

**A regional comparative overview of legislative
frameworks governing political parties in eastern and
southern Africa: The case of Malawi, South Africa,
Tanzania and Zambia**

Prepared
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Presentation Outline

- Contextualising the debate
- Recap on the role of parties.
- To legislate or not to legislate political parties?
- An overview of the legal framework governing political parties
- What are the areas that are legally governed?
 - Defining what political parties are;
 - Registration of political parties
 - The relevant laws
 - Registration Requirements;
 - Refusal of registration;
 - Cancellation of registration
 - Political party funding
 - Whether there should be state funding;
 - Criteria of disbursement;
 - For what can funds be used;
 - Financial accounting procedures;
 - Disclosure of private funding
 - Conclusions

The state of affairs: Political parties are the 'disliked' institutions?

Region/ Country	Trust in political parties (% of the population)
Central and Eastern Europe	11% (Richard Rose and Neil Munro, 2003)
Baltic States	10% (New Baltic Barometer, 2005)
Former Soviet Union	7% (Richard Rose, 2001)
Armenia	17% (in governing parties and 19% in opposition parties (IFES, 2004)
Ukraine	9% (IFES, 2005)
Latin America	< 20% (Latinobarometer, 2004)
Africa	about 50% (trust in ruling parties) and 23% in opposition (Afro-barometer, 2001)
Middle East	39% (Al Arabia, 2005)
East Asia (without China)	26.4% (East Asia Barometer, 2001-2002)

Restating the obvious: Democracy and political parties

- Representative democracy and need for intermediaries
- Political parties have a fundamental and indispensable role in today's democracy
- The unique feature of political parties: Primary goal is that of contesting and capturing state power
- Parties are main vehicle for political representation, the main mechanism for the organization of government and the channels for maintaining democratic accountability.

To legislate or not to legislate political parties? That is the question

- Under the most egalitarian systems, parties are only loosely governed by law. (eg France, Sweden, Ireland, Mauritius where outside elections, political parties are completely unregulated;
- However, it is also the case that in many democracies the actual functioning of political parties are regulated by law.
- How extensive such legislations are and which areas of political parties are subject to law varies again from country to country;
- Often, relevant legal instruments define what a political party is, what its functions are, how it can be (de)registered and how it can be funded. How then is the situation in the countries under review?

An overview of the legal framework governing political parties

Country	The Country's Constitution	Specific Law on Political Parties	Other laws
Malawi	Constitution of the Republic of Malawi	Political Parties Registration (and Regulations) Act, 1996	<ol style="list-style-type: none"> 1. Elections related laws 2. Code of conduct
South Africa	The South African Constitution	<ul style="list-style-type: none"> • Electoral Commission Act, 51 of 1996 (Ch. 4 Sec 15-17: Registration of Political Parties) • Regulations for the Registration of Political Parties (No. R. 13 dated 7 January 2004) • Public Funding of Represented Political Parties Act 	<ol style="list-style-type: none"> 1. Elections related laws 2. Code of conduct

An overview of the legal framework governing political parties

Country	The Country's Constitution	Specific Law on Political Parties	Other laws
Tanzania		The Political Parties Act, 1992	<ol style="list-style-type: none">1. Elections related laws2. Code of conduct
Zambia			<ol style="list-style-type: none">1. The Electoral Act;2. The Electoral related laws;3. The Public Order Act;4. Societies Act (Cap 119 of the laws of Zambia)5. Code of conduct

Constitutional basis of political parties in South Africa and Malawi

South Africa (Chapter 2 - Bill of Rights 19. Political rights)	Malawi (Bill of Rights Sec 40- Political rights)
South Africa (Chapter 2 - Bill of Rights 19. Political rights)	Malawi (Bill of Rights Sec 40- Political rights)
Every citizen is free to make political choices, which includes the right <ul style="list-style-type: none">a) to form a political party;b) to participate in the activities of, or recruit members for, a political party; andc) to campaign for a political party or cause.	every person shall have the right to: <ul style="list-style-type: none">a) form, join, to participate in the activities of and to recruit members for a political partyb) campaign for a political party or cause;c) participate in a peaceful political activity intended to influence the composition and policies of the Government; andd) freely to make political choices.

The constitutional basis of political parties in Zambia and Tanzania is rather weak

- In Zambia, for instance, it is only in the preamble to that country's Constitution where by it is stated that "Zambia shall for ever remain a ...multiparty and democratic sovereign state".
- Tanzania: "The United Republic [of Tanzania] is a democratic and socialist state which adheres to multiparty democracy".

Other party related laws

- In Malawi, South Africa and Tanzania, there are specific laws that have been enacted to deal with political parties.
- In Zambia, political parties are governed by the Societies Act that also deals with clubs and associations although there is a public demand for a party law.
- Other than these 'party specific' laws, political parties are also affected by a number of other legislations, particularly those related to elections.

Should political parties be entrenched in the Constitution?

- This may be an open question;
- One thing, however, may be important. It is one thing to declare a country democratic and completely another, to practice that democracy;

How political parties are legally defined?

Malawi	South Africa	Tanzania	Zambia
<p>“a combination of persons who have constituted themselves for a political purpose” (Political parties Registration (and regulation) Act</p>	<p>“...any registered party, and it includes any organisation or movement of a political nature which publicly supports or opposes the policy, candidates or cause of registered party, or which propagates non-participation in any election” (Electoral Commission Act 51 of 1996)</p>	<p>“any organised group formed for purposes of forming a government or local government authority within the United Republic through elections or for putting up or supporting candidates in such elections” (The Political Parties Act, 1992)</p>	<p>“... an organisation registered under the Societies Act, the objects of which include any political activity or the sponsoring of candidate for the election of President or as member of the National Assembly” (Electoral Act, 2006, 2)</p>

Registration of political parties

Country	Relevant law	Registering authority
MALAWI	Registration and Regulation) Act of 1993	Registrar of Political Parties
SOUTH AFRICA	Electoral Act 1998	Independent Electoral Commission
TANZANIA	Political Parties Act 1992	Registrar of Political Parties
ZAMBIA	Societies Act	Registrar of Societies

Registration requirements

Malawi

- The party should have not less than 100 traceable registered members who must be Malawians of a voting age;

An application for registration need to be signed by the office bearers of the party and has to:

- Specify the name of the party;
- Be accompanied by two copies of the constitution, rules and manifesto;
- The particulars of the registered office of the party;
- Names and addresses of the leader and other office bearers

Registration requirements: Tanzania

Two staged process: provisional and full registration

Provisional registration:

- The founding members have applied in the prescribed manner.
- A copy of its constitution has been included.
- Its membership is open to all Tanzanians without discrimination

Full registration

- Must obtain signatures from at least 200 members who are qualified to register as voters from 10 of the 26 regions of the United Republic. (At least two of these regions must be from the five Zanzibar archipelago regions including one of Unguja's three regions and one of Pemba's two regions).
- Must provide a list of its leaders, which must include members from both the mainland and from Zanzibar.
- Must submit the address of its head office and its postal address

Registration requirements: Zambia

- an application should be made within 28 days of the party's formation;
- must have its head quarters in Zambia;
- One of its office bearers and members must reside in Zambia;

Registration Requirements: South Africa

- The party must submit its name, abbreviation, a distinguishing emblem in colour and its constitution
- A party that is not already represented at some elective level of government (national, provincial or local) is required to furnish the party's deed of foundation (signed by 50 qualified voters)
- A registration fee of R500 (or R200 for parties contesting only municipal elections)
- Proof of publication in the *Gazette* of a notice of application
- Parties that are not represented in a legislative body must renew their registration before 31 December every year

Refusal of registration

Malawi

- The application is not in conformity with the Party Act.
- The name of the party is the same or similar to another registered or deregistered party, denotes a religious faith or is offensive or illegal.
- The goals of the party are unlawful

South Africa

- if its name, abbreviation or emblem resembles that of another party sufficiently to deceive or confuse voters,
- incites violence or hatred, or causes offence on the grounds of race, gender, sex, ethnicity, colour, sexual orientation, age disability, religion, conscience, belief, culture or language

Refusal of registration: Tanzania

If the party....

- aims at promoting or furthering the interests of, any religious faith or group; any tribal group, place of origin, race or gender; only a particular area within any part of the United Republic;
- advocates for the break-up of the United Republic;
- accepts or advocates for the use of force or violent confrontation as means of attaining its political goals;
- advocates or intends to carry on its
- political activities in only one part of the United Republic;
- does not permit periodic and democratic election of its leaders

Refusal of registration: Zambia

If

- The party's goals are illegal or prejudicial to law and order
- The party's constitution violates Zambia law
- The application fails to comply with the terms of the Societies Act, or regulations made under it
- The party does not exist
- The party's name is illegal or resembles that of another organisation in a way that is deceptive

Cancellation of registration

Malawi	South Africa
<p>If...</p> <ul style="list-style-type: none">• the party's office bearers so request;• the number of registered members has fallen below 100;• the Registrar is satisfied that the party has ceased to exist	<p>If...</p> <ul style="list-style-type: none">• the IEC is satisfied that the party no longer functions or has no intentions to participate in elections;• the IEC is notified by the party that it has dissolved or has intentions to dissolve;• the party is not represented in the national Assembly, a provincial legislature or municipal council and has not participated in a national, provincial or municipal general election that took place after the date of its registration or after the date when it was so represented;• the party has changed its deed of foundations and the changes makes it to be disqualified for registration

Cancellation of registration

Tanzania	Zambia
<ul style="list-style-type: none">• if the party is in contravention of the Political Parties Act or or• if the party ceases to qualify as a political party	<p>Cancellation by the Minister</p> <ul style="list-style-type: none">• If he believes that the party concerned is being used for illegal activities or activities prejudicial to law and order <p>Cancellation by Registrar of Societies if the party...</p> <ul style="list-style-type: none">• violates the terms of registration described above.• changes its name or constitution without informing the Registrar within a month of doing so.• it affiliates with a foreign political body without informing the Registrar within a month of doing so.

State and private funding of political parties

Key questions:

- Whether State funding is to be guaranteed in the country's Constitution or in separate legislations
- Which parties have to be financed
- How the parties are to be financed
- Whether apart from state funding, parties may have other sources of funds
- In case other sources of funding are allowed, how are donations from those sources going to be regulated.

Whether state funding is allowed and the corresponding legal instruments

	Malawi	South Africa	Tanzania	Zambia
Whether state funding is allowed	Yes	Yes	Yes?	No
Relevant legal instruments	Constitution of the Republic of Malawi (Sec 40,2)	<ul style="list-style-type: none"> • The Constitution of the Republic of South Africa (Sec 236), and • more detailed in Public Funding of Represented Political Parties Act 1997 	Political Parties Act 1992	No legislation

Disbursement criteria of state funding

Malawi	South Africa
<p>Any political party which has secured more than one tenth of the national vote in election (has been translated to mean 10% of representation in Parliament</p>	<p>General conditions:</p> <ul style="list-style-type: none">• party should be represented in either of the following: National Assembly, Provincial legislature or both <p>Specifics</p> <p>The formula combines the principles of proportionality (number of representatives that the party has in either of the two bodies or both) and equity (a fixed threshold for a minimum allocation for reach of the qualifying parties)</p>

Disbursement criteria of state funding

Tanzania	Zambia
<p>General conditions:</p> <ul style="list-style-type: none">• party should be fully registered;• should have secured at least a seat in the immediately preceding general or local government elections <p>Specifics</p> <ul style="list-style-type: none">• 50% in proportion to number of number of seats/constituencies• 50% to all parties that have won at least 5% of votes cast in all the constituencies based on the ratio between total number of valid votes cast for the parliamentary candidates of a party and the total number of votes cast in the parliamentary election for all qualifying parties	<p>Not applicable</p>

For what can state funds be used?

Malawi	South Africa	Tanzania	Zambia
To allow the party to continue to represent its constituency during a given legislative period	<ul style="list-style-type: none"> • development of the political will; • help the party to continue shaping the public opinion; • political education; • promoting active participation of citizens in political life; • exercise influence on political trends; • ensuring continuous vital links between the people and organs of the state 	<ul style="list-style-type: none"> • parliamentary and civic activities of a party; • any lawful activity relating to an election in which a party nominates a candidate; • any other necessary or reasonable requirement of a party 	NA

Are there clear financial and accounting procedures in place?

Tanzania	Malawi
<ul style="list-style-type: none">● Every registered party is by law required to :✓ Maintain proper accounts of the funds and property of the party and submit to the registrar;✓ Audited annual statements of account;✓ Annual declaration of all the property owned by the party● Subventions received are accounted for separately (from accounting of other funds of the party) to the Registrar;● Any failure to account for the funds received leads to forfeiture of the right to any other subvention	Not clear

Accounting and financial reporting of party funds

South Africa	Zambia
<ul style="list-style-type: none">• Every political party that receives state funds is required by law to deposit all receipts into a separate special bank account held with South African registered bank,• The IEC is expected to keep full financial records and accounts for each financial year;• The financial accounts must be submitted to the Auditor-General for auditing	<ul style="list-style-type: none">• Parties may be required by the Registrar (of Societies) to submit financial accounts for inspection at any time;• Financial information on the assets of a party, balance sheet and accounting documentation may also be requested by the Registrar ;• Publication of the information gathered is at the discretion of the Minister

Disclosure and limitations of private funding

	Malawi	South Africa
Disclosure and limitations of private funding from within the country	There are no laws on private funding of political parties	There are no laws on private funding of political parties
Disclosure and limitations of private funding from outside the country	Not applicable	There are no laws on private funding of political parties. However, it is possible for foreign donations to be made to the established party fund which in turn is distributed to qualifying political parties

Disclosure and limitations of private funding

	Tanzania	Zambia
Disclosure and limitations of private funding from within the country	<ul style="list-style-type: none">• There are no laws on private funding of political parties except those related to disclosure of foreign donations (see below)	There are no laws on private funding of political parties
Disclosure and limitations of private funding from outside the country	<ul style="list-style-type: none">• Parties are required by law to disclose any funds or resources obtained from outside sources including foreigners or foreign organisations based in Tanzania	Not applicable