POLICY BRIEF DECEMBER 2016

DETERRING THE INFLUENCE OF PRIVATE MONEY ON POLITICAL PARTIES IN SOUTH AFRICA

EXECUTIVE SUMMARY

Political parties in South Africa are heavily dependent on private sources of funding. Despite its important role in the South African political funding regime, policy makers have failed to regulate the supply of private money. The current political finance framework leaves private funding unregulated, increasing the risks for abuse and misuse. There is a need for comprehensive political finance reform to meet South Africa's international obligations and constitutional commitments to transparency, accountability and inclusiveness. In this respect, comparative evidence and international best practice show that South Africa will benefit from adopting a combination of party funding rules to reform its political finance system.

INTRODUCTION

Political funding is indispensable in democratic politics. Political parties need financial resources to organise, hold election campaigns, and to reach their voters. Access to sufficient financial resources not only allows political parties to carry out their democratic functions, it also helps to promote fairness in political competition.

In South Africa, the Public Funding of Represented Political Parties Act allows political parties to source private funding, in addition to the statutory state subsidies provided. The provision and condition of use of money from the public purse are carefully regulated as parties are required to report on monies received and spent. However, like in most African countries, private political financing in South Africa is largely unregulated as there are no limits on or requirements to disclose private donations. Consequently, private donors – be they individuals or corporations – can contribute to parties in secret and without restrictions.

Although political finance is desirable in most democracies, the practice of private political financing – particularly secret large private donations – can give rise to serious problems in

RECOMMENDATIONS

The following regulations are proposed for consideration:

1) To strengthen democratic governance, policy makers should reform private money in South African politics.

2) To encourage equal participation of all citizens in the financing of politics, policy makers should limit the size of individual and corporate political donations.

3) To prevent political corruption and undue third-party influence, policy makers should ban donations from government contractors and parastatals.

4) To ensure greater transparency and accountability in political financing, policy makers should extend existing disclosure rules to private funding.

democratic governance. Private money, if left completely uncontrolled and unmonitored, can exacerbate political corruption. It can create situations where donors may make contributions to a party in return for government contracts or other favours. Political clientelism or "favour for sale" agreements – where people believe elected leaders have engaged in shady deals in exchange for contributions – not only distort the public voice, but risk the integrity of the political and electoral system and ultimately undermine democracy.

Insufficient regulation of private money also undermines fairness in the political playing field. For instance, a party that has access to large private funds has a disproportional advantage over an opposing party that might not have as wealthy backers. The disparity of resources between the rich and poor parties unevenly shapes political participation, with the rich party being able to run more expansive election campaigns.

The potential corruptive influence that private money poses in politics is a worldwide challenge. Domestically, there have been repeated calls for policy makers to introduce tighter restrictions to control the abuse of private money in South African politics. Accordingly, this policy brief examines contemporary public policy strategies for regulating private political funding. In light of the South African context and international best practice, this brief proposes a funding model and makes key recommendations for funding reform.

PRIVATE POLITICAL FUNDING REGULATORY POLICIES

Comparative evidence illustrates that countries adopt diverse approaches to controlling the flow and influence of private political funding. Global political finance regimes vary in scope and type of regulation, ranging from insufficient or more laissez-faire regulation to more interventionist measures. Nonetheless, the commonly employed private political finance regulations include outright bans, donor limits, and disclosure requirements. These policies are either used singly or in combination to control the flow of private money.

Bans against certain types of contributions

A number of countries expressly ban particular types of political contributions as a measure to control the influence of those donations in their politics. In countries like Belgium, Canada, France, Israel, Mexico, Turkey, and the United States, business entities or corporations are not permitted to donate to political parties. However, the bans on company donations tend to vary slightly within countries. For instance, the corporate donation prohibition in Mexico excludes non-profit organisations. Similarly, in Turkey, the corporate ban applies only to banks.

In other countries, including Brazil, France, Turkey, and the United States, trade unions are prohibited from making political donations to parties. Similarly, in Brazil, Britain, France, and Spain anonymous donations to political parties are either directly or indirectly banned. For example, Austria and Britain only prohibit anonymous donations to political parties that exceed a specified threshold.

Moreover, countries like France, Germany, Greece, India, Italy, Japan, Spain, and Turkey have introduced special contribution bans against government contractors or certain business enterprises with direct financial ties to the government. In France for instance, public companies with the majority of their capital owned by public entities, casinos, gambling establishments, and similar facilities are banned from making political donations. In Greece and India, government companies cannot contribute to political parties. Similarly, in Japan, government-subsidised companies and/or government contractors cannot make political donations.

Bans against certain categories of donations tend to boost citizens' participation in the financing of politics. This is because parties are forced to broaden their funding sources or donor base – like fund-raising from a large number of small donors instead of relying heavily on a few wealthy donors. Moreover, prohibitions, particularly those against corporations and trade unions, also help in reducing any unfair advantage to the parties that benefit from these donations. Likewise, prohibitions against contributions by government contractors assist in preventing possible cases of conflicts of interest.

Contribution limits

A significant number of countries permit political donations to parties but have rigid restrictions in place to control possible undue donor influences on parties. They employ donor limits as a means to ensure that a few wealthy financiers do not monopolise and/or unduly influence their politics.

In a number of countries, Britain, Canada, France, Japan, Russia, Spain, and the United States included, some private donations to political parties is allowed provided the donations remain within a stipulated legal limit or threshold. However, the size or threshold of donations to political parties varies across these countries. For example, Canada places tighter restrictions on donations to political parties as compared to Britain.

Another case is in Germany, where political donations from companies and trade unions are not explicitly banned but strongly discouraged. Domestic companies do not get tax relief or incentives for political donations like individual donors do. Political contributions by trade unions are also limited to no more than 10 percent of their budget and are subjected to a 50 percent tax.

In other countries, restrictions or ceilings on political contributions apply selectively to certain categories of donors. For instance, in Brazil, only political donations by individuals and companies are subjected to a ceiling. Similarly, companies in India cannot donate more than 5 percent of their average profits in a financial year. On the other hand, individual donors in Israel are permitted to donate no more than USD 9,100 to political parties annually; this amount, however, is doubled during an election year. Finally, Mexico permits non-profit organisations to contribute to political parties, but no more than 5 percent of the total amount of the parties' public funding received in the corresponding year.

Although restrictions on donations to parties are prone to evasion, they are necessary to promote fairness in the political system by ensuring that opposing parties have equal access to financial resources for electioneering.

Donor transparency rules

One of the main concerns with private money in politics is its potential corruptive influence. In this respect, mandatory disclosure requirements have proven effective in countering potential corruption linked to political financing, and boosting transparency and accountability in party funding. For instance, in an effort for greater transparency, India introduced strict disclosure rules that require full disclosure of all corporate donations and large amounts by individual donors. This and similar disclosure reforms in other countries allows for early detection and possibly prevention of political corruption. For example, if a business or an individual happens to gain a lucrative government contract after donating a large amount to the winning party, the two transactions could be connected. It is easier to identify any shadowy links between donors and elected leaders if parties and/or donors are made to reveal their contributions.

However, opponents of mandatory disclosure (mainly political parties) often view the duty to disclose the sources and other details of their private funding as a violation of their privacy and that of their donors. It is also argued that the requisite disclosure of private donations indirectly forces donors to declare their political allegiance. Parties then risk losing potential donors who wish to remain private or anonymous. Although there are merits in arguments for anonymity, the right to privacy cannot be used as a justification for secrecy in political funding.

In this respect, some countries have managed a compromise between the seemingly opposing principles of privacy and transparency. They find a balance through partial disclosure rules where only large contributions or donations exceeding a specified threshold need to be disclosed. The threshold or ceiling for donation disclosures also varies between countries that have them. For instance, the United States and Canada exemplify very low disclosure threshold cases. In both countries, individual donations in excess of USD 100 must be publicly declared. Britain, on the other hand, has a high national disclosure threshold of about USD 8000.

However, transparency measures are only effective when properly implemented and monitored. Almost all the countries that employ disclosure laws have a form of oversight authority to enforce compliance and sanction violations. However, the enforcement capability of these entities also differ across the countries.

IMPROVING POLITICAL FINANCING IN SOUTH AFRICA

International good governance suggests that the choice of a political finance regime should be informed by the country's electoral system. However, evidence suggests that most countries employ a combination of multiple political finance regulations.

Given South Africa's historical, political and social contexts and its current electoral system, a mixed policy model blending a combination of public subsidies, limits on contributions, and disclosure rules will be more suitable for reforming its political finance system.

The existing public funding regulation can be improved upon. Policy makers could look into increasing existing public subsidies to competitive levels. Evidently the current amounts are insufficient, and that is why political parties are increasingly sourcing from the private sector.

Moreover, policy makers should reform the current political financing system by introducing strict regulations in the area of private funding. The following regulations are proposed for consideration; policy makers should:

- Ban donations from government contractors, parastatals, and businesses financially-tied to the state.
- Introduce a cap on the size of company donations. This ceiling should be set at a fairly low amount (e.g. R1000) so that parties are forced to raise money from a larger number of donors instead of a small number of wealthy sponsors.
- Limit the size of individual donations to parties but provide tax exemptions on individual contributions up to a specific threshold, to encourage more smaller donations.

•Extend and strengthen existing disclosure rules to cover private donations. This might require expanding the oversight responsibility of the Independent Electoral Commission to cover private funding. Thus, political parties should be made to report on the amount and sources of private funds received to the IEC and the general public.

The adoption of regulations in the practice of private funding would ensure that parties continue to source from the private sector for political finance without risking democratic governance. Limits on contributions and disclosure would help control for any undue donor influence by ensuring that donations are made on the basis of transparency and openness. Reforming private funding would be fulfilling South Africa's international obligations under signed Conventions such as the UN Convention against Corruption and the AU Convention on Preventing and Combating Corruption.

CONCLUSION

Money is essential for democratic politics. Political parties rely on a combination of public subsidies and private donations to fund their activities and to fulfil their democratic functions. However, in recent times, parties have increasingly become dependent on private money as political costs rise.

Political donations from private sources present a challenge for many democracies worldwide. The biggest challenge is how to control or regulate the practice of private political financing. In this regard, comparative analyses of global political finance regimes reveal a range of legislative measures to control private money, including limiting the size of contributions and mandatory disclosure of party funding.

In light of the South African context, policy makers will do well to reform the political finance system. In reforming the current system, policy makers should consider introducing limits on contributions and disclosure rules in private funding.

FURTHER READING

ACE The Electoral Knowledge Network
•http://aceproject.org/

International IDEA Political Finance Database
•http://www.idea.int/political-finance/question.cfm

Money, Politics and Transparency
•http://moneypoliticstransparency.org/

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