



Office of the Registrar of Political Parties

The Political Parties Act in a Nutshell

What citizens need to know about
Kenya's law
on political parties

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Foreword

The Political Parties Act, 2011 is fairly new and its implications for the governance and management of political parties is not well understood by political parties, other electoral stakeholders and members of the public. This publication provides key information, about the contents and application of the law in practice. It is hoped that it will contribute to better understanding of and compliance with the Act.

This publication has benefited immensely from the support and contribution of a number of individuals and partners. We would like to thank all for this support. In particular, I am grateful to the Swedish Embassy in Nairobi, through the International Institute of Democracy and Electoral Assistance, for providing funding and technical support for the publication of this booklet. Thanks also to Bjarte Tora and Sam van der Staak for giving their time to read, and advise, on the text.

Thanks also to our development partners- the National Democratic Institute, the International Foundation for Electoral Systems and the Electoral Institute for Sustainable Democracy in Africa- who gave useful insights, advice and assistance.

Lastly, I am grateful to the staff at my Office who have worked tirelessly and with dedication to see the project through.

Lucy K. Ndungu

Registrar of Political Parties

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1. INTRODUCTION

1.1 How to use this Publication

The Constitution 2010 and the Political Parties Act, 2011 have brought about many new changes affecting formation, management and regulation of political parties in the country. This publication provides registered political parties, their officials, members, supporters and citizens with key information they need to know about these laws. Whether you are a party member who wants to know what your rights are, or whether you are a local branch official who wants to be aware what your obligations are, this publication highlights what the law requires of you.

1.2 Help with using this Publication

The publication is not intended to supersede the Constitution, the Political Parties Act or any other law in Kenya. If there is any inconsistency, the Constitution, the Political Parties Act 2011 and any law will prevail over the publication.

Any person who wishes to receive clarification concerning any information in this publication is advised to consult the law first. Therefore, the publication should be read in conjunction with the Constitution 2010 and the Political Parties Act, 2011 both of which set out the legal and other obligations for registered political parties.

If the law or the publication does not answer your question, contact the Office of the Registrar of Political Parties:

On telephone: +254-020-276900

By e-mail at: rpp@iebc.or.ke

At this address:

The Office of the Registrar of Political Parties
21st Floor, Lion place, Waiyaki Way
P.O. Box NAIROBI

Further information may also be accessed from the Office's website:

2. THE LAW AND INSTITUTIONS FOR POLITICAL PARTIES

The principal source of law for formation, operation and management of political parties is the Kenyan Constitution 2010 and the Political Parties Act, 2011.

2.1 Definition of a Political Party

Article 260 of the Constitution of Kenya 2010 defines a political party as an association contemplated in Part 3 of chapter seven of the Constitution. Part 3 contains Articles 91 and 92 which deal with the basic requirements for political parties and the legislation of political parties respectively. They emphasise that political parties must have a national character and a democratically elected governing body, respect minorities and marginalised groups, and promote the Constitution and the Rule of Law. A political party shall not be founded on religious, linguistic, racial, ethnic, gender or regional basis, nor shall it engage in corruption. The Political Parties Act 2011 implements Articles 91 and 92.

Political parties are central to democracy and in this regard play several roles including proposing or supporting candidates for national or county elections, with a view to forming or influencing the formation of the government.

A political party is an organization whose fundamental purposes are:

1. To be an avenue for peoples' participation and integration in their democracy
2. To mobilise citizens for elections
3. To express citizens interest in parliament
4. To formulate public policy positions and present policy alternatives
5. To recruit and select political leaders (both internally and for general elections).

2.2 Brief History of Political Parties Law

The idea that the affairs of political parties need to be governed by law is a relatively recent development in Kenya. Initially, political parties were registered under and governed by the Societies Act. Political parties did not have legal personality or perpetual succession. Basically, political parties

belonged to individuals and some unscrupulous party leaders formed parties with a view to selling them for monetary gain.

With the emergence of multiparty rule and the mushrooming of political parties that followed, a need for greater clarity on the rights and duties of political parties also emerged. The Political Parties Act 2007 (PPA 2007), which became operational on 1st July 2008, superseded the Societies Act with regard to the formation, management and regulation of political parties. The PPA 2007 provided a legal framework for registration, regulation and funding of political parties and established the Office of Registrar of Political Parties (ORPP), responsible for implementing and enforcing the law.

The Political Parties Act, 2011 provides the institutional, legal and regulatory framework for registration, regulation and funding of political parties in Kenya. The Act is the primary legal reference for management of political parties in accordance with Articles 91 and 92 of the Kenya Constitution 2010, which envisages well governed political parties that respect internal democracy and their constitutional status in the Kenyan political system. The Act seeks to address gaps that were inherent in Political Parties Act 2007 such as lack of clarity on mergers and coalitions. Under the Act, political parties have legal personality and therefore can sue , be sued and own property, among other functions.

2.3 Present Law for Political Parties

The principal laws governing the formation, management and regulation of political parties are the Constitution of Kenya 2010 and the Political Parties Act 2011. Alongside these, there are other laws-such as the Elections Act 2011, the National Cohesion and Integration Act 2008 and the Independent Electoral and Boundaries Commission Act 2011 that have a bearing on political parties' operations.

2.3.1 The Constitution

The Constitution embodies principles and values that seek to configure the governance and architecture of political parties. Any registered party or person(s) contemplating forming a political party must take cognizance of and adhere to the principles and values stipulated in the Constitution. There are

several Constitutional principles that inform the formation, management and operation of political parties. A few of these are highlighted below.

The preamble to the Constitution of Kenya 2010 recognizes aspirations of all Kenyans for a government based on essential values of human rights, equality, freedom, democracy, social justice and the rule of law.

Article 4 (2) underscored that Kenya is a multi-party democratic State founded on the national values and principles including those of governance, democracy, participation of the people, non-discrimination and protection of the marginalized.

Art 16 provides membership to political parties may include citizens living outside of the country. Art. 36 provides for the right of-freedom of association. Article 38 guarantees citizens the right to make political choices including the right to: form, or participate in forming, a political party; to participate in the activities of, or recruit members for, a political party; and, to campaign for a political party or cause.

Article 91(1) sets down the basic requirements for a political party and these include that a political party must have a national character, respect and promote gender equality and equity and practice democracy through regular, fair and free elections within the party. The Political Parties Act 2011 implements Articles 91 and 92 of the Constitution.

Under Art 91(2), a political party shall not, among others:

- be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis;
- engage in or encourage violence by, or intimidation of its members, supporters, opponents or any other person;
- establish or maintain a paramilitary force, militia or similar organization; and
- engage in corruption.

Art. 92 deals with legislation of political parties and requires Parliament to enact a law to deal with several aspects of political parties including their

registration and regulation, establishment, management, funding and financial reporting.

2.3.2 The Political Parties Act

One of the laws contemplated under Articles 91 and 92 is the Political Parties Act 2011 which came into force on 1st November, 2011. The Act provides the institutional, legal and regulatory framework for registration, regulation and funding of political parties in Kenya. The Act is the primary legal reference for management of political parties in accordance with Articles 91 and 92.

It creates the office of the Registrar of Political Parties as a State Office within the meaning of Article 260 of the Constitution and therefore independent and not amenable to the direction or control of any person or authority. It is also a body corporate with perpetual succession and has rights and obligations of a legal person.

3. REGISTRATION

No association of persons or an organization is allowed to operate or function as a political party unless it has first been registered in accordance with the provisions of Political Parties Act, 2011.

The Act uses the following terms to describe the registration position of political parties:

- Provisionally registered political party: a party that has applied for registration under the Act fulfilling the conditions for provisional registration but has yet to fulfil the conditions for full registration.
- Fully registered political party: a party that is registered under the Act after having met all requirements for full registration.
- Deregistered party: a registered party that has been deregistered under the Act.

3.1 Applying for Registration

Registration of a political party is a two stage process, Provisional registration

and full registration.

3.1.1 Provisional Registration

Registration of a party in Kenya is split into two steps: provisional and full registration.

This has three benefits as it allows:

- i) Parties to legally engage in membership recruitment, which unregistered entities are not allowed to;
- ii) Citizens and other parties to be informed and where necessary make objections concerning the registration of the name, symbol or colour of the party; and
- iii) The Registrar sufficient time to scrutinize the submitted registration documents.

The Act specifies the information that must be contained in an application for registration. The application must be made on forms provided by the Registrar and by authorized officials of the political party.

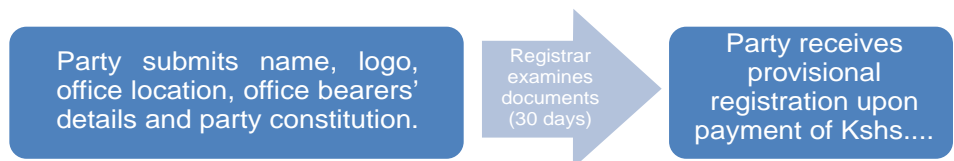
3.1.1.1 Name Search

To apply for provisional registration, an organization must:

- i. Submit an application for name search of a political party to the Registrar of political parties.
- ii. After the name is approved, the applicant will submit an application for provisional registration.

The name of a political party includes its full name, short-form name or abbreviation, and logo.

Figure 1. Timeline for Provisional Registration



3.1.1.2 Application for provisional registration

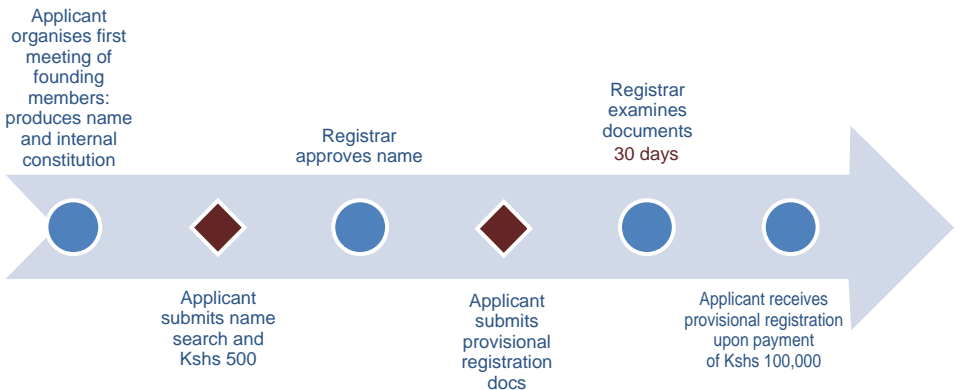
An application for provisional registration of a proposed political party shall:-

- be in writing and signed by the applicant(s);
- include signed minutes of the first meeting of the founding members of the political party;
- set out the name of the party
- if the party wishes to use an abbreviation of its name, set out that abbreviation.
- be accompanied by a copy of the Constitution of the proposed party which must comply with the provisions of section 9; and
- Be accompanied by prescribed fee; and
- include a request for the registration of the symbol of the party to be used on ballot papers.

3.1.1.3 Provisional certificate of registration

After the Registrar has verified that the party's application for registration is complete, he or she will issue a certificate of provisional registration to the founding members within thirty days (30) of receipt of an application.

Figure 1. Timeline Provisional registration



If the party is not eligible for provisional registration, the Registrar will indicate which requirements have not been met.

The information of the provisionally registered political party shall be entered in provisional register for record keeping.

The provisional registration of a political party shall lapse and a provisional registration certificate shall cease to have effect at the expiry of one hundred and eighty (180) days from the date of issue of the certificate of provisional registration.

3.1.1.4 Benefits of Provisional registration

A provisionally registered party may carry out activities necessary so as to meet the requirements for full registration such as recruiting at least 1000 members in atleast 24 counties.

3.1.2 Full Registration

A party that has provisional registration may apply to be fully registered. The Act stipulates the information that must be contained in an application for registration.

The application must be made on forms provided by the Registrar and signed by authorized officials of the political party.

3.1.2.1 Application for Full Registration

A political party that has been provisionally registered may apply to the Registrar for full registration not later than one hundred and eighty (180) days from the date of provisional registration.

3.1.2.2 Requirements for Full Registration

A political party is qualified for full registration if:

- a) it has recruited as members, not fewer than one thousand (1000) registered voters from at least twenty four(24) counties;
- b) the members reflect regional and ethnic diversity, gender balance and representation of minorities and marginalised groups;
- c) the composition of its governing body reflects regional and ethnic diversity, gender balance and representation of minorities and marginalised groups;

- d) not more than two-thirds of the members of its governing body are of the same gender;
- e) it has demonstrated that members of its governing body meet the requirements of Chapter Six of the Constitution and the laws relating to ethics;
- f) it has undertaken to be bound by this Act and the Code of Conduct set out in the First Schedule of the Act.
- g) it has submitted to the Registrar-
 - (i) a list of the names, addresses and identification particulars of all its members;
 - (ii) the location of its head office, which shall be a registered office within Kenya and a postal address to which notices and other communication may be sent; and
 - (iii) the location and addresses of the branch offices of the political party, which shall be in more than half of the counties.

3.1.2.3 Withdrawing Application

At any time before registration, an eligible party may withdraw its application by sending a request to withdraw to the Registrar.

The leader must sign the request to withdraw the application

3.1.2.4 Benefits of Full Registration

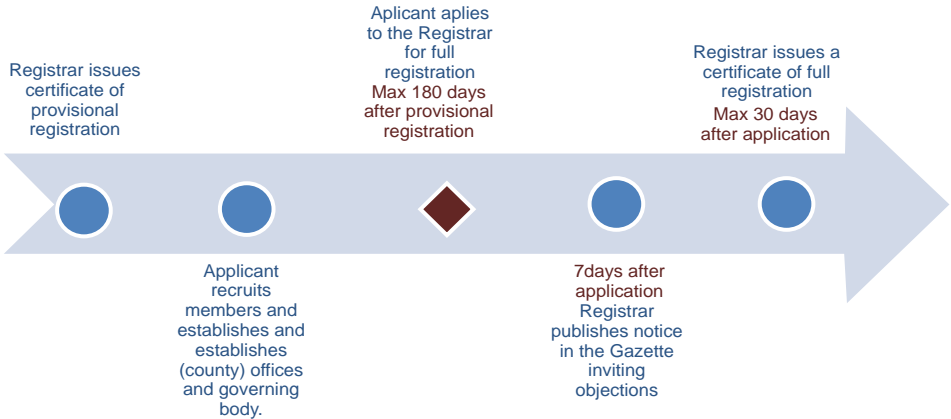
A fully registered political party enjoys several advantages including:

- being identified on the ballot with the candidates it endorses;
- political parties funding;
- receiving guaranteed broadcasting time in national media stations.

3.2 When Registration Takes Effect

A political party is fully registered within thirty days of its application and upon having fulfilled the conditions of full registration. The official registration date is the date indicated on the certificate of full registration.

Figure 2. Timeline for Full registration



3.3 Loss of Eligibility for Registration

A political party can lose its eligibility for registration if the party fails to comply with the Constitution and the Political Parties Act.

An eligible party can also lose its eligibility for registration if:

- i. the name of a political party or the abbreviation of the name that it wishes to use is:
 - obscene or offensive;
 - excessively long;
 - the name, or is an abbreviation of another political party that is already registered;
 - nearly resembles the name, or an abbreviation of the name of another political party already registered or any other legal entity registered under any other law.

4. DEREGISTRATION

A political party may be deregistered or suspended under certain specific circumstances.

Deregistration may be:

- Involuntary; or
- Voluntary.

4.1 Involuntary Deregistration

The Registrar has wide powers as set out in S. 34 of the Act including deregistration of a political party.

4.1.1 Grounds for Deregistration

The registrar may deregister a political party if the party:

- has contravened the provisions of Article 91 of the Constitution;
- does not promote free and fair nomination of candidates;
- does not adhere to the law relating to the nomination of candidates;
- does not respect the national values and principles of the Constitution;
- obtained its registration in a fraudulent manner;
- has instigated or participated in the commission of an election offence; or
- has acted contrary to the provisions of section 26 by not adhering to the legal requirements on the political parties fund.

4.1.2 Deregistration Procedure

The Registrar will follow this procedure before deregistering a political party:

- i. *notify the party in writing by notice sent to all party officers:*
 - of the particulars of the breach or contravention;
 - of the intention to deregister the political party; and
 - direct the political party to remedy the breach or contravention within ninety days or otherwise show cause why the party should not be deregistered.
- ii. *If a party fails to:*

- rectify the omission or
- does not convince the Registrar that the infraction was not the result of any negligence or lack of good faith on its part

Within ninety days, the Registrar may deregister the party. If a registered party becomes deregistered, the Registrar will publish a notice of deregistration in the Kenya Gazette .This notice will specify the effective date of deregistration.

4.2 Voluntary Deregistration

A registered political party may voluntarily apply to become deregistered. The Registrar can accept the application to deregister a party if it is signed by the party leader and any two party officials. .

4.3 Consequences of Deregistration

The Registrar will change the status of the party from “registered” to “deregistered” in the Registry of Political Parties.

The deregistered political party then loses all the advantages of a registration.

In addition, a political party that is deregistered under this Act shall not:

- a) summon a meeting of members or officers of the political party other than for purposes of winding up the political party or for purposes of challenging the de-registration of the political party;
- b) attend or make a person attend a meeting in the capacity of a member or officer of the political party;
- c) publish a notice or advertisement relating to a meeting of the political party except for purposes of a meeting under paragraph (a);
- d) invite persons to support the political party;

4.4 Registration of Deregistered Parties

A deregistered political party may choose to reapply for registration. The party can reapply by submitting an Application to Register a Political Party

using the same process as if it were applying for the first time.

4.5 Suspension of Registration

The Registrar may suspend the registration of a political party for a period not exceeding twelve months.

4.5.1 Grounds of Suspension

A political party will be suspended if it commits an offence under the Act. The objective of suspension is to enable the political party to remedy the breach specified in the notice issued by the Registrar under subsection.

2.5.2 Consequences of Suspension

A political party that has been suspended under subsection (3) shall not be entitled to any of the rights and privileges specified in section 15, namely, the right to:

- hold and address public meetings in any area in Kenya for the purposes of publicising the political party and recruiting members;
- the protection and assistance of the State security agencies for the purposes of facilitating peaceful and orderly meetings; and
- the provision by the State, of fair opportunity to present the political party's programmes to the public by ensuring equitable access to the State owned media.

5. MEMBERSHIP

Political party members form the core of a political party. They implement the traditional roles of a political party in society, such as:

- To mobilise citizens for party support
- To engage with and educate citizens on policies
- To recruit and elect political party leaders
- To nominate party candidates for general election and by-election
- To formulate public policy views
- To be educated for future leadership (sustainability of the party)
- To represent citizens when nominated and elected to the legislative

and executive arms of government.

- To pay membership fees.

The Political parties Act places members at the core of Kenyan parties so as to allow them to play these roles in society. Political parties therefore must not only have a membership that is sufficiently large and diverse, they must also know them and involve them in party affairs. How exactly members will be engaged, the Act leaves for each individual party to decide.

5.1 Eligibility for Membership

Any person who is at least 18 years is eligible to be a member of a political party.

5.2 How to Become a Member

A political Party is a legal entity with its own rights and responsibilities. On account of this, it has the latitude to decide who and the criteria one needs to satisfy before becoming a member. Political parties stipulate eligibility for membership in their constitutions.

Whoever it recruits has to give his/her consent and it is an offence to register a person as a member of a political party without his/her consent.

A political party must at any time keep updated and accurate party membership lists to be available for the members and the public at the party head office and all party county offices. The party membership lists must be submitted regularly to the Office of the Registrar of Political Parties

5.3 Rights of a Member

A member of a political party has several rights including the right to:

- participate in the activities of a political party;
- campaign for a political party or cause; and
- contest for leadership positions in a party
- to run as a candidate in party nomination for candidates for general election and by-election.

5.4 Ceasing being a Member a Political Party

There are four ways a member can cease being a member of a party:

- i. Resignation;
- ii. Expulsion;
- iii. Through “deeming”; and
- iv. Natural attrition.

5.4.1 Resignation

S.14 (1) of the PPA requires a member of a political party who intends to resign from the political party to give a written notice, prior to his resignation to the political party. If the member is a Member of Parliament or County Assembly, a thirty-days written notice should also be sent to the Clerk of that House or County Assembly.

The resignation is effective once the notice has been received by the political party and the clerk, both who are required to notify the registrar.

5.4.2 Internal Party Mechanisms

A member is bound by the Constitution of a political party and may be expelled only if he/she violates the provisions of the constitution, which normally set out the party disciplinary mechanism.

A party constitution must satisfy the requirements of the Kenya Constitution and the Political Parties Act, 2011 which includes being democratic.

5.4.3 Deeming Provisions

The Act lays out grounds when a member can be deemed to have resigned from a political party. These are that the member:

- forms another political party;
- joins in the formation of another political party;
- joins another political party;
- in any way or manner, publicly advocates for the formation of another political party; or
- promotes the ideology, interests or policies of another political party;

The Act does not explicitly indicate who is responsible for implementing the provisions of s. 14(5). However, this responsibility is vested on the party taking into account the party constitution and rules.

6. PARTY MANAGEMENT

Every political party in Kenya must have a

- National character
- Have democratically elected governing body
- Promote and uphold national unity
- Abide by the democratic principles of good governance, promote and practice democracy through regular, fair and free elections within the party
- Respect the rights of all persons to participate in the political process, including minorities and marginalized groups
- Respect and promote human rights and fundamental freedoms
- Respect and promote gender equality and equity

The party must have an organizational structure at national and county level with all relevant and elected party bodies and organs. The governing body must reflect regional and ethnic diversity and representation of minorities and marginalized groups. Not more than two-third of the members of the governing body are of the same gender. The party must demonstrate that members of the governing body meet the requirements of Chapter Six of the Constitution and the laws relating to ethics.

- A person who is undischarged bankrupt; or
- has been convicted of a criminal offence (imprisonment for minimum of six months); or
- has been suspended for violating the code of conduct (period of minimum six months); or
- has contravened the provision of Chapter Six of the Constitution is disqualified from being a member of a party governing body.

The party must have a clear management structure including roles and

responsibilities and the procedures to be followed.

To address potential conflicts in the party, it must have permanent dispute and conflict resolution mechanism.

Among the documents required for a political party are:

- Party constitution
- Nomination rules and procedures
- Internal party election rules and procedures
- Party policy document(s)
- Party policy reporting document

6.1 Records

Political party documents are fundamental for party institutionalizing, inclusive participation, education of party members and the public at large, accountability and transparency and responsible representation. Therefore all political parties must have accurate and authentic records including:

- Party constitution
- Party nomination rules and internal election rules
- Party manifesto and other policy documents including policy reporting document
- Party strategic plan
- Names and contact details of party officials and party elected representatives to public offices
- Party budget, particulars of contributions including membership dues paid, latest audited accounts as well as particulars of properties.

The Office of the Registrar of Political Parties may request copies of documents to be furnished upon request. Any person who interferes, damages or destroys any record or fails to furnish any document required commits an offence.

A member of a political party may, during working hours and on payment of the prescribed fee, inspect and obtain copies of the records maintained at its head office or county office.

6.2 County Office

For a party to be registered, it is required to open party county offices in at least half of the counties. More importantly, the office should be functional.

Party county offices are there to provide the services of the party to its members and the public at large.

Among the many functions a party county office may provide are:

- The members of the party and the public to have access to the party
- Party outreach activities and purposes
- For internal activities and the running of the party affairs
- For keeping of records in accordance with sec.17 of the ActFor membership recruitment and membership list updating
- For keeping records of all party officials and all party elected representatives
- For keeping the particulars of the office including the person in charge
- Being the prime point of contact with IEBC and the representatives of the Registrar at the county office, the county PPLC (Political Party Liaison Committee), Government agencies, IEBC Peace Committees and other relevant actors
- Liaise with the party members in the County Assembly
- Prepare regular reports to the party head office

According to the Act, the minimum requirements are that the office is functioning, keeps the records and is available for party members and the public including providing copies of records upon request.

7. MERGERS

Two entirely new provisions in the Act deal with mergers and coalitions. In previous years, the lack of legislation on mergers and coalitions had led to a political landscape where parties coalesced, sometimes merged and easily dissolved again to a point where few of them remained recognizable entities to their members or voters. The new provisions aim to provide a legal

framework to govern future mergers and coalitions so as to maintain clearer identities for individual parties.

In that regard, two or more registered parties may apply to become a single registered party. This merger can occur at any time other than during the period beginning 30 days before the issue of a writ for an election and ending on an election day

7.1 What is a Merger?

The Act does not define what a merger is. Nonetheless, merger may occur by:

Amalgamation: where the assets and liabilities of two or more political parties are vested in a third and new entity, with the effect that both former political parties lose their identities to form a new political party.

Integration/absorption: under which one political party transfers its assets and liabilities to another political party.

Figure 3: Merger by amalgamation

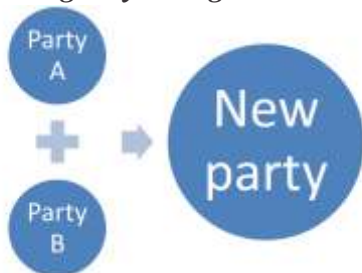
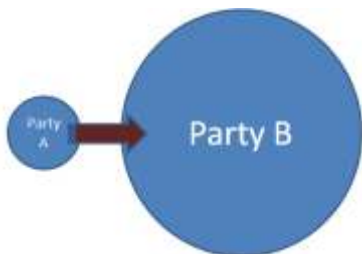


Figure 4: Merger by integration



7.2 Why do Parties Merge?

Political parties can have several reasons to merge:

- To gain more votes during elections
- To gain more cabinet posts
- Sometimes, a merger is used to rebrand the political party's image.
- To strengthen the policy agenda through a stronger and bigger party.
- To represent and attract more members through a bigger party.
- To raise more (public and private) funds, also because funds no longer have to be spent on challenging each other.
- To keep an undesired third party out of government.

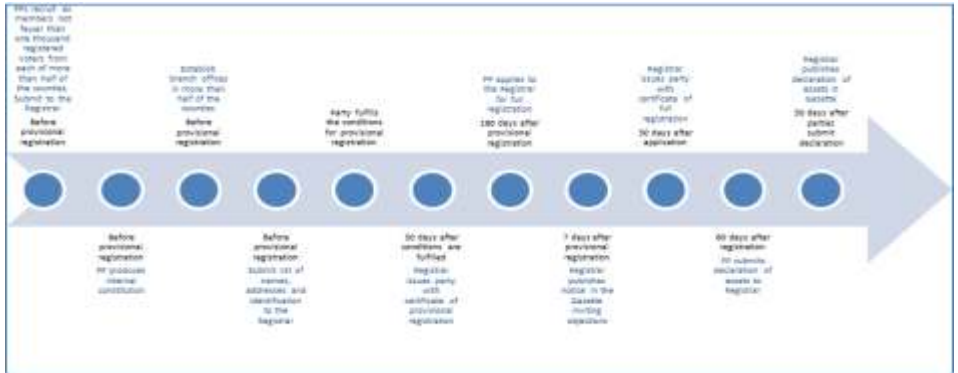
7.3 Applying for a Merger

The Registrar must be satisfied that the merged party is eligible for registration as a political party under the Act, and that they have observed all other requirements of the Act.

If satisfied, the Registrar will amend the Registry of Political Parties by replacing the names of the merging parties with the name of the merged party.

The Registrar will notify the merging parties in writing, and publish a notice in the Kenya Gazette, that the names of the merging parties have been replaced in the Registry of Political Parties with the name of the merged party.

i. Registration timeline for Merger by formation of a new party



ii. Registration timeline for Merger by Integration/ absorption



7.4 Consequences of a Merger

The merger of two or more registered parties has these consequences:

- The merged party is the successor of both merging parties. (The former parties cease to exist and no longer appear as parties in the Registry of Political Parties from the date of the merger.)
- The merged party becomes a registered party.
- The assets of each merging party belong to the merged party.
- The merged party is responsible for the liabilities of each merging party.

- The merged party is responsible for the obligations of each merging party to report on its financial transactions and election expenses for any period before the merger took effect.
- The merged party replaces each merging party in any legal proceedings – whether civil, penal or administrative – by or against a merging party.
- Any decision of a judicial or quasi-judicial nature involving a merging party may be enforced by or against the merged party.
- The registered associations of the merging parties will become deregistered.
- A merged party is entitled to the combined total of the allowances to which the merging parties would be entitled if they had not merged.

8. COALITIONS

Provisions on coalitions are a new phenomenon that were introduced by the Act. Coalitions in Kenya have in the past been difficult to distinguish from mergers.. They have also led to disputes when internal rules were not clearly defined or implemented. The Act tries to clearly distinguish between the two options of mergers and coalitions, thus helping political parties to choose the model that best fits their purpose. It also requires parties in coalition to draft clear internal rules and objectives so that ordinary Kenyans understand what to expect from the cooperation between parties.

The Political Parties Act 2011 provides for coalitions and political Parties have the right to enter into coalition agreements, normally signed and submitted to the ORPP.

8.1 What a Coalition is

A “coalition” means an alliance of two or more political parties formed for the purpose of pursuing a common goal and is governed by a written agreement deposited with the Registrar (S.2, PPA 2011). Coalitions enable constituent political parties to pursue a common goal. Coalitions are different from mergers in that parties in spite of their cooperation remain

independently identifiable legal entities with their own leadership, constitutions, members etc.

Political parties may sign coalition agreements before elections (pre-election coalitions) or after elections (post-election coalitions)

8.2 Why form Coalitions?

Parties form coalitions to enhance chances of achieving certain goals such as winning elections and forming a government or strengthening their role as opposition.

8.3 Types of Coalitions

The Act stipulates that political parties may form coalitions before or after elections. In a pre-election coalition, parties agree they intend to form a government with each other if they receive enough votes in the up-coming elections. Pre-election coalitions can include:

- Working together
- Electoral cooperation, such as encouraging voters to vote for an ally
- Joint policy platform
- Negotiation of mutual withdrawals: meaning a candidate of one party in one electoral area and a candidate of the other party in another electoral area so that the two partners are not competing against each other in any electoral area .

Post-election coalitions are normally coalitions that determine:

- i. who will be their partners in government and under what terms they will cooperate;
- ii. the joint policies that the government will implement.

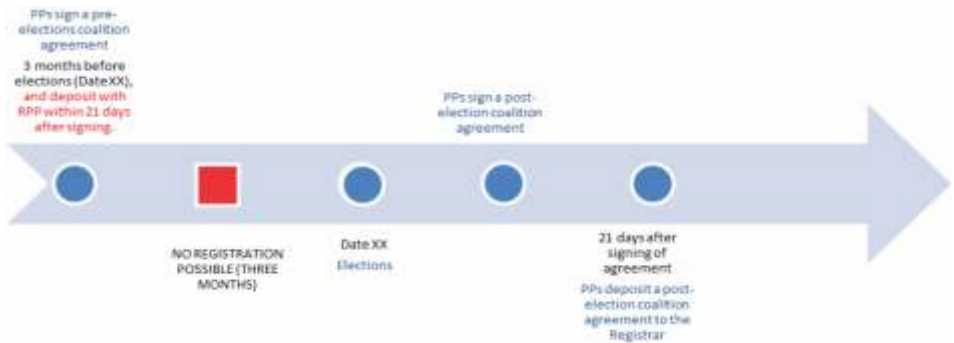
Parties often agree on this with the help of coalition agreements. Coalition agreements typically include components such as portfolio allocation, government formation, coalition decision rules, mechanisms

of collective decision-making, the government's policy programme, electoral cooperation and cabinet termination and duration.

8.4 Requirements of Coalitions

The requirements for coalition agreement are set out in the Third Schedule of the Act and include that it be:

- sanctioned by the governing body of the political parties entering into the coalition and shall;
- be in writing and duly executed by authorized national party officials; and
- Commissioned by a Commissioner of Oaths.



8.5 Consequences of Forming a Coalition

Each party in the coalition is still recognised as a legal entity and has an independent legal existence from that of its coalition partner(s). It still is entitled to rights and has to fulfil its responsibilities and liabilities under the Act and other laws.

A coalition:

- (a) shall not register a coalition name, but may use such name in popularizing the coalition;
- (b) shall not register a coalition slogan, logo or colours but may use such particulars in popularizing the coalition

- (c) may use the logo, symbol and colours of its constituent political parties;
- (d) will not receive funds from the political parties fund but each party;
- (e) may only admit as its members registered political parties;
- (f) shall not recruit individual members except through its constituent political parties; and
- (g) no candidate shall be nominated on a coalition ticket.

8.6 Amending of the coalition agreement

A coalition agreement can be amended and must follow the Act provisions for coalition agreement and the provisions spelt out in the original coalition agreement.

8.7 Ending of Coalition

A coalition may end by following the provisions spelt out in the coalition agreement.

9. FINANCIAL ADMINISTRATION

The Act has very elaborate provisions on political parties funding and accounting. The reason is to ensure that funds are used prudently.

9.1 Sources of Funds for Political Parties

The sources of funds for a political party are (S. 23 & 24):

- The political parties fund (Fund);
- membership fees;
- voluntary contributions from a lawful source;
- donations, bequests and grants from any other lawful source, not being from a non-citizen, foreign government, inter-governmental or non-governmental organisation; and
- the proceeds of any investment, project or undertaking in which the political party has an interest.

9.2 Political Parties Fund

The State allocates money for the Political Parties Fund to be used in funding political parties that meet the criteria set out in the Act.

9.2.1 Origin and Rationale

Political parties require financial resources to sustain and operate a basic party structure. Initially, the major sources of funds for political parties in Kenya are members' contributions, donations from well-wishers and fund raising activities. These sources are important to demonstrate that political parties are rooted in society and engage with their members as much as possible instead of being dependent predominantly on state funding.

The Political Parties Act 2007 established the Political Parties Fund, funded by the State, and administered by the Registrar. The Fund has been retained in the Political Parties Act 2011. The goal of the Fund is to assist political parties to fulfil their roles in a democratic society, especially in non-election periods. It includes such funding purposes as:

- promoting the representation in Parliament and in the county assemblies of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities;
- promoting active participation by individual citizens in political life;
- covering the election expenses of the political party and the broadcasting of the policies of the political party;
- the organisation by the political party of civic education in democracy and other electoral processes;
- bringing the political party's influence to bear on the shaping of public opinion; and
- administrative and staff expenses of the political party which shall not be more than thirty per cent of the moneys allocated to the political party.

The Political Parties Fund promotes accountability, transparency and fair competition between parties. This in essence is aimed to curb corrupt practices while promoting several constitutional and enshrined rights.

The Act provides for distribution of the fund, restriction of sources, disclosure and audit of the Fund. The purposes for which the fund is to be utilized are set out in the Act and are identified simply as those compatible with democracy.

9.2.2 The Sources of the Fund

The sources of the Fund are:

- At least zero point three per cent (0.3%) of the revenue collected by the national government as may be provided by Parliament; and
- contribution and donations to the Fund. (S.24)

9.2.3 Distribution of the Fund

The Fund shall be distributed as follows:

- ninety five per cent (95%) to each political party based on the total number of votes secured such a political party in the preceding general election; and
- five percent for the administration expenses of the Fund.

9.2.4 Eligibility for Funding

Not all fully registered political parties are eligible to receive funding. A political party must meet the following requirements before it qualifies to access funds in the Fund:

- Secure at least five per cent of the total number of votes at the preceding general elections; or
- Promote affirmative action in the sense that no more than two-thirds of its registered office bearers are of the same gender.

9.2.5 Purposes of the Fund

Political Parties are required to spend money allocated from the Fund in the following ways (s.26):

- at least thirty percent (30%) of the Funds to promote the representation in Parliament and in the county assemblies of women, persons with disabilities, youth, ethnic and other

- minorities and marginalised communities;
- promoting active participation by individual citizens in political life;
- covering the election expenses of the political party and the broadcasting of the policies of the political party;
- the organisation by the political party of civic education in democracy and other electoral processes;
- bringing the political party's influence to bear on the shaping of public opinion; and
- at most thirty percent (30%) on administrative and staff expenses.

9.2.6 Restrictions on use of Funds

Political parties are prohibited from spending money from the Fund:

- to directly or indirectly pay remuneration, fees, rewards, allowances or any other benefit to a member or supporter of the political party, other than a member of staff;
- to finance or as a contribution to any matter, cause, event or occasion directly or indirectly in contravention of any code of ethics binding on public officers;
- to directly or indirectly for the purposes of establishing any business or acquiring or maintaining any right or financial interest whatsoever in any business or in any immovable property; or

for any other purpose incompatible with the promotion of a multiparty democracy and the electoral processes, or with the Constitution.

9.2.7 Disbursement Requirements

The Registrar shall issue a notice to all political parties, at the beginning of each financial year, to submit their applications for funding in prescribed forms by presenting the following particulars:-

- I. Work plan of activities/programmes the political party intends to undertake and the timelines;
- ii. Procurement plan.
- iii. Audited financial statements;

- iv. Actual income and expenditure statement;
- v. Form PP 15: Declaration of Signatories to Political Parties Fund Account
- vi. Form PP 16: Application for Funding of a Political Party

These are requirements as stipulated in the Political Parties Funding Regulations, 2009 that should the political party fail to comply with its provisions, the Registrar may withhold the funds due to that Political Party.

9.2.8 Disbursement Process

The following is the current procedure followed before a political party receives its funds for a financial year



9.3 Contributions

Political parties are allowed to receive contributions from lawful sources ., Contributions can enhance the strength of a party in Kenyan society and help it to design and implement its policies. However, a contribution can also lead to undue influence of the contributor over the party, advantage the interests of the contributor over those of (other) members of the party and thus harm its independent decision making powers. To avoid this, contributors and parties must adhere to strict rules and always be transparent. The Act formulates these rules.

9.3.1 What is a Contribution?

A contribution may be monetary or non-monetary.

Monetary contributions: A monetary contribution is an amount of money provided that is not repayable.

Non-monetary contributions: A non-monetary contribution is the commercial value of a service or of property, or the use of property or money to the extent that they are provided without charge or at less than their commercial value.

9.1.2 Eligible Contributors

Contributions, donations, bequests and grants must be from a lawful source. Political parties must familiarize themselves with other laws that may have a bearing on these such as the Proceeds of Crime and Anti-Money Laundering Act.

Only an individual who is a Kenyan as defined in the Constitution and the Immigration Act can make a contribution to a registered party.

When a party receives a non-monetary contribution from an individual, it must obtain complete documentation about the commercial value of the goods or services donated, and the name and address of the donor.

A foreign agency, or a foreign political party which shares an ideology with a political party registered in Kenya, may provide technical assistance but not assets to that political party.

9.1.3 Acceptance of a Contribution

A monetary contribution is deemed to be accepted when it comes into the hands of the political party. A non-monetary contribution is deemed to be accepted when the political party authorizes the use of the property or service.

9.1.4 Contribution Limit

The law does not stipulate contribution limit.

9.1.5 Contributions

The following are contributions, whether monetary or non-monetary:

- Contributions from a non-citizen,
- Contributions from a foreign government,
- Contributions from an inter-governmental or non-governmental organization.

10. REPORTING REQUIREMENTS

10.1 Overview

This section contains general information about the non-financial and financial reporting requirements of registered parties throughout the year and for the specific purposes of general elections and by-elections.

The secretary general of a registered party is responsible for administering its financial transactions and for reporting on them in accordance with the Act.

10.2 Non-Financial Reporting

10.2.1 Changes that must be reported to the Registrar

(a) Registered parties intending to effect changes to:

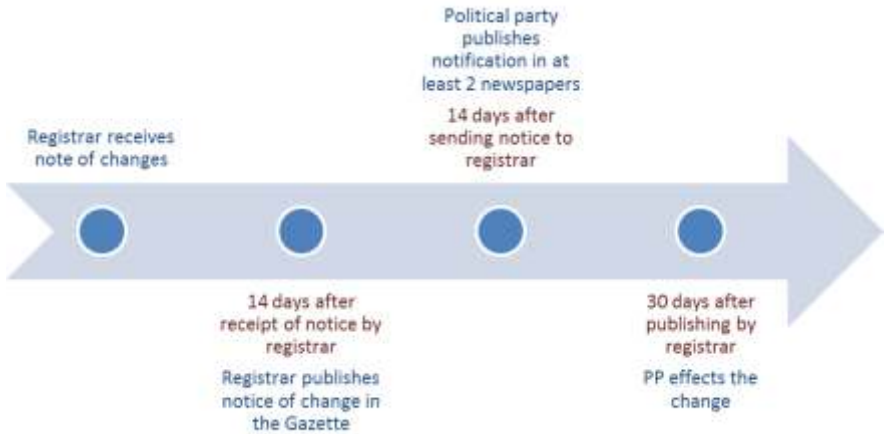
- its constitution;
- its rules and regulations;
- the title, name or address of any party official; or
- its name, symbol, slogan or colour.

in their party information must follow this procedure:

- i. Report any of the intended changes in their party information to the Registrar.
- ii. The Registrar is required to publish notice of the intended change or alteration in the Kenya Gazette within fourteen days after receiving

it.

- iii. The political party shall publish such notification in at least two daily newspapers having nationwide circulation for the purpose of receiving public representations.
- iv. Upon the expiry of thirty days from the date of publication of the notice in the Gazette, the political party may effect the change or alteration in accordance with its constitution and rules.



(a) Change of Office Bearers

Where an office bearer of a registered political party ceases to hold office or a person is appointed to be an office bearer of a registered political party, the political party shall within 30 days send notice thereof to the Registrar.

© Notice of Change of Location or Head Office or Postal Address

Where a registered political party changes the location of its head office or changes its postal address, it shall, within 14 days of such change, send notice thereof to the Registrar.

(d) Any other change to the information about the party contained in the

Register of Political Parties.

10.3 Financial Reporting

10.3.1 Upon Registration

Within sixty (60) days of the date of its registration, a registered party must file with the Registrar a written declaration giving details of all assets and expenditure. This includes all contributions, donations or pledges of contributions or donations, whether in cash or in kind, made or to be made to the initial assets of the political party by its founding members in respect of the first year of its existence (S.16).

10.3.2 Annual Financial Reporting

Within ninety (90) days after the end of its financial year (which must government financial year), a political party must publish in two newspapers having nationwide circulation:

- Its sources of funds;
- Its income and expenditure; and
- Its assets and liabilities.

10.3.3 In Relation to Elections

Electoral periods are when parties often receive and spend most of their resources. In order for the Registrar to verify that all parties run fair and transparent nomination and electoral processes during this period, it is important that every political party opens its records to the Registrar on time. A political party shall, therefore, at least ninety days before a general election, submit to the Registrar a register of its members and a statement of its assets and liabilities.

10.4 Audit of Accounts

The Fund is financed by taxpayers and, therefore, has to be audited to ensure that money allocated is used prudently and in accordance with the objective for which it was allocated.

A political party shall, within three months after the end of each financial year, submit to the Auditor-General its accounts.

The Auditor-General shall audit the accounts and submit them to the Registrar for tabling in the National Assembly.

11. POLITICAL PARTIES DISPUTE TRIBUNAL

In the recent past, disputes within and between political parties in Kenya have often been referred to the courts. Even though this practice in various cases led to acceptable outcomes, it also led to a situation where important political issues were decided over not by politicians but by judges. It, moreover, paralysed political decision making and at times even threatened the independence of the courts.

To bring political decisions back to political powers, the Act first calls for political parties to establish in their constitutions, their own internal dispute resolution mechanisms. Internal disputes relating to nominations will be dealt with primarily by parties themselves.

Only when all resolution mechanisms within the party have been exhausted and the dispute still remains unsolved, can members of political parties call upon an external dispute resolution mechanism. This external dispute tribunal also deals with disputes between political parties. The Act provides for establishment of the Political Parties Dispute Tribunal whose functions are to determine [s.40]:

- (ii) disputes between the members of a political party;
disputes between a member of a political party and a political party;
- (iii) disputes between political parties;
- (iv) disputes between an independent candidate and a political party;
- (v) disputes between coalition partners; and
- (vi) appeals from decisions of the Registrar under this Act.

12. POLITICAL PARTIES LIAISON COMMITTEE

In previous years political parties, the Registrar of Political Parties and the IEBC have met at regular intervals to discuss processes that they are all involved in so as to find common ways to forge forward. This dialogue mechanism has now been formalized in the Act.

The Political Parties Act provides for the establishment of the Political Parties Liaison Committee at the national and county level [(Section 38(1)(2)(3)]. The role of the Committee is further emphasized in the Independent Electoral and Boundaries Commission Act 2011 [Rule 9(3), Second Schedule] and the Elections Act 2011 (Rule 6(2), Electoral Code of Conduct). The purpose of the Committee is to provide a platform for dialogue between the Registrar of Political Parties, the Independent Electoral and Boundaries Commission (IEBC) and political parties.

The Electoral Code of Conduct requires political parties to attend and participate in Political Parties Liaison Committee Meetings [(Rule 6(k)(ii)]. For More information on the Committee, reference may be made to the *Political Parties Liaison Committee Guide*, available at the ORPP.

13. POLITICAL PARTIES CODE OF CONDUCT

Under the Kenya Constitution, a political party must meet requirements which include subscribing to and observing the Political Parties code of conduct for political parties. [(Art.91(1)(h)]. Before a party is issued with a certificate of full registration, it must undertake to be bound by the Political Parties Act 2011 and the Code of Conduct set out in the First Schedule of the Act. [(s.7(2)(g)]

A code of conduct is a set of rules or principles outlining the responsibilities of or proper practices for an individual, party or organisation. This may be in relation to other individuals, parties or organisations. Code of conduct may stipulate sanctions that follow violating any of its provisions.

13.1 Rationale of Political Code of Conduct

The Political Parties Code of Conduct regulates the behaviour of members, office bearers of political parties and aspiring candidates, and their supporters with a view to promoting good governance and eradicating political malpractices. It also ensures peace; and public order in the running of political party affairs.

13.2 Consequences of Violating the Code of Conduct

A person cannot be a member of a governing body of a political party if the person has been suspended for a period of six months for violating the Code of Conduct of the political party [s.7(3)(c)].

- Article 91 of the Constitution requires political parties to adhere to a code of conduct. Violation of the Code may lead to deregistration of a political party.
- Instigating or participating in the commission of an offence. The code prohibits participation on acts of violence.

14. COMPLIANCE AND ENFORCEMENT

The Registrar has responsibility of ensuring compliance and enforcement of the Political Parties Act.

14.1 Registrar of Political Parties

The Registrar implements and enforces the Act. The functions of the Registrar include (s.34):

- i. register, regulate, monitor, investigate and supervise political parties to ensure compliance with this Act;
- ii. administer the Fund;
- iii. ensure publication of audited annual accounts of political parties;
- iv. verify and make publicly available the list of all members of political parties;
- v. maintain a register of political parties and the symbols of the political parties;
- vi. ensure and verify that no person is a member of more than one political party and notify the Commission of his/her findings; and

vii. investigate complaints received under this Act.

The above functions are not exhaustive and as such the Registrar may perform such other functions as may be conferred by this Act or any other written law.

For instance, where a political party commits an offence under this Act, the Registrar shall have the power to: [s.45(5):

- i. issue a warning and require the political party to conform to this Act within a specified period;
- ii. suspend the registration of the political party for a period not exceeding twelve months; or
- iii. withhold funds to the political party for a period not exceeding twelve months.

14.2 Offences and Penalties


Offences and penalties for violations of the Political Parties Act are found in Part VI of the Act.

It is an offence for a person to: (s.45 (1) :

- i. fail to furnish particulars or information required to be furnished by a political party or by him/her under the Act;
- ii. make a statement which he/she knows to be false or which he/she has no reason to believe to be true; or
- iii. recklessly makes a false statement under the Act,

Where a political party commits an offence under the Act, every principal officer of that political party shall also be deemed to have committed the offence (s.45).

A person convicted of an offence under the Act for which no penalty is prescribed shall be liable, on conviction, to a fine of not less than one million shillings or to imprisonment for a term of not less than two years, or to both (s.46).



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