



## POLITICAL PARTY FUNDING AND CORRUPTION: THE NEED FOR LEGISLATIVE REFORM IN SOUTH AFRICA

### EXECUTIVE SUMMARY

*The level of corruption and related scandals in South African politics has reached critical levels, with media reports detailing new scandals every other day. It is, therefore, unsurprising that party finance and political corruption have become the subject of extensive public discourse, which has raised the need for political party finance reform. Since electoral and political processes can be corrupted by forces such as money, it is control its influence in order to ensure that a few rich people do not buy political power and influence through their support of political parties. Anti-corruption legislation can prove useful in fostering greater transparency and accountability in political party activities, especially in the area of party funding*

### INTRODUCTION

Political corruption is an insidious disease challenging transparency and accountability in global contemporary politics. Corruption in politics occurs where a public official violates the rules and/or norms of office, to the detriment of public interests, to benefit themselves and/or a third party.<sup>1</sup> Political corruption — be it the bribing of civil servants in return for favour, stealing from the public purse, politicians unjustly enriching themselves, and/or the abuse of public power for personal gains — poses great economic and social costs to democratic governments.<sup>2</sup> If left unchecked, political corruption can inhibit national economic growth and exacerbate social inequality.<sup>3</sup>

Political corruption is a significant problem in many countries, and is arguably becoming an endemic culture in South Africa. This is evident from mounting media reports full of alleged corruption and related scandals about politicians,<sup>4</sup> abuse of state resources,<sup>5</sup> tender rigging,<sup>6</sup> and questionable relationships between wealthy individuals and politicians.<sup>7</sup> The gradual normalisation and institutionalisation of corruption undermine public trust in government and politicians, and ultimately democracy itself.

When public officials abuse, or are perceived to abuse, the power entrusted to them by voters for their private gain, the public's trust in political processes and politicians is undermined.<sup>8</sup> In order for any democratic system to function, corruption must be rooted out. In doing so, politicians, public officials, state agents or civil servants must be held accountable for their actions.<sup>9</sup> Holding politicians to public account includes putting in place appropriate measures that will force them to act openly and ethically.

At a global level, there are a number of international and regional standards that establish strategies to combat corruption. In this respect, the UN Convention against Corruption (UN Convention), the AU Convention Against Corruption (AU Convention), the SADC Protocol against Corruption, and the OECD Code on Anti-Bribery and Corruption are all relevant in the continued efforts to prevent and/or detect corruption.<sup>10</sup> As a signatory to these international and regional conventions, the South African government has a responsibility to root out corruption in all spheres of the South African society. However, international and regional obligations only prove effective and useful when they find expression in national laws.



## NATIONAL ANTI-CORRUPTION STRATEGIES

Locally, South Africa has demonstrated legislative commitments to its responsibilities under international law. At the foundation of its legislative commitment is the Constitution, the supreme law of the country. The Constitution enshrines key principles of democratic accountability, responsiveness and openness.<sup>11</sup> At the cornerstone of this constitutional democracy is a Bill of Rights, which the state has a duty to respect, protect, promote and fulfil. Emanating from this mandate is the broader duty to fight secrecy and/or deter maladministration within the public sector. In this respect, the Constitution enjoins the state to take measures to ensure or improve accountability and transparency in all its public procurement policies and practices.<sup>12</sup> Even though the Constitution is the legal base for the fight against corruption, numerous pieces of legislation culminate to form a national plan aimed at fostering a more open and accountable democracy.

As aforementioned, there are a number of related pieces of legislation, to varying degrees, dealing with the fight against corruption in South Africa. The Prevention and Combatting of Corrupt Activities Act 12 of 2004 (PCCAA), the Protected Disclosures Act 26 of 2000 (PDA), the Public Finance Management Act 1 of 1999 (PFMA), and the Municipal Finance Management Act 56 of 2003 (MFMA) are the core legislative instruments in the fight against corruption and supporting the broader strategy against secrecy and the unresponsive culture prevalent in contemporary South African politics.

The Prevention and Combatting of Corrupt Activities Act (PCCAA) was enacted to bring domestic anti-corruption policy in line with both the UN and the AU Conventions. It is the primary legislative measure to fight corruption and related activities in South Africa. The PCCAA criminalises, among other offences, the improper influence of

another person to act in a way that is illegal, dishonest, unauthorised or biased; and/or the abuse of authority, trust or legal rules in order to achieve an unfair outcome.<sup>13</sup>

The Protected Disclosures Act (PDA) is the main legal framework promoting the disclosure of information about any unlawful practice (malpractice) within the public and private sectors. Employees who, in good faith, raise concerns about any suspected impropriety are protected against occupational reprisals such as harassment, dismissal, non-promotion or any other adverse effects. However, the protections available for whistle blowers in terms of the PDA are primarily for internal disclosures. There is no legal requirement for public disclosures of the information. Nonetheless, the broad aim of this whistle-blowing legislation is to promote early detection and prevention of corruption within the public sector.

Both the Public Finance Management Act (PFMA) and the Municipal Finance Management Act (MFMA) and related regulations are aimed at, among other things, investigating and combating cases of corruption, fraud, abuse, and improper conduct in the public supply chain management system. Whilst the PFMA regulates public procurement at national and provincial levels, the MFMA operates at the municipal level.

The national anti-corruption framework — i.e. the PCCAA, PDA, PFMA, and the MFMA — prescribe high punitive measures for corrupt activities. Despite these legislative measures against corruption, corruption continues to be a major problem in South Africa with the corruption levels remaining relatively the same over the past five years. According to Transparency International's Corruption Perception Index (CPI) for 2016, South Africa ranked 64<sup>th</sup> place out of 176 countries.



SOUTH AFRICA CORRUPTION RANK



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## PARTY-DIRECTED CORRUPTION AND PARTY FUNDING

Money and politics have become inextricably linked. In many democratic countries, political parties need access to adequate financial resources in order to play their role in the political process. Parties have to raise huge amounts of money to fund ever-increasing operational costs; including mobilising voters in support of their political agenda, organising election campaigns for public office, and influencing policy design. Where membership fees and public subsidies are insufficient; private individuals and businesses, foreign corporations, and other interest groups are relied on to contribute to party coffers.

The increasing influence of money on today's politics means that political parties can be part of the corruption problem in any democracy. For instance, under financial pressure, parties are likely to accept donations from wealthy private donors (individuals or companies) in exchange for future favours. The contribution of money to political parties is an avenue through which an elite few exercise disproportionate influence over politics. That is, a few rich people having more influence than poor, undermining political equality. The dangers of big money in politics leave parties and their representatives highly susceptible to corrupt financing, bribery, and other forms of political patronage and clientelism.

It is trite to say that corrupt parties are not good for democratic politics. Given the powerful position they occupy, any abuse or corruption in political parties form the base of defects in any political system. There is therefore a strong need to control illegitimate sources of money and funding practices in order to tackle party corruption. In this respect, the national anti-corruption legislation discussed above can prove useful in fostering greater transparency and accountability in political party activities, especially in the area of party funding.

The fight against political party corruption can be won with increased financial transparency. Transparency in this context means open access to accurate and detailed party information. When political parties are not compelled to publicly declare all sources of donations, the door is wide open to corruption. Regulating all party funding sources provides voters with important information about the links between parties and other interest groups.

Anti-corruption measures like those found in the PCCA on improper influence, and the PDA on disclosure of information can generally help fight corruption. However, in order to effectively identify and stem corrupt behaviour or practices in political parties, especially those specifically originating from political party financing, these statutes need clear rules and regulations on political party financing.



The rules and regulations need to specifically outline the scope of ethical conduct for party members and help enforce internal party financial checks and balances. Failing which, existing anti-corruption legislation needs to be coupled with an effective political party finance regulatory framework.

## CONCLUSION

The existing anti-corruption legal framework in South Africa needs further legislative reform to effectively control corruption originating from political party financing practices. One of the mechanisms of combating corruption at the party level is by introducing laws that specifically ensure transparency and accountability in funding of political parties. Such legislative reform can reduce the extent to which political parties irregularly hand out political favours to their campaign funders after elections.

## REFERENCES

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- <sup>11</sup> Section 1(d) of the Constitution of the Republic of South Africa, Act 108 of 1996.
- <sup>12</sup> Section 217 of the Constitution of the Republic of South Africa, Act 108 of 1996.
- <sup>13</sup> Section 3 of the PCCA.