

Promoting Constitutional Democracy: Regulating Political Parties in the Central African Republic and Senegal

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Abstract

Constitutions and other legal frameworks are expected to ensure the protection of the fundamental and collective rights of citizens. In this respect, the regulation of political parties is a global phenomenon, which symbolises multi-party democracy, the rule of law and good governance. This article examines the phenomenon of the constitutional and legal regulation of political parties in the Central African Republic (hereafter CAR) and Senegal, two francophone countries with different trajectories and experiences of multi-party democracy. It identifies possible challenges and shortcomings of the regulation of political parties in the two countries, especially in relation to the actual implementation of the existing national frameworks. The article attempts to suggest possible frameworks for an effective implementation of the constitutional and legal rights of political parties, including the constitutionalisation of the enforcement mechanisms, which would undeniably protect the position of political parties in constitutional democracies. In conclusion, the article highlights the role of an independent judiciary in the promotion and protection of the constitutional and legal status of all political parties in the CAR and Senegal.

Keywords

Political parties; Central African Republic; Senegal; constitutional democracy; party constitutionalisation; multi-party democracy; party funding; one-party system.

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1 Introduction

In democratic societies, party regulation is used as a mechanism to promote and guarantee citizens' rights to political participation but also to ensure that political parties' activities and behaviour comply with the goals and practices of modern democracies.¹ Constitutions and other legal frameworks are expected to ensure the protection of the fundamental and collective rights of citizens. In this context, the contractual and other relationships between individual citizens and various communities should not be subjected to governments' direct interference.² Citizens should enjoy a fundamental right to form any private association within the law, without state intervention.³ Political parties, however, seem to occupy a specific position with regard to state non-interference, since on the one hand they are merely citizens' associations, while on the other hand they also aim to gain access to political power. This makes them major stakeholders in the sphere of national public policy and constitutional life. The constitutionalisation of political parties is a global phenomenon which symbolises multi-party democracy, the rule of law and good governance. In addition, many countries have also enacted laws which relate to the status and operations of political parties, including electoral laws, party finance and party formation regulations. Party constitutionalisation would set the principles to be followed by ordinary laws and provides stability to the legal status of political parties. As constitutions and laws provide for the rights and duties of political parties, it is imperative to examine how such provisions promote political parties which are expected to propose views and programmes alternative to those of the ruling party and therefore might be potentially vulnerable to pressure and intimidation. This article will review the phenomenon of the constitutional and legal regulation of political parties in the Central African Republic (hereafter CAR) and Senegal - two francophone countries with different trajectories and experiences of multi-party democracy - and its possible impact on the promotion of constitutional democracy. In its 2018 interactive map of Freedom in the World,⁴ the Freedom House ranked

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¹ Avnon 1995 *JLS* 296.

² Karvonen "Legislation on Political Parties" 2-4.

³ Karvonen "Legislation on Political Parties" 2-4.

⁴ Freedom House 2019 <https://freedomhouse.org/report/freedom-world/freedom-world-2018>.

Senegal among the "free" countries in the world.⁵ In contrast, the CAR - a country in a conflict situation - was ranked amongst one of the few "least free" countries in the world.⁶ In this regard, one of the article's primary aims is to examine the process of party regulation in two African countries with similar colonial experience but with typically different political and democratic paths and experiences.

This article aims to specifically focus on a comparison of their experiences of party regulation in promoting constitutional democracy and to establish whether the differences in political trajectories impact on their manner and level of political party regulation. The article lays out the theoretical approaches that will be used to inform the comparative analysis of constitutional democracy and party regulation in the two countries. The article will review key international and regional instruments regulating the rights of political parties and their impacts on the promotion of constitutional democracy in African states. It will conduct a critical analysis of the evolution of party regulation in the two selected countries prior to the wave of democratisation, i.e. from before the 1990s until now, and will identify possible challenges to and shortcomings in the regulation of political parties in the two countries. Finally, the article will attempt to suggest possible mechanisms for an effective implementation of the constitutional and legal rights of political parties, which will undeniably impact on the position of political parties in the constitutional order in the CAR and Senegal.

2 Constitutional democracy

The concept of constitutional democracy has been defined as a system of government based on popular sovereignty in which the structures, powers and limits of government are determined by a constitution.⁷ Constitutional democracy means that the power of the political authority is defined and regulated by the constitution so that the rights of individuals and minorities are respected.⁸ Constitutional democracy is notably characterised by the principle of popular sovereignty, in which citizens are seen as the ultimate

⁵ Senegal's rating was: freedom: 2/7; political rights: 2/7; civil liberties: 2/7 (1= most free, 7= least free). Freedom House 2018 <https://freedomhouse.org/report/freedom-world/2018/senegal>.

⁶ CAR's rating was freedom: 7/7; political rights: 7/7; civil liberties: 7/7. Freedom House 2018 <https://freedomhouse.org/report/freedom-world/2018/central-african-republic>.

⁷ Dallas Learning Cloud date unknown <https://dlc.dcccd.edu/usgov1-1/the-meaning-of-democracy>.

⁸ Centre for Civic Education date unknown <http://www.civiced.org/resources/publications/resource-materials/390-constitutional-democracy>.

source of the authority of the government, while in return the government holds its right to govern from their consent.⁹ In other words, in a constitutional democracy the expected primary goal of the government is to protect peoples' basic civil and political rights, including the right to freedom of association and assembly,¹⁰ the right to freedom to participate in government,¹¹ citizen's right to equality and rights,¹² as well as other economic and social rights pertaining to property, work, health and education. For instance, in the case of *United Democratic Movement v Speaker of the National Assembly* in 2017, the South African Constitutional Court defined a constitutional democracy as a "government of the people, by the people and for the people through the instrumentality of the Constitution".¹³ The Court added that "central to this vision [of constitutional democracy], is the improvement of the quality of life of all citizens and the optimisation of the potential of each through good governance".¹⁴ Accountability, the rule of law and the supremacy of the South African Constitution are therefore core value of a constitutional democracy.¹⁵

The advent of constitutional democracy in most African states took place in the early 1990s during what was called the "third wave of democratization".¹⁶ African states then were forced to embrace democratic and liberal values, especially as they faced increasing pressure from an empowered civil society and endeavoured to meet international financial institutions' loan conditions¹⁷ pertaining to good governance, civil society empowerment and constitutionalism. African states adopted new or revised constitutions, which entrenched democratic principles such as "political

⁹ Centre for Civic Education date unknown <http://www.civiced.org/resources/publications/resource-materials/390-constitutional-democracy>.

¹⁰ Articles 10 and 11 of the *African Charter on Human and People's Rights* (1981) (hereinafter the ACHPR).

¹¹ Article 13 of the ACHPR.

¹² Article 19 of the ACHPR.

¹³ *United Democratic Movement v Speaker of the National Assembly* 2017 5 SA 300 (CC) para 80.

¹⁴ *United Democratic Movement v Speaker of the National Assembly* 2017 5 SA 300 (CC) para 80.

¹⁵ See ss 1(c) and (d) of the *Constitution of the Republic of South Africa*, 1996 (hereinafter the South African Constitution).

¹⁶ A concept developed by Samuel P Huntington in relation to the global democratic transition, the first two waves began in the 1820s and the 1940s (Huntington *Third Wave* 366).

¹⁷ Limpach and Michaelowa *Impact of World Bank and IMF Programs on Democratization* 7.

alternation",¹⁸ transparent democratic practices, and the reinforcement of political rights, as well as political competition.¹⁹

Prior to the wave of democratisation in Africa, from the colonial period until the early 1990s, African states' experiences of constitutional democracy and multi-party democracy were mostly inconsistent.²⁰ Most post-independence constitutions raised hopes with the inclusion or at least the non-prohibition of multi-party systems. However, the widespread constitutionalisation of one-party systems that followed in the late 1960s marked a grim period for democracy and constitutionalism, mostly across sub-Saharan African states. From the mid-1960s until the early 1990s, with the exception of Botswana, Mauritius and Gambia for a certain period, one-party systems became the norm on almost the entire African continent.²¹ In the early 1990s, with the end of the Cold War and in the context of global economic crises such as the oil crisis and economic depressions, African authoritarian states had to adopt structural adjustment policies and political reforms. This process culminated in the African third wave of democratisation in the 1990s where African states started recognising multi-partyism and gradually amended their constitutions to reflect the transition to constitutional democracy.²² Most post-1990s African constitutions entrenched the principle of multi-party elections and recognised the rights to freely form and join political parties. Multi-party politics has since become the norm in Africa to such an extent that scholars have highlighted the "routinisation of multiparty elections".²³ Almost all African states now conduct regular elections, which allow opposition parties to be represented in Parliament.²⁴ The entrenchment of multi-party systems in a constitutional democracy was mostly illustrated by the constitutional and/or legal regulation of political parties. There is a distinction between party constitutional regulation and party legal regulation.²⁵ Party legal regulation refers to laws that govern the definition, composition, structure and activities of political parties.²⁶ A mere

¹⁸ Nicolas van de Walle refers to the absence of political alternation when the winning party in the first multi-party election almost invariably wins a more comfortable majority during the second elections. See Van de Walle 2003 *J Mod Afr Stud* 301.

¹⁹ Fombad 2014 *AHRLJ* 416.

²⁰ Fombad 2015 *VRÜ* 6.

²¹ Fombad 2015 *VRÜ* 7.

²² For instance, the following countries adopted a new constitution after 1990: CAR (1995); Democratic Republic of Congo (Constitution amended in 1990 and 1994); Mali (1992); Ethiopia (1994); South Africa (1994 interim Constitution and 1996 Constitution).

²³ Van de Walle 2003 *J Mod Afr Stud* 299.

²⁴ With the exception of Swaziland and Eritrea.

²⁵ Borz 2016 *IPSR* 2.

²⁶ Janda "How Nations Govern Political Parties" 1-12.

legal regulation of political parties could therefore lead to the enactment of legislation that protects the interests of dominant parties in the government or in the legislature and privileges their own positions.²⁷ To the contrary, constitutional regulation of political parties means that specific provisions on political parties are enshrined in a constitution. The effect of this is that the constitutional provisions concerning political parties can be reviewed only through a clearly laid down procedure²⁸ to ensure the protection of the will of the people. Party constitutionalisation provides evidence that political parties are recognised as "necessary institutions of the political system".²⁹

Momentum towards the regulation of political parties, particularly the constitutional regulation, gained pace in Europe in the period following World War II.³⁰ Italy and Germany were the first countries in the world to give a constitutional status to political parties, and the practice gradually spread to other parts of Europe through the process of constitutional revisions. In Africa the rights of political parties were entrenched in constitutions in order to give political parties constitutional privileges and protection against all forms of authoritarianism and arbitrariness. Party constitutionalisation became the expression of pluralism, popular will, sovereignty, equality, participation and competition.³¹

3 Constitutional and legal party regulation in CAR and Senegal: historical perspectives

This section critically analyses the major phases of party constitutional and legal regulation in the CAR and Senegal from these countries' independence to the period of democratisation in the 1990s. Although both the CAR and Senegal are former French colonies, they are characterised by their unique historical and socio-political backgrounds and legal systems. Currently, Senegal is considered as a multi-party constitutional democracy characterised by multi-party elections, political competitiveness and political alternation,³² while the CAR's experience of constitutional democracy and political alternation has proven to be more turbulent and uncertain. Sectarian and religious tensions and violent armed groups, all leading to a serious humanitarian crisis, currently affect the CAR. The leadership of the

²⁷ Gauja *Political Parties and Elections* cited in Borz 2016 *IPSR* 2.

²⁸ Fombad 2007 *Am J Comp L* 21.

²⁹ Borz 2016 *IPSR* 2.

³⁰ Van Biezen 2009 <http://www.partylaw.leidenuniv.nl/uploads/wp0309a.pdf> 1.

³¹ Borz 2016 *IPSR* 6.

³² Freedom House 2019 <https://freedomhouse.org/report/freedom-world/2019/senegal>.

two selected countries should also be regarded as a significant factor in their political and democratic trajectories. In Senegal the first president, Leopold Sédar Senghor, played a critical role in the country's political path during the period leading to its independence. A poet and cultural theorist, he served as president for 20 years but resigned before the end of his fifth term in 1980.³³ It is argued that Senghor's personality and credentials contributed to Senegal's current political stability and maturity. In the CAR, by contrast, although nationalist leader Barthélemy Boganda³⁴ successfully negotiated the country's independence from France, his premature death seems to have had an impact on the country's political stability to date. Unlike Senegal, the CAR did not have an influential figure that embodied national unity, reconciliation and patriotism. It may be argued that the political unpreparedness of the nascent country, coupled with the vacuum left by Barthélemy Boganda's untimely death, could also have contributed to the CAR's turbulent political trajectory. Despite these differences, this article specifically focusses on a comparison of the experiences of party regulation in promoting constitutional democracy in both Senegal and CAR.

3.1 CAR

Formerly known as Oubangui Chari, the CAR is a landlocked country located in the centre of Africa, which became an independent state in August, 1960. From 1884 to 1960 the CAR had been colonised by the French, which had leased the country to private companies. The CAR law and its judicial institutions have been largely inspired by the French Model and mostly have their roots in the French civil law. Other sources of law complement the French style civil law. These are based on local traditions and customs practised by the various CAR communities. As regards its political trajectory, in the 1959 to 1991 phase of democratisation the CAR adopted five different constitutions and experienced five different regimes,³⁵ which included a period of constitutional monarchy, with three *coups d'état*. Like many other African countries, the CAR experienced a long period of a one-party system, which came to an end in the early 1990s, when most African states undertook a transition to multi-partyism.

³³ Senghor was peacefully replaced by his prime minister Abdou Diouf.

³⁴ In 1958, Barthélemy Boganda became Oubangui Chari's first prime minister and intended to serve as first president of independent CAR. However, he was mysteriously killed in 1959.

³⁵ Between 1959 and 1991 the CAR was successively led by Barthelemy Boganda (1958-1959); David Dacko (1960-1966); Jean-Bedel Bokassa (1966-1979); David Dacko (1979-1981); and Andre Kolingba (1981-1993).

3.1.1 *Constitutional provisions on the status and rights of political parties*

The first Constitution of the newly created CAR was adopted in 1959 before the country attained independence. The Constitution set up a parliamentary system and provided for the rights and duties of political parties.³⁶ Article 2 of the 1959 Constitution – which was similar to Article 4 of the 1958 French Constitution – provided for the status of political parties and groups. When the 1959 Constitution was adopted, the main political party was the *Mouvement pour l'Evolution Sociale en Afrique Noire* (MESAN)³⁷ which was founded by Oubangui-Chari's "founding father" Barthelemy Boganda in 1949. Other political parties included the *Rassemblement Democratique Africain* (RDA),³⁸ the French Section of the Workers' International (SFIO)³⁹ and the *Mouvement Populaire Republicain* (MPR).⁴⁰ However, in reality, only MESAN party members were allowed to be candidates during the legislative elections of 5 April 1959 and MESAN won all the seats, including at regional level.⁴¹ The brief experience of multi-partyism of the newly independent country came abruptly to an end in December 1960 when the opposition party *Mouvement pour l'Evolution Democratique de l'Afrique Centrale* (MEDAC) was formally prohibited, making the CAR a *de facto* single party state. On 21 December 1962 a law amending the Constitution was passed to formally prohibit multi-partyism and establish a one-party system in the CAR.⁴² With the 1962 constitutional amendment, the CAR formally moved from a multiparty system to a *de jure* one-party system, which would continue in existence for the next three decades.

The third Constitution of 1976, which proclaimed the Central African Empire and established a constitutional monarchy under Emperor Jean-Bedel Bokassa, reiterated the position of MESAN as the sole political party of the country.⁴³ However, the CAR experienced a brief period of multi-partyism when it adopted its fourth Constitution on 1 February 1981 under David

³⁶ Article 2 of the *Constitution of the CAR*, 1959.

³⁷ MESAN was founded in 1949 by CAR founding father Barthelemy Boganda.

³⁸ A federation of African political parties created during the Bamako Congress in 1946.

³⁹ A former French political party founded in 1905. In 1957 the federations of SFIO in African countries including Oubangui-Chari and Senegal decided to separate from the French parent organisation and set up a new Pan-African party called the African Socialist Movement (MSA).

⁴⁰ A former French Christian Democrat Party founded in 1944.

⁴¹ Opposition candidate lists submitted in 3 constituencies were rejected due to "irregularities". See Kalck *Barthelemy Boganda* 218.

⁴² *Constitutional Law* 62.365 of 1962.

⁴³ Articles 15 and 16 of the *Constitution of the CAR*, 1976.

Dacko.⁴⁴ The 1981 Constitution explicitly allowed multi-partyism⁴⁵ and as a result, multiparty presidential elections were held on 15 March 1981. However, the 1981 Constitution was suspended following a *coup d'état* in September 1981. In 1986 a new Constitution was adopted through a referendum⁴⁶ and once again it endorsed a single-party system in the CAR. Article 3 of the 1986 Constitution stipulated that the single party *Rassemblement Démocratique Centrafricain* (RDC) “represented the people in its diversity and contributed to the promotion of the right to vote”. In summary, the general trend of party constitutionalisation before the 1990s in the CAR mostly aimed to establish a *de jure* one-party state. It was only when the sixth *Constitution of the CAR* was adopted in 1995 that the incorporation of multi-partyism was finally confirmed.⁴⁷ From this point on, all subsequent CAR constitutions explicitly entrenched the rights and duties of political parties and also recognised the contribution of political parties to the country's political, economic and social life.⁴⁸ For instance, Article 31 of the current Constitution of 2016 requires that political parties respect the gender and regional balance and that they should not represent any armed groups. The constitutionalisation of political parties in the CAR therefore reflects the country's realities and challenges.

3.1.2 *Legal provisions on the status and rights of political parties*

As stated above, there was no legal regulation of political parties in the CAR until 1991. Since the first *CAR Constitution* of 1959, political parties have always been regulated by the constitutions, especially those providing for a single-party system. However, in 1991, amidst pressure from civil society movements and the international community, President Andre Kolingba had to repeal the ban on multi-partyism by adopting the 1991 Organic Law on the formation, operation, financing and dissolution of Political Parties.⁴⁹ The 1991 Party Law was a turning point in CAR's political history, as it paved the way for the organisation of multi-party presidential elections, which took place in 1993. In 2005 the 1991 Party Law was replaced by a Presidential

⁴⁴ The *Constitution of the CAR*, 1981 adopted by referendum. Art 4 of the 1981 *CAR Constitution* states: "Political parties contribute to the expression of universal suffrage. They are formed and carry out their activities freely."

⁴⁵ Article 14 of the 1981 *CAR Constitution* states that political parties concur in the expression of universal suffrage. They can be formed and carry out their activities freely.

⁴⁶ *Constitution of the CAR*, 1986.

⁴⁷ Article 19 of the *Constitution of the CAR*, 1995.

⁴⁸ Article 20 of the *Constitution of the CAR*, 2004; art 31 of the *Constitution of the CAR*, 2016.

⁴⁹ *Law 91.004 on the Formation, Operation, Financing and Dissolution of Political Parties* of 1991.

Ordinance relating to political parties and the statutes of the opposition in the CAR.⁵⁰ The 2005 Ordinance defined the requirements for the creation, registration, coalition, suspension, dissolution, functioning and funding of political parties or party coalitions, as well as the status of opposition parties.⁵¹ With the 2005 Ordinance, for the first time, the law in the CAR made specific provisions for the protection of opposition parties. It should be noted that the participation of political parties in the electoral process was also supported by other laws, including the *Electoral Code*,⁵² which created the Independent Joint Electoral Commission.⁵³ Overall, it is important to point out that after a long period of the existence of a *de jure* single-party system, CAR's first regulation of political pluralism occurred through the law (the 1991 *Party Law*). A multi-party system was enshrined in the CAR Constitution of 1995.

3.2 Senegal

Although the Portuguese were the first to explore Senegal in the mid-15th century, the country was colonised by the French, who initially used its territory as a point of departure for the Atlantic slave trade.⁵⁴ Senegal occupied a special position over other French colonies in Africa. Its capital city, Dakar, was also the capital of French West Africa and became the centre from which the French governed and developed their West African colonies.⁵⁵ Generally, the Senegalese legal system, like that of the CAR, is inspired by the French civil law, although it is also influenced by customary laws as well as Islamic law. In terms of civil and political rights, Senegal is regarded as a relatively peaceful country with a longstanding democratic tradition.⁵⁶ Since its independence in 1960 the country has never

⁵⁰ *Presidential Ordinance 05.007 of 2005 on Political Parties and Opposition Parties Statutes in the Central African Republic* (ch V).

⁵¹ Chapter V of *Presidential Ordinance 05.007 of 2005 on Political Parties and Opposition Parties Statutes in the Central African Republic*.

⁵² *Law 98.004* of 1998 amended by *Law 99.015* of 1999 relating to the *Electoral Code*; *Law 09.016* of 2009 relating to the *Electoral Code*; *Law 13.003* of 2013 relating to the *Electoral Code* as aligned with *Law 15.004* of 2015 derogating from certain provisions of *Law 13.003* of 2013 and by *Law 15.005* of 2015 amending certain provisions of *Law 15.004* of 2015.

⁵³ *Law 98.004* of 1998.

⁵⁴ Education Encyclopedia 2019 <https://education.stateuniversity.com/pages/1309/Senegal-HISTORY-BACKGROUND.html>.

⁵⁵ Education Encyclopedia 2019 <https://education.stateuniversity.com/pages/1309/Senegal-HISTORY-BACKGROUND.html>.

⁵⁶ With the exception of the political unrest around the organisation of the presidential elections in 2012. Despite popular opposition, the Constitutional Council validated the candidacy of incumbent President Abdoulaye Wade, while it invalidated the

experienced a coup d'état, and it has continuously consolidated its status as an example of good governance and constitutional democracy.

3.2.1 *Constitutional provisions on the status and rights of political parties*

Senegal already had a number of existing political parties before accessing independence. These included the *Rassemblement Démocratique Africain* (RDA), the French Section of the Workers' International (SFIO),⁵⁷ and the *Bloc Démocratique Sénégalais* (BDS) founded in 1948 by Leopold Sedar Senghor, who became the first president of independent Senegal in 1960. In 1958 Senghor initiated the merger of other parties to form the *Union Progressiste Sénégalaise* (UPS),⁵⁸ which became the most prominent political force in the country. The first constitutional regulation of political parties in Senegal occurred through the Constitution of 26 August 1960, which provided for Senegal's adherence to a parliamentary system. Article 3 of the 1960 Constitution provided for the rights and duties of parties, while emphasising their obligations to respect the principles of sovereignty and democracy. In 1963 a new Constitution⁵⁹ allowing a presidential system was adopted. Article 3 of the 1963 Constitution reiterated the provisions of the 1960 Constitution concerning political parties' rights and duties.

Theoretically, political pluralism had been implemented in Senegal before the country's independence and the rights of political parties were enshrined in the constitution as soon as Senegal became independent in 1960. However, in practice, both at national and local government level, President Leopold Sedar Senghor's party, *Union Progressiste Sénégalaise* (UPS), held all seats in Parliament,⁶⁰ while other political parties were prohibited.⁶¹ This contradicted the existing constitutional provisions on the rights and duties of all political parties in Senegal.⁶² In reality, the representation of the citizens of Senegal occurred solely through the ruling party. Between 1966 and 1974, in violation of the Constitution, Senegal experienced an

candidacy of other key figures. Several demonstrations broke out immediately after the announcement, leading to a dozen deaths.

⁵⁷ RDA and SFIO were also existing political parties in the CAR and other Francophone African countries.

⁵⁸ *L'Union Progressiste Sénégalaise* was created in 1958 and renamed *Parti Socialiste* in 1976.

⁵⁹ *Constitutional Law 63-22* of 1963 on the amendment of the *Constitution of the Republic of Senegal*.

⁶⁰ During the 1963 presidential elections Senghor won by 99% of the votes.

⁶¹ Cheikh Anta Diop's *Bloc des Masses Sénégalaises* (BMS) was banned in 1962; and BMS converted into *Front National Sénégalais* and was banned again in 1964.

⁶² See art 3 of the *Constitution of the Republic of Senegal*, 1960.

"authoritarian presidential regime",⁶³ and became a *de facto* one-party state⁶⁴ with the predominance of the UPS. While there was no formal prohibition of political pluralism, opposition parties were either curtailed or merged⁶⁵ with the ruling party. The constitutionalisation of political pluralism was therefore only symbolic. It was only in 1974, following a wave of political and social unrest, that the government authorised the creation of a second political party, namely the *Parti Démocratique Sénégalais* (PDS).⁶⁶

From 1963 until 2001, when a new Constitution was finally adopted, the constitutional status of political parties was changed on several occasions in accordance with the government's political visions.⁶⁷ Firstly, in 1976 Article 3 of the Constitution was amended to authorise only three political parties in Senegal.⁶⁸ Article 3 of the Constitution provided that political parties could not be more than three in number and that they must represent different currents of thought. Secondly, in 1978 the Constitution was amended to establish a four-party system in Senegal and to explicitly list the four authorised types of party ideologies.⁶⁹ From the foregoing, it became apparent that while officially adhering to the principle of constitutional democracy and political pluralism, Senegal had opted for a "controlled multi-partyism" illustrated by restrictive constitutional provisions pertaining to the activities of political parties. The Senegalese Government argued that to prevent political anarchy resulting from the proliferation of political parties⁷⁰ it had to resort to a system that closely regulated the status of political parties.

It was only in 1981, during a third constitutional amendment of the status of political parties, that Article 3 of the Constitution was amended to reinstate "absolute multi-partyism" in Senegal.⁷¹ The government justified this step based on its aim to "modernise the political regime, strengthen good

⁶³ Tine 1997 *Les Classiques des Sciences Sociales* 16.

⁶⁴ The Government then referred to a "unified party" (*parti unifié*) while the opposition critiqued the existence of a single party (*parti unique*).

⁶⁵ In 1966 the *Parti du Regroupement Africain-Senegal* merged with the ruling party UPS.

⁶⁶ The *Parti Démocratique Sénégalais* was founded by Abdoulaye Wade in 1974.

⁶⁷ Overall, between 1967 and 1999 the *Senegalese Constitution* of 1963 was amended 20 times. Three constitutional amendments specifically concerned the status of political parties.

⁶⁸ *Constitutional Law 76-01* of 19 March 1976 on the revision of the Constitution of the Republic of Senegal.

⁶⁹ *Constitutional Law 78-60* of 1978. The four authorised ideologies were conservative; liberal; socialist and marxist-leninist or communist.

⁷⁰ *Fall Textes Constitutionnels du Sénégal* 102.

⁷¹ *Constitutional Law 81-16* of 1981. President Abdou Diouf reinstated a "*multipartisme absolu*" in Senegal.

governance and consolidate the rule of law and democracy." In 2016 the *Senegalese Constitution* was amended to provide more rights and protection to all political parties and independent candidates alike. Senegalese political parties were given a societal role in terms of "training of citizens, promotion of citizens' participation in national life and public affairs management".⁷² In a separate article the 2016 Constitutional Amendment enshrined the rights of opposition parties as well as those of the leader of the opposition.⁷³

In sum, it can be said that the first decade following Senegalese independence was marked by a *de facto* single-party system, in violation of the provisions of the 1960 Constitution. Using an ideology-based party constitutionalisation, Senegal opted for a prudent and gradual approach to the protection and promotion of the rights of all political parties. The adoption of such an approach may suggest that the primary goal of party constitutionalisation was not to promote constitutional democracy but rather to preserve political power.

3.2.2 *Legal provisions on the status and rights of political parties*

As the Senegalese government enshrined the status of political parties in its Constitutions, it simultaneously enacted laws relating to political parties.⁷⁴ In 1964 the first *Senegalese Party Law* regulated political parties' participation in elections.⁷⁵ However the *Party Law* had little influence on the enforcement of the rights and duties of political parties since in reality only the ruling party was authorised to operate in the country and opposition parties were either intimidated or banned.⁷⁶ In 1976 Article 2 of the 1975 *Party Law*⁷⁷ was amended to list the three party ideologies authorised in the country.⁷⁸ Referring to Article 3 of the Constitution, the amended *Party Law* required the three political parties to respectively subscribe to three listed

⁷² *Constitutional Law 2016-10* of 2016 (art 4).

⁷³ Article 58 of the *Constitutional Law 2016-10* of 2016 states: "The Constitution guarantees political parties that oppose Government's policy, the right to oppose. The Constitution guarantees the opposition a status that enables it to carry out its functions. The law defines its status and sets out its rights and duties as well as those of the leader of the opposition".

⁷⁴ *Political Parties Law 75-68* of 1975; *Political Parties Law 81-17* of 1981; *Political Parties Law 89-36* of 1989 amending *Political Parties Law 81-17* of 1981.

⁷⁵ Hartmann 2010 *Democratization* 770.

⁷⁶ Following the 1963 elections, the ruling party UPS was holding all seats in Parliament and Cheikh Anta Diop's *Front National Sénégalais* was banned in 1964.

⁷⁷ *Political Parties Law 75-68* of 1975.

⁷⁸ The three authorised ideologies were: liberal and democrat; socialist and democrat; Marxist-Leninist/communist ideologies.

ideologies, namely the liberal and democratic, the socialist and democratic, or the Marxist-Leninist/communist ideologies, or else they could face dissolution. This development was considered as uncommon in comparison with the prevalent one-party systems and military regimes in other parts of the continent.⁷⁹ In 1981, after the *Senegalese Constitution* was amended to provide for "absolute multi-partyism",⁸⁰ a *Party Law*⁸¹ was adopted to repeal the "three ideologies" requirement. It merely required political parties to comply with the principles of national sovereignty and democracy. Finally, in 1989 a law amending the 1981 *Party Law* established the conditions for the dissolution of political parties.⁸²

4 Other sources of regulations

4.1 International regulations

There are no specific international obligations requiring states parties to give a constitutional or legal status to political parties, but as members of the United Nations African states are bound by the *UN Charter* obligations, which include promoting human rights and fundamental freedoms.⁸³ Adherence to UN Treaty-based bodies and instruments and their subsequent human rights-focussed obligations should foster the protection of constitutional democracy, good governance, and respect for the rule of law.⁸⁴ The rationale for international intervention in promoting party constitutionalisation is based on the premise that each country has the sovereign right to choose how to conduct its internal affairs. However, by adhering to the *UN Charter* and various international instruments, states agree to abide by a set of obligations and commitments to protect fundamental rights and freedoms including citizens' right to participate in their country's public affairs.⁸⁵ The main international instruments regulating freedom of association and citizens' right to participate in public affairs are the *Universal Declaration of Human Rights* (hereafter UDHR) of 1948⁸⁶ and

⁷⁹ Hartmann 2010 *Democratization* 771.

⁸⁰ With *Constitutional Law 81-16* of 1981, President Abdou Diouf reinstated a "*multipartisme absolu*" in Senegal. See Fall *Textes Constitutionnels du Sénégal* 102.

⁸¹ *Political Parties Law 81-17* of 1981.

⁸² *Political Parties Law 89-36* of 1989 amending *Political Parties Law 81-17* of 1981.

⁸³ The purpose of the *Charter of the United Nations* (1945) includes the achievement of international cooperation by promoting and encouraging respect for human rights and fundamental freedoms (art 1(3)).

⁸⁴ International IDEA *International Obligations for Elections* vii.

⁸⁵ International IDEA *International Obligations for Elections* v.

⁸⁶ *Universal Declaration of Human Rights* (1948) (UDHR). Art 21: "(1) Everyone has the right to take part in the government of his country, directly or through freely

the *International Covenant on Civil and Political Rights* (hereafter ICCPR) of 1966.⁸⁷ As in the UDHR, the ICCPR confirms the right to participate in the conduct of public affairs. Regarding political parties in particular, the *Travaux préparatoires* of the monitoring body of the ICCPR, the Human Rights Committee, states that political parties are called upon to function democratically in order to guarantee citizens' equal rights and opportunity to be elected and to participate in public affairs.⁸⁸

UN treaties and resolutions, as well as the related jurisprudence,⁸⁹ therefore provide universal benchmarks for States Parties to promote constitutional democracy, good governance and respect for the rule of law. From this perspective, the concept of an "obligations-based approach" to international treaties has been promoted as a way of ensuring that political parties, civil society groups and ordinary citizens are able to "debate and apply obligations from the same perspective, nationally and internationally." The prospects for promoting party constitutionalisation would be strengthened by the adoption of the obligations-based approach, as all stakeholders would be able to defend their rights to participate in public affairs using international instruments that their state has committed itself to abide by. The adoption of this approach is confirmed by the fact that national constitutions often make specific reference to international and regional instruments, making them constitutionally binding.

chosen representatives. (2) Everyone has the right of equal access to public service in his country."

⁸⁷ *International Covenant on Civil and Political Rights* (1966) (ICCPR). Art 21: "(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. (2) No restriction may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals of the protection of the rights and freedoms of others ... Art 25: Every citizen shall have the right and the opportunity ... (a) To take part in the conduct of public affairs, directly or through freely chosen representatives. (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors".

⁸⁸ *Travaux préparatoires* UN Doc CCPR/C/SR1509 GC25 para 52.

⁸⁹ For instance, see *UN Human Rights Committee: Concluding Observations - Uganda* UN Doc CCPR/CO/80/UGA (2004); *UN Human Rights Committee: Concluding Observations - Equatorial Guinea* CCPR/CO/79/GNQ (2004); *UN Human Rights Committee: Concluding Observations - Rwanda* UN Doc CCPR/C/RWA/CO/3 (2009).

4.2 Regional and sub-regional regulations

African regional institutions can contribute to the effective implementation of party constitutionalisation and the promotion of constitutional democracy. The African Union (hereafter AU) has put in place norms, standards and instruments to strengthen Africa's political and socio-economic integration and unity, including the promotion of democracy through the rule of law and constitutional order. For instance, the *African Charter on Human and Peoples' Rights* of 1981 (hereafter ACHPR) provides for freedom of association and citizens' right to participate freely in public affairs through chosen representatives,⁹⁰ and Articles 10 and 11 of the Charter reiterate the language of international instruments pertaining to freedom of association and freedom of expression.⁹¹ The African Commission on Human and Peoples' Rights, which is the treaty body that monitors the implementation of the ACHPR, has ruled in favour of the protection and promotion of freedom of association and freedom of expression. It has called on States Parties to comply with national constitutions and promote political pluralism.⁹² Similarly, the *AU Constitutive Act* of 2000 enshrines the key principles of the African Union, including respect for democratic principles, human rights, the rule of law and good governance.⁹³ The *Constitutive Act* functions as a cornerstone for the promotion of constitutionalism in Africa as it establishes a close relationship between democracy, human rights, the rule of law, and good governance.⁹⁴ It requires States Parties to promote and protect human and people's rights in accordance with the *African*

⁹⁰ Articles 10(1) and 13(1) of the ACHPR.

⁹¹ Article 10 of the ACHPR: "1. Every individual shall have the right to free association on provided that he abides by the law. 2. Subject to the obligation of solidarity provided for in Art. 29 no one may be compelled to join an association." Art 11 of the ACHPR: "Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others."

⁹² See *International Pen (on behalf of Saro-Wira) v Nigeria* 2000 AHRLR 212 (ACHPR 1998) paras 107-110, which finds a violation of the right to freedom of association where the government takes action against an association because it does not approve of its positions. Also see *Interights v Mauritania* 2004 AHLRL 87 (ACPHR 2004), in which the Commission found that the dissolution of a political party by the Islamic Republic of Mauritania was not proportional to the nature of the breaches and offences committed by the political party and was therefore in violation of the provisions of art 10(1) of the ACHPR. The African Commission went on to call on all the republican political forces in the Islamic Republic of Mauritania to work, within the framework of the Constitution, towards the reinforcement of healthy pluralist and democratic practice, which would preserve social unity and public peace.

⁹³ *African Union Constitutive Act* (2000) art 3(m).

⁹⁴ Mbata Mangu 2014 *Africa Review* 63.

Charter on Human and People's Rights and other relevant human rights agreements (Article 3(h)).

The *African Charter on Democracy, Elections and Governance* (hereafter ACDEG) of 2007, which came into force in 2012, also aims to promote African States' adherence to the rule of law and good governance. It is one critical element of AU's agenda for constitutionalism and good governance, as it includes detailed provisions on human rights and the rule of law, democratic institutions, democratic elections; political, economic and social governance as well as mechanisms for its application at individual state party, regional and continental level.⁹⁵ The major role played by political parties is highlighted, as Article 3(11) requires States Parties to reinforce political pluralism and recognise the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.⁹⁶

The effective promotion and protection of the constitutional rights and duties of political parties by individual states depends on whether or not they have ratified and domesticated the international or regional human rights framework. In other words, the CAR and Senegal would be legally bound by these human rights instruments if they have ratified them. However, both countries⁹⁷ have not ratified the ACDEG. Hence it may be assumed that in reality the ACDEG and other non-binding AU frameworks⁹⁸ may have a limited effect on CAR and Senegal. However, recent decisions by the African Court of Human and People's Rights have shown that the non-ratification of regional instruments does not preclude AU member states from being legally bound and held accountable for the promotion of constitutional democracy and good governance. On two occasions⁹⁹ the Court has ordered state parties to respectively amend their constitutions and laws in order to make them compliant with the above mentioned human rights instruments. In the case of *Christopher R Mtikila and others v Republic of Tanzania* in 2001, the African Court on Human and People's Rights found that a Tanzanian legislative ban on independent candidates

⁹⁵ Fombad "African Union and Democratization" 327.

⁹⁶ Article 3(11) of the *African Charter on Democracy, Elections and Governance* (2007) (ACDEG).

⁹⁷ The CAR signed the ACDEG on 28 June 2008 while Senegal signed it on 12 December 2008.

⁹⁸ For instance, the *African Union Declaration on the Principles Governing Democratic Elections in Africa* (2002).

⁹⁹ See *Christopher R Mtikila v Republic of Tanzania* Application 009/2011 and 011/2011, Judgment of 14 June 2013; also see *Actions pour la Protection des Droits de l'Homme v The Republic of Cote d'Ivoire* Application 001/2014, Judgment of 18 November 2016.

was unconstitutional. The ban violated the right to association – which includes the right not to associate, and the right to political participation guaranteed in the *African Charter on Human and People's Rights*. Similarly, in the case of *ACPDH v The Republic of Côte d'Ivoire*, the African Court ruled that by adopting an impugned law on the composition of the Independent Electoral Commission (IEC),¹⁰⁰ the Republic of Côte d'Ivoire violated its commitment to establish an independent and impartial electoral body as provided under Article 17 of the *African Charter on Democracy* and Article 3 of the *Economic Community of West African States* (hereafter ECOWAS) *Democracy Protocol*.

There are also sub-regional instruments which aim to promote constitutional democracy and the status of political parties. In West Africa ECOWAS¹⁰¹ adopted a *Protocol on Democracy and Good Governance* in 2001. It recognises political parties' freedom of operation and guarantees the freedom of the opposition.¹⁰² The Protocol is used as a reference point for assessing West African states' compliance with the principles of democracy, good governance and the rule of law. For instance, in 2010, in the *Hissein Habre* case, the ECOWAS Community Court of Justice urged Senegal to ensure that its constitutional and legal reforms do not violate the claimant's rights to a fair trial.¹⁰³ The *Hissein Habre* case demonstrated the impacts of ECOWAS mechanisms on ECOWAS countries' constitutional and legal frameworks and their obligations to comply with them. In Central Africa, the Preamble of the *Revised Treaty for the Establishment of the Economic and Monetary Community of Central African States* (hereafter CEMAC) of 2008 proclaims member states' commitment to democratic values, the rule of law and good governance. The objectives of the CEMAC Treaty are reinforced by the *Economic Community of Central African States* (hereafter ECCAS) *Treaty*¹⁰⁴ which also addresses issues related to human rights and democracy.¹⁰⁵ However in reality there is no instrument in the Central African sub-region that specifically provides for democracy, good governance and respect for constitutionalism as in the ECOWAS zone.

¹⁰⁰ Law 2014-335 Relating to the Independent Electoral Commission, 2014.

¹⁰¹ Senegal is a member of the ECOWAS.

¹⁰² Article 1(i) of the *Economic Community of West African States Protocol on Democracy and Good Governance* (2001).

¹⁰³ *Hissein Habré v Republic of Senegal* Judgment No ECW/CCJ/JUD/06/10 of 18 November 2010. The ECOWAS Community Court found that Senegal's reforms were likely to affect Chadian President Hissein Habre's human rights.

¹⁰⁴ Communauté Economique Des Etats de L' Afrique Centrale date unknown http://www.ceeac-eccas.org/images/traites/trt_eccas.pdf.__Membership between CEMAC and ECCAS overlaps.

¹⁰⁵ The CAR is a member of CEMAC and ECCAS.

More specifically, Central African states have no sub-regional obligations to adopt constitutional and legal regulations on political parties.

5 Justifications and rationale for regulating the status of political parties in CAR and Senegal

The motivation for regulating the status of political parties varies according to the actors involved in the process, whether they are political parties themselves, the media, and civil society organisations or external actors, such as state or non-state international organisations. In Europe, for instance, Gabriela Borz explained the wave of party constitutionalisation around six main justifications,¹⁰⁶ amongst which there is the need for the recognition of political parties as "agents" or representatives of the citizens in the political system. Party constitutionalisation therefore constitutes a legitimisation of the role and activities of political parties in a constitutional democracy. Constitutional recognition is expected to place political parties in a more stable position so that they are less vulnerable to change. Another justification of party constitutionalisation pertains to political parties' need for resources and subsidies. Political parties need constitutional recognition to be able to obtain certain advantages with a view to ultimately guaranteeing their sustainability in the power structure. Finally, one of Gabriela Borz's justifications for party constitutionalisation originates in the necessity to regulate the activities of political parties by ensuring that they comply with the constitution. Party constitutionalisation would force political parties to comply with the principles of accountability and transparency even in their internal affairs.

In the next section, a review of the current provisions regulating political parties in CAR and Senegal will confirm whether or not Gabriella Borz's rationale for party constitutionalisation is applicable in both countries.

5.1 Promoting constitutional democracy

In the CAR, Article 31 of the 2016 Constitution stipulates that political parties and political groups contribute to the expression of suffrage. Article 26 of the *CAR Constitution* of 2016 provides that institutions that are responsible for running the state hold their powers from the people by means of elections, through direct or indirect universal suffrage.¹⁰⁷ Similarly, in Senegal the Preamble to the Constitution enshrines the country's desire to be a modern state. It recognises the opposition as a fundamental pillar of

¹⁰⁶ Borz 2016 *IPSR* 2.

¹⁰⁷ *Constitution of the CAR*, 2016.

democracy and an indispensable element for the proper functioning of the democratic mechanism. As the *Senegalese Constitution* was amended in 2016, the new Article 4 of the same Constitution¹⁰⁸ not only recognised the role of political parties and coalitions of political parties in the expression of suffrage but also emphasised that political parties contribute to training citizens, and to promoting their participation in national life and in the management of public affairs. The key role of political parties in the promotion of constitutional democracy in the CAR and Senegal is therefore recognisable in both countries' constitutions.

Since constitutional democracy is characterised by the principle of popular sovereignty, in which citizens are seen as the ultimate source of the authority of the government, the running of elections constitutes a means by which it translates the free expression of the will of citizens into representative government.¹⁰⁹ Overall, the CAR and Senegalese Constitutions provide for citizens' electoral rights in general terms, while recognising political parties' role in the electoral processes, and provides for the legislation to regulate the modalities of the electoral system of both countries. The recent amendment of the Senegalese *Electoral Code* is an example of the link between political parties, the conduct of national elections and the promotion of constitutional democracy. In April 2018 members of the ruling party amended the *Electoral Code*¹¹⁰ in order to restrict the requirements for becoming a candidate in presidential elections. The Government justified this move through its willingness to rule out candidates with no chance of winning and therefore prevent political anarchy. This suggests that the Senegalese Government established a link between the number of political parties and candidates and the efficient conduct of elections in a constitutional democracy. However, it should be noted that the Senegalese government's reasoning contradicts the African Court's judgment in the above-mentioned *Mtikila* case, which recognised all citizens' right to political participation as guaranteed by the *African Charter on Human and People's Rights*.

5.2 Regulating party funding

Butler posits that money is essential to the operation of any democracy.¹¹¹ Money is not only essential to implementing national development policies and programmes but it is also a critical resource for political parties to

¹⁰⁸ *Constitutional Law 2016-10* of 2016 on the Revision of the Constitution.

¹⁰⁹ International IDEA *International Obligations for Elections* 214.

¹¹⁰ *Law 2018-22 Amending the Electoral Code*, 2018.

¹¹¹ Butler *Paying for Politics* 1.

operate, mainly by organising their campaigns, disseminating their alternative visions and policies and expanding the number of their voters.¹¹² Even though it is widely accepted that political parties require financing, it is also acknowledged that non-transparent financing may "discourage participation in political parties and encourage cynicism".¹¹³ Party funding regulation is therefore expected to promote citizens' trust in politics and political parties in particular but also to promote constitutional democracy as a whole.¹¹⁴

In CAR Article 31 of the 2016 Constitution provides that a law determines the conditions of formation, operation and financing of political parties. Accordingly, the financing of political parties in CAR is regulated by a Presidential Ordinance of 2005,¹¹⁵ which provides for annual state funding of political parties proportionate to the number of their members of Parliament.¹¹⁶ In the context of elections, the state is required to support political parties' election expenses by reimbursing 50% of the authorised campaign expenses limit. However, it appears that in reality there have been no annual budget allocations to political parties in recent years in CAR.¹¹⁷ This suggests that the 2005 Ordinance on political parties has not been fully implemented and political parties in CAR do not have access to state funding, even though there is a legal framework in place. In Senegal the 2016 amendment to the Constitution stipulates that the conditions in which political parties carry out their activities and receive public funding should be determined by law.¹¹⁸ However, the existing *Party Law* of 1981¹¹⁹ does not make provision for direct public funding.¹²⁰ In other words, in Senegal the constitutional provisions on public funding are currently not being enforced, since there is no implementing legislation that sets out the modalities of direct state funding to political parties.

It should be pointed out that the constitutions of the CAR and Senegal are both silent on the issue of private sources of funding to political parties. The

¹¹² Butler *Paying for Politics* 1.

¹¹³ Bryan and Baer *Money in Politics* 7.

¹¹⁴ International IDEA *Funding of Political Parties and Election Campaigns* 2.

¹¹⁵ *Presidential Ordinance 05.007 on Political Parties and Opposition Parties Statutes in the Central African Republic*, 2005.

¹¹⁶ *Presidential Ordinance 05.007 on Political Parties and Opposition Parties Statutes in the Central African Republic*, 2005 (art 44).

¹¹⁷ The 2016 and 2017 CAR budget did not provide for state party funding: Droit Afrique 2017 <http://www.droit-afrique.com/uploads/RCA-LF-2017.pdf>; Droit-Afrique 2016 <https://www.droit-afrique.com/uploads/RCA-LF-2016-.pdf>.

¹¹⁸ *Constitutional Law 2016-10* of 2016 (art 4).

¹¹⁹ Amended by *Political Parties Law 89-36* of 1989.

¹²⁰ Article 5 of *Political Parties Law 89-36* of 1989.

CAR Ordinance of 2005 authorises private sources of funding to political parties, provided that the donors are CAR nationals and the funds do not exceed 50% of the parties' total income.¹²¹ The *Senegalese Party Law* of 1981 implicitly recognises the private funding of political parties' since it requires political parties to file their annual accounts with the Government, in order to establish that they do not benefit from prohibited resources such as foreign donations. However, the law does not explicitly include any regulation of the amount that may be received, or the modalities or the nature of these private contributions.

Following the Senegalese presidential elections in February 2019, election observers including civil society¹²² and intergovernmental bodies¹²³ highlighted the absence of a legal framework related to political party and electoral campaign funding. For instance, in its conclusions on the presidential elections, the European Union Election Observation Mission in Senegal recommended the enactment of a political party funding law and the creation of an institution which would monitor compliance with the legislation and take enforcement measures accordingly.¹²⁴ Using the example of the CAR and Senegal, it is important to highlight the risk of not regulating or implementing party financing. The regulation of party funding is essential to protect political parties' from corruption or bankruptcy and therefore to promote constitutional democracy.

5.3 Regulating the activities and behaviour of political parties

Some African countries' constitutions have included provisions requiring political parties to abide by the democratic principles of good governance and national sovereignty.¹²⁵ The regulation of internal party democracy may concern party nominations, leadership appointments and internal decision-making, as well as regional and gender representation.

In the CAR, under Article 31 of the 2016 Constitution political parties are required to promote and respect the principles of democracy, national unity and sovereignty, human rights and the republican nature of the State in

¹²¹ Article 42 of *Presidential Ordinance 05.007 on Political Parties and Opposition Parties Statutes in the Central African Republic*, 2005.

¹²² Sunu Election 2019.

¹²³ European Union Election Observation Mission in Senegal.

¹²⁴ Union Européenne *Sénégal 2019* 11.

¹²⁵ For instance, see *Constitution of Rwanda*, 2015 (art 56); *Constitution of Kenya*, 2010 (art 91); *Constitution of Nigeria*, 1999 (art 223). In South Africa, the Constitution does not include specific provisions pertaining to political parties' behaviour and internal affairs. However, the *Electoral Commission Act 51* of 1996 provides for the condition of registration of political parties (ss 15-17).

accordance with the existing laws and regulations. Political parties are also required to respect the principle of gender and regional representation. Pursuant to the Constitution, a Law on Gender Parity¹²⁶ was adopted in 2016. It provides that political parties' decision-making processes that do not involve 35% of women can be invalidated by a statutory body under Article 8. The law also provides for the creation of a monitoring body to that effect. In Senegal, in addition to the obligation to abide by the principles of democracy, national sovereignty and unity, Article 4 of the Constitution explicitly stipulates that political parties are required "to strictly observe the rules of associative good governance" or else they would face sanctions that might lead to their suspension and dissolution. In 2008 the Senegalese Parliament amended the Constitution in order to ensure that political parties comply with the requirement of gender equality.¹²⁷ It can be said that in the CAR and Senegal, both the constitutional designers and lawmakers have made provision for the enforcement of internal party democracy. The provision requiring internal democracy relates specifically to the countries' move to ensure that political parties themselves comply with democratic principles in the conduct of their internal affairs.

6 Gaps in and challenges to party regulation

The examples of party regulation in CAR and Senegal indicate that for an effective promotion of constitutional democracy, regulation must be followed by implementation. For instance, in the case of state party funding in the CAR, despite the existence of a Presidential Ordinance,¹²⁸ in reality there have been no annual budget allocations to political parties in recent years.¹²⁹ It may be argued that the current conflict situation in the country could explain this shortcoming. However, it appears that state party funding was not allocated during the period prior to the conflict; that is, before 2013.¹³⁰ Consequently, political parties in the CAR do not have access to state funding even though there is an appropriate legal framework in place. Equally, in Senegal the 2016 constitutional provisions on public funding are

¹²⁶ *Law 16.004 Establishing Parity between Men and Women in the Central African Republic*, 2016.

¹²⁷ *Constitutional Law 2008-30* of 2008 amending arts 7, 63, 68, 71, and 82 of the Constitution.

¹²⁸ *Presidential Ordinance 05.007 on Political Parties and Opposition Parties Statutes in the Central African Republic*, 2005.

¹²⁹ The 2016 and 2017 CAR budget did not provide for state party funding: Droit Afrique 2017 <http://www.droit-afrique.com/uploads/RCA-LF-2017.pdf>; Droit-Afrique 2016 <https://www.droit-afrique.com/uploads/RCA-LF-2016-.pdf>.

¹³⁰ For instance, see the 2011 CAR budget, which does not include specific budget allocation to political parties: Droit-Afrique 2011 <http://www.droit-afrique.com/upload/doc/rca/RCA-LF-2011.pdf>.

currently not being enforced since there is no implementing legislation that sets out the modalities of direct state funding to political parties. Similar legal gaps apply to the situation of the foreign funding of political parties in the CAR and Senegal. In the CAR, the *Political Parties Ordinance* of 2005 provides that foreign donations should not exceed 20% of the parties' total income,¹³¹ while in Senegal the 1989 law amending the 1981 *Party Law* provides for the dissolution of political parties where a party has received funding directly or indirectly from foreigners or foreigners established in Senegal. However, none of the above-mentioned laws include monitoring mechanisms making the flow of foreign funding hardly preventable. This suggests that the regulation of political parties in the CAR and Senegal is symbolic, to some extent, and that the promotion of constitutional democracy may not be effective.

Another risk to party regulation is the attempt of governments to restrict political parties' activities, as was seen in the 1960s in Senegal, when the government opted for a "controlled multi-partyism" by limiting the number of authorised political parties. The promotion of constitutional democracy would be compromised if the regulation of political parties enabled any ruling party to pose a potential threat to genuine multi-partyism. Party regulation would become a source of limited competition and the ruling party's monopoly of power would imply that there would be little chance of political alternation.

7 Conclusion and recommendations

This study had two main objectives. The first was to review the emergence and evolution of party regulation in CAR and Senegal, in the light of their respective historical backgrounds and socio-political contexts. The second objective was to establish whether the constitutional and legal regulation of political parties in both countries has actually promoted constitutional democracy to which CAR and Senegal have adhered since the 1990s. These two objectives are essential in understanding the current position of political parties in both countries, and the role that they play in the constitutional order.

Party constitutionalisation emerged in CAR and Senegal as they became independent. It was established that the French legal framework, specifically the French Constitution of 1958, played a crucial role in the

¹³¹ Article 41 of the *Presidential Ordinance 05.007 on Political Parties and Opposition Parties Statutes in the Central African Republic*, 2005.

process of party constitutionalisation in CAR and Senegal. It is submitted that the legal regulation of political parties in the CAR and Senegal has complemented and strengthened the process of party constitutionalisation, regardless of the democratic or undemocratic nature of the regimes. It is also argued that party regulation can play a significant role in promoting constitutional order and political stability. Senegal's legal and constitutional regulation of political parties may have contributed to its long history of democracy and political stability compared with that of the CAR, which has been in political turmoil. For instance, the constitution of Senegal recognised unrestricted multi-partyism¹³² from as early as 1981. Meanwhile, the CAR was a *de jure* one-party state from 1962 to 1991. During this period the country experienced three *coups d'état*.¹³³

In examining the justifications of and rationale for party regulation, the issue of the implementation of the constitutional and legal regulation of political parties has been highlighted. This is because it was found that the regulation of political parties constituted a means for ensuring that they comply with the principles of accountability, good governance and transparency, even in their internal affairs. For instance, the state funding of political parties in CAR and Senegal is still "symbolic", even though the Senegalese Constitution explicitly provides for such a resource. This raises the issue of "semantic constitutions" that are not enforced in practice and subsequently jeopardise the promotion of constitutional democracy.

In this light, it is recommended that constitutional and legal regulation are complemented by constitutionally recognised enforcement mechanisms which can protect and promote the constitutional rights and duties of political parties and clearly impact on the position of political parties in the constitutional democracy. Similarly, it is important that the private funding of political parties is constitutionally regulated. In CAR and Senegal only party laws provide for the private funding of political parties, but in reality there are no monitoring and sanction mechanisms.

Finally, party constitutionalisation highlights the essential role of the judiciary in protecting and promoting the constitutional order. An independent judiciary is expected to protect the constitutional rights and duties of all political parties regardless of whether they are majority or

¹³² In Senegal, multi-partyism was initially limited to three authorised political parties (1976), then four political parties (1978).

¹³³ 1966, 1979 and 1981.

minority parties. In the CAR¹³⁴ and Senegal¹³⁵ current frameworks for constitutional review there are restrictive rules for accessing the constitutional courts, making it almost impossible for ordinary litigants, including opposition political parties, to refer any matter pertaining to the rights and duties of political parties to the constitutional judge. A framework in which independent constitutional judges have significant latitude in interpreting and protecting constitutional provisions would probably be more conducive to the effective implementation of party rights and the promotion of constitutional democracy.

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¹³⁵ Articles 74 and 92 of the 2001 *Senegalese Constitution*. In Senegal, only a few selected members of the executive and legislative powers may challenge the constitutionality of laws before the Constitutional Council.

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List of Abbreviations

ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Charter on Human and Peoples' Rights
AHRLJ	African Human Rights Law Journal
Am J Comp L	American Journal of Comparative Law
AU	African Union
BDS	<i>Bloc Démocratique Sénégalais</i>
BMS	Bloc des Masses Sénégalaises
Br J Polit Sci	British Journal of Political Science

CAR	Central African Republic
CEMAC	Economic and Monetary Community of Central African States
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
ICCPR	International Covenant on Civil and Political Rights
IEC	Independent Electoral Commission
International IDEA	International Institute for Democracy and Electoral Assistance
IPSR	International Political Science Review
J Mod Afr Stud	Journal of Modern African Studies
JLS	Journal of Legislative Studies
MEDAC	<i>Mouvement pour l'Evolution Démocratique de l'Afrique Centrale</i>
MESAN	<i>Mouvement pour l'Evolution Sociale en Afrique Noire</i>
MPR	<i>Mouvement Populaire Republicain</i>
MSA	African Socialist Movement
PDS	<i>Parti Démocratique Sénégalais</i>
RDA	<i>Rassemblement Démocratique Africain</i>
RDC	<i>Rassemblement Démocratique Centrafricain</i>
SFIO	French Section of the Workers' International
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPS	<i>Union Progressiste Sénégalaise</i>
VRÜ	<i>Verfassung und Recht in Übersee / Law and Politics in Africa, Asia, Latin America</i>