

REALITY CHECK

Political Party Financing in Uganda

A Critical Analysis in Reference to Other Countries

Paul K. Ssemogerere



Konrad
Adenauer
Stiftung

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Foreword

Public political party financing is increasingly being acknowledged in several states worldwide as an essential framework for nurturing political parties as fundamental blocks of multiparty democracy. In Germany, the home of the Konrad-Adenauer-Stiftung, public financing of political parties and the regulation of party funding be it by public or private sources has been in existence for several decades. It has over the years been recognised as an essential ingredient in the sustainable development of Germany's democratic system. In addition, the German system foresees the establishment and support of party-affiliated political foundations – including the Konrad-Adenauer-Stiftung – which are key actors for contributing to democratisation processes not only in Germany but in several countries around the world.

Having been reintroduced after the referendum held in 2005, the multiparty system in Uganda is a considerably young one. The second general elections since the reintroduction of multiparty democracy held in 2011 confirmed that political parties face several challenges. A number of these challenges are logistical and mainly associated with the limited resources available to political parties. This makes it difficult for them to conduct effective campaigns and to mobilise. In addition, the political parties are, beyond elections, largely unable to fulfil expected core functions with the lack of funds again being a major cause of this deficit.

With the above state of affairs, the need for consensus and later for establishing a framework towards sustainable and well regulated political party financing becomes apparent in the case of Uganda. Nevertheless, political party financing has been a generally neglected topic in the political debate. Even when a law, the Political Parties and Organisations (Amendment) Act, 2010, was passed there was limited progress in the area of party financing. According to several observers, the law – which is to be considered a positive step – besides providing for public financing did not address other essential aspects of the political party financing framework, for example private contributions and financial spending. Several stakeholders including a cross-section of political party leaders who participated in a KAS supported interparty dialogue held in 2008 on the subject expressed conflicting views on the bill then. It can therefore be concluded that the debate is still open and valid and that Uganda still has to reach a consensus in establishing a fair and equitable party financing framework in which all stakeholders hold confidence.

It is on the above premise that KAS supports this publication on **Political Party Financing in Uganda** as an assessment of the public funding system of political parties, organisations and candidates. It is written on the background of the Political Parties and Organisations (Amendment) Act, 2010 which present the frame on public funding of political parties in Uganda. The paper aims at identifying key ingredients in the funding systems of multiparty democracies and drawing lessons for the emerging system of Uganda.

The publication considers the introduction of public party financing as an important matter at this stage of Uganda's democratisation process. Public funding of political parties can support a sustainable functioning multiparty democracy and a fair competition among the existing parties. In addition, it strengthens the independence of parties and the political playing field. Nevertheless, a proper design and implementation of the funding is crucial to prevent failure and abuse.

The author Paul K. Ssemogere has been a prominent actor in Ugandan politics. He is nationally and internationally known, amongst others, as party president of the Democratic Party, presidential candidate in 1980 and 1996, leader of several committees under the UN and founding father of the Foundation for African Development (FAD). In this paper, Dr. Ssemogerere extensively analyses the party funding systems of established and emerging democracies not just from the West but also from Africa. He develops a series of suggestions on how the Ugandan system can be effectively developed. It is my sincere hope that this publication will assist in contributing to the realisation of a political party financing system acceptable to all Ugandan stakeholders.

Peter Girke
KAS Country Representative

Acronyms/Abbreviations

AU	African Union
CMI	Chieftaincy of Military Intelligence
CDU	Christian Democratic Union
COG	Commonwealth Observer Group
CREEP	Committee for the Re-election of the President
DEMGROUP	Democracy Monitoring Group
DP	Democratic Party (of Uganda)
EC	Electoral Commission (of Uganda)
ESO	External Security Organisation
FAD	Foundation for African Development
FDC	Forum for Democratic Change
FEC	(US) Federal Electoral Commission
FECA	(US) Federal Election Campaign Act (1971)
FES	Friedrich-Ebert-Stiftung (Friedrich Ebert Foundation)
FHRI (U)	Foundation for Human Rights Initiative (of Uganda)
FRG	Federal Republic of Germany
HMSO	Her/His Majesty's Stationery Office
ICCPR	International Covenant on Civil and Political Rights
IDEA	International Institute for Democracy and Electoral Assistance
IFES	International Foundation for Electoral Systems
IPOD	Inter-Party Organisation for Dialogue

IRI	International Republican Institute
ISO	Internal Security Organisation
KAP	Kalangala Action Plan
KAS	Konrad-Adenauer-Stiftung
KIC	Christian Democratic International Centre (of Sweden)
KY	" <i>Kabaka Yekka</i> " (Literary, the "King Alone")
NDI	National Democratic Institute
NED	National Endowment for Democracy
NEPAD	New Partnership for Africa's Development
NIMD	Netherlands Institute for Multiparty Democracy
NRA	National Resistance Army
NRM	National Resistance Movement
PPOA	Political Parties and Organisations Act
RDC	Resident District Commissioner
SADC	Southern Africa Development Community
TEC	The Executive Council (S. A. Transitional Authority)
UNDP	United Nations Development Programme
UPC	Uganda People's Congress
UPDF	Uganda People's Defence Forces
WFD	Westminster Foundation for Democracy

Executive Summary

On 17 March 2010 the President of Uganda signed into law the Political Parties and Organisations (Amendment) Act, 2010, which sanctions public funding of political parties in the country.¹ This is in addition to public funding of presidential candidates in elections as previously provided for under the Presidential Elections Act (2005). The initiative is welcomed as a measure with the prospects of further contributing to Uganda's transition from monolithic rule to institutionalised multiparty democracy. But care needs to be taken to ensure that the funding system proposed is well-founded, fair and equitable, lest it be subject to manipulation and hence potentially lead to the denial of the very objectives sought and proclaimed.

Leading scholars in the public political funding field emphasise the paramount position of political parties for the democratisation process. Marcin Walecki observes:

*"While elections themselves are important events for a democratic transition, sustainable and transparent institutions are the bedrock upon which democracy is built. One such key institution is the political party."*²

He adds:

*"Political parties form the foundation of political society, providing a structure for political participation and organized competition."*³

And, on the rationale for public funding of political parties, Walecki points out that it can contribute to *"strengthening democratic politics (in four) crucial ways"*⁴. It can:

1 At the time of writing, this law was, however, not yet operational.

2 Walecki, Marcin, 'Public Funding in Established and Transitional Democracies.' See: International Foundation for Electoral Systems (IFES) (undated), *Public Funding for Political Parties in Muslim-Majority Societies* (Washington, D.C.: 1101, 15th Street, N.W. Suite 300), p. 26.

3 Walecki, *ibid* p.26.

4 Walecki, Marcin, 'Public Funding Opportunities – Conditions, Constraints, and Possible Outcomes' in International Foundation for Electoral Systems (IFES) (undated), *Public Funding for Political Parties in Muslim Majority Societies* (Washington, D.C.: 1101, 15th Street, N.W, Suite 300) p.94.

- *"strengthen the autonomy of politicians, prevent political finance-related corruption and enhance financial transparency;*
- *"protect political equality of opportunity and electoral competition;*
- *"provide political actors with adequate resources for essential democratic activities, increasing the institutionalisation and stability of parties; and*
- *"be a powerful lever to secure compliance with other political finance regulations."⁵*

However, as a mechanism, public funding is not by itself a panacea for a well-empowered institutionalised multiparty democracy: it cannot and it ought not to be a substitute for the members' own funding and services, and, least of all, a surrender of their autonomy and control over their political parties and the electoral process. Caution is also necessary when , as so far introduced, Uganda's emerging political party funding system suffers from some inherent disadvantages. Most notable among these are: a weak and equivocal ideological/constitutional /legal foundation; an administering authority, i.e. the Electoral Commission, whose independence and authority are in question; and inadequate controls. These disadvantages need to be addressed if the funding system is to be fair and equitably useful in nurturing Uganda's multiparty democracy.

Political Party Financing in Uganda is an assessment of Uganda's emerging public funding system of political parties/organisations and presidential candidates. It follows the enactment of the Political Parties and Organisations (Amendment) Act, 2010. The purpose of this paper is to identify key ingredients in the funding systems of multiparty democracies and to draw lessons from them for Uganda's emerging system. Using the US, the Federal Republic of Germany (FRG), the UK, Sweden, and South Africa as examples, the paper reveals a six-feature model of essential ingredients for public funding of political parties in a democracy. These ingredients form the basis for a comparison with Uganda's emerging system.

5 Walecki, Marcin (undated), 'Public Funding Opportunities – Conditions, Constraints, and Possible Outcomes' in IFES, *ibid*, p.94.

The paper is presented in the six following sections.

Section 1 introduces the subject and the basis for its undertaking. Public political funding in Uganda was given a boost with the enactment of the Political Parties and Organisations (Amendment) Act, 2010 as an amendment of the original 2005 Parties' Law. However, there are expressed reservations and even objections about some aspects of this Act. For example: the introduction in Parliament of the relevant amendment attracted considerable controversy; the ideological/constitutional/legal anchorage of the funding system as a mechanism for strengthening multiparty democracy is equivocal; and the system's fairness, adequacy and effectiveness are in question. Therefore the section lays the foundation for enquiring the concept, genesis and practice of public political funding in established democracies; and for comparing the Uganda initiative to those experiences.

Section 2 interprets and establishes the rationale for public political funding as an innovation towards a more effective functioning of representative democracies, with particular regard to the conduct of the multiparty system and the electoral process. The innovation is designed as a two-pronged strategy: first as an empowerment mechanism to boost the performance of the recipient electoral candidate and/or political party, as the case may be; and second, as a controlling intervention to prevent or minimise threats that might undermine or compromise the democratic system. Threats can occur, for example, through suspect, excessive and unregulated funding as well as improper financial management.

Section 3 traces the genesis of public political funding from its introduction as a concept in 1907 by US President Theodore Roosevelt; its ill-fated start in 1928 in Uruguay; its successful adoption in the FRG (first administratively in 1959 and later under law in 1967); its hesitant establishment in the US between 1966 and 1974; and its subsequent worldwide adoption thereafter, including in African countries and among them Uganda. In the process the study establishes the significance of a hospitable ideological/constitutional/legal foundation as a necessary condition for a fair and equitable public funding system.

Section 4 concentrates on the US and the FRG as examples for countries whose funding systems are focused on electoral candidates – e.g. the presidential candidates – and political parties. Other countries, whose funding systems are also briefly examined, are the UK, Sweden and South

Africa. A six-feature model is developed which captures the principal ingredients of public funding systems in the respective countries. On basis of these ingredients the efficacy of the system can be appraised and a comparison with other funding systems made. The six-feature model is composed of the following ingredients:

1. An ideological/constitutional/legal foundation, oriented on human rights and multiparty democracy, as the most critical determining factor in establishing the objectives and sustainability of a fair and equitable public funding system;
2. The focus and scope of the funding system:
 - (a) the focus may be on the electoral candidate or the party;
 - (b) the scope of activities may be narrowly prescribed (e.g. limited to the electoral process) or broad (embracing a wide range of activities including administrative and normal party activities, civic and political education, leadership training, women and youth programmes etc.);
3. The source(s) of the funds (i.e., public and/or private and the extent to which these sources are adequate, transparent, regulated and fair); and the categories or forms under which public funding is carried out (i.e., the funding may be direct or indirect, or in the form of a specific subsidy);
4. The responsible authority for the administration of the system and the extent to which it is credible as a genuinely independent, authoritative and effective authority;
5. The controlling component of the funding system directed at safeguarding treasured democratic values, e.g. the principle of equality; enforcing prescribed financial management norms and standards, notably accountability and transparency, as well as stipulated limitations and prohibitions regarding contributions and spending;
6. Provision for independent and autonomous party-associated entities, e.g. political foundations, institutes, programmes etc.

Section 5 compares Uganda’s emerging public party funding system with the six-feature model developed in section 4. The comparison brings out several issues which need to be addressed in effort to develop a fair and equitable public party funding system in Uganda. They include:

- Establishing a case for harmonising the ideological/ constitutional/ legal framework with the public funding system, and having it oriented towards upholding and protecting fundamental human rights and legitimate multiparty democracy;
- Devising a basis for the necessary institutional reforms to establish a genuinely independent and authoritative Electoral Commission;
- Establishing a basis for identifying and adopting an acceptable fair and equitable formula for determining the level of funding under the Uganda system;
- Highlighting a case for providing incentives for additional legitimate funding sources, besides the constrained resources from the public treasury which are not adequate to meet the big financial demands of the electoral process and the broad-based mandated activities of the political parties;
- Reappraising the prevailing control system with a view to bring about reforms designed to ensure fairness and to eliminate loopholes for evasion, cheating and abuse;
- Establishing a case for a positive attitude towards political foundations and having them established in Uganda under public funding.

Section 6 recommends a proactive consensus-forming strategy to address the foregoing challenges and to develop as well as execute an advocacy mechanism for the adoption of the necessary reforms. The strategy involves convening a stakeholders' forum for dialogue and constructive engagement, followed by reaching out to parliament for legislative action.

1. Introduction

1.1 General Background

On 22 December 2009, the Parliament of Uganda passed the Political Parties and Organisations (Amendment) Bill (2008). The bill received Presidential assent on 17 March 2010 and became law as an Act of Parliament, styled the Political Parties and Organisations (Amendment) Act (2010). Earlier, the Amendment Bill had been presented to Parliament for its first reading on 2 April 2009. It was referred to the Sessional Committee on Legal and Parliamentary Affairs for scrutiny before it was debated by Parliament (second reading) on 16 April 2009. The Amendment Act adds a new section (section "14A"), to the Political Parties and Organisations Act (2005) and its objective is to provide for "public" funding of "political parties" and "organisations" represented in Parliament under the multiparty dispensation, which is in force since the enactment of the original Act in 2005.

Section 14A should be construed as a complement of section 14 which is confined to control private contributions and donations, e.g. putting limitations on contributions and donations by non-nationals, foreign governments and NGOs, and prohibiting donations from hostile governments and terrorist organisations.

In addition, section 14A should also be read together with:

- (a) Sections 9 and 12 of the original Act which, respectively, provide for disclosure of assets and other sources of funds (section 9) and for a statement of audited accounts, including contributions and donations from non-citizens (section 12);
- (b) Section 22 (sub-sections (3), (4), (6), (7), (8) and (9)) of the Presidential Elections Act (No. 16 of 2005) which caters for public and private funding, but exclusively for the presidential election campaign and only for the presidential candidates;
- (c) Section 25 of the Parliamentary Elections Act (No. 18 of 2005 as amended) which makes provision for the use for election campaigns of government resources, e.g. vehicles, but only by a candidate "who is a Minister" or someone who holds "any other political office" and where such facilities are "ordinarily" attached to their offices;

In full the Political Parties and Organisations Act (2010) reads:

14A. Use of Government or public resources for political party or organisation activities Government shall contribute funds or other public resources towards the activities of political parties or organisations represented in Parliament in accordance with the following principles-

- (a) registered political parties or organisations shall be funded by Government under this Act in respect of elections and their normal day to day activities;*
- (b) in respect of elections, Government shall finance political organisations and parties on equal basis;*
- (c) in respect of normal day to day activities, funding shall be based on the numerical strength of each political party or organisation in Parliament;*
- (d) the funds provided to political parties and organisations under this Act, shall be subject to audit by the Auditor General.*

The Political Parties and Organisations (Amendment) Act, 2010 may be welcomed as a step in the right direction, in the democratisation process and, in particular, in the proper re-establishment of multiparty politics in the country. However, the legislation in its present form has room for improvement, if at all it is to satisfy the quest for a fair and equitable public funding system based on a firm and sound political/ constitutional/ legal and administrative foundation.

In general, the following preliminary observations may be made about the bill, as passed, and about Uganda's envisaged public funding system itself, as adopted so far.

1.1.1 A narrow political base

The Political Parties and Organisations (Amendment) Bill (2008) was properly tabled in Parliament, debated and passed with unchallenged majority support, in accordance with the rules of procedure. The Act, however, lacks an adequately broad political base, especially if the country's political opposition, its small representation in Parliament notwithstanding, is considered to be a critical factor for a properly functioning multiparty democracy.

Following the introduction of the Amendment Bill in Parliament, a suggestion was made by the parliamentary opposition to postpone debate on it until a constructive bipartisan engagement had been held in an endeavour to reach a common understanding on its principal objectives and, where necessary, on appropriate modifications to it; but this suggestion was not followed up.⁶ Neither is there evidence that any other forum, such as the National Consultative Forum which is provided for under section 20 of the Act, was used for government to reach out to the opposition parties in order to generate political consensus on this initiative. Even the seven opposition political parties which made presentations to the Sessional Committee, where the bill was referred for scrutiny, were not given any special audience for dialogue or consultation with government.⁷ Consequently, while the parliamentary debate on the bill ended with its successful passage, this success was unfortunately followed by disappointment, frustration and even silent protest on the part of the parliamentary opposition – a feature which is well reflected in the *Hansard* of 16 April 2009.⁸ In the bill's appearance before Parliament for the third and final reading on 22 December less than four minutes, were spent on it - just the time needed for the Attorney General to read out its title and have it passed by voice call.

1.1.2 Weak constitutional foundation

The funding system under the amended act suffers from two constitutional weaknesses. First the Constitution of Uganda (as at 15 February 2006) is equivocal about the multiparty system and second the constitutional provision setting up the critical body for the administration of the funding system, i.e. the Electoral Commission, is vulnerable to criticism for having a built-in bias towards the ruling party.

While the Uganda Constitution upholds the fundamental right to freedom of expression, association and assembly,⁹ and additionally prohibits the establishment of a one-party system,¹⁰ the same constitution provides for the possible suspension of political parties and a reversal to the monolithic

6 Conversation with Shadow Attorney General, Erias Lukwago (28 July 2010).

7 They were: The Democratic Party; Forum for Democratic Change; Uganda Peoples Congress; Peoples Progressive Party; Justice Forum; People's Development Party; and Movement for Democratic Change.

8 According to the parliamentary *Hansard* of the day, strong but fruitless objections were made against the Bill, as framed and presented, during its Second Reading on 16 April 2009.

9 *The Constitution of the Republic of Uganda* (as amended, 2006), article 29.

10 *The Constitution of the Republic of Uganda*, article 75.

Movement System.¹¹ Accordingly, the sustainability of the funding system based on such a constitutional provision cannot be guaranteed. Furthermore, under the relevant provisions of the constitution, the president together with the ruling party members in Parliament dominates the entire process of selecting and appointing the Electoral Commission. The President, simultaneously head of the ruling party, initiates the process by submitting nominations to Parliament for approval. There is no constitutional requirement, convention or established practice for bipartisan consultations and consensus-formation in the process, nor for ensuring political balance or neutrality for the commissioners appointed.¹² Consequently the stage is set for the appointment of commissioners being a one-sided affair – one overly influenced by the ruling party – and for the institutionalisation of repeated conflict-of-interest scenarios in the commissioners’ administration of the funding system.

The act therefore lacks a strong constitutional foundation which guarantees a broadly supported, politically independent and fair institution or mechanism for the administration of the resultant funding system. Such a mechanism is necessary to instil confidence in a level playing field between and among the various competing political parties. Calls have been made and initiatives have been taken, in- and outside Parliament, for reforming the process of selecting and appointing the Electoral Commission. An attempt was made in Parliament to introduce a motion for constitutional amendments to this effect¹³, but it was unsuccessful. Leading sections of Uganda’s civil society, notably the Uganda Law Society, have made demands for a genuine ‘independent’ Electoral Commission¹⁴ and some of Uganda’s leading development partners, such as the US, have given the same message.¹⁵ But so far all initiatives have not borne fruit.¹⁶

11 The possible suspension of the multiparty system and reversal to the Movement System is provided for under article 74 of the *Constitution of the Republic of Uganda*.

12 The *Constitution of the Republic of Uganda*, article 60.

13 See: Erias Lukwago (DP MP, Kampala Central) in *Hansard* (Thursday, 10 December 2009).

14 See: Statement demanding ‘an independent (electoral) commission’ by the President of Uganda Law Society and Professor Oloka Onyango, at the Society’s pre-annual meeting, at Mbale Resort Hotel, reported in *Sunday Vision* (2May2010); p.15, ‘Lawyers’ body asks Kiggundu-led Commission to resign’ (Kampala, Uganda).

15 See: *Daily Monitor* (20and 21 May2010), ‘Obama’s man flies in over polls’ et al. (Kampala, Uganda); and *Daily Monitor* (24 September 2010) ‘Uganda Lacks EC Independence – Clinton’ (Kampala, Uganda), p.24.

16 See: *Daily Monitor* (3 June 2010), ‘Museveni tells donors to back off 2011 polls’ (Kampala, Uganda).

Given the foregoing, that act was subject of criticism by the opposition in- and outside Parliament as well as by the civil society, etc. This criticism was detailed in submissions by the Leader of the Parliamentary Opposition on the bill and also in submissions by seven opposition political parties to the Parliamentary Sessional Committee.¹⁷

In sum, the resultant funding system remains a subject of criticism for shortcomings in the following aspects:

First, the public funding act has a relatively narrow scope which is limited to elections and normal day-to-day party activities, thereby leaving out activities which are vital for a developing democracy notably research, civic and political education, policy development etc.

Second, the act establishes no specified source(s) of party funding and it sets no formula or mechanism for determining the total amount of public funds to be appropriated annually for the purpose, thereby surrendering, by default, all the decision-making power over these critical issues to the discretion of the Executive and, in effect, to the discretion of the ruling party.

Third, the act refers to unspecified 'other public resources', thereby provoking suspicions concerning the nature, amount and purpose of such resources which do not seem to be determined by Parliament. In his written proposals on the bill the Leader of the Opposition took strong exception to the availing of these 'other public resources' to parties/organisations, a provision which, he feared, amounted to vesting excessive discretionary power in the Executive and was a loophole for abuse of office.¹⁸

Fourth, under section 14A (c), the act establishes the numerical strength of the parties/organisations in Parliament, rather than the votes cast in elections, as the basis for the level of funding for the day-to-day activities of the eligible political parties. This is a contentious choice and its fairness is particularly questionable in a country such as Uganda with

17 It is noteworthy that nine of the 19 members of the Sessional Committee (i.e. almost one half) did not sign the Committee Report and that four of these were prominent members of the opposition, viz: Erias Lukwago, Ben Wacha, Sam Njuba and Samuel Odonga Otto.

18 See:

- a. Ogenga-Latigo, Morris W. *Proposed Amendments to the Bill on 'Political Parties and Organisations (Amendment) Act, 2008* (Memorandum), (Office of the Clerk to Parliament of Uganda); and
- b. The Republic of Uganda, Report of the Sessional Committee on Legal and Parliamentary Affairs on the Political Parties and Organisations (Amendment) Bill, 2008 (8 April 2009), (Office of the Clerk to Parliament: Parliamentary Library).

a plurality ('winner-takes-all') electoral system and one in transition from authoritarian rule to multiparty politics. In such a situation the choice of the criterion for determining the level of funding raises the risk of perpetuating the dominance of the original single party/organisation under monolithic rule.

Fifth, while it provides for transparency and public accountability, through audit by the Auditor General, for funds received by the political parties from government and private sources, the act sets no limitations on contributions/donations from Ugandan nationals, business interests etc., as well as on expenditure, thereby rendering Uganda's political process vulnerable to undue influence from wealthy individuals and locally registered corporations etc. pursuing their own agenda.

1.2 The Continuing Debate

The foregoing concerns and shortcomings were not adequately addressed by Parliament. They underlie the continued reservations and debate about the Political Parties and Organisations Act (2010, as amended) as well as the strenuous efforts to amend it, along with the constitution.¹⁹ The continuing serious concerns and debate over these issues is reflected also in the prevailing protests against the Electoral Commission. One of the prominent opposition Presidential candidates made the matter of Electoral Commission reform his key issue, an issue over which he even threatened an election boycott.²⁰ For the way forward, it is necessary to realise that Uganda is not an isolated case in this regard. Many countries, including established democracies, continue to this day to debate over better ways of reforming their funding laws and their constitutional/legal foundation.

Carrying out constitutional and legal reforms for a functioning democracy calls for patience and perseverance especially where, as in Uganda, democratic development has not been on a steady course but has oscillated between liberalisation and authoritarianism. Ugandan political leaders and legislators should accept the responsibility, like their counterparts in established democracies, to sustain the struggle for the necessary reforms to promote public funding on a level playing field,

¹⁹ The Opposition Shadow Attorney General, Erias Lukwago, tabled a Private Members Bill on 20 May 2010, for a constitutional amendment, directed, *inter alia*, at affecting the process of appointing the Electoral Commission (the body responsible for conducting elections and the administration of the funding system), but it was promptly rejected by government.

²⁰ *Sunday Vision* (31 October, 2010), 'Who will be Uganda's next President?' (Kampala, Uganda) pp. 1, 2, 8, 9). See also: *The Observer* (6-8 September 2010), pp. 1 and 3.

based on fairness and equity, in order to achieve a sound and strong multiparty system. Up to this day, reforms are carried out in the US and the FRG to strengthen the funding systems in those countries.²¹ Sweden too, provides a good lesson for Uganda. Champions for liberal democracy in Sweden have constantly resorted to constitutional and legal reforms, for as long as 200 years (since 1809) when constitutional rule was first introduced in that country, in order to achieve a strong constitutional foundation for a functioning multiparty democracy and a public funding system of the political parties.²²

1.3 Summary and the Way Forward

This paper is based on two underlying assumptions: first, that the introduction of public funding in Uganda, previously only for nominated presidential candidates under the Presidential Elections Act (2005) and recently under the Political Parties and Organisations (Amendment) Act (2010) for political parties/organisations as well, were made in good faith; and, second, that the political leadership in the country has an open mind in the quest for a sound and sustainable public funding system for the multiparty democratic dispensation. This change was ushered in the country under the 2005 constitutional amendments following decades of authoritarian rule on the one hand and a spirited and sustained struggle for genuine multiparty democracy on the other.

The objective of the paper is to contribute in a constructive way to the continuing debate over the Political Parties and Organisations (Amendment) Act, 2010. It makes a case for revisiting the issue of the country's political party funding law, as enacted. It examines the funding systems in established democracies to identify essential ingredients for a fair and equitable funding system and to draw lessons from them. This is all the more compelling because of two facts. First, Uganda is in transition from monolithic rule to multiparty politics, where now all

21 Continuing debate for law reform is normal business in a democracy. The Federal Election Campaign Law (FECA) in the US, enacted in 1971, has been a subject of intense debate and criticism ever since; and it has, in effect, undergone various amendments, the most recent being the McCain-Feingold Campaign Finance Reforms Act (2002). Similarly, the German law on party funding, first enacted in 1967, has undergone various reforms due to the vigilance of the political reformers in the country. It is also noteworthy that political foundations were not always provided for in the US and the UK: they are a recent innovation, thanks to the German example.

22 See:

- (i) *The Constitution of Sweden: The Fundamental Laws and the Riksdag Act (2003)*, (Stockholm, Sweden: the Swedish Parliament); and
- (ii) Lagerqvist, Lars O. (2006) *A History of Sweden* (Odeshog, Sweden: The Swedish Institute).

legitimate parties should be equal before the law, in contrast to the previous situation where the ruling party was dominant, all-pervasive and enjoyed special privileges in terms of public financial contributions/ grants, services and facilities. Second, Uganda's political system is a hybrid one – partly presidential and partly parliamentary. Uganda's transitional status and the combination of two divergent political systems have significant implications on the funding system. For instance it led to the raging debate over the criteria for eligibility of funding and of the level of funding as well as over the appointment and performance of the Electoral Commission, as already demonstrated.

Accordingly, special care needs to be taken to ensure that the introduction of the funding system is not used to perpetuate inherent structural imbalances, commonly favouring the original single party under monolithic rule; but instead it becomes a positive factor in the establishment of a level political playing field²³ and in the institutionalisation of sound multiparty democracy. In addition, when learning lessons from the funding systems in established democracies, the principal features of such systems should be carefully examined to appreciate the roles they play and the basis for their successful performance.

In sum, this section has introduced the subject of the paper, dwelt on the introduction and passage of the enabling legislation for public funding of political parties in Uganda; and it has also provided a critique of the process that was followed. The following section (2) interprets public funding of political parties as a concept and explains its rationale in a democracy. The subsequent section (3) provides information on the initiation of the concept and the practice of public funding and its worldwide adoption, with the German model becoming increasingly attractive. Section 4 develops a six-feature model, which summarises characteristics of funding systems in established democracies, especially regarding the FRG and the United States of America (USA) but also with respect to the UK, Sweden and the Republic of South Africa. Reference is also made to prospects for it in the Republic of Ghana. In section 5 a comparison of Uganda's emerging funding system to the six-feature model is made and conclusions are drawn; while section 6 makes recommendations on the way forward.

23 This argument was emphasised in Parliament by MPs of the principal opposition parties, most prominently by DrMichael Lulume Bayigga (DP, Buyikwe South, Mukono), Mr Nandala-Mafabi (FDC, Budadiri County West, Sironko) and Mr Livingstone Okello-Okello (UPC, Chua County, Kitgum), who strongly opposed determining a party's political support in the country and making it the basis for the level of funding for its day-to-day activities, solely on the basis of its numerical representation in Parliament. DrBayigga gave Tanzania as an example of a country where such a formula resulted in perpetuating the financial dominance of the country's former single party, *Chama Cha Mapinduzi*. See: Uganda Parliamentary *Hansard* (Thursday, 16April 2009).

2. The Concept of Fair and Equitable Public Funding: Interpretation and Rationale; and the two-pronged strategy to achieve this objective.

2.1 Interpretation

As used in this paper, fair and equitable public funding refers to the provision under law, in a right and proper way and without bias, of public funds, facilities and services to political parties and electoral candidates for political participation in elections and other legitimate activities.²⁴ Under its dispensation, public funding also introduces a regime of regulations to ensure its proper functioning and management. It also sets mechanisms to safeguard it from possible abuse and being undermined by uncontrolled financing, donations etc. from private and other sources.

Public funding may take many forms but three important categories have been identified: first, direct funding, when the state appropriates public funds directly to a political party and/or candidate; second, indirect funding, when the state forgoes revenue through giving tax rebates or making available the services of public facilities (e.g. transport, conference halls, radio, television, print media etc.) for the benefit of political parties and/or candidates; and, third, when the state disburses specific public subsidies for organisations and programmes associated with political parties (e.g. political foundations, research institutes or centres, as well as for parliamentary caucuses, women and youth organisations, newspapers, and for programmes for civic and political education).²⁵

2.1.1 Rationale for public funding of political participation in general: the philosophical/ideological argument

The rationale for providing public funds for political participation is essentially a two-fold argument: first, that such funding is a means of upholding human rights and legitimate government; and, second, that it averts otherwise attendant risks in default, e.g. the control, through

²⁴ Casas-Zamora, Kevin 'Introduction' see: International Foundation for Electoral Systems (IFES) (undated), *Public Funding Solutions for Political Parties in Muslim-Majority Societies* (Washington D.C.: 1101, 15th Street, N.W., Suite 300); pp. 11-24, esp. p. 16.

²⁵ Casas-Zamora, esp. pp.16-19.

illegitimate financing etc. of political leadership by vested interests pursuing their own agenda.

In order to achieve these noble aims, it is necessary for the public funding system to be executed under law, so as to ensure the following: first, that there is an established acceptable mechanism for providing the necessary funds and other resources/facilities; second, that the administration of the funding system is carried out in a fair and equitable way on the basis of agreed principles and regulations; and, third, that there is responsible management of the funds by the executing authorities in accordance with established standards and norms including transparency and accountability. The following discussion gives the rationale for public financing of political parties.

(i) Public funding for upholding human rights and legitimate democratic government

- Upholding fundamental human rights

The concept of fundamental human rights and the moral obligation to respect and uphold them by the political authorities commands widespread consensus among nations. This is expressed in the UN Declaration of Human Rights (UNDHR) and the International Covenant on Civil and Political Rights (ICCPR) as well as in regional instruments, notably the African Charter on Democracy, Elections and Governance, the New Partnership for African Development (NEPAD) and in the constitutions of individual states.

Uganda is a signatory to the above international instruments and has committed, in its constitution, to the protection and promotion of fundamental human rights and freedoms. This commitment is not only a matter of legal obligation: it is a precious principle in Uganda, given the country's political background and the atrocities suffered under authoritarian and repressive rule, and given the relentless political struggle waged by the people of Uganda to gain political and other freedoms.

Since political participation, through one's chosen political party, is a practical and effective form of exercising and safeguarding one's human rights (and in a representative role it includes acting on behalf of others), it follows, that as a moral obligation there is justification for the state to

provide financial and other material support to the political parties as a mechanism for the exercise and protection of these rights and freedoms.

- Establishing and upholding legitimate democratic government on the principle of 'consent of the governed'

In addition to upholding human rights, it can be argued, that the state is also under a moral obligation to support political participation. This should happen directly or indirectly, through freely chosen representatives and political parties, in order to uphold the long-cherished principle in democratic societies of freely given 'consent of the governed' as a necessary condition for 'legitimate authority' or government.²⁶

Under the representative government in a democracy, political parties as organisations constitute a powerful and practical mechanism for the people's articulation of their interests and the exercise of their power in this respect.²⁷ It is through their political parties that the citizens are best empowered to peacefully confer legitimate political authority or withdraw it from one leader and bestow it on another. Therefore it can be followed that the state has a moral obligation to provide public funding to political parties, so that they, as the people's forum, may properly discharge their duties and thereby constitute a sound and secure foundation for legitimate government.

(ii) Public funding to avert threats to the integrity of the democratic process and of the state

The argument for public funding, and in particular public funding under law, is further strengthened when attendant risks, in the event of default, are contemplated. It gains importance especially when the financial base of the political parties and/or candidates is low and when the projected expenditure is comparatively high, as is the case in Uganda.

26 Early and famous exponents of the principle of 'consent of the governed' as a necessary condition for legitimate authority/government include: Lord (and Chief Justice of the King's Bench) John Fortescue (1394-1476) and John Locke (1632-1704). See: Burns, J.H., editor (1988), *The Cambridge IsHistory of Medieval Political Thought c.350-1450* (N.Y. et al.) esp. pp. 511-516; *The New Encyclopaedia Britannica, Knowledge in Depth, 1943-1973* (1974) (Chicago, London et al.: William Hemingway, Publisher & Helen HHHHHhhHHeeHemingway Benton, Publisher), Vols. 5 and 14.

27 For the 'power' and 'influence' of political parties as organisations see: Russell, Bertrand (2004 reprinted 2005, 2006, 2007), *Power, A New Social Analysis* (London and New York: Routledge Classics) esp. pp.23-34; 127-164.

Under these circumstances of meagre party resources in the face of huge financial demands, political party leaders and/or candidates might be tempted to surrender and abandon their responsibilities and/or accept financial and other material support from otherwise undesirable or illicit sources. This kind of support might carry conditional ties that compromise and undermine not only the political process, but also the multiparty system itself, with adverse implications for the country. According to the memorandum presented by the Attorney General when introducing the Political Parties and Organisations (Amendment) Bill (2008), the fear of this threat of external interference looms large as a principal motivating factor for government's action.²⁸

In establishing a public funding system it is necessary that it is a credible one and that it is within a legal/administrative framework, which ensures proper standards of management with safeguards against abuse of the system itself as well as the political process.

The foregoing arguments for the state to provide public support to political parties as a moral obligation, are valid everywhere. They are particularly applicable in the developing democracies where it is necessary and urgent to intensify the struggle for human rights and legitimate government. At the same time the democratic process is too expensive for the party memberships to manage on their own. Likewise, a huge uncontrolled and non-transparent financing from unspecified sources can make the process even more expensive. Uganda is a compelling case in point where, by default through neglect of the political parties, all post-independence governments have been the product of political violence, i.e. military and palace coups or guerrilla warfare, and where, in the absence of a good law governing public and private political financing, the country's fragile multiparty system can be undermined through such financing.

Commitment by the country's leadership to the above ideological/philosophical position and acknowledgement of the state's moral obligation to uphold and support the people's right to political participation may be demonstrated in various ways, such as through policy statements or, in a more concrete way, in a binding law and, better still, in the national constitution.

28 The Attorney General's Memorandum reads:
There are no other viable means of supporting political parties and organisations other than state funding. The state has a duty to nurture and develop political parties and organisations more so in a young and growing democracy like Uganda. Non-provision of state funding to political parties and organisations exposes them to solicit for donor aid which may compromise their national interest, integrity and independence.

Nevertheless, sole or overwhelming reliance on state funding ought to be avoided: it might create its own dependency syndrome and jeopardise the autonomy and integrity of the multiparty system.

2.1.2 The two-pronged strategy to achieve fair and equitable public funding

Given the strong case for a public funding system and the need that it is fair and equitable, a two-pronged strategy is adopted. Under this strategy the state empowers the political parties/electoral candidates by providing public resources, while, at the same time it sets appropriate limitations on all financing (public and private) as well as on expenditure. As will be seen in section 4.0, this two-pronged approach is well incorporated into both the US and the German funding systems.

2.2 Summary

This section has interpreted the concept of fair and equitable public funding as providing public funds, services and facilities in a right and proper way to political parties and/or electoral candidates. It is a mechanism for empowerment in enabling the political parties/electoral candidates to execute their duties. It also provides a provision, under law, for regulating such funding along with contributions from private sources. The section has also given the rationale for public funding under law, on the grounds of first, upholding human rights and the principle of 'consent of the governed' for legitimate government and, second, for protective measures to ensure the proper functioning of the democratic system.

3. Genesis and the Worldwide Adoption of Public Funding of Political Parties: Overview

3.1 Origin

Public funding as an idea had its origin in the US in 1907 when US President Theodore Roosevelt proposed it to Congress.²⁹ However, the idea did not translate into an operating law until 1971 owing to inaction and delays by Congress, as will be seen in section 4.1. Uruguay was the very first country throughout the world, which enacted a law for public funding (of political parties) in 1928.³⁰ Unfortunately, Uruguay's funding system suffered from an inhospitable political/constitutional environment: it was adversely affected by recurring disruptions of the democratic rule in the country – a phenomenon widespread in Latin America at the time. Among the Muslim-majority societies in the Middle East and North Africa, Turkey (in its early years as a multiparty state following over twenty years (1923-1946) of autocracy and one-party rule or 'Kemalism'³¹ under the Republican Peoples Party (RPP)) led the way in 1965 by introducing public funding of political parties. However, there is still no political consensus on some key issues related to the law of political financing in Turkey. This is especially the case with respect to private contributions to parties, public funding of party-sponsored research and civic education programmes as well as with regard to the activities of party-associated organisations such as for women's and youth organisations. According to the present-day funding law such programmes and activities are not provided for in Turkey.³²

29 US Federal Elections Commission (FEC) (1996, updated in 2009), *Presidential Election Public Funding* (a brochure), (Washington, D.C., USA). However, Marcin Walecki, in his study, 'Public Funding in Established and Transitional Democracies' (see below) places Roosevelt's message to Congress as having been given two years earlier, i.e. in 1905.

30 Casas_Zamora, Kevin, 'Introduction;' and Walecki, Marcin, 'Public Funding in Established and Transitional Democracies'. See: International Foundation for Electoral Systems (IFES) (undated), *Public Funding for Political Parties in Muslim-Majority Societies* (Washington, D.C.: 1101 15th Street, N.W. Suite 300) pages 16 and 27.

31 'Kemallism': a term coined after renowned Turkish nationalist, general and later autocratic president Mustafa Kemal.

32 Genckaya, Omer Faruk, 'Public Funding of Political Parties: The Case of Turkey'. See: IFES, pp. 40-49.

By contrast to the above initiatives the public funding system of the FRG, which was introduced first administratively in 1959³³ and under law eight years later in 1967, has been remarkably successful and innovative. The German system has suffered neither setbacks nor disruptions; it has all along enjoyed the political support of all major political parties. Moreover it has the distinguishing feature of catering for a broad political mandate through direct and indirect funding to the parties, as well as through subsidies to party-sponsored organisations and programmes, such as political foundations and civic education programmes.

3.2 Worldwide Adoption

Ever since its introduction, public funding of political parties and candidates has been gaining ground in many countries around the world. According to Walecki, public funding of political parties has been introduced in 104 countries;³⁴ and it has been recognised by a number of prominent non-governmental and intergovernmental organisations, e.g. the World Bank (2001), the Council of Europe (the Venice Commission (2002) and the Committee of Ministers (2003)), The Carter Centre/OAS (2003), and Transparency International (2005).³⁵

Public funding of political parties has been widely adopted in Latin America and Europe, although less so in the Caribbean Islands where it is in practice in only one country,³⁶ Barbados.³⁷ All Latin American states, with the exception of Venezuela, provide public funding of political parties, following the re-emergence of the multiparty system in the region after a long suspension under military rule. All European countries, with the exception of Cyprus, Latvia and Malta, have adopted the practice.³⁸

In the Muslim-majority societies in the Middle East and North Africa, public funding of political parties has since been adopted in several other countries besides Turkey; and they include Egypt, Lebanon and Morocco. However, it has been observed that the public funding systems in all these countries has not taken off effectively so far, mainly because

33 See: Walecki.

34 Walecki, Marcin, 'Public Funding in Established and Transitional Democracies.' See: International Foundation for Electoral Systems, IFES (undated), *Public Funding for Political Parties in Muslim-Majority Societies* (Washington D.C. 1101, 15th Street, N.W. Suite 300).

35 Walecki, Marcin, 'Public Funding in Established and Transitional Democracies.'

36 Walecki, Marcin, 'Public Funding in Established and Transitional Democracies.'

37 Walecki, Marcin, 'Public Funding in Established and Transitional Democracies.'

38 International Institute for Democracy and Electoral Assistance (2004), 'Financing of Political Parties: Public Funding and Taxation' in *IDEA Handbook on Funding of Political Parties and Electoral Campaigns* (Stockholm, Sweden) pp. 1-3; www.idea.int. See also: Walecki,

of an inhospitable socio-political environment for multiparty democracy, characterised by authoritarianism and patronage, and furthermore because of inadequacies in the funding laws.³⁹ In Turkey itself, it took 30 years for public funding of political parties to achieve constitutional status when a constitutional amendment was made to that effect in 1995; but even now concerns about its inadequacies persist and calls for reform being made.⁴⁰

3.3 Public funding in Africa

In Africa as a whole, while public funding of political parties is still relatively low continent-wide,⁴¹ it is high on the political agenda in the countries of sub-Saharan Africa, including southern Africa where, for example, eight out of the fifteen countries in the region have introduced it under law.⁴²

However, the African initiative has had its teething problems, ranging from a weak ideological/constitutional/legal foundation to problems regarding its fairness among the different political parties, to its efficacy in the cause of multiparty politics and the quality and coherence of its enabling laws.⁴³ In Ghana the first attempts to introduce public funding were challenged.⁴⁴ Furthermore there are significant differences and contradictions among the various funding systems of the countries where public funding is adopted.

39 Casas-Zamora and Walecki.

40 Genckaya, Omer Faruk, 'Public Funding of Political Parties: The Case of Turkey' in IFES, *Public Funding for Political Parties in Muslim-Majority Societies*, pp. 40-49, esp. pp. 45-46. See also Walecki.

41 According to Walecki, public funding of political parties is not available to 56percent of the African countries. However, taking Uganda as an example, the number of African countries adopting public funding is rising.

42 Countries in southern Africa with public funding under law are: Angola, Lesotho, Malawi, Mozambique, Namibia, Seychelles, South Africa, and Zimbabwe. And countries in the region without a legal regime for public funding are: Botswana, DRC (Democratic Republic of Congo), Madagascar, Mauritius, Swaziland, Tanzania, and Zambia. While public funding of political parties in Tanzania was abolished in 2000, disclosure of all funds received from outside the country and submission to the Registrar of audited accounts of party funds and property are enforced, respectively, under sections 13 (2) and 14 (1) of the Political Parties Act, 1992.

Source: Electoral Institute for Sustainability of Democracy in Africa (EISA), (Johannesburg, South Africa); www.eisa.org-za/WEP/comparties.htm.

43 Most of Africa was under colonial rule which was authoritarian; and soon after independence many African leaders imposed one-party rule or variants of it.

44 See:

(a) Joe-Amoako-Tuffour Joe, 'Ghana: State Funding of Political Parties' in *Daily Mail* (13 March 2008);

(b) Konrad-Adenauer-Stiftung, ed. (2007) *Parties and Democracy* (Berlin, Germany) pp.42-61.

Of the eight countries in southern Africa with public funding laws only four (Angola, Lesotho, Namibia and Zimbabwe) have regulations related to private contributions and donations. Some countries without legal provision for public financing have, nevertheless, instituted regulations over private contributions (Botswana and Democratic Republic of Congo).⁴⁵

Public funding for political participation is now generally acceptable in Uganda; but it is being adopted incrementally. Public support was first given, in the form of transport, and only to Presidential candidates for the 1980 general elections (courtesy of the Tanzania Government). The Uganda Government has since adopted the practice and, in addition to transport, has also provided Presidential candidates with financial support, towards their election expenses in 1996, 2001, 2006 and 2011 (the Presidential Elections Act, 2005). Under section 14 of the Political Parties and Organizations Act (2005), Uganda made legislation to control financial contributions to political parties from foreign sources and to prohibit such financing from specified illegal sources. This has now been followed by amending the Political Parties and Organizations Act (2005), by adding section 14A, to provide for public financing of political parties and organizations.

However, the enabling law, as enacted, is still a subject of concern and active debate, mainly in the opposition and civil society circles, for lack of a firm constitutional foundation and for being considered to be biased in favour of the ruling political organisation, which was Uganda's de-facto single party until 2005. It is hoped that Uganda can benefit from the public funding systems of other countries and from the experience gained over the years.

3.4 Summary

Section 3 has given an overview of public funding from its inception as an idea by US President Theodore Roosevelt in 1907 to its worldwide adoption today. The cases cited, in particular the US, the FRG, Uruguay and Turkey, point to the importance of a firm ideological and constitutional foundation as well as to a continuing broad-based supportive political environment for a successful and sustainable political funding system.

The setbacks in Uruguay, the first country ever introducing public funding in 1928, and the limited progress in Turkey, the first Middle

⁴⁵ Electoral Institute for Sustainability of Democracy in Africa (EISA).

Eastern country to adopt the system in 1965, are to be attributed to an inhospitable ideological/constitutional environment. Moreover the long delay in the US, of 64 years (1907-1971), to have an operating public funding system, is to be attributed to a reluctant Congress. On the other hand, however, public funding of political parties was successfully established in the FRG, first administratively in 1959 and later under law in 1967. The success can be seen primarily on account of the strong ideological orientation of the founding fathers of the republic and the strong constitutional and legal foundation on which it was based and still remains.

Following its successful institutionalisation in the Federal Republic of Germany public funding of political parties has been widely adopted abroad, particularly in Europe and Latin America. A growing number of sub-Saharan African countries, including South Africa, have already enacted laws to introduce it in one version or another.

4. Drawing Lessons: The US and German Public Political Funding Systems and Some Other Cases

The US and the German public funding systems are of practical relevance to this paper: together and in separate ways they have contributed to the sustenance of multiparty democracy in the two countries and they are being emulated in the formulation of public funding systems in many countries, including Uganda. Therefore, these two systems are examined with a view to arrive at a proper appreciation of the necessary conditions and ingredients of the typical funding systems in a multiparty democracy. In addition a brief overview is also given of funding systems in the UK, Sweden and the Republic of South Africa. Ghana is presented as a special case for a reason: although it does not have a public political funding system yet, but the country's ideological/constitutional/legal setting and its administering authority for the electoral process augur well for such a system, if and when it is introduced.

4.1 The US and German systems

In principle, the US and German public funding systems have much in common. They demonstrate the essential conditions for a viable and sustainable public funding system. These conditions include especially a favourable ideological and constitutional foundation. In both the US and the German cases the promoters of public political financing shared a firm commitment to 'liberal' democracy⁴⁶and, given that ideological disposition, it was logical to introduce public funding as a means of upholding and strengthening representative democracy and safeguarding it against perceived threats. The successful introduction and endurance of the public funding system in the two countries is also a reflection of the extent to which the social and political forces in society have supported the innovation.

However, the public funding systems in the US and the FRG show significant differences, especially in focus and scope. In the US the focus lies on the aspiring and nominated party candidates and the scope is a

⁴⁶ 'Liberal' as applied here is in generic terms, stressing commitment to the doctrine of God-given natural or fundamental human rights and freedoms of individuals which exist independent of government among all people. See: Scruton, Roger (1982), *A Dictionary of Political Thought* (London and Basingstoke: The Macmillan Press Ltd.)

relatively narrow one, directed at the presidential elections (both the 'primary' and the 'general' or 'federal' elections) and the party nominating conventions. In the FRG, on the other hand, the focus lies on the national political parties and the scope is broader, catering for not only elections but also other legitimate activities, in which the parties may engage in accordance with their role under the German Basic Law (article 21).

In addition, the two countries cater for party-associated but, nevertheless, autonomous political organisations. The set-up of these organisations presents also significant differences. While in the US they are established by an ordinary congressional legislation, as tax-exempt and non-profit organisations with a foreign policy dimension, in the FRG they are political foundations of constitutional status, under the German Basic Law with a mandate to conduct their activities both at home and abroad. Whatever may be their differences, both the US and FRG public funding systems have to be credited for their common success. At home they have been well institutionalised and they have proved to be sustainable and an effective mechanism for safeguarding and strengthening multiparty democracy, while at the same time they have proved to be relevant abroad.

4.2 The Funding Systems of UK, Sweden, and South Africa

The funding systems of the UK, Sweden and South Africa are recently established and are, in many respects, adaptations of the US and German systems. Like the German system, all the three versions are focused on political parties and the UK and Swedish versions have independent party-associated political organisations with a foreign policy orientation as provided for under the US system. The South African version is almost entirely modelled on the German system, but with the notable difference that it does not provide for party-associated political organisations, yet.

4.3 The American initiative and after: The candidate-focused model

The US is the first country ever to initiate the idea of public political funding; and, when eventually introduced, its funding system is distinguishable from most other systems by its focus on the Presidential candidate and election.

4.3.1 Introduction

In line with the dominant role of the executive presidency under the US political system, the public funding system in the country is focused on the presidential candidates and elections. As pointed out in section 3.1, public funding for political participation as a concept was first brought up in 1907 by US President Theodore Roosevelt in his State of the Nation message to Congress⁴⁷. He proposed for Congress to enact a law for the establishment of a system which would provide for public 'financing of federal elections and for a ban on private contributions.'⁴⁸

The President's message was rejected by Congress and it was not until 1966 that it was reverted to and passed into law. Even then, there was another setback: the law was suspended a year afterwards in 1967. It took another four years for Congress to reconsider the matter and pass a new, but identical, law for the purpose: the 1971 Revenue Act (Public Law 92-175). The same year, this act was complemented by the 1971 Federal Election Campaign Act (FECA) (Public Law 92-225). These acts have since been amended several times, but without diverting from their original ideological/constitutional foundation and objective.

Public funding for state elections in the US is provided for separately under respective state legislation; and, according to a recent study, only twenty-five states had some form of public funding in state elections by 2005.⁴⁹

4.3.2 The original design: A narrow scope and a two-pronged strategy

As originally conceived, the US public funding system was narrowly defined: it was focused on the presidential election and it was limited to the election campaign at the 'general/federal' level, i.e. excluding the 'primaries' and the nomination convention. However, the scope of coverage was later broadened to include both the presidential 'primaries' and the presidential nomination conventions of the major political parties, in order to make the system more effective and less vulnerable to evasion, cheating and/or abuse.

47 US Federal Elections Commission (FEC), (1996, updated in 2009), *Presidential Election Public Funding (a brochure)*, (Washington D.C., USA).

48 US Federal Elections Commission (FEC), p. 2.

49 See: Ray La Raja (2005) 'The Potential Effects of Public Funding on Political Parties' (University of Massachusetts, Amherst, US).

Public funding in the US is executed, as originally designed, under a two-pronged strategy. On the one hand, it is a strategy of empowerment by providing public financing to the Presidential candidate, aimed at upholding and bolstering the democratic electoral process for the election of the President. On the other hand, it is a strategy of establishing and enforcing controls, including limitations, on the candidate's campaign financing and spending, in order to protect the electoral process as well as the autonomy and integrity of the elected President and government against being undermined through uncontrolled, even suspect, campaign financing.⁵⁰

4.3.3 Reforms and Amendments

However, as it will be seen later in this section, uncontrolled and suspect financing which was originally President Roosevelt's concern, did persist and continue to be a matter of apprehension to many American statesmen long afterwards, even when legal controls were put in place under both the 1971 Revenue Act and the 1971 Federal Election Campaign Act (FECA). Concerns about unregulated campaign financing attained great proportions following revelations of unethical conduct under the Watergate episode⁵¹, when various schemes were adopted to evade the limitations and prohibitions on campaign financing by indirectly channelling huge amounts of funds in 'soft money'⁵² for a candidate's campaign. This was possible through intermediate agencies, notably party political committees and tax-free '527-committees', to which the

50 See: Casas-Zamora, Kevin, 'Introduction' in IFES, and Walecki, Marcin, 'Public Funding in Established and Transitional Democracies' in IFES.

51 The 'Watergate episode' refers to unethical conduct under President Richard Nixon, epitomised by the activities of the Committee for the Re-election of the President (CREEP), in 1972, which were the subject of investigations by the Senate through a Senate Select Committee and culminated in Nixon's impeachment. Unethical practices under the Watergate episode included:

- use of government powers and resources on behalf of friends and against opponents (deemed as enemies);
- politicisation of career services;
- use of government personnel and resources for partisan purposes – including political campaigns;
- solicitation of political contributions from private interests with implicit or explicit assurances of support or favour;
- dirty tricks etc.

See: Mosher, Frederick and Others (1974) 'Watergate: Implications for Responsible Government' in Shafritz, Jay, M. and Albert C, Hyde (1987) *Classics of Public Administration, Second Edition, Revised and Expanded* (Chicago, Illinois: The Dorsey Press) pp. 488-495). For more information, see original source: Mosher, Frederick C. and Others (1974), *Watergate: Implications for Responsible Government* (New York: Basic Books, Inc. Publishers), pp. 3-11, 123-126.

52 'Soft money,' as opposed to 'hard money,' is unregulated, unlimited, non-transparent money, and generally in cash. Contributions to presidential candidates may not be made in this form of money, although political parties may and do accept such money for party-building purposes. See: *Business Week* (12/4/2004) Issue no.3878; pp. 32-35. 'Hard money' is regulated and verifiable money, and it may be disbursed only in the form of a cheque or money order.

stipulated controls did not apply.⁵³

These trends were viewed as real threats to basic American values: they threatened 'free and honest elections', the right to 'equal treatment' and the principle of 'countervailing powers' to prevent usurpation by any single power, including usurpation by a single political party.⁵⁴ Concerns over such threats led to major reforms of the law in 1974: first, the establishment of an independent executive Federal Election Commission (FEC) with a mandate to make the electoral process more competitive; and, second, to major amendments of the law, directed at blocking the loopholes for evasion and abuse – more specifically blocking loopholes for channelling 'soft money' into the election campaign through disguised intermediaries. Even then, illicit campaign financing continued to elude the law. In reaction, the McCain/Feingold Reforms Bill was introduced in 2000 and passed as an act in 2002.⁵⁵

4.4 The US public funding system of federal elections under Law (the 1971 Revenue Act and the 1971/74 Federal Election Campaign Act (as amended))

The US public funding system is based on the 1971 Revenue Act, complemented by the 1971 Federal Election Campaign Act (as amended in 1974 and subsequently, especially in 2002 under the McCain/Feingold Campaign Reforms Act). As it operates today, the funding system may be broken down to the following seven components:

- The ideological/constitutional foundation;
- The authority administering the system;
- Focus on presidential candidate and eligibility for funding;
- Public funding for empowerment : sources and categories;
- The control component;
- The challenges: inherent weaknesses and objections to the system;
- Public funding of autonomous political organisations and programmes associated with political parties.

53 The '527 committees' derive their number and name from the number such non-profit groups are provided with under US federal tax law.

54 Mosher, Frederick and Others 'Watergate: Implications for Responsible Government', in Shafriz, Jay, M. and Albert C. Hyde (1987) *Classics of Public Administration*, p. 489.

55 Minor amendments were made to the funding law in 1976, 1979, and 1984. See: US Federal Elections Commission (1996, updated January 2009), p. 2 and footnote 5. Later in 1993, indirect public funding was increased under Public Law 103-66(1993).

4.4.1 The ideological/constitutional foundation

The ideological foundation of the US funding system is traced to the ideological conviction and vision of an ideal government of its original author, Theodore Roosevelt. It is backed not only by many of his contemporaries but also by over a hundred years' history of elective representative democracy in the US and its 13th century antecedent, the Magna Charta issued in 1225. The system's constitutional basis is generated by provisions in the US constitution: provisions which have been refined, enriched and consolidated by over two centuries of congressional legislation, judicial interpretation and a sustained supportive multiparty culture.

Roosevelt had a strong personal ideological commitment to democratic values and principles, a vision for a powerful but clean government as well as concern for safeguarding the welfare of the people.⁵⁶ This standpoint was a compelling reason to lead him to the position, that federal government ought to be freed and insulated from the possible corrupting influence of questionable financiers. He believed that a well-regulated public funding system for the election of the nation's top leadership would, on the one hand, guarantee free and fair elections; and, on the other, it would keep in check the dominance in campaign financing of 'big business' and 'big labour' etc., thereby countering their perceived undue political influence over the elected officials and in turn over government.

The resultant US funding system has its constitutional anchorage in the US constitution. The democratic prescriptions of the US constitution as manifested, in particular by the American Declaration of Independence and the 1st and 15th articles of the first ten amendments, which emphasised the sanctity of God-given 'unalienable rights', including the right to freedom of expression and assembly as well as the right to vote and the requirement of the 'consent of the governed' for 'a just government', were and still are an important constitutional foundation for the system. Although the constitution is silent on political parties, these might have

56 Evidence of his vision and concerns is deduced from some of Roosevelt's actions when in office, first as Governor of New York State and afterwards as President of the United States:

- He sacked several public officials on charges of corruption, successively in New York State and in the Federal Government;
- He established the Bureau of Corporations to audit Inter-State businesses;
- He brought into law the Hepburn Act (1906) which empowered the Inter-State Commission to set limits on railroad rates.

been taken for granted at the time and implicitly provided for under the 1st article of the amendments to the constitution.⁵⁷

From the foregoing it may be inferred that the US funding system, as an empowerment mechanism for promoting and protecting legitimate democratic government, is anchored in a sound and long-lasting ideological/constitutional foundation.

4.4.2 Administration of the funding system: The Federal Election Commission (FEC)

As seen above in 4.3.3, public political funding is administered by an independent commission: the US Federal Election Commission (FEC). It was established under the 1974 reforms as part of the corrective measures taken after the Watergate episode. In accordance with the overall principle of 'shared power'⁵⁸ and built-in 'checks and balances' between Congress and the Executive, as interpreted by the courts, the election commissioners are nominated by the President, 'subject to the advice and consent of the Senate'.⁵⁹ This arrangement was reached in accordance with a 1976 Supreme Court ruling on the matter which interprets the constitutional application of the doctrine of 'shared power', followed by a decision of Congress in 1978 in compliance with that interpretation.⁶⁰

Given the above terms and as with the appointment process of other independent commissions, Congress, especially through its strong committee system, does play a critical role in the appointment of the FEC, both in making recommendations for nominations and in confirming

⁵⁷ Article I of the Amendments (first passed by Congress on 25 September 1789 and ratified on 15 December 1791, states:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, of the press; or the right of the people peacefully to assemble, and to petition the government for a redress of grievances.

The right to freedom of political association and, therefore, the right to belong to a political party of one's choice may be interpreted to be implicit in this amendment article.

⁵⁸ Some new interpretations of the functioning of the US political system are substituting the concept of 'shared' power for the term 'separation' of power; and this new interpretation well explains the interrelationship between the Executive, Congress and the Judiciary in respect of the appointment of the US Federal Election Commission. See: Fisher, Louis (1987), *The Politics of Shared Power: Congress and the Executive*, 2nd Edition (1414 22nd Street, N.W., Washington, D.C. 20037: Congressional Quarterly Inc.) p.1.

⁵⁹ Fisher, Louis, p.131.

⁶⁰ Fisher, Louis (1987) *The Politics of Shared Power: Congress and the Executive*, 2nd Edition (Washington, D.C.: Congressional Quarterly Inc.) pp. 130-131.

or blocking of, even by a single Senator (e.g. through filibustering), the President's nominations. Congress also has power to monitor the performance of the FEC and, in justified cases, to conduct investigations which might culminate in the impeachment of the commissioner(s) in question.⁶¹ The door is also open for stakeholders in society, e.g. the Bar Association etc., to make recommendations for or against any such nominations.⁶²

4.4.3 Focus on Presidential candidate and eligibility

Public funding in the US is focused on the Presidential candidate; but the candidate has to qualify for it by meeting stipulated eligibility criteria.

The Presidential candidate as the focus

The first congressional attempt to introduce public funding for the Presidential election in the US involved the distribution of the funds to the respective political parties. This, however, changed with the passing of the 1971 Revenue Act: the focus shifted from the political party to the Presidential candidate, as the recipient for public funding.

■ Eligibility

To qualify for public funding candidates must meet the eligibility criteria. This is directed towards limiting the number of presidential candidates to be funded within a reasonable range as well as ensuring that the candidates enjoy substantive public support and meet approved ethical and professional standards of performance. To qualify for public funding, presidential candidates have to fulfil the following conditions:

- firstly they have to demonstrate that they enjoy broad-based public support, nationwide; and,
- secondly they have to commit themselves in writing that they will comply with prescribed controls in respect of professional financial management norms and standards as well as in respect of administrative limitations and prohibitions on financial contributions and spending.

■ Broad-based public support (political as well as financial) as a condition for public funding of presidential candidates of major parties:

Before the 1971 Revenue Act was complemented and superseded in some aspects by the 1971/4 Federal Elections Campaign Act (as amended), broad-based public support, as an eligibility criterion for public funding, was decided solely on the condition that the qualifying candidate was

61 Fisher, Louis , pp. 5 and 131.

62 Fisher, Louis , p.130.

the successful presidential nominee of a major political party. Thus, the prescribed controls he/she had to comply with were only the stipulated limitations on campaign spending in respect of the federal/general election and a ban on all 'private'⁶³ contributions.

However, the 1971 Federal Election Campaign Act along with the 1974 amendments affected the 1971 Revenue Act in significant ways which, in turn, affected the defining criteria for the eligibility of the presidential candidates of the major parties. For the public support requirement, which under the 1971 dispensation was fulfilled once the candidate mustered sufficient political support to secure his/her party's nomination, the amendments now extended this requirement also to include nationwide financial support, obtained from widespread contributions by the candidate's supporters.⁶⁴

■ **Broad-based public support in respect of presidential candidates of 'minor' and 'new' parties**

A concession is made to presidential candidates of political parties classified as 'minor' and 'new': these are not required to demonstrate widespread financial support to pass the public support test. For Presidential candidates in this category to be eligible for public funding, it is sufficient that they have broad-based political support demonstrated by achieving two things: by securing the nomination of their parties; and through their parties attaining the stipulated threshold of public support on the basis of the performance in presidential elections by their respective Presidential candidates.⁶⁵

4.4.4 Public funding for empowerment and control⁶⁶

Public funding of US presidential candidates is a practical means of empowering them for better performance in the electoral process. It is also a mechanism of control for the purpose of protecting their autonomy and integrity when elected as well as of the government formed.

63 'Private' contributions: money contributed independently to the candidates, by those contributing it, and not handled by government.

64 Currently, the threshold to be secured for eligibility for public funding is \$5,000 in each of at least twenty states, i.e. \$100,000 altogether, raised from contributions of \$250 per person. While an individual supporter may contribute up to a ceiling of \$2,400, only \$250 would be credited in respect of the \$100,000 threshold.

65 A 'minor' party achieves its stipulated threshold of public support if its presidential candidate secured between 5%-25% share, of the valid votes cast in the previous Presidential election ; and a 'new' party secures its stipulated threshold if its Presidential candidate secures at least 5% share of the total valid votes cast in the current Presidential election.

66 Parts (iv) and (v) are discussed together here for convenience.

4.4.5 Sources and categories of funding

The source of the funding is the Presidential Election Fund which is instituted in the US Treasury. The money for the Presidential Election Fund is collected partly from a portion of incoming tax revenue and partly from revenue already owned by the Federal Government.

There are three categories of public funding in the US: indirect funding, partial direct funding and full direct funding by grant money (or subsidy). As conceived under the ill-fated 1966 legislation and also according to both, the 1971 Revenue Act and the 1971 Federal Election Campaign Act, public funding under the US system was initially limited to 'indirect funding' It was only later, under Congressional amendments, that public funding was extended to include 'partial direct funding' and 'full direct public funding.'

4.4.6 Indirect funding: The 'check off' system

The money for indirect funding is obtained from money collected under the Presidential Election Fund in the US Treasury, as transferred rebate from incoming tax revenue, voluntarily 'checked off' on federal income tax returns by participating taxpayers and it is given to a nominated presidential candidate in accordance with the wishes of those contributing it. Originally, the amount permissible for 'check off' per taxpayer was \$1; but it was increased, in 1993, to \$3 with the passing of an amendment (Public Law 103-66) to the original law.

The initiative here lies with the taxpayers: if they were not to 'check-off' any money, there would be no funds to disburse under this category. And when 'checking-off' is done, the amount available for disbursement and the particular candidates to benefit are dictated by the number and choices of the individual participating taxpayers.

4.4.7 'Partial direct' public funding: 'Matching funds'

As seen above in this section, when the 1974 amendments lifted the ban on private contributions, they also introduced 'partial direct' public funding in the form of 'matching' or complementary funds, whereby the state 'matches' individual contributions to an eligible aspiring presidential candidate for his/her primary campaign; but 'matching funds' are paid only up to a maximum individual contribution of \$250 contributed, per person, to the candidate's campaign. Providing 'matching funds' is 'direct' public funding because, unlike in the case of the 'check off' method where the funds provided are obtained from incoming revenue,

here the 'matching funds' are taken from revenue already owned by the federal government.⁶⁷

4.4.8 Full direct public funding by grant for the general election

Another form of public funding, referred to here as 'full' direct public funding, is in the form of a grant or subsidy in a specified amount of money. Currently the amount is \$20m plus a Cost of Living Allowance Adjustment (COLA) (at the moment calculated to be \$84.1m)⁶⁸ which is designed to cover the entire federal/general election campaign.⁶⁹ This subsidy is available for a nominated presidential candidate who opts for it. However, there are three conditions attached to the grant for presidential candidates of the major parties: first, the candidate may not receive any private contributions; second, except for administrative costs, he/she has to limit campaign expenditure to the amount of grant money received from the federal government; and, third, while the candidate may spend personal money in excess of the amount of grant money (i.e. currently in excess of \$20m), such personal expenditure is limited to \$50,000 (i.e. 0.25 percent of the total grant money).⁷⁰

4.4.9 Full direct public funding for nomination conventions

The nomination conventions of major parties are entitled to full direct funding, currently amounting to \$4m plus a COLA of \$16.82m.⁷¹ As with the funding of the general election, the \$4m subsidy plus COLA is supposed to cover the entire nomination convention expenses. Additional contributions to the party committees responsible for the nomination conventions are permitted, but only to cover legal and administrative expenses related to the requirements of the funding law.

4.4.10 Partial direct public funding by grant/subsidy for 'minor' and 'new' party candidates

An exception is made for presidential candidates of minor and new parties in respect of federal grants/subsidies for the general election campaign: these candidates may receive such grants, but on a partial basis,⁷²

67 FEC, p.3.

68 FEC, pp. 4 and 10, footnote 7.

69 FEC, p.4.

70 FEC, p.4.

71 FEC, pp.6 and 10, footnote 8.

72 The partial grant due to a 'minor' party candidate is determined by calculating the ratio of his/her party's total votes in the preceding election to the average of the votes secured by the two major parties in the same election. The same calculation applies when determining the amount of grant due to the presidential candidate of a 'new' party, except that in this case reference is to the current election, and not the preceding one. See: FEC, p. 4.

without forfeiting the right to raise funds in private contributions (as is the case with the presidential nominees of the major parties). These grants are disbursed before the federal campaign if the candidate is from a minor party and it is disbursed after the campaign if the candidate is from a new party.

4.5 Broadening and tightening of controls

As already pointed out, controls were inherent in the funding law as originally conceived and subsequently established; but they have since been broadened and tightened under various reforms and amendments to make them more effective and to counter evasion and abuse.

The controls under the 1971 legislations (i.e. the 1971 Revenue Act and the 1971 Federal Election Campaign Act) imposed two things on a presidential candidate receiving public funding: a ban on private contributions and a requirement for providing full and detailed accounts of contributions and expenditure but only in respect of the general/federal election. These 1971 controls were substantially affected under the 1974 reforms: on the one hand the ban on private contributions was lifted and 'matching funds' were introduced; on the other hand, controls were broadened and tightened:

- Limitations were installed on campaign spending for the 'primaries'⁷³ and the nomination conventions;⁷⁴
- Regulations on contributions were tightened against 'soft money'. Contributions for the eligibility of a presidential candidate for public funding and for the 'matching funds' were to be made only in hard money (by cheque or money order); and money in the form of loans, or from political party committees and from illegal sources was not permissible;⁷⁵
- The submission of audited financial returns was extended to cover, in addition to the federal/general election campaign, also the primaries and the nomination conventions.

73 As of 2008, spending limits by a major party presidential candidate receiving public funding were set thus:

- All primary elections, at \$10 million, plus a cost of living allowance (COLA), estimated at \$84.1 p. a.;
- Spending in each state, at \$200,000, plus COLA;
- Spending limit from personal funds, at \$50,000.

See: Federal Election Commission, FEC (1996 updated 2009), especially p. 6.

74 A major party nomination convention is entitled to a fixed subsidy of \$4m, plus a Cost of Living Allowance (COLA) of \$16.82 million; and, as a control measure, the party committee may not spend more than this amount, although contributions may be made to cover legal and administrative expenses related to the funding law. See: FEC p. 6

75 FEC, pp. 3 and 4.

In addition, new controls in form of prohibitions were introduced: under the 1974 amendments a ban was imposed on contributions by foreign nationals and federal government contractors.⁷⁶ Presumably these

prohibitions are directed at averting 'conflict of interest' scenarios and blackmail.

4.5.1 McCain-Feingold Campaign Finance Reforms Act (2002)

As pointed out, the 1974 amendments were designed to contain the practice of rendering ineffective the original limitations set on contributions and expenditure. However, by 2000 the 1974 amendments were found to be inadequate to counter the practice: the controls instituted on the private funding of presidential candidates under the 1971/74 law notwithstanding, various schemes had been devised for circumventing this law, once again inviting criticism of its adequacy.

Of great notoriety in this regard was the continuing resort to indirect funding of presidential candidates, in huge amounts of 'soft money', by large corporations, labour unions and wealthy individuals, through deceptive contributions to the candidates' party committees and/or designated non-profit groups such as the '527-committees.' Huge contributions in the form of 'soft money,' totalling as much as \$100 m, were reported to have been raised by each of the two major parties in the 1996 federal election and previously in 1992.⁷⁷ In all probability, comparable or more such amounts might have been raised for the subsequent elections after 1996. The various schemes to circumvent the Elections Campaign Finance law by resorting to financing of the indirect candidates through payments of non-transparent and uncontrolled 'soft money' to political parties and non-profit groups sympathetic to them or to their candidates, became a matter of continuing concern - even 'outrage' - in the US.⁷⁸

The widespread concern over the inadequacy of the 1971/74 law prompted Congress to take bipartisan action and close the legal loopholes

76 FEC, footnote 9, p.10.

77 *Business Week* (12th June, 1999, issue 3658 p.162) 'Editorial' (New York). For a good exposition of the dynamics of 'soft money,' see: *Business Week* (12 April 2004, issue 3878, pp. 32-35) 'The New Fat Cats' (New York).

78 See: UNDP (2002) *Human Development Report: Deepening Democracy in a Fragmented World* (New York and Oxford: Oxford University Press), p.68.

by introducing the McCain-Feingold⁷⁹ Campaign Finance Reforms Bill, 2000, which was passed as an act in 2002. However, the McCain/Feingold Act did not pass unchallenged. Objections were made to this initiative both in Congress and subsequently in the Supreme Court. A rival bill was introduced in the Senate to weaken the McCain/Feingold campaign finance reform bill, but it was rejected.⁸⁰ Subsequently, after the bill's passage in Congress, the McCain-Feingold Campaign Finance Reform Act, 2002, was challenged in the Supreme Court, where it was upheld by a 5:4 majority verdict.⁸¹

4.6 Public Funding of US non-partisan political organisations⁸²

In addition to catering for federal presidential elections, the US also provides public funding to non-partisan political organisations with a foreign policy orientation: they include the International Republican Institute (IRI) and the National Democratic Institute for International Affairs (NDI).⁸³ Although they are non-partisan and conduct their activities abroad, both the NDI and the IRI are linked to political parties in the US. Providing funding to them is therefore a means of empowering American political parties to contribute, albeit indirectly, to political developments abroad.

4.6.1 Ideological/legal foundation, funding and role

Both the IRI and NDI were specifically established by Congressional legislation in 1983 with a foreign policy orientation to promote democratic political development and freedom worldwide, following the launching of such a policy by President Ronald Reagan in an address to the British

79 US Senator John McCain (Republican, Arizona) and US Representative Russell D. Feingold (Democrat, Wisconsin).

80 The bill designed to weaken the McCain/Feingold bill was brought in the Senate by Senator Chuck Hagel. See: *New York Times* (28 March 2001), p.20.

81 Writing for the majority in upholding the McCain-Feingold Campaign Finance Reform Act on 11 December 2003, Justices John Paul Stevens and Sandra Day O'Connor are reported to have observed that large 'soft money' contributions to national party committees, which the parties can spend on a particular candidate's federal election, did have a corrupting influence or give rise to the appearance of corruption. See: *New York Times* (12 November 2003), p.40, and *New York Times* (11 December 2003, p. 40) 'The Supreme Court; Excerpts from Supreme Court Ruling on McCain-Feingold Campaign Finance Law' (New York). See also: Overby, Peter in 'All Things Considered', National Public Radio (NPR), and 18 March 2004.

82 Sources: Wikipedia, the Free Encyclopedia; <http://www.iri.org>; <http://www.wikimir.com/international-republican-institute>; http://www.ndi.org/about_ndi.

83 Other such non-partisan political organisations established under the same dispensation include the American Center for International Labor Solidarity and the Center for International Private Enterprise.

Parliament at Westminster in London, 1982. In his speech, President Reagan made a strong plea for freedom as a universal value, as spelt out in the UN Declaration on Human Rights; and he urged for its promotion all over the world. The two institutes are registered as non-partisan, non-profit and tax-exempt organisations under section 501(c) (3). Given the terms of their legal status as tax-exempt under US law, these organisations may not take part in partisan domestic US politics. They receive most of their funding from government, through the US State Department, the United States Agency for International Development (USAID) and the National Endowment for Democracy (NED) – with the NED as the major donor. The NED was established in 1983 specifically as a mechanism for channelling congressional funds to such organisations. Private donation to them is negligible, being less than 1%.

In accordance with the purpose for which they were established, the activities of these organisations are directed towards promoting human rights and democracy abroad. They do so mainly through political party-associated programmes, with such objectives as: civil society development (including those directed towards women and the youth), political institution-building, civic education, electoral reforms and election monitoring etc. In some respects, their activities are similar to those carried out by the German political foundations.

4.6.2 Institutional linkage with political parties

While both the NDI and the IRI are non-partisan, they are linked to the two major American parties. The majority of the members of their Boards of Directors, consultants and staff are drawn respectively from the Democratic Party and the Republican Party. For instance, the current Chairman of the Board of Directors of the IRI is John McCain, a prominent Republican Senator and the party's presidential nominee in the 2008 US Federal Election.

4.7 Challenges to the system: Inherent weaknesses and ideological objections

It is noteworthy that even after its successful introduction under law (i.e. the 1971 Revenue Act) and long afterwards, the US public funding system has faced various challenges: one set emanating from its own weaknesses or shortcomings and another set from its ideological adversaries. These challenges have been and continue to be addressed through legislative reforms/amendments and through concerted defence in Congress and, where necessary, in the courts of law.

On ideological grounds protagonists of the US funding system have had powerful adversaries to contend with, hence the long wait from 1907 until 1971 before the system was established and the challenges encountered thereafter in Congress and in the Supreme Court.

Prior to the spirited challenge to the McCain/Feingold reforms two separate suits (*Buckley vs Valeo (1976)* and *Republican National Committee vs Federal Elections Committee, FEC (1980)*) were brought in the Supreme Court to challenge the constitutionality of stipulating limitations on campaign contributions and spending as introduced under the 1974 reforms. Both suits were unsuccessful: the Supreme Court ruled that these limitations were constitutional.⁸⁴

4.8 The German model: A comprehensive party-focused system⁸⁵

4.8.1 Introduction

Comprehensiveness is the hallmark of the German public funding system. It is a political party-focused system. It is anchored in a strong ideological/constitutional/legal foundation; and it is structured in favour of basic rights and multiparty democracy. It is provided for under the Political Parties Law (the *Parteiengesetz – PartG*), which is itself well spelt out in the German Basic Law and enjoys a strong ideological foundation along with a supportive political culture. It has a comprehensive legal/administrative framework in place to cater for: the regulated raising of revenue, public as well as private; the enforcement of limitations on funding (and in effect on spending); and for sound and accountable financial management – all for upholding and safeguarding legitimate parliamentary democracy as well as ensuring the integrity and efficacy of the funding system itself.

In addition to catering for political parties, the FRG led the way in introducing publicly funded political foundations which are associates of political parties and which also, like parties, command constitutional status as ‘associations’ under the Basic Law.

84 FEC , p. 2.

85 The references to public funding of political parties in Germany are largely based on Deutscher Bundestag publication, *State Funding of Political Parties in Germany* (last revised 3 September 2008), (D-11011 Berlin; Platz der Republic 1) and also on Buchstab, Goenter and Klaus Gotto (1981, 1983), *The Foundation of the Union: Traditions – Genesis – Representatives* (Munchen-Wien and St. Augustin, Bonn: Konrad Adenauer Stiftung).

Initiation

Public funding in the FRG was first introduced administratively in 1959, ten years after the promulgation of the German Basic Law on 23 May 1949. Eight years later in 1967 it was established under law, as an amendment to the Political Parties Law (*Parteiengesetz – PartG*) - ahead of any such law in any other industrialised democracy.⁸⁶ The German public funding law (1967) was extensively amended in 1994 in accordance with a Federal Constitutional Court ruling on the subject on 9 April 1992. There were additional amendments in 2009.

The German system has proved sustainable at home and it has become an attractive model to many countries, including established democracies in Western Europe as well as developing and newly re-established ones in Africa, Central Europe and Latin America.⁸⁷

4.8.2 The German public funding system

i. Ideological and constitutional/legal foundation

The German public funding system has a particularly strong ideological and constitutional/legal foundation passed on from the convictions and commitments of the founding fathers of the then new republic. The soundness of this foundation is reflected in specific provisions in the German Basic Law ('provisional' Constitution) and the Political Parties Law (*Parteiengesetz – PartG*), and it may be summarised as follows: The German public funding law caters for a broad-based mandate under a two-pronged strategy of empowerment and control and is founded on:

- The Political Party Law (*Parteiengesetz – PartG*), as provided for under sections, 2(1) and 18(1), setting out the role of the political parties, as interpreted on the basis of:
- The German Basic Law, article 21(1), under which political parties are specifically provided for and defined, in accordance with:
- The constitutional guarantees for 'basic rights' under articles 5, 8 and 9 and ultimately under:

⁸⁶ As pointed out in sections 3.1 and 4.1 above, the US Congress passed a law for public funding in 1966 but it was suspended in 1967. The operating US funding system has its legal origin in the 1971 Revenue Act, i.e. twelve years after the commencement of public funding in the Federal Republic of Germany and four years after its operation under law.

⁸⁷ For a good account of countries in Central Europe and Latin America which have adopted the German model of direct funding to political parties, see: Walecki, Marcin, *Direct Public Funding of Political Parties: Recommendations prepared for the Latvian Corruption Prevention and Combating Bureau* (2 June 2006); (www.knab.gov.lv/uploads/eng/public_funding_in_latvia.pdf).

- The fundamental 'State principle of (parliamentary) democracy', laid down in article 20, which rights and principle are inviolable and entrenched under article 79 of the Basic Law.⁸⁸

Thus, although the German public funding system is itself subject to change, it stands on a rock-solid foundation, well protected against ideological adversaries.

The founding fathers of post-World War II FRG spurred on by the occupying Western powers, viz the US, Britain and France, were determined to move their country decidedly away from anything like the Hitler dictatorship, under which many of them nearly perished.⁸⁹ At the same time they were careful to take special precautions to avoid unprincipled liberalism and political permissiveness which were blamed for the institutional weaknesses and political instability that characterised the Weimar Republic. They thus by default had contributed to the rise of Hitler's dictatorship.⁹⁰ It was their vision that the ills of dictatorship epitomised under Hitler and the institutional weaknesses responsible for political crises and instability under the Weimar Republic would be avoided by the establishment of a republic based on four agreed and entrenched basic principles of the constitution: that the new republic would be a democracy, a federation, a social welfare state and under the rule of law⁹¹ (articles 20 and 79 of the Basic Law).

88 See also: Roemer, Karl, editor, (1979), *Facts About Germany* (St. Augustin: Bertelsmann Lexikon-Verlag) pp. 69-71.

89 One of the leading founding fathers of the FRG and the Republic's first Chancellor, Konrad Adenauer, had a strong Catholic formation, subscribed to Pope Leo X111's social doctrine and had previously been a member of the Centre Party with its philosophical rooting in Christian values. He was a prominent lawyer in Cologne and had risen to the post of Lord Mayor of the city. He was imprisoned twice by the Nazi regime and, for some time, he had to hide for fear of his life from Hitler's terrorist agents, in the attic of a Catholic nuns' convent at Maria Laac. Adenauer believed strongly in justice and liberal democracy under the rule of law and he was a staunch opponent of communist social regimentation. He joined forces with leading Protestants to promote reconciliation among Christians and, together, after the World War II, they played a lead role in founding the Christian Democratic Union (CDU) and promoting multiparty democracy on a firm basis. See: *The New Encyclopaedia Britannica* (1974) (Chicago, et al.: William Benton; Helen Hemingway Benton), vol. 1 pp. 86-87 and Buchstab Gunter and Klaus Gotto (1981; 1983), *The Founding of the Union* (St. Augustin, Bonn: Konrad Adenauer Stiftung), especially pp. 9-26.

90 A check against the permissiveness under the Weimar Republic is reflected, for instance, in the exacting eligibility criterion of a 5% threshold of votes cast a political party must secure to qualify to participate in the Bundestag. For a critical assessment of the Weimar Republic in relation to Hitler's fortunes, see:

- (i) German Bundestag (1989), *Questions on German History: Ideas, Forces and Decisions from 1800 to the Present* (Bonn: Publications Section,) especially pp. 247-286 and pp. 360-271.
- (ii) Bullock, Alan (1992), *Hitler and Stalin: Parallel Lives* (N.Y.: Alfred A. Knoff), especially pp. 66-67 and 166-167.

91 The Federal Republic of Germany, *The Basic Law of the Federal Republic of Germany* (23May 1949, as amended up to and including 1976), (Bonn: Press and Information Office of the Federal Government). See also: Bulka, Hans Dieter et al., editors, (1979; 1987), *Facts about Germany: The Federal Republic of Germany* (Munich, FRG: Lexikon-Institut, Bertelsmann), p. 94.

Standing high among the entrenched principles was the establishment of a parliamentary democracy, which in turn presupposed a properly functioning multiparty system based on guaranteed fundamental (or basic) rights and freedoms.⁹² The political freedoms are catered for in the German Basic Law, thus: first, under the right to expression and dissemination of one's opinion in article 5(i); second, under the right to freedom of assembly in article 8; and, third, under the right to freedom of assembly in article 9. Together with the rest of such rights and the basic principles of the constitution, they were entrenched under article 79 which stipulates that any amendments to them are 'inadmissible'.

Unlike in the US, political parties in the FRG are expressly provided for under article 21 of the Basic Law and political foundations are deemed to be provided for implicitly under articles 9 and 12 as 'associations'. These constitutional provisions form the basis of the enabling laws on political parties and political foundations together with their characteristically broad mandates and for their corresponding liberal public funding.

ii. Administration

Unlike the US public funding system which is governed under the country's Presidential system by the principle of 'shared powers' between Congress and the Executive, the German funding system, which operates under the Parliamentary system, is determined solely by the Bundestag (the Federal Parliament) and subject of course to intervention by the Constitutional Court when so moved.

According to the Political Party Law, under section 18, the President (Speaker) of the Bundestag (Federal Parliament) who is himself/herself elected by the Bundestag, is the designated authority responsible for the administration of the funding system. The Speaker's office as an institution may be viewed as the embodiment of political consensus at the highest practical political level. Broad political consultation is of the essence, both in the process of electing the Speaker and subsequently in his/her day-to-day execution of official business. Therefore the designation of the Speaker (President of the Bundestag) as the authority over the funding system can be seen as an attempt to ensure broad-based political support for the administrative authority and to promote fairness in its functioning.

92 While parliamentary democracy, social justice, and the rule of law may readily be accepted as of universal relevance, federalism is vulnerable to different interpretations and it is a matter for local choice.

In addition, the choice of the Speaker as the administrator for the funding system reflects the prominent role of Parliament in the German political

system – a prominence also shared by many parliamentary democracies, notably the UK⁹³ and Sweden.

iii. Focus on political parties and eligibility for public funding (empowerment)⁹⁴

Political parties as the focus

A feature of the German political system is the central place of political parties in it, their important role in society and the public support which they receive in form of public funding.

As pointed out in section 4.2(b) (i), political parties in Germany are specifically provided for under article 21 of the Basic Law, thereby underscoring their significance and the critical role they play in a parliamentary democracy. Section 1 of article 21 states:

*The political parties shall participate in the forming of the political will of the people. They may be freely established. Their internal organisation must conform to democratic principles. They must publicly account for the sources and use of their funds and for their assets.*⁹⁵ ('shall' underlined for special emphasis)

In these terms the constitution prescribes the role and defines the character of the political parties in Germany. They are mandated to play a big and broad political role – one far transcending the otherwise typical electoral role. And the parties must be 'freely established', i.e. autonomous and not subservient to outside control or direction. They must be democratic and publicly accountable for the sources and the amount of their funding as well as details of expenditure. It was on the basis of this constitutional provision in article 21(1) that Germany's funding system was established under the Political Parties Law (*Parteiengesetz – PartG*) in 1967.

93 According to convention and tradition, Parliament in the UK is, constitutionally, supreme.

94 The main source for these features is: Deutscher Bundestag Publication, *State Funding of Political Parties in Germany* (Last revised: 3 September 2008), (D 11011 Berlin, Platz der Republik 1: Press and Information Office); http://www.bundestag.de/htdocs_e/parliament/function/party_funding/index.html

95 *The Basic Law of the Federal Republic of Germany*. See also: Bulka, M. A. Heinz Dieter et al. (editors) (1979; 1987), *Facts about Germany: The Federal Republic of Germany* (Munich, FRG: Lexikon-Institut Bertelsmann), p. 114. For a broader presentation, see: Ernest Hillenbrand (March 2006), *State Funding for Political Parties in Germany: A Brief Overview* by (London, The Chandlery Office, 50 Westminster Bridge Road: Friederich-Ebert-Stiftung).

Following substantive amendments the role of political parties in Germany, as stipulated in the Basic Law (article 21(1)), has since been elaborated and consolidated in the Political Parties Law (section 2, paragraph 1) as follows:

The parties shall participate in the formation of the political will of the people in all fields of public life, in particular by exerting influence in the shaping of public opinion, inspiring and furthering political education, promoting active public participation in political life, training capable people to assume public responsibilities, participating in Federal, Land and Local Government elections by nominating candidates, exerting influence in Parliament and Government, incorporating their defined political aims into the nation's decision-making process; and ensuring continuous vital links between the people and the instruments of State.⁹⁶

Thus, according to both the Basic Law (article 21(1)) and the 1967 Political Parties Law (as amended), political parties in Germany have a substantially broad mandate which involves a wide range of activities related, not only to achieving and exercising political power, but also influencing public policy and promoting responsible civic and democratic values, practices and institutions at home and abroad. Given such an important and broad mandate, the political parties in Germany are central to the country's political life, hence the focus on them under the public funding system.

4.8.3 Eligibility for public funding and determination of level of funding

As in the US, eligibility for public funding and determination of level of funding in Germany are decided on the basis of two principles:

- First, public support; and
- Second, compliance with established controls governing public funding.

i. First criterion: Public support as a condition for funding, as a general principle

Built into the German public funding laws is the principle of public support as a necessary condition and a determining criterion for eligibility for funding of political parties and their associated organisations and/

⁹⁶ *Federal Law Gazette 1* (22 December 2004) 'The Law on Political Parties' (section 2 of paragraph 1 as amended, 31 January 1994) pp.149.

or programmes, as well as for the level of funding. The same principle is upheld under the US system. It can be defended on the ground that entitlement to public funding should be based on, and commensurate with, the public support earned and manifested in a tangible way.

To be eligible for public funding in Germany, a political party has to demonstrate that it enjoys substantial public support by securing the stipulated threshold of the valid votes cast in the most recent elections which is: either 0.5% of the total votes cast for the German Federal Parliament (Bundestag) or the European Parliament or 1.0% of the total votes cast for a State Parliament (Landtag).

The level of public funding which a political party gets, is determined on the basis of the level of the party's public support as gauged from its share of the total votes cast in the previous election and from the amount of financial contributions given to it by party members, elected representatives and other 'legal' sources.⁹⁷

ii. Second criterion: Compliance with established controls

In addition to demonstration of substantial public support, for a political party to qualify for public funding it is required to comply with established controls governing the operation of the funding system. These include limitations and prohibitions regarding contributions and spending as well as adherence to prescribed financial management norms and standards (as indicated in (v) below).

4.8.4 Public funding: Source and Categories

Public funding of political parties is based on the Political Parties Law (PartG) in section 18 (1) under which the state has the obligation to appropriate the necessary funding on an annual basis so that the parties may 'perform the duties incumbent upon them under the Basic Law',⁹⁸ as set out in article 21(1). The funding may be provided directly or indirectly.

i. Direct funding

The state provides mandatory direct funding as a subsidy to eligible political parties. The relative level of 'direct' funding which political parties are entitled to is in proportion to their respective public support as gauged: first, from the votes secured at the immediately preceding

97 It will be seen in section 4.2 (b) (vi) that the level of public financing a party-associated organisation etc. receives is partly based on the same criteria and also on the cost evaluation of the specific project(s) undertaken and approved.

98 Deutscher Bundestag, *State Funding of Political Parties in Germany*, p.1

elections for the European Parliament, Bundestag and Landtag;⁹⁹and, second, from the contributions received by the parties from their individual registered members.

Euro 0.85 is granted to a party for every valid vote secured, up to 4 million votes and thereafter euro 0.70 is granted for any additional vote. As a result, the more the voters who support a party, the more that party secures in public funding. And euro 0.38 is granted, per person contributing, up to euros 3,300 in contributions, the maximum eligible for matching public funding. Similarly, the more the registered members contribute (up to the maximum eligible amount set for matching public funding) the more such funds the party secures. Ideally, the smaller the individual amounts contributed per person, the more the members contributing to reach the Euro 3,300 ceiling and hence the bigger the funding a party is entitled to. It therefore pays for a political party to have a large paid-up and voting membership: it entitles the party correspondingly to good public funding (and good election results).

ii. **Indirect funding**

Indirect public funding to political parties in Germany is provided in various forms, including the following two: first, in the form of tax-exemption status of the parties from income, inheritance, property and gift tax (including contributions and donations within accepted limits).¹⁰⁰ The second form is by government granting tax rebate/relief to party members etc. on the contributions/donations they make to the parties, thereby forgoing revenue otherwise due.

4.8.5 The control component

Article 21(1) of the German Basic Law forms not only the basis for empowerment of political parties through public funding, but also that of a controlling mechanism. The article defines the parties as 'freely' formed and democratic in character; it establishes their role in society as involving contributing to the formation of the political will of the people (a role subsequently elaborated in the Political Parties Law);¹⁰¹ and it prescribes the condition that parties have to render public accountability for their funds and assets, and disclose their sources. These specifications

⁹⁹ *State Funding of Political Parties in Germany*, p. 2.

¹⁰⁰ *State Funding of Political Parties in Germany*, p.4; and International Institute for Democracy and Electoral Assistance, 'Financing of Political Parties: Public Funding and Taxation', in *IDEA Handbook on Funding of Political Parties and Electoral Campaigns* (2004); Matrix on Political Finance Laws and Regulations (Stockholm, Sweden), www.idea.int.

¹⁰¹ Under this dispensation, political parties in Germany have a broad scope of operation and public funding is not tied to a specific activity or activities. See: International Institute for Democracy and Electoral Assistance.

have to be upheld and promoted, not only by public financing, but also by a system of controls.

The control component of the German public funding system is therefore designed to serve as a protective mechanism in a broad perspective, directed towards ensuring: that the integrity of the political parties and their mandated role are not jeopardised through unregulated funding, whether public or private; that the prescription for public accountability is implemented; and that there is efficacious management of the funds. In addition, the German control measures also include a prescription for adherence by the relevant public authorities to the principle of equality, in order to ensure fairness between and amongst the various political parties and particularly to prevent abuse of incumbency.

i. Equal treatment as a deterrent against bias and unfairness and against abuse of incumbency

The principle of equal treatment is specifically guaranteed under the Party Law as a deterrent against bias and unfairness. Section 5 of the Party Law states: 'Where a public authority provides facilities or other services for use by one (political) party, equal treatment must be accorded to all (political) parties'.

The ethical principle of equality has been at the heart of democratic theory from antiquity when it was argued that there should be 'equal share of the practice of ruling'¹⁰²; and that this can be realized when:

- 'participation is financially remunerated so that citizens are not worse off as a result of political involvement;
- 'citizens have equal voting power; and
- 'there are in principle equal chances to hold office'.¹⁰³

Equal treatment in terms of providing public facilities and services on an equal basis to all the competing candidates enhances the prospects for 'equal chances' and rejects bias and unfairness in the competition for victory. It contributes towards providing the contestants with a 'level playing field' to ensure a fair and equitable public funding system. The principle of equality increases the prospects for equal opportunities between and among political parties to make their contribution to society unhindered in their day-to-day activities.

¹⁰² Held, David (1987 reprinted 1988 – 1993) *Models of Democracy* (Cambridge: Polity Press), p. 20.

¹⁰³ Held, *ibid*, p. 20.

Appreciation of the principle of equality between and among political parties in Germany was probably reinforced among Germany's post-World War II political architects as they drew lessons from its deprivation under Nazi totalitarianism. And the entrenchment of this principle in the country's political system was facilitated by the quashing of the Nazi-police-military complex¹⁰⁴ which had formed the power base of this totalitarianism. The demise of this Nazi-police-military complex helped in leveling the political playing field and it paved the way for the resuscitation of free and autonomous political parties on an equal footing.

The fact that this principle of equality is explicitly and unequivocally laid down in the law makes it readily enforceable. This emphasises the high level of commitment this principle commands in the country's political system.

ii. Limitations on funding as a deterrent against external dominance

There are legal limitations aimed at preventing or discouraging external and/or individual control and domination of the parties through dominant funding and contributions from the state, whether individuals or any other source. In setting limitations, the law targets the state by limiting all categories of state funding: first, by fixing an absolute limit to total state funding; and, second, by setting limitations on indirect funding, consequently limiting all private contributions which are contingent upon it and discouraging excessive contributions.

iii. 'Absolute limit'

The Political Party Law (in section 18(2)) prescribes a stipulated 'absolute limit', which may not be exceeded in total annual direct state funding to all eligible political parties together. Currently, the 'absolute limit' is fixed at euros 133 million.

iv. Limitations on funding to individual parties: The constitutional ban on 'predominant' funding by the state

Under section 18(5) of the Political Parties Law 'predominant' funding of any individual party by the state is banned: State funding to a political party may not exceed the total income collected by the party itself.¹⁰⁵ This proscription serves as a legal instrument to restrain the state from

104 See, for example, the offensive against the Nazi regime by the Allied occupying forces: *The New Encyclopaedia Britannica (1974)*, vol. 8, pp. 121-122.

105 'State Funding of Political Parties in Germany', p.3.

the temptation to undermine, through excessive funding, the autonomy and the democratic character of the political parties which are necessary features of German political parties as provided under article 21(1) of the Basic Law.

v. Limitations on 'matching' funds

Limitations are also imposed on direct public funding by setting a ceiling on the maximum amount of money in contributions per person which is eligible for 'matching' funds from the state, as indicated in section 4.2(b) (iii): eligible contributions p.a. per person range from euro 0.38 to euro 3,300 and additional amounts by an individual are ineligible for matching funds.

This limitation has a double effect. Besides checking the possibility of the state taking over the parties, the limitation also serves as an incentive to the party leadership to seek out many contributing ordinary members who do so in modest amounts within their means. Consequently, this large paid-up membership is put in a position to own their parties while, at the same time, the limitation is a disincentive against surrendering parties to the proprietorship of a few rich individuals. In this way the limitation safeguards the autonomy and democratic credentials of the political parties.

vi. Limitations on 'indirect' funding in the form of 'tax relief'

In addition to imposing limitations on direct public funding to the political parties, the control component also places limitations on indirect state funding in the form of tax relief. The state provides indirect funding to political parties by foregoing incoming revenue by offering tax exemptions to political parties on contributions and donations. As a control mechanism, however, a limitation is imposed on the maximum amount eligible for the tax relief: currently it is euros 3,300 a year for an individual donor and euros 6,600 for a couple.

Again, as with limitations on 'direct' funding, the plot is the same with indirect funding: while private contributions are encouraged, limitations are imposed to discourage zealous wealthy donors from the temptation of buying up otherwise needy political parties.

vii. 'Illegal' and prohibited funding¹⁰⁶

There are two other control measures on funding referred to as 'illegal' and 'prohibited' funding.

¹⁰⁶ 'State Funding of Political Parties in Germany', p.7.

'Illegal' funding refers to contributions/donations a party receives in cash in excess of euros 1,000, the latter being the maximum ceiling set for individual contributions in cash. It is not criminal to receive and accept such funding. However, the money received does not qualify as eligible for reciprocal public funding or as part of a party's official statement of accounts. This control measure serves as a disincentive against non-transparent, corruption-prone, financing and spending. Another control measure is the outright prohibition and criminalisation of funding from some specified sources. The Political Parties Law categorically prohibits accepting funding from unknown sources, from donors who do so in exchange for political or financial gain or from partially public-owned companies or bodies.

These prohibitions serve as an institutionalised bulwark for safeguarding the integrity of the parties: they are directed against possible conflict-of-interest scenarios and infiltration and dominance by corrupt and other wrong influences.

4.9 The Political Foundations¹⁰⁷

A unique German contribution to multiparty democracy, both at home and abroad, is the innovation of the institution of political foundations. They are an intellectual and educational enterprise of great value . In particular, political foundations contribute to the consolidation of democratic culture in society generally and they help equip the political parties with the requisite values, knowledge and skills for a functioning parliamentary democracy. They serve their respective associated political parties, and the country generally, as centres for research and as 'think tanks' as well as institutions for leadership training, civic and political education. All over the world, Germany's political foundations are being emulated in different versions in many countries, including the US and the UK, as seen in 4.1 and 4.2.

German political foundations are independent and autonomous institutions. Nevertheless, they have a strong ideological foundation, as reflected largely in their close relationship with their respective associated political parties. They have a firm constitutional foundation from articles 9 and 12 of the Basic Law which provide, respectively: for their formation, as 'associations' and for their role, as providing

107 Valuable information on the funding of German political foundations has been obtained from Konrad-Adenauer-Stiftung (Germany), a publication on 'Funding'. See, KAS website: www.kas.de/wf/en/71.3712.

professional and sustainable education in the fields of social policy and democracy.¹⁰⁸

The justification for public funding of these foundations is based on the following:

- A Constitutional Court ruling on the matter in 1986;
- The findings, in 1993, of a Presidential Commission on the subject; and
- A joint declaration, signed in 1998 by the executives of the various political foundations, spelling out their perception of their role in society.¹⁰⁹

Political foundations in Germany conduct projects in various fields, such as conferences and seminars on civic and political education, research, consultancy, documentation and publication as well as sponsorship to German and foreign students. They also carry out various projects in the field of international cooperation.¹¹⁰

The political foundations are funded by the state in annual remittances proposed by the foundations themselves through the Budget Committee and approved by the Federal Parliament. The remittances provided are earmarked for global expenditure and specific projects. The level of budgetary support German foundations receive from public funding is significant and it is also a reflection of the relative public support of the associated political parties. According to Konrad-Adenauer-Stiftung public funding accounted for 97.3% of the foundation's budget for the year 2004 and its share of total funding for all political foundations was 32.0%, compared to 33.75% for the Friedrich-Ebert-Stiftung and to 11.42 percent for the Hanns-Seidel- Stiftung, which correspond favourably to the respective corresponding popular support of the three associated parties at the time. The foundations are accountable for the funds received. Their statements of accounts are open to the public and subject to audit and review by the Federal Internal Revenue Office.

The German innovation of political foundations predates the introduction of such foundations in any other country and, as already pointed out in

108 Konrad-Adenauer-Stiftung website on '*Funding*' **ibid.**

109 The foundations whose Executives signed the Joint Declaration are: the Konrad-Adenauer-Stiftung, the Friedrich-Ebert-Stiftung, the Friedrich-Naumann-Stiftung, the Hanns-Seidel-Stiftung and the Heinrich-Böll-Stiftung

110 E.g. Konrad-Adenauer-Stiftung, www.kas.de, Friedrich-Ebert-Stiftung, www.fes.de.

this paper, it has proved particularly attractive in established democracies such as the USA, the UK, Sweden, and the Netherlands,¹¹¹ as well as in some developing democracies, where it has been or is being adopted with various modifications. Uganda is one such developing democracy where political foundations associated to political parties are becoming accepted in principle and where some are already being formed.¹¹²

The German model of public funding of political parties and the political foundations with which they are associated is a manifestation of widespread and deep-rooted national consensus, faith and confidence in the multiparty system in operation in that country. At the same time it is a revelation of some of the secrets behind the stability of the multiparty system in Germany and the favourable reception and impact of this funding model abroad.

4.10 Addressing Challenges: The 1994 Reforms and the 2009 Amendments

In appraisal it may be said that the German public funding system has performed well over the decades since its introduction in 1959. Nevertheless, like the US system but to a less extent, it has had its challenges but which have so far been addressed through reforms (1994) and amendments (2009).

111 Political foundations introduced in established democracies, with appropriate modifications on the German model, which have a presence in Uganda include: the Netherlands Institute for Multiparty Democracy (NIMD) of the Netherlands; the Christian Democratic International Centre (KIC) of Sweden; the Westminster Foundation for Democracy (WFD) of the UK; the International Republican Institute (IRI) and the National Democratic Institute (NDI) of the US.

112 The DP was probably the first political party in Africa to establish such a foundation, namely the Foundation for African Development (FAD) in 1979, drawing inspiration directly from the Konrad Adenauer Foundation. The DP has since been followed by another major political party in the country, Forum for Democratic Change (FDC), whose leadership has registered an NGO named Change Initiative Ltd. (CIL) whose role is akin to that of FAD. At the same time, the Netherlands umbrella version of the German model, i.e. the Netherlands Institute for Multiparty Democracy (NIMD), is also being adopted in some countries in Africa, notably Ghana and Uganda. In the Netherlands' version all parties in Parliament in a given country, including parties in government and in the opposition, join hands and establish a body to promote multiparty democracy. In Uganda such an umbrella organisation called the Inter-Party Organisation for Dialogue (IPOD), has been formed; and in 2006-2011 it embraced all the six parties represented in Parliament, viz.:

- National Resistance Movement Organisation (NRM-O);
- Forum for Democratic Change (FDC),
- Democratic Party (DP);
- Uganda Peoples Congress (UPC);
- Conservative Party (CP);
- Justice Forum (JEEMA).

4.11 Brief notes on public funding from other countries: the UK, Sweden, South Africa and the special case of Ghana

4.11.1 The UK variant: A compensatory/counterbalancing system¹¹³

The UK is a parliamentary democracy where Parliament is 'supreme' and operates essentially on a two-party basis, also styled the 'Westminster system'. Public political party funding, as such, is limited to the opposition parliamentary party. Public funding of party-associated political organisation(s) was recently introduced as a version of political foundations in the FRG with close affinity to the US version.

i. The ideological/constitutional and legal foundation

The UK has no one 'written' document, credited as the 'constitution'. It, however, has an 'unwritten' constitution evolved over the centuries and dispersed in statute law, common law and conventions¹¹⁴ (inclusive 13th century Magna Charta). It is this 'unwritten constitution' which forms the ideological and constitutional foundation of Britain's multiparty (for most of the time, essentially 'two-party') political system and consequently of the public funding system as well.

Although the political party system in Britain is of considerably long duration, (over 150 years), political parties in the country are not registered and they need not be registered, as long as the defining terms of Britain's unwritten constitution prevail. They are a political reality in the country's life and their principal role as the institutional basis for legitimate government is never in doubt.

ii. Focus on opposition parliamentary parties

Public political funding in the UK is of very recent origin. It is provided to political parties and limited to the parliamentary opposition parties, in both Houses of Parliament.¹¹⁵ Public funding is provided in order to help the parliamentary opposition to carry out their work at Westminster¹¹⁶ as the 'alternative government'.

¹¹³ The information on the UK public funding system is mainly obtained from: Her Majesty's Stationery Office (HMSO) Official Handbook, *Britain (1996, 1998, and 1999)*, (London, UK).

¹¹⁴ HMSO Handbook, *Britain (1999)*, p.31.

¹¹⁵ Public funding for political parties in the House of Lords was only recently introduced in 1996. See: HMSO Handbook, *Britain (1999)*.

¹¹⁶ HMSO Handbook, *Britain (1999)*, p. 42-43.

The UK version of public funding may be described as 'compensatory' or 'counterbalancing' in type. It is premised on an adversarial two-party system, with the opposition strong enough not only to engage government but even challenge and, where necessary, have it voted out of office.¹¹⁷ Consequently, the funding system is focused on the parliamentary opposition to ensure that, like their counterparts on the government side, opposition parties are publicly facilitated and equipped. This is to enable to serve as an effective countervailing force on a comparatively equal basis.

Eligibility of a party (in the opposition) for funding is securing at least two parliamentary seats in the preceding general election or one seat with at least 150,000 valid votes cast.¹¹⁸

iii. Public funding: Source, category, administration and control

The public funding of opposition parliamentary political parties in Britain is on an annual basis and is made in the form of grants or remittances. The level of remittances received by individual parties is calculated on the basis of the number of their parliamentary seats and of the votes secured¹¹⁹ in the preceding elections.

Given Parliament's control over all expenditure in Britain, it is assumed¹²⁰ that the annual remittances to the opposition parliamentary parties are, along with other allocations, submitted by the Chancellor of the Exchequer (Minister of Finance) to Parliament for approval and thereafter it is available to the appropriate party leadership.

Appropriate parliamentary committees, notably the Public Accounts Committee¹²¹ and designated select committees, would verify if such

117 Recent developments in the UK show a probable transformation of the traditional two-party system into a multi-party system. This is especially the case following the 2010 General Elections which culminated in the formation of a coalition Government between the Conservatives and the Liberals – with Labour forming the Opposition.

118 HMSO Handbook, Britain (1999), p. 44. Such a low minimum requirement for eligibility for public funding is a guarantee that virtually at all times Britain will have an operating two-party system in Parliament.

119 For the period 1998 – 1999 each seat earned Pound Sterling 3, 648.35 and Pound Sterling 7, 04 for every 200 votes secured in the general election. See: HMSO, *Britain (1999)*, p.44.

120 Time did not allow verification of this assumption: it should be verified.

121 The Public Accounts Committee is headed by a member from the parliamentary opposition and the opposition form a majority of its members. It receives and examines all government audited accounts from Ministries, executive agencies etc., as well as reports of the Comptroller and Auditor General and it submits its report to Parliament. See: HMSO, *Britain (1999)*, p. 392.

funds were properly disbursed and properly administered/managed. In cases of allegations of possible misappropriations and mismanagement, such matters would be raised with the office of the Parliamentary Commissioner for Administration, otherwise called the Parliamentary Ombudsman, who is vested with executive power and can take such action as the situation requires.¹²²

iv. Party-associated political organisation: The Westminster Foundation¹²³

The Westminster Foundation for Democracy (WFD) is an umbrella political organisation and it is in many important respects analogous to the US version, particularly with respect to mandate and sphere of operation, funding and institutional relationship with the major political parties.

The WFD was established in 1992 in the UK, the same year President Reagan made his appeal at Westminster for a foreign policy offensive in favour of freedom and democracy and barely a year before the National Endowment for Democracy (NED), the major funding body for NDI and IRI, was established by the US Congress in 1993. Like the NDI and the IRI the WFD's mandate is foreign-oriented for the promotion of human rights and democracy. The foundation is publicly funded annually in the form of a grant from the Foreign and Commonwealth Office (FCO); and it also raises funds on its own from various sources.

The WFD is independent and autonomous and the government does not interfere with its operations. However, the latter has a presence on the foundation's Board of Governors, as a non-voting member, for purposes of factual information-sharing. Britain's major parties maintain an active interest in the WFD and its programmes; and they are institutionally linked with it by their prominent membership on its Board of Governors.

4.11.2 Public funding in Sweden¹²⁴

Public political funding in Sweden is of recent origin, following a long protracted struggle of wrestling for effective political power from monarchical absolutism to effective control by Parliament (the Riksdag),

¹²² HMSO, *Britain* (1999), p.50.

¹²³ The information on the Westminster Foundation is obtained from HMSO Handbook, *Britain* (1996, 1998, 1999), and from conversations with officials of the Foundation.

¹²⁴ Main sources for information on Sweden are: *The Constitution of Sweden: The Fundamental Laws and the Riksdag Act* (2003), (Stockholm, Sweden: The Swedish Parliament); *The Constitution of Sweden: The Riksdag Act of Succession, and The Freedom Act* (1989) (Stockholm, Sweden: The Riksdag); *Encyclopaedia Britannica* (1973).

under a constitutional monarchy committed to governance with 'a keen sense of justice' and a non-communist 'welfare state'.¹²⁵ With victory on their side, Sweden's constitutional architects committed the country to being a representative parliamentary democracy and for its political activities to be the domain of the political parties. Elections are held under a proportional electoral system where the seats gained in the Riksdag are in direct proportion to the votes secured in elections. Sweden's constitution proclaims as a basic principle:

*All power in Sweden proceeds from the people. Swedish democracy is founded on freedom of opinion and universal and equal suffrage. It shall be realised through a representative and parliamentary polity.*¹²⁶

In addition and more explicitly the Swedish Rikstag, in adopting the constitution, stated as a precondition that 'political activity should thenceforth be carried out through political parties.'¹²⁷

Public funding of parties and party-associated organisations

Political parties in Sweden and their role in society together with their entitlement to public funding have a strong ideological and constitutional foundation. When entrusting to political parties the important responsibility of providing the central mechanism for conducting the country's political activities, specific provision was also made under the constitution to ensure that the parties would be assured of the necessary public financial resources to execute their mandate.

Public funding of political parties in Sweden is guaranteed by the constitution in Chapter 4, article 6.1 of the Riksdag Act, under which the important Parliamentary Committee on the Constitution is given the responsibility for initiating legislation for such funding. The article states, *inter alia*:

'In addition to its mandate under Article 4, the committee on the constitution shall prepare matters relating to legislation in

125 *The New Encyclopaedia Britannica*, 17: 845-854; *The Constitution of Sweden* (1989).

126 *The Instrument of Government (of Sweden): The Basic Principles of the Constitution*, Chapter 1, article 1.

127 Special care is, however, taken under the constitution, as in the FRG, to keep the number of political parties within an optimum range as a safeguard against shortcomings and abuses of uncontrolled numbers. Eligibility for party participation in the Riksdag is determined by securing a prescribed threshold, which is a minimum of at least 4% of valid votes cast, nationwide; or 12% of votes cast in a particular constituency. See: *The Constitution of Sweden: The Instrument of Government; The Riksdag Act of Succession; and The Freedom of Press Act* (1989), (Published by the Riksdag), p.14.

*the fields of...financial support for...political parties....*¹²⁸ ('shall' is underlined for emphasis)

The level of public funding which political parties receive is in proportion to their respective number of seats in the Riksdag which are in proportion to the respective number of votes secured.

Sweden also provides public funding to party-associated political organisations. One such organisation, the Christian Democratic International Centre (KIC), which is an associate of the Christian Democratic Party in that country, is currently actively engaged in Uganda through its partnership with a local party-associated NGO, Change Initiative Limited (CIL).¹²⁹ In addition, Sweden is the host country to a multilateral non-partisan political foundation, the International Institute for Democracy and Electoral Assistance (IDEA), whose principal promoters include the FRG, the UK, the US, and France.

4.11.3 South Africa: An inclusive representative independent appointing authority for the political transition and sustainable sources for party funding

South Africa managed a peaceful political transition, a racially divisive and violent history notwithstanding. A critical innovation which contributed towards this successful transition was the establishment of a politically inclusive and representative¹³⁰ authority, vested with executive powers to manage the transition including appointing the administering body for the transitional elections (i.e. the Independent Electoral Commission).

South Africa is also credited as a leading example of an African initiative for a sound ideological/constitutional/legal foundation for human rights and multiparty democracy. In this regard, South Africa took an early initiative to introduce public funding of parties and to establish sustainable sources of funding for that purpose. However, party-associated political organisations (or political foundations) are not yet catered for.

In the early 1990s, in many ways like their counterparts in the FRG and Sweden, former jailed African nationalist leader Nelson Mandela and the then white leader of South Africa's government President F. W. de

¹²⁸ *The Constitution of Sweden: The Fundamental Laws and the Riksdag Act (2003)*, (Stockholm, Sweden: The Swedish Parliament), Chapter 4, article 6.1,

¹²⁹ Change Initiative Ltd. (CIL) is associated with Forum for Democratic Change (FDC).

¹³⁰ Ghana had earlier adopted this principle of representation as a basis for the establishment of the appointing authority of her electoral commission. See: Ghana, below in 4.3.4.

Clerk resolutely rejected the *status quo* under apartheid and worked for a truly democratic dispensation under a representative multiparty system. Together, they played a key role in generating national consensus for a peaceful transition to democracy which included the establishment of an interim authoritative body, named The Executive Council (TEC), with representation from all major political parties in the country. The TEC steered the country through a short-lived transition, culminating in South Africa's first ever non-racial multiparty general elections in 1994. The elections were administered by a TEC-appointed electoral commission which was unquestionably independent and well-insulated from partisan influence by any interest group, political party, government or the transitional authority (TEC) itself.¹³¹

A hybrid political system

The South African political system is of the hybrid type: it embraces important elements of the US system, e.g. an executive presidency and at the same time it also conforms to the dictates of the Westminster system, whereby for instance the Executive is part and parcel of Parliament underscoring the superiority of Parliament over the Executive.

■ The central role of political parties and public funding for them

Political parties are accorded a central role in South Africa's political system and accordingly they are provided with public funding to enable them to carry it out. The constitution of South Africa, under section 236, proclaims 'multiparty democracy' as 'a basic principle' upon which the republic is founded, with the political parties having a broad mandate encompassing purposes deemed compatible with a 'functioning modern democracy'. The constitution provides under the same section for legislation to be enacted whereby political parties may receive public funding to assist them in fulfilling their mandate. Section 236 also provides that eligibility for such funding shall be participation in the National Assembly and/or Provincial Legislatures and that the funding shall be on an 'equitable and proportional basis.'

Legislation was enacted to that effect under the Public Funding of Represented Political Parties Act No. 18517 (1997).¹³² The act caters for the funding of parties: partly on the basis of a fixed threshold for all parties, and partly on a proportional basis in accordance with their

¹³¹ See: The Republic of South Africa, 'The Independent Electoral Commission Act, No. 150, 1993' in *Government Gazette No. 15183 Vol.340* (27 October 1993) (Cape Town, South Africa).

¹³² See: *Government Gazette No 18517* (19 December 1997) (Cape Town, South Africa).

respective individual representation in the National Assembly and the Provincial Legislatures in terms of seats secured. The act also spells out a six-fold mandate for political parties eligible for public funding:¹³³

- The development of the political will of the people;
- Bringing the political party's influence to bear on the shaping of public opinion;
- Inspiring and furthering political education;
- Promoting active participation by individual citizens in political life;
- Exercising an influence on political trends; and
- Ensuring continuous, vital links between the people and organs of state.

However, there is no legislation catering for party-associated political organisations or programmes so far in South Africa.

■ **Source(s) and administration of funding: The Represented Political Parties' Fund**

South Africa addressed the problem of inadequate public resources for public funding of political parties by creating a special fund: the Represented Political Parties' Fund. In addition to standard funds provided by the treasury, the Parties' Fund also receives contributions from the following sources:

- Donations and contributions from various sources, including foreign sources;
- Interest earned on funds deposited in banks etc.;
- Funds received from any other sources.

■ **The Administration of the Represented Political Parties Fund**

The administration and management of the political parties' fund is the responsibility of the Electoral Commission.¹³⁴ The commission's role is consistent with the two-pronged strategy pointed out earlier, of empowerment and control: it includes disbursement of funds to the political parties in accordance with established guidelines as well as the enforcement of prescribed controls and application of sanctions, e.g. suspension of funding in cases of default and instituting a civil claim for the recovery of funds wrongfully spent by a political party. However,

133 See: The Republic of South Africa, 'Public Funding of Represented Political Parties Act (No.103 of 1997)', section 5(1)(b) in *Government Gazette, No 18517* (19 December 1997).

134 *Public Funding of Represented Political Parties Fund Act (1997)*, section 4 in *Government Gazette No. 18517* (19 December 1997).

the controls are centred and limited to ensuring accountability and the proper financial management norms and standards for the public funds disbursed: they do not extend to limitations on contributions and expenditure or to prohibitions against suspect sources of funding or donations.¹³⁵

The Electoral Commission submits its accounts to the Auditor General for auditing. Thereafter it presents its report and the audited accounts to Parliament.

4.11.4 The special case of Ghana: A representative independent appointing authority for an independent electoral commission

Ghana, like South Africa, managed a successful transition to multiparty democracy. It has yet to introduce public funding of political parties; but it has a clearly laid down ideological, constitutional and legal foundation on which such funding could be based. In addition, Ghana has a genuine independent administering authority for public funding, should the decision be taken to establish one.

The Republic of Ghana provides another commendable African initiative in rejecting authoritarian and repressive rule and embracing representative multiparty democracy with a firm constitutional foundation for political parties. In doing so the leadership of Ghana turned their back decisively on the political repression and bloody military coups which plagued the country for over thirty years¹³⁶ before democracy was re-introduced under the 1992 Constitution.

i. The constitutional foundation of the parties

Like South Africa, Ghana has a hybrid political system embracing both the US-style presidential system and the Westminster parliamentary system of government. Again, like in South Africa, Parliament in Ghana is superior to the Executive and political parties are expressly provided for under the constitution. Article 55(1) of the Ghana Constitution states: 'The right to form political parties is hereby guaranteed.' And according to

¹³⁵ Public Funding of Represented Political Parties Fund Act (1997), sections 5, 6, 7.

¹³⁶ Ghana achieved national independence under the leadership of Prime Minister (later President) Kwame Nkrumah in 1957, who later championed one-party rule and spearheaded an offensive against multiparty politics and traditional chieftainship in sub-Saharan Africa. He imprisoned political opponents without trial under the Detention without Trial Act and one of its victims and Nkrumah's former party leader, Dr Joseph B. Danquah, died in custody. One of Nkrumah's staunchest former allies and the first Minister of Finance in independent Ghana, Mr Bedemah, fled into exile in Togo, followed by a ceaseless brain drain. A military coup overthrew Nkrumah and he died in exile. Political instability and authoritarian/military rule ensued for decades until, eventually, multiparty democracy was restored under the 1992 Constitution.

article 55(2): 'Every citizen of Ghana of voting age has the right to join a political party.' There is no ambiguity, contradiction or equivocation in the constitution over these provisions, thereby making the commitment to multiparty democracy categorical.

ii. The political role of the parties

The constitution provides, under article 55(3), for a broad mandate embracing a wide range of activities which the political parties may carry out and these activities are conducted under the supervision of the Independent Electoral Commission. The parties' mandate under the article is similar in terms to those provided for political parties in the FRG, Sweden and South Africa. With respect to elections, however, the parties' mandate in Ghana is limited to the national level – it does not extend to the lower levels. Article 55(3) states:

...a political party (in Ghana) is free to participate in shaping the political will of the people, to disseminate information on political ideas, social and economic programmes of a national character, and sponsor candidates for elections to any public office other than to District Assemblies or lower local government units.¹³⁷ (underlining added for emphasis).

iii. The administration of the electoral process: The independent electoral commission

Ghana has introduced an innovation directed at enhancing the prospects for the establishment of a credible merit-based, non-partisan and non-sectarian Electoral Commission.¹³⁸ The innovation is the institution of a broadly inclusive 'representative'¹³⁹ appointing authority. Under this constitutional innovation, the Electoral Commission of Ghana is appointed by the President of the Republic but on two prescribed conditions: first those to be appointed must be representative of specified categories of leadership; and, second, the appointment must be on the basis of specified significant consultation and advice.

The Electoral Commission is appointed by the President on the advice of the Council of State.¹⁴⁰ And the Council of State itself consists of the

¹³⁷ *Constitution of the Republic of Ghana*, article 55(3).

¹³⁸ *Constitution of the Republic of Ghana (1992)*, articles 43 and 70.

¹³⁹ 'Representative' authority etc., i.e. an authority etc., comprising of bona fide representatives of agreed-upon stakeholders in society. The concept of representative participation is well articulated by Krislov, Samuel and David H. Rosenbloom, 'Representative Bureaucracy and the American Political System', in Shaftritz, Jay M. & Albert C. Hyde, *Classics of Public Administration*, pp. 529-538.

¹⁴⁰ *Constitution of the Republic of Ghana (1992)*, article 70.

following three categories of leaders:

- A former Chief Justice, a former Chief of Defence Staff of the Armed Forces, and a former Inspector General of Police: all appointed by the President acting in consultation with Parliament;¹⁴¹
- The President of the National House of Chiefs, with the National Council of Chiefs consisting of five elected chiefs from each of the regions of Ghana;¹⁴² and
- One representative from each region of Ghana elected by an electoral college with two representatives from each district and nominated by the district assemblies.

On the basis of reports from accredited observers¹⁴³ of elections in Ghana since the introduction of this innovation, as well as on the basis of the general acceptance of the election results in the country, including the peaceful transfer of power twice, there are good reasons to claim that the innovation has produced a credible administering authority for elections and thereby built confidence in the electoral process in Ghana.

The Ghana Election Commission has not yet been charged with the responsibility of presiding over public funding of political parties but, on the basis of its record so far, it is reasonable to expect equally satisfactory performance if so appointed.

4.12 Summary

In this section the following have been noted:

First, that public political funding is essentially a two-pronged strategy directed, on the one hand, towards empowering political parties and/or electoral candidates so that they are well equipped to uphold human rights and legitimate democratic government and, on the other, as a deterrent against possible schemes that might fail the purpose of the political process or of the funding system itself.

Second, six features have been identified in this section which, despite having significant variations, are common not only in both the US and the German public funding systems, but also in the funding systems in other established and developing democracies, e.g. the UK, Sweden and South Africa.

141 *Constitution of the Republic of Ghana (1992)*, article 89.

142 *Constitution of the Republic of Ghana (1992)*, article 271.

143 J.B. Kawanga (MP, Masaka Municipality), head of a delegation of election observers from Uganda, sponsored by the Westminster Foundation (WFD), to Ghana's 2004 general elections, reported favourably on the independence, competence and integrity of the Ghana Election Commissioners, and on their conduct of the elections.

The six common features identified are as below:

- 1) An ideological/constitutional/legal foundation, oriented in favour of human rights and multiparty democracy as the most critical determining factor in establishing the objectives and sustainability of a fair and equitable public funding system;
- 2) The focus and scope of the funding system, i.e.: (a) the focus may be on the electoral candidate, the national party or the parliamentary party; and (b) the scope of activities catered for may be narrowly prescribed, e.g. limited to the electoral process, or broad, embracing a wide range of activities including administrative and normal party activities, civic and political education, leadership training, women and youth programmes etc.;
- 3) The source(s) of the funds (public and/or private) and categories or forms under which public funding is carried out (i.e. the funding may be direct or indirect, or in the form of a specific subsidy), and the extent to which these sources are adequate, transparent, regulated and fair;
- 4) The authority responsible for the administration of the system: the extent to which it is credible as a genuinely independent, authoritative and effective authority;
- 5) The controlling component of the funding system directed at safeguarding treasured democratic values, e.g. the principle of equality; enforcing prescribed financial management norms and standards, notably accountability and transparency, as well as stipulated limitations and prohibitions regarding contributions and spending;
- 6) Provision for independent and autonomous party-associated entities, e.g. political foundations, institutes, programmes etc.

The section has also made an appraisal of the ideological soundness and efficacy of the funding systems based on this model, by reference to the challenges they have encountered and how these have been addressed through reforms and modifications as well as through contestation in the legislature and the courts. In the next section the six-feature public funding model provides a proper basis for drawing lessons for necessary improvements and reforms of the emerging public funding system in Uganda.

5. The Emerging Political Party Funding System in Uganda in Comparison to the Six-Feature Model of the Established Democracies

This section compares Uganda's emerging funding system to the six-feature model of the established democracies as developed in section 4. This model is recommended as a basis for considering desirable innovations, reforms and modifications for Uganda's emerging public funding system, with a view to making it fair and equitable. It is not intended in this paper that this six-feature model be a prescription for wholesale adoption but rather as a guide for reflection and discussion. It is in this spirit that the model is presented and pertinent comments, based on it, are made in order to enrich the anticipated interactions on the subject.

5.1 The ideological/constitutional/legal foundation

As indicated in all previous sections and in particular in section 4, it is the running contention in this paper that the ideological/constitutional/legal foundation of the funding system is of critical importance, because it determines in a substantial way the extent to which the funding system upholds human rights and multiparty democracy on a sustainable basis.

A review of the funding systems of the established democracies in the foregoing sections has indicated that the ideological/constitutional foundation in the established democracies on this issue is clear, unambiguous and unequivocal: with all the constituent ingredients harmonised and oriented towards upholding fundamental human rights and multiparty democracy. In this respect, the German public funding system stands out as a classic case. A developing democracy in Africa, viz., the Republic of South Africa especially with its unequivocal constitutional commitment to multiparty democracy and public party funding, also falls in the category of countries with a sound ideological/constitutional/legal foundation for multiparty democracy and the associated public

party funding system. Another African country with a firm constitutional foundation for multiparty democracy, although it does not provide for public political funding yet, is the Republic of Ghana.¹⁴⁴

Unlike in the established and developing democracies reviewed, the Ugandan ideological commitment to multiparty democracy is somehow still questionable, particularly on the part of the country's leadership. The constitutional foundation is also non-categorical: it is equivocal and carries contradictions, rendering an irreversible transition to multiparty democracy incomplete. The equivocation and contradictions affect the emerging public party funding system: they make it a weak instrument in the cause of upholding and strengthening multiparty democracy on fair terms. Thus, the two factors to be discussed in this context are:

- a) Uganda's political history and public policy, together with the expressed views of her previous and current leaderships which have been generally sceptical about multiparty democracy; and
- b) the weak ideological/constitutional/legal framework underlying the emerging funding system.

5.1.1 The political background: A general challenge to the growth of multiparty democracy

Uganda has had a chequered political history, characterised by coups and authoritarian rule which for years impeded the steady development of constitutionalism and the multiparty system. Since attaining national independence under a multiparty system in 1962, the country has had seven coups¹⁴⁵ and only five general elections (1980, 1996, 2001, 2006, and 2011). Even then, two of these elections (1996 and 2001) were held when multiparty politics was administratively banned and a de facto one-party system, under the National Resistance Movement (NRM), reigned. A whole twenty-six years separated the 1980 and the 2006 multiparty elections; thus leaving, so far, only the 2011 multiparty elections to have

¹⁴⁴ *The Constitution of the Republic of Ghana (1992)*, article 55 (1- 3).

¹⁴⁵ The seven coups were:

- The 1966-7 constitutional coup, staged by then Prime Minister-turned Executive President, Milton Obote;
- The 1971 military coup, staged by then Army Commander, Colonel (later General and 'Field Marshall') Idi Amin;
- The 1979 (April) overthrow of President Idi Amin by a combined military force of the Tanzania army (the Tanzania Peoples Defence Forces, TPDF) and volunteer troops organised by Ugandans in exile;
- The 1979 (June) palace coup, staged by sections among the ruling Uganda National Liberation Front (UNLF);
- The 1980 (May) coup by the Military Commission of the UNLF;
- The 1985 (July) military coup, staged by then Army Commander, Tito Okello Lutwa;
- The 1986 (January) military overthrow of President (General) Tito Okello Lutwa's government by the National Resistance Movement/Army (NRM/A), headed by then Chairman of the High Command of the NRA, Yoweri K. Museveni.

been held on schedule since national independence in 1962. In addition, multiparty politics has for a long period been looked upon with disfavour and suspicion by the country's leadership. For example in December 1969 all opposition parties and pressure groups were summarily banned and many of their leaders rounded up and imprisoned without trial under the Public Order and Security Act (1967).

Furthermore, the public policy and rhetoric among key members of the current leadership, since its accession to power by military means in 1986, manifests some reservations about a freely functioning multiparty system. The introduction of the Movement System, first administratively and later under law (the 1997 Movement Act) was intended to make it a substitute for the traditional political parties. And when political parties found their way into the constitution, following heated deliberations over the issue in the Constituent Assembly,¹⁴⁶ the Movement System was nevertheless accommodated in the same constitution; not only as an alternative to the multiparty system, but also as the dominant political organisation, buttressed under article 269 by clear controls against other (rival) political organisations. It was also strategically placed as the interim political system before the first referendum was held to decide on the preferred political system (i.e. whether a multiparty or Movement system), thereby having the advantages of incumbency.

When it was decided to register political parties, the enabling law, enacted for the purpose viz. the Political Parties Act (2002), was a truncated one: the prohibitions against political party activities, originally carried under article 269 of the constitution, were imported into this act. This prevented the parties from conducting otherwise legitimate activities which political parties all over the world ordinarily conduct, including in particular challenging their political rivals in government who, in the

146 The heated deliberations in the Constituent Assembly, and the ideological position held on the issue of the political system is highlighted and recorded for posterity by the then Chairman of the NRM and President of Uganda, Yoweri K. Museveni. He writes in his autobiography (Museveni, Yoweri K. (1996) *The Mustard Seed* (London and Basingstoke: Macmillan Press), p.195):

Another issue in the Constituent Assembly (CA) debates was whether or not we should have political parties. We, in the NRM...argued that there are no healthy grounds, for party polarisation in Uganda at this time because of the absence of social classes. In Western democracies, parties have usually been founded on some sort of class: parties for the middle class, parties for the workers.

He questioned the socio-economic basis on which political parties were to be formed in Uganda, since, unlike in the Western democracies, socio-economic classes had not yet developed in the country. He, then expressed the fear that:

The polarization one is likely to get in Uganda and countries like it is vertical polarization; tribe A will join party A, while tribe B will join party B, and so on. They will be sectarian.

case of Uganda, belonged to the Movement organisation.¹⁴⁷ It took the political opposition several years of litigation, in constitutional petitions in the Constitutional and Supreme Courts, to secure the necessary relief and have the prohibitions declared unconstitutional. However, both as a concept and a legal provision, the Movement System remains an ideal political system in the view of some sections of the country's leadership, hence the equivocation under articles 69, 73 and 74 of the constitution.

i. The constitutional/legal framework

The public funding system for political parties¹⁴⁸ in Uganda is introduced as an amendment, i.e. section 14A, to the Political Parties and Organisations Act, 2005) and its ideological/constitutional/legal foundation may be summarised under the following framework:

- 'Direct' public funding of political parties in form of grants or subsidies is provided for in section 14A of the Political Parties and Organisations Act, 2005 (as amended in 2010) while controls on party funding are provided for under section 14, thereby constituting a two-pronged strategy of empowerment and control.
- The Political Parties and Organisations Act, 2005 (as amended) is based on articles 69, 71, 72 and 73 of the constitution which, respectively: provide for the right for the possible choice and adoption of a multiparty system (article 69); sets out the principles to be met for eligibility as a political party under the constitution (article 71); and prescribes principles and regulations to be complied with subsequently (articles 72 and 73).
- Constitutional articles 69, 71, 72 and 73 are, in turn, based on: Constitutional provisions of articles 20 and 29 which provide for the right to freedom of political association 29(1)(e) as a fundamental human right and therefore as an inherent right, the protection of which is a national commitment under: the

¹⁴⁷ This state of affairs prompted the Human Rights Commission to make the following observations in their Report for the year 2003:

While these two rights (association and assembly) are ably protected in Uganda law and generally respected, their political angle continued to be restricted and infringed during the year 2003. This was a continuation of the politics (sic) and the dominant perception since 1986 that political parties are a danger to peace, unity and development which perception was entrenched in the 1995 Constitution restricting the rights of political parties. These restrictions were still in place in the year 2003.

¹⁴⁸ Public funding for nominated presidential candidates was already provided for under the Presidential Election Act No, 16, (2005).

declared 'National Objectives and Directive Principles of State Policy' set out in the constitution, which include adherence to 'democratic principles' (Principle II) and to protection of 'fundamental human rights' (Principle V)

The above constitutional framework, however, presents some challenges to realising a credible and sustainable party funding system. Whereas articles 69, 71, 72 and 73 provide a legal foundation for the existence and operation of political parties in Uganda, they only can do so when a majority of the people, voting in a general election or referendum, make the choice. However, such a choice can be reversed in another election or referendum (article 69). In that event the right to belong to a political party of one's choice ceases to be a fundamental right: it is in this instance subjected to the vagaries of the politics of the day; and its significance is thereby diminished. Consequently, to base the political party system in Uganda on articles 69, 71, 72 and 73 is not an adequate assurance to the political parties of a firm constitutional foundation to which they are, otherwise, entitled under articles 20 and 29 and ultimately under the country's commitment to democratic principles and fundamental human rights (spelled out in Principles II and V of the Constitution). This contradiction and equivocation has adverse implications for the party funding system which is based on the provisions of these articles. If and when the multiparty system is voted out, the funding system collapses along with it. Uganda's constitutional foundation for democracy therefore needs revisiting, with a view to harmonise and re-orient it to be unequivocal in its support for multiparty democracy.

5.2 The focus of the funding system: Presidential candidates and political parties

The emerging funding system in Uganda is focused on both the presidential candidates and the political parties. Such a focus is to be appreciated first as it puts in place a framework for campaign financing of presidential candidates and second for providing, at least generally, the necessary support needed for nurturing political parties as the engines of multiparty democracy. There are key aspects in the funding framework that leave room for the much-needed improvement. These include:

i. Eligibility criteria: the principle of public support and compliance with prescribed controls

In two distinguished cases of public funding, notably Germany and the US, eligibility for public funding is determined first, on the criterion

of widespread public support. Second, both systems also emphasise compliance with prescribed controls which include imitations on contributions and spending as well as set norms and professional standards with respect to financial management.

In Uganda the country's emerging funding system upholds the principle of widespread public support for eligibility. However, the controls in place are inadequate and biased; and they are only in respect to the following:

- Compliance with prescribed financial management norms and standards;
- Compliance with limitations on contributions and not on spending and such limitations are only in respect to contributions from foreign sources; and
- Compliance with prohibitions against receiving contributions from terrorist organisations and against committing the crime of bribery.

On the positive side, fulfilment of the principle of widespread public support as a requirement is in place. In the case of the presidential candidate, it is demonstrated by the requirement of securing the support of at least 100 registered voters in each of at least two-thirds of all the districts of Uganda.¹⁴⁹ In the case of the political parties, the principle of public support is complied with by fulfilling the requirements for party registration, under the Party Law which include having a 'national character', demonstrated by securing the support of at least 50 members in each of at least two-thirds of all the districts of Uganda and in each of the country's regions.¹⁵⁰ It can, therefore, be concluded that Uganda's eligibility for public funding is, in principle, in agreement with the criteria set out in established democracies in respect of the condition of compliance with the requirement for widespread political support. The legal framework also is consistent with prescribed financial management norms and standards.

Controls on contributions, donations and loans are, however, only directed against foreign sources and terrorist organisations. Both the Presidential

149 The Presidential Elections Act, No 16 (2005), section 10(a) and (b) and *The Constitution of the Republic of Uganda* (1995 as amended, 2005) article 103(1)(b). There are other requirements to be met for a candidate to qualify for nomination but they are not a measure of popular support.

150 The Political Parties and Organisations Act, No 18 of 2005, as amended in 2010, section 5(1)(c); 5(2); 5(4).

Election Act, section 22(4) and the Political Parties and Organisations Act (as amended in 2010), section 14 prohibit receiving contributions from foreign governments, institutions etc. intending to overthrow the Government of Uganda or to endanger the security of the country. In addition, the Political Parties and Organisations Act puts limitations on contributions to political parties from non-Ugandan citizens, foreign governments and missions as well as non-Ugandan non-governmental organisations (NGOs) registered in Uganda.¹⁵¹ It is in this respect that Uganda falls short of the standards set by the established democracies concerning the condition of limitations. Whereas in established democracies limitations are set first, on both contributions and spending and second, on contributions from both local and foreign sources, Uganda sets limitations on only contributions and specifically on only contributions from foreign sources. Consequently, Uganda's stipulated limitations, as part of the criteria for eligibility, are quite inadequate and render the funding system vulnerable to discriminatory application and possible abuse through existing gaps and loopholes in the law itself.¹⁵²

ii. The scope for funding

In Uganda, unlike in the US as earlier discussed, the scope for public funding for presidential candidates as provided for under the Presidential Elections Act, is unspecified both in time-frame and activities. Public funding of political parties in Uganda, under the emerging funding system, caters differently for elections and for 'day-to-day' party activities. However, the eligible scope for funding is not specified. The relevant provision of the act (section 14A (a) of the PPOA), simply states: 'registered political parties or organisations shall be funded by Government under this Act in respect of elections and for normal day to day activities'. It does not specify which elections: whether reference is made to the general elections, inclusive of presidential, parliamentary and local council elections or to a particular one among them. The act

¹⁵¹ Subsections (2) and (3) of section 14 the Political Parties and Organisations Act are confined to limitations on contributions from foreign sources. The limitations are defined ambiguously in subsection(3)(a and b): they are interpreted here as follows:

- That, according to subsection (3) (a), the limitation of the maximum permissible is twenty thousand currency points (i.e. USh. 400m) if the contribution is from a single non-Ugandan non-governmental organisation registered in Uganda; and
- That, according to subsection (3) (b), the limitation of the maximum permissible is two hundred thousand currency points (i.e. USh. 4bn) if the contribution is from several non-Ugandan non-governmental organisations registered in Uganda or from any other foreign source(s), i.e. a non-Ugandan citizen(s), foreign government(s) or diplomatic mission(s).

¹⁵² The unlimited party funding from unspecified sources, coupled with unlimited party spending by Uganda's ruling political organisation, the NRM, is manifested in the huge handouts by its leadership, particularly during election campaign periods. The *Monitor* newspaper of 6 January 2011, reported of a scheduled handout by NRM, of USh. 20m., to each of the 238 official party candidates, i.e. a total of USh. 4.76b.

also provides for public funding for 'normal day to day activities'; but it does not specify which activities constitute them and are, therefore,

eligible for funding. In real life, however, political parties in Uganda are expected to carry out a broad range of political activities along the same lines as political parties in the FRG, Sweden, South Africa and Ghana.

As provided for under the Political Parties/Organisation Act (as amended), therefore, Uganda's emerging public funding system contains ambiguities and uncertainties regarding the scope of funding, which can lead to misinterpretations and conflicts during implementation. There is a need for Uganda to examine the options presented by the funding systems of the different democratic countries in order to make its choice of the version for adoption, with appropriate modifications on the basis of its national priorities and the broad range of responsibilities political parties in Uganda have to shoulder at this stage of the country's political development.

iii. Level of funding

As pointed out in section 4, the level of public funding for political parties in the established democracies is based on the democratic principle of public support which each candidate/party commands, nationwide. The application technicalities differ in the different countries. Uganda's emerging funding system in this regard presents a mixed version.

First, Uganda is adopting the US version of a fixed subsidy, applicable as an option, to the nominated US presidential candidates for the general/federal election campaign. Under the Uganda Presidential Elections Act, 2005, section 22(2), nominated presidential candidates are entitled to a fixed subsidy of 'one thousand currency points' (i.e. US\$. 20million) and under the Political Parties/Organisations Act, 2005 (as amended 2010), section 14A, registered political parties are entitled to public funding on an unspecified 'equal basis' for, as yet unspecified, 'elections.' However, unlike in the US, Uganda sets no limitations on spending and no prohibitions against or even limitations on additional funding, thereby reducing the significance of this type of funding as an equitable and fair controlling mechanism, as originally conceived and maintained under the US system.

Second, the amendment to the Parties/Organisations Act (section 14A of PPOA) also introduces public funding of political parties in accordance with the second scheme of basing funding on the level of public support. The

amendment provides for public funding for 'day to day' party activities where the level of funding for political parties is determined on the basis of their respective party strengths in Parliament, which are in indirect proportion to the corresponding public support in the country.

However, given Uganda's plurality or 'winner-takes-all' electoral system, unlike the proportional electoral system in use in countries such as Sweden and South Africa, a party's public support in Uganda, in terms of voter support, is not necessarily accurately reflected by the number of seats gained in Parliament. Situations do, sometimes, arise under the plurality system when a party with a majority in Parliament secures fewer popular votes than the opposition in an election. Consequently, the seats of the various political parties in Parliament are not necessarily a fair reflection of their corresponding political support in the country when calculated in terms of votes.¹⁵³ Therefore, while basing the level of funding on the party's support nationwide is in general an ideal approach, maintaining the present formula as a basis for determining the level of public funding may perpetuate a built-in structural imbalance as introduced earlier under different circumstances preceding the introduction of multiparty politics. There is, therefore, need to re-examine this issue and identify a more accurate and fairer formula for relating the level of funding to the corresponding party support in the country.

In consequence, the foregoing compromises of the adopted versions defeat the objective of establishing a fair and equitable public funding system under the prevailing terms of Uganda's emerging system. Providing a fixed subsidy for the electoral process without applying the requisite controls on additional local funding and on spending does not achieve its purpose of contributing towards a level playing field. And

153 Under the proportional electoral system, the number of parliamentary seats a party gains is determined on the basis of calculating the percent share it secures of the total valid votes cast nationwide, in multi-member constituencies. Thus in each multi-member constituency the available seats will be shared by the different political parties in accordance with their share of the total valid votes cast. The plurality or 'winner-takes-all' electoral system, on the other hand, is based on single member constituencies where there is only one winning candidate per constituency i.e., the one who secures more votes than any other single contestant. When many candidates contest in a constituency, the winning candidate could obtain as low as 30% of the votes cast, or even less; and the balance of 70% (or more) gained by other candidates are disregarded when totaling the number of seats gained. Since, under the plurality/ 'winner-takes-all' electoral system, the number of seats a party gains is determined by the sum total of only the individual victories of its candidates in the various single-member constituencies, where the winning candidate only secures more votes than any other single candidate in the same constituency, situations sometimes arise when the victorious party in an election secures fewer votes, overall, than a defeated party in the opposition. The prospects of a well organised 'minority' party, under shrewd and calculating leadership, winning an election under the plurality system are enhanced when constituencies are demarcated with little or no regard to balancing the number of the respective registered voters in the various constituencies in the country. In addition, such disproportionate outcomes may be contrived by gerrymandering in the demarcation of the constituencies, a scheme to which the relatively small plurality single-member constituencies are more vulnerable than the large multi-member constituencies under the proportional system.

relying on representation in Parliament, under the plurality electoral system, as an indirect method of gauging national public support and, consequently, determining the level of public funding for day-to-day party activities is defective to the extent that the plurality system itself does not guarantee proportional representation of the voters in Parliament.

5.3 Sources and categories of funding

The principal sources for public party funding in the established democracies are the state treasuries and the participating taxpayers. Funds given out directly by government to the candidates/political parties etc. in the form of subsidies or 'matching' funds are contributed by the treasury from revenue already owned by government. And funds given out indirectly, resulting from such avenues as 'check off' and 'tax relief' are contributed by willing/participating taxpayers, where government foregoes incoming revenue in favour of the eligible candidates/political parties. The funding from the general revenue by the treasury is justified on the grounds of promoting a clean political process and equal opportunities for competition for political office and the funding from the respective willing/participating taxpayers is in recognition of the people's right to freedom of association and their responsibility to advance their legitimate interests peacefully through the democratic process, by empowering their freely chosen candidates/political parties accordingly.

By comparison, legitimate, transparent and verifiable public funding under the emerging Uganda funding system has two weaknesses: first it is narrowly based and precarious; and, second, it does not serve as a sufficient incentive for regulated and transparent contributions from the public.

Under the emerging system, except for foreign contributions, all regulated and transparent public funding is provided by the treasury – a treasury whose resources are limited, compelling government to depend on international charity for budget support. Yet all indications are that political activities, in particular the electoral process, have become an extremely expensive enterprise which cannot be adequately funded from the national budget and from regular subscription fees by party members. The astronomical gap between demand and resources available in this respect is properly indicated by the projected election expenditures of the major parties when compared to the subsidy provided. For instance, the projected expenditures for the 2011 general elections, for most of the political parties/Presidential candidates, ranged from Uganda

shillings 6 billion to 50 billion, in comparison to the fixed public subsidy for the Presidential election of only Uganda shillings 20m.¹⁵⁴ Given this disproportional relationship between supply and demand, confining the source of regulated public funding to the treasury in Uganda makes it difficult for the public resources to be adequate for the envisaged demands for elections and party activities. Consideration should thus be given to exploring additional avenues, as is done in the established democracies and in the Republic of South Africa, e.g. introducing tax incentives for political contributions, in order to attract additional resources for complementing legitimate and transparent sources. In addition or in the alternative, steps should be taken, as in the US and the FRG, to tame political expenditure, particularly for election campaigns, by establishing limitations on all contributions, public as well as private - Ugandan sources inclusive - as well as on expenditure.

5.4 Administration of the funding system

It is contended in this paper that, institutionally, the quality, in terms of appropriateness, integrity, competence and effectiveness of the authority responsible for the administration of the public funding system of any country, is of paramount importance in all endeavours to uphold and promote fairness and equity in the political process. And it is further contended that the quality of the administering body or authority is influenced by the principle(s) underlying the mechanism by which that authority is established.

Four principles may be discerned from the foregoing as underlying the mechanisms for the appointment of bodies/institutions administering various public funding systems. They are:

- The 'shared-powers' principle mediating the rival roles of different institutions, as between Congress and the Executive in the US;
- The political consensus principle, manifest, e.g. in the choice of the Speaker of Parliament as the presiding authority over the funding system, as in the FRG;

154 The estimated expenditure for the NRM, IPC and DP for the 2011 general election, as reported in the press, is, respectively, Ush. 45 -50 billion, 6 - 8 billion, and 6 billion. (*The Observer*, 18-20 October 2010 (Kampala: The Observer Media Ltd.), pp.1 and 3). These amounts compare unfavourably with the subsidy of Ush. 20 million provided to each presidential candidate and the traditionally modest contributions affordable by party members and supporters. It should be noted that in the US scenario, the public subsidy provided would be the maximum permissible expenditure for each recipient presidential candidate.

- The compensatory/countervailing/counterbalancing power principle, underlying the focus of funding being the parliamentary opposition, as in the UK;
- The representative principle¹⁵⁵ directed towards the establishment of an all-inclusive independent representative authority, vested with executive powers to appoint a genuinely independent and autonomous administering body, which principle served both South Africa and Ghana well in their transition to multiparty democracy.

i. The 'shared powers' principle

As already seen in 4.1, the funding system in the US is administered by an independent authority, the Federal Electoral Commission (FEC), which is nominated by the president 'subject to the advice and consent of the Senate' under the principle of shared powers with its built-in checks and balances. The nominated commissioners are subjected to an exacting process of confirmation proceedings, in which confirmation cannot be taken for granted and might well be withheld. While the Federal Election Commission operates under the oversight of both Congress and the Executive, it is nevertheless an independent body insulated from partisan direction and control. All these particulars are necessary conditions for a fair and equitable application of the US funding system. The power-sharing principle is, however, a complex one to interpret and operate. Even after its long application in the US, for instance, differences did arise between Congress and the president over the application of this principle in respect to the appointment of the Electoral Commission and the matter had to be resolved eventually by the Supreme Court and the subsequent concurrence of Congress.

ii. The political consensus principle

In the FRG the President of the Bundestag (i.e. the Speaker of the Federal Parliament) is the authority responsible for the administration of the public funding system. The speaker's office is the epitome of institutionalised political consensus in the German Federal Parliament as election to, and survival in, office of the speaker depends on broad bipartisan support. It is therefore expected that in the execution of his/her duties he/she would be influenced by the general consensus of the

155 'Representative' principle refers to all-inclusive representation or participation by various categories of stakeholders in society. This principle is well articulated in Krislow, Samuel and David H. Rosenbloom, 'Representative Bureaucracy in the American Political System' in Shafritz, Jay M. and Albert C. Hyde, editors, (1978), *Classics of Public Administration 2nd Edition, Revised and Expanded* (Chicago, Illinois: the Dorsey Press) pp. 529-538, esp. p. 530.

Bundestag and would, as such, be inclined to preside over a fair and equitable funding system.

It should, however, be suggested that the consensus principle would seem to apply readily where there is a high degree of bipartisan cooperation under the speaker in Parliament and where there is no domineering force at play of the executive presidency (as is the case under Uganda's hybrid system).

iii. The compensatory/countervailing/counterbalancing principle

In the UK, given the country's tradition of the supremacy of Parliament and the adversarial encounters between government and the opposition, applying the principle of compensatory/countervailing power whereby the opposition is adequately empowered to match government, is critical to the proper functioning of the two-party system. Consequently, public funding is a matter for the opposition parliamentary party and it would be administered under the oversight of an appropriate parliamentary committee.

The successful application of the countervailing/compensatory principle calls for even greater mutual trust and cooperation between government and the opposition than otherwise demanded with respect to the consensus principle – a feat achieved through centuries of political engagement under Britain's predominantly two-party system.

iv. The representative principle: The South African and Ghanaian initiatives

As seen in section 4.0, South Africa and Ghana epitomise ingenious attempts at instituting novel mechanisms, free from political and sectarian bias and undue influence, for appointing genuinely independent, authoritative and confidence-building institutions for conducting elections, which institutions also qualify for administering the public funding system. In each case such a body was instituted as the country transitioned to multiparty democracy under universal franchise.

In South Africa, both the president and Parliament surrendered power to an independent interim authority, The Executive Council (TEC), which appointed state institutions considered critical for the country's political transition from apartheid rule and qualified franchise to non-racial multiparty democracy and universal franchise. One of these institutions

which were appointed was the Independent Electoral Commission. In Ghana, the constitution (1992) requires the President of the Republic to appoint an Independent Electoral Commission, on the advice of the Council of State, which itself is comprised of eminent personalities representing key national institutions, viz the National House of Chiefs, Elected Regional Leaders, and retired heads of the Judiciary, the Armed Forces and the Police.

Ghana has not yet introduced public funding of political parties/ electoral candidates; an attempt was made in the recent past but it was unsuccessful.

With regard to Uganda, under the country's laws the Electoral Commission carries considerable responsibilities as administrator/manager, mediator-participant and prosecutor. These responsibilities call for a truly independent authority.

5.5 The legal basis and roles of Uganda's Electoral Commission

The Uganda Electoral Commission (EC) is established under article 60 of the Constitution; it is the body charged with conducting all elections (national and local). Under the Presidential Elections Act, 2005, the Electoral Commission is the same body responsible for the management of the public resources for the electoral process, including financial resources and other facilities extended to presidential candidates.¹⁵⁶ And, under the PPOA, it is responsible for the registration and administration of political parties, including the enforcement of controls on their funding¹⁵⁷ etc. The amendment which provides for public funding of political parties (section 14A of the PPOA) is silent about the administering authority. However, given the roles of the Electoral Commission enumerated above, it is presumed that, the Electoral Commission will also be responsible for the administration of the public funds to be disbursed, under that section, to the eligible political parties.

The Uganda Electoral Commission has additional roles, under sections 20 and 21 of the PPOA and section 41 of the Presidential Election Act, which roles might impinge on public funding. Section 20 of the PPOA provides it with a participant-mediator role, whereby the commission

¹⁵⁶ *Presidential Elections Act, 2005*, section 22.

¹⁵⁷ *Political Parties and Organisations Act as amended 2010*, sections 9, 12, 14, 15.

carries out joint deliberations with political parties in the National Consultative Forum (NCF) on a wide range of matters under the PPOA; and these matters could be related to public funding. In addition, section 21 vests the Election Commission with a prosecutorial role in the event of non-compliance by a political party, where, likewise, non-compliance can be related to public funding, e.g. breaching prescribed financial management standards as laid down in section 12 of the PPOA. Related to the prosecutorial role is the vesting of the Election Commission with the powers of a 'Justice of Peace' under the Presidential Election Act (section 41).

The controversial background

The appointment and operation of Uganda's Electoral Commissions have all along been matters of serious controversy. This has consistently been the case, beginning with the Election Commission for the 1962 general elections,¹⁵⁸ followed by the Electoral Commission appointed by the UNLF Military Commission for the 1980 elections¹⁵⁹ and, subsequently, by all Electoral Commissions appointed under the NRM leadership.¹⁶⁰ In all these cases the most serious controversies have arisen from accusations of lack of independence coupled with built-in political bias.

The findings and comments of the country's Auditor General on the performance of the Electoral Commission in 2006 reinforce the view that the commission lacks the authority, the autonomy, the independence and the motivation to execute, without fear or favour, its administrative role as the body responsible for public expenditure, including expenditure for the commission itself.¹⁶¹

The mounting attacks against the commission in the aftermath of the passage of the amendment to the PPOA, i.e., section 14A, protesting at its lack of independence, as pointed out in the introduction in section 1,

158 The 1962 Electoral Commission was chaired by R.C. Peargram, a civil servant under the British Colonial Government, and a member of the European Civil Servants Association which was uncomfortable about the independence strategy for Africanisation of the Civil Service which was advanced by Uganda's first African-led government but which exercised limited executive powers.

159 The 1980 Electoral Commission was chaired by Mr Kikira, a civil servant in the Lands and Surveys Department, who was appointed by the then Military Commission-led UNLF government which was accused of being politically biased.

160 The appointment of all subsequent Electoral Commissions for the 1996, 2001, 2006 and 2011 general elections have all been disputed by the opposition as politically biased.

161 *The Report and Opinion of the Auditor General to Parliament on the Public Accounts of the Republic of Uganda for the Year Ended 30th June, 2006* (Kampala : The Republic of Uganda), section 31. This view of lack of independence on the part of the Electoral Commission was also attested to by an official of the commission during the preparation of this paper.

are evidence that these controversies are serious and are still ongoing. Additional accusations of the weakness and lack of independence of the Electoral Commission can be deduced from two Supreme Court judgements in presidential election petitions (*Kizza Besigye vs Yoweri Kaguta Museveni and the Electoral Commission* (2001 & 2006)) in which their Lordships found that there was non-compliance with the electoral law, on the part of the commission. The commission's weakness is further reflected by its failure to enforce the submission to it of election financial returns by some election candidates in the 2006 Presidential election as reported in its report for the year (see appendix 2)

Uganda thus faces challenges arising from a long-held negative perception of the country's successive Electoral Commissions, which have been accused, in particular, of lack of independence and political will, as well as of having political bias. Under the circumstances, it becomes difficult to generate public confidence in the commission's capacity to administer the public funding system in a fair and equitable way. To overcome such challenges, it is necessary to identify and adopt an appropriate principle, or a combination of principles, to govern the process for the establishment of the administering authority (the Electoral Commission) which is/are aimed: first, at preventing all forms of bias from the authority and ensuring its autonomy and independence; and, second, at promoting public confidence in it when subsequently established. The German model and the South African/Ghanaian initiative, based, respectively, on the 'political consensus' principle and the 'all-inclusive representative' one, seem to be commendable in this respect. The 'representative' principle is particularly appealing under transition to multiparty democracy. The US 'shared power' principle may also be adopted, but its underlying assumptions have to be appreciated and incorporated. The British 'compensatory' model too may be considered but only on condition that Uganda's funding system as a whole would be changed to focus on the parliamentary opposition.

5.6 The control component

5.6.1 Concept and application in established democracies

As already seen in sections 2 and 4, the control component is an essential ingredient in the public funding systems in the established democracies. It is a means of enhancing the democratic character of the entire multiparty political system - in particular of the political parties themselves and the electoral process. In addition, regulated public funding is also a

mechanism for safeguarding the political system against undue influence, and against infiltration from suspect sources.

The German public funding system presents a comprehensive model of such a control component while the US experience has been that of incremental improvement and tightening of controls over the years.

The control component of the funding systems in the established democracies covered in this paper consists of:

- *Limitations and prohibitions*

Under the two-pronged-strategy for public funding systems in established democracies, as identified in sections 2 and 4, built-in pro-political-contribution incentives by both the state and elements in the private sector, viz., business corporations and individuals, are tempered by prescribed limitations and prohibitions. These limitations and prohibitions are targeted at safeguarding the autonomy of the political parties as freely and autonomously formed and managed organisations; and to cater for a fair electoral process, as well as to avert threats to the multiparty political process. This is achieved by discouraging undue influence through predominant funding by the state, corporations and/or individuals, and by warding off infiltration of wrong elements through illicit/suspect contributions.

- *Upholding proper financial management norms and standards*

Public funding in established democracies is conducted in accordance with certain professional management norms and standards which, in respect of financial management, include, in particular, providing public accountability and disclosure, in a transparent way, for contributions received and expenditure incurred.

- *Upholding the right to equal treatment*

Enforcement of the principle of the right to equal treatment between and among the various political parties and contending electoral candidates is a necessary condition for a functioning multiparty democracy and for fair competition for political office.

5.6.2 Uganda's emerging control component

Section 14A of the Political Parties and Organisations Act (as amended, 2010), which makes provision for Uganda's public funding system, does not, by itself, include a control component. However, controls applicable to public funding, as the concept has been interpreted earlier in section

2(a) (i), are found dispersed elsewhere in the relevant acts: the Political Parties/Organisations Act (sections 12 and 14); the Presidential Election Act (sections 22(4), 23(1) and 27); and the Parliamentary Elections Act (sections 25 and 68).

i. Limitations

The limitations and prohibitions under Uganda's emerging funding system are different from those in the established democracies in several respects. Except for suspect sources, they are targeted exclusively against contributions from foreign sources, namely non-Ugandan citizens, foreign governments and diplomatic missions and non-Ugandan NGOs registered in Uganda.¹⁶² Another feature of these limitations and prohibitions is that they are applicable only in respect of incoming contributions, and not with regard to spending. They also do not apply in respect of the candidate's own contribution and spending as would be the case, for example, for presidential candidates in the US.¹⁶³

A serious shortcoming of Uganda's emerging public funding system is the failure to set effective controls in terms of institutional scrutiny and vetting as well as limitations and prohibitions on the spending of public resources by incumbents, notably under the president's vote on donations. It is difficult enough to defend the annual allocation in the budget of huge amounts of public money that is given out in donations arbitrarily by the president without any instituted process of scrutiny and vetting. But it is an enticement to corruption if not outright bribery and an affront to a fair election, to make available, to a sitting President running as a candidate, public funds for unregulated handouts during his/her election campaign.¹⁶⁴

These shortcomings of the limitations and prohibitions, as introduced, make Uganda's emerging funding system inadequate and prone to

162 Section 14(2) of the *Political Parties/Organisations Act*; and section 22(4) of the *Presidential Act*.

163 For instance, nominated presidential candidates in the US who opt for subsidy/grant money may not spend, as 'listed' expenditure, in excess of that amount, except for personal expenditure and, even then, 'unlisted' personal expenditure may not, currently, exceed \$50,000 i.e., 0.25% of the grant money. See: Section 4.4.8 above and FEC, p.4. In contrast, however, in Uganda, where no such limitations are set, nominated presidential candidates who are recipients of grant money may spend considerably far beyond such grant money. As an example, president-cum-candidate Yoweri Museveni donated US\$ 90m to a Busoga prince during campaign time, which is an amount far in excess of the Uganda shillings 20 million he received as a fixed subsidy when nominated. See: *Daily Monitor* (27 December 2010), p.4.

164 The Democracy Monitoring Group (Demgroup) protested against such handouts by President and candidate Museveni but the Electoral Commission overruled them. See: *Daily Monitor* (23 November 2010), 'EC: President right to hand out money' (Kampala, Uganda), p. 8.

evasion and abuse, as well as vulnerable to accusations of bias. There is need for an appraisal of their suitability and effectiveness with a view to freeing them of bias and establishing objective principles for improvement.

ii. Financial management norms and standards

Public funding systems in established democracies carry prescribed financial management norms and standards to cater for essential democratic values such as public accountability and transparency. For this purpose recipient presidential candidates and/or political parties are required to make a pre-funding undertaking for compliance and, thereafter, to make and keep accurate records of all contributions received and of their sources as well as records of expenses incurred. These records are audited and submitted to the public funding administering authority for oversight purposes and are available for public inspection as may be needed.

In Uganda, both the Presidential Election Act (under section 22(6)) and the Political Parties/Organisations Act (under section 12) provide for accurate record-keeping, audit and submission to the Electoral Commission of all contributions received within specified periods: the Presidential Election Act provides for three months after an election; and the PPOA provides for six months after the end of the financial year. In the case of political parties, it is also a requirement to declare to the Electoral Commission all assets held. However, according to the report of the Electoral Commission (2006), there was default in respect of returns, suggesting weakness in enforcement – weakness not attributed to the law as framed but, rather, to the enforcement authority.

iii. The 'equality' principle

The democratic principle of equality is a critical and defining ingredient of democracy and, consequently of the public funding system in the established democracies. It is emphasised, under law, in the FRG system, where it is set out in a specific provision in section 5 of the German Political Parties Law (Part G), making it mandatory for public authorities to accord equal treatment to all political parties. Earlier in the formative years of the FRG, the dismantling of the totalitarian Nazi regime along with its institutional pillars viz., the police, the paramilitary and the military,¹⁶⁵ had paved the way for a level playing field for the

¹⁶⁵ *Encyclopaedia Britannica* (1974) , 8:119-20 and 121-122. See also 'Denazification' in German Bundestag (1989) *Questions, Ideas, Forces and Decisions from 1800 to the Present* (Bonn, Germany).

resurrection of old parties and the formation of new ones on an equal basis. In the US also, equality of treatment, though not explicitly spelled out, is a highly valued right, as attested by the National Academy of Public Administration in Congress.¹⁶⁶ It is the single most important principle underlying the fixed subsidy option, along with its attendant conditional ties, i.e. restrictions on spending and forfeiture of the right to raise additional funding in respect of the Presidential nominees.

5.6.3 The Uganda case: Equivocation and historical inequality

Uganda's emerging funding system features two weaknesses in respect of the principle of equality: first, it is equivocal under the law despite affirmation to it, as under section 23(1) of the Presidential Election Act; and, second, it is undermined by the subsistence of the historical structural dominance of the ruling political organisation, i.e. the NRM and its linkages with the security agencies.

i. The equality principle under the law

The equality principle is not adequately catered for under Uganda's emerging public funding system, both under law and in practice. Even where an attempt is made to incorporate it through the funding system on the US model by providing a common fixed subsidy to the nominated presidential candidates, the objective is abandoned when the subsidy is not accompanied by the prohibition, or levelling, of incoming contributions and expenditure.

At the same time, there is equivocation over this principle, for instance in respect of use of public resources. While the use of public resources for elections is prohibited under provisions of the Presidential and Parliamentary Acts, the same provisions exempt contesting incumbents in elections from the prohibitions where such resources are 'ordinarily attached to their offices.'¹⁶⁷ In practice these exemptions have been exploited by incumbents as a licence to use all manner of resources such as official premises and courtesies (e.g. at State House), helicopters and convoys of public vehicles, as well as the services and influence of

166 Addressing the Senate Select Committee on the Watergate episode, Professor Frederick C. Mosher and others highlighted the 'values and protections Americans associate with a democratic system of government,' pointing out that they include 'the right to equal treatment.' See: Mosher, Frederick C. and others, 'Watergate: Implications for Responsible Government,' in Shafritz, Jay M. and Albert C. Hyde (1978) *Classics of Public Administration*, op. cit. p. 493.

167 Presidential Elections Act, 2005, section 27 and Parliamentary Election Act, 2005, section 25. For criticism of the issue, by the Democracy Monitoring Group (Demgroup), see: *Daily Monitor* (23 November 2010), (Kampala, Uganda), p.8.

political officials (e.g. Resident District Commissioners, (RDCs))¹⁶⁸ and making unlimited contributions/donations from the presidential vote etc.¹⁶⁹

In advanced economies, where the private sector is well established and the financial base of the political parties, including parties in the opposition, is strong (thanks to built-in pro-political-contribution incentives in the taxation laws), such exemptions might not seriously affect the political process. But in an LDC economy, such as Uganda's where, in addition, making substantive contributions to opposition candidates and parties is looked upon with disfavour in official circles, the exemptions amount to political bias and constitute a serious violation of the 'equality principle': they provide an unfair advantage to the incumbents and the ruling party over their challengers and the opposition parties.¹⁷⁰ This hidden injustice needs to be redressed; and the equality principle should be reinforced and widely applied throughout all aspects of the funding system.

In sum, Uganda's emerging funding system embraces the strategy of controls as a means of safeguarding the democratic credentials of the multiparty system and of the political process in general, including the electoral process. For this purpose, the enabling law provides for limitations and prohibitions on financial contributions; it establishes norms and standards for financial management; and it embraces the principle of equality of treatment. However, the controls, as introduced so far, have significant shortcomings. The limitations on funding are targeted exclusively against foreign sources; there are no limitations or prohibitions on spending; there is equivocation over the application of the principle of equality; and there is apparent lack of authority or of political will for effective enforcement of controls in respect of financial management, notably in respect of submission of returns. The cumulative impact of these shortcomings is to tilt the funding system in favour of the incumbent and the ruling party. There is need to address the shortcomings of the present controls and to ensure that they are equitably and effectively enforced.

168 For example, an overzealous RDC (Richard Gulume of Butalejja District in Busoga, Eastern Uganda) went to the extent of taking the campaign for President Museveni to church. See: *New Vision* (29 December 2010) 'Butalejja RDC campaigns in church' (Kampala, Uganda), p. 7.

169 See, for example, Commonwealth Observer Group Report, *The Uganda Presidential and Parliamentary Elections, 23 February 2006* (London: Commonwealth Secretariat), Chap.4, p.25; and Foundation for Human Rights Initiative, Uganda, (2006), *Presidential and Parliamentary Elections 2006* (Kampala, Uganda), p.18.

170 The plight of political parties in poor countries is highlighted with respect to West African states (which are in the same category as Uganda, if not a better one) in the International Institute for Democracy and Electoral Assistance (2007) *Political Parties in Africa: The Challenge of Democratisation in Fragile States* (Stockholm, Sweden: International IDEA).

ii. The historical inequality: The issue of NRM/NRM-O¹⁷¹ vs other parties

Besides inequality by default, due to inadequacies of the law as currently framed, there is, in the Ugandan situation, the historical, albeit mooted, issue of NRM/NRM-O's built-in structural dominance over other parties, arising from the subsistence of its historical status and role. This dominance arises from the organisation's previous monopoly of political space before it was opened up for other political parties, coupled with its structural interlocking with the state, in particular with the military and intelligence establishments as well as the local government authorities. This party-state relationship is graphically presented in the person of the Executive Chairman of the NRM/NRM-O who is at the same time: chairman of the (military) High Command; Commander-in-Chief of the Armed Forces; and executive President and Head of State, in which capacity he is the appointing authority of central government political officials at the district level, notably the Resident District Commissioners who play an active role in political mobilisation through the local government structures and who are also the chairmen of the respective security committees in their districts.

When the NRM/NRA captured state power in January 1986, they overthrew the military and replaced it with their command and, to a big extent, they suppressed political activities of the traditional political parties. Uganda was then officially described as a no-party system but the National Resistance Movement (NRM) played a dominant political role under it. The NRM was virtually indistinguishable from government: it had an organisational secretariat, staffed by public officials headed by a Political Commissar. Government paid the salaries of the party officials and provided the necessary facilities for the functioning of the organisation in terms of office and field work, transportation facilities, mobilisation etc. In addition, public officials, notably Resident District Commissioners (RDCs), were duty-bound to play an active part in NRM's activities and in boosting its support base and image. In 1997 a law, the Movement Act (1997), was made and, under it, the Movement's principal features were preserved intact and government continued paying for its structures, with the secretariat at the head, up to the day of the general election, 23 February 2006, even though the Political Parties and Organisations Act, which ushered multiparty politics in the country, had already been enacted in 2005.¹⁷²

171 NRM, i.e., the National Resistance Movement, was originally the political arm of the National Resistance Army (NRA), the guerilla army (1981-86) which captured state power in 1986. NRM-O is the registered name of the same political organisation under the Political Parties and Organisations Act (2005 as amended, 2010).

172 Uganda Human Rights Commission, *The 8th Annual Report 2005 to the Parliament of Uganda by the Uganda Human Rights Commission* (Kampala), paragraph 3.9 page 73.

When the Political Parties and Organisations Act (2005) was enacted, it contained a provision which was aimed at drawing a clear boundary, so as to avoid confusion, even in mere perception, between a government institution and a political party. Thus, for a party to be eligible to be registered under the act, it had to distance itself, in reality and/or in perception, with respect to name, slogan, symbol etc., from government or anybody in which government has a proprietary interest in order to avoid '(confusing) members of the general public.'¹⁷³ Nevertheless, when the Movement leadership decided to register as a political party under the act, they insisted on and succeeded in retaining the name NRM, which for twenty years had been funded by government and had, to all intents and purposes, been understood, not only by the general public but generally by public officials as well, to be part and parcel of government.

The cumulative impact of the historical status of the NRM/NRM-O and its special relationship with government institutions, notably the presidency, local government and security agencies, versus the rest of the political parties, is structural inequality, and hence injustice, towards the latter. Consequently, a public funding system established in such a setting perpetuates this injustice. There is, therefore, need for some corrective action which can be achieved through civic education, dialogue, and constructive engagement in order to:

- remove the false residual perception of the NRM as an integral part of the state; and
- level the playing field by eliminating from the NRM activities the role of public officials, e.g. that of RDCs, and de-linking it from the state security institutions.

iii. Party associated political organisations

With the introduction of political foundations, the FRG led the way for political parties, separately or jointly, to establish mechanisms for pursuing political objectives beyond those normally catered for under routine partisan activities. The US and the UK established foreign-oriented political organisations, called 'institutes' in the US and 'foundation' in the UK, which are associated to the political parties in those countries and are mandated to promote human rights and democracy abroad. In the US the political institutes (the IRI and NDI) are, just like foundations in the FRG, separately linked to individual political parties; while in the UK

173 The Political Parties and Organisations Act, section 8 (a), (b) and (c).

the parties are jointly linked to the lone political foundation there, the Westminster Foundation for Democracy (WFD). The Netherlands provides public funding for a broader party mandate, encompassing these wider objectives while at the same time the country has also established a multiparty-associated institute, the Netherlands Institute for Multiparty Democracy (NIMD), on the model of the Westminster Foundation for Democracy, which is actively engaged abroad. Sweden provides public funding to party-associated political organisations, e.g. the Christian Democratic Centre (KIC), which is associated to the country's Christian Democratic Party; but Sweden is also host country to an independent multilateral foreign-oriented political institute, the International Institute for Democracy and Electoral Assistance (IDEA), which is not associated to any political party.

Thus, it is becoming increasingly common for established democracies, in addition to catering for routine partisan programmes, to establish broad political programmes which cater for human rights and democracy, at home and abroad, and to provide public funding for them. Some of these programmes may be adopted by the political parties themselves, as in the Netherlands, or they may be carried out by party-associated foundations/institutes/centres etc., as in the US, the FRG, UK, Sweden etc. Several of these organisations are playing a constructive role in the democratisation process in Uganda and are cooperating with the country's major political parties.

Some political parties in Uganda have taken the initiative to establish party-associated political organisations whose objectives are similar to those of their counterparts in established democracies. However, these organisations are not catered for under provisions of the emerging public funding system as there is no provision for their registration under the Political/Organisation Act. And there is no law specially designed, as in the FRG, to cater for them with provisions for public funding. Currently, political foundations in Uganda may be, and are, registered as nongovernmental organisations (NGOs), along with other organisations, some of which they have little in common with, and they are under the oversight of an administering authority which may not have any interest in their political objectives.

5.7 Summary and the way forward

This section has compared Uganda's emerging public funding system to systems in established democracies. The comparison has revealed that, on the whole, the orientation and objectives of the Uganda system are consistent with those of the corresponding systems in the established democracies. However, it has also been established that there are shortcomings in its institutional and administrative setting which need to be addressed. The comparison has brought to the surface issues regarding the action which should be taken to promote a fair and equitable public funding system in Uganda and they include the following:

- The need to develop and establish an unequivocal ideological/constitutional foundation which can be relied upon for providing a firm basis for a sustainable public funding system with the objective of upholding and safeguarding human rights and multiparty democracy.
- The need for developing a formula for providing public funding to the political parties on a fair and equitable basis in more accurate terms than is the case now.
- The need to identify additional sources of funding to beef up the public funding system and enable it to meet the costly financial demands of the political parties' mandate, in its broad terms.
- The need to carry out the necessary institutional reforms to establish an unquestionably independent and authoritative Electoral Commission and to ensure that the commission so established enjoys the full confidence of all the people, in particular, the confidence of the key political stakeholders responsible for steering the multiparty system.
- The need to re-appraise the control component of the funding system in order to remove loopholes for evasion, cheating and abuse, and to ensure that the controls are applied in a fair and equitable way, regardless of the source of funding or the beneficiary thereof.
- The need to appraise the constructive role of political foundations, at home and abroad, and to find ways and means of opening up and providing public funding for them in Uganda.

6.0 Recommendations

This paper takes the introduction of public funding of political parties to be a matter of critical importance to Uganda at this stage of her democratisation process. If properly designed and properly administered, public funding of political parties in Uganda will boost the prospects for a sound and sustainable functioning multiparty democracy, and not one only surfacing periodically at election time; but failure to do so might spell doom for the country, leading to a lopsided political system *ab initio*, or to ineffective public funding that is vulnerable to evasion, cheating and abuse.

A three-part strategy is recommended for consensus-development over appropriate proposals for reforms and modifications. These are considered necessary for bringing into force a fair and equitable public funding system of political parties in Uganda. It consists of: a human resources inventory; constructive engagement; and advocacy for the adoption of appropriate reforms and modifications.

6.1 Human resources inventory

A human resources inventory should be carried out to establish qualified key stakeholders who would participate in the effort to develop a fair and equitable public funding system of political parties in Uganda. Consideration should be given to the following categories for representation:

- Political party leaders, present and past, from both the government and the opposition;
- Elected representatives in Parliament and the local councils;
- Present and past leaders/representatives of credible party-associated political foundations operating in Uganda, both local and foreign;
- Representatives of the Judiciary/Law Society;
- Representatives from the human rights fraternity.

6.2 Constructive engagement

It is recommended that the stakeholders' representatives be convened in a suitable forum for constructive engagement directed at:

- Establishing essential features for a fair and equitable public funding system, using the six-feature framework developed in section 4, or modifications of it, as a guide;
- Addressing and establishing agreed-upon solutions to issues related to public funding in Uganda. The summarised conclusion in section 5 can be relied upon as a guide.

6.3 Advocacy for adoption

It is recommended that the same forum convened under 6.2 above or a delegated committee of experts devises and executes an advocacy programme for the implementation of the agreed-upon innovations, reforms and modifications that are designed to deliver a fair and equitable public funding system for political parties in Uganda.

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Paul K. Ssemogerere holds the honorary degree of Doctor of Humane Letters, (LHD), *honoris causa*, of Allegheny College (1989) and a Master of Public Administration (MPA) from Syracuse University. He has, since independence, been a prominent actor in Ugandan politics. In 1961 Ssemogerere was appointed Parliamentary Secretary to then Chief Minister (Benedicto K. M. Kiwanuka). He was, successfully, Leader of the Opposition (1980-85), Minister of Internal Affairs (1985-88), Minister of Foreign Affairs (1988-94), Minister of Public Service (1994-95), Deputy Prime Minister (1988-95), and elected Member of Uganda's Constituent Assembly (1994-95). At the international level he has been leader of several committees under the UN and OAU including serving as Chairman of the conclusive meeting of the UN Committee of Experts on the establishment of the International Criminal Court.

Paul Ssemogerere has been instrumental in the life of the Democratic Party, Uganda's oldest political party. He was appointed and, thereafter served as the Party's national Publicity Secretary (1960-69). He later served as Party President (1980-2005). Ssemogerere served as: Vice President of the Christian Democrat International (CDI), President of the Union of African Parties for Democracy and Development (UAPDD) and Vice President of the Democratic Union of Africa (DUA). He stood twice for President of Uganda and lost in disputed elections in 1980 and 1996. Ssemogerere was the founding father of the Foundation for African Development (FAD) in 1979 and served as its first Executive Director. Ssemogere is married to Dr. Germina Ssemogerere (PhD Economics, Duke University); and they have five children.

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