



AFRICAN RESERVE BANK

PAYING THE PIPER:
REGULATING PARTY FUNDING
IN SOUTH AFRICAN POLITICS

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QUARTERLY

roundtable

THE HELEN SUZMAN FOUNDATION

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The Helen Suzman Foundation

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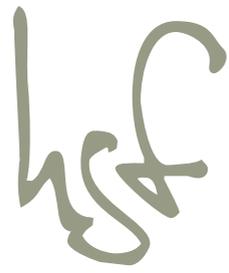
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Profiles



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Shameela has been with IDASA's Political Information and Monitoring Service for the last five years and her areas of interest include the development of South Africa's institutions of democracy, particularly parliament and the judiciary.

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Michael Spicer

Michael Spicer is the Chief Executive Officer of Business Leadership South Africa. Prior to his arrival at Business Leadership, Michael was an Executive Vice President at Anglo American plc and Executive Director of Anglo American South Africa. He remains on the Board of Anglo American South Africa in a non-executive capacity, is the Chairman of Vergelegen Wine Estate and is a Board member of Rothschild South Africa .

Mr Spicer has a wide involvement in business and public life, being Deputy Chairman of the National Business Initiative, a member of President Mbeki's Big Business Working Group and International Marketing Council, and a board member of the Business Trust. He was appointed in 2006 as an inaugural member of the Presidential International Advisory Board of Mocambique. He is also Chairman of the Council at St. John's College , from where he matriculated before completing his BA and MA degrees at Rhodes University with distinction.



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Hennie van Vuuren is Head of the Corruption and Governance Programme at the Institute for Security Studies (ISS) in Cape Town. The programme is engaged in applied research projects in Africa in areas such as natural resources, climate change, service delivery, political party funding, conflicts of interest, public asset management, stolen assets and national legislative reform.

He is engaged in applied policy research projects with a focus on corruption and democratic governance. Before joining the ISS as a Senior Researcher in 2002 he worked as a Programme Officer at the Transparency International (TI) secretariat in Berlin, Germany. He holds a BA Honours degree in African Politics from the University of Witwatersrand (Johannesburg) and an MA in Political Studies from the Free University (Berlin).

Profiles



Raenette Taljaard

Raenette Taljaard is the director of the Helen Suzman Foundation. Taljaard, a former DA MP, served as Shadow Minister of Finance from 2002 and was a member of the Portfolio Committee on Finance. She also served on numerous other parliamentary committees, including the Standing Committee on Public Accounts during the arms deal investigation

Taljaard lectures part-time locally and abroad on the regulation of private military and security companies.

Taljaard is a Yale World Fellow, a Fellow of the Emerging Leaders Programme of the Centre for Leadership and Public Values (UCT's Graduate School of Business and Duke University), a Young Global Leader of the World Economic Forum, and an ALI Fellow of the Aspen Institute.

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Taljaard publishes widely.



HELEN SUZMAN FOUNDATION

*Paying the Piper: Regulating Party
Funding in South African Politics*



**OPEN SOCIETY FOUNDATION
FOR SOUTH AFRICA**



Introduction

Introduction

Funding Reform must be a post-Polokwane, post-Poll priority

The election campaign for the fourth democratically elected Government and Parliament of the Republic of South Africa has been one of the most expensive in our history. As our political parties spawn new market entrants into the party political space and others grow and consolidate their financial needs magnify accordingly. In terms of existing laws and regulations, particularly the fund established in accordance with the Public Funding of Represented Political Parties Fund Act.

In a Government Gazette notice dated a week before the election on the 22nd of April 2009, the IEC (which administers the fund) announced that political parties would share R92,9m from the public purse for the 2009/10 financial year which will be distributed on the basis of the 2009 election proportional seat allocation with disbursements commencing in May 2009.

The public funding provided for in the Act only provides funding for parties which are represented in Parliament and a controversy emerged prior to the election itself with political newbie COPE not eligible for funding – a situation which will now cease pursuant to the IEC’s announcement.

As a new party, formed in intervening allocation periods, COPE got nothing in the 2008/08 funding allocation. The IEC formula for funding from the Fund is based on a 90/10 formula with 90% based on the number of seats each party holds in the Parliament and 10% distributed equally between all the parties in Parliament – an arrangement that, arguably, assists incumbency.

In its Polokwane resolutions the ANC dealt expressly with the financing need of running a modern political party and called for a robust debate in this regard and for reform:

“The ANC should champion the introduction of a comprehensive system of public funding of representative political parties in the different spheres of government and civil society organisations, as part of strengthening the tenets of our new democracy. This should include putting in place an effective regulatory architecture from private funding of political parties and civil society groups to enhance accountability and transparency to the citizenry. The incoming NEC must urgently develop guidelines and policy on public and private funding, including hot to regulate investment vehicles”

These Polokwane sentiments were echoed by ANC Treasurer Matthews Phosa during the course of the election campaign when he



Introduction

told the Cape Town Press Club on the 15th of April 2009 that there could not be any disclosure on party funding in the absence of a full discussion of how taxpayers would be willing to fund democracy. Drawing comparisons with Britain and Germany Mr. Phosa emphasised that taxpayers in these countries funded their democracy: “You will find in those countries the taxpayer funds democracy. If the taxpayers pay peanuts they get monkeys”. Phosa said the ANC would be happy to disclose more about its donors once it has clarified how much ordinary South Africans would contribute to funding parties thereby strengthening democracy.

South Africa’s IDASA has been at the forefront of co-ordinated civil society actions to seek to regulate private campaign finance whether from corporate or individual donors or, arguably, from foreign governments or ideologically-linked political parties, including seeking legal relief in 2005. On 20 April 2005 Justice Griessel of the Cape High Court dismissed IDASA’s application under the Promotion of Access to Information Act to access the records of the then four biggest political parties (ANC, DA, IFP and the NNP). The Court found that access to

records of private donors was not reasonably required for the exercise and protection of the section 19 of the Constitution right to free political choice, a question IDASA believes the Constitutional Court could have decided differently. However, as the ANC gave IDASA a commitment that campaign finance reform laws would be forthcoming, IDASA opted not to appeal the Cape High Court ruling.

During the 2009 campaign IDASA recommended that parties should receive public funding, both directly and indirectly in the form of free public broadcast time, for example, but also be made to disclose all their private funding.

There can be little doubt that the time for clear reforms have arrived in accordance with the Polokwane resolutions’ commitments in this regard and for a public debate about public and private campaign financing and how to regulate both through clear and unambiguous new laws on private donations and the necessary amendments to the Public Funding of Represented Political Parties Fund Act.



Chairperson

We've convened this roundtable today with thoughtful analysts from both the private sector and the civil-society community. You will notice that we don't have any political parties; this was a deliberate decision, so that we could go into the more thought-provoking questions about what is required in the regulatory response.

Despite litigation on this issue, and we'll hear more from the Institute for Democracy in South Africa (IDASA) about this, there has not been any real substantive effort to introduce new national legislation in the South African Parliament to regulate the funding and financing of political parties. We're in the throes of arguably one of the country's most expensive election campaigns ever. Figures in the public domain range in the area of close to R220 million, some of which includes the represented political parties' fund expenditure, of which the taxpayer funds to the tune of close to R88 million.

So we're looking at staggering amounts of money. Television campaigning has come to South Africa, with the two biggest parties launching campaigns, and some of those ads cost up to R3 million each. I quote those figures to give you an idea of the extent to which money is infiltrating South African politics and how expensive our elections have become, just to contextualise the discussion.

In the absence of very clear regulations in this area, it is not only the political parties that are potentially open to the influence that comes with private funding. Our private sector is confronted with a myriad challenges and moral hazards and concerns, and opportunities, at the same time.

There can be very little doubt that there's a key need for regulation. We hope that with this event we can focus attention on one of the really forgotten questions of this election campaign – and one of the most important ones, because it cuts to the heart of the matter, as to who is paying the piper and who is calling the tune.

And with that, I'm going to introduce the panellists we've assembled for you.

We have Shameela Seedat of IDASA, which those of you who have followed this debate will know was the key litigant during 2003 and 2005 on this very matter. Professor Steven Friedman is a very well-known political analyst, with the University of Johannesburg, Centre for Democracy. Hennie van Vuuren heads the corruption and governance programme of the Institute of Security Studies in Cape Town. And last but not least, we have a key voice from business, Michael Spicer from Business Leadership South Africa (BLSA).



Shameela Seedat

If I had to pose the question of who puts up most of the money for this election, the simple answer is that, with some exceptions, we simply don't know. And of course this is why we're all gathered here today. What I hope to do is lay out IDASA's position and strategy on party funding over the past years.

Let me begin by drawing a distinction between public and private financing of political parties. In terms of our public-funding law, passed in 1997, 90% of funding is allocated from the State Fund to all political parties represented in the provincial and national legislatures on a proportional basis, according to their numerical strength. The remaining 10% is allocated to the various parties in equal amounts.

This arrangement, for example, would thus exclude a newcomer party such as the Congress of the People (COPE), since a party would have already have had to be occupying seats in the legislature in order to qualify for state funding. The result of this public-funding arrangement is, of course, that

larger parties receive the lion's share of the state's money.

For example, in the last financial year the state fund disbursed around R80 million to 19 political parties. The African National Congress (ANC) received around R53 million of this sum, followed by the Democratic Alliance (DA) with R9,6 million. The Inkatha Freedom Party (IFP) received around 4,8 million.

In the past few years there has been a fair amount of debate, generated mostly by the smaller parties, about the fairness of this 90% proportional and 10% equitable formula. And, specifically, whether it represents the most appropriate way to share state money among contending parties. There are, broadly speaking, two opposing views on this.

Some argue that it is perfectly fair and appropriate, since it has the effect of rewarding parties according to their legislative strength and therefore reinforces the democratically expressed will of the electorate.

On the other hand, critiques of this formula argue that it really just serves to further entrench the dominance of the leading party, and hampers the capacity of other smaller parties to challenge it effectively. But I doubt that this formula will be changed by government in the near future; it is set in law and there's probably nothing unconstitutional about it.

But I think the debate certainly does raise some valid questions about how best to use the state fund to enhance fair competition among parties, and also to reflect a range of political opinions, which is more likely to be sustained by a number of political parties having more money among themselves.

Let me jump the gun a bit and move on to private party funding, because if you look at the facts and figures, it's really private money and not state money that is the main driver of the party and election machine.

To give you an idea of the extent of private funding in South Africa, in the last financial year, 19 parties received around R80 million from the state fund. But parties spent an estimated R300 – 500 million during the 2004 election campaign, with around R46 million being spent only on advertising in the mainstream media. So the question remains, who puts up this money, and what exactly is the deal here?

“... the electorate cannot know where political parties obtain their money and thus cannot form their own opinion on the measure of influence brought to bear upon a political party.”

I think that we cannot deny that politics needs money. State funding and party-membership contributions alone aren't enough to allow parties to carry out their daily activities and run their election campaigns. The problem, however, is the lack of transparency and regulation, and the very effect it has on the electorate. Thus IDASA has for many years now, along with other organisations, been actively seeking regulation, and mostly for two reasons.

First, donations to political parties all around the world are often surrounded by allegations of corruption, and we believe that the scope for corruption would be greatly reduced through regulation. There are a number of examples here, from Pieter Marais to David Malatsi, Chancellor House, Allgate, Schabir Shaik and so on, and all these examples serve to illuminate the ongoing dangers of secret party funding.



“The Cape High Court ruled that the law in its current formulation did not give people the right to the donation records of political parties.”

The second reason why IDASA thinks that regulation is important relates to the rights of all voters. For, quite apart from the question of whether private donors give money to political parties in order to influence policy, and whether there’s anything wrong with that, quite apart from the question of whether they give donations benignly to support multiparty democracy, we believe that without regulation, the electorate cannot know where political parties obtain their money and thus cannot form their own opinion on the measure of influence brought to bear upon a political party.

Thus, we think the publication of financial details will help electors to identify the interests with which the party is associated, and where it sits on the political spectrum. It will also help electors to identify causes which a party is likely to promote in government. The electorate stands to lose without such transparency, as we can’t see who the piper is and who is calling the tunes.

I’m going to speak very briefly about three things that IDASA has done over the years to pursue regulation of private donations. It’s been a very long road. The issue was first raised 12 years ago and, as Raenette mentioned, we still don’t have any movement towards a law on private party funding.

A while back, IDASA drafted a position paper on what a possible regulatory regime could look like. In this regard, in addition to the mandatory requirement of transparency, such regulation will have to consider where to set the threshold for disclosure. In other words, should small donations be disclosed, or just larger ones that are likely to bear a greater influence on politics? Also, what is small in this context? Is it R50 000, is it R100 000, is it less than R50 000?

Regulation would also have to address, not just cash donations, but also donations in kind: for example, posters. Regulation would

also have to consider whether there should actually be a monetary cap on donations, as well on campaign expenditure, in order to level the playing field and reduce the costs of elections in general. It will also have to deal with establishing an independent oversight mechanism to oversee such donations.

This position paper is really just offering a few suggestions, and it is up to all of us to debate what an appropriate regulatory regime would look like in South Africa.

The second part of IDASA’s strategy was admittedly more bold and dramatic. It was to take five of the biggest political parties to court in November 2003 to force them to disclose donations over R50 000, as well as the identities of the donors, and the conditions attached to any of these donations. IDASA tried to do this by using the provisions of the Promotion of Access to Information Act.

Unfortunately, IDASA lost the court case. The Cape High Court ruled that the law in its current formulation did not give people the right to the donation records of political parties. It also said that political parties were private bodies for the purposes of the access to information law, and there was therefore no automatic right to their records.

I don’t think I will go into the legal nuances of the case, but the court ultimately took the view that it was up to Parliament, and not the courts, to regulate this arena of private party funding. But I think, most importantly, the judge in the case said that IDASA had presented “a compelling case that private donations ought to be regulated by specific legislation in the interests of greater openness and transparency”.

So although IDASA lost, we do believe that a more imaginative court might have come to a different conclusion and a wider interpretation of the Act in the Constitution. But in the end, at the time, we decided not to appeal the court decision, largely because Kgalema Motlanthe, in his written affidavit provided to the court at the time of the case, specifically mentioned an intention towards a legislative process by Parliament to regulate private donations.

But this was in 2004, and despite this undertaking, despite the ANC 2007 Polokwane resolution that committed the ANC to disclosure of private donations, despite all of this, there has been no regulation, no movement in this direction. And, in fact, it's now 12 years since the then Minister of Constitutional Development, Valli Moosa, introduced the state funding law to Parliament and specifically said that a private funding law would have to complement the state laws, so as to prevent parties from being backed by powerful financiers, thereby subverting Parliament and democracy.

Clearly the political will to regulate is weak, but why the reluctance? Most political parties don't see it as in their interest. They feel they will lose out on donations, or they don't want to be seen as currying favour with companies and vice versa. So in the end, we feel that the electorate loses out.

Finally, I'll speak about the third part of IDASA's multi-pronged strategy over the years to get a regulation regime, which involves another player, which is businesses. I'm going to limit what I say to IDASA's experiences.

Leading up the 2004 elections, IDASA worked with a number of leading companies to encourage them to adopt codes to govern their own donations. And, prior to that election, at least ten major corporates decided to publish their donations. Some of them said that because the principle of openness was established, they would be making donations for the first time. And around R30 million in new money was thereby injected into the political system, helping to allay fears expressed by parties themselves that disclosure would result in a drop in donations.

A few weeks ago, IDASA issued a corporate guide on donations, which you can find on our website. It encourages companies to create a workable self-regulatory framework in the absence of regulation by Parliament. It encourages companies to consider setting a ceiling for donations to any one party, and also encourages them to establish a financial



limit for political donations in any given period.

It also asks companies to be specific about the purposes for which their money can be used. For example, the guide suggests that money may be better spent on research, on opinion polling, on workshops, on training of electoral candidates, rather than, for example, on street-pole posters or billboard adverts. And the idea behind IDASA's corporate guide is to get more companies to disclose, so as then to oblige political parties themselves to be transparent about the money that they receive from these companies.

I'll conclude by restating IDASA's belief that an election is only fair if the electorate can make an informed choice, [and that presupposes] the right to know who funds political parties. Regulation is necessary for transparency, and so that we can see where undue influence takes place, where influence and favours are purchased. Unfortunately we don't have such regulation and we continue to wait, obliged to allow political parties the still uncontrolled right to raise funds as they see fit, in order to fight the most hotly contested debate since democratic transition.

Sharmeen Seedat



Spicer

Michael

Michael Spicer

Part of my portfolio when I was an executive for Anglo American was very much this question, and I interacted with my friends at IDASA for a number of years.

Prior to 1994, I think we, and I, had a fairly clear perspective on this. This was a different environment. I think it was no particular secret that the flow of funding went to the opposition. Given that, we were fairly set against transparency because that would simply give weapons to the then ruling party to belabour this particular company which was already being set about for a number of other reasons.

I must say that since the advent of democracy I have changed my perspective for a number of reasons, not least that this is the norm internationally. The African Union (AU) has a convention signed in Maputo in 2003 on preventing and combating corruption which prescribes that all members of the AU should legislate and regulate. South Africa is obliged, as a member of the AU, to carry that forward. In the meantime, I think companies, starting

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with the run-up mainly to the 2004 elections, though there were a few outliers who did this earlier on, have begun to set a pattern of transparency.

But I perhaps should make a couple of comments on Shameela’s presentation because I think there are some gaps in that. I think one has to include all other non-South African state funding in private funding, because it’s quite clear that a very substantial proportion of, particularly, the ruling party’s funds could perhaps best be described as party-to-party. And I think if you were able to get behind the figures, you would find that in fact they exceed the corporate donations by a fair



margin, because many of them are in hard currencies.

Equally, however, I think one needs to include private individuals, particularly wealthy individuals, who may not actually be companies, but may control private business interests. They're clearly players in this.

What sort of regulation is clearly very important. And if you are to have an independent oversight, the composition of that body and who regulates the regulator as always is a key question.

I do think that transparency has some risks. What has transpired internationally is that the norm for multinationals is actually not to contribute at all, and a growing number of companies have simply said it's all too complicated, it's all too difficult, and they would prefer not to contribute. So I'm mildly sceptical of the claim that R30 million in new funding came in. I think some companies started to fund, others stopped funding. Indeed, Anglo American has decided to stop funding, in line with the international pattern of behaviour.

Let me turn to the way that businesses are now approaching this. The King III

code has a very short section on relations with government, which simply says that companies should set out the principles that apply when the board considers making a financial contribution to any political party or group. And there is a school, it says, that suggests good governance is to remain apolitical and not to make donations.

Now, I'm wearing that hats of both CEO of Business Leadership and Deputy Chairman of the National Business Initiative (NBI), which is the business body that's done a lot of work on this, and I'm drawing a little bit from the work that they have been doing, so I think I should acknowledge that.

The BLSA and the NBI believe that there is a good case for party-political funding in emerging democracies particularly. That is to strengthen the ability of a range of parties to have an impact, to join the public discourse, and to be effective in political contestation, if we are to have a vibrant multiparty democracy, and not a single-party democracy.

So, generally speaking, in our advice to companies, we've encouraged them not to take the cop-out route that is now the norm internationally; there is a particular purpose, given South Africa's history, to fund. But

“Equally, however, I think one needs to include private individuals, particularly wealthy individuals, who may not actually be companies, but may control private business interests.”

what we then say is that it is the duty of the board to take charge of this matter, and to set out a series of clear principles:

- There should be a clear policy derived by the board to fund political parties or not fund them as the case might be.
- The policy and its application must be open to public scrutiny.
- The policy must be communicated in a transparent manner and published, at least at the very minimum, in the company’s annual report.
- The basis for distributing funding between parties must be explained.
- The consistent implementation of the policy must be ensured, including sponsorship of political activities and conferences.

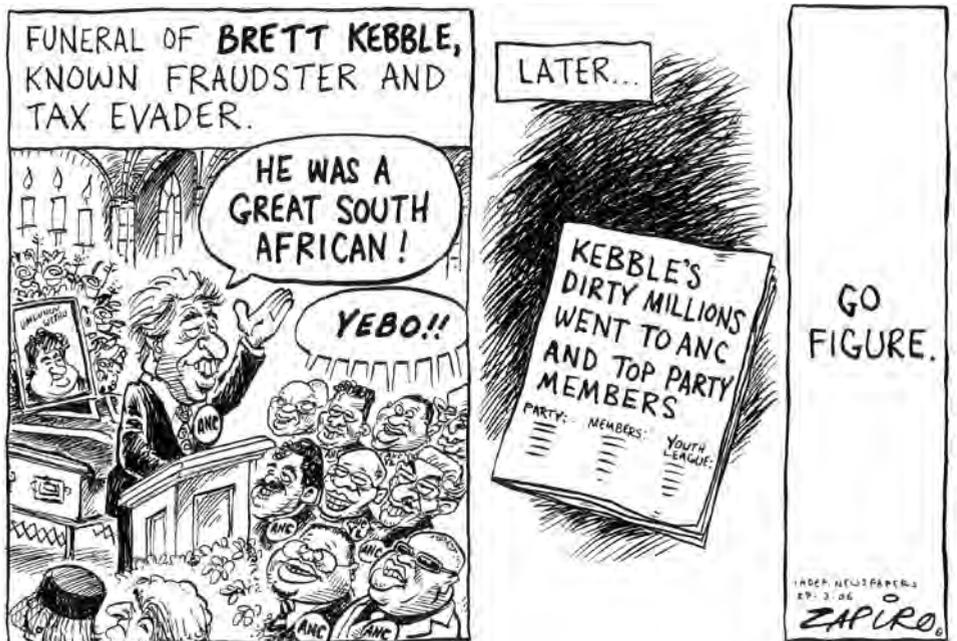
So it must widen the remit of the definition: it’s not just the contribution of funds, but all cash and kind donations, including such

things as discounts on products, overseas trips, scholarships for children of party officials and so on; all of which I think do find their way into this broad ambit.

The regularity of the funding must be clear. Is this something that happens only in election years, or does it happen every year? And money should only be deposited or transferred into the official account of the political parties, with a copy of the deposit slip posted to the party for its records. There should be a full paper trail, all discoverable and as transparent as possible.

Of course, there are many options. There is the direct party contribution, but you can also support voter education; support the Independent Electoral Commission (IEC), as a number of companies do; undertake human-rights education and so on.

It’s quite interesting to consider the range of options that companies have taken, and I think all of these, in a way, are legitimate. There is of course the difficulty that in large companies you’re pretty certain to have within your employee base, not to speak of your stakeholder base, every single political party represented. So it requires some adroitness to make sure that you avoid doing no more than reflecting the biases of the individuals who sit on the board.





Michael Spicer

So you can take a strictly proportional approach on parties represented prior to the election in Parliament. If you took the situation of the ruling party, and opposition parties A, B and C, you might split 60/20/10/10. If you decided to go for a pro-competition policy, and that's an interesting one, that would be to introduce some subjective criteria. That is the route that Anglo Gold Ashanti took in the 2004 election. They went 30 ruling party, 30 opposition A, and 20/20 opposition B and C. I'm not going to indicate which those are but educated guesses will get you there. Or you could split 50% government, 50% opposition. In a sort-of proportional way you could take the official opposition and the ruling party, do that 70/30.

The advent of new parties does create some difficulties. Some of those major corporations have included that by promising what might be termed an "agterskot". They promised funding after the election against performance. So part of it has been prior, and part afterwards. I think that's a legitimate aspect as well.

Then there are parties that have very predominant regional operations. For

example, if you were KwaZulu-Natal based, your perspective would be somewhat different, perhaps, than if you were a national operation sitting up in Johannesburg.

Some parties have thought about putting this through their corporate foundations, and generally we think that's not a good idea, because these foundations have all sorts of monitoring and evaluation of criteria, which sit uneasily with relationships with political parties. Generally that's something that we have not taken the view of.

I personally support regulation. I'm particularly keen that it captures not just companies, but all the spectrum of other individuals and entities, both local and foreign. I don't think one can have a half-transparency on this. I think one has to have total transparency, across the board.

Personally, again, I'm not particularly in favour of setting limits. I'm not sure what criteria one could ever set that would be objective and reasonable. I think as long as there is full transparency, things will settle at a reasonable level.

Hennie van Vuuren

I DASA has led this battle for many years. Other civil-society organisations, trade unions, the churches and the faith-based community have supported them on this, and it's very encouraging to hear from business, at least from what Michael is saying, that there is a broader consensus among many business leaders today than there was perhaps five years ago, and that this issue is important.

What I'm interested in tackling is the reason for regulating the private funding of political parties, and the danger that [such funding] poses of criminalising politics in South Africa. I think that's part of the framework we need to use to look at the issue.

Overall, we have clearly developed a very strong framework of laws and institutions to tackle corruption in South Africa, and this is the one big gaping loophole that remains. But it remains as much a part of a broader discussion that we're not having, on the issue of money in politics and conflicts of interest in public life. One primarily talks of these conflicts in the intersection between the state and the

private sector, but it is as relevant in the private sector itself.

To focus on this conflict of interest as it takes place between the private sector and government, and the way in which government does its business through tenders, we know, for example, of the Auditor-General's report in 2006 that pointed towards those 50 000-odd relatively senior public servants who all have private business interests. They're directors, they sit on boards of companies, etc, so they make key decisions. I use that just as an example to point towards the issue that party funding doesn't stand alone. It needs to be understood as one aspect of a broader societal conversation that we need to be having about conflicts of interest in public life.

Turning to the party-funding issue, I'm going to cover some things that Shameela and Michael have, and Steven may very well, touch on. But firstly, let me identify the major risk areas where party funding has an impact, and some examples we could consider.

The first is in the issue of our relations with foreign states. We are led to believe that in the 1994 elections Libya was among the major donors, particularly to the ANC, as it was moving from being a liberation movement to being the ruling party. I'm not sure if it was through a party or the government, but it's alleged that Mohammed Suharto from Indonesia also donated a large amount of money to the ANC. But we have no clarity on the impact that foreign funding has on domestic politics and our relations to foreign states.

In apartheid South Africa, one of the ways in which the apartheid state used to leverage the little muscle that it had internationally was to fund political parties. There's enough literature which shows us that in many of the so-called western democracies, in France, in the United States and elsewhere, the governments of PW Botha, Vorster and others were paying money to influence foreign policy. And I raise this because I think this is why we need to be very aware and conscious of the impact that this sort of funding can have on policy-making processes.

Questions remain as to who is funding political parties across the board in these elections among foreign governments. The question of China comes up at a time when

we see the furore over the Dalai Lama's visit in the past three weeks. We know that the week before this happened, the China/Africa Forum took place. Mathews Phosa was described by some as the star of the show at that meeting, and one does ask why we had the ANC Treasurer-General sitting next to the South African Deputy Minister of Trade and Industry, who was leading the South African delegation.

We would need to ask the same question if this was the DA or COPE Treasurer-General. It's not directed at the party, but at the delineation of party and state in this instance. And it does raise the question whether, for example, the ANC received any money from China. I haven't heard the question being asked by the media openly. Equally, I don't think it has been asked of

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the ANC: have you received money from China? I certainly haven’t seen anything reported on that. So there’s certainly an opportunity for undermining the policy-making process.

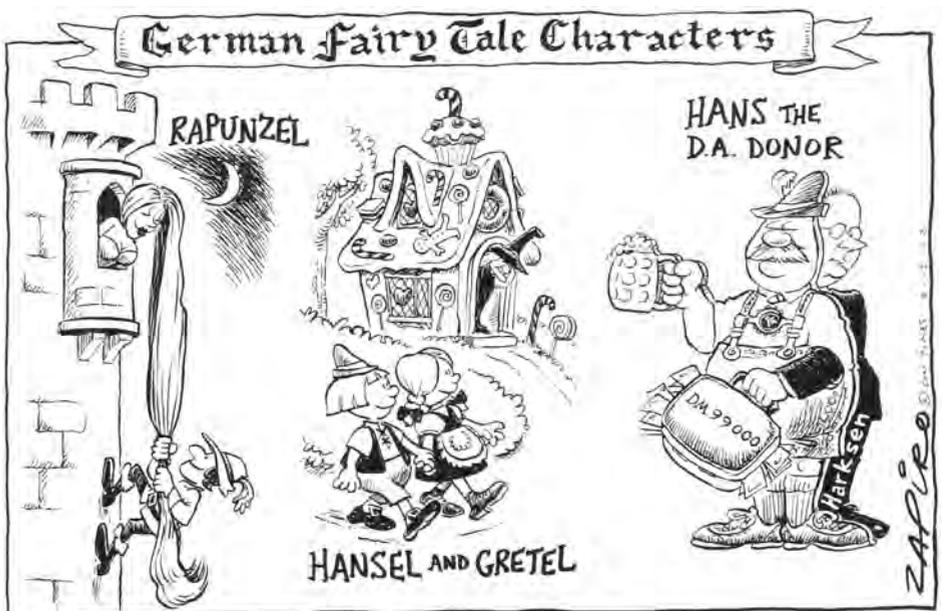
The second risk area is to do with criminal networks. We think about Jurgen Harksen’s famous tango with the DA in the Western Cape – a man who until recently was sitting in jail in Germany. Brett Kebble, the great South African, according to Essop Pahad, was funding the ANC. Since his passing, we know that he was not only a legitimate business person. Many organised criminal groups are made up not only of Mafia-type people, but wealthy business people as well.

Then there’s the issue of domestic corporations. Michael Spicer has tried to tease out how some companies, we think of Anglo Gold Ashanti or Absa and others, are prepared to come out about whom they are funding. But we don’t know what’s happening, not only at the national level, where there’s one set of questions, but at the provincial and the local level, where tenders

are being awarded. How much pressure is being placed on smaller, medium-sized companies to pay monies to all political parties, where those companies are already feeling the pinch? We know that the issue of tenders and the way they’ve been awarded is a cornerstone of the ANC’s election policy manifesto. And I think that it’s precisely because it needs to make the linkage between that and party funding that it needs to start to support the regulation of party funding.

There are examples where it’s not only about clear funding to a political party. According to an article in City Press in the middle of last year, there were discussions between Premier Sello Moloto in Limpopo province with Anglo Platinum, to fund the erection of a new hall at the University of Limpopo. This was in 2007, approximately six months before the ruling party was set to have its Congress at the university, and there wasn’t sufficient infrastructure to be able to accommodate the 3 000 delegates. We assume that the monies were not paid, because the delegates met in the tent.

The fourth area is the manner in which the state can be criminalised through front companies. The Chancellor House example entered the public discourse in late 2006, following some research that we did together with IDASA and the Mail & Guardian on





Henmie van Vuuren

that issue, where it was apparent that the ANC had set up a front company. The primary purpose of this company, or this trust, was to raise funds for the ANC.

That in itself wouldn't be the problem. The problem was that the front company, Chancellor House, was being given preference as a partner in the awarding of large tenders, particularly in manganese fields in the Northern Cape worth over a billion US dollars at that time. Chancellor House was dealing with directly with Victor Vekselberg, one of the Russian oligarchs who had an interest in gaining access to South African mines. At the same time, Foreign Affairs was involved in trying to assist in building a strategic partnership between Russia and South Africa, and thrown into the mix is the Department of Mineral & Energy Affairs, who helped to facilitate this relationship between Chancellor House and Victor Vekselberg's company.

For a year almost nothing was said about Chancellor House. From the ANC side, we hear quiet until November of 2007, shortly before Polokwane, where it emerges that in the building of the new coal/electric power stations, the Medupi Power Station in

particular, Chancellor House has entered into a strategic partnership with Hitachi Africa and it stands to be awarded a contract worth R5 billion.

Now, I think this caused outrage, although quiet outrage, within the ranks of the ANC. Correctly so. The response from the DA, interestingly enough, was muted. It was along the lines of: "We believe that political parties should be able to set up companies but they shouldn't really be awarded state tenders." Therefore I say watch this space in the Western Cape if Helen Zille does come to power, because this has more to do with power than it has to do with the political parties per se.

But the ANC is, according to Mendi Msimang at his last Treasurer-General's report in Polokwane in December 2007, arguably the richest political party in Africa, worth R1,7 billion. And I think the extraordinary thing is that ordinary members within the party had absolutely no insight, until that stage, as to how the party's affairs were being run. What happens at party congresses, and I think a similar thing happens across the board in many of the other parties, is that a



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Hennie van

PowerPoint presentation with a balance sheet is shown, a Treasurer-General's Report is handed out, and that suggests that there has been income generated, there have been expenditures, and that seems to suffice.

But where the money is being generated, what promises have been made, to which companies, to which foreign governments, in that process, ordinary members, and that includes quite often members of parliament, don't know. We know that, for example, in the case of the DA, for all the talk about fighting corruption, probity and openness, the majority of its members of parliament don't know who, in fact, funds the party.

So that comes back again to this issue of how have we managed to undermine involvement by ordinary members in the politics of their parties through the brokering of deals that involve the elite. I'm going to present just a couple of pointers that I think are required now for reform, and these are perhaps things we could discuss.

The first has mentioned by a few people. How do we deal with ensuring that we get ordinary members to participate in the politics of parties when the large donations drown out the voices of these members? And I think one way of doing that is through the creation of a central democracy fund, a fund to which all foreign governments, foreign

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corporations and domestic corporations can make contributions.

The funds are regulated by the IEC, for argument's sake – such an institution would be perfectly placed to do so – and they are disbursed equitably, which could be done in the same way in which public funds are disbursed, but perhaps allowing for some funds for new parties that emerge within six months of an election. There are a number of possible mechanisms, such as parties having to bring 100 000 signatures to prove that they have support, etc.

So the only way in which we would fund parties is through the public fund.

Secondly, if you have any desire to fund parties, we're not going to make it a requirement for your board to decide whether or not to make the funding of parties public. Rather force transparency on this issue. And that might also mean



that we will see more large corporations, particularly those who have listings in the United Kingdom or the United States, where they are very nervous about funding political parties, continue to do so.

Then I think we could make political parties more reliant on their ordinary membership by swelling the numbers of members. We see a decrease in the number of members of all the parties, other than COPE. If parties spent more time trying to build up branch structures, it would I think have the impact, potentially, of deepening democracy. And that's where we can cap those contributions at R10 or R20, or whatever the amount is. But there are only three forms of contribution: through the democracy fund, state funding and through membership of the political party.

We also need to deal with the issue of public funding. Many parties have called for an increase in public funding. We do need a debate about it, but [on the basis] that there is only one form of public funding: funds that are appropriated through a budget process involving the National Assembly.

In the run-up to these elections we've seen provincial legislatures starting to allocate money to political parties. That's another area of concern, because the funds aren't

necessarily all used in the province. In provinces where one party has a very vast majority, some of that money is probably filtering straight back up into national campaigns or into campaigns in other provinces.

Lastly, the issue of capping the amount of money that political parties can use in elections. And I think the high point was 1999, where we think that political parties may have spent up to R400 million on elections. So that is quite important.

Lastly, the time for reform is now. We are either going to achieve this in the next 24 months, or we're not going to achieve it until after the next elections. Our lesson is that within 18 months' time, political parties are raising funds at the local level for local government elections. Within six months of that, they're focusing on the next national and provincial elections.

And I think that that reform needs to be driven by a broad coalition of civil society, and with the support of members. I think that the call needs to go out today to members of a political party with integrity who have come to realise how internal party democracy has been undermined through this issue, to come to the fore and start to drive the issue in their party.



Steven Friedman

I'm going to try to put this in an international context, and then try to explain why I think we have the problem we have locally. At the end I'll make a specific proposal for regulatory reform which will offend everybody.

I do not see myself as somebody who spends all his waking hours talking on the media because I happen to pass the only test which the media impose to make you a sage public commentator, which is that you should live within a ten-minute radius of the nearest television studio. I actually consider myself a democratic theorist, or I'm trying to be a democratic theorist. I study and write about what makes democracy work and what obstructs democracy. And it's relevant to what I have to say, which is that to me the cardinal democratic principle, which

“... democracy is meant, in principle, to be a system in which every adult member of a society is entitled to an equal say in political decisions ...”

is merely a restatement of the very old principle, but we've tended to forget it over the past decades, is that democracy is meant, in principle, to be a system in which every adult member of a society is entitled to an equal say in political decisions, though it obviously never works out quite like that in practice. And that colours quite a lot of my view of how party funding should work.

To illustrate the problem in an international context, given the kind of political system and the kind of political reforms which I think ought to follow from this attempt to make democracy, as much as we can, a system in which every adult has an equal say, many of the ideas on how this could actually work in practice have actually been instituted over a period of time in the United States.

The United States elects a far wider range of public officials than most other democracies, and it exposes a far wider range of public issues to a vote through referenda than most other societies. And yet we have the odd contradiction that it is generally agreed, I think, in much of the professional literature,

that in fact the United States is one of the weaker, poorer-quality democracies on the planet.

If you look at participation rates and levels of public trust in politics in the United States and, most importantly, at the very wide gap between the public and political debate on some major issues, you see that you're really dealing with a political system in which, despite all this vigorous voting and all this vigorous democracy, the citizen has very little say.

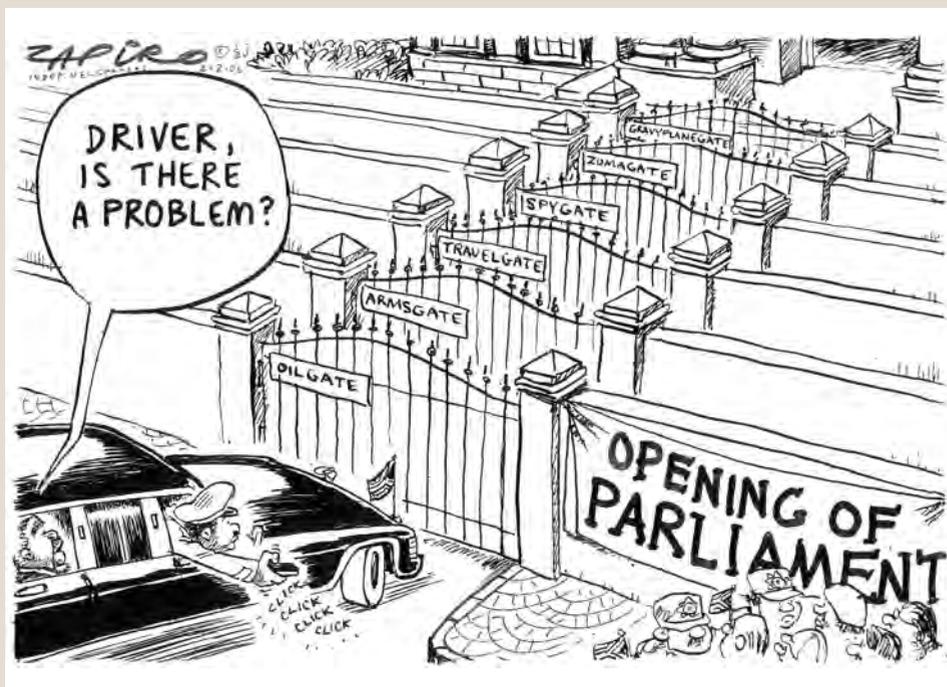
Once again, I think that the academic literature broadly agrees and the evidence is overwhelming that the reason the citizen has so poor a say in American democracy is that despite all these wonderful reforms, the Americans have never actually got the relationship between private money and public purpose right.

And the role of money in American politics, certainly compared to older democracies in Western Europe, for example, and some of the large southern democracies like India, is excessive. It is excessive in the sense that it ensures that the public debate in the United States is largely set by the donor rather than the voter, which is obviously not what democracy is supposed to be about.

So I think the American example serves as a warning to us that democracy is not simply about the way you design your institutions and not simply about the rules of political engagement you introduce, it's also about the context in which the politics happens. And if you have a context in which the power of private money over public decisions is as great as it is in the United States, the citizen battles to be heard, if the citizen is heard at all.

Now, why is this an issue for South Africa? Because I think – as you've heard from some of my fellow panellists, and I would endorse that very strongly – that the role of private money in politics in South Africa is ubiquitous and I think that it is extraordinarily damaging to our democracy. One doesn't like to make melodramatic statements about all sorts of things, but there's certainly a good case to be made that the relationship between money and politics in our society may well be the biggest threat to democracy in South Africa.

“... the relationship between money and politics in our society may well be the biggest threat to democracy in South Africa.”





There's a history to this which gives us a context, and the history is that there are a great many reasons why you could have looked at post-apartheid South Africa as a disaster waiting to happen if you're concerned about the relationship between money and politics. Michael Spicer has referred to the first point, which is that there were quite important financial relationships, not only with local business, but also between these international actors that Hennie was talking about, and about which we are rightly concerned. There was relationship between them and politics in the apartheid struggle period, which I believe created patterns that have come back to haunt us.

A culture was created in which, on both sides of the fence, the preferred relationship between key political actors inside the country and key foreign actors was one in which the foreign actors were judged by the size of the cheque they wrote out. And if you think the Dalai Lama decision may have been the first foreign-policy decision made on that basis, it isn't. So that was the first disaster waiting to happen.

But the second point is the relationship with some business people – and it doesn't take too many business people with this kind of mindset to really mess up the political

“... there is a culture and an expectation among sections of business in South Africa which says, to put it politely, that the way in which you secure your interests is that you form relationships with political figures.

system. On one hand, you had politicians coming back from exile or from underground, and the gap between how people had been living and how they were expected to live in the new democracy was so great. I have a friend who was an attorney who, in the first year of democracy in this country, devoted almost her entire practice to trying to help out new MPs who got into trouble on their credit cards. That really illustrates the kind of environment in which people were coming back into the society. They were expected to adopt a particular standard of living – and let it be said they were not particularly averse to wanting to do that – and then they came smack up against certain businesses, certain wealthy individuals, who wanted to assist them.

Perhaps some people wanted to assist because they believed in a new tomorrow.

But I think many people wanted to assist because – and I did some research on this – there is a culture and an expectation among sections of business in South Africa which says, to put it politely, that the way in which you secure your interests is that you form relationships with political figures. It's not universal at all, but there was quite a lot of that going on.

I was running an entirely politically independent research centre, and had private discussions with senior business people who said, "Look, this stuff about you being independent is nonsense, isn't it? You're really ANC." And we would say, no. And they'd say, "Well then we're not going to fund you because you're not a conduit to the people we're trying to get to."

There was that kind of culture. It started very often with very innocent things like so-and-so needs a place to stay, or so-and-so needs a school for their children or a car to get around. And one thing led to another. One of the greatest sources of amusement to me over the past year is the suggestion that certain public figures are owned by the South African Communist Party (SACP) and the Congress of South African Trade Unions

(COSATU). The real question is who owns the SACP and COSATU. When the General Secretary of the SACP has to explain where the 4x4s come from, I doubt very much whether it's from workers' money. But that's another debate.

There are a great many politicians in this country who are beholden to private interests, and I think that that is an immense problem. Of course, we have laws against corruption. But this stuff doesn't usually happen with the wealthy individual saying, "Here's the big pot of money and where's the tender?" Very often it happens through quite insidious processes which determine who's sitting at which tables, and who can get appointments with whom at particular times. And I think that we need to take that kind of nexus very seriously if we want to build a working democracy in this country.

I don't want to go into how to deal with that broader issue. Hennie and other people have come up with proposals. In fact, some politicians have come up with proposals for cooling-off periods and ways in which to unscramble this, and try to introduce greater transparency into the system. But

Steven Friedman



I certainly believe that unless we try to introduce greater transparency, we're going to be living with a very serious problem: that most of our public decisions will be taken for reasons other than a calculation of what the majority of voters would like to happen, and that's not particularly healthy.

The other point I should make, because it's relevant, although implicit, is that quite obviously party funding becomes part of this and that issue is once again complicated. There are quite clearly individuals who are funding parties because they want to sit at tables, etc. There are other people funding parties because a particular pattern has been created over the years in which you want to be seen to be helpful, and to be contributing. And political parties are particularly obsessed with money.

"I'm far more worried about war chests which get used to buy food parcels for some people and to make all sort of goodies available to some people and, to put it very bluntly, to set up very large patronage networks among disadvantaged people.

One of the ironies, incidentally, is that I think we also need to ask some quite important questions about the use of money in politics. Smaller, losing parties always tell you it's because they didn't have enough money or they didn't have access to the media, or whatever the case may be. I think there's quite a lot of evidence to suggest that that kind of argument is exaggerated. Obviously, if you have no money you can't do things. But I think the notion that elections are always won by the party with the biggest war chest, who can put up the most posters, needs serious scrutiny.

The reason is twofold. Firstly, it obstructs us from asking the questions about the really insidious use of money by political parties. And as far as I'm concerned, the differential putting up of posters is not what this is all about. I'm far more worried about war

chests which get used to buy food parcels for some people and to make all sort of goodies available to some people and, to put it very bluntly, to set up very large patronage networks among disadvantaged people which lock them into your party. And I think that's what we need to be worried about far more than who gets the money to put up posters.

I'm not picking on a particular party, but I doubt very much whether the [ANC's] R1.7 billion has all been used on advertising and posters. We should be asking some very serious questions about what it's used for.

Given that sort of background, and that we have to try to work towards a situation in which democracy is a system in which all of us have an equal say, and given that one of the ways we need to do that is to ensure that the money to political parties is effectively regulated, and also that I remain a sceptic about how much political parties need of a drug that they consistently obsess about anyway, my radical proposal is a threefold reform package – which actually isn't all that radical because it simply mirrors what happens in a few societies I know, though I think it would shock some South Africans.

The first part is total disclosure, and I mean total, ten cents and upwards, zero and upwards. It can be done. The little donations need to be logged for auditing purposes as well as the biggest. I think we may agree on that one.

The second is a quite drastic cap on donations. In other words, no person or no institution or no body can give donations of more than a particular value. And I would be quite tough about it; I would look at something like R2 500.

And then the third part, which is made possible by the other two, is that you do then have public funding, because I think public funding can play a role in levelling the playing field. But your public funding is not based on who won the last election, and it's certainly not based on some of the contorted formulae that I've heard over the past few weeks [in talk] about how COPE has created this kind-of crisis, because everybody



Steven Friedman

used to do it on the basis of parliamentary representation, and now COPE's thrown the spanner in that works. But I think all that's really illustrated is that it should never have been done on the basis of parliamentary representation anyway.

I think the solution to that problem in principle is quite simple; you introduce the matching-fund principle, which means you have capped donations, and your public funds match your private funds. Obviously there may have to be a cap because the public fund is not unlimited. But I'm sure

it's possible to work out a formula in which you are rewarded for how many people you can persuade to give you money, rather than on the spurious formula we're talking about.

You can pick holes in the details, but I do think that it gives us some sort of principle to go on, because if you do implement the matching fund principle, at least you're saying to parties that, instead of petitions with 10 000 votes, which I don't take terribly seriously, if you have public support, show us how many people gave you ten bucks last week.

Questions

Questions & Answers

CHAIRPERSON: *I'd like to add two risk areas. There's also the additional pool of money which flows from the various constituency allowances that are allocated to political parties. Which largely, given that we do not have a constituency-based electoral system, also go into an overall pool of funding within a political party, for which there's very little transparency internally in the political party. And in addition, you may not be aware of this, but members of parliament also have their salaries docked by their political parties, and the parties have very little transparency with respect to that.*

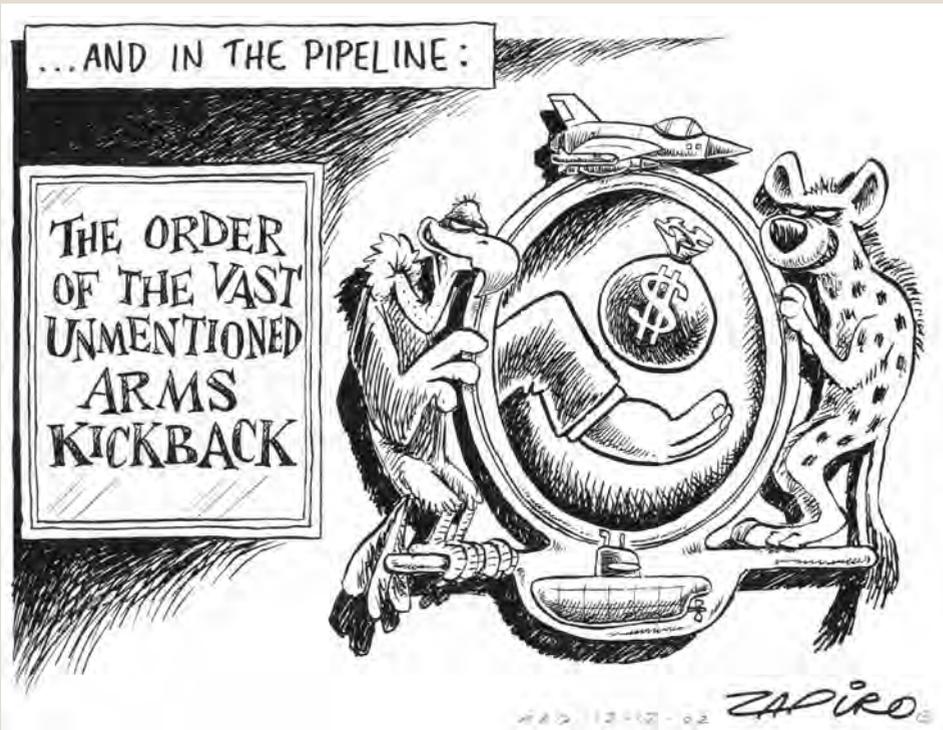
Before I hand over to all of you, I jotted down a list of the key unanswered funding questions during the previous two polls and this poll. In '99 it was questions about the strategic defence procurement, particularly the arms deal, which largely remain unanswered and continued to reverberate into this election campaign with respect to the charges against ANC President, Jacob Zuma, which have been dropped. In 2004, I remember this quite vividly because I had to issue a flurry of press statements at the time, there was the Iraq oil-for-food issue. And this year we've had the unanswered questions with respect to the Dalai Lama issue. And absolutely, Steven, this is not the first time that this has occurred with respect to foreign policy. And they are all still the subject of various allegations.

MR LEON LOUW: (Free Market Foundation) *Yes, I'm surprised so little reference was made to the government's side of the problem – the concern that, for example, was raised by the DA that people would be scared to make donations if they know that the government's going to know whence they come, because those donors will be victimised. I'm not saying the DA is right, but the IFP has made a similar comment. Now the reason they can be victimised is because there are insufficient checks and balances in the way in which government decisions are made; for example, no clear adherence to the rule of law. If you take something like the Dalai Lama decision, if there were objective criteria for how and when visas are granted, then there would not be the exercise and the abuse of discretionary power. It just shouldn't be possible.*

And if discretionary power could be exercised with the great ease that it was under apartheid, which is why Michael originally wanted secrecy, why not now? There is still potential for the abuse of power against people who support someone other than the ruling party.

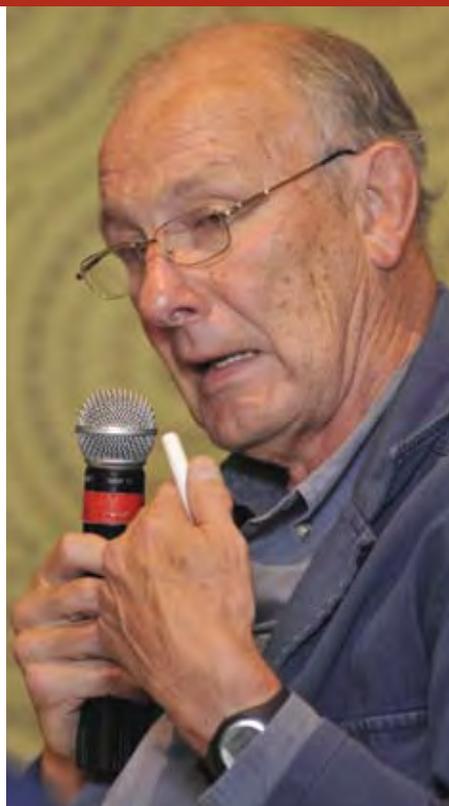


Government needs to function in a much better way. It should not be possible to victimise and make discretionary and frivolous decisions to the extent that can be done, in tendering and in all decisions. Until you get that sorted out, until you get the rule of law functioning properly within government, it's very, very difficult to ask people to disclose whom they support, to have transparency – unless you go Steven Friedman's route, which I find quite appealing because then it doesn't matter if government is abusive because you can't either get government favours or get government wrath with such small multiple amounts. That side of the equation hasn't been addressed to my satisfaction by the panel.



Questions

Questions



NATASHA: (South African Press Association) *It's clear that the electorate is most disadvantaged by the lack of public funding. I just wanted to know what more can be done by ordinary citizens, NGOs as well, to compel government to regulate political-party funding. The ANC has mentioned that the resolution they took in 2007 will be implemented before their next conference. But judging from the history, it doesn't seem very likely.*

RICHARD STEYN: (Helen Suzman Foundation) *It seems to me that implementing the Freedom of Information Act is really the way to go. I'd like to ask Shameela how sound that Cape judgment was, and is it not worth reopening that avenue? In the light of the ANC reneging on a promise to implement, I'm sure a court would take that into account. But isn't this an issue for the Constitutional Court? Really, until we get that Act properly implemented, we're going to be talking about this for the next five, ten, 15 years.*

MR SPICER: To respond to Leon's question, in the famous South African phrase, ja-nee. I think the case for transparency has been made, for somebody leading in the absence of regulation. The fear of victimisation is certainly there. So the response is twofold. Firstly, it's a cop-out to say it's all too difficult, so if good corporate governance internationally is defined as not giving money to political parties, we'll be good corporate citizens.

The default mechanism for funding is just to go with straight proportional representation, and that placates the ruling party because they get the bulk of the funds. But you're not really exercising great discretion or discrimination. There are some, but they're relatively few, who take the competitive kind of route. So I agree that the threat is certainly as much as before, but I think the case for being transparent has been made

MR VAN VUUREN: To deal with Leon's question first, the issue of victimisation is often used by opposition parties to argue against openness and transparency. But the proposal that there should be a centralised fund to which everybody gives openly would mean that no money goes to the party directly any longer. I think the concern is that, when we find out in hindsight that party X received money that they didn't disclose, they say they were just about to go and disclose the money in the black bag in the boot but didn't get to do it, which I think has happened in the past.



ANSWERS

And the idea of channelling all the cash into one central place from which it's disbursed according to fair principles can potentially benefit all the political parties. I think it will benefit the opposition parties as well, as much as it would the ruling party. The ruling party, wherever it's situated, at a council, provincial or national level, does benefit disproportionately in any event because more money is going to go to those who sit in power, where you can get greater leverage from those parties.

Coming to Natasha's question on what more the electorate can do, there's one group of organisations like ours that operate on a relatively elite level and we need to see it that way: they push for public-policy reform and they have a place in society. I think what we need to see at a different level is a call, particularly from trade unions, and members of political parties, on this issue.

I think trade unions have an interest in this. Let's use the example of China giving the ANC money, and negotiations taking place on the access of Chinese textiles into South African markets, and then we see yesterday that Frame Textiles has closed down. There's a direct interest for workers when it comes to this issue, and I think we need to see our trade unions leading more on this.

We need to see business leading more on this. I think it has taken a back seat. And this is about competition, if we want to put it in its crudest sense. It's about foreign corporations, criminal groups and others using this as a back-door way to get greater leverage and to beat those businesses who argue that they do everything legitimately. It's not only about getting business on side of the principle, it's about business, through the various federations and fora, engaging government directly on this issue and saying we can't continue on this basis.

And then it's clearly about the membership of parties. I've sat as an observer in two political-party conferences. In one of them – it's a relatively large party – where the Treasurer-General's report was discussed, the entire discussion was focused on how monies are moved from a local level to the regional branch office. There was no interest, no discussion whatsoever about what is happening at the national level. It's up to members to start to talk about how decisions are made. How is my branch able to impact on policy decisions on who is elected at a central level within the party, and what role do foreign and other large donors play in that process?



Questions

CHAIRPERSON: *Thank you. I think that Hennie raised an exceptionally important point with respect to internal democracy in political parties. I think there is a core issue here, not only for ordinary members of political parties, but also for the public representatives within political parties, to take up the cudgels within their own party structures, let alone in the broader regulatory environment.*

MS SEEDAT: I'll answer the question about the court case first. Yes, the promise was made during the court case and it hasn't been kept many years later. IDASA does think that the judgment was conservative, and that a different court could very well have come to a different conclusion.

We also very strongly disagreed with the characterisation of political parties as private entities for the purpose of the Act, and this is because political parties virtually hold the monopoly on political power. They are primary vehicles for the public to participate in politics. And as we see, as a consequence of the judge's characterisation of them as private bodies, they are open to far less stringent standards of transparency and so on.

The issue is, of course, that with litigation there are always big risks to be taken into consideration. We're also concerned that maybe the floor-crossing case, which was also not favourably won by IDASA, might also curtail us in this direction, because ultimately there's a strong argument that a court would say that it is in the domain of the legislature, rather than the judiciary, to pass such a law because it is far-reaching. So our focus is on non-judicial ways of lobbying, even though these are proving to be very difficult.

MR FRIEDMAN: Before I respond to Leon and Natasha, I have two problems with Hennie's proposal of a central fund. The one, as I've said before, is that I don't know how you come up with a really equitable formula for distributing the resources. I've sat in meetings in Tanzania, with opposition parties justifiably describing proportional donation as a hidden subsidy to the ruling party by foreign donors; which is what it was in that case.

The second point, however, is that despite the points I've made, I do think that it is important



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in a democracy that individuals should be entitled to donate to the political party of their choice. And therefore, perhaps to try to bridge the gap between Hennie and me, one other concrete proposal we can look at is some variation of the German arrangement whereby German taxpayers are permitted to mention on their tax return who they want their money to go to. My understanding it doesn't go to the party, it goes to the party foundation, but that could be amended.

But then we'd have to find a way of extending that to the many South Africans who don't pay income tax. But if we could come up with an equitable principle in which every citizen could indicate freely what proportion of public money they wish to go to which party, then we'd have a far more democratic system. But these are just ideas we're playing around with.

Leon's point is obviously entirely valid. I do think that capping donations would help, but I don't think it's the whole story. But of course, then we have to ask what could get us to that situation. Laws can help, but laws only take us so far. Shameela has just said IDASA didn't win the legal battle about floor-crossing, but it did win the argument on floor-crossing.

I think what we've got to look at is what is going to make our politics change in a way in which these things become more possible, and to me it very much hinges around accountability, and the way in which we need enhanced electoral competition to increase accountability, and so forth. But also, part of the equation – and that gets on to Natasha's very important question – is that quite a bit of this has to do with active citizenship, with people standing up and saying, "Our interests are not being served by this." Because, as Natasha's pointed out, the people who lose most are the electorate.

I did want to say in response on the strategic issue that I'm not quite as optimistic as Hennie. The political parties have no incentive to change. As IDASA discovered when they brought their transparency case, the political parties were entirely united in their desire to prevent transparency. So this really is going to depend, however long it takes, on citizens and citizens' organisations, the media, and all our democratic institutions making this a public issue. And it's going to depend on the extent to which those of us who feel that it is a threat to our

Questions



democracy succeed in getting it on to the public agenda, keeping it on the public agenda, and making sure that important interests in this society start pressing for reform.

I wish we could do all this in two years, and I'd be the first to throw the party if we can, but I'm afraid this might be a longer haul than that. But I don't think we should be deterred by that, it's a major issue in our democracy.

MR SHEBA MARATONA: (Business Leadership South Africa) *A thought has triggered in my mind as we have been speaking about this. I think we are defaulting to an assumption of shared interests here, with people whose interests in the main may not necessarily be the same as ours.*

I'm assuming that we want transparency for the sole purpose of being able to level the playing field and promote democracy. I'm going to put it to the panel that to the extent that there's private interest, there's always going to be a problem. To the extent that I have a private interest, I'm never going to agree to disclose, and I'm never going to agree not to fund those people that I want to fund, to push for that.

CONCLUDING REMARKS

MR SPICER: I think the case has been made across the panel for reform. Equally, I think it's going to be difficult for all the reasons that have been adduced, and I tend towards Steven's view rather than Hennie's in terms of the likelihood and how long it will take. What I do think would be extremely useful – and forgive me if I've missed it – would be more public discussion of systems that work internationally, particularly systems in the developing-country world. I think we're a little too prone to considering the developed world, which of course is the product of a different set of experiences over a longer period of time.

What is more interesting for South Africa is those democracies in Latin America, for example, or Asia, that are doing a reasonable job in this area. And that, for me, would be the next point in this debate. I do take Hennie's point about business being a little more vocal and active, and I suspect that will be the case in this area.



MR VAN VUUREN: I didn't suggest that we will resolve the problem perhaps in two years' time, but I think we've got two years to gain some momentum on the issue before inertia sets in again. And perhaps these fora are among the ways to do so.

Maybe the question Sheba asked about private interests is at the heart of all of this. It's going to be about how we are regulating, and ensuring that the vision of the Constitution for an open society of equal opportunity is in fact realised. And certainly the issue of private funding of political parties speaks completely against it.

I think IDASA is able to speak to many of the leaders of some of the smaller parties who are prepared to engage on transparency, but there's certainly complicity among most of the leaders of the large parties. There is no willingness to move on this issue, and they are complicit in effectively criminalising the activities of political parties in South Africa. And I think they should expect themselves to be judged by this in future, if this is the standard that they are finally prepared to set.

We need also to watch this space in the next few years, in which very large procurement deals are going to be undertaken. Raenette has pointed to the arms deal, and we haven't spent much time speaking on this, but there are often allegations that some of the kickbacks may very well have gone in that instance to the ruling party.

But there will no doubt be very large tenders being handed out in the next couple of years – in areas like energy, where we think of a trillion rand if the economy recovers. And those are the opportunities where it's not only a small cabal of people who get money as a kickback, but rather money that flows back to political parties and empowers a cabal within those parties. What impact does that have on democracy?

MS SEEDAT: Clearly, the regulation of party funding is at the heart of political equality. Money and influence compromise the public agenda and regardless of considerations of the effect on donors and decreasing their contributions and so on, there are serious concerns when big donors purchase access to and control of power. So we think that it's an urgent time to act for

ANSWERS



Answers

all of us and active citizenship is key, keeping the debate alive and keeping the issue on the public agenda, which is partly what this forum is about.

MR FRIEDMAN: Nobody's pointed out the obvious, which is that, for what it's worth, if my proposal was implemented, just about all the foreign funding would stop and so would all the social-responsibility funding. And you might have gathered from my presentation that this is a catastrophe with which I will happily cope.

But to take your very important question, I think it does highlight something we need to stress. You're absolutely right, the problem will always be there. I certainly don't want, when I say that voters are disadvantaged, to give the impression that this is some sort of happy issue where all you have to do is point out that there is a problem, and everybody will rally round you. If it were that easy, we wouldn't be gathered here today.

It's going to be a tough battle to win because there are very powerful interests in the society, as IDASA discovered in their court case, who don't want this to happen. And that's why I think Hennie's absolutely right that we should start tomorrow. But that's precisely why I think this battle is going to have to be fought for quite a while in our politics, and I think that it's important that we take it very seriously.

Some things in democratic politics you can win in a short time, there are other things you battle away for for years, and you don't think you're going to win, and then one day you win. I didn't think that floor-crossing would be won as quickly as it was won. So one thing I hope we would all agree on in the panel is that the Helen Suzman Foundation's taken an initiative to put this on the agenda today and that's important. But it can't stop here. This has got to be the beginning of a process in which we all keep on putting it on the agenda and make it a hot-button political issue.

Media coverage

FRIDAY, 8 MAY 2009 BusinessDay

Opinion & Analysis

Clearly it is time to close book on party-funding secrecy in SA

JUDITH FEBRUARY

WITH the elections over and the African National Congress (ANC) celebrating its victory, it is clear that, along with the people, the money has also spoken.

Estimates put the ANC's election spending at between R200m and R400m. No one can be sure of the actual amount, given the lack of transparency in the funding of political parties. All political parties seem to agree that transparency is a good thing but appear to lose their appetite when it comes to disclosing their own sources of funding. It has been a case of "show me yours and I'll show you mine". For as much as the ANC has been coy about the sources of its donations, so has the opposition Democratic Alliance – which flooded the Western Cape with

posters and, towards the end of its campaign, laid on a helicopter for Helen Zille – been reluctant to disclose its funding sources.

So, the question remains, who will lead the way in closing this gap in SA's transparency regime? Logically, it would have to be the ruling party, with its overwhelming majority in Parliament. The ANC's commitment to transparency in party funding was articulated in its Polokwane resolutions. It therefore has a mandate from its members to legislate on this issue. Yet, there has been little movement on the matter since Polokwane.

According to ANC treasurer-general Mathews Phosa, there seems to be a move toward demanding greater public funding. The question, of course, is what the public will think of this.

It is clear that political parties need money to operate. In the recent election, we have seen

what happens when parties lack resources. The Independent Democrats, the United Democratic Movement and, to a lesser extent, the Congress of the People have been hamstrung by a lack of funding. But knowing where the money comes from is crucial if political parties are serious about transparency in tender processes and conflicts of interest. Without transparency in relation to political donations, there can be no way of knowing whether tenders are being allocated because of what companies or individuals have donated to the ANC, for instance.

There is no doubt that strong democracies require healthy political parties. In turn, political parties require resources to sustain and operate a basic party structure, to contest elections and to contribute to policy debate. And it is probably unrealistic to outlaw private donations.

Moreover, it is clear that the R70m-odd a

year of public money that the political parties currently receive is not enough to finance the myriad activities political parties need to undertake. But what is also clear is that reform and regulation now represent mainstream modern democratic thinking, though the detail of the regulation varies and must be contextually orientated. In Britain, public disclosure of contributions is required only of corporations and unions. Parties are required to submit quarterly reports, which detail donor information, to the electoral commission. German law entitles parties or several of its bodies to receive donations, but donations that exceed €10 000 a year must be publicly disclosed.

Whatever the shortcomings of regulating private funding to political parties, the advantages of transparency are clear. Increasing public funding might only be part of the solution,

because public money will never be enough and will not do away with political parties' need to raise private money. So, in a sense, requesting greater amounts of public money only serves to create a diversion, because the nub of the problem is the millions of rands raised in secret and the accountability deficit that has been created in our political processes.

Perhaps the new Parliament can start its term with a commitment to filling the lacuna in SA's anticorruption apparatus and initiate legislation to ensure that political parties are transparent about their sources of funding? The public has the right to know who is funding our political parties because secrecy only breeds mistrust and an environment ripe for corruption.

■ Judith February is head of Idasa's Political Information & Monitoring Service.

Regulating funding for political parties 'imperative'

WILSON JOHWA
Political Correspondent

ANALYSTS yesterday discussed ways to manage and regulate political party funding, an area of contest in election times.

Head of the Centre for the Study of Democracy Steven Friedman, speaking at a discussion organised by the Helen Suzman Foundation, said the failure to manage the relationship between money and politics "could well be the biggest threat" to democracy.

Parties were spending more than R500m to contest next Wednesday's elections, but the source of much of the funding remains a closely guarded secret — something that raises the need to regulate party funding.

In the past financial year, the state fund disbursed about R80m to 19 political parties. But parties spent an estimated R300m-R500m during the 2004 election, according to Shameela Seedat of the Institute for Democracy in South Africa (Idasa).

"So the questions are who put up this money and what exactly is the deal?" she said.

Seedat said although the bigger parties were publicly funded, it was private funding that drove party activities. Idasa was lobbying for regulation in order to reduce the potential for corruption.

Controversial donations to political parties have included revelations that the late businessman Brett Kebble gave money to the African National Congress (ANC), while German fugitive Jurgen Harksen funded the Democratic Alliance. Also raising eyebrows was Chancellor House, a company through which the ANC raised money through government tenders and mineral rights.

In 2005, Idasa failed in its bid to compel parties to disclose the source of their donations of over R50 000. Recently, Idasa set up a corporate guide to encourage companies to disclose their donations.

However, Business Leadership SA CEO Michael Spicer said some corporates saw transparency as risky, citing AngloGold Ashanti's recent move to withhold its donation. He said regulations should also be extended to encompass individuals and foreign donors.

Institute of Security Studies analyst Hennie van Vuuren suggested the establishment of a general democracy fund through which all parties' donations would be channelled. But Friedman said all individuals had the right to donate to a party of their choice.

He proposed a three-point model encompassing total disclosure, a cap on donations and a matching-fund principle through which privately raised funds would be matched by public money.

Head of the Helen Suzman Foundation Raenette Taljaard said although the issue had fallen off the radar, the ANC's Polokwane resolution to review private party funding gave reason for optimism.

Relevant articles

Poor funding regulation bad for SA

By **Natasha Marrian**

A lack of regulation over political party funding was the biggest threat to democracy in South Africa, said political analyst Steven Friedman on Wednesday.

"The relationship between money and politics may well be the biggest threat to democracy in South Africa. Democracy is meant to be a system where every adult member of society has equal say," said Friedman, who is the director for the centre of democracy at the University of Johannesburg.

However, in South Africa the role of private money in politics was ubiquitous, he said. "There are a great many politicians in this country who are beholden to private money and that's a problem.

"The problem is [when there is private funding] public decisions are taken for reasons other than those the majority of citizens would like to see," he said. Friedman was speaking at a quarterly debate hosted by the Helen Suzman Foundation on political party funding in South Africa.

The Institute for Democracy in South Africa described how it sought to force political parties to disclose their funders through court action in 2003 but was unsuccessful.

Idasa's Shameela Seedat said the lack of transparency in party funding had a direct impact on the electorate. "If there is no regulation, the electorate does not know where the money comes from ... the electorate needs transparency, without it they cannot see who the piper is and who is calling the tunes," she said.

"An election is only fair if the electorate can make an informed choice and this includes knowing where the money came from."

Hennie van Vuuren, head of the corruption and governance unit at the Institute for Security Studies, said the lack of regulation in party funding left a hole in the fight against corruption. "We have developed a very strong framework of laws and institutions to tackle corruption in South Africa... and this [lack of regulation of party funding] is the one big gaping loophole that does remain.

"But it remains as much a part of a broader discussion that we are not having on the issue of money in politics and conflict of interest in public life."

Van Vuuren identified risk areas where party funding could lead to conflict of interest. "In the issue of our relations with foreign states ... we have no clarity over the impact that foreign funding has over domestic policies, politics and our relations to foreign states," he said.

During apartheid, the South African government would fund overseas political parties in order to influence foreign policy, he said. "I think we should be aware of the impact this kind of funding can have on the policy making process."

The question of foreign countries funding political parties arose after the furore over the Dalai Lama being denied a visa by the South African government.

"We know the week before this happened the China Africa forum took place we know that Mathews Phosa was described by some to be the star of the show at that meeting and one does wonder why sitting next to the deputy SA minister of trade and industry, leading the SA delegation, we have the ANC treasurer general.

"I think we would need to ask the same question if it was the DA treasurer general, the Cope treasurer general... it's not directed at the party, it is the delineation of party and state in this instance," Van Vuuren said.

Another risk area was organised criminal networks. "We think here about Jurgen Harksen and his famous tango with the DA in the Western Cape. A man who until recently had been sitting in jail in Germany."

Van Vuuren suggested introducing a regulatory framework to create a "central democratic fund" where everyone wanting to contribute to a political party placed their donation.

The money would then be distributed by an institute like the Independent Electoral Commission, for example.

He said internal party democracy was also being undermined by the lack of regulation in political party funding. Trade unions as well as ordinary members had a role to play in calling on their parties to be more transparent.

Consensus was reached during the debate that political will was weak in implementing any form of legislation to regulate party funding.

"We cannot rely on political parties... they have no intention to bring about transparency... its really going to depend on citizens making this part of the public debate," Friedman said.

Speakers agreed that reform had to be driven by civil society, however there was indication that the ANC intended to introduce regulation.

It resolved at its elective conference in Polokwane in 2007 that it would "champion the introduction of a comprehensive system of public funding of representative political parties".

"This should include putting in place an effective regulatory architecture for private funding of political parties and civil society groups to enhance accountability and transparency to the citizenry," the resolution said.

"The incoming NEC must urgently develop guidelines and policy on public and private funding, including how to regulate investment vehicles."

The conference resolution had to be implemented by government before the party's next conference in 2012.

Source : Sapa Date : 15 Apr 2009

NO DISCLOSURE ON PARTY FUNDING YET: PHOSA

ANC treasurer-general Mathews Phosa said on Wednesday there would be no law forcing political parties to disclose their funding until they were entitled to sufficient levels of public funding.

He said the party has been studying several Western democracies including Britain and Germany in a bid to determine "best practice" in terms of dealing transparently with party funding.

"You will find in those countries the taxpayer funds democracy," Phosa said.

"If the taxpayers pay peanuts they get monkeys," he quipped.

In Germany, political parties receive a significant percentage of their funding from public resources, with the rationale that it gives them greater independence from private and individual interests.

Phosa said the African National Congress would be happy to disclose more about its donors once it has clarified how much ordinary South Africans would contribute to funding parties and thereby strengthening democracy.

He added that the same standards must be applied to other parties, notably the Democratic Alliance.

By law, political parties are not obliged to disclose their donors.

The issue of secret funding recently drew fresh criticism when the government, in a bid to appease China, refused to allow the Dalai Lama to come to South Africa to attend a peace conference linked to the 2010 Football World Cup.

It has been reported that the ruling Communist Party of China is among the ANC's funders.

The Institute for Democracy in SA has recommended that parties should receive public funding, both directly and indirectly in the form of free public broadcast time, for example, but also be made to disclose all their private funding.

ANC 52ND NATIONAL CONFERENCE 2007 – RESOLUTIONS

FUNDING

6.3 Conference believes the resourcing of the movement is fundamental to its ability to carry out the mission of the ANC. Conference therefore adopts the following policy positions from the Organisational Review document and the Policy Conference:-

- The ANC should champion the introduction of a comprehensive system of public funding of representative political parties in the different spheres of government and civil society organisations, as part of strengthening the tenets of our new democracy. This should include putting in place an effective regulatory architecture for private funding of political parties and civil society groups to enhance accountability and transparency to the citizenry. The incoming NEC must urgently develop guidelines and policy on public and private funding, including how to regulate investment vehicles.

Source : Sapa Date : 15 Apr 2009



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