



SHOULD FOREIGN FUNDING TO POLITICAL PARTIES BE BANNED IN SOUTH AFRICA?

EXECUTIVE SUMMARY

Money is essential for democratic politics. However, there is a risk of the abuse of money in politics if donations are shrouded in secrecy. Private funding is unregulated in South Africa, leaving foreign donors to contribute large amounts into the coffers of political parties in secret. Political contributions from foreign interests that are not carefully monitored risk increasing corruption and policy capture in domestic politics. Comparative examination of political finance regulations around the world reveals international best practices that can inform prospective South African party funding reform.

INTRODUCTION

Access to financial resources is critical for the operational survival of political parties in any modern democracy. The sources of political finances are becoming increasingly important. In this regard, both the public and private sectors play essential roles in contributing to the coffers of political parties. However, there are risks, real or perceived, associated with the private financing of political activities, particularly if the donations are from undisclosed foreign sources.

The main issues often cited regarding foreign political financing are that of political corruption and conflicts-of-interest. It is argued that non-disclosure of private sources of income by parties fosters secrecy and leaves room for corruption of all forms to creep into political processes. For instance, foreign donors could be contributing to parties with the intent of influencing domestic foreign policies for their private gain. Foreign donations that come with strings attached risk undermining domestic democratic politics. There have been numerous media reports of cases where elected leaders allegedly negotiated certain quid pro quo arrangements with foreigners in exchange for their contributions.

Political funding scandals reduce public trust in domestic political processes.

Given these concerns, it is unsurprising that the practice of private funding of political parties, particularly donations from foreign interests, has become a prominent challenge globally. This policy brief explores policy options for regulating foreign political funding, and recommends the best model for the South African context.

RECOMMENDATIONS

- 1) To promote greater transparency and openness in the electoral and political system, policy makers should limit the size of foreign political contributions to a low threshold.
- 2) To ensure accountability and trust in the political process, policy makers should introduce mandatory reporting of the amounts and identities of large foreign donors.
- 3) To ensure compliance, policy makers should expand the monitoring and enforcement powers of the IEC to include foreign funding.



EXISTING REGULATORY FRAMEWORK

Presently, South African law allows for the use of both public and private (from other sources), including foreign, sources of political finance. South Africa provides direct financial assistance to political parties based on a mixed model (proportionality and equality). This public funding is closely monitored and fairly transparent as parties are required to account for and publicly disclose amounts received and spent. The provision of statutory public subsidies to political parties is not unique to South Africa. Similar frameworks exist in a number of countries, including Australia, Britain, Indonesia, Japan, Mozambique, Russia, Sweden, and Tanzania.

The South African party funding framework does not regulate foreign donations to political parties. There are no restrictions on foreign contributions to political parties; no set limits on the size or frequency, or disclosure requirements for private donations to parties. In short, foreign donors (i.e. individuals, corporates and governments) are able to donate as much as they desire to political parties in secret. Political parties are not legally required to disclose any information relating to the donations or the donors to the public.

How foreign political funding corrupts our politics

There has been a number of reported scandals where it has been suggested that foreign money help swing government contracts. For instance, the multi-billion-rand military acquisition scandal or “Arms Deal” is a prime example of how foreign interests can swing contracts. Related to political corruption is the current nuclear deal scandal. It is alleged that foreign interests including Russian, French, America, Chinese and Korean firms are strongly competing for the contract.

The lack of a domestic regulatory framework on private money, whether locally or internationally-sourced, has elicited serious public debate. The current laissez-faire approach to private money in

South Africa has led to increasing calls from civil society groups for comprehensive legislative reform to regulate private party financing. It is argued that leaving private money completely unregulated increases the scope for corruption in the political and electoral processes. Secrecy can exacerbate the misuse of money in politics.

POLICY OPTIONS FOR POLITICAL FINANCE REFORM

Political finance regulations vary worldwide, ranging from more laissez-faire to more interventionist approaches. Comparatively, very few countries allow foreign donations to political parties. For instance, democracies like Australia, Belgium, Denmark, Italy and the Netherlands allow foreign donations to political parties without much regulation or restrictions. Nonetheless, analyses of the regulatory policies of countries that permit foreign political funding reveal some international best practices that could inform South African policy reform considerations.

Bans on foreign donations

Globally, bans on foreign donations are the most commonly used public policy to control private money in politics. This policy approach is aimed at limiting foreign influences and preserving the autonomy and sovereignty of domestic politics. For instance, a 2011 survey of political finance laws and regulations in 180 countries revealed that 114 of the countries researched strictly prohibit donations by foreign interests, including foreign governments, corporates and individuals, to political parties. These include many African countries, three of the BRICS countries (i.e. Brazil, India and Russia) and advanced democracies like Britain, France, Sweden, and the United States.

This practice of banning foreign political contributions can be for varied reasons, some legitimate.



For most countries with multi-party systems, the goal is to prohibit the use of foreign donations and force parties to raise money from their own supporters. However, some countries use the practice to restrict money to opposition groups as part of governing elite crackdown on dissent.

Although heavy reliance on foreign donations is problematic, a complete ban on foreign contributions may not be a realistic policy option in the South African context. Yet the insufficient regulation of foreign political funding is equally problematic. There needs to be a more pragmatic way to control the influence of foreign contributions in South African politics. Perhaps a more viable option for South Africa will be to join the growing list of countries that have or are implementing, to varying degrees, reforms to regulate foreign contributions to political parties.

Restrictions on foreign contributions

An alternative to explicitly banning foreign contributions to political parties is tighter legislative measures that regulate access to and use of foreign finance by political parties. One such approach is the legal imposition of donor caps or contribution limits. In some countries, foreign contributions to parties are allowed to the extent that they fall within or below a stipulated legal threshold or ceiling.

Austria, Germany and New Zealand provide best practices in respect of contribution limits. These countries allow foreign donations to political parties but limit the amount of contribution. In Germany, any foreign donations to parties are limited to 1000 euros. Similarly, New Zealand limits foreign political donations to NZD 1500. Interestingly, Austria only limits donations by foreign individuals at 2500 euros, not on contributions from foreign corporations or governments. Although the size of the threshold may vary across countries, donor caps or contribution limits have proven useful for

moderating the undue influence of potential foreign funders in domestic governance.

Disclosure of foreign contributions

Another policy approach generally employed to control the flow of private money in politics is mandatory disclosure requirements. However, disclosure rules in respect of political finance tend to vary significantly across countries that have them. Some countries require regular financial reports, while others only require the disclosure of large donations and/or amounts above a specified donation threshold.

In almost all of the countries that permit foreign political funding, political parties are required to submit annual reports on their finances, including foreign contributions, to an oversight body. The information reported is then made available to the general public. However, what is required to be disclosed differs in each country. For instance, in Spain and Tanzania, political parties must reveal the identities of the donors, the donation amounts received and/or how they were spent in their financial reports.

But in a number of countries, including Austria, Australia, Germany and Italy, parties are only required to disclose the identities of large financiers whose contributions exceed an annual donation limit. Variances notwithstanding, the use of donor disclosure laws has proven to foster accountability and transparency in party finance, by detecting undue influences of donations.

PROPOSED MODEL FOR SOUTH AFRICA

The above approaches to regulating political finance can be used singularly or in any combination. Globally, countries usually employ a combination of these public policies to regulate the flow of private money in their politics. Since no approach is entirely perfect, it



may require trade-offs to be made. International good practices suggest that the choice of the policy model employed should be informed by the type of electoral system in place.

In light of South Africa's historical, political and socio-economic contexts, and current electoral system, a mixed policy model will be more appropriate. At present, South African law allows for both public and private funding to political parties. Legislation already provides for and closely regulates public funding by means of disclosure requirements. However, sole reliance on domestic public funding, in its current state, is neither adequate nor sustainable in providing the needed financial resources required for political activities.

Has foreign political funding ever benefitted South Africa?

Foreign political contributions have featured prominently in South African politics. Pre-democracy, the liberation struggle and the ANC largely relied on foreign donors – mostly from foreign governments interested in defeating apartheid – in the run-up to the 1994 elections. Although the foreign donations reduced substantially when the ANC gained power, it did not cease completely. Media reports also suggest that some of that foreign money came from questionable sources, like the 60 million US Dollars reported to have been donated to the ANC by General Mohammed Suharto of Indonesia.

In order to ensure continued foreign support to parties without compromising domestic political and electoral processes, policy makers should introduce contribution limits.

Reforming the political financing system will involve extending and strengthening existing disclosure requirements to include foreign

donations. This will mean that political parties will be required to report on all funding sources, including the identities of their foreign donors and amounts received. This would ensure parties keep receiving needed foreign financing without compromising domestic governance because donations would be made on the basis of openness and transparency.

Comparative evidence has shown that any regulation – be it disclosure or contribution capping – is more effective if there is a politically independent oversight body to enforce the rules. South Africa already has an oversight body in the form of the Independent Electoral Commission (IEC). The oversight responsibility of the IEC will need to be expanded to cover foreign funding. The IEC will need to monitor party finance practices and ensure that there are no violations of the implemented regulation.

In choosing a model, South African policy makers should ground prospective reforms on appropriate international and regional standards and principles. South Africa is a signatory to both the United Nations Convention against Corruption, and the African Union Convention on Preventing and Combating Corruption. As a signatory, South African policy makers have committed the country to promote transparency and accountability, and to reduce corruption with respect to political party funding. Reforming the legal framework to include foreign party donations would align the current political finance system with important international and constitutional principles of openness and accountability.



CONCLUSION

Evidently private money, including foreign donations, is necessary for political parties in South Africa to function efficiently. However, foreign contributors have the potential to influence domestic affairs. In this respect, comparative research reveals a number of regulations that could control the undue influence of foreign donors in domestic politics.

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