

PROPOSED DRAFT PUBLIC FUNDING OF POLITICAL PARTIES BILL, 2008



BACKGROUND

Political parties are the heart and soul of a democracy. In the case of Ghana's budding multi-party democracy, political parties perform key roles such as the formation of the government, grooming leaders at the national and sub-national levels and holding government accountable (when they are in opposition) among others.

Yet, political parties are among the most neglected of the political institutions of state. They are made to operate as if they are purely private organisations with no state or national interest in their establishment, maintenance, wellbeing and extinction. By their very nature, poorly established and poorly maintained political parties produce poor quality leadership, both at the party level and at the government level.

For these reasons, it is important to ensure that political parties are not just electoral machines for achieving electoral victories but also function effectively as vehicles for public education, leadership training, national integration and skills acquisition during inter-election years.

This is especially the case in Ghana where the Constitution imposes heavy responsibilities on political parties by requiring them to "shape the political will of the people, disseminate information on political ideas, social and economic programmes of a national character, and sponsor candidates for elections to any public office other than to District Assemblies or lower local government units" (Article 55 (3)).

If political parties are to play their roles effectively in Ghana's multi-party democracy, then their funding must be of concern to the state. This is especially the case as the Political Parties Act, 2000 (Act 574) imposes stringent duties and responsibilities on political parties – in terms of their sources of revenue, financial reporting and accountability.

However, the only sources of public financial support currently available for political parties are the following:

- Indirect support by not subjecting the incomes of political parties to tax;
- Direct support by the allocation of a few vehicles in election years to political parties participating in the elections through the Electoral Commission.

It is against this background that the IEA/ Ghana Political Parties Programme (GPPP) initiated a move to have enacted a Public Funding of Political Parties Act that will provide state and other public financial support for political parties in Ghana.

In furtherance of this initiative, the IEA/GPPP prepared the initial proposals for the Bill. Thereafter a legal consultant in the person of Professor Kofi Kumado, a Professor of Law at the University of Ghana and Director of the Legon Centre for International Affairs (LECIA) was commissioned to prepare a Draft Bill on Public Funding of Political Parties. The Draft Bill was subjected to nationwide stakeholder consultations. Two separate workshops were also held in Kumasi and Accra at which various recommendations for amendments were made. The major proposals were the following:

- A Board of the Political Parties Fund comprising representatives of the political parties should be established to be responsible for policy issues, while the Electoral Commission is made responsible for the day-to-day management and administration of the Fund;
- Consultations should be held with Ghana's development partners to reach agreement on the proposed major source of revenue into the Fund, which is a percentage of the VAT;
- The general public should be sensitised to the proposed use of the VAT for the purposes of the Fund in order not to risk public protests;
- Provisions that have the effect of exerting Government control of the Fund should be removed as the Fund should be seen as one set up by the political parties for the political parties;
- Independent candidates should not benefit from the use of the Fund.

Some of the above proposals have been incorporated into the revised Draft Bill.

The final proposed Draft Bill has the following as its major features:

- The establishment of a Political Parties Fund;
- The principal source of money for the Fund is two and half percent of the total tax revenue of Ghana;
- The Fund is to be administered by the Electoral Commission;
- A formula for the disbursement of the Fund comprising reimbursement for electoral expenses and general administration;
- A provision to encourage political parties to field women candidates in elections;
- The Fund is exempted from tax;
- Provision is made for annual audit of the Fund and annual reports to Parliament.

The proposed Draft Bill has been accepted by the four political parties which form the GPPP and was signed in attestation at a public ceremony held on 10th October 2007. The Electoral Commission has also accepted to manage and administer the Fund once the Bill is passed into law. The Draft Bill has been submitted to the Attorney General with a request for sponsoring it to Cabinet and Parliament for enactment. Indeed, former President Professor John Atta Mills in his 2009 State of the Nation Address, commended the IEA for its work and pledged to consider the Draft Bills initiated by the Institute including the Public Funding of Political Parties Bill. In

2012, the then Vice President, John Mahama, also re-emphasised government's consideration of the above Bill, during his keynote speech at the IEA's commemoration of the Presidential Transition Act.

With the finalisation of the Draft Public Funding of Political Parties Bill, The IEA/GPPP has once again played a model role in consolidating and entrenching Ghana's democracy. It is hoped that with the passage of the Bill into law, and the consequent establishment of the Political Parties Fund, political parties will be strengthened to play their proper roles in multi-party constitutional governance in Ghana.

EXPLANATORY MEMORANDUM TO THE PROPOSED DRAFT BILL

ON PUBLIC FUNDING OF POLITICAL PARTIES

INTRODUCTION

Political parties are clearly considered to be critical to the political and constitutional process in Ghana. This is evidenced by Articles 21(3), 54 and 56 of the Constitution. In many parts of the world, the recognition of political parties as important pillars of constitutional democracy is concretised by the provision of state financial support for the operation of political parties. In Africa, mention may be made of South Africa, Zimbabwe and Mali.

Ghana provides some state support for political parties at the moment. But there is a general feeling that the state should do more. This is especially so given the stringent financial reporting regime established by the Political Parties Act, 2000 (Act 574), which creates costs for political parties. The Public Funding of Political Parties Bill is in response to this need.

Structure of the Bill

The Bill is organised into two parts. Part I deals with establishment issues. Part II addresses administrative, financial and related issues.

Main Features of the Bill

Clause 3 of the Bill lays down the sources of money for the Fund. The principal source of money for the Fund will be VAT. The formulation follows the standard practice on the establishment of Funds by Parliament (see for example, section 3(a) of the Ghana Education Trust Fund Act, 2000 (Act 581)).

Under the Political Parties Act, 2000 (Act 574), foreigners, whether within or outside Ghana, are prohibited from contributing financially or otherwise to political parties. Clause 3(c) makes a slight departure from this rule by opening up the possibility of foreigners contributing to the Fund. The risks associated with contributions to individual political parties, which informs the prohibition, is considered minimised by such a relaxation.

Clause 4 provides for the Fund to be administered by the Electoral Commission. This hardly needs any justification. In any event, if justification were needed, two might suffice. First, administration by the national electoral body is consistent with best practice all over the world. Second, the Electoral Commission already administers the existing state support for political parties. The Clause maintains the independence of the Electoral Commission. Clause 3 is supplemented by Clause 9 which allows the Commission, with the approval of the Minister of Finance, to recover all administrative costs it incurs in the administration of the Fund.

Clause 5 makes the usual provisions for the vesting of the moneys accruing to the Fund in the Commission; for the money to be lodged in bank accounts and for the investment of unspent balances in any financial year.

The procedures and the principles governing the allocation of moneys to political parties are contained in Clause 6. The Clause operates on the principle of equality of all political parties registered under the appropriate law. However, the principles also specify conditions to be satisfied by a political party before it can access the Fund as well as the purposes for which the moneys may or may not be put.

Two main categories of financial assistance are provided for by Clause 6 namely, reimbursement of electoral expenses and general administration. General administration is to account for 20% of the moneys available to the Fund in any financial year (January 1 to December 31). This is to be allocated equally to all political parties provided they satisfy other requirements in this Bill or any other law; for example, the obligation to file financial statements with the Electoral Commission and to maintain a certain measure of physical presence throughout the country.

Electoral reimbursement accounts for the remainder i.e. 80%. However, this remainder is broken into Presidential and Parliamentary Elections as well as the number of seats a political party has in Parliament. Provision is also made here for those contesting elections as independent candidates.

Clause 6 contains two principles worth highlighting. First, the threshold for being eligible for reimbursement of electoral expenses. The Clause pegs this at 2% of the votes cast in the election which is being used as the basis for the allocation to the political parties. In other words, a political party must obtain at least 2% of the total votes actually cast (not of registered voters). From comparative data, the eligibility threshold ranges between 1% - 5%. The 2% provided in Clause 6 is based on the results of the 1992, 1996, 2000 and 2004 elections and also on the belief that the threshold should not be fixed based on the registered voters only but should also take into consideration the total national population represented by elected officials.

The regulation of bye-elections is left to the Commission. No provision is made for candidates elected unopposed because it is assumed they will have no electoral expenses. For this purpose, it must be understood that the philosophy underlying the Bill assumes that the election commences with the filing of nomination papers.

Another principle is the setting aside of 10% of the Fund to encourage political parties to field women candidates and do so in constituencies where they are likely to be elected. To make the encouragement meaningful, it is provided in Clause 7 that a political party must elect at least 30 women Members of Parliament to qualify for a share of this 10%.

Clause 8 deals with the management of the funds allocated to a political party and the reporting obligations thereon.

Clause 10 exempts the Fund from tax. This is consistent with other Funds established by law.

Clause 11 makes provision for the Fund to be audited annually by the Auditor-General.

Clause 12 obliges the Commission to report annually to Parliament.

Clause 14 gives the Commission the power to regulate the allocation of moneys to political parties.

Consistent with other legislation affecting political parties, Clause 15 provides a right of appeal by a political party up to the Court of Appeal against any decision of the Commission. The Clause provides a three-tier decision-making process which should be adequate (i.e. Commission, High Court and Court of Appeal).

The purpose of Clause 16 is to achieve consistency and mutual reinforcement of legislation relating to political parties.

Clause 18 provides for a prospective commencement date of the Bill when enacted. This is to create a level field for all political parties and to avoid creating the impression that the Bill favours or is intended to favour any particular political party or parties.

PROPOSED DRAFT

PUBLIC FUNDING OF POLITICAL PARTIES BILL, 2008

A Bill to establish a Fund to support political parties, to provide for the management of the Fund and for related matters.

Be it enacted by Parliament as Follows:

Part I

Establishment of Political Parties

Fund

Establishment of the Fund

- 1. a) This Bill may be cited as the Political Parties (Public Funding) Bill.
- b) There is established by this Bill a Fund to be known as Political Parties Fund.

Object of the Fund

- 2. The Object of the Fund is to provide public finance to assist political parties in carrying out their mandate under the Constitution.

Part II

Administrative, Financial and Miscellaneous Provisions

Sources of Money for the Fund

- 3) The sources of money for the Fund shall be as follows:
 - a) An amount of money equivalent to two and half percent of the total tax revenues of Ghana, or such percentage as Parliament may decide;
 - b) Other moneys appropriated to the Fund by Parliament;
 - c) Grants, donations, gifts, devises and other voluntary contributions to the Fund from any sources whether originating within or outside the Republic, whether by foreigners or citizens of Ghana;
 - d) Moneys accruing to the Fund from investment
 - e) Other moneys or properties that may in any way accrue to or become payable to the Fund from any other source including reimbursements from political parties.

Management of the Fund

- 4. (1) The Fund shall be managed and controlled by the Commission
- (2) Subject to the directions of the Commission, the Chairman of the Commission shall be responsible for the day-to-day administration of the Fund and shall be the accounting officer of the Fund.
- (3) The Chairman of the Commission shall have the power to delegate any of his/her functions under this Clause to any officer of the Commission without prejudice to his/her overall responsibility.
- (4) In the discharge of its functions, the Commission may rely on the advice of political parties and for such purposes may utilise any existing framework for consultations with the political parties or such other person or persons as the Commission may deem fit.
- (5) Subject to the Constitution and this Bill, in carrying out its responsibilities under this Act, the Commission shall not be answerable to any person or authority but without

prejudice to the power of the Auditor-General to audit public funds, the Commission shall not be answerable to any person or authority.

- (6) The management and control of the Fund shall not be understood as creating an obligation on the Commission to organise fund-raising activities for the Fund.

Deposit and Investment of Moneys Belonging to the Fund

- 5. (1) Moneys of the Fund shall vest in the Commission and shall be paid into Bank accounts that shall be opened by the Commission with prior approval of the Controller and Accountant-General;
- (2) The Minister responsible for Finance shall cause the amount to be paid to the Fund under Clause 3(a) of this Bill to be paid in quarterly installments directly into the Bank Accounts opened under sub-Clause 1 of this Clause.
- (3) The moneys of the Fund that are not immediately required for making allocations to political parties may be invested by the Commission
- (4) For purposes of investment of moneys of the Fund, the Commission may act directly or through a professional fund manager or other agent appointed by the Commission provided always that such investment shall be made only after consultation with the political parties.

Allocations from the Fund

- 6. (1) Every political party which satisfies the criteria set out in this Bill or by virtue of this Bill is entitled to be allocated moneys from the Fund for any financial year and as prescribed under this Bill.
- (2) The moneys allocated to a political party under this Bill may be used for any purpose compatible with its functioning as a political party subject to the Constitution and the Political Parties Act, for the time being in force.
- (3) Allocations from the Fund to a political party shall be based on the following principles and needs:
 - a) Representation in Parliament;
 - b) Number of votes or percentage of votes obtained in the last general election in respect of
 - (i) Presidential Elections
 - (ii) Parliamentary Elections
 - c) Representation in any other deliberative body established by law in which political parties are directly represented
 - d) General Administration
 - e) Number of votes obtained by an independent candidate provided the candidate is elected.
- 4) A political party shall not be eligible to be allocated moneys under sub-clause 4(b) unless the party obtained at least 2 percent of the total votes cast in the election in question and provided always that payments made under this sub-clause shall be only in respect of reimbursement of audited expenses.

- 5) The allocation under sub-clause 4(d) shall be based on the principle of equality of political parties.
- 6) A political party shall not be entitled to be allocated any moneys in respect of an election in which it does not present a candidate even if it supports a candidate of another political party.
- 7) A political party shall not be eligible to be allocated any moneys under this Bill, if it has failed to present candidates for elections held since its formation and registration
- 8) A political party shall not be eligible to be allocated any moneys under this Bill if it has failed to fulfil the financial reporting obligations prescribed by the Political Parties Act, for the time being in force.
- 9) The information and particulars required for the allocation of moneys from the Fund shall be ascertained by the Commission from the relevant facts and circumstances as at the time when the allocation is to be made as may be provided for by regulations made under this Bill.
- (10) A political party formed in between elections shall be entitled to moneys to be allocated under sub-clause 4(d) of this Clause only and after one year of existence and operations and until after its first congress or national meeting.
- (11) Moneys allocated to a political party from the Fund may not be used:
 - a) For the purpose of directly or indirectly paying any remuneration, fee, reward or other benefit to any person who is an office-holder of the political party except administrative staff.
 - b) To finance or contribute to any matter, cause or event or occasion whether directly or indirectly which contradicts any Code of Ethics agreed upon by the political parties
 - c) Directly or indirectly to establish any business or acquire or maintain any right or financial interest or stake whatsoever in any business or in an immovable property except where the right or interest is to be used by the party solely for party political purpose only.
- (12) A political party's entitlement to be allocated moneys from the Fund shall cease when the political party ceases to qualify in terms of the Political Parties Act, for the time being in force.
- (13) Within 30 days after the date on which a political party ceases to qualify, the political party must refund the unspent balances of all moneys that had been allocated to it under this Bill to the Commission.

7. The money available for allocation to political parties in a financial

year shall be distributed as follows:

- 1) 40% shall go to representation in Parliament as provided for in sub-clause 4(a) of Clause 6 of this Bill
- 2) 25% shall be divided equally between Presidential and Parliamentary elections as provided for in sub-clause 4(b) of Clause 6 of this Bill and shall be allocated on the basis of the number of votes obtained by a political party subject to sub-clause 5 of Clause 6 of this Bill;

- 3) 20% shall go to general administration as provided for in sub-clause 4(d) of Clause 6 of this Bill;
- 4) 5% for independent candidates as provided for in sub-clause 4(e) of Clause 6 of this Bill.
- 5) 10% as additional support to political parties in proportion to the number of women Members of the Political Party elected to Parliament, provided however that at least 10 women have been elected to Parliament on the ticket of the political party.

Political Parties to account for Moneys allocated to them from the Fund

8. (1) Every political party to which moneys are allocated from the Fund shall:
 - a) Open and keep a separate bank account with a Bank registered in Ghana into which all moneys allocated to the party must be deposited;
 - b) Appoint or designate an official of the party as its accounting officer for purposes of the moneys allocated from the Fund.
- (2) It shall be the responsibility of the accounting officer:
 - a) to account to the Commission for the moneys allocated from the Fund;
 - b) to ensure that the moneys allocated under the Fund are used solely for the purposes authorised by this Bill;
 - c) generally to ensure the party's compliance with the requirements of this Bill;
 - d) to keep separate books of accounts in the manner prescribed by the Commission with respect to the moneys allocated and all transactions involving those moneys;
 - e) within three months after the end of the financial year for which moneys have been allocated to prepare and present to the Commission an audited Statement and report showing all moneys received by the party from the Fund during the financial year, their application and the purposes for which the moneys were applied.
- (3) The Commission may suspend the allocation of fresh moneys to a political party if satisfied on reasonable grounds which shall be notified to the party that the party has failed to comply with the requirements of this Bill.
- (4) Before suspending a political party under sub-clause 7(3) the Commission shall give the party 14 days written notice to furnish reasons why its allocation of moneys from the Fund may not be suspended or to make good the irregularity.
- (5) Any moneys judged by the Commission to have been utilised in breach of this Bill shall be repaid to the Fund by a political party.
- (6) The Commission shall have the power to take appropriate action including the institution of a civil action to recover the moneys irregularly spent.

Expenses of the Fund

9. Subject to the approval of the Minister of Finance, the Commission shall recover from the Fund all administrative expenses of the Commission arising out of the management of the Fund which shall include allowances for staff who carry out tasks under this Bill.

Tax Exemption

10. The Fund is exempted from payment of all tax.

Accounts and Audit

11.
- (1)

The Commission shall keep in respect of the Fund books of accounts and proper records in relation to such account and the books of accounts and records shall be in such form as the Auditor-General may approve.
- (2)

The books of accounts shall be audited by the Auditor-General or by an auditor appointed by him or her within three months after the end of each financial year.

- 2)
- The High Court upon hearing the appeal may confirm, vary or reverse the decision or may remit the matter to the Commission for reconsideration.

Annual Report

12.
- The Commission shall submit to Parliament and to all political parties as soon as practicable and in any event not more than six months after the end of each financial year, a report dealing generally with the activities and operations of the Fund during the year to which the report relates and shall include:
- (a)

Audited accounts of the Fund;
- (b)

Audited accounts and financial statements submitted by the political parties;
- (c)

Allocations made from the Fund to respective political parties;
- (d)

The balance of the Fund and any accounts owing to or by the Fund as at the end of that year;
- (e)

Such other information as the Commission may consider necessary.

- 3)
- An appeal shall lie to the Court of Appeal only, from any decision of the High Court.
- 4)
- The rules of procedure applicable to appeals in the High Court and the Court of Appeal in a civil cause or matter shall apply to an appeal under this Clause.

16.
- This Bill shall be read together with the Electoral Commission Act, 1993 (Act 451), the Political Parties Act, for the time being in force, the Representation of the People Law, 1992 (PNDCL 284) (as amended) and the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998, Act 550.

Interpretation

17.
- In this Bill, unless the context otherwise requires:
"Commission" means the Electoral Commission established by Chapter 7 of the Constitution and the Electoral Commission Act, 1993 (Act 451).
"Constitution" means the 1992 Constitution of Ghana.
"Office-holder" shall have the same meaning as under the Political Parties Act, for the time being in force.

Financial Year

13.
- The financial year of the Fund shall be the same as the financial year of the Government.

Regulation

14.
- The Commission may by Constitutional instrument make Regulations to prescribe generally for the effective implementation of this Bill.

Miscellaneous

15.
- (1) A person or political party aggrieved by a decision of the Commission under this Bill may appeal to the High Court from that decision

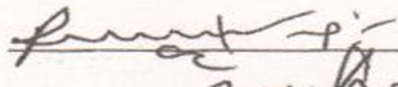
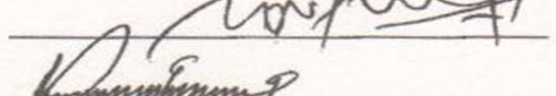
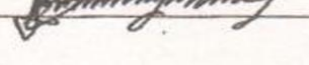

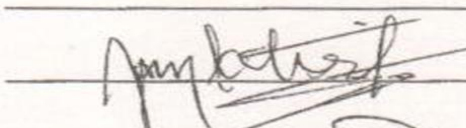
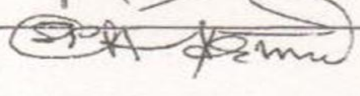
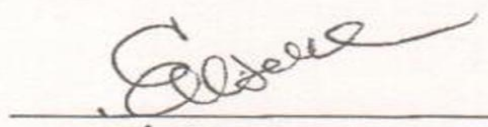
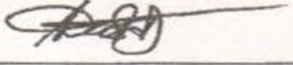
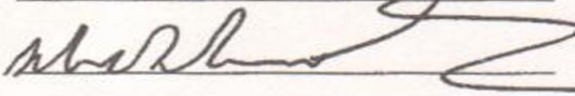
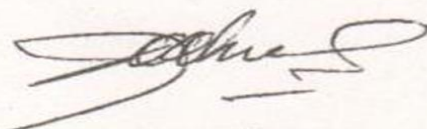

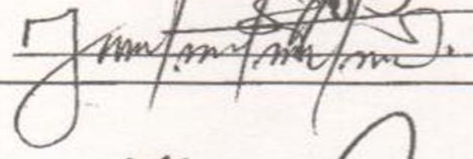
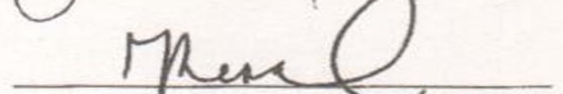
Commencement

18.
- (1)

The Bill shall come into force on first day of January, 2009.
- (2)

The first allocation under the Bill shall be made at the end of the 2009 financial year based on the parliamentary and presidential elections of 2008.

**THIS PROPOSED DRAFT PUBLIC FUNDING OF POLITICAL PARTIES BILL 2008 BY THE
CHAIRMANS CAUCUS AND THE PLATFORM OF GENERAL SECRETARIES
AND POLICY ANALYSTS WAS SIGNED THIS 10TH DAY OF OCTOBER 2007**

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| <p><u>NEW PATRIOTIC PARTY</u></p> <p>Mr. Peter Mac Manu (National Chairman)</p> <p>Nana Ohene Ntow (General Secretary)</p> <p>Hon Isaac Asiamah (Policy Analyst)</p> | <p align="center"><u>SIGNATURE</u></p>    |
| <p><u>NATIONAL DEMOCRATIC CONGRESS</u></p> <p>Dr. Kwabena Adjei (National Chairman)</p> <p>Mr. Asiedu Nketia (General Secretary)</p> <p>Mr. S.P. Adamu (Policy Analyst)</p> |    |
| <p><u>CONVENTION PEOPLES PARTY</u></p> <p>Dr. Edmund Delle (National Chairman)</p> <p>Prof. Nii Noi Dowuona (General Secretary)</p> <p>Mr. Michael Nunoo (Policy Analyst)</p> |    |
| <p><u>PEOPLES NATIONAL CONVENTION</u></p> <p>Alhaji Ahmed Ramadan (National Vice Chairman)</p> <p>Mr. Gabriel Pwamang (General Secretary)</p> <p>Mr. Haruna Sumani (Policy Analyst)</p> |    |
| <p><u>THE INSTITUTE OF ECONOMIC AFFAIRS</u></p> <p>Mrs. Jean Mensa (Administrator)</p> |  |