

Presentation to **Conference on Money in Electoral Processes**, organized by International IDEA

By **Yacoob Abba Omar**, Mapungubwe Institute (MISTRA)

Windhoek, 16 August 2016

I have no doubt that ANC elections head, Nomvula Mokonyane, is regretting her casual response to a journalist that the ANC had spent R1 billion on its local election campaign. An indication of the ANC's own confusion, it was several days before she retracted and ANC Treasurer-General Zweli Mkhize denied the amount.

The worrying aspect of an otherwise highly dramatic and intense local government elections was the muted response by all the political parties in South Africa. It is an indication of the preferred conspiracy of silence that they wish to engage in.

What currently exists

- With respect to State funding, the Public Funding of Represented Political Parties Act, 103 of 1997 governs the eligibility of parties and the allocations they receive from the Represented Political Parties' Fund. That Act allows for money to be appropriated from the public purse for the maintenance of political parties between elections. The law allows for money from the public purse to be allocated to political parties on a 90:10 split. Ninety percent allocated proportionately – that is, according to the percentage of votes received in elections and 10% is distributed equitably between parties represented in Parliament. At the time, many argued that the Act ought to include some regulation of private donations to political parties.
- Any political party may also obtain funds from its members and from other sources, such as business (both local and foreign) and civil society groupings.
- Financial contributions given to parties are known as direct funding, while contributions in kind (e.g. voluntary work or free office space, advertising, equipment or printing facilities) are known as indirect funding.

Judith February has pointed out that more than R100 million a year of public money that the major political parties currently receive is not enough to finance the myriad activities political parties need to undertake. Like most African countries, South Africa is a particularly challenging country within which to contest an election – a sprawling land mass, large rural areas, eleven languages and a low literacy rate.

In 2005, an application by IDASA for greater disclosure of party funding by the ANC, the DA, the IFP and the New National Party was opposed by all 4 parties in what the judge called “an uncharacteristic display of solidarity across party-political divisions”. The court ruled that “disclosure of donor funding is not a prerequisite to free and fair elections”. But it also noted that a “compelling case” had been made that “private donations to political parties ought to be regulated by way of specific legislation in the interest of greater openness and transparency.

On 28 July 2016, the NGO My Vote Counts applied to the Cape Town High Court for an order to declare that Promotion of Access to Information Act (PAIA) is invalid and unconstitutional insofar as and to the extent that it fails to make provision for the continuous and systematic recording and disclosure of information regarding the private funding of political parties and independent ward candidates.

Undoubtedly all parties with the exception of the UDM led by Bantu Holomisa has been culpable of some form of shady practices. A Cape Town construction project, Maiden Cove, drew attention when it emerged that the developer had close ties to DA mayor Patricia De Lille.

January 2013 it emerged that the DA had taken funding from an executive in a company owned by the Guptas.

ANC's Truman Prince used a municipal letterhead to solicit contributions to the party, saying: 'We want to see construction companies sympathetic and having a relationship with the ANC to benefit'.

The ANC's more famous vehicle is a company called Chancellor House. In 2015 the US Securities and Exchange Commission found that "Hitachi allegedly sold a 25% stake in its South African unit to Chancellor House Holdings (Pty) Ltd, allowing the company and the party to share profits. Hitachi paid Chancellor House, which it knew was a front for the ruling African National Congress, \$5 million from the contracts and another \$1 million in 'success fees'."

Also, need to acknowledge the power of incumbency the ANC enjoys to date. I had a personal experience of this when I was Deputy Director General of Government Communications (GCIS) which shows that some of this begins with the best of intentions. In 1997 President Mandela had instituted the practice of reporting to the nation through an 'annual report'. This was elevated from 1998 onwards into a multi-media project as part of the subsequent Presidents' State of the Nation Address' which involved newspaper supplements, radio packages etc.

Delegates have referred to the issue of intra-party tensions as well as inter-party contestations turning violent. Because of its hitherto hegemonic position its levers are important for patronage at every level of government. According to a 2006 survey carried out by the ANC in Gauteng some 42% of ordinary members and 31% of office bearers were unemployed. As many as 45% of ordinary members and 36% of leaders surveyed said that they experienced periods when they had to go hungry. Slightly over half the members earn between R299 and R2, 999 per month and only 24% have a post-matric education

A position in a local council has been described as the difference between poverty and putting something on the table for one's family – an indication of high the stakes are here, leading often to violence and even assassinations. Given their limited educational qualifications and skills sets, except as effective mobilisers of their communities, it was inevitable that they were linked up with higher echelons to earn their positions – hence embedding patronage into the ANC's very DNA.

Control of the provincial structures of the ANC, and concomitantly that of provincial governments, are hotly contested, as has been seen in the fight over the post of Premier in KZN, the antics of the Premier of Mpumalanga etc. Similarly, the 2016 local government elections have unleashed a range of furies at ANC branch level. It is estimated that 60 people were killed since the 2014 elections; that there have been 120 killings in KZN since 2003.

What is the Way Forward?

Zille believes that if it were made public where the DA gets its money, its donors would have to face the wrath of the ANC. The Council for the Advancement of the South African Constitution (CASAC) rubbished this view saying: "There is no evidence that donors to the DA will suffer reprisals. When AngloGold Ashanti

decided to declare its donations to the DA it suffered no such reprisal. In fact the then Secretary-General of the ANC, Kgalema Motlanthe, congratulated AngloGold on adopting such a principled position.”

Judith February captured the conundrum SA faces well when she wrote: ‘public money will never be enough and will not do away with political parties need to raise private money. The nub of the problem lies in the millions of rands raised in secret and the accountability deficit that has been created in our political processes’.

In charting the way forward we need to locate the question of part funding within the framework of what has come to be referred to as clientilism and state capture.

Anthony Butler and Roger Southall have argued that SA shares the same problems that the approximately 60 countries that were part of the ‘third wave’ of democratisation in the 1980s and 1990s. Those that become representative democracies before they have built a coherent and capable state administration are almost certain to be organised along clientelist lines.

Joel Netshitenzhe has said that ‘state capture is about state decision-makers being “agents to the principals (captors)”’, pointing out that the notion of state capture gained currency especially in the aftermath of post-socialist Eastern Europe. However, it can be applied to established democracies such as the US. Netshitenzhe has no truck with those who wish to engage in a conspiracy of silence: ‘There indeed may be skeletons in many cupboards and, as the saying goes, for every ‘corruptee’ there is a ‘corruptor’. Those who are aware of such skeletons should lead the law-enforcement agencies to the burial sites rather than seeking to blackmail the party and society into silence’.

He points out that ‘State capture at a macro-level can include capture of the nerve centre or critical organ of the state colossus. Where such capture relates to the very centre of government, there would be few other perfect examples of state capture’.

The ANC treasurer-general, Zweli Mkhize, has suggested that there needs to be an intermediate body through which to filter donations. He is suggesting a "trust fund" into which companies or individuals could make donations that will then be allocated among political parties according to a set formula. This democracy fund would require the necessary legislation to regulate private funding to political parties, allowing businesses to make a contribution to multiparty democracy; it would allow transparency and would be managed by an independent body such as the Independent Electoral Commission, though Mkhize is suggesting the National Assembly.

The door would still be left open for dodgy donations because there is no law that regulates private funding to political parties. Yet, should Mkhize's idea take root, it would go some way towards opening the discussion about transparency in relation to political donations. There is increasing evidence that many corporate donors – certainly those that wish in good faith to support the constitutional principle of multiparty democracy – would prefer to make donations openly. In turn, there are indications that greater openness will, in fact, result in a higher level of corporate donations from those that seek to see their contributions put to good use.