

REPUBLIC OF SOUTH SUDAN
MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS



Office of the Minister

Date: 20th May, 2024

Mr. Gabriel Kuot Akok Deng
Advocate and Legal Consultant
Republic of South Sudan, Juba

SUBJECT: LEGAL OPINION ON REGISTRATION AND LICENSE FEES OF AMOUNTS OF USD 50,000.00 AND 25,000.00 RESPECTIVELY IMPOSED BY THE POLITICAL PARTIES COUNCIL ON THE POLITICAL PARTIES

Introduction: -

1. This legal opinion relates to notice of intention to sue the Political Parties Council brought to our attention by Advocate **Gabriel Kuot Akok Deng** on 25th April, 2024 on behalf of Dr. **Gai Chol Paul** and other thirteen (13) Political Parties Leaders challenging the legality of the decision of the Chairperson of the Political Parties Council imposing an amount of USD 75,000.00 as provisional registration and licensing fees for the Political Parties and requesting the Ministry of Justice and Constitutional Affairs to intervene by rendering an appropriate legal opinion on the matter. On 15th May, 2024, the Director of Civil Litigation and Legal Opinion in the Ministry of Justice and Constitutional Affairs rendered to my end a legal opinion on the matter with clear recommendations, the opinion of which I fully concurred with and render to your end the same as the Chief Legal Advisor to the Government of the Republic of South Sudan in accordance with Article 135 (2) of the Transitional Constitution of the Republic of South Sudan, 2011 as amended.

Summary of the facts: -

The facts of the case are precisely outlined as hereunder;

2. Firstly, that early March, 2024, the Chairperson of the Political Parties Council issued a decision charging any political party seeking for the registration to pay USD 50,000.00 for Provisional Registration which is valid for six (6) months only and USD 25,000.00 for full Registration License fee making the total amount of USD 75,000.00.
3. Secondly, that on 25th March, 2024, about fourteen (14) Political Parties aspiring for registration delivered a petition to the Chairperson of the Political Parties Council rejecting the fees imposed by the Political Parties Council for their registration and licensing at USD 75,000.00.

4. Thirdly, that the Political Parties Council did not respond to the said petition to date despite the fact that the registration deadline is approaching as the country prepares for the upcoming general elections in December, 2024.
5. Fourthly, that the alleged regulations on which the decision was based was unreasonable, illegal, unilateral and discriminatory, and the decision was intentionally made to overcharge the opposition parties, an act that amounts to violation of the right to form a political party as required by the Transitional Constitution of the Republic of South Sudan, 2011 as amended.
6. Fifthly, that in line with this illegal decision, the Chairperson of the Political Parties Council Hon. Eng. **James Akol Zakayo** wrote a letter dated 13th February, 2024, to the Chairperson of African People's Congress requesting him to re-submit an application for Provisional Registration of his party African People's Congress with Registration Fee USD 50,000.00 pursuant to **Item No. 1 Second Schedule** of the Political Parties Council (Amendment) Regulations, 2024 and in accordance with Section 6 (1), (2) and (3) of the Political Parties Act, 2012 as amended.
7. Finally, that the regulations that charge the Political Parties Leaders with these fees in form of the hard currency is also a violation of government financial policy which permits all the transactions to be made in local currency (South Sudanese Pounds). Advocate **Gabriel Kuot Akok Deng** concludes that the Political Parties Leaders will seek cancellation of USD 75,000.00 fees and confirmation of SSP 20,000.00 as the full registration and license fees from the East African Court of Justice if the decision of USD 75,000.00 registration and licensing fees is not reviewed, reversed or cancelled by the Political Parties Council.

Issues for determination: -

8. Two issues are essential to be determined in order to arrive at an appropriate legal opinion on the matter. **The first issue is whether the Political Parties Council Regulations, 2015 (Amendment) Regulations, 2024 upon which the decision of USD 75,000.00 registration and licensing fees was based are legal or lawful regulations or not?**
9. **The second issue is whether the decision is in compliance with the Transitional Constitution of the Republic of South Sudan, 2011 as amended, the Political Parties Act, 2012 as amended and Bank of South Sudan Act, 2012 or not?**

Determination of issues: -

10. Before determination of the two issues contained herein above, it is worth mentioning that the Chairperson of the Political Parties Council in his letter of re-submission of application for Provisional Registration of African People's Congress Party invoked and determined USD 50,000.00 fee in accordance with and pursuant to **Item No.1 Second Schedule of the Political Parties Council (Amendment) Regulations, 2024**, and not the Political Parties Council Regulations, 2015 which

is the legally existing Regulations pending the signature of the Political Parties Council (Amendment) Regulations, 2024 into regulations as required under Section 18 (e) of the Political Parties Act, 2012 as amended.

11. Now, the initial question necessary for determining this issue is; have the Political Parties Council (Amendment) Regulations, 2024 been signed into regulations as required under Section 18 (e) of the Political Parties Act, 2012 as amended?
12. Section 18 (e) of the Political Parties Act, 2012 as amended provides that:
13. **The Chairperson of the Council shall have the following functions: (e) to sign regulations and resolutions of the Council.**
14. The answer to the question above is no. The Political Parties Council (Amendment) Regulations, 2024, are not yet signed into regulations but still under amendment as these regulations are not signed into regulations by the Chairperson of the Political Parties Council as provided for under Section 18 (e) of the Political Parties Council Act, 2012 as amended.
15. As a result, the determination of this issue is very simple because the Political Parties Council Regulations, 2015 (Amendment) Regulations, 2024, have not yet been signed into regulations by the Chairperson of the Political Parties Council. Therefore, the Regulations that should have governed this issue of USD 75,000.00 registration and licensing fees for the Political Parties is the Political Parties Council Regulations, 2015, and not the one which is still under amendment and not yet signed into regulations.
16. Even if the regulations in question were signed into regulations legally, still the legal principle of **non-retrospectivity** of law is paramount and fundamental to be upheld when it comes to application of law on the facts and actions that occurred or happened before coming into force of that particular law. The legal principle of **non-retrospectivity** of law simply means that laws do not apply to facts or actions that happened or occurred before they could come to enforcement or existence including the **Regulations**.
17. Therefore, the decision in question is null and void as it was based on the regulations still under amendment and not signed into regulations as required under Section 18 (e) of the Political Parties Act, 2012 as amended. The said decision should have been based on the Political Parties Council Regulations, 2015 and not otherwise as the law does not apply retrospectively.
18. As for the second issue, Article 25 (1) and (2) of the Transitional Constitution of the Republic of South Sudan, 2011 as amended respectively provides that:
The right to peaceful assembly is recognized and guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his or her interest.

Formation and registration of political parties, associations and trade unions shall be regulated by law as is necessary in a democratic society.

19. To determine whether the decision is in compliance with the Transitional Constitution of the Republic of South Sudan, 2011 as amended. We say, it is not in compliance with Article 25 (1) and (2) of the Transitional Constitution of the Republic of South Sudan simply because it was based on the Regulations not signed into regulations, and more importantly, the imposition of such huge amount of money in foreign currency hinders and prohibits the Political Parties to register and exercise their political rights as is necessary in a democratic society as provided for under Article 25 (2) of the Transitional Constitution of the Republic of South Sudan, 2011 as amended. This huge amount of money in hard currency apart from discouraging the Political Parties to exercise their activities as required, it wrongly sends a message that the Political Parties Council is a revenue collector rather than a regulator of the Political Parties.

20. Similarly, the decision is in violation of Section 18 (e) of the Political Parties Act, 2012 as amended, because the regulations relied on in determination of the said fees bear no signature of the Chairperson of the Political Parties Council. The decision is also in violation of Section 47 (1) and (2) of the Political Parties Act, 2012 as amended which respectively provides that:

A political party that contravenes any provision of this Act commits an offence and a person convicted of an offence under this Act for which no penalty is prescribed shall be liable:

In the case of a political party, to fine not exceeding One Hundred Thousand (100,000.00) South Sudanese Pounds; or

In the case of a member of a political party on conviction, to a fine not less than One Hundred Thousand (100,000.00) South Sudanese Pounds or imprisonment for a term of not less than two years, or both.

21. While the decision in question imposes registration and licensing fees on the Political Parties in United States Dollars which is a foreign currency, the Section above imposes penalties on violation of this Act in South Sudanese Pounds. The laws are above the Regulations and the latter should not under any circumstances violate the law for which they were made to regulate.

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22. As for the Bank of South Sudan Act, 2012, Section 46 of the Bank of South Sudan Act, 2011 provides that:

A tender of payment of money is a legal tender if made in banknotes or coins. Banknotes and coins shall be accepted, for the amount of their denomination in the currency of South Sudan, in payment of all public and private debts in South Sudan.

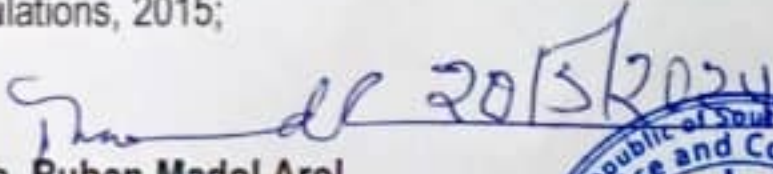
23. Section 49 of the Bank of South Sudan Act, 2011 provides that:
Prices for all goods and services in South Sudan shall be denominated in South Sudanese Pounds.
24. The decision in question is in contravention with Sections 46 and 49 of the Bank of South Sudan Act, 2011 as it imposes registration and licensing fees for the Political Parties in a foreign currency and not South Sudan's currency as required under the above Sections of the Bank of South Sudan Act, 2011.

The opinion: -

25. Based on the reasons stated above, and pursuant to Article 135 (2) and (6) of the Transitional Constitution of the Republic of South Sudan, 2011 as amended, read together with Section 25 (1) and (k) of the Ministry of Legal Affairs and Constitutional Development Organization Act, 2008, I do hereby render to your end the required legal opinion as hereunder;
- a. That the decision of the Chairperson of the Political Parties Council is illegal and unlawful as it is based on the Political Parties Council Regulations, 2024, still under the amendment and not yet signed into regulations and not the Political Parties Council Regulations, 2015 which is in force now pending the signature of the Political Parties Council (Amendment) Regulations, 2024;
 - b. That the decision violates the Transitional Constitution of the Republic of South Sudan, 2011 as amended, the Political Parties Act, 2012 as amended and the Bank of South Sudan Act, 2011;
 - c. That the decision is hereby declared null and void for the reasons clearly stated in Paragraphs (1) and (2) above;
 - d. That the determination of registration and licensing fees for the Political Parties should be based on the Political Parties Council Regulations, 2015; and
 - e. That the relevant parties be served with copies of this legal opinion.

The legal authorities relied on: -

1. The Transitional Constitution of the Republic of South Sudan, 2011 as amended
2. The Political Parties Act, 2012 as amended
3. The Bank of South Sudan Act, 2011; and
4. The Political Parties Council Regulations, 2015;


Justice, Ruben Madol Arol
Minister of Justice and Constitutional Affairs
Republic of South Sudan, Juba

Attachments: -

1. The Political Parties Act, 2012 as amended;
2. The Political Parties Council (Amendment Draft) Regulations, 2024;



3. The letter of the Chairperson of the Political Parties Council to the African People's Congress;
4. Second Schedule of the Political Parties Council (Amendment Draft) Regulations, 2024; and
5. The notice of intention to sue.

Cc:

- Hon. Undersecretary of Ministry of Justice and Constitutional Affairs
- Hon. Chairperson of the Political Parties Council
- Hon. Director of Civil Litigation and Legal Opinion
- Representatives of Political Parties
- File