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Symposium on Political Funding in South Africa

Political Financing Models around the World: A Historical Overview and Financing Models

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Introduction

- **Regulated political financing** is a **public good.**
- **Political financing** enables the nurturing of democratic values in society.
- For example, **A)** it can facilitate a **functional political party system** that **nurtures political leaders** for a country; **B)** it can be used as **a tool to mainstream representation of affirmative groups** [women, youth, disabled, minority ethnic groups] **at decision-making levels; C)** it **protects political equality of opportunity** and **electoral competition**; **D)** it strengthens the **autonomy of politicians and prevents political corruption** and **enhances financial transparency** in society.
- **Unregulated financing** of political parties and election campaigns, on the other hand, is **a serious challenge to democracy** in Africa. Unregulated financing can lead to **state capture, policy capture, inflation, and corruption** esp. **political corruption – e.g, South Africa, Brazil, Uganda.**

Introduction (cont'd)

- At the expense of serving societal needs, political leaders and political parties can **concentrate on the raising of unregulated finance from private interests** for the sustenance of their political power. The consequences include the provision of inadequate and low-quality **social services and bogus public procurements to appease individual, foreign, corporate, and organized crime interests.**
- Consequently, there **must be a regulatory regime on the source of political finances, and how much money is used during election campaigns** and between **every electoral cycle(s)** by political leaders and political parties, including independent candidates.
- This includes **public** or **private sources.**

Origins of Political Financing around the World

- **Worldwide – USA** – 1907 – 1971; **Uruguay** in 1928; **Turkey** in 1965; **Germany** in 1959 - 1967.
- **Africa – Recently Established.** Examples – **Tanzania** in 2010; **Kenya** in 2013; **Uganda** in 1980.
- **SA is a party to international anti-corruption instruments** – **UN & AU** Conventions against Corruption, **ACDEG**, and **SADC** Protocol against Corruption, among others.

Political Financing and Human Rights

- **Article 12(3) UDHR** "Will of people basis of govt." in "… expressed in periodic and genuine elections … by secret vote or free voting procedures …".
- **Article 25 ICCPR**
- **ARTICLE 7 (3) UNCAC** – Transparency in funding elected officials.
- **Articles 1 & 4 Interparliamentary Declaration on Free and Fair Elections.**
- **Articles 3 & 17 ACDEG. Strong and independent EMBs.**
- **Article 10 AUCCPC – Dirty money not to finance PPs.**

Ideological Approaches to Political Financing

- **Libertarian or Egalitarian approaches.**
- **Libertarian ideology** espouses a strong **presumption against the regulation of political financing** on the basis that it is **a violation of the constitutional right to free speech and association.** The **weak regulations** that result from this approach do little to stem the **influence of a powerful few** on the **outcomes** of **national elections** and the **policy agenda**.
- **Egalitarian approach**, which focuses on **leveling the playing field** for all the participants. Under this model, **rights are subject to greater regulation** so long as the government can provide sufficient justification. **This model helps to legitimatize the electoral result.** This approach not only **imposes spending and donation limits** on candidates and the parties but also (**third parties**).

Models of Political Financing

- **Three Models**; - 1) **Equitable** Model, and 2) **Proportional** Model or 3). A **combination of both models** as the third model.
- In the **Equitable model**, political financing is disbursed equally to political organisations and candidates, regardless of electoral support.
- The **Proportional model** employs a formula that equates to the electoral support that a political party got in the previous general elections. This electoral support may take the form of the number of electoral positions won or the number of votes cast in favour of the political party.
- A **combination of both above models**, depending on the **political environment of the country.**

5 Patterns of Political Financing

- **1) Minimum Regulation Pattern** – Funding provided, but with minimum regulation.
- **2) Highly Regulated Pattern** – Spending Limits, Bans, third parties, Sanctions for illegal political financing.
- **3) Transparency Pattern** – **Maximum transparency** of funds into politics. **No or few regulations** on **raising** and **spending** political finances.
- 4) **Inconsistent Candidate Regulation Pattern** – an inconsistent set of rules for candidates' political financing.
- 5) **Mixed Regulation Pattern** – Combines all the 4 above Patterns

Regulatory Frameworks

- **A Campaign Finance Regulatory Regime entails 4 elements: 1. Private Funding, 2. Public Funding 3. Spending 4. Reporting, Oversight, and Sanctions**
- **ARTICLE 7 (3)** of the **United Nations Convention Against Corruption** requires member countries to enhance "Transparency in the funding of candidates for elected public office, and where applicable the funding of political parties." Also see **Article 25** of the **ICCPR. Other treaties on human trafficking, terrorism, and Money Laundering** may affect political financing. **"Dirty money" may end up financing political parties and political leaders,** including **independent candidates.**
- **African Union Convention on Preventing and Combating Corruption, 2003 prohibits the illicit financing** of political parties and advocates for **increased transparency in political financing** on the African continent. The AU Convention is **general to corruption and not specific to political financing.**

Regulatory Frameworks (Cont'd)

- **ACDEG** has specific provisions on **free and fair elections,** including **political corruption.**
- At the sub-regional level, the SADC **Protocol against Corruption, 2001; SADC Principles and Guidelines Governing Democratic Elections, 2015.**
- The challenge is that political financing falls under **the broad anti-corruption mechanisms in these regional and sub-regional instruments. No specific and comprehensive instrument to** campaign financing in Africa.

Key Issues on Political Finance Regulation

- Sources of political finance - **public or private**
- **Limits on political funding** - total public funding, - a mix of public and private, and total private funding. **(34 African countries provide some form of public funding to political parties and candidates).**
- **Spending caps** on political parties and independent candidates' expenditures. **Third-Parties affiliated with Parties or Third Parties not affiliated with Political Parties.**
- **Financial reporting** by political parties and candidates **(38 African countries require this**). Challenges of **Cash transactions in African economies** enable **illicit financial flows**.
- **Audit – Oversight of money used in politics** – EMBS, Auditor General, Parliament, and courts. Also, the **Media, Civil Society and activist citizens.**
- **Sanctions regime** – fines (**40 countries**) – loss of public funding **(17 countries)** – imprisonment **(34 countries)** for non-compliance.

Private or Public Funding of Political Parties?

- There are compelling arguments for **purely private or public funding. E.g, Impartiality versus public good, Policy Capture of PPs by private interests – Corruption.**

- A **mix of the two is** better, depending on the **political environment** of a country.

Political Financing and Corruption

- **Quid-Pro-Quo Private Financing and Donations –** This can eventually lead to **grand corruption** and its effects, including **policy** and **state capture, inflation,** and **national economy collapse**.
- **Abuse of Government resources –** abuse of state resources by the ruling political party and its candidates.
- **Vote buying** and **selling,** including **bribery of EMB officials** to rig or manipulate electoral results.

Which Political Financing Model for South Africa?

- **Political Parties Funding Act 6 of 2018** – as result of the Constitutional Court directive.
- **Political Financing Regulations** –Donation limits to PPs.
- Case Law: 1. ***IDASA v. ANC & Ors*** – (2005) Right of access to funding for private funding of PPs. 2. ***My Vote Counts v. Minister of Justice and Correctional Services and Anor*** **(2018) –** Established constitutional right to information about sources of financing for political parties.

Practical Recommendations

- **Which Ideological Approach for South Africa on political financing?** Egalitarian Approach?
- **Which Political Financing Model for South Africa?** A combination of both **Equitable** and **Proportional** models of political financing?
- **Political Financing Patterns** – See slide on patterns, excerpt pattern 1, the 4 patterns.

Practical Recommendations (Cont'd)

- **Emerging Issues: Technology, Third-Parties and Third Parties unrelated to PPs**, but promoting PPs agenda, and expenditure Caps on PPs and independent candidates?
- **Loopholes in current political financing law – Spending Caps** for PPs and independent candidates, Third Parties – donations and spending, **anonymous donors**, **foreign donors**, **digital campaigns**, **organised crime and dirty money**, relationship between **political financing and quid pro quo corruption** with big business, EMB to regulate donations and spending caps?
- **Skills and capacity issues of EMB** in regulating the political financing of political parties and independent candidates.

CONCLUSION

- This discussion shows that **money has a role to play in politics**, **but that role should be regulated** depending on the ideological approach South Africa takes.
- **SA's ideological approach** is towards the **egalitarian approach,** given the **current political financing law** and **case law jurisprudence.**
- Given South Africa's current political environment, the **political financing patterns can be incrementally introduced** to enable the **avoidance of policy or state capture** of the national government's agenda, which **may derail the national development goals and democratic values** of South Africa. This may also prevent the policy capture of political parties' agenda from various interests, including **foreign, corporate, and organized crime** interests.

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