

## **POLITICAL PARTIES (AMENDMENT) 2022**

### **ANALYSIS**

#### **Introduction**

Political parties have been defined as associations formally organized with the explicit and declared purpose of acquiring and/or maintaining political power. It has been pointed out that political parties can acquire this political power either singly or in coalition with other parties<sup>1</sup>. Due to active role played by elites in political parties, political parties can also be defined as, “organizations or associations of the political elite that these elites use to mobilize the public in their quest to capture and/or retain political power.” This is because apart from providing labels under which the elites seek to capture power, most of them are only active during elections and are often not about membership.

Political parties play various critical roles in any democracy including Kenya; they act as unifying and stabilizing factors in the political process thereby enhancing national integration, provide the base on which the selection of the political leadership in whose hands power and decisions will reside, formulate and execute policies within a political system, and are also agents of socialization among citizens of diverse opinions and cultures. However in Kenya, political parties have performed dismally on the cited functions and have been labeled as just tools for chasing power, captured, tribal mobilization vessels, aloof and elitist and ideologically bereft among other terms that have become the lens upon which society view political parties.

#### **Background**

In the run-up to Kenyan independence two major political parties emerged, the Kenyan African Democratic Union (KADU) and its counterpart, the Kenyan African National Union (KANU). This was a short-lived experiment with political pluralism from independence in 1963 to 1966. The Second phase began in the early 1990s and included the multiparty elections of 1992 and 1997, ethnicity has emerged as the single most important factor in political competition.

Parliament unsuccessfully attempted four times between 1993 and 1994 to enact a law that would provide independent registration and funding of political parties. The liberalization of the registration of political parties in Kenya resulted in the formation of many political parties that wrangled, split and formed new outfits with similar names and/or symbols.

Prior to the 2007 general election there were 168 registered parties and 117 that participated in the General Election. It is against this background that the Political Parties Act 2007 was enacted. The objective of the Act was to provide for the registration, regulation and funding of political parties and matters incidental thereto. It came into force on 1<sup>st</sup> July, 2008 and the Office of Registrar of Political Parties was established. All Political Parties registered under the Societies Act were required to register afresh under the new law within 160 days. This led to the reduction of political parties registered under the Societies Act from 168 to 47 by 2009.

The passing of the Constitution of Kenya, 2010 introduced a new paradigm for management and administration of political parties. It recognizes political parties as important institutions in the promotion of democracy. Article 91 of the Constitution sets out basic requirements for political

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<sup>1</sup> Assessing the role of political parties in democratization in Kenya: the case of 2013 general elections by Dr. Fred Jonjo.

parties and stipulates the principles upon which political parties shall be formed. Article 92 further provides that parliament shall enact legislation to incorporate and implement the Constitution and the principles stipulated there under. Consequently the Political Parties Act, 2011 was enacted and the office of the Registrar of Political Parties became an independent office.

There can be no party without members because members are the lifeline of a party. The Political Parties Act places members at the core of Kenyan parties so as to allow them to play these roles in society. Political parties therefore must not only have a membership that is sufficiently large and diverse, they must also know them and involve them in party affairs. How exactly members will be engaged, the Act leaves for each individual party to decide.

Since a political party is a legal entity with its own rights and responsibilities, it has a liberty to decide who and the criteria one needs to satisfy to become a member. And as a requirement with the Act, a political party must stipulate, in its constitution the eligibility for membership. Current trends indicate that parties are increasingly preferring to enter into coalition agreements that would enable them to capture power. Unfortunately the coalition agreements have caused more problems especially in the distribution of power and when it comes to sharing the Political Parties Funds as witnessed in the NASA Coalition that led to its collapse. Fast-forward, the Political Parties Amendment of 2021, though contentious created coalition parties with a clear framework on formation and sharing of the political parties fund.

The Political Parties (Amendment) Bill, 2022 intends to reintroduce the concept of corporate membership where a political party is allowed to be a member of another political party. While the concept is not a new phenomenon as it was contained in the political parties Act, 2007 it is a concept that has never carried forward in the Political Parties Act, 2011 and had been ignored in the Political Parties Amendment 2021 in favour of the recognition of coalition parties which was a cure for institutionalizing political parties and setting up of a formula for sharing the political parties fund. The Bill fails to demonstrate the issues the proposal wants to fix and in our opinion, we believe the issues that bedeviled political parties mergers/coalitions have been fixed and having corporate memberships in other parties would interfere with the internal democracy, independence and running of political parties. Our specific input on the Bill are as hereunder;

Clause	Proposed Amendments / Ramifications	Comments on Proposed Amendments/ Recommendations

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2	<p>The Bill seeks to amend <b>Sec. 2</b> of the principal Act i.e. the Definition Section by inserting the definition of a corporate member;</p> <p><i>‘Corporate member’ to mean a registered party which is a member of another registered political party.</i></p>	<p>The definition of a political party under Art. 260 of the Constitution, meaning an association contemplated under Part 3 of Chapter 7 (Basic requirements of a political party &amp; legislation on political parties).</p> <p>Currently a political party is defined to mean <b><i>an association of citizens with an identifiable ideology or programme that is constituted for the purpose of influencing public policy or nominating candidates to contest elections; and includes a coalition of political party/s</i></b></p> <p>The proposed amendments are antithetical to the principal Act Political Parties (Amendment) Act, 2021. The definition under the Act doesn’t contemplate anything but individuals in political parties.</p>
3	<p>Seeks to amend the principal Act by introducing Sec. 11A to the effect that;</p> <p><i>A political party may become a corporate member of another party in accordance to the Constitution, rules and procedures of the</i></p>	<p>The Political Parties Act of 2007 had the concept of corporate membership it defined a “corporate member” means a registered political party which is a member of another registered political party.</p>

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	<p>party.</p> <p><i>The decision to become a corporate member shall be by a resolution of the party organs and duly executed by the party officials authorized to execute on behalf of the party.</i></p> <p><i>A copy of the Resolution and minutes shall be deposited with the Registrar 21 days after execution</i></p> <p><i>The Constitution of a party shall include Rules governing corporate membership</i></p>	<p>The current proposal was lifted from the Political Parties Act of 2007.</p> <p>Do we need corporate membership in the post 2010 era?</p> <p>Did coalitions and new definition of political parties cure this need?</p> <p>Of what value do this kind of membership bring to the political parties? Finance? Infrastructure? Ideas?</p> <p>How do they vote/participate in the activities of the party?</p> <p>To what extent does the Registrar control this corporate membership if they're to be guided by their own constitution, rules and procedures?</p> <p>The Political Parties Act of 2021 has fixed the challenges experienced by political parties in mergers and coalition agreements post the 2017 election and wrangles that ensued from those agreements. Introduction of corporate membership would add no value to political</p>

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		parties and would interfere with the independence and internal running of political parties.
4	<p>The Bill proposes to amend Sec. 14 of the Principal Act by inserting subsection 6A to the effect that Subsection 4 &amp; 5 shall not apply to a corporate member of a political party.</p> <p>Subsection 4 state that a person shall not be a member more than two political parties at a time while Subsection 5 provides for grounds one is considered to have constructively resigned from a party which includes forming another party, joining formation of another party, or publicly advocates for policies of another party.</p>	<p>Is corporate membership a life membership to a party?</p> <p>Any grounds for dismissal/resignation/withdrawal?</p> <p>The Bill is silent on the termination of a corporate membership.</p>
5	<p>The Bill proposes to amend Schedule 2 Sec. 6 by intruding 6 (aa) to include various categories of party membership to include corporate membership.</p> <p>*Schedule 2 is on contents of a Constitution or Rules of a political party.</p> <p>The Bill further proposes to amend the Schedule 2 by inserting a new paragraph, after 21A which talks about Rules for entering coalition with Rules for Corporate</p>	<p>This is towards giving parties powers to make their own provisions in their Constitutions and Rules on corporate membership.</p>

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