



GUIDING PRINCIPLES FOR POLITICAL PARTY FUNDING REFORM IN SOUTH AFRICA

EXECUTIVE SUMMARY

There is a political culture of secrecy in the South African political finance system, particularly in relation to private donations to political parties, that is inconsistent with a constitutional multi-party democratic system founded on principles of accountability, responsiveness and openness. The absence of reform and lack of regulation of private political finances pose severe institutionalised corruption and political inequality risks that need to be addressed urgently. Key constitutional principles need to guide the regulation of the role of money in politics in order to develop a more transparent, equal and inclusive political system.

INTRODUCTION

Funding is an essential element in modern politics. Access to financial resources is important for political parties and electoral candidates for a variety of reasons. Politics is an expensive affair and political parties need to generate adequate funding if they are to perform their expected tasks effectively. Money is required to reach new and existing voters, among other election-related activities.

However, the relationship of money and politics can be problematic. The inability of policy makers to control the influence of money in politics can compromise fairness in the political and electoral processes, and subsequently undermine democratic governance. In this respect, party funding, particularly the practice of private funding, has become both a topical and contentious issue in South African politics.

On the one hand, some political analysts and civil society groups like MVC, Corruption Watch, and Right2Know call for a reform in or regulation of the role of money in politics, specifically private donations. Reformists are not necessarily against the use of private donations as a source of party funding. They want greater transparency in the political process, and therefore call for disclosure

laws to be extended to the area of private funding.

On the other hand, opponents argue that mandatory disclosures of private donations by political parties will be an interference in the affairs of political parties, as well as undermine the privacy of donors and parties. Both sides raise compelling concerns but any attempts at striking a balance must be directed by key constitutional principles that support a multi-party democracy.

This policy brief explores the viability for legislative reforms to the contemporary South African political finance system. It assesses existing legal framework and ongoing public debates about political party funding in South Africa. The goal is to arrive at a set of key principles that can guide efforts to mitigate the role of money in the political process.

OVERVIEW OF EXISTING PARTY FUNDING REGULATORY FRAMEWORK

Presently, South Africa provides public funding for political parties. A variety of legislation — the Constitution, the Public Funding of Represented Political Parties Act 103 of 1997, the Public Funding of Represented Political Parties Regulation of 1998, and the Electoral Act of 1998 — seek to



monitor and regulate public funding of political parties. These laws set the rules for the provision of and condition of use of public funds by political parties.

The Constitution provides for equitable and proportional public funding to political parties at both national and provincial levels. The Constitutional provision is more of a guiding principle than a regulation of party funding.

The Public Funding of Represented Political Parties Act attempts to regulate party funding in a more meaningful way. It established the Represented Political Parties Fund, to give effect to the constitutional provision of funding for political parties, to be administered by an Independent Electoral Commission (IEC). The Act requires political parties to account for money received from the Fund. In summary, the Act sets limits on the amount parties receive and sets requirements for disclosure of expenditures.

In contrast, private funding of political parties remains largely unregulated. Neither the Electoral Act nor the Public Funding Act offer a view on the matter. Legally, there are no limits on, or requirements to disclose of, private funding. Thus, disclosures of private donations and related matters are left to the voluntary discretion of political parties. Political parties may, if at all, choose when and how they disclose the sources, amounts and/or use of private donations they have received. This laissez-faire approach to the practice of private political financing is problematic.

THE CASE FOR AND AGAINST REGULATION OF PRIVATE FUNDING

The lack of institutionalisation or regulation of private political funding practices causes much controversy. Arguments for the reform of South Africa's party funding framework are primarily based on issues of social justice.

For the supporters of political financing reforms, introducing comprehensive legislation that regulates private funding and donations will help mitigate some of the issues associated with the abuse of money in politics.

More importantly, reform is necessary to protect the public interest. Enacting or extending disclosure laws would prevent political corruption as well as promote the right to information and the right to an "informed" vote, all of which are for the benefit of the general public. Argued simply, non-disclosure of private funding risks increasing political inequality and derailing democratic goals.

Given these problems, there needs to be some form of regulation of private party funding in South African politics. It cannot be simply hoped for or trusted that political parties will do the correct thing or toe ethical lines.

In spite of this, calls for legal reforms to political financing have been met with strong opposition. The primary concern for anti-reformists, major political parties being the biggest opposition, is that of privacy. They view any imposed duty to disclose the source and other details of their private funding highly inappropriate because political parties are private organisations.

Additionally, imposed duty to disclose will violate the privacy of their donors who wish to remain private or anonymous. If disclosure laws are introduced into the area of private political financing, they risk losing potential donors, and subsequently compromise their performances in electoral contests.

Other opponents have also argued that mandated disclosures will create situations where donors of minority political parties risk harassment by dominant parties or government.



Despite the opposing concerns around regulating private donations, some form of regulation is needed and indeed possible. Regulations serve to prevent the abuse of money as well as increase fairness and participation in the political process, among other goals.

TOWARDS A SET OF PRINCIPLES FOR POLICY REFORM

The challenge becomes how to balance the conflicting interests of all stakeholders, without compromising democratic governance. In this regard, there needs to be a set of broad principles that can guide legislation and practices.

The following interrelated principles should drive the design and reform of South Africa's system of political financing.

Transparency

Openness is a crucial principle for consideration in the political funding reform. Any attempts to end corruption in politics will require addressing the issue of “money politics”. The influencing role of money in politics needs to be carefully monitored and managed in order to strike a balance between the influences and voices of diverse actors and groups. This requires greater transparency in the political financial system.

Citizens have constitutional rights to free association and to vote. However, the nature of South Africa's electoral system only allows for these important political choices to be exercised through political parties. For this reason, the exercise of this democratic right must be informed. Part of making informed decisions involves having access to all the relevant information. Voters should ideally have all the information on political activities, including political finance, before casting their votes. Besides, parties and elected officials have a duty to serve the public interest; therefore, their “business” should not be shrouded in secrecy.

Political parties should be required to release relevant, accurate and comprehensive information timeously to the public so that they can act accordingly.

The reporting or disclosure of private donations, experience has shown, cannot be left to the self-regulation or discretion of political parties. Mandatory disclosure of party funding is therefore necessary to detect irregularities in party-donor relationships, help combat corruption, and promote fairness in the political process.

Accountability

Beyond transparency, political finance systems need to be fair and accountable. It is not simply enough to reform existing or introduce new regulations on private political financing. There needs to be an accountability mechanism that enforces and ensures policy compliance.

Regarding private political financing, an independent non-partisan enforcement or oversight body is crucial. This body should then be equipped with adequate authority and resources to audit and disclose political finances, as well as investigate and impose appropriate sanctions for political finance violations or unethical practices.

Currently the IEC performs most of these oversight functions, but only in the area of public funding. Its control will need to be extended to include private donations. The oversight role of the IEC can be further supported by civil society organisations and the media to mitigate the risks of conflict of interest and corruption in the political process. Civil society organisations and the media in South Africa already serves as public watchdogs that actively monitor the political process.



This public or external oversight can be leveraged into an institutionalised multi-actor independent oversight body that monitor, investigate, and enforce the rules and functions of the political finance system to ensure greater transparency and accountability.

Inclusive participation

The Constitution grants to all citizens the freedom to make political choices, including the freedom to participate in the activities of a political party. The Constitution promotes political equality in that all individuals, not just a wealthy few, have equal right to participate in the political process.

A significant aspect of the enjoyment of political equality is access to information. In respect of party financing, the disclosure of party funding might be relevant to voting decisions. In this respect, inclusive participation is undermined when people are denied access to important political finance information. All citizens should have a right of access to the financial details of political parties and candidates if they are to have active influence in democratic processes.

Trust

Intricately linked to the principle of inclusive participation is public trust or confidence in the integrity of the political process. Currently in South Africa, citizens are becoming increasingly detached from political parties and elected leaders. This growing disconnect can partly be attributed to perceptions of corruption.

Party financing scandals essentially undermine public confidence in political parties and the political system generally. Public opinion surveys reveal a growing public mistrust in South African political parties. The growing mistrust in political parties translates into low public participation in electoral politics, which ultimately undermines political equality.

Evidence suggests that legal regulations, in this case the disclosure of political party financial information, can improve and help build the level of public trust in political parties and the political system generally.

CONCLUSION

The increasing influence of money in politics is an ongoing debate in South African politics. Specifically, in relation to private political funding, there appears to be clear division. On the one hand, some lobbyists have called for an urgent reform to South Africa's political finance system as it relates to private donations. This call has been countered by interest groups wanting to maintain the status quo. Dissenting voices aside, there is a real need to review the current framework as it compromises important democratic goals. However, any legal reform should be guided by constitutional principles of openness, accountability, inclusiveness and trust to succeed.

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