

Legal Framework for Political Parties in Selected Countries of Sub-Saharan Africa

Edited by Dr. Arne Wulff



Konrad
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LEGAL FRAMEWORK FOR POLITICAL PARTIES IN SELECTED COUNTRIES OF SUB-SAHARAN AFRICA

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Introduction

According to Article 21 of the Constitution of the Federal Republic of Germany, political parties play a role in the political decision-making process. Thus, according to Peter Badura, they have not only a “type of constitutional status”, but are also put in a functional context within the parliamentary democracy. Just as the state itself, the internal order of political parties must comply with democratic principles and they must publicly account for the origin and use of their funds as well as their assets. A Federal Republic of Germany would be unthinkable without its diverse parties, which are marked by their programmatic stipulations, almost 70 years into the existence of the Constitution.

It is often overlooked that this system is neither seen as necessary nor taken for granted in many democracies around the world. Even in countries that avail of a very old democratic tradition, political parties do not enjoy the same legal status as they do in Germany.

Even when the Constitution of a country makes provision for their political participation, they are often understood only as a vehicle for the purpose of individuals to gain power and not as a programmatic platform for the realisation of a common future. They are then only perceived as the carrier or the mule on whose back the candidate rides across the finishing line. Afterwards, they disappear into oblivion or are, depending on the whim of their respective leadership, dissolved and replaced by a new organisation, which calls itself a party.

This phenomenon seems particularly popular in Sub-Saharan Africa. Apart from the parties that began their existence as freedom movements and have developed into governing parties in some countries today, (e.g. the ANC in South Africa), political parties in Africa are young and vulnerable.



A supporter wearing a hat covered with stickers cheers at a final African National Congress in 2014

Source: Blogs - Journal Star

Their diversity as well as their transience resemble a flower meadow in summer. Africa, the continent with the most recent and at the same time most modern constitutions in the world, is still standing at the very beginning of its party-development. It is interesting to interrogate the freedom and protection they enjoy in their respective countries.

This brochure seeks to find out how free and independent political parties are, the existing limitations and how they are funded. In view of the great diversity of 49 states in Sub-Saharan Africa, this brochure is limited to select countries which are representative of various regions region on the continent. In contrast, West-European countries were consciously chosen and put at the beginning, not only because of their democratic tradition, but also because of their colonial past.

Lastly, the text is enriched by the impressions of various staff members of the Konrad-Adenauer-Foundation (KAS) in the field from the various projects in those countries. They are best able to describe the difference between aspiration and reality.

In the production of this brochure, I was mainly assisted by Dorothee vom Holtz, Marie-Luise Weckerling, Marie-Laura Schmitt and Helen Mariana Andresen. I would like to thank them for their hands-on support. I would also like to thank my colleagues at the KAS regional offices for their critical reviews and their own contributions, and my staff member Peter Wendoh for the layout.

We have endeavoured to capture the current status but are well aware that some changes may have occurred from the time of compilation to the date of publishing.

I therefore welcome any corrections and notices via the e-mail address:
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Nairobi, September 2017

A: LEGAL FRAMEWORK FOR POLITICAL PARTIES BY COMPARISON USING SELECTED COUNTRIES IN EUROPE AND AFRICA

1. LEGAL FRAMEWORK FOR POLITICAL PARTIES IN EUROPE USING THE EXAMPLE OF THREE PREVIOUS COLONIAL POWERS IN SUB-SAHARAN AFRICA

a. GERMANY

The role of a political party is regulated in the German Constitution, the Basic Law Charter, under Article 21 paragraph 1.¹ It is meant to be a connective link between the population and the government. In the run-up to elections, they control and organise the process of developing an informed opinion and produce candidates, destined to fill positions within the state structure.² Through Article 21, the one-party system is excluded and a pluralistic order is established.³ Under Article 21 paragraph 1, the right to found a political party is guaranteed.

The internal organisation of a political party must be democratic, according to Article 21 paragraph 1 sentence 2. For instance, holding of positions within a political party is limited to a two-year term but a person is eligible for re-election according to the Political Parties Act. Decisions must be taken by members of the party or its delegates. Elections must be secret and equal with regard to the weight of the vote.⁴

In sentence 3, the duty to give a public account regarding the origin and use of its means is determined.

Article 21 paragraph 2 is understood as party privilege. Accordingly, a political party is initially seen as constitutional and approved, until such time as the opposite has been established by the Constitutional Court.⁵

¹ Article 21

(1) Political parties contribute to the development of an informed political opinion of the nation. Their founding is free. The internal processes must conform to basic democratic principles. They must publicly account for the origin and use of their funds as well as their assets.

(2) Parties that aim, according to their goal or the conduct of their supporters, at impairing or removing the liberal democratic constitution or at endangering the existence of the Federal Republic of Germany, are unconstitutional. The question of unconstitutionality is decided by the Federal Constitutional Court.

(3) Details are regulated in the Federal Law.

² Klein in Maunz/Düring, Constitutional Law-Commentary, Article 21, Rn. 158 f.

³ Klein in Maunz/Düring, Constitutional Law-Commentary, Article. 21, Rn. 9; Horst Pötzsch, Die Deutsche Demokratie. 5th edition, Bonn: Federal Agency for Civic Education 2009, p. 44-47 Parties, <http://www.bpb.de/politik/grundfragen/deutsche-demokratie/39317/parteien?p=all>.

⁴ Second section of the Political Party Act, "internal order", provides the requirements of an internal democratic order more specifically.

⁵ Klein, Article 21. Rn. 122, Horst Pötzsch, Die Deutsche Demokratie. 5th edition, Bonn: Federal Agency for Civic Education 2009, ps. 44-47 parties, <http://www.bpb.de/politik/grundfragen/deutsche-demokratie/39317/parteien?p=all>.

The Political Parties Act is seen as complimentary, in terms of giving further details and explaining constitutional regulations. The Political Parties Act of 1994, last amended in 2015, is valid according to § 2 section 1 for Federal as well as state parties. Under this section, political parties are organisations of natural persons, who want to seriously influence in developing an informed political opinion and representation of the people within the Federal or state parliament. Indications for such are the stability and extent of their membership and organisational structure.

Besides the definition of the internal order of political parties, the prerequisites for state financing as well as the duties of accountability represent the main content of the Political Parties Act.

b. GREAT BRITAIN

Due to the lack of a constitution, there are no regulations regarding political parties under constitutional law. No separate Act has been passed specifically on political parties either.

However, there is an Act that was passed in 2000, on Political Parties, Elections and Referenda⁶ as well as the Act on Political Parties and Elections of 2009⁷. According to section 22 of this Act, parties must be registered, in order for their candidates to be able to participate in elections. Furthermore,

duties regarding accountability and reporting to the Electoral Commission in relation to private donations are regulated.

c. FRANCE

The French Constitution of 1958 states in Article 4 that political parties contribute to the exercising of the voting right. They must respect the fundamental principles of national sovereignty and democracy.⁸ Their function also lies in the fact that the guiding principles of the French state, as stipulated in Article 1 of the Constitution, is to implement these into a social, secular and democratic republic.⁹

A separate Act on political parties has not been passed in France. However, the affairs of political parties are co-regulated in two Acts.

In 1988, the Act on Financial Transparency in Political Life¹⁰ was passed. The 3rd title of the Act, contemplates the legal nature of political parties that constitute legal persons according to § 7. There is no compulsory registration. Moreover, the funding of parties by the state as well as duties of accountability are regulated here.

The electoral code (code électoral) regulates the support of candidates and parties during election campaigns.

⁶ Political Parties, Elections and Referendums Act 2000

⁷ Political Parties and Elections Act 2009.

⁸ Article 4 of the French Constitution:

Political parties and groups shall contribute to the exercise of suffrage. They shall be formed and carry on their activities freely. They shall respect the principles of national sovereignty and democracy.

They shall contribute to the implementation of the principle set out in the second paragraph of article 1 as provided for by statute.

Statutes shall guarantee the expression of diverse opinions and the equitable participation of political parties and groups in the democratic life of the Nation.

⁹ Art. 1 "France shall be an indivisible, secular, democratic and social Republic."

¹⁰ Loi n°88-227 du 11 mars 1988 relative à la transparence financière de la vie politique

2. LEGAL FRAMEWORK FOR POLITICAL PARTIES IN AFRICA FROM SELECT COUNTRIES IN EAST, WEST, SOUTH AND CENTRAL AFRICA

a. KENYA

The Kenyan Constitution of 2010 devotes part 3 of chapter seven to political parties¹¹.

According to Article 91 paragraph 1, political parties must be democratically organised and promote and respect the goals and fundamental principles of the constitution and rule of law. Furthermore, their objectives should not be rooted in racist, religious, ethnic, sexual discrimination or prejudice. Article 92 makes provision to enable the passing of an Act on political parties.

Such an act came into force with the *Political Parties Act 2011*¹². It regulates the prerequisites and the registration procedure of political parties, their rights and privileges, their funding, their dissolution and the prerequisites for resigning from a political party.

Section II provides for the registration and regulation of political parties. They are obliged to register¹³, which is carried out by the Registration Authority for Political Parties (registrar)¹⁴. The prerequisites for a registration are regulated in section 7. Accordingly, amongst other things, the ethnic and regional diversity must be mirrored and certain representations of interests as well as gender equality must be taken into account. Furthermore, the party is required to recruit at least 1000 members, from at least 24 counties out of the 47 counties in the country.



A Samburu warrior leaving a polling station after voting on 8th August 2017

Source: The New York Times Credit Cyril Villemain/Agence France-Presse

¹¹ Chapter seven – Representation of the People ; Part 3 – Political parties

¹² Last amended in the Political Parties (Amendment)(No. 2) Act, 2016

¹³ See section 4(1)

¹⁴ See definition in section 2

Only Kenyan citizens may become members of the party. Moreover, the constitution or the set of rules of a party must ensure that not more than two-thirds of the membership of the various organs or committees belong to the same gender¹⁵.

Section 15 regulates the rights and privileges of a political party. Part of their privileges is free and public assembly in order to present political programmes and to recruit members, as well as the provision of state security during such activities. Furthermore, all political parties have equal access to state media. According to section 16(1), parties are legal persons, who may acquire property and may be taken to court or may take legal action themselves.

According to section 16 (5A)¹⁶, a fully registered party shall be deregistered if it fails to present a candidate in two consecutive general elections.

Further reasons for a removal from the register can be found in section 21 and this includes the violation of national values or constitutional principles or the misappropriation of funds allocated to the political party.

Further regulations regarding political parties within the framework of elections can be found in the *Elections Act 2011*¹⁷ and the *Election Campaign Financing Act 2013*¹⁸.

b. UGANDA

A number of regulations regarding political parties can be found in the Constitution of the Republic of Uganda¹⁹. For example, Article 29 paragraph 1(e) in the fourth chapter which deals with the protection and promotion of fundamental and human rights, provides for the right of political association and organisation.

Moreover, a multi-party system which was decided through a referendum²⁰ has existed in Uganda since 2005. Article 71 paragraph 1 stipulates the requirements for a political party within the framework of this system. For instance, the internal organisation of a party must live up to democratic principles and the party itself must display a national character. Membership is not supposed to be based on ethnicity, religion or gender.

The freedom to found a political party is guaranteed under Article 72 paragraph 1, whereby the party must meet the regulations as per Constitutions (Article 72 paragraph 2). Funding and functions of political parties are regulated by an Act of parliament known as the *Political Parties and Organisations Act*²¹. According to section 6(1) a party must be registered. This is done by the electoral commission (Election Commission)²². The political parties must account to this commission according to sections 9, 11, 15.

¹⁵ See section 9(1)

¹⁶ See the Political Parties (Amendment) (No. 2) Act, 2016

¹⁷ Last amended through the Amendment Act of 16/01/2017 (*Election Laws (Amendment) Act, 2017*).

¹⁸ Through the Amendment Act of 16/01/2017 (*Election Laws (Amendment) Act, 2017*) the execution of the Act was deferred until after the parliamentary elections in 2017.

¹⁹ Constitution of 1995; Last amended by the Constitution (Amendment) Act, 2005.

²⁰ Republic of Uganda, Report on the 2005/2006 General Elections by the Electoral Commission, August 2006, p. 4.

²¹ Political Parties and Organisations Act, 2005; amended by the *Political Parties and Organisations (Amendment) Act, 2010* and *Political Parties and Organisations (Amendment) (No. 2) Act, 2010*.

²² Section 4 of the Political Parties and Organisations Act



Opposition leader Dr. Kizza Besigye with his supporters

File: Reuters

Furthermore, parties are legal persons, able to bring legal suit or be sued²³. The requirement of national character of goals and membership of a party according to section 5(1)(c) is only granted in accordance with Article 3 of the Constitution, if at least 50 of the member representatives constitute a minimum of two-thirds of all districts and each region in Uganda.

Consequences of violations against the Act are regulated under section 21. Nullification of registration or the deletion from the register may only take place by order of the High Court at the request of the Electoral Commission in accordance with the provisions of section 2.

c. SOUTH AFRICA

Article 1 (d) of the South African Constitution²⁴ makes provision for a multi-party system. The basic right of free political association is guaranteed in Article 19, including the right

to found a political party, to participate in its activities and to be involved in election campaigns. There is no separate regulation regarding the role and function of political parties within the state apparatus.

However, Article 236 contains the regulation for the issuance of legal regulations regarding the funding of political parties, which serves to strengthen the multi-party-system. Such a regulation can be found in the Public Funding of Represented Political Parties Act, 1997.²⁵

A separate Political Parties Act does not exist in South Africa. However, a number of laws have been created, which contain regulations regarding political parties.

The Act on Election Commissions (Electoral Commission Act)²⁶ regulates the registration process of parties in chapter 4. On the basis of section 23(c), further rules were issued in

²³ Section 6(3) of the Political Parties and Organisations Act

²⁴ The South African Constitution, 1996; last amended in 2013.

²⁵ *Public Funding of Represented Political Parties Act 103 of 1997*; last amended by *General Laws (Loss of Membership of National Assembly, Provincial Legislature or Municipal Council) Amendment Act 55 of 2008*.

²⁶ *Electoral Commission Act 51 of 1996*; last amended by the *Amendment Act Electoral Commission Amendment Act 14 of 2004*.

2004.²⁷ The third part in chapter 3 of the Act on Elections (Electoral Act)²⁸ contains the requirements for a political party taking part in elections.

d. NAMIBIA

The Namibian Constitution contains in Article 17 paragraph 1, the basic right to found political parties and to join them. Also under Article 21 paragraph 1(e), it contains the right of assembly, the freedom to join political parties and to found them. A separate regulation regarding the function and role of political parties is however, not to be found in the Constitution. A specific act on political parties has also not been enacted.

registration and termination of registration as well as the funding of political parties.

Section 135(2)(a) stipulates that political parties must have the objective to participate in elections, to promote them as well as nominate candidates and to use its funds extensively for the expenses of the candidate in election campaigns.

The pursuit of objectives that are contrary to the legal order of Namibia and public security is prohibited. Also, political parties are not allowed to propagate their messages by violent means or restrict their political activities to only one part of Namibia. Moreover, membership



SWAPO Party Secretary General, Cde Pendukeni Iivula-Ithana, hands over scarfs and constitutions to the new members as Chief Frans Gooseb looks on

Photo: Levi Upula

The Act on Elections of 2014 (Electoral Act, 2014)²⁹ provides the legal basis for the work of political parties. Apart from the preparation and execution of elections and referenda in chapter 4, this law regulates the founding,

may not be denied due to reasons such as race, ethnicity, gender, religion or social status.³⁰ In order to participate in elections, the party must be registered in accordance with the provisions of section 136.

²⁷ *Regulations for the Registration of Political Parties, 2004*; last amended by GN R151 in GG 34044 of 23 February 2011.

²⁸ *Electoral Act 73 of 1998*; last amended by the *Amendment Act Electoral Amendment Act 18 of 2013*.

²⁹ Regulation according to section 205 of the Election Act: *Regulations relating to registration of voters, political parties or organisations: Electoral Act, 2014 of 13/05/2015*.

³⁰ See section 135 (2)(b)

Amongst the mandatory requirements is the signing of a declaration by 3500 persons listed in the national voters' register, who equally hail from at least seven Namibian regions.³¹

The Electoral Commission is responsible for the registration process in accordance with section 136. An appeal may be lodged against the rejection of a registration at the electoral court ("Electoral Court") in accordance with section 137(4) and eventually the same can be appealed before the High Court.

e. ZIMBABWE

The Zimbabwean Constitution of 2013³² expressly affirms a multi-party system³³. Further regulations regarding the nature, rights and functions of political parties are however, not to be found. Article 67 paragraph 2 of the Constitution guarantees the right to found a party and to join as well as the right to participate in election campaigns in a peaceful manner.

According to Article 67 paragraph 4, the funding of political parties must be regulated by an Act by Parliament. The Election Act (*Electoral Act [Chapter 2:13]*)³⁴ stipulates in section 3(c)(ii) and (iii) that, political parties may operate through nomination and funding of candidates during elections and participate in election campaigns within the legal framework.

There are no regulations regarding the necessity or process of registration. According to section 4, every political organisation is a political party.³⁵

The funding of political parties is regulated by the *Political Parties Finance Act (Chapter 2:11)*, 2002. In section 2, a political party is defined as: *an association of persons the primary object of which is to secure the election of one or more of its members to a local authority or Parliament."*



ZANU PF supporters at a political rally

Source: The Southern Times

³¹ See section 135(1)(d)

³² Constitution of Zimbabwe Amendment (No. 20) Act, 2013; last amended by the Constitution of Zimbabwe Amendment (No. 1) Act, 2017.

³³ See Article 3(2)(a)

³⁴ Electoral Act [Chapter 2:13] 2004; last amended by General Laws Amendment Act, 2016 (No. 3/2016).

³⁵ Definition in section 2 of the *Political Parties (Finance) Act [Chapter 2:11]*, 2002: "[...] means an association of persons the primary object of which is to secure the election of one or more of its members to a local authority or Parliament."

f. DEMOCRATIC REPUBLIC OF CONGO

The Congolese Constitution of 2005³⁶ contains in Article 6, the declaration in the belief of pluralism of political parties as well as the right to found political parties and to join a political party. Moreover, Article 6 guarantees the freedom of political parties to operate within the limits of the legal order and to respect public order and morals.

There is also a provision for state funding of election campaigns or the activities of the parties. Further elaboration is to be made in legal acts.

the party must register with the required documentation and meet the requirements of Article 12. According to Article 20, a political party may own property if this serves the function of the party. Moreover, the law specifies regulations regarding the dissolution, resources, sanctions and competition control.

g. SENEGAL

The Senegalese Constitution of 2001³⁸ addresses the issue of political parties in Articles 4 and 58. According to Article 4, political parties contribute to the legal right to vote as provided for in the Constitution. They support



FILE - Supporters of Congolese former opposition leader Etienne Tshisekedi (deceased 01.02.2017) carry placards and flags as they attend a political rally in the Democratic Republic of Congo's capital Kinshasa, July 31, 2016.

Source: <https://www.voanews.com/>

One such Act is *Loi n° 04/002 du 15 mars 2004*³⁷, regulating the organisation and function of political parties. Chapter 2 is dedicated to the founding of a political party. According to Article 11 paragraphs (a) and (b), all founding members must be Congolese citizens and have a minimum age of 25 years at the moment of founding the party. Furthermore,

the education of citizens and promote the participation in national life and governance. Therefore, parties as well as coalitions are required to respect the Constitution as well as the principles of national sovereignty and democracy. Moreover, it is prohibited to identify with a particular race, ethnic group, gender, religion, sect, language or territory.

³⁶ *Constitution de la République Démocratique du Congo, 2005*; last amended in 2011.

³⁷ *Loi n° 04/002 du 15 mars 2004 portant organisation et fonctionnement des partis politiques.*

³⁸ *Constitution de la République du Sénégal, 2001*; last amended by the *Loi constitutionnelle n° 2016-10 du 05 avril 2016 portant révision de la Constitution.*

In addition, equality of political parties, also those in the opposition, is guaranteed in the Constitution. The founding or dissolution of a party, as well as working conditions or prerequisites for the preservation of public funds are legally regulated.

According to Article 58, opposition parties have the guaranteed right to object. Their status also enables them to fulfil their tasks. This status, as well as rights and obligations of leaders of the opposition are defined by law.

The *Loi n° 81-17 of 6 May 1987*³⁹ addresses the rights and obligations of political parties. In spite of this Act, their founding is regulated according to the provisions of association law in Article 812 to 814 of the Code des Obligations Civiles et Commerciales.⁴⁰

h. GHANA

The Constitution of Ghana 1992⁴¹ expressly provides for a multi-party system⁴². Article 21 paragraph 3 guarantees the right of all citizens to found political parties. Part 3 of chapter seven contains the regulations regarding the organisation.

According to Article 55, the function of political parties within the state structure is seen as a force, forming political will by using political programmes and ideas that produce candidates for elections for every public office, except local elections. Here, Article 248 paragraph 1 addresses the fact that during local election, candidates may only compete as individuals. The use of a symbol for a party is forbidden. In paragraph 2, the activity of parties during election campaigns at municipal level is also prohibited. Equal access for political parties to state media as well as equal treatment of presidential candidates by the



Party campaigns in Ghana

Source: <http://citifmonline.com/>

³⁹ Amended by the *loi n° 89-36 du 12 octobre 1989*.

⁴⁰ Hartmann, Christof (2010) 'Senegal's party system: the limits of formal regulation', *Democratization* Vol. 17, No.4, August 2010, 769-786, S. 774.

⁴¹ *The Constitution of the Republic of Ghana, 1992*; last amended by *The Constitution of the Republic of Ghana (Amendment) Act, 1996*.

⁴² Article 3 paragraph 1 of the Constitution: 'Parliament shall have no power to enact a law establishing a one-party state.'

state media during election campaigns are guaranteed in the Constitution⁴³. According to Article 6, an organisation may not act as a party, as long as it is not registered. The requirements for registration can be found in Article 7 and section 17 of *The Political Parties Act 574 (2002)*. The Electoral Commission is responsible for the registration according to Article 55 paragraph 7 of the Constitution and section 5 of the Political Parties Act.

Furthermore, parties must demonstrate a national character and membership may not be based on racial, ethnic, regional or any other nation-dividing differentiations⁴⁴.

i. NIGERIA

Article 40 of the Constitution of 1999⁴⁵ ensures the freedom of foundation of and the right of membership in any political party. This right is subject to a constitutional barrier as well as a legal reservation and is limited to lawful

parties, according to the Constitution.⁴⁶ In chapter six on the executive, the requirements for political parties as well as their function are stipulated in detail under Articles 221 to 229. According to Article 229, a political party is "[...] any association whose activities include canvassing for votes in support of a candidate for election to the office of President, Vice-President, Governor, Deputy Governor or membership of a legislative house or a local government council". A party affiliation is the prerequisite for all candidates wanting to participate in elections.⁴⁷

In order for an association to be seen as a political party, its headquarters must be located in the capital city of Abuja according to Article 222 paragraph (f) and the names and addresses of national officials⁴⁸ as well as a copy of the constitution of the party must be registered with the independent electoral commission (*Independent National Electoral*



Members of the Nigerian senate at a plenary

Source: *The Guardian*

⁴³ Article 55 paragraphs 11 and 12 of the Constitution

⁴⁴ Article 55 paragraphs 4 of the Constitution

⁴⁵ *Constitution of the Federal Republic of Nigeria, 1999*; last amended by the *Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010*.

⁴⁶ See wording in article 40: "[...] Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

⁴⁷ See article 131 lit. (c), 177 lit. (c), 65 paragraph 2; 106 lit. (d).

⁴⁸ Article 222(a)

Commission, INEC)⁴⁹. Goals and programmes of the party should be in accordance with the Constitution⁵⁰. Furthermore, political parties are to be democratically organised and must represent within its Executive Board or any other body the “Federal character” of Nigeria⁵¹. Parties are subject to the control of the Electoral Commission according to Articles 225 and 226 and are accountable to it, especially with regard to income and expenses. No other separate Act on political parties exists.

j. TANZANIA

The Constitution of 1977⁵² provides for a multi-party democracy for Tanzania in Article 3 paragraph 1. Affairs regarding the registration and administration of parties are regulated in the act on political parties (*Political Parties Act*)⁵³ that was enacted in accordance with Article 2. Article 20 paragraph 1 contains the right of free association. According to Article

20 paragraph 2, the registration of a party is to be regarded as unlawful, if it endorses the dissolution of the Republic⁵⁴. Further regulations with regard to political parties are not to be found in the Constitution.

The requirements for the registration are listed in the third section of the Political Parties Act. Section 7(1) provides for compulsory registration. Therefore, according to Article 3, no organisation may act as a political party without prior registration.

During registration, a differentiation is made between provisional and full registration, whereby the first is the prerequisite of the latter. A full registration requires among others that the party has a membership of at least 200 people who are qualified to be registered as voters for parliamentary elections from each of the ten regions of the Republic, and at least two must be from Zanzibar and Pemba⁵⁵.



Chama Cha Kijamii's (CCK) chairman Constantine Akitanda (R), holding a party registration certificate with John Tendwa (L) the registrar of political parties in January 2012

Source: Shout Africa - <http://www.shout-africa.com/politics/tanzania-cck-party-registers-as-political-party/>

⁴⁸ Article 222(a)

⁴⁹ Article 222(c)

⁵⁰ Article 224

⁵¹ Article 223 paragraph 1 of the Constitution

⁵² *The Constitution of the United Republic of Tanzania, 1997*; last amended by G.N. No. 150 of 2005.

⁵³ *The Political Parties Act (CAP 258 R.E. 2015)*.

⁵⁴ Article 20(2)(b) of the Constitution

⁵⁵ Section 10(b) of the Political Parties Act

B: LEGAL FRAMEWORK FOR THE FUNDING OF POLITICAL PARTIES

1. LEGAL FRAMEWORK FOR THE FUNDING OF POLITICAL PARTIES USING THE EXAMPLE OF THREE PREVIOUS COLONIAL POWERS IN SUB-SAHARAN AFRICA

a. GERMANY

The act on political parties stipulates that there is partial state funding which takes place in two different ways. According to § 18 section 3 p. 1 No. 1 and 2, a subsidy of 0.83 € is granted for each validly given vote for a party. The first 4 million votes for each party are treated as privileged according to § 18 paragraph 3 p. 2, which are then subsidised with 1 € in favour of each valid vote for a party. However, in order for state funding to be granted, a minimum hurdle of 0.5 % in parliamentary election or 1 % in state election of the given votes in favour of the party must be overcome⁵⁶. According to § 18 section 3 p. 1 No. 2, a party will receive in addition to this 0.45 € for each Euro appropriated to it, including membership fees, however, only 3300 € per natural person will be taken into account.

The President of the German Parliament is the fund-managing authority for state funds in accordance with §§ 21 section 2 and 23. He/she while performing this function is subject to

control by the Federal Audit Office according to § 21 section 2.

Private donations to political parties are permissible according to § 25 section 1. They can be made in cash up to an amount of 1000 €. Should the amount exceed the annual limit of 10,000 €, the name and address of the donor must be given in the statement of accounts according to § 25 section 3 p. 1. Should a donation amount to more than 50,000 €, the President of the German Parliament must be notified immediately according to § 25 section 3 p. 2. The accountability of the parties regarding their income and expenses is also embedded in the Constitution under Article 21 paragraph 4.

A maximum amount for private donations by natural as well as legal persons is not stipulated. Donations made by natural persons in favour of political parties may be claimed as a deduction in tax returns up to an annual amount of 3.300 € for singles or up to 6,600 € for married people.⁵⁷ Tax relief for companies does not exist according to § 4 section 6 of the Income Tax Act.

Furthermore, the acceptance of donations by non-profit public service corporations, fractions and political foundations is prohibited

⁵⁶ § 18 section 4 p. 1

⁵⁷ §§ 34 g, 10 b section 2 of the Income Tax Act.

as well as by corporations and associations, which are made to directly serve the interests of the public⁵⁸.

Donations from abroad are generally non-permissible according to § 25 section 2 No. 3, unless the donation of a foreigner does not amount to more than 1000 € (No. 3 c) or was made by a company, of which at least 50 % are held by a German or European citizen, or is derived from the assets of a German or European citizen, who resides in Germany or a member state of the European Union (No. 3 a).

Donations to a party of national minority is permitted, as long as they flow from an ancestral home country, directly bordering the Federal Republic of Germany (No. 3 b).

Moreover, donations from professional associations meant for the purpose of disguising and circumventing the requirement to declare the origin of the source⁵⁹ as well as donations granted as reward for a certain political or economic advantage⁶⁰ as well as the acceptance of donations, if it has to be remunerated by the party with more than 25 % of the funds raised⁶¹, are prohibited. Anonymous donations⁶² which amount to more than 500 €, as well as donations by companies, which are completely or partially

owned by the public to a tune of at least 25 %, or are administered or operated as such⁶³ are also unlawful. According to § 42 section 2 of the Broadcasting Treaty in comparison to § 5 Part G, parties are entitled to appropriate broadcasting times during election campaigns in proportion to prior election results they achieved.

b. GREAT BRITAIN

Financial support by the state is granted directly in two ways:

1. Funds are granted for the development of politics, which are administered by the Electoral Commission and it also controls and monitors such.⁶⁴ The prerequisites for the monies to be paid out include, the party must be registered with the Electoral Commission and should have won at least two seats in the House of Commons and have sworn an oath of allegiance.⁶⁵
2. In the British House of Commons as well as the House of Lords, opposition parties are granted subsidies for administration and their work in parliament. In the House of Commons, these funds are called 'Short Money', in the House of Lords, they are called "Cranborne Money".⁶⁶ Short Money⁶⁷ is granted to all opposition

⁵⁸ § 25 section 2 No. 1, 2

⁵⁹ § 25 section 2 No. 4

⁶⁰ § 25 section 2 No. 7

⁶¹ § 25 section 2 No. 8

⁶² § 25 section 2 No. 6

⁶³ § 25 section 2 No. 5

⁶⁴ <http://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/public-funding-for-parties>.

⁶⁵ Political Parties and Referenda Act 2000, § 21; Elise Uberoi, Political Party Funding: sources and regulations, Briefing Paper No. 7137, House of Commons Library, 8.01.2016, S. 5, <http://researchbriefings.files.parliament.uk/documents/SN07137/SN07137.pdf>. Thereby parties, such as the Sinn Fein, have not sworn an oath of allegiance according to the Parliamentary Oaths Act 1866 receive no funding.

⁶⁶ Elise Uberoi, *ibid.*, p. 6.

⁶⁷ Short Money Resolution of the House of Commons of 26 May 1999

parties, who have won at least two seats in parliament or one seat and 150,000 votes won in the last election. Even parties, such as the “Sinn Fein” party, who have decided not to claim their seats, are entitled to this kind of support.⁶⁸

Short Money is broken down into three parts: The first one is determined by the number of seats and votes won⁶⁹, the second one covers travel costs⁷⁰, the amounts of which are also determined by the above-mentioned criteria, the third part is a fixed amount⁷¹, which is due to the office of the opposition leader for running costs.⁷² Besides that, the opposition leader (Leader of the Opposition), the General Manager of the opposition factions (Opposition Chief Whip) as well as a maximum of two of its staff members receive an additional income from public funds.⁷³ Cranborne Money is provided in the House of Lords for the two largest opposition parties and for the person, who is the speaker of the independent members of parliament (Crossbencher).⁷⁴ An additional income is also provided for the leader of the opposition and the General Manager of the opposition faction in the *Ministerial and other Salaries Act 1975*.⁷⁵

Indirect support is given in the form of broadcasting of party-political messages on the radio and television, postal stamps for election communication and provision for assembly halls in official buildings.⁷⁶ (Self-) funded election commercials are, however, prohibited in Great Britain.⁷⁷

Private donations must also fulfil certain regulations. Donations below 500 £ are not taken into account.⁷⁸ Only donations, given by permitted donors may be accepted according to section 54(2).

Included are natural persons, listed in the voters’ roll, who have their permanent residence in the United Kingdom or one of the EU member countries and work in the United Kingdom, as well as associations, political parties registered in Great Britain and trade unions.⁷⁹ According to sections 54(A) and (B), and 62, the name, address and purpose as well as the amount of the donation must be recorded if the donation exceeds 7500 £ and must be made available to the Electoral Commission quarterly. During election campaigns, reports must be made to the Commission on a weekly basis according to section 63.

⁶⁸ Richard Kelly, Short Money, Briefing Paper No. 01663, House of Commons Library, 22/03/2016, p. 3, 23 <http://researchbriefings.files.parliament.uk/documents/SN01663/SN01663.pdf>

⁶⁹ In the 2015 financial year, beginning on 1 April 2015, 16,956.16 £ were granted for each seat and 33.86 £ for every 200 votes respectively.

⁷⁰ 186,269.37 £ was e.g. the total amount to be paid out in the 2015 financial year, Richard Kelly, *ibid*, p. 5.

⁷¹ 789,979.10 £ e.g. for the financial year from April 2015, Richard Kelly, *ibid*, p. 5.

⁷² Richard Kelly, *ibid*, p. 5.

⁷³ Ministerial and other Salaries Act 1975 (chapter 27), sections 1 and 2 and Schedule 2; Richard Kelly, *ibid*, p. 6.

⁷⁴ House of Lords Resolution of 30 July 2002 on Cranborne money article 1.

⁷⁵ Richard Kelly, *ibid*, p. 21.

⁷⁶ Elise Uberoi, *ibid*, p. 8.

⁷⁷ Section 8 Broadcasting Act 1990.

⁷⁸ Section 52(2)(b) of the Political Parties, Elections and Referendums Act 2000.

⁷⁹ Section 54 section 2 Political Parties, Elections and Referendums act 2000, “For the purposes of this Part the following are permissible donors—

a) an individual registered in an electoral register;

According to sections 56 and 57 no other than the permitted donations may be accepted, should the origin be unclear. The identity of the donor must be investigated or else, the donation must be returned. Should the party omit to do so, the Electoral Commission may under section 58 apply to a court to order the forfeiture of a donation which a party has accepted from a source which is either impermissible or not known. Even persons, who promote in any way whatsoever the payment of donations by inadmissible donors or give false information regarding the origin and amount of the donated amount, commit a crime according to section 61.

Donations to candidates in an election are separately regulated under sections 71 and 130. Here, donations to the value of over 50 £ are regulated. Just as political parties, candidates or their proxies may receive donations only from permitted donors and must record the origin, name and address of the donor as well as the amount of the donation. Likewise, the sum of all donations below the amount of 50 £ is to be disclosed.⁸⁰

Loans in the form of money or by credit institutions to parties fall under the same regulations as donations. However, loans to election candidates are not regulated.⁸¹

c. FRANCE

Section 8 of the Act governing the financial transparency of political life⁸² regulates the state funding of political parties. According to section 9, parties are entitled to financial support if they were able to secure a minimum of 1% of the votes in at least 50 electoral districts.⁸³

The funds are paid out in accordance with section 8 in two instalments. The first instalment is determined by the party's results in the parliamentary elections and the second one given to parties that were able to secure mandates in parliament.⁸⁴

State funding is tied to the additional prerequisite that parties create gender equality.⁸⁵

-
- b) a company—
 - (i) registered under the Companies Act 2006], and incorporated within the United Kingdom or
 - (ii) another member State, which carries on business in the United Kingdom;
 - c) a registered party, other than a Gibraltar party whose entry in the register includes a statement that it intends to contest one or more elections to the European Parliament in the combined region];
 - d) a trade union entered in the list kept under the Trade Union and Labour Relations (Consolidation) Act 1992 or the Industrial Relations (Northern Ireland) Order 1992;
 - e) a building society (within the meaning of the Building Societies Act 1986);
 - f) a limited liability partnership registered under the Limited Liability Partnerships Act 2000. . . which carries on business in the United Kingdom;
 - g) a friendly society registered under the Friendly Societies Act 1974 or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969; and
 - h) any unincorporated association of two or more persons which does not fall within any of the preceding paragraphs but which carries on business or other activities

⁸⁰ see also Elise Uberoi, *ibid.*, p. 10.

⁸¹ *Ibid.*, p. 12.

⁸² Loi n°88-227 du 11 mars 1988 relative à la transparence financière de la vie politique

⁸³ La première fraction des aides prévues à l'article 8 est attribuée - soit aux partis et groupements politiques qui ont présenté lors du plus récent renouvellement de l'Assemblée nationale des candidats ayant obtenu chacun au moins 1 % des suffrages exprimés dans au moins cinquante circonscriptions;

⁸⁴ „Ce montant est divisé en deux fractions égales: 1° Une première fraction destinée au financement des partis et groupements en fonction de leurs résultats aux élections à l'Assemblée nationale ;

2° Une seconde fraction spécifiquement destinée au financement des partis et groupements représentés au Parlement.”.

⁸⁵ Daniela Romée Piccio Party Regulation in Europe: Country Reports, Working Paper Series on the Legal Regulation of Political Parties, No. 18, 2012, p. 24 <http://www.partylaw.leidenuniv.nl/uploads/wp1812a.pdf>

Donations from the private sector may not be made directly to the parties, but through an intermediary, nominated by the party.⁸⁶ An annual upper limit for donations by natural persons is set at 7500 €. Cash donations to a party may not exceed 150 €.

Donations to political parties by legal persons and political associations are completely prohibited according to Article 11-4 which also prohibits direct or indirect donations by other countries or foreign legal persons. A provision, regulating donations by foreign, natural persons does not exist.⁸⁷

According to Article 11-7, political parties are obligated to submit annual reports to the National Commission on Election Campaign-Accounting and Funding of Political Parties (*Commission Nationale des Comptes de Campagne et des Financements Politiques, CNCCFP*).

In terms of election campaign donations, the Electoral Code applies as a specific Act. State financial support is granted firstly via a direct payment to the candidate and secondly in an indirect manner via the granting of election commercials on public radio and on television. Self-funded commercial advertising in favour of candidates or parties is prohibited for a period

of three months before elections.⁸⁸ According to Article R 26 of the Electoral Code, from the second Monday before elections during and for the election campaign, a natural person is limited to donations of a total amount of 4600 €. ⁸⁹ Likewise, cash donations are limited to 150 €, whereby the total amount, a candidate receives in cash, may not exceed 20% of his total donations, in case these do not exceed 15,000 € .⁹⁰

Even in the funding of election campaigns, legal persons are comprehensively excluded.⁹¹

A candidate may neither receive direct nor indirect donations from a foreign country or a foreign legal person according to Article L 52-8.⁹²

Natural persons may deduct their donations from tax up to the amount of 66 % of the donated amount.

⁸⁶ *ibid*, p. 25. – article 11-4

⁸⁷ Library of Congress, Campaign Finance: France, <https://www.loc.gov/law/help/campaign-finance/france.php> (last amended 07/01/2015); Loi 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique, Electoral Code Article 11-4, Annexe IV, p. 890.

⁸⁸ Electoral Code Article L 52-11-1, R 39, Annexe II S. 815, 828; <https://www.loc.gov/law/help/campaign-finance/france.php>

⁸⁹ Article L 52-8 Electoral Code

⁹⁰ Article L 52-8

⁹¹ Electoral Code Article L 52-8, „Les personnes morales, à l'exception des partis ou groupements politiques, ne peuvent participer au financement de la campagne électorale d'un candidat, ni en lui consentant des dons sous quelque forme que ce soit, ni en lui fournissant des biens, services ou autres avantages directs ou indirects à des prix inférieurs à ceux qui sont habituellement pratiqués.”

⁹² Electoral Code Article R 39-1 iVm Code General des Impôts Art. 200, Loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique Art, 11-7 iVm Code General des Impôts Art. 200.

2. LEGAL FRAMEWORK FOR THE FUNDING OF POLITICAL PARTIES IN AFRICA FROM SELECT COUNTRIES IN EAST, WEST, SOUTH AND CENTRAL AFRICA

a. KENYA

Part III of the *Political Parties Act (2011)* regulates the funding and accountability of political parties.

Section 23 establishes a Fund which is administered by the Registrar of political parties. According to section 24, the sources of money in the Fund comprises of not less than 0.3 % of the state income as well as other contributions and donations from any other lawful source.

According to section 25(1), 95 % of these funds will be paid to the political parties based on the votes achieved in the latest elections with the remaining 5% being used for administrative expenses of the Fund. Section 25(2) lays the pre-condition for a political party to benefit from this Fund. Thus, for any party to qualify it must secure at least 5 % of all votes during the last elections and must ensure at least 1/3 of its registered office bearers are from a different gender⁹³. The monies from the Fund can only be used for purposes of promoting democracy as detailed in section 26 of the Act and not for any other purpose. This includes, promoting the representation in parliament and county assemblies of special interest groups⁹⁴; promoting active participation of individuals in political life among others.

According to section 26(1) not less than 30 % of the monies received should be used to promote representation of special interest groups in legislative organs at the national and county level. In addition, not more than 30% should be spent on administrative and staff costs. Section 26(3) spells out expenses that these funds should not be spent on including, the payment remuneration, fees, rewards, allowances, establishing businesses among others. Any action that contravenes these regulations constitutes a criminal offence according to section 26(5).

Besides the Fund, other permissible sources of funding for political parties⁹⁵ include membership contributions, voluntary payments of lawful origin, income from investments, projects or enterprises in the interest of the party, donations, grants or subsidies from other lawful sources provided they are not foreign citizens or foreign governments, or inter-governmental or non-governmental organisations. Funding from abroad is therefore not possible for political parties in Kenya. However, Foreign Authorities or parties with similar ideologies as those parties registered in Kenya may at most give technical support.⁹⁶

All direct and indirect gifts, donations and grants must be recorded together with the name and address of the donor, independent of the amount and mode of payment. In the same manner, the purchase of property as well as the time and circumstances of the purchase are to be specified. Fundamentally, they are obliged according to section 17(d) to (g) to comprehensively document their

⁹³ Not more than two-thirds of its registered office bearers should be of the same gender.

⁹⁴ These are women, people with disabilities, the youth, ethnic minorities and marginalised groups – The Political Parties (Amendment) Act No. 21 of 2016

⁹⁵ Section 27

⁹⁶ Section 27(2)



Some of the choppers used in a campaign rallies in Kenyan

File: Nation Media Group

financial activities. The Registrar may at any point in time, in accordance with section 18, request for such information.

A political party must disclose to the Registrar full particulars of all funds or other resources obtained by it from any source⁹⁷ and must within ninety days of the end of its financial year publish in at least two national newspapers, the financial report indicating all the sources of its funds, its income and expenditure as well as its assets and liabilities. It is an offence not to comply with this requirement and such a political party shall be disqualified from receiving moneys from the Fund during the period of non-compliance⁹⁸.

According to section 31, a political party must submit its annual accounts to the Auditor-General within three months after the end of each financial year. Another relevant Act of Parliament in this regard is the Election

Campaign Financing Act 2013⁹⁹ meant for regulation, management, expenditure and accountability of election campaign funds during election and referendum campaigns. Section 11 provides that the sources of funds for purposes of financing party nomination, election or referendum campaign shall be contributions from any person, political party or any other lawful source provided it is not directly from a foreign government; as well as contributions from a fundraising initiative popularly known as harambee. Section 13 outlaws anonymous contributions or contributions from an illegal source while section 14 prohibits candidates, political parties or referendum committees from receiving any contribution or donation, in cash or in kind from the State, a State institution or agency or any other public resource.

The Act also sets spending limits under section 18.

⁹⁷ Section 27(4)

⁹⁸ Section 29

⁹⁹ Through the Amendment Act of 16/01/2017 (*Election Laws (Amendment) Act, 2017*), the operation of the Act was suspended until after the general elections of 2017.

b. UGANDA

Regulations regarding the funding of a political party are not to be found in the Constitution. However, under Article 71(e), political parties are required to account for the sources and use of their funds and assets. Section 12 of the Political Parties and Organisations Act prescribes that a permanent register must be kept by parties, whereby all donations and gifts or pledges of such must be recorded. Moreover, in the accounting process, the precise origin of domestic and foreign funds and the relationship to the donors must be included. Furthermore, all schedules must be made available to each party member and an annual audit must be carried out and submitted to the Electoral Commission which is responsible for enforcement of these requirements.

Section 14 limits donations from foreign sources. The value of donations, gifts or loans is limited to an amount of 20,000 “currency points” per foreign donor within a period of 12 months.¹⁰⁰ The foreign donors include non-Ugandan citizens¹⁰¹, foreign governments or diplomatic missions and foreign non-governmental organisations, which are registered in Uganda in accordance with the *Non-Governmental Organisations Registrations Act*. Section 14(3) sets the limit of the amount of donations that can be accepted provided all such funds must be reported by the party to the Electoral Commission within 21 days after receipt. Any funds from foreign entities that have demonstrated an intention of overthrowing the government or endangering the security of the public or

are associated with terrorist organisations is expressly prohibited under section 14(5).

Section 14A makes provision for state funding.¹⁰² Accordingly, the government must support the activities of political parties represented in parliament with funding or other state resources according to the principles prescribed in the paragraph. In this manner, support is rendered amongst other things with regard to elections and day-to-day operations of the parties.

c. SOUTH AFRICA

The *Public Funding of Represented Political Parties Act, 1997*¹⁰³, enacted on the basis of Article 236 of the Constitution makes provision for the funding of parties from public coffers that participate in parliamentary as well as local elections¹⁰⁴.

Political parties, represented in the National Assembly, at regional level or both, are entitled to receive state funding in every financial year in accordance with section 5. The allocation is made in accordance with the prescribed formula that considers among other issues, the principles of proportionality and equity.

The funds may be used by the parties for all purposes that are consistent with the function of a political party in a modern democracy. This includes, the political decision-making process, the promotion of political education, the support of the active participation of citizens in political life as well as the guarantee of a continued connection of government bodies and the people.

¹⁰⁰ According to section 2(1), a currency point is 20,000 Shillings. Thus, the limit per year is 400,000,000 Shillings

¹⁰¹ „Non-citizen” is defined in paragraph 7.

¹⁰² Inserted in the *Political Parties and Organisations (Amendment) Act, 2010*.

¹⁰³ See Fn. 19.

¹⁰⁴ See section 2(1)



Julius Malema of Economic Freedom Fighters (EFF) at a campaign rally

File: (AP Photo/Themba Hadebe)

Section 5 (3) prohibits the use of such funds to remunerate representatives of the party in the National Assembly, the council of the provinces (National Council of Provinces) as well as all other officeholders at all levels of government. Moreover, these funds may not be used for the purchase or maintenance of financial interest, business or properties unless the properties serve and promote the ordinary party-political purposes. The Electoral Commission is responsible for the distribution, administration and control of the funds in accordance with section 4 read together with section 3(1) of the Electoral Commission Act¹⁰⁵. The party is accountable to the Commission in accordance with section 6(1)(c). Regulations regarding private or foreign funding are not to be found.

d. NAMIBIA

Regulations regarding the funding of a political party can be found in chapter four of the Electoral Act.

Section 154 provides that the National Assembly must fund political parties with monies appropriated by Parliament for that purpose¹⁰⁶. The distribution of funds is carried in accordance with a formula that is determined by the Minister for Finance with the approval of the National Assembly¹⁰⁷ as well as the principle of proportional representation as stipulated in Article 49 of the Constitution. Section 157 stipulates the use of the funds by a political party. Accordingly, state funding may not be used to pay salaries or, commissions to persons who represent the party in parliament, the regional council or local authority council among others. The duties of accountability are regulated under section 158. Section 159 provides for the recovery of any allocated funds that were irregularly spent by such a political party in addition to any accruing interest as may be determined in terms of section 2 of the Prescribed Rate of Interest Act.

¹⁰⁵ See Fn. 20.

¹⁰⁶ A political party is defined to mean a political party represented in Parliament. See section 154(1)

¹⁰⁷ See section 155

Legally, every party may accept monetary donations for the purpose of supporting the party or election campaign from a foreign person or institution with their seat in or outside of Namibia¹⁰⁸, provided such donations are disclosed and the total amount of the donation does not exceed a certain limit per annum¹⁰⁹. This requirement applies to domestic donations as well¹¹⁰.

Regardless of the regulations under section 158, every registered political party is required to keep and maintain an accurate record¹¹¹ showing among other things, any contribution, donation or pledge of contributions or donations, whether in cash or in kind made to the political party; a statement of its accounts that shows the sources of its funds and the name of every person who has contributed to the funds; and any property that belongs to the political party and the time and mode of acquisition of the property.

These records are accessible to any member of the registered political party in accordance with the rules and procedures as may be determined by the authorised body of the registered political party.

A registered political party is also required to have its financial accounts audited annually with the report being lodged with the Electoral Commission and a summary of the same published in at least two daily newspapers with a nationwide circulation.

e. ZIMBABWE

Regulations regarding the funding of political parties can be found in the *Political Parties Finance Act [Chapter 2:11]*¹¹².

Sections 3 to 5 deal with State funding. According to section 5, all monies paid to the parties in accordance with this Act are taken from the funds allotted for the respective parliamentary year by parliament in accordance with the law. Section 3(3) stipulates that every party, whose candidates managed to receive at least 5 % of the votes during the latest elections, is entitled to a proportional share of the sum, which is specified and announced by the minister¹¹³ in accordance with section 3(2).

In order to receive government support, a relevant application must be submitted to the minister in line with section 4, who then takes a decision on the application.

According to section 6(1), any kind of donation from a foreign source is prohibited. Any member or party that accepts such a donation is liable to a fine according to section 6(3) unless the donation is returned within 30 days after receipt. By the same token, according to section 7, soliciting of donations by non-Zimbabwean citizen in Zimbabwe is prohibited and a fine will be imposed in case of a contravention.

There are no regulations in this Act, regarding the limitation on the amount or origin of private donations.

¹⁰⁸ Section 141(1) section 1

¹⁰⁹ The maximum limit of amount receivable is not prescribed in the Act

¹¹⁰ See section 141(2)

¹¹¹ See section 140

¹¹² *Political Parties Finance Act [Chapter 2:11]*, 2002.

f. DEMOCRATIC REPUBLIC OF CONGO

Chapter IV of the *Loi n° 04/002 du 15 mars 2004*¹¹⁴ contains regulations regarding the resources of a political party.

According to Article 22, the funds of a party consist of membership fees, donations and bequests, income from events and publications, finance and capital transactions and possible subsidies by the government. Origin, type and amount of donations and bequests must be declared to the Department of Internal Affairs. The source of such donations must be from identifiable persons and should not be associated with any criminal activities¹¹⁵. Both private and state funding of a party is possible.

According to Article 25, registered parties profit from the subsidies of the government as per the conditions and regulations of the law, *Loi n° 08/005 du 10 juin 2008*¹¹⁶. Part three of this law consists of the conditions and modalities of the funding which includes a condition that the party avails of an account with a credit balance of at least 2,500,000 KFCF¹¹⁷.

Regarding the financing of the running costs, a financial act on State subsidies meant for this purpose is issued annually in accordance with Article 4. The subsidy may not amount to less than 0.5 % and not more than 1.0 % of the total income of the government. The subsidy serves the purposes stipulated in Article 6 and is distributed in accordance with Article 7 taking into consideration proportional

representation of party members in the “decision-making assemblies” namely, the Senate, the National Assembly and the Town Council. Chapter three contains further regulations regarding the funding of election campaigns.

Foreign funding is possible but only to a very limited extent. According to Article 24, financial as well as material support by a foreign government is prohibited.

Political parties are required to keep books regarding their finances and assets and justify their origin before the responsible authority in an annual report as stipulated in Article 26.

g. SENEGAL

To date, there is no State funding for political parties nor are there any respective regulations.¹¹⁸ However, due to the amendment of the Constitution in 2016, under Article 4, a legal reservation has been created making a set of rules regarding the payment of government funds.

Regulations regarding the private and foreign funding of political parties can be found in the *Loi n° 81-17*.¹¹⁹ In Article 4 No. 1, it is stipulated that any direct or indirect donation from abroad or by a foreigner residing in Senegal are prohibited. Should a party be in contravention of this provision, it may be dissolved. The funding of individual candidates however, is permitted; regulations or prohibitions in this regard, are not to be

¹¹³ Minister is according to section 2: “[...] means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may from time to time assign the administration of this Act.”

¹¹⁴ *Loi n° 04/002 du 15 mars 2004 portant organisation et fonctionnement des partis politiques.*

¹¹⁵ Article 23

¹¹⁶ *Loi n° 08/005 du 10 juin 2008 portant financement public des partis politiques.*

¹¹⁷ Article 3 no. 3

¹¹⁸ Africa Freedom of Information Center (AFIC), Article 19, West Africa, ‘Access to Information on Political Party and Election Candidate Financing in Uganda and Senegal’, 2016, S. 53.

¹¹⁹ See above.

found. A prohibition against donations by trade unions or companies paid to political parties does not exist.¹²⁰

According to the law, political parties must submit an annual report regarding the origin of their funding for the previous year on 31 January. An annual audit regarding the books of the party is not required. The monitoring of these acts is bestowed upon the Department of Interior Affairs.¹²¹

h. GHANA

Regulations regarding the funding of parties can be found in Article 55 paragraph 15 of the Constitution and the Parties Act.

Regarding private funding, according to Article 55 paragraph 15 of the Constitution, only a Ghanaian citizen may make a contribution or donation to a party which is registered in Ghana, as does the Political Act¹²². According to section 23(2) of the Parties Act, companies, corporations or enterprises are registered according to Ghanaian law as local, if at least 75% of the capital is held by locals. Any financial participation of a non-citizen, either direct or indirect, is not possible according to section 24. By the same token, the solicitation or acceptance of an amount made by a non-citizen by a party or a person on behalf of a political party is not permitted. Should a non-citizen pay funds or benefits in kind to a party, in contravention of sections 23 and 24 of the Parties Act, the monies paid is automatically

the property of the State and the party is obliged to cede the payments to the State. Moreover, the donor may be fined.¹²³

Financial support or payment in kind from a foreign source to a political party is possible under section 25 of the Parties Act only if it is from a foreign government or non-governmental organisation that is made directly to the Electoral Commission and to the benefit of all political parties.¹²⁴

More details regarding the funding, such as the limits of amounts that may be paid are not stipulated in the Parties Act.

Regulations regarding State funding for parties cannot be found either. According to section 21(1), every party must submit an explanation on an annual basis within six months after the 31 December, the origin of its funds, membership fees, donations and contributions in cash or in kind as well as on their audited accounts to the Commission. Section 14 deals with the declaration of assets in the context of elections.

i. NIGERIA

Regulations regarding the funding of parties can be found in Articles 225 and 228 of the Constitution¹²⁵ and the *Electoral Act*¹²⁶.

Every party must submit an annual detailed report to the Independent Electoral Commission (INEC) regarding the sources of

¹²⁰ Africa Freedom of Information Center (AFIC), Article 19, West Africa, 'Access to Information on Political Party and Election Candidate Financing in Uganda and Senegal', 2016, p. 12-13.

¹²¹ *Ibid.*, p. 55.

¹²² Also see section 23(1) of the Parties Act

¹²³ According to section 25(2): A non-citizen found guilty of contravention of section 24 shall be deemed to be a prohibited immigrant and liable to deportation under the Aliens Act, 1963 (Act 160).

¹²⁴ Section 25(3): The provisions of sections 23 and 24 do not preclude a government of any country or a non-governmental organization from providing assistance in cash or in kind to the Commission for use by the Commission for the collective benefit of registered political parties.

¹²⁵ See Fn. 36.

¹²⁶ Electoral Act, 2010; last amended by the Electoral (Amendment) Act, 2015.

their assets and their analysis together with a statement of expenditure¹²⁷. Section 89 of the Electoral Act 2010 expands on this and also requires a statement of liabilities.¹²⁸ According to Article 225 paragraph 3 of the Constitution, parties may not own or maintain funds or other assets outside of Nigeria neither can they refund such assets.¹²⁹ According to Article 225 paragraph 4 of the Constitution, all monies or other assets, the party received outside of Nigeria, must be paid or transferred within 21 days together with the information required by the Electoral Commission. Foreign funding is therefore not possible. Should a party contravene this provision, the National Assembly may, according to Article 228 paragraph 1 impose punishment according to the law on any person who participates in the running or control of this party.

According to section 88(a) of the Electoral Act¹³⁰, in case of a contravention of Article 225 paragraph 3 of the Constitution, the political party must transfer the assets to the Electoral Commission and a fine in the amount of not less than NGN500,000.00 is imposed. This also applies in case of a contravention of Article 225 paragraph 3(b) of the Constitution¹³¹. State funding is made by the National Assembly. According to Article 228 of the Constitution, the National Assembly may also by law decide on an annual subsidy to the Electoral Commission for the purpose of payment to the parties, on a just and fair basis, in order to assist them in carrying out their tasks.

Private funding is done through sums of money or other assets, paid by an individual or a group of persons to a party. Such are bound by the limitations imposed by the Commission as prescribed under section 90 of the Electoral Act.¹³²

According to section 93(1) of the Electoral Act, parties may neither accept nor own anonymous monetary donations or other contributions, gifts, or other assets from any source.¹³³ According section 93(3), no monetary donation or other donation of more than NGN100,000.00 may be accepted, unless the party is able to disclose the origin of the donation to the Commission.

j. TANZANIA

The electoral act (Political Parties Act) stipulates in section 13 that the funds and other resources of the parties must be obtained from membership fees and voluntary contributions, earnings from investments, projects, subsidies in the interest of the party, subsidies by government and from donations, bequests and grant from any other source. State, private and foreign funding of parties is therefore possible in Tanzania.

Information regarding funds or resources which are located outside of Tanzania must be disclosed to the registration authority, independent of whether they are obtained directly or through domestic sources according to section 13(2). This also applies to foreign organisations located in Tanzania and

¹²⁷ See article 225 paragraph 2 of the Constitution

¹²⁸ Exact requirements in section 89(2) of the Electoral Act.

¹²⁹ Art. 225 paragraph 3 (b): No political party shall – be entitled to retain funds or assets remitted or sent to from outside Nigeria.

¹³⁰ Section 88 last amended by the Electoral (Amendment) Act, 2010.

¹³¹ *Ibid.*

¹³² Section 90 last amended by the Electoral (Amendment) Act, 2010.

¹³³ Requirements regarding the disclosure in section 2.

for residents, who are not Tanzanian citizens. Should disclosure not have been made in accordance with the aforementioned section or false information was stated, every party employee or every other person responsible for the disclosure will be punished in accordance with section 13(3). The punishment could be either in the form of a fine in respect of the value of the undisclosed source or the false information or a prison term of not less than 12 months. Fines and prison terms may be imposed simultaneously.

Section 14 regulates the proper accounting by political parties. As such, the parties must among other things, submit an annual report to the registration authority. The report must be authored by an auditor authorised according to the Accounts and Auditors (Registration) Act. By the same token, a report regarding the assets of the party is mandatory. The registration authority publishes an annual report regarding the audited accounts of the parties in the government gazette¹³⁴. Moreover, it is entitled to publish any event regarding the accounting of parties to the benefit of the citizenship¹³⁵.

The election campaign expenses are regulated by the Election Expenses Act of 2010. According to section 8, the parties must finance the election campaign through resources as prescribed by the electoral act.

¹³⁴ See section 14(3) of the Act

¹³⁵ See section 14(2) of the Act

C: REALITY -VS- ASPIRATION: IMPLEMENTATION OF THE LAWS AS ANALYSED BY KAS PROJECTS IN SELECTED COUNTRIES

a. SENEGAL

Evolution of the Political Party System in Senegal

Senegal has a long democratic tradition reinforced by its position in West Africa during the colonial period and progressively consolidated through the guarantee of the expression of the right of suffrage and the principle of political pluralism. Thus, the full multiparty system introduced from 1981 onwards eventually led to the proliferation of political parties. Major reforms were adopted with a view to strengthening the status of political parties and modernizing their role.

From monopartism to a multiparty system

Despite the principle of pluralism without any limitation, as stipulated in the 1960 constitution and reiterated in Article 3 of the 1963 Constitution, Senegal actually had a de facto Single Party until 1974 when the Parti Démocratique Sénégalais (PDS) was established.

Pursuant to the Constitution, the conditions under which political parties are formed, exercise and cease their activities are determined by the law¹³⁶ of 24 January 1964 before Law No 75-68 of 9 July 1975 was enacted. But the constitutional law¹³⁷ of 19 March 1976 decided to limit the number of parties to three (03).

The Law on Political Parties was amended in its Article 2, which henceforth specified the existence of three ideological trends (liberal and democratic, socialist and democratic, Marxist-Leninist or communist) to which each party was expected to belong.

In 1978, the number of parties was increased to a maximum of four during the constitutional review¹³⁸ and they were also expected to represent each of the four trends: conservative, liberal, socialist, Marxist-Leninist or communist. It should be emphasized that this reform advocated democratic openness, given the conditions for voting and election of the President of the Republic and the strengthening of the electoral judge's powers in the area of dispute management.

¹³⁶ Law No. 64-09 of 24 January 1964

¹³⁷ Law No. 76-01 of 19 March 1976 on the Revision of the Constitution

¹³⁸ Law No. 78-60 of 28 December 1978 amending the Constitution

The full multiparty system

The advent of President A. Diouf was a decisive turning point in the evolution of the Senegalese political system. He removed the party limitation and the reference to currents of thought, strengthened the electoral system and established total multi-partism. Two phases characterized this 1981 reform¹³⁹. The first phase (1981-2000) was characterized by a controlled political pluralism in that, despite the lifting of constraints on the creation and operation of political parties, only about 40 political parties were registered during the twenty (20) years after the introduction of the full multiparty system, while the post-2000

period saw an exponential increase in the number of political parties. Currently there are 280 legally constituted political parties. There is an unhealthy proliferation of political parties, which tends to blur the democratic space.

The requirements of the Law on Political Parties

Law No. 81-17 of 6 May 1981 on political parties¹⁴⁰ stipulates in Article 1 that they are constituted in the form of associations in accordance with the provisions of Articles 812 to 814 of the Code of Civil and Commercial Obligations.



Former president Abdoulaye Wade casting his vote

File: <http://saharanvibe.blogspot.co.ke/>

¹³⁹ Law No. 81-16 of 6 May 1981 revising the Constitution

¹⁴⁰ See Law No. 89-36 of 12 October 1989 amending Articles 4 and 5 of Law No. 81-17 on political parties

In addition to respecting the Constitution, the principles of national sovereignty and democracy, they are obliged to respect a certain number of requirements to avoid dissolution:

- Prohibition of identification with a race, ethnic group, sex, religion, sect, language or part of the territory;
- Prohibition from receiving directly or indirectly any subsidies from abroad or from foreigners established in Senegal;
- Obligation to declare any changes to the statutes and changes in the administration of the party;
- Obligation to file annually the financial account for the past financial year no later than 31 January.

It must be acknowledged that few political parties comply with this last obligation in spite of the reminders addressed to them by the Minister of the Interior.

“Consolidating” reforms

Although, for the past 36 years the law on parties has only been amended to clarify certain obligations and their access to public media, it should be pointed out that several constitutional revisions have addressed the status and regime of political parties.

Thanks to the ‘*constitutional revision*¹⁴¹ of 1992’, the right to contribute to the expression of suffrage, hitherto the preserve of political parties, was extended to coalitions of parties and independent personalities. According to Article 29 of the Constitution, all applications must be submitted by a legally constituted political party or be signed by at least ten thousand duly registered voters domiciled in

six regions, on the basis of five hundred per region. In the case of legislative elections and local elections, the sponsorship of independent entities is governed by the electoral code.

Though Article 58 of the constitution of 2001 adopted by A. Wade guarantees the right of opposition to political parties that oppose the Government’s policy, it should be emphasized that the law which was to define their status and their rights and duties was never enacted.

Constitutional Law No. 2016-10 of 5 April 2016 on the revision of the Constitution advocates for the modernization of the role of political parties in the democratic system and the strengthening of the status of the opposition and its Leader. It also establishes public funding for political parties. To implement these reforms, a revision of the law on political parties is necessary.

Hence, the consultations announced by the President during the launch of the national dialogue should continue with a view to defining the criteria for funding political parties, the status of the opposition and the modalities for the appointment of the Leader of the opposition.

An unhealthy Proliferation of Political Parties

The multiparty system, as well as the free expression of opinions, is part of the fundamentals of democracy and the rule of law, but when poorly managed, it engenders anarchy. For a population of less than fifteen (15) million, Senegal has nearly 300 political parties. This situation, far from reflecting a healthy democracy, can have detrimental effects on the functioning of the democratic

¹⁴¹ Constitutional Law No. 91-46 of 6 October 1991 revising the Constitution

system. In this respect, as might be expected, the legislative elections of 30 July 2017 recorded 47 lists of candidates, doubling the record reached in the elections of 2001 and 2012. For the first time, citizens have had to face the reality of the plethora of parties. This does not fail to affect the political system on offer, the voting process and the overall cost of the elections. However, almost all the lists in competition have never proved their representativeness.

For example, only five (05) lists of candidates out of forty-seven (47) were able to collect a number of votes equal to or greater than the electoral quota required to obtain a seat in the National Assembly. This means that the other nine lists had to benefit from the largest remainder to have an elected official. The new electoral code requires independent entities to collect 0.5% of the electorate (nearly 32 000 signatures) in order to be able to make a valid nomination, whereas in the 2012 legislative elections, 18 of the 24 lists of candidates did not achieve this threshold of 0.5% (26,843 voters).

The Modernization of the Party System

The mushrooming of political parties exacerbated by the plethora of candidatures in the last legislative elections is becoming more and more worrying, to the extent of prompting the National Commission of Reform of the Institutions (NCRI¹⁴² to issue a response in these terms:

“How can the number of parties be reduced considerably without compromising freedom of association and the free choice of citizens? What are the rules and conditions that should

govern the creation and operation of political parties?”

In the same vein, the Directorate of General Affairs and Territorial Administration (or *Direction des Affaires Générales et de l'Administration Territoriale* - DAGAT)¹⁴³, as the Administration in charge of political parties, had addressed the issue by drawing up a preliminary draft bill¹⁴⁴ on the status and operation of parties. It goes without saying that the project could not be completed because of the March 2016 referendum which included the modernization of the role of political parties among the issues submitted to the people.

What Solutions to the Plethora of Parties?

In the light of the evolution of the party system and of the last constitutional reform, it was felt necessary to initiate, as soon as possible, a revision of the political party system with a view to completing the process of modernization and rationalization of our party system in order to achieve a lasting solution to the plethora of parties.

In this respect, it would be desirable for the stakeholders, through inclusive consultations, to reach a consensual agreement on objective criteria, while preserving the constitutional right of parties and coalitions of parties to participate in the voting process, and tidy up the political landscape.

From this perspective, it seems advisable to start from the “evidence of representativeness” which would become the barometer or licence for a political party to continue taking part in electoral contests and eventually to

¹⁴² Report of the Committee for the Reform of Institutions to the President of the Republic, December 2013

¹⁴³ The current Directorate General of Territorial Administration (or *Direction Générale de l'Administration Territoriale* - DGAT)

¹⁴⁴ See Study on the follow-up of the recommendations of the EU observation missions in Senegal, October 2016

benefit from public funding. Also, all parties must participate in at least one presidential election or several legislative elections and obtain at least 0.5% of the votes determined correlatively to the percentage set for independent entities.

As a result, parties that do not achieve the threshold and obtain an elected representative to the National Assembly through the largest remainder method will be rescued. Moreover, the formation of coalitions deserves to be better managed.

On the other hand, the issue of coalitions of parties should also be raised and resolved. In any case, it is increasingly imperative to create an independent authority¹⁴⁵ responsible for the regulation of political parties and put in place a control system that guarantees transparency and efficiency in the use of public funds. Under these conditions, the binding provisions on the administrative management, the public financing rules and the regularity of party financial accounts would be strictly observed.

Further, the regulatory authority should ensure that the parties respect the texts governing their organization and their internal operation, their obligation to have functional headquarters at national and regional level and to hold regular meetings of their organs. Political parties will also be expected to provide for the training of militants and promote internal democracy.

Will the Leader of the Opposition be appointed on the basis of the results of the parliamentary or presidential elections? Can an independent

candidate claim the position of Leader of the Opposition? Should sponsorship of political party applications be required? Is it necessary to create an independent authority to control and regulate the party system?

These are questions that challenge the political class as a whole and whose resolution would contribute in a lasting way to consolidating our democratic system.

b. DEMOCRATIC REPUBLIC OF CONGO

Constitutional Norm and Constitution Reality in the DRC

Political pluralism is recognized and guaranteed in the Democratic Republic of Congo (Article 6 of the Constitution and Article 1 of the Political Parties Act).

The DRC does not have a long tradition of political pluralism. After the speech of President Mobutu on 24th April 1990 recognizing pluralism, then thereafter the three political party democracy, it is befitting to salute the will of the Congolese Constituent Assembly to provide in the supreme law the principle of political pluralism. This principle is certainly constitutional because it is provided for in the Constitution and it is translated by the existence of several political parties (about 500) but we have to acknowledge that among them there are «briefcase parties »¹⁴⁶ or even « feeder parties »¹⁴⁷. A lot of these parties are without any ideology, without any social project and consequently without any manifesto during electoral campaigns.

Although paragraph 3 of Article 6 provides that political parties shall form and pursue their activities in accordance with the law,

¹⁴⁵ See Report on the Follow-up to the Recommendations of the European Union Election Observation Missions, FKA, October 2015

¹⁴⁶ Briefcase political parties are political parties which exist only in the briefcases of their founders. In deed they have no known head offices in the Town and the address indicated for purposes of registration is that of the founders' residences and that of one of the co-founders in case of several founders.

¹⁴⁷ Feed parties are those which gravitate around the political party in power for purposes of funding.

public order and good morals, those in the opposition are often prohibited from meeting and claiming their rights through peaceful demonstrations and if they are allowed, it is under heavy security and in most cases, this degenerates into confrontations between opposition political party supporters and security forces who are charged to maintain law and order during public demonstrations.

account with a credit balance of 2, 500,000 FC and keep regular accounting records. It must also have an inventory of its movable and immovable assets and produce a tax certificate of the last financial year.

Since the promulgation of this law in 2008, no political party has received state funding in terms of reimbursement of



Public funding of political parties

Paragraph 5 of the same Article 6 of the Constitution provides that political parties can receive public funds from the State to finance their electoral campaigns or their activities in accordance with the terms and conditions defined by the law. This provision is also found in article 25 of the Political Parties Act while the Act n° 08/005 of 10th June 2008 on public funding of political parties requires regular registration with the Ministry in charge of internal affairs for purposes of benefitting from state financial support. The political party applying for public funding must have a known head office and certified by a title deed or a lease contract. It must have a bank

operational expenses in conformity with the aforementioned law. Indeed, it is prescribed annually in the Finance Law, a funding to cater for operational expenses of political parties (Article. 4) and this funding shall neither be below 0.5% nor above 1% of the total national state revenue (Article 5).

In matters pertaining to financing electoral campaign expenses, the State contributes retrospectively (Article 8) and the amount of this participation is included in the Finance Law of the following year after consultation. It is fixed at 2% of the total national state revenue (Article 9).

Understandably, the objective of this funding is to ensure that political parties do not empty their coffers at each electoral period and to enable the democratic process to operate harmoniously and freely at regular intervals.

This option considers political parties as private associations¹⁴⁸ which finance their day-to-day operations freely¹⁴⁹ but it is necessary that they get financial assistance which is organised by public authorities. It has also the objective of financing political formation activities that are led by political parties through exhibitions or foundations or publication of periodicals and other publications for purposes of citizens' political formation¹⁵⁰.

The freedom guaranteed to political parties is an empty shell and in the same breathe, public funding of political parties is an illusion.

No political party shall adopt the name, abbreviation , symbols and other signs of a political party already registered by a competent public authority otherwise it will meted with sanctions provided by the law (Article 7 of the Political Parties Act).

Duplication of political parties is a phenomenon which has become common in the Democratic Republic of Congo. Indeed, some leaders of the political parties forming the Majority had demanded strict adherence to the Constitution and therefore change of political power after the end of the second term of the chairperson in office.

Failure by the political party in power to adhere to this requirement, these political leaders

decided to leave the Majority and form with some politicians of the radical opposition, a platform known as «Rassemblement» (*Assembly*). Not happy with this decision, the Majority camp organized the duplication of all these rebellious parties with a view to maintain their linings in the Majority.

The existence of these linings was tolerated by the ministry in charge of political parties by allowing use of the same names, acronyms, symbols and other distinctive signs of the political parties which had left the Majority.

A combination of Articles 7 and 31 of the Act n° 04/002 of 15th March on organisation and operations of political parties provides for dissolution.

On the condition that one should be of Congolese nationality to form a political party (Article 11 a), of the Political parties Act)

It is incumbent upon the Secretary General of political parties, which falls under the Ministry of Internal Affairs, to verify if the founder members of a political party satisfy the conditions provided in Article 11 of the law, first among them being the condition of Congolese nationality. The issue of nationality is one of the controversial issues in the Democratic Republic of Congo. But it is noteworthy that many politicians are believed to be holding two or even three nationalities but are founders of political parties while the Congolese nationality is one and exclusive and cannot be held at the same time with any other nationality¹⁵¹.

¹⁴⁸ Read Article 2 of the Act n°04/002 of 15th March 2004, op. cit. : « Political party is an association of natural persons of Congolese nationality who share the same ideology and the same social project, with a view to acquire and exercise State power in a democratic and peaceful manner ».

¹⁴⁹ Cfr Article 22 of the Act n°04/022 of 15th March 2002, op. cit. on political party resources.

¹⁵⁰ Lire Mabila Mantuba-Ngoma, Funding of political parties, in Mabila Mantuba-Ngoma (dir.), Organisation and operations of political parties, Publications by Konrad Adenauer Foundation, Kinshasa 2014, p.41.

¹⁵¹ Article 10 of the Constitution

If we were strict with the law, many of the political parties would not have been registered and in contrary to the certificate of Congolese nationality submitted as part of the file as provided for in Article 12, a process will be initiated for declaring the certificate as a forgery.

Political parties legally constituted have a right to free access and equal treatment by public media within the context of talk-shows and weekly programs to make their opinions known and read out their communiqués [...] (Article 19)

This provision is often ignored in the Democratic Republic of Congo. Indeed opposition political parties do not have any access to the national television channel and channels belonging to opposition leaders as well as those channels deemed to be sympathetic to opposition parties are constantly having their signals cut off. The Audio-visual and Communication Council must make efforts to ensure that the law is adhered to even by governing bodies. The electoral campaign periods are more crucial because political parties must convey messages containing their programs of action as a translation of their social projects with a view to capture power.

Buildings owned by the political party for its operations (Article 20 of the Political parties Act)

Article 20 of the Act provides that any political party can have, in property or otherwise, necessary buildings for its operations. It is in one of these buildings in which the head office of the party should be located. These buildings shall be declared to the Ministry in charge of Internal Affairs. It is unfortunate that several political parties do not have a known head office in the City of Kinshasa or in any other town. For many others, the residential

homes serve as the head office of the party or literally their briefcases. No sanctions have been meted on these political parties.

Source of political parties' resources [...] (Article 22)

Article 22 of the Political Parties Act classifies political parties contributions as the first source of political parties resources. The resources provided under Article 22 are what we call «private funding of political parties » as compared to public funding. This is the most important source of funding because a political party above all remains a private association. The reality in the field is such that contributions from political party members are non-existent, with the exception of and subject to any reservations, the *Union pour la Démocratie et le Progrès Social (UDPS)* as well as the *Parti Lumumbiste Unifié (PALU)*.

Majority of the political parties are funded by the founder who therefore behaves like the real and sole owner of what could almost be referred to as «proper business ». Expressions like «party dear to so and so ...» are often and long been used while a political party is, and should be dear to all the members.

Dictatorial attitudes of the party chiefs leading to inadequacies in democracy within political parties are due to the fact that the political party chiefs at the worst consider political parties as own businesses and at the best, but still bad, as family enterprises.

Some political parties with representatives in government and in enterprises within the State portfolio receive sums of money as retrocession in favour of the party because it is through approval by this party that the member got the work on the basis of party democracy.

Prohibition of funding by a foreign State (Article 24 of Political Parties Act)

Article 24 prohibits political parties from receiving directly or indirectly financial or material support coming from a foreign State. Non-adherence to this provision will lead to the dissolution of the political party. This provision is certainly important in respect to the penalty attached to it, i.e. dissolution, but it is noteworthy that no control mechanism has been put in place in this regard.

The control of annual accounting reports to be filed at this ministry in charge of political parties should help to ensure traceability of donations and bequests of political parties and to detect illegal source of gifts given to political parties. But keeping of annual accounts is not done and the filing of the same is not also done.

c. GHANA

Political Party financing in Ghana

In Ghana the political party law bars foreign and external supports to political parties either from businesses or individuals. Parties are to be funded by Ghanaians living in Ghana or aboard and Ghanaian businesses through donations and membership dues as well as other creative measures parties may adopt to raise funds.

The history of financing of political parties in Ghana has been a very complex process since the inception of the country into the Fourth Republic. As part of the transition process leading the country into the democracy from the military regime, there was the consensus of state support to the political parties. However, the transitional arrangements did not state the extent of the support to the parties. The arrangements also failed to state which party can benefit from the support for example,

critical questions such as parties in Parliament, or parties with huge membership or party in Government were not comprehensively addressed.

In 1992 founding elections, the state provided 5 cars to all the registered political parties contesting the Presidential and the Parliamentary elections. The Ghana Broadcasting Corporation-the main and the only Television and Radio network at the time was directed to provide defined airtime to all the parties as contribution of the state the democratization processes.

In 1996, the state support to the political parties were stalled, the Ghana Broadcasting Corporation (GBC) had a competitor as the medium of reaching the electorates, although some airtime was provided to all the contesting political parties it was not enough to meet 10% of the media needs the parties.

In 2000 general elections, the state financial and resource support officially ended although the media support by the GBC continued.

The opposition graved so much for the minimal support but the National Democratic Congress Government objected to the request through the Electoral Commission.

In 2001, when the New Patriotic Party Government was formed, the discussion of state funding of political parties became a huge topical issue for discussion by all the political parties, civil society groups and other democratic stakeholders. The discussions on the topic continue to linger from elections to elections by stakeholders the divergent views continue entrenched with time. Consequently parties have adopted their own mechanisms of funding their political activities.

There are three main types of funding:

- **Micro financing**

This is where individuals make small contributions through either party dues, or texting to a mobile network with a code to make a contribution, this is normally less than Two Euros to a political party. The nature of the contributions looks very little from fund raising perspective but it provides opportunities for party members to own the campaign process. Also some contributions are in kind such as cleaning and preparing the party's campaign grounds for political rallies as well as provision of water to the party officials and supports.

- **Meso financing**

A contributor at this level provides support to their parties with some pronouncements to the public that they are donors and contributors to their respective political parties. Their contributions are in a form of materials such as bicycles, motor bikes, and payment for hotel accommodation for campaign teams fueling of the cars. Individuals and enterprises are also involved to make contributions here.

- **Macro-financing**

These are the few great financiers who are never disclosed who provide the millions for the political party activities and as well lead the campaign process. They are businesses wholly owned by Ghanaians or with Ghanaian majority shares in the company. These groups provide the cars, finance the presidential campaign tours as well cash for the entire campaign.

The incumbent party financing

The successive incumbent political parties have abused the incumbency advantages over the years. The presidential candidates' trips are regularly considered as state functions fully funded by the state with financial and organizational support from the state structures. The arguments over the years propounded by the beneficiaries of the system postulate: the state has responsibility to protect the president every time and everywhere.

The local government structures provide state resources for party official and members to attend party programs. For example, district assemblies and regional ministers use state cars, fuel and drivers for party programme at the expense of other political parties. Consequently, political parties in government refuse to appreciate the arguments of state funding of political parties. The incumbent governments also use the state media especially the Ghana Broadcasting Corporation which is still the most geographically covered media network to their benefit.

Rationale Contributors

There are four main rationale for contributions:

1. Contributors who support their parties because of the love they have for the party as well as joy to see the party in power without necessarily praying to win any contract or opportunity to serve in government.
2. Party contributors who specifically make donation to specific parties or specific persons or the general pool seeking specific returns when the party wins.
3. Contributors who invest to reap dividend when the party captures power. The contributors consider politics as purely business venture



Supporters of Ghana's president-elect, Nana Akufo-Addo of the New Patriotic Party, celebrate victory in Accra, Ghana, on December 10, 2016. The longtime opposition leader won the presidency on his third run for office, a race that was largely seen as a referendum on how the incumbent party had managed the economy (Sunday Alamba/AP)

Source: <https://www.washingtonpost.com/>

so they contribute as a form of investment to the two big political parties which have the opportunity to win the political power to enable them to reap dividends.

4. Contributors who support opposition party to punish incumbent political parties to ensure that better business climatic conditions are provided to ensure the flourishing of their businesses.

The political party funding in Ghana is a very complex issue shrouded in secrecy and highly confidential topic. The level of confidentiality is much higher within the hierarchy of the political parties. The transactions are conducted in cash to avoid any form of traces by any third party. The transfers and movements of funds are also conducted in secrecy.

Some parties also encourage contributors to adopt constituencies to avoid traces of how much resources has been disbursed in the constituencies or provided by the individuals. In view of the secrecy, parties have difficulty in preparing and submitting the appropriate audited accounts to the Electoral Commission.

The state will continue to alienate its self from funding political parties programmes or campaigns because the incumbent governments benefits from the status quo consider it as a very appropriate measure of scheming the opposition parties to give them political advantage of the elections yet to be conducted. The parties are working within the political party law.

d. TANZANIA

Legal framework for political parties

Most existing parties were established after the reintroduction of the multi-party system in 1992. However, there are only a handful of functioning parties with appropriate structures at the local level. Spin-offs and newly formed parties are the exception. The same applies to those who consist only of a chairman.

The multi-party democracy provided for in the Constitution does not exist in reality. There is still a dominating ruling party, and the separation between it and the state is very difficult to observe. The work of the opposition parties is regularly restricted by the government. One example is that the immunity of Members of Parliament is regularly disregarded because they are being arrested. Another example is that the freedom of association in 2016 has been suspended for more than a month to prevent internal meetings of the opposition parties. The Registrar of the political Parties also fails to fill his role of a mediator for problems arising within and between parties. He is appointed directly by the president, who is also the chairman of the ruling party.

Legal framework for party financing

The parties are financed almost exclusively by government subsidies, which are comparable to the German election campaign cost reimbursement.

These subsidies are disbursed by the Registrar of the political parties. The membership fees are extremely low and their payment is mostly not kept because there are no strong membership lists.

All registered parties publish an annual financial report showing their income, expenditure and ownership. This is conducted by the board of trustees, which can be directly held responsible for all deficiencies in this report.

The ruling party is also financed largely from government subsidies. However, their strong ties with state structures are also noticeable here. Various properties used by the party have been or still are owned by the state. Over the years, the ownership of some of them has been transferred to the party or the party is not paying any rent or the like for them.



A political rally campaign in Tanzania. President John Magufuli banned political rallies for non-elected officials in 2016

File: <http://saharanvibe.blogspot.co.ke/>



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