



Four essential changes to the proposed amendments to the Political Parties Act (2002)

1) Diluting excessive powers given to the Registrar on internal party matters

The Bill would give the Registrar powers that go well beyond the original purpose of his office – to administer the registration of political parties – turning the “Registrar” into a “Regulator”.

Specifically, this includes extensive powers to demand information – membership lists, details of party finances, and “any information as may be required.” Further, it includes the power to intervene in internal party management matters, such as administration of membership lists, restrictions on parties’ constitutions, and internal party disciplinary matters.

Given that the Registrar is appointed by (and can be dismissed by) the President, who happens usually to be the chair of the ruling party, this introduces a conflict of interest and tips the political playing field against opposition parties. The Registrar should properly have no substantive role on matters relating to sensitive information or internal decision-making processes, with their role limited solely to administration of party registrations.

Changes

- Edit point (e) from the amendments to section 4(5) of the principal Act such that the Registrar provides guidance for party members to monitor their party’s finances
- Amend section 5B which is a new proposed section under the amendments to limit the Registrar to asking for information from political parties directly (not members or leaders) and to follow the recommendations for penalties below.
- Qualify the immunity offered to the Registrar in Section 6.
- Limit the registers maintained to (a) register of political parties; and (b) register of national party leaders and bring the penalties in line with the recommendations below.
- The Registrar can advise parties to amend their constitutions not force them. The penalties should follow the process outlined below.
- Ensure the party declarations submitted to the Registrar only require information to be submitted that is relevant to the Act and that does not violate other laws or constitutional rights. Bring the penalties in line with the recommendations below
- Include in 19A all the protections provided in sections 19(2) and 19(3) of the existing Act
- Remove amendments 22(a) and (b).
- Political parties should only be subject to annual audits and any decisions about suspending their grant money should come with evidence and be recommended by the Controller and Auditor-General.
- Remove the proposed new section 21E entirely.

2) Ensuring the law does not create fear or prescribe excessive penalties

The Bill makes constant references to offences in almost every amendment. This creates a sense of fear when reading the Bill, that there is an offence you can commit at every step.

In addition, the penalties imposed for these offences, most of which are administrative, are disproportionate. They do not take into account basic legal principles, particularly the principles of administrative law and penology.

Although political parties need to be regulated, they also, in young democracy, need to be nurtured. The introduction of a system of warnings, checks and balances for the imposition of harsh penalties and lack of clear distinctions between institutional and individual offences/liabilities need attention.

Changes

- Any criminal offences should not be detailed in the Act but are instead covered by the Penal Code
- Remove all references to penalties from the main body of the law and detail them in a specific additional section of the law titled: Offences and Penalties. Otherwise put the process outlined below into every section detailing an offence and related penalty. These include Sections 5A(4), (6); 5B(2), (3), (5); 8C(3), (4), 8D(4); 8E(3); 12C(4); 19A(3); 21D(1), (2), (3), (4).
- The administrative offences, as described and detailed in this law, should all conform to the following process:
 - (1) a minimum of three letters of warning requiring response
 - (2) if no response received or no action taken to correct the offence, a reasonable fine can be imposed on the party as an institution
 - (3) temporary suspension, provided the following conditions have been met: written notice of intention to suspend the party including details of offences committed, and copies of letters previously written by the Registrar to notify the part of these transgressions
 - (4) deregistration in the face of continued offences after the suspension has been lifted, or in the case of no satisfactory response to the issue leading to the suspension having been received
 - (5) deregistration by the Registrar should be subject to Ministerial and court appeal

3) Removing restrictions on the right to freedom of expression and access to information

The amendments contained in the Bill include three areas where citizens' right to freedom of expression and information are breached.

First there is a new prohibition on parties acting as pressure groups, defined as "a group that influences public opinion or government action." Such activity is a core part of any political party's work and should not be restricted. Second, the Bill would make it an offence for a party to "make a statement which is false in material particulars." This is both problematic in controversial areas where the trust is contested – as in much political activity – and also vulnerable to selected enforcement. And third the Bill allows the Registrar to disapprove of civic education and capacity building to political parties and to regulate civic education more broadly.

Changes

- In section 3(a)(5)(g), the Registrar can provide guidelines for civic education not regulation
- Remove the possibility for the Registrar to disapprove of capacity building to political parties, he/she can again provide advice and guidelines.
- Remove (7) from Section 6A and edit (6) to allow political parties to mobilise citizen action and influence government opinion.
- Specify that 21D(2) applies only to statements made to the Registrar as part of compliance with the terms of the Act.
- Reinstate the requirement to publish party registers in 8C(3).

4) Removing restrictions on party mergers and coalitions

The amendments introduce regulation of an area not previously covered in depth by the existing Political Parties Act – party mergers and coalitions. There is a new restriction that mergers will only be permitted "within 21 days prior to nomination of candidates for general election" – a limit that makes mergers almost impossible in practice. Further, and more significantly, the Act gives the Minister power to set regulations governing the forming of party coalitions – a clear conflict of interest given the Minister's role in party politics.

Changes

- Allow mergers to take place at any time and remove the requirement for the Minister to make regulations about party coalitions.