

1. Executive summary

A strong democracy requires healthy political parties. In turn, political parties require resources to sustain and operate a basic party structure sufficient to represent people, develop the capacity to contest elections and contribute creatively to policy debate. Parties, therefore, need to raise funds.

In South Africa, the Constitution encourages multi-party democracy by providing parties with public funding to promote a system of government that is accountable, representative, responsive and open. South Africa's democracy therefore requires a political environment that encourages open and fair competition between political parties.

Yet, while the private financing of political life is desirable and necessary it also presents a problem if left unregulated. Secret donations from private sources, such as wealthy individuals or large corporations, can exert undue influence on the political system, secretly drowning out the interests of the poor and less powerful.

Private donations exert influence over politics in a number of ways and can have a corrupting effect on government. Private donations to parties in return for an unauthorised favour or the promise of a favour if elected to office or accepting contributions from disreputable sources are two such examples.

Corruption can also have a distorting effect on the functioning of government and may skew socio-economic development and increase inequality and poverty. Progressive parties in government have been distracted from the wider socio-economic agenda by donations from big business.

Trust in democracy can also be undermined. When public policy decisions are made, or are perceived to be made, on the basis of political contributions, not only will policy be suspect, but government will not be seen as accountable to the people, and the principles of participation and legitimacy will be undermined.

In a country such as South Africa, with profound socio-economic disparities and demographic differences, money in politics has the very real prospect of compromising the priorities of the public agenda and eroding democratic gains.

A number of corruption scandals around the world have focused attention on the way to respond to the problem. Most modern democracies now regulate private donations, driven by the recognition that regulation is important and necessary for democracy and that financing political campaigns in many countries has become a form of legalised corruption.

Idasa has embarked on litigation in terms of the *Promotion of Access to Information Act* (POATIA) to compel political parties to provide the Institute with information regarding their sources of private funding. It forms part of a broader campaign to lobby for regulation of private funding to political parties.

Idasa argues that the regulation of party funding will strengthen democracy, curb opportunities for corrupt practices and promote several constitutionally enshrined rights. These objectives depend on public access to information and the right to know being exercised, which is reliant on a regulatory system being implemented.

In terms of strengthening democracy and curbing corruption, regulations will:

- ◆ foster stronger representative government and accountable political parties;
- ◆ ensure effective electoral competition;
- ◆ promote citizen participation; and
- ◆ enhance transparency.

In terms of promoting constitutional rights, regulations will enhance:

- ◆ the right to political equality in terms of access and influence;

- ◆ the right to freedom of association by informing citizens about political parties' affiliations, interests, objectives and resources;
- ◆ the right to freedom of expression by allowing citizens to debate, impart and receive political information in an informed manner.

These rights can be promoted through regulations. This can include bans or limits on private political contributions, controls over political expenditures and rules securing transparency of contributions and expenditures.

2. Introduction

Idasa maintains that the regulation of party funding will strengthen democracy, curb opportunities for corrupt practices and promote several constitutionally enshrined rights. These objectives depend on public access to information and the right to know being exercised, which is reliant on a regulatory system being implemented.

As part of the strategy to lobby for the regulation of private funding to political parties, Idasa requested the following information in terms of the *Promotion of Access to Information Act* (POATIA) from all 13 political parties represented in the National Assembly:

- ◆ the identities of all private donors since 1994;
- ◆ the amount of such donations; and
- ◆ the date on which they were given.

As a result of the political parties not responding to the requests, Idasa has embarked on litigation in terms of POATIA to compel political parties to provide the Institute with information regarding their sources of private funding.

Idasa believes that this case will provide an opportunity to exercise the POATIA and will also give the Court an opportunity to pronounce on a possible way in which to regulate private funding in South Africa.

Idasa's litigation forms part of a broader campaign to lobby for regulation of private funding to political parties by a campaign group of civil society organisations such as Black Sash, The Institute for Security Studies, The South African Catholics Bishops' Conference and The South African Council of Churches.

Idasa has made submissions to Parliament's Justice Committee and the Private Members' Bill Committee on the issue. In terms of the former, Idasa proposed adding a draft chapter on funding to political parties to the Prevention of Corruption Bill.

In addition, Idasa's Political information and Monitoring Unit (PIMS) is involved in a pilot study on the "cost of getting elected" in South Africa and five other Southern African countries.

Many political parties see any proposal to regulate party funding as a sure means to cut the flow of money they receive. Regulation should not be seen as a threat to the right to donate but as a way to minimise the undue influence of money on politics while simultaneously recognising that money is an important feature of the modern political landscape.

In light of the litigation Idasa believes that it is important to emphasise the following points:

- ◆ we respect the right of parties to raise money and we recognise that parties need money;
- ◆ we support transparent funding of political parties;
- ◆ we aim to promote a healthy relationship between politics and money;

- ◆ we emphasise the relationship between party funding and both corruption and the wider issues of political and socio-economic equality;
- ◆ we emphasise that international standards are emerging in most modern democracies in terms of party funding.

This position paper provides an in-depth analysis of Idasa's motivation for the regulation of private funding to political parties.

The founding provisions of the Constitution stipulate that South Africa's democracy should be based on a multi-party system of government to ensure accountability, responsiveness and openness.¹ By implication South Africa's democracy requires a political environment that encourages open and fair competition between political parties.

In any democracy money plays an important role in the political process. A representative democracy cannot function without parties and parties rely on political finance to sustain themselves in terms of election campaigns, routine functions and advertising.²

Idasa recognises the need for private sources of finance to support a newly formed multi-party system. It is important for parties to survive between elections as well as competing at elections. It is imperative that parties sustain a basic party structure sufficient to represent people between elections by carrying out research that enriches policy choices and provides links to the electorate via the constituency offices. Political parties have to budget for a range of factors at election time.

In Malawi, the largest campaign expense is transport followed by electioneering materials for voters.³ For political parties in Mozambique the largest campaign expense is travel within the country (the use of helicopters are required due to lack of a transport infrastructure) and party monitors at polling booths due to mistrust and insecurity amongst parties.⁴

Private funding also offers an important source of income to enable parties to contest elections. Moreover, it may be unconstitutional, and unrealistic, to outlaw private donations. It is also costly to the state (and to the taxpayer) to provide all necessary funding through current public funding mechanisms.

Yet, while the private financing of political life is desirable and a necessity it also presents a problem. Private contributions may exert inappropriate, undue influence on the political system if left unregulated, and pose real dangers in terms of undermining numerous democratic and constitutionally enshrined rights. In particular, financing political campaigns can encourage "selling" of politicians to contributors. Both legal and illegal contributions from wealthy interests are a source of concern. Rose-Ackerman states that:

The worry is favoritism. Groups that give funds to elected officials expect help in the legislative process. They may also expect special treatment on individual problems in dealing with the bureaucracy or in seeking contracts and concessions. If the interests of such groups or individuals conflict with those of the general public, this undermines democratic values.⁵

The threat to democratic government and the fear that public confidence in democracy is being undermined by lenient funding regulations has generated concern. The Secretary-General for the International Institute for Democracy and Electoral Assistance [(DEA) stated:

More recently – in the older as in the newer democracies – there has been increasing contempt for and general public disillusionment with parties and politicians, impacting in turn on attitudes to democracy as a whole. One main reason for this has, without doubt, been what is perceived as an excessive intrusion of money into politics.⁶

¹ The Constitution of the Republic of South Africa, 1996. Chapter 1. Founding Provisions. Section 1.

² In the narrow sense political finance involves money used by political parties for electioneering and campaign costs. However, since it is difficult to distinguish between money used for this purpose and money used for a party's routine expenses and functions, party funds are considered as political finance. See Pinto-Duschinsky, Michael, "Financing Politics: A Global View," *Journal of Democracy* Volume 13, Number 4, October 2002, p. 70.

³ NDI – Idasa, *Party Finance – Malawi*.

⁴ NDI – Idasa, *Party Finance – Mozambique*.

⁵ Rose-Ackerman, "Democracy and Corruption: Causes, Consequences and Reform". 1999 p. 133

⁶ Fogg, Karen, "Paying for Parties – Choices for Democrats". Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 2.

South Africa has embraced legislation to combat a variety of corrupt activities, which has been welcomed. However, whilst the Prevention of Corrupt Activities Bill tackles corruption comprehensively a lacuna exists as it fails to regulate the raising of funds and procurement of additional financing for political activity, potentially creating the opportunity for corruption to take root.⁷

At present, private donors may support a political party without either entity being obliged by law to disclose financial support. In this sense, South Africa has a gap with regards to party financing and this failure to regulate private funding amounts to a serious flaw.

The *Public Funding of Represented Political Parties Act*, 1997, based on s 236 of the Constitution, provides that to enhance multi-party democracy funding must be distributed on an “equitable and proportional” basis amongst political parties.⁸ The legislation requires that state funding be pooled together with foreign funding received, for example from sources such as the European Union. The Independent Electoral Commission (IEC) administers the fund. A total of 90% of the fund is distributed to political parties in proportion to their representation in both the national and provincial legislatures; the remaining 10% is divided equally amongst all political parties. The parties are obliged to account to the IEC for state funds spent. The IEC then reports to Parliament.⁹

This money is however insufficient to sustain parties and they therefore have to obtain funding from private sources. South Africa’s 20 represented political parties will receive a total of R66.6 million for general expenditure from the IEC.¹⁰ If one unpacks the total amount, the governing party (ANC) will receive R42.5 million, with the main opposition party (the Democratic Alliance or DA) receiving about R7.1 million. However, considering that these state funds are mainly used to cover routine expenditures, parties will still require greater amounts to finance the 2004 election campaign. The ANC reportedly spent at least R100 million on its 1999 campaign and the DA reportedly spent in the region of R20 million on its campaign. The vast disparity between state funding and campaign expenses indicates that all parties will be wooing the corporate community and citizens to raise funds for multi-million rand media campaigns, leaving ample space for influence peddling.

Political parties in South Africa have turned to business to fill the funding gap and have raised the question of conflict of interests. As Lodge states:

The Treasurer-General of the ANC, Makhenkesi Stofile, told an audience at Mafikeng in 1997 that R2 million donations to the ANC had now become customary among black business people. In return for this generosity ‘we opted for the role of facilitators for black business in the country,’ he noted. The Inkatha Freedom party (IFP) accepted donations from illegal casino operators while the provincial government began preparing legislation to regulate the casino industry. In 2000, after the Kwa-Zulu Natal Gambling Board received and evaluated 13 bids to establish casinos within the new legal framework, the premier intervened to change the tender regulations in such a way as to favour the bidders the IFP preferred.¹¹

However, party financing regulation may choose to limit private funding thereby creating a need for increased public funding. Although the increase in expenses will fall on the state and therefore the taxpayer the paper argues that it’s a fair trade-off because it reduces the potential of corruption and enhances democratic rights.

As Karen Fogg states:

Most regulation makes a distinction between private contributions on the one hand, whether from individuals or institutions, and public subsidies, direct or indirect, on the other hand. In fact, it is always the citizen who pays for democracy and finances party expenditure.¹²

⁷ See South African Prevention of Corrupt Activities Bill.

⁸ Act No 103 of 1997.

⁹ Jacobs, S. Power, G. and Calland, R, *Real Politics: The Wicked Issues*. 2001. Cape Town: Idasa.

¹⁰ The money is granted to political parties in terms of the *Public Funding of Represented Political Parties Act* of 1997. The money can be spent on such matters as personnel expenditure, travel expenses, accommodation, meetings, promotions and publications. The exact amount distributed for the 2003 – 2004 financial year is R66 653 000. The amount for the last financial year [2002-2003] was R67 405 856.

¹¹ Lodge, Tom, *Bus Stop for Everyone: Politics in South Africa*. 2002 p. 134.

¹² Fogg, “*Paying for Parties – Choices for Democrats*”. Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 2

The points at which politics and money meet and the number of channels through which private money can enter politics and parties are numerous and difficult to manage.¹³ It entails direct contacts with members of the executive and legislature, election campaigns and a party's ability to attract private sources of funding. It also relates to the level of state funding for the party system and the relationship between private sources of funding and government decisions. Any of these situations provide opportunity for corruption and conflicts of interest to arise and demand specific remedies.

While money is a fundamental part of the functioning of modern democracies, the flow of cash need not necessarily become an unethical, corrosive tool with which politicians promote their own interests. Idasa promotes a healthy relationship between money and politics by advocating a system that is characterised by transparency and openness by promoting access to information, and a system that allows for clean and fair private funding practices. Idasa aims to ensure that a balance is struck between the principles of competition and equity in terms of private financing of political parties as well as the necessity for money in politics together with the challenge of regulating it.

The question Idasa poses is: Since private funding is permissible and necessary, what duties, in the interests of democracy, should there be to disclose donations publicly and what limitations and regulations are appropriate for South Africa?

3. International overview of private funding

The problem of political funding is a global one, and there is a case for universal standards that establish a framework of principle to which all can be encouraged to subscribe, and by which all can be judged.¹⁴

The increasing contempt for and general disillusionment with parties and politicians has led to wide acknowledgement internationally that unregulated money (soft money) in the form of contributions to political parties by private sources is a contentious area requiring some level of regulation to ensure disclosure. Many countries are taking steps to deal with the problem. Recent examples include the UK's comprehensive *Political Parties, Elections and Referendums Act* of 2000. The Rau Commission in Germany, established in 2000 in response to the CDU party donation scandal to examine existing party funding methods, and the Federation Parliament in Bosnia, which passed a new party funding law in July 2000.¹⁵ Most countries do permit private funding to political parties. However a number of those countries regulate and limit such funding, including India, Australia and the United States.

The African Union (AU) *Convention on Preventing and Combating Corruption*, largely drafted by members of the South African Public Service Commission, includes a clause on the importance of regulating private funding and calls on states to do so. Article 10 states: "Each State Party shall adopt legislative and other measures to:

- (a) proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and
- (b) incorporate the principle of transparency into funding of political parties."¹⁶

The Convention was adopted in Maputo in July 2003. The inclusion of the clause obliges all African states, including South Africa, to re-examine the regulation of party financing.

An escalating discourse calling for the reform of party financing is driven by the recognition that its regulation is important and necessary for democracy. Scholars such as UK Labour Law Professor Keith Ewing have made a strong case for setting global standards by stating that preventing corruption in the funding of political parties is crucial to the quality of democracy.¹⁷

¹³ Jacobs, Power and Calland, *Real Politics*, p. 12.

¹⁴ Ewing, Keith, "Corruption in party financing: the case for global standards," 2001. *Global Corruption Report*. p. 191.

¹⁵ *Ibid.*, p. 196.

¹⁶ African Union *Convention on Preventing and Combating Corruption*, 11 July 2003, Article 10.

¹⁷ Ewing, "Corruption in party financing".

Regulation aims to introduce new levels of political accountability between the electorate and the party system. Political accountability refers to the constraints placed on the behaviour of public officials by organisations and constituencies with the power to apply sanctions to them. As political accountability increases, the costs to public officials of taking decisions that benefit certain interests at the expense of the broader public interest also increases, thus working as a deterrent/disincentive to corrupt practices.¹⁸

While regulation introduces disincentives in terms of corrupt practices it must be noted that it will not necessarily offer a panacea to the problem and will not eliminate all instances of corruption. Even countries that have tough regulations, such as Germany, still experience evasion of their laws. In Germany, Chancellor Kohl was forced to resign as honorary chairman of the Christian Democrat Union (CDU) following revelations of illegal donations to his party.¹⁹

However, as the German case illustrates, regulation ensures that there is an improved chance of highlighting and rooting out instances of corruption when it does occur, simply by promoting disclosure and the right to know.

The www.opensecrets.org website provides the American public with a range of party financing information. This includes information about campaign contributions from a range of corporate industries to candidates or members of Congress committees. It also allows citizens to scrutinise contributions to local members or candidates in their state. As examples, citizens are able to inform themselves about which candidates the computer industry is giving to and the patterns in tobacco company contributions in the last ten years. In addition, citizens can view a list of organisations that have given the most from a particular industry and a list of candidates who have received the most from an industry.

Transparency through disclosure and access to information allows citizens to see when decisions to back certain policies are a result of undue pressure or coercion from the groups that finance them. Regulation allows for punishments of corrupt acts, thereby entrenching a set of principles in society that become increasingly difficult to undercut. Without regulation, it is challenging to expose corrupt transactions and when they are apparent it is impossible to chastise those responsible, since such acts are effectively legal. Regulation can also introduce incentives, thereby changing existing corrupt practices. The Argentinean case constitutes an excellent example whereby changing incentives helps to slow corruption in party funding, as illustrated in the box below.²⁰

Argentina's particular combination of legal, political and institutional factors in the country created both incentives and opportunities for the illegal financing of electoral campaigns. Argentina has high levels of corruption, low levels of accountability, weak rule of law and low respect for institutions. Current campaign finance law imposes no limits on donations, no limits on campaign expenditure and no limits on campaign duration. With regard to the control of private funds, Article 41 of the Political Parties Law enables donors to require candidates to withhold donors' names for at least three years. The informal economy also represents a serious problem. Annual income tax evasion amounts to as much as US \$1.8 billion (evasion rate of between 45–50%). Annual VAT evasion could be US \$9.1 billion (evasion rate of 35%). These features indicate the existence of a large and uncontrolled flow of illegal funds, some of which may turn into financing not reported on the parties' balance sheets.

Poder Ciudadano - Argentina's Transparency International chapter - has developed a model that seeks to change political parties' incentives from below. Politicians are first encouraged to sign a "transparency agreement" (TA). As part of this agreement, they pledge to inform Poder Ciudadano on a monthly basis of their expenditure, and to allow it to review their campaign budgets. Poder Ciudadano also compiles its own data on campaign financing and spending, in collaboration with an outside private sector company. Poder Ciudadano's research focuses on monitoring expenditure in media advertising – on the assumption that spending in this one vital campaign area can be taken as indicative of parties' funding and expenditure patterns as a whole.

¹⁸ See the World Bank Anti-Corruption Index <http://www.worldbank.org/publicsector/anticorrupt/index.htm>

¹⁹ Ewing, "Corruption in party financing," p. 186.

²⁰ Ewing, "Corruption in party financing," p. 193.

The Poder Ciudadano model produces highly relevant, reliable and easily understood data on the expenditures incurred by parties and candidates during elections. By widely publicising this information in the media, and putting it at the disposal of all citizens, the model set forth in Argentina is a tool that encourages collective action and generates pressure from civil society by correcting deliberate information asymmetries. With this pressure, it has now become more costly for politicians not to sign the TA than to sign it. Once the TA is signed, it is similarly costly for the parties not to honour its terms.

During the 1999 presidential elections all three main presidential candidates and their respective parties committed themselves to cooperating with Poder Ciudadano to fulfil the demands for disclosure of expenditures. In the May 2000 elections for the legislature and mayor of the city of Buenos Aires, this success was repeated.

In 2003 Costa Rica's Sala Constitucional (Constitutional Chamber) promoted access to information and transparency in political funding by allowing two appeals lodged by a member against two state banks that had refused to give out information about bank accounts belonging to political parties.

Vote 03-3489 demonstrated that the wealth of political parties is subject to transparency and disclosure rules, in accordance with article 96 of the country's Constitution. The Chamber asserted that accounts held by political parties in any financial body are a matter of public interest and may be accessed by anyone who wishes to do so.

According to Mario Carazo, vice president of Transparency International Costa Rica, the decision is essential to the right to access information as it means political parties cannot hide behind legal formalities to evade their duty to be transparent and accountable.²¹

The search for legal solutions has been mostly a response to scandals. As corruption and related scandals have become more visible in party politics so has the willingness to confront it increased.²² There is no shortage of regulations and subsidies concerning political money. Regulatory steps include bans or limits on private political contributions, state subsidies (state funds) for parties and/or candidates, controls over political expenditure and rules securing transparency of contributions and expenditures. The table below illustrates the global prevalence of various kinds of public measures concerning political financing across both developed and developing countries.²³

²¹ Salazar, Roxana and Carazo, Mario, Article 19 paper. <http://www.article19.org/> May 2003.

²² Brademas, John, "Countering Political Corruption: Can Money in Politics be Contained?" Workshop organised by the National Democratic Institute – 9th International Anti-Corruption Conference, 1999, South Africa. p. 4.

²³ Pinto-Duschinsky, Michael, "Financing Politics: A Global View," *Journal of Democracy* Volume 13, Number 4, October 2002, p. 74. The statistics in the table are based on the author's research into countries in every region in the world. The countries included in the table are rated as "free" or "partly free" by the Freedom House in 2001.

Regulations and subsidies in 104 countries	
Regulations	Percentage
Disclosure rules	62%
Ban on foreign donations (partial and/or complete)	49%
Campaign speeding limits (any)	41%
Disclosure of individual donors (partial and/or complete)	32%
Contribution limits (any)	28%
Ban on paid election advertising on TV	22%
Ban on corporate donations (partial and/or complete)	16%
Ban on corporate donations (complete)	8%
Subsidies	
Free political broadcasts	79%
Direct public subsidies	59%
Subsidies in kind (apart from political broadcasts)	49%
Tax relief for political donations	18%

The table below provides information indicating whether countries have three important kinds of regulations and subsidies: disclosure regulation, direct public subsidies and the provision of free political broadcasts.

Three types of campaign finance measures			
Country	Direct public funding	Disclosure laws (Asterisks denote that individual donations must be disclosed by parties)	Free TV time to candidates and/or parties (Asterisks denote ban on paid political advertising on TV)
Argentina	yes	yes*	yes
Australia	yes	yes*	yes
Austria	yes	yes	yes
Bahamas	no	no	yes
Bangladesh	no	yes	no
Barbados	no	yes	yes
Belgium	yes	yes	yes*
Bolivia	yes	yes	yes
Bosnia-Herzegovina	yes	yes*	yes*
Botswana	no	yes	yes
Brazil	yes	yes*	yes*

Country	Direct public funding	Disclosure laws (Asterisks denote that individual donations must be disclosed by parties)	Free TV time to candidates and/or parties (Asterisks denote ban on paid political advertising on TV)
Bulgaria	yes	yes	yes
Canada	yes	yes*	yes
Chile	no	yes	yes
Colombia	yes	yes	yes
Costa Rica	yes	yes*	yes
Croatia	yes	no	yes
Czech Republic	yes	yes*	yes*
Denmark	yes	yes*	yes
Ecuador	yes	yes	no
France	yes	yes	yes
The Gambia	no	yes	yes
Germany	yes	yes*	yes
Ghana	no	yes	yes
Greece	yes	yes*	yes
Guatemala	yes	no	yes
Hungary	yes	yes*	yes
India	no	yes	yes
Indonesia	yes	yes	no
Ireland	yes	yes*	yes*
Israel	yes	yes	yes*
Italy	yes	yes*	yes*
Jamaica	no	yes	no
Japan	yes	yes*	yes*
Lesotho	yes	yes*	yes
Lithuania	yes	yes*	yes
Macedonia	yes	yes	yes
Malaysia	no	no	no*
Mauritius	no	yes	yes
Mexico	yes	yes	yes
Mozambique	yes	no	yes
Namibia	yes	yes	yes

Country	Direct public funding	Disclosure laws (Asterisks denote that individual donations must be disclosed by parties)	Free TV time to candidates and/or parties (Asterisks denote ban on paid political advertising on TV)
Netherlands	yes	yes*	*yes
New Zealand	no	yes*	yes
Nicaragua	yes	yes*	yes
Nigeria	no	yes	no
Paraguay	yes	no	yes
Philippines	no	yes *	yes
Poland	yes	yes *	yes
Portugal	yes	yes*	yes*
Romania	yes	yes*	yes*
Russia	yes	yes*	yes
Senegal	no	no	yes*
Seychelles	yes	no	yes*
Singapore	no	yes*	yes*
Slovakia	yes	yes*	yes *
South Africa	yes	no	yes
Spain	yes	yes	yes
Sri Lanka	yes	no	yes*
Sweden	yes	no	yes*
Switzerland	yes	no	yes*
Tanzania	yes	yes*	no
Thailand	yes	yes*	yes
Tonga	no	yes	no
Turkey	yes	no	yes*
Uganda	yes	no	yes
Ukraine	no	yes*	yes
United Kingdom	yes	yes*	yes*
United States	yes	yes*	no
Uruguay	yes	no	yes
Venezuela	no	no	no
Zambia	no	No	no

Campaign financing systems found in Western Europe and Canada are often cited as models.²⁴

Britain

In terms of British regulations the law limits campaign spending by individual candidates. Expenditure by national parties during a parliamentary campaign, however, is not limited. Candidates have free access to some television. Public disclosure of contributions is required only of corporations and unions.

The “sleaze” affair surrounding British Conservative Party MP Neil Hamilton was primarily responsible for revealing the malign influence of money on the British political system and prompting a new system for regulating the relationship between business and politics.²⁵ It also provided the impetus for setting up the Nolan Committee, an independent committee set up by Prime Minister John Major in 1995 to examine standards in public life and the ethics of public officials. It also prompted investigations by the parliamentary committee on members’ interests and the Committee on Standards in Public Life. The Lord Neill’s Committee on Standards in Public Life (formerly the Nolan Committee) has, under the current Labour Government, made recommendations for campaign finance reform, including requiring public disclosure of most contributions and calling for some direct funding of political parties.²⁶ UK’s comprehensive *Political Parties, Elections and Referendums Act* of 2000 incorporates a number of these recommendations.

The Act states that parties are not allowed to accept donations that are not from permissible donors or donations that are anonymous, where the donor cannot be identified.²⁷ Section 54(1) of the Act states: “A donation received by a registered party must not be accepted by the party if:

- (a) the person by whom the donation would be made is not, at the time of its receipt by the party, a permissible donor; or
- (b) the party is (whether because the donation is given anonymously or by reason of any deception or concealment or otherwise) unable to ascertain the identity of that person.”

Permissible donors include citizens who are registered to vote, a company that is registered in Britain, a political party and a trade union and donations are not allowed to exceed £200 (section 54). Parties are required to submit quarterly reports that detail donor information such as their name and address and the nature of the donation.²⁸ These reports must be submitted to the Electoral Commission. The Act also stipulates that donors who contribute more than an aggregate amount of £5,000 must make a report to the Commission (section 68). The Court may, on an application made by the Commission, order political parties to forfeit impermissible donations (section 58).

Canada

Canada can be viewed as the country with the most comprehensive, balanced and apparently successful system of regulation and public funding.²⁹ Canadian law provides some public funding of campaigns for election to Parliament. Television networks must provide candidates two minutes of free television time as well as a limited amount of airtime at the lowest advertising rate. Voters receive a tax credit of up to \$500 for campaign contributions. If you give a political donation for an amount up to \$100, the state will add three times to what the citizen has contributed. By providing tax credits for donations the system encourages small donations as opposed to a few large donations.

Strong pressure recently to curb the influence of corporate financing more severely culminated in a new law that passed through Federal Parliament on 19 June 2003. It prohibits corporations, trade unions and lobby

²⁴ Several case studies illustrated here are extracted from Brademas, “Countering Political Corruption,” p. 13.

²⁵ Jacobs, Power and Calland, *Real Politics*. p. 12.

²⁶ The Committee’s main proposals for reform included rules for full public disclosure of donations of £5000 or more nationally and of £1000 or more in a constituency from any person or source; and a limit of £20 million on national campaign expenditure by a party.

²⁷ *Political Parties, Elections and Referendums Act*, 2000 Part IV.

²⁸ Schedule 6: Details to be given in donation reports. *Political Parties, Elections and Referendums Act*, 2000

²⁹ Fogg, “Paying for Parties – Choices for Democrats”. Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 7

groups from making donations to political parties, allowing them to contribute amounts of up to only \$1,000 per year to individual candidates or local party associations. To compensate, direct public funding for parties is to be introduced at the rate of \$1.75 per vote received in the previous election, which adds to the already generous reimbursement of candidates' electoral expenses.³⁰

The amount of money that candidates and parties can spend in a campaign is limited by a formula based on the number of registered voters. Canada has an elections commission that effectively enforces penalties for violations of campaign finance laws. The Canadian system has been effective, according to Pinto-Duschinsky, because it has a centralised, professional administration and enforcement of the laws.³¹

Germany

In the Federal Republic of Germany, public funding of campaigns is provided for parties fielding candidates in federal and state parliamentary elections and for elections to the European Parliament. There is also public funding of political party foundations, which are affiliated with the parties but work exclusively to promote civic education in Germany and abroad. A small amount of free television and radio time for candidates is required of the networks.

Section 25 of Germany's *Parteiengesetz* (*Political Parties Act* of 2002) regulates donations. Whilst German law entitles parties or several of its bodies to receive donations, those donations that exceed a value of 10 000 Euro per year must be publicly disclosed by giving the name and address of the donor as well as the total amount in the annual report.³² Donations that exceed 50 000 Euro have to be reported immediately to the President of the *Bundestag*, which is then published.

Parties are also entitled to receive donations of up to 1 000 Euro in cash. Individuals are also entitled to a tax credit for certain amounts of campaign contribution. There are no limits on expenditures by parties or candidates. An incentive for parties to report campaign financing is that the party or candidate receives public funding only after disclosing its or his/her finances.

Italy

Italy's political system has come under increased scrutiny since Operation Clean Hands in 1993. The government provides some public funding for campaigns. Television networks are required to make free air time available for candidates. Italy has now imposed campaign spending limits on candidates and political parties. Contributions to individual candidates are limited, but not to parties. All contributions in excess of five million lira (US \$2,700) per year must be reported and disclosed. Foreign companies and foreign citizens can make contributions.

Europe³³

Despite the radical differences in tradition within Europe, it is interesting to note the impact of European integration in the area of funding regulation. Under the influence of those countries with a tradition of public funding, the European Union's Treaty of Nice of 2000 provided for regulations to be established governing political parties at the European level and in particular the rules regarding their funding.

In the words of the President of the European Commission, Romano Prodi: "Strong and independent European parties are essential for improving democracy in the European Union." Prompted by the demand for transparency in party financing emanating from the European Court of Audit, as well as the imminence of European Union enlargement, there has been a recent flurry of activity, with a draft regulation from the Commission in February 2003, followed by a European Parliament position in June.

³⁰ Fogg, "Paying for Parties – Choices for Democrats". Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 7

³¹ Bauduy, Jenifer, *Limits? What Limits?* Interview with campaign finance expert Michael Pinto-Duschinsky.

³² *Political Parties Act* of 2002, Sections 25 (3).

³³ This section is directly quoted from Fogg, "Paying for Parties – Choices for Democrats". Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 8

Key elements of the Commission's proposal foresee public funding being made conditional on evidence that party statutes and activities respect the principles of democracy, human rights and the rule of law as laid down in the European Union Treaty and the Charter of Fundamental Rights of the European Union. Parties must demonstrate a reasonable degree of representativeness across the European Union. They must generate at least 25% of their funding through their own efforts (donations, subscriptions etc.). Parties must disclose their accounts to the Court of Auditors, specifying donors and donations (exceeding 500 Euro in the latest version). Ceilings on donations (exceeding 12.000 Euro per year according to the Parliament) are to be fixed.

The significance of these developments at European Union level, yet to be confirmed by the Council, is that they may gradually influence the contrasting national political traditions across the enlarged European Union and beyond.

Reinforcing the trend towards regulation is the initiative by the 45-member Council of Europe, which agreed on a recommendation on 8 April 2003 asking all countries to abide by a number of principles on party finance, ranging from transparency in party accounts through restrictions on or prohibitions of sources of funds to public funding of political parties.

Good practice in political party financing is also being promoted by influential transnational NGOs such as the Association of Central and Eastern European Election Officials (ACEEEO).

Common to most case studies above is the availability of public (state) funding, limits on spending, disclosure of contributions and free access to the media. The importance of public funding is given prominence in these cases. The link between private funding regulation and public funding is important since the success of regulating private funds relies to a great extent on the availability of public funding for parties. Public funding introduces a higher potential for equity in terms of sourcing finances for parties. Public funds ensure parties can also survive between elections and encourage multi-partyism. Importantly, it also reduces parties' reliance on private sources and encourages a higher level of disclosure. Public funding can take various forms, such as subsidies (tax benefits and free broadcasting time) and state finance.

United States

There has been renewed interest in political party finance in the Americas. In March 2003, the Council of Presidents and Prime Ministers of the Americas agreed on a declaration on political financing (Carter Center 19 March 2003) which refer to six principles:³⁴

- ◆ *Fostering stronger representative and accountable political parties.* In their representation and participation functions, political parties need access to adequate resources to function effectively and ethically;
- ◆ *Ensuring effective electoral competition.* Parties and candidates must have a fair chance to campaign for their ideas; access to the media and adequate resources are crucial. Unfair incumbency advantages should be addressed and the use of state resources that are not made available for all candidates in the electoral campaign should be prohibited;
- ◆ *Promoting political equality and citizen participation.* Citizens, rich or poor, must have equal opportunity to participate in the political process and to support candidates or parties of their choice. Financial contributions are a legitimate form of support. Inequalities related to gender, race, ethnicity or marginalised populations should be compensated. The principle of one-person, one-vote must be preserved;
- ◆ *Preserving the integrity of the electoral process through transparency.* Voters need to be empowered to choose as autonomous and informed citizens, free from pressures, intimidation or seduction through economic benefits, and informed about the resources and support for candidates and parties;
- ◆ *Enhancing accountability and eliminating corruption.* Elected officeholders should represent their constituents as a whole and be free from financial dependence on a few. Donations should not be used to buy access to politicians or civil servants, personal favours (contracts, tax breaks and so on), or policy favours.

³⁴ Fogg, "Paying for Parties – Choices for Democrats". Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 8

- ◆ *Strengthening the rule of law and enforcement capacity.* There must be assurances of timely justice and an end to impunity in abuses of political financing. The enforcement of political finance laws and regulations requires the existence of independent oversight authorities and an effective system of sanctions to end impunity.

Interestingly, the United States stands out among the most economically advanced democracies due to its lack of stringent regulation and lack of free political broadcasts. The US situation is now framed by some fairly distinctive legal and institutional elements. In 1975, the US Supreme Court took up an important case that tested the federal campaign reform law. In *Buckley vs. Valeo*, the court struck down parts of the 1974 law as unconstitutional on the grounds that they infringed the First Amendment right of freedom of speech. Because, held the court, the limits on congressional campaign spending which the statute originally imposed did not include a public financing option, as with presidential campaigns, they were ruled invalid. The court also struck down as unconstitutional the limits in the 1974 statute on so-called “independent expenditures” by groups and national political parties.³⁵

The *Buckley* decision means that a candidate can spend as much money on his campaign as he wants out of his own pocket. The court insisted that campaign spending and freedom of speech could not be disentangled and ruled that a “ceiling on personal expenditures by candidates on their own behalf imposes a substantial restraint on the ability of persons to engage in protected First Amendment expression”.³⁶ The US has made a strong commitment to regarding money in politics as not precisely equivalent to speech but as crucial for speech.

Parties are relatively weak in the US, and are funded not as membership organisations but via fundraising operations targeted at individuals. People concerned about the effect of money unavoidably have to take on issues like disclosure of contributions, which constitutes the core of financial support.

Many legal scholars hold that in the *Buckley vs. Valeo* case, the Supreme Court made a grave mistake and that the “freedom of speech argument” is misplaced.³⁷ A quarter of a century after Watergate and the legislation it provoked, the issue of campaign reform came to the fore in the US after calls for present practices to be reformed. The call for reform was also compounded by revelations of Enron’s vast network of political giving and influence.³⁸ Whilst there are regulations, according to academics such as Dr Brademas, they are insufficient and gaps exist in the current regulatory system for financing campaigns for Federal Office, which has undermined public faith in the integrity of the democratic system.

In response to calls for reform, the new US campaign finance law, the *Bipartisan Campaign Reform Act* (BCRA or McCain-Feingold law) was signed into law by President Bush in March 2002. Almost immediately, various groups filed lawsuits against the Federal Election Commission (FEC) protesting that the BCRA violates the First Amendment by limiting the right of people to express their opinions and participate in the political process. The Supreme Court justices started to hear arguments on 8 September 2003.

With thirteen provisions of the Act under consideration the task of the court will be to examine the constitutionality of the Act. Two particular provisions are hotly disputed. First, the law prohibits the national parties and their officers, as well as federal officeholders and candidates, from raising and spending “soft money” donations that are not subject to federal limits because technically they go to state parties. Corporations and unions have long been barred from contributing to federal campaigns, and individuals are limited in the amounts they can contribute. However, all have been able to evade the limitations by giving to political parties instead.

Secondly, the law imposes new regulations on issue adverts such as TV and radio commercials that air near election time that either praise or condemn candidates without expressly telling people to vote for or against

³⁵ Brademas, “Countering Political Corruption,” p. 5.

³⁶ Ibid. p. 5.

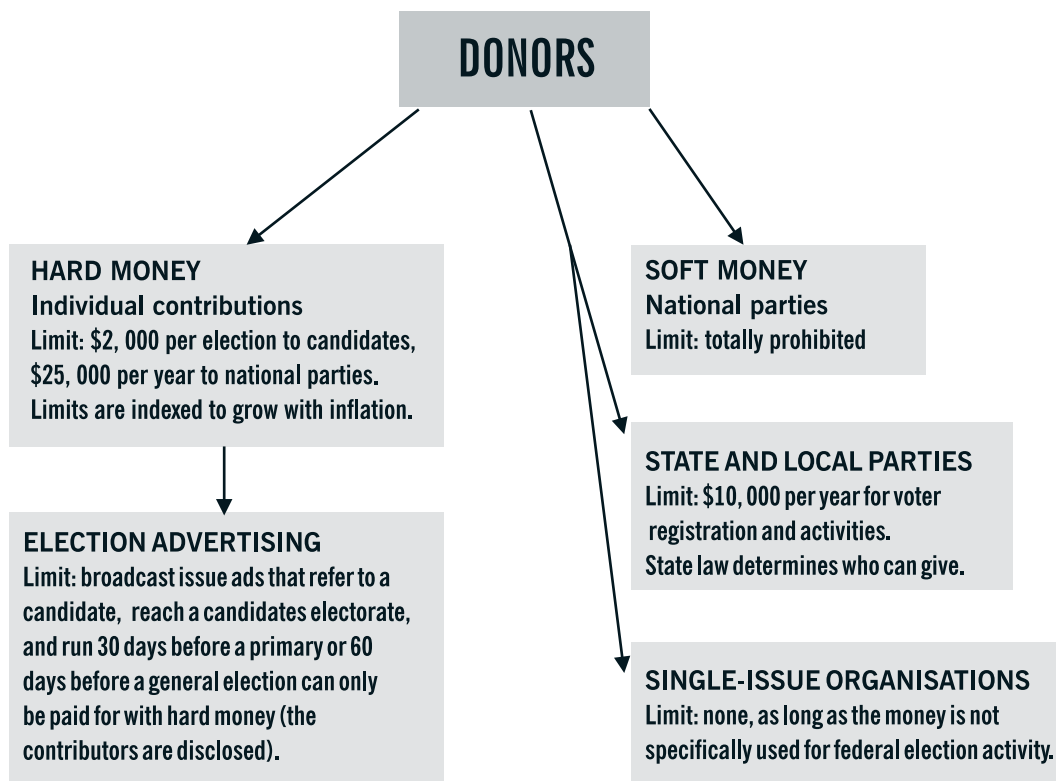
³⁷ According to the Brennan Centre, “*Buckley* itself upheld a wide variety of restrictions [on political contributions and spending], and since then the Supreme Court has upheld others,” including the \$1,000 limit on contributions by an individual to a campaign and the limits on campaign spending when a presidential candidate accepts public matching funds. “The Court has repeatedly held in *Buckley* and other cases that preventing the appearance and reality of corruption is a compelling state interest that justifies limits on the source and amount of contributions to a candidate or political party.”

³⁸ Enron is one of the world’s leading energy, commodities and services companies. Revenues were \$101 billion in 2000. See <http://www.enron.com/corp/pressroom/factsheets/company.html>

them.³⁹ Unions and corporations have evaded this prohibition by running commercials that pretend to be abstract discussions on political issues.⁴⁰

In broad terms the oral arguments heard in court present a debate between two democratic values. Opponents argue that the law infringes free speech as protected by the First Amendment and defenders argue that in fact the law will promote equality of free speech and clean politics. The latter argue that the First Amendment's purpose is to promote a functioning and fair democracy, which the current system of financing mocks. Opponents say the law unconstitutionally meddles in state elections by putting new restrictions on previously unregulated "soft money" contributions to state and local parties. Defenders of the law say doing so would open a huge loophole in the law, allowing unlimited donations to political parties from corporations, unions and individuals to flow unabated to federal candidates through state parties. Whether the Supreme Court decides to uphold or strike down the ban on issue adverts and "soft money" contributions will determine the outcome of new financing regulations for the US.⁴¹

Table 4: How the Bipartisan Campaign Reform Act alters the money flow in US politics⁴²



US business has also called for a more transparent system as it feels economic success depends on a more open system of decision-making.⁴³ A number of recommendations were put forward by the Committee for Economic Development (CED) to improve the party financing system in a report released in 1999.⁴⁴ The CED proposal is aimed at increasing public participation and competition in elections and reducing the influence of large donors and special interest groups. The CED recommended banning all undisclosed contributions and promoting public financing for congressional races, whilst limiting their spending amounts. Many Fortune 500

³⁹ Lane, Charles, "High Court takes on High-Stakes Dispute – Campaign laws. Constitutionality at issue". *Washington Post*, 7 September 2003.

⁴⁰ "The Case for McCain-Feingold". *Washington Post*, 7h September 2003.

⁴¹ Congressional Quarterly's Daily Update, "Supreme Court hears arguments on campaign finance," – 8 September 2003.

⁴² "Campaign Finance Passage Ends a Political Odyssey". *CQ Weekly* 23 March 2002.

⁴³ Brademas, "Countering Political Corruption," p. 9.

⁴⁴ The Committee for Economic Development (CED) is a major group of American business leaders. The report is entitled "Investing in the People's Business. A Business Proposal for Campaign Finance Reform".

corporations have stopped making soft money contributions out of frustration with what one former CEO of Deloitte Touche called “extortion”.⁴⁵

A CED survey of business executives revealed that contributors who volunteer donations actually acknowledge that they do so in the hopes of special treatment in legislative or regulatory matters. As a US organisation, Common Cause, who advocate for regulations of party financing in the US, stated: “Federal campaigns have come to resemble auctions, in which candidates and parties sell what they disingenuously call ‘access’.”⁴⁶

One cause of global scandals and corruption linked to campaign financing is the rising costs of modern politics, in particular the expenses parties incur for campaigns and the use of mass media. The rising costs of campaigning have created a financial “arms race” between contesting parties. In the US the cost of financing presidential campaigns has risen dramatically. For example, television commercials in the 1994 elections cost \$356 million, in 1996 \$405 million was spent, and in 1998 \$531 million was spent.⁴⁷ The 1999-2000 election cycle was fuelled by US \$463 million of soft money, roughly evenly split between the two major parties. This represents more than 90% more money than either party had raised during the previous presidential election cycle. The bulk of this money (over US \$360 million) was given by corporate interests.⁴⁸ Rose-Ackerman states that,

*Financial pressures give politicians an incentive to accept pay-offs, thus working against the other corruption-reducing effects of competitive elections.*⁴⁹

The World Bank’s Anti-Corruption Unit explains that international experience shows the immense difficulties of installing an effective system of party funding that will not be open to abuse.⁵⁰ Many countries have experienced malpractice in public procurement that provided kickbacks for party funding, as well as a plethora of other improper channels involving state-owned enterprises, privatisation and the leverage afforded by appointments and control rights at all levels of government.

However, international experience also shows that regulation of party funding can be effective if well designed, backed by effective sanctions and accompanied by a parallel diffusion of appropriate ethics and norms. In Italy, Operation Clean Hands, which involved the investigation of violations of campaign financing laws, resulted in the imprisonment of hundreds of politicians and businessmen.⁵¹ Ultimately it is committed politicians and citizens who have asserted the principles that should govern party financing and have driven through new laws and regulations. These rules need oversight, enforcement and monitoring. This requires reliable judges or electoral authorities and an active investigative press. In some cases, the shame and electoral consequences of political exposure have proved effective. There is no single prescription for success, as party financing rules have to operate in an environment of institutions and degrees of respect for rules that varies across countries and thus they have to select differing mechanisms to suit their needs.

4. Link between private funding and political corruption

Voters need information on candidates’ records and on the money – both campaign contributions and gifts – they have received. Legal gifts can have a corrupting effect if they need not be made public and if the quid pro quo is not itself obvious to voters.⁵²

The causes of corruption are complex and are rooted in a country’s policies, bureaucratic traditions, political development and social history. Corruption tends to flourish when standards are lax or poorly defined, regulatory institutions and enforcement practices are weak and government policies generate economic rents.⁵³

⁴⁵ Ewing, “Corruption in party financing,” p. 188.

⁴⁶ Ibid. p. 188.

⁴⁷ Brademas, “Countering Political Corruption,” p. 2.

⁴⁸ Ewing, “Corruption in party financing,” p. 188.

⁴⁹ Rose-Ackerman, *Corruption and Government: Causes, consequences and reform.* 1999 p.133

⁵⁰ For further information see <http://www1.worldbank.org/publicsector/anticorrupt/politicalaccountability.htm#i>

⁵¹ Idasa, “Democracy 2000: Reforming Party Political Funding,” unpublished paper, p. 5.

⁵² Brademas, “Countering Political Corruption,” p. 11.

⁵³ Bottelier, Pieter, Senior Advisor to The World Bank – East Asia and Pacific Region, “The Social and Economic Costs of Corruption” p. 2.

The opportunity for corruption is a function of the size of the rents under control of a public official, the discretion that that official has in allocating those rents and the practical accountability that that official faces for his or her decisions. A well-known corruption expert, Robert Klitgaard, uses this equation to measure corruption potential:⁵⁴

$$C \text{ (corruption)} = M \text{ (monopoly)} + D \text{ (discretion)} - A \text{ (accountability)}$$

Conventional definitions of “political corruption” are often inadequate since they do not deal with all aspects of corrupt political financing.⁵⁵ In order to have a better understanding of the causal relationship between private funding and political corruption below is a summary of the various types of corrupt political financing.⁵⁶

Political contributions that contravene existing laws on political financing

Illegal donations are often regarded as scandalous, even if there is no suggestion that the donors obtained any improper benefit in return for their contributions. Prominent examples include the Filesa case (1991 onwards), which contributed to the electoral defeat of Spain’s Prime Minister Felipe Gonzales; the Kohlgate scandal in Germany in 2000; and the One Israel Affair in Israel in the same year.

The use of money for campaign or party objectives that a political officeholder has received from a corrupt transaction

In such a case, all that differentiates corrupt political funding from other forms of political corruption is the use to which the bribe is put by the bribe-taker. In the 1990s, examples included the Costea Affair in Romania and the Goldenberg Affair in Kenya. In both these cases, the profits of corruption involving hundreds of millions of dollars are reported to have ended partly in private pockets but also partly in campaign coffers.

Unauthorised use of state resources for partisan political purposes

This is a commonly noted feature of ruling parties’ campaigns in established and developing democracies alike. Invitations to White House coffee receptions and sleepovers in the Lincoln bedroom were among the more innocent ways in which US President Bill Clinton used a public resource to raise funds for his 1996 re-election campaign. More important is the common practice of using public funds to pay staffers who carry out partisan activities. President Jacques Chirac of France is said to have used hundreds of patronage posts available to him as the mayor of Paris to save his party from the need to raise private funds for its headquarters. In parts of Africa and the former Soviet Union, the resources available to office holders, national and local, are blatantly used for electioneering.

Acceptance of money in return for an unauthorised favour or the promise of a favour if elected to office. It is useful to consider what private parties can “purchase” from a politician⁵⁷

Government contracts: Bribes can influence the choice of private parties to supply public goods and services and the exact terms of those supply contracts. It can also affect the terms of re-contracting during project implementation.

Government benefits: Bribes can influence the allocation of monetary benefits (tax evasion, pensions) or in-kind benefits (ownership stakes in enterprises being privatised).

A representative sampling from this category is potentially huge. Significant cases arise in over 28 countries ranging from Antigua and Barbuda to the United Kingdom and the United States, from Belgium and Brazil to Italy and India, and from Papua New Guinea to Cameroon. Some countries where there were serious allegations

⁵⁴ Bottelier, “The Social and Economic Costs of Corruption” p. 2.

⁵⁵ Conventional definitions include “the use of public office for unauthorised private gain”. For example the definition does not apply to fundraising for a potential incumbent who is outside of public office but may accept money in exchange for promises to misuse public office. Additionally, money may not be used for private gain but for the gain of the party or a candidate.

⁵⁶ Case study information is extracted from Pinto-Duschinsky, “Financing Politics,” p. 71.

⁵⁷ Gray, Cheryl and Kaufmann, Daniel, “Corruption and Development,” *Finance & Development Publication* March 1998. p. 7.

are noted in the table below. It is apparent that politicians in all parts of the world have been caught up in major scandals. It is also worth noting that allegations frequently have concerned politicians at the highest level.

In France, the Dassault affair is a good example of systematic kickbacks received between 1995 and 1997 by the party in government (the Belgium Socialist party) for public contracts to purchase fighter planes and to modernise Mirages. Money paid by the Dassault Company has been checked in the Socialist Party finances. The disclosure of these facts led to the dismissal of four ministers, the suicide of the former Headquarter Chief of Air force, Jacques Lefebvre, and the death of a key person whose role was to put the people involved in these secret international deals in contact with each other.⁵⁸ Pujas identifies both the oil industry and aeronautics and arms industry as two sectors that are subject to political exploitation for financing of parties in France.⁵⁹ The reasons cited for the sectors being particularly susceptible are that they are strongly linked to the political sphere and thus hold a privileged relationship with political decision-makers.

A classic example of the acceptance of money in return for an unauthorised favour is illustrated by the recent scandal in France involving President Chirac. The late Jean-Claude Mery, a former financier for President Chirac's party, Rally for the Republic (RPR), recorded a confession on videotape in 1996, which highlighted corrupt activities by Chirac and other politicians. The videotape was released in 2000, after the death of Mery. On tape Mery claimed that while President Chirac was mayor of Paris between 1977 and 1995 he ran a covert fund that accepted cash from companies awarded public works municipal contracts. Companies were reportedly expected to pay 2% of the value of each contract to the RPR, which kept 1.2% and passed the rest on to be divided between the Socialist and Communist parties.⁶⁰ Mery claimed that it was his job to collect funds covertly for the RPR from the firms. Businessmen and local politicians under investigation have told magistrates that building firms paid approximately 60 million pounds in bribes between 1989 and 1996.

As a result of Mery's accusations, 60 politicians and businessmen are under investigation, including the mayor of Paris, Jean Tiberi. However, Chirac is not obliged to comment on the Mery case because presidential privilege prevents him from being questioned or charged. At the time of the alleged corruption there were no regulations governing private funding to parties. In 1994 Prime Minister Edouard Balladur banned all party funding by companies. Only individuals can contribute to party coffers. However, scandals and accusations continue.

Investigators studying the city hall case also uncovered what they called a double-barrelled system that provided funds for the coffers of Chirac's party through contracts, while also saving the party money by paying staff with city hall funds which became known as the "jobs scam". Altogether 27 people, both party functionaries and businessmen, are facing charges over payments made by the Parisian city hall and private companies which bankrolled the salaries of dozens RPR staff.⁶¹ In particular, France's former Prime Minister, Alain Juppe, (who has close political ties to President Jacques Chirac), appeared in court in a trial that aimed to uncover funding irregularities in the RPR. Juppe's corruption trial ended on 16 October 2003, with a verdict expected in January 2004. In closing arguments, his lawyers argued that he should not be held accountable for the jobs scandal at Paris city hall dating back to Chirac's years as Paris mayor. However, if convicted, Juppe could face up to five years in prison, a fine and a five-year ban from elected office.⁶²

A poll in the daily *Le Parisian* on 28 September 2000 found that 67% of respondents believed France's latest corruption scandal had besmirched the image of the country's political class.⁶³

Accused politicians include:⁶⁴

Jacques Chirac - French president, mayor of Paris from 1977 to 1995 and founder of the neo-Gaullist RPR party. His name has appeared on the margins of a multitude of investigations into the funding of the RPR,

⁵⁸ Pujas, Veronique, "Corruption Via Party Financing in France," working paper submitted for a TI workshop on corruption and party financing in Italy. October 2000, p. 2.

⁵⁹ Ibid.

⁶⁰ Guardian Unlimited. 15 December 2000. "Chirac goes on TV to deny graft claims". www.guardian.co.uk

⁶¹ The Tocqueville Connection. 29 September 2003 "France's former PM Juppe on trial for funding scam at Chirac's party".

⁶² Newsday. 16 October 2003, 'Corruption trial closes of ex-French PM' www.newsday.com

⁶³ Guardian Unlimited. 1 October 2000, 'Chirac sulks as scandal grows.' www.guardian.co.uk

⁶⁴ Guardian Unlimited. 5 December 2000, 'Flames of scandal close in on silent Chirac' www.guardian.co.uk

including an alleged kickback scam and a jobs scandal. Has persistently denounced all such rumours and allegations as malicious and unfounded nonsense.

Jean-Claude Méry - Now-deceased multimillionaire property developer, RPR official and close ally of Chirac, Méry ran a consultancy that specialised in helping companies win lucrative Paris city hall contracts. He did time in prison and three years ago recorded a video cassette to “put the record straight”. When this was released in September, Méry’s detailed allegations sent a shock wave through the entire French political establishment.

Michel Roussin - Chirac’s chief aide at city hall from 1989 to 1993. A former cooperation minister, Roussin was commander of the French secret service and a senior gendarme. Accused of “complicity in, and receipt of, the proceeds of corruption”, Roussin is seen as one of the kingpins of Chirac’s alleged illicit funding system.

Louise-Yvonne Cassetta – also known as “La Cassetta” (the purse). Ms Cassetta was for many years allegedly the RPR party’s unofficial treasurer, collecting and distributing illegal kickbacks paid by construction and maintenance companies. During the trial she was released for lack of sufficient evidence but was re-arrested the following day.

Corporations like Enron have long counted on the influence their huge campaign contributions have on politicians. The donations ensure that the government stays out of their way while corporations evade rules to multiply profits amounting to legalised bribery.

Another example was the speculation surrounding the £1 million donation by Bernie Ecclestone to the UK Labour Party in 1997, and the subsequent U-turn in policy towards tobacco advertising in Formula One racing.⁶⁵

Apart from those already mentioned, others have included Vice-President Spiro Agnew (United States), members of the Bird dynasty (Antigua and Barbuda), President Desi Bourterse (Suriname), Prime Minister Benazir Bhutto (Pakistan), Vice-President Alfonso Guerra (Spain), Prime Minister Vaclav Klaus (Czech Republic), Economics Minister Otto Graf Lambsdorff (Germany), President Carlos Andres Perez (Venezuela), Prime Minister Lyndon Pindling (Bahamas), President Carlos Salinas de Gortari (Mexico) and Prime Minister Noboru Takeshita (Japan).

Contributions from disreputable sources:

Each time there is a row over the link between a private funder and political parties it serves to deepen people’s cynicism of politicians and politics. Recent South African examples include allegations surrounding German fugitive Jurgen Harksen’s donations to the Democratic Alliance, the Malatsi/Roodefontein case (see below) and recently the allegations of bribe-taking by Deputy President Jacob Zuma. This has serious implications for democracy. It promotes a lack of trust in political institutions and undermines the legitimacy of popularly elected public representatives.

The Malatsi/Roodefontein case

Former Deputy Minister of Social Development, David Malatsi, together with former Western Cape premier, Peter Marais, appeared before Cape Town Regional Magistrate Piet Nel on Friday August 16, 2003. This was in connection with an alleged acceptance of about R400 000 in donations to the New National Party (NNP) from Italian businessman Riccardo Agusta, the developer of Roodefontein Golf Estate in Plettenberg Bay. Deputy Minister Malatsi and NNP secretary Mariaan Meyer were the sole signatories to the NNP’s Khayelitsha bank account, into which R100 000 was allegedly deposited by Agusta. Agusta has acknowledged handing the NNP money, which he claimed was intended for “the benefit of impoverished people in the Western Cape”.

Both Malatsi and Marais (now suspended from the NNP) have protested their innocence. Corruption charges against Malatsi and Marais continue despite a demand by the defence team, advocate Hugo Rossouw and attorney Richard Dixon, to withdraw the charges. Both are currently out on bail of R10 000 each.

Even though there may be no evidence of an exchange of favours or promises for future favours, the presumption is that tainted sources are likely to have tainted motives. According to a scholarly estimate in 1960, perhaps 15% of the money for state and local campaigns in the United States was derived at that time from underworld sources anxious to protect their criminal enterprises. There are widespread rumours that crime bosses are involved in electioneering and campaign financing in Russia. Some of the most dramatic and most fully established examples of criminal sources concern the financing of politics in Central and South America and in the Caribbean by drug dealers. In 1994, the director and other senior officials of Ernesto Samper's successful campaign to become president of Colombia went to jail when the so-called narco-tapes, which suggested that drug money had financed Samper's run, became public.

Spending of money on banned purposes such as vote buying

This costly set of campaigning methods seems to occur most frequently in relatively poor countries, although it is found residually in some large US cities as well. Candidates are expected to treat ordinary voters to gifts of various kinds, often including food and especially free drinks. Pinto-Duschinsky's research has uncovered significant vote-buying in countries ranging from Cambodia, Malaysia and Taiwan in Asia to Cameroon, Kenya, Uganda and Zimbabwe in Africa, to Antigua and Barbuda, Costa Rica, Mexico and Suriname in the Americas, and even to Samoa in the Pacific. A MCP MP in Malawi highlighted during an interview the extent of vote-buying in his country. Parties try to influence the vote during elections through both in-kind contributions by handing out maize and direct cash handouts. The Centre for Human Rights in Malawi also pointed out the seriousness of political and electoral corruption by stating that vote-buying was done particularly by the governing party through cash handouts to the electorate, particularly in the 1999 elections, as well as by offering food like sugar.

Sampling of campaign finance scandals⁶⁶

Brazil: *With impeachment hanging over his head, President Fernando Collor de Mello resigned in late December 1992 as charges circulated of kickbacks and illegal campaign contributions from companies doing business with the government. The Supreme Court later acquitted him. His campaign fundraiser, Paulo Farias, was sentenced to house arrest and found dead in 1996.*

Croatia: *After the Croatian Democratic Union fell from power in 2001, it came out that the party had raised most of its funding through "racketeering" schemes in which government contractors would be paid only in return for substantial contributions to party coffers.*

Ecuador: *A scandal erupted when it emerged that the Christian Democratic Party's successful 1998 presidential candidate, Jamil Mahuad, had accepted an undisclosed donation of US \$3.1 million from the owner of the Banco del Progreso. The Christian Democrats faced a fine of US \$6.2 million.*

Germany: *In the spring of 2002, Norbert Reuther, the former leader of Cologne's ruling Social Democrats, was arrested for accepting illegal political donations. The payments were allegedly connected with contracts awarded to a waste management company for the construction and operation of a \$353 million garbage incinerator in the city.*

India: *The Bofors affair of 1987 onwards and the Telheka.com affair of March 2001 both involved allegations of political donations for arms contracts. The former scandal involved politicians close to Prime Minister Rajiv Gandhi and a contract for Bofors, the Swedish arms manufacturer, for FH 778 guns.*

Italy: *The long-ruling Christian Democrats were engulfed and destroyed after the end of the Cold War by a torrent of allegations that triggered an investigation called Operation Clean Hands. By 1994, no fewer than seven high-ranking party officials had committed suicide while under investigation. In 2000, former Socialist premier Bettino Craxi, who had fled to avoid prosecution and then received a jail term in absentia, died in Tunis.*

Japan: *The 1990s saw several alleged cases of "donations for contracts" including the conviction in 1998 of Osaka oil dealer Tzui Jun'ichi and a 2000 scandal involving the alleged relationship between former construction minister Nakao Eiichi and a building company.*

Papua New Guinea: *Reported instances of “grand corruption” include payments by foreign corporations of election expenses in return for licences, as well as personal bribes to politicians. The payments frequently came from overseas companies.*

South Korea: *In 1996, former presidents Roh Tae Woo and Chu Doo Hwan were sentenced to long prison terms and fines totalling US \$600 million. Among their offences was a collection of a slush fund, two-thirds of which went to their political party. The Hanbo affair of 1997 involved allegations that the bankrupt conglomerate had received special treatment in return for massive political contributions to then-President Kim Young Sam’s 1992 campaign.*

Spain: *According to the scholar of political financing and Spanish cabinet minister, Pilar del Castillo, sources close to the building trade acknowledged in 1991 that the payment into party coffers of commissions ranging from 2 to 4% was considered “a common method to obtain work contacts”.*

United Kingdom: *The “Formula One affair” of 1997 involved accusations that the newly elected Labour government of Prime Minister Tony Blair had changed its policy and begun allowing televised tobacco advertising during Grand Prix auto-racing events in order to advance the commercial interests of a donor who had contributed \$1.55 million. Whether the donation had affected the Labour government’s change of policy remained unclear, but the donation was returned.*

Democracies require strong, independent political parties operating in an open and truly competitive political system to function properly. Such systems encourage transparency and accountability and thereby encourage the reduction of corruption in the public sector and politics generally. Similarly a well-informed electorate who can exercise equal influence over the decision-making process are preconditions for genuine participatory democracy.

Democratic systems are best equipped to challenge corruption and realise the needs of the electorate. Elections serve to discipline politicians to represent the interests of their constituents and numerous mechanisms are provided to ensure groups and interests have points of access to the political process.

Private funding (in particular, corporate funding) is at the core of the concern around political corruption. A primary consideration is to ensure that checks and balances exist to prevent undue concentrations of power and influence, which can distort government policy against the best interests of the majority. As Susan Rose-Ackerman, a leading scholar on corruption, notes, “the key variables in any regime are the ability of wealthy organised groups to obtain legal influence and the attitude of the general population towards the public provision of private benefits”.⁶⁷

The rising costs of elections (as mentioned earlier) compounds the need for corporate and private donations to parties, which further exacerbates the possibility for corruption and undermines equality in the electoral process. “The current arms race mentality increases the potential for corruption, decreases electoral competition, distracts sitting officials from their duties, and undermines public confidence in the political system.”⁶⁸ Some countries have attempted to tackle the problem of rising election costs by reducing the costs of elections through increased public funding.

In an environment of real or perceived corruption, confidence in government and business is eroded. If public policy decisions are made, or are perceived to be made, on the basis of political contributions, not only will policy be suspect, but government will not be seen as accountable to the people and the principle of participation and legitimacy is undermined. This conclusion is valid for developing countries too where democratic consolidation and trust in its institutions are still developing and are thus vulnerable.⁶⁹

A 2002 pilot survey of international attitudes, expectations and priorities on corruption asked over 23 000 respondents from 47 countries the following question, “If you had a magic wand and you could eliminate

⁶⁵ Idasa, “Democracy 2000,” p. 2.

⁶⁶ Pinto-Duschinsky, “Financing Politics,” p. 71.

⁶⁷ Brademas, “Countering Political Corruption,” p. 11.

⁶⁸ Brennan Centre for Justice, “Mitch McConnell’s Myths about the Constitutional Limitations on Campaign Finance Reform,” New York University School of Law, 1999.

⁶⁹ The relationship between party financing, corruption and developing democracies will be discussed in greater detail in section five.

corruption from one of the following institutions, what would your first choice be?” Out of 12 institutional options such as courts, police and the private sector, political parties were the first choice for the vast majority of respondents.⁷⁰

Again in 2003 Transparency International found in its Global Corruption Barometer on public attitudes that in 33 of 44 countries surveyed, more than 30 per cent of the respondents picked political parties as the first actors to be addressed in the struggle to eliminate corruption.⁷¹

Therefore the need for transparency of contributions by donors becomes imperative, not only to combat corruption and promote accountability of office holders, but also to preserve legitimacy of the democratic system. In terms of mandatory spending limits the US court has repeatedly held in *Buckley* and other cases that preventing the appearance and reality of corruption is a compelling state interest that justifies limits on the source and amount of contributions to a candidate, political party or political action committees.⁷²

Thus democracies require a set of institutions and rules both inside and outside government that can promote the regulation of private funding and combat the potential for the types of corruption outlined above.

5. Link between political corruption and socio-economic development

Corruption weakens the State and its ability to promote development and social justice.⁷³

Various types of corruption - some stemming from a lack of a regulatory system to govern private financing of political parties - can result in skewed socio-economic development and reinforce and increase inequality in a society. The idea that corruption is a sort of informal and supplementary tax payable in developing countries has now been entirely discredited. Studies now caution that corruption is, rather, a tax on development.⁷⁴

Political corruption interferes with the traditional core functions of government: the allocation of resources, stabilisation of the economy and the redistribution of income. These functions influence income distribution and poverty in varying degrees, both directly and indirectly.

Thus the effects of corruption on an economy can be thought of in terms of the distorting effects it has on the allocation of resources and the extent to which ongoing economic activity is redirected and rendered less efficient. There are numerous studies showing this relationship and all point to both negative economic efficiency and distributional consequences.⁷⁵ The World Bank has identified corruption as the single greatest obstacle to economic and social development and asserts that it undermines development by distorting the rule of law and weakening the institutional foundation on which economic growth depends.⁷⁶

Political corruption can increase income inequality and poverty in a number of ways.⁷⁷

⁷⁰ Other institutions were: business licensing, courts, customs, education system, utilities, medical services, immigration, police, private sector, tax revenue, other. “A 2002 Pilot Survey of International Attitudes, Expectations, and Priorities on Corruption”. Transparency International Global Corruption Barometer and Gallup International’s Voice of the People Survey. July 2003, London.

⁷¹ Fogg, “Paying for Parties – Choices for Democrats”. Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 2.

⁷² Brennan Centre for Justice, “Mitch McConnell’s Myths”.

⁷³ Bottelier, “The Social and Economic Costs of Corruption.” p. 1.

⁷⁴ OECD Development Centre, “Corruption: The Issues,” Technical Papers No. 122, p. 33.

⁷⁵ Gupta, Sanjeev, Davoodi, Hamid and Alonso-Terme, Rosa. “Does Corruption Affect Income Inequality and Poverty?” International Monetary Fund – Fiscal Affairs Dept Paper, May 1998; OECD Development Centre, “Corruption,” p. 33.

⁷⁶ See The World Bank Anti-Corruption Index <http://www.worldbank.org/publicsector/anticorrupt/index.htm>

⁷⁷ Gupta, Davoodi, and Alonso-Terme, “Does Corruption Affect Income Inequality,” p. 4.

Through lower economic growth

Evidence suggests that a higher growth rate is associated with a higher rate of poverty reduction.⁷⁸ In turn, political corruption can slow the growth rate and therefore poverty reduction. A non-regulatory system for party finance can slow growth because of perceived or real levels of corruption in the system. Similarly, income inequality has been shown to be harmful to growth.⁷⁹ If political corruption due to non-regulation of disclosure for example increases income inequality it will also reduce growth thereby limiting poverty reduction.

A biased tax system favouring the rich and well connected

Political corruption can lead to tax evasion, poor tax administration and exemptions that disproportionately favour the well-connected and wealthy population groups. This can reduce the tax base and the progressivity of the tax system.

Poor targeting of social programmes

Political corruption can affect the targeting of social programmes to the truly needy. The use of government-funded programmes to extend benefits to relatively wealthy population groups, or the siphoning off of funds from poverty-alleviation programmes by well-connected individuals, will diminish the impact of social programmes on income distribution and poverty.

Use of wealth by the wealthy to lobby government for favourable policies that perpetuate inequality in asset ownership

A high concentration of asset ownership can influence public policy and increase income inequality. In a society where asset ownership is concentrated in a small elite, such as South Africa, asset owners can use their wealth to lobby the government for favourable trade policies, including exchange rates, spending programmes and preferential tax treatment of their assets. These policies will result in higher returns to the assets owned by the wealthy and lower returns to the assets owned by the poor, thereby increasing income inequality.

Lower social spending

Corruption can affect income distribution and poverty via its impact on human capital formation. Improper tax exemptions (as discussed above) can lead to less tax revenue and fewer resources available for funding public provision of services such as education. Further, corruption increases the operating cost of government (scandals, courts cases, arms deal) and therefore reduces the resources available for other uses, including the financing of social spending that is crucial for the formation of human capital. Third, wealthy urban elites can lobby the government (through private donations) to influence social expenditure services in ways that tend to benefit high-income groups (such as tertiary education).

A higher risk in investment decisions of the poor

If the rules of the game are unclear due to corruption and are biased towards the wealthy and well-connected, the poor and less well-connected face an added risk premium in their investment decisions. Unequally distributed risk increases expected returns to the wealthy and less to the poor. Therefore, low-income groups (the less well-connected) will be discouraged from investing in any resource (human, physical or land) and income inequality and poverty will be perpetuated.

Pieter Bottelier, a senior adviser to the World Bank, in a paper on the economic costs of corruption in East Asia, contends that corruption has led to the misallocation of scarce talent to rent seeking activities while distorting investment priorities and technology choices.⁸⁰ (An example of distorting investment priorities and technology choices includes creating incentives to contract for large defence projects rather than rural health

⁷⁸ Ravallion, Martin, "What can new survey data tell us about recent changes in distribution and poverty?" *World Bank Economic Review*, 1997, Vol 11 No. 2, pp. 357 – 382.

⁷⁹ Alesina, Alberto, and Rodrik, Dani, "Distributive Politics and Economic Growth," *Quarterly Journal of Economics*, 1994, Vol. 109, pp. 465 – 90.

⁸⁰ Bottelier, "The Social and Economic Costs of Corruption," p. 1; and Gray and Kaufmann, "Corruption and Development," p. 8.

clinics.)⁸¹ He further suggests that corruption has weakened the state in the region and its ability to promote development and social justice. “Corruption is a double jeopardy for the poor and unprotected. They pay a high share of monopoly rents and bribes, while they are often deprived of essential government services.”⁸²

Dr Fredrick Mutesa, a Zambian academic on party financing, argues that private financiers of political parties in Zambia do so to advance their own business interests. Proper procedures in terms of the current privatisation programme of the public sector and the awarding of contracts is threatened by the hold that the private sector has over parties with their offers of excessive amounts of money.⁸³

It is clear that the harmful effects of corruption are especially severe on the poor, who are hardest hit by economic decline, are most reliant on the provision of public services and are least capable of paying the extra costs associated with political corruption and misappropriation of economic privileges. Corruption also sabotages policies and programmes that aim to reduce poverty. Thus tackling political corruption as a result of party financing is tantamount to tackling poverty and inequality.

The relationship between poverty, inequality and political corruption has indisputable importance for countries like South Africa, which are already characterised by extreme levels of inequality and poverty. Poverty in South Africa is increasingly well documented. The Taylor Report in its analysis of poverty in South Africa revealed that “forty five per cent of the population (18 million people) live on less than \$2 a day”.⁸⁴ Poverty is concentrated among blacks, particularly Africans: 61% of Africans and 38% of coloureds are poor, compared with 5% of Indians and 1% of whites, highlighting the striking racial inequality between races.

In terms of the increasing inequality gap, the Taylor Report confirmed that South Africa is ranked the fifth highest in the world according to the Gini-coefficient. Further the Taylor Report confirmed that since 1994 whilst inequality between races has diminished slightly the intra-racial gap has actually increased, suggesting that the racial divides left by apartheid could become entrenched class divides post-1994. The poorest 50% of the population witnessed a declining household income and growing inequality of 11%. The richest 10% benefited from a 17% increase in household income.⁸⁵

Of particular importance is the skewed distribution of assets in South Africa.⁸⁶ Statistics SA reported that 32% of African households (a minority of which are pensioner households) were “workerless” (i.e. contained no employed people); by 1999 that percentage had risen above 38%. Translated into numbers of households, the data suggests that whereas in 1995 there were about 1.9 million African workerless households, that number had risen to 3.1 million by 1999. Of approximately 210 000 African households in which there was no working age person present, about 182 000 of them spent, on average, less than R800 per month.⁸⁷

Against this backdrop of poverty, growing inequality and the negligible asset base of the poor it is clear that these citizens have little chance to influence the political process through donations, neither are they in a position to hold government accountable in terms of association and policy choices and implementation for development. However, they are the most likely to be affected by inadequate policies, political corruption and therefore are also likely to be the first to question the legitimacy of government.

A number of opportunities exist for the wealthier segments of society to assert their interests over the interests of the poor, such as the tender allocation process that occurs during privatisation programmes. However, the possibility of political corruption from party financing interfering with the functions of government does not bode well for a country with high inequality and poverty levels. As discussed, development is hindered since corruption affects growth, lowers social spending, affects the targeting of social programmes, perpetuates unequal asset ownership and can result in policies that mainly benefit the wealthy. Thus any instance of corruption as a result of party financing is a violation of the right to equality in terms of socio-economic well being.

⁸¹ Gray and Kaufmann, “Corruption and Development,” p. 8.

⁸² Bottelier, “The Social and Economic Costs of Corruption,” p. 1.

⁸³ Mutesa, Fredrick, “Private Funding of Political parties in Zambia,” University of Zambia, paper presented at a workshop on private funding of political parties organised by the Institute of Security Studies, November 2002, p. 6.

⁸⁴ The Taylor Report, “Transforming the Present – Protecting the Future,” p.16.

⁸⁵ *Ibid.*, p.16.

⁸⁶ *Ibid.*, p. 29.

⁸⁷ The Taylor Report, “Transforming the Present – Protecting the Future,” p. 28.

6. The need for party finance regulation in emerging democracies – underdeveloped countries

The effects of corruption are especially pernicious in emerging democracies, for the abuse of public office subverts popular confidence in the very idea of self government.⁸⁸

A lack of regulation ensures that conditions are ripe for political corruption in developing and transition countries. However, other motivations exist such as poverty and low salaries and other opportunities present themselves. Accountability tends to be weak, principles of ethics are poorly developed and watchdog institutions that provide information on which detection and enforcement are based are also weak.

Transparency International (TI) released its Bribe Payers Index (BPI) in May 2002 showing very high levels of corruption in developing countries by corporations from Russia, China, Taiwan and South Korea, as well as numerous leading industrial nations, all of which have laws making corrupt payments to foreign officials a crime. As TI Chairman, Peter Eigen, stated: “Our new survey leaves no doubt that large numbers of multinational corporations from the richest nations are pursuing a criminal course to win contracts in the leading emerging market economies of the world.”⁸⁹

The BPI was conducted in 15 emerging market economies including Argentina, Brazil, Hungary, India, the Philippines, Thailand, Nigeria and South Africa, which are among the largest such countries involved in trade and investment with multinational firms.

Against this backdrop it is equally important, if not more so, for underdeveloped countries to have regulations. As shown above in an environment of real or perceived corruption confidence in government and business is eroded. If public policy decisions are made, or are perceived to be made, on the basis of political contributions, not only will policy be suspect, but the government will not be seen as accountable to the people. The principles of participation and legitimacy are undermined. A democracy that has emerged as a result of a recent transition or is in the early stages of consolidating democratic institutions may be particularly vulnerable to problems of legitimacy. Falling levels of trust among citizens may undermine democracy itself.

Secondly, as indicated in section four, political corruption affects developmental and redistributive mechanisms adversely, particularly in countries that are characterised by poverty and socio-economic inequality. Since underdevelopment and socio-economic inequality distinguish the majority of young democracies it becomes increasingly important to control the potential for political corruption of any type. In a recent survey of more than 150 high-ranking public officials and key members of civil society from more than 60 developing countries the respondents ranked public sector corruption as the most severe impediment to development and growth in their countries.⁹⁰

The TI BPI, as mentioned above, also noted that the corrupt actions of multinational firms also lead to “a huge misallocation of very scarce resources in developing countries”.⁹¹ The TI-Kenya Executive Director, John Githongo, also stressed that corruption meant that “money is siphoned off from schools and hospitals and essential public works projects”.⁹²

The principle of redistribution is closely linked to the need for high levels of political participation in a developing democracy. Not only will a higher level of participation heighten democracy but it also offers the opportunity for the poor to influence the way the first few years of redistributive policies are framed. Unregulated, and in particular undisclosed, private financing of parties create the potential for uneven access to influence the law-

⁸⁸ Brademas, “Countering Political Corruption,” p. 13.

⁸⁹ Transparency International Press Release: Bribe Payers Index, May 2002. A total of 835 interviews were carried out with senior executives of domestic and foreign companies, chartered accountants, chambers of commerce, banks and law firms. The survey related to perceptions about multinational firms from 21 countries.

⁹⁰ Gray and Kaufmann, “Corruption and Development,” p. 7.

⁹¹ Transparency International Press Release, p. 3.

⁹² *Ibid.*, p. 4.

making process. Without a voice in this process at the early stages of socio-economic development the poor can inherit unwanted long-term policies that intensify their poverty.

As Dr Mutesa says, “Money has become to be closely associated with holding of political office (in Zambia). This state of affairs is worrisome, given the high-levels of poverty in the country. It simply means that the poor, who constitute the majority in the country, cannot influence the nation’s political developments.”⁹³

In Mozambique, an NDI study illustrates the perception that Frelimo (the long-standing governing party) benefits from domestic and international private business links through financial support, from privatisation of state assets, from material goods and from logistical support such as transport. Opposition parties and civil society allege that the offer of company contracts in exchange for contributions to the election costs of the governing party does occur. Further, Frelimo was said to be benefiting financially from the growing commitment between government and the private sector to privatise state-owned enterprises.⁹⁴

An anti-corruption bill is currently before the Mozambican Parliament. The bill is aimed at all corrupt dealings that involve officials who work for the state, municipalities, publicly-owned companies, private companies in which the state is the main shareholder or companies which have been granted leases to operate public services. A further proposal is that all officials must declare their assets. To date it has only been top state officials, such as ministers and provincial governors, who had to provide a list of their property.

A number of related issues that are unique to developing nations are worth noting. In developing nations, “traditions of culture” and giving “gifts” are often used as a defence against reform of party financing, particularly election campaigns. Where cultural resistance does occur, the government should at least require politicians to disclose any significant financial or other assistance. The public disclosure of gifts and party financing is also particularly problematic in developing countries where the government and business are often intertwined through public-private partnerships and privatisation processes, such as in Malawi.

As Brademas explains, “In some developing countries, cabinet ministers chair public enterprises’ boards of directors, reducing their independence and creating conflicts of interest ... (A)t a minimum, disclosure of politicians’ financial interests and those of their families seems necessary for democratic accountability.”⁹⁵

Rose-Ackerman also discusses the need for a regulatory system in new democracies, where conflicts of interest have not been a high priority of reformers. She highlights the previous point when discussing the problem in some developing countries where cabinet ministers chair public enterprises’ boards of directors.⁹⁶ She cites Russia, Poland and China (if and when it moves towards democracy) as examples of this problem since former managers who are still involved in politics continue to control many firms.⁹⁷

According to Yaw Saffu, in Africa, countries without disclosure laws outnumber those with such regulation by five to one. In the Southern African Development Community (SADC), Lesotho, Mauritius, Malawi, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe do not have disclosure provisions for privately raised political party and campaign funds. Namibia is only a partial exception. Parties there are required to disclose only foreign donations.⁹⁸

In Zambia election expenditure is also unregulated. As a result the issue of funding has become a source of serious contestation and controversy. As Mutesa states, “Accusation and counter accusations of bribery of the electorate have come to characterise heated exchanges between the ruling party and its opponents.”⁹⁹

Anecdotal evidence outlined in Dr Mutesa’s paper (see table below) sheds light on the nature and influence of private financing of political parties in Zambia.¹⁰⁰

⁹³ Mutesa, “Private Funding of Political Parties”.

⁹⁴ NDI – Idasa, *Political Party Finance Survey. Final Report: Mozambique*.

⁹⁵ Brademas, “Countering Political Corruption,” p. 12.

⁹⁶ Rose-Ackerman, “*Democracy and Corruption: Causes, Consequences and Reform*”. 1999 p. 137

⁹⁷ Rose-Ackerman, “*Democracy and Corruption: Causes, Consequences and Reform*”. 1999 p. 136

⁹⁸ Professor Yaw Saffu, Institute of Economic Affairs, Ghana, “Challenges of regulating private funding of political parties in Africa,” paper prepared for the Institute of Security Seminar, p. 2.

⁹⁹ Mutesa, “Private Funding of Political Parties”.

¹⁰⁰ *Ibid*, p. 3.

Financing of political parties in Zambia.¹⁰¹

- A stand-off between Republican Vice-President Enoch Kavindele and opposition Zambia Republican Party (ZRP) president, Ben Mwila, exposed serious financial improprieties in the private financing of political parties in Zambia. Mwila, a former MMD (Zambia's ruling party) Defence Minister and party national treasurer who has now left the party, claimed that the MMD owes him approximately US \$1million. The money was used to fund MMD activities in the run-up to the 1991 presidential and parliamentary elections. Kavindele refuted this claim by arguing that before the MMD came to power many companies and individuals donated up to US \$1 000 287 which was kept in an overseas party account. The MMD, Kavindele maintained, did not open an account in Zambia for fear that the then ruling UNIP government might freeze it and therefore put its campaigns at risk. When the MMD brought the money into the country, Kavindele adds, it used already established company accounts, among them Mwila's company, Cordelia Investments. Consequently, Mwila would sign and issue cheques to the MMD based on the money deposited in his company account. It is also revealed that in his capacity as MMD national treasurer, Mwila committed the country to externalisation of US \$40 million to two British firms, Seven Oaks and Harrow Limited, for consideration of a loan of US \$400 000 to the party borrowed in June and September, 1991.
- A former MMD national secretary, Michael Sata, also revealed to the media that more than 300 vehicles used by the party in the election campaigns were paid for from the Zambia Intelligence Service (Zamtrop) account.
- According to former MMD national secretary, Vernon Mwaanga, the MMD also gave two private companies, Chani Fisheries and C.S., special exemption on duty to bring mealie meal from South Africa which was given to all MMD parliamentary candidates for campaign purposes.
- Lt. General Christon Tembo, President of the FDD, allegedly received money to finance his election campaign from a man suspected of being a drug baron and gun-runner (*The Post*, November 15, 2001). The government also accused Tembo of using drug money to hire an aircraft that took him around the country in the run-up to the December 27, 2001 presidential and parliamentary elections.
- A South African businessman, Laban Naidoo, has accused Anderson Mazoka, UNDP leader, of having borrowed R25 million to meet his expenses which he has failed to repay (*Zambian Daily Mail*, October 28, 2002)

Nigeria, Kenya and Senegal have no disclosure laws for the amounts raised for political parties and election campaigns. In West Africa, only Benin, Ghana and Guinea have disclosure laws. Benin and Guinea require that the donor, nature and value of grants and donations be declared to the Ministry of the Interior.

In Ghana the *Political Parties Act*, 2000 specifies that within six months from 31 December of each year, a political party shall furnish funding details to the independent Electoral Commission. This includes the state of its accounts; the sources of its funds; membership dues paid; contributions or donations in cash or in kind; properties of the party and the name of acquisition. Audited accounts of the party for the year must be filed with the Commission at the same time. The Commission can order the accounts of a political party to be audited at any time.¹⁰²

In terms of rules on sources of private funding those countries in Africa that regulate usually attempt to indicate which sources of private funding are permitted and which are prohibited, and then might go on to impose some limits even on the acceptable sources. The permitted sources are usually the traditional sources of party financing. The political party laws that choose to specify the permitted private sources, such as those of Benin, Guinea, Senegal and Cameroon, list the following: members' contribution (in the form of joining fees and annual dues); donations and grants or gifts from members and sympathisers; and income from party funding-raising activities. Ghana's *Political Parties Act* does not list but implies these traditional sources: "Only a citizen may contribute in cash or in kind to the funds of a political party." Citizens includes Ghanaian-owned

¹⁰¹ Mutesa, "Private Funding of Political Parties," p. 3.

¹⁰² Yaw Saffu, "Challenges of regulating private funding," p. 3.

firms, partnerships or enterprises or companies that are registered in Ghana and are at least 75% Ghanaian-owned.

A number of factors may assist the achievement of effective regulations in a country characterised by underdevelopment and an emergent democracy. First, as Fambon points out, public funding is vital to ensure a multi-party system and the development of a vibrant political sphere, particularly in light of the high costs of elections in Africa.¹⁰³ Public funding will also reduce the reliance of parties on private funding.

Secondly, external funding from the international donor community of elections and parties can assist the growth of democracy, particularly in situations where the governing party is dominant and has the advantage of state resources for electioneering.

Thirdly, limited free time on radio and television for all parties can reduce the costs of campaigning for parties and thus also reduce the need for private donations.

However, the regulatory institution, whether it is the courts or electoral commissions, need to be sufficiently independent to be able to implement enforcement effectively. The creation of an electoral commission that is independent of the executive and legislature to monitor financing of campaigns and to enforce laws and regulations is vital. Such a commission will rely on having both sufficient resources necessary to carry out its responsibility and the support of political actors.¹⁰⁴

Of interesting is a recent case in India where independent institutions and a vibrant civil society was able to assert the need for political accountability in a context where socio-economic disparities are high and democracy is still consolidating.

Indian Supreme Court enforces accountability of politicians¹⁰⁵

The key issue of public concern that gave rise to organised advocacy by some leading civil society groups is that politicians are controlled by private “money bags” or criminal elements who also find their way into politics.

After a long and intense debate between politicians and civil society, parliament and the president on the disclosure obligations of politicians, the Supreme Court on 13 March 2003 struck down a major portion of the new *Electoral Reforms Act*. The Court stated the Act should not undermine an earlier court judgment in 2002, which had given a direction that the voters had the right to know the criminal antecedents and liabilities and assets of the candidates so as to equip them to vote wisely on election day.

The implications of the court’s ruling were succinctly captured by LOK SATTA (People Power), one of the NGOs which helped take the case to the Supreme Court. Referring to the court verdict, it stated:

This should not be seen as a struggle between the people and the political parties. The parties have a vital and often thankless task to perform in a democracy. Very often they are captive in the hands of political fiefdoms which dominate the electoral scene in a first-past-the-post system. Our parties are striving hard to sustain our democracy against great odds. They need our full support in this endeavour. Equally, the parties must take this as an opportunity, not a threat. This is a priceless opportunity for our political system to break itself loose from criminal elements, unaccounted and excessive money power, and increasing perception of illegitimacy of the power game (Narayan, 13 March 2003).

¹⁰³ Fambon, Samuel, “The Funding of Elections and Political Parties in African States,” paper prepared for the Africa Conference on Elections, Democracy and Governance, April 2003, p. 28.

¹⁰⁴ Yaw Saffu, “Challenges of regulating private funding,” p. 7.

¹⁰⁵ This text box is quoted from: Fogg, “Paying for Parties – Choices for Democrats”. Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 11

7. Link between constitutional rights and the regulation of private funding

Preventing corruption in the funding of political parties is crucial to the quality of democracy.¹⁰⁶

This section deals with the relationship between constitutional and democratic rights and access to information about party financing, which is dependent on a regulatory system. By regulating party financing through disclosure in particular, a number of constitutional rights can be strengthened. Conversely, the current absence of regulation can result in a violation, breach or limitation of certain democratic and constitutional rights.

Regulations on financing of political parties promote a number of basic democratic principles, all of which are enshrined in the South African Constitution.¹⁰⁷ These include fostering stronger representative government and accountable political parties (s 1(d)), ensuring effective electoral competition (s 19), promoting political equality (s 9) and citizen participation (s19) and enhancing transparency and eliminating corruption (s 195). Further, the South African Constitution demands not only a representative but also a participatory democracy. Section 1 of the Constitution embraces the principles of accessibility and participation in its commitment to openness and responsiveness. Three additional provisions ensure public participation in law-making at all three levels of government (s 59, 72 and 118).¹⁰⁸

The array of rights discussed here can be realised or strengthened by promoting public access to information about the sources and amounts of donations to political parties. Thus the lack of access to records that reveal details of private donations infringes rights and prevents their full realisation. Further regulation that also promotes fairness can help protect these rights. As Keith Ewing states:

*Containing the costs of elections can be justified on a number of grounds. It is not simply a way of controlling the demand for dirty money, soft money or any other money; it is a way of responding to fundamental democratic principles. Politics should be conducted on the basis of the quality of a message, not its volume. The regulation of private funds to political parties promotes an array of democratic principles.*¹⁰⁹

Section 9 - the right to equality¹¹⁰ and section 19 - political rights¹¹¹

In terms of concerns about non-regulation the dominant political value at stake is political equality. Academics speak of the negative effects of unregulated party financing on the equality right in a democracy. Pinto-Duschinsky plainly states that, “the ways in which political activity is financed can lead to severe inequalities”.¹¹²

In recognition of the breach of the democratic right of equality, in 1990 the US Supreme Court, in *Austin*, upheld the flat ban on electioneering by corporations, notwithstanding the impact on corporate speech, to prevent massive accumulations of wealth from distorting the electoral process.¹¹³

¹⁰⁶ Ewing, Keith, “Corruption in party financing,” p. 186.

¹⁰⁷ For a list of democratic principles that regulation promotes see the Statement of the Council of Presidents and Prime Ministers of the Americas, “Financing Democracy: Political parties, Campaigns, and Elections,” The Carter Centre, Atlanta Georgia, 19 March 2003.

¹⁰⁸ Murray, Christina and Nijzink, Lia, “Building Representative Democracy: South Africa’s Legislatures and the Constitution,” The Parliamentary Support Programme. 2002.

¹⁰⁹ Ewing, “Corruption in party financing,” p. 193.

¹¹⁰ (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

¹¹¹ (1) Every citizen is free to make political choices, which includes the right - to form a political party; to participate in the activities of, or recruit members for, a political party; and to campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.

(3) Every adult citizen has the right to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and to stand for public office and, if elected, to hold office.

¹¹² Pinto-Duschinsky, “Financing Politics,” p. 70.

¹¹³ Brennan Centre for Justice, “Mitch McConnell’s Myths”.

Section 9 (2) in the South African Constitution promotes the right to equality, which states that “equality includes the full and equal enjoyment of *all rights and freedoms*” (our emphasis). Section 19 states that every citizen is free to make political choices. It then follows that each person in South Africa is entitled to equality of political choice and equality in terms of free, fair and regular elections, since section 9 directly affects section 19. This then requires that all citizens, rich and poor, must have equal opportunity to participate in the political process and to support candidates or parties of their choice.

Unregulated private funding and resultant political corruption can adversely affect the right of all citizens to participate in the political process equally. First, incumbent office holders have an enormous advantage in the scramble for campaign funds thus limiting non-incumbents’ right to participate. If left unregulated the costs of campaigns may hinder active participation by citizens in the political process. Regulations that introduce expenditure limitations can assist in equalising the playing field in this regard. Pinto-Duschinsky states that, “if the costs of campaigning are prohibitive, citizens without private wealth may be prevented from running for public office. Moreover, election campaigns are arguably unfair when rich candidates or parties with wealthy supporters are able to spend far more money than their opponents”.¹¹⁴

Further, the value attached to participation in democratic elections goes beyond the procedural or “mechanical” aspect of the exercise. A substantive value is attached to the political right to vote in elections, which relies on a voter being informed so as to make the best decision regarding a party for him/herself. In order for voters to be fully informed about their choice of party they require information about the party, such as the party’s history, how it operates and its sources of funds.

Secondly, confidence in democratic institutions is falling as politics becomes discredited due primarily to improper practices in financing campaigns and corruption scandals. The Neill Committee noted, with concern, the widespread public perception among the British public that money can buy influence and the extremely damaging effects of such widespread assumptions on the democratic process, due to the centrality of political parties.¹¹⁵ This perception needs to be reversed in order to encourage the active participation of all citizens in political life and to restore confidence in democratic institutions. Reforms that enhance fair, transparent and accountable decision-making by political parties will help restore public confidence and strengthen the right to participate.

Thirdly, the right to equality assumes that all groups in society, including the less well-off, should have equal opportunity to *influence* political processes through participation. However, if private funding by the corporate sector and wealthy individuals buys higher levels of influence it serves to diminish the ability of poorer citizens to exercise relative equality of influence. Keith Ewing sums up the tension between right to political equality and unregulated donations when he states that:

*The spoils of office should not go to those with the ability to shout loudest. These aphorisms reflect the first principle of democratic self-government, which is the principle of political equality: those representing major sections of opinion within a community should not be excluded from office because of the wealth of their opponents.*¹¹⁶

Unregulated private donations to political parties can create unequal access to political decision-makers, and the ability to unduly influence political outcomes, both of which tend to favour the wealthy. This then results in “drowning out voices”, particularly of the poor. The marginalisation of these voices thus creates an unequal situation in terms of participation and influence in political decision-making. Such instances, whether they amount to political corruption or uneven access and influence, result in a violation of the right to equality and the right to exercise political rights in an equal manner. Regulations attempt to protect the right to equality and the right to exercise political rights by promoting fair participation in government and providing a level playing field for the exercise of political participation.¹¹⁷

¹¹⁴ Pinto-Duschinsky, “Financing Politics,” p. 70.

¹¹⁵ Fifth Report of the Committee on Standards in Public Life. “Standards in Public Life. The Funding of Political Parties in the United Kingdom, Summary of Findings,” 1998, p. 1.

¹¹⁶ Ewing, “Corruption in party financing,” p. 193.

¹¹⁷ Shugarman, David, “Combating Corruption: Regulating the Funding of Political Parties,” paper presented at the 8th International Anti-Corruption Conference, p. 1.

The secondary consequence of maintaining an unregulated system is that where only the wealthy have influence over government, or at least a disproportionate amount of influence compared to ordinary citizens, by virtue of their financial contributions to political parties, governments and parties are likely to lose sight of their purpose. In order to deliver to their donors/funders and large contributors, they render themselves susceptible to decision-making and policy promotion that ignores the public interest and their wider constituencies. In a country like South Africa this would serve to deepen social inequality and poverty. In the political process, all people should be equal and the principle of political equality is violated if there are individuals/companies that are able to buy influence in politics and government.

Political corruption in party financing distracts political decision-makers from the development agenda and can lead to higher levels of inequality in a society (as discussed in section four). It follows that an unfair level of access and influence will skew political outcomes such as policy and legislative choices, budgetary allocation and the distribution of benefits in general. Progressive policies and legislation (either in existence or in the pipeline) can be overturned by secret corporate donations. Those in power are distracted by pandering to the big donors and adhering to their agenda as opposed to that of the poor.

Section 10: The right to human dignity

Section 10 of the Constitution states that “everyone has inherent dignity and the right to have their dignity respected and protected”. With South Africa documented as one of the most unequal societies in the world, characterised by high levels of poverty, any instance where corruption stemming from private financing of political parties results in furthering of socio-economic inequality constitutes a violation of the right to human dignity. Put simply, political corruption that increases inequality and poverty by skewing development is an infringement of one’s right to inherent dignity and the right to have their dignity respected and protected.

The right to human dignity and the right to equality are interlinked. The right to equal protection and benefit of the law (as stipulated in section 9 of the Constitution) for poorer segments of the population may be breached by the fact that laws affected by unfair influence may not promote their interests. Earlier discussions highlighted how political corruption and bribery can skewer development. Any policy, legislative or project outcome that has been subject to undue influence and that does not actively promote the wellbeing of the poor (in South Africa the poor constitute the majority) can also be seen as an infringement of the right to dignity.

The equality clause in section 9 of the Constitution further asserts that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds. Such policy, legislative or project outcomes that do not actively promote the socio-economic of the poor can be construed as discrimination. In order to achieve equality the Constitution calls for legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination; “national legislation must be enacted to prevent or prohibit unfair discrimination”. This clause can be interpreted as a call to regulate through legislation any instances that may cause discrimination, unless it is deemed fair. Since it has been established that party funding can cause unfair discrimination as repeatedly illustrated in terms of political rights and socio-economic development this clause suggests that regulatory measures for party financing are supported by a constitutional imperative.

Section 12: Freedom and security of the person¹¹⁸

Connected to the right to dignity argument above is the right to freedom and security of the person. Socio-economic inequality and poverty undermines the right to the freedom and security of the person entrenched in section 12 of the Constitution, in particular clause 12.1(e) and 12.(2), which respectively state that everyone has the right not to be treated or punished in a cruel, inhuman or degrading way and everyone has the right to bodily and psychological integrity. Thus any instance where corrupt political decisions are made that do not promote development and socio-economic rights are a violation of this right.

¹¹⁸ 12. (1) Everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause; not to be detained without trial; to be free from all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction; to security in and control over their body; and not to be subjected to medical or scientific experiments without their informed consent.

Section 18: Freedom of association¹¹⁹

In order to associate freely each citizen requires an open arena for public dissemination of information and opinion on political issues. This openness requires easy access and transparency, where political actors are identifiable and their affiliations, interests, objectives and resources are set out publicly. Therefore when a citizen joins a political party that person has a right to know with whom he or she is associating.

Without regulation that emphasises access to information about the disclosure of donations (sources and amounts), citizens are unable to make fully informed decisions about which political party to associate with and support. When a political party receives secret donations that a voter or supporter is not aware of this means that they are unaware of whom they associate with and this infringes their right to freedom of association. Karen Fogg explains how disclosure can strengthen the right to freedom of association:

*The notion of disclosure is linked to the empowerment of voters, aiming to ensure that they have the information they need to be able to make an informed choice on Election Day.*¹²⁰

Rose-Ackerman further elaborates on /how democratic values protected by elections can be undermined when voters are not fully informed:

*The electoral process can discipline politicians to represent the interests of their constituents, and voters may penalise candidates who seem too beholden to special interests. But voters cannot act unless they know both how their representatives behave and who has given them money.*¹²¹

A person may choose not to associate with a political party on moral or other grounds if he or she was aware of the party's financial affiliations. Citizens should have the opportunity to withdraw their support for a party despite the good performance of the party if they do not agree with the sources of the contributions, which may be from disreputable sources (narcotics or money laundering) or some other corrupt transaction.

Citizens must be empowered to choose as autonomous and informed citizens, free from pressures, intimidation or seduction through economic benefits, and informed about the resources and support for candidates and parties. As Ewing states,

*People in any political system are entitled to know who is funding their parties and candidates, in order to be fully informed of the interests they are likely to serve.*¹²²

The right to association creates minimum obligations on an organisation like a party, which includes the right to join, the right to participate, the right to not be expelled without proper cause and the right to a minimum level of information, which should include private donors.

Disclosure of private donations to political parties not only upholds the right to freedom of association but also helps to preserve the integrity of the electoral process through transparency. Elections are insufficient as a mechanism for the voter to penalise candidates who appear to be in the pocket of special interests. They do not allow the voter to know of hidden interests that may have been consolidated between elections between interest groups and the public officials.¹²³ Therefore disclosure strengthens the electoral process by allowing for informed choice at the time of elections.

Informing citizens fully through disclosure regulations also offers protection. An informed citizen is in a better position to detect undue influence on political parties, public representatives and the party in government and incidents of patronage. Access to information also gives transparency to patronage appointments in the public service and more importantly might bring to light the relationship between certain government decisions and large donations to government.

¹¹⁹ 18. Everyone has the right to freedom of association.

¹²⁰ Fogg, "Paying for Parties – Choices for Democrats". Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 3.

¹²¹ Rose-Ackerman, "Democracy and Corruption: Causes, Consequences and Reform". 1999 p. 133

¹²² Ewing, "Corruption in party financing," p. 193.

¹²³ Brademas, "Countering Political Corruption".

Section 16: Freedom of expression¹²⁴

The right to freedom of expression protects the right of citizens to debate and impart and receive political and other information. However, freedom of expression is more fully realised if the expression is informed, which relies on asserting the right to access to information.

As a democratic right, freedom of expression contributes to the individual's involvement in robust political debate and assumes equal opportunity to speak and be heard in order to contribute to political debate by providing information and opinion that will persuade. In an unregulated system only the wealthy can do this.

The right to freedom of expression is not limited to expressing oneself through procedural aspects of democracy such as voting. To be realised fully it relies on a more substantive element which is linked to the right to know information about the party you vote for such as their background and history, how they operate and who funds them.

Deciding on one's political allegiances and the relative values of political parties is only possible where one has all the necessary information about the party, which includes information about who funds those parties. Like the right to association, a person may choose not to express certain sentiments about a political party on moral or other grounds if he or she was aware of the party's financial affiliations. It follows from the right to freedom of expression that citizens should have the opportunity to form knowledgeable expressions about a party.

Thus, full enjoyment of the right to freedom of expression is intrinsically linked to the right to know/of access to information being exercised, which is reliant on the implementation of disclosure regulation. Regulations attempt to protect the right to expression by promoting a level playing field for the exercise of political speech, which includes the right to hear and be heard. In practical terms, regulations will avoid the saturation of media by one dominant voice or too many voices, thus ensuring a fair opportunity to be heard.

Various social and political practices and functions may require regulations to make sure the average, non-wealthy individual's right to expression is not constrained or drowned out. As Owen Fiss, Sterling Professor of Law at Yale University, puts it, there can in some instances be a silencing dimension to speech. "[U]nlimited political expenditures not only perpetuate the unequal distribution of wealth and put the poor at a disadvantage in the political arena but also may have the effect of silencing the poor. The rich may, for example, so dominate advertising space in the media and other public domains that the public will, in effect, hear only their message."¹²⁵ Fiss adds that the need for state intervention in areas such as campaign finance is based on the theory that "fostering full and open debate - making certain that the public hears all that it should - is a permissible end for the state ... (By enacting curbs on campaign spending) the state is merely exercising its police power to further a worthy public end, as it does when it enacts gun control or speed limit laws. In this case, the end happens to be a conception of democracy which requires that the speech of the powerful not drown out or impair the speech of the less powerful."¹²⁶

Using the US example, Fiss highlights the tension between conflicting democratic values inherent in the right to expression. The struggle over the issue of party finance generally pits liberty, as embodied in the First Amendment, against equality, as in the Fourteenth Amendment. However, it is possible to present a democratic view of the First Amendment that transcends this opposition. If equal participation is a precondition of free and open public debate, then the First Amendment encompasses the values of both equality and liberty.

By examining the silencing effects of speech, its power to overwhelm and intimidate the under-funded, under-represented or the disadvantaged voices, Fiss shows how restrictions on funding of parties can be defended in terms of the First Amendment, not despite it. This reminds us that the state can also be the friend of freedom, protecting and fostering speech that might otherwise die unheard, depriving our democracy of the full range and richness of its expression.

¹²⁴ 16. (1) Everyone has the right to freedom of expression, freedom to receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to propaganda for war; incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

¹²⁵ Fiss, quoted in Shugarman, "Combating Corruption," p. 2.

¹²⁶ *Ibid.*, p. 2.

As a democratic right, the freedom of expression assumes equal opportunity to speak and be heard in order to contribute to political debate by providing information and opinion that will persuade. It is not a right that is to be enjoyed by a minority with the wherewithal to exercise it at the expense of those who cannot afford to do so. It is a right that, when exercised, is integral to democratic values and processes less because of any presumed or demonstrable effectiveness with respect to desired outcomes but rather because it is understood as emblematic of political equality, openness to others' judgements and attempts at persuasion, human fallibility and mutual respect.¹²⁷

Section 15: Freedom of religion, belief and opinion¹²⁸

In terms of section 15 everyone has the right to freedom of conscience, religion, thought, belief and opinion in South Africa. The full enjoyment of this right is once again reliant on exercising the right of access to information. Without regulation that emphasises disclosure of donations (sources and amounts) citizens are unable to make fully informed decisions about which political party to associate with, nor are they able to fully exercise their right to expression. A person may choose not to associate with a political party if they found the party's financial sources to be in contradiction with their religious, spiritual or moral beliefs. In section 15(1) everyone has the right to freedom of conscience. If citizens perceive that their support is unethical or immoral they have the right to withdraw their support for a party. It is interesting to note that religious institutions and churches in the United States have called for regulations citing that a "just and fair electoral process" is also a moral issue.¹²⁹

Balancing competing rights

The debates on whether funding should be made public or private, on limiting the size of donations and restricting political spending are a debate between models: that of the primacy of free speech versus the primacy of equal opportunities.¹³⁰

This highlights the inherent problem of "competing" rights. In terms of the individual citizen the regulation of political finance deals with the financial accountability of important bodies in the electoral process and the process of governance, thereby promoting fairness and equality. On the other hand, it also raises questions of privacy, private interests and the right to express oneself politically through donations.

In terms of the political party, regulations (disclosure in particular) have to be balanced with the possible infringement of the citizen's right to privacy and secrecy of the ballot and parties' right to internal autonomy against the right to access to information for all citizens.

Democracy is often about a trade-off between competing values with party funding raising a classic tension between democratic rights and liberal principles. Rights that are integral to democratic processes and practices and reflect democratic values like equality are in tension with rights that are promoted by liberal principles, which assert that any restriction on the exercise of a person's or group's rights is an infringement of basic liberties, such as the right to free speech.¹³¹ The libertarian approach sees the state as the threat to rights. The democratic perspective recognises that the state may at times be the defender and promoter of citizens' democratic rights against those who would seek to privatise them.

The challenge for democrats is to find solutions that will balance competing rights to ensure they are all promoted and protected. The purpose of a regulatory framework is not to undermine the rights of citizens and

¹²⁷ Fiss, Owen, *The Irony of Free Speech*, 1998 Harvard University Press.

¹²⁸ 15 (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Religious observances may be conducted at state or state-aided institutions, provided that those observances follow rules made by the appropriate public authorities; they are conducted on an equitable basis; and attendance at them is free and voluntary.

(3) This section does not prevent legislation recognising marriages concluded under any tradition, or a system of religious, personal or family law; or systems of personal and family law under any tradition, or adhered to by persons professing a particular religion. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

¹²⁹ Brademas, "Countering Political Corruption," P. 13.

¹³⁰ Argandona, Antonio, "Political Party Funding and Business Corruption," research paper No 458, January, 2002, published by the Chair of Economics and Ethics, IESE.

¹³¹ Shugarman, "Combating Corruption," p. 2.

organisations who engage in competitive party politics and political expression, but rather to limit the distorting effects of undue influence and wealth so as to protect other rights as laid out in this section. The current situation in party financing is skewed in favour of the wealthier and more money and powerful segments of society.

Rather than viewing regulation by the state as a threat to rights, our perspective holds that the state plays a crucial role in defending and promoting democratic rights, especially protecting rights against those seeking to privatise them. Hence the appropriate regulation of private funding to political parties seeks to minimise the undue influence of money on politics while at the same recognising that money is an important feature of the modern political landscape.

To this end, various social and political practices and functions may require regulations to make sure the average individual's rights to equality, dignity, security, association and expression are not constrained or drowned out. The citizenry's trust in the principle of equal opportunity to participate in and influence political processes is crucial to the maintenance of respect for politicians and democratic processes. Where the principle is belied in practice the foundations of a democratic society will be weakened. The court should therefore do everything in its power to limit the weakening or infringement of these rights by asserting the citizens' right access to information.

8. Exploring policy options for South Africa

An important way of combating undue influence on political parties - and thus the corrupting power of money on decision-makers - is to institute a regulatory regime which limits and monitors campaign funding.¹³²

International experience shows that there are immense difficulties in installing an effective system of party funding that will not be open to abuse. Even developed democracies that embrace regulation struggle to ensure abuses do not occur.

The French case study offers a good example of systematic weaknesses. Firstly, Pujas explains that the prosecution of corrupt practices is dependent on many hurdles linked to the organisation of the judiciary: "In France the independence of the judiciary is always at stake when political figures are involved. The influence of executive power over judicial prosecution is the main limitation."¹³³

Secondly, the failure of political accountability in France has meant that the prevention and punishment of this type of corruption has forced the involvement of the judiciary, which has led to what is called the "judicialisation of French politics".¹³⁴

Many jurisdictions have experienced malpractice in the process of public procurement in the form of kickbacks in exchange for private party funding, as well as a plethora of other improper, irregular and in many instances corrupt practices involving state-owned enterprises, privatisation and the leverage afforded by appointments and control rights at all levels of government.

However, international experience also shows that the regulation of party funding can be effective if well-designed, backed by effective sanctions and accompanied by a parallel diffusion of appropriate ethics and norms.

Ultimately it is committed politicians and citizens who have the ability to assert the principles that should govern party financing and who are in the best position to push for legislation and regulations. These rules would need oversight, enforcement and monitoring. Therefore a system regulating private funding of political parties is necessary.

¹³² Shugarman, "Combating Corruption," p.2.

¹³³ Pujas, "Corruption via Party Financing in France," p. 5.

¹³⁴ *Ibid.*, p. 6.

¹³⁵ Pinto-Duschinsky, "Financing Politics," p. 70.

However, there is no single prescription for success, as party financing rules have to operate in an environment of respect for institutions and law that varies across different contexts. It is worth remembering that, “Regulations and subsidies aimed at reforming the use of political money may have varying objectives. A system that aims to control corruption in the funding of parties and election campaigns is likely to be different from a system that seeks mainly to promote fairness.”¹³⁵

Karen Fogg points out that the problems of regulating political finance cannot be tackled adequately without a broader consideration of other structural issues affecting the role of political parties. Fogg lists such considerations as follows:¹³⁶

- ◆ *Political commitment*: parties must go beyond a willingness to legislate and include also a willingness to make the legislation work by setting up independent and properly resourced enforcement mechanisms;
- ◆ *Democratic internal party management*: high standards of transparency and accountability need to be applicable to decision making, appointments, fundraising and financial management within parties;
- ◆ *Continuing public pressure*: both media and civil society need to maintain pressure on political parties to reform, rather than be tempted to dismiss parties as incorrigible;
- ◆ *High degree of political competition*: a responsive and open political system nurtures a high degree of political competition, which in turn becomes a necessity for clean politics. Yet genuine competition is one of the hardest features for new democracies to gain. In such situations calls for regulation on party finance or transparency need to be set within a more general movement in favour of the rule of law and systems of regulation which protect against abuse and inefficiency;
- ◆ *Broader context for competition and governance*: political parties cannot be isolated from the political systems in which they operate. Any reform must take into account conditions for continued competition and governance;
- ◆ *Public funding*: there is scope for developing more efficient frameworks and conditions for public funding which are conducive to strengthening parties.

South Africa’s challenge is to find a regulatory framework that is appropriate to its contextual particularities and that suits all political parties and role players but which above all would promote constitutional rights, the public interest and entrench ethics in public life.

The case for establishing a framework of principles to which South Africa can be encouraged to subscribe to has been discussed in the previous sections. Instead this section offers several policy choices, highlighting general conceptual guidelines that have proved useful in other jurisdictions.

Disclosure regulations

The starting point of any regulatory framework is transparency. There is a need above all for a regulatory standard that requires parties and candidates for political office to account for their funds, in particular the size and source of contributions above a prescribed limit. Thus disclosure forms part and parcel of other regulations: “Other regulations concerning the raising and expenditure of funds by political parties are virtually worthless if there are no disclosure provisions.”¹³⁷

It is interesting to note that difficulties in enforcing other measures such as bans of certain donors has led to greater reliance on transparency measures such as disclosure.¹³⁸

Leaving a paper trail through disclosure ensures that all donations and other sources of party revenue are made public. Donors and the amounts of their donations are identified in the public record, and candidates disclose

¹³⁶ Fogg, “Paying for Parties – Choices for Democrats”. Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 11 - 12

¹³⁷ Yaw Saffu, “Challenges of regulating private funding,” p. 1

¹³⁸ Fogg, “Paying for Parties – Choices for Democrats”. Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 3.

links to lobbyists, as well as sources, types and amounts of support, both before and after elections. Expenditures and their purpose should be similarly published and made available for audit.

Disclosure requirements can be implemented in the following ways:

- ◆ all donations to political parties and candidates;
- ◆ donations above a certain level;
- ◆ name parties and/or candidates who receive donations;
- ◆ all information relating to the donation;
- ◆ details about parties' expenditure;
- ◆ mixed system of public and secret disclosure.

Disclosure regulation can be used as a key mechanism in confronting conflicts of interest and improper influence on parties or candidates. It is entirely in keeping with the new global framework of accountability and transparency mechanisms and institutions.¹³⁹

However as Fogg notes, the argument that disclosure can substitute bans and limitations leaving parties free to seek funding from a range of sources since civil society and media can provide effective sanctions to discourage disreputable funding requires careful analysis.¹⁴⁰ Disclosure rules can only be effective in certain conditions.

The challenge is to make available information that can be useful to the interested voter or the media. In practise, this means naming only the bigger donors and ensuring that information is available in a timely fashion before elections rather than months after the event.¹⁴¹

Further limitations regarding disclosure rules relate to the fact that it is taken for granted that an active independent media and civil society exist and are able to use the information provided by disclosure in an objective manner and bring it to the attention of voters. In addition, disclosure in some emerging or unstable democracies may have negative spin-offs. Opposition parties and respective donors may experience difficulties. Contextualising transparency and disclosure is important to understand domestic complexities such as the party system and the media but should not be a disincentive to adopting such measures.

State funding and subsidies

Many countries have established partial public funding, recognising that political parties play a public interest role as they make an essential contribution to political contestability and the expression of diverse values and interests. Public funding reduces the scope for private interests to "buy influence" and can also help reinforce limits on spending because of the electorate's resistance to excessive public expenditure. Further, it is the most frequently used to equalise competition between parties. IDEA's surveys identify 65 countries as having provisions for direct public funding and 79 as having indirect funding.¹⁴² Also interesting to note is evidence from Latin America (Mexico and Costa Rica) that suggests that public funding has contributed to modifying entrenched party systems and facilitated the development of new political forces and political competition.¹⁴³

Currently South Africa has direct public funding of political parties and offers free television time to its political parties.

Additional measures to contribute to the establishment of a level playing field includes the limitation of the campaign period, a ban on the purchasing of television time for political advertising and parties in government not being permitted to use state resources for party political purposes or in election campaigns.

¹³⁹ South Africa has introduced legislation to promote accountability, transparency and public ethics. In 1998 the *Executive Members Ethics Act* no. 82 was passed to provide for a code of ethics governing the conduct of members of the Cabinet, Deputy Ministers and Members of Provincial Executive Councils. The code of conduct of 1997 makes provision for a Register of Members' Interests in Parliament.

¹⁴⁰ Fogg, "Paying for Parties – Choices for Democrats". Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 3.

¹⁴¹ Fogg, "Paying for Parties – Choices for Democrats". Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 4.

¹⁴² Fogg, "Paying for Parties – Choices for Democrats". Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 6.

¹⁴³ Fogg, "Paying for Parties – Choices for Democrats". Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 6.

Expenditure limitations

There are several options available to contain the costs of elections and make party politics as inexpensive as possible. Usually the demand exceeds the supply of funds, leading to a search for funding that may breach legitimate frontiers.

The first would be to require a limit to be imposed on the amount of money that candidates and parties can spend on a campaign. This would have to be set low enough to be meaningful, but high enough to allow candidates and parties to be heard and to prevent the election being dominated by the institutional press and its proprietors.

The second option, for states where freedom of expression is an obstacle, would be to outflank it by creating a regime of public funding of elections, which can include funding for broadcasting costs. The underwriting of costs by the state in this way has the double advantage of further reducing the demand for money by parties themselves.

Third, a limitation on the level of the donations can be placed in the following ways:

- ◆ limit by amount per donee;
- ◆ limit by amount per donor;
- ◆ limit by proportion of overall donations.

In highly competitive political systems where voters are informed a policy of prompt and complete disclosure may be sufficient. However, if the political system is not very competitive and voters are not well informed more direct restrictions are required such as spending limits.¹⁴⁴ However, whilst limits on donations are justified as a way to curb corrupt influences strict legal limits can encourage unreported illegal transfers, as found in the Japanese system between 1975 and 1993.¹⁴⁵

Limitation regulation can be used to prevent an individual or corporation from gaining too great an influence on a party or candidate. It prevents over-dependence on one individual or corporation or a small number of individuals or corporations.

Exclusion of certain donors

In terms of ethics and levels of undue influence certain donations may cross a threshold of what is acceptable. The concern with anonymous donations also derives from the transparency principle as it is impossible to monitor and prevent conflicts of interest or improper influence when the donor is anonymous, however strong the rules of disclosure are.

Some countries have outlawed donations from certain types of donors. These include both public and private sector companies, such as in France since 1995, or foreign donations. Others include trade unions, political foundations, casino and gambling institutions and anonymous donors.

When a donation comes from a foreign source there is difficulty in relation to regulation and enforcement and the danger of inappropriate influence by foreign governments and firms. Foreign aid can be permissible where it is allocated to or can benefit all parties (such as funding for training). Countries that prohibit foreign funding include Australia, the Czech Republic, the United Kingdom, Greece, India (unless prior government permission has been obtained), Italy, Mexico, the Netherlands and Sweden. In Canada, foreign funding is prohibited, although foreign-owned firms with Canadian subsidiaries may contribute. In Germany, donations not exceeding R3 000 are permissible.

In light of the Transparency International Bribe Payers Index (see section 6) showing very high levels of corruption in developing countries by corporations from Russia, China, Taiwan and South Korea and other leading industrial nations, it may be prudent to ban donations from foreign multinationals.

¹⁴⁴ Rose-Ackerman, *Democracy and Corruption: Causes, consequences and reform*. 1999 p. 138

¹⁴⁵ Rose-Ackerman, *Democracy and Corruption: Causes, consequences and reform*. 1999 p. 139

Ensure oversight

Rose-Ackerman stresses the need for effective and visible enforcement: “Lack of enforcement is probably more dangerous than lack of rules, since it leads to disenchantment and cynicism towards democracy.”¹⁴⁶

Since there are real pressures against enforcement it is imperative to set up an independent authoritative body. The electoral commission might be the appropriate institution to take on such responsibility for the integrity of all issues regarding party finance and electoral rules.

However, the capacity to enforce legislation and regulation of this nature rely on both institutional capacity and political capacity and willingness. In terms of institutional capacity, it is necessary for an institution, whether the IEC or otherwise, to have the ability to enforce regulation without excessive expense or bureaucracy. At the same time, the institutions must be able to proceed with enforcement through monitoring and judging irregularities without any political interference.¹⁴⁷ The stability and independence of political and judicial institutions in a particular country become important for the enforceability issue.

Kaufmann, the Chilean Lead Economist in the World Bank’s Development Research Group, tells us that controlling corruption is feasible; and strategies to address corruption need to pay more attention to its root causes and thus to the roles of incentives, prevention and institutional reforms.¹⁴⁸ However, he warns that, “once corruption becomes systemic the likelihood of detection and punishment decreases, and incentives are created for corruption to increase further”.

Systemic corruption means that the institutions, rules and norms of behaviour have already adapted to a corrupt *modus operandi*.¹⁴⁹ Considering how difficult it can prove to reverse corrupt political financing it is important that South Africa introduces and implements regulations in a speedy fashion with emphasis on selecting key measures that are in line with the country’s implementation capabilities.

A policy option for South Africa

The following text boxes offer three basic policy models or options. The first outlines a highly regulated system, the second a “laissez faire” system and the third a “middle way”, which incorporates features of the first two systems and is recommended as a policy option for South Africa.

A: Highly regulated system

- **No private funding (foreign and/or local) allowed;**
- **Intention not only to reduce, but to outlaw dependence on private sources;**
- **Public funding is limited in scope (parties or candidates) depending on the electoral system. In the case of South Africa, the PR-party list system would favour party funding;**
- **An independent funding agency;**
- **Full audit of expenses by parties (electoral and/or operational costs) demanded, with allocations paid out only after receipt of full audit, i.e. parties are refunded. This is to prevent abuses of the system;**
- **Parties with no current legislative representation or who fail to show significant support (audited membership, etc) are excluded.**

¹⁴⁶ Fogg, “Paying for Parties – Choices for Democrats”. Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 4

¹⁴⁷ Fogg, “Paying for Parties – Choices for Democrats”. Lecture delivered at Centre for Democratic Institutions, 12 August 2003, p. 4

¹⁴⁸ Gray and Kaufmann, “Corruption and Development,” p. 7

¹⁴⁹ *Ibid.*, p. 7.

B: Laissez faire system

- Funding of political parties entirely unregulated;
- No limits on type (private/public or local/foreign);
- No limits on the amount of funding;
- No limit/regulations on what the money can be spent on;
- Funding for both election and operational costs;
- Funding for both candidates and parties;
- No proper auditing system;
- Left to parties to regulate themselves;
- No or non-independent funding agencies;
- All allocations paid out up-front to parties;
- No thresholds on who qualifies for funding (e.g. registered party, candidates, pay deposits etc);
- Any party that registers for elections, qualifies for funding;

No questions of conflict of interest or possible corruption, given the sources of private funding.

B: Middle way option

This policy option attempts to take into account forces at play regarding money and politics. It can be seen as a middle ground between the highly regulated system and the laissez faire system. The features of this system includes:

Public funding

- Funding restricted to parties taking into account the PR electoral system;
- Funding is also extended to factions if defections occur;
- Funding for electoral and/or operational costs, depending on resource availability and priorities;
- Creative and extensive use of indirect public funding opportunities;
- Allocations must be open and transparent to avoid charges of favouritism or corruption through a system of extensive public disclosure, including expenditure;
- A proper distribution formula in place for allocations (e.g. time-scales, initial amount and balance on receipt of proper audit of expenses);
- Principles of proportionality and equity taken into account with allocations (e.g. taking into account last election count, membership fees, private donations);
- A weighing formula to advantage smaller parties;
- Maintaining ratio between public and private support and reducing parties' reliance on private sources to a tolerable level;

Taking into account the cost burden on the state.

Private funding

- Both foreign and local funding allowed;
- However, there should be limitations on the sources and type of funding (possibilities include in-kind contributions and shares as a means to source funds);
- Foreign funding limited to governments or parliamentary groups, registered expatriate voters and endowment funds;
- Foreign funding should be to the benefit of all parties and the principle of proportionality and equity should be achieved;
- Funders should be identified at all times, as well as the type/amount of funding;
- Funding of operational costs of parties by local private donors should be outlawed;
- Certain donors should be excluded, e.g. anonymous (above certain fairly low levels) and those that infringe the Constitution.

Advantages

This option recognises the importance of private funding as well as the dangers related to it. On the basis of this it puts in place mechanisms to regulate private funding to ensure heightened accountability and ethical mechanisms are in place to regulate private funding. These mechanisms include disclosure of donors, exclusion of anonymous donors as well as outlawing local private funding for operational costs. Where these mechanisms are effectively implemented the credibility of the government is in little danger.

As mentioned in the introduction Idasa made a submission to Parliament's Justice Committee on the issue, in the context of the Prevention of Corruption Bill, and proposed that an additional chapter on funding to political parties be added to the Bill. What follows is an outline of that submission so as to provide a starting point for a wider debate on the content of a regulatory framework for South Africa.

PROPOSED DRAFT CHAPTER ON FUNDING TO POLITICAL PARTIES

ADDITIONAL PREAMBLE

(to be added to the preamble of the Prevention of Corruption Bill).

Whereas legislation exists to create conditions conducive to free and fair elections and the Constitution promotes open, transparent and accountable governance and multi-party democracy;

It is recognised that money can have a corrosive effect on politics thereby creating conditions that undermine citizens' political equality. A lacuna currently exists in South Africa in respect of promoting transparency, openness and accountability with regard to the *raising* of funds and procurement of additional financing for political activity potentially creating the opportunity for corruption to take root in this area. Legislation is needed to address such a problem.

OBJECTS

(to be added to the Objects of the Prevention of Corruption Bill as a whole).

This law therefore seeks to:

- ◆ Enhance public confidence in the integrity of the electoral process and government institutions;
- ◆ Reduce the scope and opportunity for corruption to undermine a free and fair political environment;
- ◆ Encourage compliance with, and facilitate enforcement of, laws and regulations setting limitations, restrictions and prohibitions upon the financing of political activity;
- ◆ Require complete record-keeping, periodic reporting and public disclosure of information relating to the private financing of political activity by political parties.

No provision in this law will over-ride any provisions of the *Electoral Act 202* of 1993 or the *Public Funding of Represented Political Parties' Act 103* of 1997.

DEFINITIONS

(to be added to the Definitions section of the Prevention of Corruption Bill).

In this Act, except if inconsistent with the context,

1. “*contributions*” shall mean any donations in cash or in-kind for the purposes of extending the influence of a political party at election time or otherwise.
2. “*In-kind contributions*” shall include the provision of non-monetary resources (goods, services or use of facilities or equipment), anything of value, any loan of funds otherwise than on commercial terms made or provided to a candidate or political party or to any other person or entity for the purposes of extending the influence of a political party at election time or otherwise.
3. “*Donations*” shall include any sponsorship provided in relation to the political party, any subscription or other fee paid for affiliation to, or membership of, the party.
4. “*Maximum donation*” shall mean the maximum value of a recordable contribution or cumulative total of recordable contributions as defined in section 7 of this legislation in any financial year that is permissible to be made to a political party.

5. “*Political party*” shall mean “*political party*” as defined in the *Electoral Act*, but shall also include, in the context of a contribution, a candidate or officer of a political party or any related entity where that entity exists for the primary purpose of extending the influence of the said political party at election time or otherwise.
6. “*Financial year*” shall mean the financial year of the respective political party.
7. “*The Independent Electoral Commission*” shall mean the Electoral Commission established by s 3 (1) of the *Electoral Commission Act 51* of 1996.
8. “*Foreign source*” shall include but not be limited to foreign governments, foreign political parties, foreign funding agencies and companies registered and carrying on business outside South Africa.

1. REGULATION OF CONTRIBUTIONS FROM PRIVATE DONORS TO REGISTERED POLITICAL PARTIES AND THEIR MEMBERS

- a) Contributions received by a political party, member of a political party or candidate whether accepted directly or indirectly *are* subject to certain restrictions.

PERMISSIBLE CONTRIBUTIONS

2. Contributions by the following individuals or entities are permissible:
 - a) an individual registered to vote in South Africa;
 - b) a company carrying on business and registered in South Africa in terms of the *Companies Act*;
 - c) a close corporation carrying on business and registered in South Africa in terms of the *Close Corporations Act*;
 - d) a partnership, trust or unincorporated association, including but not limited to a trade union conducting its activities or business in South Africa;
 - e) a foreign political party;
 - f) a foreign government; and
 - g) a foreign funding agency.
3. Contributions made through an agent or intermediary shall be prohibited.
4. Contributions from foreign companies registered outside South Africa shall be prohibited.
5. Should a contribution be received by a political party, member of a political party or candidate which is prohibited in terms of this law such contribution shall be returned to the donor in its entirety or in the amount that exceeds the legal amount laid down within seven days of the contribution being recorded and received.
6. Any contribution received by a political party, member of a political party or candidate in the form of goods or services, whether accepted directly or indirectly, shall be regarded as “in-kind” contributions if such goods or services are not paid for by the political party, member of the political party or candidate at full and fair market value.
7. The value of an “in-kind” contribution shall be determined as the fair market value of goods or services or the cost of the use of equipment or provision of services contributed, less payment, if any, by the party or candidate for such goods or services.

DUTY TO RECORD

8. All monetary contributions to political parties, members of political parties and/or candidates shall be deposited into the bank account ordinarily used to receive contributions by the political party.
9. All contributions to political parties, members of political parties and/or candidates shall be regarded as recordable contributions should they be in excess of R1 000 and shall be recorded in a Contributions Register to be maintained by the recipient political party.
10. Such Contributions Register shall include the name and address of the contributor and the amount of such a contribution.
11. No contribution to a party *from a single contributor* shall exceed the maximum donation determined by Independent Electoral Commission who shall review the maximum donation every year. The maximum donation shall initially be R200 000 per annum.

DISCLOSURE OF CONTRIBUTIONS

12. All contributions to political parties, members of political parties and/or candidates shall be disclosed if the contribution is in excess of R20 000 or if the contribution, either on its own or cumulatively exceeds R20 000 within any given financial year.

MANNER OF DISCLOSURE

13. The Chairperson of each political party shall appoint a Financial Disclosure Officer who shall be responsible for keeping complete and accurate records of the private contributions made to their party, and shall further be responsible for reporting information about such activity in a timely and accurate manner.
14. The Financial Disclosure Officer shall request from the Chairperson of the political party all financial records, data, documentation and any other information necessary to keep complete and accurate records of the party's financial activity as related to private contributions.
15. The Financial Disclosure Officer and the Chairperson of each party shall be responsible for compliance with this law.
16. The Financial Disclosure Officer of each political party shall prepare a "Contributions Report" in respect of the following periods: January to June and July to December of every year.
17. If during the relevant periods no contributions have been received the Contributions Report shall contain a statement to such an effect.
18. Should a prohibited amount have been received by the political party, member or candidate and returned the Contributions Report shall also contain a statement to such an effect.

SUBMISSION OF CONTRIBUTIONS REPORTS

19. The Financial Disclosure Officer shall submit a Contributions Report on the last day of June and December of each year, to the Independent Electoral Commission who will be responsible for the enforcement of this legislation.
20. The Contributions Report shall contain full details of all donations and "in-kind" contributions received during the relevant periods. The amount of the contribution above the amounts prescribed elsewhere in this law, the full name and address of the donor as well as the date of the donation shall be furnished. As regards "in-kind" contributions, the value of such contributions shall be furnished in the Contributions Report as well as the name and address of the donor and the date the contribution was made.

21. Once the Contributions Report is received, the IEC shall make it available for inspection to the general public, including but not limited to the media, non-governmental organisations and or any other interested persons, within 48 hours of receipt. Thereafter the IEC shall table the Reports in Parliament.
22. The IEC shall review the amount of the threshold for disclosure of contributions annually and may, in its discretion, decide to increase or decrease the amount.

ENFORCEMENT

23. The Financial Disclosure Officer commits an offence in terms of this legislation if there is failure to comply with the requirements of s 15.
24. Where the Financial Disclosure Officer is charged with an offence in terms of s 21, it shall be a defence to prove that all reasonable steps were taken to ensure that all requirements were complied with in relation to donations received in the relevant periods and that the information received was accurate.
25. A person commits an offence if he/she knowingly enters into or knowingly commits any act that facilitates the giving of contributions to a political party by anyone other than a permissible donor.
26. A person commits an offence if he/she knowingly provides the Financial Disclosure Officer false information relating to a contribution made to the political party.
27. If the IEC finds or has reason to believe that any party has contravened any provision in this Act, it may, upon 14 days notice, withhold payment of any monies due to the said party pursuant to the provisions of the *Public Funding of Represented Political Parties Act* until such time as the contravention is corrected and/or an adequate lawful explanation as to the reason for the contravention is provided by the said party to the IEC.
28. The IEC may in the case of a serious contravention of this Act permanently withhold payment of any monies due to the contravening party pursuant to the provisions of the *Public Funding of Represented Political Parties Act*.
29. Any South African citizen qualified to vote may submit a complaint to the IEC alleging violations of this law by political parties, their members or candidates. The IEC shall prescribe the procedures for the review of such complaints.

