

= CGD BILLS DIGEST =

Money and politics are intertwined like Siamese twins. The imminent state funding of political parties is therefore both justifiable and long overdue.

▣ THE POLITICAL PARTIES BILL, 2004

Finally, state funding for Political Parties

The Minister for Justice and Constitutional Affairs is about to publish a Bill for an Act of Parliament titled *Political Parties Bill, 2004* whose object is to provide for the registration, regulation and funding of political parties. The quest for the said legislation can be traced as far back as 1991 with the reintroduction of multi-party politics, which saw an upsurge of political activities. By 1993, there were about 39 political parties. These parties differed in leadership and following which was mostly ethnic based, but most of them were inoperative and had neither working organizational structures nor offices.

The few political parties that were operational stood for more or less the same ideology, values and mission, the only difference being the identity of their leadership.

The initial legislative efforts were, however, restricted to funding of political parties. Parliament, on four separate occasions, between 1993 and 1999, unanimously resolved that political parties should receive funding from the

Consolidated Fund. 1994 saw the first motion on public financing of political parties being adopted by parliament. Three others followed this motion in the Seventh and Eighth parliaments all accepting that political parties being vital components of democracy should receive state funding. Other decisions relating to funding of political parties include IPPG Resolutions of 1997 and a motion sponsored by the Democratic Party (DP), in 1998 and an initiative by the defunct National Democratic Party (NDP) initiative, in 1999.

These parliamentary endorsements and efforts were due to the realization that money and politics, like Siamese twins, are intertwined. These endorsements led to the tabling of a motion in the National Assembly, in 2002, by Musikari Kombo to introduce the *Political Parties Fund Bill, 2001* (otherwise known as the Kombo Bill). The motion was passed with an amendment that the proposed Bill should include provisions for the registration, management and regulation of political parties.

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What the Bill Provides



The Bill encompasses registration, regulation, funding and incidental matters. It is both elaborate and comprehensive

The Bill has 37 elaborate sections and one schedule.

Part 1 sections 1-2 provides for preliminary matters. These include short title and commencement and interpretation. A fundamentally significant definition, in this part, is that of a political party - any association or organization which has as its objects or purposes or one or more of its objects or purposes the proposing or supporting of candidates for national or local authority elections, with a view to form or influence the formation of the Government of Kenya or any local authority within Kenya. This definition captures three aspects of what constitutes a political party.

- A political party is an association or organization of persons
- the purpose or aim of that association is to propose or support a candidate for national or local authority elections. They must aim at participating in an election, parliamentary, presidential or local authority. The definition does not require a party's candidates to win elections in any of those categories, it is enough to propose or support candidates to participate in the election.
- The aim of proposing or supporting candidates, of a political party, is to form or influence the formation of the government or local authority.

Yet, the Bill glaringly has no memorandum of objects; in other words it has no proposals on what it intends to achieve except that these can be discerned from its long title or preamble, which provides that its objective is to provide for registration, regulation and funding of political parties and for matters incidental thereto and connected therewith.

Part II- sections 3-4 establish the office of the Registrar of Political Parties whose responsibility

will be to register political parties. The President, upon approval of the National Assembly, shall appoint the Registrar. The rationale here is to ensure that the appointment of the registrar is not left to the whims and caprices of an individual (the President). In the performance of her/his duties, the Registrar is not to be subject to the direction of any other person or authority and he/she shall only be accountable to Parliament. This segment of the Bill when read together with Section 30, which immunizes registrar from suits, is intended to give the Registrar some semblance of independence in the discharge of his duties under the Bill. Insistence on an independent Registrar is informed by the fact that the office has been used in the past to suppress or curtail the activities of political parties. Furthermore, such independence will ensure that the Registrar does not apply the law selectively against some political parties in favour of others.

Section 4 requires the Registrar to keep and maintain a register containing a list of all registered political parties and other particulars relating to such parties.

Part III sections 5-20 deals with formation, registration and regulation of political parties

a). Formation

Under Section 5, a political party may be formed to further purposes that are neither contrary to the constitution nor any other law. **Section 9** entitles any citizen who has attained the age of 18 years to form and or/join a political party of his/her choice thus encouraging the participation of the youth in political activities. The section further requires a member of a political party who intends to resign from his party to notify the relevant authorities. A person is forbidden from joining, forming, joining in the formation of or publicly advocating for the formation of another political party while s/he is a member of another political party.

Under section 9, all members of a political party shall have equal voting rights during a party's elections even though this is dependent on the respective political party's constitution. A member of a political party can only be expelled from the party if s/he has infringed the party's constitution or has acted in a manner that seriously impairs the standing of their party. This provision will ensure that members of a political party are not capriciously or arbitrarily expelled from the party.

Under section 8, a political party shall not have as its leader or a member of its executive any person who is not qualified to be elected as a Member of National Assembly or local authority. It further states that a founder, leader or executive member of a party must be qualified to hold public office or elected Member of Parliament.

Members of the Armed Forces, Police Force, Prisons Service, Kenya Wildlife Society, Judicial Service, National Youth Service or other public officers, are (Section 7) not eligible to be founding members or hold office in a political party as this would compromise the political neutrality of their office.

Section 6 prohibits the formation of political parties on the basis of ethnicity, age, tribe, race, gender, language, region, profession, or religion; or seek to engage in propaganda based on such matters, or use words, emblems, slogans, or symbols that could arouse such matters. It also prohibits enactment of a constitution or operations that allow discriminatory practices; accepting or advocating the use of force or violence as a means of attaining its objectives or advocating or aiming to carry out its activities exclusively in one part of Kenya.

In addition parties are required to hold regular, democratic, periodic and open elections of its office bearers at least once in every 3 years.

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Under section 10, a political party is that which has been so registered in accordance with the proposed Political Parties Act. The first step towards the registration of a political party is an application for provisional registration, setting out the name of the proposed political party, abbreviation and a copy of the

constitution. The prescribed fee should accompany the application. Also, the application may include a request for the registration of a political party's emblem to be used on ballot papers.

The Registrar can decline to register a political party if, in his/her opinion, the name or abbreviation; is obscene or excessively long; is the name or abbreviation of an existing political party or; so nearly resembles the name or abbreviation of an existing party. Conversely, under section 17, a fully registered political party may change its constitution, rules and regulations; its name, emblem, slogan or colours; or the title, name or address of any person or office. If a political party intends to make such changes, it should notify the Registrar

The Registrar issues within 30 days of receipt, a Certificate of Provisional Registration. This provisional registration entitles such a party to hold and address public meetings; to the protection of the state security agents for purposes of facilitating meetings and; to a fair opportunity to present the party's programmes to the public through state owned media. These entitlements are advised from past experiences whereby activities of newly registered parties were frustrated by the state's security agents or hired goons. Moreover, the state owned media was monopolized by the ruling party while other political parties were either not covered or given little coverage whose effect was to malign such a new party(s).

However, provisional registration does not entitle a political party to organize or hold public meetings in connection with any election, nor to propose or campaign for any candidate in any parliamentary, presidential or local government elections.

A provisional registered party is required to apply for full registration within 6 months (180 days); otherwise such provisional registration shall lapse at the expiry of this period and the Provisional Registration Certificate issued will cease to be of any effect. The 6-month period is provided for to give a political party ample time to comply with the stringent conditions, which it is required to comply with before it can be fully registered. A provisional party qualifies for full registration (section 15(1)) if it has;

- first been provisionally registered,
- obtained at least 100 members, who are registered voters, from every province,

- has a member in its governing body ordinarily resident or registered to vote in each province, and
- submitted to the registrar the exact location of its head office, postal address and exact location of its district offices if any.

Here the Bill tries to strike a balance between the need to restrict the proliferation of unsustainable or sectional political parties and the need to ensure that the requirements are not too strict such that no political party is able to comply with them. The other rationale is to restrict the formation of tribal/ethnic outfits. Unlike the current set up of districts, provinces are less tribal, hence the insistence on provinces.

The Registrar issues a party with a Certificate of full Registration if it has fully complied or, gives reasons for not registering it within 30 days after receiving an application for full registration.

The Importance of Political Parties Bill, 2004



The important role played by political parties in the fabric of society, cannot be overemphasized

The political parties bill comes at critical time when dramatic political changes are occurring in this country. Kenyans are now struggling albeit with much contradiction to get “politics right”, evolve a new constitutional order that respects individual and group rights and a culture of governance that incorporates the people and liberate their energies and creativity for development. The last elections held in 2002 deconstructed barriers and created new hopes swaying the debate to devising strategies of how to institutionalise and consolidate the process of democracy and good governance.

This process of institutionalising democracy and good governance is now real and substantive, yet there are formidable obstacles to the actualization of the objectives. First is the current legal regime that governs political parties, which is not

comprehensive. The regime was introduced in Kenya in 1952 as Societies Ordinance, and like all other ordinances it was transformed into an Act of parliament at independence without even the slightest alteration to its provisions. The 1952 Societies Ordinance was amendment in 1968 becoming the current Societies Act (Cap.108). The Societies Act (Cap. 108) makes provisions for the registration of societies. The Act governs societies generally treating political parties as mere societies despite the unique role they play in electoral and government activities. This makes current legal framework generally weak for three broad reasons:

- It has no mechanisms in place to check on the mushrooming of unsustainable political parties.
- It does not provide an enabling environment for the emergence of strong

A fully registered political party becomes a body corporate with a common seal and perpetual succession (section 16(1)). Here, and in legal parlance, perpetual succession means that a political party will continue to exist despite the death of one or more or all of its members or office bearers. This in effect means that a political party's existence will not depend upon the life of an individual or individuals.

Still, **section 16**, requires a fully registered political party to, within 60 days of such registration, submit to the Registrar a written declaration detailing all its assets and expenditures including all donations, contributions or pledges made or to be made by its founding members in respect of the first year of its existence. Such a declaration must disclose the sources of all funds and other assets of a political party. The Registrar is required to enable publication of this information in the Kenya gazette and one daily newspaper. A party officer who fails to comply with these requirements or

democratic and institutionalised political parties.

- Lastly, granted the influence of money in politics, the current legal framework does not make provisions for regulating funding of political parties and proper management and accountability of any funds received.

The bill attempts to address this weakness by proposing a comprehensive and independent legal framework to specifically govern political parties and political activities in an effort to reform the entire political system to make it more accountable and transparent to the public. If enacted, the proposed legal framework would be the first of its kind in the country even though countries around the world such as India, Nigeria, South Africa, Tanzania and Germany, among others, have recognized the importance of and need for comprehensive legislation regulating the registration, management and funding of political parties.

submits false declarations will be notified and required to comply. But, if after such reasonable notice, there is still non compliance, the Registrar is empowered to cancel the registration of the political party in breach.

b). Cancellation of Registration

Section 18 seeks to empower the Registrar to cancel the registration of a political party. Specifically, the registrar is empowered to cancel the registration of a political party;

- That the party; is in violation of the provisions of sections 6, 23 and 24 or of the provisions of its own constitution; has used monies allocated to it for purposes not allowed by section 23(2). Section 6, prohibits the formation of a political party on certain basis. Section 23, specifies the purposes for which money allocated to a political party from the political parties fund can be used. Section 24, specifies sources from which political parties can draw their funds; or
- That the political party has obtained its registration fraudulently; or
- That the political party has used monies allocated to it for prohibited purposes; or
- That the political party has been declared a prohibited organization under any law (section 32).

Cancellation of the registration of a political party has the effect of restricting its activities. Once the registration of a political party has been cancelled, no person shall;

- summon a meeting of members or officials of the party;
- attend or make a person to attend a meeting in their capacity as a member or officer of the party;
- publish a notice or advertisement relating to a meeting;
- invite persons to support the party;
- make or accept a contribution or loan to funds held by or for the benefit of the party; or
- give a guarantee in respect of a party's funds, loans or contributions.

Though the Bill grants the Registrar wide discretion to cancel the registration of a political party, s/he is enjoined to exercise such discretion fairly. In particular, section 18(2) provides that before the Registrar exercises the discretion to de-register a political party, s/he should first inform, in writing, the affected party of his/her intention to do so, directing defaulting party to remedy the breach or comply with the law, failing which the party's registration will be cancelled. Upon the cancellation of the registration of a political party, an application shall be made to the High Court for that party to be wound up and dissolved. A political party whose registration has been cancelled is entitled to appeal against the cancellation to the High Court.

Still, under section 16(b)(6), a fully registered political party loses its status as a political party if it has not participated in either parliamentary or local government elections, either alone or jointly with others, for a period of six years. Here the Bill seeks to discourage the existence of dormant political parties or political parties that only exist on paper. Furthermore, one of the main aims of political parties is to participate in the electoral process and therefore a political party that does not participate in the electoral process has no business being in existence given that the parties are allowed to coalesce with others in order to participate in elections.

Part IV sections 21-27 deals with Funding and Accounts of Political Parties.

1. Funding

There is established a political parties Fund under section 21 to be administered by the Registrar from which, registered political parties may draw funds in order to finance their operations. The Fund draws its finances from two main sources (section 21-24): i) such money as may be provided by the Minister of Finance in annual estimates, ii) contributions and donations to the Fund from any other source. Monies in the Fund, which are not immediately required, are to be invested in such securities as will be approved by Treasury.

50% of the monies allocated to the Fund shall be distributed equally among political parties that

have obtained at least 2% of votes cast at parliamentary elections. The remaining 50% will be distributed proportionately depending on the votes garnered and the number of women elected. This will ensure that only serious political parties will receive funding. Further, the Bill is trying to encourage the participation of women in political activities.

Monies allocated to a political party from the Fund can only be used for such purposes as are compatible with promotion of democracy including; promoting active participation by citizens in politics, covering election expenses, linking the people to the state and organizing civic education. This recognizes the functions and roles of political parties and, therefore, monies allocated to a political party can only be used to defray expenses incurred in the course of performing such functions. Only 10% of the monies allocated to a political party from the Fund should be used for administrative expenses. Monies to a political party from the Fund cannot be used to:

- pay remuneration, fees, rewards or other benefit to a member or supporter of the party. This is mainly because such payments could be avenues of fraud and abuse;
- contribute to or finance the contravention of any code of ethics binding on public officers;
- to establish, maintain or acquire a business or financial interest in a business or immovable property. However, a political party is allowed to have financial interest in immovable property only if such property is to be used for a party's political purposes. Here, the Bill is putting a check on instances where a political party may be formed by crafty individuals for purposes of establishing businesses using public funds and thereafter dissolve or 'sell' the party once they have achieved their objective; and
- engage in activities that are not compatible with the promotion of multiparty democracy and the electoral process.

Besides the Fund, parties are allowed to raise extra money on their own from sources which may include membership fees; voluntary contributions, donations, bequests; proceeds of any investments, projects or undertakings. Grants from foreign governments and inter-governmental organizations are however prohibited (Section 24(1)(c). An alien is also prohibited from making contributions, donations or loans to political parties, and any amount so contributed will be forfeited to the State. While foreign governments, Inter-governmental organizations and Aliens are prohibited from making direct grants to political parties, they are not prohibited from making or directing their contributions or donations to the Political Parties Fund kitty.

Under section 26(1), a political party is obliged to disclose to the Registrar within three months of its financial year, full particulars of all funds or resources obtained from such other sources.

The Bill restricts the amount in cash or in kind, which an individual person can contribute to a political party in any one year to one million Kenya shillings. This limit does not include contributions or donations made, towards the initial assets within the first year of a party's existence, by a founding member. However, with the permission of the Registrar, this limit can be surpassed. This requirement is geared to ensure that political parties are not held hostage or at ransom by an individual(s) due to his/her/their generous contributions.

2. Accounting

Under section 25, a political party after it has been registered to participate in an election pursuant to provisions of the National Assembly and Presidential Elections Act, is required to submit to the Registrar, a statement of its assets and liabilities prior to such an election. After the election, the party is further required to submit to the Registrar a detailed statement of all expenditures incurred in respect of each candidate supported by that party, specifying the manner in which monies involved were spent. The statement of assets, liabilities and expenses submitted must be supported by a statutory declaration and penalties are prescribed for submission of false statements

or failure to submit. This is essential granted the influential part money has, historically, played in the elections processes through bribery and all manner of corruption. The section thus intends to check on such malpractices. Indeed the largest scandals in the country including goldenberg and Karura forest debacles took place prior to and were aimed at financing the elections in 1992 and 1997 respectively.

Under Section 26, every political party irrespective of whether it has been cleared to participate in an election or not, within three months of every financial year, is obligated to publish the sources of its funds; stating the amount of money received from the Political Parties Fund, members subscription fees and supporters and other donations section 27 empowers. Apart from this, the Auditor-General will undertake annual audits of political party's books of accounts and forward accounts to the Registrar and Parliament. Any member of the general public is entitled, upon payment of a fee, to inspect and be given copies of the audited accounts. The Registrar is also obliged to publish these annual reports of the audited accounts. The rationale for auditing by the Auditor General, and not private auditors, is advised by the fact that political parties will be funded through the taxpayer's money.

The Registrar is entitled to cancel the registration of a political party that does not comply with the foregoing.

PART V- sections 28-37 provides for General Provisions

Under Section 28, political parties are required to maintain at their national office a record of the following;

- a list of its membership; donations, contributions and pledges made by founding members
- particulars of property and the time and mode of their acquisition; books of account and
- other particulars the registrar may require.

A political party having district offices is required to maintain the same records at the district and constituencies offices.

The Registrar may request a political party to furnish him/her with information or their records for purposes of inspection and s/he may make copies or take extracts from such records or information (section 29).

Section 30 seeks to grant the Registrar immunity from suits for anything done or omitted to be done in good faith and without negligence in the performance of his/her functions. Section 36(1) seeks to empower the Registrar to make regulations for purposes of carrying out or giving effect to the provisions of the Bill. And, to ensure enforcement of the provisions of the Bill. Section 34 provides for penalties for non-compliance; where an offence is committed by a political party, every officer of that party shall be guilty of the offence.

Finally, **Part VI section 38** are Transitional provisions intended to bridge the proposed legal framework with the existing political party registration system (the current Societies Act). It requires all parties registered before the coming into force of this Bill to make an application for full registration within 180 days or within such an extended period as the Registrar may determine. In other words, it presumes such political parties to have been provisionally registered and therefore, have to comply with the set pre-conditions before full registration.

Section 11(2) provides that the Registrar shall require, through an order in writing, a political party, registered prior to the commencement of the Bill, to amend its rules or constitution within 3 months so as to make provisions for all or any of the matters specified in the schedule to the Bill. If such a political party does not comply with

the registrar's order to amend its rules or constitution, it shall be deemed to have committed an offence under the proposed Act.

A party, registered under the Societies Act, will be deemed to be unlawful if it does not make an application for full registration and will cease to qualify for registration under the Bill [section 37(3)]. Upon full registration such political parties registered under the Societies Act shall be deemed to exist as if they were originally registered under the Bill in respect of: their funds, assets and other property; all rights, liabilities, powers and duties; actions, suits or legal proceedings; and officers, members and servants.

ASSUMPTIONS AND PROBLEMS TO BE ADDRESSED BY THE BILL

From the contents of the Bill there is an assumption that political parties are essential for politics in general and the existence and operation of democracy in particular. However, it is considered that the existence of political parties must be regulated specifically by legislation. On this basis, the current situation, where political parties are regulated like any other society is untenable. Besides, reform of political parties should be in tandem with reforms in systems of governance, justice, law and order.

A number of problems are intended to be addressed by the Bill. These include;

- Creation of an Independent Regulatory Body
- Institutionalisation of political parties
- Resources to Support Political Parties
- Internal party democracy and transparency
- Participation of the Youth, Women and Marginalized Groups and other Members in Party Affairs
- Redundancy of dormant or inoperative Parties

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