

● NEW LAW

Political parties to be funded by the state

INTRODUCTION

The repeal of section 2A of the Constitution in 1991 reintroduced multiparty politics in Kenya. But the country failed to include direct provisions in the Constitution to guide the formation of political parties including their organization, funding, role, functions and operations. The wave of change in 1991 led to formation of many political parties, merely with the aim of capturing state power from the then ruling Kenya African National Union (KANU) in the ensuing General Election. The absence of solid constitutional provisions for political parties and elections, and the authoritarian nature of the KANU government, which operated as though other parties did not exist, provided the wrong base for multi party democracy, and *ipso facto* defeat of the opposition in 1992 and 1997 general elections.

Currently, there are over 50 registered political parties in Kenya, with only 8 represented in the August House and quite a number existing only by name. The parties are characterized by arbitrary, autocratic and unaccountable leadership and owe their allegiance to the founders who are mostly influential political and economic elites who defected from KANU. They have weak

organizational structures and lack clearly developed philosophies, policies and programmes. Because of personality cult and personal rule phenomenon, the parties are increasingly marred by inter and intra party feuds mostly around issues of leadership, organizational structures, class and ethnic interests.

The important role played by political parties in governance has necessitated debate on how to make them more democratic and nationally oriented as well as responsive to the citizens, good governance and the rule of law. The debate has focused on ways to regulate the formation, management and dissolution of parties by law. The first attempt to institute a law governing the formation, registration and regulation of political

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parties was the introduction of *the Political Parties Bill, 1995*. The publication of this Bill incensed the public who were up in arms arguing against the power given to the executive to control political parties. The introduction of *The Political Parties Funding Bill, 2001* by Hon. Musikari Kombo seeking state funding of political parties re-ignited the waning debate. This initiative was spearheaded by the Center for Governance and Development (CGD) under its Strengthening of Parliament Programme (SOP) now renamed **Representative Institutions Programme (RIP)**. Despite the passage of the Bill, implementation could not be realized because Parliament was dissolved by the then President Daniel Arap Moi- a move that effectively rendered the Bill invalid.

Recognizing the significance of political parties in a multi party democracy, the debate on the Bill did not fizzle out with the dissolution of Parliament but has intensified over the period of time. A number of interventions are currently under way simultaneously pursuing the issue. Of these, is the revival of the CGD initiative that led to the Kombo Bill; under a global effort spearheaded by the National Democratic Institute (NDI), and the British Department for International Development. There is also the initiative by the Kenya Law Reform Commission that has culminated into the drafting of a Bill on political parties.

The stakeholders in these initiatives have realized that there is need to forge a collaborative approach to achieve the necessary synergy, as well as broaden the agenda beyond financing of political parties to cover registration and management /regulation of parties given the need for institutionalisation of political parties.

This *Policy Brief* examines the effects of multiparty party politics in Kenya and how political parties can be consolidated. In particular, it examines the

correlation between weak or personalized political parties and corruption in Kenya after repeal of section 2A of the current Constitution. It captures the stakeholders' discussions and consensus on critical issues.

THE SIGNIFICANCE OF POLITICAL PARTIES IN A DEMOCRACY

A political party may generally be defined as an organization of people who come together for the purpose of achieving political power and to exercise that power to attain the socio-economic objectives of the party (Okondo, 1995). The socio-economic objectives of the party constitute the basic policies for that party.

In a liberal democracy and traditions, political parties are permanent organizations, which contest elections to occupy the decisive positions of authority within the state and as such substantially remain integral to politics in a number of ways:

- Political parties provide the link between government and people through political education and mobilization of the electorate. Through the use of the mass media, mass rallies and local organizations, they maintain contacts with the relatively politically inactive.
- Political parties present issues and set value goals for the society. All political parties have philosophical bases no matter how blurred and divorced from the actual political behavior of the party.
- Political parties unite, simplify and stabilize the political process. They bring together sectional interests, overcome geographical distances and provide coherence to sometimes divisive government structures.
- They serve as a point of reference to their supporters and voters, giving people a key to interpreting the complicated political world.
- They function as agents of elite recruitment. They serve as a major mechanism for preparing and recruiting candidates for political office.

Political parties are, therefore, essential institutions of a democratic system because the principle of representation in a democracy hinges on the existence of political parties. Indeed, political parties influence parliament and government, thereby, introducing political objectivity in the formation of the will of the state.

Up to now, there are no convincing alternatives to political parties. Progress of political modernization and consolidation of democratic systems (democratization) are inextricably linked to the contribution of political parties in transforming countries. Political parties are associations for the preparation of elections. However, the activity of political parties does not cease once the election period is over. They remain present in the organ to which their members are elected and give the impetus in decision-making processes. In fact, they not only provide Members of Parliament, they also form the government.

Political parties in the liberal tradition are thus either running the government or in the case of an opposition party, a government in waiting. A political party must, therefore, have an organizational structure and framework that shows how power is distributed within the party and also power relations and discipline within the party. An examination of party structure ideally ought to consider the role of the leadership and the method of ascending to leadership position, the control of party bureaucracy, the basis and the extent of membership, the degree of organizational centralization, the power of the leadership in relation to the rank and file; the extent of disciplinary powers, participation in decision making and policy initiation, among other factors

More importantly, a political party must have a sound financial base that can enable it capture state power or retain it. It is a combination of such factors that give rise to a party's tradition, values and goals.

BACKGROUND INFORMATION: POLITICAL PARTIES IN KENYA

Kenya held its third multiparty elections in 2002 since the restoration of multiparty politics in 1991. The first multiparty elections were held in 1992 and the second in 1997. From the standpoint of democratisation, these three general elections and the intervening periods between them revealed a very important lesson: that periodic elections are not by themselves a guarantee for sustainable democracy. There has to be more. There is need for rules creating a level playing field and with sufficient prescriptive force to motivate obedience. There is also need for strong institutions, including political parties, to protect and safeguard democracy.

The provisions of section 2A explicitly provided that Kenya shall be a one-party state - that party being KANU. Thus, the period between 1982 and 1991 was marked by, among other things, the institutionalisation of a monolithic system of government as well as the curtailment of fundamental freedoms, including the freedoms of association and assembly. Allegiance to KANU served as a precondition for participating in the electoral process. The task for the enforcement of the draconian rule was left to the KANU Disciplinary Committee, which ensured compliance with the party policies by using its power to expel members from the party.

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Although the quest for democratic and accountable governance began soon after independence and persisted throughout the regimes of Jomo Kenyatta, the first President of Kenya, and Daniel Arap Moi, the efforts intensified in 1990 following a global resurgence of democracy that was precipitated by the collapse of the Soviet Union and the end of Cold War. A fresh gale swept through the African continent giving impetus to a long repressed internal pressure for change. For Kenya in particular, a combined pressure by political action groups, religious organisations and non-governmental organisations saw KANU and former President Moi succumb and,

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re-introduce multiparty democracy in December 1991.

The adoption of multiparty politics in Kenya, though hailed as a major political landmark, was regrettably not accompanied by legal, constitutional and administrative reforms. Consequently, the

country embraced multipartyism without corresponding reforms necessary in a true multiparty democracy. Every political party enters the campaign trail preaching integrity and good governance, promising an end to corruption and the introduction of an era of new politics based on morality and strict code of ethics. Yet the election of the National Rainbow Alliance (NaRC) in 2002 has offered little if any change in political culture of the country. This has resulted to unending agitation by Kenyans for constitutional and legislative safeguards that would see the incorporation of practices such as good governance and respect of peoples' right to participate in decision-making processes.

Political parties in Kenya are class outfits characterised by weak organizational structures and factional fights, hardly with a coherent and consistent ideology on which to contest state power. They are formed by political elites to advance narrow individual and class interests. Usually, they are formed to act as protective masks on the part of the political class. They lack internal party democracy, effectively being associated with core interests of their founders and leaders.

TOWARDS INSTITUTIONALISATION OF PARTIES IN KENYA

The Existing Legal Framework

The legal framework for political parties in Kenya is still under-developed, as political parties are required to register under the Society's Act, Cap 108 of the

Laws of Kenya. It is important to note that all other societies, including clubs, welfare groups and women groups also derive their legal existence through the Act. The absence of an explicit legal framework for political parties and the failure to recognise the significance of political parties in the democratic process have clearly undermined the proper functioning of political parties, and made their institutionalisation efforts elusive. Arguably, this state of affairs has contributed to the weak institutional structures of parties and coalitions thereof in Kenya.

In the absence of an explicit law governing political parties in Kenya, it has been assumed that political parties are bound and regulated by the electoral laws. There are two sets of laws governing elections in Kenya. The first set of laws contains provisions that were enacted exclusively for the purposes of regulating elections and that impact on the electoral process directly. Under this category are the *Constitution of Kenya*, the *National Assembly and Presidential Elections Act*, the *Election Offences Act* and the *Local Government Act*. The second set of laws consists of laws that, although not enacted for the purposes of elections, nevertheless have a collateral impact on the electoral process². There are a number of laws in this category but the most important are the *Constitutional Offices Remuneration's Act*, the *Public Order Act*, the *Chiefs Act*, the *Society's Act* and the *Penal Code*. Equally important are the individual constitutions of political parties, which provide for internal regulations of parties. However, compliance to the parties' constitutions by the various political parties has been lacking and blatant abuses have been reported in the past. For example, party elections of KANU were due since 1988 despite the fact that its constitution provides for elections in every five years. In some parties, officials are holding offices on an interim basis. This is obviously a failure to recognise political parties as entities of public interest, a status that could oblige the state to guarantee the conditions and assistance required for their development.

Registrations and Regulation of Political Parties

As mentioned above, political parties in Kenya are registered under the *Societies Act*, a general Act under which non-political institutions and organizations are registered. The Registrar of Societies is appointed by the president and does not enjoy security of tenure. The conduct of the Registrar of Societies over the

period of years and the absence of a law dedicated to political parties has in essence meant that there is no sound legal mechanism to regulate the operations of the parties and enforce party discipline which is a critical element of strong and institutionalized political parties. The conduct of the Registrar of Societies in 1992, and in 1997, left a lot to be desired. The discretionary powers of registering political parties was widely abused and in most cases exercised to suit the ruling party. Fragmentation of the original Forum for Restoration of Democracy (FORD) was in part due to the arbitrary powers of the registrar. The refusal to register *SAFINA* party in 1997 is another example. Even under the NARC leadership, refusal by the Registrar of Societies to recognize the newly elected KANU officials is illustrative of the fact that given a chance, the arbitrary powers can be invoked.

Like all other political parties formed on the eve of the second liberation in Africa, the management of the political parties is haphazard as no adequate regulatory mechanisms are in place other than legalization of multipartyism. This situation like the foregoing is exacerbated by the absence of a legal framework for political parties. As mentioned earlier, the electoral laws only regulate parties to the extent that they participate in elections underscoring the presumption that political parties in Kenya are only tools for elections. Participation of the citizens in the democratic governance is anchored in democratic elections, and this right can only be secured and enjoyed through participating in political parties activities. It is, therefore, unfair that they are lumped together with other societies whose role is incomparable to the crucial role political parties play.

Theoretically, the parties' constitutions purport to provide for a regulatory framework for management and coordination of the various organs and structures of the parties. However, in practice the big man syndrome in parties is very real and often relegates the party constitution in the periphery. It is therefore imperative for any bill seeking to provide a legal framework for parties to incorporate the aspect of their regulation.

POLITICAL PARTY FUNDING AND CORRUPTION

The Two Paradigms

Essentially, funding of political parties embraces two paradigms. The first one is the European model that emphasises on public funding. Systems relying on public funding appreciate the fact that states have sacred obligation in supporting democracy and citizen participation, as represented by their political parties. Most European countries and recently South Africa, for example, recognize that democracy is not merely a statement of intent but is participatory.

The Second paradigm is the United States (US) model, which puts more emphasis on private contributions and donations. One of the arguments for private funding is rooted more on the realities of state economies. Kennedy Mbaya has emphasised this in his paper, *The use of State Resources During Elections in South Africa*, where he categorically states that, "ruling out private funding would be unrealistic considering the fact that government cannot fund political activities sufficiently due to other pressing needs".

Although private funding for political parties is intended to achieve the same goal as public funding, if left unregulated, almost often, lead to increasing dependence on monied politics, a corrupting effect on the political and electoral process. This has been a major problem with the US paradigm of private and corporate donations.

THE CASE OF KENYA

The economic and political context in which political parties are formed and sustained in Kenya creates a fertile ground for the thriving and institutionalization of corruption. There is a direct correlation between funding and formation of political parties, and grand corruption in Kenya. In the 1970s, the Ndegwa Commission allowed politicians and bureaucrats to engage in private business with the result that while such proposal and recommendation was accepted, there was no clear policy guidelines and regulations on how to reconcile ethical dilemmas with official or state policies. The provincial administration and senior civil servants took advantage of poor policy and the vacuum to engage in corrupt dealings in both

Kenyatta and Moi regimes. What emerged was a powerful political and landed class that moved to active party politics to protect their ill-gotten wealth. Furthermore, politics became a monopoly of this class to the exclusion of majority of Kenyans who happen to be poor.

Party politics and funding in Kenya is, therefore, informed by the imperative fear of being called to account for the past gross or serious human rights violations. KANU, the oldest political party and one which was in power for over 40 years represented the interests of the post-independence political elite whose aim was to protect the resources accumulated during the period. The opposition parties on the other hand were formed by personalities from the same class who had lost favour with the ruling party but formed the second layer of the same class. Their vision and understanding of democracy hinges on reclaiming their old areas of accumulation. The struggle for democracy and multipartyism took place within the context of those two forces with similar interests.

a). The Link between corruption and funding of political parties in Kenya

Resources and especially money for political mobilization, education and campaigns are vital for any political party to come to power. The funding of political parties all over the world is shrouded in a cloud of secrecy especially in countries with weak political institutions and economies. The struggle for power, therefore, involves lots of under hand dealings and undertakings by the political parties. Sources of political parties funding can be classified into legitimate and illegitimate sources. Legitimate source of funds for a political party may be accrued from:

- Membership fees.
- Donations and grants from organizations.

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- Proceeds from both domestic and international investments, capital projects undertaken by parties.
- Political parties can also be funded by the state using taxpayer's money and this is a legitimate source of funds.

These legitimate sources of funds can also be a cause for concern if there are strings attached to them in terms of compromising or changing party policies to suit sectarian interests of those who contribute money.

Political capital is very tempting as the money or any other resource is given when the parties concerned are in their campaign trail and in desperate need of resources to capture state power. More often than not, the question of political ethics can be shelved in pursuit of short-term gains and power. There are cases where naked corruption and bribing of political leaders to adopt corporate friendly policies take place. Multinational Corporations, other big business enterprises and lobbyists can make deliberate attempts to influence party policies by donating money or other resources to influence party policies especially where there is a dominant party in power.

Proceeds from service providers and business persons who receive or had received government contracts but failed to complete their work is an illegitimate source of funds.

In the 1960s, KANU was a strong political party, but weakened over the years, as it was controlled by a political class that favoured use of the civil service and other state resources to implement its policies. For over a decade, therefore, KANU lacked structures and institutions of governance that were effective and functional. Jomo Kenyatta had little regard for party politics and, thus personified the government and employed the provincial administration as the main apparatus of his rule. Unlike Kenyatta who had the support of indigenous capitalists from the areas of high capitalist penetration, Daniel Arap Moi was from Tugen community and an area of least capitalist penetration and needed quick political capital to build an independent political base for himself and within a short span of time.

The politics of survival were typical in both the Kenyatta and Moi administrations, thus, relegating democracy, development and good governance to the periphery. To survive, both administrations needed to control political as well as economic power as a guarantee to their own survival, with the result that corruption and authoritarianism became the norm. The politics of the 1990s, especially, the collapse of the cold war and the clamour for multi-party democracy catalysed the situation. It is, therefore, not surprising that most of the corrupt dealings were documented under President Moi's regime.

Under the Moi government for example, some road contractors associated with corrupt politicians were paid huge sums of money even before the construction work began, at times leaving the projects incomplete or even not started at all with full payment done. The beneficiaries found their way to Parliament on a popular vote. In Kenya, the target group has been the influential politicians because political parties are institutionally weak or dysfunctional. The proliferation and institutionalization of corruption is correlated to the way the state conducted its business by awarding tenders to those who contributed to kitchen core.

Money or proceeds from drug barons is an illegitimate source of funds. Money accrued from the sale of drugs or banned substances might compromise a party into providing a safe haven for the drug dealers or create an environment where they can legitimise their source and put their investments into a legitimate economic sector. On extreme cases, powerful drug barons may capture the state and use it to support their under world activities, such as buying political support and allies elsewhere to advance their cause. In Columbia, for example, cocaine business and politics are intertwined to the extent that drugs business is entrenched in society and is almost socially acceptable. Once political parties accept money from drug lords or institutions associated with drugs such as cocaine, mandrax and others, the consequences could be that the recipient party is forced to provide fertile ground

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and conducive environment for such a business to operate and thrive including provision of security to the drug barons, market and transport among other logistical mechanisms.

There are other cases where money is donated on condition that the recipient country pursues a foreign policy objective of the donating party even though the source could be regarded as legitimate. This kind of corruption takes the form of indirect and

conditional funding of a political party or granting of foreign loans subject to certain conditions, which are never made public or remain confidential. The purpose is to pursue foreign policy objectives of the donor country in the international politics. This could be unethical granted that the undisclosed conditionalities might be harmful to the interests of the party members and the state. Such is largely the case in an unequal neo-colonial relationship. The bottom line is that the national interests of the recipient country have always been compromised and sustained structurally.

b). Documented cases on Corruption

i). Plundering the State Institutions (Ministries and Parastatals)

The misuse of state corporations and parastatals was more pronounced during the Moi regime. This took numerous forms. Political patronage and employment of incompetent people to manage key parastatals such as the Kenya Posts and Telecommunications corporations, Kenya Ports Authority, Kenya Airways, the National Social Security Fund (NSSF), (Kenya Times, May 27, 1993). NSSF was established in 1966 by an Act of Parliament as a provident fund guaranteed by the state. On 27, September 1992, the *Sunday Nation* revealed that NSSF had loaned Kshs. 1.2 Billion to Sololo Outlets Ltd, a company owned by Cyrus Jirongo and Davy Koech. The former was the chairman of the powerful and controversial Youth for KANU (YK'92) and the latter the chairperson of the Kenya Medical Research Institute (KEMRI). The money was channelled

through Post Bank credit, created to channel monies stolen from state parastatals. Another disbursement of Kshs. 0.54 Billion and Kshs 0.3 Billion was made to the defunct YK 92 and Sololo Outlets, respectively. The money was used to campaign for Moi's re-election and to bribe his political opponents (*Sunday Nation*, September, 27, 1992). In the 1992 elections, Moi used YK 92 for personal campaigns and not just his political party KANU. The cumulative effect of numerous economic scandals was that Kenya was pushed to high inflation in 1993.

HZ group of companies owned by then powerful Cabinet Minister Nicholas Biwott was paid Kshs 0.9 Billion by the NSSF through the now defunct Trade Bank Group. Mahmoud Mohammed, the then Chief of General Staff through Prudential Building Society got Kshs 0.3 Billion to develop his Sun View Estate that he leased to the government. This complex web of corruption was initiated purposely by the political class to acquire capital to buy political power at a time when KANU was facing severe challenge from the opposition parties. Those who acquired political capital were in turn elected to Parliament and appointed Cabinet Ministers, positions that ensured that they politically protected their ill-gotten wealth and even to some extent legitimised it. Others, who were not interested in party politics but had economic interests to be protected, generously contributed to the KANU campaign kitty directly or indirectly (Matiba, 1993).

ii). GoldenBerg Scandal and Politically Correct Banks

Goldenberg scandal remains the biggest grand corruption recorded in Africa to date. The scandal involved importation of gold and other precious minerals by Goldenberg International whose registered directors were Kamlesh Pattni and the then Criminal Investigations Department (CID) Director, Mr. James Kanyotu. Goldenberg was allegedly paid huge sums of money by the Central Bank of Kenya running into billions of shillings as compensation for gold and diamond, which were never imported in the first place. It is alleged that the money obtained from state through Goldenberg was used to finance KANU in the first multi party elections. Mr. Pattni recently confirmed the allegations during the Goldenberg Commission of Inquiry hearings.

In 1992, for example, the Central Bank of Kenya lost approximately Kshs. 35 Billion and the suspects are prominent politicians and personalities such as former Vice President George Saitoti, the Governor of the Central Bank Eric Kotut and former Finance Permanent Secretary, Mr. Charles Mbindyo. The culprits created conduit political banks for siphoning public resources to fund political activities, plunging the country into hyperinflation. Political banks such as the Trade Bank and Euro Bank collapsed after powerful individuals completed illegal transactions with several parastatals causing government to loose huge sums of money.

iii). White Elephant Projects

A number of white elephant projects were formed whose viability was seriously questioned but which were believed to be conduits of amassing wealth, later used for political activities. Leading in this pack includes; Turkwell Gorge project where over Kshs. 7.5 Billion was lost in 1992; Kisumu Molasses Plant where over Kshs.12 Billion was lost with Kshs. 85 Million alleged as kick back to Nicholas Biwott. The Kenya National Assurance Company lost over Kshs. 3 Billion in the financial year 1991/92. The Eldoret Airport had Kshs. 221 Million unaccounted for, raising suspicions that the money was stolen. In all these scandals, the beneficiaries were people who were politically and strategically placed. The triumph of KANU in the 1992 and 1997 general elections was the result of institutionalised corruption and naked abuse of power by the ruling elite.

iv). Use of Land

The use of land manifested itself in many forms. The first one is that owing to absence of a land policy in Kenya, the President used his powers arbitrarily to allocate land to some people who were politically correct. This situation was predominant in the 1990s until 2002. Over the said period, prime areas both in Nairobi and upcountry were fraudulently allocated. Karura Forest, City Park, Karen- in Nairobi, and the Agricultural Development Corporation (ADC) land in Eldoret are few examples of the misuse of land.

Second, is allocation of government land and houses as rewards or outright buying of favours. Many cases are documented, where in both urban

and rural areas, government houses and land set for public utility ended up in private hands.

The politicisation of the land or the land question by the political class led to the politically motivated ethnic cleansing in parts of the Rift Valley, Western Kenya, Coast and Central provinces. By using land and ethnicity as a weapon for political mobilization, the political class managed to remain in power and retained their wealth and property.

v). *Post 2002 Scenario*

Political corruption was not limited to the Kenyatta and Moi administration. Indeed numerous reports indicate that whereas petty corruption might have dropped in the post 2002 elections under the

NARC government, grand corruption is rife. Scandals such as Anglo Leasing, which involved Kshs. 7 Billion; the Passport scandal where Kshs. 2.7 Billion was involved; duty waiver by the Minister for Finance among others, have been reported. The British High Commissioner reported that the government has so far lost Kshs. 15 Billion since NARC took over, a record, which is incomparable to the Moi administration. Observers have pointed out that the purpose for the re-emergence of grand corruption is non other than to amass wealth in anticipation of the re-election of President Kibaki in 2007.

Reforming the Legal Framework

- Registration, regulation and funding of political parties

Overview of the Proposed Bill

The Kenya Law Reform Commission has drafted a Bill, *Political Parties Bill 2004*, whose object is to impact on the registration, regulation and funding of political parties. The process of discussing and subsequent drafting of the said Bill was fairly consultative and CGD played a key role in leading the NGO/civil society lobbying initiative- a process that is still on-going. It should be noted that whereas the earlier Bill tabled in 2002, sought to legislate funding of political parties, the current Bill appreciates the reality of the Kenyan context especially the fact that such legislation should widen its scope beyond funding of political parties. While it is acknowledged that funding of parties still remain the core objective of the Bill, issues of registration and regulation of parties equally pose a major challenge and should, therefore, be legislated. This Bill is the first progressive step of reforming political parties in Kenya. However, the efficacy of reforms is determined by the extent to which institutions of enforcement are empowered both financially and through legislation. The real test for this law is its enforcement capacity. The Bill has five main parts addressing the establishment of the office of

Registrar of Political Parties, appointment of the Registrar, formation, registration and regulation of political parties, funding and accounts of political parties, general provisions and transition.

i). **Registration of Parties.**

The Bill proposes that the body charged with the registration of political parties will be the Registrar of Political Parties whose office will be situated within the Electoral Commission of Kenya (ECK). The constitutional privileges enjoyed by the ECK, was the major factor for consideration in situating the office of the Registrar of Political Parties within the ECK. Further, the Bill makes elaborate provisions on the formation of political parties, prohibition of ethnic or

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religious parties, membership and qualification, participation in political activities and rights of party members. An important inclusion in the draft Bill is the procedure for registration. The bill provides for provisional registration as a first step to eventual full registration and this is intended to give the registrar adequate time to vet applications for registration.

ii). Funding of Parties

Under this section, there are five components, expenditure and contribution limits, disclosure clauses, public funding and enforcement mechanisms. According to part 4 of the Bill, there are two legitimate sources of funds- funds provided by the Minister for Finance in the annual estimates and contributions and donations from any other legitimate source. Section 23 of the Bill lays down the criteria for the distribution and use of funds by the parties and states that party funds are not to be used in activities incompatible with the promotion of multiparty democracy and the electoral processes. The scope of the regulations governing political parties finance and methods of finance depend on the legislative and enforcement institutions in place. Regulations mainly seek to create a more transparent and accountable political system free from improper influence.

The Bill provides for the establishment of a Political Parties Fund to be administered by the Registrar. The Bill further states the sources of funds, allocation and distribution of funds. Section 23 (3) of the Bill makes provisions for allocation of the fund and provides inter alia that; "Fifty percent of the moneys allocated by parliament shall be distributed equally among political parties each of which obtained not less than two percent of the total votes cast at the previous parliamentary elections, and the remaining fifty percent shall be paid proportionately by reference to the number of votes secured by each political party

and the number of women candidates elected in each party".

iii). Regulation of Parties

The regulation provisions in the Bill deal mainly with issues of funding and management funds. Provisions dealing with regulation and management

include; declaration of assets, liabilities and expenditure; publishing sources of funds and audit of political parties accounts. Regulations limiting expenditure are among the most important mechanisms of levelling the playing field for smaller and lesser influential political parties. This regulation is very necessary during campaign periods. The amount of money a donor can give to a political party has a ceiling to dilute the influence of wealthy and powerful donors. The section on the General Provisions further makes detailed provisions on regulation and management of the fund.

iv). Offences and penalties

The Bill makes it an offence to contribute more than one million shillings to a political party in any one year. Under section 9 (7), one is liable to a fine not exceeding Kshs15,000 or imprisonment for a term not exceeding two years or both, for suppressing lawful political activity of another. It is also an offence not to disclose or give false information in respect to funds, or resources from sources out of Kenya or to knowingly, negligently or recklessly make false statements, section 34(2) and (3) of the Bill. It is also an offence to receive funds from a prohibited person under sections 34(3) and sections 24(3). It is an offence to suppress a lawful political activity.

Comparative Perspective

Is the debate on registration, funding and regulation peculiar to Kenya only? The answer to this question is an emphatic NO. In fact Kenya lags behind in so far as instituting a legal framework for political parties and by extension providing for state funding to political parties is concerned. This section offers a comparative study and demonstrates how certain countries have made numerous strides on the subject. In particular, the section examines the issue of Registration, funding and Regulation of Parties in selected countries namely: South Africa, India, Tanzania, Nigeria, and Germany.

1. The South Africa Experience

Following decades of apartheid, South Africa reverted to a fully participatory democracy in the early 1990s. The culmination of the transition saw political pressure groups, prominent among them the African National Congress (ANC), transform themselves into political parties in preparation to the first multi racial-multi party democratic elections. The period preceding the 1994 elections was characterized by a comprehensive review of the Constitution that was intended to chart a new dispensation for the country that was responsive to the needs and aspirations of South Africans

i). General Legal Provisions for Political Parties

The legal and constitutional framework governing political parties in South Africa are contained principally in three documents; namely the Constitution of South Africa, Represented Political Parties Act, and the Electoral Act. As the supreme law, the Constitution is the most important law governing political parties. The South African Constitution makes elaborate provisions for citizen's rights and political participation as well as mechanisms for their protection. The Electoral Act also makes, elaborate provisions governing political parties in respect to election

related activities, and lays in detail all the logistical and procedural requirements to the various electoral offices.

The statutory framework for political parties in South Africa is contained in the Represented Political Parties Act Cap 103 of 1997. The body charged with the responsibility of registration and regulation of political parties is the Independent Electoral Commission (IEC).

ii). Funding of Parties

One of the salient features of the Political Parties Act is the establishment of the Represented Political Parties Fund. The eligibility for political parties fund encapsulates both proportional representation and equitable distribution formula. Thus, 90% of the fund is distributed proportionately and the remainder is distributed equitably on the basis of a threshold.

iii). Enforcement and Regulation of the Fund

IEC disburses the fund to political parties on a quarterly basis. The IEC ensures that parties use the fund specifically for the purposes for which they are meant and not to engage in corrupt practices. Consequently, the IEC monitors closely the manner in which funds are used and ensures stringent accountability measures on the part of political parties.

2. The India Experience

The Indian National Congress (INC), established in 1885, and the Bharatiya Janata Party (BJP) dominate

One of the salient features of the Political Parties Act is the establishment of the Represented Political Parties Fund. The eligibility for political parties fund encapsulates both proportional representation and equitable distribution formula. Thus, 90% of the fund is distributed proportionately and the remainder is distributed equitably on the basis of a threshold

politics in India. Although the pronounced ethnic and social diversity in India has given rise to many political parties, their impact has not been felt in the 60 year old, world largest democracy.

i). General Legal Provisions

India has elaborate laws that govern and regulate political parties. In particular, there are a number of extensive provisions that regulate parties on financing and electoral related matters. To begin with, political parties are legally required to register with the Electoral Commission and are invariably regulated by Political Parties Act.

ii). Funding of Political Parties

Currently, political parties do not receive funding from the state, although they are provided free airtime in the state owned radio and television stations. A proposal is currently pending with parliament to legislate an all year round subsidy to political parties to minimize reliance on black money. Despite the fact that there is no state funding, the law allows political parties and candidates to source for private contributions and donations from private sources. Restriction is however, imposed on foreign contributions, as stipulated in the Foreign Contribution Act, which prohibits parties from accepting foreign donations. Parties are also prohibited from receiving donations from state owned corporations.

iii). Enforcement and Regulation

The Electoral Commission has considerable powers of oversight, investigation, prosecution and sentencing of those who do not comply with the law. The Representation of the Peoples Act 1951 establishes limits on campaign spending by candidates. The limits on candidates vary per constituency but usually range from 600,000 to 1.5 million Rupees. However, there are no restrictions on campaign spending for political

parties. Other enforcement mechanisms in India include, strict disclosure laws and penalties ranging from fines to prison sentences.

3. The Tanzania Experience

Tanzania reverted to multi party politics in 1992 following three decades of single party rule. Since independence (1961), the political landscape has been dominated by the ruling Chama Cha Mapinduzi (CCM). The 1995 and the 2000 general elections were predominantly won by CCM, resulting in a heavily skewed Parliament in favour of the ruling party. Currently, 90% of the total parliamentary seats are held by CCM. This translates into 202 seats out of a 232-seat Parliament

i). General Legal Provisions

The laws governing political parties in Tanzania are contained in the Constitution, Political Parties Act, and the Electoral Act. The Political Parties Act provides the legal basis for registration, functions, rights and obligations of political parties in Tanzania. The Act establishes the office of the Registrar of Political Parties, who is responsible for registration, regulation and deregistration of political parties.

ii). Funding of Political Parties

Parties are funded by the state using government subvention, which is given to parties mainly on proportional basis. To qualify for the subvention, a party must win at least 5% of the total votes cast and or 1 seat in Parliament. This criterion has disproportionately advantaged CCM at the expense of other opposition parties owing to its numbers in Parliament.

iii). Enforcement and Regulation

The enforcement and regulatory mechanism in Tanzania vis a viz. party financing is generally very weak. There is neither specified legal expenditure limits nor disclosure of funding received or expenses incurred. The law is also silent on foreign donations.

Although various provisions of the Political Parties Act, 1992, gives the Registrar of Political Parties considerable enforcement powers, among them; annual receipt of audited accounts, and deregistration of

In India, political parties do not receive funding from the state, although they are provided free airtime in the state owned Radio and Television stations. A proposal is currently pending with parliament to legislate a subsidy to political parties to minimize reliance on black money.

political parties for non compliance with the law, little has been done to effect these powers.

4. The Nigeria Experience

Over the last four decades, the political environment in Nigeria has been very unstable characterized by coups and civil wars. The country which is the most populous nation in Africa, and is sufficiently endowed with natural resources, has realized slow political and economic progress.

i). General Legal Provisions

The laws governing political parties in Nigeria are the Constitution and the Electoral Act. The body charged with the responsibility of regulating political parties and supervising elections is the Independent Electoral Commission (INEC)

ii). Funding of Political Parties

The Constitution permits the Federal Government to provide public funding to political parties on an equitable and fair basis. However, funding is mainly for electoral support. There are no laws limiting private contributions to political parties or candidates.

iii). Enforcement and Regulations

Theoretically, provisions relating to enforcement and regulation of party funding exist, but are neither enforced nor adhered to. Flagrant abuse of the law in regard to disclosure, expenditure limits and many others continue unabated. The Electoral Act, 2002, Article 84(6) states that “any political party which incurs expenses during elections beyond the limit stipulated in this Act is guilty of an offence and shall be liable to conviction or a fine of N500, 000. Other Articles stipulate prison sentences for violations, but the sanctions are rarely enforced.

5. Federal Republic of Germany

Germany is a federal state with proportional representation system of elections. Germany also has a bicameral Parliament with the Lower House Bundestag, and the Upper House Reichstag.

Political parties in Germany are state funded. The criteria for eligibility to the state fund are both proportional and equitable. The proportional criteria requires that any party that gains 0.5% of valid votes for the national party lists, or 10% of first votes cast in a constituency, is entitled to benefit from the list.

i). General Legal Provisions

The Constitution of Germany makes elaborate provision for political parties. In fact, the Constitution provides a definition for political parties (Article 21)

ii). Party Funding

Political parties in Germany are state funded. The criteria for eligibility to the state fund are both proportional and equitable. The proportional criteria requires that any party that gains 0.5% of valid votes for the national party lists, or 10% of first votes cast in a constituency, is entitled to benefit from the list. Germany also allows for private and corporate donations to political parties. However, adequate laws exist to regulate funding or donations from private sources.

iii). Enforcement and Regulations

Regulations concerning party finances involve a number of measures: to begin with there is a strict disclosure regulation that requires the listing of the source of all funding received and this must be done in public. There are also regulations that control private contributions. Following the 1983 amendment, a law was passed that now requires political parties to detail all their expenditure. The agency that is responsible for the regulation of party financing is the Chair of the Bundestag (Lower House).

Towards Best Practices in Political Party Financing

Evidence of countries with effective management of both public and private funding, illustrate that if properly managed, financing of political parties contribute significantly to the growth and development of political parties. As the Institute of Democracy in South Africa (IDASA) aptly posits... “International experience shows that the regulation of party funding can be effective if well designed, backed by effective sanctions accompanied by parallel diffusion of appropriate ethics and norms”

The following ten recommendations provide certain principles that may be considered as best practices.

a). Legal Framework and Constitutional Guarantees

It is not merely enough to leave matters of regulating political parties to the moral goodwill of political leaders. Adequate constitutional and legal guarantees should be enacted to safeguard the operations of political parties. Considering the indispensable role that political parties play in the democratic and electoral process, it is imperative to define political parties in the Constitution. As a further step to recognizing the important role of political parties, enabling legislations should be enacted that provide for their institutionalisation as well as provisions for funding. South Africa, India, Germany, Tanzania not only recognize political parties in their Constitutions, but have also enacted laws that regulate political parties.

b). Public Funding

Essentially, public funds are intended to assist parties meet their election needs (electoral support) and to help institutionalize the political parties (parliamentary support). Comparatively, systems relying on public funding are not subjected to the rigorous regulatory mechanisms similar to countries relying on private

funding. In determining the eligibility for public funding, two criteria are usually considered: the proportional criteria and the equitable criteria. The proportional strength of a political party is usually the prime determinant of how much funding is provided. However, as seen from the example of both South Africa and Tanzania, reliance on the proportional criteria usually lead to the dominant effect, where the ruling party disproportionately benefits from the state fund at the expense of opposition parties. In response to the foregoing disparity, countries like Germany employ a combination of proportional and equitable formula.

The use of state resources by the ruling parties should also be minimized. Often, there is no distinction between the state resources and the ruling party’s resources. A clear distinction between the two should be clearly spelt out and strict sanctions imposed for misuse of resources by the ruling party.

c). Private Contribution Limits.

It is an undeniable fact that political parties all over the world receive funding and donations from private sources. Even in countries with watertight legal systems, reports have been made where parties received illegal donations from private sources. Granted, successful operation of political parties largely depend on their ability to raise funds from private sources, as well as from their membership. The reliance of political parties on private contributions can be an important mechanism for accountability. However, a system that relies on private funding, must also cope with the possibility that private contributors may exert inappropriate influence on the political system. To address the

It is an undeniable fact that political parties all over the world receive funding and donations from private sources. Even in countries with watertight legal systems, there are instances where parties reportedly received illegal donations from private sources.

above problems, countries allowing for private contributions should impose limits and regulations. Limits on private contributors generally concern two factors: the amount of allowable contribution and the source. The other common limits concern foreign and anonymous donors.

d). Private Contribution Reporting and Disclosure

Requirement concerning the disclosure of private contributions are a common feature of most political funding systems. In most countries, a threshold is set with regard to which contribution must be disclosed. The purpose of a threshold is to focus the disclosure system on contributions above a certain amount. The administration of disclosure is fairly uniform across the countries aforementioned. Most disclosure regulations require the listing of the names and the addresses of contributors.

e). Regulation of Expenditures

Political party funds should be used for the intended and stated purpose. The regulations of political party expenditure generally concern two factors: the amount and the type of expenditure. To level the playing ground for political parties and candidates, it is important to establish a ceiling imposing the limits of expenditure parties should incur. Limits on the types of allowable political party expenditures can be applied through the definition section of the law.

f). Enforcement

Enforcement bodies are critical to the successful implementation and functioning of a political party funding system. There are significant variations to the role and powers that are given to the enforcement bodies. In Canada, the United States and South Africa, an independent enforcement body is combined with secondary administrative bodies within government. Each of these countries utilize an independent electoral commission, while the department responsible for finance distributes public funds, and certain judicial authorities are responsible for adjudicating cases. In India, the Electoral Commission has the powers of oversight,

Media plays a pivotal role in the democratic process.

In terms of elections...a comparative research conducted by NDI in a number of countries shows that media communication account for between 40% and 70% of all the political party expenditure.

investigation, prosecution, and sentencing. In effect, the commission has the powers equivalent to those of a civil court.

g). Media

Media plays a pivotal role in the democratic process. In terms of elections, the role of the media, among others, encapsulates the following: dissemination of voter information; educating the public on electoral matters; enabling dialogue among stakeholders;

providing a forum for debates; and acting as a watchdog in the electoral process. A comparative research conducted by NDI in a number of countries shows that media communication are a substantial expenditure for political parties and account to between 40% and 70% of all the political party expenditure.

Many political party funding systems include measures to provide free or subsidized broadcast media time. This media time can be provided in two ways: government can provide funding to the relevant media organizations or free air time through the government licenses that are normally given to authorize the use of public frequency wave.

Various countries have adopted different ways of dealing with the question of regulating both private and public media. It should be noted that private media are not usually held to the same standards of control applicable to the public media. In countries where public television and radio stations exist, they are often called to support political parties participating in elections. In the United States, private television and radio station must provide the lowest commercial rates to political parties. In India and Israel paid political advertising is prohibited during elections. African countries, particularly in the Southern African Development Commission (SADC) region have also taken impressive measures towards embracing and promoting free and pluralistic press. The Windhoek Declaration of 1991, and the SADC Parliamentary Forum Norms and Standards are classic examples.

h). International Benchmarks

The success of democracy requires a collaborative effort from the various stakeholders. Similarly, the institutionalisation of political parties and the regulation of party financing require participation of all the prominent players. To this end, the Executive, Legislature, Judiciary, the Election Management Bodies, the Civil Society and Political Parties themselves, must join hands and ensure a conducive environment for the development of parties and effective management and enforcement of party funding.

i). Transparent Accounting and Auditing

Transparency and accountability in management of party funds should apply both in terms of expenditure and applicable income. A designated body should be appointed to audit the donations received and expenditure and the same should be publicly reported. As much as possible such returns should be done annually, and strict sanctions imposed in case of non-compliance.

j). Code of Conduct for Political Parties

A code of conduct is a political tool whose aim in the context of elections is to codify proper behaviour of stakeholders, including political parties, media, electoral bodies etc.

A code of conduct for political parties provide, for example, the framework for activities of political parties and the behaviour of party representatives and their followers, which must be in line with the rules stipulated in the electoral law.

Transparency and accountability in management of party funds should apply both in terms of expenditure and applicable income. A designated body should be appointed to audit the donation received and expenditure and the same should be publicly reported.

The definition espoused by the International Institute of Democracy and Electoral Assistance (IDEA) is that “a Code of Conduct for political parties is a set of rules of behaviour for political parties and their supporters relating to their participation in an election process, to which parties ideally will voluntarily agree; and which may, subsequent to that agreement, be incorporated in law”. This foregoing definition illustrate that a code of conduct goes merely beyond the law but appeals for best practices and political/moral

goodwill necessary for creating a conducive and amicable environment among the different players. As such, the code of conduct for political parties must be widened to go beyond elections and incorporate best practices for party financing and regulations.

CONCLUSION

Political parties are important institutions through which political power can be contested though not the only ones. Whereas the *Political Parties Bill, 2004* provide a positive move of regulating political parties, political culture may not be legislated and thus a deliberate effort needs to be made to change Kenya’s political culture from one of big man-small boys syndrome to policy and issue based politics with organic links to the communities.

The extent to which the Bill might succeed is perhaps dependent on other factors among them, economic and social transformation which might lead to a new society and political community in the long term.

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