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THE POLITICAL PARTIES BILL, 1999 - AN ANALYSIS (PART I)

by

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INTRODUCTION

Political parties, no doubt, are essential to democratic governance. They provide the electorate with viable alternatives and a genuine choice among policy directions; aggregate the aspirations and demands of individuals and groups; and channel them through peaceful, constitutional procedures and bodies for policy formulation. While parties in power implement policies in accordance with their mandate, opposition parties monitor governmental actions, publicise abuse of power, and present alternative policies. A flourishing democracy, therefore, requires not the mere existence of political parties for fielding candidates in elections, but also freedom to organise support, and spread their ideas. In this connection, the founding, organisation, financing and disbursements of political parties as leading players in governance, have been deemed matters of public policy. Not only have the types of political parties and the bases of their support been matters of public interest, but also in some cases, the very number

of political parties allowed in the political system has been legislated upon, as happened in Nigeria, for example.

The Political Parties Law (PNDCL 281) as amended, was enacted by the Provisional National Defence Council (PNDC) government to regulate the conduct of presidential and parliamentary elections in 1992. It was largely criticised as being slanted to give the National Democratic Congress (NDC), an unfair advantage at the polls. A new Political Parties Bill has been laid before Parliament recently by the Hon. Attorney General, and it is the hope of many that a new law will remove existing discontent and help to consolidate Ghana's young democracy. This presenter's aim is to discuss aspects of the proposed law and help generate public debate on same.

This edition of *Governance* is the first of a two-part paper, and deals with the founding, registration and conduct of parties, and

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contribution to party funds. Part Two considers state funding of political parties, the practice in other nations, modalities to be employed, and other related issues.

SUMMARY OF PROVISIONS

The draft Bill contains 34 clauses grouped into four parts:

- 1) Founding and registration of political parties; Conduct of political parties;
- 2) Certain prohibitions which include the formation of parties on ethnic lines, the use of national symbols, etc. as well as disqualification of persons from being executive members of political parties;
- 3) Contribution to funds of political parties; and
- 4) General and miscellaneous provisions.

The purpose of the Bill, according to a memorandum attached to it, is to bring the existing law into conformity with the Constitution; remove some provisions in the existing law no longer considered purposive; and introduce some reform for the better regulation of political party activities in Ghana. As one would expect, the Bill re-enacts several of the provisions of the existing law. Included are the following: that every Ghanaian of voting age has the right to form or join a political party; that parties should not be formed on sectional lines; and that the internal organisation of parties should conform with democratic principles. These provisions are meant to promote national unity and to satisfy democratic norms.

Other retained clauses may, however, be perceived as controversial. For example, the new Bill, like the existing law, specifically prohibits chiefs from founding, holding office in, or canvassing for political parties. The EC is empowered to cancel the registration of any political party which violates this provision. Much as one may favour the exclusion of chiefs from partisan politics, the author is dissatisfied with EC's past effectiveness in implementing this provision; and doubts that the Commission will be any more effective in the future, given that

over the years the country has seen chiefs take up appointments as presidential staffers, and don party colours at political rallies. The EC has never challenged the chiefs, nor the political parties they belong to, on this blatant breach of the law. There is the need to prescribe stiff sanctions to prevent the law from being honoured in the breach.

A few of the clauses in the old law have either been deleted or modified. The controversial provision on proscribed political parties has been deleted. The only restriction now - on the symbol, slogan, colour or name of a political party - is to ensure that it is not the same as that of an existing political party or the coat of arms of the Republic of Ghana. Unlike PNDCL281 which debarred all firms and companies from contributing to political parties, it is proposed that in future, companies legally registered or established under a law in Ghana, may make contributions to parties. But the Bill is silent on offshore companies owned by Ghanaians which 'may want to make contributions to a political party.

Time frames for submission of various accounts and reports to the EC have been extended to make them more realistic, and also to encourage compliance. Similarly, the cumbersome requirement of furnishing the EC with the names, addresses and nationalities of the founders/ executives, in addition to the location of their offices, has been deleted,

The ceiling on the contribution of individual party members, which was pegged under PNDCL 283 at ₵ 1 million per annum, has now been made more flexible. The EC is now to determine the ceiling on an annual basis, to make it more realistic. In the same way, fines and other penalties have been revised upwards. This writer suggests that the Inter-Party Advisory Committee (IPAC) should be recognised by the law and institutionalised, so that the EC should fix the ceiling on individual contributions in consultation with or on the advice of, the IPAC. This would confer recognition on political parties as real partners in democratisation and election

management, and not organisations which should be dictated to.

A complete novelty in the draft Bill, however, can be found in clauses 19 and 20 which deal with mergers and alliances, respectively. Taking a cue from the electoral landscape in the 1992 and 1996 elections when several alliances were formed, the drafters of the Bill have made detailed provisions regarding these matters. Parties which merge, lose their original identities, and every merged party shall be regarded as a new unregistered party which shall have to go through the registration process. But parties in alliance shall retain their respective identities, and alliance candidates at elections shall be identified by their own party symbols. Where there is more than one alliance candidate in a particular constituency, the candidates shall be identified separately. It is the view of this presentation that these provisions have set out the rules more clearly, and will ease the burden of the EC in subsequent elections. During the 1996 elections, there were several cases of chaos and confusion owing to the lack of clarity of these rules. The drafters of the Bill admittedly took into account discussions held between the EC and the IPAC. This form of participation in the legal process is to be encouraged.

FOUNDING AND REGISTRATION

Regarding the rules for the founding and registration of political parties, the existing law is basically retained. A political party must be registered with the EC, and it is an offence to operate a political party, or put forward a candidate, or campaign for a political party or a candidate of a political party in any election unless that party has been duly registered. And no prospective political party shall organise or hold a public meeting unless it has been issued with a final certificate of registration by the EC.

When an application is submitted to the EC, a political party shall pay in respect of the registration, such fees as the EC shall determine. Any fee paid in this regard is not refundable. An application for registration must also state the qualifications of the party's executive and

founding members. A prospective political party shall not have as a founding member, a leader or a member of its executive, a person who is not qualified to be elected as a member of Parliament; or is not qualified to hold any public office. The application should be accompanied by a copy of the party's constitution, and the rules or regulations of the prospective political party, duly signed by the interim national chairman or leader, and by the interim national or general secretary of the party. Notably, under the existing law, an application for registration should be accompanied by two copies of the documents mentioned herein.

The application for registration must have, for vetting purposes, detailed particulars of the party's principal officers. These particulars include the names and addresses of the national officers. There is also a requirement of a full description of the identifying symbols, slogans and colours, if any, of the prospective political party. The party is, in this connection, obliged to show that its colour, symbol or emblem does not resemble those of an existing party, nor the Coat of Arms of the Republic of Ghana. The latter provision has taken care of one of the most acrimonious issues in contemporary Ghanaian politics: a faction of the Nkrumahist tradition who want to use the name Convention People's Party, have been prevented from doing so under the existing law.

A registration fee fixed by the EC shall be paid, and this is not refundable under any circumstances. Registration is currently a two-stage process, and it remains so in the proposed law. The Commission shall, not later than 7 days after the receipt of the application, issue to the prospective political party, a provisional certificate of registration, and shall cause a notice of the application to be published in the Gazette as soon as practicable after receipt, inviting objections from any person concerning the name, aims, objectives, constitution, rules, symbols, slogans or colours of the party. This is an opportunity given to the entire public to raise any objection anyone may have to the registration of the new party. If a member of the public is

satisfied, for example, that it is the aim of a party seeking registration to ignore democratic principles, as enshrined in the Constitution, or to promote violent ethnic conflict or immorality, it should be possible for redress to be sought, and the constitutionality of the matter may even be tested in the Supreme Court. The EC may, in addition to inviting objections to the registration as above-mentioned, cause an independent inquiry to be made to satisfy the Commission on the propriety, or otherwise, of granting a license.

Thirty days after the publication in the Gazette, if there are no objections to registration of the party from the public, and at this stage, the EC is satisfied that all registration requirements have been complied with, then the party should be fully registered and issued with a final certificate. A party whose application is turned down, has a right to apply to the EC for review. If no favourable action is taken by the EC within 14 days, the party has the right to take the matter to the Court of Appeal, whose decision on the matter shall be final.

Two objections may be raised. Section 8(2) of the proposed law says that at one stage, the EC shall cause a notice of the application for registration to be published in the Gazette "as soon as practicable". The wording gives too much room for possible delays and other obstacles to be placed in the path of a proposed political party, for political or personal reasons. It is proposed, as a protective clause, that the publication in the Gazette should be mandatorily made within 14 days. Second, appeal should lie with the Supreme Court if a political party is dissatisfied with a decision of the Court of Appeal in that regard.

CONDUCT OF POLITICAL PARTIES

Within 90 days of receiving a final certificate of registration, a political party is obliged to submit to the EC, a written declaration giving details of all its assets and expenditure, donations both in cash and in kind, and by way of pledges, which form part of the initial assets of the party. This declaration is to be further supported by a statutory declaration (a form of affidavit) sworn

to by the national treasurer and the national! general secretary of the party, which will be published by the EC in the Gazette. The penalty for refusal to comply with this requirement, or the submission of false particulars, is the cancellation of the party's registration. This is without prejudice to other sanctions provided under the Political Parties Law or other law of the land.

Certain recommendations may be made herein. It should be provided that any person against whom some adverse finding may be made, should be given a hearing as a condition precedent. Furthermore, the provision that a statutory declaration should accompany the declaration we have discussed above, could be rather intimidating. Returns made under the requirements of company law are not verified by affidavits. It may be argued that a government may use its influence over the EC and power of prosecution, to jail a political opponent for swearing an affidavit which, though technically false, may be harmless in essence; and furthermore, use this as an excuse to cancel the registration of an opposing political party.

Second, the law provides that a statement of the assets, liabilities and expenditure of a political party in relation to elections, should be filed with the EC. In this connection, within the 21 days preceding every general election, a political party should file a statement of its assets and liabilities in such a form as the EC may determine. Similarly, within six months after general elections, a political party should submit to the EC, details of its income and expenditure in respect of all its candidates. These declarations are also to be certified by an affidavit, and the party's registration may be cancelled for the same reasons as discussed above.

Third, it is provided that not only should a political party manifest its presence by way of national or head, regional, district and constituency offices and officers, but it should also keep proper books at all these levels. The particulars which have to be submitted to the EC include the names, titles and addresses of all the party's officials.

The auditors of the party should be approved by the EC which has the power to cancel the registration of any political party if the Commission is satisfied that the party is in breach of any of these provisions. Appeal lies with the Court of Appeal. It is recommended that a hearing should, by all means, be given after a notice in writing has been given of any default, and the political party has failed or refused to correct the anomaly. At this hearing, the political party, being a body that an adverse finding may be made against, should have the right to counsel. It is worthy of mention that whereas decisions of the Commission for Human Rights and Administrative Justice (CHRAJ) are by way of recommendations which can only be enforced by recourse to the High Court, those of the EC have full force of law, equivalent to decisions of the High Court; and appeals may only be made to the Court of Appeal. A change is required in the law to make decisions of the CHRAJ also equivalent to those of the High Court.

Details are given of the record-keeping required of political parties. A political party shall maintain at its head or national office, an accurate and permanent record comprising the following: a list of its membership; a statement of its accounts, showing the sources of its funds and the names of any persons who have contributed to the funds; membership dues paid; donations in cash or in kind; and all the financial transactions of the political party which are conducted through, by, or with the head or national office of the party; any contributions, donations or pledges of contributions or donations, whether in cash or in kind, made by the founding members of the political party; the properties of the party and times of acquisition. These requirements are too intrusive of the privacy of the individual and the organisation.

The accounts of a political party shall be audited and published once in every year in such manner as the EC may direct, but not later than 31st day of December, by an auditor approved by the EC, and a copy of the audited accounts shall be filed by the political party with the Commission at such times as the EC may specify.

From the above, it is also clear that the proposed law expects political parties to operate nationally, and be properly organised at all levels, including towns and villages. This should be borne in mind when the matter of finance is considered in due course, as well as the need for the State to find means of supporting political parties.

Fourth, the law makes provisions for the internal management of political parties on democratic principles. Accession to party office is by election. Every political party shall elect such persons as may be determined by the members of the party as executive officers of the party. The election of the national and regional executive officers of every political party shall be conducted under the supervision of the EC. Pending the election of the executive officers, an application for registration of the prospective party shall be submitted to the Commission by such interim executive officers as the members of the party shall determine.

Fifth, the corporate status of a political party implies that it can change its constitution and regulations etc as and when it thinks fit. Hence, as in the existing law, provision has been made for notification of changes in the constitution of political parties. It is provided that where a political party is desirous of changing its constitution, rules or regulations, the name or address of any of its founding members, or the title, name or address of any person or officer submitted to the EC, or its identifying symbol, slogan, colour or name, that party shall notify the EC of its intention and the EC shall, within 14 days from the date of receipt of the notification, cause to be published in the Gazette a notice of the intended change.

Every change shall come into effect - if no objection is raised to the change - 7 days after publication by the Commission of the notice, or in any other case, at such time as the Commission may determine. The recommendation of this writer in this connection is that the expression "such time as the Commission may determine" should be expunged from the Bill; for it takes away the mandatory right to make

the change if no objection is justifiably raised within seven days.

Sixth, when a merger takes place among two or more parties, the merged parties shall constitute one new unregistered political party which shall need to be freshly registered. Where two or more registered political parties form an alliance, however, each party shall remain a separate registered political party. In any public election, each candidate shall be identified only by the symbol of his own party on the ballot paper. Where the parties nominate separate candidates to contest an election in the same constituency, each candidate shall be identified separately on the ballot paper, and in relation to his party only. In this connection, fees payable for any purpose under any law and relating to elections, shall be paid separately by, or for, each candidate as standing for the election in the name of his own party, the alliance notwithstanding.

CONTRIBUTIONS TO FUNDS OF POLITICAL PARTIES

A citizen of Ghana may contribute in cash or in kind to the funds of a political party, except that the contribution in any period of twelve months shall not exceed an amount determined by the EC. This means that when the proposed law comes into effect, a Ghanaian may contribute more than the present ceiling of one million cedis if this is so determined. The new provision also allows flexibility, and for the amount to be determined from time to time. This limitation does not apply to a contribution, donation or pledge of contribution or donation, whether in cash or in kind, made by any founding member of the political party as his contribution towards the initial assets of the party within the first year of the existence of the party.

No person who is not a citizen of Ghana shall, directly or indirectly, make a contribution or donation or loan, whether in cash or in kind, to the assets held or to be held by, or for the benefit

of, a political party, and no political party or person shall demand or accept a contribution, donation or loan from a non-citizen. No company, partnership, firm or other business enterprise which is not legally registered or established under a law in Ghana, shall make any contribution, whether in cash or in kind to the assets of a political party. However, the provisions of the proposed law do not preclude the government of any country, or a foreign non-governmental organization from providing assistance in cash or in kind to the Commission, to be used for the collective benefit of registered political parties. In the same vein, the Government of Ghana should, as a matter of public policy, provide systematic material assistance to political parties.

The limitations above-mentioned are very debatable. Those in favour argue that the limitations would help prevent the domination of political parties by the affluent few; second, that the limitations would give all citizens an opportunity to participate in the financial control of political parties; and third, that the limitations would ensure that politicians who attain power will be free to act in the national interest, and not in the interest of a few rich and influential people who control the party's purse. To the contrary, the limitations on contributions to political party funds have been criticised on three main grounds: that the disclosure requirements are too many, violate the citizen's right to privacy, and are therefore likely to discourage some citizens from contributing to the assets of political parties; that the existing law has been honoured in the breach; that churchgoers are free to contribute unlimited sums of money to their churches, and that in this sense, the law discriminates against political parties in an unfair manner. If this culture is encouraged in a country where political parties have been blamed by successive military regimes for many ills of society, parties will not flourish and play the role expected of them. This area of the proposed law deserves further debate.

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Note: Nothing written herein is to be construed as necessarily reflecting the views of the Institute of Economic Affairs.

