

Recht und Verfassung in Afrika –
Law and Constitution in Africa

Charles M Fombad | Johannes Socher [Eds.]

Constitutionalisation of Political Parties and the State of Democracy in Sub-Saharan Africa



Nomos

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Foreword

Scholars ascribe extensive tasks to political parties in representative democracies that other institutions are unable to fulfil. This description of tasks leads to the realisation that democracies without functioning political parties are inconceivable and, according to the current state of knowledge, also impossible. Institutions such as the Konrad Adenauer Foundation have therefore made co-operation with and support for political parties a focal point of their promotion activities with regard to global democracy. Promotion of and co-operation with political parties is thus first and foremost the promotion of democracy.

Although the theoretical importance of political parties is hardly controversial, their actual performance in representative democracies is often criticised, and not always without justification. The anchoring of parties in society and the population's approval of them vary considerably. Criticism of political parties culminates in the accusation that they are dominated by their own interests in power, posts, and money and that they lack problem-solving competency. For their part, political parties point out that there is insufficient willingness in society to get involved in party politics, that funding for party activities is uncertain or inadequate, and that parties lack adequate legal anchorage, all of which makes their work more difficult.

Germany is a positive example with regard to the framework conditions for party politics. The special importance of political parties to democracy is explicitly recognised, and parties are secured by Article 21 of the German Basic Law as a necessary component of the free democratic order at a constitutional level. Their rights and duties, their funding and their tasks, are described in a separate law, the Political Parties Act. Furthermore, only the Federal Constitutional Court has the power to ban political parties. Nonetheless, there is also so-called party disenchantment in Germany, and willingness to get involved in political parties or become a member of a party is decreasing.

The situation of political parties in Africa appears even more complex. Here, the wave of democratisation in the 1990s has led to a highly dynamic development of the party landscape, which is fundamentally positive but has not always been without risk. Among the extreme examples of these risks was Rwanda in the early 1990s, where the inexperienced handling of

political competition in a multiparty system intensified pre-existing ethnic conflict and thus increased the risk of it turning violent.

In many African states, the introduction of multiparty systems led to the exuberant formation of political parties with only a limited capacity for political work. Wherever access to parliament was not restricted by blocking clauses, the large number of small parties was also reflected in the parliaments, where micro-factions emerged that fulfil the requirements of parliamentary work only to a very limited extent.

Among the greatest challenges to effective political-party functioning in Africa are internal party conflicts, which usually arise from a lack of internal democracy. Such conflicts often lead to splitting and further fragmentation of the party system. They also weaken confidence in parties because political parties that are incapable of resolving their own conflicts are not trustworthy in resolving societal conflicts. In extreme cases, such as in Tunisia, this loss of trust in political parties has led to their being regarded as useless by large sections of the population – indeed, a presidential candidate was elected who mobilised against the party system and was himself not supported by a political party.

Not all countries on the continent that consider themselves democracies allow political parties to operate freely. This applies in particular to opposition parties, which are often subject to legal and financial restrictions and also have significantly less access to the media than do ruling parties. Political work in an African opposition party can pose a significant risk for politicians, especially if the judiciary is not independent. Moreover, there seems to be no limit to the inventiveness of authoritarian regimes in developing instruments to suppress opposition forces.

Poor framework conditions for party activity and the suspension of political competition through repression of opposition parties have dramatic consequences for a country's democracy and development. If it is not possible for responsible political parties, representing their respective interests, to negotiate and resolve societal conflicts between themselves, these often remain unresolved or, in the worst case, become violent. Unfortunately, there are all too many examples in Africa of such violent conflicts that could be prevented by a functioning party democracy.

Proceeding on the premise that democracies need functioning political parties, this edited volume deals with the constitutional mandate of political parties in regard to the special role they play in contributing to the functioning of the democratic system. Using 12 case studies reflective of the diversity of the African continent, the volume explores the regional

and international context of political-party constitutionalisation and the significance that such constitutionalisation has for the development of multiparty systems, for parties in dominant-party systems, for party funding, and for the work of opposition parties. The case studies make it clear that anchoring parties in constitutions is an essential condition for the success of multiparty democracies.

This publication offers numerous insights, ideas, and arguments that support the development and consolidation of multiparty systems in Africa. The publishers and authors deserve credit for having made an important contribution with this publication to the promotion and consolidation of African democracies.

Holger Dix, Konrad Adenauer Foundation

Preface

The global crisis of democracy deepened in 2024, widely hailed as one of the biggest election years in history, with citizens in more than 65 countries around the world going to the polls. Despite this singular testimony to the routinisation of elections, the existence of constitutional and legal frameworks guaranteeing that political parties can compete freely for power does not appear to have led to genuine multipartyism. This is particularly the case in Africa, which has witnessed a democratic decline in recent years. While there are many reasons for this, at the heart of the problem is a crisis facing political parties in sub-Saharan Africa. Barely three decades after their revival on the sub-continent, systems of multiparty democracy have been captured and manipulated by elites in dominant parties, seemingly reincarnating the one-party institutions of yesteryear and threatening to erode the limited progress made since the 1990s.

This edited volume arises out of concern for the role of political parties in sustaining democracy and constitutionalism in sub-Saharan Africa. Its genesis was also informed by the realisation that there are few theoretical and comparative studies of this critical issue. The objective of the volume is thus to stimulate discussion and understanding of the challenges impeding genuine political-party participation in governance and the adverse impact this is having on democracy and constitutionalism. What has become clear, overall, is that the move from a one-party system to a proliferation of parties overshadowed by a dominant party is unlikely to help the sub-continent's faltering transition to democracy that began in the 1990s.

In concrete terms, this volume originated in a research project designed and coordinated at the Institute for International and Comparative Law in Africa at the Faculty of Law, University of Pretoria, during a Walter Benjamin Fellowship generously funded by the German Research Foundation (DFG). The resultant edited volume is in turn a joint effort by contributors from across sub-Saharan Africa and beyond. Most of the chapters are based on papers presented at an international conference held at the Future Africa Campus of the University of Pretoria in April 2024. We are grateful to the Konrad Adenauer Stiftung (KAS), and in particular Holger Dix, Head of the Regional Programme Political Dialogue Sub-Saharan Africa, for supporting the conference as well as for co-funding the publication together

with the DFG. We also wish to thank Sabeeha Majid, Angel Ekata and Nathan Mukoma for helping to organise the event.

Our gratitude goes, furthermore, to Rowland Cole and André Gilles, who provided additional comments on the case studies of Liberia and Germany, respectively. Following an extensive review process, all of the chapters were excellently copy-edited by André Wiesner. At Nomos, we would like to thank Johannes Rux and Josef Herbasch, as well as Oliver C Ruppel, one of the series editors of *Recht und Verfassung in Afrika – Law and Constitution in Africa*. Given that this work is the product of collaboration between a Cameroonian and a German scholar, we could not have found a better home for our co-edited volume than a series dedicated to enhancing academic discourse on comparative law between Africa and Europe.

Charles M Fombad
Johannes Socher
Pretoria 2025

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