

MONEY AND POLITICS: THE CASE OF PARTY NOMINATIONS IN KENYA.

INTRODUCTION

The impact of money on politics is unquestionable. The availability or otherwise of money has enormous influence on the conduct and nature of general elections in all democracies whether consolidated or transitional. It is now common knowledge that elections have become very costly not only to the governments that have to manage them, but also to the political parties and individual candidates. The high costs of elections have direct bearing on two ingredients of electoral democracy, namely, popular participation and fair contestation. Indeed, it has been argued that the large sums of money spent in elections have had tragic effects on democracy including deterring citizens from political participation.¹ There is also the danger that as elections become more expensive and campaign spending increases considerably, effective participation will be absent from the election campaigns. This is likely to lead to the poor losing confidence in the efficacy of their contribution to the democratic process.² Another effect is that when elections become expensive, fund raising becomes the pre-occupation of politicians thereby distracting them from public policy making and their role as trustees of public interest.

The role of money in politics is a major concern, for any nation that adheres to democratic tenets. This raises concern because wealth creates unequal opportunity for participation.³ The source of funding itself is also a vexing issue, given that corporate funding of the political process generally increases non-participation in self-governance; it can be said to have the perverse effect of minimising democracy and promoting the inevitable elite plutocracy. However although it is evident that the cost of elections is high there is lack of comprehensive data showing, on the one hand, what the political parties and their candidates spent in any given election, and on the other hand, what state organs responsible for the management of elections spend. Parties are reluctant to expose their expenditure data, whether this is for presidential, parliamentary or sub-territorial elections.

Since the process of electioneering is a multi-activity undertaking by political parties, it requires heavy financing which in turn influences electoral competitions and outcomes. However, if only certain groups donate and only a select few receive money, then the electoral marketplace becomes limited to only those with means to gain entry. In addition, the buying of votes as well as unethical receipt and expenditure of funds, can have a corruption influence in the governing process. The end result is that under such circumstances money can lead to negative consequences such as decreased competitiveness and corruption.⁴

In this handbook we concentrate on the impact of money in party nominations since the return of multi-party politics in Kenya in 1992. In particular, we address the implications of the various modes used by parties and individuals in financing their respective party nominations and how this affects the broader democratisation process in Kenya.

CAMPAIGN AND PARTY FINANCE

Political financing broadly defined includes finance of party activities in elections and during non-election periods.⁵ It can also be described as the funds received and spent by political parties and candidates in election campaigns. Such campaign as envisaged in this definition includes both party

and individual campaigns since both need resources.⁶ Political finance is therefore both the object and result of political processes. The funding of parties and campaigns is determined by policy decisions of politicians. In new democracies, it must not be treated solely as a problem but a means to create a basis for democratic government. The challenge therefore is to find the best way of matching the need for sustainable financial base for the parties with the wider public interest of curbing or curtailing corruption and avoiding undue influence in politics.

Political financing is one form of political participation. But for such participation to meet the tenets of a democratic government, it not only has to accommodate the general claim to participate but also the actual variation in degrees of participation caused by economic inequality and the voluntary nature of that participation.⁷ The import of this argument is that, the flow of funds into any party system reflects the economic and social structure of its society. Parties trying to finance themselves often rely on financial sources that presuppose inequality and illegality. As Paltiel has argued, “the search for funds may induce politicians to listen more to those who give to their campaigns than to those who vote for them or to their party.”⁸

THEORETICAL APPROACH

Money in politics has been widely studied from several theoretical approaches. However, in this study we restrict ourselves to pluralist theories and investment theories. The starting point for pluralists is that in a democracy, parties compete in an economic market for voters. According to Downs (1957), “parties are entrepreneurs in a profit seeking economy who act to maximize votes.”⁹ Also arguing along the same lines is Alexander (1989) who posits that, “Since policy preferences are in competition with conflicting claims for political action, individuals or groups use wealth to achieve policy goals by promoting nominations or elections of candidates and parties with views congenial to theirs.”¹⁰ Given the fact that power and money is distributed unequally in this market, pluralists argue that, debates about political finance legislation stem from the effort to reconcile the economic inequalities. The position taken by the pluralists brings out the tension between political freedom and political equality. Political freedom dictates that individuals and parties should be able to spend, as much as they want during campaigns, whereas political equality implies equal opportunity and distribution of power among parties.

The investment theory on the other hand proposes the “Golden Rule.” The argument here is that in order to discover who rules you should follow the gold, (or trace the origins and financing of campaigns) According to this theory voters have little or no authority in the campaign process since this is under the control of a few investors. The supposition here is that it is only when campaign money is available to all parties and potential candidates can true democracy flourish.¹¹ Even though this theory is relevant to our subject, it has two major flaws; first, it is based on a critique of the US parties and party change, specifically the realignment theory (realignment only takes place during changes in blocs of investors and that any body can be an investor). This thus limits its comparative application. Second, the theories conceptualization of the party as a bloc of investors may not be accurate in countries or cases where parties receive substantial funds from the state.

The two theories cited above provide a broad spectrum upon which party financing can be put in context. However, both theories largely ignore public funding of political parties and its impact and instead perceive party financing as largely a private affair. This is an important omission especially in countries where state funding of political parties is constitutionally recognized. However in the

Kenyan case where state funding of political parties is yet to be provided for, the two theories are relevantly applicable.

SOURCES AND PURPOSES OF PARTY FINANCE

A discussion of political party finance has to grapple with the origins of the money and accounting for their usage. That is what is the source of the funds and how are they used. Universally, corruption, bribery, vote buying and election related financial malpractices have necessitated calls for electoral reforms to address the anomalies. Generally there are three different sources of money that parties accrue their finances from. These are first, internal finances such as members' dues and membership fees, second private donations, and third state/public funding. The latter are the subsidies provided by the state to parties, candidates for campaigns in the form of direct payments, campaign reimbursements, and in other cases free media time.¹² However public funding has its inherent dangers, which include over dependence on the state for funding which may hinder the independence of political parties; capitalization that primarily leads to concerns on the possibility of exchange of large donations for political favours. Commercialization that is, the increased use of political consultants that leads to political parties' decreased consultation as well as less reliance on members.

These problems inevitably lead to alienation of parties from their members and vice versa. But in spite of these shortfalls state financing has largely been supported on grounds that, since parties and electoral competition are essential for democracy, it is only fair that the state provides them some support. In addition, with the ever-increasing costs of elections, there may not be enough private financing for all parties. Therefore public funds are the only way to ensure equality.¹³ Skeptics have however faulted public funding on grounds that, funding may lead to state interference in the internal affairs of the parties or lead to ossification of the party system. In other words, the party system will not change and encourage new competition because parties that might have otherwise faded away continue to exist as a result of state funding. In addition parties will become less dependent on members dues, thus becoming coteries of the state, rather than articulating the interest of the people. As Von Beyme argues "public funding is a proof that parties have lost their social critical function and are ossifying in the arms of the state."¹⁴

In order to address these anomalies legislation should be designed legislation should be designed in a way that ensures that fundraising does not become the main preoccupation of parties. Likewise, funding should be designed to grant parties a degree of autonomy from private interest. To this end, legislation on contribution limits for instance can be enacted to ensure that one individual or group does not have a disproportional influence on parties, elections or the policy decisions of representatives. By limiting the number of big donors to each party it limits the possibility of one party having a large advantage over others.¹⁵

It can also be argued that contribution limits can enhance the autonomy of parties and lessen the commercialization of politics since parties would no longer rely on large contributors, which in turn would make them less susceptible to influence to contributors of large donations.¹⁶ This argument is however oblivious of the fact that these limits might actually increase the time spent on fundraising since the number of donors required to maintain current income levels would increase since instead of a few large donors many small donors would be needed.

PARTY FINANCING IN WESTERN DEMOCRACIES

Historically, parties have played a pivotal role in founding and consolidating of democratic systems of governance. Parties aggregate diverse demands into coherent political programmes and translate these programmes into effective collective actions once they have a legitimated

control of political office. In early Western democracies parties were created to articulate and protect specific social interests. Parties were thus seen, as institutions that would create political trust within the political class.¹⁷ In attempting to achieve their goals parties came to the realization that they need to have at their disposal finances to facilitate their activities both electoral and non electoral. A look at the experiences of a few western countries illustrates as the importance of political parties in political systems has increased so has their financial expenditures.

In Britain, the state does not finance political parties during elections, and together with Switzerland they are the only exceptions in Europe. Therefore, campaign money is sourced from private sources and there is no ceiling as to how much a party can receive. However, limitations are imposed on possible campaign and election expenditure in order to prevent the 'buying' of votes by parties through huge election budgets; a maximum expenditure of £30,000 in each contested constituency applies in a general election (relevant legislation cited in PAC report, Council of EU)¹⁸

The main argument by the British government against public funding of political parties is that taxpayers should not be forced to support parties financially which they may not approve of politically. There is also the argument that public funding would continue to ossify the present party system by making it harder for new parties to establish themselves. Furthermore, it was considered that it would increase the distance between the political elite and the citizen who is to be represented. However, indirect public subsidies are offered in the form of free broadcasting time for major parties during campaigns, free postage of campaign material, free meeting rooms and research assistance to parliamentary groups.

Britain's party structure has largely been organized around the Conservative and Labour parties that have mass membership. The Conservative party recruits due paying members that are mostly organized in constituency associations that are responsible for various fund raising activities. Other sources of income include business donations, individual donations, and funds from constituency associations- each of the associations is given a quota that it is expected to contribute annually. A number of large companies also give the party a proportion of their profits every year. It's important to note that, most of the moneys from constituency associations come from events such as, dinner evenings and coffee mornings rather than individual subscriptions.¹⁹ Labour party on the other hand heavily depends on Labour Unions for its income. However they have constituency parties that engage in raising funds. Unions can sponsor parliamentary candidates and contribute a certain sum towards the local party's expenses.

The USA being a federal state, the laws governing the funding of elections are as many as the states in the union and the legal picture is, therefore as complex as the federal system itself. The complexity arises from the fact that apart from the Federal Election Laws, the individual states

have their own laws, which differ, from one state to another. Therefore, we shall confine the remarks here to the situation at the federal level. After many years of searching for a funding formula, the federal government established a law providing for the financing of only the presidential elections and candidates; an attempt to include congressional candidates in the financing of elections by the government failed some three decades ago.

According to the Federal Electoral Commission (USA), any presidential candidate who receives 5% of the vote qualifies for financial support from the federal government. Matching funds are also made available for primary elections. The federal government also give grants to cover nominating conventions of major parties as well as some grants for party congressional committees.

However, private funding remains a major source of campaign financing. Political parties receive a lot of the so-called 'soft money' from 'well-wishers', which they in turn pass on to their candidates. The law establishes certain contribution limits, which individuals have to comply with. Any citizen can contribute funds to a certain candidate or political party so long as such citizen does not have a contract with the federal government. Cash contributions regardless of origin must not exceed \$100,000. This contribution as well as the expenditure to which it is put by the party must be disclosed. There are restrictions, however. Donations from corporations, unions, federal government contractors and foreign nationals are prohibited. The agency that is required to enforce Electoral Laws is the Federal Electoral Commission, which has the power to impose penalties ranging from fines to disgorging illegal contributions.

In France, Electoral Laws provide that any presidential candidate who receives 5% of the vote shall be entitled to reimbursement by the state, but if a presidential candidate gets more than 5% of the votes the reimbursement is increased to 25%. In parliament the state pays 1% of the allowable costs; for a party to benefit it must be represented in parliament.

In addition, the law allows for political parties/candidates to receive private donations from individuals or what the French call natural persons. The import of this is that corporate bodies are not allowed to make private contributions. There are legal controls over a candidate's election spending ceiling and those who surpass it or fail to submit a report of election expenditure for the year preceding the election date within two months of election may be disqualified.²⁰ For a political party, failure to submit financial reports in due time may lead to the party being deprived of public subsidies.

In Germany since 1966, the state reimburses political parties up to 50% of the total financial expenditure for elections as long as the party has secured 0.5% of the vote cast in an election. In addition political parties in Germany receive indirect funding from the state in the form of free media coverage, support for political party Foundations and also support for party caucuses. As in Britain,

in Germany, indirect state funding is also extended to the party parliamentary group for non-electoral expenses such as staff salaries and office equipment. In addition to state support the law allows the political parties to receive donations from individuals and corporate bodies and there is no limit to the amount of money that can be donated. In the interest of transparency and accountability, however, donations in excess of DM 20,000 have to be published annually in statements of accounts.

Greece has an explicit regulation of party funding entrenched in its constitution that specifically empowers the legislature to give financial support and ensure that the costs of election campaigns are revealed. However the state is not under any obligation to do so.²¹ In Portugal the constitution gives the parties specific slots for political broadcasts and contains indirect stipulation that expenses for elections must be audited. This stipulation only affects political parties and not individuals. This compares to the situation in Germany where article 2114 of the basic law requires political parties to account for their sources of income, how they use of their funds as well as assets.²² But in France, Italy and Spain party funding is not mentioned directly in the constitution. Advocates against party funding have argued for the need to de-link political parties from the state by making parties self-financing organizations. To this end such advocates argue that party membership fees is certainly the most acceptable means of financing political parties. The argument here is that a financially responsible party membership ensures that members determine the democratic structure within the party by virtue of their contribution.²³

However party membership represent only a small fraction of the finances that political parties have at their disposal. The import of this is that, where party members can only dispose of a small part of their income, membership fees are characteristically low hence the need for other sources of income. The size of membership likewise plays an important part in the amount of income at a party's disposal. According to Dian Schefold, Western left wing parties and parties with large membership will normally try to get most of their funding from membership fees- albeit with varying success. In France as she observes, the left wing parties have always tried to generate a high level of self financing through high membership fees and indexation of fees proportional to the income of party members.²⁴ Noteworthy in this sense therefore is the growing levels of general disinterest in political parties not only in France but globally, which negates membership fees as a source of income. In Britain for instance, even left wing parties are unable to finance the bulk of their budgets from membership fees.

PUBLIC SUBSIDIES TO POLITICAL PARTIES IN EUROPE

Public subsidies to political parties have been justified on various grounds which include the fact that; it helps to inform and educate the public on political matters; maintain public relations activities which stimulate public political debate; disseminate information and practical experience which are shared especially with the younger generations as well as the conduct of political research. In Germany these considerations lead to the introduction of subsidies for the promotion of political information and education by the parties. And in the Netherlands, specific criteria for financial support to political parties still play a very important role because there is a very strong opposition to the institutionalization

of parties and in part to public subsidies although the financial requirements of political parties are generally accepted. Subsidies paid to political organizations working in the fields of science and education, or those working with young people are however seen as an acceptable compromise.²⁵ Party organizations, which receive subsidies, are however required to be legal entities with clearly defined objectives, which are monitored by public authorities and subject to accounting rules.

Public subsidies are in this case a common feature in most Western democracies. Even though it is done in different forms, countries such as Canada, Germany, Netherlands, France, Portugal, Spain, Sweden, and Italy have public subsidy programmes for political parties. The amount/size of funding also vary from country to country as is the conditions under which such funding is given. Across the board parliamentary representation has largely been used as a criterion of eligibility for funding. This automatically excludes very small parties especially newly formed parties from receiving funding thus putting them at a competitive disadvantage vis-à-vis established parties. This principle applies in Belgium, France, Italy and Spain. In Denmark however, funding is based on the number of votes (with a negligible minimum threshold) in the most recent parliamentary and regional elections. Greece also uses election results as a basis for allocation of funds with a relatively high minimum threshold of 3% of all votes.

In the United States of America public funding started in 1971 when congress introduced the income tax “check off” by which individual American citizens can indicate in their income tax returns that \$ 3 of their tax goes to the presidential election campaigns fund. The money thus collected is distributed under three programmes: primary matching payments, party convention grants, and general election grants.

In Canada, public funding was introduced in 1974 as a means of covering part of the documented campaign expenditure, while the rest was to be funded by private donations. Since 1983 a registered political party has been entitled to a reimbursement of 22.5% of declared election expenses, provided that it obtains at least 2% of the number of valid votes cast at elections or 5% of the number of valid votes cast in electoral districts in which the party endorsed a candidate.²⁶ Constituency candidates are entitled to reimbursement of 50% of their election expenses up to a maximum of 50% of the spending limit if the candidate obtained 15% of valid votes cast.

In addition to public and membership financing parties have also the option of private financing, one of which International IDEA has termed ‘plutocratic financing’. Such funding is a result of large donations from private companies and corporations. Large donations have invariably caused serious problems in Spain, France, and Italy through impropriety. The most improper way is outright corruption through kickbacks and toll gating. Alternatively, a more subtle way involves front companies affiliated with political parties charging businesses and banks which are interested in buying access to politicians or favorable decision for bogus research papers, consultancy work, or technical advice.

The result is that, governing parties sell their decision making power, while companies pay kickbacks in percentage terms of the total value in return for public works contracts, for example the Guerra Naseiro, SAS and Ceres affairs of 1990s in Spain. The Spanish version of toll gating for example, was witnessed when persons who had obtained a public license from a regional government to run casinos in Catalonia were obliged to pay fees to the party in power. There have also been cases of insider trading related to property development and local government contracts.²⁷

In Italy, corruption associated with kickbacks (*tangenti*) has been estimated to be as high as 75% of public subsidies in the 1980s leading to the “*mani pulite*” (Clean hands inquiry) in 1992. The funds illegally obtained to \$2,6 billion a year, at least ten times the total official income of all-Italian parties. (Bardi and Malino 1994: 260) France has since 1995 banned candidates and parties from receiving donations from private corporation and public sector companies. However this may not deter corrupt dealings since funds could still be channeled through private citizens. In Germany, Sweden and Netherlands plutocratic funding is a minor problem. In Germany, contributions from big donors used to be a major source for right of center parties in election years. However by 1990 this influence was almost completely all gone.

In the USA, the Federal Elections Campaign Act of 1971 (FECA), which deals with federal especially presidential elections, stands out as the most important regulation of campaign finance in America. It created an independent regulatory agency charged with guaranteeing public disclosure of funds raised and spent in federal elections. For non-federal elections each state may establish campaign finance rules for elections held within its borders. Such rules may differ considerably from one state to another. FECA has largely succeeded in setting up rules to reduce plutocratic financing by big donors by setting limits for contributions that explicitly prohibit certain individuals and organizations, such as corporations, Labour unions, federal government contractors and foreign nationals from influencing federal elections. Foreign nationals, national banks and other federal chartered corporations are equally forbidden to contribute in connection with state and local elections.^{28,28}

International IDEA, 2003

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Funding of Political Parties and Election Campaigns

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International IDEA, Stockholm pp. 39

The general goal of these laws is to reduce the influence of wealthy donors on politics by capping the amount of money that is donated to a candidate, party or their campaign committee. However rich donors have evaded this rule by financing candidates by way of “bundle” of individual contributions from themselves, their aunts, uncles, in-laws and children on the same day. Other corrupt sources of income include spoils or ‘graft’ such as toll gating, which requires holders of government permits to make regular contributions to the war chest of incumbent parties; ‘Kick backs’ or ‘slash funds’, that include payment of a percentage of value of all government contracts made by the contractors to the governing party. Thus incumbency gives the politician a significant advantage to access kickbacks from government contractors.²⁹

In the UK, campaign spending is subject to legal constraints, which have their origin in the Corrupt and Illegal Practices (Prevention) Act of 1983. The Act limits the amount of money that could be spent on an electoral campaign in a constituency in order to prevent wealthy candidates from buying votes. At the national level, there is a ban on paid political broadcasting on television and radio. In addition, restriction on spending by central party organizations was enacted in 2000.

Furthermore the national campaign expenditure limits also apply to donations in kind- staff, equipment, and advertising.

In Canada and USA public disclosure of donor identity and their contributions have been used as a means to monitor the flow of private money into campaign coffers and to supervise political financing. However in the UK donations have traditionally not been made public for several reasons but mainly for the protection of privacy. But this began changing in 1995 when Labour albeit with some delay revealed the names of its donors and the amount they had contributed. The conservative party has also since 1997 elections done the same which has coincided with calls for more transparency with respect to larger donations to political parties. This followed allegations touching on donations from overseas to Conservative party and from Formula one racing team to Labour party.

In France, the Netherlands and Sweden monitoring of party financing is limited because the privacy of donors is emphasized. With the exception of Sweden however, statutory obligation to disclose donors identities have been implemented in most Western European states including, Italy, France, Netherlands, Germany, Spain (though only vaguely regulated) among others. It is important to note that, intense regulation some times works against the original intentions.

POLITICAL PARTY FINANCING: THE AFRICAN EXPERIENCE

The situation in Africa is by no means similar to the Western democracies in spite of Africa having been colonized by the west. With the exception of South Africa, Sub-Saharan Africa presents an absolutely unique situation. This is probably because Africa has not successfully embraced democracy and therefore the principles that come with it. The nature of the African state can also be seen as another explanation. Historically in the period 1985-1989 competitive elections allowing for more than one party were held in ten of the 53 countries in the continent. But between 1990 and 1997, “founding” or transitional elections that signaled an end to military dictatorship and authoritarian one party personal rule were held in 40 countries. By 2002 only eight or so African countries did not have a multi party political system. (Some of which including, Comoros, DRC, Sudan, Swaziland and Uganda are no party systems; Eritrea is technically a one party state while Somalia does not have a functioning political system) Africa’s second wave of democracy has thus largely been a significant expansion of electoral democracy.

Political parties in Africa as their counterparts in the West incur the usual financial costs associated with the establishment, maintenance and operation of more or less modern democratic organizations. However political financing is largely under regulated in Africa and to this end fund raising is generally a matter of unregulated self-help. Regulation is also minimal and there are no comprehensive laws that govern the financing of political parties that detail permitted and prohibited sources of revenue or that impose ceilings, disclosures or auditing and specific sanctions. Benin for instance has limits to campaign expenditure and has provisions on public funding but not on other aspects of political financing. Mali has a ban on foreign donations but has no provision on other aspects of political financing. Ghana has disclosure provisions and bans on foreign donations, but no provisions for limits on campaign expenditure and other aspects of political financing. While South Africa has no provisions on general disclosure or bans on foreign funding but has provisions on substantial public funding and accounting requirements with respect to public funds.

Generally donations are the modal source of income for African political parties especially opposition parties. However parties in government have the advantage of ability to exploit other sources such as “toll gating”, kickbacks or state owned organizations to funnel state funds to the party. In Ghana it was the young business executives and professionals that for instance provided

substantial funding to Professor Adu Boahen's 1992 presidential bid against Jerry Rawlings.³⁰ In Zambia, it was trade unionists that led the formation of the Movement for Multi party democracy (MMD) Whereas this would easily pass as a democratic way of raising funds for political financing, there is a marked tendency on the part of tycoon donors that are behind political party financing in Africa to view politics as a business by other means and political parties as appropriate investments for future profits. Such tycoon donations usually used to fund parties that the tycoons own or used to transform them into king makers in parties they heavily bought into.³¹

In Nigeria the influence of money in politics is quite significant. Here the brazen role that money plays in politics and the corruption it engenders has led to politically semantic catchwords such as, "nairacracy", "contractocracy" and reference to politicians as "money-bags" and local wags, thus illustrating how money has corrupted politics in that country.

As Igwe (1994) points out with reference to the 1992 Nigerian elections, " they were not only distinguished by the extent of rigging but also reaching an imaginable levels of electoral fraud, and the amount of money reportedly spent by candidates who owned the parties that nominated them."³²

Donations from citizens living abroad are another important source of funding for political parties in Africa, particularly for opposition parties. Foreign backers have also played an important part in financing political parties and eventually influencing the decision making in the countries. For instance South Africa's ANC had a lot of financial backing from foreign organizations and governments in the 1994 general elections. Unconfirmed reports also indicated that Mandela capitalized on his reputation and stature to raise huge donations from leaders of foreign countries for ANC's 1999 election campaigns. An IDASA survey in 1999 indicated that parties expected 50 to 80 percent of their campaign funds to come from business and foreign donors. Incumbent parties in Africa however, have less need for political entrepreneurs or citizens who are outside the country. By the mere fact that they control the state, they already have a lucrative source of funding that include kickbacks on contracts and the sale of state assets.

The type of political funding via the control of state resources becomes available to new parties as soon as they get into power. In general public funding of political parties in Africa is not commonplace. Only about 14 countries in Africa fund political parties directly with or without legislation including, Benin, Burkina Faso, Chad, Egypt, Equatorial Guinea, Gabon, Malawi, Morocco, Mozambique, Namibia, Seychelles, South Africa, Tanzania and Zimbabwe. The adequacy of this funding however is debatable.

Among these countries, "it is only in South Africa, Morocco, Seychelles and Zimbabwe (if the ruling party there had allowed it), where the sums have been sizeable enough to make a difference in the operations of the opposition parties."³³

In South Africa as David Pottie (2002) points out, "the 1993 electoral Act Section 74 provided for state funding of electoral campaigns of registered parties. Qualification for funding was based on opinion polls and presentation of 10,000 signatures from five of the nine provinces or at 2% support in an independent poll. This was later repealed in 1997 to restrict funding to represented political parties, weighted in favour of elected representation by each political party. Such funding must be accounted for to the Independent Electoral Commission.

The import of public funding in South Africa was to give meaning to the constitutional provision to support democracy. Clarence Tshitere (2002) has thus argued that,

“Although South Africa is a new democracy...party funding is already becoming cloaked in secrecy. Those in power or who are connected to it do not want the facts about election funding to be known as they would reveal a pattern of deception and control both in influencing the election outcome and in moderating their own party. Nor do they want it known that their party has compromised itself by taking money from controversial donor countries...”³⁴

While buying elections is almost everywhere Africa, a recurring theme- votes cannot be or at least should not be traded in the market place as if they were a commodity- it has been argued that the way electoral campaigns are run in many countries amount to little more than buying votes. Campaign contributions are required to ‘persuade’ voters and those supplying the funds gain undue influence in policy formulation.

POLITICAL PARTY FINANCING AND THE ROLE OF MONEY IN KENYAN POLITICS

The literature that we have reviewed on the funding of elections whether in developed or developing countries seems to suggest that political parties on their own are not capable of mobilising adequate finance to enable them to compete effectively in an electoral contest. It is against this background that the question of whether the state should assume the responsibility of financing all competing political parties has become central. The concern for equitable funding of all political parties participating in elections arises from the realization that some parties are usually better endowed than others based either on their ideological bases of support or on social bases of support.

Our review of the literature on election funding in Africa has also revealed that information on the expenditure by political parties is not available. However there are a few countries such as South Africa and Nigeria that provide figures since they have laws that compel the state to provide funds for political parties. But the situation is different in countries where there is no law requiring the state to provide support to political parties. This is the category where Kenya falls in. Here the ruling party has continuously enjoyed undue advantage due to the fact that apart from its access to state funds, it also gets donations either voluntarily or through coercion from the corporate world and individual businessmen, who usually enjoy patronage from the incumbent regime and are therefore interested in playing a part towards its electoral victory. This raises the question as to how elections should be financed in a way that does not undermine democracy.

The need for permanent financial support for political parties has been justified on the grounds that money has the tendency to create unequal opportunities for participation. It has thus been argued that as long as political parties remain permanent institutions in all representative democracies, they should receive government funding on a permanent basis. However, the nature and form, which state funding of political parties should take, is still a subject of debate. Critics of the above position have on their part argued that the task of financing political parties as a way of levelling the playing field for competition should not be the sole responsibility of the state. They have thus identified two other sources namely: private contribution and foreign funding. In a number of African countries where the state is already involved in the financing of political parties, these two sources exist concurrently with state funding. Parties continue to receive financial contributions from their own supporters as well as corporate contributors. On the other hand foreign funding, where the law allows, has played a major role in a number of African countries in enabling especially the emergent opposition parties to organise a credible campaign against the ruling parties. Indeed, without donor support, many opposition parties in Africa would not have been able to put together the kind of electoral machinery that has enabled a number of them to present a credible challenge to the ruling parties in the respective countries, thereby resulting, in some cases, in the defeat of the ruling parties.

The bottom line in these two contending positions however is that in countries where there is no state financing of elections, the ruling party usually has an unfair advantage over the opposition parties by virtue of having access to state resources both financial and non-financial (such as logistical administrative support, use of state media for communication and propaganda purposes and use of state personnel to further its own partisan interests). The Kenyan situation illustrates this. Kenya like many other African countries is still grappling with the problem of political party financing. Public funding remains non-existent and regulations governing campaign-spending limits (though technically existed, but was abolished prior to the 1992 multi party general elections)³⁵ do not exist at the moment. Kenya's electoral process just as many in Africa requires the utilization of considerable sums of money by both political parties and individual candidates. Candidates and political parties in this case seek funds to print election literature and paraphernalia, organize political and campaign meetings, to advertise and buy airtime among several other purposes. The search and utilization of these contributions have distorted competition between candidates as well as parties. This in turn has resulted in corruption finding a fertile breeding ground. Thus since the country returned to multi-politics in 1992, electioneering has mainly revolved around wealthy individuals whose salience in politics has been founded on endless rewards to supporters or bribery of an opponents supporters thus making elections in the country a messy affair. The situation becomes even grimmer we factor in the fact that there is no statutory framework for political party financing in Kenya. And although parliament has passed four motions calling for legislation to facilitate the public funding of political parties since 1993, no legislation has been enacted so far.

In theory political parties are autonomous, freely formed voluntary associations, which should be financed by members who support them. But as we stated in previous sections this has not been the case universally. In Kenya the culture of financing political parties is non-existent and this is probably a function of the biting poverty, the low levels of income as well as illiteracy. Over the years Kenyans have joined political parties not to help sustain them but rather with the expectation of receiving material gains from the parties or their leaders. Parties and candidates are therefore expected to “treat” voters, which includes direct payment as well as the delivery of monetary valuables. It is thus only a few friends or associates of the parties that shoulder the financing of the parties as opposed to the rank and file of the said parties. For instance in the 1992 general elections, “the opposition presidential hopefuls pumped millions of shillings of their own money and those of their wealthy friends into the campaigns.”³⁶ The Democratic Party (DP) for example was said to have had the financial backing of big Kikuyu businessmen while the inner circle of Forum for Restoration of Democracy-Asili (Ford-Asili) reportedly included the chairman of (BAT) Kenya, who had close ties to the Kenyatta family. Even FORD-Kenya although with fewer wealthy friends raised 80% of its central fund, (Ksh. 14 million), from a few large donations from “anonymous well-wishers”.³⁷

Money has thus been a major factor in the Kenyan political arena and this has created a major concern for the obvious reason that wealth creates unequal opportunities for participation. This is largely because election campaigns largely depend on the availability of funds at a party’s disposal. The problem of money in politics in this case, as Clarence Tshitere identifies is that “donors, whether corporate or individual, often make contributions not out of the goodness of their hearts or for reasons of political idealism, but in expectation of returns. Private donations to political parties are thus in most cases tied to certain conditions, implied or explicit. Companies tend to contribute to parties whose policies they consider appropriate or favourable to their business plans and ideals, or in other cases they fund parties that promise to implement sympathetic policies to their donors interests if they gain control of power.”³⁸

The massive support to the then ruling party KANU by the Asian community in Kenya in the past three general elections vindicates this argument. Their fear of lose of favours resulting from change of regime precipitated this inclination. In addition the threat by Kenneth Matiba, FORD-Asili’s presidential candidate that he would expel Asians whether real or otherwise scared the community that holds a large amount of business interests in Kenya. For them therefore, the status quo was the best option and hence their heavy financial investment in Kanu campaigns. An assessment of the role of money in Kenyan politics, must take cognizance of both the money from the politician to the voter and money from the donor/anonymous well-wisher to the politician. It is only by looking at these different perspectives that we can be able to discern the actual motive, as well as understand the deceit and corrupt practices that money brings into the Kenyan political arena. These should in turn be assessed against the laws governing elections in Kenya. For example, the Election Offences Act, (Cap 66 of Laws of Kenya) makes it an offence to: bribe a voter with money or anything else of value in order to influence her or his decision on how to vote.

Likewise, it prohibits a voter from soliciting for, or receiving a bribe so as to vote one way or another. Whereas bribery seems to be outlawed on both sides of the giver and the recipient, the law remains openly oblivious of the source of such money or things of value that makes bribery possible. This loophole gives the politicians the leeway to source unlimited amount of money as they wish and to spend it without any restrictions as long as they can avoid being caught engaging in bribery. Implementation of this law likewise has been wanting. For instance, in the 1997 general elections, IED (1998) reported cases of bribery of voters in all constituencies, with candidates allegedly paying voters anything between twenty to one thousand shillings either directly or through agents.

Other monetary goods given as bribes included, maize flour, sugar, clothing, iron sheets, purchase of food and drinks and supply of relief food in order to woo voters.³⁹

Bribery was also significant in the 2002 general elections though not to the magnitudes reported in 1992 and 1997. The K-DOP 2002 report indicates that bribery during that year was much more rampant during the nominations than the general elections it self.⁴⁰ The use of money to purchase voters cards and Identity cards in a bid to deny an opponent's supporters a chance to vote have also been wide spread in spite of the same being outlawed by the Election Offences Act. The practice as IED has documented is usually more prevalent towards the close of the campaign period.⁴¹

In essence, as candidates and parties become more clearer as who is their supporter and who is not, the motivation to use money to reduce the opponents number of supporters increase and money becomes handy in disenfranchising voters who do not support him/her or the party. The lack of capacity by the ECK to stop this activity led the commission taking the option of replacing voters cards as late as a day before the election date to enable those who sold their cards to vote but of course that could only be done if the voter indicated that he/ she lost and not sold the card.

Other areas where money has been used to distort the outcome of elections include, the hiring of youths to disrupt campaign rallies and even cause violence. As IED (1998) points out, the youth since 1992 have played a central role as hecklers and more often than not cause chaos during campaign rallies. A large number of rowdy youths have on several occasions been paraded during such meetings as party supporters, causing tension in political meetings and often instigating fights. These youths usually attend political meetings drunk, often with explicit instructions to disrupt the meetings. All parties have in one-way or another, involved in rowdy and intimidatory acts using youths.⁴² Money has also been used in most cases by the ruling party to induce opponents to step down so as to increase the parties' candidates' chances of winning. The underlying significance here is that of money and how those who have access to it (the ruling party- state resources) have negatively been used to manipulate the democratic process thus effectively invalidating any hopes for free and fair elections. It is therefore important to consider the role of money both as a facilitator of democracy and an inhibitor of democracy depending on how money is used in that process especially in young democracies of Africa such as Kenya. As Grignon (2001) has argued;

*“Elections in Africa are often a war for economic and political survival; losing an election is often losing everything. The control of the state is the central concern of politicians partly because the state has been, since the beginning of the continent's postcolonial history, the engine of kleptocratic accumulation and the essential generator of both patronage and resources.”*⁴³

Candidates and parties are therefore hell-bent on raising money from whatever source and spending it in whatever way that would guarantee them either access to or retention of power. The obsession here is to control of the state and its resources and thus be in a position to distribute the said resources in a manner that will perpetuate the in built patronage net work of rewards and punishment through inclusion and exclusion. This

motivation has largely ensured the negative use of money in Kenyan politics and the muzzling of democracy.

It is with the foregoing in mind that one can appreciate the concerted efforts by a few NGOs in the last few years to influence the enactment of a political parties (financial) bill under which the state would assume the responsibility of financing political parties represented in parliament. In fact the NGOs led by CGD went ahead and produced a draft Bill wherein it was proposed that an annual figure of 1% of the total budget (i.e. about Ksh. 2.8 billion or US\$ 36,845,105) be spent annually to fund political parties. They further suggest that the money be allocated on a quarterly basis based on the number of votes each party had garnered in the previous elections and that the Electoral Commission of Kenya (ECK) be responsible for the administration of the political parties.⁴⁴

The Bill is yet to be transformed into law and thus in the meantime, Kenya operates an open-door policy according to which there is no limit as to how much a candidate or a party can spend in an election. Nor is there any restriction as to the sources of funding. Whereas the state is fully responsible for financing the ECK's activities, political parties have no option but to fend for themselves. The experience of the last three elections has revealed that without a strong financial base, a political party cannot mount a credible campaign, and therefore, cannot expect to win any significant number of seats in parliament. This explains why a number of fringe presidential candidates in the last three elections even failed to be elected as members of parliament for their constituencies.

One way in which the corrupt influence of money in the electoral process in Kenya can be curtailed or checked is through a system of disclosure. But for the last three elections in Kenya, no figures are available about the level and type of expenditure either by the individual parliamentary or presidential candidates and political parties. This is because there is currently no law in the country, that requires candidates or political parties to disclose the donations they have received or their expenditures. This by itself enhances political corruption in the electoral process, as there is no enforceable law for culprits who engage in such practices. This position was vindicated by a survey conducted by Transparency International-Kenya that sampled 1,956 citizens in nine major urban centres in Kenya. It reported that 90% of the respondents believed that corruption is rampant in electoral politics. Furthermore, 80% of the respondents opined that money enhances the chances of a candidate to win elections.⁴⁵

MONEY AND POLITICAL PARTY NOMINATIONS IN KENYA

In the absence of public funding, political parties have been left with no option but to seek financial resources elsewhere. And just as parties and individual candidates need more money in general elections so do they need money for their respective party nominations. While the party is expected to shoulder the logistics and administrative aspects of such nominations, individual candidates are expected to finance their own campaigns during the exercise. In addition political parties also expect

the individual candidates to contribute to the parties kitty as it prepares to battle it out with other parties at a general election.

It is against this background that the politics of patronage usually take a central stage in the party nomination process. Party leaders, who also double up as party patrons have for the most part since 1992 run their respective parties as personal investments. And it is from this perspective that party nominations provide such leaders with an opportunity to raise additional finances. In other words aspirants with adequate financial resources who are willing to invest their money in the parties activities usually gain an inside track and can therefore buy the support of the party leader who would then either endorse them or impose them on the electorate. This has been a prevalent occurrence in the past three general elections. Indeed as IED (1998) noted party nominations have been some of the most undemocratic processes in the multi party general elections.

The malpractices have been more rampant in respective strongholds of particular parties. The idea of parties designating particular regions or districts as their strongholds brought a new phenomena in the Kenyan political arena known as political zoning whereby a given party seals off a specific area through various unethical tactics to sustain its dominance in that particular area. For instance during the 1997 elections, DP was predominant in Central province, NDP in Nyanza, FORD Kenya-Western, SDP- Eastern, and KANU- Rift Valley. In its report on the 1997 general elections IED noted that, the DP imposed candidates in Nyeri, the party's major stronghold, and also refused to publish the list of its nominees, which remained confidential until the official nomination day set up by the Electoral Commission of Kenya (ECK).⁴⁶ Furthermore, parties have on several occasions during the last three elections openly flouted their own nomination rules. Some of the most blatant cases have involved party chairmen who have single handedly picked candidates thus disenfranchising party members. KANU has been outstanding in this respect.

THE ROLE OF MONEY IN PARTY NOMINATIONS

Party nominations in Kenya are regarded as the private affair of respective political parties. Through Act No. 1 of 1992, such nominations were made the exclusive province of each political party. To this end both the state and the Electoral Commission of Kenya are not expected to play any official role during each parties nomination process. However under the KANU regime, the provincial administration did time and again involve itself in the then ruling party's activities as the line between the state and the party was blurred thanks to three decades of monopolization of power. Although most of analysis has been done at the macro level on the role of money and its influence during a general election, little has been done at the micro level, specifically the role of money during party nominations. This gap thus needs to be filled. The rationale for such an analysis emanates from the fact that democracy at the national level can only take root, if it is nurtured at the party level and also at the grassroots societal level. Such an analysis should address the main concern for both democratic and democratizing nations, which is the influence of money in politics that has in varying degrees led to corrupt practices in politics.

Although money is an essential requirement for financing elections, undisclosed and unregulated money has the potential of tilting the elections whether at the party or national level and the governing process that arises out of such elections. There is thus a need for transparency in the use of money in politics, which is essential if better governance is to be attained. According to a study done by USAID (2003) under its office of democracy and governance, there are at least four risks associated with money in politics that prompt the effort to control it. These include; first, uneven playing field, that is the risk that large sums of money in politics give undue advantage over others and constrains competition; second, unequal access to office, that is the risk that certain sectors of a population lacking money are prevented from running for office or getting meaningful representation; third is co-opted politicians, that is the risk that those who donate funds will control the politicians they finance; and fourth is tainted politics that is the risk that dirty or illicit money will corrupt the system and undermine the rule of law.

These risks threaten both democratic and economic development and many emerging democracies have yet to address them.⁴⁷

Party nominations in Kenya have for the most part since 1992 been conducted under an environment of blackmail, intrigue, suspicion and violence. As already indicated the management of party nominations as from 1992 became the exclusive province of each party. This meant that each political party would bear the cost of organizing its primary nominations. The new parties most of which were poor thus failed to organize nominations in every part of the country. The resultant effect was that candidates who failed to get nominations from the bigger parties sought the same from smaller parties that in most cases did not have a candidate in the area or where there was no competition. To be accepted in these fringe parties one had to part with money in order to be endorsed to run on the party ticket or pay the application fee in order to participate in the party's nomination process.

In 1992, party nominations were mainly flawed as a result of:

- a) The political parties failure to stick to their constitutionally laid down machinery for nominations. Often party leaders in an attempt to avoid long drawn and expensive elections process hand picked candidates.
- b) Some candidates were replaced by newcomer candidates favoured by the party leaders after regular nominations and in most cases the candidates favoured had monetary influence.
- c) Lack of consensus for instance on the mode of nominations that pitted two factions of FORD based on direct nominations by members and nominations by delegates. This led to the split of the party prior to the elections
- d) Polling materials were not readily available and often polling stations and dates were changed at short notice.

- e) Many Kenyans secured several party membership cards as a result they could vote in party nominations of more than one candidate. Often aspiring candidates bought cards and distributed them to any willing person who would then vote for the candidate.
- f) A large number of candidates moved from one party to another with relative ease and in complete disregard of party loyalty, which was subsidiary to getting nominated.⁴⁸

There was no marked change in the manner, which parties carried out their nominations in 1997, each party assumed the responsibility for financing, organizing, and administering its own nominations. In the process internal party nomination rules and regulations were seriously put to test. Just as in 1992 most parties did not follow their rules regardless of the nomination methods that each party used. Party chairmen single handedly chose candidates in a number of constituencies instead of allowing members to nominate candidates of their choice and KANU was outstanding in this respect. DP also imposed candidates when repeat nominations failed to yield clear winners. This was most evident in party strongholds. The same was true of all other parties including NDP, FORD Kenya, and SDP.

One of the reasons why parties have consistently flouted their own nominations rules is the fact that party membership in most cases is either blurred or non-existent. In addition, lack of proper modalities of financing the democratic management of parties leaves the 'members' at the mercy of the party patrons or owners who finance all the party activities and hence usurp the obligation and responsibility to determine the party operations from the members. In Kenya, party ownership stems from the source of finance for the party and since members do not have a financial stake, the party leaders cum proprietors unilaterally assume that role and dictate the management of the parties' affairs.

In the 2002 general elections, party nominations were equally controversial. This was more pronounced in the then ruling party KANU where the incumbent and long serving President Moi was not eligible for re-election. This meant that for the first time since independence KANU was theoretically going to have an open nominations contest to determine who would be its presidential candidate in the 2002 general elections. Hopes of such an eventuality were however dashed when Moi unilaterally declared that he was backing Uhuru Kenyatta as KANU's presidential candidate. On paper his support for Kenyatta did not bar other candidates from contesting but in reality the machinations that went on at the parties secretariat suggested otherwise. Among those interested in contesting the presidency under the KANU banner was Raila Odinga who was the party secretary general. He now found himself stripped of his official party spokesperson role as party affairs were

now being conducted from state house where official statements ostensibly from the party were being broadcast over national media without his knowledge. In addition a list of delegates was also being prepared from state house in total disregard of the existence of an eligible list that was prepared and used when KANU and NDP merged. Under these acrimonious circumstances other KANU presidential hopefuls that included George Saitoti, Kalonzo Musyoka and Moody Awori among a host of other prominent politicians decamped from KANU to form the rainbow alliance, which was transformed into LDP, which finally entered into a pact with NAK to form the current ruling coalition NARC.

The ardent support for Uhuru Kenyatta by the party chairman was among other issues based on his potential to attract campaign funds for the party among other factors such as ethnicity and name recognition. Uhuru Kenyatta's candidature was in this instance a sure way of bringing on board to the party's campaign the immense wealth of the Kenyatta family and also the potential to attract the wealth of other Kikuyu tribesmen especially from Kiambu to the party's kitty. And to vindicate this projection Njenga Karume who for a long time was the chief financier of current president Mwai Kibaki decamped from DP to KANU to oil its campaigns. In the Uhuru Kenyatta candidacy the ruling party thus could count on an alternative source of funds separate from state resources. The net effect was that the party ignored and completely disregarded the democratic tenets that were supposed to guide its internal party nominations.

On its part, FORD People nominated Simeon Nyachae at a national delegates conference held at Limuru where Nyachae was proposed, seconded and endorsed unopposed as the party's candidate. The expedience in Nyachae's unopposed nomination was mainly a result of his immense wealth, which was needed for the party's campaigns and other activities. It was for the same reasons that Nyachae had earlier taken over as the "official" leader of FORD People from Kimani Wa Nyoike the party chairman and presidential candidate of the party in the 1997 elections who was however less endowed financially.

In NARC the nomination of Kibaki was purely an elite affair arrived at in a boardroom meeting. The coalition was hastily crafted with the sole purpose of defeating KANU and beating it at its own game. The strategy was thus to likewise field an umbrella opposition Kikuyu candidate to counter KANU's Kikuyu candidate. Party nomination rules for the presidential candidate in this case were non-existent and in any case were not needed. Kibaki's nomination was preceded by negotiations

between LDP and NAK that was geared towards creating a grand coalition that initially also involved FORD People which however later pulled out after its proposition that an electoral college comprising of 100 members drawn from each participating party to elect the party flag bearer was rejected. But it was the NARC parliamentary nominations that attracted enormous controversy. The coalitions parliamentary nominations attracted close to 2000 candidates for the 210 parliamentary seats. The cost of organizing the primary nominations was as expected enormously huge. The huge number of aspirants coupled with the fact that there was no proper party structure of the coalition on the ground, the existence of coalescing parties offices on the ground notwithstanding led to many nominations in most parts of the country ending in a disarray. For instance in some constituencies the coalition had to improvise election materials such as cartons and gallons to be used for polling as ballot boxes were not available. This confused state of affairs can be blamed on both organizational inadequacy as well as a shortage of funds to cope with the huge number of aspirants.

At the individual aspirant level there was an uneven playing field in the coalitions nominations. Here money was one of the dominant factors that played a crucial role in determining who would get the nod for the parties' ticket. In fact the most controversial aspect was the silent provision that allowed candidates who had the financial means to fund the administrative costs of the nominations to undertake the task. This of course gave them an upper hand in the ensuing nomination process. It was against this background that there were accusations and counter accusations that some candidates were declared winners because of the monetary support that they had given the coalition despite the fact that they had come second or third during the nomination exercise. A case in point was that of Raphael Tuju, who it was claimed had provided the NARC presidential campaign team with his communication firms' expertise.⁴⁹ Tuju was one of the chief fundraisers for LDP. For his monetary support to his party and the coalition Tuju was rewarded twice. First he got the nod from the coalition to be its candidate in Rarieda constituency despite losing the nomination contest to Moses Owiti. And for his role in boosting the Presidential campaign he was appointed to the Cabinet in spite of the fact that this was a first time MP and notwithstanding the fact that he was not one of the LDP nominees for a cabinet post.

Cases of candidates being imposed on the electorate after having lost were not unique to NARC. KANU had similar situations in Gatundu North, Juja, Kiambaa, and Kasarani.⁵⁰ Such favours by the party headquarters especially Kiambaa where Njenga Karume was facing off with Stanley Githunguri, both wealthy men by any standards but the former having a track record in politics as well as financing political campaigns. It can thus be safely be argued that his nomination be largely attributed to the influence of money and the financial muscle he was bringing to the party coupled with the clout as the previous chairman of the defunct GEMA through which KANU expected to mobilize votes in Central and Eastern provinces.

Money has also been instrumental in bribery and election related financial malpractice. Indeed as K-DOP observed in the 2002 general elections, during the party nominations, several cases of bribery, abuse of public resources, vote buying and violence were reported.⁵¹ Likewise in the 1997 general elections, all constituencies reported cases of bribery with candidates allegedly paying voters anywhere from twenty shillings to one thousand shillings.⁵² Cases of vote buying also intensified as campaigns advanced.

One reason why parties turn to individual candidates is their lack of a formidable financial base to support party activities. To this end parties find themselves turning to financially endowed candidates to financially empower the parties activities. The backside of this is that it creates a framework that facilitates unequal access to office. In such a scenario certain individuals or groups are denied the chance to compete for office or get the representation they deserve because they lack financial resources. But parties are in a dilemma, as most of them have no clear and consistent membership despite the numerous recruitment drives that they conduct. The resultant effect is that even the basic source of party finance which is membership fees is non existent or too meager to run party affairs. Since most parties in Kenya are usually docile in between elections their quest and pressure for money is felt more in an election year. To financially prepare for internal nominations and campaigns for the general election most parties especially the ones in the opposition to applications for party nominations as an alternative source of funding.

In 2002, for example the main parties charged an average of Ksh. 40,000 for parliamentary nomination and Ksh. 10,000 for civic nominations.⁵³ Considering the big numbers of aspirants by the various parties, the amount of money generated during nominations was quite substantial. Parties however have taken advantage of the lack of legal requirements especially in regard to accountability and disclosure to keep their expenditures out of the public domain. To this no party disclosed how much money they raised neither did they reveal or account for their expenditures. The lack of disclosure and accountability has some negative effects. For instance the failure by NARC to pay its staff for the last 13 months in addition to non-payment of rent arrears that led to their eventual eviction from their offices point to the possibility of mismanagement of party finances. The same situation was witnessed in FORD-People where the party has invited the Kenya Anti Corruption Commission to investigate the how the money raised as nomination fee were utilized.

Parties have also been known to raise money from both local and foreign donors. To this end Party leaders have made foreign trips where they have held meetings with Kenyans abroad where they have used such occasions to raised funds. None of these funds is usually disclosed or accounted for. Money has also played a central role in financing violence, intimidation and heckling in both party nominations as well as campaigns for general elections. Aspirants are known to hire youths at a fee or other forms of rewards to cause chaos during campaign meetings. The formation of party or candidate militias such as Jeshi la Mzee, Jeshi la Embakasi, Jeshi la King'ole, Baghdad Boys, or the use of Mungiki et cetera attests to this. Most of these groups (now outlawed) are composed of youths whose sole purpose is to intimidate opponents. The K-DOP report noted for instance that, disruption of party nominations were mainly done through the use of inflammatory language, intimidation, violence, heckling, bribery, stealing of votes and stage managed walk outs to disrupt procedures. During the nominations,

Heckling accounted for	20% of disruptions,
Inflammatory language	19.4%
Attempts to stop meetings	13.1%
Intimidation	12.6%
Violence	11.4%

Bribery 8%

(Source K-DOP 2003: 70)

Most of these if not all offences were committed by intoxicated youths in the pay roll of opponents.

ROLE OF MONEY IN POLITICAL PARTY NOMINATIONS: A STAKEHOLDERS' ACCOUNT

A series of interviews of a sample of key informants were^{*1} conducted to seek opinion of key stakeholders in the electoral process. The aim was to collate and assess their views on the subject of money in politics. This included political parties' officials, civil society organizations directly or indirectly involved in the process and researchers from various institutions. To cross check the interviews, focused group discussion^{*2} were also organized and brought together a selected group of other stakeholders in roundtable sessions to assess the impact of money in nomination in general but more specifically the impact of corrupt practices in the past general elections.

THE PREVALENCE OF CORRUPT PRACTICES DURING PARTY NOMINATIONS IN KENYA

In order to understand the influence of money in party nominations and its effects on the democratization process in Kenya we adopt the classification of the four potential risks associated with money in politics that have been identified by USAID (2003). These are uneven playing field, unequal access to office, co-opted politicians and tainted politics.

The first risk is that of an uneven playing field that assumes that the electoral arena under which various candidates in any given party competed was tilted towards a particular candidate. If it is so it is important to assess whether money was the principle cause of the said disparity.

The important question here is to inquire whether the various parties nominees were ones who spent more money both in terms of financing the party as well as their campaigns. Two factors come into play here. First is the choice of the party leader and second is the financial muscle of the various candidates competing. Since most Kenyan parties do not have party structures down to the grassroots level, most candidates usually end up buying their nomination from the party leaders. This is more prevalent of the smaller parties but is also true for some cases for the bigger and more established parties. This is political corruption and the candidates that get nominations through this avenue cannot be said to be true representatives of the people.

However in looking at money as creating an uneven playing field we must separate the genuine use of money from its corrupt uses. The ability to raise or have substantial amounts of money at a candidate's disposal is important during party nominations and especially in situations as in the 2002 elections when double payments had to be made especially for the candidates seeking the nominations of the NARC coalition. For the successful candidates they also had to pay the ECK fee. Most NARC candidates in this case had to pay both the constituent party fee and the coalition fee. Furthermore with a crowded field and a short campaign period networking and reaching out to the masses required massive resources if one was to make an impact.

Although money was generally put into good use there were also several cases in which money was used to corrupt the electoral process at the nomination level. For instance the question of membership has variedly distorted the party nominations process especially where opponent parties members participate in other party nominations. This in most cases is usually geared towards ensuring that a weaker candidate is nominated from the opposing party so as to enhance the aggressor party's chances of winning. This can be morally classified as corruption especially where the aggressor party sponsors the illegal members participation in an opponent parties nomination process. But it is also important to note that in Kenya where party membership is fluid there is no proper data or documentation to determine the membership of any given party. As such it might be hard to prove in such cases whether double voting constitutes legal political corruption.

The second risk is that of unequal access to office, which is attributed to the systematic denial of certain individuals or groups the chance to compete for office or the opportunity to get the representation they deserve because they lack financial resources.

The main question here is whether there is an acknowledged financial threshold before one can run for office, i.e. is the nomination fee exorbitant so as to lock out interested aspirants? And in multi-ethnic constituencies are certain sub-populations locked out because they do not contribute to the party's kitty?

An explanation why this risk plagues the party nomination process in Kenya has to do with the lack of funding for political parties. Most parties in Kenya cannot finance their operations. A glaring example is the current ruling coalition non-payment of rent, which resulted into their eviction coupled with its inability to pay its workers. Part of the problem is that there is a tradition in Kenya where prominent individuals form and own parties thus enabling them to have the final word on party

affairs. This has had a negative bearing on these parties especially during the nomination process. Since financing party activities is a very expensive exercise, party power barons usually need the assistance of other wealthy adherents as well as aspirants in order to meet their revolving electoral expenditure. In such instances the party barons have not hesitated to give favor to their financial lackeys or their conduits at the expense of the more popular candidates at the grassroots. This occurs in spite of the existence of party rules, which are largely ignored because most parties lack the institutional capacity to enforce their own rules. The lack of a proper party structure in most parties has thus made the party nominations simply a formality. Most parties have thus ended up as patronage tools for their founding fathers who have the power to decide who gets to be nominated.

On paper parties usually promise to undertake an independent democratic nominations process. For instance NARC in 2002 developed a set of rules that included checking the corruption record of a candidate. The rule for the major part was used successfully to sift candidates but patronage later became a major challenge. The Summit members a number of whom were party leaders of their respective parties found it convenient to flout the rules in order to get their favourites nominated. A glaring case was where the late Wamalwa sought to replace the names of Mukisa Kituyi, Musikari Kombo, and Noah Wekesa. Ironically when he died all the three MPs sought to succeed him. But apart from politics there were financial implications in that some of the aspirants whom he sought to sneak in like Suleiman Murunga are wealthy individuals who were willing to finance Wamalwa's political activities.

Parties also strategically spend more money in areas where the party has a chance of winning. The net result of this is that parties tend to ignore areas where they consider as strongholds of their opponents. Such areas are therefore starved of party cash as it is considered to be a waste of money, which can be used in areas where a party can put a good fight to make an impact. The party therefore does not invest in the nomination process in such areas and candidates are either handpicked or nominated by consensus. The disinterest that parties show in certain areas thus disenfranchises their supporters in such localities as they are not given an opportunity through their party machinery to either vote the candidate of their choice or in some instances even offer themselves as candidates on their parties ticket.

Other factors that create an unequal access to office during party nominations include using money to buy membership cards for voters but also in some cases sponsoring the nomination process itself. In such cases the more endowed candidate can collude with the party and its administrators on the

ground to tilt the nomination process in favor of the more moneyed candidate. Parties do this with the foresight that they would prefer candidates at the general election who can finance their own campaigns rather than those who will rely on the party to bankroll their constituency battles with rival parties candidates. In the same vein political patronage also uneven the playing field as party barons selectively give the nod to their favored candidates who in most cases bankroll the parties activities. There are also cases where the parties' financiers are not candidates themselves but they front for their favored candidates against other aspirants who might not have an inside track of the party.

The risk of co-opted politicians assumes that money in politics has ramifications for the quality of governance. There is thus a need to determine how much political finance is affecting the allegiance and performance of elected officials.

The major question here is whether there is evidence that nominated and eventually elected or appointed officials act in the interest of large contributors and against the interests of constituents and the public at large. Likewise also look if there is evidence that elected and appointed officials misuse state resources to cover their party or campaign expenses.

It is important to note that it is practically not possible to lock out those who finance the party e.g. owners of the parties and as well as its major financiers. Due to the huge expenses involved in elections, parties cannot turn down money from various sources. Most funds donated to parties are usually channelled through the patrons. There is no question that some of the financiers do so with the intention of gaining favours should the party or candidate access power. Some of the money is therefore usually used to purchase positions including public appointments and contracts in advance. Another factor leading to politics of co-optation has to do with the lack of widespread party membership. Since 1992 there has never been a distinct party membership in most parties. To this end most parties do not have cardholders hence the difficulty for the parties to organize. Parties are thus financed by a few individuals who in turn dominate and determine the affairs of their respective parties. For instance, in the Democratic Party where a club of prominent industrialists contributed more than 70% of the party's finances. This definitely gives them the leeway to call the shots in the party.

During the KANU era its campaign was mainly financed by business moguls from the Asian community as well as a number from the coast who would in turn get favours once can KANU retained to

power. Public appointments were also made not only based on nepotism but also financial backers were appointed to parasitical boards as well as huge contracts as token for their financial support. And as is currently being revealed at the Goldenberg Inquiry state finances were corruptly used to compensate businessmen who had finance the ruling parties campaign in 1992. Under NARC symptoms of political co-optation have also become prevalent. For instance the chief financiers of DP since 1992 have all landed lucrative parastatals or corporation jobs not essentially because of their expertise but as token for having stood by the party and the current president for over a decade. For such political transactions to be curtailed there is need for transparent disclosure to be introduced into our electoral laws. This would be helpful in informing the public about which private interests are associated with which candidates or parties, and about use and abuse of public resources. Itemized data enable the public to track compliance with laws that prohibit financing from certain sources, limit total contributions and expenses, and ban the use of state resources for electioneering.

The risk of tainted politics is pegged on the fact that illicit money in politics is an obvious threat to the rule of law and a major cause of corrupt government. The perception is that corruption in political parties is widespread but little facts are available about its source and the amounts involved.

The major question in this case is to ask if illegal funds are the major source of political financing for candidates or parties. In essence is political corruption a major factor in the party nomination process. Due to the complexity of corruption, which is a context-laden concept, it is important first to define corruption within the context of party nominations and elections. Where nominations are governed by party rules and regulations and they end up being flouted then one can talk of political corruption. However in cases where party rules make undemocratic provisions in its rules then one cannot talk of political corruption. For instance in KANU the chairman has the powers to nominate aspirants directly.

However corruption is not easily identifiable within the current context of party nominations in Kenya where there are no standard regulations governing party nominations. And in the absence of concrete rules and a clear arbitration mechanism then corruption becomes difficult to define in the party politics context. Furthermore we must differentiate between political marketing and corruption. Corruption during party nominations can generally be blamed on the following factors:

First, is the prevailing political culture whereby the electorates, a majority of whom are poor make high monetary demands on politicians. This encourages corruption, as politicians have to satisfy the voter demands if they hope to be nominated.

Second, nominations have become too expensive in terms of the logistics involved and an average amount for one to successfully be nominated and win election is 3 million Kenyan shillings. Furthermore since most of the country is a stronghold of a given party, it means that the fiercest competition in most cases is usually at the nomination level where depending on which party is dominant an area a nominee is usually almost guaranteed an election to parliament.

Other reasons for tainted politics is that party financiers usually put pressure if their party ends up forming the government for returns on their donations. The government especially the KANU one then turned to public assets to compensate its financiers that led to the grabbing of public land, inflated tenders and illegal trade. Since there is still no limit on election expenditures the problem will persist unless of course a regulatory framework for disclosure is enacted into an enforceable law.

The ranking of factors that influence the choice of a nominee is difficult to tabulate since different factors influence nominations in different regions in varying degrees and this also changes from one election to another. There is thus no universal factor that can be isolated as being prime across the board. To this end there are several factors that come into play during party nominations and that have a bearing on the choice of the eventual nominee. These include political strategy, clanism, money, patronage; popularity etcetera that have varying impacts in different parties, regions and constituencies.

Factors that determine the choice of the nominee also vary from party to party but one fact that is constant across all parties is that irrespective of the determining factor money plays either a direct or indirect role in the choice of the nominee but albeit in varying degrees. One of the Key factors that determines the choice of a nominee is clannism. Although this is more prevalent in western Kenya than other parts of the country it nonetheless is a factor that cuts across the board. Thus a candidate will always stand a better chance of being elected if he she comes from a populous clan. But emanating from a big clan in itself is not enough. In most cases one has to have substantial amounts of money to lodge a successful campaign. There are also instances that several candidates are from the same clan, in that case the differences comes from either patronage from the party leader or enormous finance.

During the 2002 elections, the nominations in Uriri in Nyanza explain the power of the clan factor in conjunction with patronage. The incumbent Odhiambo Omamba who hails from the populous Kanyamkago clan was beaten by a solitary vote by businessman George Onyango who though hailing from a smaller clan had alot of money to oil his campaign. There was an immediate clash from the

Kanyamkago clan who threatened to vote for an alternative candidate from another party. And in a characteristic function of the behavior of party barons Raila Odinga the leading light in LDP and Luoland got the Electoral Commission to nullify the nomination of Onyango and certify Omamba as the NARC candidate. This was a case in which the influence of money determined the nominee at the party nomination stage but clannism and patronage led to the nullification of the voters' verdict. One also sees an aspect of political strategy as the party power baron sought to sacrifice internal party democracy in order to ensure that NARC won the seat.

There are also instances in which parties determine the choice of candidates based on the candidate's resources. For instance in 2002, KANU ranked candidates on the basis of one's ability to raise money not only for his candidature but also for the party. It was against this background that a candidate such as Njenga Karume got nomination in Kiambaa, Kuria Kanyingi in Limuru, Haroun Mwau in Kilome among others. Long-term membership within the party and incumbency also determined the choice of who got the nomination ticket. In this category are Shariff Nassir in Mvita and Maalim Mohammed in Dujis. This partially disadvantaged women as they have not entrenched within party hierarchies and in case women in Kenya are generally less endowed in monetary terms when compared with their male counterparts.

The fact that most parties are weak institutionally and most of them lack a financial base to manage their activities contributes to the influential role that money plays in determining the choice of nominees. Although in some instances party loyalty has ensured the nomination of certain candidates across the country a closer look suggests that such candidates apart from being considered as loyal by the respective party leaders are also in most cases well endowed financially. Candidates who benefited from loyalty but were also sound financially include Job Omino in Nyanza, Nicholas Biwott in Rift Valley, Mohammed Haji in North- Eastern province among others. However, party loyalty accompanied by financial endowment is not an automatic ticket for nomination. For instance in the 2002 NARC nominations Matu Wamae was not only loyal to DP but also a confidante of Mwai Kibaki apart from being financially sound, but he was beaten by Nderitu Gachagua who had more money. In this case one can argue that party loyalty was not a factor and that the financial acumen and organizational ability as well as a fair nomination process ensured that Nderitu won.

Political strategy was also a factor in choice of nominees the 2002 elections even though in most cases undemocratic. For example the NARC nominations in Westlands, which pitted Fred Gumo of

LDP and Betty Tett of DP turned violent and the NARC summit resolved to give Gumo the nomination while at the same time promising Tett that she would be nominated to parliament by NARC after the elections. This saved the party simmering wrangles and even ethnic animosity between supporters of LDP and those of LDP. Another tactical decision that was undemocratic but which can be considered as strategic although not all cases were deserving was the direct nominations of members of the summit and other prominent political personalities in the NARC coalition. Most of the nominees were in any case financially well endowed and could easily have won their parties with a few exceptions. The main strategic reason for directly nominating them was to free them from the rigor of the nomination process that so as to allow them to concentrate on the national campaign for NARC and its presidential candidate.

There have also been cases where the choice of the nominee is determined by his/her popularity. For instance in Tharaka constituency, where Francis Kagwima won the nomination but was rigged out only for him to win the general elections under the banner of FORD Asili, a similar occurrence took place in Tigania East where Peter Munya won the nomination under a NARC ticket which was however nullified, he however went ahead and won the general election on a Safina ticket. It thus needs to be noted that although money might be a significant factor in the party nomination process, there are numerous cases where its influence has been minimal. For example in the mid-90's by-election Webuye where Saulo Busolo walked out of the lecture room with only the meager savings from his university teaching job and the goodwill of the people to win both the Ford-K nomination and the well oiled KANU campaign in the by-election proper.

FINANCIAL REGULATIONS AND INTERNAL PARTY NOMINATIONS: A JUSTIFICATION

Campaign expenditure by parties and candidates in the electoral process in Kenya remains legally a private affair in the electoral laws that guide the electoral process in Kenya. And we assert here that this is one of the major bottlenecks that lies in the path of the quest to consolidate democracy in Kenya. Obscure and uncontrolled parties and individual candidates undermine the democratization process, good governance, political accountability and citizen faith on the leaders that they elect. A democratization process in any transitional country that does not address the influence of money in politics will certainly come short of consolidating its democracy.

Although substantial amounts of money is a basic requirement for political parties in the nomination process the problem lies in how such money is utilized. This is important because political culture that exists in Kenya presently in regard to both the party nomination period and the general elections is one of a time frame that voters need to maximize their exploitation of the candidate and the party or risk waiting another five years before such an opportunity arises again. There is thus need to regulate the role of money in the party nomination process as well as the general elections. The point to be noted here is that a bottom up approach is likely to enhance democracy faster in the country than a top down approach. Although regulating internal party affairs might be seen as an assault on democracy through micro-management, there is need to appreciate the fact that if the use of money is regulated only at the general election this will fall short of redressing the injurious impact that money is likely to create at the party nomination stage. For instance if an aspirant gets locked out in a particular party's stronghold as a result of the corrupt influence of money, this cannot be redressed by laws enacted to regulate the general election as that particular aspirant even if he defected must face the corrupt one in a more even field but without the benefit of running on the popular party ticket. In such a case the corrupt politician might win on the strength of his party's ticket and not necessarily on his constituents support for him. Regulation at the party nomination will certainly redress such an anomaly.

The first step therefore is to stop treating party nominations as a private internal affair that the state and its agents have to keep away from. Both our review of the literature and discussions with key informants as well as the focused group discussions show that patronage has undermined internal democracy in all the Kenyan political parties. The effect of patronage has rendered parties as institutions negligible and instead made party leaders and their financiers the point of reference within the parties. In fact it can be convincingly argued that the entrenchment of personal rule in Kenya is a direct product of the personalization of political parties. The perception that voters have towards political leaders as the ultimate solution to their personal financial problems has also perpetuated bribery during the party nomination process. The monetary demands from constituents and the resultant cycle of dependency and poverty that handouts by aspirants create defeats the purpose of the nomination process as the first step in determining the peoples representatives and instead acts as a catalyst that increases the propensity for corruption and bribery. Despite the prevalence of the corrupting influence of money at the party nomination stage we are opposed to the state financing the party nominations, which we feel, should be left to respective parties and political aspirants to fund. Although we recognise that the capping of financial expenditures would be a more feasible enactment we also recognize the enormous challenge that its enforcement entails. It is for this reason

that we feel that disclosure would be the best way for regulating and curtailing the corrupt use of money at the party nomination stage.

In general, there are six main approaches to controlling money in politics. They are contribution limits, contribution bans, spending limits, public disclosure and public financing. Often a combination of approaches are included in a given reform initiative, but there is no agreed upon formula for what constitutes the best mixture of approaches⁵⁴

But it is clear that limits and prohibitions on money in politics or political finance, can only work if there are adequate rules for disclosure. Public disclosure is the most basic method of controlling money in politics. It requires two things; first, that candidates and parties report in detail on receipts and expenditures; and second that campaign and party funding reports are available for timely public scrutiny. Founded on transparency and openness, public disclosure lets the public decide what to do with the information disclosed. Disclosure is generally accepted as more neutral than other restraint strategies.

Without disclosure, most of the other strategies of controlling the influence of money in politics are not enforceable and thus will fail the test of time. What is needed in the Kenyan situation therefore is regulation crafted around the disclosure concept.

The disclosure rule can be tailored around personal net worth forms to be filled by candidates and authenticated by a relevant government agency. Any expenditure beyond ones declared personal net worth must therefore be accounted for. It is also important to enact enforcement mechanisms, which can be used to punish violators as a demonstration to deter future flouting of the regulation.

CONTROLLING MONEY IN THE PARTY NOMINATION PROCESS: THE ROLE OF THE STATE

Political parties are essential in any country that aspires for democracy.

But a downside of political parties in Kenya is that most of them are structurally weak and institutionally inept. As already noted, most of the parties are synonymous with their founder leaders. In a democratic nation, the state is only supposed to facilitate but not interfere with the management of political parties. The facilitation includes registration, documentation of the parties' returns, providing law and order for party meetings etcetera. However the widespread lack of internal democracy begs the question as to whether the Kenyan state should play a more enhanced role in the regulation of parties than its current role of mere facilitation.

As already noted party nominations in Kenya have for the most part been a mess. This begs the question as to whether the ECK should help in the administration of the party nomination process. While this might appear to be interference on what should be an essentially private affair of political parties, we propose that provision should be made in the electoral law regulations that allows the

ECK when invited by a political party to supervise its nominations but only if the ECK is convinced that the party's nomination rules meet the minimum criteria that guarantees free and fair elections. Such an administration should also be premised on the complete independence of the ECK in determining the results, which can only be challenged in a court of law.

In addition the state should provide a regulatory framework to promote democracy within parties. Self-regulation by individual political parties has failed so far hence the need for the state enact benchmarks that will guide the registration of political parties and also influence the structure of their party constitutions. The current vacuum in the regulation of political parties has only encouraged abuse by party managers of internal party democracy since there are no broad guiding principles to regulate internal party democracy.

Party registration regulations are critical because it will eliminate parties registered for speculation purposes and in anticipation of sale. Membership size should therefore be a requirement in addition to investment in basic structures. Parties should also be required to file annual compliance reports in addition to returns. They should also demonstrate the existence of institutional structure; this will effectively eliminate briefcase political parties.

The states role in controlling the influence of money in the party nomination process should also be guided by the need to remove barriers to transparency and eliminate the influence of big money. It should especially with regard to ruling parties and incumbents enact laws that outlaw coercion and forced contributions, which as we documented usually ends up creating unequal access of office. The state should also limit the size of contributions and secrecy of campaign funds as this ends up facilitating the prevalence of co-opted politicians.

RECOMMENDATIONS*³

The following are the recommendations on the way forward in streamlining the management of political parties and in particular the democratisation of the political party nomination process:

1. The state should provide a framework for NGOs and Civil Society organizations to freely conduct voter education and train party agents with the goal of curtailing the vulnerability of the voter.
2. The media's role as the public's watchdog should be enhanced so that corrupt electoral practices are exposed. This can act as a catalyst for deterring the negative use of money during party nominations.

3. The ECK should be empowered to enable it to enforce its own regulations as stipulated in the election offences act.
4. There is need to use the political parties as the engine for reforms. Assistant as well as programmes on civic education should be conducted through or in conjunction with political parties due to their orientation as grassroots organizations.
5. The ECK should be the guarantor of free and fair elections and its task here should begin at the party nomination stage. To be able to do this, the ECK should be given the power to nullify elections when they are deemed to be unfair. Quasi-judicial powers should thus be given to the ECK either through the constitutional review or parliamentary amendments to avoid the slow speed of court cases and petitions. In general however we need to differentiate between election offences and general criminal offences.
6. Currently political parties are generally grouped under the societies act and are looked at as just any other welfare organization. This is one of the reasons why it is very easy to create a political party and also the reason why we have so many briefcase political parties. The government thus needs to come up with a specific law on the registration and regulation of political parties. In fact an office of the registrar of political parties who has a security of tenure should be created.
7. Since currently, parties do not abide by their own nomination rules, the registration of political parties needs to be revised to provide for stringent regulations which will condition parties to adhere their rules as approved by the registrar upon their registration or risk de-registration.
8. In order to curb political corruption at the party nomination level there is need for an enhanced civic education programme. The goal should be to discourage the negative use of money in elections. Illicit money is already quietly loosing its place in politics thanks to civic education. Civic educators should thus highlight cases of illicit money spenders who have lost previous elections.
- .
9. Political parties should be encouraged to enact rules that compel allegiance to political party parties i.e. to reduce the phenomenon of multi-membership. This will also curb the tendency of both members and aspirants switching parties intermittently
10. ECK should be more pro-active in the party nomination by monitoring the process as opposed to the current posture of simply waiting for certificates to be brought to them.

11. Legal impediments to the ECK should be overhauled if it is to play any meaningful role in the party nomination process. The ECKs process of seeking justice at the national level has been quite slow; this is partly because the ECK does not have prosecutorial powers. This has meant that the ECK cannot nullify an election and can only seek redress through courts of law. The reformulation of these laws should be geared towards empowering the ECK to have the capacity to enforce the Election Offences Act.

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Appendix I

Focused Group Discussion List of Participants

Name	Organization
1. Charles Namachanja	Secretary General University Academic Staff Union (UASU) and Lecturer Dep't. of Political Science and Public Administration
2. Collins	Friedrich Ebert Foundation Nairobi
3. Wambui Kimathi	Kenya Human Rights Commission
4. Jemimah	Legal Officer Electoral Commission of Kenya
6. Ms. Irene Oloo	Executive Director League of Women Voters
7. Owiti Jeremiah	Executive Director Centre for Independent Research
8. Kariuki	Office of the Leader of Official Opposition
9. Ochanda	ICAD
10. Wanja	CLARION
11. Chege Suleiman	Electoral Commission of Kenya
12. Aura Zephaniah	Programme Officer Institute for Education in Democracy
13. Mmwaliimu Mati	Transparency International
14. Prof. Were	Lecturer Dep't of Religious Studies University of Nairobi
15. Jaindi Kisero	Columnist Nation News Papers
16. Njoki Ndung'u	NARC nominated MP Human Rights Lawyer and advocate of the High Court of Kenya
17. Mr. Njui	Catholic Justice and Peace Commission
18. Divider Lamba	Mazingira Institute and Board Member CGD
19. Mutunga M A	SODNET
20. Gichira Kibara	Executive Director Centre for Governance and Development
21. Masime	Programme Officer Centre For Governance and Development
22. Adams Oloo	Lead Researcher and Lecturer Department of Political Science and Public Administration UoN
23. Otieno Michael	Research Assistant and Raporteur (Department of Political Science and Public Administration UoN)

Guiding Research Questions

1. What are the major reasons that explain the prevalence of corrupt practices during party nominations?
2. What are the major factors that influence the choice of nominees and where does financial resources rank in hierarchical order?
3. Should financial regulations also extend to internal party nominations?
4. How adequate are the proposed constitutional changes on the election offences Act?
5. What should be the role of the state in enhancing internal party democracy and reduction of electoral malpractices, corruption and financial misconduct?

Appendix II

Focused Group Discussion I (29th 04 2004 New Stanley Hotel)

List of Participants

Name	Organization
1. Charles Namachanja	Secretary General University Academic Staff Union (UASU) and Lecturer Dep't. of Political Science and Public Administration
2. Collins	Friedrich Ebert Foundation Nairobi
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11. Gichira Kibara	Executive Director Centre for Governance and Development
5. Masime	Programme Officer Centre For Governance and Development
12. Adams Oloo	Lead Researcher and Lecturer Department of Political Science and Public Administration UoN.
13. Otieno Michael	Research Assistant and Rapporteur (Department of Political Science and Public Administration UoN.)

Introduction

Gichira Kibara (Executive Director: Centre for Governance and Development)

The director put the discussion in focus by highlighting the intention of the research and therefore the FGD. As he noted, the research, which is being carried in conjunction with National Democratic Institute (NDI) Washington Office seeks to assess the impact of money in nomination in general but more specifically the impact of corruption in the past general elections. He noted that the 2002 general elections were massively flawed, with cases of direct nomination by party leaders, money-changing hands in a large scale. He drew a parallel with the 1970s when money was used to distort the democratic process through military coups. Now money serves the same purpose but through bribery, vote buying, purchase of nomination by candidates from party leaders, purchase and destruction of voters cards, sponsoring of violence by contestants against opponents etcetera. This problem has been the pre occupation of many international bodies including the United Nations. (UN)

The Focused Group Discussions are a baseline study preceding public forums that would bring together Political Parties, Members of Parliament, the Government and Civil Society. The ultimate goal is to form a Coalition of Civil Society to advocate for legal provisions on issue areas such as disclosure of sources of funding, accountability, public funding, civic education programmes on dangers of negative use of money to democracy. Create monitoring instruments, structures, institutions and processes to tell how parties spend their money. (Read- to prevent unfairness, intimidation and corruption)

Dr. Oloo Adams (Lead Researcher and Lecturer Department of Political Science and Public Administration)

In guiding the discussion Dr. Oloo observed that nominations in Kenya have largely taken a top down approach, effectively neglecting the grassroots and locking out democracy and its attendant principles. The major determinant of this flawed approach has been (right or wrongly) attributed to money. He prescribed a bottom up approach to democracy, in any case that is what it is in the strict sense of the concept. Money has both direct and indirect role in party nominations coupled with patronage of and party leader domination on who gets to be nominated. The discussion should therefore consider both the direct and indirect role of money and their influence on party nominations. It is hence a broad overview of party nominations financing and the consequent effects of money on the nature of the process.

Guiding Research Questions:

1. What are the major reasons that explain the prevalence of corrupt practices during party nominations?

2. What are the major factors that influence the choice of nominees and where does financial resources rank in hierarchical order?
3. Should financial regulations also extend to internal party nominations?
4. What should be the role of the state in enhancing internal party democracy and reduction of electoral malpractices, corruption and financial misconduct?

Question 1 Responses

Charles Namachanja

The participant pointed out poverty and illiteracy among the electorate as major motivators for demand for handouts in the form of money and food. However he noted that ethnic considerations have also been a major explanation for change of voting pattern especially in Luhya land between 1992,1997 and 2002 elections when Luhya community were able to vote as one block given the surety of Wamalwa being vice president in a pre election coalition pact.

It is the leaders who finance the ethnic based parties who influence those who get to be nominated, that is, those who are potential sycophants who will perpetuate hero worship. He noted that parties do not exist as institutions, this is exacerbated by low political consciousness- people have no understanding of the ideals of democracy.

A question however arose as to the universal impact of ethnicity during nominations. Given that parties are ethnic based, except for urban/cosmopolitan areas, other factors such as clanism come into play. Namachanja acknowledged this, and gave the example of Korwa Adar who lost in 1992 general elections because he came from a small clan as opposed to his opponent Ocholla Ogur who came from a dominant clan in Nyatike constituency. The lack of money for him further ensured he did not stand a chance of winning the nominations.

Collins (FES)

The participant noted that ideally there are no party nominations since nominations are based on individuals' not political party ideals. Hence there is a combination of two factors: the choice of the political party leader and who pays more.

Since there are no party structures down to the grassroots, candidates buy their nomination from the party leaders.

Wambui Kimathi (KHRC)

She argued that, by virtue of our parties being institutions that mobilize for political purposes, they qualify to be political parties and therefore we have political parties. This was in response to questions as to whether our parties qualify to be political parties or are just ethnic organizations for gaining access to political power. She however noted that when they coincide with ethnic interests then their structures change.

Whereas she appreciates the role of direct nominations by party leaders especially as experienced in the last general elections, she sees them as well calculated political strategies, that is, they are strategic decisions not corruption or a malpractice. Political strategy has no place for morality, corruption is a moral consideration and therefore strategic political decisions cannot be subject to moral judgment. She blames corruption during nominations on:

- The prevailing political culture – the demands made on politicians is too high and therefore encourages corruptions.
- Nominations are too expensive in terms of logistics involved this is likely to generate corruption
- Lack of party membership- since 1992 to the last elections there has not been distinct party membership, no cardholders hence the difficulty for the parties to organize. She gave the example of Democratic Party where three people contributed 70% of the party's, party members had to be catered for on transport and accommodation during National Delegates Conference. Therefore those who finance the party have the leeway to call the shorts.

Jemimah (ECK)

In her opinion there is absolute no democracy in the political parties. She points out the existence of 52 political parties, most of which have no physical address: they operate on the streets. (Briefcase Political Parties) Parties are not institutionalized and gave the example of the problem of signatories of NARC during nominations. Parties experience a general weakness to organize, no offices, no membership registration. The ECK particularly has been a victim of this lack of organization with cases of different names forwarded for nominations. Those who win during nominations are not forwarded. She therefore stresses the need to increase capacity of political parties and institutionalization.

At the core is the funding for political parties. Most parties cannot finance their operations including rent payment. (e.g. NARC problems with their landlord at Mwenge house) WE therefore need a political parties bill to facilitate the enhancement of capacity of political parties.

The power tradition that bestows upon certain individuals who own the parties the power and authority to overrule members' decisions proves that members do not own the parties. For instance in the Tigania East nominations where the public nominated Peter Munya but NARC cleared Adams Karauri, Munya later won the seat with a Safina ticket, see also Starehe's Jimna Mbaru and Maina Kamanda, Rarieda's Owiti Malo Malo and Raphael Tuju. There is a general culture of lack democracy within political parties, lack of accountability, misuse of party finances and corruption.

In response **Namachanja** noted that, this is aggravated by the perception of access to political office and state power as a means to distribute and allocate public resources. Ethnic communities hence see their leaders as a means to wholesome benefits from the state resources. He gave the example of ANC of South Africa, which has adequate structures and is run as an institution based on policies and therefore a legitimate means to access power.

The chair (**Dr. Oloo**) however faulted the need to put other standards such as ideology in the western democratic context if we have acknowledged that our parties are based on ethnic affiliations. In his opinion parties are not necessarily modeled on the western liberal democracy party outfits. Our parties lack institutional capacity but they exist as political parties. He gave the example of the US where there is distinctly Black American vote, Jew vote, Spanish vote and are respected as so, whereas in Kenya, ethnic votes are demonized and seen as a problem/weakness.

Gichira Kibara (CGD) asserted that we do have parties with underdeveloped ideologies which are always abused. They have inappropriate manifestos, which do not articulate the real goals such as capturing the ethnic votes. There is therefore need for capacity building and reorient the political parties.

Masime (CGD) argued that what we have are elite factions and parties this has resulted in the current confusion where we seem to have more of KANU in NARC and NARC in KANU. Individuals simply align themselves with parties in order to capture power.

Collins (FES) decried the lack of legal framework that encourages existence of political parties and their management. The electorate on the other hand put demands on parties, of which they are not members. Such hefty demands from society increase the costs of nominations. The individuals who

finance the parties control them. Political parties are not regulated by law and therefore people vote for individuals hoping left right and centre from one party to another.

Ms. Oloo (League of Women Voters)

In most cases it is the losers who complain about corruption therefore it is corruption when we don't benefit from it but not if we reap the benefits. The key concern is lack of capacity for candidates not corruption (allegations of corruption).

Gichira Kibara noted that members do not fund parties because they are personalized institutions where ordinary citizens are not welcome. It is a deliberate effort by party gatekeepers to personalize the party and exclude everybody else as a means of controlling the parties.

The chair, further noted that in the developed world, most money goes into adverts due to access to the media (print and electronic) by a majority of voters, here there is no access therefore other clandestine areas of expenditure.

Jemimah however, pointed out that lack of means of accessing information should not be a justification for corrupt expenditures since candidates can use posters and even mount public address systems among others as alternatives.

Question 2 Responses

It was generally observed that ranking would be difficult because different factors influence nominations in different regions there is therefore no universal factor that would apply across the board. Hence, political strategy, clanism, money, patronage, popularity etcetera have varying impacts in different places.

To **Namachanja**, there is need to integrate both financial political strategies and patronage (pay the party leaders) to win nomination. To combat bribery political patronage, we need to intensify civic education on the reason for and need to vote.

The ECK should regulate political parties and corruption related practices.

Key to nominations is: Clanism, the question of who is who in the party, resources (for instance, KANU ranked candidates on the basis of ability to raise the highest amount of money) period of membership (generally agreed as a legitimate means to gaining access to party nomination) In these contexts, women are more disadvantaged since they are not within the hierarchy of the parties. Money being a source of influence, payment to the party is legitimate for those who have not been participating in party activities. To avoid people switching membership to political parties, allegiance

to political parties should be a requirement for gaining access to party nominations. ANC for instance, requires candidates to be committed members.

He identified other areas where money has been used as buying of agents of candidates who do not have the money to retain them, kidnapping to make candidates time barred.

Owiti Jeremiah (CIR)

Due to weak institutionalization and lack of resources, he identified money as a key factor in influencing nominations. However, in his opinion party loyalty is neither here nor there, he gave the example of LDP, which is $\frac{3}{4}$ KANU, and therefore party loyalty is not a factor. In DP for example, Nderitu Gachagua beat Matu Wamae (a party loyalist) party loyalty is therefore not very significant, money hence ranks high. Strategic decisions however play apart, and he gave the example of Westlands where strategically it was expedient to sacrifice party stalwarts to achieve sympathy with western Kenya in the Gummo candidature.

Kariuki (Office of the Leader of Official Opposition)

He down played the effect of money in nominations giving the example of David Koros winning against the moneyed Mark Too, and Ewaton spending 6 million on logistics alone, money therefore has not much influence. Socio-cultural issues unique to Kenya such “idolatry “ of party / ethnic leaders, in Luo Nyanza for instance, allegiance to Raila secures parliamentary membership otherwise Otieno would be in parliament if money was a factor. We need to educate Kenyans on level of participation during campaigns since candidates attract more people than ordinary civic education sessions. This calls for a reevaluation of strategy to have a guided civic education.

Wambui reasserted the need to avoid ranking and look at the political mix of ability to capture the vote, ability to mobilize resources, political experience, name/recognition, and financial resources etcetera. Candidates do not admit to loosing elections and blame it on corruption even when money is spent legitimately. We must therefore differentiate political marketing and corruption.

Collins: Even though ranking is difficult, due to poverty and illiteracy, individual competence and constituency participation comes last. We must separate money from corruption, money is important in nominations especially when we have tripartite payments as was in the last general elections to constituent party, coalition party and the ECK. To tackle the problem of corruption money we should democratize political parties and enable candidates to afford legitimate political party nomination expenditures. He gave the example of Kabogo of Juja where money worked and Mwau’s “Osa Vinya” where it did not.

Jemimah however put popularity first then money. She explained the ECK’s failure to regulate political parties to lack of a legal requirement on its part to do so. The ECK has no powers including

to punish candidates in cases of electoral offences since it does not have powers to prosecute in spite of existence of Electoral Code of Conduct and Election Offences Act. We need adequate legal weapons to control malpractices during nominations.

Collins, in this context, pointed out reiterated that too much is expected from the ECK which operates in an ambiguous legal framework.

Question 3 Responses

Ochanda (ICAD)

In his experience as a candidate in the last general elections, he noted that nominations have been treated as a private party affair. In general however we need to differentiate between election offences and general criminal offences. The ECK cannot direct campaigns since it is not the manager of party nominations. Money remains a core factor of the exercise of nominations aside from the illegitimate expenditures. The problem lies in how the money is used. Societal perception of candidates as people who have money, voters do not take poor candidates seriously. The impression that the candidate creates in the eyes of the voters therefore influences the direction of voters' decisions. All this requires money. To regulate this situation we need to create a ceiling on expenditure in the form of a regulation even though enforcement would be problematic. We must avoid treating nominations as an internal party affair and have an enforceable legal framework as a benchmark. On patronage he noted that, it is not the party, which is not significant, but the person at the helm of the leadership. Other areas that require massive expenditure include; logistics of getting to the people and endearing them to you and socializing in different manners.

Owiti sought to know whether campaign bribery is demand or supply driven. However in response **Ochanda** argued that, the approach (he) used to face bribery, negates the demand or value for money and therefore for bribery.

Wanja (Clarion) highlighted the role of perception that people have towards political leaders as ultimate solution to their personal financial problems. Elected leaders are given personal bills- such demands from constituents and the resultant cycle of dependency and poverty increases the propensity to corruption and bribery. She attempted to de-link political organization the process and the unit. She decried the new twist that the "big man thing" is taking, (Kalonzo in Ukambani becoming a big threat, Kombo in Luhya land) it is becoming a threat to political organization the process and the unit with reference to the changing perception of leaders.

Wambui argued that candidates ought to be on their own at the nomination level. She views funding for candidates at the nomination level as not a feasible requirement from the government. Capping expenditures might be feasible but difficult to enforce. In her opinion what is required is disclosure.

We must relate governance through the political process accountability must therefore begin from the political process.

Bururia (Ecumenical Centre for Justice and Peace)

The beginning point should be sensitization on the need to own political parties, which is at present lacking. He argued that influence is determined by popularity of the candidate and gave the example of Tharaka, where Kagwima was rigged out in NARC nominations but won with FORD Asili, Peter Munya in Tigania East. We need to sensitize voters to make informed decisions based on policies and manifestos of political parties so that candidates' personality does not sway the direction of voting. *This removal of the influence of the individuals was seen as the recommended ideal situation far from current reality.*

Namachanja preferred that candidates be left to look for as much money as they can during nominations. He argued that money facilitates but not the major determinant in nominations. He gave the examples of Masinde in 1992 and Saulo Busolo in Webuye where money did not have any substantial effect as opposed to popularity of the candidate and party allegiance.

Ochanda noted that we must differentiate between individual and party finances for organizing elections and divorce the two.

Jemimah recommended a limit to how much candidates should spend on nominations. To control demands from political parties, this she argued within the context of requirements of nomination fees by political parties.

Owiti reminded the participants that democracy by its very origin is a bourgeoisie invention hence resources remain a determinant in other words democracy has no provision for the poor.

Collins recommended control regulations to eradicate corruption through disclosure of sources of funding and not towards limits to candidates' expenditures.

The Chair, on limits on sources of donations, gave the US example of federal matching funds system and limits as much individual donors can contribute.

Ochanda in giving examples of sources of his donations in the last elections noted that regulation of donations would be difficult especially if donations are in kind.

Owiti supported a ceiling on donor contributions (individuals or corporate) the aim of which is to avoid overly influence on policy of parties and donations made in anticipation of benefits such as award of contracts and illegal sources of funds such as drug money in anticipation of protection.

Kariuki pointed out the difficulty of separating corruption and campaign marketing. What we need is enforcement of financial discipline in management of party finances especially on the question of ceiling on donor contributions.

To **Collins** the problem is not money but the lack of it, people can contribute as much as they want and given the scarcity of willing donors ceiling would starve parties of funds.

To **Wambui** what we need is regulation crafted around disclosure through personal net worth forms to be filled by candidates. Any expenditure beyond ones declared personal net worth must be accounted for. We can then use (punish) a few cases for demonstration purposes to deter future flouting of the regulation. The personal worth is added to other sources of contributions in accounting.

Masime however warned that regulation can be counter productive given that the state will be the enforcing agent, it can use it to cripple political parties activities.

Question 4 Responses

Ochanda, we need to define political parties before we bring in the state in party affairs. (In his opinion what we have are not political parties but conduits for clearing people for elections.) The state can then come in party funding based on a threshold of e.g. percentage of votes garnered in elections or members of parliament. We however still have a problem of party membership; he highlighted the example George Nyanja multiple defections in 1997.

With proper determination of what parties are, the state can fund political parties with set/specific functions. Political party nominations need to be taken up by the ECK, it should then be given more powers of enforcement and to prosecute and with good will from the government it can undertake the task. Public education (largely left to civil society) should be brought into the content of school curriculum and provisions for those outside the school framework.

Kibara attributed the lack of education to failure of the state, (The registrar of societies for instance has not been up to his duties.) and lack of internal democracy within the parties. Regulation would therefore reduce inter party mobility and personalization of parties. Such regulation should then create mechanisms for conflict/dispute resolution that for instance are now dogging NARC. The vacuum of regulation for political parties has encouraged lack internal party democracy since there is no requirement for internal party democracy.

Kariuki however noted that parties are learning the hard way since they are the victims of lack internal party democracy. He gave the example of Wundanyi Constituency where FORD People

took advantage of lack of internal party democracy in KANU and NARC and won the seat through Mwandawiru.

Collins sees our political parties as weak or non-existent with rogue individuals. The state should therefore provide a legal regulatory framework to promote democratic political parties in form of e.g. disclosures not for purposes of control but to ensure that parties develop a democratic culture. Self-regulation has not been very effective and therefore there should be a state developed framework for self-regulation, including benchmarks for political parties and party constitutions hence parties based on parliamentary representation.

Wambui supported state regulation of political parties as a basis for funding. The threshold idea becomes critical in enhancing existing bigger parties and to eliminate parties registered for speculation purposes in anticipation of sale. Membership size should therefore be a requirement in addition to investment in basic structures. Parties should hence file annual compliance report in addition to returns. They must also demonstrate the existence of institutional structure; this will effectively eliminate briefcase political parties. The regulation should also demand for separation of roles of politicians and party executives. It should change the culture of political parties and allow entry of women into the party hierarchy.

Namachanja however argued that this depends on the nature of the state, authoritarian state would be restrictive and interfere with the running of the political parties. A liberal state would liberalize key institutions and organs of power. Parties must be perceived as part of the democratic institutions. The state therefore only facilitates but not interferes with the running of the parties e.g. through funding, while parties concentrate on policies. A democratic state should be able to remove restrictions to internal and external fundraising. He pointed out the blocking of Ford Kenya's fundraising efforts abroad and that of South Africa where Mandela engaged in massive external fundraising. Any state laws and rules must therefore be liberalized. Parties can also venture in investments in profit making activities to generate funds. The ECK should be facilitated to meet all the costs indiscriminate and prompt application of the law. Parties should therefore be left to enforce their rules and internalize discipline.

The chair **sought to know the legality and or appropriateness of declaring the Baringo Central MP unopposed even before the elections by the ECK. He viewed this as an effective way of disenfranchising the electorate by limiting their opportunities of choice.**

Jemimah on behalf of the ECK argued that NARC and other parties did not contest the unopposed declaration and therefore was not able to do anything. Since the law provides for a deadline of nomination it's an expedient strategy to buy candidates after the end of deadline and therefore go

unopposed. The only way out is to change the law so that in case of a withdrawal parties can be given a chance to nominate another candidate. She raised the question of advantage by the party in power to access public resources in kind and public servants, this should also be addressed. This leads to the question as to whether the government party should also be funded due to the advantages that automatically accrue to incumbent parties. The other area of concern is the danger of investing in political parties. Section 33 of the (draft) constitution provides for 1/3 women membership the state should strictly enforce this to ensure gender balance.

Summary

The chair summarized the discussion by pointing out the major areas of concern as

- a. On parties two arguments arose one, the parties we have are not parties; two, that they are parties but lacking in institutional capacity.
- b. They are weak and are only conduits for electioneering- they are merely electoral vehicles.
- c. There is need for state regulatory framework for formation of political parties, their structure and membership.
- d. Factors that influence nomination identified as, money, political strategy, patronage, clanism, ethnicity (especially in urban areas), and popularity. Ranking was however not seen as the best way forward hence the importance of the mix of these factors applied in an area specific approach.
- e. Money in political party nominations identified both as legitimate and illegitimate which can be used negative or positively.
- f. There is need for regulations to curb corruption in nominations, however there was disagreement as to whether such regulation should provide for upper ceiling on contribution and spending. The difficulty in enforcing the regulation was also noted.
- g. There should be disclosure on and expenditures so as to curtail kickbacks or vested interests in the political process.
- h. Since membership is not adequate there would be need for other sources of funding political party organization.
- i. There was a consensus on the state having a role in regulating internal party democracy. Such regulation should be a broad framework that would ensure parties adopt democratic practices.

Vote of Thanks

The final vote of thanks was given by Gichira Kibara the Executive Director of CGD, where he indicated that this was just one in a series of other forums in the future.

Focused Group Discussion II (30th 04 2004 New Stanley Hotel)

List of Participants

Name	Organization
1. Chege Suleiman	Electoral Commission of Kenya
2. Aura Zephaniah	Programme Officer Institute for Education in Democracy
3. Mmwaliimu Mati	Transparency International
4. Jemimah Legal Officer	Electoral Commission of Kenya
5. Prof. Were	Lecturer Dep't of Religious Studies University of Nairobi
6. Jaindi Kiseru	Columnist Nation News Papers
7. Kariuki	Office of the Leader of Official Opposition
8. Njoki Ndung'u	NARC nominated MP Human Rights Lawyer and advocate of the High Court of Kenya
9. Mr. Njui	Catholic Justice and Peace Commission
10. Divider Lamba	Mazingira Movement and Board Member CGD
11. Mutunga M A	SODNET
12. Gichira Kibara	Executive Director Centre for Governance and Development
13. Masime Richard	Programme Officer Centre For Governance and Development
14. Adams Oloo	Lead Researcher and Lecturer Department of Political Science and Public Administration
15. Otieno Michael	Research Assistant and Rapporteur

Introduction

Gichira Kibara (Executive Director: Centre for Governance and Development)

As he did in the first Focused Group Discussion, the director put the discussion in focus by highlighting the intention of the research and therefore the FGD. As he noted, the research, which is being carried in conjunction with National Democratic Institute (NDI) Washington Office seeks to assess the impact of money in nomination in general but more specifically the impact of corruption in the past general elections. He noted that the 2002 general elections were massively flawed, with cases of direct nomination by party leaders, money-changing hands in a large scale. He drew a parallel with the 1970s when money was used to distort the democratic process through military coups. Now money serves the same purpose but through bribery, vote buying, purchase of nomination by candidates from party leaders, purchase and destruction of voters cards, sponsoring of violence by contestants

against opponents etcetera. This problem has been the pre occupation of many international bodies including the United Nations. (UN)

The Focused Group Discussions are a baseline study preceding public forums that would bring together Political Parties, Members of Parliament, the Government and Civil Society. The ultimate goal is to form a Coalition of Civil Society to advocate for legal provisions on issue areas such as disclosure of sources of funding, accountability, public funding, civic education programmes on dangers of negative use of money to democracy. Create monitoring instruments, structures, institutions and processes to tell how parties spend their money. (Read- to prevent unfairness, intimidation and corruption)

Dr. Oloo Adams (Lead Researcher and Lecturer Department of Political Science and Public Administration)

In guiding the discussion Dr. Oloo observed that nominations in Kenya have largely taken a top down approach, effectively neglecting the grassroots and locking out democracy and its attendant principles. The major determinant of this flawed approach has been (right or wrongly) attributed to money. He prescribed a bottom up approach to democracy, in any case that is what it is in the strict sense of the concept. Money has both direct and indirect role in party nominations coupled with patronage of and party leader domination on who gets to be nominated. The discussion should therefore consider both the direct and indirect role of money and their influence on party nominations. It is hence a broad overview of party nominations financing and the consequent effects of money on the nature of the process.

Guiding Research Questions:

1. What are the major reasons that explain the prevalence of corrupt practices during party nominations?
2. What are the major factors that influence the choice of nominees and where does financial resources rank in hierarchical order?
3. Should financial regulations also extend to internal party nominations?
4. How adequate are the proposed constitutional changes on the election offences Act?
5. What should be the role of the state in enhancing internal party democracy and reduction of electoral malpractices, corruption and financial misconduct?

Question 1 Response

Arising out of the previous discussion it became important first to define corruption within the contexts of party nominations and elections.

Aura (IED) argued that where nominations are governed by party rules and regulations when these rules are not followed then it encompasses corruption. However when the party rules themselves provide for an unfair nomination procedure for instance in KANU where the chairman can nominate directly then it is not corruption.

Chege (ECK) made reference to the 2002 nominations which were marred with chaos and parties changing names of nominees as late as during printing of ballot papers through telephone calls. There were also cases where parties nominated more than two candidates. In his opinion internal democracy and transparency is seriously lacking in parties and gave the example of nomination certificates being thrown out through the windows of party headquarters. According to him we cannot talk of democracy if party leaders reject people's choice. The chaos that characterise party nominations can be related to the existence of party euphoria, which makes getting a party nomination as good as being elected. He therefore recommended regulations to be reviewed to provide for proper voter education and training for agents. Further that mechanisms for recall be imposed on candidates through a legal provision to give the people power in party nominations. To avoid cases of bribery violence and corruption political parties ought to be accountable to the people.

Mwalimu (TI) parties have a characteristic institutional weakness- no party members, one can be a member of several parties and have various party membership cards bought for them by candidates. He views parties as vehicles for charismatic leaders with no structure or proper rules and regulations. In the absence of the rules then corruption becomes difficult to define in the party politics context.

Jmimah (ECK) suggested a need for legal framework to prevent malpractices such as the use of violence to impose nomination by the ECK.

Aura decried the culture violation of the law including the constitution the same culture of lack of respect for the law is transferred to the party nominations process. He does not prefer the ECK loading on parties through controls as that would amount to taking too far the role of the ECK.

Were (UoN) party rules exist but the culture and how the parties were created makes nobody take the rules seriously. The culture of patronage give the party founders the power to decide who gets to be nominated. The lack of a proper party structure makes the party nominations simply a formality since it is not entrenched within the parties.

Chege on the role of ECK in party nominations- unless the ECK is asked to assist it does not interfere in internal party nominations process. It however raised concern on the party nomination process, for instance in Uriri, Starehe. Since parties do not abide by their own nomination rules, the registration of political parties needs to be revised to provide for stringent regulations with reference to adherence to party rules.

Divider Lamba argued that money might not be a determinant. There have been cases where money worked and others where it did not, hence other factors get into play. We need a comparative study through a case-by-case approach with reference to the last general elections.

Aura raised the question of membership; opponent parties have participated in other party nominations so that a weaker candidate is nominated to enhance its chances of winning this he classifies as corruption.

Mwalimu however retorted that where membership is fluid and there is no knowing of who is a member of what parties this cannot constitute corruption.

Jaindi noted that it is not sensible to have dual membership and therefore the complexity of the problem should be dealt with as ruthlessly as adequate. Nominations being a façade they should be done away with.

Were faulted the time period provided for party nominations as too long and gives room changing of party membership and participation in different party nominations.

To **Njoki Ndung'u** given that nominations are very expensive especially for parties with big number of contestants, more time is needed to organize them, she gave the example of NARC nominations, which were like a general elections. She identified problem areas to include candidates buying membership cards for voters, political parties having similar manifestos, patronage- especially in Nyanza- in the Kisumu West by elections a proposal to bring in the Eck was rejected due to patronage and the fear of loosing control of the region. Parties have also been simply a means of gaining power, the citizens do not own the parties and therefore have very little say in the process of nominations.

To **Lamba** corruption is not identifiable within the current context of party nominations.

The Chair proposed that, we should look at ideology broadly as a tool of party mobilization and this should include ethnic perspective.

Mr. Njui blamed the mess on the structural problem of political parties; parties are personal entities. We should nurture the culture of political democracy as opposed to entrepreneurship in political parties, which perceives parties as a mobilization base to get clientele. Money becomes a negative influence for instance if spent on hirelings to disrupt and distort the democratic process.

Jaindi we need to integrate the relevance of political parties in our context in comparative politics. He questions the reason why voters elect people they reject in the nominations e.g. Maina Kamanda against Jimna Mbaru. He related the mess in political parties to general institutional decay across the board including in other areas where elections are held, such as churches and cooperatives.

Question 2 Responses

Njoki Ndung'u with reference to NARC explained that the party developed a set of rules such as corruption record of the candidate. The rules worked but patronage was the main challenge. Summit members replaced names of nominees e.g. in western Kenya cases of Musikari Kombo, Wekesa, Kituyi. In other cases summit members took certificates for candidates regardless of whether they worn nominations or not. The rules existed but the problem was the implementation.

She identified a big problem in the leadership structure that has created a leadership vacuum with no body to hand over to. For instance the case of Maendeleo ya Wanawake and the flawed process of choice delegates to Bomas where whole families were represented. The composition of the ECK was questioned and blamed on its failures.

Jaindi specifically raised the issue of conflict in responsibility in main elections and the political party nominees to the commission.

Njoki on areas of expenditure pointed out that more money is used on areas where the party is sure of winning. On the influence of money it was her informed opinion that it's not possible to lock out those who finance the party e.g. owners of the parties and the major donors. Due to the expenses involved in elections the parties cannot turn down money from whatever source. She identified institutional failure and poverty as making the parties prone to manipulation. She observed that in 2002-election year, the period before October the flow of funds were inadequate, however after the launch of NARC money started flowing, probably due to expectation of returns. Most of the Money was channelled through the patrons and with money and power anybody can be corruptible, hence purchase of positions including public appointments and contracts.

Lamba stressed the need to look at money pathways. The financiers put pressure on the government for returns on their donations. This can easily be related to grabbing of public assets and land turned into liquidity and then used for elections and with the ease of predictability the same will reoccur again.

Mr. Njui we need to anatomise why elections are so expensive because corruption is attributable to costs and money, and lack of limits to election expenditures and standards. We need to determine is rational in election expenditures and what we need to do to tame the "Kenyan democracy"

Njoki gave NARC's organization of the party's expenditures. NARC had two accounts one for presidential election campaigns and the other for parliamentary and civic campaigns.

Question 3 Responses

It was generally agreed that the ECK should be more entrenched in the political party nominations process by monitoring the process and not just waiting for certificates to be brought to them. It

should not wait for formal complains even when there is evidence of malpractice and here; the Kisumu by-elections came into focus. The ECK was accused of ganging against voters with political parties especially over the computer register during the last general elections. ECK needs to follow the rules and not circum to pressure from political parties.

NARC nominations also came into focus and it was accused of wasting voters' time the whole or more only for their decision not to be respected.

Chege in defence of the commissioners ages he pointed out that there is no legal provision for age limit, in addition, the power to appoint commissioners rests with the president who decides the people he feels are the right ones for the job. There is therefore a need for consultative meetings with political parties on the way forward.

He raised the issue of security for commission staff (ROs) and gave the example of Budalangi and Kwale where the ROs was threatened. With regard to enforcement of election offences the major impediment is the commission's lack of prosecution powers, however it created peace committees where candidates were warned and minor conflicts resolved mutually. Criminal cases are normally subject to the penal code enforced by the police, whereas the Electoral Code of Conduct is subject to a tribunal created by the commission and he gave the examples of Rutto, Wanjala and Sunkuli who were summoned to the tribunal and fined.

On the issue voters register since many names were missing from the computer register the ECK proposed the use of two registers, which the political parties turned down and insisted on the use of single register since voters were expected to have inspected the register.

Mwalimu ECK should ensure that nominations are free and fair and not allow corruption to interfere with the elections. He proposed that the ECK should be given the power to nullify elections when they are deemed to be unfair.

Mr. Njui wondered why election time is a time of lawlessness when the rule of law seems to be suspended. He drew attention to the fact that Asians leave the country during elections and return after the exercise. This demonstrate the extent of the internal rot, we have evolved a culture of lawlessness and finger pointing where outright crime is not taken as so instead it is toyed around with in the process of blaming one another. Such crimes include: purchase of ID cards, forgery of certificates, purchase of voters cards, bribery etcetera. As a culture we need to adopt zero tolerance to corruption including election related offences. The ECK in order to achieve this needs legal teeth and develop benchmarks and standards to invalidate elections.

The difficulty however lies with establishing and proving corruption in an environment where the same is not defined. We need to differentiate between election related offences and criminal offences.

Jaindi faulted the IPPG negotiations that approved the nomination of commissioners to the ECK by political parties, he views these nominees as interested parties and disproves of the model of interest group approach to creating regulatory bodies that automatically leads to conflict of interest. The ECK should be an independent regulatory body.

Njoki in response argued for the exclusion of interest groups in key positions and independent approach to constituting the ECK.

Mr. Njui however stressed on the consideration of the structure and powers of the commission rather than the input. In other words the most important thing is the output not the input, we should consider the mandate not the composition.

Jemimah argued that in spite of the party nominees there are 12 twelve independent commissioners however the independence of the twelve were also question since they have been seen to be there at the behest of the former ruling party.

On the question of ECK involving in party nominations she pointed out that the ECK Act does not legally require it to involve in party nominations if is to do so then there must be a legal provision. In spite of this the ECK should ensure that there is no malpractice during nominations.

On the question of the violence in the Kisumu by-election, she noted that the peace committee is yet to submit its report so that a tribunal can be formed however she pointed out that there is no legal provision for the creation of the tribunal. The process of ensuring justice is extremely slow since the ECK has no prosecution powers, which rest with the police, and once results are announced the ECK cannot nullify elections but only seek redress through election petition. There is also no benchmark for disqualifying candidates and violence is not enough ground to nullify elections.

Mr. Njui sought to know what the ECK considers to constitute a free and fair election. He recommended quasi-judicial powers to the ECK either through the constitutional review or parliamentary amendments to avoid the slow speed court cases and petitions. However he observed that the ECK decisions are not just legal but also political and the political implications have to be taken into account.

Handouts

We must avoid western standards of defining electoral offences. The huge expenses in elections was attributed to the high premium attached to elections and political offices. This leads candidates buying the seats.

Mwalimu recommended the tightening of laws to protect people's rights to choose.

To **Mr. Njui** the immediate returns expectation by voters from candidates instead of policy motivates the need for handouts. He connected bribery to psychological attachment to giving money. Many give money without any instructions as to the way of voting. We therefore need a legislation defining corruption in elections.

Aura linked the purchasing of parliamentary membership to corruption as the MPs seek to recover the high costs of elections.

Kariuki stressed the need for civic education to discourage the negative use of money in elections. According to him money is quietly losing its place in politics we need to highlight the people who lose in spite of their money.

Jemimah noted that most of those who demand money do not even vote; this negates the need for bribery.

Chege saw a difficulty in enforcing limits to election expenditures.

Aura recommended the working with key institutions in the voting process i.e. voters, parties, ECK. According to him parties are more effective in voter education hence the need to work with them to bring about change.

Jaindi recommended the introduction of systems that would bring down the premium and stakes in politics such as devolution and power sharing would be a faster means to change and reform.

Summary

The chair summarized the discussion by pointing out the major areas of concern as

- a. We need to define corruption in an election environment – poverty and illiteracy motivates money changing hands we must therefore tackle these problems to eradicate corruption in elections
- b. Political parties as an institution are weak lacking in ideologies and membership hence multiple membership.
- c. ECK is has an important role in bringing internal party democracy and ensuring the same during party nominations, however it should not load on political parties but instead take the role of a facilitator.
- d. The ECK should be proactive in enforcing the Election Offences Act
- e. Ethnic mobilization as a mechanism for parties should be given a positive perception. See the example of the US where sectarian votes are not demonised hence black vote, Spanish vote,

etcetera and the Democrats specifically targeting white vote while the Republicans appeal to the black, Spanish, and Jew votes.

Vote of Thanks

The final vote of thanks was given by Masime a Programme Officer With CGD, where he indicated that this was just one in a series of other forums in the future.

Appendix III

Key Informant Interviews Report

1. Mr. Aura Zephaniah and Okoth Alingo (Programme Officers Institute for Education in Democracy)

Interviewed on 27th 04 2004 at IED offices. Both officers have been involved in election observation including in the latest by-election in Kisumu West constituency. They have also carried out researches related to political party activities including the recently released IED report on voter...

Party funding sources

They identified the following as the main sources of party funding:

1. Harambees friends' contributions and dinner evening e.g. KANU organized a dinner evening in 2002.
2. Patrons or party owners contributions- this was identified as the main source of funding for political parties and the reason for patronage and lack of democracy within political parties.
3. Even though membership should ideally be the largest source of financing for parties there is no evidence that it is currently a source, where people have membership cards it was bought for them by the candidates and in any case the fee is as little as Ksh.10.00 which may not have a significant effect on party financing.
4. Nomination fees
5. Party investments e.g. KICC formally owned by KANU
6. There have been cases of foreign donations but this has not been forthright. However organizations such as NDI have been known to support strengthening of political parties though there is no evidence of direct funding.
7. There have been allegations of corrupt sources of funding e.g. goldenberg money being given to political parties. Most of this money however found its way into political party activities through

individuals and directly to the parties. Cases such FORD Kenya receiving money from Pattni has been in the public domain.

Political parties have largely been seen as personal investments at the disposal of the owners for purposes of fund raising. Most parties are formed strategically for sale.

At the candidate level, candidates basically fund themselves even though some parties fund candidates who are likely to win, this has been witnessed in KANU and NARC in the last elections gave candidates Ksh. 100,000.00 and more was spent in areas where there was a likelihood of winning.

Expenditures During Nominations

They identified the main areas of expenditures as:

- a. Administrative and organizational costs of party nominations and
- b. Individual campaigns. This is further classified into the legitimate expenditures on logistics and publicity and clandestine expenditures such as; bribery of candidates, payment of party leaders to get direct nominations especially in areas where getting nominated is a sure way of getting a parliamentary seat. Others include bribery of electorate and opponents e.g. in Baringo Central, buying of voters cards, handouts to voters and sponsoring of violence to prevent people from voting.

The net effect of this that by imposing candidates we effectively kill democracy by limiting citizen participation. Such cases of party HQs giving direct nominations was a common phenomenon both in KANU and NARC in the last elections. This leads to voter apathy and hence the low voter turn outs. The branch officials of the parties are also disillusioned when strangers are brought with names of preferred candidates defeating the essence of nominations.

The poverty situation in the country has also aggravated these electoral corruption, people view election period as the period of free money and a time to make the kill. Women electorate particularly find it very difficult to fail to vote after taking money. This has also been blamed on illiteracy and the need by agents to confirm that those they paid voted for them has led to even voters who are literate insisting on being assisted hence the presence of the agents, this kills the secrecy the voting process. There is also the compromise on quality of leadership since people are chosen not on the basis of ideals hence mediocre candidates who are not representative. They become very arrogant because they bought their seats and spend five years recovering their costs and reaping profits from their investment, hence propensity to involve in corruption. This kills the process of nurturing good governance. We pretend to be democratic when in reality the choice was limited by money, which clouded the ability of the electorate to see through the candidates their platform and development goals.

Other areas where money has been used negatively are:

- a. Buying of election officials and regional coordinators to intentionally delay or come on the wrong day. This was widely used by parties in 2002 including in the NARC nominations where NARC officials had selected candidates prior to the make believe mock nominations marred with stage managed confusion
- b. Buying the youth to cause terror and fear to prevent voters from coming.
- c. Buying of the press to get positive coverage. The press have been known to threaten to give candidates blackouts if they are not paid. The gutter press have also been bought to malign candidates.
- d. The use of the provincial administration to harass abduct and or stop candidates from doing campaigns.
- e. Importation of voters

Party Regulations and Constitutions

Parties have not been capable of conducting nominations within their own regulations and procedures, largely because they do not have any predictable procedures governing nominations where such regulations exist they are flagrantly ignored and in most cases have no provisions for democratic nominations. For example on the issue of method of voting in KANU it be done by queue, secret ballot or acclamation, the latter two have no place in democracy. Parties have no membership list or register and therefore there is no way of identifying members. Anybody is eligible to vote and people can vote in any party nominations. In addition no party has provisions for accounting and auditing of party finances.

Role of the Civil Society

- a. Strengthening the capacity of political parties through training and promoting respect for rule of law
- b. Education on democracy awareness among party members and effective citizen participation through civic education.
- c. Gender mainstreaming
- d. Joint work with political parties to fundraise

There is need for impartiality and the rule of law in doing this.

Way Forward

Need for an effective legal framework- the society Act within which parties operate is neither adequate nor relevant. There should be provisions for accountability. We should therefore have a specific legal framework within which political parties should operate. The political party funding bill should provide for accountability and basic rules of engagement.

The **ECK**'s capacity should be enhanced both in terms of human resources and its independence, so that it is not perceived to be pro government party. Its reliance entirely on exchequer for funding increases its susceptibility to government control. It should be financially independent. ECK should have a limited role in political party nominations e.g. it can be involved to help preside over political party nominations.

It should be able to work together with political parties in their nomination process to ensure democracy. However it must not load on political parties, as this would mean the ECK biting too much.

There is a general culture of leaders not respecting the rule of law this culture is carried into the management of political parties, in addition to the parties having terrible constitutions. KANU for instance gives party chairman powers to nominate a percentage of candidates directly including civic candidates. Such constitutions are oppressive and in no way promote democracy.

On the draft constitutions its emphasis on parliamentary membership as a criterion for funding may not be very democratic.

Donors may also need to start strengthening and focusing on the institutions of political parties in enhancing the electoral process.

2. Mr. Njui (Catholic Justice and Peace Commission)

Interviewed on 27th 04 2004 at the CJPC offices. He has been involved observing the elections and participated in the production of the KDOP report on the 2002 general elections. He has also carried out civic education to voters across the country in addition to various research works on election related activities.

In his opinion does not necessarily guarantee a win. The 2002 elections were in his view a protest vote. However the major areas of expenditure especially during nominations was in vote buying, handouts and purchase of voter's cards.

Major problems hindering democracy among political parties include: lack of party membership and participation. Political parties effectiveness is grossly affected by patronage and lack of organizational structure, the decision-making mechanism effectively ignores the grassroots. There are regular party meetings or activities. These problems make very difficult for parties to justify their existence in

between the elections this leads to commercialisation of elections and throwing democracy through the window. There is no opportunity for choice, no way of people participating and hence no competition. With these anomalies they do not qualify to be political parties but are just a semblance of the institution. They ideally do not have any agenda, ideology, and theoretical or philosophical ground. In addition the parties are financially weak and are basically a means to power.

He recommends funding for political parties but within a given regulatory framework that would avoid only strengthening the big parties and fail to protect the weak parties. Such a system should include but not limited to parties raising a given amount of funds from other sources.

There needs to be an effort towards mobilization of membership at community level, the civil society and the church comes in handy especially in engendering a democratic political culture. This would reduce the problem of individual influence resulting from ownership of parties as personal investments through which they gain state power to access public resources.

We need to change Kenyans attitude to embrace dialogue, this is conducive for political participation. A provision for leadership at the devolved levels of government would effectively motivate people to participate in political activities.

He sees parties as protective individual entities and therefore are not keen to open up for the citizens to decisively participate in nominations. In addition we have made elections too expensive, which makes it difficult for the poor to survive in the process. We therefore need to change the value systems to make elections cheap.

The ECK in his opinion has the capacity to regulate political parties however its mandate should be expanded to include presiding over party nominations to ensure internal party democracy.

3. Susan Ibutu (NCK)

Interviewed on 4th 05 2004. She is the Director Democracy and Governance at NCK. She has undertaken advocacy on economic, gender justice, civic education and peace building since 1994 nationally and regionally. Regionally she undertakes these responsibilities in conjunction with international ecumenical partners.

Sources of Party funding

From her experience the main sources of party funding are the party leaders, patrons and founder members. In addition there are also foreign sources, nominations fees and to a negligible extent membership fees.

Party financiers are not necessarily the most popular but greatly influence who gets to be nominated, this is mostly determined by the amount of money a contestant brings to the party.

She was not forthright on corruption money due to the complexity of defining what corrupt money in elections is. However there are open rumours of corruption related expenditures during elections e.g. the 500 shilling note (Jirongo) that came with the 1992 general elections. Such money she argues is also contributed to churches to seek audience and anticipate support from the churches. This trend increases as elections draw near.

She acknowledged the existence of party nomination rules but noted that they are never followed. This is due to patronage problems. Party leaders influence the nominations and put relatives and friends strategically in the party offices to ensure that their finances are managed by people close to them. (Parties are personal investments) this culture of rewarding kins and friends eventually extend to the running of government when parties get into power.

They do not then satisfactorily qualify to be political parties in the ideal sense. We therefore need to reorganize the political party structures. We also need to revise the electoral laws and party financing to enhance participation and democracy. She gave the example of party manifestos and constitutions not being followed. What is needed is proper reorganization so that parties become a means of civic education and not institutions of patronage and exclusion of the citizens. She recommends proper rules and regulations by the state to govern and regulate the creation and management of political parties. It is only within this framework that public funding for political parties can be effectively implemented.

With regard to regulations on foreign donation she does not agree but suggests that there should be a regulation on how the money is spent to eliminate illegitimate expenditures.

In her opinion handouts are the reason for high cost of elections. The motivation for this is poverty, illiteracy and unemployment. Handout giving has been a culture of both the givers and takers. This calls for change of political culture targeting the voters and the candidates. We also need to make it illegal to give handouts and create a mechanism to enforce the law through the ECK. She decried the rampant violence during 2002 elections and Kisumu East by-election that have gone un-punished. She proposed express and automatic powers of disqualification by the ECK in case of electoral malpractice. In addition there would be need for a judiciary that is more independent and effective.

In her opinion the **ECK** needs more authority to streamline and supervise and oversee the activities of political parties. Otherwise as it is now it has no capacity to effectively enforce for instance electoral regulations.

She alluded to the role money plays in distorting the democratic process through voter bribery, vote buying, buying of voters cards and hiring of gangs by politicians to intimidate voters. With proper voter education and reform strategies for the gangs as the NCCK does with Baghdad Boys in Kisumu through provision of alternative sources of income and civic education the negative role of money can be reduced and or eliminated.

In terms of ranking she argued that given the tribal nature of parties it is not reasonable to rank money given other factors such as patronage, and clanism, however popularity has no place in party politics in Kenya.

Role of Civil Society

- a. Civic empowerment and advocacy within the electoral process
- b. Mediation and reconciliation in democracy e.g. peace-building and conflict resolution by the NCCK in the 1992 clashes
- c. Advocacy to influence policy and law through constitutional review

She however pointed out that it is not easy to work with political parties due to lack of structures, this makes personal accountability difficult since people leaders keep changing parties.

Way Forward

- a. Drastic change in the management of political parties
- b. Create legal structures for the democratic management of political party nominations and finances
- c. Proper changes in the constitution to ensure turn around in the running of political parties. Politicians should be qualified and more diplomatic so that we do away with the current crop of party leaders who perpetuate poverty and illiteracy situation among citizens so that they continue to manipulate them.