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German  Institute of Global and Area Studies  
Leibniz-Institut für Globale und Regionale Studien

GIGA Research Programme:  
Violence and Security

## **Ethnic Party Bans in East Africa from a Comparative Perspective**

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**No 129**

**April 2010**

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GIGA research unit responsible for this issue:  
Research Programme “Violence and Security”  
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English copy editor: Melissa Nelson  
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## **Ethnic Party Bans in East Africa from a Comparative Perspective**

### **Abstract**

Since 1990 the banning of ethnic and other identity-based parties has become the norm in sub-Saharan Africa. This article focuses on Kenya, Tanzania and Uganda as three East African countries that have opted for different ways of dealing with such parties. Using case studies, it traces the origins of the party bans in Tanzania and Uganda and explores the reasons for the absence of a ban in Kenya. The analysis shows that the laws on particularistic parties have actually been implemented by the appropriate institutions. However, these laws have only marginally influenced the character of the political parties in the three countries: A comparison of regional voting patterns suggests that bans on particularistic parties have not ensured the emergence of aggregative parties with a national following in Tanzania and Uganda. In Kenya on the other hand, where such a ban was non-existent until 2008, parties have not proven to be more regional.

Keywords: Sub-Saharan Africa, party ban, ethnic parties, Kenya, Tanzania, Uganda, party regulation, party nationalization

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## **Zusammenfassung**

### **Verbote von Parteien auf ethnischer Basis in Ostafrika im Vergleich**

Das Verbot ethnischer und anderer identitätsbasierter politischer Parteien ist seit Beginn der 1990er Jahre im subsaharischen Afrika zur Norm geworden. Der vorliegende Aufsatz analysiert drei ostafrikanische Länder, die verschiedene Wege im Umgang mit partikularistischen Parteien eingeschlagen haben und untersucht, warum Tansania und Uganda ein Parteienverbot eingeführt haben, Kenia jedoch nicht. Die Untersuchung macht zudem deutlich, dass die zuständigen Institutionen die Gesetze zwar anwenden, dies jedoch nicht zu nationalen Parteien führt: Eine Analyse der Wahlergebnisse auf subnationaler Ebene zeigt, dass insbesondere Oppositionsparteien oft regionale Hochburgen aber keine landesweite Unterstützung haben. Politische Parteien in Kenia sind dabei trotz divergierender Parteiregulierung nicht deutlich weniger national als Parteien in Tansania und Uganda.

# Ethnic Party Bans in East Africa from a Comparative Perspective

**Anika Moroff**

## **Article Outline**

- 1 Introduction
- 2 The Origins of Party Regulation in East Africa
- 3 The Implementation of Party Regulation in East Africa
- 4 The Effects of Party Regulation in East Africa
- 5 Conclusion

## **1 Introduction**

When reintroducing multiparty politics in the 1990s, most African countries felt the need for the legal regulation of political parties.<sup>12</sup> Forty out of 46 countries adopted specific party laws or regulated parties under their electoral laws and/or their constitutions.<sup>3</sup> A specific feature of such regulation in Africa has been the widespread distrust of particularistic parties; in order to avert the emergence of ethnic, religious, or other identity-based parties, which are believed to foster violent conflict, most countries have simply banned them. Many others have introduced representation requirements such as national membership or a countrywide organizational presence in order to foster national parties and prevent regional ones. While such bans are very common and rarely questioned, little is known about their implementa-

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<sup>1</sup> I would like to thank Matthias Basedau, Christof Hartmann and Tom Wolf for their helpful comments on earlier versions of this paper.

<sup>2</sup> The paper draws on case studies conducted in March and April 2008 within the project "Managing Ethnic Conflict through Institutional Engineering. Ethnic Party Bans in Africa," which was funded by the Fritz Thyssen Foundation and was conducted in close cooperation with Jacobs University Bremen and the universities of Darmstadt and Duisburg-Essen.

<sup>3</sup> There is no multiparty system in Swaziland or Eritrea.

tion or their effectiveness in preventing particularistic parties and violent conflict.<sup>4</sup> We also do not know much about why some countries have defied the general trend and not introduced bans on particularistic parties.

Ethnic heterogeneity is commonly considered to be a major obstacle to peace and democratic stability (Gurr/Harff 1994, Lake/Rothchild 1998). While ethnic conflict can have various causes, it is generally assumed that in heterogeneous countries multiparty politics leads to the emergence of particularistic parties that foster conflict via ethnic outbidding and census-like elections.<sup>5</sup> A broad literature on how to prevent such a development has emerged over the years and focuses on various institutional engineering tools.<sup>6</sup> Only more recently has this literature taken a closer look at those regulations that directly target political parties (Basedau/Becher 2007, Basedau/Bogaards/Hartmann/Niesen 2007). It has been argued that regulations that foster the aggregative character of parties and their national outlook or even outlaw particularistic parties might help to stabilize a peaceful democracy (Bogaards 2007, Reilly 2006). However, such a stabilizing effect can only occur if these regulations do indeed influence the character and behavior of political parties.

In order to determine why regulations regarding particularistic parties have been introduced (and why not), the extent to which they are implemented, and what impact they have had on political parties, this article adopts an area approach and takes a closer look at three East African countries, namely, Kenya, Tanzania and Uganda. While they are geographically close and share a number of historical and structural similarities (such as ethnic heterogeneity, low income, partly free political regimes, British colonial background), these countries opted for very different strategies to deal with particularistic parties in the 1990s.<sup>7</sup> The article first examines the historical background for the introduction of party bans. In a second step the implementation of the various party bans as well as their success in promoting more nationalized political parties are compared.

## 2 The Origins of Party Regulation in East Africa

When most African countries introduced party regulation in the 1990s, Kenya, Tanzania and Uganda opted for three different approaches. Kenya had no party law at all; parties were regulated under the Societies Act. Only in 2008 was a political party law enacted. Tanzania, in contrast, passed a party law in 1992. This law banned particularistic parties and included representation requirements for the registration of parties. Finally, Uganda outlawed party activities under the “movement system” until 2005. The movement system was introduced in

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<sup>4</sup> For a collection on party regulation and its impact in different regions, see Reilly/Nordlund 2008. For research on the impact of party regulation in Latin America, see Birnir 2004.

<sup>5</sup> Horowitz 2000, Rabushka/Shepsle 1972. For a contrasting view see Chandra 2004.

<sup>6</sup> See, for example, Sisk 1996.

<sup>7</sup> Today, however, this difference has greatly decreased.

1986 by President Museveni and the National Resistance Movement (NRM) and was initially thought to represent a transitional form of government. However, it was then integrated in the 1995 constitution, which not only prohibited party activities as long as the movement system was in place but also included regulations regarding particularistic parties. In 2002 a party law was introduced, but it was soon superseded by a new law in 2005. Table 1 provides a brief overview of previous and current regulations regarding particularistic parties in the three countries.

**Table 1: Party Regulation in Kenya, Tanzania and Uganda since 1990**

	Legal Source	Outlawed Identity	Representation Requirement	Responsible Institution (registration)	Responsible Institution (dissolution)
Kenya 1992	Societies Act	-	-	Registrar of Societies	Registrar of Societies
Kenya 2008	Political Parties Act	color, ethnicity, faith, language, race, region, tribe	200 members from each province, one member from each province in the governing body, one founding member from each district	Registrar of Political Parties	Registrar of Political Parties
Tanzania	Constitution Political Parties Act	religion, place of origin, race, tribe	200 members from each of 10 regions, including Pemba and Zanzibar; leadership from mainland and Zanzibar	Registrar of Political Parties	Registrar of Political Parties (agreed to by the responsible minister)
Uganda 1995	Constitution	ethnicity, faith or other sectarian division	“national character”		
Uganda 2002	The Political Parties and Organisations Act	color, ethnicity, faith, race, region, tribe	50 members from each of at least half of all the districts*	Registrar General	Registrar General may apply to High Court
Uganda 2005	The Political Parties and Organisations Act	color, ethnicity, faith, race, region, tribe	50 members from each of at least 2/3 of all the districts in each region	Electoral Commission	Electoral Commission may apply to High Court

Notes: \* In order to be registered, parties had to bring a list with the names and addresses of at least 50 members from only 1/3 of the districts.

Source: Author’s own compilation.

How can we explain these developments? While a full explanation is beyond the scope of this paper, a closer look at the combination of historical factors and the interaction of relevant actors in the three cases still reveals interesting insights. Few studies have tried to explain the introduction of specific provisions in party laws up to now. One exception is the paper of Hartmann and Kemmerzell (2009), who—in order to explain the introduction of party bans—analyze the colonial background of the country in question, its previous experience

with party competition, its mode of transition towards a multiparty regime, and its previous experience with (ethnic) violence. A British colonial background—shared by the three countries—is assumed to lead to more liberal party regulations. However, this assumption does not allow us to explain why both Uganda and Tanzania opted for restrictive party regulations. Highly constrained political competition (including former attempts to restrict particularistic parties), a top-down transition, and previous outbreaks of ethnic violence are assumed to make the introduction of a party ban more likely.

A brief overview of these factors does not point to a clear-cut pattern explaining the introduction or the absence of a ban: while all three countries experienced a managed transition from autocratic rule (which in Uganda included the particularity of the movement system), the levels of party competition and ethnic violence before 1990 varied considerably. Kenya and Tanzania both experienced only short periods of multiparty competition and can be classified as being competitive one-party systems for most of the post-independence period. The ruling party in each case was well entrenched, but some degree of competition within the system was allowed (Bratton/Van de Walle 1997, Throup 1993, Hyden/Leys 1972). Uganda, in contrast, experienced several periods of multiparty politics, which were, however, interrupted by periods of military rule (Hartmann 1999: 221 ff.). Uganda also went through periods of very bloody interethnic strife, largely absent in the neighboring countries (at least, for Kenya, until 2007-8). Ethnicity played a significant role in Kenyan politics, while in Tanzania this factor never gained such importance (Erdmann 2002: 11, Glickmann 1995). It seems that neither the transition nor the former regime type or previous levels of violence are sufficient to explain the diverging party regulations in the three countries. These divergent historical influences do, however, influence the choice of relevant actors, as will be demonstrated in the following sections (starting with Tanzania as the “typical” party-ban model).

### *Tanzania*

Tanzania introduced multiparty politics in July 1992 with the Eighth Amendment of the constitution. The decision followed a recommendation of the Nyalali Commission, under the chairmanship of the Chief Justice of Tanzania, Justice Francis Nyalali, which was appointed in February 1991 by President Ali Hassan Mwinyi. The bill on political parties was presented to parliament by First Vice President Edward Lowassa on May 7, 1992 and was granted presidential assent on May 29, 1992 (Peter 1996). Article 20 of the constitution as well as the Political Parties Act prohibit the registration of a party

which according to its constitution or policy (a) aims at promoting or furthering the interest of: (i) any religious faith or group; (ii) any tribal group, place of origin, race or gender, (iii) only a particular area within any part of the United Republic; (b) advocates for the break-up of the Republic; [...] (d) advocates or intends to carry on its political activities in only one part of the United Republic. (The United Republic of Tanzania 1977: Article 20)



The Political Parties Act further provides that membership shall be “voluntary and open to all citizens of the United Republic without discrimination on account of gender, religious belief, race, tribe, ethnic origin, profession or occupation” (The United Republic of Tanzania 1992a: Article 8 [1] [c]). Groups that want to register as a political party have to apply for provisional registration first, and then for full registration within 180 days. In order to be fully registered, the party needs not less than 200 members, who are qualified to be registered as voters for the purpose of parliamentary elections, from each of at least 10 regions of the United Republic. At least two regions have to be in Zanzibar, one in Unguja and one in Pemba (the two Zanzibari islands).<sup>8</sup> Additionally, the party leadership must include members from both Tanzania Zanzibar and Mainland Tanzania (The United Republic of Tanzania 1992a: Article 10 [1] [b] [c]).<sup>9</sup> The registrar of political parties, who is appointed by the president, registers parties and can—with the consent of the responsible minister—cancel the registration of a party which has violated any provision of the act or which otherwise ceases to qualify for registration under the act.

Mainland Tanzania did not suffer from large-scale ethnic violence before or after independence (Blum 2006, Young 1976). Nevertheless, as of the 1960s the Tanganyika African National Union (TANU) and then president Julius Nyerere adopted an intensive nation-building policy, which included the promotion of Swahili as a national language and the use of TANU, and its successor organization, Chama cha Mapinduzi (CCM), as an instrument of integration and assimilation (Glickmann 1995). In its 1991 report, the Nyalali Commission recommended the reintroduction of multiparty politics but picked up on Nyerere’s ideas concerning the dangers of tribalism. While discussing the advantages and possible pitfalls of multiparty politics, it referred explicitly to the threat to peace, national unity, and the union of Tanzania mainland and Zanzibar and identified the emergence of tribal or religious parties as one possible problem. The commission therefore recommended various safeguards, including major restrictions on particularistic parties (The United Republic of Tanzania 1992b).<sup>10</sup>

These recommendations were implemented in the Political Parties Act of 1992. The regulations were justified by central actors such as the speaker of the national assembly and the registrar of political parties as aiming to preserve the unity achieved thus far and to avoid the violence experienced by other countries (Liundi 1998: 203, Msekwa 1995). However, there are many indications that the law also fit well with the Tanzanian government’s wish to keep a tight grip on the liberalization process by allowing it to regulate the registration and activities of the new political parties (Mmuya 2008, Hoffman/Robinson 2009).

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<sup>8</sup> The United Republic of Tanzania consists of Tanzania mainland and Zanzibar. The union was created in 1964 under Julius Nyerere and Abeid Karume, Zanzibar’s first president.

<sup>9</sup> There are currently 26 regions in Tanzania, with three on Unguja, the main island, and two on Pemba.

<sup>10</sup> The commission recommended that parties should not be based on religion, tribe or race and should have a national character and 200 signatories in 10 regions, two of them in Zanzibar.

## *Kenya*

While Tanzania followed a pattern common on the continent, Kenya belonged to the exceptions and did not introduce any specific party legislation when allowing for multiparty politics in 1991. Instead, parties were regulated under the Societies Act of 1968. The Societies Act prohibited associations of which the registrar of societies had “reasonable cause to believe that the society [had] among its objectives, or [was] likely to pursue or to be used for, any unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare or good order in Kenya” (Republic of Kenya 1968: Article 11). The registrar could also cancel a party’s registration for the same reasons.

As of 1993 the Kenyan parliament (and in 1997 the Inter-Parties’ Parliamentary Group) discussed the issue of party regulation with particular regard to party funding (Center for Governance and Development 2005b). Attorney General (AG) Amos Wako made a first attempt to create a party law in June 1995. His bill included a ban on ethnic or religious party names and proposed a registration process of at least seven months. It was argued that the bill was directed primarily against Safina, an explicitly nonethnic party founded by reformist opposition politicians centered around Paul Muite and Richard Leakey, which had applied for registration three days earlier (Safina means “the ark” in Swahili). Wako finally backed down on bringing the bill into parliament due to a wave of national and international criticism (Peters 1996).

In 2002 MP Musikari Kombo sponsored a motion for a Political Parties Funding Bill, which was passed with an amendment that it should include regulation regarding the registration of political parties. Following the bill’s death in the wake of President Moi’s dissolution of parliament in November (in order to bloc further progress on constitutional reform prior to the forthcoming election at the end of that year), various organizations continued to follow the issue. In 2004 the Kenya Law Reform Commission, working closely with the Electoral Commission of Kenya and several other stakeholders, drafted a bill on political parties which included a ban on parties based on ethnicity, tribe, race, language, region, or religion; it also required that a party have 100 members in each province and at least one person from each province in its governing body (Center for Governance and Development 2005a). While the bill was backed by the minister of justice and constitutional affairs, it was not brought before parliament until December 2006. It was speculated that the two main reasons for this delay were a lack of funds in the budget to cover the public funding of parties, something included in the bill, and a reluctance to change the rules before the 2007 elections (The World Bank 2006, *The East African Standard*, 14 August 2006).

Finally, the bill on political parties was brought before parliament again in March 2007 by the minister of justice and constitutional affairs. After an initial rejection, the law was granted assent by the president in October.<sup>11</sup> It entered into force in July 2008. The Political

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<sup>11</sup> Kibaki initially rejected the bill because of its regulations on party mergers and coalitions.

Parties Act created a registrar of political parties, located within the (now defunct) electoral commission, and includes a restriction that no party shall be registered which

(a) is founded on an ethnic, age, tribal, racial, gender, regional, linguistic, corporatistic, professional or religious basis or which seeks to engage in propaganda based on any of these matters; (b) uses words, slogans, emblems or symbols which could arouse ethnic, age, tribal, racial, gender, regional, linguistic, corporatist, professional or religious divisions; [...] (e) advocates or aims to carry on its political activities exclusively in one part of Kenya. (Republic of Kenya 2007)

As is the case in Tanzania, the registration process has two steps. In order to become fully registered, the party must have no less than 200 members from each province who are registered voters, a member from each province who is ordinarily resident or registered to vote on its governing body, and at least one founding member from each district. If a party breaches these regulations or has obtained its regulations in a fraudulent manner, the registrar of political parties shall warn the party and—if the party does not comply with the regulations—deregister it within 90 days.

However, a ban on particularistic parties has also been discussed within the context of the constitutional reform process. While a major civil society constitutional draft of November 1994 did not include a ban on ethnic parties (Mutunga 1999), such a regulation can be found in more recent drafts from the Constitution of Kenya Review Commission (produced under Chairman Prof. Yash Ghai in 2002), the National Constitutional Conference (the Bomas Draft of 2004), and the government (2005 draft by AG Amos Wako).

Given the difficult process of enacting party regulations in Kenya, it seems that there are various factors that explain the absence of a ban against particularistic parties prior to 2008. First, it seems clear that the reason was not a deliberate decision against a ban, as was the case, for example, in South Africa. Rather, in 1991 and 1992 none of the main actors had a strong interest in a party law.<sup>12</sup> The final decision to introduce multiparty politics was apparently taken rather rapidly at the end of 1991 and elections were held only one year later. The opposition had achieved its aim of formal legalization, and was occupied with preparing the elections. At this point in time, they did not see a necessity for a comprehensive institutional reform, including new regulations for political parties (Ndegwa 1998). The incumbent government, on the other hand, already had a very powerful tool to influence the registration of parties: the rather vague regulations of the Societies Act, which were used excessively in order to weaken opposition parties, as will be shown below. Finally, it might be assumed that President Moi had no interest in outlawing ethnic parties—the alleged dangers of tribalism and ethnic conflict were a key element of his political rhetoric. Later on the introduction of party regulation was made difficult by dissent over party funding and AG Wako's authoritar-

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<sup>12</sup> A similar opinion was advanced by Jane Amiri (2008) and the program officer of the KAS Office in Nairobi (2008) in interviews with the author.

ian proposal in 1995. When the issue was tackled anew after 2002, parties raised concerns about the proposed minimum number of members but other issues such as party funding or mergers and coalitions led to much more discussion (Programmes Officer of CMD Kenya 2008). The provisions of the Political Parties Act of 2008 now closely resemble those of similar acts in other countries.

### *Uganda*

Uganda has been an exception on the African continent by keeping the “movement system” until the reintroduction of multiparty politics in 2005. When the NRM came to power in 1986 after a five-year civil war, its leadership abolished parts of the 1967 constitution in its Legal Notice 1 of 1986 and thereby banned political party activities (see Museveni 2000: 257-261).<sup>13</sup> According to the NRM, former regimes and political parties had played a divisive role in the country’s history, causing sectarian politics and ethnic violence (Mukholi 1995: 25 ff, Museveni 2000: 111 ff). While the movement system was accepted by the political parties as an interim measure for a transition period of four years, the question of the political system proved controversial in the constitutional debate that began in 1990 (Hartmann 1999: 237 ff).<sup>14</sup>

The Uganda Constitutional Commission (UCC), which collected views from Ugandan citizens all across the country, found this issue to be the most controversial of all. It finally proposed in its draft report of 1992 that the movement system should be kept in place for five more years following the elections. However, it was also argued that the question was too important to be permanently decided by the constitution, so that the option of a referendum on the multiparty system was also included (Odoki 2005). In the Constitutional Assembly, which sat from 1994 to 1995, the question of the political system led to new conflicts between the proponents of the movement system and the supporters of a multiparty system. Ultimately, the commission’s proposition to keep the movement system but allow for regular referenda on the reintroduction of a multiparty system was approved (The Republic of Uganda 1995: Art. 69, 70, 269-271).<sup>15</sup> The constitution also includes a paragraph that regulates parties under a multiparty system: Article 71, which still regulates parties today, requires parties to “have a national character” and contains rules stipulating that “membership of a political party shall not be based on sex, ethnicity, religion or other sectarian division.”

The debate within the UCC and in the Constitutional Assembly seems to have focused strongly on the choice between a movement and a multiparty system. Article 71 was apparently not the subject of a major debate.<sup>16</sup> In its final report the UCC stated that it aimed to

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<sup>13</sup> Article 3 of the Ten-Point Program speaks about the consolidation of national unity and the necessary elimination of all forms of sectarianism.

<sup>14</sup> The members of the Constitutional Commission were nominated in 1989 and began work in 1990.

<sup>15</sup> For the negotiations, see Mukholi 1995: 52f, and Wapakhapulo 2001.

<sup>16</sup> No discussion of this issue is mentioned by Mukholi (1995). Odoki (2005) elaborates in depth on the debate about the system types and describes how a compromise was found, but he does not mention a discussion on the banning of ethnic parties.

reconcile the divergent views on multiparty politics by allowing parties to operate freely, “with the exception of endorsing, sponsoring, offering a platform or campaigning for or against a candidate for any elections” under the movement system. At the same time, it recommended “that the formation and operation of political parties be regulated by law so [as to] ensure their full democratisation and peaceful coexistence and their conformity to the national objectives and principles as identified by the people” (Waliggo 1995: 35). This compromise solution is reflected in Article 71.

Article 71 also suggested that the parliament should introduce legislation on the financing and functioning of political parties. This proved to be difficult however.<sup>17</sup> The bill on political parties was expected to be brought before parliament in 1998 but didn’t receive its first reading until 1999. The political parties expected that the bill would be passed before the first referendum on the nature of the political system, which was conducted in 2000, in order to allow them to campaign for their views. The government, however, argued that a situation in which parties were permitted to campaign openly would confuse voters about the aim of the referendum. Only in 2001 was the disputed bill again tabled and passed by parliament. However, as it allowed parties to operate at the district level—something outlawed under the movement system—Museveni refused to sign it. Only one year later, in 2002, a more restrictive version of the bill was finally passed into law by parliament amid storms of protest by opposition MPs. The Political Parties and Organisations Act (PPOA) of 2002 was immediately challenged before the courts by two opposition parties. In 2003 the Constitutional Court declared large sections of the act unconstitutional and annulled them, declaring that they would make Uganda into a de facto one-party state (*Paul Kawanga Ssemogerere and Others vs. the Attorney General of Uganda*). The new and significantly altered Political Parties and Organisations Act was then passed in 2005 as part of the preparation for a new referendum on the reintroduction of multiparty politics in Uganda. Both party laws ruled that

(1) no person shall form a political party or organization a) the membership of which is based on sex, race, colour or ethnic origin, tribe, birth, creed or religion or other similar division; b) which uses words, slogans or symbols which could arouse divisions on any basis specified in paragraph (a); or the objects and membership are not of a national character. (2) For the purposes of subsection (1), a political party or organisation is formed on any of the basis specified in subsection (1) if membership or leadership is restricted to members of any particular category specified in that subsection or if its structure and mode of operation are not national in character. (The Republic of Uganda 2002: Article 5 [1; 2])

In order to specify how to determine the national character of a political party, the PPOA 2002 ruled that a political party or organization would not be considered to have a national character unless it had at least fifty representatives from each of at least half of all the dis-

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<sup>17</sup> If not otherwise indicated, the following section draws mainly on EIU Country Reports.

tricts within its membership (The Republic of Uganda 2002: Article 5 [4]). In the subsequent PPOA of 2005, this requirement was made even more demanding, requiring at least 50 members from each of at least two-thirds of all the districts and from each region of Uganda (The Republic of Uganda 2005).<sup>18</sup> If the responsible regulatory institution—since 2005 the electoral commission—were to find that a party did not comply with the act, it could require the party to address this and, in the event of persistent non-compliance, apply to the High Court for an order to shut the party down.

The opposition parties' critique of the PPOA of 2002 once again focused on various aspects of the law but less on the ban on particularistic parties. While one of the petitions against the PPOA of 2002 did not include a complaint against Article 5, the other questioned the requirement that a party's membership include representatives from a large number of districts, arguing that this might prevent individuals who were unable to travel the whole country from forming political parties. The Constitutional Court referred to the constitution and argued that "an organisation which hopes to take political power under this Constitution should be representative of the people of Uganda" and "be reasonably a reflection of Uganda." It concluded that the requirement was within the spirit of the constitution and—while annulling many other parts of the law—upheld the article in question.

### *Summary*

The preceding comparison of Tanzania, Kenya and Uganda has shown that there is no single path leading to a particularistic party ban. The example of Tanzania suggests that previous ethnic violence and negative experiences with particularistic parties is not a necessary condition for the introduction of a ban. It seems rather that the ban in Tanzania has expressed a certain path-dependency in the preventive regulation of ethnicity and has additionally allowed the government to exert some control over the new parties. In Uganda the party ban can be closely linked to the movement system and its anti-particularistic ideas, while diverging from pre-1986 party strategies. The Ugandan regulation would therefore support the argument that bans might represent an attempt to avoid former evils. By contrast, Kenya did not opt for the absence of a ban in a deliberate way. Rather, the country's rapid transition process in 1991/92 and a lack of interest in a new, comprehensive regulation regarding political parties on both sides (incumbent and opposition parties) served to allow the status quo to prevail (that is, the regulation of parties under the Societies Act). Later attempts to regulate parties, such as various constitutional drafts from 2002 on and all bills on political parties, included a ban of particularistic parties. As explained above, they failed not because of the included party ban but due to other reasons, particularly the issue of party funding.

All in all, this analysis demonstrates the existence of a very broad consensus on the continent about the necessity of particularistic party bans. This tendency to introduce such

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<sup>18</sup> In Article 7 (1) (b) the act specifies that "region" here refers to Uganda's "traditional geographical regions," namely Buganda, East, North and West. Uganda currently has 77 districts.

bans is boosted by cross-national diffusion and copying; for example, the drafters of the Kenyan Political Parties Act studied other African and non-African party laws, and the law's paragraphs on particularistic parties closely resemble those of other African countries, for instance, Tanzania.

### 3 The Implementation of Party Regulation in East Africa

While particularistic party bans are common, their implementation cannot be taken as a given. The relevance of formal institutions in sub-Saharan Africa has often been questioned, and therefore party laws might be more of symbolic value rather than actually representing strict guidelines for the responsible institutions (Chabal/Daloz 1999). Additionally, African institutions often lack resources, something which could also prevent effective implementation of such laws. Therefore, the question of how the party bans have actually been implemented in the three countries emerges. Are the laws enforced at all, and to the extent that they are, which problems have emerged?

#### *Tanzania*

In Tanzania, the registrar of political parties is responsible for the registration and the banning of political parties. He is, like the deputy registrar, nominated directly by the president. The "responsible minister"—currently the prime minister—nominates several assistant registrars (The United Republic of Tanzania 1992a). The registration process began in 1992 under the first registrar of political parties, George Liundi. Thirty-one political parties received provisional registration in the first year, but only 12 were ultimately registered. According to official information, all of the others were unable to get the necessary 2000 member signatures. No party was registered between March 1994 and November 2001. Only when Liundi retired and John Tendwa was named registrar of political parties, in 2001, did new registrations take place. Between 1992 and 2005, a total of 71 parties received provisional registration and 20 were fully registered.<sup>19</sup> Despite various threats by both registrars, however, only three parties were deregistered for failing to hold internal elections (*Daily News*, 13 September 1999, *The Guardian*, 8 March 2000, *The Guardian*, 2 June 2001, *The Guardian*, 11 February 2004.).

Most of the groups that were denied registration dissolved after the decision. However, 14 parties tried to register several times and one, the Democratic Party (DP), even took the registrar to court regarding a denied registration. Rev. George Mtikila had tried to register the DP in 1992. He was openly critical of the union of Tanzania mainland and Zanzibar, and considered the latter not to be part of Tanzania. Additionally, at public rallies, he employed a xenophobic rhetoric against the Asian business community, and this had resulted in clashes in Dar es Salaam between party supporters and the Asian minority in January 1992. At the same time, some Muslim groups argued that if a party founded by a Christian reverend were

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<sup>19</sup> List obtained at the office of the registrar.

registered, a Muslim party should likewise be allowed (Economist Intelligence Unit 1993a). The registrar ultimately denied registration to the DP because Mtikila did not obtain the necessary signatures in Zanzibar. Mtikila brought the case to court, which decided in his favor. However, when Mtikila applied anew (still without the necessary signatures in Zanzibar), his application was again rejected. Mtikila tried without success to force the registrar to register the DP, until in 2002 he finally got the necessary signatures and the DP was registered (*The Guardian*, 5 August 2000). When asked why he had not banned the DP on the basis of its religious or discriminatory policy, Liundi argued that this would have fuelled additional conflicts. On a later occasion he followed the rationale of his initial decision regarding the DP, denying registration to a Muslim party because of its inadequate membership (Liundi 2008).

The Political Parties Act and its implementation have led to various critiques over the years. When the law was introduced, politicians from both sides of the union questioned the requirement that parties have a union character and obtain a minimum membership (*Business Times*, 1 January 1993, Economist Intelligence Unit 1992). Indeed, when the registration process began, opposition parties found it difficult to comply with these requirements. They complained especially of harassment by the governing parties and civil service agents, like disturbances of public rallies, as well as a lack of resources, which made it difficult to travel the country in order to mobilize potential members (*Business Times* 30 October 1992).<sup>20</sup> Even the registrar of political parties considered the registration requirements to be harsh and several times proposed amendments to the government to undo the representation requirements. These proposals were not adopted. (Liundi 2006: 523, *The Express*, 17 February 1994, *The East African* 9 April 2001).<sup>21</sup>

The office of the registrar seems to have had difficulty enforcing the regulations: during the initial years of its existence, it lacked the staff and resources to travel to the 10 regions to assess all the parties that applied for full registration (Liundi 2008). It therefore only controlled the party members in some regions until Registrar Tendwa announced in 2002 that his office would control all 10 regions from then on (*The Guardian*, 18 February 2002). The office of the registrar claimed that they controlled the young parties only sporadically in order to make registration easier for them (Assistant Registrar 2008).<sup>22</sup> However, the strategy was also criticized as biased as the registrar applied requirements and regulations in a discriminatory manner and controlled some parties stricter than others (Peter 1996). It has also sometimes been argued that the requirements were ineffective because many of the signatures were “bought” with food and tea or small gifts.<sup>23</sup> While it is difficult to substantiate this

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<sup>20</sup> Interviewees from different parties described the registration process as very difficult and very expensive (Chairman of the National League for Democracy 2008, Chairman of the Tanzania Democratic Alliance Party 2008, Secretary General of the United Democratic Party 2008).

<sup>21</sup> For a recent discussion of the act see Fimbo et al. 2008.

<sup>22</sup> According to Liundi, his office accepted applications with 1600 signatures to ease the procedure.

<sup>23</sup> One interviewee affirmed that he had “bought” a large number of members and that other parties were doing the same. Another party leader claimed that he had not had the resources to do so but that it was known that other parties had followed this strategy.



claim, it is clear that not all parties were able to obtain the necessary signatures this way: 51 parties failed to meet the requirements. In at least one case, in 1992, two groups merged to form a party, the Civic United Front (CUF), in order to have the required geographic presence in Zanzibar and Tanzania mainland.<sup>24</sup>

### *Kenya*

Prior to 2008, the regulation of political parties in Kenya followed the Societies Act. This act left considerable discretionary power to the registrar of societies, who was nominated by the president. Until an amendment in 1997, the act did not even specify a time limit for the registrar's decision. He therefore could use a delaying technique against vocal political groups by simply not acting on their application (Ndegwa 1998). The registrar also denied registration to various parties and functioned as a political instrument in favor of the regime by registering government-friendly parties and the splinter groups of opposition parties, which had similar names and symbols to these parties, while delaying or even denying the registration of opposition parties considered as dangerous (Amiri 2007: 64, Registrar of Societies 2008). Between 1992 and 1996 alone the registrar denied registration to 23 parties. One of them, the Islamic Party of Kenya (IPK), was denied registration due to its presumed religious character in June 1992. This decision, however, revealed the unclear legal situation: when the party complained about the refusal to the attorney general, he justified the decision on the grounds that the constitution outlaws religious parties. However, there is no such article in the constitution, and the decision was harshly criticized by many opposition parties (*Daily Nation*, 20 June 1992, *Daily Nation*, 22 June 1992).<sup>25</sup>

With the agreement reached by the IPPG in 1997, the number of parties increased from 12 to 26 and to 51 in 2002. The number of parties then exploded from 85 in February 2007 to 134 in November of the same year, and stood at 161 in December, at the time of the 2007 elections. However, most of these parties only existed virtually and were created in order to allow candidates which had not been nominated by their original party to stand in the elections (Independent Review Commission 2008). In 2008 the responsibility for political parties was transferred to the registrar of political parties and all parties had to apply for full registration by the end of the year. Only 47 parties managed to fulfill all the criteria, which included getting the necessary members and paying a registration fee of 600,000 KSH (*The Standard*, 31 October 2009).

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<sup>24</sup> In June 1992 the leading Zanzibari opposition group Kamau ya Mageuz Huru (Kamahuru) merged with Chama cha Wananchi, led by opposition leader James Mapalala, to form the CUF in order to avoid its disqualification as a party because of inadequate national membership (Economist Intelligence Unit 1992).

<sup>25</sup> Additionally, the religious character of the IPK has been questioned. The party was open to non-Muslims and indeed included non-Muslim members.

## *Uganda*

In Uganda, no new political party could register with the issue of a political party law not yet resolved. Political parties remained subject to the general ban on party activities of 1986 and since 1995 by Article 270 of the constitution, which regulated party activity under the movement system. The registration process only started after the passing of the PPOA in 2002. Nevertheless, in April 1993 a Muslim group around Idris Muwonge and the Tabliq Youth Movement announced the foundation of the Uganda Islamic Revolutionary Party (UIRP). The attempt was immediately condemned by Museveni, who argued that the NRM would “not allow religion to be brought into politics” (Economist Intelligence Unit 1993b: 12). Muwonge declared that the UIRP would operate clandestinely, but the group did not enjoy strong support from the Muslim population and seems to have disappeared (Tibendera 2006: 104 ff).

The first group seeking to register as a political party, in June 2003, was the NRM itself. Initially rejected by the registrar general (RG) because of unconstitutional passages in the party statute, the National Resistance Movement Organisation was registered in October 2003 (Steiner 2004: 322-323). No other party registered in 2003 as most parties questioned the legitimacy of the act. By the time of the elections in 2006, 33 parties had registered; today the number has increased to 36.<sup>26</sup> However, a number of opposition parties had difficulty registering since 2003. Some of the problems resulted from internal leadership wrangles, as in the case of the Democratic Party (DP), others apparently from the delaying strategies of the RG, as in the case of the Forum for Democratic Change (FDC) (Makara et al. 2009).

The RG’s office argued that registration delays were due to a lack of funds: it complained about having insufficient resources to ensure that the extensive membership requirements were met (Kiiza et al. 2008: 207-208). While it is unclear if this was actually the case, the RG was certainly not in the best position to enforce the law. The office, which at the time was located within the Ministry of Justice and Constitutional Affairs, was based solely in Kampala. In order to ensure more efficient enforcement, the PPOA 2005 transferred the responsibility for political parties to the electoral commission (EC). In order to verify that a party complies with the law, the EC first checks the party constitution and then samples several districts per region as well as several villages per district, where member signatures are controlled (Head of Legal and Public Relations Department of the Electoral Commission of Uganda 2008). By 2008 the EC had discovered fake names on the membership lists of three parties.<sup>27</sup> However, an infringement does not automatically lead to the denial of registration: when the EC discovers noncompliance it indicates it to the party, which is permitted to rectify the situation. Nonetheless, apparently none of the three parties with faked names is still registered.

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<sup>26</sup> List obtained from the Electoral Commission of Uganda.

<sup>27</sup> List obtained from the Electoral Commission of Uganda.

Since the beginning of the registration process in 2003 only one party has effectively been denied registration, namely, a group called Kabaka Yekka (KY; which means “king only” in Luganda). The original KY was founded in 1961 as the party of the Baganda and governed the country in a coalition with Obote’s Uganda People’s Congress (UPC) from 1962 to 1966. The new KY sought registration in 2004 but was advised by the RG to change its name. The case was later transferred to the EC, which repeated this advice. When the party refused to comply, the EC denied registration, arguing that the party’s name was connected to the Buganda Kingdom and likely to “confuse” the public. In July 2006 the KY brought the issue before the Constitutional Court, which decided in favor of the EC. The court argued that the name “Kabaka Yekka” was “likely to rekindle the old emotions of the 1960s stirring up public unrest, commotion and confusion.” While the party had proven that its membership was open to the public and had managed to obtain the necessary quota of members all over the country, its name was said to be still likely to arouse divisions:

It is a well known fact which this Constitutional Court has to take judicial notice of that the traditional/cultural leader of Buganda Kingdom is called the Kabaka. Section 5(1) (b) of the PPOA prohibits the use of “words” which could arouse divisions on any basis specified in para (a). Paragraph 1(a) prohibits membership based on, inter alia, ethnic origin, tribe. Since the Kabaka of Buganda is a cultural /traditional leader of the Baganda the use of the name “Kabaka” which is a word was likely to cause divisions. I appreciate the submission by the respondents’ counsel that the right thinking people were likely to assume that the Kabaka of Buganda was indulging into partisan political activities, contrary to article 246(3)(e) of the Constitution. This would cause unwarranted divisions and would be contrary to the Constitutional Principle of Unity. (*Paul Kafeero and Herman Kazibe vs. The Electoral Commission and the Attorney General 2008*)

In sum, we see that all enforcement institutions in the three countries examined here—the registrar of political parties in Tanzania, the registrar general and later the EC in Uganda, and the registrar of societies and later the registrar of political parties in Kenya—took their task rather seriously and tried to implement the existing regulations. While concerns about their impartiality were raised from time to time, only the registrar of societies in Kenya seems to have followed a strongly “political” registration tactic. All institutions routinely checked party constitutions for conformity with the law and also verified—within the limits of the available resources—registration requirements in terms of national membership. This latter requirement appears to have represented a considerable obstacle for political parties, as shown by the numerous denials of registration in Tanzania, the evidence of fake names in Uganda, and the nonregistration of more than 100 parties in Kenya in 2008.<sup>28</sup>

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<sup>28</sup> As mentioned above, a large number of these Kenyan parties were never supposed to exist long after the 2007 election as they had fulfilled their aim for the respective candidates. Some of them also failed to pay the fee of 600,000 KSH.

#### 4 The Effects of Party Regulation in East Africa

While the analysis has so far shed some light on the introduction and implementation of particularistic party bans, the question of whether these regulations do indeed influence political parties remains. If we assume that party bans have an impact on issues such as democratization and violent conflict, most of this effect would occur via the political parties. As explained in more detail by Becher and Basedau (2008), particularistic party bans target various aspects of political parties, such as their membership structure, their campaign practices, or their party symbols. Many countries explicitly aim to encourage the formation of parties with a national outlook by introducing representation requirements that require parties to have offices nationwide or to recruit members or founding members from all over the country. As explained above, Tanzania and Uganda have belonged to this category since 1992 and 2002 respectively and Kenya only since 2008. If representation requirements are successful in fostering more national parties and preventing regional parties, we would therefore expect to see differences between the parties in the three countries.

In order to obtain a first impression of how such regulation influences political parties, the degree of party nationalization is measured by the regional distribution of a party's support.<sup>29</sup> According to this understanding, a nationalized party obtains a similar level of support all over the country, while a regional party receives most of its votes in only some regions.<sup>30</sup>

Naturally, party nationalization might also be influenced by other factors, such as a presidential or parliamentary system, the electoral system, party funding, cleavage lines, and the degree of authoritarianism (Croissant/Schächter 2008). While the three countries under investigation have in common a presidential system, a first-past-the-post electoral system, and a high level of ethnic fractionalization, the resources available to political parties have varied between and within these countries over time. Also, ethnicity is more politically salient in Kenya and Uganda than in Tanzania, which might cause regional strongholds to actually represent ethnic strongholds. Additionally, some elections have been more heavily marred by authoritarian excesses than others (for example, Kenya in 1992, 1997 and 2007). Finally, Kenya requires the presidential candidate to obtain a minimum of 25 percent of the valid vote cast in at least five of the eight provinces.

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<sup>29</sup> Election results have to be treated with some caution as an indicator of a party's support base as electoral malpractice cannot be excluded. Additionally, African election data tends to be of questionable quality, particularly for early elections. Nevertheless, as other potential indicators such as membership data are very unreliable and hard to obtain, the election results remain an important source and are therefore used here.

<sup>30</sup> I have decided to focus on the national vs. regional character of parties instead of other particularistic aspects such as their ethnic or religious character because comparative data is more easily available. Additionally, the different degrees of political saliency of ethnicity and religion would have made it even harder to isolate the impact of a party law. For a general discussion of the difference between regional and ethnic party character, see Basedau/Stroh 2009, Erdmann 2007, Stroh 2009.

The analysis uses a party nationalization score (PNS), which measures how equally party support in parliamentary election is distributed over the country, as well as a party system nationalization score (PSNS). The PNS indicates how a party's vote shares are spread over the country: a highly nationalized party has "a relatively even share of the vote across different geographic units" (Jones/Mainwaring 2003: 140).<sup>31</sup> In order to calculate the PNS, the Gini Index, which represents a measure of inequalities across units, is subtracted from 1. This inverted Gini coefficient ranges from 0 to 1; the higher it is, the more equal the distribution of the vote share is. The PNS has the advantage of providing a clear interpretation; it is comparable across cases but is slightly sensitive to the number of units included (Jones/Mainwaring 2003). In order to keep the number of units as similar as possible, the analysis relies on the eight provinces for Kenya and four regions for Uganda. Tanzania's 27 regions are grouped into seven zones according to a classification of the country's electoral commission. Additionally, the party system nationalization score (PSNS) is calculated. For this index, the PNS for every party is multiplied by its share of the valid national vote and the results are then totaled. This measure allows for an assessment of the party system's overall level of nationalization (Jones/Mainwaring 2003). Only parties that received at least one seat in parliament have been included in its calculation in the present case. The following discussion, however, only focuses on governing parties and the main opposition parties.

An initial comparison of the governing parties shows that Tanzania's CCM not only has the highest vote share generally (and the largest dominance in parliament) but is also the most nationalized. Its PNS lay at .91 in the first multiparty election in 1995 and it managed to mobilize even more widespread support in the following elections, with a PNS of .94 (see Table 2). Uganda's NRM also had a rather high score of .86 in 2006. Both governing parties have managed to gain support fairly equally across the country. In contrast, not only was the Kenya African National Union's (KANU) vote share significantly lower (at approximately one-third in 1992 and at 39 percent in 1997), but its support base was also more strongly regionalized, as shown by the PNS of .69 for the first election and .76 five years later. This score remained widely unchanged in 2002 when the National Alliance Rainbow Coalition (NARC) won the election and ousted the KANU from power. The NARC at this time equaled the NRM with a score of .84. While in 2002 the two largest parties had a fairly national reach, the two main contenders in the 2007 elections, the Orange Democratic Movement (ODM) and the Party of National Unity (PNU), had comparatively more regionalized support bases: the PNU received only 21 percent of the national vote and had a PNS of .65, while the ODM received more votes (31 percent) and had a slightly higher PNS of .69. However, the Kenyan scores have to be treated with some caution as the four major parties in 2002 and 2007 represented coalitions of smaller parties rather than parties with a fixed organizational structure (Elischer 2008). By contesting the elections under a single label, they increased their chance of

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<sup>31</sup> For the calculation see Jones/Mainwaring 2003.

winning the parliamentary and, more important, the presidential elections. After the elections, these coalitions have proved to be volatile, however.

The CCM's very high score and its large vote share explain the high degree of nationalization of the Tanzanian party system, at .76 and above. Uganda's and Kenya's party systems, in contrast, are slightly less nationalized. Additionally, the nationalization of Kenya's party system changed rather strongly over the years. Particularly in 1997 and in 2007, the Kenyan party system exhibited a lower degree of nationalization.

**Table 2: Political Parties in Tanzania, Uganda and Kenya**

Tanzania		CCM	CHADEMA	CUF	NCCR	UDP	TLP	PSNS
1995	No. of seats	186	3	24	16	3	0	
	% of votes	59%	6%	5%	22%	3%	0.4%	.76
	PNS	0.91	0.69	0.37	0.69	0.39	n.c.	
2000	No. of seats	202	4	17	1	3	4	
	% of votes	65%	4%	13%	4%	5%	9%	.80
	PNS	0.94	0.48	0.61	0.66	0.30	0.59	
2005	No. of seats	206	5	19	0	1	1	
	% of votes	70%	8%	14%	2%	1%	3%	.83
	PNS	0.94	0.66	0.66	0.61	0.17	0.59	
Uganda		NRM	FDC	DP	UPC			
2006	No. of seats	191	37	8	9			
	% of votes	51%	16%	7%	5%			.61
	PNS	0.86	0.80	0.36	0.42			
Kenya		KANU	Ford-A	Ford-K	DP	NDP	SDP	
1992	No. of seats	100	31	31	23	-	-	
	% of votes	30%	25%	20%	22%			.61
	PNS	0.69	0.6	0.53	0.61			
1997	No. of seats	107	1	17	39	21	15	
	% of votes	39%	1%	10%	22%	11%	8%	.57
	PNS	0.76	0.44	0.45	0.56	0.37	0.49	
		NARC	KANU	Ford-P				
2002	No. of seats	125	64	14				
	% of votes	51%	28%	8%				.71
	PNS	0.83	0.75	.62				
		PNU	ODM	ODM-K	KANU			
2007	No. of seats	43	99	16	14			
	% of votes	21%	31%	7%	6%			.52
	PNS	0.65	0.69	.48	.47			

Note: The PNS for the TLP has not been calculated. The NDP and the SDP were only founded in 1996 and 1997, respectively.

Source: Author's own calculations based on official election results; African Election Database.

As Table 2 shows, support for the opposition parties in the three countries has been more unequally distributed than support for the governing parties. The PNS of Tanzania's opposition parties has still been comparatively high, with values ranging from .48 to .69 for the Chama cha Demokrasia na Maendeleo (CHADEMA), from .37 and .66 for the CUF, and at .59 for the Tanzania Labour Party (TLP). While the National Convention for Construction and Reform (NCCR-Mageuzi), one of the strongest opposition parties in 1995, lost almost all its voters in the following elections, its support base in 2005 (only 2 percent of the votes) was still relatively equally distributed, with a PNS of .61. The United Democratic Party (UDP), for which support fell to 1 percent nationwide in 2005, had a much stronger concentration of voters in 2005, which proved to be an advantage in the first-past-the-post system, securing the party at least one seat in parliament. A similar effect can be observed for 1995: the NCCR gained more votes than the CUF but had greater national appeal. It (therefore) gained fewer seats than the CUF, which received considerably fewer votes but more seats.

Uganda's traditional opposition parties, the DP and the UPC, have received only limited support, and this support seems to have been more regionally concentrated than that of opposition parties in Tanzania. The FDC, however, has been an exception: in 2006 it managed to secure 16 percent of the votes, and these votes were almost as equally distributed as those of the NRM.

Finally, the Kenyan opposition parties under the KANU had PNSs that were roughly comparable to the Tanzanian level in the 1992 elections and somewhat lower in 1997. The score fell from .6 to .44 for the Forum for the Restoration of Democracy-Asili (Ford-A)—which, however, lost almost all of its voters in 1997 and from .53 to .45 for the Forum for the Restoration of Democracy-Kenya (Ford-K). Only the Democratic Party (DP) had a more nationalized support base, with a PNS of .56. Finally, while the Social Democratic Party (SDP) had a PNS comparable to the other opposition parties, the National Development Party (NDP) displayed a more regionally concentrated support base with a PNS of .37. After the NARC's victory in 2002, the KANU and to a lesser extent the Forum for the Restoration of Democracy for the People (Ford-P) became the major opposition parties. The creation of a government of national unity in 2007 left no clear opposition party. Twenty-three parties won seats in parliament, but most formed unofficial coalitions with either the PNU or the ODM. The two largest additional parties, the Orange Democratic Movement-Kenya (ODM-K) and KANU, both had PNSs slightly below .5.

In order to get a clearer picture of how the parties rank in comparison to each other, Table 3 lists the parties in the bottom and the top quarter in terms of PNS scores (for a similar approach see Jones/Mainwaring 2003: 154). All parties with at least one seat in the national parliament and 3 percent of the national vote have been included in the analysis. While the results confirm the findings of similar analyses from Latin America and Asia that larger parties tend to have a more equally distributed vote (*ibid.*, Croissant/Schächter 2009), they also show that Kenyan parties are not significantly less nationalized than Tanzanian or Ugandan

parties: despite the fact that significantly more Kenyan parties have been included in the analysis (12 compared to four in Uganda and six in Tanzania), only two Kenyan parties figure among the six parties with the lowest scores.

**Table 3: Ranking the 12 Most Nationalized and Least Nationalized Parties**

	Party election year	Percent of the vote	PNS
6 parties with the lowest PNS	UDP, Tanzania 2000	4%	.30
	DP, Uganda 2006	7%	.36
	CUF, Tanzania 1995	5%	.37
	NDP, Kenya 1997	11%	.37
	UDP, Tanzania 1995	3%	.39
	Safina, Kenya 2007	4%	.41
6 parties with the highest PNS	FDC, Uganda 2006	16%	.80
	NARC, Kenya 2002	51%	.83
	NRM, Uganda 2006	51%	.86
	CCM, Tanzania 1995	59%	.91
	CCM, Tanzania 2000	65%	.94
	CCM, Tanzania 2005	70%	.94

Source: Author's own compilation.

In sum, the PNS scores do not point to a clear effect of the party laws in favor of parties with a more national support base. Requiring parties to have members all over the country in order to become registered clearly does not translate into a nationwide following for these parties. The ability of parties to do nationwide outreach has varied considerably across as well as within countries. Representation requirements have not prevented the emergence or persistence of parties with clear regional strongholds, such as the UDP in Tanzania or the DP and the UPC in Uganda. Meanwhile, Kenya's parties have not demonstrated significantly lower PNSs than political parties in Tanzania and Uganda. In Uganda, the long-term ban on all party activities seems to have significantly weakened the traditional opposition parties and thereby furthered what this ban was allegedly intended to prevent, namely, parties without a national character. From an international perspective, the opposition parties in particular have comparatively low degrees of nationalization. In calculating the PNS for 17 South and North American countries, Jones and Mainwaring found that the 11 lowest party scores were at .7 and below. Croissant and Schächter showed that nine out of 55 parties in seven Asian countries displayed scores below .5 for at least one election; most of the scores varied between .65 and .9. In contrast, among the 39 East African parties with one seat in parliament and at least three percent of the vote, 23 scored below .65 and 31 below .7 (see Annex). KANU in 2002, the CHADEMA in 1995, and the FDC in 2006 were the only opposition parties that had a score of .7 or above.



Almost all opposition parties therefore failed to mobilize support nationwide, no matter if they fulfilled the strict representation requirements, as in Tanzania and Uganda, or if they did not, as in Kenya. General obstacles, such as a restrictive legal environment, malapportioned constituencies, informal harassment of the opposition, insufficient coordination among opposition parties, or lacking available funding counteracted the impact of the party law.<sup>32</sup> The only effect we might see is the prevention of an excessive fragmentation of the party system as in Kenya before the 2007 elections.

In contrast, most governing parties in Kenya, Tanzania and Uganda have tended to have a more national support base. In the case of the CCM and the NRM, however, this is clearly not a result of the registration requirements. Their nationwide institutional presence resulting from the period of single-party rule in Tanzania and the movement system in Uganda, their access to state funds, and their use of formal institutions and informal practices are among the factors that stabilize their rule (Hoffman/Robinson 2009, Makara et al. 2009). In Kenya all major parties, except for the KANU in 1992 and 1997, represented coalitions of smaller parties, most of which had clearly identifiable regional and ethnic strongholds. The electoral system and particularly the representation requirements have constituted an incentive for vote-pooling; however, the resulting coalitions and mergers have proven very fragile and even conflict-prone, as in the case of the NARC.

## 5 Conclusion

This article has examined the regulation of particularistic parties in East Africa. While party bans have been the norm elsewhere in Africa, Kenya, Tanzania and Uganda have chosen three alternative ways of dealing with particularistic parties. Today, however, the respective provisions in their party laws closely resemble each other; all combine a ban on particularistic parties with representation requirements. Indeed, this convergence reflects the general tendency on the African continent: except for South Africa, all countries that have introduced legislation on political parties since 1990 have included a particularistic party ban within the regulations.

For the three case studies investigated here, no evidence has been found to indicate that a presumably more liberal British colonial background prevents the introduction of a ban or that such a ban is solely a reaction to past experiences with ethnic violence. Rather, the study has shown that a mixture of factors has prevailed, including the government's wish to regulate and control the opposition parties; lessons learned, as in Uganda (and maybe in Kenya today); and the aim of prevention, as in Tanzania. In Kenya the absence of a party ban until 2008 was not due to a deliberate decision but rather to specific circumstances linked to the rapid transition to democracy, which prevented the introduction of a party law. The exist-

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<sup>32</sup> On opposition party weaknesses in general, see Rakner/Van de Walle 2009.

ing regulation under the Societies Act proved to be a flexible and highly manipulable instrument which suited the incumbent government well. All later attempts to introduce party regulation in Kenya included proposals to ban particularistic parties, but these all failed due to conflict over the issue of party funding.

Furthermore, the paper has shown that—contrary to common assumptions—party regulations have been implemented in all three countries included in the analysis. However, this implementation has been limited to the formal control of the party constitution and to the registration requirements, which are meant to ensure national membership. In the three countries under investigation, no existing party has been banned for its particularistic character. As the final section of this paper has shown, the implementation of party regulations does not necessarily guarantee that parties are actually more national in character. While registration requirements can help to prevent the excessive fragmentation of the party system and the mushrooming of briefcase parties, they are less suited to ensuring the emergence of aggregative parties with a national following.

Several questions remain open: First, only membership requirements have been included in the analysis. Other countries, such as Ghana, require parties to have offices and party branches all over the country. This might prove more effective than a regulation which does not affect the party organization. Second, this paper has focused only on the regional distribution of voter support. It would be worthwhile to test whether party bans are effective in reducing the political salience of ethnicity or preventing radical particularistic parties that might represent a greater danger for peaceful and stable democracy than parties with regional strongholds. Finally, the analysis has only briefly taken into account other factors that influence political parties, such as other institutional arrangements or social cleavages. In future analyses the interaction of party regulations with these factors should be explored in greater depth.

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### Annex: Calculation of the Party System Nationalization Score (PSNS)

In order to calculate the PSNS, all parties with at least one seat in the national parliament and at least 3 percent of the national vote were included in the calculation.

#### Annex 1: Regional Vote Shares of Tanzanian Parties

Zone	CCM			CUF			CHADEMA			NCCR		UDP			TLP	
	1995	2000	2005	1995	2000	2005	1995	2000	2005	1995	2000	1995	2000	2005	2000	2005
Central	59	68	75	2	12	11	9	7	7	17	7	2	2	0	2	1
Coast	61	60	67	3	27	21	6	1	7	21	2	2	1	0	9	2
Lake	53	59	64	5	7	16	6	3	9	23	4	10	15	6	12	3
North	51	62	71	2	8	6	10	14	15	33	2	1	0	0	13	4
S. Highl.	65	74	74	2	2	20	4	1	3	24	5	2	0	0	17	1
South	82	82	78	5	8	6	4	3	7	7	3	0	3	0	1	4
Zanzibar	50	67	55	48	30	43	1	0	1	0	1	0	0	0	0	0
Total	59	64	70	5	13	14	6	4	8	22	4	3	5	1	9	3
PNS	.91	.94	.94	.37	.61	.66	.69	.48	.66	.69	.61	.39	.30	.17	.59	.59

Note: All vote shares in percent. Only parties with at least 1 seat in parliament included.

Source: Author's own compilation based on election results from the Electoral Commission of Tanzania.

#### Annex 2: Regional Vote Shares of Parties in Uganda's 2006 Election

Region	NRM	DP	UPC	FDC	CP	JEEMA
Central	47	22	1	7	1	2
Eastern	48	1	5	22	0.3	0
Northern	33	2	17	22	0	0
Western	69	0	0	15	0	0
Total	51	5	7	16	0.5	0.5
PNS	0.86	0.36	0.42	0.80	.33	.25

Note: All vote shares in percent. Only parties with at least 1 seat in parliament included. CP: Conservative Party.

Source: Author's own compilation based on official election results.

#### Annex 3: Regional Vote Shares of Parties in Kenya's 1992 Election

Province	KANU	DP	Ford-K	Ford-A	KSC	KNC	PICK
Central	4	37	5	50	0	3	0.3
Coast	53	17	19	9	0	2	0
Eastern	41	43	4	10	0	2	0.2
Nairobi	16	19	23	37	0	4	1
North Eastern	64	4	11	12	0	0	9
Nyanza	17	7	71	1	2	0.3	2
Rift Valley	49	16	9	25	0	0.3	1
Western	43	5	17	33	0	0	1
Total	30	22	20	25	0.4	2	1
PNS	.69	.61	.53	.6	.15	.47	.37

Note: All vote shares in percent. Only parties with at least 1 seat in parliament included. Parties with at least 1 seat in parliament but less than 3% of the vote: KSC: Kenya Social Congress; KNC: Kenya National Congress; PICK: Party of Independent Candidates of Kenya.

Source: Author's own compilation based on Throup and Hornsby 1998, Report of the Constitution of Kenya Review Commission 2003.



**Annex 4: Regional Vote Shares of Parties in Kenya's 1997 Election**

Province	KANU	DP	Ford-K	NDP	SDP	Safina	Ford-A	Ford-P	KSC	SPK
Central	11	48	0	3	11	13	1	9	0	0
Coast	53	16	4	12	7	1	0	1	0	5
Eastern	40	24	4	2	23	1	2	1	0	0
Nairobi	22	32	6	20	12	4	1	1	1	0
North Eastern	60	5	4	0	1	22	7	0	0	0
Nyanza	30	4	10	48	4	1	0	0	2	0
Rift Valley	59	23	9	3	1	3	0	0	0	0
Western	47	1	44	3	1	1	3	0	0	0
Total	39	22	10	11	8	4	1	2	0.3	0.4
PNS	.76	.56	.45	.37	.49	.42	.44	.27	.27	.13

Note: All vote shares in percent. Only parties with at least 1 seat in parliament included. SKS: Shirikisho Party of Kenya.

Source: Author's own compilation based on official election results.

**Annex 5: Regional Vote Shares of Parties in Kenya's 2002 Election**

Province	NARC	KANU	Ford-P	Safina	SKS	Ford-A	SPK
Central	54	23	3	10.61	2.61	1.72	
Coast	43	31	11	0.75		0.09	4.88
Eastern	50	25	5	4.62	1.07	3.40	
Nairobi	70	18	2	5.73	0.20	1.31	0.00
North Eastern	14	51	13	6.44		3.20	0.00
Nyanza	52	10	24	0.26	0.09	1.18	0.00
Rift Valley	42	47	6	1.44		0.08	
Western	65	24	7	0.08		1.54	
Total	51	28	8	4	0.7	1	0.3
PNS	.83	.75	.62	.49	.23	.59	.12

Note: All vote shares in percent. SKS: Sisi kwa Sisi Party.

Source: Author's own calculations based on official election results.

**Annex 6: Regional Vote Shares of Parties in Kenya's 2007 Election**

Province	PDU	ODM	ODM K	KANU	Safina	Narc/K	NARC	SKS	PICK	DP	KENDA	CCU	PKK
Central	42.7	0.8	0.2	8.5	12.2	2.9	0.2	6.0	1.7	3.4	2.0	0	0.8
Coast	14.3	35.5	9.3	5.5	1.0	3.8	1.1	0.4	0	2.8	2.3	1.5	0
Eastern	21.2	3.5	23.5	5.6	3.5	2.1	1.6	0.9	2.9	5.4	1.9	2.9	0
Nairobi	28.8	41.9	5.4	0	0.5	0	1.7	1.1	0.2	1.1	0.9	0.7	0
North Eastern	6.0	35.8	5.4	26.8	8.4	1.3	1.5	0	0	4.1	1.2	0.3	0
Nyanza	1.5	60.7	1.2	2.7	0.4	1.3	10.2	0	0.2	1.2	0.8	1.7	0
Rift Valley	18.9	44.5	4.2	10.1	2.5	1.2	1.1	0.8	0.1	0.2	2.2	0.2	0
Western	17.7	43.1	2.7	0.4	0.1	0.1	7.5	0	0	0	0.8	2.3	0.1
Total	20.9	31.0	6.6	6.4	3.8	1.6	3.1	1.6	0.9	2.1	1.7	1.2	0.2
PNS	0.65	0.69	0.48	0.47	0.41	0.58	0.48	0.32	0.29	0.55	0.78	0.54	0.15

Province	KADDU	UDM	NLP	KADU A	NFK	FORD-P	FORD A	MGPk	FORD K	PDP
Central	0	0	0	0	0.1	2.5	2.4	1.3	1.1	0
Coast	1.8	0	0.3	5.3	0.3	1.8	0	0.1	0.9	0.3
Eastern	0	0	2.2	0	0	1.2	0.7	2.7	0.5	0
Nairobi	0.9	0	0	0	0	6.2	1.1	0.1	0.1	0
North Eastern	1.7	0	0	0	0	0.1	0	0	1.6	0
Nyanza	1.4	0	1.2	0	0.4	5.0	0	0.7	0.5	0.9
Rift Valley	2.1	4.1	0	0	0.8	0.1	0.1	0.6	0.2	0
Western	7.1	0.1	0	0.1	6.1	0.2	0	0	2.9	0
Total	2	1	0.6	0.3	1	2	0.7	1	1	0.2
PNS	0.47	0.13	0.25	0.13	0.22	0.45	0.29	0.38	0.53	0.18

Note: All vote shares in percent. NARC: National Rainbow Coalition; KENDA: Kenya National Democratic Alliance; CCU: Chama cha Uzalendo; PKK: Peoples Party of Kenya; KADDU: Kenya African Democratic Development Union; UDM: United Democratic Movement; NLP: National Labour Party; KADU-A: Kenya African Democratic Union-Asili; NFK: New Forum for the Restoration of Democracy Kenya; MGPk: Mazingira Greens Party of Kenya; PDP: Peoples Democratic Party.

Source: Author's own calculations based on official election results.

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