

ANALYSIS AND RECOMMENDATIONS ON THE PROPOSED POLITICAL PARTIES BILL, 2017 .

OCTOBER, 2017

GENERAL COMMENTS

1. The proposed bill limits the functions and scope of **political parties**. At the same time, the Constitution of the United Republic of Tanzania, 1977 stipulates in its preamble that: “We, the people of the United Republic of Tanzania, have firmly and solemnly resolved to build in our country a society founded on the **principles of freedom, justice, fraternity and concord**: And whereas those principles can only be realized in a **democratic society** in which the Executive is accountable to a Legislature composed of elected members and representative of the people, and also a Judiciary which is independent and dispenses justice without fear or favour, thereby ensuring that all human rights are preserved and protected and that the duties of every person are faithfully discharged”.
2. This proposed bill is written on the assumption that all political parties are at the same level of maturity. This is misconceived since – notwithstanding different ideologies, philosophical views and organizational structures of political parties – on the one hand there are political parties with well-established systems, solid duration of their existence and capability, and thus able to comply with this law. However, on the other side, there are other political parties which are at a very initial stage of their establishment, and thus may have difficulties to comply with this

law.

3. The proposed bill threatens political parties rather than coordinating them. There are a number of offences created and arbitrary punishments that are imposed even to non-compliance minor issues such as failure to report on time. The proposed bill criminalizes politics by creating offences with regard to minor issues. Additionally, the proposed bill does not distinguish the wrongs done by institutions and individuals or office bearers.
4. This proposed bill centralizes political activities at the national level which in essence is not practical since political parties are organized from national to lower level. Again, political parties have different structures.
5. The proposed bill has self-defeating provisions, e. g. it prohibits a political party to operate in one part of the country while the same law denies the political party to operate in areas where they don't have elected Members of Parliament and local Councilors.
6. The proposed bill also limits political parties to have international cooperation with other parties, foundations, networks etc.
7. The **Registrar of Political Parties** under this proposed bill has numerous powers as administrator, regulator and quasi-judicial body.
8. This proposed bill interferes with internal management and further matters of political parties contrary to their Constitution and Rules. It derogates from fundamental freedoms of full enjoyment of political rights exercised by political parties; for instance, the Registrar may order the amendment of political parties .
9. This proposed bill threatens the **national security** when the Registrar de-registers or suspends a ruling party.
10. This proposed bill also is a threat to the **national unity** by providing that only elected leaders

are eligible to conduct political activities whereas non-elected leaders are not eligible. The threat ahead of this provision is to create tribalism, political zoning and other disintegration factors. Also, the ruling party will have an advantage over opposition political parties to use government avenues to conduct political activities.

11. This proposed bill establishes standards which even the **Constitution** of the United Republic of Tanzania 1977 does not contain, for instance “National Values” and “Patriotism”
12. The proposed bill contains a number of redundant provisions whose implementation is impractical, unconstitutional and/or against cardinal principles of the laws. For instance, there is a well-established principle in criminology and penology that the punishment should be more of punitive than compensatory manner of which this proposed bill has failed to abide. For instance, Section 55 and Sections 58(5), 60(12). Also for example, the interference with internal management procedures of a registered political party contravenes Article 151 (2)(c) of the Constitution of the United Republic of Tanzania, that stipulates “The following rules shall be applied for the purpose of construing the provisions of the Constitution, that is to say (...) (c) if pursuant to the provisions of this Constitution there is any matter required to be performed or to be dealt with by any political party, then that matter shall be performed or dealt with by that party in accordance with the procedure laid down by that party for that purpose, and also in conformity with the provisions of this Constitution or any law enacted by Parliament for that purpose”.
13. This proposed bill disregards the existence of **other laws**, for instance pertaining to the creation of penalties which are inconsistent with other laws.

ANALYSIS AND RECOMMENDATIONS ON SPECIFIC PROVISIONS

No	Section	Issue	Proposed amendment
1	4(3)(b)	The office of the Registrar has stipulated a number of functions that may interfere with the modus operandi of political parties that are within their mandate as provided for in their Constitutions.	<p>Some of the functions stipulated in this section should be deleted. These include;</p> <ul style="list-style-type: none"> • regulate and investigate • supervise management <p>Therefore, under this provision the Registrar should have a function of coordinating conducts of political parties in compliance with this Act and their Constitutions.</p>
2	4(3)(c)	The section interferes with existing internal conflict management mechanisms.	To be deleted
3	4(3)(d)	<ul style="list-style-type: none"> • The section conflicts with the mandate of and democratic processes within political parties. • It is a redundant provision and its implementation is impossible due to its 	To be deleted

		institutional arrangement and capacity.	
4	4(3)(e)	<ul style="list-style-type: none"> • Each political party has its own ideology and Philosophy, therefore interparty misunderstandings (conflicts) are inevitable. • Each political party has its own mechanism of resolving inter and intraparty conflicts, therefore this provision remains to be redundant. • Since decisions of the Registrar with regard to the mediation and arbitration of conflicts are not binding and final, following such procedure would unnecessarily delay conflict resolutions. 	To be deleted
5	4(3)(i)	<p>The provision provides the monitoring of civic education given to political parties;</p> <ol style="list-style-type: none"> 1. The provision does not clearly differentiate between civic education provided to political parties and citizens. 2. Each political party has its own ideology and philosophy and no single curriculum would suit the diverse needs of all registered political parties in a multiparty 	To be deleted

		<p>democracy.</p> <p>3. The section will limit freedom of expression in terms of full enjoyment of political rights without undue influence contrary to the Constitution of the United Republic of Tanzania, 1977 and the International Covenant on Civil and Political Rights, 1966.</p>	
6	4(3)(j)	<p>The provision seems to interfere with the internal management of the political parties under their Constitution. The fact to promote gender equality (by the political parties themselves) is substantiated with this very same proposed bill under section 9(3), 10(1)(a) and 16 (1)(d).</p>	To be deleted
7	5(1) and (3)	<p>Section 5(3) contravenes the establishment of the office of the Registrar of Political Parties under this law which is section 4(2) that guarantees autonomy of and non-interference towards the function.</p>	<ul style="list-style-type: none"> • Appointment of an autonomous and independent institution of the Registrar of Political Parties as a neutral body to be vetted by the Parliament
8	6(1)	<p>Section 6(1) stipulates the appointment of a Deputy Registrar of Political Parties by the President</p>	<ul style="list-style-type: none"> • Appointment of an autonomous and independent institution of the Registrar of Political Parties

			as a neutral body to be vetted by the Parliament
9	6(3)	Section 6(3) requires the appointment of Assistant Registrars of Political Parties by the Minister	<ul style="list-style-type: none"> All appointed Assistant Registrars shall be employed with relevant qualifications.
10	7	The protection of officers appointed by the Act against a liability done by officers or any other person holding public office is contrary to the Prevention and Combating of Corruption Act (PCCA), 2007 which criminalizes the abuse of office. The words "good faith" are an opinion which is subject to judicial interpretation and proof beyond reasonable doubt.	The provision to be deleted as public officers are also subjected to other laws including the PCCA, Public Leadership Code of Ethics Act and Civil Servant Act.
11	10(1)(c)	There is no definition of the term "national values".	"National values" shall be clearly defined in accordance with the supporting authority to that provides the same recalling that the Constitution of the United Republic of Tanzania, 1977 neither uses this term nor provides any definition.
12	10(1)(d)	Section 10(1) (d) stipulates that political	To be deleted as it brings unfairness

		<p>parties shall perform and support social responsibilities</p> <ul style="list-style-type: none"> • This is not a role of political parties. • This role may be abused during elections as inducement to voters; see e. g. the TAKRIMA case. 	<p>among political parties and politicians in its implementation as was so declared unconstitutional in TAKRIMA case.</p>
13	10(1)(f)	<p>This section provides that political parties shall support political stability, among others. Instead, it shall be noted that political parties do not support but rather promote political stability.</p>	<p>Replace the term “support” with the term “promote” as promote gives a political party scrutiny powers of the proposition.</p>
14	10 (1)(g)	<p>The word “qualified” under this provision is an opinion not a fact, depending on the internal management of the respective party and based on her ideology and philosophy. Also, political parties do not recruit people to hold public office but they nominate.</p>	<p>The provision should only provide that “<i>nominate candidates to run for public office</i>”.</p>
15	10(2)	<p>Opposition parties in any multiparty, democratic state act as pressure group by providing programmatic and institutional alternatives towards the government and countering potential misuse of power by</p>	<p>It is a redundant provision that is to be deleted.</p>

		the government to enhance performance of people, organizations and systems in the country.	
16	10(3)	<ul style="list-style-type: none"> • It is wrongly placed and should be under interpretation clause. • It is an irrelevant and redundant provision since political parties will always influence public opinion and government actions so as to take powers as primary objective of any registered political party in the world not only in Tanzania. 	To be deleted as redundant provision which aims at killing multiparty democracy in the country.
17	11(6)	The age of majority is 18 years and the Constitution of the United Republic of Tanzania recognizes so as eligible person to vote. Thus, why is a citizen of Tanzania under 21 years ineligible to register a political party? At 18 years any person has the mandate to enter into any contractual agreement etc.	Replace twenty one (21) with eighteen (18) years.
18	(12)	It is a blanket provision.	The provision should provide the duration of the prohibition to use such names or symbols if

			considered critically. If the party was deregistered for whatever reason, it is not a fact that such particular party has automatically lost their freedom of association as basic political and civil right so it should have the right to be registered again or any other organization or persons to use similar identities since registration is not automatic rights is a procedural requirement under this Act.
19	13(3)	Political activities are not defined anywhere in this Act. It is a clear fact that all parties have friendships and partnerships with other parties in the world, for instance CCM has a close collaboration with the Communist Party of China and CHADEMA and other democratic parties are members of the IDU. Also there are foreign institutions that collaborate with political parties. In this regard defining political activities would	Define the term “political activities”.

		save a good purpose in this context.	
20	13(6)	<ul style="list-style-type: none"> • The provision has unnecessary explanation. • The word “may” be replaced with “should”. 	The sentence to read: “A member of a political party should be expelled from that political party after following due processes prescribed in the party Constitution and Rules.”
21	13(7)	The provision exposes a person below 18 to participate in political activities contrary to the Constitution of the United Republic of Tanzania, 1977 and the Law of the Child Act, 2011 which fundamentally guarantees the “Best Interest of Child Principle”. It is a clear fact that the nature of political rallies held by different political parties in most cases do not provide a conducive environment that would guarantee the “Best Interest of the Child Principle”, for the use of abusive language.	The section should prohibit children from participating in any political parties activities.
22	13(9)	Section 13(9) is wrongly placed.	To be moved to the interpretation section.
23	14 (f)	Since a civil servant is allowed to join any political party in order to enjoy freedom of	<ul style="list-style-type: none"> • To be deleted so as to enhance civil servants to enjoy freedom of

		<p>association has the right to enjoy freedom of expression, and secondly as civil servant might have different technical knowledge which might influence the decision reached by politicians holding public office.</p>	<p>speech and opinion.</p> <ul style="list-style-type: none"> • Secondly, sub-section (d-h) to be taken to the Public Service Code of Ethics Act. The Registrar has no mandate with disciplinary matters of public officers; therefore, keeping such provisions in this law is a creation of redundant laws. • To add subsection 14(4) to exclude senior civil servants and members of security forces from participating in politics even after retirement.
24	18(2) to read 18(3)	<p>The Registrar of Political Parties does not have the mandate to interfere with the internal management of a registered political party. These powers proposed in this section could be abused to disorganize any registered political party. A name of any political party is “a brand” that is built for years, therefore a decision to change its name is solely a discretion of members of</p>	<p>This provision to be deleted as its aim does not intend to achieve anything else than addressing failures of the Registrar during registration processes. Therefore, should be deleted</p>

		such party. In that regard invoking such arbitrary powers limits the full enjoyment of democratic processes.	
25	22(1)(b)(iii)	No definition of “minorities” and “marginalized groups” for the Tanzanian context is provided while the terminologies are used differently globally.	The Act should define “minorities” and “marginalized groups” in the Tanzanian context.
26	25(3)	The register should be freely accessible to the public as it is public information and therefore there should be no conditions as stipulated in this section.	The section should read “ <i>The register in subsection (1) and (2) shall be accessible to members of public at any time as to its original existing format</i> ”.
27	25(6)	<ul style="list-style-type: none"> • It is an irrelevant provision. • All political parties have their own structure and their functions are stipulated in their Constitution and Rules. • The Constitution of the United Republic of Tanzania, 1977 provides for freedom of movement, freedom of speech and expression, and gives an individual rights to take part in governance and political activities. 	Thus, this provision is unconstitutional, irrelevant and violates basic principles of human rights. Therefore subsection 7 of this provision is inoperative and should as well be deleted.
28	26(1)	This section is not clear. This Act has a	1. Failure to conduct Annual

		number of provisions of which some are relevant to individuals within political parties and others are specific to the political party (collective responsibility). Factors for de-registration should be appended to collective party wrongs of non-compliance, malpractice, etc.	<p>General Meeting</p> <p>2. Bankruptcy</p> <p>3. Failure to participate election as stipulated in Section 26(1)(g) etc.</p>
29	26(2)	A Registrar of Political Parties is given very simple procedures to de-register a political party.	A Registrar apart from the provisions of subsection (a) and (b) another subsection (c) is introduced so as the registrar should file a notice of motion to de-register a political party to the High Court of Tanzania if so granted after hearing both parties will then proceed with the deregistration.
30	(27)	A political party as legal entity cannot be suspended. However, it is possible to suspend its officials for one reason or another. The good example would be the Media Services Act, 2016 which has powers to suspend a newspaper (brand) but not	To be deleted

		<p>the printing company.</p> <p>Implications:</p> <ul style="list-style-type: none"> • What would be the position for elected leaders including the president? Do they lose their status? • What is the right of citizens who elected those leaders (remain unrepresented or call for bi-election)? • What costs are involved? • A party is either registered or de-registered (suspending a political party is just an imaginable situation). 	
31	29	<ul style="list-style-type: none"> • The office of the Registrar of Political Parties is a public office as facilitative office that coordinates conducts of political parties and not a quasi-judicial body. The country adheres to principles of rule of law. This section arbitrarily ousters jurisdiction and powers of any court over administrative decision which are subject to judicial review for any decision that is made by a public officer. 	<p>The decision of a Registrar over registration or de-registration of a political party should be subjected to judicial review by the High Court of Tanzania and Zanzibar.</p>

		<p>It is an unacceptable provision that would deny justice to political parties. Furthermore, the punishments provided in different offences under this Act include imprisonment; it is dangerous to consolidate such powers to an individual.</p>	
32	<p>Part V: Organization and Management of Political Parties</p> <p>General Comments on this Part</p> <p>This part is wrongly placed in this proposed bill due to the following reasons:</p> <ol style="list-style-type: none"> 1. Every political party has its own Constitution, Rules, structure and positions which are named differently. 2. Each party has its own ideology and philosophy. 3. Each party has its own objectives and strategies to achieve them. 4. Rules in the party are made in accordance with need of the time. <p>Therefore, it is impossible to have uniform organization structures, names, positions, ways of running its affairs including agenda and time for Annual General meetings and other meetings. For instance, this Act under section 30(5) provides the National Executive Committee (NEC) as supreme decision making body)it is only <i>Chama Cha Mapinduzi (CCM)</i> that has this structure, differently CHADEMA’s supreme decision making body is the Governing Council.</p>		

	Political parties are institutions that are meant to take power in the country. They should be alternate institutions to take powers in a country. Political parties are not terrorist institutions and should be treated fairly. They should be nurtured to take power so as to enhance socio-economic development. For instance, sections 35 and 36 outlaw political party's credibility, authenticity, mandate, authority and diminish influence of political leaders and opposition parties.		
33	31(1)(a)	Wrongly placed; it is a requirement for registration.	To be taken to the conditions for the registration section.
34	31(1)(b)-(d)	These subsections concern internal issues of a political party.	To be deleted and added in the registration process as important documents for a party to have in place.
35	32(1)	The term "other place of learning" is not defined.	To define the term "other place of learning"
36	33, 34, 37 and 43	No proper place	To be taken to the regulations to be made
37	38	Internal arrangement of political parties	To be deleted
38	39	Internal arrangement of political parties as stipulated in their different constitution	To be deleted
39	42(2)	The condition of this subsection	To remove the words "may be determined by the Registrar"
40	45(2)	It is an undemocratic and unconstitutional provision that hinders political activity and	To be deleted

		contravenes other provision of this very same Act such as Section 45(1).	
41	45(3)	It is a provision that does not provide equal opportunities between the ruling party and opposition. It is very difficult to separate between duties of public officers as government officer or political party leader.	To be deleted
42	46(4)(b)	Issues: <ul style="list-style-type: none"> • Can an “unlawful purpose” be held in Public? • Can an “unlawful purpose” be notified to the Police? The provision of this section is not adequate to explain a scenario of a notifiable unlawful purpose.	To be deleted as it is a redundant provision
43	48	<ul style="list-style-type: none"> • The provision regulates the merging of political parties. However, political merging is a political strategy that should not be subjected to any censorship of the Registrar of Political Parties. This provision should clearly differentiate merging to form new political parties and merging to form coalition. For the purpose	A certificate of recognition to be issued

		of merging to form a political party the issuing of a new certificate of registration is fine, but with regard to merging to form a coalition as political strategy only a certificate of recognition suffices to save the purpose.	
44	Section 50(3), (4) and (5)	<ul style="list-style-type: none"> • The two Provisions give powers to the Registrar to censor activities of political parties unnecessarily. • Political parties are strong institutions that aim at taking powers. Exposing their strategies and plans undermines their credibility. • Since there are other laws like the Election Expenses Act and the Anti-Money Laundering Act, addressing illicit financial flows, it is unfair to limit the type of assets to be donated by foreign partners. The political parties need resources in order to operate, therefore foreign aid should not be limited bearing in mind that even the government itself as institution depends on such aid to run 	To be deleted

		its affairs without any limits.	
45	(51)		To be deleted
46	53(1)	The time frame of thirty days given for a newly registered political party is immaterial to have all these information.	Replace "thirty days" with "six months"
47	53(4)	The penalty stipulated to deregister the political party is too severe.	An alternative penalty should be prescribed in the regulation such as a fine that suffices in this case.
48	54(2)	<ul style="list-style-type: none"> • It is not a practical provision as there is no any mischief that this provision intends to cure because a contribution in law cannot be equated to shares which gives someone legal authority to do or omit to do something. • The provision is hindering growth of small registered political parties which do not obtain any government subvention, which depend on contributions from individuals, and which also do not have any assets and investments. • Again, a contribution so received does not constitute a criminal act so long as it is obtained from legally recognized 	To be deleted

		sources and when a contribution is made it does not constitute an ill motive (Mensrea).	
49	54(3)	It compels political parties to continue using the same budget every year.	To be deleted
50	54(4) and 54(5)	To criminalize the individuals or an organization that contributes to political parties is contrary to other laws; for instance, the Companies Act allows political contribution without disclosing the amount contributed. In this case the Constitution of the United Republic of Tanzania, 1977, Article 21(2) is violated " <i>Kila raia naya haki na uhuru kwa ukamilifu katika kufikia uamuzi juu ya mambo yanayomhusu yeye, maisha yake, au yanayoihusu taifa</i> ".	To be deleted
51	54(6)	The provision does not put restriction on contributions on initial assets during the registration process which is a good thing that gives right to an individual to enjoy his constitutional right under Article 21(2).	To be amended to include that also after registration there should be no restriction to provide such contribution.
52	55(2) and	<ul style="list-style-type: none"> • Wrongs done by both, parties' institutions 	<ul style="list-style-type: none"> • It is proposed that the liability for

	(3)	<p>and individuals, cannot all together be punished.</p> <ul style="list-style-type: none"> • Secondly, the punishment is severe as the system uses to determine the amount payable; this has never been used in any other laws in the country, including Mining Laws which are even important as they regulate natural resources. • The punishment imposed does not save a purpose of correction but rather it destabilizes the party and makes it more weak than it used to be. 	<p>the offence should be to the institution and not individuals.</p> <ul style="list-style-type: none"> • Punishment to be reduced in accordance to the rules to be made
53	56(2), (3) and (4)	<p>The subsections require political parties to declare audited accounts and assets within one month. Also, they require the Registrar to do same thing as may wish. It should be also noted that the Controller Audit General (CAG) does the same.</p>	<p>It is proposed that only subsection 2 should be introduced so as to compel the Registrar of Political Parties as regulatory body to publish the Audited Accounts on behalf of the political parties, since all the required information to be published normally are public documents issued by CAG reports printed both in Kiswahili and English.</p>

54	57(3)	This provision is impractical as political parties would wish to have separate accounts on different projects, investments and political strategies depending on the need. So therefore it cannot operate on two accounts from National level to the branches.	This provision should not limit the number of accounts in order to be practical. Therefore, the provision should read that political parties should have different accounts according to the need and all of them should be disclosed every financial year for audit.
55	(58)	The section introduces a new provision on how the Government subvention shall be distributed.	<p>Add subsection (d) whereby Presidential votes should also be included to determine the government subvention distribution.</p> <p>Government subvention shall be distributed among political parties by using the following formula;</p> <ul style="list-style-type: none"> i. Presidential votes: 30% ii. Parliamentary votes: 30% iii. Parliamentary seats: 20% iv. Councilors seats: 15% v. All registered political parties: 5%
56	58(3)	The Minister should not be given powers to	To be deleted

		make regulations on how political parties should spend the government subvention. Political parties have different political strategies, projects etc.	
57	58(4)	The provision defeats the qualification for political parties to receive government subvention as stipulated in subsection 58(2). Small political parties will be the losers in this case and opposition will not grow as supposed to do.	To be deleted
58	58(7)	The provision will bring conflict among political parties and the Registrar and will destabilize political parties and create avenues for corruption practices including buying in representatives.	To be deleted
59	60 (3)(d)	Since political parties have investment and will definitely require immovable properties which are treated assets and can be audited, there is problem to acquire such properties.	To be deleted
60	60 (6) and (7)	The government reporting system should be adopted, where in all departments and ministries it is reported every financial year.	To be amended to be reported as consolidated report on annual basis

61	60(8) and (9)	The punishment is severe.	Alternative measures should be thought of in order to accommodate such scenario as treated in District Councils Authorities and Central Government institutions with the qualified audit reports.
62	60(10)	The registrar deals with individuals not an institution.	The provision should deal with the institution instead of dealing with its individuals in a political party as an institution.
63	60(11)	This provision is mere opinion and not fact. Law does not operate on speculations and the cardinal principle of the law is that it must be specific.	To be deleted
64	60(12)	The punishment is severe and such punishment is not available in any institution audited by the CAG.	The same punishment/remedies should made available to other institutions audited by the CAG.
65	64(2)	Members of the Political Parties Council should come from all registered political parties in the country.	To be amended as: Members of the Council shall come from all registered political parties to be represented by two leaders.
66	65(1)(e)	The words "any matter" might bring	To be deleted

		confusion since they are subject to interpretation.	
67	67	The described content is too general to constitute offences.	To be deleted
68	68	The scenario for suspending political parties is not realistic.	To be deleted
69	69	What is the motive of creating informers under this Act? There are a number of laws like the Whistleblowers and Witness Protection Act,2015; and others of the same nature	To be deleted
70	70(2)	There is no need to have this in place.	To be deleted
71	71	The section only provides for repeal and leaves out savings.	To add a savings section that will guarantee that the current registered political parties will continue to exist as per Political Parties Act, 1992.