

Constitutionalisation of Political Parties, Multipartyism and Political Opposition in Anglophone Eastern Africa

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Abstract: This article examines the relevant constitutional and legal frameworks on political parties, multipartyism and political opposition in anglophone Eastern Africa. Using Kenya, Uganda and Zimbabwe as case studies, it shows that while these countries have constitutionalised political parties and multipartyism, political opposition is only weakly protected. The article also reveals how this weak protection is rooted in a shared British colonial past and how it has evolved over time. Following brief periods of multipartyism after independence from Britain, one-party states existed sometimes for decades until democratisation in the 1990s. Uganda has returned to the multiparty system through constitutional amendments in 2005 and both Kenya and Zimbabwe have entrenched political parties and multipartyism in new constitutions in 2010 and 2013, respectively. As will be argued, although these frameworks include some dedicated provisions promoting and protecting political opposition, in practice they often work in favour of ruling parties and do not provide a level playing field for opposition parties to openly compete for power. At the same time, examples from all three countries illustrate how opposition parties in anglophone Eastern Africa are able to use or circumvent provisions in these frameworks to operate and compete in this environment.

Keywords: Constitutionalisation of Political Parties; Opposition Parties; Eastern Africa

A. Introduction

The re-introduction of multipartyism and the expansion of political rights in Africa during the so-called third wave of democratisation in the 1990s was expected to enhance the chances of political alternation and the possibilities of opposition parties winning power. These prospects were reinforced by the African Union as part of its democracy agenda, in particular through the adoption of the African Charter on Democracy, Elections and

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Governance in 2007. Article 3 of the Charter imposes a duty on all Member States to strengthen “political pluralism and recognizing the role, rights and responsibility of legally constituted political parties, including opposition political parties”.¹ The overriding aim is to counter the scourge of authoritarian rule that had emerged across the continent soon after independence when the short-lived multiparty systems provided for in the first constitutions were progressively either replaced by military regimes or authoritarian one-party rule. In fact, before 1990, with the exception of Botswana and Mauritius and to a certain extent, Gambia and Senegal, military or one-party regimes had become the order of the day. This is also true for Kenya, Uganda and Zimbabwe, the three anglophone countries in Eastern Africa forming the focus of this study.¹ In Kenya, the Kenya African National Union (KANU) ruled for nearly forty years until 2012. In Zimbabwe, the Zimbabwe African National Union and its successor, ZANU – Patriotic Front (PF) have been in power since independence from Britain in 1980. And in Uganda, Yoweri Museveni’s National Resistance Movement (NRM) has ruled the country since it came to power in 1986 following the civil war against the Obote regime.

Until the 1990s, these one-party states existed sometimes not only *de facto*. In Kenya, KANU’s status as the only political party was formalised *de jure* in 1982 by a constitutional amendment.² In Uganda, opposition parties had been banned already since 1969 and although the NRM did not formally prohibit political parties when it came to power in 1986, Museveni effectively upheld the ban by prohibiting parties from holding conferences, opening branches, sponsoring candidates, recruiting members, and displaying party colours.³ Lastly, in Zimbabwe, although eventually never formalised *de jure*, Robert Mugabe had also envisaged a one-party state. For instance, the agreement merging ZANU and the Zimbabwe African People’s Union (ZAPU) in 1987 explicitly provided that the newly created ZANU–PF “shall seek to establish a one-party state in Zimbabwe”.⁴

Although multiparty democracy has been reintroduced in Uganda by constitutional amendment in 2005 and Zimbabwe has adopted a new Constitution in 2013 constitutionalising political parties and entrenching multipartyism, no opposition party has so far been able to win power from the dominant parties that continue to rule in the two countries. By contrast, already three different political alliances have been in government in Kenya since

1 African Charter on Democracy, Elections and Governance, adopted on 30 January 2007, entry into force on 15 February 2012.

1 While different definitions of Eastern Africa exist depending on geographical, historical and political considerations, this study uses a broad understanding of the term in line with the United Nations geoscheme for Africa.

2 Section 2A of the 1963 Constitution of Kenya, inserted by the Constitution of Kenya (Amendment) Act 1982, No. 7 of 1982, 25 June 1982.

3 *Sabiti Makara*, The Challenge of Building Strong Political Parties for Democratic Governance in Uganda: Does Multiparty Politics Have a Future?, *The East African Review* 41 (2009), p. 10.

4 Two Parties Merge as Zanu (PF), *The Herald*, 23 December 1987, <https://www.herald.co.zw/two-parties-merge-as-zanu-pf/> (last accessed on 4 November 2024).

the adoption of a new Constitution in 2010. Against this background, this comparative study analyses to what extent the different constitutional and legal frameworks regulating political parties have been contributing towards genuine multiparty democracy in the three countries. Although these frameworks include some dedicated provisions promoting and protecting political opposition, in practice, they often work in favour of ruling parties and do not provide a level playing field for opposition parties to freely compete for power.⁵ At the same time, examples from all three countries illustrate how opposition parties in anglo-phone Eastern Africa have been able to use or circumvent provisions in these frameworks to operate and compete with some success in environments that the latest Freedom House rating assesses as only “partly free” (Kenya) or even “not free” (Uganda and Zimbabwe).⁶

B. Evolution of Party Constitutionalisation and Multiparty Politics

In the British constitutional tradition, the regulation of political parties is largely absent.⁷ This weak regulation was inherited and carried over through so-called independence constitutions in many former British colonies. However, while many of these frameworks did not mention political parties directly, some presupposed their existence, for example by envisaging a Leader of the Opposition, a position originally introduced in parliaments of the British Commonwealth at the beginning of the twentieth century.⁸

I. Uganda: From the Movement System to a Multiparty System Dominated by the NRM

When Uganda gained independence from Britain in 1962, several political parties existed. Multipartyism prevailed however only for a brief period until 1969, when President Milton Obote of the Uganda National Congress (UPC) banned all opposition parties. Although multipartyism was briefly reinstated in 1981, political parties were effectively banned again when Museveni and his NRM came to power in 1986 following the civil war against the Obote regime.⁹

Despite being otherwise fairly progressive, the 1995 Constitution of Uganda initially established a peculiar political system called “the movement”, a presumably “broad-based,

5 For an overview of the various ways in which African constitutions refer to political opposition see *Danny Schindler*, *Constitutionalizing Dissent: The Universe of Opposition Rules in African Constitutions*, *Global Constitutionalism* (2024), forthcoming.

6 Freedom House, *Countries and Territories – Global Freedom Scores*, <https://freedomhouse.org/countries/freedom-world/scores> (last accessed on 13 December 2024).

7 *Vernon Bogdanor* (ed.), *The British Constitution in the Twentieth Century*, Oxford 2004.

8 *Dean E McHenry*, *Formal Recognition of the Leader of the Opposition in Parliaments of the British Commonwealth*, *Political Science Quarterly* 69 (1954), p. 438.

9 See *James Nkuubi*, *Swimming Against the Tide: Militancy and Diplomacy as Survival Mechanisms for Opposition Parties in Uganda’s Militarised Politics*, in: Charles M. Fombad / Johannes Socher (eds.), *Constitutionalisation of Political Parties and the State of Democracy in Sub-Saharan Africa*, Baden-Baden 2025.

inclusive and nonpartisan” system based on the principles of “participatory democracy; democracy, accountability and transparency; accessibility to all positions of leadership by all citizens; [and] individual merit as a basis for election to political offices”.¹⁰ By contrast, although existing political parties were allowed to continue to operate following the adoption of the 1995 Constitution in line with a transitional provision, their activities were heavily restricted, prohibiting them to open and operate branch offices, hold delegates’ conferences and public rallies, sponsor or offer a platform for candidates to run for elections, or carry out “any activities that may interfere with the movement political system for the time being in force”.¹¹ James Nkuubi rightly finds these provisions ironic, as they restricted the most fundamental activities of political parties, thereby ensuring that political parties “remained sidelined and constrained under a de facto one-party system” dominated by Museveni’s NRM.¹²

While multipartyism was not immediately introduced by Uganda’s 1995 Constitution, the return to a one-party state was constitutionally prohibited.¹³ The movement system was initially kept but the Constitution gave citizens the right to replace it at a later stage.¹⁴ In 2000, a first referendum failed but a second referendum in 2005 approving a number of constitutional amendments included the return to the multiparty system (although in theory citizens could still choose to return to the movement system).¹⁵ Since then, the Constitution sets out a multiparty framework outlining its main characteristics in a dedicated provision.¹⁶

At the end of 2024, Uganda had over twenty registered political parties, although only five competed in the last presidential elections in 2021.¹⁷ While Museveni was re-elected as president and his NRM continues to hold the majority in parliament, his main competitor, the activist and musician Bobi Wine of the National Unity Platform (NUP) won over a third of the votes in the presidential elections.¹⁸ Other noteworthy opposition parties include the UPC, the Democratic Party (DP), and the Forum for Democratic Change (FDC). In addition, the newly formed People’s Front for Freedom (PFF) led by three-times presidential

10 Section 70(1) of the 1995 Constitution of Uganda.

11 *Ibid.*, Sections 270 and 271.

12 *Nkuubi*, note 10.

13 Section 75 of the 1995 Constitution of Uganda.

14 *Ibid.*, Section 69.

15 *Ibid.*, Sections 69 and 70. Both provisions were not repealed by the 2005 amendments and continue to be part of the Constitution.

16 Section 71 of the 1995 Constitution of Uganda, as amended in 2005.

17 Electoral Commission of Uganda, 2021 General Elections, <https://www.ec.or.ug/2021-general-elections> (last accessed on 7 November 2024).

18 *Ibid.*

candidate Kizza Besigye was in the process of registration at the time of writing (December 2024).¹⁹

II. Kenya: From a Constitutionalized One-Party State under KANU to Coalition Governments

At Kenya's independence in 1963, two main political parties existed: Jomo Kenyatta's KANU and the Kenya African Democratic Union (KADU), founded when several politicians refused to join Kenyatta's party. KADU dissolved however again a year later to merge with KANU, making it the only major political party in the country. While Kenya's Constitution initially did not mention political parties at all and only guaranteed the right to freedom of association more broadly,²⁰ KANU's status as the country's sole political party was eventually constitutionalised through an amendment inserting Section 2A in the Constitution declaring that "there shall be in Kenya only one political party, the Kenya African National Union".²¹

In 1991, Section 2A was repealed again and a number of references to political parties were added to Kenya's Constitution for the first time in preparation for the country's first multiparty elections since independence.²² Apart from requiring candidates for parliamentary seats as well as presidential candidates to be members of a political party,²³ the amendment also inserted a definition of political parties in the Constitution, stating that a party is only considered as such if it "is duly registered under any law which requires political parties to be registered, and which has complied with the requirements of any law as to the constitution or rules of political parties nominating candidates for the National Assembly".²⁴ Until the enactment of the Political Parties Act in 2007, the requirements for registration of political parties were set out by the Societies Act dating back to 1968.²⁵ Another amendment in 1997 constitutionalised multipartyism by inserting a new Section 1A into the Constitution, proclaiming Kenya a "multi-party democratic state".²⁶

Despite this formal re-introduction of multipartyism, KANU was initially able to keep a majority of seats in parliament and its presidential candidate, President Daniel arap Moi (who had been Kenya's head of state since 1978) was re-elected in the first two multiparty elections in 1992 and 1997. The party's dominance broke however during the

19 *Simon Wokorach*, Peoples' Front for Freedom Starts Registration of Members in Northern Uganda, Uganda Radio Network, 21 October 2024, <https://ugandaradionetwork.net/story/peoples-front-for-freedom-starts-registration-of-members-in-northern-uganda> (last accessed on 11 December 2024).

20 Section 24 of The Kenya Independence Order in Council 1963.

21 Section 2A of the 1963 Constitution of Kenya, as amended in 1982.

22 Constitution of Kenya (Amendment) Act 1991, Act No. 12 of 1991.

23 Section 5(3)(a) and 34(d) of the 1963 Constitution of Kenya, as amended in 1991.

24 *Ibid.*, Section 123.

25 Societies Act of Kenya, Act No. 4 of 1968, Cap. 108.

26 Section 1A of the 1963 Constitution, as amended in 1997.

2002 elections, when a group of KANU leaders left, created a new party, and affiliated with several other opposition parties to form the National Rainbow Coalition (NARC). NARC's candidate Mwai Kibaki won the presidency over KANU's candidate, Uhuru Kenyatta (Jomo Kenyatta's son).

After a first constitutional review process had failed in a referendum in 2005, a second attempt was made following post-election violence and a power-sharing agreement that had been reached between the two main opponents of the elections, Kibaki and Raila Odinga, both former NARC members now leading separate new parties. Following an elaborate constitution-making process, a new Constitution with an explicit commitment to multipartyism and a dedicated section on political parties was finally adopted and approved in a referendum in 2010.²⁷ Since its adoption, two further coalitions have governed the country: Kenyatta's Jubilee Alliance from 2013 until 2022, and William Ruto's Kenya Kwanza coalition since the last elections in 2022. While KANU's dominance can thereby be called a thing of the past, Buluma Bwire in his case study on Kenya argues that

*“President Ruto’s Kenya Kwanza government is treading the same path that Kenyatta paved in terms of blurring the separation between the executive and parliament. The political fusion of the executive and legislature with strong party politics and domination of administrative decision-making by the ruling party greatly limits parliament in constraining executive power. Moreover, it creates path dependencies and opportunities for the re-centralization of power in the executive which was the key deficiency within the Kenyan political structure that bred the dictatorial excesses of the KANU regime.”*²⁸

At the time of writing (December 2024), Kenya's parliament largely consisted of two big party alliances, with members of the Azimio la Umoja faction forming the opposition to the ruling Kenya Kwanza. Azimio la Umoja is led by Odinga and consists of the Orange Democratic Movement (ODM), the Jubilee Party, KANU, and other opposition parties.²⁹

III. Zimbabwe: From De Facto One-Party Rule to Dominant Party Government under ZANU–PF

Zimbabwe gained independence from Britain in 1980, with its independence Constitution providing for freedom of association, “in particular to form or belong to political parties”.³⁰ Following decades of de facto one-party rule under Mugabe's ZANU–PF, a new Constitu-

27 Section 4(2) and Part 3 (Sections 91 and 92) of the 2010 Constitution of Kenya.

28 *Buluma Bwire*, Intra-Party Democracy and the Chasm between Political Parties and Democratization in Kenya, in: Charles M. Fombad / Johannes Socher (eds.), *Constitutionalisation of Political Parties and the State of Democracy in Sub-Saharan Africa*, Baden-Baden 2025.

29 Whether Odinga would continue to be the opposition alliance's leader was unclear at the time of writing due to his recent “handshake” with Ruto, see section D II below.

30 Section 21(1) of the 1980 Constitution of Zimbabwe.

tion was adopted in 2013, explicitly listing “a multi-party democratic political system” and “respect for the rights of all political parties” as two separate principles in its catalogue of principles of good governance “which bind the State and all institutions and agencies of government at every level”.³¹ The Constitution furthermore guarantees the right to form, join, and participate in the activities of and the right to campaign for a political party.³² Notwithstanding these provisions, ZANU–PF has continued to be the only party in government even after the adoption of the new constitution, first under Mugabe and since 2017 under Emmerson Mnangagwa. ZANU–PF has however faced increasing political opposition from the Movement for Democratic Change (MDC) and the Citizens Coalition for Change (CCC). Since 2018, the opposition’s strongest leader has been Nelson Chamisa, who competed in the last two presidential elections against Mnangagwa.³³ In Parliament, the CCC is currently the only opposition party with 73 seats, compared to 137 seats occupied by the ruling ZANU–PF.

C. Dedicated Provisions Promoting and Protecting Political Opposition

In addition to their constitutional entrenchment, political parties are regulated in dedicated party laws in Uganda and Kenya.³⁴ In Zimbabwe, while no such general party law has been enacted to date, a Political Finance Act has existed since 2001 and the country’s Electoral Act also has a number of provisions relevant for political parties in the context of elections.³⁵ As will be shown in this section, while these frameworks include some dedicated provisions promoting and protecting political opposition,³⁶ they are so far limited to provisions assigning the position of an opposition leader in parliament. In addition, Kenya and Zimbabwe have provisions aimed at protecting opposition parties and their supporters from intimidation and violence, while Uganda has not introduced similar provisions so far.

31 Section 3(2)(a) of the 2013 Constitution of Zimbabwe.

32 Ibid, Section 67(2)(a) and (b).

33 Chamisa has however recently resigned as CCC’s president, see section D I below.

34 The Political Parties and Organisations Act of Uganda 2005, (last accessed on 4 November 2024); Political Parties Act of Kenya, Act No. 11 of 2011, 1 November 2011, CAP. 7D, <http://kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=CAP.%207D> (last accessed on 4 November 2024).

35 Electoral Act of Zimbabwe, Act No. 25 of 2004. The Act has been amended multiple times since it first came into operation in 2005. A consolidated version last amended in 2023 is available at [https://www.veritaszim.net/sites/veritas_d/files/Electoral%20Act%20\(Consolidated%20as%20at%2019-07-2023\).pdf](https://www.veritaszim.net/sites/veritas_d/files/Electoral%20Act%20(Consolidated%20as%20at%2019-07-2023).pdf) (last accessed on 30 October 2024).

36 See generally *Elliot Bulmer*, Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition, International IDEA Constitution-Building Primer 22, 9 July 2021, <https://www.idea.int/sites/default/files/publications/opposition-and-legislative-minorities-constitutional-roles-rights-recognition.pdf> (last accessed on 11 December 2024).

I. Provisions Establishing the Position of Parliamentary Opposition Leaders

A first aspect in the constitutional and legal frameworks of Kenya, Uganda and Zimbabwe specifically dedicated to political opposition are provisions establishing the position of a parliamentary opposition leader. Uganda has introduced a Leader of the Opposition through its 2005 constitutional amendments by inserting Section 82A in the Constitution which explicitly recognizes the position of the Leader of the Opposition and requires that statutory law shall prescribe their selection, status, role and functions, and the benefits and privileges attached to the office. This is done by the Administration of Parliament Act which gives the Leader of the Opposition the status of a Cabinet Minister and defines the position as the member of parliament leading the opposition party with the most seats.³⁷ Importantly, this means that in Uganda the Leader of the Opposition is not chosen by all opposition parties but (only) by the strongest party represented in parliament that is not in government. Consequently, since the return to the multiparty system, Uganda's Leader of the Opposition came from the largest opposition party represented in parliament, that is the FDC from 2006 until 2021, and the NUP since then. The Act outlines the role and functions of the Leader of the Opposition as follows:

- (1) The principal role of the Leader of the Opposition is to keep the government in check.
- (2) The Leader of the Opposition shall under subsection (1), in consultation with his or her party leadership appoint a shadow cabinet from members of the opposition in Parliament with portfolios and functions that correspond to those of Cabinet Ministers.
- (3) The Leader of the Opposition shall be a member of the Committee of Parliament responsible for determining and scheduling of business in Parliament and the Committee responsible for appointments and shall hold regular consultations with the Leader of Government Business and the Speaker.
- (4) The Leader of the Opposition shall study all policy statements of government with his or her shadow ministers and attend committee deliberations on policy issues and give their party's views and opinions and propose possible alternatives.³⁸

Recent proposals by the opposition party DP to change the election of the Leader of the Opposition and other positions reserved for the largest opposition party in parliament to be elected from among *all* opposition parties represented in parliament were rejected by

37 Sections 1(ea), 6D and 6F of the Administration of Parliament Act of Uganda, Cap. 257, as amended in 2006, [https://judiciary.go.ug/files/downloads/Act%20No.22%20of%202006%20Administration%20of%20Parliament\(Amendment\)Act.pdf](https://judiciary.go.ug/files/downloads/Act%20No.22%20of%202006%20Administration%20of%20Parliament(Amendment)Act.pdf) (last accessed on 12 December 2024).

38 Ibid, Section 6E.

other smaller opposition parties, with the UPC's secretary-general arguing that the proposed reforms are "a recipe for disaster" which "causes division" among opposition parties.³⁹

Kenya's Constitution also provides for the position of an opposition leader who is however called the Leader of the Minority Party.⁴⁰ The Standing Orders of the Kenya National Assembly further detail the position and assign it to the leader in parliament "of the second largest party or coalition of parties".⁴¹ While the Standing Orders are not as detailed as Uganda's Administration of Parliament Act (for instance, they do not envisage a shadow cabinet), what is interesting to note here is that despite its name the Leader of the Minority Party can be elected among multiple opposition parties provided that they have formed a coalition of parties. Moreover, although not adopted in the end due to procedural errors in the amendment process, it is apt to remember in this context that the constitutional review process in 2020 would have inserted a new Section 107A in the Constitution, introducing a Leader of Official Opposition, a position granted to "the person who received the second greatest number of votes in a presidential election; and whose political party or coalition of parties has at least twenty-five percent of all the members of the National Assembly". This would have introduced a "consolation prize" for the presidential candidate with the second-most votes, thereby creating a constitutionally recognised position for the opposition going beyond that of a leader in parliament.⁴²

While Zimbabwe's Constitution does not outline the selection, status, role and function of the Leader of the Opposition, it refers to the position at least in passing in a provision outlining the members of the parliamentary Committee on Standing Rules and Orders.⁴³ This has led to some confusion whether the position exists at all when newly elected President Mnangagwa had publicly suggested to "introduce" the office following the 2018 presidential elections, arguing that "there was no formal recognition of the opposition leader" but now under his government he would change that and confer the position with "certain conditions and perks in parliament".⁴⁴ However, the Leader of the Opposition is already constitutionally recognized and is also mentioned in the National Assembly's Standing Rules and Orders.⁴⁵ As has been highlighted by the Zimbabwean information

39 See Parliament of the Republic of Uganda, Opposition Parties Reject Bill on Election of LOP, 11 October 2024, <https://www.parliament.go.ug/news/3364/opposition-parties-reject-bill-election-lop> (last accessed on 12 December 2024).

40 Section 108(2) of the 2010 Constitution of Kenya.

41 Section 19(2) of the Kenya National Assembly Standing Orders, 6th edition, as adopted on 7 June 2022.

42 *Danny Schindler*, Keine Reform des konstitutionellen Parlamentsrechts: Kenias gescheiterte Building Bridges Initiative als eine institutionspolitisch verpasste Chance?, *Law in Africa* 26 (2023), p. 20.

43 Section 151(2)(e) of the Kenya National Assembly Standing Orders, note 42.

44 Quoted in *Veritas Zimbabwe*, Leader of the Opposition, Constitution Watch 2/2018, 25 September 2018, <https://www.veritaszim.net/node/3224> (last accessed on 10 November 2024).

45 *Ibid.*

network Veritas, the innovative aspect in Mwangagwa's proposal was therefore not the formal recognition of the position but the fact that he had mentioned in that context that he planned to offer it to Chamisa, who, although having been the opposition's presidential candidate, had not been a member of parliament at the time.⁴⁶

II. Provisions Aimed at Protecting Political Opposition Against Intimidation and Violence

In addition to provisions establishing and recognising parliamentary opposition leaders, a second area specifically dedicated to political opposition in constitutional and legal frameworks regulating political parties are provisions aimed at protecting opposition parties and their supporters against intimidation and violence. While Kenya and Zimbabwe have enacted such provisions, Uganda's framework regulating political parties does not provide for similar provisions although its Political Parties and Organisations Act envisages a code of conduct for political parties, but no such regulations seem to have been adopted to date.⁴⁷

The most detailed provisions in this regard exist in Kenya, where the Constitution has an explicit provision prohibiting political parties to "engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person".⁴⁸ The provision is reiterated and refined in the Code of Conduct for Political Parties in Kenya's Political Parties Act which prohibits parties to "engage in or encourage any kind of intimidation of opponents, any other person or any other political party".⁴⁹ In Zimbabwe, although not constitutionalised like in Kenya and technically not specifically limited to opposition parties and their supporters, the Electoral Act explicitly criminalizes "intimidatory practices" against political parties.⁵⁰ In particular, the Act prohibits any attempted or successful prevention or obstruction of a political party from campaigning in an election.⁵¹ In addition, it places a responsibility on political parties themselves to take appropriate measures to prevent politically motivated violence and any electoral malpractices and to take effective steps to discipline party members who engage in such conduct.⁵²

46 Ibid.

47 A process to draft such a code of conduct has been underway in 2018 but no reporting on the subsequent development could be found. See *New Vision*, Political Parties' Code of Conduct Under Way, 8 June 2018, <https://www.newvision.co.ug/news/1479341/political-parties-code-cond> (last accessed on 12 November 2024).

48 Section 91(2)(b) of the 2010 Constitution of Kenya.

49 Section 7 of the First Schedule of the 2011 Political Parties Act of Kenya, note 35.

50 Part XVIII A of the 2004 Electoral Act of Zimbabwe, note 36.

51 Ibid., Section 133C.

52 Ibid., Section 133G.

As the recent detention of Uganda's PFF leader Besigye under mysterious circumstances showed,⁵³ the absence of provisions aimed at protecting political opposition against intimidation and violence exposes opposition leaders to unfair and arbitrary treatment. On the other hand, the mere existence of such provisions is of course no guarantee for better protection and in any case have seemingly not improved the situation for opposition parties in Zimbabwe where electoral violence against the CCC and their supporters continues to be widespread. For example, ahead of the 2023 elections, Zimbabwe's Vice President had stated that the government would "crush the party like lice"; one day later, a CCC supporter was killed and at least 22 others were seriously injured.⁵⁴ By contrast in Kenya, which also has a long history of electoral violence, the 2022 elections were relatively peaceful. One aspect in the legal framework that might have contributed to electoral security apart from the criminalization of intimidation and violence is the newly introduced possibility to form party coalitions already before an election.⁵⁵ According to a recent study by ENACT Africa, prior to the amendment

*"[...] political party coalitions crumbled quickly due to mistrust over power and resource sharing, fragile organisation and the absence of a water-tight dispute resolution mechanism. The amended law allows political parties to reach out to former bitter rivals in the hopes of gaining more support. The ruling party, Jubilee, worked with their opposition and former rival, the Orange Democratic Movement [ODM], to form Azimio law Umoja Kenya – "One Kenya", a coalition of 26 political parties, led by then president Uhuru Kenyatta, and the ODM's Raila Odinga."*⁵⁶

D. Impact of the Wider Constitutional and Legal Frameworks on Opposition Parties

While the discussion in the preceding section has shown how dedicated provisions provide at least some formal recognition and protection of opposition parties and their supporters in Kenya, Uganda and Zimbabwe, this section will illustrate how in practice the wider constitutional and legal frameworks regulating political parties often work in favour of ruling parties and do not provide a level playing field for opposition parties to openly compete for power. At the same time, examples from all three countries show how opposition parties

53 *Wycliffe Muia*, How a Ugandan Opposition Leader Disappeared in Kenya and Ended Up in Military Court, BBC, 2 December 2024, <https://www.bbc.com/news/articles/cp8x3vr6zj2o> (last accessed on 12 December 2024).

54 Amnesty International, Zimbabwe: Investigate Violence on Political Opposition Supporters, 28 February 2022, <https://www.amnesty.org/en/latest/news/2022/02/zimbabwe-investigate-violence-on-political-opposition/> (last accessed on 9 November 2024).

55 Section 9 of the Political Parties (Amendment) Act 2022, Act No. 2 of 2022.

56 See ENACT, Mafia-Style Crimes / Muted Violence in Kenya's 2022 Elections Masked Seething Dissent, 24 April 2023, <https://enactafrica.org/enact-observer/muted-violence-in-kenyas-2022-elections-masked-seething-dissent> (last accessed on 12 November 2024).

in anglophone Eastern Africa have been able to use or circumvent provisions in these frameworks to operate in this environment.

I. Registration Requirements

A first challenge for opposition parties are high thresholds or cumbersome processes for registration. A prominent example is the controversial requirement for political parties to have a nationwide presence or not to be based on ethnicity or religion. In particular Kenya has a track record of cases where new parties have been refused to be registered based on this requirement.⁵⁷ For instance, in 2005 the New Democratic Union for Change was refused registration based on intelligence that all party founders shared the same ethnic background.⁵⁸ A second, more recent case was the refusal in 2015 to register the Coast Peoples Democratic Movement for its party programme advocating for an independent state encompassing the former Coast Province of Kenya. In its final judgment, the High Court of Kenya upheld the decision, citing Section 91 of the Constitution prohibiting particularistic parties and the provision in the preamble declaring that the people of Kenya are proud of their “ethnic, cultural and religious diversity” and “determined to live in peace and unity as one indivisible sovereign nation”.⁵⁹

High registration requirements or cumbersome registration processes might lead opposition movements to choose not to register as a political party at all or look for “shelter” in pre-existing party structures. A prominent example is the People Power movement in Uganda. Primarily sparked by civil unrest following Museveni’s announced plans to extend his presidential term in 2017, the movement’s leader Bobi Wine initially denounced the idea of transforming it into a party:

*“People Power is not a political party or political organisation for that matter. We are aware that the state is so scared of the people who come together regardless of their political affiliations, regardless of tribe or religion but people who envision an idea of having power back in their hands. And I want to emphasise that every Ugandan has equal stake in the idea of people power.”*⁶⁰

57 See Johannes Socher / Charles M. Fombad, Prohibition of Ethnic Political Parties and Constitutionalism in Sub-Saharan Africa, in: Charles M. Fombad / Nico Steytler / Yonatan Fessha (eds.), *Ethnicity and Constitutionalism in Africa*, Oxford, forthcoming.

58 The decision was upheld by the High Court of Kenya in *John Musa Kilonzo & Others v Registrar of Societies*, 27 January 2006, eKLR.

59 High Court of Kenya, *Morris Jarha Maro & Another v Registrar of Societies & Another*, 18 March 2015, eKLR.

60 URN, Can ‘People Power’ Change Uganda’s Political Fortune?, *The Observer*, 1 October 2018, <https://observer.ug/news/headlines/58803-can-people-power-change-uganda-s-political-fortune> (last accessed on 10 November 2024).

However, in the lead-up to the 2021 elections, the movement decided to merge with the National Unity, Reconciliation and Development Party which had already existed since 2004.⁶¹ Renamed the National Unity Platform (NUP), it was able to win 58 seats, making it instantly the strongest opposition party in parliament.⁶² Using pre-existing party structures for new political movements rather than registering new parties is also common practice in Kenya. Ahead of the 2002 elections for example, Odinga had to act quickly after a merger of his National Democratic Party with the ruling KANU had failed and decided instead to forge another alliance together with other disgruntled KANU leaders, calling it the Rainbow Alliance. However, as Bwire explains,

*“[...] since the Rainbow Alliance needed to transform into a political party for its members to be able to contest for seats in the upcoming elections, they subsequently usurped the minnow known as the Liberal Democratic Party (LDP). Undoubtedly, the takeover of LDP by the Rainbow Alliance was anything but democratic since its leadership was simply bought out, thereby setting an enduring trend of Kenyan politicians buying out registered leaders or moribund political parties to use as vehicles to contest elections.”*⁶³

In contrast to Uganda and Kenya, Zimbabwe’s constitutional and legal framework is not only silent on the issue of particularist parties but also does not provide for a registration process at all. Although the currently contemplated introduction of a registration process has raised concerns among civil society that this will be used to stifle opposition and further shrink the democratic space,⁶⁴ the complete lack of a registration process for political parties can also work against opposition as the following example illustrates. Due to an internal dispute, MDC, the strongest opposition party at the time, split in 2005 and two parties emerged, both carrying the party’s acronym in their name and contesting separately in the 2008 and 2013 elections: the MDC-T, led by Morgan Tsvangirai, and MDC-N, led by Welshman Ncube. Following the death of Tsvangirai in 2018, a newly formed MDC-Alliance (led by Nelson Chamisa) competed separately from MDC-T (led by Thokozani Khuphe) in the elections that year. As Edson Ziso argues in his case study on Zimbabwe,

61 Ian Katusiime / Derrick Wandera, Bobi Wine Finds Party Shelter with Eyes on 2021 Presidential Election, *The East African*, 23 July 2020, <https://www.theeastafrican.co.ke/tea/news/east-africa/bobi-wine-party-shelter-eyes-2021-presidential-election-1904780> (last accessed on 4 November 2024).

62 Electoral Commission of Uganda, 2021 General Parliamentary Elections, 2021, Election Results, https://www.ec.or.ug/ecresults/2021/MPS_RESULTS_2021.pdf (last accessed on 10 November 2024).

63 Bwire, note 29, citing C. Odhiambo-Mbai, The Rise and Fall of the Autocratic State in Kenya, in: Walter O. Oyugi / Peter Wanyande / C. Odhiambo-Mbai (eds.), *The Politics of Transition in Kenya: From KANU to NARC*, Nairobi 2003, p. 70.

64 See Kitsepile Nyathi, Zimbabwe Targets More Restrictions on Political Parties, *Nation*, 11 October 2024, <https://nation.africa/africa/news/zimbabwe-targets-more-restrictions-on-political-parties-4792286> (last accessed on 9 November 2024).

the silence in the regulatory framework on party names confused voters and ultimately weakened the opposition as a whole:

“Over the years, this situation invariably resulted in ballot papers being spoiled as confused voters ended up voting for multiple candidates. [...]. The overall effect was that this also split the vote of the opposition to the advantage of ZANU-PF. Simultaneously, disappointed voters gradually got tired or fed up with these political game [...].”⁶⁵

In the aftermath of the 2018 elections, the dispute over the MDC escalated between the different factions, resulting in the creation of the CCC in 2022, led by Chamisa. However, after having won 44 per cent of the votes in the presidential race and 103 of the 280 parliamentary seats for the CCC in the next elections in 2023, Chamisa resigned again as the party’s president at the beginning of 2024, citing government interference that has “contaminated” and “hijacked” the party.⁶⁶ The fact that the CCC did not yet have party statutes came at a high price for Chamisa, as Sengezo Tshabangu could declare himself the party’s secretary-general, a position he used to recall all CCC members of parliament loyal to the party’s president. As Ziso further explains:

“Within days of the swearing in of members after the 2023 elections, [...] Tshabangu flipped the script by recalling anyone aligned with Chamisa whilst also ensuring that they were banned from re-contesting the election under the CCC banner. At the end of the bloodletting, ZANU-PF emerged as the winner and now commands 190 seats in the 280-member parliament. This is because the recalls necessitated a series of by-elections which ZANU-PF comfortably won, giving it the much needed two-thirds majority required to control parliament.”⁶⁷

After Chamisa’s resignation, another gap in the legal framework enabled the final step in Tshabangu gaining control over the CCC. Apparently without a prior party meeting in which such a decision was taken, Tshabangu was announced as the new Leader of the Opposition in parliament.⁶⁸

65 Edson Ziso, External Regulation and Internal Contradiction in Zimbabwean Opposition Politics: The Case of the MDC/CCC, in: Charles M. Fombad / Johannes Socher (eds.), *Constitutionalisation of Political Parties and the State of Democracy in Sub-Saharan Africa*, Bade-Baden 2025.

66 See BBC, Nelson Chamisa: Zimbabwe Opposition CCC Leader Quits ‘Contaminated’ Party, 25 January 2024, <https://www.bbc.com/news/world-africa-68095685> (last accessed on 12 November 2024).

67 Ziso, note 65.

68 Anna Chibamu, Tshabangu Appoints Self New Leader of Opposition in Parliament, New Zimbabwean, 30 May 2024, <https://www.newzimbabwe.com/tshabangu-appoints-self-new-leader-of-opposition-in-parliament/> (last accessed on 12 November 2024).

II. Co-optation and Coalition Agreements

A more subtle form through which ruling parties often suppress political opposition is co-optation, a form of “constitutional engineering directed at undermining institutions that would otherwise constrain them”.⁶⁹ As Leonardo Arriola and others show, co-optation can have far-reaching effects for political opposition as a whole: “By demonstrating a willingness to trade individual ministerial appointments for temporary political allegiance, incumbents can tempt opposition politicians to create splinter parties or to pursue independent candidacies. In the process, incumbents do more than merely buy off individual opposition politicians; they weaken the opposition as a whole by inducing their fragmentation.”⁷⁰

Uganda under Museveni’s NRM has a long history of co-optation of politicians going back to the period of the “movement”.⁷¹ More recently, Museveni appointed three opposition leaders as ministers in his cabinet following the 2016 elections.⁷² And in the current government, co-optation reached a new level and affected an entire opposition party. In 2022, the leader of the Democratic Party (DP), Norbert Mao, signed a “cooperation agreement” with the ruling NRM, granting him the position of justice minister, among others.⁷³ The signing of the agreement was widely seen as a “sell out” of the oldest opposition party in the country, a “betrayal of the party’s core values of truth and justice, which it had upheld for over 60 years in Ugandan politics”, as Nkuubi argues in his case study on Uganda.⁷⁴ Some DP leaders challenged the agreement’s validity in court based on the argument that Mao had signed it “without proper authority, consultation, or consent from the party’s organs”.⁷⁵ While the case had not been decided at the time of writing (December 2024), the dispute over the signing of the agreement is in any case another example of how gaps in the legal framework can be used to weaken opposition as Uganda’s Political Parties and Organizations Act mentions “alliances” but does not say anything about their creation, status or the relationship between the constituent parties of such alliances.⁷⁶

69 Leonardo R. Arriola / Jed Devaro / Anne Meng, Democratic Subversion: Elite Cooptation and Opposition Fragmentation, *American Political Science Review* 115 (2021), p. 1358.

70 Ibid.

71 Moses Khisa, Inclusive Co-Optation and Political Corruption in Museveni’s Uganda, in: Inge Amundsen (ed.), *Political Corruption in Africa*, Cheltenham 2019, p. 95.

72 Michael Mutyaba, Co-Option and Cabinets in Uganda, Africa Research Institute, 11 October 2016, <https://www.africaresearchinstitute.org/newsite/blog/co-option-cabinets-uganda/> (last accessed on 4 November 2024).

73 Observer, Details of Museveni, Mao 42-Clause Agreement, 22 July 2022, <https://observer.ug/news/headlines/74458-details-of-museveni-mao-42-clause-agreement> (last accessed on 12 November 2024).

74 Nkuubi, note 10.

75 The Independent, Court Issues Timelines in Mao-NRM Deal Case, 27 February 2024, <https://www.independent.co.ug/court-issues-timelines-in-mao-nrm-deal-case/> (last accessed on 12 November 2024).

76 Section 18 of the Political Parties and Organisations Act of Uganda 2005, note 35.

On the other hand, coalitions also offer the opportunity for opposition parties to join forces and unite against a dominant party. While this has so far not succeeded in Uganda and Zimbabwe, in Kenya the NARC coalition was able to break KANU's dominance in 2002 which has since not returned to power (even if leading politicians of KANU have pursued their career elsewhere and eventually went on to rule the country under a different banner such as current president William Ruto, who had left KANU in 2005). NARC collapsed however already three years later and one of the main reasons for this was a dispute among its leaders over how to share power despite having agreed on it in a memorandum of understanding.⁷⁷ NARC's collapse revealed a gap in Kenya's constitutional and legal framework at the time as the memorandum of understanding was not binding and provided no dispute resolution mechanism if breached by one of the parties.⁷⁸ Since 2011, this gap has however been filled and coalitions are regulated in some detail. Pursuant to the Political Parties Act, alliances of two or more political parties that want to form a coalition before or after an election have to deposit an agreement with the Registrar of Political Parties.⁷⁹ Coalition agreements have to be sanctioned by the governing bodies of the constituent parties and have to cover a number of aspects, including "the criteria or formular for sharing of positions in the coalition structure, roles and responsibilities within the coalition" and "the decision making structure, rules and procedures".⁸⁰ Importantly, coalition agreements must also provide for "dispute resolution mechanisms and procedures" and "enforcement and sanction mechanisms and procedures for breach of any of the provisions of the agreement".⁸¹ They also have to spell out "the formular and the mechanisms for sharing of funds" and "the grounds upon which a coalition may be dissolved including the mechanism and procedures to be followed".⁸² Whether these elaborate rules can provide the constitutional stability they seek to ensure seems however at least questionable amid recent reports that Kenya's main opposition coalition Azimio la Umoja is about to fall apart following Odinga's recent "handshake" with the Ruto government despite other ODM party leaders' insistence that the party itself remains in opposition and part of the coalition.⁸³

77 See *Peter Wanyande / Patrick O. Asingo*, *Beyond Election Campaign Rhetoric: Challenges Facing the National Rainbow Coalition (NARC)*, *African Review* 31 (2004), p. 13.

78 See also *Bwire*, note 29.

79 Section 10 of the Political Parties Act of Kenya 2011, note 35.

80 *Ibid.*, Section 3(e) and (h) of the Third Schedule.

81 *Ibid.*, Section 3(k) and (l) of the Third Schedule.

82 *Ibid.*, Section 3(o) and (p) of the Third Schedule.

83 See *Victor Abuso*, *Kenya: Azimio Coalition Collapsing as More Allies Announce Plans to Quit*, 8 November 2024, <https://www.theafricareport.com/367621/kenya-azimio-coalition-collapsing-as-more-allies-announce-plans-to-quit/> (last accessed on 9 November 2024).

E. Conclusions

According to the latest Afrobarometer survey, the people of Kenya, Uganda and Zimbabwe continue to overwhelmingly reject one-party rule and prefer democracy to any other kind of government.⁸⁴ This support for multiparty democracy has so far only partly translated into politics, where a single party continues to dominate in Uganda and Zimbabwe and only in Kenya have new parties been able to win elections and form alternating governments (albeit largely consisting of the same politicians that were formerly members of KANU). This article has shown how the relevant constitutional and legal frameworks on political parties, multipartyism and political opposition have contributed to this situation by not being able to provide a genuine level playing field for opposition parties to openly compete for power. This finding leads to a number of conclusions.

First, the existing dedicated provisions recognising political opposition are arguably insufficient. While the constitutional frameworks of all three countries know the position of an opposition leader, this seems to be largely symbolic and is so far limited to a parliamentary role. At least in presidential systems where parliaments are regularly described as rubber stamp institutions and barely a majority of the population is of the view that parliament is rarely or never ignored by the government,⁸⁵ the contemplated idea in Kenya (and to a lesser extent also in Zimbabwe) to confer the role of the opposition leader to the presidential candidate with the second most votes is at least interesting and should be seriously considered. While the awarding of such a “consolation prize” entails the risk of co-optation, it also has the potential to strengthen the significance of the position and would reflect the political reality that the most powerful opposition politicians in Kenya (Odinga), Uganda (Wine) and Zimbabwe (Chamisa) don’t compete for parliamentary seats but for the office of the president even where the constitution allows them to do both.⁸⁶ But even if the position of the opposition leader is limited to a parliamentary role, the recent reform debates in Uganda to change it into a representative position of *all* opposition parties in parliament seems a possibility to strengthen the opposition as a whole and not to weaken it, as some have suggested.

Second, while it is difficult to assess the effectiveness of the existing provisions aimed at protecting opposition parties and their supporters from intimidation and violence in Kenya and Zimbabwe, the lack of similar provisions has not helped the situation in Uganda, where almost half of the population fears intimidation and violence during elections and

84 Afrobarometer, Democracy Scorecards on Kenya, Uganda and Zimbabwe, 17 July 2024, <https://www.afrobarometer.org/publication> (last accessed on 13 December 2024).

85 According to the latest Afrobarometer data, only 51 per cent (Uganda and Kenya) and 53 per cent (Zimbabwe) of the population think that the president rarely or never ignores parliament, see *Ibid.*

86 See, e.g., section 137(3)(2)(c) of the 2010 Constitution of Kenya which explicitly exempts members of parliament from being disqualified for nomination as a presidential candidate.

attacks and arbitrary detentions of opposition politicians are part of the political environment.⁸⁷

Third, the analysis of the broader frameworks regulating political parties has shown how they often work in favour of ruling parties and keep opposition parties in check. This was particularly evident in relation to high thresholds or cumbersome processes for the registration of political parties. Although new political movements seem to be able to find ways to circumvent cumbersome registration requirements, for example by using pre-existing party structures as “shells” like in Kenya and Uganda, other restrictions such as prohibitions of ethnic and religious parties or the requirement of a national presence are prone to abuse and can be used as a pretext to deny new political movements registration. On the other hand, gaps in the regulatory framework can also weaken opposition parties which would otherwise protect them. As the example of Zimbabwe’s MMC/CCC has shown, confusion over a party’s name, the absence of requiring political parties to have statutes or the lack of clear provisions on the election of the opposition leader in parliament make the (self-)sabotage of opposition parties possible.

Lastly, although the example of Uganda’s DP has shown that coalition agreements can also be used to co-opt entire opposition parties, provisions on coalitions also provide a tool for the opposition to overcome fragmentation and join forces against ruling parties.⁸⁸ In particular the experience of Kenya with forming different opposition coalitions eventually taking power point at the agency of opposition parties even in contexts where a single party has dominated politics for decades.



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- 87 *Dorah Babirye*, Political Freedom at Risk? Almost Half of Ugandans Fear Intimidation and Violence During Elections, Afrobarometer Dispatch No. 886, 24 September 2024, <https://www.afrobarometer.org/wp-content/uploads/2024/09/AD866-Almost-half-of-Ugandans-fear-intimidation-and-violence-during-elections-Afrobarometer-24sept24.pdf> (last accessed on 13 December 2024).
- 88 For studies that have identified internal fragmentation as a key weakness of opposition parties see *Bertha Chiroro*, The Dilemmas of Opposition Political Parties in Southern Africa, *Journal of African Elections* 5 (2006), p. 100; *Wondwosen Teshome*, Opposition Parties and the Politics of Opposition in Africa: A Critical Analysis, *International Journal of Humanities and Social Sciences* 3 (2009), p. 1.