

Regulation and Implementation of Party Funding in Burkina Faso and Ghana: A Comparative Study

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Abstract

There has been considerable momentum to address the issue of party finance and political corruption across the world, including in Africa; this is because political parties require funds to properly function and to actively participate in elections. This article will review the system of regulation and implementation of party funding in two West African countries, namely Burkina Faso and Ghana, and it will examine how financing of political parties is regulated and the impact on rule of law and good governance in both countries. Whether they have access to public or private funds, it appears that small political parties in Burkina Faso and Ghana continue to face challenges which ultimately affect their ability to function properly and to actively participate in elections. The article therefore submits that the phenomenon of party funding regulation in Burkina Faso and Ghana is a process in development which needs reinforcing in order to be fair and inclusive.

Keywords: party funding; Ghana; Burkina Faso; constitutions; public funds; private funds

Introduction

Political parties are critical components of modern democracies. They are expected to reflect citizens' concerns¹ and aspirations and enable them to influence and participate in public affairs. This paper places an emphasis on one of the key areas relating to the essence of political parties in modern democracies: the financing of political parties.² In contemporary politics, money is a critical resource for political parties to operate, mainly by organising their campaigns, and growing the number of their voters. As Butler posits, money is essential to the operation of any democracy.³ Party funding regulation is therefore expected to promote citizens' trust in politics and in political parties in particular.⁴ Hatchard argues that regulation of party financing is essential because the nature and modality of funding of candidates and political parties can be detrimental to political life.⁵ Indeed, even though it is widely accepted that political parties require financing, it is equally acknowledged that non-transparent financing may 'discourage participation in political parties and encourage cynicism'.⁶ Regulation of the funding of political parties and candidates is, therefore, an essential tool in working against political corruption.⁷ Based on existing national frameworks, this article will examine the system of regulation of party funding in two West African countries, namely Burkina Faso and Ghana. The article will review regional and international instruments on political party financing. It will also analyse relevant African case laws and key concepts in relation to party funding and its sources, with a view to discuss the challenges faced by the two countries in this regard. Burkina Faso and Ghana are both members of the Economic Community of West African States (ECOWAS) and have both ratified major international and regional human rights instruments. They are currently considered multiparty constitutional democracies characterised by multiparty elections, political competitiveness and political alternation. Burkina Faso and Ghana present different specificities in terms of party funding. For instance, in 2012, following an advocacy mission⁸ of the African Union Advisory Board on Corruption

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- 1 International Institute for Democracy and Electoral Assistance, *International Obligations for Elections, Guidelines for Legal Frameworks* (International IDEA 2014) 82.
 - 2 International Institute for Democracy and Electoral Assistance, *Political Parties in Africa: Challenges for Sustained Multiparty Democracy* (International IDEA 2008) 19.
 - 3 Anthony Butler (ed), *Paying for Politics: Party funding and Political Change in South Africa and the Global South* (Jacana Media 2010) 1.
 - 4 International Institute for Democracy and Electoral Assistance, *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance* (International IDEA 2014) 2.
 - 5 John Hatchard, *Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa* (Edward Elgar Publishing 2014) 59.
 - 6 Shari Bryan and Denise Baer (eds), *Money in Politics: A Study of Party Financing in 22 Countries* (National Democratic Institute for International Affairs 2005) 7.
 - 7 Political corruption is defined as a situation of conflict between the personal interests of a decision-maker in the private and public sector and those of the entity that he or she serves. See Zwelethu Jolobe, 'Financing the ANC: Chancellor House, Eskom and the Dilemmas of Party Finance Reform' in Butler (n 3) 206.
 - 8 Report of the African Union Advisory Board on Corruption Advocacy Mission to the Republic of Ghana on Implementation of the African Union Convention on Corruption.

(AUABC)⁹—an organ of the African Union Convention on preventing and combating corruption (AUCPCC)—it was found that Ghana experienced various weaknesses pertaining to party funding, including a lack of transparency and accountability in political funding. The absence of legislation was identified as ‘a major source for widespread corruption in the country.’¹⁰ Burkina Faso, for its part, is confronted with insecurity challenges perpetrated by criminal groups working in concert with terrorist organisations and drug traffickers. In the absence of regulation of political parties’ private sources of funding, there are concerns that money from drug and human trafficking as well as black market currency could be used to corrupt government officials and finance political parties.¹¹

In its 2019 interactive map of freedom in the world,¹² the Freedom House ranked Burkina Faso among the ‘partly free’ countries and Ghana among the ‘free’ countries in the world. It used three indexes of freedom: freedom, political rights and civil liberties.¹³ The political trajectories of Burkina Faso and Ghana are similar to those of most sub-Saharan African states regarding multiparty democracy. During what was called the third wave of democratisation¹⁴ in the 1990s, African states had to adopt new or revised constitutions, which entrenched democratic principles such as transparent and democratic practices and political competition. Burkina Faso’s history has indelibly been marked by its former President Thomas Sankara who carried out an aspiring socio-economic programme in the 1980s, which aimed to promote development and equalities in the country. After Sankara was overthrown and killed in 1987, Burkina Faso experienced a long period of party dominance which ended only in 2014 when former President Blaise Compaoré was forced out of office. Burkina Faso, now characterised by a fairly balanced representation of political parties in the National Assembly, is currently facing various challenges including terrorism and extreme poverty.¹⁵ In Ghana, after the country’s first President Kwame Nkrumah was overthrown in the mid-

9 An autonomous organ established in terms of Article 22 of the African Union Convention on Preventing and Combating Corruption (AUCPCC).

10 Report of the African Union Advisory Board on Corruption Advocacy Mission to the Republic of Ghana on Implementation of the African Union Convention on Corruption, para 27.

11 ‘Burkina Faso’ (*KnowYourCountry*)

<<https://www.knowyourcountry.com/burkina1111#:~:text=The%20last%20Mutual%20Evaluation%20Report,of%20the%20FATF%2040%20Recommendations>> accessed 23 May 2021.

12 ‘Countries and Territories’ (*Freedom House*) <<https://freedomhouse.org/report/freedom-world/freedom-world-2019/map>> accessed 27 February 2020.

13 Burkina Faso’s rating was: Freedom 3.5, Political rights 4, Civil liberties 3; Ghana’s rating was: Freedom 1.5, Political rights 1, Civil liberties 2. (Each country’s score is based on two numerical ratings, from 1 to 7, for political rights and civil liberties, with 1 representing the most free and 7 the least free).

14 A concept developed by Samuel Phillips Huntington in relation to the global democratic transition, the first two waves began in the 1820s and the 1940s. See Samuel Phillips Huntington, *The Third Wave: Democratization in the Twentieth Century* (University of Oklahoma 1992) 366.

15 Burkina Faso’s Human Development Index value for 2018 was 0.434, which put the country in the low human development category, positioning it at 182 out of 189 countries and territories.

1960s, the country experienced a prolonged and unstable period of governance marked by an alternation between civilian and military governments and the banning of political parties.¹⁶ However, in the 1990s, the growing interest in democratisation across Africa motivated Ghana to adopt a new constitution in 1992. This constitution permitted multipartyism and several other civil and political rights which allowed Ghana to experience free and fair multi-party elections. Based on their respective socio-political histories, and considering that Burkina Faso and Ghana are now recognised multi-party democracies, it becomes important to examine how financing of political parties is regulated and the impacts on the rule of law and good governance which both countries have adhered to through their respective constitutions.

Setting the Legal Scene

International and Regional Regulations of Party Funding

Over the years, there has been considerable momentum to address the issue of party finance and political corruption across the world, including in Africa. As members of the United Nations (UN) and the African Union (AU), African states, including Burkina Faso and Ghana, are bound by the UN Charter obligations and the AU framework promoting the rule of law and good governance, which include promoting human rights and fundamental freedoms. Adherence to UN and AU treaty-based bodies and instruments and their subsequent human rights-focused obligations is expected to guide states in the protection and promotion of the constitutional rights and duties of political parties, including those related to party funding.

The United Nations Convention against Corruption 2003

The UN Convention against Corruption (UNCAC) is the only legally binding universal anti-corruption instrument. It requires state parties to take appropriate legislative and administrative measures to enhance transparency of the funding of candidates and political parties.¹⁷ Burkina Faso and Ghana have both ratified the convention. The Implementation Review Mechanism (IRM) is the peer-review process that assists states' parties to effectively implement the convention. Ghana undertook its first cycle of the UNCAC review mechanism, which focused on chapters of the convention¹⁸ concerning criminalisation and international cooperation. In 2014, Ghana received recommendations following the first cycle review, however, no recommendations on funding of political parties were made.¹⁹ In 2018, the IRM recognised the existence of

16 Flight Lieutenant Jerry John Rawlings became president in 1981. The constitution was suspended in 1981 and political parties were banned. See Clement Sefa-Nyarko, 'History Production after Undemocratic Regime Change: The Impact of Ghana's Competing Independence Narratives after the First Coup d'état on Peace and Political Stability' (2015) 5 *Strife Journal* 23.

17 Article 7(3) of the United Nations Convention against Corruption.

18 Chapters III and IV of the UNCAC.

19 CAC/COSP/IRG/1/3/1/Add 18.

state funding in Burkina Faso and recommended that the State considers regulating the private funding of candidates for public office and of political parties.²⁰

The ECOWAS Protocol on Democracy and Good Governance 2001

At a regional level, as members of ECOWAS, Burkina Faso and Ghana are legally bound by its instruments. For instance, ECOWAS adopted a protocol on democracy and good governance in 2001, which enshrined major constitutional principles, namely the separation of power, the empowerment and strengthening of parliaments and the independence of the judiciary. The ECOWAS Democracy Protocol recognises political parties' freedom of operation and guarantees the freedom of the opposition. It specifically requires member states to 'adopt a system for financing political parties, in accordance with criteria set under the law.'²¹ The protocol provides that the African Charter on Human and Peoples' Rights and other international instruments shall be guaranteed in each of the ECOWAS member states and that in the absence of a court of special jurisdiction, the protocol shall be regarded as giving the necessary powers to common or civil law judicial bodies in the ECOWAS zone.²² Burkina Faso and Ghana, therefore, have a mandate to domesticate the ECOWAS protocol. For instance, in *APDH v The Republic of Côte d'Ivoire*,²³ concerning a law regulating the composition of the Ivorian Independent Electoral Commission, the African Court on Human and Peoples' Rights invoked the ECOWAS Democracy Protocol and other international human rights treaties when it ordered the Republic of Côte d'Ivoire to amend the impugned law on the electoral commission to make it compliant with human rights standards. In this case, the court found that Côte d'Ivoire violated its commitment to establish an independent and impartial electoral body as provided under Article 17 of the African Charter on Democracy and Article 3 of the ECOWAS Democracy Protocol. The court consequently held that the violation of Article 17 of the African Charter on Democracy affected 'the right of every Ivorian citizen to participate freely in the conduct of public affairs [in] his country as guaranteed by article 13 of the Charter on Human Rights'. The ECOWAS Democracy Protocol, therefore, plays a significant role in encouraging ECOWAS member states to enact laws on political parties' financing. The law reform process can be initiated at domestic level, whereby the parliament enacts a law on political party financing; but it can also take place through litigation at regional level, in which regional mechanisms (eg ECOWAS Court of Justice of the African Court in Human and People's Rights) will order state members to conduct a law reform process. To this end, it should be pointed out that there are various international and regional monitoring mechanisms which require Burkina Faso and Ghana to take legislative measures to ensure transparent public and private funding of political parties. These instruments primarily aim to promote rule of law, good governance and fight corruption.

20 CAC/COSP/IRG/II/1/1/Add 4, para 2.3.

21 Article 1(i) of the Protocol on Democracy and Good Governance (2001).

22 Article 1(h) of the Protocol on Democracy and Good Governance (2001).

23 *Actions pour la Protection des Droits de l'Homme v The Republic of Cote d'Ivoire*, Application 001/2014, Judgment of 18 November 2016.

By entrenching the issue of party funding, these instruments evidently recognise the link between the political parties' operations and the urgent need for clear legislations and mechanisms which regulate the financing of their activities. The regulation of political parties therefore seems vital to the promotion and protection of the rule of law and good governance in constitutional democracies.

National Regulations of Party Funding in Burkina Faso and Ghana

Chapter 2 of the 1991 Constitution of Burkina Faso,²⁴ which provides for the rights and duties of political parties, fails to include any provision on political parties' funding. However, a law regulating the financing of political parties and groups and electoral campaigns²⁵ was later enacted in 2009. The law provides the modalities of state funding of political parties during local and general electoral campaigns periods and beyond electoral campaigns. An annual budget line is earmarked in the State budget for the financing of political parties and groups and for electoral campaigns. The law also specifies that only political parties and groups that operate regularly and are up to date with their statutory obligations can benefit from state funding.²⁶ In terms of accountability and transparency, the national governing body of a party or a candidate who has received public funding is required to submit a financial report on the use of public funds received for its electoral campaign within six months after the official publication of the elections results.²⁷ Political parties are also required to submit their annual financial reports during non-election periods.²⁸ The law also provides that in the case of presidential elections, state funding should be shared equally amongst presidential candidates²⁹ under conditions defined by a decree adopted in 2015 on public funding of political activities during electoral campaigns and outside electoral campaigns.³⁰ Concerning the eligibility requirements for receiving state funding during non-electoral periods, the law provides that all political parties or groups that have obtained at least three per cent of the votes in the last legislative elections are eligible. The distribution is made in proportion to the number of votes obtained. For instance, in the context of the 2015 presidential elections, 350 million CFA francs were distributed equally to 14 presidential candidates, ie 25 million CFA francs each. For the legislative elections, a total amount of 5 million CFA francs were provided, that is, 71,000 CFA francs per candidate.³¹ Similarly, in January 2019, the Minister of Territorial Administration, Decentralization and Social Cohesion (MATDC) officially handed out cheques to respective political parties, representing the state contribution to their

24 Constitution of Burkina Faso 1991.

25 *Loi No 008-2009/AN portant financement des partis et formations politiques et des campagnes électorales.*

26 Article 8.

27 Article 7.

28 Article 13.

29 Article 9.

30 Decree 2015-1364/PRES-TRANS/PM/MATD/MEF/MJDHPC of 20 November 2015.

31 EUEOM Report 2015 for Burkina Faso, 19.

activities for the non-electoral year of 2018.³² In 2018, the State allocated a total amount of 500 hundred million CFA francs to be distributed amongst six eligible political parties.³³ It should be noted that the publication of party financial reports on public funding is not required by law in Burkina Faso. Also, there are no specific provisions on the kinds of expenditure parties or candidates should make while using public funding. The law only prohibits the use of public funds for purposes other than those provided by the law. Moreover, there is no national framework regulating political parties' private funding. This implies that private funding of political parties is not prohibited in Burkina Faso, possibly including foreign sources of funding. The issue of unregulated and undisclosed private funding is crucial to the integrity of political parties and for the fight against political corruption. It is argued that there is a relationship between the disclosure of parties' funding and voting decisions. Indeed, citizens should participate in free and fair elections with full knowledge of political parties' ideologies as well as their funders.³⁴ Large donations in particular can be problematic, since they can lead to political parties' indebtedness to their donors, which in turn may jeopardise democracy and good governance. As political parties in Burkina Faso are granted public funds, it may be argued that their over-reliance on private funding could be mitigated. Nevertheless, the issue of private funding of political parties can be more acute in the context of a dominant party system, as was the case in Burkina Faso for over 17 years.³⁵ Indeed, unregulated private funding may lead the dominant party being less inclined to introduce new laws that provide for more transparency and accountability in its own finances.

In Ghana, article 55 of the 1992 constitution provides for the right to join and form a political party. The Constitution requires that the internal democracy of political parties conforms with the democratic principles, actions and purposes consistent with the constitution or any other law.³⁶ Concerning elections, article 55(12) provides that all presidential candidates be given the same amount of time and space on state-owned media to present their programmes to the electorate. With respect to political parties'

32 Boureima, 'Burkina: des partis politiques se partagent 500 millions de F CFA au titre de la subvention de l'Etat' (*Wakat Sera*, 29 January 2019) <<https://www.wakatsera.com/burkina-des-partis-politiques-se-partagent-500-millions-de-f-cfa-au-titre-de-la-subvention-de-letat/>> accessed 25 October 2021.

33 For the year 2018, the following political parties received state funding as follows: *Alliance pour la Démocratie et la Fédération-Rassemblement Démocratique Africain (ADF-RDA)*: 19,300,000 CFA francs; *Congrès pour la Démocratie et le Progrès (CDP)*: 83,150,000 CFA francs; *Mouvement du Peuple pour le Progrès (MPP)*: 218,500,000 CFA francs; *Nouvelle Alliance du Faso (NAFA)*: 26,150,000 CFA francs; *Union pour la Renaissance / Parti Sankariste (UNIR/PS)*: 23,600,000 CFA francs; *Union pour le Progrès et le Changement (UPC)*: 129,300,000 CFA francs.

34 Katherine O'Regan, 'Political Parties: The Missing Link in Our Constitution?' (Political Parties in South Africa: The Interface between Law and Politics, Cape Town, 27 August 2010) <http://www.law.uct.ac.za/sites/default/files/image_tool/images/99/Political-Parties-in-the-Constitution-address-27-August-2015.pdf?> accessed 28 February 2020.

35 *Congrès National pour le Développement et le Progrès (CDP)* was the ruling political party in Burkina Faso until former President Blaise Compaore was ousted in 2014.

36 Article 55(3) of the Constitution of Ghana, 1992.

sources of revenue, the constitution requires political parties to publish audited party funding and assets to the public annually. Article 55(15) of the constitution prohibits foreign sources of funding as it provides that only a citizen of Ghana may make a contribution or donation to a political party registered in Ghana. It is important to note that the 1992 Constitution of Ghana does not mandate the State to fund political parties even though it requires financial transparency and accountability from political parties. This may suggest that the authors of the constitution considered that the sources of funding of political parties in Ghana should be exclusively private and national (ie non foreign funds) and that the responsibility of the State is limited to enforcing transparency and good governance within the internal organisation of the parties. In this regard, the 1992 constitution devolved to parliament the mandate to enact a law that regulates the establishment and functioning of political parties.

Subsequently, the Political Parties Act of 2000³⁷ provides that the modalities of registration and operations of political parties. The Electoral Commission is responsible for registration of all political parties in the country (section 5). In accordance with the 1992 constitution, section 13 of the Political Parties Act requires political parties to declare all their assets and expenditure to the Electoral Commission, including contributions or donations in cash or in kind made to the initial assets of the political party. Section 14 of the law also requires political parties' declaration of assets, liabilities and expenditure to the commission, in relation to elections. Within 21 days before a general election, through a written declaration submitted to the electoral commission, political parties in Ghana are required to give details of their sources of funds and other assets. Political parties' failure to comply with their statutory obligations may lead the electoral commission to cancel their registration (section 6 (6)).

The only provision for party funding included in the law concerns the contribution of Ghanaian citizens in cash or in kind to the funds of a political party. The law prohibits contributions or donations or loans of non-citizens, whether in cash or in kind, to the funds held by or for the benefit of a political party (section 24). The law provides for sanctions in case of violation of political parties funding obligations, which include the forfeiture of the contentious private fund to the State (section 25.3). It should be noted that as in the constitution, the law is silent on the issue of public funding of political parties. Therefore, political parties in Ghana do not benefit from state funding and rely mainly on private funding, under the control of the electoral commission and in accordance with sections 23 and 24 of the Political Party Act of 2000. It may be argued that the lack of constitutional or legal framework related to public funding of political parties in Ghana may constitute an impediment in the promotion of good governance in the country. This is because public funding aims to ensure that all relevant political forces have access to enough resources to campaign and contest in elections. It is therefore expected to encourage pluralism and provide voters with a wider choice of

37 The Political Parties Law Act 574, 2000.

politicians and policies.³⁸ The absence of public funding may subsequently increase potential risks of dependence on private donors, which may lead to corruption and subversion.

Implementation of Party Funding Regulations and Challenges

Implementation

As mentioned earlier under section 3, the Constitution of Ghana and other relevant legislations do not provide for public and private funding of political parties. However, the constitution requires financial transparency and accountability from political parties. Further, the Political Parties Act of 2000 requires political parties to declare all their assets and expenditure to the electoral commission.³⁹ However, in practice, it appears that this particular provision has not been implemented since the enactment of the Political Parties Act. Indeed, until March 2019, political parties in Ghana did not declare their assets and expenditures, and the electoral commission had not taken any measures to ensure that these provisions were enforced. This situation not only led to a lack of transparency in the financing of campaigns, but it also rendered impossible the control and prevention of foreign sources of funding in the Ghanaian political landscape. It is more so crucial for political parties to file their annual financial reports as previous research has shown that party members' contributions represented only 15 per cent of the party's source of funding and was limited due to rampant poverty among the Ghanaian population.⁴⁰ This confirms the fact that the sources of political parties' funding may be diverse and not necessarily domestic.

In March 2019, following a two-year advocacy campaign and legal action led by the non-governmental organisation Citizen Ghana Movement (CGM), the Electoral Commission of Ghana was forced to publish the financial accounts of all political parties in a national newspaper.⁴¹ In 2018, following the CGM's strategic litigation, the Human Rights Court of Accra⁴² ordered the electoral commission to publish the statements of accounts of all political parties for the purpose of public information in accordance with national law. With the CGM's persistent pressure, the electoral commission eventually issued a notice demanding that all political parties submit their statements of accounts to the commission by February 2019. As a result of this court order, it was the first time

38 International Institute for Democracy and Electoral Assistance, *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance* (International IDEA 2014) 22.

39 Section 13 and 14 of the Political Parties Law Act 574, 2000.

40 Wilbert Nam-Kotati, James Doku, Joshua Abor and Peter Quartey, 'Financing Political Parties in Ghana' (2011) *Journal of Applied Business and Economics* 96.

41 'Publish Assets, Accounts of Political Parties – Court order EC' (*Ghana Web*), <<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Publish-assets-accounts-of-political-parties-Court-orders-EC-625016>> accessed 25 October 2021.

42 Unreported judgment of the High Court, Accra, Human Rights Division, in Suit No. HR 0057/2017 delivered on 9 February 2018.

in the history of democratic Ghana that the finances of political parties were disclosed to the public.

The advocacy carried out by the CGM highlights the significant role played by civil society organisations (CSOs) in the enactment or implementation of regulations pertaining to political parties' financing. While the electoral commission seemed to have been unable to ensure that political parties disclose their sources of revenue, CSOs made use of mechanisms available in a constitutional democracy—ie the existence of a judiciary—to compel political parties to fulfil their constitutional obligations of transparency and accountability. The role of CSOs in monitoring political parties' source funding was confirmed in South Africa in the IDASA case. In 2005, the Institute for Democracy in South Africa (IDASA) challenged the practice of undisclosed private funding before the high court in Cape Town.⁴³ The organisation unsuccessfully took legal action against four main South African political parties⁴⁴ to compel them to disclose their sources of funding. The high court in Cape Town found that the existing legislation did not compel political parties to disclose their financial records. The applicants filed an appeal against the high court judgement and the case was brought before the constitutional court. The constitutional court held that although the applicants argued a compelling case, 'private donations to political parties ought to be regulated by way of specific legislation in the interest of greater openness and transparency', and existing legislation did not oblige them to disclose details of private donations made to them. The role of CSOs in promoting transparency of political parties' finances was later confirmed in the case of *My Vote Counts NPC v President of the Republic of South Africa and Others*,⁴⁵ in which the Western Cape High Court ruled that information about the private funding of political parties was reasonably required for the effective exercise of the right to vote and to make political choice.⁴⁶ Subsequently, in 2018, the South African parliament adopted the Political Party Funding Act⁴⁷ which aims to provide for and regulate the public and private funding of political parties, including the prohibition of certain donations made directly to political parties. The Act, which came into force in April 2021, compels political parties to disclose donations above 7,000 US dollars to the electoral commission. It prohibits donations above 100,000 US dollars from a single donor. It also prohibits donations from foreign governments and their agencies, foreign persons and entities, organs of state and state-owned enterprises. These case laws are relevant to the current context in Burkina Faso and Ghana since they relate to a situation of unregulated and undisclosed private sources of funding as experienced in both

43 *Institute for Democracy in South Africa and Others v African National Congress and Others* 2005 (5) SA 39 (C).

44 African National Congress (ANC); Democratic Alliance (DA); Inkatha Freedom Party (IFP) and African Christian Democratic party (ACDP). The parties argued that they had to protect their donors' anonymity and that instead of a court order it was necessary to adopt legislation regulating the funding of political parties in the Republic of South Africa.

45 *My Vote Counts NPC v President of the Republic of South Africa and Others* 2017 (6) SA 501 (WCC).

46 *ibid* para 75.

47 Political Party Funding Act (6/2018).

countries. They are evidence that governments' reluctance to regulate private funding of political parties can be bypassed and that governments can be encouraged to engage in necessary law reforms to address this issue.

The above-mentioned case laws related to political party funding clearly establish the essential role played by the judiciary in the implementation of legislations on political party funding. In the South African case of *My Vote Counts NPC v President of the Republic of South Africa and Others*, the judgement directly led to the enactment of a political party funding law. This suggests that the government authorities and institutions, ie the electoral commission, are not the only custodians of transparency and accountability in a constitutional democracy. Civil society is a key role player in holding political parties accountable and ensuring compliance with constitutional provisions that mandate political parties to declare sources of funds.⁴⁸ In Burkina Faso, a law establishing quota and procedures for choosing candidates in legislative and municipal elections⁴⁹ rewards political parties through additional state funding if they respect gender balance during legislative and municipal elections. Article 10 of the law provides that any political party, grouping of political parties or grouping of independent candidates who has reached a quota of 30 per cent of candidates from both sexes in the constituency where they stand for election will be granted additional public funding for the purpose of the electoral campaign. The law also states that the surplus of funding represents 20 per cent of the total amount allocated by the State to the electoral campaign financing. However, the law has been criticised as favouring tokenism in exchange of money and that stronger sanctions against political parties could be put in place instead. Another challenging aspect to take into account is the issue of the availability of sufficient public funds to be given to political parties.

Challenges

Burkina Faso and Ghana have faced various challenges in the implementation of political party funding regulations. In Burkina Faso for instance, during the 2015 presidential elections, the European Union Election Observation Mission (EUEOM) noted that the absence of regulations on private funding was likely to affect the transparency of political parties and electoral campaigns funding. Moreover, since the campaign spending limits were not regulated, the principle of equity of resources in the campaign could be called into question. In addition, the audit on public funding conducted by the European Court of Auditors is carried out belatedly. The EUEOM therefore called for an urgent and profound reform of the normative framework.⁵⁰ There have been instances where the allocated public funds to political parties were not sufficient. In 2015 for instance, the Government of Burkina Faso was forced to increase

48 *My Vote Counts NPC v President of the Republic of South Africa and Others* 4 All SA 840 (WCC) para 75.

49 *Loi portant fixation de quota et modalités de positionnement des candidates ou des candidats aux élections législatives et municipales au Burkina Faso*.

50 EUEOM Report 2015 for Burkina Faso, 19.

the total funds allocated to political parties after they complained that the proposed fund was not sufficient. The total state allowance to political parties became insufficient due to the increase of political parties in number.⁵¹

In Ghana, the African Union Election Observation Mission (AUEOM) found that the lack of public funding for political parties may have also impacted on the ability of smaller parties to carry out effective campaigns. Some of the smaller parties reportedly complained of resource constraints as their main hindrance to campaign meaningfully.⁵² Like in Burkina Faso, there is no legislation that provides for spending limits on political parties during campaign periods. The AUEOM, therefore, concluded that the absence of clear legislation left the Ghanaian electoral process ‘vulnerable to the unregulated influence of money’ and that it gave ‘undue advantage to the candidates with resources and, as such, prevents potential candidates, especially women, from contesting on a level playing field.’⁵³ This was corroborated by a study on political party funding in Ghana which revealed that the main political parties in Ghana are funded privately either through donations made by institutions, kickbacks and corruption, fundraising and membership dues.⁵⁴ They are also funded by nomination fees paid by aspirants of executive positions in political parties as well as parliamentary and presidential aspirants during party primaries and congress. The study therefore recommended the allocation of state funding of political parties in order to prevent the abuse of incumbency and corruption, which in turn undermines political party competitiveness, thereby undermining multiparty democracy in Ghana.

Research findings have established that most African political parties rely predominantly on funding from private sources,⁵⁵ even more so when they do not receive public funding. They are likely to become over-reliant on private sources of funding, which include wealthy individuals as well as lobby groups, and this may ultimately compromise their independence and neutrality while implementing their programmes. The impact of the relationship between political parties and private donors may be exacerbated when ruling parties are involved. Private donors may be inclined to make donations to the ruling party in order to enjoy preferential treatment, for example in relation to state contracts or with state-owned companies. Large donations in particular can be problematic, since they can lead to political parties’ indebtedness to

51 ‘Elections 2015: La subvention allouée aux partis politiques désormais fixée à 1,3 milliard de F CFA’ (*Burkina24*, 3 November 2015) <<https://www.burkina24.com/2015/11/03/elections-2015-la-subvention-allouee-aux-partis-politiques-desormais-fixee-a-13-milliard-de-f-cfa/>> accessed 25 October 2021.

52 African Union Election Observation Mission Report: Ghana 2016 para 60.

53 African Union Election Observation Mission Report: Ghana 2016 para 63.

54 Alban Bagbin and Albert Ahenkan, ‘Political Party Financing and Reporting in Ghana: Practitioner Perspectives’ in Kobby Mensah *Political Marketing and Management in Ghana: A New Architecture* (Palgrave MacMillan 2017) 112.

55 International Institute for Democracy and Electoral Assistance 44.

their donors, which in turn may jeopardise democracy and good governance.⁵⁶ In South Africa for instance, a wealthy family who owned a wide range of businesses was controversially linked to former President Jacob Zuma and his family. The Gupta family was reported to have access to state contracts and exert undue influence on both the former president and his party, the African National Congress (ANC).⁵⁷ However, state funding of political parties is not exempt from criticism either. Opponents to state party funding argue that this system perpetuates the already existing inequalities between political parties, since it is those who win the most seats or the most votes that can also receive most of the funds. Moreover, members of parliament who adopt the annual budget line for state party funding in parliament are in fact allocating funds to their respective political parties. It is therefore argued that state funding of political parties promotes status quo.⁵⁸ For instance, Nassmacher⁵⁹ established a relationship between state funding of political parties and the promotion of party competition. The author argues that state funding is a remedy against corrupt practices in party politics. However, he equally contends that a situation of unbalanced state funding could jeopardise fair party competition. Other arguments against state funding include the fact that it implies that taxpayers are led to financially support political parties or candidates for which they would never vote.⁶⁰ It is also feared that the allocation of public funds could disconnect political parties from citizens, since political parties would be less dependent on their supporters to receive donations or contributions in kind. Finally, this method of financing can also encourage the creation of false political parties for financial purposes. This may explain why in Burkina Faso public funds are granted only to parties that operate regularly.

Recommendations and Conclusion

This article analysed the regulations and implementation of party funding in Burkina Faso and Ghana. The regulation of party funding means that specific provisions on political parties financing during and beyond electoral campaigns are enshrined either in constitutions or in legislations, or both. It sets the rules to be implemented and, therefore, provides stability to and sustainability of the activities of all political parties, regardless of their sizes and ideologies. The regulation of party funding is of particular relevance considering the role of political parties as indispensable institutional components of constitutional democracy systems and factors of political stability. More

56 International Institute for Democracy and Electoral Assistance, 45.

57 In May 2017, the ANC treasurer general confirmed that the ANC had received donations from the Gupta family. See Jan Gerber, 'Guptas Donated to ANC–Mkhize' (*News24*, 16 August 2017) <<https://www.news24.com/news24/southafrica/news/guptas-donated-to-anc-mkhize-20170816-2>> accessed 20 May 2021.

58 Jean Rousselle and Gerard Bila Segda, 'Le financement des partis politiques dans l'espace francophone: Projet de Rapport, Commission parlementaire de la Francophonie' Juillet 2014.

59 Karl-Heinz Nassmacher, *The Funding of Party Competition: Political Finance in 25 Democracies* (Nomos Verlagsgesellschaft 2009) 44.

60 Rousselle and Segda (n 58).

importantly, the regulation of party funding represents a key factor in the fight against political corruption⁶¹ and the promotion of fair competition as well as citizens' trust in politics. However, this article also found that even though Burkina Faso and Ghana have ratified key international and regional instruments requiring them to enact laws regulating party funding, both countries continue to face challenges in this regard. Certain measures are therefore recommended to ensure that both countries fulfil their obligations in terms of party funding regulation and to combat corruption. Unlike Ghana, it is recommended that Burkina Faso, for instance, enact laws to regulate private funding, especially foreign funding of political parties. The issue of foreign funding is often regarded as the interference of foreign forces in domestic political matters. This is more relevant when the national security of a country is at stake and terrorist attacks become recurrent, as in Burkina Faso.⁶² Private funding of political parties should be regulated and limited in Burkina Faso and Ghana, as recently adopted in South Africa.

As mentioned earlier, most African political parties rely on private funding. Although private funding enables small political parties, who do not qualify for public funding, to sustain their activities, the risk of corruption from large donors to bigger parties or ruling parties remains high. In Burkina Faso, for instance, bigger parties who already have access to public funds, can also have unlimited access to private funds. In Ghana, where there is no regulation of both public and private sources of funding, with the exception of the prohibition of foreign funds, the situation of small political parties remains precarious since they may not have access to large donations. It is, therefore, recommended that legislation be enacted to ensure full transparency of political parties' finances, especially during electoral campaigns.

Because of the risk of private funding affecting the integrity of political parties, especially the impact of large donations from corporations, it is recommended that a specific guideline be developed to provide guidance to political parties and private donors on ethical funding. A national guideline on private funding would provide for social responsibility of corporations towards political parties and citizens at large. Businesses and private companies will be led to conform to ethical principles, including integrity and transparency, when funding political parties. Such guideline can only be developed after the State has enacted a law regulating the private sources of funding of political parties.

Finally, the contribution of CSOs to the enactment and implementation on legislations pertaining to political parties financing should be promoted. As seen in South Africa in

61 Political corruption is defined as a situation of conflict between the personal interests of a decision maker in the private and public sector and those of the entity that he or she serves. See Zwelethu Jolobe, 'Financing the ANC: Chancellor House, Eskom and the Dilemmas of Party Finance Reform' in Butler (n 311) 206.

62 Mahamoudou Savadogo, 'The Changing Face of Burkina Faso's Terrorist Threat' (*The Conversation*, 26 January 2020) <<http://theconversation.com/the-changing-face-of-burkina-fasos-terrorist-threat-130267>> accessed 25 October 2021.

the case against political parties, CSOs have played a key role in fostering citizens' rights to information and offering a platform for holding government authorities and independent institutions to account. The CGM has succeeded in forcing the electoral commission to call on political parties to publish their audited accounts. Pursuant to Article 1(i) of the ECOWAS Democracy Protocol, the organisation could take legal action and challenge the government to conduct law reform on political parties financing.

In conclusion, this article submits that the phenomenon of party funding regulation in Burkina Faso and Ghana is a process in development which needs reinforcing. Although both countries adhere to international and regional instruments against political corruption, there are some limitations in their respective national frameworks which jeopardise political competition and affect the principles of transparency and accountability in politics. In most cases, these shortcomings impact on small parties who do not have equal access to funding opportunities like their bigger counterparts, therefore reducing their chance of contributing meaningfully to their country's political life. The lacunae in the party funding regulations and the non-implementation of some existing regulations can equally affect citizens' rights to participate in public affairs (when small parties are not represented) as well as their rights to information (when funds are unregulated and/or undisclosed). This could ultimately lead to citizens' mistrust and lack of interest in politics, which would ultimately be detrimental to any constitutional democracy.

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