



Political Party Funding

1. Introduction

As in all liberal democracies, South Africa's multi-party electoral system is heavily dependent on money. Lately, political funding, especially private and foreign funding of political parties, has come up for debate again,¹ even though the issue has been on the table in South African legal and political circles for more than 15 years – arising through litigation, international obligations, and resolutions taken by political parties. There is now a push for Parliament to address the matter with the earnestness it deserves in order to strengthen democratic processes. An open political party funding framework enhances accountability and reduces the possibility of state capture and corruption in our political parties. South Africa is one of the few countries that do not regulate private party political funding. In response to these issues Parliament has opened a process to review party funding, and a number of submissions have been made by political parties and civil society organisations suggesting amendments to the current system of regulation of political party funding.

2. The Functions of Parties

The role of political parties is to perform representative functions, that is, they aim to reflect public opinion, specifically the will of their constituency. Parties serve as one of the primary conduits through which the governors and the governed are linked. In their efforts to secure voter support, they have to appeal to the public, attracting voters. They also have a participatory function as they offer a vehicle for political involvement through membership, meetings, educating the public, and engagement in the development of party policy. Parties also perform an agenda-setting function in shaping the terms

and content of political debates. This leads to aggregation as parties attempt to reconcile the diverse interests and agendas from amongst the citizenry and present them in a coherent and salient manner. Additionally, political parties retain the role of policy and programmatic articulation as they try to communicate their ideas, ideology, policies and programmes. Major political parties also perform a governance function: they determine the pool of people who govern through their recruitment and pre-selection processes, and participate in the act of governing through helping make, carry out, and scrutinise, both laws and executive decisions.

All of these functions have a primarily public character. Accordingly, even though political parties are not public bodies – in the sense of being organs of state or subject to state control – they cannot be regarded as purely private either. If this is so, then it is at least arguable that citizens have a right to know how much money a given party raises, and where it comes from.

3. The Constitutional and Statutory Position

Public funding of political parties in South Africa is sanctioned by section 236 of the Constitution, which states that "to enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis". The Public Funding of Represented Political Parties Act, 103 of 1997 ('the Act') is the national legislation which gives effect to this constitutional imperative.

The Act provides for a 'Represented Political Parties' Fund', which is administered by the Independent Electoral Commission (IEC). Monies are appropriated to the Fund annually by

Parliament, and are then allocated to parties both proportionally and equitably. At present, 90% of the allocation goes to parties according to the strength of their representation in the National Assembly and provincial legislatures, and the remaining 10% is divided equally amongst all parties represented in either the National Assembly or a provincial legislature.

In 2016, a total of R127.7 million was allocated to the Fund by Parliament. Of this, the ANC received R75.6 million, the DA R27.5 million, and the EFF R10.3 million, with the smallest parties (1 MP in the National Assembly) getting R138 000.² Unsurprisingly, many of the smaller parties argue that the 90/10 ratio between the proportional and equitable shares should be reduced to 70/30 or 60/40, a move that would see them gaining considerably at the expense of the bigger parties. Without such a change, they claim, it is impossible for a small party to grow – it cannot market itself, advertise, produce literature, etc. And if smaller parties cannot grow, then the existence of a truly multi-party system is threatened.

The Act goes further by providing other mechanisms in which money can be donated to the Fund by private entities, including foreign sources, in support of political parties generally. Unfortunately, it appears that for at least the last ten years, no money has been donated to the Fund from any source other than the annual appropriation by Parliament.

Apart from these monies, parties also receive public funding from Parliament and the provincial legislatures which goes towards the costs of running their caucuses in the various legislatures, support for party leadership, and for constituency work. For the rest, parties must solicit donations from members and supporters, corporate sponsors and the general public – in other words, private funding.

When it comes to accounting for the money they receive, there is no general requirement for an audit of political party finances. The only funds that must be accounted for are those disbursed by the IEC, for which an annual audited report must be submitted by each party. However, income from private entities is not required to be publicly accounted for.

Another constitutional provision that comes into the picture is the right of access to information. Section 32 of the Constitution states:

- 1) (E)veryone has the right of access to –
 - a) any information held by the state and
 - b) any information that is held by other person and that is required for the exercise or protection of any rights.

As has been noted above, since political parties are at least semi-public bodies, a strong argument can be made to the effect that the public has a right to information concerning their finances. This argument becomes all the stronger when a party is in government, when it assumes an even more obvious public role. At present, if we include municipal governments and coalitions, the ANC, the DA, the EFF, the UDM, the IFP, the NFP and the African Independent Congress are all to one extent or another ‘in government’.

4. Other Countries

Political party funding presents a global challenge for both developed and developing nations, and funding regimes for political parties vary between countries. In some cases, all party expenses are covered by taxpayers’ money and private funding is banned because it is seen as having the potential to unduly influence decisions when a party assumes power.

A study conducted by the International Institute for Democracy and Electoral Assistance (IDEA) found that 35 countries worldwide put a ban on donations from foreign interests to political parties. The IDEA study also shows that, of the 35 countries from which data was collected, South Africa is the only one that does not report on political party funding.³ Other thought-provoking findings from the study are as follows:

- 28 countries including Ethiopia, Kenya and Ghana ban donations to political parties from corporations with government contracts or partial government ownership (SA does not).
- 8 countries including Mexico, Mozambique and Portugal ban corporate donations to political parties (SA does not).
- 18 countries including Nigeria, Germany and Argentina prohibit any other forms of donation (SA does not).
- In 28 countries parties have to disclose their annual financial statements (SA does not require this).
- In 21 countries parties must report on their finances in relation to elections (SA does not require this).⁴

5. The Position of Civil Society

A fundamental lack of trust is at the heart of South African politicians' extremely poor reputation,⁵ and is probably the main reason why people's opinions about their elected representatives have transformed from healthy scepticism into destructive cynicism.⁶ If South Africans do not find a way to break the circle of mistrust, public disdain will infect the health of the institutions that are the foundation and framework of our democratic political system. What alarms civil society is that the majority of political party funds come from private sources; and that there are no legally binding requirements compelling them to disclose how much they receive. There is also potential for money to be derived from illegal or criminal sources or activities. Furthermore, such funding could potentially be made with the intention of influencing future procurement procedures or the outright purchase of tenders.

Most civil society organizations believe that the public has a right to know who is financing parties and candidates, and by how much. Therefore, consensus seems to support the need for a comprehensive legal framework that will assist in promoting proactive, regular disclosure of party funding.⁷ At the public hearings on political party funding in Parliament last month, the organisation *My Vote Counts* proposed that there should be frequent and periodic disclosures of donations that political parties receive.⁸ The periods for disclosures should be set separately for election years and non-election years (particularly for provincial and national elections), with a change in frequency for the periods directly before provincial and national elections. Likewise, the *Right2Know Campaign* believes this need for transparency goes beyond the need to root out corruption and malfeasance. Transparency is a crucial step towards greater political equality.⁹

My Vote Counts also argued that foreign funding of local parties should be banned because there have been a number of reported scandals where it has been suggested that foreign money helped swing government contracts. For instance, the multi-billion Rand military acquisition programme, or "Arms Deal", was a prime example of how foreign interests could exert undue influence in order to secure contracts. The current project involving new nuclear power stations was another example. A number of foreign interests including Russian, French, American, Chinese and Korean firms were strongly competing for the contract, and might

well attempt to use donations to parties to gain an advantage over their competitors.¹⁰

In its submission, the CPLO argued for full disclosure of party funding, but noted that there should be a threshold below which contributions need not be individually disclosed. To require parties to report on ordinary membership fees, for example, or small donations below a certain figure – perhaps R10 000 – would constitute a very onerous burden. CPLO also argued for disclosure and transparency regarding investment vehicles controlled by parties. It was important to be able to trace any suspicious links between a party's investments in companies and contracts or tenders being awarded to such companies.

6. Views of the Political Parties

In his submission to the hearings, Dr Zweli Mkhize, Treasurer-General of the ANC, urged that enhancing public funding should only be considered in the context of an improved regulatory architecture for the financial operations of parties. Such a framework should build transparency and financial accountability, regulate private funding of parties, and increase public confidence in the democratic system.¹¹

Many opposition parties adopt the line that they would be prepared to disclose their sources of funding if "everyone else does so as well". However, some opposition parties raised concerns that donors would be too intimidated to give money to them if such funding could not be kept secret. The DA's James Selfe suggested that there was a widespread fear among donors of losing government business as a form of reprisal, together with a fear that donors' business might be "targeted by inspectors" or "disadvantaged in some way".¹²

7. Conclusion

Democracy is a system in which the government is controlled by the people, and in which people are considered equals in the exercise of that control. However, unequal access to political finance contributes to an uneven political playing field. The rapid growth of campaign expenditure in many countries has worsened this problem. Huge and unaccounted amounts of money involved in election campaigns and the running of political parties make it impossible for those without access to large private funds to

compete on the same level as those who are well funded.

Voters all over the world want political parties and governments to represent their views and to be responsive to their needs. However, all too often parties are disproportionately representative of the interests of the donors who have largely financed them. If large corporations and rich individuals are able to buy greater influence

through large campaign donations, then citizens can lose faith in, or be marginalized from, the political process.

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¹ <http://www.enca.com/elections-2014-south-africa/da-agang-break-donor-funding-spotlight>

² The Fund's Annual Reports are available on the website of the Electoral Commission. See <http://www.elections.org.za/content/About-Us/Represented-Political-Parties/>

³ See <http://www.idea.int/political-finance/>

⁴ Ibid.

⁵ *SA poisoned by suspicion and lack of trust.* See <https://www.iol.co.za/sundayindependent/sa-poisoned-by-suspicion-and-lack-of-trust-2004362>

⁶ *Private donations mute the voice of ordinary citizens* See <https://www.dailymaverick.co.za/opinionista/2017-06-26-private-donations-mute-the-voice-of-ordinary-citizens/#.WcOtmXRr02w>

⁷ Ad hoc Committee on the Funding of Political Parties see <https://www.parliament.gov.za/group-details/6624>

⁸ Ibid.

⁹ Written Submissions. See <https://www.myvotecounts.org.za/what-we-do/>

¹⁰ Ibid.

¹¹ *Political Party funding must support transparency, accountability and the strengthening of our democracy.* See <http://www.anc.org.za/content/political-party-funding-must-support-transparency-accountability-and-strengthening-our>

¹² *Secret funding of SA politics: Is the party over?* Available on: <https://www.dailymaverick.co.za/article/2017-08-16-secret-funding-of-sa-politics-is-the-party-over/#.WcOwLHRx02w>

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