration and the conduct of the poll itself, with campaign finance regulation repeatedly deferred as a consequence. The result has been a pattern in which limits are proposed, subjected to a limited public participation, and then either not finalized in time or withdrawn before they can take practical effect —a pattern the two instruments now before the Commission are specifically designed to break.

2.3 Policy Background

The policy foundation for both instruments rests on Article 88(4)(i) of the Constitution; Section 29 of the ECF Act, which anchor the Commission's rule-making power to the extent that the same does not require Parliamentary approval before publication in the Gazette; and on Sections 12, 18 and 19, which anchor the spending and contribution limits. It is reinforced by the wider constitutional architecture governing integrity in public life under Chapter Six of the Constitution, which Regulation 4(4)(a) of the draft Regulations expressly requires authorised persons to uphold and by Kenya's standing obligations under regional and international instruments on the conduct of free and fair elections. The Commission has also drawn on comparative and technical literature, including the Commonwealth's guidance on political finance regulation, Dr Magnus Ohman's comparative study of campaign spending limits across African jurisdictions (undertaken with the support of the International Foundation for Electoral Systems), the 2021 study on the cost of politics in Kenya produced under the auspices of the Westminster Foundation for Democracy and the Netherlands Institute for Multiparty Democracy, and the analysis of political finance corruption produced by International IDEA. These sources converge on a consistent policy diagnosis: unregulated campaign spending entrenches incumbency and wealth as the primary currency of electoral competition, crowds out candidates of talent but modest means, and opens channels through which proceeds of corruption and organized crime can be laundered into the political system.

PART 3: OBJECTIVES, SALIENT FEATURES AND DETERMINATION OF THE LIMITS

3.1 Objectives

The two instruments, read together, pursue five interlocking objectives:

- To afford candidates and political parties an approximately equal opportunity to stand and compete in elections, regardless of personal or institutional wealth;
- To prevent political actors from corrupting the electoral process or entrenching incumbency through the unchecked deployment of state or private resources;
- To guard against the biased or partisan use of campaign finance enforcement mechanisms against political opponents;
- To prevent proceeds of corruption or organised crime ("dirty money") from infiltrating the political system and thereby distorting public decision-making; and
- To compel candidates and political parties to be transparent about how they raise and spend campaign funds, so that voters and oversight institutions can hold them to account.

3.2 Salient Features of the Draft ECF Regulations, 2026

The draft Regulations, running to forty Regulations across eight parts and a schedule of twelve prescribed forms (Forms ECF 1 to ECF 12), build the administrative scaffolding through which the Act's substantive obligations are discharged.

Part II fixes the expenditure period for a general election, a by-election and a referendum, tying the general election period to a window beginning at least six months before the poll and closing fourteen days after it.

Part III requires every candidate, political party and referendum committee to appoint one or more authorized persons to be registered with the Commission, bound to uphold Chapter Six standards, and personally responsible for receiving contributions and discharging expenditure and permits a candidate to act as their own authorized person.

Part IV governs contributions and donations, including the treatment of harambee proceeds, proxy contributions, loans and anonymous donations, the last of which must be surrendered to the National Treasury within fourteen days of being reported.

Part V regulates expenditure itself, including the power conferred on the Commission at regulation 20 to fix and vary the very limits addressed by the companion instrument.

Part VI governs reporting and disclosure, including quarterly returns, preliminary and final expenditure reports, mandatory audit of accounts once expenditure exceeds five million shillings, and the issuance of a certificate of compliance.

Part VII establishes an expedited, proportionate dispute resolution mechanism before the Commission, and

Part VIII contains miscellaneous provisions on service, retention of records and the integration of electronic systems into compliance.

3.3 Determination of the Spending and Contribution Limits: Methodology

Because the spending and contribution limits are, in a literal sense, the numbers on which the entire regulatory scheme turns, this Assessment sets out the methodology by which they were derived in some detail, both to demonstrate that the exercise meets the rational, evidence-based standard the courts and the SIA demand of subsidiary legislation, and to allow stakeholders to test the reasoning for themselves.

3.3.1 Prescription of Campaign Expenses

Section 19 of the ECF Act directs the Commission to prescribe the nature of authorized items or activities for which campaign expenses may be incurred, listing venue hire, publicity material, advertising, campaign personnel, transportation and "any other justifiable expenses" as illustrative heads. Building on this, an internal Technical Committee on ECF, supported by development partners facilitated multiple stakeholder engagements, bringing together representatives from Parliament and Counties, Political Parties, the Office of the Registrar of Political Parties, the Political Parties Liaison Committee, the Ethics and Anti-Corruption Commission, the Kenya Law Reform Commission, the Office of the Attorney-General, Transparency International-Kenya, the Commission on Administrative Justice, Commission on Revenue Allocation, the Office of the Director of Public Prosecutions and the National Cohesion and Integration Commission, settled on eleven allowable expenditure heads: venues, publicity materials, advertising and media, campaign personnel, election agents, transportation, communication, nomination fees and charges, security, accommodation, and administrative costs. Each head was further particularized, for instance, "campaign personnel" captures drivers, secretaries, personal assistants and mobilisers, while "advertising and media" captures billboards, broadcast media, social media, print and outdoor media so that the costing exercise rests on a defensible, exhaustive taxonomy rather than an impressionistic list.

3.3.2 Costing of Campaign Expenses

Average unit costs for each expenditure head were obtained at three electoral levels namely; ward, constituency and county and, within each level, across three area classifications derived from the Article 89 boundary-delimitation criteria: urban or city areas, sparsely populated areas, and other areas. This classification matters because the economics of campaigning differ sharply between a dense urban ward, where advertising and personnel costs dominate, and a sparsely populated constituency in, for instance, Marsabit or Turkana, where transportation costs can exceed those of any other head several times over. The costing exercise drew on data supplied by counties, on cost information gathered from political parties during the 2017 stakeholder engagement, and on the comparative literature referenced at Part 2.3 above. The resulting average-cost tables form the empirical foundation for everything that follows.

3.3.3 The Population and Land-Area Formula

Section 18(4) of the ECF Act requires the Commission, in fixing spending limits, to have regard to geographical features and urban centres, the type of election, the population of the electoral area, the number of party members in the area, and communication infrastructure. The Commission operationalized the first three of these factors through a formula combining a **fixed cost** component by capturing expenses, such as nomination fees, security and statutory charges, that do not vary materially with the size or population of an electoral unit and with **variable** components tied to population and land area, weighted 70 percent and 30 percent respectively to reflect the relatively greater cost-driving effect of reaching people as against covering ground. The ideal population and land-area quota for each electoral level was derived by dividing the National Projected Population for 2025 (53,330,964) and the national land mass (581,307 square kilometers) by the number of electoral units at that level;1,450 wards, 290 constituencies and 47 counties, and the resulting unit costs were then applied to each specific electoral unit's actual population and area. Four candidate models for combining these **variables** were evaluated; the Commission adopted a formula, which retains a fixed (minimum) cost component alongside the population and land-area variables, on the ground that it produces the most equitable and defensible outcome across sparsely and densely populated units alike, avoiding both the understatement of costs in vast, low-population constituencies and the overstatement of costs in small, dense urban wards.

3.3.4 The Presidential and Political Party Limits

No campaign has previously been costed at the presidential level in isolation, so the Commission adopted a bottom-up approach, deriving the presidential limit from the average of the sum limits computed independently at county, constituency and ward level and applied uniformly across the national population and land area. This produced limits of Kshs 3,254,432,437 (county-level basis), Kshs 7,206,770,580 (constituency-level basis) and Kshs 7,876,426,381 (ward-level basis), averaging to a presidential spending limit of Kshs 6,112,543,133. The political party limit, in turn, assumes that a party will field candidates across every electoral unit in the country and is accordingly computed as the sum of

the limits across all wards (Kshs 7,876,426,381), all constituencies (Kshs 7,206,770,580), all counties (Kshs 3,254,432,437) and the presidential limit (Kshs 6,112,543,133), yielding an aggregate political party spending limit of Kshs 24,450,172,531, apportioned across the eleven expenditure heads, with transportation head reflecting the sheer geographic scale a party must cover to campaign nationally accounting for the largest single share.

3.3.5 Headline Results

Category	Spending Limit (Kshs)
Presidential election	**6,112,543,133**
Political party (aggregate, all electoral levels)	**24,450,172,531**
Illustrative county limit – Mombasa (Governor/Senator/CWR)	**60,967,580**
Illustrative constituency limit – Changamwe	**18,302,374**
Illustrative ward limit – Port Reitz	**4,954,920**

The full county-by-county, constituency-by-constituency and ward-by-ward schedule appears at a document titled "***DETERMINATION OF THE ELECTION CAMPAIGN FINANCE SPENDING LIMITS FOR 2027 GENERAL ELECTION***" to the source materials and will form the operative Schedule to the Gazette notice; the figures above are reproduced purely to illustrate the range the formula produces and the scale of the national aggregation underlying the political party and presidential limits.

3.4 Effects on the Public Sector

3.4.1 Direct Impacts

The immediate, direct effects on the public sector fall principally on the Commission itself, which assumes new and recurring institutional obligations:

i. registering and maintaining a national register of authorized persons and expenditure committees;

ii. receiving, scrutinizing and where necessary, investigating quarterly and final expenditure reports from every candidate and political party contesting six categories of election across 1,450 wards, 290 constituencies and 47 counties;

iii. adjudicating campaign finance complaints within the compressed timelines set by **Part VII** of the Regulations; and

iv. publishing, on an ongoing basis, the list of contributors and the amounts they have given, consistent with the principles of the data protection legislation.

3.4.2 Indirect (Incidental) Impacts

Indirect effects extend to other public institutions with adjacent mandates:

i. the Ethics and Anti-Corruption Commission and the Office of the Director of Public Prosecutions may see an increase in referrals arising from the Commission's investigative and enforcement function;

ii. the Office of the Registrar of Political Parties will need to reconcile its own party-registration and party-funding oversight with the Commission's expenditure reporting; and

iii. the National Treasury will receive and account for anonymous contributions surrendered under the Regulations.

Each of these institutions will need to coordinate with the Commission on referrals, prosecutions and the handling of surplus and unclaimed funds, a coordination burden that is manageable but real, and that the Commission proposes to address through the memoranda of understanding already in place with several of these bodies.

3.5 Effects on the Private Sector

3.5.1 Direct Impacts

For candidates, political parties, referendum committees and supporting organizations, the direct effects are immediate and quantifiable:

i. every candidate and party must appoint and register authorized persons before undertaking any campaign financing activity,

ii. open and maintain a dedicated campaign bank account,

iii. issue and retain receipts for contributions exceeding twenty thousand shillings,

iv. keep contemporaneous records of harambee proceeds and proxy contributions,

v. file quarterly and final expenditure reports, and, where expenditure exceeds five million shillings, procure an independent audit.

None of these obligations previously existed in enforced form, so for most candidates and parties this represents a genuine step-change in compliance burden, measured in the professional fees for bookkeepers and auditors, the administrative time of authorized persons, and the opportunity cost of funds that must now be channeled through formal, traceable accounts rather than informal networks.

3.5.2 Indirect (Incidental) Impacts

The indirect effects are, on balance, favorable to the sector as a whole. They include—

i. A level playing field reduces the structural advantage historically enjoyed by incumbents and by wealthy or state-adjacent candidates, and

ii. predictable, published limits allow smaller parties and independent candidates to plan a viable campaign budget with a degree of certainty that has, until now, been entirely absent from Kenyan electoral practice.

A secondary, longer-term indirect effect is the professionalization of campaign management by the emergence of a cadre of authorized persons, bookkeepers and compliance officers serving candidates and parties which is itself a modest but genuine contribution to formal-sector employment around each election cycle.

3.6 Effects on Fundamental Rights and Freedoms

A regime that prescribes limits on election campaign expenditure necessarily implicates the freedom of expression and the political rights guaranteed by Articles 33 and 38 of the Constitution, and the Commission has, throughout the development of the proposed framework, been cognizant of the need to ensure that any limitation arising from the regulation o campaign expenditure remains proportionate reasonable and justifiable in an open and democratic society and does not operate as to unduly restrict legitimate political expression or participation.

The limits are not designed to suppress political speech but rather are designed to ensure that the volume of political speech any candidate can purchase is not simply a function of personal or institutional wealth. It should be noted that the limits are directed not at the content or substance of political expression, but at the disproportionate influence that financial resources may exert on the electoral process. In this regard, the regulatory objective is to ensure that the reach and visibility of political communication during an election are not determined solely by the financial capacity of an individual candidate, political party or other electoral contestant.

The Commission considers the criteria adopted to be the most appropriate because it takes into account both population and land area while maintaining a minimum cost for electoral units with smaller populations. This ensures that candidates in such electoral units are not subject to unrealistically low spending limits. Properly calibrated spending limits therefore promote the equal enjoyment of political rights under Article 38(1) and the right to free and fair elections under Article 81(e) by preventing wealthier candidates and political parties from using excessive financial resources to overwhelm the political participation and expression of others.

The transparency obligations in the Regulations similarly advance, rather than derogate from, the right of access to information under Article 35, by making it possible for voters, the media and oversight bodies to know who is funding whom.

PART 4: REGULATORY AND NON-REGULATORY OPTIONS

4.1 Option 1 – Maintaining the Status Quo

The first option is to make no new instrument and allow the ECF Act to continue in its current, substantially unenforceable state, relying on the general disclosure obligations in Section 16 of the Act and on ad hoc enforcement by the Commission. This option was rejected. It is not, in truth, available to the Commission as a matter of law, given the High Court's explicit direction in the *Katiba Institute case* and even setting the litigation aside, a decade of practical experience across three general elections demonstrates that the status quo produces exactly. It produces harms, opaque, unregulated and potentially illicit campaign spending that Article 88(4)(i) was designed to prevent.

4.2 Option 2 – Publication of the Regulations and the Limits (Preferred Option)

The second option, and the one the Commission recommends, is to finalize and publish both instruments together. This option operationalizes the ECF Act as Parliament intended, gives concrete effect to the constitutional value of equity in Article 10, and complies with the High Court's directions in *Katiba Institute case*. The Commission considers simultaneous publication of the two instruments preferable to a staggered approach, since the Regulations and the Notice are functionally interdependent. Publishing the Instruments apart risks a period during which limits exist without an enforcement architecture, or an enforcement architecture exists without substantive limits to enforce.

4.3 Other Practical Options

The Commission also considered a range of non-regulatory alternatives, consistent with the range the SIA itself expects a regulation-making authority to canvass: voluntary self-regulation by political parties through codes of conduct; co-regulation, in which the Commission would set broad principles and leave parties to develop detailed compliance mechanisms; market-based or incentive structures, such as differential public funding tied to voluntary spending caps; and pure information and education campaigns encouraging transparency without binding limits. Each of these was found wanting, for the reasons developed further at Part 6 below.

4.4 Comparative Studies:

4.4.1. South Africa

South Africa's Political Party Funding Act, 2018 takes a disclosure-first approach, focusing chiefly on the transparency of donations to a Represented Political Party Fund and a Multi-Party Democracy Fund, without imposing hard expenditure ceilings on individual candidates; this

reflects South Africa's constitutional emphasis on proportional representation and party-list contests rather than the constituency-based, candidate-centred contests that dominate the Kenyan ballot.

4.4.2. Nigeria

Nigeria's Electoral Act,2022, by contrast, imposes hard expenditure ceilings that vary by the office contested, broadly comparable in structure to the approach the Commission has adopted here, although Nigeria's ceilings are fixed as flat national sums rather than being calibrated to the population and geographic size of each constituency, a design choice that has attracted criticism in Nigerian commentary for treating a densely populated Lagos federal constituency the same as a vast, sparsely populated northern one.

4.4.3. Canada

Canada has a highly institutionalized campaign-finance framework administered by Elections Canada. It regulates political contributions and campaign expenditure, imposes spending limits, and requires candidates and political parties to maintain financial records and submit detailed financial returns. The framework also provides for auditing, verification and public disclosure of financial information. The Canadian model demonstrates the importance of strong reporting, auditing and compliance mechanisms in ensuring effective implementation of campaign-finance rules.

4.4.4. United Kingdom

In the United Kingdom, campaign financing is regulated through statutory controls on political parties and candidates, with the Electoral Commission providing oversight. The framework regulates permissible donations, campaign expenditure and financial reporting, with different spending limits applying to candidates and political parties depending on the type of election. Candidates and parties are required to account for and report their expenditure, while breaches may attract civil or criminal sanctions. The UK model demonstrates the importance of differentiated spending limits, transparent financial reporting and effective enforcement mechanisms.

The Kenyan model, calibrating limits to the specific demographic and geographic profile of each of 1,450 county assembly wards, 290 constituencies and 47 counties, is in this respect considerably more granular than either comparator and in the Commission's assessment, more equitable, precisely because it avoids imposing a single national ceiling that would be

simultaneously too generous for a small urban ward and punitively low for a vast, sparsely populated constituency.

The aforementioned countries nonetheless, confirm the wider global consensus that the choice facing a regulator is not whether to intervene, but how, either, through disclosure, through hard ceilings, or through some hybrid of the two. The Kenyan framework, combining published ceilings with mandatory disclosure of contributors, represents a considered hybrid drawing on the strengths of comparators models.

Critical publications were consulted on the established and emerging practices across other democracies in campaign financing regulation.

These were:

a) International Institute for Democracy and Electoral Assistance, Political Finance Regulations Around the World: An Overview of the International IDEA Database, 2012

b) Elin Falgueraet al, Funding of Political Parties and Election Campaigns: A Handbook on Political Finance, International Institute for Democracy and Electoral Assistance, 2014.

c) International Institute for Democracy and Electoral Assistance "Combatting Corruption in Political Finance: Global Trends, Challenges and Solutions"

d) References were also made to case law from the United States of America around various aspects of election campaign financing for vital lessons.

PART 5: COST-BENEFIT ANALYSIS

5.1 Benefits, Costs and Net Impact

The principal costs of the proposed instruments fall into three categories. First, compliance costs borne by candidates, parties and referendum committees such as bookkeeping, audit fees above the seven hundred- and fifty-thousand-shilling threshold, and the administrative time of authorized persons, which the Commission estimates, based on the costing exercise at Part 3.3, to be a modest fraction of the spending limits themselves and therefore proportionate.

Second, institutional costs borne by the Commission in building and staffing the monitoring, reporting and dispute resolution architecture the Regulations require, including the electronic systems for record-keeping contemplated by Regulation 40.

Third, there is the cost to candidates who, in the absence of spending limits, would have chosen to spend more than the prescribed amount. In the Commission's view, this is an intended consequence of the Constitution. The Constitution and statutory provisions impose these limits to promote fairness by ensuring that candidates with greater financial resources do not gain an undue advantage over those with fewer resources.

Ranged against these costs are benefits that are qualitative but nonetheless substantial and, in the Commission's assessment, considerably outweigh them—

i. The chief benefit is the prevention of illicit money, proceeds of corruption or organized crime, from entering the political system through unregulated campaign spending, a benefit whose value is best measured not in shillings but in the integrity of the resulting government.

ii. A second benefit is the levelling of the electoral playing field, which expands the pool of viable candidates beyond those with access to significant personal or party wealth, and which the comparative literature (Ohman; the Westminster Foundation for Democracy and Netherlands Institute for Multiparty Democracy study on the cost of politics in Kenya) associates with improved representativeness of elected office over time.

iii. A third benefit is enhanced public trust in the electoral process itself, flowing from the transparency the Regulations mandate in relation to contributors and expenditure.

Table 1: Costs and Benefits arising from the Election Campaign Financing and Spending and Contribution limits

S.No	Stakeholder	Principal Costs	Principal Benefits	Net Impact
1.	Candidates & political parties	Compliance, bookkeeping and audit costs; opportunity cost of the ceiling itself	Predictable, level playing field, protection from being out-spent by better-resourced rivals	Positive, particularly for candidates of modest means
2.	IEBC	Institutional build-out in registration, monitoring, audit and dispute-resolution capacity	Fulfilment of constitutional mandate, compliance with the High Court Orders *Katiba Institute case*	Positive
3.	Voters and the General public	None directly borne	Greater transparency; reduced risk of state capture through illicit campaign finance	Positive
4.	Allied oversight institutions (EACC ODPP, ORPP, National Treasury)	Modest coordination and referral-handling costs	Better-quality referrals; stronger evidentiary trail for enforcement	Positive

5.2 Return on Investment

Measured against the institutional investment the Commission must make to operationalize the two instruments, the return which is a campaign finance regime that is, for the first time since

2013, both substantively defined and practically enforceable is, in the Commission's considered view, disproportionately favorable.

The investment is a one-off and recurring administrative cost. The return is a structural change in how Kenyan elections are financed, contested and won, with knock-on benefits for public confidence in electoral outcomes.

Secondly, it is for the fiscal integrity of the political system, and for compliance with Kenya's constitutional and international obligations on free and fair elections. Put differently, the cost of implementing the regime is known, predictable, and can be planned for. By contrast, the cost of failing to act is uncertain, potentially far greater, and ultimately undermines the integrity of future elections.

PART 6: REASONS WHY OTHER NON-REGULATORY OPTIONS ARE NOT APPROPRIATE

6.1 Option 1: Maintaining the Status Quo

Continuing without implementing Regulations or published limits is not lawfully available to the Commission following the High Court's direction in the *Katiba Institute case*, and a decade of experience has demonstrated that it produces exactly the enforcement vacuum the two instruments are designed to close.

The status quo is, moreover, self-defeating on its own terms as Sections 12, 18 and 19 of the ECF Act remain in force whether or not limits are published, so a candidate operating under the status quo is technically in a state of continuing, unremedied statutory default rather than in a lawfully deregulated environment.

6.2 Other Practical Options: Alternatives to Regulation

Self-regulation and co-regulation were, in substance, the position obtaining between 2013 and 2022 and did not produce meaningful compliance. Neither of the model supplies the independent verification, audit and sanction mechanisms that only a regulator with statutory enforcement powers can provide. They both depend on a degree of institutional trust and internal enforcement capacity within political parties that does not, at present, exist in the Kenyan context.

Incentive-based or market-based structures, such as differential public funding tied to voluntary spending caps, require a public funding architecture considerably more developed than Kenya's current Political Parties Fund allows, and could not credibly be operationalized in time for the 2027 General Election.

A purely educational approach addresses awareness of the problem, not the absence of binding obligations, and cannot alone close an enforcement gap that the courts have found to be a matter of unlawful default rather than mere ignorance.

Taken together, none of the non-regulatory alternatives is capable, within the available timeframe and institutional capacity, of achieving the objectives set out at Part 3.1 as reliably or as swiftly as the two instruments now proposed.

PART 7: PUBLIC PARTICIPATION AND STAKEHOLDERS' ENGAGEMENT

7.1 Legal Requirements Relating to Public Participation and Consultation

Article 10 of the Constitution of Kenya enumerates the National values and principles of governance that informs public service including the law-making processes. It mandates any public institution making any law to undertake public participation before enacting and implementing any public policy decision or law.

Article 232 of the Constitution of Kenya provides the values and principles of public service. It requires the involvement of the people in the process of policymaking and participation, transparency and provision to the public of timely and accurate information.

The courts of law have in several instances provided for the modes of ensuring that public participation is effective and meaningful. For instance, in, ***Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others [2017] eKLR*** (para 164 –165) the court of appeal stated.

> ***"…The mode, degree, scope and extent of public participation is to be determined on a case-by-case basis.***
>
> ***What is critical is a reasonable notice and reasonable opportunity for public participation. In determining what reasonable notice is, a realistic time frame for public participation should be given. Also, the purposes and level of public participation should be indicated. Reasonableness is also to be determined from the nature and importance of legislation or decision to be made, and the intensity of the impact of the legislation or decision on the public. The length of consultation during public participation should be given and the issues for consultation. Mechanisms to enable the widest reach to members of the public should be put in place; and if the matter is urgent the urgency should be explained…"***

Further, in ***Poverty Alleviation Network & Others v President of the Republic of South Africa & 19 others, CCT 86/08 [2010] ZACC 5***, public participation was emphasized in the following terms;

> ***"…engagement with the public is essential. Public participation informs the public of what is to be expected. It allows the community to express concerns, fears and even to make demands. In any democratic state, participation is integral to its legitimacy.***

When a decision is made without consulting the public the result can never be an informed decision…"

In the totality of all above pronouncements, the following points are important in determining the effective threshold of public participation:

i. Public participation was never intended to be a superfluous or ornamental suggestion; rather, it should be implemented and enforced to have a practical substantive value.

ii. Public participation should never be a mere cosmetic venture, formality, and public relations relation exercise, rather it ought to be conducted in a manner that informs the public of what is at stake, and how it will impact society and the end document should mirror and reflect the spirit of the public in concern; and

iii. Public participation should never be equated to mere consultations. The product of legislation ought to be a true reflection of public participation so that the end product bears the seal of approval by the public.

With regard to the subsidiary legislation making process, the Statutory Instruments Act, CAP 2A requires that the regulation-making authority to make consultations before making the statutory instrument in question and in particular where the proposed Instruments are likely to have a direct or a substantial indirect effect on certain section of the society.

The Act provides that in determining whether any consultation that was undertaken is appropriate, the regulation-making authority shall have regard to all relevant matters, including the extent to which the consultation:

a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and
b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Statutory Instruments Act further requires that the persons to be consulted should either directly or by advertisement through representative organizations be invited to make submissions by a specified date, which should not be less than 14 days or be invited to participate in public hearings concerning the proposed instrument.

7.2 The Process of Public Consultation Undertaken by the Commission

The Commission's consultative process operated at several levels. Internally, the Regulations and the proposed limits were deliberated at Commission Management, Committee and full Commission level, involving a comprehensive review of the ECF Act and related legislation to ensure alignment. An internal Technical Committee was constituted to interrogate the statutory framework governing contribution and spending limits and, with support from development partners, convened a series of working sessions notwithstanding resource constraints.

The costing data underpinning the proposed spending limits was informed not only by the current stakeholder consultation process, but also by information obtained from the counties and cost data gathered from political parties during earlier stakeholder engagements undertaken in the lead-up to the 2017 and 2022 General Elections. Accordingly, the proposed limits are grounded in a broader evidentiary base reflecting historical campaign expenditure patterns, prevailing costs and information obtained from relevant electoral stakeholders, rather than being derived solely from the submissions received during the current consultation process. This approach is consistent with the statutory framework, which contemplates the consideration of relevant factors in determining spending limits.

In parallel, the Commission issued a public notice on 6th July 2026 in the Nation and Standard Newspapers inviting Kenyans to submit memoranda on the draft Regulations and the proposed contribution, spending and authorized expenditure limits, with submissions accepted until 15th July 2026, consistent with the Section 8 SIA duty to publicize a proposed instrument in a manner reasonably calculated to reach those it will affect.

The Commission received and assessed comments and memoranda submitted by different stakeholders. Further, it conducted a series of public participation forums to engage key stakeholders on the Draft Regulations and Limits before their finalization and gazettement. These forums were designed to ensure transparency, inclusivity and stakeholder engagement, allowing diverse industry players to provide their feedback, recommendations and concerns regarding the proposed regulations.

To maximize outreach and inclusivity, the Commission adopted a multi-faceted approach to notify the public about the participation forums. Invitations were sent out through:

i. Publications in the Nation and Standard Newspapers, which have a countrywide circulation;

ii. Notices on the Commission website and Social Media platforms;

iii. Letters to all ninety-eight (98) registered political parties vide their official email addresses requesting them to submit their comments and memoranda on the Draft Regulations and Spending and Contribution limits;

iv. Letters to all registered political parties inviting each party to nominate one representative to participate in the public hearing forum convened under the auspices of the Political Parties Liaison Committee;

v. Invitations to public hearing forums in 10 clustered Counties fora

vi. Letters to state actors, civil society organizations, inter-religious council and media inviting them to breakfast national stakeholder engagement on the two Instruments.

This extensive outreach strategy successfully attracted participation from a broad spectrum of stakeholders, including:

i. Electorates in the Counties;
ii. 2027 General Election Aspirants;
iii. University Students;
iv. Media personnel;
v. Local civil society Organizations;
vi. Youth groups and Organizations;
vii. Village Elders;
viii. PWDs and PWDs local leaders;
ix. Researchers and academics;
x. County Government officials;
xi. National Government Administrative Officers;
xii. Religious leaders;
xiii. Political Parties representatives;
xiv. Representatives of elected Members of Parliament/County Assemblies;
xv. Local opinion leaders;
xvi. Mobilizers
xvii. State actors
xviii. Local political leaders, and
xix. The General public.

These forums provided a platform for direct engagement, allowing the Commission to receive, document and review stakeholder input, concerns, and recommendations on the proposed Regulations and Limits.

7.3 Stakeholder Forums

A total of 14 public participation forums and consultative meetings were held across various counties, attracting a total of 630 participants. The details of these engagements are outlined in the tables below:

Consultative Meetings				
S.No	**Date**	**Venue**	**Participants**	**Number**
1.	24th July 2026	**Maanzoni Hotel Machakos**	Political Parties	98
2.	30th July 2026	**Pullman Hotel Upper Hill, Nairobi**	State actors, CSOs, Media, Inter-religious council	114
3.	31st July 2026	**Microsoft Teams**	IEBC staff	358
4.	5th July 2026	**Argyle Grand Hotel**	JLAC – National Assembly	30
5.	6th July 2026	**Argyle Grand Hotel**	Committee on Delegated Legislation – National Assembly	30
Total				**630**

Public Participation cluster hearings				
S.No	**Date**	**Cluster**	**Description**	**No of Participants**
1	28th July 2026	**Nairobi**	Nairobi city Kajiado Kiambu	84
2	28th July 2026	**Kakamega**	Kakamega Vihiga Busia Bungoma	120
3	27th July 2026	**Kisumu**	Kisumu Kisii Nyamira Migori Homabay Siaya	75

4	27th July 2026	**Mombasa**	Mombasa Kwale Kilifi Lamu Tana River Taita Taveta	115
5	27th July 2026	**Garissa**	Garissa Wajir Mandera	71
6	28th July 2026	**Nyeri**	Nyeri Nyandarua Kirinyaga Murang'a	157
7	28th July 2026	**Machakos**	Machakos Makueni Kitui	220
8	27th July 2026	**Eldoret**	Uasin Gishu Elgeyo-Marakwet Nandi Turkana West Pokot Trans Nzoia	100
9	28th July 2026	**Nakuru**	Nakuru Samburu Baringo Laikipia Narok Kericho Bomet	130
10	28th July 2026	**Isiolo**	Isiolo Embu	85

			Meru Tharaka-Nithi Marsabit	
Totals				**1,157**

The engagement sessions facilitated valuable discussions, leading to submissions of comments, memoranda, and recommendations from stakeholders.

7.4 Analysis and Feedback from Stakeholders

The stakeholder forums generated substantive feedback on, among other matters, the treatment of harambee contributions, the adequacy of the audit threshold, the practicality of the fourteen-day surrender period for anonymous contributions, and the calibration of the population and land-area weighting in the spending-limit formula. That feedback has informed the final drafting of both instruments, and a fuller record of the submissions received and the Commission's response to them are annexed to this Report which is consistent with the Commission's obligation under section 7(6) of the SIA to ensure that all comments and submissions are considered before the statutory instrument is made and made available to the Committee on Delegated Legislation.

Table 2: Highlights of the Analysis of the Public Participation and Stakeholder Engagement

S.No	Thematic area	Comments/recommendations
1.	**Legal and Regulatory Framework**	Stakeholders sought clarification on the legal basis and scope of the Draft Regulations, including whether previously rejected provisions had been revised, the extent to which the Draft Regulations give effect to the Election Campaign Financing Act, the applicable parliamentary approval process, and the legal status of campaign financing activities undertaken prior to the commencement of the Regulations.
2.	**Commencement and Duration of Campaign Finance Regulation**	Several participants sought clarification on the commencement of campaign finance regulation and the period during which campaign contributions and expenditure would be subject to regulation. It was proposed that the regulated expenditure period should cover the entire electoral cycle, so as to capture early

		campaign activities and long-term fundraising undertaken well in advance of elections.
3.	**Sources of Campaign Funds, Transparency and Accountability**	Participants sought clarification on permissible sources of campaign contributions, disclosure obligations and verification mechanisms. Concerns were raised regarding the use of illicit funds, proxy donors, public resources, and funding by State actors. Participants emphasized the need for more transparency, accountability and effective mechanisms to identify the true source of campaign funds.
4.	**Campaign Expenditure and Spending Limits**	Stakeholders questioned the methodology used in determining campaign expenditure limits and sought clarification on what constitutes campaign expenditure. Participants observed that certain campaign costs, such as transport reimbursements and other incidental expenses, should be expressly provided for. Questions were also raised on whether the Regulations seek to regulate campaign funds or campaign activities, and whether expenditure limits may disadvantage candidates with limited financial resources.
5.	**Which Population data was used in the formula**	Participants questioned the population data that the Commission used in coming up with the formula.
6.	**Monitoring, Enforcement and Compliance**	Stakeholders raised concerns regarding the implementation and enforcement of the Draft Regulations, including monitoring compliance, reporting mechanisms, the adequacy of penalties, and institutional coordination. They recommended stronger inter-agency collaboration, anonymous reporting and whistle-blower protection, and proposed an independent enforcement unit under the IEBC.
7.	**Political Violence, Voter Bribery and**	Participants raised concerns regarding voter bribery, financing of criminal groups ("goons"), misuse of State resources during campaigns and the use of public funds to support ruling party

	Misuse of Public Resources	candidates. Some participants questioned how such conduct would be regulated and whether stronger safeguards could be introduced to promote a level playing field.
8.	**Institutional Independence and Capacity of the Commission**	Stakeholders questioned the Commission's independence where the Regulations are subject to parliamentary approval and where enforcement depends on other State agencies. Recommendations were made to strengthen the Commission's institutional independence, enhance its financial allocation and establish more effective enforcement mechanisms.
9.	**Campaign Finance Reporting and Administrative Requirements**	Participants sought clarification on the reporting obligations for campaign contributions, pledges and expenditure. Concerns were expressed regarding the complexity of the prescribed reporting forms, documentation requirements, including the use of KRA PINs, and the Commission's capacity to effectively monitor compliance.
10.	**Inclusivity, Accessibility and Public Participation**	Stakeholders emphasized the need to strengthen participation by persons with disabilities through improved accessibility measures, better disability data and appropriate facilitation. Participants also raised concerns about ensuring that marginalized groups are not disadvantaged by the regulatory framework and called for continued stakeholder engagement and civic education.
11.	**Emerging Issues and Policy Recommendations**	Participants recommended that the Regulations adequately address digital campaigning, fundraising activities such as harambees, data protection, community-based monitoring and inter-agency cooperation. They further proposed that civic and election education be integrated into the education system and that continuous public awareness programmes be undertaken to improve understanding and compliance with the campaign finance framework.

PART 8: ENFORCEMENT AND COMPLIANCE

Enforcement of both Instruments rests on a layered architecture. At the first tier, the Regulations require self-reporting in that the authorized persons must file preliminary and final expenditure reports in Form ECF 6, supported by bank statements and, above the five-million-shilling threshold, an independent auditor's report.

At the second tier, the Commission exercises an active scrutiny function under Regulation 22 and is empowered to seek further information, direct rectification of errors, order further audit, or launch an investigation where it considers a breach may have occurred.

At the third tier, a candidate who fails to comply may be required to show cause why the sanctions under Section 23 of the ECF Act should not be imposed, with a right to make representations within twenty days. The Commission's dispute resolution committee, operating under Part VII of the Regulations, is empowered to determine complaints of breach lodged by any person, on an expedited and proportionate basis, within a compressed timeline calculated in hours rather than weeks.

Breach of the spending limits themselves is a offence under Section 12(7) of the ECF Act, carrying the ordinary consequence of referral to the Office of the Director of Public Prosecutions where the Commission's own administrative sanctions are insufficient to the gravity of the conduct.

This layered structure from self-reporting to active administrative scrutiny, expedited internal adjudication and, where warranted, criminal referral is designed to make the limits something more than an aspirational ceiling, giving effect to the enforceability that the High Court in *Katiba Institute case* found conspicuously absent from the Commission's practice between 2013 and 2021.

PART 9: CONCLUSION AND RECOMMENDATIONS

On the totality of the assessment set out above, the Commission is satisfied that the Election Campaign Financing Regulations, 2026 and the accompanying Notice of contribution, spending and authorized expenditure limits for the 2027 General Election are necessary, proportionate, evidence-based and compliant with the requirements of Articles 10, 88(4)(i) and 232 of the Constitution, Sections 12, 18, 19 and 29 of the Election Campaign Financing Act, and Sections 5 to 8 of the Statutory Instruments Act, Cap 2A.

The status quo is neither lawful nor defensible on the merits; the non-regulatory alternatives canvassed at Parts 4 and 6 are inadequate to the scale of the problem; and the costs the two instruments impose are proportionate to, and substantially outweighed by, the benefits they are designed to secure.

The Commission accordingly recommends that both instruments proceed to publication in the Gazette, tabling before Parliament pursuant to Section 11 of the Statutory Instruments Act, Cap 2A and operationalization ahead of the 2027 General Election.

PART 10: ANNEXURES

1. The Draft Election Campaign Financing Regulations, 2026
2. The Draft Election Campaign Financing (Contributions, Spending Limits and Authorized Expenditures) Notice for the 2027 General Election
3. Matrices on the analysis and feedback from Stakeholders