KONRAD ADENAUER STIFTUNG

PRUF Düsseldorf Party Research Institute

Strengthening legal frameworks for political parties

POLITICAL PARTY, PARLIAMENTARY AND ELECTION LAW DEVELOPMENT IN MONGOLIA, SOUTH AFRICA, TANZANIA, THAILAND AND VENEZUELA

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POLITICAL PARTY, PARLIAMENTARY AND ELECTION LAW DEVELOPMENT IN MONGOLIA, SOUTH AFRICA, TANZANIA, THAILAND AND VENEZUELA

HEIKE MERTEN / SOPHIE SCHÖNBERGER

Contents

Dear readers,

In 2022, we are faced with a persistent global shift in the international balance, to greater authoritarianism at the expense of democracy. In many countries, the COVID-19 pandemic has been leveraged by political leaders to restrict citizens' freedoms, widely exacerbating already-present political and societal divisions. At the same time, recent years have shown a fading and inconsistent presence of major democracies in the international arena, while undemocratic forces strategically and consistently influence the domestic political discourse of foreign democracies.

Against a background of increasing democratic backsliding in the world, political parties are central to the fight against these growing autocratic tendencies. They are crucial to ensuring citizens' political participation, by making their interests heard and offering political alternatives for those dissatisfied with governing elites. Opposition parties in particular are in a special position for controlling the government's executive power, by enabling political pluralism through constructive competition. However, this is only possible where essential legal provisions, below the level of a country's constitution – party, electoral and parliamentary law – allow for a sufficiently representative framework.

If external actors such as the European Union (EU) seek to support political parties as part of their external democracy promotion, they need to be more actively engaged in carefully differentiated cooperation. The EU is generally still widely wary of directly cooperating with political parties in third countries, knowing that direct external intervention is limited in scope and oftentimes unwelcomed by the respective governments. To support the development of a pluralistic political party system with legally registered political parties in partner countries, the EU must therefore carefully assess the existing legal systems and their institutional settings. Once the legal parameters for the work of political parties are examined, a bespoke set of actions for strengthening the political party system can be developed.

The present study contributes to this long-term endeavour by offering in-depth analyses of developments in party law, electoral law and parliamentary law in Mongolia, South Africa, Tanzania, Thailand and Venezuela. The selected countries provide a wide variety of respective histories, political traditions and democratic cultures, and all currently face different challenges. By comparing the findings from all five countries, we identify the potential of the party, electoral and parliament law for strengthening political parties as democratic actors in times of increasing international pressure. Based on the findings in each country chapter, we have formulated recommendations for how the EU can develop a context-sensitive and differentiated approach to strengthening political parties as part of its wider ambitions to promote democracy.

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We hope you find this an insightful and thought-provoking read.

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Political (opposition) parties under pressure – an introduction

SOPHIE SCHÖNBERGER

Democracy is not something that can be taken for granted. It comes in waves. Since the 19th century, it has been possible to observe how, from an international comparative perspective, democratic achievements all over the world are repeatedly followed by democratic setbacks, not infrequently followed in turn by democratic progress. The American political scientist Samuel P. Huntington described this development in his famous three waves of democratisation;[1] systems with a higher degree of historical differentiation even identify 13 different waves between the late 18th and the early 21st century.[2] The narrative of a steady history of democratic progress, which is particularly widespread in Europe and North America, was therefore never historically correct in the true sense of the word. At the beginning of the 21st century, however, it is now becoming particularly evident how the expectations associated with this narrative are increasingly being disappointed. Even large and indeed lighthouse-like democracies like the USA are suddenly in danger of democratic backsliding.[3] Younger democracies that were recently celebrated as part of the third wave of democratisation, such as Russia or Hungary, are sliding into (semi-)authoritarian systems.

Political parties play a pivotal role in these developments toward or away from democracy. That is especially true of opposition parties. Democracy thrives on the free exchange of opinions and on decision-making by the majority, but also on the temporal limitation of rule and the possibility that the minority may become the majority at any time in the democratic process.[4] Democracy is "a system in which parties lose elections"[5]. In a very elementary sense, the freedom of opposition parties is therefore a prerequisite for a political system to be classified as democratic at all. The minimal definition of democracy could therefore also be that the government must be able to become the opposition and the opposition must be able to become the government. And that possibility must exist in real terms, not just theoretically. Furthermore, a democracy needs at least the promise that those who are affected by a political decision – i.e. citizens – will be involved in its creation in some way.

But even beyond this very fundamental function, the importance of political parties should not be underestimated in determining whether a political system can establish itself as a democracy and whether it can hold its own against authoritarian shifts. In their ground-breaking study "How Democracies Die", Steven Levitsky and Daniel Ziblatt used the example of the United States to show the important role that political parties play as "democracy's guardians" when it comes to preventing autocrats from coming to power through democratic elections.[6] Conversely, as can currently be seen in Europe, parties – helped also by authoritarian leaders – can be the very vehicle for leading democratic structures in the direction of (semi-)authoritarian regimes. The Fidesz party led by Viktor Orbán in Hungary and the PiS headed by Jarosław Kaczyński in Poland are equally striking examples of that phenomenon.

1 *Huntington*, The Third Wave: Democratization in the Late Twentieth Century, 1991.

2 *Gunitsky*, Democratic Waves in Historical Perspective, Perspectives on Politics 16 (2018), pp. 634-651.

3 See *Levitsky/Ziblatt*, How Democracies Die, New York 2018.

4 *Schumpeter*, Capitalism, Socialism and Democracy, 1942, p. 269.

5 *Przeworski*, Democracy and the Market. Political and Economic Reforms in Eastern Europe and Latin America, 1991, p. 10.

6 *Levitsky/Ziblatt*, How Democracies Die, New York 2018, pp. 33 et seq.

The role that political parties play in the respective political system depends on a variety of factors. Specific political and historical developments in the respective country play an important role here. The associated traditions of political culture can also have a significant influence. Finally, the constitution and the institutional structure established by it shape the function and significance of political parties to a very high degree.

However, the constitution, and with it the entire legal system, play an ambivalent role in the question of the stability of democracy. In recent decades, it has been observed that modern democracies are rarely threatened by authoritarian reversion, i.e. a rapid and near-complete collapse of democratic institutions. The greater danger comes from what can be called constitutional retrogression. Unlike reversion, it does not lead to a sudden anti-democratic overthrow. Rather, the changes here are gradual, subtly eroding three institutional predicates of democracy: competitive elections, rights of political speech and association, and the administrative and adjudicative rule of law.[7] The constitutional order and the simple legal order play a decisive role in this model of democratic decline, because the anti-democratic development of a country takes place, at least on the surface, within the channels of the applicable constitution and within the channels of the applicable law. In the best case, the existing legal system and its institutional setting can prevent a democratic decline from occurring at all. Conversely, in the worst case, the legal framework is used to promote erosion. That is especially true if, at the same time, the rule of law in a political system no longer has any force. In that case, legal instruments are often even deliberately used for arbitrary measures that undermine the democratic system.

The essential legal provisions that operate below the level of the constitution and decisively shape the democratic framework include party law, electoral law and parliamentary law. They set the legal parameters for the central democratic actors, namely the political parties, and thus establish the framework within which democratic will can be formed in a representative democracy. It is precisely these legal frameworks that the present study addresses on the basis of five sample countries.

The selected countries reflect a wide range of different historical developments, political traditions, current challenges and current democratic standards. Mongolia and Tanzania both established their current political order after emerging from a socialist one-party system in the early 1990s and have certain similarities at this point. However, while the break with the socialist system took place at a similar time in both countries, it was significantly different in character: while Mongolia became independent from a socialist republic after the collapse of the Soviet Union and constituted itself as a new democratic constitutional state, in Tanzania it was initially the political break with decolonisation that brought the now independent country into a specific form of African-style socialism in the first place. The development away from socialism toward a democratic system was far less radical than in Mongolia, even if it was indeed significantly influenced by the collapse of the Soviet Union.

Thailand, on the other hand, has a political system shaped by it being the only country in Southeast Asia never to have been formally under European colonial rule. It remains a (constitutional) monarchy and in this respect constitutes a special case among the countries compared. While the monarchical structure promises a certain stability in terms of political organisation, the country has been marked by recurring military coups and subsequent military governments since the Second World War, so that the country's overall democratic development can be described as not only incomplete, but also very changeable.

South Africa's political system is still decisively shaped by the consequences of apartheid and overcoming of the associated political and social structures. The special democratic preconditions here predominantly revolved and still revolve around the fact that the majority of the population had to be integrated into the democratic system on an equal footing after the abolition of racial segregation. The corresponding break in the system did not occur suddenly and by a visible external rupture, as in Mongolia, but rather, as in Tanzania, by means of a longer-lasting process of change.

7 *Huq/Ginsburg*, How to Lose a Constitutional Democracy, U.C.L. A. Law Review 65 (2018), pp. 78 et seq.

Venezuela, on the other hand, the fifth country of comparison, was originally considered one of the oldest democracies in Latin America. In the meantime, however, the country has slipped into a kind of electoral autocracy and always ranks at the bottom of international democracy studies. One of the main reasons for this development is the poor reputation that the previously established democratic parties had among the population. In many respects, this general party scepticism paved the way for the shift to the authoritarian structures that now exist.

For all five countries, the study examines how the legal framework shapes the role of parties as authoritative actors. What is the constitutional status of parties? How does ordinary law define the concept of a political party, and what barriers to entry exist, especially with regard to participation in elections? What requirements does the law set for the internal organisation of political parties? How do political parties finance themselves? Under what conditions can political parties be banned? How is the work of political parties in parliaments legally structured? This study addresses these questions with a special focus on the role of opposition parties, since their position in the political system is a particularly important indicator of democratic stability. The respective country chapters look not only at the current de-facto circumstances of the opposition parties, but also reflect on the role of the law as a whole in the current situation of the respective country.

The study concludes with a summary of the findings from the comparison of the five reference countries. The aim is to identify the potential that party, electoral and parliamentary law has to strengthen (opposition) parties as democratic actors and thus democratic structures overall in a situation where political parties and democracy as a whole are coming under increasing international pressure.

Mongolia

HEIKE MERTEN, MARLA MORRY, GANDOLGOR SAINKHUU

History and constitutional system

The territory of today's Mongolia has been inhabited since the early Palaeolithic period and, until the founding of the first Mongolian nation under Genghis Khan in 1189, was shaped primarily by the influences of nomadic peoples and equestrian groups.[8] What was once the largest contiguous empire of humankind finally collapsed under the internal power struggles of the various steppe princes and the strong pressure of the neighbouring Chinese empire back in the 14th century.[9] For more than 200 years, today's Mongolian territories were united with those of China under the powerful Ming and Qing dynasties, until at the end of the 18th century the question of Mongolian independence was raised for the first time.[10] The question finally found an answer in 1921 when Mongolia gained provisional autonomy as a constitutional monarchy with strong ties to Russia.[11] These strong ties eventually led to the end of the constitutional monarchy just three years later in 1924 and the establishment of a socialist-influenced People's Republic based on Russian-Marxist-Leninist principles, whose autonomy and sovereignty were also recognised by China in 1946.[12] Under the leadership of the *Mongolian People's Party*, founded in 1921 (which changed its name to the *Mongolian People's Revolutionary Party in* 1924), a one-party system prevailed in the Mongolian People's Republic.[13] This system existed until 1990, when the first free elections were held with the participation of a large number of newly formed parties.[14] After just 15 months of intensive discussion, the People's Assembly thus elected finally adopted the Constitution in 1992, the core of which is still in force today.[15] This Constitution brought an end to the dominance of the *Mongolian People's Party* in the socialist one-party system and instead introduced a multi-party system and a parliamentary republic.[16] The freedom to form political parties was constitutionally guaranteed through freedom of association. In 1992, the parliamentary system was changed from a bicameral[17] to a unicameral parliament, the State Great Khural. To date, Mongolia has been led by 17 different governments in the 30 years since the peaceful revolution, usually with alternating participation of one of the two dominant political parties.[18] The low stability

8 *Bedeski*, Roots of the Mongolian State: Genghis Khan's Survival and Pragmatism as related in the Secret History of the Mongols, 2018, p. 71 (71).

9 *Sabloff*, Why Mongolia? The political culture of an emerging democracy, 2002, p. 19 (26).

10 *Miliate*, Small Power: Mongolia's democratization and foreign policy objectives, 2011, p. 18; Mongolia declared itself independent from China as early as 1911, a fact long unacknowledged by China; see: *Porter*, Realpolitik in Mongolia-US Relations, 2009, p. 49 (49-50).

11 Bogd Khan was already the ruler called "Khan" over Outer Mongolia in 1911 and was installed as monarch over all of Mongolia in 1921.

12 *Porter*, Realpolitik in Mongolia-US Relations, 2009, p. 49 (51); *Radchenko*, New Documents on Mongolia and the Cold War, 2007/2008, p. 341 (342).

13 *Miliate*, Small Power: Mongolia's democratization and foreign policy objectives, 2011, p. 37; *Porter*, Realpolitik in Mongolian-US Relations, 2009, p. 49 (52-54); see also: *Asia Foundation*, The State of Conflict and Violence in Asia-Mongolia, 2017, p. 94 (94).

14 *Porter*, Realpolitik in Mongolia-US Relations, 2009, p. 49 (52).

15 On the development of the 1992 Constitution, see: *Nelle*, Constitutional Reform in Mongolia Increases Resilience of the Political System, VRÜ 53 (2020), p. 309 (310).

16 Note that the *Mongolian People's Revolutionary Party* changed its name again in 2010, dropping the word "revolutionary". Since than the party has been known as the Mongolian People's Party.

17 *Munkh-Erdene*, The Transformation of Mongolia's Political System, 2010, p. 311 (315).

18 All presidents as well as all prime ministers since Mongolia's founding have been affiliated with one of the two major parties, see: *Burcher/Bērtoa*, Political Finance in Mongolia, 2018, p. 11.

of the governments is one of the weak points of the 1992 Constitution. In addition to the still dominant *Mongolian People's Party* (MPP) the liberal-nationalist *Democratic Party* (DP), founded in 2000, has established itself as a second political actor. Although a total of some 36 political parties have been registered with the Supreme Court since the democratic transition in 1989 to participate in the political will-forming process of the Mongolian people, the dominance of these two popular "people's parties" in the reality of political life cannot be denied.[19] On 28 May 2021, the Supreme Court made the decision to deregister the Mongolian People's Revolutionary Party upon its request, as MPRP has united with MPP.[20]

This currently prevailing two-party system is leading to increased frustration among the Mongolian population and decreased confidence in the political abilities of the parties. The attempt to found a new and large third party, the *National Labour Party* (NLP), failed in 2015 due to the necessary formalities for registration.[21]

The MPP has been the ruling party again since 2016. In the 2020 parliamentary elections, it achieved a historic victory and entered Parliament with a surprising two-thirds majority.[22] With this clear victory, it "relegated" the party that had been the strongest until 2016, President Battulga's DP, to the opposition. This precarious situation, in which the president, who is endowed with strong powers, is backed by the opposition party, while facing the "opposing" governing party under the prime minister, is unanimously believed to be the trigger for numerous institutional crises, including the current ones.[23]

According to the Constitution, the Mongolian state is a free republic characterised by fundamental democratic values such as equality, freedom and justice, and the separation of powers,[24] even if the separation of powers is not entirely modelled on the European system.

Accordingly, the president is not only part of the executive branch, but also of the legislative branch, which consists of Parliament and the president. The president's strong position is reflected in his/her far-reaching powers. The president is simultaneously

19 For a list of political parties registered with the Supreme Court, see: http://www.supremecourt.mn/nam/printlist/all, last accessed 19 May 2021.

20 The Supreme Court made the decision pursuant to Section 23.1 of the Law on Political Parties of Mongolia. See: http://www.supremecourt.mn/news/620, last accessed 28 September 2021.

21 On the growing demand for a third political party in Mongolia, 2007, see: *Bold-Erdene*, available at https://gogo.mn/r/mqo5 in Mongolian.

22 On MPP's landslide victory, see: https://www.kas.de/de/laenderberichte/detail/-/content/erdrutschsieg-fuer-die-mongolische-volkspartei, last accessed 19 May 2021.

23 *Altankhuyag*, Why Constitutional Democracy in Mongolia is in Danger, 2021, p. 1 (1); available from: https://verfassungsblog.de/the-price-of-limiting-power/, last accessed 18 May 2021.

24 Article 1 of the Constitution of Mongolia.

head of state, commander-in-chief of the armed forces and chairman of the *National Security Council* (NSC), which has existed since 1992. The NSC consists of three members: the president, who chairs it, the prime minister and the Speaker of Parliament. It can, for example, make recommendations on the dismissals of the Attorney General and his/her deputies, the chairman of the Anti-Corruption Agency and judges, which can then be cited as grounds for dismissal.25 The president also has the right to veto bills, which can only be overridden by a two-thirds majority in Parliament.[26]

The constitutional amendment, which was passed in 2019[27] and came into force in May 2020, is intended to partially curtail these far-reaching powers of the president, transform the previously prevailing presidential system into a parliamentary system and grant the prime minister more powers. The restriction to only one presidential term (which was extended from four to six years) was controversial, especially in view of the presidential election which was to be held in June 2021.[28]

Mongolia's Parliament (State Great Khural) consists of 76 deputies and is elected every four years.[29] Until the 2012 parliamentary elections in Mongolia, 48 deputies were directly elected in as many constituencies according to the majority principle, and the remaining 28 seats were divided among all parties that received at least five percent of the vote according to proportional representation. Shortly before the 2016 election, the electoral system was changed to a pure majoritarian system, so that all 76 deputies are now elected according to the majority principle in 29 multi-member constituencies.

Mongolia, the most sparsely populated country in the world with some three million inhabitants, is organised centrally and has 21 *aimags* (provinces) headed by governors. The capital Ulan Bator has a special status.

The Constitution sets out the essential foundations for the existence of political parties in Mongolia's constitutional system. For example, Article 16(10) of the Constitution governs the right to freedom of association in political parties and thus forms the basis for the free founding, free joining and free participation in a political party according to personal and social views. The prohibition of discrimination or persecution of any person on the basis of party membership is likewise constitutionally guaranteed. Furthermore, the Constitution stipulates that political parties must maintain the public security and order of the state and uphold and enforce its laws. With regard to the internal organisation of a political party, Article 19[1] (3)[30] of the Constitution only came into force in May 2020, according to which political parties should be based on democratic principles and they must disclose their financing, assets and sources of income. This new Article now also contains the power to adopt further simple-law regulations regarding the establishment, registration, financing, handling of internal party affairs and dissolution of a party.

25 See: https://www.kas.de/de/web/mongolei/laenderberichte/detail/-/content/die-juengste-mongolische-justizreform, last accessed 19 May 2021. See also Articles 30 and 33 of the Constitution of Mongolia.

26 See sentence 1 of Article 33(1) of the Constitution of Mongolia.

27 Published Töriin medeelel (Mongolian Law Gazette) No. 45, 28 November 2019.

28 The Article, which abolishes the possibility of presidential re-election, was initially intended to apply from 2025. However, the Constitutional Court decided on 16 April 2021 that the new regulation would also affect the current term of office of President Battulga, who was thus not allowed to run again in the presidential election in June 2021. This decision was considered the trigger for the presidential decree of 18 April 2021, dissolving the ruling party. See: *Altankhuyag*, Why Constitutional Democracy in Mongolia is in Danger, 2021, p. 1 (2) available at: https://verfassungsblog.de/the-price-of-limiting-power, last accessed 19 May 2021.

29 *Munkh-Erdene*, The Transformation of Mongolia's Political System, 2010, p. 311 (311); Articles 20 and 21 of the Constitution of Mongolia (1992). The 2008 parliamentary elections were marked by unrest and protests and underscored the instability of Mongolia's party system; see: *Porter*, Realpolitik in Mongolia-US Relations, 2009, p. 49 (54); *Asia Foundation*, The State of Conflict and Violence in Asia-Mongolia, 2017, p. 94 (94).

30 Please note: there is an existing Article 19 in the Constitution. The new amendments introduced Article 19 with a superscript (Article 19[1]).

The Mongolian judiciary was considered weak and subservient to the executive power.[31] For a long time, therefore, it did not lead the way. The Judicial General Council, which appoints all judges and prosecutors, plays a central role.[32] Following the controversial judicial reform in 2019, critics see the independence of the judiciary and the Judicial General Council as being at risk. The reform allows for dismissals of judges, prosecutors and their deputies regardless of tenure, based only on recommendations by the NSC. The consequences were already evident in June 2019 when President Battulga pushed through the dismissal of 17 judges, five of them members of the Supreme Court.[33]

Current situation of the opposition

The opposition ahead of the Mongolian local elections, October 2020 (photo: KAS)

The current situation of the opposition in Mongolia, a parliamentary democracy, is not subject to any illegal political barriers, but to several de-facto hurdles, the most prominent one being the absolute dominance of the political scene by the *Mongolian People's Party* (MPP) and *Democratic Party* (DP). The V-Dem Institute at the University of Gothenburg describes Mongolia as an electoral democracy. In the institute's Liberal Democracy Index, which also includes important aspects of free opposition, the country ranks 60th out of 179 countries, with a score of 0.5/0.06.[34] Mongolia thus falls among the top 30-40 % of countries, both overall and in the electoral and liberal democratic components of the report.

Section 11(3) of the Law on the State Great Khural stipulates that a party (or coalition of several parties) that has won fewer than 39 seats in Parliament is considered a minority. Since the 2016 parliamentary elections, this parliamentary minority has been the DP, which is the leading opposition party in Parliament with eleven seats. The 2020 election marked the first time since the introduction of the democratic Constitution in 1992 that a ruling party has won re-election in Mongolia. Its unexpectedly clear victory gives the MPP 62 of the 76 seats in the current Parliament, a stable two-thirds majority, while the DP is the second strongest party with its eleven seats. The remaining three seats are divided among an independent candidate, a candidate from *"Our Coalition"* (an electoral alliance of the Mongolian People's Revolutionary Party, the Civil Courage Green Party and the Mongolian United Traditional Party), and a candidate from the *"Right Person Electorate Coalition"* (an electoral alliance of NLP, the Mongolian Social Democratic Party, and the Sincerity Party), represented by a member of the NLP. The other electoral alliance, "New Coalition" (Civic Union Party for Justice, Republican Party, Truth and Correctness Party, Mongolian National Democratic Party) of former DP parliamentarians came away empty-handed. Since then the DP has 13 seats, after the independent and the deputy from the breakaway faction MPRP joined the DP before the presidential election in May 2021. Of the 76 deputies, 13 are women. Given the MPP's strong two-thirds majority, laws and other parliamentary resolutions

31 *Munkhsaikhan*, Towards Better Protection of Fundamental Rights in Mongolia: Constitutional Review and Interpretation, Nagoya 2014, p. 89.

32 Judicial General Council, governed by Article 49 of the Constitution of Mongolia.

33 *Nelle*, Constitutional Reform in Mongolia Increases Resilience of the Political System, VRÜ 53 (2020), p. 309 (319); https://www.kas.de/de/web/mongolei/laenderberichte/detail/-/content/die-juengste-mongolische-justizreform, last accessed 18 May 2021.

34 Alizada, Nazifa / Cole, Rowan / Gastaldi, Lisa / Grahn, Sanda / Hellmeier, Sebastian / Kolvani, Palina / Lachapelle, Jean / Lührmann, Anna / Maerz, Seraphine F. / Pillai, Shreeya / Lindberg Staffan I., Autocratization Turns Viral. Democracy Report 2021, 2021, University of Gothenburg, V-Dem Institute.

can currently be passed without the votes of the parliamentary opposition.[35] As a result, although the opposition can actively participate in political debates and publicly question draft laws of the ruling party, it does not represent a real alternative to the work of the government. The minority is granted the right to present alternatives, comments and motions in the standing committees. In addition, the prime minister is required to present and answer questions every two weeks on the government's activities and plans regarding the state budget, the country's economic situation and other socioeconomic issues.[36]

Mongolia's parliamentary law and Constitution stipulate that all deputies are entitled to equal participation in committees.[37] Accordingly, seven DP deputies are currently sitting on three standing committees and four on two standing committees.[38] In view of the current situation due to the Covid-19 pandemic, much of the opposition's political work is in the digital realm. The opposition has its own website and Facebook page, where it publishes its activities and weekly summaries of its work in an attempt to fulfil its role as a political opposition.[39] Nevertheless, the opposition's reputation among the population has steadily declined in recent years, as has the reputation of political parties in general.

This is also reinforced by massive intra-party power struggles within the opposition Democratic Party (DP) over the rightful party chairmanship. The situation came to a head before the 2021 presidential election after the General Election Commission confirmed the candidacy of the third and final candidate for the upcoming presidential election, S. Erdene. A plot to split the country's largest opposition party ahead of the June 2021 presidential election had been suspected. It remains unclear how Erdene managed to become an official candidate. In January, the Supreme Court refused to register Erdene as the party's chairman.[40] However, the court also refused to confirm a temporary party chairman and the constitution adopted at the party's digital congress. The legal attempt to resolve the dispute has dragged on for months. The 13 parliamentary deputies from the opposition DP went on a hunger strike outside the Mongolian Parliament after the GEC officially approved Erdene's candidacy for the June 2021 presidential election.[41]

The MPP won the presidential election on 9 June 2021, with a clear majority of 67.8 % of the votes cast. With the assumption of office by Khürelsükh, the MPP provides the head of state in addition to the prime minister, Luvsannamsrai Oyun-Erdene, and the majority in Parliament. After the presidential election in Mongolia, all power is now in the hands of one party. The opposition is thus once again significantly weakened.

Legal framework for political parties

In addition to the Constitution, the Law on Political Parties and the Election Law provide the legal framework for political parties in Mongolia.

35 Section 44(2) of the Law on the Procedure of the Plenary Session of the Parliament of Mongolia stipulates that a law may be passed by the votes of the majority of the Parliament, i.e. 39 votes.

36 Section 109(1) of the Law on the Procedure of the Plenary Session of the Parliament of Mongolia.

37 Sentence 2 of Section 8(1) of Mongolia's Parliamentary Law stipulates that deputies must belong to committees and that their equal participation must be ensured. Article 28 of the Constitution provides that the Parliament may establish standing committees consisting of the minority if a quarter of the deputies propose the establishment of a temporary committee to monitor and evaluate the execution of legislation in the public interest.

38 To find out which deputy sits on which parliamentary standing committee, visit the DP parliamentary group's website at http://anbuleg.mn/index.php/p/bh in Mongolian.

39 The opposition's website in Mongolian can be found at: www.anbuleg.mn.

40 Supreme Court of Mongolia (2021): Ардчилсан намаас ирүүлсэн хүсэлтийг шийдвэрлэлээ, available online at: http://www.supremecourt.mn/news/560?fbclid=IwAR2VvwFiCwyntKx2aEeMh0Fd9dMFWaAKgzJBTTUKbieom3mRH6625Ca_y8A,%20last%20accessed%2004/06/2021.

41 https://www.kas.de/de/web/mongolei/laenderberichte/detail/-/content/die-mongolische-opposition-im-hungerstreik, last accessed 20 July 2021.

1. Constitutional status and conceptual foundation

Political parties are explicitly mentioned in Mongolia's Constitution, and their rights, as well as their duties, are laid down in it. The details are left to a legal regulation. Parallels to the provisions of the German Basic Law (Article 21) cannot be ignored. The Constitution refrains from defining political parties and leaves this to simple legislation in the Law on Political Parties. Freedom of association is fundamental to the status of parties. The Constitution assumes an association of citizens and thus of natural persons. Article 16(10) of the Constitution assigns parties, along with other organisations, the task of "maintaining public order and the security of the state". This gives them a special role as an organisation that sets them apart from other associations. However, this special role also requires constitutional obligations, such as a democratic internal structure and transparency of funding. Following the constitutional reform, this is now enshrined in Article 19.

2. The Law on Political Parties

Mongolia's party law, unlike its election law, is stable and has undergone few changes. It was adopted in 1990 as part of the state's transformation from a single-party to a multi-party system and was replaced by a new Law on Political Parties in 2005, which has since been amended twice, in 2015 and 2020. It contains a definition of the political party in Mongolia.[42]

a. Foundation and registration

Mongolia's current party law governs the formation and registration of a party, its organisation, the handling of party finances, and the requirements for parties to participate in an election.

According to Section 8 of the Law on Political Parties, a party is founded by a constituent assembly, which gives the party its name, symbols and colours, its internal rules in the form of its statutes, and its orientation and programme. No later than ten days after this constituent founding meeting, the party, represented by its chairman elected at the founding meeting, must submit a written and signed application for registration to the Supreme Court.[43] All documents required by law, including the party membership list, must be submitted for inspection. One of the requirements for successful registration is that a party must list at least 801 members with their names and addresses in the registration application.[44] The "True and Correct" political party was denied registration by the Supreme Court on 20 March 2016 and 30 March 2017, and was registered on the third attempt on 7 June 2017.[45] The registration was refused on the grounds that the materials submitted to the Supreme Court did not fulfil the requirements set forth in the Law on Political Parties, including due to lack of the addresses, names, ID registration numbers and signatures of at least 801 party members. While the party had submitted a total of 819 signatures of party members, the Supreme Court called 20 random members on the list to determine whether the signatures were legitimate, leaving fewer than 801 (valid) signatures on the list.

With regard to membership in a political party, the Law on Political Parties stipulates that only Mongolian citizens can be members of a party and that the

42 Section 4(1) of the Law on Political Parties defines a political party as follows: "A political party is considered to be an association of Mongolian citizens who have voluntarily joined together for the purpose of organising social, personal, and political activities as stipulated in Article 16(10) of the Constitution of Mongolia."

43 Section 9(3) of the Law on Political Parties.

44 Section 9(3)(7) of the Law on Political Parties.

45 Registration of the "True and Correct" party with the Supreme Court of Mongolia, court decision available at http://www.supremecourt.mn/act/view/248 in Mongolian.

permanent expulsion of a member from the party is generally prohibited, but temporary suspension is permitted.[46] However, the bylaws of the MPP and DP appear to contradict the legislation in this respect. Section 6.5 of the MPP bylaw states that a member is deemed to be removed if he/she campaigned against a candidate of MPP, upon court decision on corruption while holding high government office, for attempted vote buying and on violation of the principles of collective decision-making.[47] The DP bylaw states in Section 5.4 of Chapter 3 that its National Bylaw Committee shall give an opinion on suspension of a member within five days if he/she has a criminal conviction by court decision or violated the Code of Ethics.

The Law on Political Parties stipulates that citizens who are members of a party may not be discriminated against, insulted or oppressed on the basis of their party membership.[48] To prevent public disclosure of party membership from bringing advantages or disadvantages, notation of party membership on official documents is prohibited. Other rights of party members are not regulated by law, but by the respective party statutes. For example, the MPP's statutes provide that its members may form factions, which should then work independently within the framework of party rules and allow for the most differentiated discourse possible.

The founding and registration of a new political party have been comparatively simple in Mongolia in recent years. The abundance of new parties formed in recent decades bear witness to the ease, speed and effectiveness of establishing and registering a political party. However, under a controversial constitutional provision in Article 19[1](2), which is scheduled to take effect in 2028, party registration will become much more difficult. Signatures of support from at least one percent of the electorate will then be required.[49] According to current figures, this corresponds to more than 20,000 signatures, thereby significantly hampering the chances of registration for new, young parties without a high profile among the electorate. There is a danger of undermining political pluralism in Mongolia.

The registration of political parties by the Supreme Court is governed not only by the rules of the Law on Political Parties, but also by the Law on State Registration of Legal Entities. Under Sections 11 and 12 of the Law on Political Parties, when deciding on the registration of a party, the Supreme Court shall take into account not only pure formalities, but also the constitutionality and legality of the party. Following the Supreme Court's deliberations regarding registration, the court shall provide comprehensive reasons for or against the party's registration and, if registration is refused, shall give the party the opportunity to submit missing documents or to remedy any deficiencies that have been identified.

b. Internal organisation

The Law on Political Parties contains broad guidelines on the internal organisation and structure, as well as the content, of a political party's statutes. For example, the law stipulates that every party must have elementary bodies such as control and supervisory organisations to regulate party finances, as well as a "grand assembly" as the party's supreme, governing body.[50] Likewise, a party's statutes must contain regulations on internal elections, the nomination of candidates and the appointment of senior officials. Pursuant to Section 13(9) of the Law on Political Parties, parties must have a body authorised to settle internal disputes, since such disputes, like matters concerning the

46 Section 3(1) of the Law on Political Parties regulates the membership of citizens, Section 3(4) regulates the temporary suspension of members who are also civil servants, and Section 3(5) regulates the prohibition of forced expulsion of party members.

47 Section 6.8 of the bylaw provides that if the member has corrected his/her wrongdoing, then he/she can submit a request to become a member of the party and it shall be considered by the General Oversight Committee.

48 Section 3(3) of the Law on Political Parties.

49 Article 19[1](2) of the Constitution of Mongolia. According to Section 3 of the Introductory Law to the Constitutional Amendment 2019 ((Mongolian Law Gazette) No. 45 of 2019), this provision shall enter into force on 1 January 2028.

50 See Sections 11 and 13 of the Law on Political Parties of Mongolia.

party's statutes, can only be resolved internally, and enforced by the party itself. Access to state courts is not provided for the resolution of internal party disputes.[51] Further regulations on the internal organisation or structure of the parties can be made independently by the parties in statutes and codes of conduct.

Furthermore, the Law on Political Parties stipulates that political parties have the freedom to organise themselves in associations for geographical areas or particular interests, including at the local level. Both major parties have made use of this freedom and founded their own women's and youth associations, for example.

The parties are granted a certain degree of autonomy with respect to their orientation and programme. Parties are fundamentally free in their agenda and elaboration of their party programme, insofar as the Constitution and simple laws are respected. Since the amendment of the Law on Political Parties in 2015, however, there has been a restriction with regard to this autonomy of the statutes. Since then, Section 12(1) of the Law on Political Parties stipulates that all political parties must adapt their political platforms and activities in line with the laws of Mongolia and the national interests outlined in the "Mongolian Development Vision 2030". All parties are to work to pursue this holistic strategy of economic development, social inclusion and environmental sustainability, and to achieve the goals set by 2030.[52] These requirements concerning the agenda of political parties were also included in the 2019 constitutional amendment (Article 19[1](1)).

c. Funding

Both the Law on Political Parties and the Election Law contain regulations on party financing, although the Election Law is limited to a party's campaign financing. In the Law on Political Parties, the regulations on financing can be found in Chapter 4. The regulations relate to income, expenditure and disclosure requirements.

Section 16 of the Law on Political Parties lists the permissible sources of party income in more detail. It mentions membership fees, income from renting or selling party property and merchandise, ancillary income from the media and advertising, donations and state funding. The revenue side is thus divided into government and non-government financing.

State funding of political parties is governed by Section 19 of the Law on Political Parties. Only parties with seats in Parliament are entitled to state funding.[53] The entitlement is based on share of votes and share of seats. Each party represented in Parliament receives 1,000 Mongolian tugriks (MNT), the equivalent of approximately EUR 0.29, for each valid vote cast for it.[54] In addition, an annual payment of MNT 10 million is made

51 Section 13(9) of the Law on Political Parties of Mongolia.

52 The "Mongolian Development Vision 2030" includes the following points:
1. increase GNI per capita to USD 17,500 and become an upper middle-income country as measured by per-capita income.
2. ensure average annual economic growth of not less than 6.6 percent in 2016-2030.
3. end poverty in all its forms.
4. reduce income inequality and raise 80 percent of the population into middle and upper-middle income brackets.
5. increase the enrolment rate in basic and vocational education to 100 % and establish a lifelong learning system.
6. improve the living environment of the Mongolian population to enable a long and healthy life; increase life expectancy at birth to 78 years.
7. rank among the first 70 countries in the ranking of countries according to the Human Development Index.
8. preserve the ecological balance and be placed among the first 30 countries in the ranking of countries according to the Global Green Economy Index.
9. rank among the top 40 countries in the "Doing Business Index" and among the top 70 countries in the world in the "Global Competitiveness Index".
10. build professional, stable and participatory governance, free of corruption and capable of implementing development policies at all levels.
The Mongolian Development Vision 2030 and the Law on Development Policy Planning, UN website, available at https://www.un-page.org/files/public/20160205_mongolia_sdv_2030.pdf in English.

53 Section 19(1) of the Law on Political Parties.

54 Section 19(1) of the Law on Political Parties.

in quarterly instalments for each seat won by the party (seat share). Unlike the rest of the state party funding, half of this funding is explicitly earmarked and to be used for the given election constituency.[55] Further regulations on state campaign financing can be found in Sections 40 to 60 of the 2019 Parliamentary Election Law.[56]

The parties' non-state income comes mainly from donations. Under Section 18, the Law on Political Parties allows donations from private citizens and legal entities. Donations from foreigners, citizens under the age of 18, international and religious organisations, legal entities that were founded less than a year ago or that are bankrupt, and anonymous donations are prohibited.[57] Donations may be made no more than twice a year, up to a limit of MNT 1 million for individuals and MNT 10 million for legal entities at a time.[58] That means that if a legal entity donates twice a year, the combined amount must not exceed MNT 20 million in total. The law does not contain any spending or earmarking regulations for the use of the donations. Parties may use the funds freely as long as they are used for typical party activities.[59]

Donations by members to their party have a special status. There is no legally regulated upper limit here; Section 18(1) of the Law on Political Parties refers to the relevant internal party regulations. This legal loophole can be observed in the case of the "pledges", which are heavily criticised in Mongolia. These funds are donated by candidates in order to run for office, and rose to around MNT 100 million in 2016.[60] Furthermore it is prohibited for state-owned enterprises, trade unions and other religious organisations to donate to parties and/or election campaigns.[61]

Given that both cash and in-kind donations are allowed by law, many companies are moving to give donations in the form of contracts and lobbying support in anticipation of future benefits.[62] The sometimes opaque, large donations from large corporations are increasingly leading to the opinion that private and economic interests are exerting too much influence on politics. This view is further supported by the fact that the control and monitoring of party finances by the relevant authorities is inadequate, and the parties, as well as their candidates, do not shy away from illegal means.[63] Regarding the disclosure and control of the financing of political parties, the Law on Political Parties stipulates that parties have internal and central monitoring and supervisory organisations responsible for the annual auditing of finances and preparation of the financial report. This annual report must be made available to the public in accordance with Section 20(3) of the Law on Political Parties. Donations must also be published by the parties, as per Section 18(4) of the Law on Political Parties. The disclosure and control of election campaign expenses, as well as the examination by the General Election Commission of the reports to be prepared in this context, is regulated in more detail in the Election Law. The Law on Political Parties regulates violations of the laws on party financing in Section 24; a civil servant who has violated the party law shall be subject to sanctions pursuant to the Law on Civil Service and an individual and/or a legal entity shall be subject to sanctions pursuant to the Criminal Code or the Law on Offences.[64]

55 Section 19(2) of the Law on Political Parties; see: *Burcher/Bértoa*, Political Finance in Mongolia, 2018, p. 18. This means that: MNT 10 million will be given for each seat (to the party); the MNT 10 million will be split to be given in quarters and 50% of the money should be spent on the MP's constituency, or "elected district" as it is called in Mongolian.

56 *Burcher/Bértoa*, Political Finance in Mongolia, 2018, p. 14, DOI: 10.31752/idea.2018.68.

57 Section 18(7) of the Law on Political Parties.

58 Section 18(3) of the Law on Political Parties.

59 Section 17 of the Law on Political Parties stipulates that political parties may use their income only for typical party affairs and not for individual members and their affairs.

60 *Burcher/Bértoa*, Political Finance in Mongolia, 2018, p. 15, DOI: 10.31752/idea.2018.68.

61 Section 18.7.2 of the Law on Political Parties, Section 56.1 of the Parliamentary Election Law.

62 *Burcher/Bértoa*, Political Finance in Mongolia, 2018, p. 16, DOI: 10.31752/idea.2018.68.

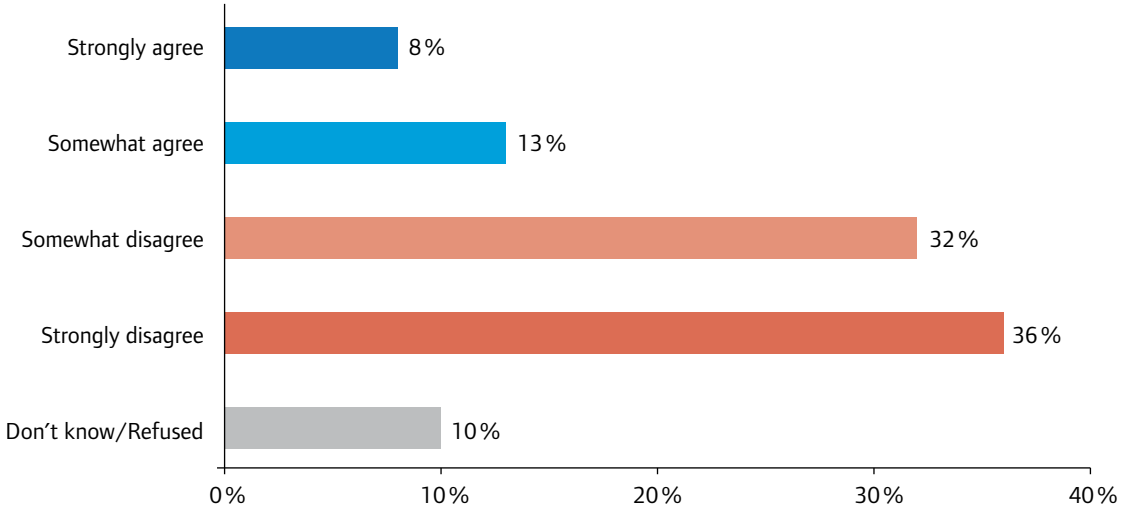
63 *Burcher/Bértoa*, Political Finance in Mongolia, 2018, p. 15, DOI: 10.31752/idea.2018.68.

64 Section 24(2) provides for fines that may be enforced by the ordinary courts. Sentence 3 specifies the level of fines in the case of illegally earned profits of the party. Sentence 4 specifies the fines in the case of illegal division and expenditure of a party's income. Sentences 5 and 6 regulate the fines imposed on a party after accepting illegal donations and the repayment thereof. Sentence 7 regulates the possibility and level of fines that may be imposed in the case of avoidance of financial audit or failure of its disclosure.

A study has shown that state funding accounts for less than 20% of a party's income on average.[65] In any case, only parties represented in Parliament receive state funding. Parties in Mongolia are thus heavily dependent on donations and other income. This high dependence on non-state sources of income makes parties more susceptible to influence by donors seeking to advance their political interests.

The lack of transparency with respect to party donations and spending leads to a loss of trust in political parties. The latest constitutional reform of 2019 aims to ensure greater transparency in the future regarding party revenues and expenditures.

Agree or Disagree? Political party campaign finance is transparent and honestly reported.



National survey (2016) of Mongolian public opinion commissioned by the International Republican Institute, Mongolia.[66]

d. Prohibition of party activities

The Law on Political Parties contains several rules on sanctions and prohibitions on political parties' activities, which can be imposed and enforced by the Supreme Court as the competent authority. For example, Section 5 contains a list of principles to which a party should adhere in its activities. Under this Section, every party shall conduct its activities in accordance with the principles of democracy, justice, freedom and equality, and must not in any way endanger Mongolia's national unity or independence.[67] Section 10 further details those regulations to the effect that parties will be denied registration if they pursue the goal of undermining Mongolia's autonomy and independence, or generally have an unconstitutional orientation. Religious, military and fascist parties are also denied registration.[68] Under Section 23, the Supreme Court may dissolve a party. The request for the dissolution of a party may be made in writing to the Supreme Court. Upon cancelling the party's registration, the Supreme Court makes the deregistration public. By order of the court, however, the party can also be forcibly dissolved if, for example, it has endangered Mongolia's national unity or is unconstitutional.[69]

65 See: *Burcher/Bértoa*, Political Finance in Mongolia, 2018, p. 18, DOI: 10.31752/idea.2018.68.

66 Full report available at https://www.iri.org/sites/default/files/wysiwyg/2016-05-10_iri_survey_of_mongolia_public_opinion-_public_deck.pdf

67 Sentence 1 of Section 5(1) of the Law on Political Parties.

68 Sentence 2 of Article 10(1) of the Law on Political Parties refers to Section 4(2) of the Law on Political Parties, which contains an extensive list of prohibited objectives for a political party in Mongolia.

69 Section 23(2) of the Law on Political Parties contains an exhaustive list of grounds for the compulsory dissolution of a party by the Supreme Court.

3. Election law

The Constitution guarantees Mongolian citizens the right to vote or to be elected and lays down the principles of electoral law.[70] The specific electoral system and its details are defined by the electoral code legislation.[71] Since the Mongolian electoral system has already been substantially changed several times, electoral law has also undergone several adjustments. In 2016, for example, the Constitutional Court declared the mixed election system with a combination of majoritarian and proportional representation and a five-percent threshold, which had been introduced in 2011 on the basis of the German model, invalid, and reintroduced a pure majoritarian election system. Another major change took place in 2019, when separate electoral laws were passed for the first time for the presidential, parliamentary and local elections, which had previously been regulated jointly.

Since its adoption in December 2019, just six months before the 2020 parliamentary elections, Mongolia's Parliamentary Election Law has governed the electoral system, electoral law, electoral procedure, campaign rules, campaign financing, and the penalties associated with violations of any of these regulations. Under a constitutional provision in effect since 25 May 2020, no amendment to the Parliamentary Election Law may be made within one year prior to a regular election.[72]

According to the Parliamentary Election Law, 76 deputies are elected by majority vote in multi-member constituencies. All Mongolian citizens who have reached the age of 25 can run for Parliament. They may be nominated and stand for election as candidates of political parties, but may also run as independent candidates.[73] However, independent candidates need 801 signatures of support.[74]

A special feature of the Mongolian Parliamentary Election Law is a quota system, according to which at least 20% of the candidates nominated by the parties shall be of either gender.[75] It is taken to mean that at least 20% of the candidates must be female, but the legal provision is formulated gender-neutrally.

More details on the nomination of candidates by the individual parties are regulated independently in their statutes. For example, the MPP's bylaw states in Section 37 that "the basic body of the party identifies the candidates and the main body makes the decision according to the laws", while the DP identifies and selects election candidates through its internal election committee, as stated in Section 22.5 of its bylaw.

The formation and establishment of electoral districts is made taking into account aspects such as the population figures, and the size and location of the provinces.[76]

The GEC and local provincial election commissions are responsible for monitoring and enforcing the election legislation. The GEC organises the conduct of elections, supervises the casting and counting of votes and monitors parties' campaign finance reports. Furthermore, the election commissions are responsible for registering parties (or electoral coalitions) to participate in elections. The registration of a party or coalition to run must take place within five days of the GEC receiving all the necessary documents.[77]

70 See Articles 16(9) and 21(2) of the Constitution of Mongolia.

71 See Articles 16(9) and 21(2) of the Constitution of Mongolia.

72 Sentence 2 of Article 21(4) of the Constitution was adopted in November 2019, but did not enter into force until May 2020. The Parliamentary Election Law of December 2019 was adopted only six months before the 2020 parliamentary elections, which was legally permissible at that time because the above constitutional provision was not yet in force.

73 Sections 6(2) and 27 of the Parliamentary Election Law of Mongolia.

74 Sections 7(2) and 28 of the Parliamentary Election Law of Mongolia

75 Section 27(2) of the Parliamentary Election Law of Mongolia. Currently, female deputies hold 17 percent of the seats (13 seats) in Mongolia's parliament.

76 Section 12.2 of the Parliamentary Election Law of Mongolia.

77 Section 26(3) of the Parliamentary Election Law of Mongolia contains a detailed list of the required documents that a party must submit for registration.

Election campaign costs are covered by donations, party assets and candidates' assets.[78] State party funding, as explained above, is the only public funding provided to parties with parliamentary seats, so there is no separate state campaign funding. The GEC sets a maximum amount for campaign staff that may not be exceeded.[79]

Campaign donations to political parties are permitted in the form of both cash and in-kind contributions. Donations in kind, which can consist of services or the provision of facilities, are problematic in that their value is assessed solely by their recipient. Objective criteria such as market value are not decisive, which means that parties have loopholes for valuing donations in kind lower than their actual value.[80] There are also caps on monetary donations in the field of campaign contributions, which are set at MNT 5 million for individuals and MNT 20 million for legal entities.[81] Donations received in this manner must be traceable and deposited with receipts into a separate party campaign finance account.[82] Foreign campaign contributions and third-party campaign financing are prohibited in Mongolia.[83] Parties, coalitions and independent candidates must publish an interim campaign finance report on their donations and expenditures three days before election day, according to the Parliamentary Election Law.[84] Another detailed report on campaign revenues and expenditures, which must include an independent audit finding, must be submitted to the State Audit Office within 45 days of election day.[85] This is published another 60 days later by the State Audit Office.[86]

There are no sanctions for false reporting of campaign finances. On 22 January 2010, the Constitutional Court invalidated Section 26(3)(6) of the 2005 Election Law, which provided that a political party/coalition that failed to file its prior campaign finance report with the GEC would be denied registration to participate in an election. The Constitutional Court deemed this a violation of Articles 16(9) and 16(10) of the Constitution, which provide for the right to vote and be elected and prohibit discrimination against political parties and their candidates. The plaintiff had argued that parties/coalitions with late submission of the campaign finance report were already subject to monetary sanctions under Section 42(8) of the Election Law and should not be subject to more than one sanction.[87]

A recent Constitutional Court decision of 3 June 2020, upheld a lawsuit filed by a newly formed political party challenging restrictions on political party participation in elections imposed by registration requirements.[88] The party complained that provisions in the Parliamentary Election Law that required a party to register its party platform with the GEC no less than 60 days before election day in order to participate in the election violated its rights under Articles 16(9) and 16(10) of the Constitution – which guarantee the right to form, join and participate in political parties, as well as to vote and be elected – and Section 9(6) of the Law on Political Parties, which allows a party to carry

78 Section 49 of the Parliamentary Election Law of Mongolia.

79 Section 37 of the Parliamentary Election Law of Mongolia.

80 *Burcher/Bértoa*, Political Finance in Mongolia, 2018, p. 17, DOI: 10.31752/idea.2018.68.

81 Section 54(1) of the Parliamentary Election Law of Mongolia.

82 See Section 40(3-5) of the Parliamentary Election Law of Mongolia and Section 18(5) of the Law on Political Parties of Mongolia.

83 Section 56(1) of the Parliamentary Election Law of Mongolia.

84 Section 58(4) of the Parliamentary Election Law of Mongolia.

85 Section 57(3) of the Parliamentary Election Law of Mongolia. Also, it states that independent candidates have 30 days.

86 Section 58(1) of the Parliamentary Election Law of Mongolia.
The State Audit Office is a constitutional body that impartially oversees the state budget and finances under the leadership of the General Auditor elected by Parliament for a six-year term. Details are regulated in the Law on State Audit of 1 May 2020. This includes Section 23, which regulates the authority of the General Auditor to impose fines on state organisations that violate laws, regulations, and administrative decisions on the budget and finances or correct accounting.

87 Constitutional Court Decision No. 01, dated 22 January 2010, is available in Mongolian at: https://www.legalinfo.mn/law/details/1039.

88 The "Democratic Reform Party" was established on 18 December 2019 and registered with the Supreme Court on 21 February 2020. Constitutional Court Decision No. 01 dated 3 June 2020 is available at https://www.legalinfo.mn/law/details/15424 in Mongolian.

out its activities nationwide after registration with the Supreme Court.[89] In upholding the case, the court declared two provisions of the Parliamentary Election Law null and void.[90]

Prior to 1 March of each election year, the State Audit Office sets the upper limit for campaign expenditures, varying depending on whether the candidate is a party, an electoral coalition or a stand-alone candidate.[91] It is assisted by the GEC and the General Auditor in determining this cap, which is based on criteria such as the number of voters and the size of the electoral district.[92] The amount thus determined is valid until the next regular election and must be publicly reported.

4. Enforceability

Political parties can assert their constitutional rights directly before the Constitutional Court; legal remedies are not required to be exhausted first. The Supreme Court is responsible for enforcing the legislative framework of political parties in Mongolia. Most lawsuits and complaints filed by political parties concern decisions by state institutions such as the GEC. Refusal to register a party for participation in an election or alleged violations of draft election programmes or candidate nominations are often fought out in court. The administrative court has jurisdiction over such actions. Parties may also sue one another in both civil and administrative courts. The main issues in such lawsuits are violations of electoral legislation, particularly election campaign violations. However, internal disputes and/or matters regarding the statutes of a political party are enforced only by the party itself. According to Section 13(9) of the Law on Political Parties, all disputes concerning the internal organisation and activities of the party that are governed by the party's bylaws are not decided in court, but by the party's authorised body.

89 The plaintiff argued that Section 13(7) of the Law on Political Parties, which requires that the party programme be discussed and adopted at a Grand Assembly or approved by the party's Central Representative Body at a Grand Assembly, contradicts Section 26(1) of the Parliamentary Election Law, which requires that a party submit its application to participate in an election to the General Election Commission 60 days prior to election day, as the former provision requires sufficient time for compliance.

90 The Constitutional Court invalidated the phrase "Before the announcement of the election day and as specified in this Law [..]." from Section 26(1) of the Parliamentary Election Law and "... before the timeframe specified in this Law for a party or coalition to declare its participation in an election" from Section 28(3)(1) of the same law.

91 Section 50 of the Parliamentary Election Law and Section 45 of the Presidential Election Law of Mongolia.

92 In brief, Section 50 of the Parliamentary Election Law states it will be approved together with GEC and the General Auditor, Section 45 of the Presidential Election Law states that it will be approved by the GEC alone; reference to the General Auditor is removed.

The State Great Khural

Legal framework of party/opposition work in Parliament

Political parties can only realise and enforce their positions, decisions and draft laws through their deputies or factions in Parliament. Against this background, the Constitution of Mongolia and the Law on the State Great Khural (Parliament) comprise the legal framework for the parties and 76 deputies in the Mongolian Parliament. The Law on the Procedure of the Plenary Session of the State Great Khural, which lays down regulations and sanctions for the procedure of the plenary sessions of Parliament, is also important for the legal framework of the deputies and parties in Parliament. Among other things, it stipulates that the Speaker of the Parliament conducts the plenary sessions, gives the floor and may also impose sanctions, for example, on a deputy who speaks in the Parliament without having received prior permission to do so.[93]

Deputies are the representatives of the people elected by the people and, as such, must safeguard their interests.[94] The Law on the State Great Khural expressly prohibits discrimination against deputies. At the same time, it does not explicitly stipulate the freedom of deputies, but does not restrict their voting and participation rights either. It governs parliamentary participation rights, such as the right to attend plenary and committee meetings, the right to vote and bring motions, the right to speak and ask questions, as well as the parliamentary right of inquiry and the right to form parliamentary groups.[95] Section 9(8) of the Law on the State Great Khural elaborates on the constitutional immunity of deputies under Article 29 of the Constitution. If a deputy is suspected of criminal activity, the Prosecutor General must apply to the Speaker of Parliament for a waiver of immunity. Within five days, the latter must decide on the request

93 Sentences 11 and 18 of Section 16(1) of the Law on the Procedure of the Plenary Session of the State Great Khural.

94 Article 23 of the Constitution of Mongolia.

95 Section 23 of the Law on the State Great Khural.

with the help of the parliamentary subcommittee on immunity. Subsequently, the waiver of immunity is discussed in the plenary session and a decision is taken by secret ballot.[96]

The remuneration of deputies for their activities is regulated by the Constitution and specified in legislation. Pursuant to Article 29 of the Constitution, deputies receive a salary from the state budget, as well as transportation and per diem allowances, and reimbursement of material and communication expenses. The salaries of advisors, representatives and assistants are also covered.[97] The amount and limits of these expenses are governed by a parliamentary resolution and may not be exceeded by deputies. In addition, deputies are not allowed to receive other fees or rewards for activities related to parliamentary business or to use the funds provided to them for their own interests and benefits. However, deputies are allowed to perform a number of specified secondary activities, for example, as a member of the cabinet, elected party official of a non-governmental organisation, political party and/or a teacher, as long as they are not incompatible with the duties assigned to them as deputies.[98] Furthermore, deputies may not accept donations or gifts for their activities or use their salaries for election campaigns.

One of the most important privileges of deputies in Parliament is the right to form parliamentary groups, because parliamentary groups have far-reaching rights of participation in Parliament. For example, factions propose the Speaker of Parliament and can discuss bills and other parliamentary decisions internally before the plenary session.[99] The Law on the State Great Khural lays down the requirements for forming parliamentary groups and the rights and duties of parliamentary groups. At least eight deputies must join together to form a parliamentary group. It is important that the deputies belong to the same party, although Section 33 of the law stipulates that parliamentary factions may not report directly to parties affiliated with them. If at least eight deputies have joined together, they must inform the Speaker of the Parliament about their formation.[100] A request to dissolve a parliamentary group must also be submitted to the Speaker of Parliament. This happens automatically as soon as a deputy leaves the parliamentary group and the number of members thus falls below the required eight, or if the party associated with the group has been dissolved. A member who belonged to a parliamentary group, but has left it is forbidden to join another parliamentary group or to found a new one. Whether a member can be forcibly expelled from his or her parliamentary group is not governed by law, nor is the relationship of the deputies to their parliamentary group. Strictly regulated, on the other hand, are the state funds to which the parliamentary groups are entitled. Section 33(2) of the Law on the State Great Khural stipulates that all parliamentary groups shall receive funds for their human resources, including all maintenance and operating costs. The secretariat of the parliamentary groups, which consists of half of the deputies or twelve if the parliamentary group has fewer than 23 deputies, is responsible for the organisation, policy development activities and financing of the parliamentary groups. The law does not specify whether donations to the parliamentary groups are permissible. The Parliamentary Budget Expenditure Subcommittee is responsible for monitoring and supervising the proper use of funds and expenditures of the parliamentary groups.

In addition to the Parliamentary Budget Expenditure Subcommittee, there are a number of parliamentary standing committees, including the Committee on Security and Foreign Policy, the Committee on Environment and Agriculture, the Committee on Legal Affairs and the Committee on Economic Affairs.[101] Furthermore, there are other subcommittees and temporary committees that parliamentarians may establish as needed.

96 If a deputy is caught "in the act" of committing a misdemeanour or felony, Parliament has only three days to discuss and decide whether to waive immunity.

97 Section 41 of the Law on the State Great Khural.

98 Article 29(1) of the Constitution of Mongolia.

99 Sections 15(1) and 22(12) of the Law on the State Great Khural.

100 Sentence 3 of Section 17(3) of the Law on the State Great Khural.

101 List of the current eleven parliamentary standing committees: security and foreign policy, environment and agriculture, education, culture, science and sports, ethics, innovation and e-policy, social policy, state building, budget, industrialisation policy, law, economy.

One-quarter of the deputies may propose the establishment of a temporary monitoring committee for the purpose of monitoring implementation of laws of public interest.[102] Parliamentary committees are important especially for the parliamentary minority.

A party, coalition or parliamentary group is considered a parliamentary minority if it consists of fewer than 39 deputies. Article 28 of the Constitution stipulates that Parliament must have standing committees and other committees, which must also include the parliamentary minority, which should actively participate in parliamentary decision-making through committee work. Section 8 of the Law on the State Great Khural stipulates that all deputies have equal rights in the committees and that all deputies must be a member of a standing committee, ensuring equal participation.[103] In the standing committees, the only real possibility for the parliamentary minority is to introduce alternative proposals and to make comments and bring motions.

The opposition party and parliamentary minority in Mongolia serve to monitor, scrutinise and control the political actions of the government and the parliamentary majority, as well as to increase political transparency. The current opposition party, the DP, actively participates in political debates and actively challenges draft legislation and policies, but its size prevents it from forming a real counterweight to the parliamentary majority. The parliamentary minority is authorised by law to participate in legislation on an equal footing, but because it currently only has eleven seats, it does not have the power to block legislation or other parliamentary decisions.[104] The only possibility is to question the government during the bi-weekly question time of the prime minister and thus obtain information on the annual budget, the country's economy or other socio-economic issues.

The unscheduled dissolution of Parliament is regulated by Section 36 of the Law on the State Great Khural. Only the president and the Parliament can initiate it. The president may dissolve Parliament in cases where Parliament has not appointed a prime minister within the prescribed 45 days after an election or has not appointed a new prime minister 30 days after the resignation of the old one. Parliament must then announce new elections within ten days and hold them within a further 60 days.

Parliament may dissolve itself if it considers itself unable to function and, according to its own assessment, cannot adequately fulfil its powers. The proposed dissolution must be debated in the plenary session and then decided by a two-thirds majority.

Political opposition in Mongolia – dangers and challenges

Currently, the greatest threats to the effective work and existence of the opposition in Mongolia are considered to be the prevailing disenchantment among the people with the parties and politics, as well as internal party power struggles and disagreements, which have encumbered the leading opposition party DP in particular in recent years. Also critical is the controversial constitutional amendment of 2019, which reduced the number of possible presidential terms from two to one and thus prevented the incumbent president from running again.

Particularly in light of the last presidential election, the opposition is facing several challenges and complains of a constitutional crisis to its detriment. Besides the presidential power over the National Security Council, the presidency in Mongolia is mainly ceremonial, though it also has a certain potential for power, especially in light of the current situation in which one party dominates the three most important branches of

102 Section 30 of the Law on the State Great Khural speaks of a temporary monitoring committee which will report its findings to the Parliament; other committees and sub-committees can be established by a deputy or deputies within the framework of the standing committees.

103 Currently, there are eleven deputies from the opposition DP party who are represented in the standing committees.

104 Laws are passed by a majority of the votes of the parliament, i.e. 39 votes.

government.[105] For the first time since the introduction of democracy in Mongolia in the 1990s, Khurelsukh, the former prime minister and presidential candidate of the MPP, has achieved a historic victory in the presidential election. In the past 30 years, there has never been a presidential candidate who has received a two-thirds majority of the votes cast. Despite the low voter turnout of only 52.69 %, which can be explained by the Covid-19 pandemic, Khurelsukh was able to obtain 68 % of the votes and from now on can use what is probably the most important right of the president, the right of veto in the legislative process.[106] The presidential election represented the culmination of six turbulent months in Mongolian politics. The 2021 political year began as early as January with the much-discussed resignation of Prime Minister Khurelsukh, which was officially explained by the uproar over a scandal related to the Covid-19 pandemic. However, the opposition repeatedly accused the MPP of using this scandal only as a pretext to provide the prime minister with a reason to resign, thus enabling his later candidacy for the presidency. The year remained turbulent after the MPP used its majority in Parliament to push through the aforementioned 2019 controversial constitutional amendment, which came into effect in 2020 and made it impossible for President Battulga to run for office again. President Battulga retaliated with his equally controversial decree banning the MPP, in which he accused the MPP of abuse of power and ties to the military.[107] In this decree, the President also accused the MPP and its chairman Khurelsukh of membership of the Mongolian Joint Military Union and thus strong military ties, as well as unconstitutionality of the party as a result. The decree further accused the MPP of denying the party-protected interests of its rank-and-file members, undermining the rule of law in the state and seizing state power by unconstitutional means. In support of these allegations, the President submitted eight sets of evidence from a total of 116 documents to the Supreme Court, including affidavits establishing the "Mongolian Joint Military Union".[108] To date, the Supreme Court has not responded to this decree, while the MPP called on the Mongolian people not to recognise the decree on the grounds of its illegality. Internationally, this decree was understood to mean that the President wanted to dissolve the MPP in order to protect Mongolia's sovereignty and democracy.[109] Furthermore, all 13 deputies of the DP went on an official hunger strike to draw attention to the MPP's abusive treatment of the three main central organs of the state, the Constitutional Court, the Supreme Court and the GEC. The opposition DP accused the MPP of making a grab for all-encompassing power and authority in the state, especially in the ongoing presidential election campaign, by seeking to fill the presidential office with its candidate as well. The fear of the MPP's absolute dominance and a resulting de-facto return to a one-party state under the MPP is acute. This development, which grants the

105 https://www.washingtonpost.com/world/mongolians-voting-for-president-amid-biggest-virus-outbreak/2021/06/09/59a38222-c8e9-11eb-8708-64991f2acf28_story.html, last accessed 16 June 2021.

106 https://www.washingtonpost.com/world/mongolians-voting-for-president-amid-biggest-virus-outbreak/2021/06/09/59a38222-c8e9-11eb-8708-64991f2acf28_story.html. The same figures are given for election result in the following two articles: https://thediplomat.com/2021/06/khurelsukh-cruises-to-victory-in-mongolian-presidential-race/ and https://www.reuters.com/world/asia-pacific/former-mongolian-prime-minister-khurelsukh-wins-presidency-2021-06-09/, last accessed 16 June 2021. The president's veto power is regulated in Article 33(1) of the Constitution of Mongolia.

107 https://thediplomat.com/2021/06/khurelsukh-cruises-to-victory-in-mongolian-presidential-race/, last accessed 16 June 2021. Presidential decree of 19 April 2021, appealing to the Supreme Court to dissolve the MPP for unconstitutional activities, see: https://verfassungsblog.de/the-price-of-limiting-power, last accessed 8 June 2021. See also: https://president.mn/en/2021/04/19/president-battulga-presents-his-ordinance-of-disbanding-mpp/, last accessed 8 June 2021.
The presidential decree dissolving the ruling party and related evidence were sent to the Supreme Court on 23 April 2021, available at: https://president.mn/en/2021/04/27/documents-regarding-disbanding-of-mpp-forwarded-to-state-supreme-court/ in English.

108 The presidential decree dissolving the ruling party and related evidence were sent to the Supreme Court on 23 April 2021, available at https://president.mn/en/2021/04/27/documents-regarding-disbanding-of-mpp-forwarded-to-state-supreme-court/ in English.

109 Mongolian President Takes Emergency Action to Protect Sovereignty and Democracy, PRDistribution.com, 20 April 2021, available at: https://www.prdistribution.com/news/mongolian-president-takes-emergency-action-to-protect-sovereignty-and-democracy.html and Globalnewswire.com, available at: https://www.globenewswire.com/news-release/2021/04/22/2215496/0/en/Mongolian-President-Takes-Emergency-Action-to-Protect-Sovereignty-and-Democracy.html.

MPP full control over Mongolian politics until the parliamentary elections in 2024, is seen by the opposition as a major threat to Mongolia's democracy.

Another major challenge for the opposition in Mongolia is the increased importance of social media in the political decision-making process. This was also demonstrated by the surprising second-place finish of the candidate of the still quite young NLP in the presidential election. The party can attribute its unexpected success of almost 20 % of the votes for its presidential candidate to a broad-based and successful election campaign in social media, which secured it many votes, especially from young people.[110] New social media thus demonstrably offers a new tool in the election campaign that should not be underestimated. While it can provide a freely and easily accessible space for differentiated expressions of opinion, as well as a new tool on the path to the greatest possible transparency, social media also provides space for never-before-seen opportunities for defamation. Wherever opportunities are opened up for the public presentation of political opinions and, above all, alternatives to the political "mainstream", doors are also opened to harsh, sometimes unfiltered criticism that infringes personality rights. Mongolia's political parties, some of which are deeply divided internally, use this opportunity for defamation and criticism in the election campaign in a targeted manner, sometimes with the help of paid Internet trolls, to discredit their political opponents in public.

Particularly against the backdrop of the prevailing party disenchantment among the people, such media mudslinging is of little help in regaining the already dwindling trust in the parties. Critics in Mongolia have long criticised a lack of ideological differences between the parties and the absence of a political alternative. Mongolian citizens are critical of the fact that Mongolia's party network, which was actually designed as a multi-party system, has developed over time into a de-facto two-party system in which a government is no longer conceivable without the participation of the MPP or the DP. This critical attitude is also reflected in a decline in party membership. Young people in particular have no confidence in the parties, nor can they imagine joining one. The reasons for this lie in the lack of divergence in content, as well as the fact that many of the young citizens can no longer identify with either of the two major parties. Another problem is the parties' strong dependence on their long-standing, financially strong members, whose large donations have put them in important positions and who now significantly influence the parties' financial means. Meanwhile, the reality of parties in Mongolia is that they are run internally more according to a top-to-bottom principle and less according to democratic guidelines. Intra-party democracy or intra-party opposition is almost non-existent in both major parties. Corruption and a lack of communication dominate the day-to-day affairs of the parties and sometimes lead to such strong disputes that it is evident to the public that the parties are internally at odds; in the case of the DP, proper participation in elections is even jeopardised.[111]

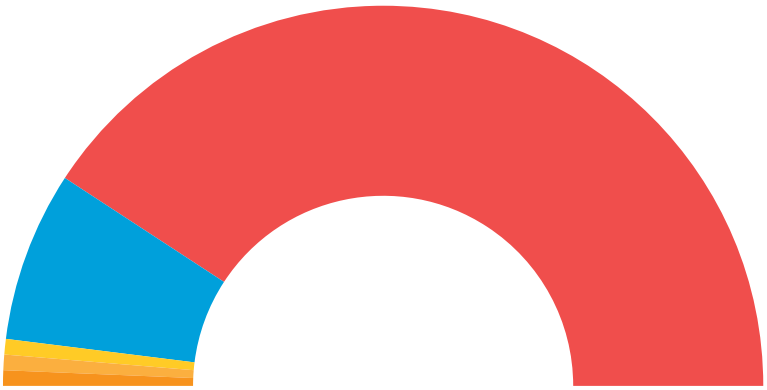
In light of the factors described above, the current development of the party landscape and multi-party democracy in Mongolia is already turbulent and in part unstable, and it was further impaired by the presidential election in the summer of 2021. The current political situation leaves the existence and significance of the political opposition in Mongolia facing further major obstacles in the years to come.

110 https://thediplomat.com/2021/06/khurelsukh-cruises-to-victory-in-mongolian-presidential-race/, last accessed 16 June 2021.

111 For example, since December 2020, the DP leadership has been arguing over who the real chairman of the party is, since both chairmen have the "party stamp" required to seal official documents, such as the application to register to compete in an election.

Parliamentary Election, 24. June 2020

Next Election: 2024



Our Coalition
8,10 %
seats 1

Independents
8,71 %
seats 1

Right Person Electorate Coalition
5,23 %
seats 1

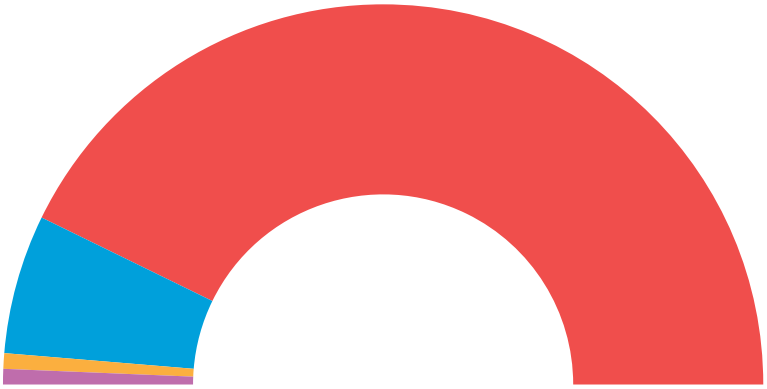
DP
24,49 %
seats 11

MVP
44,93 %
seats 62
Government

Parliamentary seats: 62 (Govt.) / 14 (Opp.)
Allocation of seats : 81,58 % (Govt.) / 18,42 % (Opp.)

source: https://ikon.mn/elections/2020.

Parliamentary Election, 29. June 2016



MPRP
8,00 %
seats 1

Independents
4,83 %
seats 1

DP
33,14 %
seats 9

MVP
45,12 %
seats 65
Government

Parliamentary seats: 65 (Govt.) / 11 (Opp.)
Allocation of seats : 85,53 % (Govt.) / 14,47 % (Opp.)

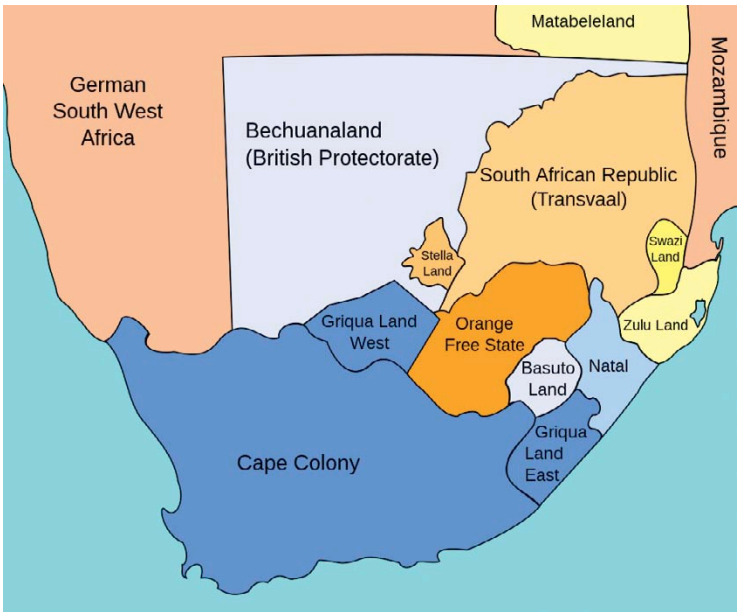
source: http://archive.ipu.org/parline-f/reports/1219.htm.

South Africa

DIRK KOTZÉ, HEIKE MERTEN

History and constitutional system

South Africa's eventful history has been shaped to a large extent by its European colonial masters. But South Africa's history did not begin with the arrival of European settlers. Archaeological finds around Johannesburg locate a "cradle of mankind" in today's South Africa.[112] This early history of South Africa, with its strong culture of various tribes and indigenous peoples, is fundamental to today's understanding of the state. South Africa's diversity originated here and is still clearly reflected today in the country's eleven official languages. This early chapter in South African history came to an end in 1652, when the Dutch established a supply station at the Cape of Good Hope. The era of colonisation began. The area around Cape Town became known as the Cape of Good Hope. From here began the settlement of the area that would later become South Africa. The British took over the Dutch bases in 1795 and again in 1802, and incorporated them into the British Empire. The natives were declared British subjects, chieftaincy was abolished, and English became the official language. With the introduction of freedom of the press, political life now slowly began to develop.[113] In 1853, the Cape Colony received limited representative self-government and a constitution approved by London. Parliament could not vote out the governor, who continued to exercise executive power, but it did have budgetary power.[114] All British subjects with property[115] and over 21 years of age were granted universal suffrage.[116] This census suffrage thus did not exclude coloured people in principle.[117] English law even explicitly provided for the equality of whites and free non-whites and prohibited the slave trade. For many slaves, however, this freedom meant a release into poverty. Paradoxically, the freeing of slaves promoted racial segregation. For the Boers, European-born cattle breeders in the Cape Colony, these reforms by the English went too far. They saw themselves deprived of their livelihood and migrated with their slaves in droves to the north and northeast to open up new grazing areas. Competition for grazing land between Boers and Xhosa grew, eventually resulting in a series of wars. Several independent agrarian Boer republics were formed, with racist white-only suffrage. The discovery of huge diamond and gold deposits radically changed the economic and social structure of the Boer republics, which until then had been remote and mainly used as farmland. This economic boom aroused the interest of Great Britain in the Boer Republics. War broke out between the Boer Republics and Great Britain, at the end of which Great Britain was victorious. The four British colonial territories of Cape Colony, Natal, Transvaal and Orange River Colony came into being, and



Map of South Africa in July 1885, showing British possessions and protectorates, the two Boer Republics (i.e. Transvaal or SAR, and Orange Free State), besides German South West Africa and Portuguese Mozambique, or Province of Mozambique at the time.

112 *Hagemann, Albrecht*, Kleine Geschichte Südafrikas, 4th edition, Munich 2018, p. 9.

113 *Marx, Christoph*, South Africa. Geschichte und Gegenwart, Stuttgart 2012, p. 84.

114 *Marx, Christoph*, South Africa. Geschichte und Gegenwart, Stuttgart 2012, p. 85.

115 A house worth 25 pounds or earning at least 50 pounds a year.

116 *Hagemann, Albrecht*, Kleine Geschichte Südafrikas, 4th edition, Munich 2018. p. 40.

117 *Marx, Christoph*, South Africa. Geschichte und Gegenwart, Stuttgart 2012, p. 85.

in 1908 they proposed at the level of their governments to form a common state. The Act to constitute the Union of South Africa was passed by the British Parliament on 20 September 1909 and finalised the formation of the Union of South Africa, which was still to be carried out.

On 31 May 1910, the Union of South Africa came into being, the first country to join the British Commonwealth. The four colonies now became the provinces: Cape Province, Natal, Transvaal and Orange Free State. Important elements of the union were a strong central government, legal equality between the English language and the Dutch language (Afrikaans only from 1925), and the retention of the respective right to vote in the four provinces. Thus, blacks had limited voting rights only in the Cape. The rivalry between the provinces for the seat of the capital resulted in the distribution of legislative, executive and judicial power among three provincial capitals, which is still the case today. Cape Town became the seat of Parliament, Pretoria the seat of government and Bloemfontein the seat of the Supreme Court. The British Crown was represented by a governor general. The first prime minister was former Boer general Louis Botha, representing the South African Party (SAP), which pursued a policy of reconciliation between the British and the Boers. He was followed by his party colleague Jan Christiaan Smuts, who ruled from 1919 to 1924. It took another 24 years for the country to gain full sovereignty with the Status of the Union Act in 1934, although it still belonged to the British Commonwealth.

The 1910s were also the time when South Africa's major political parties were formed. In 1910, the South African Party (SAP) and the South African Labour Party (LP) were founded. In 1912, lawyer Pixley ka Isaka Seme founded the South African Native National Congress, which would later become the African National Congress (ANC). Another important political party that would later play a leading role in shaping the country and its history was the National Party (NP), which was founded and licensed as a party in 1914 and won the 1948 general election – the beginning of the NP's reign that lasted until 1994, a period in which it established the apartheid state.

The first cabinet of the Union of South Africa in 1910 under the leadership of Prime Minister Louis Botha. In the back: J. B.M. Hertzog, Henry Burton, F. R. Moor, C. O'Grady Gubbins, Jan Smuts, H. C. Hull, F. S. Malan, David Graaff. In front: J. W. Sauer, Louis Botha, Abraham Fischer.

Apartheid was a system of state-regulated and legally imposed racial segregation under the authoritarian rule of South African-born whites, whose sole aim was to impose and maintain white supremacy in all spheres of the state, especially in the social, economic and, above all, political spheres.

During this time, South Africa finally became a republic in 1961. Due to the persistence of the apartheid regime and its racist laws and customs, this status was highly controversial internationally, eventually leading to South Africa's withdrawal from the Commonwealth. In the 1980s, severe international sanctions were imposed after the United Nations had classified the apartheid system, its laws and customs as crimes against humanity, thus providing the basis for apartheid's criminal liability under international law. During this period, the ANC, which increasingly saw itself as a black resistance party and was not afraid to use violence to draw attention to the abuses of the apartheid regime, was also banned in 1960 by the government, and its leader Nelson Mandela was imprisoned. As a result of severe sanctions and the ensuing economic crisis, as well as growing international pressure and continued black resistance, the apartheid regime began to crumble in the 1980s. It took four years to finally free South Africa from apartheid laws and customs and create a truly free South Africa, characterised by legal and economic equality for all citizens. 1994 was the year of the most fundamental political, social and legal changes, as it was the year in which free, democratic and general elections were held for the first time. These changes were enshrined in the 1996 Constitution, which came into force a year later. The South African people elected Nelson Mandela as the first democratically elected president, who would remain in office until 1999. His party, the ANC, remains the ruling party today and has provided the current president, Cyril Ramapho-

sa, since 2018. After the end of the apartheid system, the South African Constitutional Assembly drafted a Constitution that was strongly based on the German Basic Law. In South Africa, it was recognised from afar that the successful emergence of the Federal Republic of Germany would not have been possible without the stable foundation of the Basic Law. Therefore, advice was sought from experts in Germany.[118] The Constitution of the Republic of South Africa was adopted by the Constitutional Assembly on 8 May 1996, recognised by the country's Constitutional Court on 4 December of that year, and entered into force on 4 February 1997.

Statue of Nelson Mandela in Pretoria, South Africa

It establishes a presidential democracy with federal elements. The president is elected every five years by the National Assembly during its first session.[119] He/she is vested with far-reaching powers and authority, which are limited by elements of separation of powers. The nine provinces have their own parliaments and governments; however, they are less independent in political and financial matters than the German states.

The electoral system is not specified in the Constitution, but must be established by law. National and provincial elections are held according to the principle of proportional representation, which is based on rigid party lists. The municipal electoral system is one of mixed proportional representation. The most comprehensive account of the national and provincial electoral systems is found in Section 57A of the Electoral Act and Schedule 1A of the Act. Following a 2020 Constitutional Court ruling in the New Nation Movement case,[120] the electoral system at the national and provincial levels must be amended by Parliament within two years. In addition to party candidates, independent candidates must also be allowed.

Parliament is divided into two chambers. The National Assembly is composed of 400 deputies. The National Council of Provinces has 90 members; each of the nine provinces elects ten members, and each province has one vote. The National Council has the right to initiate legislation and the right to object to bills of the National Assembly that affect the affairs of the provinces. A mediation committee is provided for cases of conflict.

In both chambers, laws are generally passed by a simple majority. If this is lacking in one of the chambers, the joint majority of the votes of both chambers is required.

Jurisdiction is vested at the highest level in the Constitutional Court of South Africa. It consists of a presiding judge, his/her deputy and nine other judges, who are appointed by the country's president for a single term. The judges are selected by the Judicial Service Commission, which is staffed by independent members representing the different interest groups in the judicial sphere. The lowest court is the Magistrate's Court, followed by the High Court, followed by the Supreme Court of Appeal (SCA).

After the end of apartheid and the election of Nelson Mandela as president on 27 April 1994, South Africa was initially governed by a government of national unity consisting of the African National Congress (ANC), the National Party (NP) and the Inkatha Freedom Party (IFP). Since 1994, the government has been supported by a tripartite alliance of the ANC, the Communist Party (SACP) and the Congress of South African Trade Unions (COSATU).

118 https://www.dw.com/de/afrika-grundgesetz-als-vorbild/a-48844698, last accessed 19 May 2021.

119 *Kotzé, Dirk*, Electing the National President: The South African Approach and Its Implications for Presidentialism, *Politikon* 2019, https://doi.org/10.180/02589346.299.1678273.

120 *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* [2020] ZACC 11.

After the sixth free parliamentary elections in May 2019, the ANC continues to hold an absolute majority (57.5%) but lost votes (-4.65%).

The National Assembly re-elected Cyril Ramaphosa as president on 22 May 2019. He had already assumed the ANC presidency in December 2017 and also the office of national president on an interim basis in February 2018, replacing Jacob Zuma, who faced massive allegations of corruption. Ramaphosa promised to radically settle accounts with all forms of corruption and tackle social injustice. So far, however, he has been primarily concerned with keeping the two camps of the ANC together – those around Secretary General Magashule, who see posturing and job-shifting as legitimate, and those who seriously want a new beginning. However, he was recently forced to admit before the Zondo Commission of Inquiry, which is looking into corruption scandals during Jacob Zuma's presidency[121] that the ANC had failed to prevent corruption in the party. In May 2021, he became the first prominent party official to suspend ANC Secretary-General Magashule over corruption allegations.[122] Magashule continues to have many supporters, particularly in the Zuma camp of the party, so the suspension could further divide the ANC. However, many ANC supporters trust Ramaphosa to succeed in the upcoming election for party leader in late 2022 and national president in 2024. That secures a considerable number of positions in the public administration, which in a country with high unemployment, means advancement into the middle class. Ramaphosa's anti-corruption campaign is currently a good way to "neutralise" his opponents in strategic terms.[123] However, the price he has to pay is quite high. In order to have support in all camps of the party, Ramaphosa must also accept unpopular ministers. Jacob Zuma started serving a 15-month prison sentence on 8 July 2021. The reason for the imprisonment is not the conviction for the multitude of corruption and embezzlement scandals involving billions of dollars in which Zuma is involved, but his defiance of the Constitutional Court and the subordinate Commission of Inquiry.[124] While many South Africans celebrated the ex-head of state's imprisonment as a success for the country's rule of law, Zuma supporters took to the streets in protest. Massive riots broke out, resulting in numerous deaths. As a result of these riots, President Cyril Ramaphosa is reshuffling the cabinet[125] in the hope of winning new confidence.

The heads of government in eight of nine provinces are ANC members, with the exception of the Western Cape, where the Democratic Alliance (DA) holds an absolute majority.

National local elections were held in South Africa on 3 August 2016. Although the ANC was once again the strongest party by far with just under 54% of the vote, it suffered heavy losses (-8%) compared with the last local elections in 2011. It was followed by DA under the new chairman Mmusi Maimane with 27% (+3%) and the Economic Freedom Fighters with 8% (+8%). The ANC lost the mayoralties in four of the eight South African metropolises to the DA, including in the economic powerhouse Johannesburg, the capitals of Pretoria and Cape Town (here for the second time) and in Nelson Mandela Bay.

121 https://www.dw.com/de/die-zondo-kommission-w%C3%BChlt-sich-durchs-netz-der-korruption/a-50012345, last accessed 4 June 2021.

122 https://www.faz.net/aktuell/politik/ausland/korruption-in-suedafrika-ramaphosa-zieht-konsequenzen-17329173.html, last accessed 25 May 2021.

123 https://www.faz.net/aktuell/politik/ausland/korruption-in-suedafrika-ramaphosa-zieht-konsequenzen-17329173.html, last accessed 25 May 2021.

124 See also: https://www.kas.de/de/web/suedafrika/laenderberichte/detail/-/content/suedafrika-ex-praesident-zuma-in-beugehaft, last accessed 12 August 2021.

125 https://www.faz.net/aktuell/politik/ausland/proteste-mit-350-toten-kabinettsumbildung-in-suedafrika-17472783.html, last accessed 12 August 2021.

Current situation of the opposition

The current situation of the opposition in South Africa can be described as comparatively good. The V-Dem Institute at the University of Gothenburg describes South Africa as an electoral democracy. In the institute's Liberal Democracy Index, which also includes important aspects of free opposition, the country ranks 52nd out of 179 countries, with a score of 0.58/0.06.[126] South Africa thus falls among the top 20-30% of countries.

Opposition parties in South Africa have made significant gains in votes over the past decade, whereas support for the ANC has gradually declined. While the opposition was highly fragmented in the 2000s, it is currently more consolidated and dominated by three to four parties.

In South Africa, there is no blocking clause for entry into Parliament. This strong inclusivity of the South African Constitution and electoral law must be understood against the background of the country's apartheid history. In practice, this led to a fragmentation of the opposition – not necessarily desirable given the dominance of the ANC. As of 10 January 2019, 285 parties were registered with the IEC for national elections, 84 of which were newly formed. Forty-eight parties were eventually admitted to the National Assembly election on 8 May 2019. Fourteen parties entered the National Assembly. The ANC again received an absolute majority, albeit with significant losses in votes. The official opposition party was once again the Democratic Alliance (DA), which lost votes slightly, while the Economic Freedom Fighters (EFF) once again became the third strongest party. Eleven other opposition parties received less than ten percent of the vote. The opposition in South Africa is diverse and cannot be limited exclusively to political parties. It also includes strong elements of civil society, the media, NGOs and trade unions.

Legal framework of opposition work

1. Constitutional status

South Africa's Constitution does not contain a separate central provision that bundles the rights and duties of political parties or political associations. This is initially surprising, since the German Basic Law, with its separate article on political parties, served as the model for the South African Constitution. Political parties are necessary components of a parliamentary democracy. However, political parties are explicitly mentioned in the chapter on the Bill of Rights. Section 19 gives every South African citizen the right to form, join and campaign for a political party. These rights are initially framed as individual rights, but, in conjunction with the other fundamental political rights, they also operate as rights of political parties as an organisation. These rights are necessary for parties and their members, but also for all other opposition organisations, in order to be able to function meaningfully in a democratic environment. Particularly worthy of mention are freedom of association (Section 19), freedom of expression (Section 16), freedom of information (Section 32), freedom of assembly (Section 17), freedom of the press (Section 16) and equality (Section 9). Freedom of movement is guaranteed in Section 21. This freedom of movement also applies to political parties, thus allowing access to all areas. It becomes problematic in "no-go areas" where one party has a hegemonic presence and prevents any other party from entering that area. This is especially a problem during election campaigns. The Electoral Code of Conduct in the Electoral Act 73 of 1998 (Schedule 2) therefore expects each party and candidate to publicly declare that everyone has the right to "travel to and attend public meetings". However, this does not guarantee a constitutional right to assemble at any time.

126 Alizada, Nazifa / Cole, Rowan / Gastaldi, Lisa / Grahn, Sanda / Hellmeier, Sebastian / Kolvani, Palina / Lachapelle, Jean / Lührmann, Anna / Maerz, Seraphine F. / Pillai, Shreeya / Lindberg Staffan I., Autocratization Turns Viral. Democracy Report 2021, University of Gothenburg, V-Dem Institute.

2. Party law regulatory system

The constitutional requirements are set out in simple law for political parties in general and specifically with respect to their formation and organisational requirements in the Electoral Commission Act 51 of 1996, as amended on 31 January 2014,[127] and the Regulations for the Registration of Political Parties of 2004 (amended in 2008 and 2011) annexed to the Act.[128] The very incorporation of the political party regulations into the Electoral Commission Act makes it clear that parties are perceived in South Africa's democratic structure primarily as instruments for conducting elections. The important functions and general duties of political parties that go beyond this are therefore not further named or regulated in the law. Consequently, the law defines parties solely in terms of electoral participation.[129] However, the procedures set forth in the law make it clear that political parties are indirectly considered public bodies that contest elections ("parties contesting elections"). Election participation is thus not only the core function of parties, but also a constitutive element. Political parties that do not intend to participate in elections are therefore classified like social movements, community organisations or non-profit and non-governmental organisations. They are not regulated except for the purpose of tax registration or participation in municipal public participation processes.

a. Registration of political parties

The authority responsible for the legal recognition of political parties is the Electoral Commission of South Africa (IEC).[130] The IEC is an independent authority whose members are interviewed by a parliamentary committee in a public selection process and appointed by the national president. Public confidence in the IEC is high.[131] Parties must register with it. The procedure for registration first requires an application.[132] The application must state the official name, an identifying mark or symbol of the party and an abbreviation of the party name. The memorandum and articles of association must be submitted. A registration fee (ZAR 500, about EUR 30, for national and provincial parties and ZAR 200 for local parties) must be paid. The regulations for registration state that the charter must be signed by 500 registered voters (100 in the case of municipal parties). The requirements for registration are relatively modest and can be considered merely symbolic. All registered parties that are not represented in a legislative body must renew their registration annually through a simplified procedure.[133] The low requirements for registration result in a high number of registered parties.

An entry can only be rejected if a statutory ground for rejection applies.[134] The decision is initially made by the chief electoral officer. A ground for refusal exists, for example, if the proposed name, abbreviated name or distinguishing feature or symbol of a party is similar to those of a registered party, in which case it may deceive or confuse voters. A number of parties have been affected by this provision. The most recent case involves the ActionSA party of Herman Mashaba, who resigned as mayor of Johannesburg and a member of the Democratic Alliance. The IEC initially refused to register the party because its logo consisted of the colours of the national flag and the design resembled that of the Party of Action (POA). The party refused to change the logo and

127 https://www.elections.org.za/pw/Downloads/Documents-Laws-And-Regulations, last accessed 20 July 2021.

128 https://www.elections.org.za/pw/Downloads/Documents-Laws-And-Regulations, last accessed 20 July 2021.

129 Chapter 1, 1 (VI) "party" means any registered party, and includes any organisation or movement of a political nature which publicly supports or opposes the policy, candidates or cause of any registered party, or which propagates non-participation in any election.

130 https://www.elections.org.za/pw/, last accessed 6 October 2021.

131 Chapter 9 of the Constitution.

132 Chapter 15 of the Electoral Commission Act 51.

133 Chapter 15(6) of the Electoral Commission Act 51, Chapter 10 of the Regulations for the Registration of Political Parties.

134 Chapter 16 of the Electoral Commission Act 51.

Tshwane City Hall in Pretoria, South Africa.

appealed against the refused registration to the IEC,[135] which was denied. The party withdrew the subsequent appeal before the court's decision and changed its logo.[136] ActionSA has been registered with its new logo.

If a party's founding documents indicate that individuals will not be accepted as members or supporters because of their race, ethnicity or colour, party registration may also be denied.[137] This ground for refusal became relevant to the Black First Land First (BLF) party. BLF's Constitution only allowed black persons to be party members. The IEC refused to register the party. This was confirmed by the election court.[138] After an amendment to the statutes had removed this impediment,[139] the BLF was registered as a party.

The IEC also has the power to delete a party from the register.[140] The party can then no longer participate in elections, but can still continue as a social movement. As long as a party has representatives in Parliament, it cannot be removed from the register until the next election.

135 Chapter 16(2) of the Electoral Commission Act 51.

136 Mahlati, Zintle. Herman Mashaba's ActionSA registered as a political party. *IOL*. 13 December 2020, https://www.iol.co.za/news/politics/herman-mashabas-actionsa-registered-as-political-party-b55cdaaa-ae0b-4a2b-bcbd-fe414b4c0e68.

137 Chapter 16(1)(c)(ii) his of the Electoral Commission Act 51.

138 See Electoral Court press release available at https://www.elections.org.za/content/About-Us/News/Commission-upholds-African-Transformation-Movement-(ATM)-registration,-annuls-Black-First-Land-First-(BLF)-registration/, last accessed 15 June 2021; Electoral Court, Case Number: 005/2019 (14 May 2019); Davis, Rebecca. BLF officially deregistered as political party. *Daily Maverick*, 6 November 2019, https://www.dailymaverick.co.za/article/2019-11-06-end-of-an-error-blf-officially-deregistered-as-political-party/.

139 Nkosi, Bongani. IEC re-registers BLF after party amends bylaws. *The Star, IOL*, 25 November 2020, https://www.iol.co.za/the-star/news/iec-registers-blf-again-after-party-amends-constitution-b85dac0b-3f9a-418a-b547-5291a0008903.

140 Chapter 17 of the Electoral Commission Act 51; Chapters 14 and 15 of the Regulations for the Registration of Political Parties.

b. Internal organisation

For registration purposes, a party's statutes *"should, as far as possible"* contain the leadership structure and the procedure for its election, the decision-making process and the functions of its officers, the minimum requirements for membership, the party's internal disciplinary procedure and the requirements for audited financial statements.[141] There are currently no legal provisions on the specific structure of a party's internal organisation. Legal scholars are calling for greater regulation of internal party democracy.[142] The demand is derived from the need for citizen participation, as developed in the judgment of the Constitutional Court case of *"Doctors for Life"*,[143] and from the right to human dignity under Article 10 of the Constitution. Human dignity implies that every person has the same moral value and therefore must have the same opportunity to participate in party decisions.[144] The argument is based on the Ramakatsa/Magashule judgment of the Constitutional Court,[145] which affirms the right of party members to participate freely in party activities. This right should not only be included in party statutes. The court expressly urges Parliament to standardise minimum requirements for the protection of internal democratic participation in a "party law".[146]

The *Ramakatsa* case is one of several involving ANC members who have challenged decisions of the party's provincial conferences. In recent years, factional polarisation in the ANC has become a serious obstacle for the party. This applies both to provincial executive elections and to the internal nomination process for determining its candidates in the various elections. As a result of factionalisation within the party, new splinter parties emerged, such as the African Independent Congress. In many cases, they asserted their rights with the help of the courts. The election in Tlokwe in North-West Province is a well-known example. Independent candidates in a local election in Tlokwe insisted that they needed information from an up-to-date electoral roll in order to campaign meaningfully. The court found in their favour.[147]

The EFF is experiencing similar trends. The latest development is a case before the Supreme Court of Appeal in which Julius Malema appealed a High Court ruling in favour of a former senior EFF member and Member of Parliament. Thembinkosi Rawula resigned from the party after accusing the party leadership on Facebook of treating the party as their property, manipulating payments to service providers for their own benefit and engaging in corruption. In general, there is a lack of transparent internal financial accountability.[148] Similarly, it was reported that the EFF had the highest parliamentary turnover in terms of resignations and expulsions for the period 2014-2019. About 61% of its MPs left Parliament during this period, compared to 40% for the Inkatha Freedom Party and 24% for the ANC.[149] All of this points to a strong tendency in the EFF for members to question internal party practices without result. An autocratic leadership style causes most of them to leave.

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141 Chapter 2(2)(a-f) of the Regulations for the Registration of Political Parties of 2004.

142 De Vos, Pierre, It's my party (and I'll do what I want to)?: Internal party democracy and Section 19 of the South African Constitution, *South African Journal on Human Rights*, 2015, 31(1): 30-55.

143 *Doctors for Life International v. Speaker of the National Assembly* 2006 (6) SA 416 (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC) (17 August 2006).

144 De Vos, Pierre, It's my party (and I'll do what I want to)?: Internal party democracy and Section 19 of the South African Constitution, *South African Journal on Human Rights*, 2015, 31(1): 33.

145 *Ramakatsa v. Magashule* 2012 (CCT109/12) [2012] ZACC 31; 2013 (2) BCLR 202 (CC) (18 December 2012).

146 De Vos, Pierre, It's my party (and I'll do what I want to)?: Internal party democracy and Section 19 of the South African Constitution, *South African Journal on Human Rights*, 2015, 31(1): 30.

147 *Electoral Commission v Mhlope and Others* [2016] ZACC 15, although the court referred to Section 1(c) (i.e., the constitutional value of the rule of law) as the basis for its conclusion.

148 Maughan, Karyn. Malema drops R1m damages case against ex-EFF MP who said he confessed to getting VBS loot. *News24*, 25 February 2021, https://www.news24.com/news24/southafrica/news/malema-drops-r1m-damages-claim-against-ex-eff-mp-who-said-he-confessed-to-getting-vbs-loot-20210226.

149 Parliamentary Monitoring Group (PMG). MP & Committee Turnover, https://pmg.org.za/parliament-review/statistics/turnover.

c. Expulsion from a party

In addition to voluntary resignation from a party, it is also possible to expel party members from the party. Expulsion is governed exclusively by internal party procedures. The removal of party officials from their positions in a party and also the dismissal of party members as public, elected representatives are performed in the same way. To illustrate, the internal procedures of the two largest parties – the ANC and the Democratic Alliance (DA) – are explained below:

The ANC uses two party institutions to deal with member misconduct and expulsion from office or the party. In Rule 24 of its constitution,[150] the ANC established the Integrity Commission, while Rule 25 focuses on managing organisational discipline through disciplinary committees at the various levels.

With regard to disciplinary matters, Rule 25.17 establishes a list of 22 misconduct matters that fall within the jurisdiction of the disciplinary committees at the various levels. The National Disciplinary Committee or the National Disciplinary Appeals Committee may impose the following sanctions (Rule 25.21): fine, reprimand, payment of compensation, performance of useful duties, remedial action, suspension of membership, expulsion from the ANC, removal or suspension of officers, removal of public representatives from office or removal from the reserve list of candidates on the proportional representation list.

The Democratic Alliance, as the official opposition, takes a completely different approach to disciplinary cases and the suspension or expulsion of members. It has established the Federal Legal Commission (FLC) in its constitution[151] as the main party institution responsible for such matters. Provincial disciplinary committees are established by the provincial executive. Both the FLC and the provincial disciplinary committees must appoint panels of persons with legal expertise to hear cases. These panels have to adhere to the rules of natural justice (Section 10.5) in these hearings. The following sanctions may be imposed (Section 10.9): termination or temporary suspension of party membership, suspension from party offices, suspension of membership rights, fine, or the member shall perform service to the community or party for a specified period of time. More severe sanctions can only be recommended by a panel established by the FLC and not by the provincial panels, such as removal of the member from a public representative position.

The differences between the two parties are that the ANC has a more centralised approach, while the DA has delegated a great deal to its provincial structures. The FLC is involved in the more serious or high-profile cases. The ANC uses party committees for disciplinary hearings, whereas the DA uses panels that include a significant number of legal experts. Both parties assume the right to suspend or expel both members and public representatives, primarily because the parties view themselves as the central elements of South Africa's political system, rather than as individual public representatives and members of the executive branch.

The party's power in this area is relatively great and ensures a strict party line that hardly allows for any opposition within the party. The establishment of internal party procedures, which have been codified in the party statutes, counteracts arbitrary decisions by the party leadership, but cannot rule them out. Internal party and conclusive state legal protection against sanctions would facilitate the development of more internal party diversity.

150 Constitution of the African National Congress. As amended and adopted by the 54th National Conference, Nasrec, Johannesburg, 2017, https://anc1912.org.za/constitution-anc.

151 Democratic Alliance – Federal Constitution as adopted on 31 October 2020, https://www.da.org.za/why-the-da/constitution.

d. Funding of the parties

Public funding of political parties and public accountability for the source and use of private donations by political parties have been examined and critiqued in a number of scholarly publications in South Africa.[152] In 1997, the Act on the Public Funding of Represented Political Parties No. 103 of 1997 was enacted,[153] which provided for public funding of political parties represented in national and provincial parliaments. These funds were allocated proportionally by Parliament and administered by the IEC. These parliamentary funds were not sufficient for the parties. A large portion of their income came from private sources. The parties did not have to disclose these sources. Nor was there a ceiling on donations per donor. In view of this situation, the non-governmental organisation Institute for Democracy in South Africa (IDASA) sued the four most important political parties and the African National Congress in 2005 for disclosure of all donations. The lawsuit failed,[154] but the court identified an urgent need for legislative action on party donations.

In two other cases before the Constitutional Court, the non-governmental organisation My Vote Counts contended that legislation was needed to regulate the private financing of political parties. The first case, from 2015, was about the lack of such legislation,[155] while the second case, from 2018, challenged the Promotion of Access to Information Act (PAIA) 2 of 2000 as unconstitutional because it did not provide for parties to make information about their private sources publicly available.[156] The first case failed, but in the second case, part of the court's order read, "It is declared that information on the private financing of political parties and independent candidates is essential for the effective exercise of the right to make a political choice and participate in elections." The PAIA was also declared unconstitutional on the grounds that it did not provide for public access to party financing information. The Constitutional Court exerted considerable pressure on the legislature to provide for transparency in party donations. The legislature bowed to the pressure and adopted the new Political Party Funding Act in 2018. The Act's regulations on transparency and restrictions on donations took effect on 1 April 2021. The amended PAIA incorporated most of the disclosure aspects of the new Political Party Funding Act.

Party financing consists of two areas: public financing of political parties represented in national and provincial (but not local) parliaments and party revenues from private donations (cash and in-kind). The law does not distinguish between campaign financing and financing in non-election years.

Two funds have been established by the new Political Party Funding Act: the Represented Political Parties' Fund (which is largely a continuation of the fund established by the 1997 law) and the Multi-Party Democracy Fund (Section 3). The first fund is financed by Parliament, and public party financing is handled through it. The second fund is filled by private donations.

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152 *Butler, Anthony (ed.).* 2010. Paying for politics: party funding and political change in South Africa and the Global South. Auckland Park: Jacana Media; Kotzé, Dirk. 2004. Political party funding in the 2004 election", *Journal of African Elections*, 3(2), December: 27-46 (https://www.eisa.org.za/jae3-2.php); *Maphunye, Kealeboga J., Motubatse, Kgobalale N.*, 2019. Consequences of (un)regulated party funding in South Africa between 1994 and 2017, *The Journal of Transdisciplinary Research in Southern Africa*, 15(1), https://doi.org/10.4102/td.v15i1.557.

153 https://www.elections.org.za/pw/Downloads/Documents-Laws-And-Regulations, last accessed 20 July 2021.

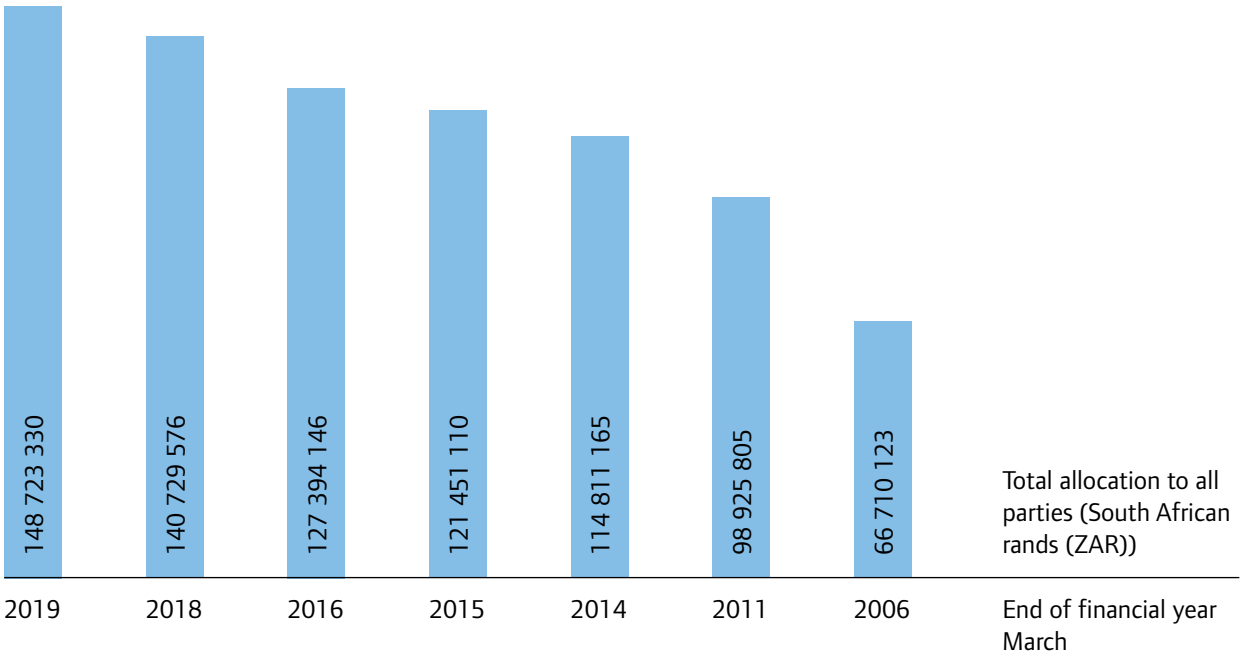
154 *Institute for Democracy in South Africa and others v African National Congress and others* (9828/03) [2005] ZAWCHC 30; 2005 (5) SA 39 (C) [2005] 3 All SA 45 (C) (20 April 2005).

155 *My Vote Counts NPC v Speaker of the National Assembly and Others* (CCT 121/14) [2015] ZACC 31 (30 September 2015).

156 *My Vote Counts NPC v Minister of Justice and Correctional Services and Another* (CCT 249/17) [2018] ZACC 17; 2018 BCLR 893 (CC); 2018 (5) SA 380 (CC) (21 June 2018).

The total amount of the two funds is distributed among all represented parties according to a predetermined key. One-third (33.3%) is distributed equally to all parties holding seats in the National Assembly or a provincial legislature. Two-thirds (66.6%) is distributed proportionally to the seats held by a political party in the National Assembly or provincial legislatures.

Public funding by Parliament of political parties (managed by the IEC)



Sources: Annual reports prepared by the IEC: Represented Political Parties' Fund Annual Report, https://www.elections.org.za/pw/Downloads/Documents-Political-Party-Funding

The donation fund may not accept donations from organs of the state, state-owned enterprises and foreign governments. Both funds are administered by the IEC. Just two months after its launch, the Multi-Party Democracy Fund is already under scrutiny. ActionSA claims that the IEC is in violation of its constitutional obligations with regard to the fund. It accuses the commission of actively collecting funds for the 14 political parties in the National Assembly and excluding political parties like ActionSA that cannot be represented until after the 2024 national elections.[157]

Parties are still entitled to accept direct donations. Donors therefore have two basic options for donating to a party: firstly, directly to a specific political party or, secondly, generally for political parties to the Multi-Party Democracy Fund. Donations to members of political parties are always classified as party donations.[158] Since it is not possible to run for office independently of a political party, it is consequently currently not possible to donate exclusively to candidates at the national and provincial levels. Following a ruling by the Constitutional Court, independent individual candidates at the national and provincial level must be permitted in the 2024 elections. A donation regulation for independent candidates is then required here.

157 https://www.sabcnews.com/sabcnews/actionsa-accuses-the-iec-of-soliciting-donations-for-political-parties/, last accessed 12 August 2021.

158 Section 10 of the Political Party Funding Act 6 of 2018 (prohibiting direct donations to party members).

A ban on donations applies under Section 8 of the Act to donations in cash or in kind from foreign governments or government agencies, from foreign persons or entities, from South African state organs or state-owned enterprises and from proceeds of crime. The cap on donations is ZAR 15 million per person per fiscal year.

Section 8(4) specifies that foreign donations are permissible, by way of exception, if they are used for the education or training of members of a political party or for the development of a party's policies.

Disclosure of the origin and size of private donations to political parties is one of the main objectives of the new legislation. Each party must appoint an officer as an accounting officer under this law. The accounting officer must prepare two statements: one of money received from the two funds and how it is used by the party, and another of all private donations over ZAR 100,000, party membership fees, levies by its public representatives or any private funding. These statements must be submitted annually to the party's auditor. At the end of the process, the party's accounting officer must submit the auditor's opinion and the audited financial statements to the IEC. The IEC must report annually to Parliament on all party financial statements. The Auditor General also has the right to audit each of these steps established in the law.

This new legal regulation did not come into force until the beginning of April 2021. It is seen as a major change in the way political parties operate. It remains to be seen how transparent the parties' income, especially donations, will actually be. It is suspected that the parties' income will fall significantly.

e. Prohibition of party activities

Political parties are not treated as a separate category of organisation in South Africa. Therefore, there is also no special procedure for banning parties. The legal restrictions that apply to political parties always apply to legal entities in general. Article 36 of the Constitution states that a lawful restriction can only be imposed by a law of general application, to the "extent that the restriction is reasonable and justified in an open and democratic society based on human dignity, equality and freedom". The restriction must take into account relevant factors such as "the nature of the right, the importance of the purpose of the restriction, the nature and extent of the restriction, the relationship between the restriction and its purpose, and less restrictive means of achieving the purpose". Restrictions on activities of political parties are thus possible under the Constitution only to the extent that they are possible against citizens or legal persons.

Of particular importance to political parties and their members is the constitutional right to freedom of expression (Article 16) and "the right to assemble *peaceably and unarmed*,[159] to demonstrate [...]" (Article 17). The right to assemble is used politically by parties and party officials in South Africa. In 2020, EFF party leader Julius Malema was charged with incitement to civil disobedience under the Riotous Assemblies Act of 1956. He had called for occupying private land. He invoked his right to free speech. The Constitutional Court concluded that the provision of the Act used in the prosecution of Malema was unconstitutional.[160] This ruling prevented restrictions on the activities of political parties.

The ban on hate speech is another area of possible restriction on the activities of political parties in South Africa. The constitutional right to freedom of expression competes here with human dignity and the right to equality. The EFF and BLF have been involved in a number of court cases accusing them of hate speech. In 2011, for example, Julius Malema was sued in the Equality Court by Afri-Forum for using or chanting certain words about killing farmers or Afrikaners at several public events in March 2010. Section 10 of the Equality Court Act describes hate speech as "publishing, propagating, advocating or communicating words against a person based on one or more of the

159 Own emphasis.

160 *EFF and Another v Minister of Justice and Correctional Services and Another* (CCT 201/19) [2020] ZACC 25; 2021 BLCR 118 (CC) (27 November 2020); Allsop, Geoffrey. Apartheid-era crimes of sedition declared unconstitutional. *Daily Maverick*, 30 November 2020, https://www.dailymaverick.co.za/article/2020-11-30-apartheid-era-crime-of-incitement-declared-unconstitutional/.

prohibited grounds that could reasonably be construed to show a clear intent to (a) be hurtful, (b) be harmful or incite harm, (c) promote or propagate hatred". The court concluded that Malema's use of these words and singing of the songs qualified as hate speech.[161] A similar case was heard by the Equality Court in May 2019. The BLF and its leader, Andile Mngxitama, were accused of hate speech by the South African Human Rights Commission, following death threats against white people. The court also classified this statement as hate speech.[162] In December 2019, the IEC warned BLF about statements on its website and in public that could be classified as hate speech. This led to speculation in the media that the IEC might cancel BLF's registration,[163] but this did not happen.

In summary, legal restrictions on the activities of political parties are rare in South Africa. Parties cannot be banned or excluded from political participation under the Constitution.

Elective regulatory system

The electoral rules are embodied in three Acts of Parliament: the Electoral Act, 13 of 1998; the Electoral Commission Act, 51 of 1996 and the Local Government: Municipal Electoral Act, 27 of 2000. Their implementation is supported by the Regulations to the Acts. These regulations have been amended periodically, and the latest general amendment is the Electoral Acts Amendment Act of 2021. The Electoral Act concerns voter registration, the electoral roll, the calling of an election and its preparation, rules for the day of the election, election administration, such as polling stations, election materials and accreditation of election observers. General provisions focus on prohibited conduct during elections (Chapter 7, Part 1), enforcement of election regulations (Sections 95-96) and prohibition of certain political activities (Section 108), strikes and lockouts (Section 112) and prevention of publication of exit polls (Section 109).

South African registered political parties must register with the IEC in order to participate in elections. However, registration does not automatically qualify a party to participate in an election. Section 26 of the Electoral Act states that a party may qualify to participate in an election only if it is a registered party and has filed a list of candidates as per Section 27. Section 27 provides that a party must file a candidate list with the Chief Election Officer before the specified deadline.[164] The candidate list must be accompanied by a declaration of commitment by the party, its candidates and representatives to abide by the Code of Conduct. A self-commitment of each candidate in this regard must also be attached. A statement by the party's authorised representative that each candidate may run on the list and an acceptance of the nomination by each candidate must be attached. Finally, a deposit must be paid. Individual deposits must be paid by a party for each provincial election (ZAR 45,000 per province) and for the national election (ZAR 200,000). Thus, participation in all national and provincial elections costs a party ZAR 605,000 (around EUR 33,600). The deposit is refunded if the party enters Parliament with at least one representative.

Candidates for national and provincial elections are nominated by their political parties. Candidate nomination requirements are set out in the Electoral Act and, for members of the National Assembly, in the Constitution also. A candidate for membership in the National Assembly must be eligible to vote under Section 47(1) of the Constitution.

161 *Afri-forum and others v Malema and others* (20968/2010) [2011] ZAEQC 2; 2011 (6) SA 240 (EqC); [2011] 4 All SA 293 (EqC); 2011 (12) BCLR 1289 (EqC) (12 September 2011).

162 Anon. Court deems BLF slogan hate speech, but BLF refuses to apologise, *City Press*, 6 May 2019, https://www.news24.com/citypress/News/court-rules-blf-slogan-is-hate-speech-but-blf-refuses-to-apologise-20190506.

163 South African Human Rights Commission. IEC: BLF to cease or desist hate speech, https://www.sahrc.org.za/index.php/sahrc-media/news/item/1738-iec-blf-to-refrain-from-hate-speech-or-be-deregistered.

164 A case where a party (the NFP) failed to meet the deadline in the 2016 local election is: *National Freedom Party v Electoral Commission and Another* (006/2016 EC) [2016] ZAEC 2 (5 July 2016).

Participation in all national and provincial elections costs a party ZAR 605,000.

This means he/she must be a South African citizen, at least 18 years of age and not disqualified from standing for election. Section 47(1)(a-e) provides that the following persons may not be a candidate: 1) anyone who has been appointed by or is in the service of the state and receives remuneration for doing so, 2) anyone who is a member of the NCOP or a provincial or local parliament, 3) an unrehabilitated insolvent, 4) anyone who has been declared of unsound mind, 5) anyone who has been convicted of an offence and sentenced to imprisonment for more than twelve months without the possibility of a fine. The exclusion expires five years after the completion of the sentence (Section 47(1)(e)). Subsection (e) does not apply to the period before the Constitution came into force in 1997, mainly to cover persons convicted on political grounds. This applied to many ANC members, but also to members of other parties.

Nominations of candidates at the national and provincial levels are made in accordance with the Electoral Act (Section 27). If the party's nominations do not comply with Section 27, the IEC shall give the party the opportunity to correct the problems, which includes the possibility of substituting a candidate or rearranging the names on the lists. Any person may object to a candidate under Section 30 of the Election Code on the grounds that the candidate is not qualified to run in the election, or that there is no acceptance of the nomination by the candidate, or that there is no signed commitment by the candidate to comply with the Code. The IEC must rule on the appeal and the candidate or his/her party may appeal against the decision to the Electoral Court.

The South African Political Party Funding Act does not distinguish between party financing and campaign financing.

Legal role of (opposition) parties in Parliament

The South African parliamentary system does not recognise factions in the true sense of the word. This is not part of the parliamentary tradition. Although it is a multi-party system, Parliament maintains a binary character of government and opposition. The president is not a Member of Parliament, but the deputy president is, and he/she also serves as the head of government business in Parliament (Article 91(4) of the Constitution). The leader of the opposition is officially recognised by the Constitution (Article 57(2)(d)), but without specific powers or duties.

In accordance with the principles of separation of powers, Parliament is independent of the government (the executive). However, the Westminster legacy resulted in an overlap of cabinet members with Members of Parliament. Parliament has almost exclusively the right of autonomous self-organisation, except in the case provided for in Article 42(5) of the Constitution: "The President may at any time summon Parliament to meet in extraordinary session for the purpose of dealing with special business." An example of this is the joint session of the two chambers called annually in February for the State of the Nation Address (SONA).

The relationship between MPs and their parties is very complex and varies from party to party. Many factors determine this relationship. One of them is the status of a party. The relationship between the ruling party and its MPs is much more symbiotic than between minority parties and their MPs. The risk of a no-confidence motion against the government is always a threat, requiring more discipline and coherence in the ruling party. The electoral system in South Africa also contributes to this strong coexistence. Parliamentarians depend on the support of their party for their political careers. There are no independent-minded backbenchers in the South African Parliament, and the electoral system has not allowed for independent MPs until now. This could change with the 2024 general election, when the ruling obtained by the New Nation Movement must be implemented. Parliamentary caucuses and party whips provide strong internal discipline among party members. An important example of factional discipline in the ANC being challenged was when parties approached the Constitutional Court to convince the Speaker of Parliament that she had the authority to determine whether a secret ballot could be held on one of the no-confidence motions against President Zuma. The consequence was that, as a result of the secret ballot, a significant number of ANC parliamentarians voted against the position of the caucus and in favour of the motion.

The rights of Members of Parliament are comprehensively regulated in South Africa.[165] The position of parliamentarians is directly enshrined in the Constitution. Articles 58 and 71 of the Constitution state that all Members of Parliament have freedom of speech in both Houses of Parliament and its committees, but subject to the internal rules and orders of Parliament. Their immunity means that they are not liable to civil or criminal prosecution, arrest, imprisonment or damages for anything they have said or disclosed or for evidence they have presented in any House of Parliament or its committees. Other privileges and immunities may be prescribed in national legislation. Immunity applies only to a Member's activities in Parliament and is not a general immunity that applies outside Parliament. It does not imply general immunity from criminal or civil prosecution in matters unrelated to parliamentary duties. The President, although not a Member of Parliament, enjoys freedom of speech in Parliament and is likewise not immune from prosecution in matters outside Parliament.

These powers and privileges are not absolute. Sections 7 and 8 of the Powers, Privileges and Immunities of Parliamentary and Provincial Legislatures Act 4 specify prohibited acts and acts of undue influence. Under that legislation, MPs are not allowed to

165 See, for example, the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 4 of 2004; the Code of Conduct and Disclosure of Members' Interests for Members of the Assembly and Permanent Council; the Ethics of Executive Members Act, 82 of 1998; and the Rules of Procedure of the National Assembly, 1999 (and subsequent editions), see: https://www.gov.za/documents/powers-privileges-and-immunities-parliaments-and-provincial-legislatures-act, last accessed 20 July 2021.

commit five types of prohibited acts, as follows: Unlawfully interfering with the activities of any part of Parliament or an MP; threatening or obstructing an MP while attending or leaving a session of Parliament; assaulting or threatening an MP because of his or her conduct in Parliament; refusing to comply with an order of an authorised person (regarding an assembly of persons or the possession of an object, including a firearm) in the parliamentary area; and causing or participating in a disturbance in the parliamentary area. The last point has been controversial since the EFF's actions in the National Assembly to disrupt meetings attended by President Jacob Zuma. The disruptions were prompted by a Public Protector report on Jacob Zuma's private residence in Nkandla, which alleged that millions in public funds had been illegally spent on its expansion. The EFF demanded in Parliament that Zuma pay the money back to the state. They disrupted several of Zuma's State of the Nation speeches and were forcibly removed from the chamber by parliamentary security guards or police officers. Following parliamentary disciplinary hearings, sanctions were imposed on EFF members in 2014 and 2021. In connection with this matter, the Western Cape High Court[166] had to rule on whether the amended rules of the National Assembly allow for MPs to be removed (forcibly) from Parliament on the instructions of the Speaker. Under the rule, the Member in question was also automatically suspended and prohibited from entering the parliamentary premises. The EFF petitioned to have the rule declared unconstitutional. It failed, except for the finding that the automatic suspension is unconstitutional.

Parliament has the power under the Powers, Privileges and Immunities Act to take disciplinary action against a Member accused of contempt of Parliament. Contempt of Parliament is defined as transgressions such as prohibited acts (Section 7), undue influence (Section 8) or unauthorised publications (Section 19). Sanctions may include a fine, an apology, a reprimand or a suspension for a period not exceeding 30 days. Suspension may be imposed under Section 12(9) only if a member is guilty of serious and repeated contempt and the other sanctions are not sufficient.

It should be emphasised that Section 12(12) of the Act expressly states that "except as provided in the Constitution, a House shall not have the power to terminate the membership of a Member in the House". Article 47(3) of the Constitution provides for three possible grounds on which a Member may lose his/her membership. None of them are disciplinary grounds. Loss of mandate is provided for only in cases where a Member loses eligibility (such as an unrehabilitated insolvent, a convicted person or a person declared of unsound mind), he/she is absent from the National Assembly without permission under conditions prescribed by the Rules of the National Assembly or he/she loses membership in the party that nominated him/her to Parliament.

Parliamentarians receive a monthly salary, as well as benefits such as membership or the parliamentary pension fund and medical care and transportation privileges. Some of them also live in a parliamentary housing development in Cape Town called Acacia Park. They have the right to continue their professional activities when time permits, as they are involved in parliamentary activities most of the year in Cape Town. It is desirable for parliamentarians to continue their professions so that they do not become overly dependent on parliamentary income, making them reluctant to give up their mandate. This excludes the categories of employment mentioned in the Constitution in Article 47(1)(a) for those who are employed by the state and are remunerated for it.

Members of Parliament may accept donations for their political activities. The provisions of the Political Party Funding Act apply to these donations, in particular Section 10(1): "No person or institution may make a donation to a member of a political party that is not intended for party-political purposes." Thus, donations to Members of Parliament are always party donations. Similar considerations motivated Section 8(2) of the Powers, Privileges and Immunities Act, which prohibits undue influence through financial means. Parliamentarians are also bound by the Code of Ethical Conduct and Disclosure of Parliamentary Interests, which requires them to disclose their material interests annually to avoid conflicts of interest in their parliamentary duties.

166 *Economic Freedom Fighters v Speaker of the National Assembly; Malema and Another v Speaker of the National Assembly of the Republic of South Africa* (14667/2015; 17666/2015) [2016] ZAWCHC 210 (14 December 2016).

Political opposition in South Africa – dangers and challenges

The activities of political parties and opposition parties in South Africa are comprehensively regulated by law. The legal framework is largely observed and strictly enforced by the courts and other public authorities. However, political parties have a natural inclination to resort to the use of their power, especially majority parties, while opposition parties rely more on the legal/judicial option. The interaction between these two options defines the partisan dimension of South African politics.

In the relationship between written law and other rules governing political parties, de-jure rules determine formal relationships and procedures within and between parties. Other factors are not defined or regulated by law, such as the internal power dynamics within parties, the role of party factions, provincialism in parties, the role that leaders play in parties or the way that governing parties shape the relationship between themselves and the state. Leadership succession is a good example of how formal rules and party traditions can operate at different levels. The ANC constitution, for example, stipulates that the party president must be elected by a national conference, and the president's term of office is not limited. The national president's term, on the other hand, is limited to two terms by the national Constitution. As a result, in practice, the ANC president has not been elected for more than two terms since 1994. The ANC tradition is that the deputy president always becomes the next president. The DA, as the official opposition, does not have the same tradition, and its federal leader could come from any position in the party. The current leader, John Steenhuizen, is the party's former parliamentary whip. His predecessors, Mmusi Maimane and Helen Zille, took different paths. Zille was mayor of Cape Town at the time of her election, and Maimane was the party's parliamentary leader before his election.

The current party system, or structure, is a combination of multi-party and single-dominant-party systems. In the last parliamentary election in 2019, a total of 48 parties registered to participate. Fourteen of them managed to secure parliamentary seats. Three of them (ANC, DA and EFF) can be considered the main parties, while two others (FF+ and the IFP) have at least a significant presence. The others are small. The dominance of the ANC (230 seats compared to the DA's 84) justifies speaking of a single dominant party, but ANC support has been declining since 2011. Party membership figures are not officially disclosed, but the ANC claims it had 1.4 million members in 2020.[167] An indication that membership and party support do not correlate is the fact that the EFF recorded one million Twitter followers in March 2020, followed by the ANC with 768,000 and the DA with 595,600,[168] while the DA received twice as many votes as the EFF in the 2019 election and the ANC received ten million votes.

The parties develop according to different trends, with some being the result of expulsions from or splits within parties. In the ANC, some individuals were expelled and formed their own parties, such as the UDM (1996) and the EFF (2013). Others were in conflict with the ANC and resigned to form new parties, such as the AIC (2005), COPE (2008) and the ATM (2019). The NFP broke away from the IFP, while the BLF founders were expelled from the EFF in 2015 and subsequently formed their own party. The DA is a combination of two currents. Some of its members also left the party to form their own parties, such as Herman Mashaba (ActionSA) and Mmusi Maimane (One South Africa). On the other hand, the DA is a product of five mergers since 1959, and most of the small parties are formed before elections. Some of them are based only in one province or even in a particular region within a province only. Rarely do they survive more than one election. Financial constraints are a common problem. Their media exposure is too low. In most cases, they are unable to reach out and unite various interests in society;

167 Haffajee, Ferial. Ace boosts ANC membership to 1.4-million – highest ever, *Daily Maverick*, 4 December 2020, https://dailymaverick.co.za/article/2020-12-04-ace-boosts-anc-membership-to-14-million-highest-ever.

168 Mtshali, Samkelo. EFF becomes first South African political party to reach 1 million Twitter followers. *IOL*, 25 March 2020, https://www.iol.co.za/news/politics/eff-becomes-first-south-african-political-party-to-reach-1-million-twitter-followers-45532652.

instead, they focus on excessively narrow niche areas. The majority of parties in South Africa participate only in municipal elections. Some of them are residents' or taxpayers' associations or focus on local issues. They are sometimes instrumental in forming local coalition governments in small towns. Opposition parties tend to be concentrated in only one or two provinces, which explains why their growth potential is limited. The DA is concentrated in Gauteng and the Western Cape; the EFF receives the majority of its votes in Gauteng, but is also present in the North West and Limpopo provinces; the IFP is concentrated in KwaZulu-Natal; the UDM in the Eastern Cape; and the FF+ garners the majority of its votes in Gauteng. Over the past decade, opposition parties in South Africa have increased their overall support, while that of the ANC has gradually declined. While the opposition was highly fragmented in the 2000s, it is currently more consolidated and dominated by three to four parties. All other parties account for less than 10 % of the vote.

Social media is used by most parties, but it does not dominate party or political communications. The classic mainstream media are still more influential. Radio has the largest reach in the country, especially in rural areas. The government does not use social media against other parties. It uses websites, radio and television extensively for its communications. Social media is used by individual politicians and by the urban population, but it is not as dominant and influential as in other countries.

The opposition in South Africa is diverse and cannot be limited to the political parties. It also includes strong elements of civil society, the media, NGOs and trade unions. Lack of financial security and the constant struggle for viability are certainly a major problem facing the opposition in South Africa. Only political parties that have already been successful in an election receive state funding. All other groups must finance their work with other contributions and private donations.

Election to the National Assembly, 08. May 2019

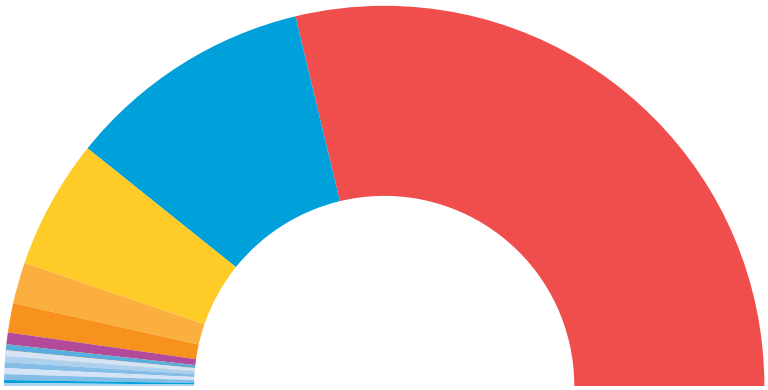
Next Election: 2024

DA
20,77 %
seats 84

EFF
10,79 %
seats 44

IFP
3,38 %
seats 14

VF PLUS
2,38 %
seats 10



ANC
57,50 %
seats 230
Government

ACDP	UDM	ATM	GOOD	NFP	AIC	COPE	PAC	ALJAMA	Others
0,84 %	0,45 %	0,44 %	0,40 %	0,35 %	0,28 %	0,27 %	0,19 %	0,18 %	1,78 %
seats 4	seats 2	seats 2	seats 2	seats 2	seats 2	seats 2	seats 1	seats 1	seats 0

Parliamentary seats: 230 (Govt.) / 170 (Opp.)
Allocation of seats: 57,5 % (Govt.) / 42,5 % (Opp.)

https://www.kas.de/documents/261596/261645/L%C3%A4nderbericht+Wahlen+S%C3%BCdafrika.pdf/a9772b8f-392f-640c-b27a-6b58f1e1b19f?t=1558596420740.

Election to the National Assembly, 07. May 2014

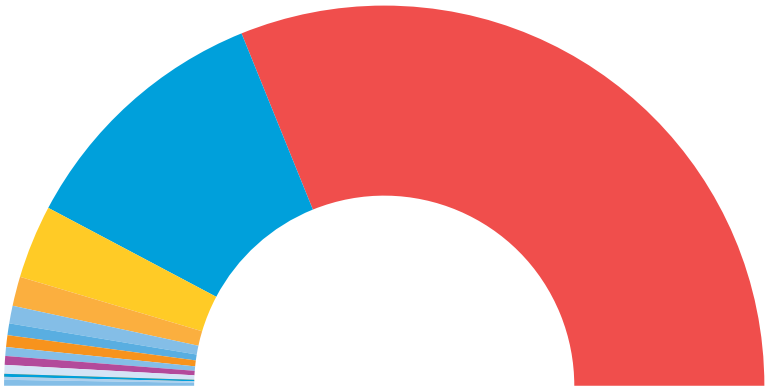
Election Turnout: 73,4 %

DA
22,23
seats 89

EFF
6,35 %
seats 25

IFP
2,40 %
seats 10

NFP
1,57 %
seats 6



ANC
62,15 %
seats 249
Government

UDM	VF PLUS	COPE	ACDP	AIC	PAC	APC	Agang SA	Others
1,0 %	0,90 %	0,67 %	0,57 %	0,53 %	0,21 %	0,17 %	0,28 %	2,73 %
seats 4	seats 4	seats 3	seats 3	seats 3	seats 1	seats 1	seats 2	seats 0

Parliamentary seats: 249 (Govt.) / 151 (Opp.)
Allocation of seats: 62,25 % (Govt.) / 37,75 % (Opp.)

https://www.kas.de/documents/261596/261645/L%C3%A4nderbericht+Wahlen+S%C3%BCdafrika.pdf/a9772b8f-392f-640c-b27a-6b58f1e1b19f?t=1558596420740.

Tanzania

CONSOLATA RAPHAEL, SOPHIE SCHÖNBERGER

History and constitutional system

In its present political form, Tanzania was founded in 1964 as the United Republic of Tanganyika and Zanzibar, which shortly thereafter changed its name to the United Republic of Tanzania.[169] Both parts of the country, Tanganyika and Zanzibar, had been released from British colonial rule a few years earlier. While Zanzibar had already been under British rule since the end of the 19th century, Tanganyika initially belonged to the German colonial empire as part of German East Africa. After World War I, this area was also placed under British rule.[170]

The first president of the new state was Julius Nyerere, who had previously been the first prime minister of independent Tanganyika and had played a decisive political role in gaining the country's independence.[171] He was also the founder and chairman of the Tanganyika African National Union (TANU). Together with the Afro-Shirazi Party (ASP), which operated solely in the territory of Zanzibar, these two parties were the two regional single parties of the one-party system enshrined in the Constitution from 1965.[172] In 1977, they merged to form Chama Cha Mapinduzi (CCM), of which Nyerere also became chairman. He remained party chairman even after his resignation from the presidency in 1985. In 1990, he handed over the chairmanship to his successor in office, Ali Hassan Mwinyi.[173]

From the mid-1960s onward, Tanzania's legal and political structures were shaped by the guiding principle of "Ujamaa" (Swahili for "family ties"), a social model that became the epitome of African socialism. Due to the country's growing economic difficulties, followed by global political developments, in particular the collapse of the Soviet Union, this model came under increasing pressure. In addition to economic reforms that began to emerge in the mid-1980s, cautious political reforms also got underway in the 1990s. In 1992, for example, the ban on parties beyond the single party CCM was lifted. The first democratic elections under the conditions of a multi-party system followed three years later.[174] The CCM remained the dominant political force, however, and remains so today.

Today, Tanzania is a presidential republic under the 1977 Constitution, which is still in force.[175] The president, who together with the vice-president is directly elected by the people every five years, is head of state and at the same time head of government and determines all important questions of policy affecting the entire state.[176] He/she

169 *Katundu/Kumburu*, Tanzania's Constitutional Reform Predicament and the survival of the Tanganyika and Zanzibar Union, 2015, p. 104 (105); *Vilby*, Independent? Tanzania's Challenges since Uhuru, 2007, p. 206.

170 "Following the defeat of Imperial Germany in World War I, the territory of Tanganyika came to be administered by Great Britain", see: *Gewald*, Colonial Warfare: Hehe and World War One, the wars besides Maji in south-western Tanzania, 2005, pp. 6 and 9.

171 *Vilby*, Independent? Tanzania's Challenges since Uhuru, 2007, p. 207; *Shayo*, Parties and political development in Tanzania, 2005, pp. 7 and 8.

172 *Vilby*, Independent? Tanzania's Challenges since Uhuru, 2007, p. 206.

173 *Vilby*, Independent? Tanzania's Challenges since Uhuru, 2007, p. 209.

174 1992 marked the introduction of the first multi-party system. That led to the formation of several "new" political parties, followed by several multi-party elections; see: *Vilby*, Independent? Tanzania's Challenges since Uhuru, 2007, p. 210; see also: *Shayo*, Parties and political development in Tanzania, 2005, p. 9.

175 *Katundu/Kumburu*, Tanzania's Constitutional Reform Predicament and the survival of the Tanganyika and Zanzibar Union, 2015, p. 104 (106).

176 Articles 33 (1)(2) and 35 (1) of the Constitution of the United Republic of Tanzania, 1977.

appoints the prime minister and the ministers, who together with him/her, the vice-president and the president of Zanzibar form the government.[177]

Legislation is the joint responsibility of the National Assembly ("Bunge") and the president. Every law passed by Parliament requires his/her approval.[178] The National Assembly currently consists of 393 members, 264 of whom are elected for five-year terms in constituencies under the first-past-the-post system.[179] Ten other members are appointed by the president under the Constitution and five members are elected by the Zanzibar House of Representatives.[180] In addition, the Attorney General is a member of the National Assembly by virtue of his/her office.[181] The same applies to the Speaker if he/she is not elected from among the Members of Parliament.[182] The other 113 Members of Parliament are currently women, who are delegated by the parties on the basis of proportion of votes, in order to satisfy the constitutional requirement for at least 30% of the Members of Parliament to be women.[183]

Jurisdiction is vested at the highest level in the High Court and the Court of Appeal. The judges are appointed by the president.[184, 185] In addition, the Special Constitutional Court rules on constitutional disputes between Zanzibar and the state as a whole.[186]

177 Articles 51 (1), 47 (1), and 103 (1) of the Constitution of the United Republic of Tanzania, 1977.

178 Tanzania's Constitution distinguishes between Parliament and the National Assembly, with Parliament consisting of the National Assembly and the president. Here, however, the term is not used in this specific sense, but as a synonym for the National Assembly. See: Article 62 (1), Constitution of the United Republic of Tanzania, 1977.

179 Article 65 (1) of the Constitution of the United Republic of Tanzania, 1977.

180 *Goldberg*, Tanzania Country Profile, 2020, p. 4.

181 Article 59 (5) of the Constitution of the United Republic of Tanzania, 1977.

182 Articles 84 (1) and 66 (1f) of the Constitution of the United Republic of Tanzania, 1977.

183 Article 66 (1) of the Constitution of the United Republic of Tanzania, 1977.

184 Articles 108 (1) and 117 (1) of the Constitution of the United Republic of Tanzania, 1977.

185 *Goldberg*, Tanzania Country Profile, 2020, p. 4.

186 Articles 125 and 126 (1) of the Constitution of the United Republic of Tanzania, 1977.

Half of its judges are appointed by the Union government and half by the government of Zanzibar.[187]

There are also autonomous bodies with autonomous powers for the island of Zanzibar.[188] However, the organisational structure essentially corresponds to the organisation of the state as a whole.

As early as 2011, the government and Parliament initiated a process aimed at adopting a new constitution.[189] However, the corresponding procedure has not been completed to date, and the further progress of the process is uncertain.

Current situation of the opposition

The current situation of the opposition in Tanzania must be described as latently precarious. The V-Dem Institute at the University of Gothenburg describes Tanzania as an electoral autocracy. In the institute's Liberal Democracy Index, which also includes key aspects of free opposition, the country ranks 99th among 179 countries, with a score of 0.33/1.[190] Above all, President John Magufuli, who died suddenly in March 2021, used his power to suppress the political opposition and restrict its work. After taking office, the new president, Samia Suluhu Hassan, announced her intention of holding talks with the opposition in order to initiate a "reconciliation" of the political camps. So far, however, no further measures to strengthen the opposition have been announced beyond that, so further developments will have to be watched closely.

In addition to the adverse conditions with regard to the state's dealings with the opposition, it may be noted that parties in general and opposition parties in particular have a bad reputation among the population in Tanzania. They are seen as actors without a substantive agenda, serving above all the power-political interests of their respective leaders. This corresponds to the fact that the office of president and the chairmanship of the former state party CCM are de facto always in the same hand. Accordingly, people's trust in political parties in Tanzania is generally low, with opposition parties enjoying the least trust. A survey by Afrobarometer shows that 63 % of the Tanzanian population has little or no trust in opposition parties, compared with 9.1 % for the ruling CCM.[191] This sentiment might be one of several reasons for the opposition's result in the last general election in October 2020. A total of 256 of the 264 constituencies were won by the ruling CCM party, with the result that the ruling party has 361 seats in the National Assembly, while the opposition has only 27.

187 Article 127 (1) of the Constitution of the United Republic of Tanzania, 1977.

188 Article 102 (1) of the Constitution of the United Republic of Tanzania, 1977; see also: *Katundu/Kumburu*, Tanzania's Constitutional Reform Predicament and the survival of the Tanganyika and Zanzibar Union, 2015, p. 104 (112).

189 On the on-going constitutional reform in Tanzania, see: Katundu/Kumburu, Tanzania's Constitutional Reform Predicament and the survival of the Tanganyika and Zanzibar Union, 2015, p. 104 (108). The proposed draft of the Constitution of Tanzania, as at September 2014 is available online: https://constitutionnet.org/vl/item/proposed-constitution-tanzania-sept-2014.

190 Alizada/Cole/Gastaldi/Grahn/Hellmeier/Kolvani/Lachapelle/Lührmann/Maerz/Pillai/Lindberg, Autocratization turn viral, Democracy Report 2021, 2021, University of Gothenburg, V-Dem Institute.

191 Lavallee et al, 2008.

Legal framework for political parties

1. Constitutional status and conceptual basis

Tanzania's Constitution declares the country to be a "democratic, secular and socialist state which adheres to multi-party democracy".[192] The existence of several political parties thus enjoys constitutional status. Corresponding to this guarantee is a subjective right of every citizen to associate freely and peacefully with others and thus to form and join political parties and act within them.[193] Provisions on registration or other procedural rules for political parties are expressly subject to regulation in the Constitution itself or in a parliamentary law.[194] Coercion to belong to a party or other organisation is declared just as unlawful as the state's refusal to recognise a party as such solely on the basis of its ideology or philosophy.[195]

Nevertheless, in keeping with Tanzania's tradition as a one-party state, the Constitution stipulates that only party members nominated by their party are eligible for parliamentary office.[196] The Political Parties Act elaborates on this provision to the effect that only parties that have been fully registered can nominate candidates.[197] This strict limitation of parliamentary participation to political parties was declared unconstitutional in a High Court ruling in 2006 on the basis that it violated freedom of association.[198] However, the Court of Appeal overturned this decision three years later on the grounds that it was a political and not a legal question.[199]

In addition, the Constitution imposes certain substantive limits on the activities of political parties. Political parties may not represent the interests of a religious community, a tribal group, a place of origin, a race or gender, or the interests of only a territorial part of the country. They are prohibited from advocating dissolution of the unity of Tanganyika and Zanzibar. Nor may they limit their activities to only one of these territorial parts. In addition, parties may neither accept nor endorse the use of violence as a means of achieving their political goals. Finally, the Constitution obliges parties to determine their leaders in regular democratic elections.[200]

The further legal framework for political parties in Tanzania can be found in the Political Parties Act and the Election Expenses Act. The Political Parties Act defines a political party as any organised group formed for the purpose of forming a government or a local government authority within the United Republic through elections, or for putting up or supporting candidates to run in such elections.[201] It requires that political parties be officially recognised and registered. As such, no organisation can operate or function as a political party unless it has first been registered.[202] Full registration requires that a party has no fewer than 200 members qualified to be registered as voters for parliamentary elections from at least half of the regions of the United Republic, out of which at least two regions are in Tanzania Zanzibar, including one region in Unguja and one region in Pemba.[203]

192 Article 3(1) of the Constitution of the United Republic of Tanzania, 1977.

193 Article 20(1) of the Constitution of the United Republic of Tanzania, 1977.

194 Article 3(2) of the Constitution of the United Republic of Tanzania, 1977.

195 Article 20(4) of the Constitution of the United Republic of Tanzania, 1977.

196 Article 67(1) of the Constitution of the United Republic of Tanzania, 1977.

197 Section 11(3) of the Political Parties Act (Cap. 258 R.E. 2019).

198 High Court of Tanzania, Christopher Mtikila v. Attorney General, Misc. Civil Cause No. 10 of 2005.

199 The Court of Appeal of Tanzania, Civil Appeal No. 45 of 2009.

200 Article 20(2) of the Constitution of the United Republic of Tanzania, 1977.

201 Section 3 of the Political Parties Act (Cap. 258 R.E. 2019).

202 Section 7(2) of the Political Parties Act (Cap. 258 R.E. 2019).

203 Section 10(b) of the Political Parties Act (Cap. 258 R.E. 2019).

2. Party regulation by the Registrar

The central figure in the legal regulation of political parties is the Registrar of Political Parties, who on paper shall be an autonomous institution under the Ministry responsible for political parties.[204] Both the Registrar and his/her deputy are appointed by the president. Other staff members may be appointed by the responsible minister. The law's silence on the Register's tenure of office implies that the President has discretion to dismiss the Registrar and appoint another person to the position when he/she wishes. The independence ordered by the law therefore does not refer to political independence from the President, but to a kind of immunity for the Registrar's official actions. In this sense, the Political Parties Act stipulates that no suit shall lie against the Registrar for anything done or omitted to be done in good faith and without negligence in the performance of any function under this Act.[205]

The Registrar is responsible in the first instance for the registration of the parties or for the refusal of registration. He/she may refuse registration if he/she considers that the requirements for registration are not met. In addition, he/she may also suspend or cancel registration if a party violates the provisions of the Political Parties Act.[206]

Furthermore, the Registrar has extensive powers to enforce legal regulations against political parties. In particular, since the amendment of the Political Parties Act in 2019, he/she has been granted extensive powers to monitor internal party processes. Thus, one of his/her duties is to control intra-party elections and candidate nominations.[207] In addition, whenever a member of a political party has contravened the Political Parties Act, the Registrar shall require the respective political party to take measures against the member as prescribed in the party constitution. If the party fails to comply with this request in a manner that the Registrar deems sufficient, he/she may exclude the party member from further political activity.[208] In addition, all political parties (as well as other institutions dedicated to political education) are required to notify the Registrar of such events 30 days in advance. They must provide information on the objective and type of training, training programme, persons involved in such training, teaching aids and expected results.[209] The Registrar may prohibit the relevant event.[210] Finally, in order to fulfil his/her duties under the Political Parties Act, the Registrar may request that any party or party leader provide the information necessary for the performance of said duties.[211]

3. Internal organisation

Internal organisation of political parties has been widely left at the discretion of individual parties. Issues related to intra-party organs, overall structure and operation of the party, role and position of party members are to be determined by individual parties' constitutions, regulations and guidelines. However, the Constitution and the Political Parties Act stipulate that only those parties may be registered that permit periodic and democratic election of their leaders.[212]

Most registered political parties in Tanzania have, at least on paper, well designed and clear rules guiding almost every sphere of their internal party life. The laws, as contained in party constitutions and guidelines, cover matters including membership and leadership, party meetings from branch to national levels and party organs. Nevertheless, the Political Parties Act limits the eligibility to run as a leader of a political party to members that are at least 21 years old, can read and write in Kiswahili or English, are

204 Section 4(1) of the Political Parties Act.

205 Section 6 of the Political Parties Act.

206 Sections 12C (4) and 19(1) of the Political Parties Act (Cap. 258 R.E. 2019).

207 Section 4(5b) of the Political Parties Act.

208 Section 21E of the Political Parties Act.

209 Section 5A(1) of the Political Parties (Amendment) Act, 2019.

210 Section 5A(2) of the Political Parties (Amendment) Act, 2019.

211 Section 5B(1) of the Political Parties (Amendment) Act, 2019.

212 Article 20(1)(e) of the Constitution of the United Republic of Tanzania, 1977; Section 9(2(e) of the Political Parties Act (Cap. 258 R.E. 2019).

Panorama of Dar Es Salaam City Centre

"of sound mind", have not been convicted of certain offences and are not disqualified from holding public office under the Constitution.[213]

4. Financing

Under the Political Parties Act, the funds and other resources of political parties shall derive from subsidies from government and foreign donors, membership fees and free contributions, investment earnings, projects, subsidies in the interests of the party, bequests and grants acquired from other sources.[214] As such, political parties in Tanzania have the legal right to receive funds from the government, as well as private and foreign sources. Nevertheless, donations exceeding approximately one million shillings (TZS 1 million)[215] for an individual donor and two million shillings (TZS 2 million) for an organisation shall, within 30 days of their receipt, be disclosed to the Registrar.[216] Information about party finances or assets which are situated outside Tanzania must be communicated to the Registrar of Political Parties, regardless of whether they were acquired directly or through local sources. The requirement also applies to organisations and citizens who are in Tanzania, but are foreign by origin.[217]

According to the Political Parties Act, the Government shall disburse up to two percent of the annual recurrent budget, less the amount payable in defraying the national debt, in the grant of subsidies to political parties.[218] The expenditure of these subsidies is restricted to parliamentary and civil activities of the party, election activities and any other reasonable requirement of the party.[219] Only parties whose candidates are represented in Parliament or in a local government authority are eligible for state party funding.[220] Fifty percent of the funds is allocated in proportion to the number of constituen-

213 Section 10(a) of the Political Parties Act (Cap. 258 R.E. 2019).

214 Section 13(1) of the Political Parties Act (Cap. 258 R.E. 2019).

215 This corresponds to approximately EUR 350.

216 Section 11(1) of the Election Expenses Act, 2010.

217 Section 13(2) of the Political Parties Act (Cap. 258 R.E. 2019).

218 Section 16(1) of the Political Parties Act (Cap. 258 R.E. 2019).

219 Section 18(1) of the Political Parties Act (Cap. 258 R.E. 2019).

220 Section 16(3) of the Political Parties (Amendment) Act, 2019.

cies won. The other fifty percent of the funds is allocated in proportion to the votes obtained nationwide, with only parties that have obtained at least five percent of the votes being taken into account.

The Election Expenses Act restricts the amount of money political parties may spend on elections. Each political party is obliged to fund its election campaigns using its own funds from among the sources listed in the Political Parties Act.[221] The maximum amount of money to be used by political parties in elections is determined by the Minister based on constituency size, categories of candidates, population size and communication infrastructure.[222] The Minister also has the ability to vary the amount of election expenses from one party to another.[223] If, in exceptional cases, a party expends the funds excessively, it is required to report to the Registrar explaining the reasons for exceeding the amount prescribed by law.[224] Otherwise, excessive spending is an offence.[225]

The parties are required to submit an annual report on their finances to the Registrar of Political Parties. Reported finances must include, among other things, party assets. The information provided, as well as the Registrar's own report on the parties' finances, is made public.[226] Similarly, the Act subjects party finances to an audit by the Controller and Auditor General (CAG).[227] It specifically states that the Registrar may, at any time, where he/she is dissatisfied with management of party resources, request that the CAG carry out a special audit.[228]

In practice, parties largely depend on government subsidies for their finances. The membership fees are very low and are largely not recorded due to the poor (and unrecorded) membership base. This puts the established governing party in a structurally better position, as it receives higher payments from state party financing due to its past electoral successes. In addition, the CCM, as a former state party, still benefits from its party assets from the days of the one-party system, many of which come from state funds. As early as 1992, immediately after the abolition of the one-party system, an individual citizen attempted to have the CCM deregistered by a court, claiming that it was still illegally in possession of the corresponding state funds. The High Court dismissed the case on grounds including the plaintiff's lack of *locus standi*. Regarding the alleged mismanagement of government funds, the High Court ruled that mismanagement of public funds lay within the jurisdiction of the executive branch of government and not the judiciary, adding that in the case of failure to oversee management of public funds, the Executive is to be accountable to the Parliament.[229]

5. Legal restrictions beyond party law

In addition to these restrictions on party activities by means of party law, there are also restrictions in other areas, especially with respect to the right of assembly. The police and the Minister for Home Affairs are granted extensive powers to restrict party rallies and gatherings. The Police Force and Auxiliary Services Act requires political parties wishing to conduct an assembly to give notice to the police officer in charge of the area 48 hours before the assembly is held.[230] The letter of notice must specify the location, time and reason for assembling and the minister responsible is mandated to specify other details of the notice.[231] The prerequisite for a political party to assemble therefore is a notification, not an application. In practice, however, police authorities sometimes

221 Section 8(1) of the Election Expenses Act, 2010.

222 Section 10(1) (a) of the Election Expenses Act (Cap. 278 R.E. 2015).

223 Section 10(1) (b) of the Election Expenses Act (Cap. 278 R.E. 2015).

224 Section 10(2) of the Election Expenses Act (Cap. 278 R.E. 2015).

225 Section 10(3) of the Election Expenses Act (Cap. 278 R.E. 2015).

226 Section 14 of the Political Parties Act (Cap. 258 R.E. 2019).

227 The legal status and powers of the CAG are governed by Article 143 of the Constitution.

228 Section 23(8) of the Political Parties (Amendment) Act, 2019.

229 High Court of Tanzania, Lujuna Shubi Ballonzi, Senior, v. The Registered Trustees of CCM, Dar es Salaam Registry, Civil Case No. 214 of 1992.

230 Section 43(1) of the Police Force and Auxiliary Services Act (Cap. 322 R.E. 2019).

231 Ibid.

intervene in the run-up to assemblies and try to prevent opposition parties in particular from holding public meetings.[232]

Furthermore, the Police Force has a legal mandate to stop or prevent a public assembly being carried out by a political party if it is certain that the assembly goes against provisions of the notice or it is likely to instigate or actually instigates violence and disruption of peace and public order.[233] If the party subject to the police ban is dissatisfied with the ban, it is allowed to appeal to the Minister, whose decision shall be unquestionable.[234] The common practice in Tanzania has, however, been late issuance of police notices with no reasons for such a decision,[235] often meant to disadvantage opposition parties.

In particular, these provisions of the right of assembly have often been used to intimidate opposition politicians, as two examples from 2020 show. In June, Zitto Kabwe, the leader of the third-largest political party, ACT-Wazalendo, was (once again) arrested during an internal party meeting for holding an unlawful assembly. Earlier, in March, several Chadema leaders were convicted of unlawful assembly, rioting and sedition, among other charges, in connection with a 2018 rally, and ordered to pay fines or face jail. The Office of the UN High Commissioner for Human Rights (OHCHR) called the arrests "troubling evidence of the crackdown on dissent and the stifling of public freedoms in the country".[236] Before and after the 2020 election, opposition politicians from all parties were arrested regularly and repeatedly both on the mainland and in Zanzibar.[237]

Legal role of (opposition) parties in parliament

The Constitution guarantees all Members of Parliament comprehensive freedom of opinion, discussion and procedure in the National Assembly.[238] These provisions are further elaborated in the Act on Parliamentary Immunities, Powers and Privileges. Thus, the Constitution in the first instance grants the Members of Parliament comprehensive indemnity. No civil or criminal proceedings shall be instituted against any Member or words spoken before or written in a report to the Assembly or a committee, or by reason of any matter or thing brought by him therein by petition, bill or motion or otherwise or for words spoken or act done in bona-fide pursuance of a decision or proceeding of the Assembly or a committee.[239] Tanzanian law does not provide immunity from prosecution for acts committed outside Parliament. Only arrest for civil debts is excluded for Members of Parliament.[240]

232 For example, in summer 2021 Chadema announced that it would turn out publicly to oppose the case in which their national chairperson Freeman Mbowe was accused of involvement in terrorist offences and called upon members and supporters of the party to appear at the Court's hearing. Responding to the party's call, the Tanzanian Inspector General of Police Simon Sirro warned the party saying, "[t]he police force is issuing a stern warning to a person or group of people who will try to encourage informal gatherings or demonstrations or in any way to push for any demand", see: "Court case places police and Chadema on collision course" (Own translation), Mwananchi, 4 August 2021.

233 Section 43(3)(4) of the Police Force and Auxiliary Services Act (Cap. 322 R.E. 2019).

234 Section 43(6) of the Police Force and Auxiliary Services Act (Cap. 322 R.E. 2019).

235 Questionnaire by SR on Freedom of Peaceful Assembly and Association. Retrieved from https://www.ohchr.org/Documents/Issues/FAssociation/Responses2012/NHRI/Tanzania.pdf on 22 February 2021.

236 https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25724&LangID=E, last accessed 28 June 2021 at 4:45 PM.

237 https://freedomhouse.org/country/tanzania/freedom-world/2021.

238 Article 100(1) of the Constitution of the United Republic of Tanzania, 1977.

239 Section 6 of the Parliamentary Immunities, Powers and Privileges Act, 1988.

240 Section 7 of the Parliamentary Immunities, Powers and Privileges Act, 1988.

In addition, however, the constitutional guarantee of freedom of expression in Parliament is in principle also directed at the conditions within the National Assembly. Here, however, the freedom of the deputies is restricted in a very significant way by the strong legal and de-facto position of the Speaker.

The institution of the Speaker is borrowed from English parliamentary law. He/she is elected by a majority of the Members of Parliament, so that in practice he/she always comes from the ranks of the majority party. The Speaker does not necessarily have to be a Member of Parliament. His/her position vis-à-vis the deputies is so dominant because the law grants him/her far-reaching independence in the conduct of his/her office, especially in disciplining the deputies. The exercise of his/her powers is not subject to court jurisdiction.[241] His/her decisions pertaining to any parliamentary procedure are final and unquestionable.[242] By implication, if he/she acts arbitrarily with regard to an MP, the latter cannot seek their rights in any court of law in Tanzania.

This independence of the Speaker corresponds to far-reaching powers to discipline Members of Parliament. The Parliamentary Immunities, Powers and Privileges Act specifies certain offences of which Members of Parliament can be guilty and which are punished by the Speaker. In addition to disrupting meetings, these include, in particular, a lack of respect for the Speaker or for Parliament as such. Violations can be punished by the Speaker through exclusion from the sessions for up to ten session days.[243]

The expulsion or suspension may, under Parliamentary Standing Orders, be carried out by the Speaker on the grounds that the MP either fails to prove the truth of the remarks they made in Parliament or if they commit disciplinary offences set out in the Standing Orders.[244]

In addition, the Speaker has the power to determine relatively freely the speaking time of each Member. He/she also has the power to interrupt any deputy at any time.[245]

This legal situation gives the Speaker the opportunity to intensively abuse his/her office for partisan political purposes and specifically suppress the freedom of opposition MPs. The Legal and Human Rights Centre, an NGO dedicated to human rights enforcement in Tanzania, found in a 2010-2015 study that the Speaker often abuses their powers to silence opposition members. Members of Parliament interviewed for the report said that most opposition MPs remained silent for fear of sanctions after smaller groups spoke out against government views and were warned and disciplined for doing so.[246] Free debate is also restricted by the Speaker's partisan allocation of speaking time and by preventing opposition MPs from freely exercising their right to speak, for example, through unprovoked interruptions.[247]

To a certain extent, however, the parliamentary rules of procedure also grant the opposition specific rights, for example by stipulating that the chairpersons of the Parliamentary Committees overseeing the expenditure of public funds shall be elected from the Members of the Official Minority Camp in Parliament.[248] However, the opposition's association as the Official Minority Camp in Parliament requires that opposition deputies hold at least 12.5% of the seats. This has not been the case since the last parliamentary election in October 2020, so that at present there is no opposition in the National Assembly in the legal sense.

241 Section 35 of the Parliamentary Immunities, Powers and Privileges Act, 1988.

242 Section 82(1) of the Parliamentary Standing Orders (2020 Edition).

243 Section 26 of the Parliamentary Immunities, Powers and Privileges Act, 1988.

244 Sections 82(3) and 83(1)(2) of the Parliamentary Standing Orders (2020 Edition).

245 Sections 69 and 74 of the Parliamentary Standing Orders (2020 Edition).

246 LHRC, Performance Assessment Report of the 10th Parliament of the United Republic of Tanzania 2010-2015, p. 37.

247 LHRC, Performance Assessment Report of the 1st Parliament of the United Republic of Tanzania 2010-2015, p. 52.

248 Section 135(11) of the Parliamentary Standing Orders (2020 Edition).

Role of law in the practice of (opposition) parties

The legal framework for political parties in Tanzania already hinders the opposition's free work in many respects. In addition, many measures relevant to the opposition's work are taken by bypassing the legal rules or in contravention of the applicable law.

A presidential decree from 2016 has proven to be particularly flagrant in this regard. Without any legal basis, a presidential order banned public rallies by political parties until the elections in 2020, confining them to the respective constituencies of political leaders. The presidential order was enforced by the police with great severity and formed the basis for numerous arrests of opposition politicians.

Access to communications infrastructure has also been made difficult for the opposition in some cases in the past. During the final week of election campaigns in 2020, the main telecommunications providers banned bulk short-message service (SMS) messages, a key tool opposition parties use to organise events and promote turnout. They also blocked any text messages that contained key words associated with the opposition, including the name of presidential candidate, Tundu Lissu. The day before polling opened on the mainland, Twitter and WhatsApp were blocked, further undermining opposition supporters' ability to organise gatherings and coordinate pre-election campaigning.[249] The ban was unofficially lifted in mid-2021.

Opposition politicians are also repeatedly subjected to intimidation and physical attacks. In June 2020, for example, Chadema chairman Freeman Mbowe was attacked in his apartment in Dodoma by unknown assailants. There were also attacks on local Chadema operations, including an arson attack on the Arusha regional headquarters. Just ahead of the election, a CCM youth leader threatened to poison Tundu if he attempted to challenge results showing a victory by Magufuli.[250] There are also repeated incidents of violence by the police at public opposition gatherings.

In addition to these measures, which primarily operate alongside the applicable legal provisions, there are also repeated violations of the existing legal framework. In November 2020, Chadema stripped 19 female cadres of their party membership after they were sworn-in as Members of Parliament (MPs) in Special Seats for Women without authorisation by their party.[251] Their membership was suspended by the party's central committee. As per the party's rule, the 19 MPs appealed to the higher party organ, the governing council, whose meeting is yet to be convened.[252] Following the saga, the Speaker of Parliament, overlooking Chadema's decision and constitutional provision that one ceases to be an MP if expelled from party membership, continued recognising and officially inviting them to parliamentary sessions.

Conversely, however, the legal provisions by which the parties are bound are enforced only very incompletely or not at all. For example, both the Constitution and the Political Parties Act require parties to elect their leaders by means of recurring democratic elections.[253] However, these provisions seem to deviate from how they are interpreted by political parties, both in theory and practice. For CCM for example, a national chairperson of the party is obtained through a YES/NO vote.[254] As a result, the process to select him/her is a mere endorsement, rather than an election in the real sense. With only one candidate presented to the party's General Convention for election, it becomes

249 https://freedomhouse.org/country/tanzania/freedom-world/2021.

250 https://freedomhouse.org/country/tanzania/freedom-world/2021.

251 The Citizen, 20 January 2021.

252 Note that the Chadema Constitution enshrines higher party organs as appellate bodies. In this case, a decision made by the Central Committee can be revoked or confirmed by the Governing Council or National Congress, for example. Thus, Chadema's Central Committee has the mandate to revoke/suspend party memberships, see: Article 7.7.16 (u) of the Chadema Constitution, 2016)

253 Article 20(1)(e) of the Constitution of the United Republic of Tanzania, 1977; Section 8(2) of the Political Parties Act (Cap. 258 R.E. 2019).

254 Section 111 of the CCM Election Guidelines.

obvious that the process lacks key principles of democratic elections, such as inclusiveness and competitiveness. In opposition parties, election of party leaders is also far from being democratic. With all national decision-making organs formed under the influence of party leaders who are allowed by their respective party constitutions to implant their close allies in those organs, it is obvious that the decision on who should, for example, become the national party chairperson does not lie in the hands of party members or their representative organs, but those of the party chairperson.[255]

Political opposition in Tanzania – dangers and challenges

The difficult situation of the opposition in Tanzania is largely due to the country's recent history. Through decades of one-party rule, the former state party has acquired a role as the dominant political force that can hardly be broken by the current opposition parties. This applies both to its reputation among the population, which remains significantly higher for the ruling party CCM than for the opposition parties, and to the structural strengthening of the CCM through its continuing close ties to the state apparatus. The transition from mono-party system into multi-party politics left key state organs closely attached to the ruling CCM.[256]

These difficult circumstances for the opposition are flanked by structural problems at the legal level. The dominance of the ruling party and its representatives is also legally secured by the very strong position of the executive branch at all levels, which is still de facto shaped by the CCM. This applies first to the president's far-reaching powers in the constitutional system. The president, who according to past practice is always also the chairperson of the CCM, is part of Parliament by virtue of the Constitution, has the power to appoint up to ten deputies, and also appoints the prime minister, as well as the cabinet ministers. As practice shows, the president's constitutional and political position is so dominant that he/she can also take measures beyond the law to suppress the opposition.

In parliamentary life, this power of posts controlled by a party-political cartel is reflected in the role of the Speaker. His/her extensive powers in the area of chairing meetings and disciplinary authority and the lack of legal review of his/her actions give him/her extensive opportunities to obstruct the work of the opposition in Parliament.

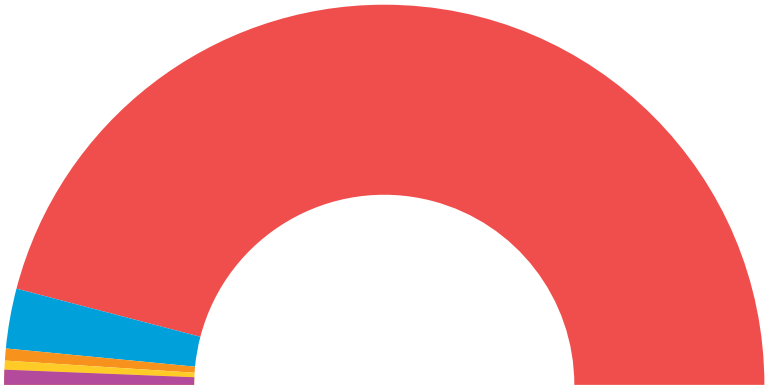
Finally, at the level of party law, the corresponding phenomenon is found in the office of Registrar. Although he/she is formally declared independent, he/she is politically dependent on the president and therefore not neutral in party-political competition. The Registrar has extensive powers to regulate political parties and thus also to hinder the work of opposition parties.

255 Most party constitutions give central committees such as the National Executive Committee final nominating authority. This is particularly true for parliamentary nominations. See: Section 7.7.16 (p) of the Chadema Constitution, 2016 and Section 102(12(g) of the CCM Constitution, 2017.
Also note that these higher party organs are composed mostly of party elites, rather than rank-and-file members. For a detailed discussion on the influence of party leaders/elites on candidate nominations in Tanzania, see: *Sulley*, Democracy within parties: Electoral consequences of candidate selection methods in Tanzania, 2021.

256 *Makulilo*, A. B. 2014. Why CCM is still in Power in Tanzania? A Reply. CEU Political Science Journal. Vol. 9, No. 1-2

Parliamentary Election, 28.10.2020

Next Election: 2025



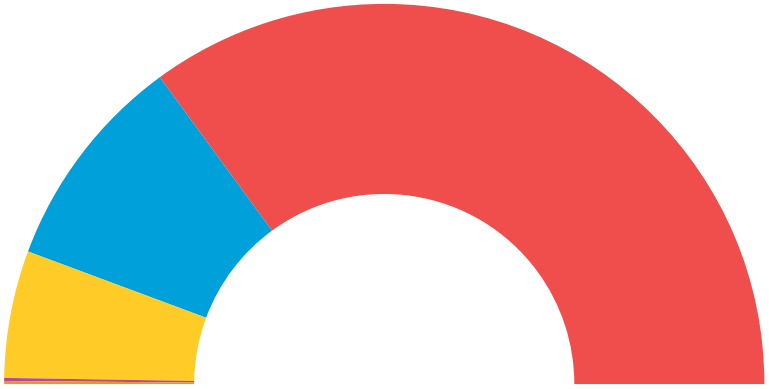
Chadema seats 20 | ACT seats 4 | CUF seats 3 | Elected by Zanzibar House of Representatives seats 5 | CCM seats 350 + 11

Government

Results of the General Election have not been published by the National Electoral Commission of Tanzania.
Parliamentary seats: 361 (Govt.) / 27 (Opp.)
Allocation of seats: 93,04 % (Govt.) / 6,96 % (Opp.)

source: https://www.nec.go.tz/uploads/documents/en/1630322400-GENERAL%20ELECTION%202020%20REPORT.pdf (pp. 66-73).

Parliamentary Election, 2015



Chadema 31.8 % seats 70 | CUF 8.6 % seats 42 | ACT 2.2 % seats 1 | NCCR 1.5 % seats 1 | CCM 55 % seats 272

Government

Parliamentary seats: 272 (Govt.) / 116 (Opp.)
Allocation of seats: 70,1 % (Govt.) / 29,9 % (Opp.)

Note: Presidential appointees 10;
Elected by Zanzibar House of Representatives 5;
and Attorney-General.

source: https://www.eisa.org/pdf/tan2015electionreport.pdf (pp. 73-77); https://www.tzaffairs.org/2016/01/2015-elections-results/.

Thailand

HEIKE MERTEN, SIRIPAN NOGSUAN SAWASDEE

History and constitutional system

The Kingdom of Thailand was founded in Bangkok in 1782 under the name "Kingdom of Siam", after it had grown together from many independent principalities.[257] Despite territorial encirclement by colonial powers such as France and Great Britain, Thailand has never been under foreign sovereignty and colonisation. The power of the king and his loyal retainers have always shaped Thailand's history and political development. Even in pre-modern times, Thailand was characterised by a division of classes based on this system of power. Nobility, free men, serfs and slaves were strictly separated with different rights and duties until the official abolition of this social order in 1938.[258] In 1892, the first centralised provincial administration was introduced in territorially fragmented Thailand, providing for a system of territorial units with centrally administered provincial governors, ministers of the interior and the first provincial courts. The introduction of

a single "mother tongue" and national symbols fostered a sense of Thai nationality.[259] This growing nationalism culminated in the coup d'état in Siam in 1932 with the abolition of absolute monarchy and the introduction of a constitutional monarchy. A constitution was adopted that provided a ceremonial role for the monarch, as well as overcoming existing class distinctions. Finally, in the 1940s, the name "Kingdom of Thailand" was officially adopted. The following years into the 1970s were marked by close relations with the United States of America, the enthronement of the revered King Bhumibol and Thailand's accession to the United Nations. At this time, Thailand's political landscape was also changing tremendously. In 1946, the Anti-Communist Act of 1932 was repealed and communist parties were legalised in Thailand until 1952, when the second Anti-Communist Act was enacted, which prohibits communist parties from operating until today.[260] The legalisation of the *Communist Party of Thailand* (CPT) is retrospectively seen as the beginning of a long series of communist riots and coups. Parallel to the strong communist currents, a strong alliance of students and trade unions developed, also beginning in the 1970s, and attempted to influence the Thai political situation through coup attempts.

In theory, the change from an absolute to a constitutional monarchy with a democratically elected government and a strong constitution had succeeded, but the strong political disagreements that prevailed in reality resulted in several bloody uprisings and numerous coups d'état in Thailand, leading to transitional and military governments.

The only consistent authority in these turbulent times was the royal house, with the king as the highest representative revered by the people, but with his extensive network of supporters and close ties to the military, he could not manage to offer real democratic support for his people. Although King Bhumibol attempted to support the democratisation of his people by forcing the government to resign and calling new elections, he was unable to stabilise the political situation and ultimately could not prevent the student revolts of the 1970s, which aimed to overthrow the ruling military and advance

257 *Peleggi*, Thai Kingdom, 2016, p. 1 (1), DOI:10.1002/9781118455074.wbeoe195, last accessed 26 August 2021.

258 *Peleggi*, Thai Kingdom, 2016, p. 1 (2), DOI:10.1002/9781118455074.wbeoe195, last accessed 26 August 2021.

259 *Peleggi*, Thai Kingdom, 2016, p. 1 (6), DOI:10.1002/9781118455074.wbeoe195, last accessed 26 August 2021.

260 *Peleggi*, Thai Kingdom, 2016, p. 1 (8), DOI:10.1002/9781118455074.wbeoe195, last accessed 26 August 2021

democratisation.[261] Until 1976, Thailand experienced a turbulent democratic phase with various short-lived governments: Among other developments, on 26 January 1975, Thailand held its first free parliamentary elections since the late 1940s. The strongest party at the time was the Democratic Party (DP), winning the 1975 and 1976 elections consecutively. However, the democratic phase ended in October 1976: extremists stormed the Thammasat University in Bangkok, which was occupied by leftists, and caused a bloodbath. The pre-election unrest again gave the military an excuse to seize power in Thailand. The following years and decades into the 1990s were again marked by several coups by the military and semi-democratic transitional governments, as well as numerous constitutional amendments. In 1988, another election was held. General Chatichai, leader of the Thai Nation Party (Chart Thai), formed a new government. However, lasting impulses for a democratisation of the country again failed to materialise. His time in power was marked by increasing corruption and enrichment of the political elite. In February 1991, there was another military coup. In the first months after the coup, the military could be sure of the approval of the majority of the population; the Constitution was suspended, Parliament was dissolved, and martial law was imposed until 2 May. The regime's strongman was General Suchinda Kraprayoon. His intention to appoint himself prime minister in 1992 led to a turnaround in popular sentiment. New elections were finally held in September 1992, and Chuan Leekpai of the Democratic Party (DP) emerged as prime minister. Despite the transition to a civilian government, a "genuine consolidation of democracy"[262] was not achieved. Corruption, a fragmented party system and unstable governing coalitions were responsible for this.[263]

The 1996 elections lent new momentum to the Thai reform movement, with the Thai Nation Party winning 92 of 391 seats, the DP 86 and the New Aspiration Party (NAP) following with 57 seats. The reform movement in the country agreed that Thailand needed a new, more democratic constitution, and a Constitutional Council was created. The deepening economic crisis in 1997 increased public pressure for political change in the country. On 11 October 1997, the Constitution then came into force, providing,

261 *Peleggi*, Thai Kingdom, 2016, p. 1 (9), DOI:10.1002/9781118455074.wbeoe195, last accessed 26 August 2021.

262 *Porchet, Nicolas*, Democratization in Southeast Asia, Vienna 2008, p. 170.

263 *Baker, Chris/Phongpaichit, Pasuk*, A History of Thailand, 2nd edition, Cambridge 2009, pp. 233 ff.

among other things, for direct election of the Senate instead of the appointment of senators by the head of government, and for control of elections by an election commission instead of the Ministry of the Interior.

In 1998, the Thai Rak Thai Party, supported by many successful Thai businessmen, was founded. The party of the successful entrepreneur and Prime Minister Thaksin Shinawatra led to a reorganisation of the Thai party system. The old party system was heavily dominated by bureaucrats and the military. This change was also due to Thailand's economic boom.

The 2000s in Thailand's political history were marked by the populist Prime Minister Thaksin and his Thai Rak Thai Party, who saw themselves as representatives of the rural poor and counterparts to the currents of conservative royalist networks. Thaksin was the first democratically elected Thai prime minister to last a full term and be confirmed in office through competitive elections. Alongside that approval, however, Thaksin's tenure was also marked by restrictions on free media activity, corruption and a creeping undermining of the checks and balances of democratic institutions. In the fall of 2005, an increasingly strong protest movement began to organise against Thaksin. In 2006, there were early elections to the House of Representatives, which were boycotted by the main opposition parties; the Thai Rak Thai Party received 51.9 % of the vote. Thaksin renounced the post of head of government. On 8 May 2006, the Constitutional Court declared the elections invalid and ordered new elections. King Bhumibol had asked the country's highest courts to find a way out of the crisis. However, another set of early parliamentary elections did not take place. Following a military coup on 19 September 2006, a Council for Democratic Reform under Constitutional Monarchy (CDRM) took power. The Constitution was suspended, the government and Parliament dissolved and martial law imposed. The 18th military coup in Thailand's history ended the country's democratic development; after 15 years, the military was once again in charge.[264]

Bangkok residents greet the military.

In 2007, the Constitutional Court ordered the dissolution of the Thai Rak Thai Party and three smaller parties for alleged fraud in the 2006 elections and conspiracy to gain administrative power through illegal means, and Thaksin and other politicians were disqualified from holding political office for five years.[265]

Neither further constitutional change nor elected governments were subsequently able to provide political stability.

The military government in power since the renewed military coup in May 2014 formally ended with the appointment of the former military ruler General Prayut Chan-o-cha, chosen by the Parliament (Senate appointed by the military and directly elected House of Representatives), as Prime Minister on 5 June 2019, preceded by elections to the House of Representatives on 24 March 2019. On 7 August 2016, a majority of the Thai people approved a draft constitution drafted by the military government in a controversial referendum. The new Constitution terminates the free election of senators in the Thai Senate (Article 107) and strengthens institutions such as the Constitutional Court, the Anti-Corruption Agency and the Election Commission.[266]

The political polarisation between the different political currents, which can be roughly divided into the "yellow shirts" (royal) and "red shirts" (electoral populism), still characterises the political development and party landscape of Thailand today, even if many young Thais no longer identify with the two classic groupings around the parties and the assigned royal or electoral populism colours.

264 *Porchet, Nicolas*, Demokratisierung in Südostasien, Vienna 2008, pp. 171 ff.

265 *Porchet, Nicolas*, Demokratisierung in Südostasien, Vienna 2008, pp. 473 f., 171 ff.

266 On the 20th Constitution since the end of the absolute monarchy, see: Bodenmüller-Raeder, Anja, Thailand's Constitution 20.0, SWP-Aktuell 59, 2016, 1 ff.

Currently, Thailand is in an ongoing state of political protest against the government and for new elections and democratic reforms and a new constitution, but this has been interrupted by the outbreak of the Covid-19 pandemic and the bans on assembly imposed to contain it.

The constitution currently in force continues to establish the form of government as a constitutional monarchy.[267] Article 3 of the Constitution provides for the power of the state to be vested in the Thai people, exercised by the King as Head of State and, in accordance with the provisions of the Constitution, by the Parliament, the Cabinet and the courts. The Constitution declares itself the supreme law of the land and guarantees human dignity, as well as liberties and equality of people.[268]

The king plays a special role in the history, as well as in the Constitution of Thailand. That role is constitutionally laid down in Articles 6 to 24. According to the Constitution, the king is sacred and inviolable; he can neither be accused nor impeached.[269] He also has the sole right to select, appoint and dismiss the Privy Council of State, which advises the king on matters relating to his office and, in the absence or other incapacity of the king, replaces him as regent.[270] The king is protected by a strict law against lèse-majesté: the "Lèse-Majesté" Law. Under that law, each guilty verdict can mean up to 15 years imprisonment per charge.

The bicameral Parliament consists of the House of Representatives and the Senate. It is responsible for legislation, among other matters.[271] The House of Representatives represents the Thai people and consists of 500 Members, of whom 350 Members are elected by direct vote and 150 Members are elected by list vote.[272]

The Senate consists of 200 members, or 250 members for the first five years. These 250 members are appointed by the National Council for Peace and Order (NCPO). The thus appointed Senate participates in the selection of the prime minister. The latter is elected every four years by the Members of the House of Representatives except during the first five years under the transitory provisions of the Constitution. A prerequisite for the formation of a government is the selection of a prime minister. This is performed by Parliament, but is initially only in the hands of the House of Representatives. Each of the parties represented in it has the right to nominate a candidate for this high executive office, but only the candidates nominated by parties with five percent or more of the seats are eligible for this process. The candidate who receives more than 50 percent of the votes is elected. If one party alone has an absolute majority of the mandates, the selection is merely a formality. However, since this is highly unlikely, individual parties will have to agree on electoral alliances.

With 750 eligible voters, the absolute majority would be 376 votes. Since 250 can be counted as military votes from the outset, the leader of the military junta, Prayut would only need 126 votes from the total of 500 members of the House of Representatives to be elected prime minister. Providing that the Senate's power to take part in the selection of a prime minister remains intact, it is likely that the military and its alliance parties will again be in control of the selection of the next prime minister.

The government consists of no more than 35 ministers appointed by the king on the advice of the prime minister and is committed to governing the country.[273] A government minister does not have to be a member of either House or Parliament. The prime minister

267 Articles 1 and 2 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

268 Articles 4 and 5 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

269 Article 6 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

270 Articles 10 and 11 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017). The President of the Council of State may be appointed as regent if necessary, see: Article 16 following of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

271 Legislating the country is one of the functions of Parliament. Bills, once approved by Parliament, must be submitted to the king for his signature before they are promulgated in the Government Gazette and thus come into force, see: Article 81 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

272 Article 83 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

273 Article 158 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

is appointed by the king from among persons approved by the House of Representatives and may not serve more than 8 years.[274]

Also enshrined in the Constitution are the courts, whose composition, rights and duties are set out in Chapter X of the Constitution. Not unlike the other powers, the judges are also subject to the Constitution and the king, and they are independent and expected to be impartial in judicial proceedings and in reaching their judgments.[275] The king appoints and dismisses the judges of the military courts, the administrative courts and the ordinary courts alike.[276] The Constitutional Court is composed of nine judges of the superior courts, also appointed by the king, as well as professors and knowledgeable persons, who are appointed for a term of seven years and may not have been members of a political party in the ten years preceding their appointment.[277] The Constitution does not provide for an express impeachment procedure. However, an investigation by the National Anti-Corruption Commission may result in impeachment.[278] The Constitutional Court's functions include reviewing the constitutionality of laws and draft laws, resolving disputes concerning the powers and duties of supreme state organs and generally ensuring compliance with the Constitution.[279]

Finally, Articles 25 to 50 of the Constitution govern the rights and freedoms of the Thai people, which include equal rights for men and women, the abolition of forced labour and rights to privacy, personality, dignity and reputation. The right to form political parties and the right of assembly are also included here.

Current situation of the opposition

The current situation of the opposition in Thailand can be described as challenging at best. The V-Dem Institute at the University of Gothenburg describes the constitutional monarchy of Thailand as a closed autocracy. In the institute's Liberal Democracy Index, which also includes important aspects of free opposition, the country ranks 133rd out of 179 countries, with a score of 0.17/0.022.[280] Thailand thus falls among the bottom 20-30 % of countries, with a steadily declining rating.

The situation is not easy for the opposition in Thailand at the moment especially. The political establishment is taking a tougher stance against its opponents in light of the political crisis in the country. The political opposition in Thailand has recently increasingly faced accusations of lèse-majesté. Insult to majesty carries a possible prison sentence of up to 15 years per offence allegedly directed against the king, the queen, and the heir apparent. Several times last year, tens of thousands of people gathered in Thailand to protest for democratic reforms. They are calling for a reform of the monarchy and an abolition or weakening of Section 112 on lèse-majesté.

In addition, dissenting opinions within a political party are not tolerated and the founding and registration of a new political party are made more difficult by law. A change of party by MPs is also subject to strict criteria. The rule that a candidate must

274 Article 158 following of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

275 Article 188 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

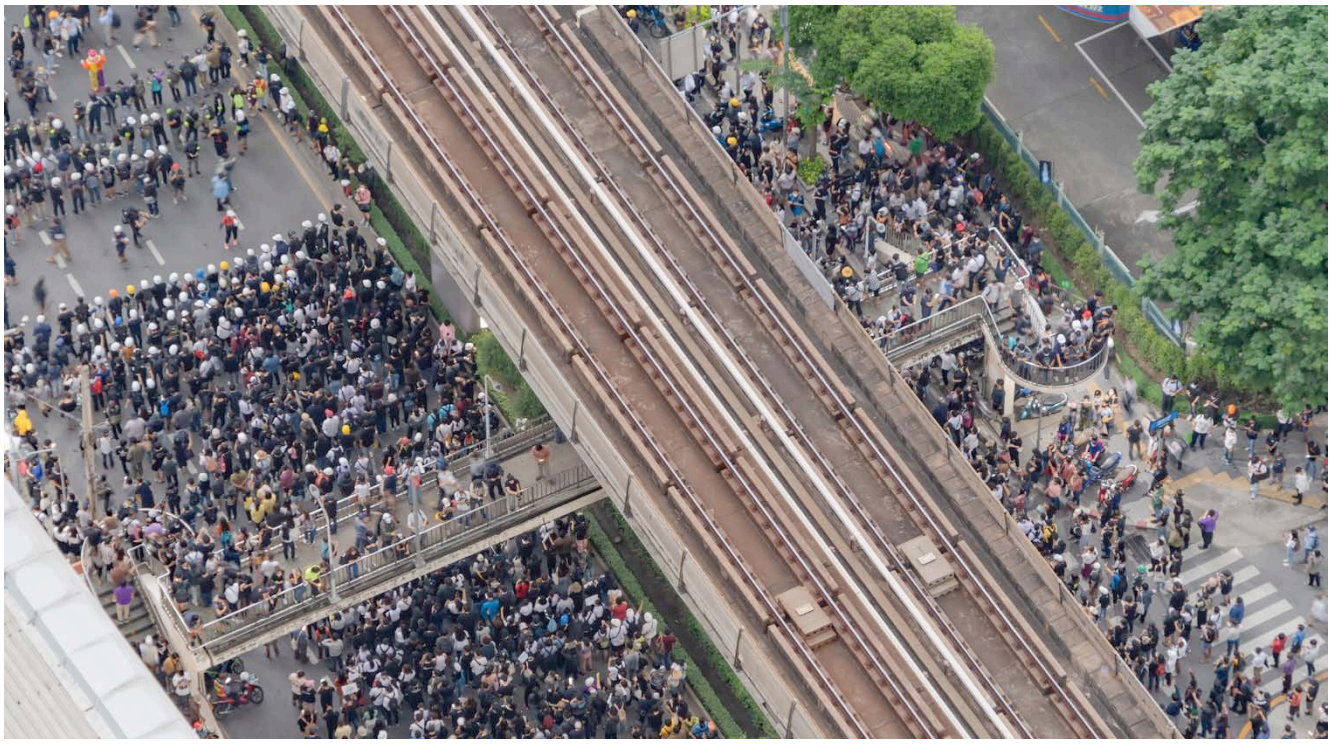
276 Article 190 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017). For details of the administrative courts, see: Article 197 following of the Constitution of the Kingdom of Thailand B.E. 2560 (2017). For details of the military courts, see: Article 199 following of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

277 The nine judges of the Constitutional Court are composed of: three judges from the Supreme Court, two judges from the Supreme Administrative Court, and one qualified expert each in law, and political science, and two experts with background in administration. See Article 200 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017). Regarding the party membership rule, see: Article 202(5) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

278 Article 234 of the Constitution of the Kingdom of Thailand B.E. (2017).

279 Article 210 of the Constitution of the Kingdom of Thailand B.E. (2017).

280 Alizada, Nazifa / Cole, Rowan / Gastaldi, Lisa / Grahn, Sanda / Hellmeier, Sebastian / Kolvani, Palina / Lachapelle, Jean / Lührmann, Anna / Maerz, Seraphine F. / Pillai, Shreeya / Lindberg Staffan I., Autocratization Turns Viral. Democracy Report 2021, 2021, University of Gothenburg, V-Dem Institute.



Flash mob protesters demonstrate against the government in Bangkok, Thailand.

be a member of a party for at least 90 days makes it difficult for MPs to change parties during the pre-election period. Party leaders could effectively use this rule to gain a party-desired vote in the House of Representatives. Under the 2017 Constitution, for example, party leaders can nominate (or threaten to nominate) a new candidate for an incumbent MP's seat within 89 days before an election, which made it impossible for the incumbent to find a new party in time to run in the election.

Although the Political Parties Act states that there shall be no party rules permitting the termination of a Member of Parliament on the basis of his or her voting record in the House of Representatives, a party committee may take action against Members of Parliament who have opposed the party line by intra-party means. This is how opposition within a party is suppressed. A good example of this was when the ruling Palang Pracharat Party (PPRP) took action against the Dao Rerk (Star) Party for not toeing the party line in the no-confidence vote[281]. PPRP chairman and Deputy Prime Minister Prawit Wongsuwon said the group would be removed as government whip and suspended from political positions for three months.

Legal framework of the parties

1. Constitutional status

Since 1946, the right of citizens to form political parties to support and enable competitive politics has been enshrined and guaranteed in the Constitution. The essential importance of political parties in enabling participation of the people in politics has thus been constitutionally recognised. Consequently, the 2017 Constitution also contains a separate article on the formation of political parties in the Article on citizens' rights and duties.[282] The freedom of every citizen to form political parties, as long as they respect the constitutional monarchy and the regulations of the Act on Political Parties, is guaranteed

281 https://www.bangkokpost.com/thailand/general/2090367/rebels-feel-wrath-over-defiance, last accessed 28 August 2021.

282 Article 45 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

there. This law is intended to establish regulations to allow for administration of the parties that is as independent as possible, as well as transparent accountability and internal party regulations to secure membership rights with respect to the nomination of candidates. All members should be able to nominate candidates for elections and participate. An expansion of the participation of party members in the political affairs of the parties is constitutionally sought. Particular emphasis is also placed on ensuring that party administration remains as free and independent as possible from manipulation and influence by persons who are not members of the party. This rule constitutes legal grounds for dissolution of a political party enshrined in the Constitution. It is a consequence of former Prime Minister Thaksin Shinnawatra's influence on the Pheu Thai Party and Thai politics. During the 2011 election campaign, Thaksin's sister ran for the office of prime minister and explicitly mentioned her brother in her party slogan.[283] In self-imposed exile, he worked hard behind the scenes to get the Pheu Thai Party elected. In addition to Article 45, Articles 87, 88 and 90 of the Constitution also contain rights and duties of political parties, specifically governing the participation and role of parties in elections. The details of the constitutional rights and duties of the parties can be found in four laws: the "Political Parties Act",[284] the "Election Commission of Thailand Act", the "Election of Members of the House of Representatives Act",[285] and the "Election of Senators Act".

2. Act on Political Parties

The Constitution does not contain a definition of a political party. However, a simple statutory definition is found in the Act on Political Parties. Section 4 provides that it is an association of persons whose application for formation has been recognised and whose purpose is to support the constitutional monarchy by nominating party members for election as members of the House of Representatives and by carrying out other political activities on a continuing basis.

a. Foundation and registration

The Act on Political Parties prescribes numerous requirements for applying to the Election Commission for the formation and registration of a political party.

For example, a party must be founded by at least 500 people and have start-up funding of at least THB 1 million (approximately USD 33,333). This start-up capital is pooled in the party's initial or start-up fund and is made up of the required payments from the founding members. All founders of the party are required to pay a minimum of THB 1,000 (roughly USD 33) each or a maximum of THB 50,000 (roughly USD 1,666) per person into this initial fund of the party within 180 days. The initial fund will be used to pay for party activities before the party can generate government funds, membership fees or donations. The fact that each founding member must contribute financially to the formation of the initial fund is intended to prevent a party from depending too heavily on any one person or family. In addition to the financial requirements, a formal meeting must be held with at least half of the required founding members (250) voting on the registration application, party constitution and basic rules. A party must also have a name, initials and emblem. These must bear no resemblance to that of an existing party or one that has been disbanded in the past. The constitution and political programme of a party must not be aimed at racial or religious division of the nation, or endanger the security of the state. The party must uphold public order and good morals and conform to the fundamental principles of the democratic order of the state (Section 12). Only if all these conditions are fulfilled, may the Election Commission to register the party as such. The Election Commission, chaired by the Registrar, has the task of controlling and verifying the establishment of a political party, as well as its activities.

283 https://www.dw.com/en/thaksin-thinks-pheu-thai-acts/a-656174, last accessed 23 August 2021.

284 Organic Act on Political Parties, B.E. B.E. 2561 (2018) = could not be found in English.

285 Organic Act on the Election of Members of the House of Representatives B.E. 2561 (2018) = http://web.krisdika.go.th/data/document/ext838/838133_0001.pdf, last accessed 27 August 2021.

A registered party must have gained at least 5,000 new members within the first year of its formation and have more than 10,000 members after four years.

The Act on Political Parties was deliberately drafted to make it very difficult to register a new political party, while making it easier to dissolve a party or expel a candidate. It even suppresses a political party's attempt to develop populist policies.

b. Internal organisation

The Act on Political Parties (Section 15) also prescribes the internal rules and regulations of a party. Thus, the statutes of a party must contain a plan for the establishment of branches and regulate their powers and duties. The admission and expulsion of members, their rights, duties and responsibilities, and the institution of the general meeting must also be regulated in the constitution and be in accordance with the law. Section 15 of the Act on Political Parties further requires that a party's constitution provide more detail on the selection of candidates for election to the House of Representatives, the management of the party's finances and the party's own procedure for dissolution. In addition, Section 16 of the Political Parties Act sets out the necessary organs (party executive) that a political party must have. They must be elected by the party members. Each party must have subdivisions, each with at least 500 members, and a provincial representative. Under Section 41 of the Act on Political Parties, the party executive has the duty and responsibility to manage the finances, property, or any other benefit of pecuniary value of the political party, as well as its subdivisions, and to ensure proper accounting.

Parties are required by Section 51 of the Act on Political Parties to establish branches and appoint party representatives in all constituencies where their candidates are standing for election. If a party fails to comply with this requirement, the Election Commission may classify candidates as ineligible. The ECT, for example, decided not to allow 506 people to run for the March 2019 elections because their parties did not meet the necessary number of branches and party representatives in the provinces, and because some possible candidates were members of multiple parties at the same time.[286] The obligation to establish branches in the provinces, as well as the requirement for a high number of members, is intended to guarantee that a political party has broad national support and is truly anchored among the Thai people. However, the Act on Political Parties does not contain any further provisions to regulate these branches' operations.

With regard to the importance of the essential aspects of the internal life of a political party, namely the selection of candidates, the definition of party policy, coalition building, and the financing of elections, the degree of internal democracy of political parties in Thailand is quite limited. Despite the very extensive regulations on a party's constitution that are standardised by law and must be published in the Royal Thai Government Gazette (Ratchakitchanubeksa),[287] Thai political parties are still "electoral parties" dependent on the party leader. The rights of party members and the rules and procedures for nominating candidates must indeed be regulated in the constitution under the new Act on Political Parties. However, the law does not prescribe how members' rights are democratically secured. In reality, the bylaws are generally seen as simple guidelines, rather than enforced. The actual weak and undemocratic internal organisation of the parties leads de facto to fairly informal decision-making within the parties and to control of the party by a limited number of elites. Against this background, it is not surprising that there is no legal regulation of internal party minority rights, such as special motions or veto rights.

However, the Act on Political Parties contains a rule that no statute or policy of a party may contain the rule that a member may be expelled from a party because of the

286 "The ECT gets ready to disqualify 506 candidates". Post Today https://www.posttoday.com/politic/news/580423, last accessed 27 August 2021.

287 For example, the constitution of the Palang Pracharat Party and the Pheu Thai Party are available online. For the Palang Pracharat Party's constitution, see: http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/D/003/T_0221.PDF, last accessed 27 August 2021. For the Pheu Thai Party's constitution, see: http://www.ratchakitcha.soc.go.th/DATA/PDF/2550/E/174/1.PDF, last accessed 27 August 2021.

manner of voting or the conduct of the member, i.e. for political reasons. Despite this rule, however, it is possible for a party committee to take action against MPs who have opposed the party line.

Regardless of the ultimate disciplinary measure of party expulsion, it is still possible to dismiss party members from their internal party positions by means of a vote. The ruling Palang Pracharat Party (PPRP), for example, voted to remove its party executive and elect a new leadership team, and adopted a new logo.[288]

The expulsion of a member from a party must be decided by a resolution of the party with at least three-quarters of the votes in the Executive Committee and the party members in the House of Representatives. If the expelled member is a Member of Parliament, he or she has 30 days from the date of the resolution to become a member of another party. If the member fails to do so, the membership of the House of Representatives is also considered terminated. For example, the Future Forward Party voted by 250 votes to dismiss four renegade MPs who voted against the party's stance on several occasions despite warnings in the House of Representatives. At their joint meeting, party executives and MPs confirmed the previous unanimous decision of party members to expel them from the party.[289] And in January 2022, 21 MPs including the secretary-general were suspiciously expelled from the PPRP over the charge of dividing the party[290]. A notable example of a different way of dealing with dissenting members is another case: when two Move Forward MPs[291] flouted the party line in the censure debate, the party deliberately kept them in the party because expulsion would legally allow them to move to another party.

c. Funding

Funding of political parties' activities has been regulated by law since the 1997 Constitution. The 1997 Constitution first established grounds for state funding of political parties, which were eventually further elaborated in the Act on Political Parties of 1998, 2007 and 2017.

The Act on Political Parties of 2017 entitles political parties to generate funds from private donations and membership fees, but also to receive government financial support, provided under the concept of the Political Parties' Development Fund (FDP). The activities of parties to raise funds for political purposes must be transparent, there are limits on donations and party accounts must be made available for inspection by controllers.

The Act on Political Parties provides for the allocation of state funds according to three criteria: the total amount of annual membership dues (40 %), the number of votes received in general elections (40 %) and the number of party branches (20 %).

In addition to state funding, political parties generate their financial resources from membership fees, which are not set by each party itself and are instead standardised by law. According to the law, a membership fee is THB 100 (approximately USD 3) per member per year, or a one-time fee of THB 2,000 (USD 65) for a lifetime membership. In many cases, the membership fees of "ordinary" members of the party are paid by leading politicians.

The purpose of state financial support is to curb illegal fundraising by parties and to help parties become independent of the financial contributions of their leaders. That purpose has not been succeeded so far. To date, state party funding does not cover the

288 New party rules regarding the election of the party's chairman and leaders were also adopted, see: Bangkok Post. "Prawit formally elected PPRP leader Anucha Nakasai of Sam Mitr as secretary-general", retrieved from: 27 June 2020: https://www.bangkokpost.com/thailand/politics/1941900/prawit-formally-elected-pprp-leader, last accessed 27 August 2021.

289 The four MPs were Chanthaburi provincial MPs Charuek Sri-on and Pol Lt Col Thanapat Kittiwongsa. See: Bangkok Post. "Future Forward officially sacks 4 MPs Hopes for recalculation of party list MPs fade", available at: https://www.bangkokpost.com/thailand/politics/1818254/future-forward-officially-sacks-4-mps, 17 December 2019, last accessed 27 August 2021.

290 https://www.bangkokpost.com/thailand/politics/2252223/21-ex-pprp-mps-seek-seats-on-govts-side, last accessed 24 January 2022.

291 The Move Forward Party is essentially a successor of the Future Forward Party; after the Future Forward Party was disbanded, its members moved to Move Forward.

main expenses of parties to the extent that financial independence from private funding can be achieved. In 2021, some THB 120 million (approximately USD 3.6 million) was disbursed to 67 political parties.[292] Small parties are trying to maximise their share of state party funding by establishing more party branches and increasing their membership.[293]

However, most major parties generate their main source of income from their cash-rich party leaders and from corporate donations.

Section 69 of the Act on Political Parties governs donations to political parties. Under that legislation, a maximum of THB 10 million per year can be donated directly to political parties, with taxpayers permitted to donate a share of their taxes of up to THB 500 to a party of their choice.[294] Donors must be Thai nationals, and donations from foreign countries, supposedly illegal sources, government or religious organisations are not permitted.[295] Donations from corporations are generally not fully disclosed. However, it can be assumed that all major parties in Thailand receive support from influential corporations and the majority of this money goes to parties with a good chance of being in government. It is an open secret that the donation figures reported to the ECT do not reflect the actual level of donations, which is in fact much higher. Government subsidies have also been linked to corruption. State money is seen as a financial cradle by some tiny, and newly formed political parties that secure less than 1% of the votes and cannot win a single parliamentary seat. Some utilize these monies to further the vested interests of their party leaders, as well as for personal costs, rather than to further the party's development. The ECT has previously reported these parties to the Constitutional Court, which then dissolved them for fraudulent actions. Many of these parties re-emerge under new names and apply to the ECT for state subsidies, which was granted and then spent for the parties' own illicit purposes.[296] A good illustration was the People Seeking Debt Relief Party (*Phak Khon Kho Plot Ni*). Its original names were Thais Is Thai Party (*Thai Pen Thai*), then Great Agrarian Party (*Kaset Mahachon*) and Thai Pen Thai (with different spelling). The party was dissolved, and its executive members were banned for five years by the order of the Constitutional Court in March 2016.[297]

In the course of an election, the ECT is the controlling authority and stipulated, for example, that campaign expenditures may not exceed a limit of THB 1.5 million per candidate and THB 35 million per party.

Parties are allowed to raise revenue for their campaigns and election operations in addition to contributions and government subsidies by organizing events and marketing party collectables and memorabilia. Leading up to the 2019 general elections, the Phalang Pracharat Party, for example, held a fundraising gala at which each of the 200 Chinese-style dining tables for ten people sold for THB 3 million. That night, the party raised THB 650 million (about USD $20 million) for its election campaign.[298].

The transparency of the revenues and financial activities of the parties shall be ensured through the report on the finances of the parties, which they must submit to the ECT. The Executive Committee of a political party shall prepare and disclose this report as part of their duty to manage the finances, accounts, property and all financial assets of the parties and their branches. Fund-raising activities must be carried out by parties openly and with clear objectives. In such activities, the money, property or other benefits of financial value obtained from supporters and having a value of THB 100,000

292 Official document released by the Political Parties' Development Fund (FDP), the Election Commission of Thailand, 20 January 2022.

293 Siripan Nogsuan Sawasdee. 2012. "Political Parties in Thailand" in: Jean Blondel and Takashi Inoguchi (eds.). Political Parties and Democracy: Contemporary Western Europe and Asia. New York: Palgrave Macmillan, Chapter 9.

294 Section 69 of the Political Parties Act of 2017.

295 Sections 72 and 74 of the Political Parties Act of 2017.

296 Punchada Sirivunnabood. 2019. "How the Thai State Subsidizes Political Parties. ISEAS-Yusof Ishak Institute. 20 June, 2019. https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2019_50.pdf, last accessed August 28, 2021.

297 Legislative Institution Repository of Thailand. https://dl.parliament.go.th/handle/lirt/511666, last accessed August 28, 2021.

298 "Thailand's new pro-junta party raises $29m in one night" https://asia.nikkei.com/Politics/Turbulent-Thailand/Thailand-s-new-pro-junta-party-raises-20m-in-one-night, last accessed August 28, 2021.

(USD 3,333) or more are classified as donations. Upon completion of a fundraising campaign, the political party shall file a report with the Registrar within thirty days of the date of the campaign, recording the income generated and the campaign. The report must include the names of all financial supporters who donated THB 100,000 or more in the course of the activity. If a political party has received money, property or any other benefit of financial value as a donation, it shall be recorded in the donation receipt account of the political party within 15 days of receipt of the donation. The donation receipt or statement shall be mailed to the donor within seven days of the date of issuance. In the case of a donation to a political party, the head of the political party shall prepare a notice each week detailing the names of the donors and the money, property or any other benefit of monetary value donated. The aforesaid notice shall be publicly posted at the principal office of the political party for no fewer than 15 days by the first working day of the following week and shall be sent to the Registrar within seven days of the date of the notice.

d. Sanctions and prohibition of party activities or parties

Thailand's turbulent political past is marked by restrictions and bans on political activities and parties. For example, after the military coup in 2014, political parties and their local branches were no longer allowed to operate. It was not until the promulgation of the Act on Political Parties in 2017 that parties began to resume political activities and operations, recruit new members and prepare for the 2019 elections. The law mandated that parties report current membership levels 90 days after it came into effect. However, the NCPO banned political activities until December 2017, so the 90-day deadline could not be met. The re-registration of all party members ordered at the time resulted in significant membership losses for older parties, a circumstance that worked in favour of new parties close to the coup plotters.[299] This was unsuccessfully challenged in the Constitutional Court by two major parties, the Pheu Thai Party and the Democratic Party. They could not prevail with the argument that an amendment of a law in the form of a decree was unconstitutional under Section 44.[300]

A political party in Thailand can be banned by the Constitutional Court and party officials can be temporarily barred from politics.

The Constitutional Court's line of jurisprudence regarding the prohibition of parties' activities can be illustrated by the following cases: In May 2007, Thai Rak Thai (Thaksin's party) was found guilty of conspiring to obtain administrative power by illegal means and was dissolved by ruling of the Constitutional Tribunal. A total of 111 of its party leaders, including Thaksin, were barred from running for political office for five years. Then in 2008, amid fierce opposition protests, the Constitutional Court dissolved the People's Power Party, which was seen by the public as a "straw man" of Thai Rak Thai, as no fewer than 171 of the People's Power Party candidates were incumbent Thai Rak Thai MPs. Thaksin remained a major donor to the party and two member parties of the coalition, namely the Chart Thai Party and the Matchima Tippatai Party, as well as executive committee members of both parties, were charged and found guilty of electoral fraud. After the People's Power Party was dissolved and its numerous executive committee members banned from participating in politics for five years, the Democratic Party was able to form a government with other smaller parties in a parliamentary vote.

The two most recent incidents occurred as part of the implementation of the 2017 Constitution. Just ahead of the 2019 general elections, the Constitutional Court ordered the dissolution of the Thai Raksa Chart Party. The party is known to be allied with Thaksin for nominating the King's sister as a candidate for prime minister in the March election. The dissolution was justified on the grounds that the party was "hostile to the rule of the constitutional monarchy". The party's executive members were also banned from politics for ten years under Section 92 of the Act on Political Parties of 2017.

299 See: *Selective Lifting of Political Ban Unfair, Democrat Says*, KHAO SOD ENGLISH (20 December 2017), http://www.khaosodenglish.com/politics/2017/12/20/selective-lifting-politics-ban-unfair-democrat-says/, last accessed 23 March 2018.

300 See: *Revolt Over & apos; Reset' Order Gains Pace*, Bangkok Post. 25 December 2017.

In addition, in a ruling on 21 February 2020, the Constitutional Court dissolved the Future Forward Party and banned its executives from politics for ten years for accepting a loan of THB 191.3 million (about USS 6.4 million) from its party chairman Thanathorn Jungroongruankit. The Court ruled that the party and its executives had accepted income from sources other than those listed in Section 62 of the Act on Political Parties, in violation of the donation limit of THB 10 million per donor per year under Section 66. The Court concluded that the money came from an illegitimate source under Section 72, leading to the dissolution of the party under Section 92. The political ban means Thanathorn and the party's 16 leaders cannot stand as MPs, join a new party or form a new party for ten years. The party's remaining constituency and list MPs must find a new party within 60 days or their MP status will be revoked. Because of these actions, the court was widely criticised for its ruling, which was seen as hostile to democratic institutions, and for exercising too much political power.[301]

The Election Commission also disqualified a number of candidates from multiple political parties because they were either members of two parties or had been members of the party for which they were contesting for fewer than 90 days. Candidates and even elected MPs can also be disqualified if they own shares in a media company (Article 98 of the 2017 Constitution). Even before the dissolution of the Future Forward Party, Thanathorn Juangroongruangkit, the party's chairman, was asked to resign as an MP and subsequently banned from politics for five years for violating election rules that prohibit candidates from holding shares in media companies.

Since 1998, the Constitutional Court has dissolved 110 parties,[302] with most of these dissolved parties having violated the law due to technical problems. It is observed that in certain cases party dissolutions can only be effective in the short term. The effect of denying a certain group the possibility of representation can have negative effects in the longer term by giving rise to protests outside the channels of the political system.

3. Election Law

Unlike the Senate, the composition of the House of Representatives is determined by the results of the general elections.[303] The parties that run for election and are recognised by the Election Commission win their mandates – a total of 500 – according to the proportion of votes cast. The number of eligible voters is around 40 million people (persons with Thai citizenship and aged over 18). A total of 350 parliamentary seats are allocated according to the vote shares of the individual parties in the constituencies,[304] and 150 via the party lists.[305] Smaller parties in particular are favoured by the weighting procedure. This new regulation by the military government disadvantages the large parties. The latter react by founding satellite parties. It is considered certain that parties resulting from splits will return to their "mother party" in Parliament. The spin-offs are intended to exploit the voter potential to the maximum.

301 See Björn Dressel and Khemthong Tonsakulrungruang. 2019. Coloured Judgements? The Work of the Thai Constitutional Court, 1998–2016, Journal of Contemporary Asia, 49:1, 1-23. https://www.tandfonline.com/doi/full/10.1080/00472336.2018.1479879; Khemthong Tonsakulrungruang. 2019. "The Thai Constitutional Court's war on freedom of expression". New Mandala. 14 November 2019. https://www.newmandala.org/the-thai-constitutional-courts-war-on-freedom-of-expression/; Somchai Preechasinlapakun. 2020. "Looking back at Thailand's Constitutional Court" New Mandala and Prachathai. 13 February 2020. https://www.newmandala.org/looking-back-at-thailands-constitutional-court-somchai-preechasinlapakun/;"Law professors oppose Constitutional Court's dissolution of Future Forward". 24 February 2020 https://www.thaipbsworld.com/law-professors-oppose-constitutional-courts-dissolution-of-future-forward/, all last accessed 27 August 2021.

302 "Twenty-Two Years, The Court Dissolved 110 Political Parties", 19 February 2020. https://thaipublica.org/2020/02/thailand-election-2562-85/, last accessed 30 August 2021.

303 On election procedure, see: https://www.kas.de/de/laenderberichte/detail/-/content/thailand-im-wahljahr-2019, last accessed 24 August 2021.

304 Article 85 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

305 See Article 91 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) for the distribution procedure.

Candidates for the office of the House of Representatives can only be persons nominated by their political parties.[306] In drawing up lists of candidates, political parties are constitutionally bound to give equal consideration to men and women, but in practice this has been disregarded by most parties. The parties' candidate selection committee shall consider the list of names of persons approved by the general meeting of the party branch and other suitable persons and make recommendations to the Executive Committee. The decision of the Executive Committee on the nomination of candidates for election as members of the House of Representatives shall be final. In addition to considering the nomination of candidates for election to the House of Representatives, the General Assembly may allow the political party to elect suitable candidates. In this case, the Executive Committee and the Political Party Candidate Election Committee shall ensure that each attendee at the Annual Meeting may cast one vote. The persons with the highest number of votes for a constituency or party list candidature shall be selected as candidates for election to the House of Representatives under the constituency system or the party list system, respectively. Article 97 of the Constitution lists the qualifications that a candidate for election must meet, such as nationality, but most importantly the requirement that the candidate for election must have belonged to a political party for at least 90 days before the election. This period is to be reduced to 30 days for cases where new elections are held due to a dissolution of Parliament.[307] The Constitution also specifies in Article 89 which persons are ineligible to stand for election, including legally convicted criminals or persons who currently hold a politically prohibited position.

Parties must register their candidates with the Election Commission of Thailand (ECT) in advance of an election. The Election Commission is empowered under Article 224(5) of the Constitution to monitor the activities of political parties for compliance with the law. The party's list of its prime ministerial candidates to be submitted to the Election Commission must be limited to three names and subsequently announced to the public by the Election Commission. The Constitution also grants the parties the right not to propose a list of candidates for election.[308]

The Election Commission is constitutionally constituted as an independent constitutional body. It consists of seven commissioners appointed by the king on the advice of the Senate for seven-year terms.[309] However, members of the current ECT were selected by the junta.[310] Its duties and powers include the organisation and holding of elections to the House of Representatives and the Senate, as well as the control and supervision of these elections and their results. The Electoral Commission is also responsible for monitoring the activities of political parties.[311] Other independent constitutional bodies are the Ombudsman, the National Anti-Corruption Commission, the State Audit Commission and the National Human Rights Commission, which are also established and governed by the Constitution.

Legal framework of party/opposition work in Parliament

The rights and duties of MPs are enshrined in the 2017 Constitution.

Under Article 114 of the Constitution, the Members of the House of Representatives and the Senators are representatives of the Thai people and free from any mandate, obligation or control. They are subject only to their conscience and have the duty to act for the good of the country and for the Thai people. According to Article 124 of

306 Article 87 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017). See also Article 108(4) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017), which provides that membership of a political party is a prerequisite for standing for election to the House of Representatives.

307 Article 97(3) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

308 Article 88 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

309 Article 222 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

310 https://ilaw.or.th/node/5004, last accessed 28 August 2021.

311 Article 224(5) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

the Constitution, they cannot be prosecuted for statements made in Parliament. Nor may a Member be arrested on criminal charges.

The House of Representatives has Rules of Procedure, which lay down rules for the maintenance of order (Rule 174). For example, all motions must be submitted in writing and in advance to the Speaker (Rule 37). After the first speaker has opened the debate, the following debate takes place in alternation between members of the opposing and the supporting side (Rule 59). A person who violates the Rules of Procedure may be cautioned by the Chair, sanctioned with a ban on speaking, required to excuse himself or herself from the meeting, or excluded from the meeting with or without notice. If a person fails to comply with the exclusion from the meeting, the Chair shall have the power to direct the security officers to remove the person concerned from the meeting or from the premises of the meeting. The order of the Presiding Officer under these Rules shall not be subject to appeal.

Government Building in Bangkok, Thailand

An MP receives a monthly position allowance of THB 71,230 and an additional allowance of THB 42,330, resulting in a total of THB 113,560 (approximately USD 3,800). MPs also receive sitting allowances if they are appointed to a House committee, as well as medical care and travel allowances.[312]

A Member can hire up to eight people: a personal specialist for academic advice, who is paid THB 24,000 a month; two experts for research, preparing applications and proposals (THB 15,000 each); and five assistants to meet people and receive complaints (THB 15,000 each).

The MPs are not allowed to pursue any other professional activity. Former Prime Minister Samak Sundaravej was therefore convicted by the Constitutional Court. He had hosted a cooking show on television, which allegedly constituted a conflict of interest, since as a civil servant he received a salary from a private company.

The acceptance of donations is prohibited for Members.

In fact, there is a strong relationship of dependence between the MPs and the party. First, only party candidates can become MPs and, second, the party also influences the work in Parliament. In order to introduce a bill, the approval of at least 20 MPs is required, i.e. individual MPs are usually dependent on the support of their party. Party leaders exploit this dependency by distributing to their MPs a timetable of expected votes in Parliament, with precise instructions on how to vote. This is known as a "whip-in". MPs are usually expected to show loyalty to their party when voting in Parliament.

Current challenges and dangers for the opposition

There are currently 84 political parties registered with the Election Commission of Thailand. The number of party members and party branches is declining, presumably due to the requirement to pay membership fees and due to the frequent dissolution of parties. As of 31 December 2021, the total number of members is 1,152,108, and the total number of branches of the parties that are still active today is 388.[313] The number of members and branches for some major parties are shown in the table below.

312 The Salaries and Benefits Ordinance for Members of Parliament. https://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/ewt_dl_link.php?nid=22944, last accessed 27 August 2021.

313 Compiled by Siripan Nogsuan Sawasdee, based on information from the Election Commission of Thailand "List of political parties and their numbers of party's membership", as of 31 December 2021: https://www.facebook.com/กองทนเพื่อการพัฒนาพรรคการเมือง 205981099944062, last accessed 24 January 2022.

Name of the political parties	Number of members	Number of branches
Democrats	178,095	18
Bhumjaithai	75,728	4
Pheu Thai	59,652	4
Seriruamthai	55,841	4
Palang Pracharat	44,871	4
Move Forward	24,589	6
Pheuchart	22,139	6
Chartthai Pattana	19,691	4
Prachachat	18,051	6
Chartpattana	15,842	4
New Economy	12,486	4

The 2019 election results, seats and vote share of political parties

Political party	Vote	Constituency seats	Party list		TOTAL	
			%	Seats	Seats	%
Pheu Thai	7,881,006	136	22.2	0	136	27.2
Palang Pracharat	8,441,274	97	23.7	19	116	23.2
Future Forward	6,330,617	31	17.8	50	81	16.2
Democrats	3,959,358	33	11.1	20	53	10.6
Bhumjaithai	3,734,459	39	10.5	12	51	10.2
Chartthai Pattana	783,689	6	2.2	4	10	2.0
Seri Ruamthai	824,284	0	2.3	10	10	2.0
Prachachat	481,490	6	1.4	1	7	1.4
New Economy	486,273	0	1.4	6	6	1.2
Pheuchart	421,412	0	1.2	5	5	1.0
Action Alliance for Thailand	415,585	1	1.2	4	5	1.0
Chartpattana	244,770	1	0.7	2	3	0.6
Thai Local Employees	214,189	0	0.6	3	3	0.6
Thai Forest Conservation	134,816	0	0.4	2	2	0.4
Other parties	1,208,334	0	3.4	12	12	2.4
Valid votes	35,561,556	350	100	150	500	100.0
Lost ballots	2,130,327		5.5			
None of the above	605,392		1.5			
Voter turnout	38,268,366		74.69			
Eligible voters	51,239,638					

Source: Author's calculation based on data from the Election Commission of Thailand.

In the 2019 general election, there were two types of newly formed parties: 1) new parties with experienced politicians who defected from the old parties, namely Palang Pracharat, Thai Raksa Chart, Prachachat; and 2) new parties with new faces, for example Future Forward and Seriruamthai.

The 2017 Constitution, drafted under military rule, is perceived in Thailand as having favoured the military's retention in power. Indeed, a Palang Pracharat representative was quoted as saying that the Constitution was "designed for them", since it introduced mixed proportional representation that forces the emergence of smaller parliamentary parties, creating weaker coalition governments.

As mentioned above, the main political parties in Thailand have been dissolved several times, so that the institution of a political party accepted in the public consciousness has never really existed. The weakness of Thai political parties was linked with the perpetual conflict between parties and military/bureaucratic power. Moreover, the many constitutions have been exploited as tools for military control. It can also be argued that the conflicts which flared up publicly resulted from the absence of the institutionalisation of political process, especially with regard to conflict resolution. As a result, each party is aware that a military coup or dissolution of the House could occur at any time, necessitating another election. With this in mind, most political parties concentrate on increasing their own popularity in the short term. They fund particular projects in the ministries they supervise. MPs, on the other hand, strive to improve their constituency service in order to strengthen and grow their patronage network.

Scholars[314] have identified the following reasons for the lack of improvement in the party system: The major goal of electoral politics is to win votes, ensuring a regular and considerable flow of government allocations to the voter base at the constituency level. At times, parties are founded to support a specific military leader, and they compete in unfair elections biased in their favor. The policies of many parties are aimed at protecting the financial interests of the parties and their large donors. Most parties rely heavily on the financial generosity of their leaders. Vote buying with cash payments is a continuing practice. Parties pay little attention to the central task of creating a link between the people and the party and raising funds for campaigns and establishing party branches. Political suppression, media censorship, and a lack of an impartial oversight from

the ECT characterized the recent election campaign.

All Thai political parties face serious challenges in maintaining their support, given that new social divisions have emerged. The many military coups also posed a major obstacle to the growth and development of political parties. Thailand's frequent coups, tolerated by conservative social forces, hindered the regularity of party competition, destroyed parties' roots in society and strained the possibility of parties and elections being accepted as a means of determining who governs.[315]

In addition, anyone can bring charges of lèse-majesté in Thailand. The Lèse-Majesté Law is thus currently being used more intensively as a weapon against opposition activists.[316] The charges levied are intended to serve as a deterrent to the pro-democracy protest movement. It is believed that Future Forward was dissolved and its executive committee members dismissed because its chairman, Thanathorn Juangroongruangkit, and the party's Secretary General, Piyabutr Saengkanokkul, had become too much of a threat to the pro-junta and pro-monarchy camp. After Thanathorn was banned from

314 See Prajak Kongkirati and Veerayooth Kanchoochat. 2018. "The Prayuth Regime: Embedded Military and Hierarchical Capitalism in Thailand" Trans. 30 July 2018. https://www.cambridge.org/core/journals/trans-trans-regional-and-national-studies-of-southeast-asia/article/prayuth-regime-embedded-military-and-hierarchical-capitalism-in-thailand/E94563EBE18DD73C5ED62F0FE5F9035E; Duncan McCargo and Saowanee T. Alexander. 2019." Thailand's 2019 Elections: A State of Democratic Dictatorship?" Asia Policy, volume 14, number 4 (october 2019), 89–106. https://thaipolitics.leeds.ac.uk/wp-content/uploads/sites/87/2019/12/McCargo-Alexander_Thailands-2019-elections.pdf; Siripan Nogsuan Sawasdee. 2020. "Electoral Integrity and the Repercussions of the Institutional Manipulations: The 2019 General Election in Thailand." Asian Journal of Comparative Politics. Volume 5 Number 1, March https://journals.sagepub.com/doi/full/10.1177/2057891119892321; Jonathan Head. 2021. "Thailand's constitution: New era new uncertainties. https://www.bbc.com/news/world-asia-39499485, all last accessed 27 August 2021.

315 Siripan Nogsuan Sawasdee. 2019. "The Conundrum of a Dominant Party in Thailand" Asian Journal of Comparative Politics. Volume 4 Number 1, March (DOI: 10.1177/2057891118774643).

316 https://www.article19.org/resources/thailand-lese-majeste/; https://asia.nikkei.com/Opinion/Lese-majeste-keeps-Thailand-in-the-dark-ages; https://www.nytimes.com/2021/01/19/world/asia/thailand-king-lese-majeste.html; https://asia.nikkei.com/Politics/Turbulent-Thailand/Thailand-s-court-denies-bail-to-leading-lese-majeste-defendants; https://www.hrw.org/news/2021/03/09/thailand-activists-jailed-criticizing-monarchy, all last accessed 27 August 2021

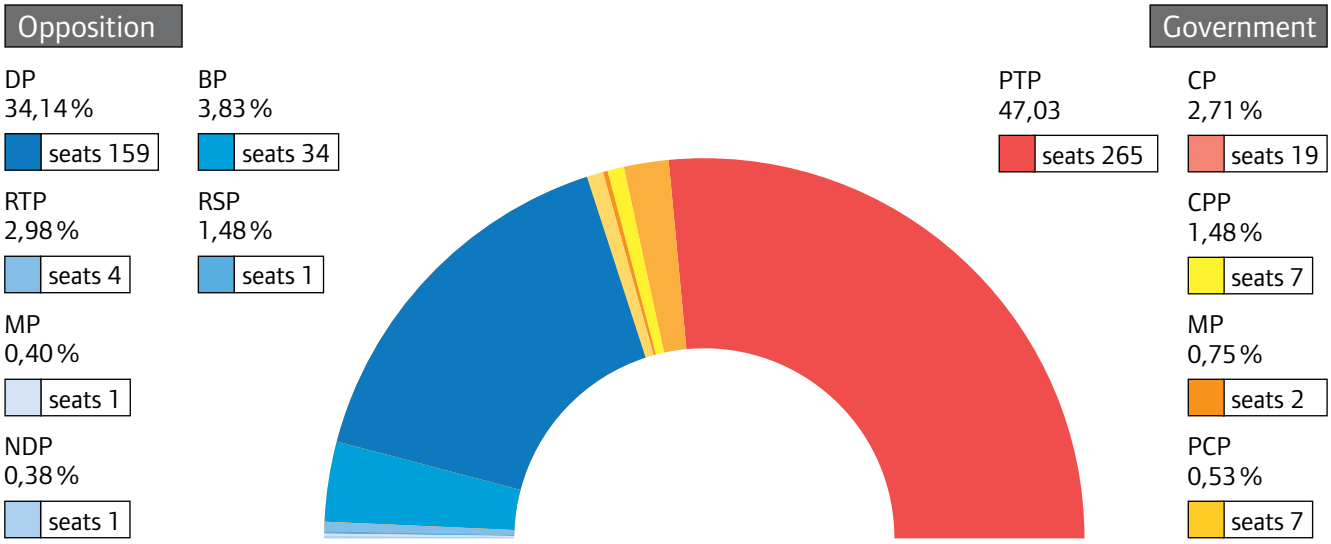
engaging in political activity, he was also charged with lèse-majesté. He had criticised the government's introduction of the Covid-19 vaccine.[317]

Over the past year, the country's youth movement has made three demands: an end to the rule of the current government, reform of the monarchy and an amendment to the current Constitution. Many of the youth activists who joined the protest are and would be strong supporters of Future Forward/Move Forward.[318]

The latest development is that on 10 September 2021, a joint session of the House and Senate approved a constitutional amendment changing the electoral system by a vote of 472 to 33, with 187 abstentions.[319] The amendments received the Royal Assent in November. The charter amendment came as a surprise because it was previously considered an uphill effort. The third and final reading requires a majority vote of the Parliament. However, that majority must include one-third of the Senate (84) and 20 percent of MPs from all political parties who do not hold positions as cabinet members, Speaker of the House of Representatives or Deputy Speaker of the House of Representatives.

The amendment marks a return to a two-ballot system similar to those elections held under the 1997 and 2007 Constitutions. The voters will be given two ballots; one ballot, for 400 constituency MPs, is to be counted under the first-past-the-post system and the other, for 100 party-list MPs, is to be counted separately under the largest-remainder proportional representation system, without a threshold. This type of MMM electoral system was once criticised for giving a disproportional advantage to a big and well-funded political party with national recognition. Under this system, many small parties, products of the 2017 electoral system, will find it hard to survive and get through. The rules of electoral competition have once again been altered, which will lead to a changing landscape of party politics and the party system.

Parliamentary Election, 03. July 2011



Parliamentary seats: 300(Govt.) / 200 (Opp.)
Allocation of seats: 60 % (Govt.) / 40 % (Opp.)

source: https://en.wikipedia.org/wiki/2011_Thai_general_election.

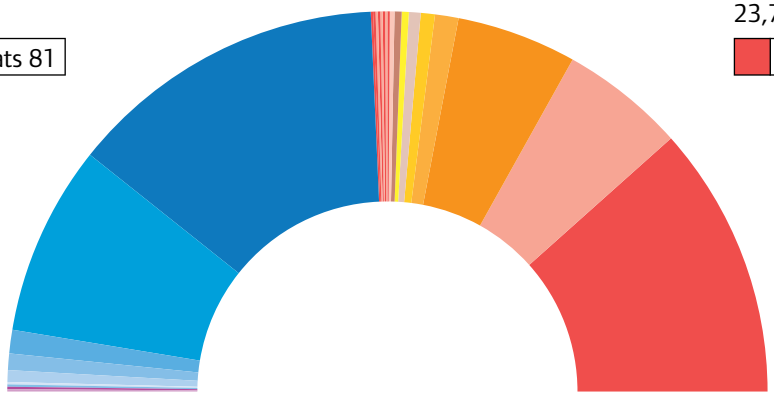
317 https://www.voanews.com/east-asia-pacific/thailand-charges-opposition-figure-defaming-king; https://www.theguardian.com/world/2021/jan/21/thailand-government-files-lese-majesty-suit-against-banned-opposition-leader, all last accessed 27 August 2021.

318 https://www.reuters.com/article/us-thailand-protests-idUSKBN2BG1ZI; https://www.bbc.com/news/av/world-asia-55180986, all last accessed 27 August 2021.

319 "Thai Parliament approves election system charter change." The Washington Post, 10 September 2021. https://www.washingtonpost.com/politics/thai-parliament-approves-election-system-charter-change/2021/09/10/911e7ba6-1238-11ec-baca-86b144fc8a2d_story.html, last accessed 23 September 2021.

Parliamentary Election, 24. March 2019

Next Election: 2024



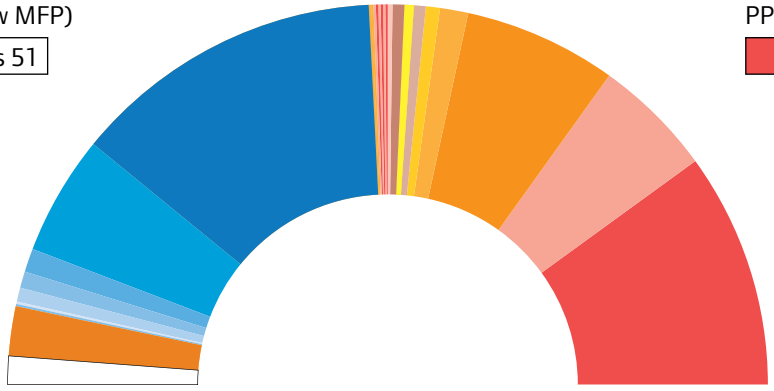
Opposition

PTP 22,3 % seats 136
FFP (now MFP) 17,6 % seats 81
SRT 2,3 % seats 10
Prachachart Party 1,34 % seats 7
PCP 1,16 % seats 5
PPP 0,19 % seats 1
PRP 0,13 % seats 1
TPPP 0,23 % seats 1
PP 0,16 % seats 1
TCP 0,17 % seats 1
TTPP 0,16 % seats 1
NDP 0,11 % seats 1
TLPP 0,59 % seats 3
ACT 1,15 % seats 5
TCP 0,17 % seats 1
TPJP 0,13 % seats 1
TNPP 0,20 % seats 1
PTRTP 0,17 % seats 1
PP 0,16 % seats 1
TCPR 0,12 % seats 1
NPP 0,1 % seats 1
TFCP 0,38 % seats 2
CPP 0,7 % seats 3

Government

PPRP 23,7 % seats 116
DP 11,1 % seats 53
BJT 10,5 % seats 51
CP 2,2 % seats 10
NEP 1,34 % seats 6

Current Distribution of Parliamentary seats



Opposition

PTP seats 133
FFP (now MFP) seats 51
SRT seats 10
Prachachart Party seats 7
PCP seats 6
PPP seats 1
TCP seats 1

Government

PPRP seats 100
DP seats 51
BJT seats 65
CP seats 12
NEP seats 6
ACT seats 5
CPP seats 4

Independent

Thai Economy seats 21
vacant seats 12

TPPP seats 1
PP seats 1
TCP seats 1
TTPP seats 1
NDP seats 1
TLPP seats 5
TNPP seats 1
PTRTP seats 1
PP seats 1
TCPR seats 1
NPP seats 1
TFCP seats 2

Parliamentary seats: 258 (Govt.) / 209 (Opp.) / Independent (21) / Vacant (12)
Allocation of seats: 51,16 % (Govt.) / 41,8 % (Opp.) / 4,2 % (Independent) / 2,4 % (Vacant)

Asked to be dissolved:
TPJP and PRP

source: https://en.wikipedia.org/wiki/2019_Thai_general_election; https://en.wikipedia.org/wiki/House_of_Representatives_(Thailand).
https://th.wikipedia.org/wiki/สภาผู้แทนราษฎรไทย_ชุดที่_25

Venezuela

JESÚS M. CASAL HERNÁNDEZ /SOPHIE SCHÖNBERGER

History and constitutional system

The history of Venezuela as an independent state began in 1811, although it was not until many years later that the country really began to free itself from Spanish colonial rule during the Wars of Independence.[320] After initially gaining independence as part of Greater Colombia, Venezuela broke away from the state structure shortly before the death of Simón Bolívar and established itself as an independent republic. The political history of the independent country can be described as quite changeable. Venezuela has had 26 different constitutions.[321] In the 19th century in particular, Venezuela's history was strongly marked by revolutions, counter-revolutions and various forms of dictatorial rule by so-called "caudillos", which were stable only to a limited extent.[322] In this respect, the various constitutions served primarily to secure the position of power of the respective ruler. If that failed and he was replaced by the next caudillo, the enactment of a new constitution usually also resulted.

Venezuela did not receive its first democratic constitution until 1947. It did not remain in force for long, however. The following year, a military coup put an end to democratic rule and established a military dictatorship, which was not overthrown until ten years later. In 1961, Venezuela received a new democratic constitution that provided for a presidential system with strong executive powers. During the nearly forty years it was in effect, presidents alternated between the social democratic Acción Democrática (AD) and the Christian democratic Comité de Organización Política Electoral Independiente (COPEI). In 1992, Hugo Chávez, an officer and founder of the underground movement Movimiento Bolivariano Revolucionario 200, unsuccessfully attempted a coup d'état and was subsequently sentenced to a term in prison, of which he served two years.[323] After his release, he founded the Movimiento Quinta República (MVR) party in 1997 as a democratic socialist party. The following year he was elected the new president.

In 1999, the newly elected president set in motion the process for a new constitution, fulfilling one of his key election promises. A directly elected constituent assembly drafted the document, which was adopted as the Constitution by referendum later that year.[324]

This Constitution, which is still in force today, establishes a presidential system with strong presidential powers. The directly elected president is head of state and head of the executive branch.[325] Parliament (Asamblea Nacional) consists of a unified chamber whose members were last elected in a parallel voting system. In addition to the executive, legislative and judicial branches, Venezuela has two other powers: the civic power (Poder Ciudadano) and the electoral power (Poder Electoral).[326] While the civic power is primarily responsible for controlling the public administration, the electoral power is responsible for organising, conducting and controlling all elections and referen-

320 *Maya*, On the history of Venezuela, 2011, p. 27 (29); *Rinke*, History and historical images of Venezuela: a sketch, 2019, p. 31 (34).

321 *Hernández*, in: Welsch/Werz/Boeckh (eds.), Venezuela Today, 2011, p. 143 (143).

322 "Caudillos" see: *Hernández*, in: Welsch/Werz/Boeckh (eds.), Venezuela Heute, 2011, p. 131 (143).

323 *Alvarez*, Countries at the Crossroads 2011: Venezuela, 2011, p. 2; *Maya*, On the History of Venezuela, 2011, p. 27 (44).

324 *Alvarez*, Countries at the Crossroads 2011: Venezuela, 2011, p. 2; *Maya*, On the History of Venezuela, 2011, p. 27 (45).

325 Article 225 of the Constitution, 1999 (2009).

326 *Combellas*, The constituent process and the Constitution of 1999, 2003, p. 183 (205); Article 136 of the Constitution, 1999 (2009).

dums.[327] It is exercised by the National Electoral Council (Consejo Nacional Electoral).

After Chávez's death in 2013, his former vice-president Nicolás Maduro was elected president. In the subsequent parliamentary elections in 2015, the opposition did achieve a two-thirds majority.[328] However, from that point on, if not earlier, the Supreme Court's and the president's encroachments on the powers of Parliament intensified, and Parliament was increasingly stripped of its powers. A referendum to vote the president out of office was also thwarted in 2016. In January 2017, Parliament declared the president deposed under Article 233 of the Constitution, but these actions had no consequences.[329] Instead, in May of that year, the president convened a constituent assembly in a procedure not provided for in the Constitution, in which forces loyal to the government had a majority and which the government increasingly envisioned replacing Parliament.[330] Presidential elections were held again in 2018, with Maduro emerging victorious. However, the elections were largely not recognised internationally. In early 2019, National Assembly President Juan Guaidó declared himself interim president under Article 233 of the Constitution and was recognised by 54 foreign countries.[331] However, he failed to seize actual power in the country.[332]

The parliamentary elections at the end of 2020 were essentially boycotted by the opposition. According to the official election results, the Partido Socialista Unido de Venezuela (PSUV), which had already absorbed the MVR in 2007, won nearly 90% of the seats. Abroad, the election was not recognised by most democratic states. Against this backdrop, the opposition-controlled National Assembly elected in 2015 decided at the end of 2020 to extend its legislative term into 2021. Thus, two competing national assemblies continue to exist in Venezuela simultaneously. The Constituent Assembly dissolved at the end of 2020.[333]

Current situation of the opposition

The V-Dem Institute at the University of Gothenburg describes Venezuela as an electoral autocracy. In the institute's Liberal Democracy Index, which also includes key aspects of free opposition, the country ranks 164th among 179 countries with a score of 0.07/1.[334]

The opposition in Venezuela is divided and opposition parties have very low support in opinion polls and political self-definition. At the same time, the figure of Juan Guaidó, President of the National Assembly elected in December 2015 and considered by many as interim President of the Republic, still has popular support, not so much due to his own political relevance but because he is the only alternative to Maduro. The opposition as a heterogeneous group still has majority support. A dilemma that is hurting the opposition is whether it is wise or not to participate in the electoral calls of the National Electoral Council (CNE), which is dominated by the governing party. So far the stance to not participate has prevailed, because of the lack of acceptable electoral conditions. Nevertheless, for the upcoming regional and local elections many opposition actors in the states and municipalities want to participate, observing that the strategy of abstentionism has not yielded results.

327 "Civic Power" see: Article 273 III of the Constitution, 1999 (2009); Electoral Power see: Article 293 of the Constitution, 1999 (2009).

328 Bertelsmann Stiftung, BTI 2020 Country Report-Venezuela, 2020, p. 5.

329 Article 233 of the Constitution, 1999 (2009).

330 Constituent Assembly see: Article 347 of the Constitution, 1999 (2009).

331 Bertelsmann Stiftung, BTI 2020 Country Report-Venezuela, 2020, p. 5.

332 Bertelsmann Stiftung, BTI 2020 Country Report-Venezuela, 2020, p. 6.

333 See https://freedomhouse.org/country/venezuela/freedom-world/2021.

334 Alizada, Nazifa/ Cole, Rowan/ Gastaldi, Lisa/ Grahn, Sanda/ Hellmeier, Sebastian/ Kolvani, Palina/ Lachapelle, Jean/ Lührmann, Anna/ Maerz, Seraphine F./Pillai, Shreeya/ Lindberg Staffan I., Autocratization Turns Viral. Democracy Report 2021, 2021, University of Gothenburg, V-Dem Institute.

In addition to this problem of fragmentation of the opposition, its political effectiveness has been massively limited, above all by the development of the media landscape over the last two decades. The government has managed to impose a communicational hegemony through a variety of different measures: the decision not to renew the television concession of the private station with the largest audience and a critical editorial line, the takeover of private radio stations by means of legal devices, the purchase of television media with a wide audience in the information sector by an intermediary, the suppression of the contracting of advertising and the sale of paper to newspapers with an opposition line and the indirect purchase of the most traditional newspaper in order to neutralise it, the degradation of public television to a campaign platform of the party and the government, and the imposition of obligatory transmissions for proselytising or ideologising activities of the President of the Republic.

Today, the possibilities for the opposition to disseminate its calls, activities or opinions through the media are minimal. Social networks are mainly used, although their use is not free from the risk of criminalisation.

Legal framework for political parties

Monument of Simon Bolivar

1. Constitutional status

The current Constitution of 1999 does not expressly refer to political parties, but to "organisations with political purposes".[335] This is not a simple variation in terminology, but part of the ideas that dominated the 1999 constituent process. The credibility of the major Venezuelan political parties deteriorated markedly when Hugo Chávez became President of the Republic in December 1998 and he himself raised his political position and ramped up his discourse based on the criticism of the traditional party system and what he considered a hegemony of the two traditional parties, *Acción Democrática* and *COPEI*, in all spheres of public life. These parties, which had alternated in power since 1958, when the military dictatorship fell and democracy was restored in the country, were suffering serious wear, under accusations of corruption, and were not capable of renewing their leadership. This was reflected in Chávez's political discourse in 1998 and subsequently impregnated the 1999 constituent process.

Accordingly, the reference to political parties contained in the 1961 Constitution was eliminated from the 1999 Constitution and the public financing of parties – now termed organisations with political purposes, – which until then had been lawful, was prohibited. The parliamentary fractions, which had been formed in the Congress of the Republic and which corresponded to each of the parties with representation in the Parliament, also received public financing in the Congress, but in 1999, within the framework of the constituent process, such parliamentary fractions were eliminated, along with the respective financing.

The Constitution at present recognises the right to associate for political purposes and establishes that democratic methods must apply to the organisation, functioning and management thereof.[336] It also establishes democratic methods for the selection of candidates for elected office.[337] The regulation of private contributions to political or-

335 Article 67 of the Constitution of the Bolivarian Republic of Venezuela (1999).

336 Sentence 1 of Article 67(1) of the Constitution of the Bolivarian Republic of Venezuela (1999).

337 The organs of political organisations shall be elected by internal elections with participation of their members. Sentence 2 of Article 67(1) of the Constitution of the Bolivarian Republic of Venezuela (1999).

ganisations and the applicable controls, as well as political propaganda and the financing of electoral campaigns, is to be determined by law.[338]

Regardless of the elimination of the concept of political party from the Constitution, the jurisprudence of the Supreme Court of Justice (Tribunal Supremo de Justicia – TSJ) has recognised since the year 2000 that Article 67 of the Constitution includes political parties,[339] since they are associations with political purposes.[340] This line of jurisprudence has continued in subsequent years. In 2003, the court addressed the significance of direct participation in relation to political representation, which is largely carried out by political parties. Regarding this issue, the 1999 Constitution confers special importance to the right and principle of citizen participation[341] and assumes as an objective the establishment of "a participative and protagonist democratic society". [342] Together with other provisions, that has led to the opinion that it advocates a participative democracy,[343] in which the role of the parties could be minimised. The Constitutional Chamber, however, held in its judgment, that both direct participation and representation are fundamental for the democracy envisaged in the Constitution,[344] by which it seemed to reduce the strength of this participatory design. However, other judicial decisions assert this participatory approach[345] and, overall, the judgments that have been dictated against the rights and position of the parties have in fact degraded them. The system as a whole has become plebiscitary and personalistic, to the detriment of parties and other democratic institutions.

In this sense, a ruling from 2016 can also be classified as rather ambivalent overall, although it seems to clearly strengthen the situation of political parties. An express reference is made therein to political parties and it is stated that Article 67 of the Constitution recognises the right to found "political parties". In addition, it states that: "political parties play a fundamental role in a Democratic and Social State of Law and Justice such as the one advocated by the Constitution in its Article 2". It also explains the function of the parties as intermediaries between the people and the State. Nevertheless, that was only a façade for dismantling the opposition parties. This judgment arbitrarily reinterpreted the Act on Political Parties, Public Meetings and Demonstrations (Ley de Partidos Políticos, Reuniones Públicas y Manifestacion – LPPRM) and established requirements for the valid conformity of the parties and the conservation of their registration that were unlawful and foreign to Venezuelan political traditions and practices,[346] all for the purpose of imposing a cumbersome procedure for the ratification of the membership of the existing political parties, which eventually led to the loss of the registration of almost all the opposition political parties.

2. Legal status and structure

The legal status of political parties in Venezuela is determined by the Act on Political Parties, Public Meetings and Demonstrations. This Act was passed prior to the 1999 Constitution and therefore retains the term of political parties, but was reformed in certain respects in 2010. It defines political parties as "groupings of a permanent character whose members consent to associate in order to participate, by lawful means, in the political life of the country, in accordance with programmes and statutes freely agreed upon by them".[347]

338 Sentence 3 of Article 67(1) of the Constitution of the Bolivarian Republic of Venezuela (1999).

339 Judgment of the Electoral Chamber of the TSJ N° 38, 28 April 2000.

340 Judgment of the Constitutional Chamber of the TSJ N° 1003, 11 August 2000.

341 Article 62 of the Constitution of the Bolivarian Republic of Venezuela (1999).

342 Preamble of the Constitution of the Bolivarian Republic of Venezuela (1999).

343 See Combellas, Ricardo, "El proceso constituyente y la Constitución de 1999", in *Politeia,* 30, 2003, pp. 183 ff.

344 See Judgment of the Constitutional Chamber of the TSJ N° 3, 22 January 2003.

345 See Judgment of the Constitutional Chamber of the TSJ N° 355, 16 May 2017.

346 Judgment of the Constitutional Chamber of the TSJ N° 1, 5 January 2016.

347 Section 2 of the Act on Political Parties, Public Meetings and Demonstrations.

Parties may be founded at the regional or national level. The former must have a membership of more than 0.5% of the registered voters in the respective entity, whose manifestation of willingness to belong to the party must be accredited. National parties must demonstrate that they have been constituted in at least twelve of the country's 23 federal entities. In both cases, an application for registration must be filed with the National Electoral Council (Consejo Nacional Electoral – CNE), together with copies "of its constitutive act, its declaration of principles, its political action programme and its statutes". Additionally, the symbols and emblems of the party must be presented, and its governing bodies must be indicated, as well as the persons who are part of them and the positions they hold.[348]

It is not clear from the law that registration with the National Electoral Council is a prerequisite for party status. From a formal point of view, therefore, this is merely an act of declarative value. From a legal point of view, it is therefore only important that a party fulfils the legal requirements. In administrative practice, however, registration is indispensable for the party to be considered to exist. Thus, the National Electoral Council plays a decisive role in the question of whether or not political parties can begin their work in Venezuela. The Council is initially conceived in the Constitution as an independent body that exercises electoral power. It consists of five members having no ties to organisations for political purposes; three of these members shall be nominated by civil society, one by the schools of law and political science of the national universities, and one by the Citizen Power. They shall be designated by a two-thirds vote of the members of the National Assembly.[349] In reality, the Council is not politically independent, but dominated by supporters of the government of Nicolás Maduro. Its decisions therefore repeatedly intervene in the political process to the disadvantage of the opposition. The opposition organisation "Vente Venezuela", for example, has been waiting for several years to be recognised as a political organisation, but the National Electoral Council refused its registration in 2015, along with that of nine other organisations, without giving any valid reasons.[350]

3. Internal organisation

The new Constitution of 1999 was intended to bring about a radical change with regard to political parties previously perceived as hierarchical and corrupt. Article 67 therefore prescribes that political organisations' governing organs and candidates for offices filled by popular vote shall be selected by internal elections with participation of their members. However, these requirements have only been partially implemented to date. The selection of the parties' authorities still lacks transparency. Regarding the designation of candidates for public offices, the opposition has at times resorted to an open primaries system for the selection of its candidates, which was considered compatible with the Constitution by the Supreme Court of Justice, but restrictions have been imposed on its realisation.[351]

The Act on Political Parties, Public Meetings and Demonstrations leaves each party to determine its internal organisation. It only requires that the National Electoral Council be informed which are its directive bodies and that the direct or representative participation of the affiliates in the government of the party and in the supervision of its performance be guaranteed.[352]

Even though the internal organisation of political parties is legally only very rudimentarily pre-structured, there have been an increasing number of cases in recent years in which the Supreme Court of Justice has intervened massively in the internal organisa-

348 Sections 10 and 16 of the Act on Political Parties, Public Meetings and Demonstrations.

349 Article 296 of the Constitution of the Bolivarian Republic of Venezuela (1999).

350 See: CNEniegaaVenteVenezuela y Marea Socialistainscribirsecomopartidos-PolítiKaUCAB (politikaucab.net), last accessed 10 February 2021; see also http://www.cne.gob.ve/web/gaceta_electoral/gaceta_electoral_detallado.php?tg=1&num_gac=748 -- , last accessed 10 February 2021.

351 See https://www.noticiasdiarias.informe25.com/2012/03/tsj-ratifica-multa-impuesta-teresa.html?m=1 last accessed 8 December 2021 at 12:15.

352 Section 5 of the Act on Political Parties, Public Meetings and Demonstrations.

Maduro was inaugurated for a contested and controversial second term on 10 January 2019.

tion of opposition parties such as Acción Democrática (AD) and Primero Justicia (PJ) by removing the board of directors of these parties and appointing persons close to the government as new directors.[353] In terms of procedural law, these measures were based on an instrument called "amparo", which may be filed to protect constitutional rights and which, when resolved by the Constitutional Chamber of the Supreme Court of Justice, confers broad powers to the judge to provide a solution to the controversy raised. Substantively, the measures were taken by invoking Articles 62, 63, 67 and 70 of the Constitution, which guarantee certain political rights and freedoms to every citizen, and enshrine the status of political organisations in the Constitution. The "amparos" were filed by militants or former militants of those same parties that bowed to the interests of the government and entered into compromises to later obtain benefits.

The relevant rulings can ultimately only be explained by the fact that the Supreme Court of Justice does not enjoy judicial independence and is politically controlled by the Maduro government. Especially since 2004-2005, the regime has been determined to cleanse the Supreme Court of Justice of any independent judges, although the problems began with the appointment of judges to the Supreme Court by the constituent assembly in 1999. In December 2015, shortly before the opposition majority in Parliament began its term, there was a new political capture of the Supreme Court of Justice, whose members are appointed by the National Assembly, which confirmed its subordination to the political interests of the government. Since 2004, the Court has been in charge of subjugating all judges, who are mostly provisional, so that they may be removed and replaced without procedure or contest for any cause whatsoever. They do not enjoy irremovability or stability in office, according to the Court's own jurisprudence.

353 See, inter alia, Judgment of the Constitutional Chamber of the TSJ N° 72, 16 June 2020.

4. Financing

The Constitution prohibits public financing of parties. However, the third paragraph of Article 67 leaves a margin for the interpretation that, by law, public funds may be allowed to be allocated for the financing of political propaganda and electoral campaigns. This exception has been regulated in Article 78 of the Organic Act on Electoral Processes (Ley Orgánica del Poder Electoral – LOPE), which refers to the possibility that the National Electoral Council, during the electoral campaigns, agrees to finance, partially or in total, the electoral propaganda of the political organisations in the radio, television or printed media. This provision has sometimes been applied by the National Electoral Council.[354] The rules, however, are set individually for each election.[355]

Against this background, political parties are financed primarily from private sources. That includes contributions from members and the receipt of direct donations or the acquisition of income through the organisation of public collections, public events or other similar activities. The Constitution provides that the law must regulate the private financing of political organisations and establish the corresponding control mechanisms, but this law has not yet been passed. However, the Act on Political Parties, Public Meetings and, Demonstrations lays forth rules that concern some aspects of the financing of the parties. The parties must keep a registry of their income and expenses before the National Electoral Council and the Act on Political Parties, Public Meetings and Demonstrations specifies the accounting books that must be presented to the competent entities of this electoral body. In addition, the National Electoral Council has issued the General Regulations of the Organic Act on Electoral Processes, in exercise of the powers granted to it by the Constitution.[356] These regulations establish rules on the control of the financing of electoral campaigns, including the obligation of each party that nominates candidates in an election to inform the National Electoral Council about the person in charge of the finances during the campaign, the duty to keep a record of the contributions received, as well as of the respective expenses, and to submit accounts to the National Electoral Council at the end of the electoral process. Certain prohibitions are established as to the origin of the funds, and supervisory competencies are foreseen. It should be noted that in practice the general prohibition of public financing of parties has only been strictly enforced at the national level with respect to opposition parties, since the governing party, the United Socialist Party of Venezuela (PSUV), and its candidates, have habitually enjoyed advantages by virtue of the use of public resources or means during the campaign and on election day. This includes the use of diverted public funds, the utilisation of official vehicles and the advantage of public means of communication and mandatory media broadcasts.

The Act on Political Parties, Public Meetings and Demonstrations forbids parties from receiving donations or subsidies from public entities, foreign companies or companies headquartered abroad, concession companies of public works or foreign states or political entities. Additionally, in 2010 the Act on the Defence of Political Sovereignty and National Self-Determination was enacted, with the intention of limiting the sources of financing of NGOs, but which contains a general prohibition of international financing for associations or organisations with political aims.

5. Party ban

The Constitution does not provide for the suppression of political parties or their members' rights. Nevertheless, the Act on Political Parties, Public Meetings and Demonstrations establishes that the Supreme Court of Justice is competent to decide on the

354 See Álvarez, Ángel, "El sistema venezolano de regulación del financiamiento de la política desde una perspectiva comparada: evaluación de su desempeño y lineamientos para su reforma" in Alarcón, Benigno and Casal, Jesús M., *Proyecto Integridad Electoral Venezuela: las reformas impostergables*, Caracas, UCAB, 2014, pp. 212 ff.

355 For the 2020 parliamentary elections, see: Reglamento especial sobre Campaña y Propaganda Electoral para las Elecciones a la Asamblea Nacional 2020, Resolución N.° 201020-046 de la Gaceta Electoral número 964.

356 Article 293(1) and (3) of the Constitution of the Bolivarian Republic of Venezuela (1999).

dissolution of a political party which "systematically promotes or develops activities against the constitutional order" (Section 29). This provision has a pre-constitutional character and can be considered derogated by the 1999 Constitution. In any case, it has never been applied during the effective term of this Constitution. The government resorts to subterfuges or legal artifices to neutralise the opposition parties without directly dissolving them. In this sense, Section 26 of the Act on Political Parties, Public Meetings and Demonstrations provides for the obligation of the parties to renew their list of registered members at the beginning of each constitutional period, if in the corresponding national election they have not obtained one percent of the total votes cast, and its Section 27 refers to the possibility of cancelling the registration of a political party if it has omitted to participate in two successive electoral periods. Through the biased interpretation of these norms,[357] the National Electoral Council has arbitrarily forced opposition parties to subject themselves to procedures for the renewal of militancy that have been deliberately cumbersome, which led to the main opposition parties (AD, UNT, VP and PJ) losing their registration between 2017 and 2018. The procedures of militancy renewal also affected various small organisations. Of 62 parties that existed in 2016, only around 15 remained as a consequence of that filter.[358]

Protest against Nicolas Maduro and his government, 2 February 2019.

In June 2021, however, the CNE declared that the Mesa de la Unidad Democrática (MUD), the organisation representing an alliance of the main opposition parties, which had been annulled in January 2018,[359] can participate in November 2021 in the next regional and local elections. This decision is part of an ongoing negotiation process between the Maduro government and some sectors of the opposition. It is worth clarifying, however, that the main opposition parties continue to be affected by measures of cancellation or of arbitrary capture of their governing bodies and party symbols. The possibility of the leaders and candidacies of these parties being grouped together in the MUD, a platform that has been inactive since 2017, will now depend on many extra-regulatory circumstances.

6. Legal restrictions beyond party law

The main measures used to prevent the work of the opposition in Venezuela are not found in party law. In effect, the government has relied on unconstitutional mechanisms of various kinds to hinder the functioning of opposition parties – most of them in the form of law. The five most important political organisations of the opposition in 2015, when it won the parliamentary elections, were the *Mesa de la Unidad Democrática* (MUD); *Acción Democrática* (AD); *Un Nuevo Tiempo (*UNT); *Voluntad Popular* (VP) and *Primero Justicia* (PJ). The MUD was subject to suspension as a political organisation through a precautionary judicial measure in 2016, to prevent it from going ahead with a signature collection process aimed at convening a recall referendum of the President of the Republic; subsequently it was annulled as an organisation through a summary procedure, in disregard of the right of defence of its representatives.

The other four organisations lost their registration during the arbitrary procedures of ratification of militancy. As already stated, this procedure was based on the regulation in Sections 26 and 27 of the Act on Political Parties, Public Meetings and Demonstrations,

357 See Judgment of the Constitutional Chamber of the TSJ N° 1, 5 January 2016.

358 See Martìnez, Eugenio, "Sobre la ilegalización de partidos en Venezuela", in *Prodavinci*, 3 February 2018, available at https://prodavinci.com/sobre-la-ilegalizacion-de-partidos-en-venezuela/, last accessed 12 February 2021.

359 See Judgment of the Constitutional Chamber of the TSJ N° 53, 25 January 2018.

which provides for the obligation of the parties to renew their list of registered members at the beginning of each constitutional period, if in the corresponding national election they have not obtained one percent of the total votes cast. Additionally, a political party's registration can be cancelled if it has omitted to participate in two successive electoral periods.[360] Through an arbitrary interpretation of these provisions by the Constitutional Chamber and by imposing deliberately complicated procedures, the CNE compelled numerous parties, almost all of them opposition parties, to convene their militancy to appear before the locations determined by the CNE, to ratify the willingness to belong to the respective organisation, until 0.5% of the electorate in several federal entities had been reached. Very few parties survived these procedures, which in the past consisted simply of submitting a list of signatures of militants. In addition, those organisations that had not participated in two consecutive electoral processes, whatever their nature, were cancelled.

However, these parties continued to operate de facto and were represented in the opposition-dominated National Assembly. Subsequently, it was convenient for the government to legally rehabilitate these organisations, either to hand over their leadership to persons subordinate to the rulers, or to use the legalisation of these parties in negotiation processes with opposition forces. To these ends, the Supreme Court of Justice carried out a manoeuvre by which it handed over the leadership of some of these parties (AD, PJ and VP) to a few militants who submitted to the interests of the government, while UNT maintained its moderate policy within the opposition. Th is was performed by means of precautionary judicial measures, in processes that were later paralyzed because the government's only interest was in obtaining this measure. Afterwards, the National Electoral Council recognised the validity of the first two organisations (AD and PJ), now in new hands, and subsequently political negotiations took place, which finally led the Supreme Court of Justice to revoke the measure of occupation of the PJ party. The VP party still has the status of illegal, and AD continues to be controlled by the reduced number of militants that lent their support to the governmental manoeuvre.

Legal role of (opposition) parties in parliament

The freedom of deputies in Venezuela is enshrined in the Constitution. Deputies are representatives both of the people and of the federal states. They are not subject to mandates or instructions, but only to their own consciences. Their vote in the National Assembly is personal.[361] They are obligated to work on a full-time basis for the benefit of the people's interest, and to stay in constant contact with their constituents, heeding their opinions and suggestions and keeping them informed about its individual and Assembly management.[362] The internal regulations of the National Assembly refer to the right to speak in the sessions, to their right to information, to their rights to ask public officials and to participate in parliamentary enquiries, among others, as well as to their rights to economic remuneration and to security in the performance of their duties.[363]

The Constitution establishes that members cannot be held responsible for votes or opinions issued in the exercise of their functions.[364] Additionally, the Members of Parliament may not be subject to criminal prosecution without the authorisation of the Parliament and prior declaration by the Supreme Court of Justice that there are merits for prosecution.[365] This guarantee of immunity from prosecution protects the Member

360 Article 27 of the Act on Political Parties, Public Meetings and Demonstrations

361 Article 201 of the Constitution of the Bolivarian Republic of Venezuela (1999).

362 Article 197 of the Constitution of the Bolivarian Republic of Venezuela (1999).

363 Sections 17, 38, 42, 70 to 99, 113 to 126 of the Reglamento Interior y de Debates de la Asamblea Nacional, Gaceta Oficial de la República Bolivariana de Venezuela numéro 42.064.

364 Article 199 of the Constitution of the Bolivarian Republic of Venezuela (1999).

365 Article 200 of the Constitution of the Bolivarian Republic of Venezuela (1999).

of Parliament from any kind of criminal accusation made during his/her term of office, while that provided for in Article 199 excludes criminal liability outright.

It is worth noting, however, that in practice the immunity of the Members of Parliament has been systematically violated, especially since 2016. In an orchestrated action between the government, the Supreme Court of Justice and, since 2017, the National Constituent Assembly, dozens of opposition members have been subject to trial and separated from Parliament for political motives, without the National Assembly having authorised their prosecution, with the result that they were suspended for years from the exercise of their functions and were disqualified from performing public functions during the trial. Most of these Members of Parliament have had to flee the country to preserve their freedom and integrity, but several have been and are still deprived of their liberty. These cases have been the subject of reports by the Committee on the Human Rights of Parliamentarians of the Inter-Parliamentary Union.[366]

One peculiarity in the organisation of the Venezuelan Parliament is that the 1999 constitutional legislation, which removed political parties from the Constitution, also facilitated the abolition of parliamentary groups. The rules of procedure of the National Assembly initially still provided a certain role for parliamentary groups of opinion. The reform of the regulations in December 2010, however, reduced their significance to a minimum, with only regional groups remaining in literal terms. This does not mean, however, that the party-political distinctions within Parliament are meaningless. In fact, there have been parliamentary benches corresponding to the government forces, grouped under the denomination of Polo Patriótico, and to the opposition forces, linked to the Mesa de la Unidad Democrática (MUD), and it was common in the National Assembly for agreements to be reached between the benches on the distribution of time for the use of the right to speak and on other matters, but this is not formally reflected in the parliamentary regulations.

Even though the parliamentary groups are not legally recognised, the political parties, or "political organisations", play a certain role in the organisation of Parliament. For example, certain rules in the Rules of Procedure refer to these organisations, in particular the distribution of the leadership of the parliament's Permanent Commissions is made according to the electoral results obtained by the political organisations.[367]

However, another regulation appears to be more decisive, albeit indirectly. In 2010, when the ruling party feared that some of its Members of Parliament might consider switching to the opposition bench, the Act on Political Parties, Public Meetings and Demonstrations was reformed to provide for the suspension and political disqualification of any Member of Parliament who recurrently votes contrary to the electoral programme presented at the time of registering his/her candidacy. The Act now prescribes that every Member of Parliament is bound to the political programme that was recorded before the National Electoral Council at the time of registering the candidacy,[368] which is generally elaborated according to the programmatic lines set by each party. If a deputy repeatedly deviates from this programme in his/her parliamentary actions, he/she commits "fraud against the voters".[369] This "fraud" may lead to the suspension or partial or total disqualification of the Member of Parliament.[370] The decision on such matters rests with the plenary of the National Assembly, which by a majority of votes may determine that the electoral programme has been repeatedly disregarded and agree on the suspension and disqualification of the deputy, at the request of 0.1% of the electors of the corresponding constituency. The law does not speak of loss of mandate, but in practice the sanction provided for in the law is equivalent to this, since the deputy may be suspended and disqualified from future elections. This rule is in open contradiction to the constitutionally guaranteed freedom of mandate. So far this rule has not yet been

366 Among other decisions, see: 2020-final-committee_decisions-e004-e.pdf, available at: https://www.ipu.org/file/9194/download, last accessed 12 August 2021 at 12:08 p.m.

367 Section 40 of the Reglamento Interior y de Debates de la Asamblea Nacional, Gaceta Oficial de la República Bolivariana de Venezuela numéro 42.064.

368 Article 26 of the Act on Political Parties, Public Meetings and Demonstrations.

369 Articles 28, 29 of the Act on Political Parties, Public Meetings and Demonstrations.

370 Article 30 of the Act on Political Parties, Public Meetings and Demonstrations.

enforced, but it posed a threat to pro-government MPs elected in 2010 and later, as they could be suspended and disqualified if they deviated from the party line.

Finally, another significant restriction that the work of Members of Parliament has experienced in recent times is the de-facto abolition of parliamentary salaries. The Members of Parliament are obliged to perform their activities on a full-time basis.[371] Accordingly, the internal regulation of the Parliament gives each Member of Parliament the right to a salary for the work they perform.[372] However, since August 2016, the government unilaterally and unconstitutionally decided to suspend the payment of the salary to the Members of Parliament. It justified this measure by saying that the deputies did not follow the rulings of the Constitutional Chamber of the Supreme Court of Justice. This arbitrary suspension of the deputies' salaries seriously affected the functioning of the Parliament. Opposition deputies living in the interior of the country could no longer travel and stay in Caracas from Monday to Friday, as per diems were also suspended. They began to travel only one day to the capital. Sessions became weekly. The political parties had to look for sources of financing and so did each deputy, through contributions from the private sector, using their own savings or carrying out other remunerative activities in an indirect manner. Meanwhile, the deputies of the government never expressed their disagreement with the suspension of their salaries, because they were surely compensated by the government by other means.

371 Article 197 of the Constitution of the Bolivarian Republic of Venezuela (1999).

372 Article 17, number 4 of the Internal Regulations of the National Assembly.

Overall, the situation of the National Assembly in Venezuela is characterised precisely by an extremely high level of political dynamism and by processes that are hardly, if at all, shaped by legal rules, but above all by the political power of the government. Since 2017 the members of the ruling PSUV stopped attending the National Assembly and in January 2020 a group of apparent opposition Members of Parliament aligned with pro-government forces to try to replace the Member of Parliament Juan Guaidó as President of the National Assembly. Until December 2020, the Members of Parliament close to Maduro's government met separately and the parliamentary majority, corresponding to the opposition, was excluded from the Federal Legislative Palace and had to meet in improvised locations or digitally. Meanwhile the National Assembly elected in 2020 meets in the Federal Legislative Palace, while the Delegate Commission of the National Assembly elected in 2015 which is still trying to function must meet privately, usually digitally.

This particular vulnerability of the Parliament to governmental power has also become apparent in other areas since the penultimate parliamentary elections in December 2015. Two aspects in which this has manifested itself are, first, the function of safeguarding the buildings of the Parliament that has always been assigned to the National Guard, a component of the National Armed Force (FAN). The President is Commander in Chief of the FAN, and therefore the Executive gives the military who guard the Federal Legislative Palace the instructions they consider convenient, which has led in these years to the military deciding who may enter the seat of the Parliament, to the point of preventing opposition members from accessing Parliament. The second aspect that needs to be mentioned is the dependence of the Parliament on the Executive Power to order the publication of the laws approved, if the President of the Republic does not want to enact them, even though he is constitutionally obliged to do so.

Nevertheless, the problems experienced since December 2015 relate primarily not to regulatory deficiencies, although these also exist, but to the existence of an authoritarian government that does not admit limits or controls. With the support of the Constitutional Chamber of the Supreme Court of Justice, Maduro's government liquidated the National Assembly, ignoring its autonomy and constitutional powers. From August 2016 until the parliamentary elections in November 2020, no law or act approved by the National Assembly has been recognised as valid and even the Budget Act has been dictated by presidential decree.[373]

Role of law in the practice of (opposition) parties

All of this shows that the work of the (opposition) parties in Venezuela is legally determined, and the government majority certainly resorts to legal means to intervene in the political process. Nevertheless, the role of the law remains highly ambivalent overall. This is not only due to the fact that simple legal regulations are repeatedly passed that openly contradict the Constitution. The legal framework for parties is applied with a great deal of political discretion and there is no legal certainty in this regard. The enforcement of this legislation is mainly in the hands of the National Electoral Council, which has been a highly politicised instance. When political agreements are reached, the rigors of the law are set aside, allegedly for the benefit of all, but when conflicts become more acute, certain precepts are sometimes rigidly applied, although generally with a deviation in the interpretation, in order to harm the opposition parties.

This problem continues with the question of judicial protection. In theory, there exists a contentious-administrative recourse that may be exercised against the failure to register a party. One could even resort to the amparo recourse. However, in practice there is no possibility of success for an opposition organisation that intends to file such appeals against a refusal of registration or the lack of response to the respective request. As for the suppression of a registration, the law on political parties itself provides for the filing of an appeal before the Supreme Court of Justice, which automatically suspends

373 With only one exception that confirms the rule; see: Casal, Jesús M., *Asamblea Nacional, Conquista democrática Vs. demolición autoritaria*, Caracas, UCAB, 2017.

the cancellation of the party, but the National Electoral Council has expressly avoided resorting to cancellation in order to avoid such suspensive effect.

Finally, there are the fundamental institutional uncertainties: Venezuela still has two competing parliaments and two competing presidents, each accusing the other of lacking legitimacy. However, since de-facto power lies with Nicolás Maduro and his supporters, the opposition is subject to numerous de-facto reprisals, including arbitrary arrests and extrajudicial executions.[374]

Political opposition in Venezuela – dangers and challenges

The extremely difficult role of the opposition in Venezuela is due in part to the highly uncertain political circumstances that have characterised the country since 2015 at least. They are based not only on the country's extraordinarily difficult economic situation, but also on the fundamental political uncertainty regarding the legitimacy of competing political institutions. The de-facto position of power that the Maduro government still holds is being used by it to persecute opposition parties and individual opposition politicians. A good part of the leadership is in exile, making it difficult to articulate policies with those who remain in Venezuela. Decision-making has increasingly been moving abroad, which is problematic. All opposition activity is criminalised in one way or another. Since the Corona pandemic began in 2020, the situation has worsened and political freedoms in the country have become even more restricted than before.[375] In addition, the opposition's work has also been complicated by the fact that opposition parties are fragmented and are therefore unable to present a unified front to Maduro's ruling party. Moreover, the strategy of an oppositional interim government with U.S. support has not proven effective in practice.

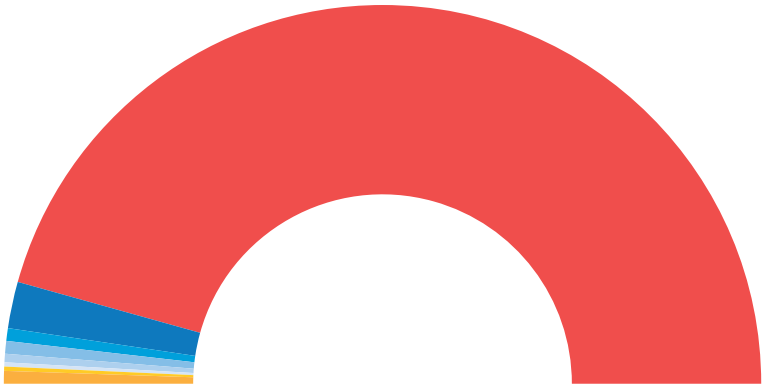
Skyline of Caracas, Venezuela.

Overall, Venezuela is a prime example of the ambivalent role that law can play in authoritarian regimes, especially with respect to the work of the opposition. Even highly authoritarian regimes today operate using the means of the law at central points of the political system. In Venezuela, for example, the situation of the opposition is determined on paper by the Constitution, the Act on Political Parties, Public Meetings and Demonstrations and other laws. The peculiarity here, however, is that these laws are usually not applied in accordance with the rule of law. First, simple laws are enacted that openly contradict the Constitution. Second, the authorities and courts often apply the laws in an arbitrary manner that structurally disadvantages the opposition, so that there is no legal certainty whatsoever. Consequently, specific legal changes could hardly have a positive impact on the opposition's situation in Venezuela at present, since the political system operates only to a very limited extent on the basis of the law.

374 https://freedomhouse.org/country/venezuela/freedom-world/2021.

375 See only Casal Hernández, Jesús María; Morales Antoniazzi, Mariela: States of Emergency without Rule of Law: The Case of Venezuela, VerfBlog, 2020/5/22, https://verfassungsblog.de/states-of-emergency-without-rule-of-law-the-case-of-venezuela/.

Parliamentary Election, 06. December 2020

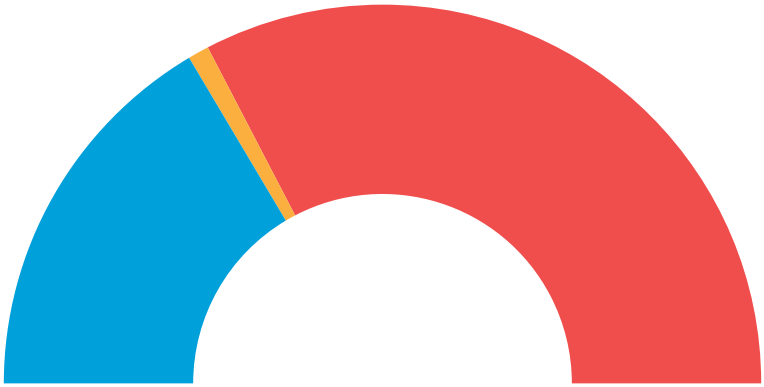


AD	AP	Cambio	PV	COPEI	PCV	Indigena	PSUV
3,97 %	1,08 %	1,08 %	0,72 %	0,36 %	0,36 %	1,08 %	91,34 %
seats 11	seats 3	seats 3	seats 2	seats 1	seats 1	seats 3	seats 253
							Government

Parliamentary seats: 253 (Govt.) / 24 (Opp.)
Allocation of seats: 91,34 % (Govt.) / 8,66 (Opp.)

source: https://www2.cne.gob.ve/an2020.

Parliamentary Election 06. December 2015



PSUV	Indigena	MUD
32,93 %	1,80 %	65,27 %
seats 55	seats 3	seats 109
	Government	Government

Parliamentary seats: 112 (Govt.) / 55 (Opp.)
Allocation of seats: 67,07 % (Govt.) / 32,93 % (Opp.)

source: https://web.archive.org/web/20210613082713/http://www.cne.gob.ve/resultado_asamblea2015/r/0/reg_000000.html.

Legal frameworks for political parties – challenges and opportunities

SOPHIE SCHÖNBERGER

The present case studies have shown how different not only the actual situation of the political opposition is in different countries of the world, but also the legal and extra-legal framework within which they operate. The question of how strong the opposition actually is in a country and what role the law can play in this context depends first of all on factors that the law itself can hardly guarantee (1.). In addition, however, a comparison of countries reveals significant differences in the electoral system (2.), parliamentary law (3.) and party law (4.), which can favour or hinder the strength of the opposition in the political system. Finally, the role that inner-party democracy plays in the political system is at least of indirect importance (5.).

Factors within and outside the law

The liberal secularised state lives by prerequisites which it cannot guarantee itself.[376] This dilemma described by the prominent German constitutional lawyer and constitutional judge Ernst-Wolfgang Böckenförde is particularly evident regarding the basic conditions of a strong and solid democratic opposition. For where the law as a whole has lost its power of control, it cannot secure the political process and the functioning of the political opposition.

This concerns, first of all, the stability of democratic institutions and the role of law in general. This is particularly evident in the current situation in Venezuela. At the stage where fundamental questions about the legitimacy of democratic elections, as well as the institutions that emerge from them, are partly answered only by means of violence and a large part of the political system (as well as the international community) does not recognise the ruling institutions, the possibilities for controlling the democratic process and the role of the opposition by means of the law are extremely limited. The example of Venezuela shows that even under these precarious conditions, (semi-)authoritarian regimes cannot act completely without the resource of the law, but must at least partially maintain the appearance of legal procedures. However, the law cannot be expected to strengthen the opposition here overall. In Mongolia, on the other hand, the low stability of governments, despite overwhelmingly clear majorities in Parliament, has led to constant changes of government. The minimum requirements of a democracy, according to which the government must be able to become the opposition and the opposition must be able to become the government, were thus fulfilled in the purest form. However, stable government action is equally important for democratic development. In Mongolia, a constitutional amendment and the government's united stand resulted in breaking the previous pattern of constant alternation between government and opposition in the last election. This aspect is underlined if, in addition to the original democratic institutions such as parliament and government, the courts are also taken into consideration. For the law can only make a substantial contribution to strengthening the opposition where it is also enforced by independent courts. In South Africa, for example, the opposition very often successfully enforces its rights with the help of independent courts or thus ensures judicial clarification of a disputed government practice of interpretation. Judicial

376 *Ernst-Wolfgang Böckenförde*, Staat, Gesellschaft, Freiheit. 1976, p. 60.

decisions are not challenged in South Africa and are consistently enforced. It is true that not every single piece of legislation is necessarily justiciable. Sometimes indirect means of enforcing a norm can also help it to be effective. Overall, however, the impact of the legal framework is exceedingly limited if the legal rules are not at least partially judicially enforceable. Moreover, it is important that the courts make their decisions in judicial independence from the government. If this judicial independence does not exist, there is a risk of structural discrimination against the opposition that is contrary to the rule of law, as is also exemplified in Venezuela. However, Tanzania and Mongolia also strikingly demonstrate the democratic problems that arise when there is no independent judiciary that enjoys the trust of the population.

Finally, a third point proves to be decisive for the effectiveness of democratic opposition, which can almost no longer be covered by law: the general trust in political parties. The lower the confidence in the political parties as a whole, the lower the confidence that a change of political power, in which the opposition becomes the majority, can bring about an improvement in political and social conditions. As a result, the governing parties, which are in any case known to the electorate for their work, are structurally favoured when it comes to voter behaviour, so that their position of power can become even more entrenched. Especially in countries that have developed from a one-party system, as is the case in Tanzania, this lack of trust massively hampers the work of the opposition.

Electoral Law

However, it is not only the actual circumstances that have a decisive influence on the strength of the opposition. On the legal level, one of the most important factors lies first of all in electoral law and the electoral system. Every electoral system is closely interrelated with the party system in the respective democratic community. It is not only the party system that influences the design of the electoral system. Conversely, the electoral system also shapes the system of political parties to a considerable extent. As the example of Thailand shows, the lack of stability in the electoral system can therefore also have an overall negative impact on the establishment of a democratic party system. Here, in September 2021, the electoral system was repeatedly changed in order to deliberately counteract the development of a stable party system.

Furthermore, the difference between a proportional representation system and a majority voting system proves to be crucial. A majority voting system strengthens parties that already have a high level of support. Small parties have a hard time winning parliamentary seats at all. Larger parties usually receive significantly more mandates than they would be entitled to on the basis of approval within the population alone. Particularly in political systems that have emerged from one-party systems, i.e., where the former state party has a very considerable advantage over its competitors in terms of name recognition, as well as material and organisational resources, a majority voting system can therefore lead to a great consolidation of power structures in favour of that party, making the work of the opposition extremely difficult. The examples of Tanzania and Mongolia illustrate this vividly. But even in countries without such a tradition, it is possible to observe how majority elements in electoral law can be used to strengthen the power of the ruling parties. The parallel voting system in Venezuela is a striking example of this.

It is true that a proportional representation system can lead to a fragmentation of the party system and thus also to a weakening of the then fragmented opposition parties. The much greater danger, however, comes from a majority voting system, which under the right conditions can lead to the opposition being completely marginalised in parliament and thus virtually losing completely any realistic possibility of exerting influence at the parliamentary level. In Tanzania, for example, the opposition has only 11 % of the seats in the national Parliament; in Mongolia the figure is 18%, and in Venezuela barely 8%. In that context, one building block for strengthening opposition parties using the means of the law is undoubtedly a strengthening of proportional representation in the electoral system.

Parliamentary law

This marginalisation of the opposition in parliament by means of electoral law also has a direct impact on the effect of the legal rules governing opposition work in parliament.[377] As a rule, the parliamentary law rules of (semi-)authoritarian parliamentary systems also provide for certain minority rights for the opposition in parliament, such as the appointment of certain committee chairs. However, these minority rights are linked to the opposition achieving a specific quorum of seats. If, however, it does not reach the required number of seats – for reasons including the majority voting system – the guarantees for opposition work in parliament come to nothing. This can be clearly observed in Mongolia, as well as in Tanzania and Venezuela. Against this background, a building block for strengthening the opposition parties could be a reduction of these quorums or also making them more flexible by no longer basing them on a certain number of seats and instead attempting to reflect the dualism between government majority and opposition in parliamentary law.

In addition, effective opposition work in parliament presupposes that the freedom of MPs is sufficiently protected by law – against the government, but also against their own party. This begins with sufficient financial security for MPs. The example of Venezuela, for example, shows how the withholding of adequate compensation for MPs can be used in a targeted manner to suppress the work of the opposition.

However, the freedom of the Members of Parliament must also be sufficiently legally secured in the substantive work in parliament. As the country reports show, it is not enough for the independence of MPs to be formally enshrined in law as a principle. This principle can be massively thwarted by many detailed regulations in parliamentary law. This applies in particular to the possibility of imposing sanctions on MPs, for example by excluding them from meetings, or also through the possibility of withdrawing their mandate, which is provided for in isolated cases. In some cases, the mere legal possibility of imposing certain sanctions can have a considerable intimidating effect on the work of Members of Parliament. An example of this is the provision introduced in Venezuela, according to which Members of Parliament are bound in their parliamentary activities by the electoral programme of their party and can lose their mandate if they deviate from this commitment. Even though the provision has not yet been applied once, the threat alone can have a very significant impact on the work of parliamentarians.

In some cases, as in Venezuela, responsibility for such measures lies with the parliamentary plenum, but in most cases it lies with the Speaker of Parliament. From a procedural point of view, the Speaker therefore plays a decisive role in determining how effective the work of the opposition in parliament can be. In addition, the Speaker is sometimes relatively free to decide on the allocation of speaking time in plenary and thus on the opposition's communicative possibilities for effectiveness. If, following the English tradition of the House of Commons, the Speaker of Parliament is appointed unilaterally by the majority faction without, for example, being assisted by vice-presidents from the ranks of the opposition, this strong position of the (pro-government) Speaker can quickly lead to a structural disadvantage for the opposition. That is all the more true when, as in Tanzania, there is a strong historical dominance of the ruling party, because it emerged from a former state party, and when the president's actions cannot be legally challenged. Here it can be seen that the relevant legal rules and institutional conditions are highly dependent on the context of the political system. While the identical legal framework in England, with its centuries-old parliamentary tradition, is essentially hemmed in by unwritten parliamentary rules in such a way that it does not lead to the suppression of parliamentary opposition, the same rules in Tanzania pose a major threat to the opposition's work.

Against this background, a building block for strengthening the opposition in parliaments lies first of all in safeguarding MPs against sanctions linked to their political activity. In particular, it is recommended that the basis for disciplinary measures be reduced

377 With a focus on parliamentary opposition instruments, see: Julian L. Garritzmann (2017) How much power do oppositions have? Comparing the opportunity structures of parliamentary oppositions in 21 democracies, The Journal of Legislative Studies, 23:1, 1-30, DOI: 10.1080/13572334.2017.1283913.

to the absolute minimum necessary to ensure the functioning of parliament. The possibility of imposing disciplinary measures on the basis of the content of parliamentary statements should be restricted as far as possible, and the possibility of sanctioning voting behaviour should be excluded.

In addition, it may be useful to reconsider the role of the President of Parliament in the respective political system. If the President of Parliament has far-reaching powers, which may even be subject to no or only limited judicial control, it may prove expedient to place Vice-Presidents at the President's side, who in any case also come from the ranks of the opposition, and to transfer certain powers from the individual to the Bureau. In countries whose parliament is heavily dominated by the House of Commons, however, this means a certain break with the previous parliamentary tradition.

Party law

Beyond the parliament, in the field of party law, it becomes apparent that here, above all, the registration of parties is the decisive point where the law can strengthen or weaken the role of (opposition) parties. If the requirements for registration are too high, this can significantly impede the democratic process, as can be seen, for example, in the case of Thailand. Financial requirements for parties, such as a minimum amount of capital that must be proven (Thailand) or a deposit for participation in the election that is only refunded in the event of success (South Africa), should also be viewed critically and can prevent the free formation of opposition parties in particular.

Even more decisive here, however, proves to be the question of the institutional enforcement of party law, for instance with regard to the prerequisites for registration or also other requirements of party law. It is true that the relevant responsibilities are usually transferred to institutions that are described as independent, at least on paper. In many cases, however, this independence is by no means legally secured. A good example is Tanzania, where the Registrar of Political Parties is described in law as an autonomous institution, but is in fact politically dependent on the prime minister and president. In Venezuela, the National Electoral Council, which is vested with the relevant powers, is indeed established in law as a plural independent body. In political practice, however, this independence is hardly reflected in the appointment policy. South Africa, on the other hand, with its Electoral Commission, offers a good example of an independent institution that is constitutionally safeguarded and enjoys great trust among the population.

Finally, the financing of political parties is also an essential factor that ensures the ability of (opposition) parties to function. Solid partial financing of the work of all parties is a good basis for a functioning party system; it prevents one-sided preferential treatment of the finances of the government parties, and also prevents corruption.[378] That requires clear, transparent rules that are established in advance and are not at the government's discretion. In order to keep the political process open to new players, it is also necessary that, in principle, smaller parties that are not yet represented in parliament can also benefit from partial state funding. This is all the more urgent when a majority voting system makes access to parliament much more difficult for small parties.

In addition to transparent and solid partial state financing of the parties, financing from non-state sources is an essential factor for the ability of (opposition) parties to function. If small and newly founded parties are mostly prevented from partaking of state funding, they are all the more dependent on other sources of funding. Opposition work costs money. This means that opposition work is also associated with the risk of political influence by donors and a loss of trust among the population. South Africa has recently developed a remarkable model in this regard, with the establishment of a central multi-party donation fund. This fund, managed and controlled by the Electoral Commission, accepts donations intended to support the multi-party system as a whole.

378 See *Michael Koß,* The Politics of Party Funding: State Funding to Political Parties and Party Competition in Western Europe, 2011.

The donations, which are audited and disclosed, are then distributed proportionally to all parties. Political influence is thus prevented and confidence in the political system is strengthened. For donors who in any case support all major parties proportionally with donations regardless of political orientation, this is probably an attractive model. On the whole, however, the willingness to donate may be expected to drop significantly, which would not make opposition work any easier. Such a multi-party donation fund is most effective if direct donations to parties are prohibited at the same time. It remains to be seen how the multi-party donation fund will develop in the future in order to be able to assess conclusively its significance in strengthening opposition work.

The indirect role of inner-party democracy

Finally, it should not be ignored that a crucial way to strengthen the role of the opposition in the political system is to accustom political actors to confronting the opposition within their own party with democratic standards. The legal framework for this is equally rudimentary in the countries studied. Often general legal provisions are found that require a democratic internal structure of the parties.

Only in a few cases, however, can these be effectively enforced. In practice, parties are usually characterised by top-down structures as well as, in part, by considerable intra-party power struggles, which not only diminish the attractiveness of parties and trust in them, but also prevent a discursive approach to opposition from being practiced in the political system. A significant contribution to strengthening (opposition) parties by means of the law could therefore also be found beyond state law in the field of autonomous party statutes. If intra-party democracy were to become more firmly anchored in law and practiced, this could significantly benefit the political system as a whole.

Recommendations for international cooperation

DENIS SCHREY

The existence of political parties, elections and parliament, and the laws regulating them, lie at the heart of political sovereignty, and therefore for any state are very sensitive. The options for direct external interventions are therefore limited and should be approached with care and reflection.

It would be quite easy to alienate the target of attention. Nevertheless, there remain multiple entry points for external actors for facilitating and/or mediating reform processes with domestic political actors.

It goes without saying that any such interventions need to be built on trust, the openness of the actors involved to accepting external support, as well as an overall political environment and culture that is open to compromise. In more restricted political environments, such interventions need to be even more carefully prepared and may differ depending on the intentions and the political will the actors involved.

The higher the degree of political polarisation between political parties in a country, along with the level of political mistrust and underdeveloped consensus culture of the political system, the more difficult it is for external actors to constructively engage as mediators or facilitators of change processes.

In particular, opposition parties in semi-(authoritarian) contexts can face a structural disadvantage in playing a role of challenging the governing party/parties and providing constructive alternatives. First they often operate within political systems where basic rights such as the freedom of assembly, the freedom of speech and the freedom to freely choose a candidate or political party (without fear) are severely restricted and the justice systems are often politically biased, adding to the pressure. As we have demonstrated in the previous country chapters, governing parties also tend to exploit electoral law, political party law and parliamentary rules to tilt the playing field in their favour. Reversing such deliberative efforts of governing parties – particularly from the outside – has been proven difficult in the past.

What can the EU do? Towards a differentiated EU approach to strengthening political parties

In the last few decades, the EU has developed numerous instruments for, and guidelines on, the effective promotion of human rights in third countries. But there are no guidelines for supporting political party cooperation as part of effective democracy promotion. Until now, the EU has chosen not to exclude, but to minimise, the issue of political party cooperation in its programmes. However, to achieve effective democracy promotion, it makes sense to engage in carefully differentiated cooperation with political parties, depending on the general political situation of a country and the relationships between domestic political parties.

An EU document on political party cooperation should differentiate its recommendations based on the constitutional, legal, and political situation of respective countries. This also applies to the ways such a guideline is used by EU Delegations to allocate funding for projects that involve both European and local actors in foreign countries.

Typical country situations can be characterised as follows:

1 The constitution and the relevant laws of a country characterise the country as a multi-party representative democracy. The government and leading political elites

are generally interested in professionalising and strengthening the political party system and relevant political parties as an instrument for peaceful political change.

2 Despite characterising itself as a representative democracy, the government and leading political elites of a country are not interested in strengthening the country's political party system and respective political parties, as they do not wish to lose political control to another party in free and fair elections.

3 As per the constitution and key political laws, only one political group or party is considered legitimate or viewed as the leading political party of the country. The involvement of stakeholders, both outside of the political party structure and outside of the country, is considered illegal and is strictly prohibited.

In most countries where the EU is represented by a delegation that is implementing or supporting projects, the situation lies somewhere between option 1 and option 2. In the process of promoting inclusive democracy through political party cooperation, each EU delegation must assess the extent to which it can openly support the development of a strong and inclusive political party system and the existence of legally-registered parties. Alternatively, EU delegations may cautiously support both European and local stakeholders through non-partisan, thematic programs – relying on the local government's silent tolerance.

Assessing the role of political parties and their legal environment at country level

Prior to developing a cooperation strategy within a given country, a detailed assessment should be conducted in order to understand the capacity of parties to influence political decisions, to achieve political power, and to compete against each other fairly.

Such an assessment should focus on the following questions:

Do the electoral laws provide political parties with the key responsibility of selecting qualified candidates for positions in national and local parliaments?

Alternatively, do they allow local dynasties and powerful personalities within constituencies to dominate the elections, with political parties only playing a minor role?

Do the internal rules of the national and local parliaments provide majority parties with a strong coordinating and agenda-setting role in order to support the standing government?

Similarly, do these rules allow opposition parties to engage in effective government oversight and offer thematic alternative options?

Are there legal regulations on the establishment, management and activities of political parties that enforce internal democratic decision-making in the thematic orientation and selection of candidates for democratic elections? Without such regulations, which might be included within a political party's rules, the role which political parties play in securing an inclusive representative democracy may be very limited.

Are party financing rules existent and strictly implemented, ensuring complete transparency of party operations?

Is there a minimum of independence from big donors, state subsidies and membership dues, as well as maximum limits for single donations? If political parties are neither transparent nor independent from large donors, they can no longer be considered civil society organisations with influence over political decision making, but must instead be characterised as pressure groups formed by powerful citizens?

Are all political parties equally free to oppose the government? Are political parties ensured open, and undiscriminated access to media, information and to an independent judiciary, separate from their role as governing or opposition parties? Is there a code of ethics for campaigning activities and for public dealings between parties?

Designing an Engagement Strategy for political parties

Based on the results of an assessment that targets these questions, EU delegations can design a specific set of actions that aim to strengthen the political party system. Such actions could (depending on the concrete political context) include:

- Improving electoral laws covering political parties, enhancing parliamentary procedures that distinguish political party groups as key decision makers in accordance with their election results
- Reforming democratic political party law to increase inclusivity
- Updating party financing regulations to ensure transparency and the independence of political parties from powerful groups, including from state subsidies
- Promoting a level playing field in the competition between different parties and designing a code of ethics for party campaigning and public relations.

Such fundamental improvements to the legal framework of political party operations can only be achieved with a certain degree of acceptance from the country's government and main political forces. However, without external support, such important developments might not happen at all. And, without strong political parties, the power structure and political decision making in a country – even one formally constituted as a representative democracy – will be dominated by traditional networks of dynasties, families and powerful business groups. Strong political parties therefore have the potential to become a powerful force of social and political modernisation. An EU-supported political party cooperation project should build awareness of the benefits of such changes to the inclusivity and stability of representative democracies. Further, EU delegations might provide technical consultancy on such projects and lobby a country's main political parties to cooperate.

In some countries, even those that define themselves as multi-party representative democracies, political parties are hindered from establishing inclusive political participation amongst the citizens. Through a multiparty, political cooperation project, the EU (either directly or through qualified European stakeholders) can offer advice and support for all interested and relevant political parties to overcome such weaknesses. Such advice and activities could include:

- Consulting and capacity building for elected representatives in local and national parliaments on how to arrange regular and open communication with their electorate and bring their interests and concerns into the work of the parliaments
- Encouraging and supporting the recruitment of women, youth, and other groups of underrepresented citizens for active membership in the parties and for political participation activities
- Creating guidelines for the review of internal political party statutes in order to improve democratic decision making and transparency within political parties, thus making them more appealing to citizens.

However, in a polarised political situation, where interparty competition is high and parties view the opposition as enemies, they may be reluctant to join political party cooperation projects with international stakeholders and their competitor parties. Party representatives may not be willing to learn from, or consult with, their political opponents. Even where the project is offered separately to each individual party, there may be a reluctance to fully embrace the message behind consulting activities, if they are also being offered to the other political opponents.

Reluctance resulting from polarisation can be ameliorated through a peer-to-peer cooperation approach. Cooperation must be built on mutual respect, understanding and trust. This is particularly true when consulting projects address the development of a sound and cohesive political platform and promote strictly-controlled, democratic procedures for internal party operations. In such situations, peer-to-peer cooperation between foreign and local political parties that builds on shared political philosophies or visions will be much more effective than a multi-party approach. In order to avoid accusations of partisan support from the respective country, a range of peer-to-peer cooperation projects can be supported. These projects should partner relevant political parties with suitable foreign organisations, preferably European political foundations that align with different parties on the political spectrum.

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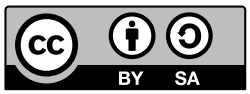

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