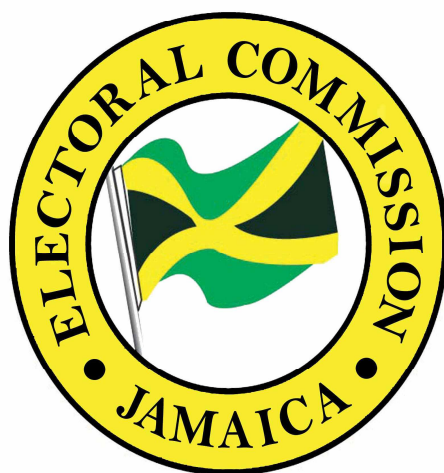


# **ELECTORAL COMMISSION OF JAMAICA**

## **REPORT TO PARLIAMENT**



### **POLITICAL PARTY REGISTRATION AND FINANCING**

**JULY, 2010**

## **INTRODUCTION**

Currently there is no requirement for political parties in Jamaica to be registered or for their financial arrangements to be regulated. Given the vital and important role that political parties play in the life of the country this oversight is no longer tenable. This Report to Parliament on Political Party Registration and Financing seeks to recommend appropriate legislation for the registration of political parties and for regulating their financing. The Report comes after extensive consultation over the last six years.

In November 2003, following consultation and discussion with the leadership of the political parties recognized by the Electoral Advisory Committee (EAC) and Citizens Action for Free and Fair Elections (CAFFE), the EAC established a six item agenda to guide its actions in the continued development of the electoral system in Jamaica. Political Party and Campaign Financing was one of the six items on the agenda.

Pursuant to this commitment the EAC in July 2006 held a two-day Conference on the subject of Political Parties and Campaign Financing. Invited representatives to this Conference included:

1. The Jamaica Labour Party
2. The Peoples National Party
3. The National Democratic Movement
4. Citizens Action for Free and Fair Elections, (CAFFE)
5. The Friedrich Ebert Stiftung Foundation, (FES)
6. The International Federation of Electoral System, (IFES)
7. Elections Canada
8. The Carter Centre

Each organisation invited was asked to present a paper setting out their views and positions on Political Party and Campaign Financing. Professor Dr. Wolfgang Zeh, former President of the German Bundestag was the keynote speaker. The Conference concluded with principles of agreement which were submitted to the political parties for confirmation and subsequently accepted by the EAC.

Using the principles of agreement as the base, the Electoral Commission of Jamaica (ECJ) drafted a Report to Parliament on the subject of Political Party and Campaign Financing. Consistent with its practice of consultation and consensus as the cornerstone of compliance, the ECJ was in the final stages of seeking agreement on the matter of limits to campaign financing and disclosure of contributions when the 2007 General Elections were announced and Parliament was dissolved.

In January 2008, the ECJ after consultation with the leadership of the political parties again developed a six-item agenda for the continued development and enhancement of the electoral system in Jamaica. Political Party and Campaign Financing became the first item on that Agenda.

Pursuant to this commitment, and taking account of sticking points in the previous dialogue, the ECJ did the following:

1. Requested and received technical advice from experts from IFES on best practices and workable approaches adopted internationally on the subjects of political party and campaign financing.
2. Commissioned a poll to canvass public opinion.
3. Accepted the offer of FES to hold town meetings across the country at which opinion leaders could posit their views and at which these views could be fully discussed. Town Meetings were held in Port Antonio, Mandeville, Montego Bay and Kingston.
4. Had consultation with the leadership of the political parties, through the Nominated Members on the Commission.

## **THE TWO STAGE APPROACH**

Through the process of consultation, the ECJ has arrived at consensus on the subject of the registration and financing of political parties. However, so far it has not reached the same position on campaign financing. Currently, there is no legislation on the subject of political party registration or financing. However, Sections 53 to 61 of the Representation of the People Act (ROPA) address the issue of Campaign Financing. While registration and financing of political parties involves fresh legislation, campaign financing requires the amendment of existing legislation.

The Commission has, therefore, decided to adopt a two-stage approach. That is, of submitting now to Parliament this Report on political party registration and financing to be followed at a later date with the Report to amend Sections 53 to 61 of the ROPA dealing with Campaign Financing. The decision of the Commission is based on three considerations. First, given that six years have elapsed since it was decided to address this issue it is imperative for some action to be taken. To delay any action until all matters are agreed would unnecessarily postpone actions on those matters on which all are agreed. Second, the matters that have been agreed are substantial and represent meaningful and measureable advance in the continued development of the electoral system. Third, passage of legislation dealing with the issue of the registration and financing of political parties will lay the groundwork for amending the existing legislation on Campaign Financing, which now only applies to Candidates.

## **RECOMMENDATIONS**

The Electoral Commission of Jamaica proposes that Parliament amend the Representation of the People Act to include the registration and financing of political parties. The proposals set out concern the subjects of the registration of political parties and the funding of political parties that qualify for state funding. All political parties that intend to contest the polls in Parliamentary elections, Parish Council elections, KSAC elections, municipal elections and referenda must be registered with the Commission. All political parties that meet the criteria qualifying them for state funding must have their finances monitored and regulated by the Commission.

## **REGISTRATION OF POLITICAL PARTIES**

It is the view of the Electoral Commission that all political parties must be registered with the Commission.

Accordingly, a nomination under the Representation of the People Act, the Kingston and St. Andrew Corporation Act or the Parish Councils Act, would be permitted only in relation to two categories of persons:

1. A person who is a candidate for a party that is registered with the Commission.
2. A person who intends to contest the polls as an independent candidate and is described as such on his nomination paper.

The Electoral Commission shall be responsible for maintaining the Register of Political Parties.

## **PROCEDURE FOR REGISTRATION**

Application for registration must be made on the form prescribed and provided by the Electoral Commission of Jamaica. This form will require the political party applying for registration to provide the following:

- a. The full name of the party and the names, addresses and telephone numbers of at least five hundred members in good financial standing.
- b. The short form of the party name or abbreviation, if any.
- c. The party logo, if any.
- d. The names and addresses of the leader or president, the general secretary, the treasurer and other persons designated as officers of the party.
- e. The address of the office of the party where the records of the party are maintained and to which communications may be addressed.
- f. A processing fee as prescribed.

The Commission shall have the power to refuse an application for registration by a political party if:

- a. The proposed name of the party is the same as, or similar to, that of a party already registered.
- b. The name or short name is obscene or offensive.
- c. The name of the party includes words, the publication of which would be likely to constitute an offence.
- d. Any of the information provided by the party is false.
- e. Any objection to the registration is found to be valid.

## **APPLICATION FOR STATE FUNDING**

A political party which is duly registered with the Commission may apply to the Commission for state funding by application made in writing which should include the following:

- a. The name and address of the person or firm that is appointed auditor of the party.
- b. A statement of the auditor in writing confirming that he/she or the firm has accepted the appointment as auditor of the party.
- c. The names, addresses and signatures of at least five hundred members of the party who are in good financial standing.
- d. The name, designation and signature of the officer of the party making the application on behalf of the party.
- e. A written constitution setting out the following:
  - (i) The aims and objectives of the party. A principal objective must be to contest elections.
  - (ii) A description and sample of the party emblem (if any).
  - (iii) The qualifications for membership of the party.
  - (iv) Provisions for an annual election of officers at a meeting called for that purpose.
  - (v) The titles of all officers and delegates, qualification of officers, and the length of their terms of office.
  - (vi) A statement of the category of persons entitled to vote in elections for officers.
  - (vii) The procedures for selection where applicable of caretakers/chairpersons of constituencies and electoral divisions, candidates for constituencies and electoral divisions, and electoral liaison office holders representing all constituencies.
  - (viii) The procedures for selection of delegates for party conferences.
  - (ix) Procedures and mechanisms for resolution of disputes and conflicts.
  - (x) The arrangements for regulating the financial affairs of the party.

- f) A declaration that the party intends to contest at least one election.

All information provided on an application form must be current. Any changes must be reported to the Commission within thirty days of the change and must be done on the form prescribed to record such changes.

## **QUALIFICATION FOR STATE FUNDING**

A political party may apply to the Electoral Commission for state funding if it satisfies the requirements for appointment of scrutineers under Section 12 of the Representation of the People Act (ROPA).

State funding shall not apply to any five or more members of Parliament who contested as independent candidates at a general election but subsequently formed a political party.

The Commission shall not be obliged to accept any application for registration of any political party, whether they qualify for state funding or not, during the following periods:

1. From the day when Parliament is prorogued for the holding of General Elections until the day after a new Parliament is convened.
2. From the day of the announcement of a by-election until the day after the Member of Parliament or Councillor is declared.
3. From the day of announcement of local government elections until the day after the councillors elected are sworn into office.

Any application made within any of the periods set out above shall be deemed to be invalid.

Within five working days of receipt of any application for registration by a political party falling within any eligible period, the Commission shall publish the name of the party and the particulars of the application in the Gazette and in at least one daily newspaper published in Jamaica. The publication shall include an invitation from any one who wishes to object to the registration of the political party. A period of thirty days shall be allowed for the receipt of any objection starting from the date of publication in the Gazette or newspaper, whichever is later.

Any objection must be made in writing and must give the grounds for the objection. The objection shall include the name and address of the person making the objection and shall be signed by that person. The Commission shall be obliged to send a copy of any objection received to the political party and by covering letter give that party fourteen days in which to reply to the objection.

The Commission shall approve an application for registration within fourteen days after the date given for objections to be made, if all requirements are met by the applicant. The Commission shall afterwards issue a Certificate of Registration to the political party. Where registration is refused the Commission shall give reasons in writing for such refusal within fourteen days after the date given for objections to be made.

A political party that qualifies for state funding shall be entitled to receive the same provided that the party:

- a. adheres to the provisions of its constitution; and
- b. submits to the Commission, on the forms prescribed by the Commission, any changes made with respect to the information provided in its application for state funding; and
- c. has not provided any false or erroneous information to the Commission in any of the documents the party is required to submit annually to the Commission.
- d. meets the requirement of Section 12 of the Representation of the People Act.

In circumstances where a political party which is in receipt of state funding:

- a. has not held election of officers as prescribed by its constitution or
- b. does not present an annual budget and annual audited reports at its Annual General Meeting or
- c. includes false and erroneous information in documents submitted to the Commission,

the Commission shall have the power to suspend the payment of state funding to that party if within sixty days of being required by the Commission to correct the particular infraction or infractions the political party fails to do so. The Commission shall remove from the register of political parties any party that does not contest three consecutive national elections.



## **OBLIGATIONS OF REGISTERED POLITICAL PARTIES THAT QUALIFY FOR STATE FUNDING**

Every registered political party that qualifies for state funding shall–

1. Maintain and submit annually to the Commission, on the anniversary of its registration, a current list of:
  - a. All officers and members of the executive/standing committee executive or comparable body of the party. The Commission must be informed of any changes to this list.
  - b. Members of Parliament, councillors, candidates, caretakers/ chairpersons, and electoral liaison officers for all constituencies. The Commission must be informed of any changes and the dates of such changes.
2. Submit to the Commission the names of all party affiliates and a list of all persons who are officers of party affiliates and the rights and privileges enjoyed by such affiliates and their officers.
3. Submit an annual Budget to its members at the Annual General Meeting.
4. Treat all monies donated and/or contributed as Trust funds.
5. Submit to the Commission a consolidated statement of income and expenditure of the party and all affiliate bodies that the party funds.
6. Submit Audited Financial Accounts to the Annual General Meeting of the Party.

## **FINANCING OF POLITICAL PARTIES**

Political parties recognised by the Commission are to be financed through four sources:

1. Dues charged to their members.
2. Contributions from individuals and organisations and fund raising events.
3. Funds from the State.
4. Income earned from legal sources.

Persons who come together to form a political party must accept responsibility for the financial operations of that party. Dues charged to members are evidence of the discharge of this responsibility. There is no limit prescribed for the number of members that a political party may have, or for the dues to be paid by members since the members themselves will set the dues.

There are individuals and organisations that will contribute to the funding of political parties based on their agreement with the ideological principles of the party, the policies that they propose and personality and quality of the individuals proposed by the party to hold public office. The framework for funding of political parties must of necessity allow for funding to come from such sources. The danger to be avoided is that no single individual or organisation contributing to the funding of a political party should be able to contribute a sum that gives that individual or organisation sufficient voice and influence to disproportionately influence the decision-making of the party by virtue of the size of that contribution. Accordingly, the limit of the contribution of any individual or organisation to a political party should not exceed one fortieth of the total income of that party in any single year.

State funding for political parties is premised on the thesis that political parties in a small growing democracy perform important public services in representing general and specific interests of people. These demands extend beyond the resources available from membership dues and contributions from like-minded individuals and organisations. It is possible that in their desire to meet representational needs beyond their resources political parties may become vulnerable to funding coming from questionable sources. State funding is a justified and justifiable means of helping to offset this deficit between available resources and the demands and needs of representation. State funding for political parties should not exceed 40 per cent of the total income of a political party in any single year.

For each financial year the Commission shall recommend to Parliament through the Commission's budget the total amount to be allotted for the support of political parties that qualify for state funding. The Disclosure Committee of the Commission shall determine the amount to be included in the Commission's budget after consultation with the Nominated Commissioners. The amount approved by Parliament shall be divided equally among the parties qualified to receive state funding.

## **USE OF STATE FUNDING BY POLITICAL PARTIES**

The total state funds allocated to a political party that qualifies for state funding can only be applied to the financing of party headquarters and constituency operations as indicated below:

1. State Funding of Party Headquarters may only be used for the following purposes:
  - a. Light Bills
  - b. Water Bills
  - c. Telephone Bills
  - d. Stationery and materials.
  - e. Salaries of administrators
  
2. State funding of constituency operations may only be used for the following purposes:
  - a. Administration
  - b. Organization

Use of state funds provided for the above mentioned purposes shall be distinctly reflected in the bookkeeping of political parties.

While political parties may locate constituency offices anywhere within a constituency, where a political party has located, or proposes to locate, a constituency office within four hundred metres of a constituency office of the Commission, this must be disclosed to the Political Party Finance Disclosure Committee of the Electoral Commission of Jamaica and approved by that Committee.

## **FINANCIAL REPORTING REQUIREMENTS FOR POLITICAL PARTIES**

Registered political parties shall maintain financial records prepared in accordance with generally accepted accounting principles. The financial records of a registered political party shall be audited by an independent auditor approved by the Electoral Commission within ninety days after the close of the financial year of the party.

Every registered political party shall be required to –

1. Nominate an officer to be designated as the “Accountable Officer” who shall sign all returns and financial statements and be fully responsible for all of the party’s financial matters.
2. File an annual financial report with the Electoral Commission.
3. Notify the Commission of all banks in which the party’s accounts are held and the nature of such accounts.

Every account maintained by a registered political party shall, in whole or in part, bear the name of the party.

The officers of a registered political party shall be jointly and severally liable for any fines levied against the party for breaches of the financial requirements.

Political parties shall separate expenditure for their administration from expenditure for a political campaign.

## **DISCLOSURE BY POLITICAL PARTIES AND THEIR CONTRIBUTORS**

It is our view that all receipts and expenditures of Political Parties must be disclosed to the Electoral Commission. Further, individuals and organizations of any form contributing \$100,000 or more in cash or kind, or both, should independently disclose such contributions to the Electoral Commission. In this regard, the definition of individuals and organizations should take account of the existing definition of connected parties within the Banking Act and also of

affiliates within the Companies Act. Also, all contributions to political parties shall be tax deductible.

Statutory bodies within the Government shall be forbidden to make contributions of cash or kind to any political party. Further, the Commission shall have the power to require pertinent and relevant information from any Statutory Body that it has reason to suspect, either by its own intelligence or from complaints received, is covertly using its resources in support of any partisan political agenda at any time and especially in the year prior to a General Election.

The Electoral Commission is not recommending that all disclosure be made public unless after investigation a particular disclosure is found to be false or otherwise in breach of prescribed principles. Public announcements may also be made of any failure by a political party to file returns by the established deadlines.

Based on our recent history of political violence, victimization and the tendency to permanently brand persons as activists, it is our view that full disclosure should be made to a Committee of the Electoral Commission that is comprised of the Selected Commissioners to be called The Political Party Finance Disclosure Committee. The expenditure of political parties shall be summarized and published in the daily newspapers and on the Commission's website. The Chairman of the Electoral Commission shall be the Chairman of the Political Party Finance Disclosure Committee.

## **POLITICAL PARTY FINANCE DISCLOSURE COMMITTEE**

This Committee:

1. shall have the power to investigate the veracity of all applications and returns filed with the Electoral Commission;
2. shall have the power, through its Chairman, to summon before it the officials of any Registered Political Party;
3. shall be supported by a staff of forensic auditors for the purpose of carrying out any required investigations.

It shall be an offence for any political party or candidate of a political party to knowingly accept or use funds tainted by illegality, or to improperly use funds legally received. Where a complaint is made of tainted funds being received by a political party or candidate, or of the improper use of funds, the Political Party Finance Disclosure Committee shall have the authority to initiate an investigation. Upon the completion of such investigation the Chairman of the Electoral Commission may take such action as is permitted by this law or, if it shall appear that a criminal offence may have been committed, submit its findings to the Director of Public Prosecutions for further investigations to be undertaken in the matter.

### **POWER TO MAKE REGULATIONS**

It is recommended that the Electoral Commission of Jamaica with the approval of the appropriate Minister of Government be empowered to make regulations for the better carrying out of these provisions and, in particular, but without prejudice to the generality of the foregoing, for establishing procedures and prescribing fines and other sanctions for a breach of any of the provisions set out herein, or for prescribing anything required or permitted by these provisions to be prescribed.

## **Banking Act - Definition of connected person**

"Connected person" shall be construed in accordance with subsection (2);

(2) For the purposes of this Act the following persons shall be treated as being connected with a given bank ("B") and the bank with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist-

- (a) a holding company or subsidiary of B;
- (b) a subsidiary or a holding company of B;
- (c) a holding company of a subsidiary of B;
- (d) any company of which B has control;
- (e) any company of which B and persons connected with B together have control;
- (f) any company which together with B constitute a group;
- (g) an individual who is a director, manager or a person who has control of B or any partner or any immediate relative of such director, manager or person as aforesaid;
- (h) any company of which any of the persons referred to in paragraph (g) is a director, manager or has control.

## **Company Act - Definition of "affiliated"**

"Affiliated" in relation to two or more companies means that –

- (a) one of them is the subsidiary of the other;
- (b) each of them is a subsidiary of the same company;
- (c) each of them is controlled directly or indirectly by the same person; or
- (d) each of them by virtue of paragraph (a), (b) or (c) has a relationship with the same company at the same time;