

The politics of state resources: Party funding in South Africa

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Introduction

KHABELE MATLOSA

The Konrad-Adenauer-Stiftung (KAS) and the Electoral Institute of Southern Africa (EISA) have since November 2003 embarked on a project under the theme: ‘The use of state resources during elections in South Africa: A consensus-building approach to accountability and transparency’. The overall idea behind this project was to investigate the manner in which state or public resources are used during elections in South Africa drawing comparative lessons from the Southern African Development Community (SADC) as a whole, and to suggest possible reforms with a view to upholding best practices that add value to the country’s democratic governance.

The question of exactly how state resources are used during elections tends to trigger much heated debate and controversy throughout the Southern African region in general.

The general perception is that during elections the use of state resources can either facilitate or retard the levelling of the political playing field and radically shift the balance of competition, often-times in favour of ruling parties and to the detriment of opposition parties.

The primary project goal is to contribute to the establishment of important benchmarks and best practices in the area of *state resource usage during elections*. This is done bearing in mind continental and regional instruments for advancing and deepening democratic governance. These instruments include the following:

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- The Draft African Union Declaration on Elections, Democracy and Governance, which states that: “Transparency in government activities, accountability, probity and responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press, and freedom of association, and assembly are essential components of the exercise of democracy.”¹
- The SADC-Parliamentary Forum, Norms and Standards for Elections in the SADC Region, which states that: “In most countries the ruling party and its government seek an unfair advantage over opposition parties through the use of public funds and assets for its political activities, particularly meeting campaign expenses.”²
- The EISA/Electoral Commissions’ Forum (ECF) Principles for Election Management, Monitoring and Observation in SADC Countries, which states that: “Not all political parties have access to public resources – governing parties in SADC have an unfair advantage in this area. It is unfair for one party to have exclusive access to public resources for campaign purposes or to further its political ends.”³

The key objective of all three instruments mentioned above is to propose best practices, standards, norms and principles that could be used as guidelines for relevant African states in deepening their democratic processes, including the use of state resources. The main objectives of this project, therefore, are:

- to provide data on the use of state resources during elections in the SADC region and to draw lessons for South Africa;
- to make an impartial assessment of the use of state resources during elections in South Africa;
- to advance specific policy recommendations and benchmarks for best practices in South Africa;
- to collaborate with South African stakeholders in government, political parties, media and civil society to play a constructive role in this debate; and
- to demonstrate South Africa’s ongoing commitment to democratic consolidation and support for free and fair elections.

South African legislation serves to mitigate many possible forms of misuse of

state resources and the privilege of serving in elected office. For example, asset disclosure legislation is at least partially designed to help steer elected officials off potential conflicts of interest. Furthermore, South Africa, it seems, has a clearly articulated code of conduct for political parties during election campaigns as well as a hard-won track record in ensuring that an impartial environment for electioneering for all political parties exists. South Africa also has specific legislation governing the public funding of political parties (details later) which helps ensure that parties take an active interest in electoral contests and participation in parliament. However, the issue of private donations to political parties still remains the sole preserve of parties and is devoid of a regulatory framework. This is the area that most urgently requires regulation by the state.

This project is timely in many ways. First, five countries in the SADC region are due to hold their general elections in 2004. These are Botswana, Malawi, Mozambique, Namibia and South Africa. It is therefore crucial that the debate in this Occasional Paper prompts a rethink regarding regulatory and policy frameworks around the use of state resources in the above mentioned countries in particular.

Second, South Africa's third democratic election scheduled for 14 April 2004 is an important political landmark coinciding as it does with the country's celebration of a successful decade of stable democracy. This requires that further reforms are thought through carefully as the country enters its second decade of democratic governance.

Thus, this project is not only relevant, but, indeed, timely in that it makes a definite contribution to enhanced accountability and transparency in South Africa's third democratic elections and the governance process during the second decade of democracy.

PROJECT METHODOLOGY

The implementation involved the following approaches:

- Regional comparative research was undertaken by EISA.
- Policy dialogue involving a stakeholder workshop.

On 27 November 2003, EISA, together with KAS, organised a workshop in

Cape Town. Under the theme ‘The use of state resources in South African elections’, presentations were made on the following topics:

- The utilisation of state/public resources during elections: A comparative survey of experiences in the SADC region;
- The need for a sound political party funding regulation mechanism that would prevent an abuse of state resources in elections;
- South African political culture and the issue of party funding for electoral purposes; and
- The current legislative framework that governs public party funding in South African Elections.

The workshop drew participants from academic and political institutions as well as from non-governmental organisations. The main aim of the workshop was to generate debate with respect to critical issues that are experienced during elections in terms of the utilisation of state/public resources. The specific objectives of the workshop were: to provide an impartial assessment of, and where relevant recommendations for improving, the use of state resources during elections in South Africa; to provide specific policy recommendations and benchmarks for best practices in South Africa; to collaborate with South African stakeholders in government, political parties, the media and civil society to play a constructive role in this debate and to demonstrate South Africa’s ongoing commitment to democratic consolidation and support for free and fair elections.

This Occasional Paper is therefore a by-product of two intertwined approaches, namely: comparative and case study research and a policy dialogue process. By way of introducing the main issues especially with respect to public funding of parties in South Africa, we provide some preliminary thoughts below in order to clear the stage for in-depth discussion later on.

PARTY FUNDING: MORE QUESTIONS THAN ANSWERS

We must, from the onset, stress the stark reality that political parties form part of a gamut of institutions that are undoubtedly central to a working democracy

such as South Africa's. Although parties play such an important role in a democracy, as key agents for democratic governance it should be borne in mind that without the requisite resources, these institutions tend to be severely constrained in participating effectively in elections and in playing the political game between elections. It should also be noted that political parties are required to pay not only for registration (R500 in South Africa), but also for participating in the election race (R150,000 for national assembly elections and R30,000 for each provincial assembly election in South Africa). It is for this reason that some countries have institutionalised the practice of public funding of political parties in order mainly to build robust institutions for a vibrant political competition – a quintessential element of democratic governance. While in some countries such as Lesotho, public funding of political parties is restricted to a modest sum given to registered parties contesting elections and specifically earmarked for campaigns, in others such as South Africa, public funding of parties is targeted at registered parties represented in parliament for their institutional development both during elections and in between elections. Before delving into some elaborate discussion, a recent publication by the International Institute for Democratic and Electoral Assistance (IDEA) isolates five key points in relation to party funding that are worth mentioning at this stage:

- Political parties and their competition for political power are essential for sustainable democracy and good governance.
- Money is an essential part of this process and should be treated as an essential resource for good political practice.
- Some activities of political parties are purely partisan.
- Funding of political activity by parties and candidates should be made an issue of public debate.
- Too much reliance on funding from either the private or the public sector of society is unwise.⁴

What then are the modalities for party funding and its political significance in South Africa?

NATURE AND MAGNITUDE OF PUBLIC FUNDING

State funding of parties in South Africa is governed by the Public Funding of Represented Political Parties Act 103 which came into effect on 1 April 1998. Thus 1998/1999 constituted the first financial year of public funding of political parties through a specific fund established for that purpose. The entire administration and management of the Represented Political Parties Fund is vested in the chief electoral officer of the Independent Electoral Commission (IEC). The funding is provided on an annual basis for only those political parties represented in parliament. It therefore does not cover newly established political parties without representation in the legislature, until they make it to parliament through an electoral process. The main objectives of the public funding of parties represented in parliament are to:

- develop the political will of the people;
- bring political parties' influence to bear on the shaping of public opinion;
- inspire and further political education;
- promote active participation by individual citizens in political life;
- exercise an influence on political trends; and
- ensure a continuous, vital link between the people and organs of the state.⁵

The allocation of public funding to political parties is determined by their share of seats in both the national and provincial legislatures. In other words, the disbursement of public funds to represented parties is determined by the proportionality of their share of parliamentary seats. Thus, about 90% of the funding is distributed proportionately, with the remainder of the funding allocated on the basis of a threshold payment.

The proportionality of the allocations of the fund takes into account the following criteria:

- The relationship that the number of a party's representatives in the National Assembly bears to the membership of the National Assembly;
- The relationship that the number of a party's representatives in any provincial legislature bears to the sum of the membership of all provincial legislatures jointly;
- The relation that the number of such a party's representatives in all the

legislative bodies jointly bears to the sum of the memberships of all those legislative bodies jointly; and

- On the principle of equity.⁶

It worth noting that public funding for political parties requires enormous amounts of financing from the national treasury. Between 1998 and 2003, the political parties fund managed by the IEC was allocated as follows: 1998/99 – R52.1 million; 1999/2000 – R54.7 million; 2000/01 – R57.8 million; 2001/2002 – R62.8 million; and 2002/2003 – R67.4 million.⁷ This form of expenditure requires that parties use the funds specifically for the purposes for which they are meant and not to engage in some corrupt practices. It is therefore imperative that the IEC monitors closely the manner in which these funds are used and ensures stringent accountability measures on the part of political parties.

OTHER SOURCES OF PARTY FUNDING

Undoubtedly, parties supplement the funding they get from the state coffers with members' subscription fees and this may help them considerably in sustaining their operations. However, the most controversial form of party funding relates to private donations by both local and foreign actors, especially business interests. Besides membership subscriptions, political parties also receive enormous amounts of funding from various private sources, principally from the private sector. It is highly possible that the public funding that parties receive from the national treasury may not be sufficient for their long-term development. According to IDASA:

“South Africa’s 20 represented political parties will receive a total of R66.6 million for general expenditure from the IEC. If one unpacks the total amount, the governing party (ANC) will receive R42.5 million with the main opposition party (DA) receiving about R7.1 million. However, considering that these state funds are mainly used to cover routine expenditure, 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.”⁸

For this and other related reasons, then, parties seek private donations. The main problem around this type of funding, however, is simply that:

- donations often come with strings attached;
- donations are never disclosed publicly; and
- donations are not regulated in the same way as public funding.

Given the above problems, the greatest danger for African democracies, including South Africa, is the corrupting tendency of undisclosed funding not only to the management of parties and their affairs but even to the overall governance project at the national level. It is therefore important that some form of regulation of private funding in South Africa is institutionalised. In a sufficiently researched paper on this issue, IDASA offers three main policy options for the regulation of private funding, namely:

- a highly regulated system in which no private funding is allowed;
- a laissez faire system in which private funding is unregulated, as is the situation now; and
- a middle way option in which private funding is allowed, but within certain limits and with a regulatory framework encompassing public disclosures.

We concur with IDASA that political parties in South Africa would be served well with regulated private funding and hope that a legislative framework would facilitate this development in the near future.

By way of conclusion, quite obviously, a healthy democracy requires, among others, well-functioning, well-organised and well-resourced political parties. Political parties cannot function effectively and cannot be well organised if they do not have the requisite resources to do their political work during and in between elections. It is for this reason mainly that South Africa has legislated for state funding of parties since 1997. This is a commendable step by the democratic South African government, which goes a long way in facilitating the

daunting process of democratic consolidation. However, given that parties find the public funding to be somewhat inadequate to cover their needs, they also resort to private sources of funding that often come in the form of donations. Such donations are never fully disclosed to the public, nor are they regulated by law. This issue has caused disquiet within some democracy circles and calls have been made for some form of regulation of private funding of political parties. It would serve the country's democracy well if this issue is addressed as part of the broader agenda of democratic consolidation in the South Africa's second decade of democracy following the 2004 election.

ENDNOTES

- 1 African Union, Draft African Union Declaration on Elections, Democracy and Governance, Addis Abbaba, AU, 2003, p. 4.
- 2 The SADC-Parliamentary Forum, Norms and Standards for Elections in the SADC Region, Windhoek, Namibia, 2001, p. 12.
- 3 EISA/ECF Principles for Election Management, Monitoring and Observation in the SADC Countries, Johannesburg, EISA, 2003, p. 18.
- 4 IDEA, *Funding of Political Parties and Elections Campaigns*, Stockholm, Sweden, 2003, p. 5.
- 5 EISA Handbook of South African Electoral Laws and Regulations, 2004.
- 6 Republic of South Africa, *Government Gazette*, 19 December 1997; EISA Handbook on South African Electoral Laws and Regulations, 2004.
- 7 IEC, Represented Political Parties' Fund Annual Reports 1998-2003, IEC, Pretoria.
- 8 IDASA. Regulation of Private Funding to Political Parties, IDASA, Cape Town, 2003, p. 4.

An analysis of the utilisation of state/public resources during elections: A comparative survey of experiences in the SADC region

KHABELE MATLOSA AND KENNEDY MBAYA

“Transparency in government activities, accountability, probity and responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press, and freedom of association, and assembly are essential components of the exercise of democracy” (Draft African Union Declaration on Elections, Democracy and Governance, 2003, p. 4).

“In most countries the ruling party and its government seek an unfair advantage over opposition parties through the use of public funds and assets for its political activities, particularly meeting campaign expenses” (SADC-Parliamentary Forum, Norms and Standards for Elections in the SADC Region, 2001, p. 12).

“Not all political parties have access to public resources – governing parties in SADC have an unfair advantage in this area. It is unfair for one party to have exclusive access to public resources for campaign purposes or to further its political ends” (EISA/ECF Principles for Election Management, Monitoring and Observation in the SADC Countries, 2003, p. 18).

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INTRODUCTION

An election is a fairly expensive endeavour that demands the investment of various kinds of resources throughout its three main phases, namely: pre-election; polling or election day; and post-election. This is the case with all countries – small and large, rich and poor alike – and is to be expected since democracy as a particular form or mode of governance, in and of itself, comes at a considerable cost. It should therefore be noted from the onset that democracy and elections are fairly expensive commodities for which public resources have to be earmarked in a prudent, cost-effective and socially responsive fashion. The cost of an election process brings into sharp relief issues around the availability of resources for the effective management of this delicate political event. In particular, it provokes our minds regarding the utilisation of state or public resources during elections, for these are the resources which, even though managed by the state, have to be used in such a manner that does not give the impression that their use is politically partisan and provides undue advantage to the ruling party due to incumbency.

Part of the larger problem around the utilisation of state or public resources during elections in the Southern African Development Community (SADC) region can be explained by reference to the following regional realities:

- There is a lack of distinction or line of divide between the government and the ruling party. Both are considered synonymous, and as a consequence what is considered a government resource is similarly taken as a resource justifiably at the disposal of the ruling party for party political purposes by design or by default.
- The all-pervasive political culture of a dominant party system also allows more power and political hegemony for ruling parties in the region. This hegemony extends into the arena of resource utilisation, as it were. The interface here is a tricky one: while on the one hand the political hegemony of the ruling parties gives them much leeway for using state resources to gain political mileage, state resources also reinforce that political hegemony.
- There is a lack of adequate institutional mechanisms to ensure stringent accountability on the use of public resources during elections. Ideally, the electoral management board (EMB) is supposed to play this role, but the key question is whether it is adequately empowered to do so. Alternatively, what

then are the legislative powers bestowed upon the public protector or ombudsman institutions in probing into this area in the SADC region? What about the anti-corruption units that are currently mushrooming in almost all SADC countries? Do they have enabling legal powers for effective intervention in this politically sensitive area?

- Fragmented and enfeebled opposition parties exist throughout the SADC region. This problem has generated the dominant party syndrome in the region in much the same way that the dominant party syndrome itself perpetuates it in a fairly dialectical way. Simply put, the dominant party situation perpetuates and sustains weak and fragmented opposition parties that hardly provide alternative policy or ideological frameworks to those of the ruling parties. Yet the enfeeblement of opposition parties provides an enabling environment for the perpetuation and sustenance of the dominant party syndrome. In both ways, this situation gives the ruling party adequate room to use state resources for electioneering purposes with little probing from weak and fragmented opposition parties.
- Weak and disjointed civil society organisations (CSOs) in the SADC region mean that little advocacy and lobbying takes place during elections on the use of state resources by ordinary citizens, whose votes are critical in the choice and formation of governments. Besides election monitoring and observation in which CSOs jointly with the Electoral Institute of Southern Africa (EISA) do occasionally raise issues around the use of state or public resources during elections, little is done in individual countries by CSOs in situating this critical issue in the public domain in between elections, so that it does not only arise around election, but much earlier than the event itself.

It is against this backdrop that the significance of the research endeavour into the utilisation of state resources during elections is both timely and relevant. This is especially so coming as it does in the context of general elections to be held this year in five SADC countries, namely: Botswana, Namibia, Malawi, Mozambique and South Africa.

Before delving into the intricacies and dynamics, we begin by outlining working definitions of the key concepts in this study, namely: state/public resources and elections.

State or public resources simply refer to capabilities (in the form of

institutions, human capital, financial wherewithal, technological inputs or other non-material assets) used to achieve an organisation's or a nation's set goals. *Elections* refer to a process of choosing leaders at local and national levels who in turn are vested with legitimate power and authority to run the national affairs of a given country on behalf of the people (also otherwise referred to as the electorate).

Elections constitute one of the most important ingredients of democratic governance the world over. Although elections in and of themselves do not constitute democracy as such, they are considered one of the principal pillars of a working democracy in any given country. Hence, it is quite possible for a country to have elections without democracy, yet a country's political system cannot be said to be democratic without competitive elections. To all intents and purposes, an election is therefore the most critical indicator of whether or not a country is governed democratically. Key functions of elections in entrenching democratic governance are:

- legitimating the political system and government;
- transferring national trust to persons and parties;
- providing for the orderly succession of governments;
- selecting and recruiting leaders;
- representing the opinions and interests of the electorate;
- linking political institutions with voters' preferences;
- mobilising the electorate for social values, political goals and programmes, etc;
- enhancing the population's political consciousness by clarifying political problems and alternatives;
- channelling political conflicts in procedures for their peaceful settlement;
- integrating social pluralism and forming a common will for political action;
- giving rise to competition for political power on the basis of alternative policy programmes;
- bringing about a decision on government leadership by means of the formation of parliamentary majorities; and
- establishing an opposition capable of exerting control.

This paper presents preliminary findings of some comparative insights in respect of the utilisation of state/public resources during elections in the SADC region.

CONCEPTUAL FRAME OF ANALYSIS

Although the remarks above go a long way in defining the problem under investigation here, we need to go a bit deeper in further problematising the issue of the utilisation of state resources through some organised mode of thought. We do this by locating the problem of the use of state resources within the rubric of a school of thought known as the political business cycle (PBC) or what other scholars also term the political budget cycle.¹ The PBC, as a distinct mode of thought on the interface between politics and economics in relation to electoral processes and the behaviour of political parties, was developed in 1975 by William Nordhaus of Yale University. Nordhaus describes this theory as follows:

“While political economy has increasingly concentrated upon the behaviour of markets, in some areas it is impossible to ignore the interaction between economic motivation and political decisions. The theory of political business cycle, which analyses the interaction of political and economic systems, arose from the obvious facts of life that voters care about the economy while politicians care about power.”²

Accordingly, the PBC school of thought maintains that “incumbents shift public expenditure shares in favour of current consumption expenditures (and away from capital investment) during election periods”.³

A plethora of literature on PBC suggests that five sets of questions are key in unravelling the use of economic tools for political gain by political parties in relation to elections. Nordhaus identifies them as follows:

- *Voters:* What governs voter behaviour? Do economic events loom large in voting behaviour?
- *Parties:* What motivates party leaders or parties? Are they vote maximising or opportunistic, or do they ideologically pursue a set of economic and social objectives as they serve a given constituency?
- *Economic structure:* What is the structure of the economy? Can parties affect economic outcomes, or is policy ineffective? What are the important instruments of policy (e.g., fiscal policy, transfer payments, monetary policy) and who controls them (the president, the congress, the central bank)?

- *Shocks*: What are the shocks to politics and the economy? Are the shocks external? Are they internal to the political process (as when one president leaves his [her] successor a large deficit or a high inflation rate to reduce)?
- *Competence*: Do parties pursue their objectives competently (that is, efficiently), or do they bumble around, neither satisfying voters nor achieving their ideological objectives?

These, broadly speaking, are some of the principal questions that the PBC addresses. From the list of issues above, it is clear that dealing with the behaviour of political parties in relation to elections is a fairly complex process since the actions and policy projections of ruling parties are inextricably linked to their desire to hold on to state power and to reproduce themselves as governments. In this vein we could add a sixth question:

- *Use of state resources*: What motivates ruling parties' strategies in the utilisation of state/public resources during elections? Is it national interests, and as such the interests of voters, or is it their partisan party political objectives linked to the monopolisation of state power?

The PBC is significant for the utilisation of state/public resources during elections probably for two reasons. First, it highlights the inherent expenditure urgency that characterises elections as a short-term event – it presupposes that the use of public resources around elections tends to go to quick and visible socio-economic projects primarily linked to vote catching. Second, it spotlights the uncompromised and central role of the incumbency in expending state/public resources during elections. What is also fascinating about this theory is that it pinpoints the fact that a shift in public expenditure is motivated by ultimate gain or outputs:

“The rationale for this intervention [utilisation of public resources] ... lies in the electoral advantage to be gained from engaging in immediately visible spending and transfers in the pre-election period.”⁴

In the context of this paper, the issue that stands out is how a shift in ‘public expenditure shares’ can fairly and equitably benefit political competitors in elections in SADC countries. The debate that informs this paper is that the

incumbents ‘shift public expenditure shares’ to their own advantage in order to promote their political interests. The argument that has been advanced is that the shifting of public expenditure shares needs to benefit political competitors equally.

The way in which a shift in public expenditure shares is administered by ruling party governments is imbalanced, whereby the ruling party has more advantages than contending parties. It is this perceived imbalance, contextually putting it, that necessitates checks and balances for the fair utilisation of state/public resources during elections. Such checks and balances are in the form of constitutional and legal frameworks and institutional arrangements whose purpose is to promote transparency and accountability in the use of state/public resources during elections.

CONTEXTUAL FRAMEWORK

The Southern African region has been undergoing significant political changes since the last decade. In the main, these changes have involved a profound transition away from authoritarian rule that spanned the 1960s to 1980s period. This period was marked by, *inter alia*, one-party rule, military regimes, apartheid destabilisation and one-person rule in most of the present-day SADC member states. It is thus gratifying that the region today is largely considered the icon of the democratisation project on the African continent, which began to sweep the whole continent since the early 1990s in earnest. It is only fair to observe that the two major distinctive features of this momentous political development in the SADC region – as elsewhere on the continent – are surely the adoption of competitive multiparty politics that allows for unfettered competition for state power, and the holding of regular multiparty elections predominantly every five years. Whereas Botswana and Mauritius have experienced a relatively stable and mature liberal democracy embracing these two principles – multiparty competition and the holding of regular elections – most SADC states have also jumped on this democratic ‘bandwagon’ since the 1990s, and to date most of these states have been able to hold two multiparty elections. It is worth emphasising, however, that three SADC countries – Angola, the Democratic Republic of Congo (DRC) and Swaziland – still remain an exception to this general rule, for obvious reasons. Both Angola and the DRC have been engulfed in protracted violent conflicts, which presently exhibit possibilities for peaceful settlement that could herald the long-awaited

democratic moment in these two states. The political dynamic in Swaziland is rather eccentric: traditionalism is being manipulated by the ruling dynastic elite in order to stamp its political hegemony on society, state and polity alike.

Be that as it may, the SADC region today is surely in a democratic moment wherein the democratisation logic has undoubtedly superseded the authoritarianism logic, so to speak. Not only have a majority of the regional states held more than one multiparty election, but even more interesting is the fact that five SADC member states – namely, Botswana, Malawi, Namibia, Mozambique and South Africa – are scheduled to hold their third round of general elections in 2004. These third-round elections are expected to represent a historic moment and an epoch-making process towards current democratic consolidation efforts by the SADC region. Most analysts and observers of democracy and elections in Africa therefore have their eyes glued to the SADC region, with a view to assessing how these elections will unfold. Their essence and significance is integral for the democratic project that has so far brought about an enormous amount of hope and optimism in a region generally regarded as a model to be emulated by other regions of the African continent within the framework of the African Union (AU) and the New Partnership for Africa's Development (NEPAD).

It is therefore in the context of the good progress made in the SADC region with regard to democratic transitions that this study on the use of state resources has been undertaken. The study essentially demonstrates that although a commendable process of democratisation is under way in the SADC region – and despite the fact that considerable strides have already been made in institutionalising democratic rule – critical challenges still remain. As such, the SADC states should not become complacent and bask in the glory of success thus far achieved. For instance, the progress made towards democratic consolidation in South Africa is questioned by some political analysts who observe that:

“As the election draws closer, South Africans can expect the African National Congress [ANC] to make more use of state events and organs to promote its cause. Such an abuse of public office will do little to advance the image of clean government, which they preach.”⁵

Major challenges still remain, especially regarding democratic consolidation. One of these challenges is surely the manner in which state resources are used

during elections, and how that process in turn ensures (or not, as the case may be) a level playing field for all political contestants. Included in this is the extent to which this crucial policy issue is influenced and shaped by the political elite through the manipulation of the systems and procedures within the framework of the PBC. In fact, one of the most interesting dynamics that keeps driving the PBC within the political systems of most SADC states is precisely the all-pervasive trend of the dominant party syndrome in the region, as Table 1 vividly demonstrates.

Table 1: Nature and composition of the legislature in the SADC region

Country	Ruling party	Nature of legislature	Size of national assembly	No. of ruling party seats	No. of opposition seats	% Ruling party seats	Appointed seats
Angola	MPLA	Unicameral	220	129	98	53.7	0
Botswana	BDP	Bicameral	47	33	7	54.2	7
DRC	Transitional government	Dissolved	210	-	-	-	-
Lesotho	LCD	Bicameral	120	80	40	-	-
Malawi	UDF	Unicameral	192	93	95	47.3	0
Mauritius		Unicameral	66	54	8	51.7	4
Mozambique	Frelimo	Unicameral	250	133	117	48.5	0
Namibia	SWAPO	Bicameral	104	55	17	76.1	6
Seychelles		Unicameral	34	30	4	61.7	0
South Africa	ANC	Bicameral	400	266	134	66.4	0
Swaziland	Executive monarchy	Bicameral	85	-	-	-	30
Tanzania	CCM	Unicameral	274	244	24	89.1	42
Zambia	MMD	Unicameral	158	127	20	60.8	8
Zimbabwe	ZANU-PF	Unicameral	150	63	57	53	30

Source: SAPES/UNDP/SADC, 1998; IFES Election Today, 2001.

It should also be noted that ruling parties dominate not only in the legislature but, more importantly, in the executive organs of the state too. The hegemony of the ruling parties in both the legislature and the executive gives impetus to their undue influence and control over the judiciary as well. The recent conflicts between the executive and the judiciary in Zimbabwe are clear testimony to the tensions among the key organs of the state as a result of the overwhelming hegemony of the one-party executive, even within the context of the current political liberalisation process.

The South West Africa People's Organisation (SWAPO) enjoys a comfortable 76% dominance in the Namibian legislature, while the ANC has 66% of the legislative seats in South Africa. Despite the vibrant, albeit fragmented, opposition in these two countries, it is likely that SWAPO and the ANC will remain ruling parties for decades to come. In fact, in the case of Namibia, President Sam Nujoma has gone to the extent of manipulating the constitution in order to secure a third term for himself and attempted, rather dismally, to make another bid for a possible fourth term. The constitutional manipulations in Southern Africa suggest that although SADC countries have constitutions, constitutionalism is not yet irreversibly embedded in the region. In Zimbabwe, President Robert Mugabe stood for and won another six-year presidential term in 2002 amid much criticism regarding the slow progress of leadership succession in that country. Not only does this regional trend suggest a lack of constitutionalism, it also brings into sharp relief the crisis of both leadership and political succession in the region, which in part is explicable by reference to the long tradition of a one-party political culture.

Dominant party systems in the SADC region assume the following forms:

- Electoral dominance for an uninterrupted and prolonged period.
- Dominance in the formation of governments.
- Dominance in determining the public agenda.⁶

The dominant party system in Southern Africa is also symptomatic of the weakness, fragmentation and disorganisation of opposition parties. Arguably, therefore, anecdotal evidence suggests strong causal linkages and an inextricable interface between the dominant party syndrome and the form of state resource usage in the SADC region.

This situation often leads to controversy or even conflicts regarding the conduct of elections. For example, election-related deficiencies that surrounded the Zambia 2001 election could be illustrative of what political analysts and observers highlight as follows: "Excessive party control of the political system is not good for the healthy development of Zambian democracy. It seems to hark back to a one-party state mindset and political culture."⁷ The argument that has drawn considerable attention in SADC and on the rest of the continent is that ruling parties could use their incumbency to manipulate state resources during elections as a means of gaining and prolonging the status quo, as opposed to opposition parties. Cases of such a nature have been at the centre

of election-related controversy in Zambia, where the ruling party is alleged to have unfairly used state resources for its own account and where it is alleged that the ruling party rode on the back of the government. The opposition parties highly criticised the arrangement of the president having “at his personal disposal substantial discretionary resources, which are used for campaigning”.⁸ UPND (Zambia) Elections Secretary Baxton Mambo deduces that: “Inducements, including food, fertiliser, housing, if offered to voters must be viewed ‘as forms of corruption’”.⁹

Such allegations of a constitutional magnitude *vis-à-vis* elections have brought the integrity of elections in SADC countries into question. The general call made is that there is a need to level the playing field in order to promote and consolidate democratic governance in the region. This theme is highlighted in the SADC-Parliamentary Forum (PF) Norms and Standards for Elections in the SADC Region developed in 2001. These norms and standards state that while constitutional and legal provisions and arrangements are a common feature in national constitutions, there is “still a need to address issues relating to levelling the playing field for all the players contesting elections, inequality in the funding of political parties, inadequate access to state-owned media and election-related violence”.¹⁰

It has to be noted, however, that the theme of levelling the playing field has been contested in academic and political discourses. A picture is generally painted that the issue of level playing fields is almost ambiguous (as is the concept of ‘free and fair’). Probably this observation holds some water; some parties are well-established and boast a considerable pool of resources while others have just emerged on the political scene and are hence poorly resourced, such that even if resources are equitably and fairly distributed, there will still be a difference in resource capacity. Again, what about in cases where only political parties represented in the National Assembly are eligible to access public funding?¹¹ Perhaps the term ‘rough equality’¹² does justice to this trend. However, in the context of this paper, the authors will settle for the theme ‘level playing fields’.

CONSTITUTIONAL AND LEGAL FRAMEWORKS

It goes without saying that in order to promote order in a society, some mechanisms and structures need to be put in place that will act as a yardstick to check behaviour and conduct. An understanding of the general legal context

surrounding the issues covered in this paper provides a dimension against which election-related issues can be debated and analysed. The constitutional and legal frameworks are fundamental documents of the state that provide the context and legal environment in which elections take place. National constitutions therefore tend to “provide the legal framework for a country, and serve as the basis for the conduct and delivery of free, fair, credible and legitimate elections”.¹³

One could say that the common feature that has defined the democratic resurgence in SADC is the formulation of constitutions that provide for the basic electoral regime therein to ensure the holding of periodic free and fair elections to the national assembly. As a regional entity, as Pottie and Lodge point out, the common approach in SADC has been to “entrench an enabling provision for an electoral management body in the constitution and to supplement this with electoral legislation”.¹⁴

It is conventional that a constitution, as a legal instrument, is the supreme or fundamental law of the state and in many instances “cannot be changed without going through a special process in the law-making body”.¹⁵ As a legitimate political device, it seeks to address issues of national importance such as political rights. For example, in Chapter 2(19)(4) of South Africa’s Constitution, the Bill of Rights as the cornerstone of democracy in South Africa focuses on political rights: “Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.”¹⁶

The authors of this paper stress these rights essentially because any other electoral legislation is responsive to the bill of rights, and in particular, political rights. In other words, it is presumed that the bill of rights subsequently informs electoral laws and processes.

ELECTORAL ACT

Although the supreme law that governs elections is surely the national constitution of each SADC state, the specific regulations in terms of the nuts and bolts of the management and administration of elections is enshrined in an electoral act. All logistical and procedural requirements are outlined in this act. The purpose of an electoral act is to govern the conduct of various types of elections (presidential, parliamentary and local government elections) throughout the three phases of elections, namely: pre-election, polling day and the post-election phase. For example, South Africa’s Electoral Act, 1998, aims

to “regulate elections of the National Assembly, the provincial legislatures and municipal councils; and to provide for related matters”.¹⁷ An electoral act serves to provide a legal framework to consolidate laws pertaining to elections. It lays down rules and regulations that all stakeholders in an election are supposed to abide by. The importance of involving political parties in the electoral process is recognised in the 1998 Electoral Act of South Africa which also regulates activities of political parties. For example, Chapter 7 of the 1998 Electoral Act prescribes “prohibited conduct relating to the exercise of undue influence, personation, intentionally making false statements, infringing the secrecy of the vote and contravention of the Electoral Code of Conduct”.¹⁸ The Namibian Electoral Act stipulates that “no political party shall conduct its political activities on the grounds of race, colour or ethnic origin”.¹⁹

From a cursory survey of electoral laws in the SADC region it is abundantly evident that these legal instruments are extremely inexplicit (at worst) and rather ambiguous (at best) in dealing with the use of state resources during elections. A good example of this general legal equivocation on this complex issue is demonstrated in the Botswana Electoral Act, which tends to address the use of state resources fairly indirectly through the prohibition of corrupt electoral practices. The Botswana Electoral Act defines corrupt electoral practices as:

- personation;
- treating;
- undue influence;
- bribery; and
- aiding, abetting, counselling or procuring any such offence.²⁰

In a similar manner, the Mauritius Electoral Act defines a variety of electoral practices that are perceived as corrupt behaviour and are thus legally prohibited, without direct reference to the use of state resources during elections.²¹

In most cases, electoral acts contain a code of conduct which serve to complement the act. For example, in enforcing the rules of the code of conduct, the South African Electoral Act cites the following prohibitions on political party behaviour:

- “Parties may not use language or act in such a way that may provoke

violence, or the intimidation of candidates, members of parties, representatives or supporters of parties, candidates or voters;

- Parties may not publish false or defamatory allegations in connection with an election in respect of a party, or its candidates;
- No person may remove, conceal or destroy any voting or election material;
- No one may plagiarise the symbols, colours or acronyms of other registered parties;
- No one may offer an inducement to join or not join a party, to attend or not attend a public meeting, rally, demonstration, or public political event, to vote or not vote in a particular way;
- No one may carry or display weapons at a political meeting;
- No one may unreasonably prevent access to voters for the purpose of voter education, collecting signatures, recruiting members, raising funds or canvassing support.”²²

CODE OF CONDUCT

A code of conduct is a political tool whose aim in the context of elections is to codify the proper behaviour of stakeholders, including political parties, the media, electoral bodies, etc. A code of conduct for political parties provides, for example, the framework for activities of political parties and the behaviour of party representatives and their followers, which must be in line with the rules stipulated in electoral law. The International Institute of Democracy and Electoral Assistance (IDEA) therefore espouses the definition of ‘codes of conduct for political parties’ as: “A set of rules of behaviour for political parties and their supporters relating to their participation in an election process, to which parties ideally will voluntarily agree; and which may, subsequent to that agreement, be incorporated in law.”²³

A code of conduct can therefore serve to “create the conditions for improved relations between political parties and reduce tension amongst their supporters”.²⁴ If effectively implemented it “can contribute to the sustainability of political tolerance and [can] build legitimacy for the peaceful conduct of election campaigns”,²⁵ and ultimately for the acceptability of election results. For example, the Electoral Code of Conduct in Schedule 2 of South Africa’s Electoral Act prohibits parties from offering any inducement or reward to another person with respect to nominations, voting or attending political meetings. The main goal of all codes of conduct that are meant to mould the

behaviour of stakeholders in an election is “to promote conditions that are conducive to a free and fair election that include tolerance for democratic debate and political activity and for the free expression of individual opinions and beliefs”.²⁶ In line with the rationale of the code of conduct, political parties in Malawi, for example, are to undertake to:

- “(a) promote conditions that are conducive to a free and fair election that include tolerance for democratic debate and political activity and for the free expression of individual opinions and beliefs;
- (b) reasonably ensure that all its members, supporters and officials comply or abide by this Code in full”.²⁷

INSTITUTIONAL SETTING AND MECHANISMS

THE JUDICIARY

The role of the judiciary in electoral processes is no less important. Its role can be significant from the pre-election period through to the post-election period. It suffices to say that the role of the judiciary in election-related provisions in the constitutions of SADC member states features prominently. There is clear indication from each member state that the judiciary is an indispensable organ in matters of national interest – elections being one of them. The central role of the judiciary is stipulated, for example, in Chapter VI(S1)(161) of the Constitution of Mozambique:

“It shall be the function of the courts to guarantee and strengthen the rule of law as an instrument of legal stability to guarantee respect for the laws, to safeguard the rights and freedoms of citizens, as well as the juridical interests of other legal entities.”²⁸

On a positive note, a dynamic role “by the [judiciary] in the election process is reassuring to the electorate, political parties and prospective candidates”.²⁹ Some instances from the region are worth mentioning in this regard. During Malawi’s 1999 elections, the ruling of the High Court to have votes that had ‘gone missing’ recounted – thereby ruling out the Electoral Commission’s decision – resulted in a complainant winning the seat. But just as with the other variables, the judiciary can be influenced by the ruling party in furthering their political interests, to the disadvantage of opposition parties. This is mostly the

case where dominant party politics are a feature of decision making. Thus, executive supremacy dwarfs judicial autonomy and independence. Kamwambe notes: “In a country which is notorious [for] the rampancy of corruption, there is a very high probability that the chosen Chairman could simply be a Judge who is a staunch supporter of the ruling political party.”³⁰

ELECTORAL MANAGEMENT BODIES (EMBS)

Electoral management bodies (EMBs) are institutions that are mandated with the responsibility to, as the name suggests, manage elections. EMBs are not a common phenomenon or a key feature of developed democracies in the industrialised world, where elections are still largely managed and administered by government departments. Thus, as Lopez-Pintor aptly observes:

“As a new field of study and practice, election management has emerged from the areas of democracy building and democratic consolidation. Had world political conditions differed significantly 30 years ago, the subject would have developed under the then fashionable rubric of ‘development administration’.”³¹

These institutions are therefore a fairly new phenomenon in the SADC region; they did not exist during the era of colonial administration, nor did they exist during the first three decades of political independence. To be sure, EMBs only came into existence and became a common feature of the electoral process in the SADC region with the onset of multiparty democratic transitions in the 1990s. Whereas during the 1970s and 1980s election management and administration in the SADC region was principally the responsibility of an election office under the Ministry of Home Affairs, most SADC member states have today established independent electoral commissions (IECs) to manage elections. These countries include Botswana, Lesotho, Zambia and South Africa. This positive move has been taken with deliberate effort by political leadership and other key stakeholders to ensure a level playing field in the election race and for the legitimacy of the election outcomes. Thus, according to Denis Kadima,³² in terms of the nature of EMBs, the SADC regional experience is a mixed bag, as Table 2 illustrates.

Although EMB models differ from one country to another in the SADC region – as vividly illustrated in Table 2 – their basic functions are generally the

Table 2: Electoral management bodies in the SADC region

<i>Country</i>	<i>Nature of EMB</i>	<i>Date established</i>	<i>Size of EMB</i>	<i>Appointing authority</i>	<i>Tenure of office</i>
Angola	National Election Council	1992	±10 members	President	120 days after publication of the official declaration of election results
Botswana	IEC	1997	7 members	Judicial Service Commission	10 years
DRC	IEC	2003	19-21 members	Sun City Agreement (2003)	Transitional
Lesotho	IEC	1997	3 members	King on advice of State Council	3 years
Malawi	Malawi Electoral Commission	1998	9 members	President	4 years
Mauritius	Electoral Supervisory Commission	1954	8 members	President on advice of the Prime Minister	5 years
Mozambique	National Electoral Commission	1994	21 members	President	5 years
Namibia	Electoral Commission of Namibia	1992	5 members	President	5 years
Seychelles	Electoral Commissioner	1994	1 member	President	7 years
South Africa	IEC	1993	5 members	President on advice of a parliamentary committee	7 years
Swaziland	Chief Electoral Officer	1992	1 member	King	As the king deems fit
Tanzania	National Electoral Commission	1990	7 members	President	5 years
Zambia	IEC	1996	5 members	President	7 years
Zimbabwe	Electoral Supervisory Commission	1979	5 members	President on advice of the Judicial Service Commission and Speaker of Parliament	5 years

same. These functions are enshrined in the constitutions of the countries and in the specific acts of parliament that establish them, as well as in electoral laws and regulations. Generally, these would normally include:

- management of elections;
- delimitation or demarcation of constituencies (where appropriate);
- registration of voters;
- preparation of the voters' roll/register;
- presiding over the nomination courts;
- managing political campaigns (through a code of conduct for political parties in some countries);
- acquisition and custody of all election material;
- provision of voter education and information;
- management of election-related conflicts;
- provision of ballot papers and their administration;
- setting up of polling stations and their management;
- recruitment and training of electoral staff and their deployment;
- procurement and security of the ballot boxes;
- counting of votes; and
- declaration of election results.

It is imperative that EMBs undertake these functions with the utmost professionalism if the electoral process and its outcome are to have the necessary legitimacy, credibility and integrity in the eyes of all contestants.

The SADC region's experience with regular multiparty elections since the early 1990s provides us with a robust reservoir of knowledge regarding best practices for election management. Drawing from the past decade of democratic transition in the region, key principles that should inform an effective EMB include:

- transparency and openness;
- efficiency and competence;
- autonomy and impartiality;
- credibility and integrity;
- inclusiveness and broad representation;
- continuity (hence, reasonable tenure);
- accountability;

- consultative management style;
- committee system (theme-/issue-based);
- gender equality and balance in all operations of the EMB;
- decentralisation of EMB operations; and
- financial sustainability.

These principles should therefore form part of the vision of EMBs in the SADC region if the management of the electoral process is to be improved further and if EMBs themselves are to adhere to best practices as enshrined in, among others:

- The SADC-PF Norms and Standards for Elections in the SADC Region (2001);
- The AU Declaration on Elections, Democracy and Governance (2003); and
- The EISA/ECF Principles for Election Management, Monitoring and Observation in the SADC Countries (2003).

The principles outlined above and adherence to the basic instruments already listed should not be just a matter of declaration, but actual practice itself. In this light it should be remembered that EMBs, especially in their current form, were established to address and redress some of the profound deficits of democratic rule in the region, including lack of broad-based representation, low participation rates marked by voter apathy, weak accountability systems, a lack of transparency in the electoral process and, above all, protracted political instability. It is therefore imperative that EMBs steadfastly uphold these principles and measure up to the above continental initiatives for streamlining the effective management of elections in Africa as a whole, and in the SADC region in particular.

At a regional level, the will to enhance electoral management in the SADC region saw the formation of the Electoral Commissions' Forum (ECF) of Southern Africa in 1998, comprising 12 electoral commissions. This regional election entity "provides the platform for members to share their experiences with electoral management, as well as to build capacity and to strengthen the role of independent electoral authorities in the region".³³ In most SADC countries, independence of commissions is provided for in constitutions. For example, Director of Elections A. T. Banzi quotes the constitution: "The Commission is an independent department and 'shall not be obliged to follow

orders or directives of any person or any government department or the views of any party’.”³⁴ The status of commissions as being independent is endorsed by all SADC countries. However, EISA/KAS cites limited independence as one of the constraints of EMBs that thwart the purposes and operations of these electoral bodies.³⁵ It is through effective EMBs that electoral processes can be fruitful. Lesotho is a good example of a SADC country where EMBs are presumably effective and efficient. Positive assessments by observer missions with regard to Lesotho’s 2002 elections illustrate the effectiveness and competence of the EMB in that country, as the following observer mission reports state:

- OAU Observer Team: “... in general, the elections were held in a transparent and credible environment, which enabled the Basotho to exercise their democratic right in dignity.”³⁶
- SADC-PF Election Observer Mission: “... the election was peaceful, free, fair and transparent; it is thus a true reflection of the will of the people of Lesotho. Indeed this largely conforms to the SADC Parliamentary Forum Norms and Standards for elections in the SADC region.”³⁷
- ECF of SADC countries: “... the criteria of secrecy, transparency, fairness and freeness were met during the poll and the count.”³⁸
- SADC Extended Troika Observer Mission: “... the elections were transparent, free, fair, peaceful, orderly and, therefore, reflecting the will of the people.”³⁹

The issue of lack of autonomy and independence of EMBs is indeed a crucial constraint for election management. Dundas observes:

“In order for the body which is responsible for the governance and control of an electoral system to play its rightful role in nurturing the integrity of the election process, it must not only be independent of government control, it must be perceived to be so by the general public and the political parties.”⁴⁰

Pottie and Lodge observe that:

“Countries with multiparty elections that nevertheless also have a long history of one-party dominance must also ensure that the independence of their respective elective electoral commissions is not compromised.”⁴¹

For example, the integrity of the Malawi Electoral Commission has been questioned, as Kamwambe writes:

“The major co-operant factors which are missing in the current set up of the Malawi Electoral Commission are the concepts of: (a) equality of representation by political parties represented in the National Assembly and (b) independence of the Electoral Commission from the view point of its structure.”⁴²

Past experiences show that opposition parties in both Zambia and Mozambique “strongly criticised the independence of the electoral commission”.⁴³

THE EXECUTIVE

According to Fox and Meyer, the executive branch is the arm of the government responsible for implementing legislation.⁴⁴ There is a general pattern in the SADC region in terms of custodianship of executive powers, as the following three examples illustrate:

- In Botswana, executive power lies with the cabinet, which comprises the president, the vice-president (appointed by the president) and the ministers. The cabinet is responsible to the National Assembly.⁴⁵
- In Lesotho, executive authority is vested in the prime minister and cabinet, which is headed by the prime minister who is also the official head of the armed forces,⁴⁶ acting in consultation with the king as the head of state.
- In Angola, executive power resides in the president of the Republic and the council of ministers. It is answerable to the National Assembly.⁴⁷

Granted that the constitution is the supreme law of a country, it embodies an “administrative discretion”: a general principle of administration encompassing [...] the requirement that the actions of any public official be based upon a

specific, legal grant of authority which establishes strict limits on official action".⁴⁸ In a constitutional democracy, the activities of the executive are governed by the constitution. For example, Chapter Two of the Constitution of Mozambique, Article 117(2), stipulates that: "The head of state shall be the guarantor of the Constitution",⁴⁹ and this includes the observation and implementation of electoral provisions entrenched in the constitution. One of the constitutional obligations of the executive, for instance, is to "ensure that [...] resources are available to organise elections from time to time".⁵⁰

In terms of elections, the executive is bound by an electoral law, electoral act or electoral commission act whose main purpose is to check and curtail possible acts of abuse of official powers. However, even though the electoral provisions are meant to check the conduct of the executive, the reality suggests otherwise. Kamwambe analyses how the executive's exercise of power may even threaten the supremacy of the constitution:

"If we examine past problems with multiparty general elections we find, for example, that Section 75(1) of the Malawi Constitution stipulates that the Chairman of the Electoral Commission: 'shall be a Judge nominated in that behalf by the Judicial Services Commission.' However, according to the situation on the ground some members of the Judicial Services Commission have, upon inquiry, attested that the identification of a suitable Chairman of the Commission has in the past tended to take place *at the highest political level* and the Judicial Services Commission *merely endorsed the name of the appointee*". (Emphasis added.)⁵¹

THE LEGISLATURE

The legislature comprises elected and appointed public officers representing different constituencies in the process of law making. Besides law making, the legislature performs such other functions as representation, public political education, supervision of the executive, law making, constitutional amendments and the appointment of judicial commissions of inquiry.⁵² Depending on how it is chosen, the legislature may comprise either one or more political party representatives. In a case where only one party forms the legislature, a country is said to be under one-party rule. In a case where the legislature is constituted by representatives from various parties, a country experiences multiparty rule. Whatever the case, legislatures in modern

democracies rest on the principle of representation.⁵³ Besides party representation, the electoral system also plays a critical role in determining the complexion and mode of representation in the legislature.

For example, while the Westminster constituency-based electoral system is often prone to a one-party or dominant party political system, the proportional representation or party list system easily lends itself to two-party or multiparty political systems.

The other important element of the legislature revolves around the principle of popular sovereignty, which accords parliament the ultimate power over law- and policy-making. Venter corroborates this point thus:

“The essential element of a democratic legislature is that it gives practical expression as well as symbolic credence to the principle of popular sovereignty. In other words, the legislature of a democratic state is the seat of ultimate political power. In the field of law-making, most legislatures are recognised as ‘sovereign’ – that is, they represent final legitimate authority in a state.”⁵⁴

It is within the principle of parliamentary sovereignty that members enjoy the following rights and privileges: parliamentary immunity; parliamentary inviolability; procedural independence; and freedom of assembly.⁵⁵

The legislature is therefore an equally important component that can either enhance or hinder the progress of a democratic culture. Legislative power resides in the national assembly or parliament of a country. This organ is critically important considering that it is this house which has the power to deliberate and make representations on constitutional issues.

The major problem that arises with respect to the operations of the national assembly is the dominance of one political party. Under conditions of a dominant party syndrome the probability of manipulating the ‘current’ or ‘wave’ in terms of topical public debate and its endorsement in favour of the incumbency is surely very high.

In some SADC countries, for instance, there have been systematic attempts by incumbent ruling parties to manipulate the constitution for the purposes of extending their tenure in office beyond two terms, and in so doing mobilising the national assembly behind these efforts. These countries include Namibia and Zambia, whereas in Malawi, the ruling party’s efforts were prematurely aborted.

KEY STATE/PUBLIC RESOURCES AND THEIR UTILISATION DURING ELECTIONS

While a constitutional culture aimed at levelling the playing field in terms of the use of state resources during elections has been entrenched in the national constitutions of SADC countries, various impediments to its implementation still, however, exist. In the context of elections, the expression “‘level playing fields’, according to this school of thought, refers to a requirement that, among others, the election rules and regulations, as well as freedom to campaign, including access to state-owned media, apply fairly to all political parties”.⁵⁶ Hence the argument that runs through this paper is that for the delivery of free and fair elections in SADC, the allocation of state resources needs to be deployed in line with the core principles of accountability and transparency, in a manner that levels a playing field.

PUBLIC FUNDING FOR POLITICAL PARTIES

Research shows that public funding for campaign purposes during elections is crucial for democratic consolidation.⁵⁷ The significance of public funding presumably has led a majority of SADC countries to endorse and constitutionalise public funding for (represented) political parties. It goes without saying that in the absence of access to resources, election campaigns and results can be a ‘one-party show’ that can hugely undermine considerable and meaningful participation of the electorate.⁵⁸ Due to other compelling reasons, public funding has indeed become a ‘burning issue’. These reasons include, for example, the ailing economies in the SADC region which handicap political parties’ proceeds from membership, as well as the unsustainability of external funding. By implication, not to address the issue of public funding seriously would undermine democratic consolidation in SADC. As Lodge seems to suggest, the issue of public funding in SADC is crucial if one is to avoid a situation whereby, “efficiently and expensively administered elections”⁵⁹ become a one-party show. While Lodge shows that there are five sources – including “own governments, foreign donors, business, political party’s own business operations (...) and their membership and mass support”⁶⁰ – in the context of this paper the authors will focus on public funding. It is fascinating that Lodge rates public funding as the most significant of all.

To address this problem, though with variations, electoral laws in most SADC member states have incorporated public funding for political parties as a priority issue in democratic elections. Lodge affirms that: “Public funding of

political parties has become a common feature of new democracies.”⁶¹ For instance, since the late 1990s political party funding in South Africa has been as follows: R52.1 million in 1998/99; R54.7 million in 1999/2000; R 57.8 million in 2000/01; R62.8 million in 2001/02; R67.4 million in 2002/03 and R66.6 million in 2003/04.⁶²

Such statistics speak volumes regarding the significance of public funding and support the observation that funding for political parties “probably represents a crucial resource in countries in which the modern economy has historically been under state control or in which ownership is highly concentrated and in which, therefore, corporate donations are likely to flow mainly to the incumbent party”.⁶³ With the exception of Zambia and Mauritius, governments in the rest of the region have a constitutional obligation to provide financial support to all political parties on the basis of principles of either equity⁶⁴ (for example, Mozambique and Tanzania) or proportionality (for example, Zimbabwe and Namibia) or both.⁶⁵ While the formulae adopted by SADC member states seem to create what may be termed as ‘rough equality’ between parties in terms of resources for canvassing votes, concerns and complaints about how public funding is administered in elections in SADC ensue. Promulgating enabling legislation is one thing; implementation is quite a different matter. Arguments regarding the use of money ‘from my pocket’ by political officials (especially incumbency) to woo votes is part of the campaign language.

Is the Asset Disclosure legislation being adhered to, to promote transparency and accountability amongst competing parties? How can instances of deception in this regard be detected? What measures, if any, are taken against a party that contravenes this legislation? Are there discernable loopholes that may thwart the purpose of any relevant legislation pertaining to public funding for political parties?

Lodge observes that – with the exception of Tanzania, Namibia, South Africa (in the case of smaller parties) and Mozambique – “the provisions are too modest to make a really decisive contribution” in the rest of the SADC member states.⁶⁶ An equally significant problem in many African countries is the virtual absence of ground rules on electoral finance. In other words, one of the major problems is the lack of clear guidelines on public financing expenditure. Lodge concludes that: “No SADC country compels political parties to conform to rigorous disclosure laws and any limits on campaigning expenditure are exceptional.”⁶⁷

Although public funding of political parties is usually provided for in electoral laws, there are, however, a number of ‘grey’ areas that still have to be critically considered. *Prima facie*, it is believed that the ruling party and the government of the day are two separate entities. Experience shows, however, that the line between the two is blurred. It is therefore argued that the ruling party has the edge over opposition parties in accessing public funding, thereby furthering the interests of the party and not (necessarily) of the government. Hence, the playing field becomes uneven when the ruling party manipulates public funding to its own advantage. Also, complaints of inadequate funding and delayed payments are rife during elections. Equally crucial to observe are possible Machiavellian intrigues that a ruling party can resort to so as to frustrate the political interests of its contenders.

PUBLIC MEDIA

All SADC countries are signatories to the Windhoek Declaration on promoting an independent and pluralistic African press. This declaration is in line with Article 19 of the United Nations Declaration of Human Rights. In terms of elections, the role of the media, among others, encapsulates the following: dissemination of voter information; educating the public on electoral matters; enabling dialogue among stakeholders; providing a forum for policy debate among parties; and acting as a watchdog on the use/abuse of power. Jennifer Stewart highlights the significance of the media and information in elections:

“The media are essential to the conduct of democratic elections. A free and fair election is not only about casting a vote in proper conditions, but also about having adequate information about parties, policies, candidates and the election process itself so that voters can make an informed choice. A democratic election with no media ... would be a contradiction in terms.”⁶⁸

Wezie Nyirongo observes that “free media is a stakeholder in elections, not a disinterested observer and has an interest in electoral participation and a free and fair poll”.⁶⁹ Hence, it is through different instruments of media that political competitors can effectively sell their ideologies and manifestos to provide electorates, giving them an opportunity to decide their future.

In the context of this paper, preference in terminology between state media

and public media is crucial. The authors favour the latter, which may be funded by government but accountable to an independent body that embodies diverse societal interests. In the case of South Africa:

“‘State-financed media’ means any newspaper, book, periodical, pamphlet, poster, and media release or other printed matter, or statement, or any audio and video material, or any information in electronic format such as CD-Rom, Internet or e-mail which is produced and disseminated to the public, and which is financed by, and directly under the control of, government.”⁷⁰

All SADC member states are signatories to the 1991 Windhoek Declaration on Promoting an Independent and Pluralistic African Press. It is obligatory then that signatories act in accordance with:

“Article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press [...] is essential to the development and maintenance of democracy in a nation, and for economic development.”⁷¹

Subsequently, all SADC member states’ constitutions provide for freedom of expression and some have enshrined freedom of the press. For example, South Africa’s constitution stipulates that:

“(1) Everyone has the right of access to –
 (a) any information held by the state; and
 (b) any information that is held by another person and that is required for the exercise or protection of any rights.”⁷²

Equal access to media provides an opportunity to competing parties to compete fairly. But by virtue of being associated with the government of the day, the ruling party has more exposure to public media than opposition parties. Dundas observes:

“In many cases the control of the media by the ruling party and government is at the heart of any imbalance of the ‘playing field’ and of contributing to a lack of transparency through selective reporting, e.g. Zambia”.⁷³

Equally, a partisan approach to the coverage of elections was also highlighted during the 2000 elections in Mauritius:

“Qualifying the MBC [Mauritian Broadcasting Corporation] as the ‘shame of the 2000 electoral campaign’, the *Business Magazine* of 6-12 September 2000 strongly claimed that the subordination of the public broadcaster to the government of the day constitutes a real threat to democracy on the island. For the magazine, the introduction of checks and balances to reinforce the independence of the MBC should be a priority of the new government.”⁷⁴

Incidents of incursions of press freedom, the banning of media coverage, and the censorship and detention of journalists have been recorded in other SADC countries.⁷⁵ The recent banning and closure of one of the main private media houses in Zimbabwe, the *Daily News*, is a case in point. Crippling the media as a communications organ supposedly features prominently in ruling party campaigns.

As Malawi gears up for its 2004 election race, the media is increasingly playing a watchdog role in that country, as Kamwambe reminds us:

“Media players in the country have voiced their concern on the manner that the laws on freedom of the media could be abrogated in the country despite assurances by the DPP’s, Fahad Assani, recently when he called for more laxity in dealing with journalists. A new amendment is proposed that seeks to bring media practitioners to book for disseminating information of public interest on elections. Press freedom has always been under fire as most journalists have been attacked and harassed in different ways. A number of journalists have been arrested for writing stories which, according to government, it considers to be detrimental to public security and would cause public alarm.”⁷⁶

This is precisely against the essence of public media which “is all part of digging for the facts, to bring to light anything that happens to be in the public domain and which the electorate should know in order to make informed judgements”.⁷⁷ The partisan activities of the media in Zambia’s 2001 elections leave much to be desired as far as the announcement of results was concerned. It was noted:

“In the twenty-four hours following the official closure of the polling stations, the TV only announced results from constituencies won by the ruling party. This was the case even though other results were available. The partisan approach of the public broadcaster during the count, which should be reviewed, reflects its generally biased approach at all stages of the electoral process. It also *inflamed* public anxieties.” (Emphasis added.)⁷⁸

Using the Media Institute of Southern Africa, Pottie and Lodge⁷⁹ cite some instances that the regional media body recorded in 1997. Some of the 167 instances include:

- Pressure on the freedom of media [unclear whether public or private]. Cases of harassment, arrest, firing and detention in Zimbabwe, Angola, Malawi and Zambia have been recorded.
- Concentration of media ownership in Botswana with one radio station owned by and operated by the state.
- Delimiting the freedoms of expression and of the press (Article 20(2)) through laws in Zambia resulting in diluting the essence of the above freedoms as long as they are ‘reasonably justifiable in a democratic society’ (Article 20(3)).
- Banning television in Malawi (1964-1994) which was only introduced on 1 April 1999”.⁸⁰

While the picture looks gloomy for an open and democratic media culture in some SADC countries, a few exceptions can, however, be made. An example is the positive approach to elections by the media in Namibia. International observers noted that campaigning in Namibia’s 1994 elections was characterised by “political maturity, tolerance and a culture of democratic practice”. In particular, the Commonwealth Observer Group “was impressed by balanced news coverage by the state broadcaster, and SWAPO’s recognition of the distinction between the state and government in its use of public resources”.⁸¹

PUBLIC SERVICE

The public service is an institutional establishment that is integral to the

operations and functioning of a government. Due to the nature of exigencies within a government setup, the public service becomes essential in the running and day-to-day administration of national affairs. One such important area in which the public service is indispensable is in national elections, and its role during elections cannot be undermined. The conduct and operations of the public service is regulated by what is generally called the Public Service Act. It is a constitutional obligation that the public service operates in a non-partisan manner during elections. According to the South African Public Service Act:

- “(1) There shall be a public service for the Republic, structured in terms of a law to provide effective public administration.
- (2) Such public service shall-
- (a) be non-partisan, career-orientated and function according to fair and equitable principles;
 - (b) promote an efficient public administration broadly representative of the South African community [not an individual organisation];
 - (c) serve all members of the public in an unbiased and impartial manner.”⁸²

The Public Service Act therefore provides for guidelines to which the conduct of public office bearers must conform. It is clear from the above stipulations that the public service is expected to operate in an impartial manner in carrying out their duties, including their involvement in elections. However, there are other clauses which may be misleading and open to manipulation by those wielding power. Chapter 13 of South Africa’s Constitution, on the Public Service Commission and Public Service, for example, stipulates that the public service “must *loyally* execute the lawful policies of the government of the *day*” (emphasis added).⁸³ Such legal provisions that seek to generate loyalty of the public service to the government of the day potentially have serious repercussions. While such clauses are not inimical in themselves, (deliberate) distortions of interpretation of legislation may not be ruled out. Incidents of partisan activities demonstrated by neighbourhood secretaries in Mozambique who are mandated with the provision of residence certificates have been a cause of concern for Renamo in determining a level playing field. The following quotation highlights the significance of the role of secretaries and the problem associated with their office:

“Neighbourhood (*bairro*) secretaries were appointed many years ago in the one-party-state era as the lowest level of both party and government structures. They carry out semi-official government functions, such as signing certificates saying that people are resident In particular, they provide the residence certificates that prove that candidates for municipal office actually live in the municipality. One problem is that many of the secretaries are staunch Frelimo loyalists and local party officials, but are using a semi-official neighbourhood post to harass opposition parties by delaying certificates of residence, by blocking opposition rallies, and by calling on the police to arrest opposition politicians.”⁸⁴

Hanlon deduces that Renamo has “long complained about secretaries mixing their political and government roles, but it seems to have become more of a problem in this election”.⁸⁵ This is a typical example whereby public servants can be involved in partisan activities and be used to further the political interests of the ruling party. Indeed, if not effectively handled, the public service can do a disservice rather than good, to an election. The nature of the secretaries’ responsibilities (inasmuch as they perform the public duty of issuing certificates) requires them to be non-partisan as they are the lowest tier of urban government in Mozambique.⁸⁶

It is also interesting that even in the celebrated, stable liberal democracy of Botswana, issues around the misuse of public resources remain highly contentious. This suggests that the problem is certainly much more complex than meets the eye.

In Botswana, as elsewhere in Africa, the distinction between the party and its interests, and government and its interests, is fairly clouded. As one recent study poignantly posits:

“Indeed, the various parastatal and statutory bodies in Botswana are largely controlled by a small group of politically trusted senior technocrats closely connected to the BDP leadership. In Botswana’s developmental state set-up, their influence is strengthened by their capacity to influence business opportunities, award contracts and importantly, operate in a largely non-transparent fashion through the control of access to vital data and information. The control of vital information on state-owned and controlled companies is bolstered by the relatively weak state of the media and civil society.”⁸⁷

Arguably, the anecdotal evidence above suggests that controversy around the use of resources linked to the public service and public enterprises is pervasive and widespread in the SADC region, including in Botswana.

THE SECURITY ESTABLISHMENT

The term ‘security forces’ refers to three or more separate branches of the forces that protect the state against external and internal breaches of the peace or a threat to the peace, namely, the police, the defence force and the intelligence. According to Dundas, the role of the security forces in fostering the integrity of the election process is not “well established and is regarded with suspicion in many Commonwealth countries”.⁸⁸ This potential oversight may have serious repercussions on the electoral process.

As with civil servants, the obligations of security agencies are guided by the constitution. According to the South African constitution, for example: “Neither the security services, nor any of their members, may, in the performance of their functions – [...] further, in a partisan manner, any interest of a political party”.⁸⁹ The above clause clearly prohibits any form of partisan activities by security services. However, the use of such agencies to promote political interests during elections may not be ruled out. For example, in Malawi the president directed the police and the defence force to “deal with any persons demonstrating for or against the third term bill”.⁹⁰ Granted that the bid for the third term was promoted with the blessing of the president, arguably, Muluzi’s directive was not in good faith; it meant to quell dissident views against his bid for a third term. Allegations have recently been made against Muluzi, who is alleged to have dipped deep into public coffers (MK3 million) and who also allegedly used the National Intelligence Bureau (NIB) “to conduct in-depth research into whether or not his United Democratic Front (UDF) has a chance of winning sufficient parliamentary seats in the north”.⁹¹ It is alleged that NIB officials are “conducting the campaign on behalf of the UDF to tell lies that the situation is OK and that the UDF is gaining ground in the north”.⁹² In a different scenario, SADC (from the SADC-PF Election Observation) “noted accusations of partisanship against the police” in Zimbabwe and concluded:

“The climate of insecurity obtaining in Zimbabwe since the 2000 parliamentary elections was such that the electoral process could not be

said to adequately comply with the Norms and Standards of the SADC region.”⁹³

What implications would the tradition of respecting and carrying out ‘orders from above’ have for the behaviour of the security personnel? What impact would the presence of security personnel have on the electorate, especially when they are perceived as partisan? Would opposition parties not bemoan the involvement of the security forces in electoral activities, for example, in transporting ballot boxes (especially in cases where the security forces are perceived to be associated with the government of the day)?

DEVELOPMENT AID

Development aid to African countries comes in various forms, but this paper will discuss specifically food aid. A question, however, may be raised as to whether food aid is a public resource. Surely it depends. Notwithstanding the debate that may arise, in the context of this paper, food aid becomes a public resource essentially because government is mandated to administer food aid on behalf of its people. Crudely put, the fact that the public is the beneficiary of food aid renders the resource to be (rightfully) called a public resource.

Again, this choice has been made because most SADC countries (e.g. Malawi, Mozambique, Zambia, Lesotho and Swaziland) have been severely hit by recent droughts, resulting in low levels of grain and cereal supply and, incidentally, because elections are being held in some of these SADC member states.

The issue of food aid features prominently in politics in general, let alone during elections. In trying to mitigate the intensity of the drought in the region, the donor community has intervened by providing food aid to the aforementioned countries. As it applies to other public resources discussed above, governments have an obligation to ensure that food aid is distributed indiscriminately to people without invoking political inclinations.

Observations have, however, been made about the goings-on of politicising food aid during elections. Since masses of people face starvation, using food aid as a means to drum up support is clearly flouting the principle of level playing fields. Allegations of using food aid have come up strongly in Zimbabwe where levels of grain supply have become acute. The IRIN estimates that 6.7 million Zimbabweans would require food aid by year-end 2002 (quoted in the

International Crisis Group [ICG]).⁹⁴ Humanitarian agencies acknowledge that “ZANU-PF is using food to punish MDC supporters and reward allies”.⁹⁵ Incidents of manipulating food aid in the district of Binga and in the Bulilimamangwe constituency in favour of ZANU-PF sympathisers have been cited as examples. There are also reports in neighbouring Mozambique about the skewed distribution of food aid in favour of the ruling party’s followers:

“Around two million people are threatened by famine in Mozambique due to drought Witnesses said some people, believed to be ruling party supporters, were given preference in the queue at the state grain depot and were allowed to buy extra amounts of meal.”⁹⁶

Indeed, the low supply levels of grain in this region and the political significance that food has been associated with during the drought period has led to tensions and conflicts flaring up between the incumbency and other political stakeholders; the media being one of them. The unwillingness by the incumbency to openly disclose the sources of maize used to woo political interests by the Malawian head of state is conspicuous in and of itself:

“On June 24, 2003, President Muluzi threatened to deal with media houses that probe into the source of free maize he doles out to his supporters during political rallies. The President’s outburst followed an article in the *Weekend Nation* that questioned the source of the maize. Some analysts claim that Muluzi is distributing the maize to gain political mileage ahead of next year’s general elections.”⁹⁷

Referring to the situation in Zimbabwe, the ICG conclusively observes:

“ZANU-PF is using food to punish MDC supporters and reward allies ... In some countries, especially Zimbabwe and to a lesser extent in Malawi, there have been concerns over the manipulation of food aid and commercial imports for political objectives.”⁹⁸

One simple, yet no so simplistic, conclusion that we reach on this point is that patronage politics that exploits poverty and hunger in most of the SADC countries is still rife, and undoubtedly the pervasive politics of the belly in the region has great potential to undermine efforts towards democratic consolidation.

STATE ASSETS

This category includes public recreational centres such as stadiums and halls, public schools, state transport, etc. As with the other resources discussed above, the resources under this category are equally important in elections as a test for determining fair competition between ruling parties and opposition parties. For example, it is in such infrastructures as stadiums, halls and schools that campaign meetings usually take place. Besides providing considerable space, they are by nature strategically located and hence provide an appealing venue. For an organisation to have access to such resources, permission is usually sought from a responsible authority, for example, a municipality or government official such as a district commissioner. Usually, however, it is the ruling party's 'faithfuls' who have the authority to manage such resources. The norm of level playing fields could therefore be undermined if the agents of a ruling party lay stumbling blocks to accessing such infrastructure.

Another crucial resource that could be used by the ruling party to its own advantage is state transport. Transport is an invaluable asset in an election, used to reach out to the electorate. It would require a considerable fleet of vehicles for political officials to effectively reach out to the electorate. But by virtue of being the party-in-power, a ruling party has easy access to state transport to intensify its campaign to the detriment of opposition parties. Manipulation of state transport for the ruling party's campaign activities was picked up in Zambia's 2001 elections. For example, complaints were raised against the Movement for Multi-Party Democracy (MMD) by the United National Independent Party's (UNIP's) Elections Director John Sandwe. United Party for National Development (UPND) Elections Secretary Baxton Mambo alleges that the number plates of government vehicles were regularly changed so that they could be used in campaigns and that the ruling party (MMD) was not held accountable for this act.⁹⁹ In a similar vein, an oversight relating to the unfair advantage of the incumbency arises when "cabinet ministers often retain for instance their cars and drivers while aspiring parties may lack transport all [together]".¹⁰⁰

Reports of the extensive use of state vehicles in Mozambique by Frelimo were recorded,¹⁰¹ as were cases of the use of state/public resources by incumbency in Botswana: "... the Vice-President has been using government resources for campaign purposes."¹⁰² Leader of the opposition Botswana Congress Party, Michael Dingake, raised concerns regarding "ministers' use of public resources when on the campaign trail".¹⁰³ Similarly, it was reported that

members of Renamo were denied “full access to the provincial computer centres tasked with the counting and transmission of results to Maputo”.¹⁰⁴ While the spokeswoman of the Congress of Democrats (CoD) Dr Elizabeth Amukugo claimed that government vehicles were used at a SWAPO rally at Eenhanna,¹⁰⁵ the DTA’s Administrative Secretary, Nico Smit, pointed out that “public address systems were recently fitted to two government vehicles which some SWAPO supporters used over two days to announce a ruling party’s rally”.¹⁰⁶ The use of state/public resources by officials of the ruling SWAPO party led opposition parties to conclude that the playing field was not level.¹⁰⁷

TOWARDS BEST PRACTICE IN THE UTILISATION OF STATE RESOURCES DURING ELECTIONS

All said and done, there are certainly no definitive solutions to the use of state/public resources during elections the world over, in both developed and developing democracies. The key challenge, however, is how best to curtail the misuse of resources with a view to levelling the playing field. At the heart of all the efforts aimed at curbing misuse of state/public resources during elections lie the robustness, efficacy and effectiveness of a regulatory regime in place in each country, which places adequate restraint on public expenditure for electioneering.

As the Institute for Democracy in South Africa (IDASA) aptly posits “... international experience ... 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”.¹⁰⁸ According to the Stockholm-based IDEA Secretary-General Karen Fogg, regulation of political finance has to be tackled in a holistic manner, taking into consideration a multiplicity of other related structural problems around party organisations as a whole. These include:

- political commitment on the part of parties by going beyond the willingness to legislate, but also making sure that the legislation works;
- democratic internal party management through high standards of transparency and accountability;
- continuing public pressure on political parties by the media and civil society for internal reforms;
- a high degree of political competition predicated upon a responsive and open political system;

- public funding through more efficient regulatory frameworks and conditions which are more conducive to strengthening parties.¹⁰⁹

Although little research has been undertaken thus far on the use of state resources during elections in the SADC region, the three quotations at the beginning of this research report point to serious concerns by the AU, the SADC-(PF), EISA and the ECF that have been raised on the use of these resources. The AU emphasises transparency, accountability, probity and responsiveness in the utilisation of resources during elections. The SADC-PF proposes that public resources should not be used in such a way that gives unfair advantage to the ruling party, and accountability should be fostered to ensure a level playing field with regard to the use of these resources during elections. In specific terms, the SADC-PF norms and standards provide as follows:

- In the interest of creating conditions for a level playing field for all political parties and promoting the integrity of the electoral process, parties should not use public funds in the electoral process.
- Where a policy decision is taken to support political parties financially with taxpayers' money, which is necessitated by the poor resource background of most political parties, an agreed-upon formula must be used and adhered to in allocating funds to the contesting parties. A commonly used formula is according to the number of seats each party holds in parliament.
- Those countries that are not yet funding contesting political parties should introduce the necessary legislation to do so in order to foster uniformity and a level playing field.
- There must be accountability in the use of public funds.¹¹⁰

The EISA/ECF Principles for Election Management, Monitoring and Observation in the SADC Region – officially launched at a major regional conference in Johannesburg during November 2003 – provide the following guidelines for best practice with regard to the use of state resources during elections, which are essentially complementary to those of the SADC-PF:

- The use of public resources for political campaigns and political party

activities should generally be avoided, but if permitted, access thereto must be equitable and must be paid for.

- The use of public assets and funds for party political purposes should be regulated in order to level the playing field for political competition.
- Political parties should be held accountable to the EMBs on the use of such resources.¹¹¹

Concerns about good practice in the use of state resources during elections extend beyond the SADC region and the African continent. International institutions have contributed some interesting ideas around this issue as well.

The International IDEA has, for example, developed the Code of Conduct for Political Parties Contesting Democratic Elections which, among others, provides that the party in power should ensure that no cause is given for any complaint that it uses its position of incumbency to further its election campaign.

In this vein, the code proposes the following specific measures:

- Ministers shall not combine official visits with electioneering work and shall not make use of official machinery or personnel during electioneering work.
- Government transport, including official aircraft, vehicles, machinery and personnel shall not be used for the furtherance of the interest of the party in power.
- Public places for holding election meetings and the use of helipads for airflights in connection with elections, shall not be monopolised by the party in power. Other parties and candidates shall be allowed the use of such places and facilities on the same terms and conditions on which they are used by the party in power.
- The issuing of advertisements at the cost of the state in newspapers and other media and the misuse of official mass media during the election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power, shall be scrupulously avoided.

- From the time the elections are announced by the Commission, no government actions should aim at influencing voters in favour of the party in power, and in this regard government ministers and other authorities shall not:
 - announce any financial grants in any form or promises thereof;
 - lay foundation stones, etc. of projects or schemes of any kind;
 - make any promise regarding the construction of roads, the provision of drinking water facilities, etc.; or
 - make any ad hoc appointments in government, public undertakings, etc.

CONCLUSION

This preliminary survey of the regional experiences regarding the use of state resources is meant to provoke thought among policy actors and the research community around this important issue. It is also meant to persuade policy actors to make appropriate policy reforms aimed at the fair utilisation of these resources with a view to levelling the political playing field.

We have surveyed a wide gamut of public resources including public media, public service, the security establishment, development assistance and state assets. This list is by no means exhaustive, but our idea was to spotlight what we consider to be the most critical state resources when it comes to electioneering.

Having concluded this preliminary survey, we make the following tentative conclusions:

First, a number of factors help explain the inequitable utilisation of state/public resources during elections in the SADC region. These include, *inter alia*, the often ubiquitous relationship between the ruling party and government – which incidentally is the stark reality of the game of politics, even in developed democracies; inadequate (or in some instances the lack of) institutional and legal mechanisms to ensure the appropriate use of state resources during elections; fragmented and enfeebled opposition parties unable to keep the ruling parties in check in terms of the use of state resources during and between elections; and weak and disjointed CSOs whose watchdog role in the governance arena is diminishing largely due to capacity constraints, among other compelling factors.

Second, it is abundantly evident that part of the explanation for the manner

in which state/public resources are used during elections derives from the PBC school of thought. This school essentially propounds the view that there is a strong interface or nexus between politics and economics, and that these two spheres always interact. The process and outcome of such interaction is often overwhelmingly influenced by the policy projections of ruling parties. This is more so around and during elections, whereby ruling parties manipulate economic policy to position themselves strategically in order to retain state power. And the same argument can therefore be extended to the manner in which ruling parties go about using state/public resources during elections.

Third, we conclude that commendable progress has been made by most SADC states towards democratisation since the early 1990s. This momentous political sea of change in the region has heralded the institutionalisation of multiparty democracy and the holding of regular elections, which provide political parties with a golden opportunity to contest state power. Be that as it may, we observe that although anecdotal evidence does suggest cause for celebration of the current 'democratic harvest', there is a need for guarded optimism as a variety of 'democratic deficits' still remain. One of these deficits is surely the use of state/public resources during and around election times.

Fourth, we have evaluated the nature of the legal and institutional architecture that governs the use of state/public resources and found that constitutions, electoral laws and codes of conduct for political parties do provide for some amount of regulation for the use of state/public resources during elections. However, there seems to be a yawning gap between the legal frameworks and actual practice on the ground. This calls for deliberate harmonisation of the law and a code of conduct, as well as the actual game of politics and contestation for state power. Additionally, we have reviewed the institutional framework focusing primarily on the executive, the judiciary, the legislature and EMBs insofar as they have a bearing on the manner in which state/public resources are used around and during elections. What comes out of the review is essentially that, due in part to the hegemony and dominance of the executive in the operations of most of these institutions – with the relative exception of EMBs in most SADC countries – these institutions often fail to hold the executive in check in terms of the fair utilisation of resources aimed at levelling the political playing field.

Fifth and finally, we considered that although there is little research as well as scant policy and academic discourse on this subject in Africa as a whole and in Southern Africa in particular, it is evident that a number of institutions have

shown interest in this area. Among these institutions are the International IDEA based in Stockholm, Sweden; SADC-PF based in Windhoek, Namibia; and EISA based in Johannesburg, South Africa – whose principles have been summarised in the text. Most of these institutions have expressed concern regarding the inequitable sharing of state/public resources around and during elections, and have gone a step further to recommend some principles or codes of conduct if this situation is to be rectified.

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The legislative framework governing party funding in South Africa

NICO STEYTLER

INTRODUCTION

The current legislative framework governing public party funding in South Africa is based on section 236 of the South African Constitution, 1996, which reads:

“To enhance multiparty democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.”

I have not yet come across anyone who can tell me what prompted this section of the Constitution or which party promoted the idea, but it exists and it is particularly remarkable in that it gives an extremely firm basis for arguing for public party funding. The words ‘multiparty democracy’, ‘enhancing’, ‘political parties’, ‘participation’, ‘equitable’ and ‘proportional’ will all be litigated in the future, providing a basis from which a comprehensive system of public funding can be developed.

To begin, there are three important elements to the section quoted above. First, the principal object of promoting multiparty democracy is broad enough to include elections. The enhancement of multipartism inexorably entails dealing with election funding and elections. Second, it is not clear what is meant by the term ‘participating’ in the phrase “political parties participating in

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national and provincial legislatures”. This can be taken narrowly in the sense that parties must be in the legislatures, or it may be more generously defined to include parties participating in elections for legislatures. An argument can be made that a broader concept of public funding that goes beyond those represented in legislatures, is possible and desirable. A third important aspect is the terms ‘proportional’ and ‘equitable’. Proportional, as we know, means that which is based on the strength of parties. The term “equitable” is, however, elusive and elastic and can be given a number of meanings. In the Constitution, equitable usually means ‘towards need’, and is always used in contradistinction to proportionality, which is interpreted as that which is according to numerical strength. New parties whose strength is not yet fully established in terms of elected members may thus argue that they need funding to be able to compete on a level playing field.

THE ACT

Based on the above three basic principles one can then judge the Public Funding of Represented Political Parties Act 103 of 1997, which establishes the Represented Political Parties’ Fund. An important and interesting element of this Act is that a parliamentary committee makes key decisions about the funding formula and, I believe, it may even make suggestions regarding the amounts. The Fund is administered by the Independent Electoral Commission (IEC). This money given to represented parties must be for any purpose compatible with the functioning of a political party in a modern democracy, and that obviously includes the fighting of an election.

Much has been said regarding the unfairness of the system for those who are ‘outside’ of it, but one should bear in mind that South Africa probably has the lowest threshold for getting into parliament than any country in the world. In other words, if a party garners at least 0.025%, or 50,000 votes, it will obtain a seat in parliament. This is extremely low. One cannot therefore say that inordinate hurdles exist to getting into parliament. Importantly, one needs to weigh this low threshold against the arguments put forward as to why unrepresented parties should receive money.

And then finally, the Act tries to set up some type of accountability system for monies received from the Fund.

The Act allows parties a wide discretion for the use of the funds. A party may use the funds for:

- the development of political will;
- bringing the party's influence to bear on the shaping of public opinion;
- inspiring and furthering political education; and
- exercising an influence on political trends.

Development of political will is not a very South African expression, but it looks similar to the German law on this topic. This objective is, however, very broad and will include electioneering. The Act also lists a number of acts for which the Fund's money may not be used. Prohibited acts include:

- not paying a salary to persons on the government pay-roll;
- not contravening any legislative code of conduct – bribery or corruption;
- not using the funds for business ventures; or
- any other conduct proscribed by a committee of parliament.

The parliamentary committee determined the formulation for the distribution of the money and made various recommendations, which the president then issued as regulations.

In terms of these regulations, 90% of the money is divided proportionally based on the number of seats each party holds in the national and provincial legislatures. Ten per cent (or R6 million) is the equitable portion that is divided between the nine provincial legislatures based on the number of seats in each legislature. Each provincial portion is then divided equally among the political parties in each of the provincial legislatures.

BLOCK GRANT VERSUS WEIGHTED GRANT

The introduction of a block grant at provincial level was a choice made by the parliamentary committee which had two options: it could either introduce a block grant or a weighted grant. A weighted grant would mean that for a certain number of seats, a party gets extra money. The distinction between block grant and weighted grant is very much the German system versus the Israeli system.

The Israeli system works with block grants; that is, a party gets so many finance units for each member it has in the Knesset (parliament) – plus an additional block finance unit. In other words, if a party has one member, it gets one additional unit; if it has 50 members, it gets 50 plus one. The German system, on the other hand, works with weighted grants whereby a party gets

DM1.3 for each vote up to five million and after five million it becomes DM1 upwards. This system therefore favours smaller parties.

The South African system favours *micro* parties as well as provincial parties. Take the following example: AZAPO, which has one Member of Parliament (MP) in the National Assembly, gets R72,000. But Peter Marais's New Labour Party (NLP) in the Western Cape legislature gets R202,000. Why? Because the NLP gets an additional R130,00 as its equitable share being a provincial and not a national party. With the Fund at R55 million strong, it is divided by 830 MPs and Members of the Provincial Legislatures (MPLs), giving an amount of R72,000 for each member. The R6 million equitable share is divided first among the province. The Western Cape's share it is divided equally among the political parties, giving the NLP an extra R130,000.

A legal argument exists that this system is unconstitutional, since every party is entitled to both a proportional share and an equitable share of the funding, and AZAPO, being only a national party, does not receive its equitable share.

POLITICAL PARTIES AS EXPRESSIONS OF CIVIL SOCIETY

Importantly, though, we need to decide whether we *want* to assist micro parties. This takes us to the issue of comfort zones and to the level of outside support that a party should receive. Germany is very clear on these issues and, I believe, influenced the European Council in this regard; namely, that no more than 50% of a party's money may come from the state because political parties are institutions and expressions of civil society and not state institutions. This is a fundamental principle in German law, and the Constitutional Court in Germany even set aside legislation which breached that principle, saying that parties must collect money. The process of fundraising links parties with their constituencies – it ensures they respond to their constituencies. Fundraising gives parties accountability to their constituencies and not to the state institution that hands out money to them.

I suggest, therefore, that we do not adopt the block grant system. We should favour small parties as opposed to micro parties; and the current system gives a lifeline to a one-person party that could exist fairly easily without funding. I also believe that provincial parties should not be favoured at the expense of national parties.

It should be noted that the overall funding budget is not huge. It grew from R52 million in 1998, peaking at R67 million and then down to R66 million last

year. Political parties will, however, need to raise between R300–R500 million to meet their calculated budgets for the forthcoming election. Government funding may therefore keep a party ticking over – and for a small party it is obviously quite important – but this is not what elections are run on; other sources of income are necessary.

THE NOTION OF PUBLIC MONEY

It would seem that this Act tried to make a distinction between money for elections and money for the running of parties between elections. We see the notion here that this is public money not to be used in the final stages of an election. Books are closed 21 days before polling day and unspent balances must be repaid to the IEC. Interestingly, outstanding instalments to parties are also suspended. Instalments are due to all political parties. Four instalments are paid a year, and if the fourth quarter or third quarter falls in the 21 days before polling, that amount is suspended and paid over two weeks after the election to those who achieve representation.

What is important to note here, is that the IEC's financial year ends on 31 March and the last quarter is paid in January. Elections will therefore not be called prior to 31 March. The money for this year could then be well used because the activities are broad enough to include campaigning. A party can therefore spend most of its money up to 21 days before polling date, getting posters printed and so forth. I do not see a major restriction on using this money for a party's campaign.

In addition one should also note that an annual roll over of 50% of the funds are permitted. I am not sure whether a party can roll year one's money up to year five, but the point is that parties can build up a bit of a 'war chest' for the last three months before an election. If, for example, the African National Congress (ANC) has an eight-week campaign, it can certainly spend monies accumulated over a five-year period in the last five weeks. It should be noted that a limit of 50% is determined by the parliamentary committee, which is composed of the major political parties; a very close link therefore exists between those making the decisions and those using the money.

AREAS OF REFORM

Regarding areas of reform, I think everyone agrees that there must be a link

between the receipt of public funds and greater state regulation over private funds. When the Act was passed, people saw it as a golden opportunity for the introduction of the disclosure of private funding. If a party receives something from the state, the *quid pro quo* is disclosure of the party's other funding; but this was never done. Other issues are the disclosure of donations above a certain limit, and the prohibitions of certain donations, mainly foreign funding.

Further, the notion of greater disclosure should be coupled with a greater regulation of party organisation and functioning. Parties are presently determining our futures by choosing who goes to parliament. But there is no regulation of the party system; there are no rules governing internal party democracy. Who decides who will appear on the party lists? Are these decisions, for example, made by the party leader or are they based on an internal democratic process. I therefore believe that this 'disclosure' and 'openness' that we talk of should extend to party democracy itself.

Another point regarding reform is that although under the current legislation funds can be used for election campaigns, I believe the Act must be quite explicit about, for example, specific funds and additional funding for election campaigns. Interestingly in Israel, parties get an up-front payment of 60% of the number of financing units for each party member represented in the Knesset. Parties can therefore get additional money, and Israel is one of the few countries that give specific election fund allocations for campaigning. Guarantees are, however, built into the system. If a party does not perform as well as its previous numbers in parliament, it must pay back any extra funding received.

A third area of reform would be the broadening of the definition of political parties participating in legislatures. I believe there is scope here to include new parties, but funding to these new parties will have to meet the two criteria of proportionality and equity. Proportionality is difficult for new parties to ascertain, but one could come up with some type of indication based on, for example, signed membership or polls. We know that in 1994 it was difficult to get any scientific knowledge regarding proportionality, but there should be a level of proportionality – the equity part will obviously provide some leeway for giving new parties some support.

When speaking of reform, one should also be looking at reducing the costs of elections. Elections should not only be about spending more money; parties should try to put a lid on the amount of money spent. We need to ask what the major election expenditures are. If it is access to the media, we then need to

examine whether some type of state intervention could provide access to the media more readily and cheaply. This is easy if the media in question is state controlled but more difficult when it comes to private newspapers or television stations.

Numerous other costs can be reduced. I was in England in 1978 when Margaret Thatcher came to power. Amazingly, there was not a single poster up in the whole of Britain.

In conclusion, we need to ask what costs are really needed and whether there are ways to reduce costs – and therefore the need for more money – by prohibiting certain expenditures.

The use of state resources during elections in South Africa

KENNEDY MBAYA

INTRODUCTION

Debate about the use of state resources in the upcoming third round of multiparty elections in South Africa is heightening. Informing this debate is insight into the need for a ‘level playing field’ in an electoral context and the impact this has on democratic consolidation. This notion can be defined in terms of the extent to which state/public resources are fairly and equally used by both a governing party and opposition parties in an election.

One way in which a level playing field can be promoted is through the establishment of rules and regulations that govern an election and which political parties, whether ruling or non-ruling, are expected to observe and adhere to.

If all political parties observe electoral guidelines and regulations, the chances of undermining the condition of a level playing field become minimal. In a similar vein, if rules and regulations in terms of the use of state resources are adhered to, a level playing field will be created. This in turn promotes the credibility of electoral processes and, ultimately, the integrity of election results.

In the context of this paper state resources refer to “capabilities (in the form of institutions, human capital, financial wherewithal, technological inputs or other non-material assets) used to achieve set goals of an organisation or a nation”.¹ While the above definition would encompass a number of resources, this paper focuses specifically on the following state resources: the security

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establishment, public funding, public media, state assets and the public service. In cases where there is a legislative mechanism to regulate the use of a particular resource, such a resource is critically discussed in light of the relevant legislation.

Further, this paper discusses South Africa's Electoral Act, 1998, and the Independent Electoral Commission (IEC) as the principal legal and constitutional instruments that shape the manner in which elections are held in South Africa. Some major weaknesses will also be highlighted.

CONTEXT

Prior to 1994, the polity in South Africa was tailored in a way that allowed for political participation of a minority while the majority was forced to sit on the political periphery. The political winds of change that blew across Southern Africa in the 1990s equally affected South Africa and, indeed, meant an end to the rule of segregation and systemic marginalisation. The year 1994 will remain no ordinary year in the history of South Africa: it will always be cherished and celebrated because it marked the breakaway from a minority government to a multiparty system of governance.

This form of governance necessitated entrenchment of the rule of law; the establishment of the Constitution, 1996, epitomised this new trend and the constitution embodied the rule of law. As opposed to pre-1994 when participation in political life was reserved for whites, the new political dispensation allowed not only for wider and more active participation but also for the holding of regular and competitive elections. Since 1994, South Africa has held two democratic elections and the feeling is that they were largely free and fair. South Africa is gearing up to hold its third round of competitive elections in April this year.

What is equally significant is the coinciding of these elections with the celebration of 10 years of democracy. Together with the jubilation that this milestone marks, it also provides an opportunity to take stock of the past 10 years of democratic rule.

We need to ask, however, whether this third round of multiparty elections marks a consolidation of democracy in South Africa and the safeguarding of its hard-won track record. A major indicator in this regard is whether or not the political playing field is level; one of the crucial factors that will determine this indicator is the use of state/public resources.

CONSTITUTIONAL AND LEGAL FRAMEWORK

ELECTORAL ACT

An electoral act is a legal device that establishes specific regulations in terms of the management and administration of elections for (in the South African context) the National Assembly, provincial legislatures and municipal councils. An electoral act serves to provide a legal framework to consolidate laws pertaining to elections. It lays down rules and regulations that all stakeholders in an election are supposed to abide by.

The use of state resources is a critical issue that one would expect to find at the core of election management and administration, and hence in an electoral act. Put differently, one would expect this legislation, which outlines prohibited conduct,² to be broad enough in scope to cover various state resources and to prescribe their use during and around elections. In this vein, an electoral act is the most befitting legislative framework in which terms and guidelines for the use of state resources could be entrenched and against which any form of litigation could be taken.

As key legislation meant to guard against any electoral misconduct, it is imperative that the electoral act provides for the acceptable use of state resources. However, as Matlosa and Mbaya point out, when critically analysing electoral law in South Africa it is evident that this legislation is significantly inexplicit in dealing with the issue of the use of state resources during and around elections.³

Even in terms of party funding, the South African Electoral Act does not provide for a way forward as far as the private funding of political parties is concerned, rules of disclosure governing such contributions or the tax status of such donations.⁴

In sum, the lack of clear guidelines on how state resources must be used during and around elections potentially creates an environment conducive to the abuse of such resources, thereby undermining a level playing field. It offers no clear-cut legal framework against which issues of electoral corruption and, significantly, the use of state resources, can be litigated.

PREVENTION AND COMBATING OF CORRUPT ACTIVITIES BILL

The introduction of the Prevention and Combating of Corrupt Activities Bill emanated from the South African government's decision:

“... to develop an overall anti-corruption strategy and the enactment of provisions dealing with a comprehensive Prevention of Corruption Bill ... the provisions contained in the Bill follow the trend of modern international legislation, namely, the ‘unbundling’ of corruption, in terms of which various specific corrupt actions and corrupt practices are defined and prohibited.”⁵

In this sense, the Bill provides wide scope for defining or determining corruption; since corruption is a complex human activity, the need for comprehensive legislation to combat it is unquestionable.

This Bill provides a legal framework against which corruption or corrupt-related activities are to be litigated. One concern that gave rise to the establishment of this Bill is the international recognition that corruption is “a major problem in society, capable of endangering the stability and security of societies, threatening social, economic and political development and undermining the values of democracy and morality”.⁶ This is in the wake of recognition that 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”.⁷ Although the Bill is not directly related to elections it is, however, important in the sense that it is likely to instill political accountability and transparency in terms of, for example, political party funding. Needless to say, a “lack of regulation ensures that conditions are ripe for political corruption in developing and transition countries”.⁸

The significance of the Bill, therefore, is that it provides “for the strengthening of measures to prevent and combat corruption and corrupt activities; to provide for the offence of corruption and offences relating to corrupt activities; to provide for investigative measures in respect of corruption and related corrupt activities”.⁹ Within the framework of this legislation, corruption is also defined in light of gratification which includes:

- (a) money, whether in cash or otherwise;
- (b) any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage.¹⁰

While the legislation provides for corrupt activities relating to public officers,

as with the Electoral Act, 1998, the Bill's silence on, for example, political party funding, is a cause for concern. It is only by implication that different party funding scandals can be litigated. Considering how critical the issue of the fair and equitable use of state resources has become for the consolidation of democracy, special focus on different forms of electoral corruption regarding the use of state resources is ideal.

INSTITUTIONAL FRAMEWORK: INDEPENDENT ELECTORAL COMMISSION (IEC)

Electoral management bodies (EMBs) are the managers and regulators of elections. In Southern Africa, EMBs assume the form of independent regulatory structures and in South Africa, it is known as the Independent Electoral Commission (IEC). The IEC is established by the 1996 Constitution. Its vision statement spells out its role in terms of elections, namely: "To strengthen constitutional democracy and the delivery and management of regular free and fair elections in which every voter is able to record his or her informed choice".¹¹

Apart from the general administration and delivery of free and fair elections, the IEC is also constitutionally mandated to manage and control a public fund for represented political parties. This duty is provided for in the Public Funding of Represented Political Parties Act, No. 103, which mandates the IEC to administer and monitor the use of these funds as determined by the Act.¹²

While the Public Funding Act stipulates that is the IEC's responsibility to regulate party funding, there is no other electoral legislation that provides clear guidelines for the use of other state resources, other than by implication. Surely this is a deficit in terms of constitutional architecture. Party funding is one state resource; but there are other equally important resources (see below) which need the same attention by the IEC to ensure that they are not used to advance one party's political interests to the detriment of all others. The IEC's role of managing and regulating elections (presumably) includes overseeing resources earmarked for, and used in, an election. Moreover, the IEC's objective of ensuring that elections are free and fair cannot be divorced from ensuring that other resources are fairly and equitably used across the board during and around elections. It is therefore astounding that no mention of other state resources has been made in that regard. While it may be noted that there are relevant authorities that oversee other state resources, the IEC as the key regulator of elections in South Africa has a stake in the manner in which state resources are used during elections.

KEY STATE RESOURCES

PUBLIC MEDIA

In South Africa, the term public media means that media which may be funded by government but is accountable to an independent body that embodies diverse societal interests. This category therefore comprises:

“... any newspaper, book, periodical, pamphlet, poster, and media release or other printed matter, or statement, or any audio and video material, or any information in electronic format (such as CD-Rom, Internet or e-mail) which is produced and disseminated to the public, and which is financed by, and directly under control of, government.”¹³

The nature of the relationship between public media and government is intrinsically problematic. Of particular concern is how impartial and independent the former can be when it comes to elections. As one of the most invaluable tools of communication between political players and the electorate, whether by design or default, the chances are high that the incumbent party will flout rules governing the role of public media and will manipulate them for its own political mileage.

In an attempt to promote an independent and pluralistic media culture, South Africa has constitutionalised the activities of the media. For example, the purpose of South Africa’s Broadcasting Act is:

“To provide for the regulation of broadcasting activities in the public interest; for that purpose to establish a juristic person to be known as the Independent Broadcasting Authority which shall function wholly independently of State, governmental and party political influences and free from political or other bias or interference.”¹⁴

To address various problems associated with the media, South Africa has not only enacted legislation pertaining to media but has established an independent authority whose purpose is to oversee broadcasting services. The Independent Communications Authority of South Africa (ICASA) is constitutionally mandated in South Africa to govern broadcasting, and the Independent Broadcasting Authority Act establishes it. The establishment of ICASA brought hope that a level political playing field would in future be entrenched by

ensuring that “the public (and private) broadcasters gave parties equitable (though not equal) coverage”.¹⁵ This was an area in which the Independent Broadcasting Authority (IBA) in 1999 “did not exercise its authority very effectively ...”,¹⁶ as manifested in “the South African Broadcasting Corporation’s (SABC’s) campaigning coverage [which] included some unfavourable editorial treatment of the Democratic Party (DP)”.¹⁷

Within the purview of the above Act, ICASA is a principle stakeholder in promoting free and fair elections by ensuring that broadcasting services are conducted in such a way that neither advantages or disadvantages any party, nor is perceived to do so. This implies that ICASA has to live up to the spirit of the IBA Act, Section 3(3), which requires it to:

“... function without any political or bias or interference and shall be wholly independent and separate from the State, the government and its administration or any political party, or from any other functionary or body directly or indirectly representing the interests of the State, the government or any political party.”¹⁸

The above provision undoubtedly is expressive to what ought to be normative to ICASA’s regulatory role in matters related to broadcasting. However, as experience on the ground suggests, there seems to be a discrepancy between what broadcasting legislation stipulates and the enforcement of that. Lodge reminds us that during the 1999 elections the Media Monitoring Project noted that although “coverage of different parties was proportionately equitable”, partisan coverage of the public broadcaster manifested in the fact that “stories about the ruling parties tended to be favourable whereas opposition parties were often treated disparagingly”.¹⁹

As events have unfolded thus far, it may well be argued that either the situation has not improved in reality or that the perception that the public broadcaster is the government’s machinery reinforces the debate as to whether the former would carry out its duties impartially and independently.

For example, the live broadcast of President Mbeki’s rally in Pietermaritzburg led to criticism against the SABC of being a state broadcaster rather than a public broadcaster. As the national regulator of broadcasting services, ICASA gave some explanations justifying its reasons for carrying the rally live. However, ICASA’s explanation has not necessarily quelled scepticism regarding the SABC’s role of serving the African National Congress (ANC)

government which, in this case, seemed to have flouted its own house rule of not taking “cognisance of the SABC’s editorial code which enjoins fairness in the conduct of its news and current affairs programmes”.²⁰ A statement by the SABC that it “would not accord the same treatment to opposition parties” was concretised when, for example, a week later the Inkatha Freedom Party (IFP) launched its manifesto only to receive “truncated TV coverage on the news service”.²¹

Further, it has been observed that “the ANC is dominating the media in terms of election coverage and was doing so before political campaigning had even officially begun”.²² Research conducted by Media Tenor, a commercial firm that analyses news sources, reveals that “the ANC received nearly 70% of the political coverage in Gauteng’s daily newspapers, seven national weekly newspapers, E.tv and the SABC’s television news channels in the first two weeks of the year”.²³

While it would be a sweeping statement to say that this is as a result of the dominant party syndrome, this nonetheless explains the dynamics of being a party at the helm; the degree of political clout automatically attracts more media publicity and exposure. This is not necessarily a one-way relationship whereby a dominant political party tends to dominate the media – on the other side is the fact that the stronger the stature of the party, the more biased coverage it will be given.

PUBLIC SERVICE

Meinhardt and Patel regard the civil service as “the backbone of any governmental system”,²⁴ and as “the operational arm of government, the civil service is charged with the task of providing an *enabling* physical, economic and administrative environment that facilitates achievement of the nation’s social and economic objectives” (emphasis added).²⁵ In order to enforce standard values and norms within the South African public service, certain mechanisms have been put in place.

One such mechanism is a constitution which is the supreme law of the country and which serves to provide some checks and balances against various forms of misconduct on the part of public office-bearers. For example, South Africa’s Constitution, 1993, places some limitations on the public service in terms of political activities by stipulating that it shall “be non-partisan, career-orientated and function according to fair and equitable principles”²⁶ and “serve

all members of the public in an unbiased and impartial manner.”²⁷ The term ‘enabling’ points to and fits well with the concepts of non-partisanship and career-orientation, which are integral for professionalism. It is clear from the above stipulations that the Public Services Act is binding, such that public service employees are expected to operate in an impartial and non-partisan manner in carrying out their public duties.

In an attempt to further professionalism and indeed “to give practical effect to the relevant constitutional provisions relating to the public service”,²⁸ South Africa has established a code of conduct for the public service. The significance of this is stressed in the:

“need ... to provide direction to employees with regard to their relationship with the legislature, political and executive office-bearers, other employees and the public and to indicate the spirit in which employees should perform their duties, what should be done to avoid conflicts of interests and what is expected of them in terms of their personal conduct in public and private life.”²⁹

This clause is significant in the context of elections as it presupposes that the relationship between the public service and the above organs of the state be kept at arm’s length. This quotation is critical for appraising the role of the public service in elections since that role may be politicised and may hence undermine the notion of a level playing field and, ultimately, democratic consolidation. Another important institution for the conduct of the public service in South Africa is the Public Services Commission, which is principally aimed at enforcing acceptable conduct within the public service.

In South Africa, the importance of regulating the role of the public service initially saw the establishment of the Independent Media Commission (IMC) in 1994 “to ensure that departments of national, provincial and local government did not propagandise the work of the ruling party – then the National Party (NP) – or act detrimentally towards parties not in power but which were seeking election”.³⁰ This clearly implies that the public service is recognised as a stakeholder in elections.

The initiative of establishing the IMC was not necessarily proactive on the part of government but rather reactive to a situation whereby “the many publications produced by civil servants to publicise their departments, [were] always done in a flattering manner”.³¹

It is essential that such mechanisms are strengthened and adequately enforced considering that the public service has proved to be an important resource in the conduct of elections owing to, mainly, the nature of the organisation, the level of skills and competencies and accessibility. It can be safely argued that public servants constitute the largest part of electoral staff in most countries, including South Africa where the civil service constitutes nearly 70% of electoral staff in an election. The role of the public service in elections is critical; however, just as many other state resources, the public service is susceptible to political manipulation.

THE SECURITY ESTABLISHMENT

Another state resource that is also crucial during and around elections is the 'security forces'. These normally comprise the police, the defence force and the intelligence whose duty is to protect the state against external and internal breaches of the peace or the threat thereof. Just as with the public service, in South Africa, the constitution provides a legal framework for regulating the conduct of security agencies. The South African Constitution stipulates that "neither the security services, nor any of their members, may, in the performance of their functions – [...] further, in a partisan manner, any interest of a political party".³² This provision clearly acts as a check against partisan activities. Concomitant to their profession is the duty of maintaining public order. This responsibility becomes increasingly important during and around elections when there is the utmost need to create "a favourable climate in which a democratic election can take place",³³ and in this way contribute to "the levelling of the political playing fields".³⁴

While there is no evidence of the actual involvement of South African security forces in partisan activities in this country, according to IEC, during the 1994 elections there was:

"... a perception, widely and firmly held in ANC circles, that the South African Police and more particularly their colleagues in the KwaZulu Police, favoured the IFP. The ANC therefore had a preference for the South African Defence Force (SADF) as a peacekeeping agency. The IFP, in turn, regarded the SADF as partial to its opponents."³⁵

While the above case may not necessarily be cause for alarm, such issues

intensify the need to check the situation keenly. Failure to do so has in the past led to the role of the security forces in fostering the integrity of the election process being discredited. In this regard, the security service "... is regarded with suspicion in many Commonwealth countries".³⁶ Such sentiments may have serious repercussions on the electoral process. In an effort to protect its hard-won freedom, South Africa cannot afford to allow a situation to develop whereby the security forces are the direct machinery of government and, by extension, of the ruling party. It is the responsibility of all stakeholders to guard against any partisan activities on the part of the security forces, thereby protecting not only their professionalism but also the credibility of elections.

STATE ASSETS

State assets refer to property owned by government but whose beneficiaries are the public. These include recreational structures and facilities, for example, stadiums and halls, public schools, state transport, etc., which although state owned ultimately serve the public. Although South Africa boasts an advanced communications infrastructure which would enable political players to communicate to electorates more effectively, the importance of the above state assets cannot be overestimated. This category of state resources is especially important given that they are found in every part of the country, including the remotest areas where other modes of communication, such as televisions, are unavailable. The unavailability or inaccessibility of other forms of communication devices make 'remote' campaigning impossible, and render the above state assets invaluable during and around elections. The extent to which all political competitors have access to such facilities therefore impacts on the level playing field.

Complaints about incumbents' use of public resources for campaigning include "the unpaid use of government transport for canvassing and transporting party leaders to rallies"³⁷ – a point which was raised during South Africa's 1999 elections. A proper explanation can be demanded by any electoral stakeholder to dispel allegations about the abuse of state resources by the incumbent, following an incident in which a government bus:

"registration number GGF 443 EC, transporting passengers was spotted bearing ANC posters on its back windows near Fort Gale. Director-general of Transport, Mr Vanguard Mkosana, said the posters were

probably left over from transporting public officials for Freedom Day celebrations on 27 April 1999, almost a week before. Because Freedom Day was a government event, government vehicles were used in preparation for the day.”³⁸

With reference to the above incident, the Public Service Accountability Monitoring team suggests that the Public Service Code of Conduct which prohibits public officials “from promoting the interests of any party during official duty”,³⁹ was contravened. While the above cases do not necessarily provide a broader picture of the extent of the abuse of state assets by incumbents in South Africa, it is an issue that could show that the governing party is using state resources to its own advantage.

Another resource that could be highly susceptible to politicisation in South Africa is land. The land issue in Africa, and indeed in this country, is highly significant considering that the masses are landless following a legacy of expropriations, and that land is an asset that is indispensable to African people and is closely connected with their identity. As the overseer of redistributive programmes, a government would potentially tend to benefit politically from such programmes; a ruling party’s propaganda may be couched in such programmes. For example, a critical observation was made regarding the manner in which the ANC handled the processing of land claims in 1999:

“The processing of land claims and restitution has been proceeding at a snail’s pace but have now suddenly started happening at an increased rate. For five years they have been just about stalled and yet last weekend Mr Mbeki was able to hand out compensation cheques to those who suffered from forced removals in the 1960s. Of course it is simply coincidence that these cases are finalised two weeks before the election and similarly, it is just coincidence that they happen to be in ... the highly contested Western Cape, where the ANC is desperate to unseat the National Party.”⁴⁰

While government officials are expected to deliver in matters affecting the masses and that such functions are done ‘in good faith’, the timing itself raises suspicion as people would be tempted to think that government officials wait for a politically ripe time to perform such duties. For example, the issue of timing is highlighted in the following quotation:

“... as the election draws closer, South Africans can expect the ANC to make more use of state events and organs to promote its cause. Such an abuse of public office will do little to advance the image of clean government, which they preach”.⁴¹

While some would argue that this is only an observation, its repercussions on the electoral process itself could be tainting.

POLITICAL PARTY FUNDING

As indicated above, in order to further democratic consolidation in South Africa and in Southern Africa as a whole, the challenge of level playing fields in terms of the use of resources during and around elections needs to be addressed. A key resource in this regard is, of course, party funding. Schikonye elaborates on the centrality of party funding:

“How much funding a party can mobilise is of decisive importance in an election. The size of funding determines the number of campaign staff it can employ, the number of vehicles and other transport it can use to reach voters in urban and rural areas, the amount of advertising it can deploy on radio, television and in the press, and the range of equipment (from telephones to computers and to stationery, etc.) which it needs to communicate with the electorate. Political campaigns do not come cheap. Similarly, maintaining a party between elections is not inexpensive.”⁴²

However, in assessing the issue of party funding, Schikonye comments that:

“Although access to resources is a decisive factor in electoral contests and party existence, the issue of party funding has not been given adequate attention which it deserves in the Southern African region.”⁴³

The issue of party funding is a policy issue rooted in the South African Constitution (1996). According to the Institute for Democracy in South Africa (IDASA), party finance regulation (especially through disclosure) strengthens a number of basic democratic principles. Among others contained in the South African Constitution are:

“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 (s 19) and enhancing transparency and eliminating corruption (s 195).”⁴⁴

It can therefore be deduced that at the core of regulatory regimes pertaining to party funding is the need to safeguard and promote the above basic democratic principles.

PUBLIC FUNDING

When discussing the issue of party funding for political parties, one has to embrace a broader perspective that takes cognisance of the dynamics that characterise South African political culture. The issue of party funding for electioneering cannot be divorced from a specific political/historical legacy.⁴⁵ Accordingly, the Representative Political Parties Act, 1997, was promulgated within a particular context unique in its own right; discussing the issue in question without appraising the context that shaped it, would denude its essence. The central point of contention is that policy tools such as the Representative Political Party Act provide significant means to political participation.⁴⁶

Section 236 of the Constitution which informs the Act reads:

“To enhance multiparty democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.”

This section therefore places a constitutional responsibility on the government to provide financial support for political parties, and the Public Funding of Represented Political Parties Act, 1997, is responsive to that need. Thus, in principle, the underlying objective of the public funding of political parties is to promote political participation. The Act seeks to give expression to the above constitutional provision and ultimately to the consolidation of democracy.

Perhaps the issue of party financing is more challenging in South Africa than in other SADC member states. According to IDASA, the significance of party funding lies in the architecture of the South African Constitution that “demands not only a representative but also a participatory democracy”.⁴⁷ It follows then

that the above constitutional essence has profound repercussions on how resources are managed and allotted so as to consolidate democracy. To a large extent, it embodies the principle of redistribution which presupposes “the need for high levels of political participation in a developing democracy”.⁴⁸

Notwithstanding the ‘good will’ inherent in the Public Funding of Represented Political Parties Act, 1997, one area of concern is to what extent the Act is versatile in addressing the issue of adequate political participation. In other words, to what extent does the Public Funding of Represented Political Parties Act, 1997, provide a nurturing environment whereby public space is adequately and meaningfully contested – granted that this Act only provides funding for parties currently enjoying representation in national and/or provincial assembly?

This issue is raised considering that contesting elections is but one activity that necessitates party funding; another example would be policy formulation. The following terms are prescribed for public funding for political parties in South Africa:

- only represented political parties may receive funds;
- funding is weighted in favour of elected representation by each political party; and
- parties must account for the funds and the IEC in turn reports to Parliament.⁴⁹

In light of the above, we need to ask whether or not the current legislative arrangements address the constitutional responsibilities of the government, given that the allocation of public funds is based on the principles of proportionality and equitability with respect to only those political parties represented in the National Assembly, and yet the rationale of the Act presupposes:

- the development of the political will of people (i.e. allowing one to choose);
- bringing the party’s influence to bear on the shaping of public opinion (i.e. providing one with a choice);
- inspiring and furthering political education (i.e. keeping one up to date with what is available and who is offering what);

- promoting active participation by individual citizens in political life (i.e. getting people involved);
- exercising an influence on political trends; and
- ensuring continuous, vital links between the people and organs of state (i.e. developing the interface between citizens and public administration).⁵⁰

We can infer that the present provision for party funding in South Africa does not adequately address the above issues. One critique that defines the problem with the present formulae is the observation that generally it favours more powerful parties because of the support they command. This is exacerbated by the fact that major political parties enjoy more resource support from private sources than less established parties. This automatically creates a situation whereby those parties which are well-resourced as a result of their strength have an edge over other parties that are poorly resourced.

Consequently, it is those parties which are well-resourced that dominate in the public space of contestation.⁵¹ In other words, by excluding parties that are not represented in parliament, the Act fails to address the need for a higher level of political participation, which not only heightens democracy “but also offers the opportunity for the poor [parties] to influence the way ... redistributive policies are framed”.⁵²

PRIVATE FUNDING

It must be made clear that while our topic is on state resources and hence public funding, the issue of private funding cannot be ignored. In the context of this paper, private funding is either from domestic or foreign sources. There are some compelling reasons which bring private funding into the picture. One justification for discussing private funding alongside public funding is in line with the constitutional arrangement stipulated in the Public Funding of Represented Political Parties Act, which was enacted following the Electoral Amendment Act of July (No. 20) which repealed section 74 of the 1993 Electoral Act. In accordance with the former: “domestic and foreign funding for political parties is placed into a state-administered fund”.⁵³ This constitutional provision casts doubt on the tendency of treating private funding categorically distinct from state funding. In light of the above clause, the line between public

funding and private funding becomes increasingly blurred and the very fact that it eventually comes from state coffers, rightly qualifies it to be regarded as a public resource.

One of the arguments for private funding is rooted in the reality of state economies. Categorically ruling out private funding would be unrealistic considering that the government cannot fund political activities sufficiently due to limited resources. Coupled with the fact that there are other equally pressing issues to be addressed, private funding of political parties is thus undoubtedly indispensable. For example, political parties spent an estimated R300-500 million on the 1999 elections.⁵⁴ However, only a fraction (R53 million) of this total expenditure was acquired from the public fund. To this effect, private funding for political parties is justifiably legitimate in countries such as South Africa where democracy is still in its infancy.

Private funding serves the same purpose of promoting contesting ideas in the public space. However, the corrupting power of money provides a good reason to worry that, if not properly and effectively regulated, political funding in terms of private donations can do a disservice to the very rationale of political participation. The National Democratic Institute for International Affairs (NDI) highlights past experiences with party funding:

“... over the past several years, party financing scandals have shaken countries in every region of the world, drawing increased international attention to the problem In Africa, despite growing awareness about the negative impact of political corruption, solutions to the problem have yet to fully emerge.”⁵⁵

However, critically speaking, private funding is not bad in and of itself; it can foster the goals of political parties so long as proper mechanisms are in place to curtail any unhealthy influences that may arise.

IDASA expounds on the link between a myriad of constitutional rights (the right to equality and political rights, the right to human dignity, freedom and security of the person, freedom of association, freedom of expression, freedom of religion, belief and opinion) and the regulation of private funding. This link presupposes that it is through the regulation of private funding that the above rights can be enhanced. However, the dominant political value at stake in the absence of a regulatory regime pertaining to private funding is political equality. As IDASA asserts:

“... unregulated private funding and resultant political corruption can adversely affect the right of all citizens to participate in the political process equally.”⁵⁶

An observation can be made that responsive to the need to promote political equality is a number of legislative tools which, among others, include Public Disclosure Requirements, the Promotion of Access to Information Act, and the Prevention and Combating of Corrupt Activities Bill. Political equality presupposes a level playing field.

For example, the Promotion of Access to Information Act provides for the open information culture which has at its core the democratic values of openness and accountability. According to the South African Constitution:

“(1) Everyone has the right of access to –
 (a) any information held by the state; and
 (b) any information that is held by another person and that is required for the exercise or protection of any rights.”⁵⁷

The Act reinforces political equality in a number of ways. For example, it provides the basis for an open information culture, which in turn would ensure that the electorate has access to information about parties’ sources of funds upon which they can base their choice whether to associate with and support a particular party. It also provides a legal pillar for reinforcing the principle of disclosure. Further, as IDASA observes, disclosure of private donations tends to safeguard the integrity of the electoral process through transparency.⁵⁸ Thus, it is instrumental to furthering the objectives of other principles, such as disclosure of conflict of interest and assets declaration.

In the light of the above legislative mechanisms, electorates and other entities in the wider society are constitutionally empowered to query both domestic and foreign contributions which may raise suspicion. A classic, though isolated, example is the legal action launched by IDASA against the ANC, the DA, the IFP and the NNP for long ignoring legitimate requests for information regarding their sources of private donations.⁵⁹ While political parties in South Africa have not generally cooperated in terms of disclosing their private funders, the African Christian Democratic Party – which has revealed the extent of its private funding – sets a precedent for driving forward the principle of disclosure.⁶⁰

A lack of regulation of party funding could lead to corruption and this would have a negative effect on the democratic project which is yet to gain the electorate's confidence and trust. Transparency and openness as features of democracy have to be fostered and promoted when dealing with the issue of party funding. For argument's sake, what would the electorate make of statements made by political parties when they argue, for example, that "as a matter of principle his party did not reveal its funding sources"?⁶¹ In the absence of regulations to promote the above principles – coupled with many cases of corruption – the electorate's trust and confidence in politics and its procedures and institutions gets eroded. This further leads to, for example, voter apathy which has already hit Southern African elections and threatens the wider and more meaningful participation of the electorate.

This ultimately undermines the concept of political equality that presupposes one citizen, one vote because private donors find their way through in terms of topical issues. The need to put in place sound regulatory mechanisms is meant to consolidate the principles of transparency and accountability in terms of political party funding, whether in the form of public financing or private funding, which are both indispensable for democratic governance. As the situation stands, serious attention is not given to the issue of party funding, and this poses a challenge to the principle of level playing fields and hence to democratic consolidation. For example, "no SADC country compels political parties to conform to rigorous disclosure laws and any limits on campaigning expenditure are exceptional".⁶²

CONCLUSION

Debate about the use of state resources is intensifying as South Africa's 2004 elections draw closer. Central to the debate is the recognition that a level playing field is conducive to free and fair elections. Unless state resources are used fairly and equitably among the political contenders, the political playing field becomes uneven, thereby thwarting progress towards democratic consolidation. This is especially significant for South Africa where political participation in the past excluded the majority. The crux of the matter is whether democratic consolidation is under way in South Africa after 10 years of democratic rule.

An argument that runs through this paper is that democratic consolidation can only occur when democratic values and principles are upheld. Discussions

have shown that one area requiring critical attention in attaining this goal is the fair and equitable use of state resources. The contention is that it is only when political competitors have fair and equitable access to state resources that they can compete effectively and adequately. In connection to this, a number state resources were discussed and were critically analysed in light of the relevant legislation. The paper also discussed South Africa's Electoral Act, 1998, the Prevention and Combating of Corrupt Activities Bill and the IEC. The general observation is that there are some discrepancies inherent in the legislation itself as well as in the actual enforcement thereof. In addition, selected cases were provided to show that in certain circumstances the incumbent flouts constitutional and legislative tools and mechanisms, thereby undermining the political playing field.

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Public funding regulatory mechanisms to prevent the abuse of state resources

DIRK KOTZÉ

INTRODUCTION

This paper deals with the regulatory mechanisms of public funding for political parties in South Africa as such. It is confined to South Africa and does not include the Southern African Development Community (SADC) or the region. It also concentrates mainly on public funding – political party funding – and not on the use of public resources in general.

The discussion centres around two approaches as paradigms or frameworks for analysis, namely: the predominantly public funding (European) approach; and the private funding (American) approach. In South Africa both types of funding are allowed for parties, though only public funding is regulated. This paper shall first look at the statutory framework in terms of which public funding is regulated.

STATUTORY FRAMEWORK OF PUBLIC FUNDING

In terms of the present situation regarding political party funding in South Africa since 1994, or more specifically since 1997, there is very little to report on. This is because there seem to be differences in interpretation of exactly how public funding specifically for political parties is regulated at the moment.

The Act that deals with it, and which is managed by the Independent Electoral Commission (IEC), is the Public Funding of Representative Political

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Parties Act 103 of 1997. The Act, to a large extent, does not deal with elections but rather with periods of funding in between elections. Two sections in the Act are relevant for this discussion. The first is Section 9(3)(a). Paragraph (a) stipulates that when parliament is dissolved every party must close its books and its accounts 21 days before the election. This means that three weeks before an election parties can no longer use the public funds that they have received from parliament.

Sub-paragraph (b) states that the day before the election the party must repay to the IEC all balances that were unspent three weeks before the election, of all the moneys that were allocated to them. So, strictly speaking, there is a division between the period before the three weeks cut-off date and then the period from the three weeks up to the election. For the last three weeks before an election no political party is allowed to use any of the public funds, but during the period up to the three week cut-off date it seems that they can use it. Three weeks is obviously a very short period before an election; therefore, it must be taken for granted that most political parties' campaigns have to a large extent been completed by the beginning of the three-week period. The three-week period is obviously a critical period in any election campaign. For example, in the run-up to the 2004 general election the African National Congress (ANC) calculated that there would be a campaigning period of eight weeks. Therefore, the three weeks are relatively short, but it is still almost half of the campaigning period.

Another important section of the current legislation is section 5, which explains what the purposes for the use of public money are. It stipulates that public money can be used to:

- development the political will of the people;
- bring political parties' influence to bear on the shaping of public opinion;
- inspire and further political education;
- promote active participation by individual citizens in political life;
- exercise an influence on political trends; and
- ensure continuous, vital links between the people and organs of state.

Excluded from public funding is the funding of remuneration, fee, reward or other benefit for members of any of the legislatures. If a party already has a person in a provincial or the national legislature, then the public money cannot be used for their extra funding in terms of remuneration or bonuses or anything

else. Second, the money cannot be used for party businesses; for example, in investment funds or in other forms of real economic business that is not political business. Many parties nowadays have investment arms or some form of trusts that they use to make money for themselves: public money is excluded from that use.

In the present South African context it appears that public funds are only in a limited sense available for electioneering.

Two main criteria are used for the distribution of public funds: the proportionality criterion, which amounts to about 90% of the allocation; and the equity criterion, which is about 10% of the allocations per year.

WHY REGULATE?

In order to engage more thoroughly with the topic, we need to ask, firstly, why it is necessary to regulate the funding of political parties. Why not just let parties control funding themselves and in a *laissez-faire* manner? Secondly, and related to this, why should political parties receive public money? Why not leave it to them to collect whatever money they can get without the state or the public fiscus being involved? Why should the state have a specific obligation to fund political parties?

It is telling that we do not have to look only at developing, relatively poor countries when discussing the issue of public funding. There are at least two models of public funding: the American and the European models. The American model determines the way in which elections are funded, and political parties get their money from interest groups, foundations and support groups (so-called 'hard' and 'soft' money). On the other hand, the idea of public funding of parties is something very much associated with continental Europe. Germany and France are two good examples of where public funding is an inherent part of a country's political party situation, while in the United States (US), for example, there is almost no public funding. Public funding is therefore not about rich versus poor countries. Rather, it is about a certain understanding of the relationship between political parties and the public sphere, or the state and its responsibility towards multipartyism or the society's political parties in general.

From a funding point of view, public funding is necessary because modern political parties cannot survive today on the old traditional forms of income, especially from membership fees, subscription fees, donations and so on. At the

same time political parties have become one of the most critical elements of any modern democratic pluralistic dispensation. A healthy party political situation is therefore critical for the functioning of democracy.

Another important consideration – and one that is relevant to the question of funding – is the role of campaigning through the media. The old-fashioned way of campaigning on a one-on-one basis has been largely replaced by public campaigning through the media, which obviously requires more substantive resources. Political parties are therefore willing to trade for influence; in other words, they are willing to accept money from outside in exchange for influence. There are different forms of influence but the critical question, since it relates to the notion of funding, is: What are acceptable and what are unacceptable forms of outside influence on political parties?

EXTERNAL FUNDING AND INFLUENCE

There are various forms of influence but for the purpose of this paper we will focus briefly on only three of them. The first is influence by domestic interest groups – for example, business groups – that have a direct influence on political parties and ultimately also on the governing party. Another influencing factor that we have seen not only in the African context but also in other countries, is influence as a result of concentrated regional support for particular political parties. We know, for example, that the African National Congress (ANC) has more support in Limpopo Province than in the Western Cape. By implication, this often translates into influence. Limpopo will have arguably more influence in the ANC, and by implication therefore also in government. The third form of influence – which is complex and almost impossible to regulate – is influence from outside the country. Three examples from the past number of years will illustrate this point: two from outside the country and one from inside the country.

Example 1: It is well-known that in the 1994 election Taiwan gave huge amounts of support to the ANC for its election campaign. As a result, the new ANC government refused to change its diplomatic relationship with continental or mainland China, but tried to pursue a ‘two Chinas’ policy. A reliable source contends that this was the main reason why President Mandela refused to change the policy to the one that the parliamentary portfolio committee on foreign affairs and the ANC’s parliamentary caucus preferred, namely a policy only preferring the People’s Republic of China.

Example 2: In about 1996 Denel (Armcor) received a contract from Syria

to upgrade that country's military tanks. The Israeli government immediately reacted since it saw this as a direct threat to Israel's internal security. As a result, Israel requested the US to put pressure on the South African government to stop the deal, but the Americans said they had no arm-twisting power. The Israeli's then approached the Japanese who, because of their high level of foreign direct investment in South Africa, were able to get the South African government to stop the contract.

The above examples are of 'other' forms of influence. Though not the result of direct business or interest groups funding of the ANC, they nonetheless had very direct and strong policy- and decision-making implications.

A different example of indirect influence is what is now referred to as the Oppenheimer's Brenthurst Initiatives. The first one was established in 1994 when President Mandela brought together a number of top business people – the Oppenheims, the Ruperts and others – to consult with the government on an ad hoc basis on important, mainly macro-economic, issues. Recently, the Oppenheimer family launched another initiative in response to the Mining Charter. The Oppenheims started their own black economic empowerment campaign from within the industry. This has a direct bearing on the way in which the government (or the ANC) views certain interests in South Africa, and specifically business interests, and how this impacts on important ANC policy initiatives.

It is therefore important that we determine where influence originates from and whether it is acceptable or unacceptable. Questions related to the issue of influence include the following:

- *Can influence affect election results, specifically from the focus point from which we are viewing it?*

Possibly yes, especially if an election campaign is based largely on public campaigning that uses media advertisements and expensive campaign material, and less on a one-on-one type of campaign. Money from donors and interest groups is therefore even more important in order to finance an election campaign. The more effective the campaign, the more will the donors have an impact on it.

- *Can influence determine who will become the members of parliament and members of other legislatures, such as provincial legislatures? For example, the compilation of party lists for elections is a highly competitive process.*

Can the order of people on these lists be determined or influenced by external initiatives through donations and other forms of financial contributions?

Supposedly yes, external forces could influence who the elected representatives are.

- *Can undue financial contributions influence government decision making?*
Again it can, but it depends who are influenced because influence can come from various sources. It can come from donors, interest groups or even from semi- or more formal forums such as Nedlac, which is not necessarily directly part of the government process. Quite often an influencing role in decision making is presented within the framework of a corporatist relationship with government. But influence can also come from the media, as well as from social movements, such as the Treatment Action Campaign, the Anti-Privatisation Forum, or the Landless Peoples' Movement. There are therefore different ways in which decision making can be influenced and it would be wrong to argue that the influencing of decision making originates only from those who act as donors or who provide money to political parties, and specifically to the ruling party.

In conclusion, regarding the morality of donor money to political parties, we should look at all the different sources of influence and try to establish whether the influence coming from donors is in principle undue, compared to other forms of influence. Is it per definition eroding the democratic assumptions or not?

Arguably more significant in a broader sense is the public perception of the funding of political parties by especially private funders: Does that have a negative impact on the public notion of multiparty democracy in general, as well as on the public credibility of multiparty democracy? Are people becoming more despondent, more cynical, about the role of political parties in general? Does it also have an impact on the integrity of democracy in general?

Some surveys have been conducted recently – for example regarding floor crossing – which concluded that people lost interest in political parties because the floor-crossing practice now makes it possible for elected representatives to move between parties based on their own judgments and not necessarily because of their understanding of public opinion in their constituencies. This has undermined the credibility and integrity of democracy in general and of elected institutions in particular. Does this same cynicism apply to the funding of political parties by private interests?

PRACTICAL SUGGESTIONS AND PRINCIPLES

We turn now to practical terms, suggestions and ideas about how to deal with public versus private funding. It is important to state at the outset that public funding cannot be regulated if private funding is not also regulated. If only one side is regulated, the other side is completely open to abuse; the loopholes on both sides must be closed. This is essential as a point of departure but obviously very difficult to implement.

In terms of this private–public nexus, at least two principles are applicable. First, in order to ensure that funding from whatever source – whether private or public – is not abused by both political parties and funders, a substantial portion of political parties’ income must be in the form of public funding. If funding is left entirely to private funders, private donors’ opportunities for exploitation are hugely increased. We should avoid at all costs a situation whereby a party is dependent on a few private funders; and public funds can counter that dependency.

The second principle, which relates to the way in which the IEC manages the Act, is that there must be expenditure control in the form of public accountability. This principle is what underlies the European experiences referred to earlier.

One can add a third principle, which is that there should also be income control (such as in the US), not only expenditure control. At present, in the annual IEC reports on this particular matter, only statements about the public contribution and the parties’ expenditure are revealed, but not on all their income. We therefore know what parties spent but, except for the public contribution, we do not know where they get the income from. Arguably the main thrust of Institute for Democracy in South Africa’s (IDASA’s) present campaign is to ensure that parties account in the public domain for their sources of finances, over and above the public contributions they receive.

PRINCIPLES

In searching for principles to guide the funding of parties, it is easy to be accused of having a eurocentric approach; yet is difficult to find stated and tested principles in other parts of the world. Hence, it is useful to look to Europe, and in particular to the Council of Europe, which in 2001 identified seven principles that should guide the financing of political parties. These are the following:

- There must be a balance between public and private funding.
- Fair criteria must exist for the distribution of public contributions. This emphasises the idea of fixed, known, predictable criteria.
- Strict rules must exist concerning private donations.
- A threshold on party expenditures in campaigns must exist; that is, there is a maximum amount that any party can spend on an election. The lack of a threshold leads to structural imbalances and disturbs the quest to achieve ‘level playing fields’, whereas a maximum threshold establishes a structural or systemic hold on imbalances. This principle does not yet feature in South Africa’s conditions.
- There must be complete transparency of financial accounts. In South Africa, this transparency already exists on the expenditure side but not on the income side.
- An independent auditing authority must be established. To some extent this already exists in the form of the IEC but some would say that a fully independent auditing authority should be established that is not linked to any electoral management structure such as the IEC.
- Meaningful sanctions must exist for those who violate these rules. Some form of enforcement mechanism is needed to ensure these principle do not become mere statements of intent.

The public funding that political parties which are represented in parliament currently receive follows a particular pattern; that is, with the exception of the ANC and the Minority Front, all political parties’ expenditures are almost completely covered by their public funding. In some cases parties have even saved money, as in the case of the Freedom Front where the public money received from parliament against its expenditure is at a percentage of 144%. In the case of the ANC, the money it receives from public funding covers about 60% of its expenditure, while for the Minority Front this is about 78%. Most of the other parties more or less break even – but we do not know what they have received over and above the public funds that could be used for other purposes.

These statistics do not, however, reflect expenditure during an election year. After the 2004 general elections it will be interesting to see what is reported to the IEC in terms of public income in relation to total expenditure. This will most probably differ from non-election years, because more expenditure is involved. As a general conclusion it appears that in most instances the expenditure of smaller parties represented in parliament is paid by public money.

TWO PARADIGMS

We have already referred to two paradigms of public funding: the European and the US. We turn for a moment to the latter paradigm, which does not include public funding. The Bipartisan Campaign Reform Act of 2002, or the McCain Feingold Bill as it is also known, was legislated in 2002 after a long history of Congressional debates and bargaining. The Bill is, however, being challenged in the US Supreme Court and its constitutional status is therefore uncertain at present. The legislative drafters tried to draw a distinction between hard money and soft money. Hard monies are direct contributions from supporters and from members. The Act places a maximum limit on individual contributions. (The Republican Party is extremely good at mobilising this type of money.) Soft money, which has a much higher limit, is money given for specific purposes – similar to the public money in the South African context – and is meant to be used for voter education, political campaigns and for general political work. But it cannot be used for election purposes.

What is significant about the situation in the US is the role of outside groups who run election campaigns on their own in support of political candidates. The loophole in the limitations imposed on both hard and soft money is that outside groups can continue on their own and endorse or support specific parties or interests or candidates, and in that sense become almost proxies for political party campaigns. To limit their influence, the Act prohibits such advertising 60 days before an election in order to prevent it during the critical periods of elections.

The utility value of this example for the South African context is unclear because there are a few problems with it. First, if we look at the two main paradigms, the European paradigm, which is more based on public funding, is hampered by the question: What about new political parties that are not represented in legislatures and are therefore by definition excluded from the

proportional public allocations? In the South African context this is a serious consideration, also in respect of the current practice of public funding. For example, before the 1999 election the United Democratic Movement was not represented in parliament. After the election it became the official opposition in the Eastern Cape with some 12% of the votes. It took away about 11% of the ANC's votes in the province, making it a significant party in the Eastern Cape even without public funding. We should therefore be sensitive to the fact that public funding can result in a systemic imbalance or unfairness.

PROBLEMS ASSOCIATED WITH PUBLIC FUNDING

Another problem with the idea of public funding is that in a real sense it entrenches the majorities and minorities of previous elections. In other words, for the purpose of public funding and the latest election, the majority of five years ago will still be the majority for now, and the minorities will remain minorities irrespective what has happened to public opinion in the five years that followed.

The structural weakness of this system is that it does not reflect new tendencies in a society's political sentiments. Take for example Zambia at the end of the Kaunda period and immediately before Frederick Chiluba's MMD won its landslide victory, or before the 1997 general election in Britain. In terms of this philosophy the Conservatives in the United Kingdom would have been treated as the majority for the purposes of funding despite their unpopularity and the fact that the Labour Party enjoyed the *de facto* majority and became the government. So a structural imbalance or a structural deficit is seen in the funding distribution, which does not reflect new tendencies in a society; though these can be depicted quite reliably and early on in opinion polls and surveys.

On the other hand, it should also be acknowledged that it is a fallacy to think that all parties are equal. They are never equal; not in terms of all the information (opinion polls, surveys, etc.) that we have available nowadays. This is a direct reflection of how the dynamics have changed between different political parties, and it has an impact on elections. Therefore, we cannot say parties are completely equal. They must have an equal chance to compete for the vote but in terms of power relations, equality in elections is a pipe-dream.

When talking about public funding, we must warn against the situation where parties become too dependent on public funds. Ultimately, political

parties are still supposed to be in direct contact with their constituencies and with their supporters. If parties start to believe that they have a secure form of income, it undermines the thrust and motivation to have a strong and intimate relationship with their supporters, especially if public money is sufficient to fund much of what they want to do.

One of the advantages of the public funding approach is that it can be controlled or managed relatively well by institutions such as the IEC. One of the deficiencies in the South African system, as already indicated, is on the income (private sources) side.

If we look at the US hard money–soft money approach, one of the most serious problems is the huge loopholes that exist in terms of regulating influence. It is almost impossible to regulate influence – influence through donations and otherwise – and also the establishing of interests; constituencies with particular interests and their having privileged access to decision-makers or representatives in general.

Another big problem for both paradigms in this respect is the fact that because the world is now relatively ‘small’, money donated to parties or candidates can be laundered between countries through the use of trusts or other companies, and ultimately returned to the receiving political party or candidate without being detected. We know that most political parties nowadays, in addition to having their own bank accounts also have trusts and other forms of legal entities with accounts they can use. For example, a particular country can donate huge amounts of money to a political party in an account which looks completely innocent, but is actually controlled by that political party.

As a consequence, the Council of Europe has suggested that no offshore donations should be allowed. As a general principle, this is obviously a very controversial point: Should money from outside a country be accepted by political parties or not?

Another problem with the US way of excluding public funds is that in developing countries where there is a small middle class or business class, there is often not a large enough pool of potential donations from which parties can solicit their private funding. So in some circumstances public funding becomes almost unavoidable. In relatively poor countries, such as Angola, there is a small but very rich group of people, mostly business people, and at the same time there is a huge group of poor people. The poor people will hardly be able to contribute to any of the major political parties but the small group of rich

business people can do so; and this will give them a disproportionate influence on political parties.

CONCLUSION

One of the advantages of public funding is that it introduces more equity into the funding process than a system that is solely reliant on private funding. One should acknowledge, however, that public funding excludes parties that are not in parliament or in the other legislatures. In this respect it entrenches the status quo. In the private funding (US) system the status quo is less entrenched; it is more flexible and it encourages political parties to have a stronger link with their real constituencies and not to rely too much on public funding.

The debate that South Africans will have to enter into is not only in terms of its public funding component; it will also have to consider the private funding paradigm and to decide to what extent the two can be combined under present conditions. It is therefore not an 'either/or' choice but rather how a combination can be used that will result in the more efficient regulation of both public and private funding.

Political culture and the public funding of political parties

EBRAHIM FAKIR

BACKGROUND AND INTRODUCTION

It is hardly possible to consider the funding of political parties, whether public or private funding, whether for campaigning and elections purposes or for routine party organisation and functioning, as a seemingly apparent instrumental policy regimen that can be codified or instituted in isolation from and distinct from the broader political context, the political moment or South Africa's political history.

The matter of party funding from either the public or private realms is closely intertwined, interrelated and interdependent and must be situated and contextualised within the broader political context and the current political moment. It will be fundamentally a political issue that is implicated in the broader ideological and political complex of the competition for social, institutional and public power; one that will be implicated not only as a policy choice in and of itself, but one – depending on the way in which its formulae will be determined, applied and dispersed (or disbursed) – that will determine later political and policy choices that are made in a society. It has the capacity to impact on and influence the type of redistributive politics (or lack of it) that we need in our evolving democratic transition.

I might by way of introduction also posit that what we determine as an appropriate and adequate policy regimen regarding the funding of political parties will be impacted upon and will in turn impact on what we conceive of as 'democracy', as 'democratic practice', and on the size, scope, nature and

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function of our political or democratic institutions. It will also, in my estimation, impact on the depth and rate at which political parties – as social and political actors contesting the public space – will be able to represent, articulate and mediate the views, concerns, aspirations, desires and motives of their constituencies.

In addition, political parties with a sufficient and adequate resource base have the potential and ability to infuse the political culture and political dynamic in a society by adding to robust political debate, making contributions on policy, engaging other social and political actors critically and constructively, and can potentially mobilise and engage their members towards an orientation that serves the public good; or at least a public political discourse.

Of course, the flipside is also true; that parties with large amounts of money and resources might and may potentially add to complacency and disengagement from social concerns and from citizens at large, for a variety of reasons. But in the case where access to the resources parties rely on is regulated by an appropriate policy regimen in the public realm – guided by the principles of equity, equality, representation and representivity – the risk of reduced funding in future may serve as an effective deterrent to this. Equally, where the private funding of political parties is concerned, a policy regimen that is guided by the principles of accountability, transparency, disclosures and caps on revenue or spending may well militate against parties' complacency at the risk of the discontinuation of funding, as the transparency and accountability mechanism will demand a level of openness that may well prove embarrassing in a robust political culture that would demand to see parties functioning in publicly transparent ways.

The point is now well established that the question of the funding of political parties is not a technical exercise to be governed by the instrumental 'input-output' systems theory which dominates much of our policy practice (incorrectly and inappropriately I might add). This is not a mere instrumental, technical exercise; quite the contrary, it is a fundamentally political and ideological one.

Second, the question of the public funding of political parties for electoral purposes is in and of itself limited, if looked at in isolation from the private funding of political parties and the funding of political parties in general. In addition, thinking of the processes engaged in by political parties regarding campaigning and canvassing during electoral periods as distinct from the activities carried on and out by political parties as part of its 'political function'

is a continuous process – one that cannot really be differentiated and distinguished from the ordinary functions of a political party; even one that may not be a part of the formal/institutional/parliamentary/representational political complex. To then attempt to consider only the public funding of political parties during elections is to consider only a part of a very complex social and political reality.

In short: there is no text without context and no context without the text; no specific without the general and no general without the specific.

There is a relational connection between the one thing (the public funding of political parties) and the larger whole within which it finds itself (the general political culture and context).

THE POLITICAL CONTEXT

The political, social, cultural and economic context in which we find ourselves is dynamic and fluid, characterised by degrees of complexity and, inevitably, contradiction.

Consequently, it would be difficult to make easy assumptions about the prevailing political moment and or the evolving political transition. While there are emergent trends, they remain susceptible to change. Despite this, it may, I think, be possible in the evaluation of the issue of party funding to consider the historical context – the historical antecedents of our historical political development – as well as the evolving and unfolding continuation of the political trajectory in which we find ourselves.

The question of how to reconcile the complex and contradictory roles of different social and political forces and actors in a society undergoing transformation is neither new nor unique to South Africa. In South Africa the objective material conditions that pertain are, however, in essence determined by the contextual particularities and peculiarities of its circumstantial historical legacy. That is, by its legacy of apartheid colonialism, of manifestations of late imperialism as a particular form of globalisation and the consequent vigour of a relatively volatile free market, and the expression of these through successive repressive apparatuses of state authority (apartheid), or particular forms of economic distribution (apartheid capitalism) or political and economic domination and subordination (apartheid capitalism and globalised neo-liberalism). These objective conditions are further shaped by the struggle against these manifestations in certain historical periods, and particularly by

developments in the aftermath of the struggle against apartheid, as well as by the transition from racist authoritarianism to a largely liberal democratic trajectory with elements of radical social redistribution, limited as this may be.

Consequently, the transition of formal political power in South Africa has been characteristically unique, typified as part successful revolution, part the result of shifts in international balances of power, and possibly, part negotiated settlement. Any such characterisation of a transition, South Africa's in particular, bears profound implications for the political space that consequently becomes available and that can then potentially be contested.

In general terms though, the distinguishing features of the South African transition to democracy are ultimately not that different from the temporal global movement oriented towards an impulse for democratisation, the dismantling of what were considered authoritarian regimes in Eastern Europe and the shifting relations between individual, society, economy, nation-state and the international system. Political parties played a crucial role in this changing context, and the role of political parties in such circumstances became defined by a fluidity that escaped easy definitions of the roles they played, the functions they fulfilled and indeed of the very nature of their identities.

During the transition – and indeed during the continuing evolution of South Africa's transition – political parties played a variety of complementary and sometimes contradictory roles; some more successfully than others. There is no doubt, however, that in the current political moment parties are having to respond to the continuing contradictory internal cleavages and stratifications that remain pronounced – particularly across the divides of poverty, inequality (racially defined), race, class, ethnicity, sexual orientation and ability (recently, health status regarding HIV status has entered this discourse). The manifest expression of these apparent contradictions – both the social contradictions inherited from apartheid and the continuing contradictions spawned by an evolving and dynamic transition – provide a useful background in which to locate the state non-state/public sphere interface.

Naturally the role and function, and indeed the power of political parties, is fundamental here. There are crucial issues to consider; how in this context they are able to muster the kind of resources required to play an adequate and appropriate political and representational role. This trajectory in part also determines the possible limitations that political parties as social actors face in shaping a role for themselves.

In addressing or attempting to resolve or at least obviate the consequences

of such contradictions, different periods in South Africa's history become discernable. I will confine myself to the 1980s onwards.

During the 1980s, the relationship between the organised public space – what others refer to as civil society, that is, non-governmental organisations (NGOs) and community-based organisations (CBOs) – and the state was relatively straightforward. Progressive non-state social actors and social forces during the years of apartheid agitated and militated in opposition to the state. In most instances its constituent organisations acted to create alternative structures of power (street committees, peoples' courts and civic organisations – particularly in predominantly black townships) invariably in an attempt to subvert the dominance of the repressive apartheid state apparatus and to influence the internal and international ideological apparatus in an attempt at dismantling the South African state in its then current form. During the transition period, however, crucial decisions on the shape of the South African political and social system, and the power of interest groups within them, had to be negotiated. To make their and their constituencies voices heard in the process, organs outside of the then state had to engage the incumbents of the existing state, either directly or indirectly. Much of this engagement on the 'progressive' front was done through the then unbanned African National Congress (ANC) and its allies, especially by supporting them with the resources and expertise needed in the negotiations with the state. In addition, some organisations interacted with the state directly.

Scrutiny of the negotiation process that unfolded in South Africa reveals that many varied forums were in place negotiating elements and aspects of the envisaged social and political reconfiguration of South African society. Forums existed and operated at all levels of governance and involved a variety of stakeholders in the debating of policy and programmes. Invariably there was also a persistent sense that past legacies of misrule would place a great burden on the incumbent government, particularly in the area of socio-economic development. It was impossible to wait until the end of the negotiations to tackle the task of reconstruction, and in that vein the process of developmental work had already begun.

In a sense, the creation of several forums in the negotiations process represented an attempt to put into practice the theoretical concept of "the public space" as a force engaging the state, but not necessarily seeking to replace it. By giving organised structures in the public domain such a stake in the process, the dangers of their being absorbed into centralised and bureaucratic

structures and modes of operation became real. The issue of the representative nature of such organisations also emerged in that context, but during the transition period they continued to play an active role in society, particularly when the negotiation process had deadlocked and political violence in the country had spiralled.

Developments during the transition process had a profound impact on the subsequent shape of South African democracy in the post-1994 period and a precedent was set where formal representative democracy negotiated by political elites, became not the only way in which citizens could have a say in the country's affairs.

What then, has this meant or does it mean for political parties in contemporary South Africa? (My emphasis is on the ruling party.)

I would argue that in part political parties – and of course the governing party and its alliance partners – were shaped by the experience just outlined. Captured in the frame of the role that they had historically come to play, has come to be the legacy which shapes them in the current moment.

This has not really yet addressed the question of the funding of political parties, but it does in part lead us to understand why and how the governing party leveraged notions of credibility and legitimacy for a large-scale electoral victory, popular support for its policy programme and the ability to craft an identity that easily shifts between political party, mass movement, 'popular front' and social movement. The leveraging of popular legitimacy and international credibility has allowed it to forge a popular consensus about its status in contemporary South Africa. This to me is important as one of the less tangible, or less overt ways, in which resources or 'social resources' are mobilised for electoral support and as political currency.

Let me return then to the contemporary period, which is characterised by:

- a constitution that creates a liberal democratic rights framework, which creates concomitant social obligations, duties and responsibilities;
- an overwhelming and overweening majority party whose dominance is set to continue (this is not a value judgement, simply an objective condition); and
- a robust democracy that is contested and contestable, despite a large and powerful ruling party.

In essence, South Africa's political context is characterised by political competition and degrees of political participation, despite decreasing levels of popular participation (decreasing because of the ability of organised and powerful groups that dominate policy processes). We are in part witnessing the emergence of a democracy in which critical engagement is continuing in the public domain, signified by the emergence of nascent social movements, which despite their own strategic and tactical shortcomings have challenged the state and the ruling party – albeit at the local level only, on a range of issues in municipal service delivery, such as water, electricity and the privatisation of municipal utilities.

Yet on the socio-cultural front, despite a successful transition, there are increasing levels of social inequality between races (inter-racial inequality) and within races (intra-racial inequalities). There is a general trend of increasing inequality with distinct patterns which have changed over time. While historically the poverty and inequality gap was straightforwardly between whites and blacks, new patterns suggest that this gap is both fairly constant but for a small number of blacks, there is a narrowing in part. Between blacks, however, the gap is increasing, as it is amongst white's themselves. Emergent is the crystallisation of class identities in nascent form, and consequently class alliances that are framed in patterns different from the past.

There is also continuing political inequality, racism and minority fears (unjustified as they may be) of what is perceived of as 'rampant majoritarianism'. In the sphere of governance:

- There is a discernable gap between policy intent, formulation and implementation.
- Some political institutions are entering a phase of stability with established procedures, conventions and protocols, whilst others are still evolving or developing. On the other extreme, others are in an almost perpetual state of transition (for example, traditional leaders).
- In the main, the relations of production and consumption which follow the conceptual inheritance of the mechanics of an economy bequeathed by apartheid have been retained. This is consolidating through economic liberalisation, unregulated markets and free trade which are becoming the international norm.

- There is increased and sustained pressure on the domestic economy from intra-country migration from rural to urban areas, international immigration of skilled foreigners as well as continental migration from less stable African states.
- The policy environment has been dominated by a technicist approach that has viewed policy formation as distinct from broader political and ideological processes and that has been marked by an instrumentalism of sorts.
- There has been a modest degree of economic growth without any potential for job creation. Despite this modest economic growth, a concomitant distributive agenda that is simultaneous with, and contemporary with, growth is lacking.
- There is an absence of a viable industrial and redistributive policy despite large amounts of budgetary spending on social goods and services and the implementation of social pensions, such as child grants.
- There has been a rampant spread of HIV/Aids with its concomitant impact on social, cultural, governance and human rights frames.
- There has been a decreasing budget deficit but equally there has been a decrease in the distribution of available and accessible public goods and services.
- There is a strong conceptual frame that sees an effective separation of powers between the executive, the judiciary and the legislature. There are strong and well codified accountability and transparency mechanisms. These, however, are ineffectively (and inappropriately) used as party political defence mechanisms which fail the public on crucial issues such as health, education and welfare.

This then is the context in which political parties operate.

Regarding political parties themselves, however, a crucial question that emerges is: What choices are citizens left with, and what is the difference in their policy platforms?

I would argue that there are no vast and seismic differences in the policy platforms available. Of course, the goals of all parties are quite similar, but there may be differences in the mechanics each would opt to achieve them.

Overall though, choices are limited between variants of essentially similar things. This is not particular to South Africa. The relative limitations of choice between political parties, dictated to in part by global realities, are not the only choices affected and impacted on by the rise of the transnational and multinational companies; but the real policy choices available are in a similar way limited and affected by this.

The fundamental issue that would arise then is: How is this related to the issue at hand, namely, the public funding of political parties for election purposes. I hope I have made clear the link between this issue and the general political context. More crucially, however, is that this question is not simply about funding but about the resources that political parties can mobilise in general – not only for elections purposes, as that is the topic – but more importantly for me, for general purposes.

In terms of framing an appropriate policy regimen for the public funding (or other funding) of political parties, in the context of the reality (complex and contradictory as it is) what would be the conceptual impetus guiding the principles that would underlie this policy regimen? More fundamentally, what and how do we conceive of democracy and the democratic impetus in such a context? What is the challenge to societies in such a time; how would it or should it guide the funding of political parties to encourage genuine political participation and competition, even though formal political parties are not the only way in which this is now occurring? (Note here social movements which could be another model of party or organisation.)

My emphasis is going to be on the conceptual rather than the instrumental. The question I am asking – and hope to answer – is: What is the principle behind the policy instrument? This should not be thought of as instrumentalist or functionalist – simply serving a regulatory purpose. And though that is what it does, it must in the final instance be related to, and account for, the dynamism and ideological apparatus at work in the political dynamic of a particular society, reflecting the political continuity and discontinuities of inherited political traditions but also more directly, of their own experiences as social and political actors and the organisational and institutional experiences that they are imbued with.

Secondly, to reiterate on an earlier point, this question of the public funding

of parties for elections cannot be distinguished from the private sources of funding of political parties. This is particularly relevant in South Africa where there is no policy regimen that governs the private funding of parties; where there are no disclosure requirements and no auditing processes that arbitrate this. It creates a number of potential inequalities, where private donors might be buying policy influence without anyone knowing. It potentially negates the political actions and the very suffrage of ordinary citizens. This may not always be as insidious as may be made out, but simply that it is *potentially* corrosive, which in a context of inequality can prove to be dangerous, in the event that policy influence may unethically be influenced by domestic private donors or international public ones. Moreover, in a formal political and legal dispensation guided by the values of accountability, transparency and openness the continued non-disclosure or non-regulation of private donations to political parties seems incongruous.

There is important and crucial work being done in this area by IDASA and the Institute for Security Studies, but this matter of public funding – the other side of the coin – is equally crucial. My point is that I do not think they are as separate as we might think they are. In thinking about this question, the potential inequalities that might arise, I think we need to critically evaluate the strengths and weaknesses of both the public as well private funding of political parties in tandem or contemporaneously. In evaluating the strengths, weaknesses and opportunities that each provide for resourcing parties to play an effective role, we might be asking serious questions about the quality of our democracy and of the democratic enterprise of subjecting competing political and ideological interests to public debate for public arbitration, and finally public choice – essentially what democracy is about. It allows us to focus on the strengths, weaknesses and opportunities offered by each; it allows for an evaluation of which needs to be addressed in what way; it allows an identification of the niches in each type of funding that might enhance the representative depth and capacity of political parties – by allowing us to create a funding enterprise that will allow for a regimen that will foreground qualitatively, the following guiding principles: relative equity, equality, representation and representativity, access and inclusivity and will allow for the real competition and multipartyism that the constitution talks about. Of course, the constitution talks about multipartyism as an instrumental feature, merely that the ‘space’ for different parties to exist and compete is guaranteed, not that there must always be competition or the resources for parties to do this.

My point is slightly different, it attempts to enhance this notion to a qualitatively different aspect creating and bolstering not only the space, but creating the real ability for parties to contest for power in the context of mobilising a minimum access to resources that will facilitate this. Clearly, in an instance where some parties, in the absence of a disclosure regimen for private funding and where the public funding of political parties is governed by a policy directive that sees the largest representative parties cashing in on proportionately the largest slice of public funds, an inequitable distribution of funding emerges, effectively marginalising smaller, emerging or nascent parties.

This is one reason why we need an appropriately designed regimen for the public funding of political parties. The stimulation of different political parties to contest for power and to give citizens a greater amount of choice, the ability to enhance and replicate a representative and representation function to basically play a more profound political role in society – and to counter the potentially corrosive influence of private money, or undeclared and non-transparent access to resources – all of these would require some sort of adequate resourcing of political parties.

Political parties, without a doubt, require funding over and above that which they can collect from membership fees or other subscriptions that they may be able to rely on. In the vast array of functions that parties play in society, their costs, like any enterprise, mount: ranging from party administration and organisation, through to running and maintaining party offices, through to servicing constituents, campaigning during elections, media, publicity and promotions, party political education and the like. The democratic process relies in part on parties to communicate and motivate voters, and overall this proves costly.

In the current moment there are three significant trends that emerge in the funding of political parties:

- There is greater instability in the position of political parties and the constituencies they represent.
- Ideological shifts and the break-up of natural constituencies of support have had an effect on the financing of parties.
- The identity, nature and extent of traditional donors to political parties is undergoing profound shifts in South Africa. By way of example, the ANC

no longer receives money from the USSR (it does not exist). Big Business has become an important donor to the ANC, despite the fact that it funds several different parties, while some of the ANC's and other parties' traditional donor communities remain intact, such as the labour movement for the ANC, business for the Democratic Alliance (previously the Democratic Party and before that the Progressive Federal Party), and large-scale agriculture and big business for the New National Party (previously the National Party).

Whatever the identity of donors, there is a widespread perception – real or illusory – that money buys influence and that parties, politicians and elected representatives are beholden to those who fund them.

The reality is that parties need funding, from whatever or whichever source. In this regard it is crucial that private funding be regulated; that public funding be adequate, that is, be guided by an appropriate policy framework that is underscored by principles of relative equality, equity, representation and representativity; that it allows for an inclusive and embracing electoral process that gives every party a fair chance to contest for power and electoral seats, not simply the opportunity to do so; and that funding from the public fiscus is seen to be distributed in a fair and equitable way consistent with the principles outlined earlier.

We will have to be creative and explorative in addressing this issue.

I would propose that the current regimen of public funding is in many ways iniquitous. While it realistically tries to limit the entrance of bogus parties it also in a very real sense limits new entrants to the game. In addition it skews the way in which large parties who already might have access to more resources and money than other, relatively smaller parties, continue to perpetuate their hegemony. Surely larger parties carry a bigger burden and justifiably they might be entitled to a bigger share of public funds, but equally so, other parties should be given a fair chance to compete in elections, to mount credible election campaigns, etc.; and this will all require fair and equitable public funding.

I propose a policy regimen that aims to address all the various concerns and which would aim to satisfy the criteria of access, equity, relative equality, representation and representativity.

In the public realm a fund needs to be created that would be administered by the Independent Electoral Commission (IEC) or some independent body according to the following formulae:

That a flat rate or amount be allocated to each registered political party that satisfies the registration criteria established by the IEC. Each party should then be funded by a percentage of funds that will be given on the basis of proportions of its representation in the national and provincial legislatures (retaining the tradition of the current Act), but that an additional amount be funded to all parties in inverse proportion to their ordinary signed up membership, proven by record at the IEC. Finally, that this be topped up by a post-election reconfiguration of the legislature, where majorities and seats may change, giving new proportions. This should also be proportionate to the number of post-election seats per party. This will be affected, of course, by the floor-crossing provisions and windows, should there be any shifts and changes in allegiance during the window periods. I propose the inverse principle to membership, to allow for smaller and unrepresented parties that can legitimately show a constituent membership to mitigate the fact that the current regimen shows a bias towards larger, represented parties. Clearly the larger represented parties continue to benefit from the first two provisions, where if they have large membership and large representation they will continue to benefit in direct proportion. Of course, the measure of membership at the IEC that I propose is an inadequate measure – but in the absence of any other (we have already used representation as a measure), I think it may be a valuable substitute where criteria to qualify for funding would place a threshold above a minimum number of X membership figures.

In addition a cap should be placed on the amount of private donations each party may receive; that there be a full disclosure regimen governing the receipt of private funding either in to-to or above a certain amount; this will be moot in the case of public funding as it will be a public process in any case.

In addition, I would argue that we need both private and public funding for political parties, but which would follow and satisfy the criteria above.

Private funding should be bolstered and topped up by public funding. Creating some equity and resources that parties can access may motivate parties to rely more strongly on the policy platform that they build, rather than on the amount of money they spend in campaigning.

CONCLUSION

I have tried not to be definitive and rather deliberately tentative, opening a debate around the issues of equity, relative equality, access, representation and

representativity. Of course, there are some parties – irrespective of the amount of money they may be able to mobilise – that will never make electoral inroads or enjoy popular legitimacy and credibility. And I would want to argue that the funding of political parties is not simply about money and access to resources, it is also about other issues, such as the legitimacy and credibility, popular or otherwise, that they enjoy, the leadership that they have, the policy platforms that they build, their ability to critically and usefully engage constituents, etc.

Public funding is not only about money and resources, it is also about access to the public broadcaster and the media and about the exposure and access that they enjoy on each. Moreover, in terms of the private media we have seen in the past some editorial lines taking party positions, some in explicit support for one or other party, in other cases endorsements, and yet in others direct patronage; this is a complex issue that requires further debate.

Conclusions and lessons learnt

KHABELE MATLOSA

LESSONS LEARNT FROM REGIONAL EXPERIENCES

Generally, an election is a fairly expensive event that necessitates a pool of public and private resources. Undoubtedly, commendable progress has been made towards the institutionalisation of democratic governance in the SADC region even if we concede that serious challenges confront efforts towards democratic consolidation. Surely, one of these challenges revolves around the manner in which these public and private resources are utilised and regulated during elections. It has thus been observed that there is a nexus between politics and economics such that there is a shift in public expenditure in the conduct of elections. The theory of political business cycle helps to explain this nexus between politics and economics especially during elections. The responsibility of earmarking state/public resources for elections is vested in the sitting government. In administering the public resources during elections the incumbent has to ensure that public resources are earmarked in a nonpartisan and impartial manner that in turn levels the political playing field.

Despite commendable achievements that have thus far been made with regard to democratisation in the region, there are, however, still deficits that pose a critical challenge to the consolidation of this democracy. One of the shortcomings that retard a remarkable progress towards the democratisation process is the use of state/public resources during and around elections. The general view that emerges from the chapters in this Occasional Paper is that the incumbents tend to shift 'public expenditure shares' unfairly to their own advantage and hence to the disadvantage of other political competitors in terms of the utilisation of state/public resources during elections. A wide range of

state/public resources including public media, public service, the security establishment, development assistance, state assets and particularly party funding have been brought to the fore to elucidate this dilemma.

As a feature of democracy, mechanisms which serve as checks and balances are put into place to promote and protect principles of democratic governance such as transparency and accountability. Thus, the legal and institutional establishments which are meant to check abuse of public offices and the administration of state/public resources have been discussed. These include constitutions, electoral laws and codes of conduct for political parties and the role of the electoral management bodies (EMBs). What emerges is that although these legal and institutional mechanisms are meant to regulate the use of state/public resources, the experiences suggest that serious loopholes still exist. The institutional and legal tools are flouted in various ways such that evidence abounds suggesting, in fact, that in past elections in most SADC countries, there have been various incidents of the abuse of state/public resources and in most cases by governing parties thereby bringing the outcomes of elections into dispute, and ultimately, the integrity and legitimacy of the incumbency. Yet another aspect that has received much attention is the institutional framework that includes the executive, the judiciary, the legislature and the EMBs as components that equally have an impact on the way state/public resources are used around and during elections. The major critique that emerges regarding this aspect of the debate is the contention that the hegemony and dominance of the executive prevail over these institutions, thereby diminishing their watchdog role and allowing the all-powerful executive unfettered hegemony and dominance, which in turn facilitates the unfair use of state resources. The discussions in this Occasional Paper, therefore, in many ways provide a platform for critical debate on the challenges that confront the SADC region pertaining to the utilisation of state/public resources during elections, in particular for the five countries holding their general multiparty elections in 2004 (South Africa on 14 April 2004; Malawi on 18 May 2004; Botswana, Namibia and Mozambique later in the year).

Various factors account for the inequitable utilisation of state/public resources during elections in the SADC region. First, the intricate, and at times nebulous, nature of the relationship that exists between the government and the ruling party provides ample room for ruling parties to use state resources to their own advantage. This automatically leads to a situation whereby, whether by design or default, the governing party tends to use those resources as though

they are party resources while in actual fact they are public resources. Second, the inadequate (or in some instances lack of) institutional and legal mechanisms to ensure the appropriate use of state resources during elections, gives the ruling parties free reign over the manner in which public resources are dispensed during and in between elections. Third, fragmented and enfeebled opposition parties are unable to keep the ruling parties in check in terms of the use of state resources during and in between elections. Fourth, the weak and disjointed nature of civil society largely due to capacity constraints renders these organisations ineffective and unable to play a watchdog role in the governance arena.

Thus, in a nutshell, we take cognisance of the following shortcomings that contribute to the unfair utilisation of state/public resources during elections:

- The line between government and ruling party is blurred such that what is considered as a government resource the ruling party can justifiably access for party political purposes, whether through acts of commission or omission.
- There is a lack of adequate institutional mechanisms to ensure stringent accountability on the use of public resources during elections or, put differently, there is a gap between policy formulation and implementation.
- EMBs in the SADC region are inadequately empowered to carry out this task effectively.
- The dominant party syndrome and the enfeeblement of opposition parties feed into each other whereby, in the end, a situation is created that allows the ruling party to manipulate the use of state/public resources without adequate challenge from weak and fragmented opposition parties; and the dominant party syndrome is strengthened by the legislature and the executive which are, by extension, pro-ruling party.
- The all-pervasive dominant party system in the SADC region and its omnipotence subsequently impinges on the arena of resource utilisation as it were.

In order to promote transparency, accountability, probity and responsiveness in

the utilisation of resources during elections, and hence to ensure a level playing field, the following lessons come out clearly from the discussions herein:

- Parties should use public funds in the electoral process so as to promote a level political playing field.
- An agreed upon formula must be used and adhered to in allocating funds to the contesting parties where a policy decision is taken to financially support political parties with taxpayers' money.
- Legislation should be established in countries that are not yet funding contesting political parties.
- Furthermore, as with public funding, private funding for political parties should be regulated in order to level the playing field for political competition as well as to ensure accountability and transparency.
- Political parties should be held accountable to the EMBs on the use of public resources.

SOME INSIGHTS ON REFORM IMPERATIVES

The discussion recognises the importance of both public and private funding of political parties to a working democracy. On the one hand, note has to be taken of the relationship between political parties as public entities and the state as the organ that promotes issues of public interests, hence its obligation to promote the objectives and goals of the former. On the other hand, it needs to be stressed that private funding is not bad in and of itself in fostering the goals of political parties so long as proper mechanisms are put in place to curtail unhealthy influences that may arise thereof.

The need for putting into place sound regulatory mechanisms is meant to consolidate the principles of transparency and accountability in terms of political party funding, whether in the form of public financing or private funding which, according to the discussions, are both indispensable for democratic governance.

According to the discussions, by and large, the following are some of the major constraints that characterise party funding regulation mechanisms:

- Resistance (by political parties) to the issue of disclosure of private sources of funding and assets undermine the principle of transparency.
- The silence of electoral legislation on determining limits in terms of maximum amounts that political parties can get from private donors creates a systemic imbalance between parties as some have wider catchments in terms of accessing funds.
- The principle of a ‘level playing field’ is also undermined by the fact that electoral legislation does not stipulate a threshold or standard amount which parties can spend on campaigns. This creates a situation whereby well-resourced parties spend more on campaigns thereby, theoretically speaking, gaining political mileage.
- Transparency of accounts should not be upheld only in terms of expenditure but must also be applicable to income.
- Sanctions against those who violate rules regarding party funding should go beyond statements of intent and rather be complemented by an enforceable code of conduct for political parties.

PARTY FUNDING IN SOUTH AFRICA

The issue of party funding for political parties embraces a broader perspective that takes into account the dynamics that characterise South African political culture. The issue of party funding for electioneering cannot be divorced from a specific political and historical legacy.

Accordingly, the Representative Political Parties Act, 1997, was promulgated within a particular context. The central point of contention is that policy tools such as the Representative Political Parties Act provide significant means to political participation.

Whereas South Africa’s democracy is robust such that it provides for public contestation, the manner in which the issue of party funding for political purposes is regulated and administered limits the meaningful and adequate participation of other political players. The principle of level playing fields is limited by the dominant party syndrome. Generally speaking, major political parties enjoy more resource support from private sources than less established

parties. This automatically creates a situation whereby those parties that are well-resourced as a result of their dominance have an edge over other poorly resourced political parties. In sum, it is those parties that are well-resourced that dominate in the public space of contestation.

The formula administered in allocating party funding based on proportionality favours those who have stronger support bases (more parliamentary seats) compared to those who have less support and worst, those who are not represented in parliament. This policy approach therefore exacerbates the state of marginalisation and inequalities rooted in the past. Party funding is intrinsically linked to issues of equity, access, equality, representation and inclusion.

THE LEGISLATIVE FRAMEWORK FOR PUBLIC PARTY FUNDING IN SOUTH AFRICA

Section 236 of Public Funding of Represented Political Parties Act 103 of 1997, which establishes the Represented Political Parties' Fund, provides the bedrock on which litigation pertaining to the enhancing of multiparty democracy is and will be exploited. Two major issues stand out especially in relation to the funding of political parties participating in national and provincial legislatures: "equitable and proportional basis".

The mandate to make key decisions about the funding formulae is the responsibility of a parliamentary committee. It is thus revealing and instructive that it is the representatives of major parties that seat on this committee. In terms of reform, a link between a receipt of public funds and a stronger state regulation of private funds must be established.

When the Act was passed there was excitement about disclosure of other funding as the *quid pro quo* for receiving state funding. Another issue that is worth exploring further through research is the lack of internal democracy within parties themselves.

That parties are subjected to their own constitutions, is undermined by the fact that there are no standard values and principles that would guide the operations of democratic political parties. Undemocratic activities at a political level may reproduce itself at the micro and macro level and may have a knock-on effect on the utilisation of state/public resources. A scenario was presented whereby attempts were made in Zambia and Namibia, and prematurely, in Malawi, to amend constitutions allowing extensions of incumbent leaders for third terms.

CRITICAL POLICY ISSUES

The following policy recommendations emerge from the contributions in this Occasional Paper:

- A cap or limit should be established on the amount of funding parties can get from private donors.
- There is a need for determining a threshold on party expenditures for campaigning.
- A situation whereby political parties become too dependent on public financing as a result of secure amounts needs to be guarded against as this would undermine the desired intimacy between political parties and their supporters.
- There should be fair and equal access to state-owned media by contending parties other than the ruling party.
- Clear regulatory mechanisms must be put in place to ensure accountability and transparency with regard to private donations to political parties.

List of abbreviations

ANC	African National Congress
AU	African Union
CBO	Community-based organisation
CoD	Congress of Democrats
CSO	Civil society organisation
DA	Democratic Alliance
DP	Democratic Party
DRC	Democratic Republic of Congo
DTA	Democratic Turnhalle Alliance
ECF	Electoral Commissions' Forum
EISA	Electoral Institute of Southern Africa
EMB	Electoral management board
Frelimo	<i>Frente de Libertação de Moçambique</i>
IBA	Independent Broadcasting Authority
ICASA	Independent Communications Authority of South Africa
IDASA	Institute for Democracy in South Africa
IDEA	Institute for Democracy and Electoral Assistance
IEC	Independent electoral commission
IFP	Inkatha Freedom Party
IMC	Independent Media Commission
KAS	Konrad-Adenauer-Stiftung
MDC	Movement for Democratic Change
MMD	Movement for Multi-Party Democracy
MP	Member of Parliament
MPL	Member of the Provincial Legislature
NDI	The National Democratic Institute for International Affairs
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental organisation
NIB	National Intelligence Bureau
NLP	New Labour Party
NNP	New National Party
NP	National Party
PBC	Political business cycle
Renamo	<i>Resistência Nacional Moçambicana</i>
SABC	South African Broadcasting Corporation

SADC	Southern African Development Community
SADC-PF	SADC-Parliamentary Forum
SADF	South African Defence Force
SWAPO	South West Africa People's Organisation
UDF	United Democratic Front
UNIP	United National Independent Party
UPND	United Party for National Development
US	United States