

Part 5

Constitutionalism and Party Financing

Chapter 16 Political Moneyball: Mapping South Africa's Party-Financing Ecosystem

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1. Introduction

There is growing scepticism about the role that money, particularly when it involves political parties, plays in shaping a country's politics.¹ In South Africa, money has had a corruptive influence within the broader political system and regulating its flow has become the focus of both legislative agendas and academic studies. The purpose of the legislation is to foster a more transparent political environment, build public trust, reduce corruption, ensure fair competition, and ultimately strengthen democracy by improving the responsiveness of political parties and the policy system. Since 1994, there have been a number of moves to encourage greater transparency in the country's political system. For instance, electoral and party finance legislation was enacted to help parties and the broader public hold elected leaders to account.

This chapter argues that there is a complex interrelationship between party financing and expenditure and how responsive parties are to voters and their concerns. It further maintains that to increase trust and transparency within the system, parties must disclose both their funding sources and their expenditure. It uses South Africa ahead of the 2024 national and

1 D Kotze, "Political Party Funding in the 2004 Election", 3 (2004) *Journal of African Elections*, pp 27–46; M Pinto-Duschinsky, "Financing Politics: A Global View", 13 (2002) *Journal of Democracy*, pp 69–86; DM Primo, "Information at the Margin: Campaign Finance Disclosure Laws, Ballot Issues, and Voter Knowledge", 12 (2013) *Election Law Journal*, pp 114–129; V Robinson and S Brummer, "SA Democracy Incorporated: Corporate Fronts and Political Party Funding", 129 (2006) *Institute for Security Studies Papers*, pp 1–129, 38; A Butler (ed.), *Paying for Politics: Party Funding and Political Change in South Africa and the Global South*, Johannesburg, Jacana Media (2010); G Pienaar, "Addressing the Implications of Political Party Funding for Democratic Governance: A South African Case Study", 58 (2014) *Journal of African Law*, pp 259–287; A Venter, "The Need to Reform the Electoral System in South Africa", in H Thuynsma (ed.), *Political Parties in South Africa: Do They Undermine or Underpin Democracy?* Pretoria, Africa Institute of South Africa (2017), pp 23–46.

provincial election cycle as a case study to show how money shaped party decision-making in terms of donor-targeting and soliciting. The chapter engages with the main scholarly debates about the financing of political parties, highlights the junction between finance, politics and law, and explores how these intersect to effect transparency, electoral fairness, and public trust in the political system.² It traces the need for party-finance reform in South Africa; the sources of funding that exist within the system; and the legislation that has been enacted to promote greater transparency.

As a conceptual framework, the chapter uses a “moneyball” approach (explained later in more detail) to assess how parties have adapted their fundraising strategies in response to finance regulations. In doing so, it relies on secondary sources such as academic articles; funding disclosure reports by the Independent Electoral Commission (IEC); and various media sources, policy reports, and legal cases to explain the positive and negative consequences for party responsiveness and transparency.

2. The evolution of party finance regulation in South Africa

South Africa has a long history of questioning the transparency of party financing. During the apartheid era, many of the regime’s financiers, such as Barlow Rand (now trading as the conglomerate Barloworld), “preferred to keep their support confidential”.³ This inability to conclusively finger the bankrollers certainly helped to prolong the apartheid regime’s tenure. But it can also be argued that this secrecy protected those supporting the struggle against apartheid from local and international retribution.⁴

In 1996, when the new Constitution was signed into law, citizens were guaranteed certain rights, including:

[the] free[dom] to make political choices, which includes the right – (a) to form a political party; (b) to participate in the activities of, or recruit

2 M Bailey, “The Two Sides of Money in Politics: A Synthesis and Framework”, 3 (2004) *Election Law Journal*, pp 653–669; S Power, *Party Funding and Corruption*, Berlin, Springer Nature (2020).

3 Open Secrets, “Declassified: Apartheid Profits – Who Funded the National Party?”, *News24*, 14 August 2017, <https://www.news24.com/News24/declassified-apartheid-profits-who-funded-the-national-party-20170814> (accessed 30 December 2024) ; H van Vuuren, *Apartheid Guns and Money: A Tale of Profit*, Johannesburg, Jacana Media (2017).

4 Ibid.

members for, a political party; and (c) to campaign for a political party or cause.⁵

Such participation, although not specifically identified, includes being able to make financial or in-kind donations to a party. These private donations, which supplement a modest amount of public funding,⁶ should fund party activities such as providing information to help citizens make informed choices about participating in elections and the broader political system. But they also fund a party's ability to contest elections which is also supported by the IEC, a Chapter 9 institution⁷ under Section 190 of the Constitution. Besides managing the flow of public funds to parties, the IEC

manage[s] elections of national, provincial and municipal legislative bodies; ensure[s] that those elections are free and fair; [and] declare[s] the results of those elections within a period that must be prescribed by national legislation ...⁸

In the years that followed, the country evolved into a dominant-party system with largely free and fair elections repeatedly returning the former liberation movement, the African National Congress (ANC), to power. The ANC abused this dominance, according to Pienaar,⁹ and used it to frustrate the efforts by opposition parties to keep the government in check.¹⁰ For instance, prior to 2018, political parties were not required to disclose the donations or the amounts they received, creating the perception that there was limited democratic accountability in the political system. Robinson and Brummer found, for instance, that this lack of transparency undermined the national government's good governance initiatives.¹¹ They argued for

5 Section 19 of the Constitution of the Republic of South Africa 1996.

6 Sources of public funding include the Represented Political Parties Fund and the Multiparty Democracy Fund, which are managed by the IEC (and discussed in detail later in this chapter).

7 Chapter 9 of the South African Constitution mandates the creation of institutions to protect and support democracy. They include the Public Protector; the South African Human Rights Commission; the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; the Commission for Gender Equality; the Auditor-General; the Independent Authority to Regulate Broadcasting; and the IEC. These institutions are meant to be independent from the government, political parties, and interest groups.

8 Section 190 of the Constitution of the Republic of South Africa 1996.

9 Pienaar, *supra* n. 1, p 263.

10 Venter, *supra* n. 1.

11 Robinson and Brummer, *supra* n. 1.

all public organisations, including political parties, to be subject to public scrutiny. Rowbottom's subsequent investigation into corruption, transparency, and reputation also uncovered a growing apprehension about the potential for donors to exert undue influence.¹² In this context, calls for greater transparency within the political system have persisted but, as Kotze¹³ and Pinto-Duschinsky¹⁴ have noted, such calls tend to fall outside the purview of existing regulatory frameworks. Moreover, since exposing their funding sources could jeopardise the credibility of both the party and specific politicians,¹⁵ political parties were understandably hesitant to agree to being regulated.¹⁶

This reticence was clear in 2005, when the civil society organisation, the Institute for Democracy in South Africa (IDASA), tried to use the Promotion of Access to Information Act (PAIA)¹⁷ to compel parties to disclose their funding sources. It launched a High Court application, *Institute for Democracy in South Africa & Others v African National Congress & Others*,¹⁸ against the ANC, the Democratic Alliance (DA), the Inkatha Freedom Party (IFP), and the New National Party, which were then all political parties registered under the Electoral Commission Act.¹⁹ The Court, however, denied the IDASA application, holding that political parties were "private bodies" and therefore revealing their funding sources did not fall within the public's interest.

12 J Rowbottom, "Corruption, Transparency, and Reputation: The Role of Publicity in Regulating Political Donations", 75 (2016) *Cambridge Law Journal*, pp 398–425.

13 Kotze, *supra* n. 1.

14 Pinto-Duschinsky, *supra* n. 1.

15 MD Gilbert, "Disclosure, Credibility, and Speech", 27 (2012) *Journal of Law & Politics*, pp 627–683.

16 MD Gilbert and BF Aiken, "Disclosure and Corruption", 14 (2015) *Election Law Journal*, pp 148–164.

17 Promotion of Access to Information Act 2 of 2000 (Vol. 416, No. 20852, Cape Town, 3 February 2000), https://www.gov.za/sites/default/files/gcis_document/201409/a2-000.pdf (accessed 17 September 2024).

18 High Court of South Africa – Western Cape Division, *Institute for Democracy in South Africa and Others v African National Congress and Others* (9828/03), ZAWCHC 30; (5) SA 39 (C); 3 All SA 45 (C); (10) BCLR 995 (C), Judgement, 20 April 2005, <https://www.saflii.org/za/cases/ZAWCHC/2005/30.html> (accessed 30 December 2024).

19 Electoral Commission Act 51 of 1996, section 15 (Vol. 376, No. 17478, Cape Town, 4 October 1996), https://www.gov.za/sites/default/files/gcis_document/201409/act51of1996.pdf (accessed 15 September 2024).

A second source of frustration is evident in relation to the dramatic increase in party spending. This has raised red flags across the political spectrum.²⁰ In particular, the campaign for senior leadership positions within the ANC's National Executive Committee proved to be an expensive and hotly contested affair. Since the 2009 national elective conference that saw Jacob Zuma elected as party president, campaigns such as this have provoked allegations of vote-buying.²¹ The same concern was raised about Cyril Ramaphosa's roughly ZAR 300 million (the amount is disputed) ANC presidential bid in 2017, nicknamed "CRI17".²² The questionable origins of money used to fund the ANC's internal party campaigns (which were then unregulated) reinforced the impression that corruption exists and that it was crippling the noble intentions of the former liberation movement. There were also concerns that "[w]hen political parties come to rely on the financial support of a few – not just the votes of a majority – to win and maintain power, public accountability and internal party democracy are undermined".²³

Finally, there is an observable trend of decreasing public participation in elections and trust in the broader political system.²⁴ A resulting lack of transparency and responsiveness has become deeply embedded in the political culture of South Africa's political parties, and this (in part at least) helps to explain why a culture of secrecy and mistrust exists amongst political actors in post-apartheid South Africa.

There have been attempts to redefine the political landscape and make the funding of political parties both more transparent and more responsive.

20 Corruption Watch, "Political Parties: The Missing Link in Our Constitution?", *Corruption Watch*, 28 August 2015, <https://www.corruptionwatch.org.za/political-parties-the-missing-link-in-our-constitution/> (accessed 12 December 2016); Corruption Watch, "Cleaning up Political Party Funding", *Corruption Watch*, 15 June 2016, <https://www.corruptionwatch.org.za/cleaning-political-party-funding/> (accessed 12 December 2016).

21 M Makhanya, "The Horse Has Bolted", *City Press*, 6 November 2022; N Njilo, "Zuma Rips into Ramaphosa's 'Vote-Buying' to Secure ANC Top Job", *Daily Maverick*, 7 November 2022; S Payne, "ANC NEC Candidates Ordered to Divulge All Election Campaign Financial Details", *Daily Maverick*, 3 November 2022.

22 C du Plessis, "Cyril Ramaphosa to Zondo Commission: My CRI17 Campaign Did Not Cost a Billion Rand", *News24*, 29 April 2021.

23 Pienaar, *supra* n. 1, p 263.

24 Human Sciences Research Council (HSRC), *Assessing Progress after the First Year of Implementation of the Political Party Funding Act (PPFA) in South Africa*. Report prepared for the Electoral Commission of South Africa (IEC), Pretoria, HSRC (2023), p 1.

As Booysen²⁵ pointed out, initial proposals in this regard were timid. They set minimum disclosure requirements but did little to dislodge the embedded financing tactics (which relied on a mix of public and private funding).²⁶ The apparent objective was to fulfil the spirit of the Constitution and to “enhance multi-party democracy [by enacting] national legislation ... [that] ... provide[s] for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis”.²⁷ Opposition parties complained that the ultimate effect was in reality to further entrench incumbent parties and fill their party coffers rather than promote new voices that could respond to changes in voter preferences.

The Public Funding of Represented Political Parties Act²⁸ (also known as the Public Funding Act) was the first serious foray into party-finance regulation. It established that political parties represented in Parliament and provincial legislatures would share monies from a public fund (also referred to as the Multiparty Democracy Fund – MDF) managed by the IEC.

In the 2012/2013 financial year alone, this public funding amounted to ZAR 110 million. It was divided proportionally among the represented parties. Parties who received funds were obliged to report on how these monies were spent, but a distinct lack of internal financial management capacity meant that many parties commingled the funds along with their other monies (such as membership fees) and were unable to provide the required reports.

In 2005, the Public Funding Act was amended to promote greater transparency in how political parties operated their constituency offices. It also sought to

provide for the re-allocation of moneys from the Represented Political Parties’ Fund and to regulate the repayment of unspent balances of all moneys allocated to political parties participating in Parliament and provincial legislatures where a member of a legislature becomes a member of another party whilst retaining membership of that legislature

25 S Booysen, “Money, Politics and Power: Impacts of Party Financing in South Africa”, 50 (2012) *Journal of Modern African Studies*, pp 221–248.

26 Ibid.

27 Section 236 of the Constitution of the Republic of South Africa.

28 Public Funding of Represented Political Parties Act 103 of 1997 (Vol. 390, No. 18517, Cape Town, 19 December 1997), https://www.gov.za/sites/default/files/gcis_document/201409/a103-97.pdf (accessed 17 September 2024).

or where an existing party merges with another party, subdivides into more than one party or subdivides and any one subdivision merges with another party ...²⁹

In addition, the amended Act amended the Determination of Delegates (National Council of Provinces) Act³⁰ to account for potential changes in party membership at the provincial level. Reporting once again proved to be inconsistent, with funding to some parties suspended until they could demonstrate compliance.³¹ A key omission, though, was that the amended Public Funding Act concentrated entirely on regulating state funding but did not require that private donations be disclosed. In effect, the Act created conditions where financial influence could go unchecked, leading to an erosion of public trust in political processes.

Calls for greater financial transparency within the political system have persisted. The most recent was made by Raymond Zondo, former Chief Justice of the Constitutional Court and Chairman of the Commission of Inquiry into State Capture of State-Owned Enterprises. His reports from the inquiry blamed the level of corruption, and the broader systemic failures it produced, on politicians who were either unable or unwilling to hold officials accountable because their livelihoods depended on their loyalty to the party and its narrow (donor) interests.³² However, almost two years after the Commission's conclusion and despite the evidence gathered during this inquiry, the country's National Prosecuting Authority has yet to bring a successful prosecution against anyone identified in the hearings. As a result, and because there is seemingly no legal recourse on the cards, voters ahead of the 2024 national and provincial election cycle felt that

29 Constitutional Matters Amendment Act 15 of 2005.

30 Determination of Delegates (National Council of Provinces) Act of 1998 (B 56B-98), https://www.gov.za/sites/default/files/gcis_document/201409/b56b-98.pdf (accessed 17 September 2024).

31 Pienaar, *supra* n. 1, p 266.

32 RM Zondo, *Judicial Commission of Inquiry into State Capture Report: Parts I-VI* (2022); E Ferreira, "National Assembly Passes Controversial Electoral Amendment Bill amid Protests from Opposition Parties", *Mail & Guardian*, 20 October 2022, <https://mg.co.za/politics/2022-10-20-national-assembly-passes-controversial-electoral-amendment-bill-amid-protests-from-opposition-parties/> (accessed 22 April 2023).

senior ruling party officials were acting with impunity. This belief affected how, and indeed if, they chose to participate.³³

Furthermore, successive ANC administrations have had to address the wealth, housing, education, and health-care imbalances that they inherited from the apartheid state. After three decades, the continued failure to provide essential infrastructure and the inability to enforce accountability on those in office have stoked national frustrations, with these now posing as perhaps the most significant threat to the country's democracy.³⁴

2.1 Building transparency by disclosing donations

The importance of financial transparency and responsiveness to political life cannot be overstated. These principles uphold the constitutional right of citizens to access information regarding political funding which is crucial for informed political participation.³⁵ To its credit, South Africa's Constitutional Court has played a pivotal role in shaping the discourse around party-finance restrictions.³⁶ Its decisions reflect a commitment to ensuring that political parties operate within a framework that promotes democratic values. It has emphasised the need for transparency in political funding to combat corruption and improve public trust in political institutions.

For instance, the case of *One Movement South Africa NPC v President of the Republic of South Africa*³⁷ saw the court address the unconstitutionality of certain provisions in the Electoral Act that limited access to political office solely through membership in a political party. The judgement underscored the importance of transparency and inclusivity in political participation, deeming it integral to mitigating corruption. *My Vote Counts*

33 L Patel, Y Sadie, M Bryer, and J de Klerk, *Factors Determining Voter Choice between 2017 and 2021*, Johannesburg, Centre for Social Development in Africa, University of Johannesburg (2021); HSRC, *supra* n. 24.

34 Thuynsma, *supra* n. 1.

35 N Netshakhuma, "The Implications of Political Party Funding Act, No. 6 of 2018 in South Africa on Records Management", 70 (2020) *Global Knowledge Memory and Communication*, pp 293–303.

36 K Maphunye and K Motubatse, "Consequences of (Un)Regulated Party Funding in South Africa between 1994 and 2017", 15 (2019) *The Journal for Transdisciplinary Research in Southern Africa*, pp 1–10.

37 *One Movement South Africa NPC v President of the Republic of South Africa and Others* (CCT 158/23), Judgement, 4 December 2023; ZACC 42; 2024 (3) BCLR 364 (CC); 2024 (2) SA 148 (CC), Judgement, 4 December 2023.

*v President of the Republic of South Africa*³⁸ is another landmark ruling that required political parties to disclose their sources of funding. In this case, the court recognised that political parties needed to be more transparent to ensure that they are more responsive to voters' needs and, ultimately, to promote integrity within the electoral process. This judicial approach underlines the need to maintain the integrity of the political process.

The efforts to regulate political-party funding have been influenced by international norms and practices. Analyses by Rashkova and Biezen³⁹ indicate that many European democracies have instituted similar regulations to mitigate the risks associated with unregulated political financing. The South African context, however, is different from many European countries due to its historical background and the specific challenges faced by smaller political parties in a predominantly ANC-dominated political environment.⁴⁰ The legal framework, therefore, seeks to regulate funding but also aims to level the playing field for all political entities in the general attempt to create a more equitable political landscape.

The next firm attempt to embed a degree of transparency and responsiveness into the system was the enactment of the Political Party Funding Act (PPFA) in 2018.⁴¹ The Act mandates that political parties disclose their sources of funding and expenditure in an effort to promote ethical conduct in political financing.⁴² Figure 1 illustrates how the PPFA was supposed to change the political culture of both leaders and individual voters.

38 Constitutional Court of South Africa, *My Vote Counts NPC v Minister of Justice and Correctional Services and Others* (CCT249/17), ZACC 17, Judgement, 21 June 2018, <http://hdl.handle.net/20.500.12144/34577> (accessed 30 December 2024); (8) BCLR 905 (CC); (5) SA 1 (CC), 21 June 2018.

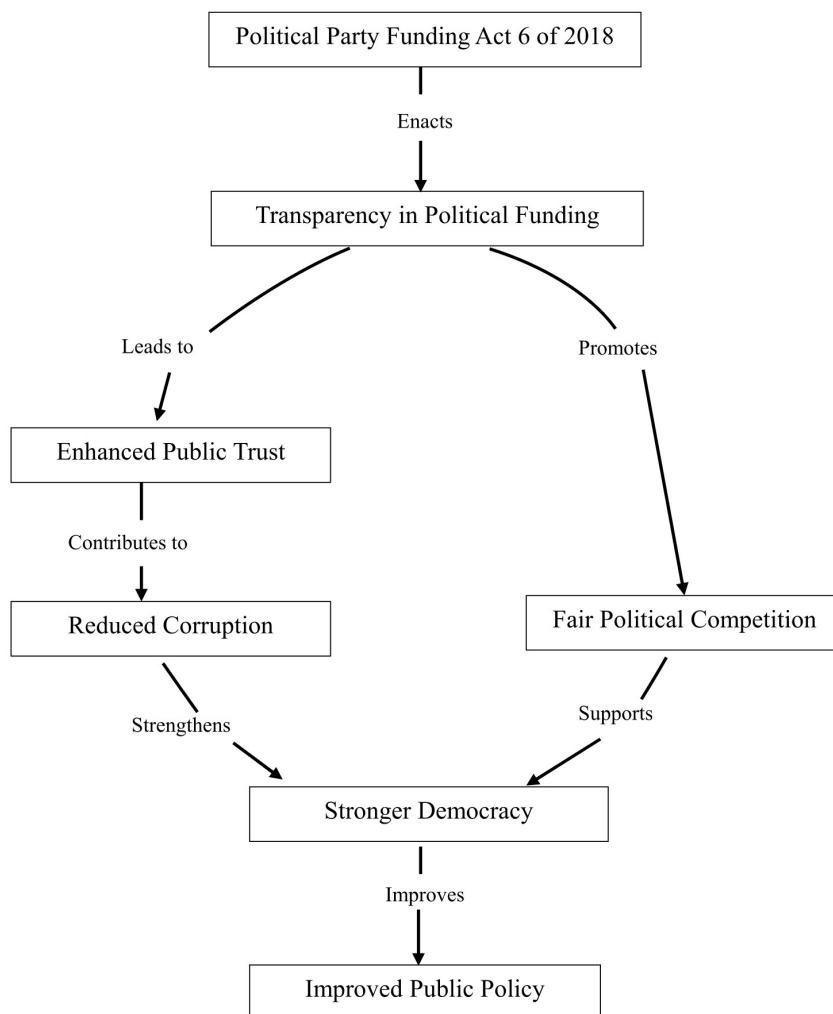
39 E Rashkova and I van Biezen, "The Legal Regulation of Political Parties: Contesting or Promoting Legitimacy?", 35 *International Political Science Review* (2014), pp 265–274.

40 K Maphunye, "Politics-Law Convergence or Divergence? 'Small' Political Parties, Realpolitik and South Africa's 20 Years of Democracy", 2 (2015) *Journal of Law Society and Development*, pp 66–92.

41 Political Party Funding Act 6 of 2018.

42 Netshakhuma, *supra* n. 35.

Figure 1: Flowchart illustrating the intended effect of the Political Party Funding Act 2018.



There was real hope for substantive change when the PPFA was passed. For the first time, the law required that political parties disclose those who contributed above a certain threshold and also limited the amount of money that both individuals and corporate bodies could give. To reduce

the possibility of external influence on national politics, the Act excluded foreign funding in certain contexts. By forcing parties to disclose their funders and to quantify the sum of their support, the law was supposed to open up what was traditionally a closed financing system. Indeed, studies such as that published by Crepaz and Arikhan,⁴³ suggest that an open system increases public trust because it exposes potential conflicts of interest and reduces perceptions of corruption.

In turn, publicising these disclosure reports was supposed to encourage an environment of greater responsiveness, one in which fair competition between political parties could exist. This law also sought to promote a political culture in which voters would be able to make more informed decisions about political parties, with this shift contributing to a more robust and democratic political system.

The key question remains, however, as to how well the PPFA was able to achieve this goal ahead of the 2024 national and provincial election cycle.

2.2 The operation of the PPFA

The PPFA was seen as both an incentive for those stakeholders (that is, businesses, investors, civil society, and voters) pushing for a more responsive system as well as a way of creating greater transparency because it requires political parties to disclose donors that give money and in-kind gifts of ZAR 100,000 or more.⁴⁴ The Act also retains the Represented Political Parties Fund (RPPF), which was originally established under the Public Funding Act and enables the IEC to disburse an annual amount of public money to political parties. The DA, however, argued that the amount of public funding it received was inadequate and that its distribution was not equitable given a party's size or electoral performance.⁴⁵ It argued that, in effect, the largest party in Parliament, the ANC, was also the largest beneficiary of state funding.

43 M Crepaz and G Arikhan, "The Effects of Transparency Regulation on Political Trust and Perceived Corruption: Evidence from a Survey Experiment", September (2023), *Regulation and Governance*.

44 E Stoltz, "All Systems Go' for IEC's Political Party Funding Act", *Mail & Guardian*, 1 April 2021, <https://mg.co.za/politics/2021-04-01-all-systems-go-for-iecs-political-party-funding-act/> (accessed 30 March 2023).

45 Ibid.

The MDF was also retained to encourage corporates, individuals, and foundations to support the country's nascent democracy by funding non-partisan activity such as issue advocacy and civic education training sessions. In line with its code of ethics, both funds prohibit money from being used to "defray any costs or expenses incurred directly or indirectly, arising from and pursuant to inter-political party disputes", remunerate individuals employed by the state including members of national, provincial and local legislatures, defray legal expenses, or establish a business.⁴⁶ According to the Act's provisions, the IEC is charged with publicising the disclosures on a quarterly basis to ensure transparency in the political system. That said, there have been challenges to ensuring that parties comply with these new legal requirements, especially in providing full and timely disclosures of their funders and expenditure.

For instance, receiving money through the MDF is in itself not controversial, but reporting on how the funds are spent can be a challenge. This is because, as mentioned earlier, most parties are unable to afford the cost of setting up a separate bank account and auditing structure to comply with the mandatory reporting requirements. As a result, most parties accept such grants into their central bank account, in effect commingling these funds with other party resources and thus making it difficult to report on the grant's specific expenditure.

In addition, the marked rise in campaign spending and the questionable nature of private donor funding, forced legislative amendments to the Executive Members' Ethics Act⁴⁷ in an attempt to monitor the ethical conduct of cabinet members, deputy ministers and members of provincial executive councils. Under this Act, an executive member must disclose all gifts, sponsorships and other benefits received in his or her private capacity. This was thought to exclude donations to an internal party campaign that is established as an independent legal entity and separate from the individual member seeking election.⁴⁸ The AmaBhungane Centre for Investigative

46 Section 7 No. 2(d) of the Political Party Funding Act 6 of 2018.

47 Executive Members' Ethics Act 82 of 1998 (Vol. 400, No. 19406, Cape Town, 28 October 1998), https://www.gov.za/sites/default/files/gcis_document/201409/a82-98.pdf (accessed 4 July 2024).

48 D Milo and L Pillay, "Donations to Political Party Candidates Must Now See the Light of Day after Successful Court Challenge by Amabhungane", *Daily Maverick*, 6 December 2021, <https://www.dailymaverick.co.za/article/2021-12-06-donations-to-political-party-candidates-must-now-see-the-light-of-day-after-successful-court-challenge-by-amabhungane/> (accessed 30 March 2023).

Journalism (in *Amabhungane Centre for Investigative Journalism NPC v President of the Republic of South Africa (2022)*)⁴⁹ successfully challenged this latter point in the High Court, stating that section 96 of the Constitution protects against a potential conflict between the official responsibilities and private interests of a member. Accordingly, members of the executive must now disclose all donations to their political campaigns.⁵⁰

3. Conceptual framework: The moneyball approach

Most post-election reports issued by political parties in South Africa (as across the world) cite lack of resources as the primary reason for not achieving a particular goal. In fact no political party has ever had enough time, people or money to contest an election, which is why most parties spend the time between elections raising funds from a variety of sources.

This endless fundraising cycle has the obvious benefit of raising a party's stature and outreach capacity, but there are also several disadvantages to this, notably its effects on voters and their freedom to choose. For instance, Overton's article on the donor class in the United States (US) discusses how the unequal distribution of wealth has enabled a small number of wealthy individuals and organisations to exert an outsized influence on the political process, potentially undermining the principle of political equality.⁵¹ Thomsen's valuable study on competition in US Congressional elections suggests that the need for campaign dollars has influenced candidates to focus more on fundraising than garnering votes, which can certainly compromise the quality of electoral competition.⁵²

As already mentioned, in the South African context, although public financing exists for political parties, it is not nearly enough, and its reporting requirements are too restrictive for parties to implement or the IEC, the primary management body, to enforce. Considering this context, this chapter explores the costs and benefits of private party financing and considers

49 Constitutional Court of South Africa, *Amabhungane Centre for Investigative Journalism v President of the Republic of South Africa*, CCT 385/21, Judgement, 20 September 2022, <https://www.concourt.org.za/index.php/judgement/483-amabhungane-centre-for-investigative-journalism-npc-v-president-of-the-republic-of-south-africa-cct385-21> (accessed 30 December 2024).

50 Milo and Pillay, *supra* n. 48; Payne, *supra* n. 21.

51 S Overton, "The Donor Class: Campaign Finance, Democracy, and Participation", 153 (2004) *University of Pennsylvania Law Review*, p 73.

52 DM Thomsen, "Competition in Congressional Elections: Money versus Votes", 117 (2022) *American Political Science Review*, pp 675–691.

the implications this money has on party responsiveness and transparency which includes the issues that parties champion as well as the campaigns they are able to afford.

The moneyball approach adopted in this chapter shows how legislation has influenced party fundraising strategies. The term “moneyball” is taken from Michael Lewis’s book.⁵³ Lewis details how Billy Beane, the general manager of the US baseball team the Oakland Athletics, used statistical analysis to build a highly competitive team on a very limited budget. By focusing on metrics rather than on traditional scouting methods, Beane identified undervalued players and so was able to optimise the team’s performance. This approach has since been adopted in various fields, including government and politics, to enhance decision-making processes. It is used here to explain how political-party financing strategies work to maximise their gains within the PPFA’s regulations.

4. Moneyball strategies for political parties

Political parties in South Africa have increasingly adopted a moneyball approach to fundraising, particularly when considering the PPFA’s regulatory framework. This approach emphasises data-driven strategies to optimise fundraising efforts while ensuring compliance with campaign finance legislation.

4.1 Data-driven donor targeting

The primary strategic priority under a moneyball approach is to use data on historical giving patterns as well as demographic information to identify high-potential donors. In this way, parties tailor their messaging and solicitation strategies to target individuals and organisations that are most likely to contribute to their cause. Targeting donors in this manner maximises the efficiency of the fundraising operation and ensures that all efforts are legally compliant.

It should be noted that, while voicing their general support for the PPFA, South African political parties consider the legislation something of

⁵³ M Lewis, *Moneyball: The Art of Winning an Unfair Game*, New York, WW Norton & Company (2004).

a disincentive. First, the disclosure requirements mean that parties need to be more open about from whom they receive their money, information they are neither accustomed nor equipped to provide. Parties, including the ANC, have also complained that the new legislation makes it difficult for them to raise money. Donors, they argue, are reluctant to link their names to a specific political party. This may also be an issue for the other political parties, but it is difficult to compare since the reporting requirement has only been implemented since 2021. However, opposition parties such as Abantu Integrity Movement, the African Christian Democratic Party, the Patriotic Alliance, and the GOOD Party all declared donations of more than ZAR 100,000 between 2021 and 2023.⁵⁴

In addition, the law restricts parties from accepting donations of more than ZAR 15 million from a single source and also prohibits foreign governments, their agencies and citizens, and their state departments and state-owned enterprises, from making donations. Essentially the Act imposes controls on the amount and sources of party funding in the hopes of restricting the potential political influence that external actors might exert. The IEC reports, however, reveal that the Economic Freedom Fighters (EFF) received donations from South African billionaire Patrice Motsepe's African Rainbow Minerals (Motsepe's sister is married to President Cyril Ramaphosa), Harmony Gold Mining, 3Sixty Health, South African Breweries, and SN Maseko.⁵⁵ Interestingly, according to IEC reports⁵⁶ African Rainbow Minerals has supported other opposition parties to the tune of about ZAR 3.5 million, with the DA receiving ZAR 2.115 million of this. In 2023, Motsepe also donated to the conservative and predominantly

54 E Matwadia, "Party Funding: DA Rakes in R15mn in Donations, ANC R10mn", *Mail & Guardian*, 9 September 2021, <https://mg.co.za/politics/2021-09-09-party-funding-da-rakes-in-r15-million-in-donations-anc-r10-million/> (accessed 30 March 2023); Independent Electoral Commission, *Political Party Funding: Annual Report 2022*, (2022a) and (2022b), https://static.pmg.org.za/PPF_Annual_Report_2022Final.pdf (accessed 20 April 2023); Independent Electoral Commission, *IEC Published Declarations Report: Quarter 1 2022/2023*, https://results.elections.org.za/home/PartyFundingReports/5/1/5_1_Published_Declarations_Report.pdf (accessed 20 April 2023); HA Thuynsma, "Willing to be Transparent? Assessing Political Parties' Commitment Towards Regulating Party Aid in South Africa", Policy Studies Special Issue on Building Party Resilience: Improving Party Aid in An Age of Democratic Decline (forthcoming).

55 N Masungwini, "EFF Declares Donations for the First Time", *City Press*, 22 February 2022; Independent Electoral Commission, *ibid*.

56 Independent Electoral Commission, *ibid*.

Afrikaans party, Freedom Front Plus. President Ramaphosa and the businessman Cedric Muziwakhile Ntombela are also listed among the ANC's individual donors.⁵⁷

Within the DA, however, questions about how individual campaigns are financed did not generate the same media attention – possibly because the party has traditionally raised far less money than its main rival. However, according to the IEC published quarterly reports, in 2021 the DA raised an impressive ZAR 15 million, outpacing the ANC which declared only ZAR 10 million in donations for that reporting cycle.⁵⁸ These reports have lifted the secrecy surrounding party financing, with the DA forced to declare another ZAR 15 million in donations from Mary Slack, daughter of the late mining mogul Harry Oppenheimer, Martin Moshal, the co-founder of Entrée Capital who also supports scholarships for students studying in Israel, South Africa, and the Ukraine, and the insurance company Fynbos Ekwiteit.⁵⁹ Michiel Le Roux, the founder of Capitec Bank, also donated more than ZAR 50 million prior to the 2024 election.⁶⁰

Since 2021 the ANC has declared multimillion-rand donations from donors such as the Sandton-based business management holding company Chancellor House; investment house Botho-Botho Commercial Enterprise; mining company African Rainbow Minerals; residential construction consulting business NEP Consulting; Nonkwelo Investment Holdings; Majestic Silver Trading 40; and United Manganese of Kalahari.

Foreign governments and agencies were also not permitted to make direct donations to a political party except in cases where the funding is there to support training and policy development initiatives (any such funding must be declared). As a result, the DA declared donations from political foundations such as the Friedrich Naumann Foundation (which provided support through both cash and in-kind donations); the Danish Liberal Democracy Programme; and the Dutch-based Volkspartij Voor Vrijheid En Democratie (the latter two provided in-kind support).⁶¹ In addition,

57 N Subramoney, "Party Funding: 'Broke' ANC Declares R22 Million as Cyril Digs into His Pockets", *The Citizen*, 19 November 2021, <https://www.citizen.co.za/news/south-africa/politics/anc-r22-million-party-funding-second-quarter/> (accessed 20 April 2023); Independent Electoral Commission, *ibid*.

58 Matwadia, *supra* n. 54.

59 Independent Electoral Commission, *supra* n. 54.

60 R Davis, "The Big Eight Funders of South Africa's Major Political Parties", *Daily Maverick*, 10 September 2023.

61 Independent Electoral Commission, *supra* n. 54.

donations from corporates such as the environmentally responsible plastic packaging firm Polyoak Packaging and the media conglomerate Naspers were acknowledged. The party also received international funding from the former chief executive and treasurer of the British Conservative Party, Sir Michael Lawrence Davis (note that donations from foreign individuals to political parties are allowed under law but cannot exceed ZAR 5 million a year).⁶²

4.2 Measuring the impact of courting private donors

The next element that parties needed to understand was the likely costs and benefits of courting private donors. Despite the ZAR 15 million donation restriction, billionaires such as the Oppenheimer family, Patrice Motsepe, and Martin Moshal have retained their influence on the fundraising strategies of political parties. The perception is that their contributions have shaped party dynamics, funding approaches, and policy priorities, with this often leading to concerns about the implications for democratic processes and governance.

The existing data suggests that parties continue to rely on a small number of wealthy donors. For instance, Le Roux, Motsepe, and Moshal, along with the Oppenheimer family, collectively contributed more than ZAR 150 million to various parties ahead of the 2024 election cycle, with this making up a significant portion of the parties' overall funding.⁶³ Such levels of dependency have encouraged parties to align their messaging and policy approaches with the interests of these donors in order to secure ongoing financial support.

For example, Motsepe's donations to parties ranging from the ANC, DA, Freedom Front, and EFF reflects a strategy of maintaining influence across the political spectrum.⁶⁴ By supporting various parties, Motsepe has sought to ensure that his commercial interests, particularly in mining and business, are represented regardless of which party, or coalition of parties, gets to be in power. In other democracies (such as the USA), such broad support

62 *Ibid.*

63 Davis, *supra* n. 60.

64 *Ibid.*; J Felix, "Meet the 3 Biggest Funders Behind SA's Political Parties", *News24*, 27 July 2023, <https://www.news24.com/news24/politics/parliament/meet-the-3-biggest-funders-behind-sas-political-parties-20230727> (accessed 1 June 2024).

has created a more fragmented policy landscape, with parties scrambling to attract key donor support and adopting very similar pro-business policies.⁶⁵ Donors expect their interests to be represented on party platforms and in legislative agendas, such that the Oppenheimer's support for economically conservative parties like the DA suggests a preference for the neoliberal policies that align with their business interests in mining and other sectors.⁶⁶

As Davis reports, Le Roux is not only a close ally of the DA party leader, Hellen Zille, but in 2019 sat on the party's review panel alongside former party strategist Ryan Coetzee and the former party leader, Tony Leon. The panel, charged with investigating the party's dramatic decline, recommended removing then party leader Mmusi Maimane.⁶⁷ These strategic partnerships raise concerns about what has become known as "policy capture", where the interests of a few wealthy individuals overshadow the broader public interest.⁶⁸

In another example, Martin Moshal and three members of the Oppenheimer family made multi-million rand donations to a number of newly formed opposition parties: ActionSA (led by former DA member and businessman Herman Mashaba); Mmusi Maimane's Build One South Africa; and Songezo Zibi's Rise Mzanzi. These parties all challenged the ANC's dominance but found themselves participating in coalition talks with the former liberation movement after no single party received a clear winning majority. In this case, it seems likely that the interests of their wealthy backers influenced the parties to set aside their opposition and join a strategic alliance with their former foes such as the IFP, Patriotic Alliance, ANC, and DA.

However, ActionSA also declared that funding came from the investment company AEEI Group. This is a subsidiary of Sekunjalo Investment Holdings, which was founded by the controversial "struggle doctor", Dr Iqbal Survé. For the more cynical analysts, this contribution is likely to have inspired the party's unexpected break with its coalition partners in local

65 Bailey, *supra* n. 2.

66 D Steyn, "How to See Where Political Parties Get Their Money", *GroundUp*, 4 August 2023, <https://groundup.org.za/article/how-to-see-where-political-parties-get-their-money/> (accessed 14 August 2023); Felix, *supra* n. 64.

67 Maimane was subsequently removed, after which he formed his own party, Build One South Africa. Davis, *supra* n. 60.

68 OECD, Preventing Policy Capture: Integrity in Public Decision Making, Paris, OECD Public Governance Reviews (2017).

municipalities such as Tshwane shortly after the national and provincial polls.⁶⁹ Under a moneyball approach, the seeming ambiguity of these actions implies that one donor's money is more influential than another's.

The substantial financial backing of private donors also allowed parties to broaden their electoral strategies to boost their campaign advertising, outreach efforts, and mobilisation activities. Both the ANC and DA were able to strengthen their campaign infrastructure and increase their visibility via electronic billboards and increased campaign advertising on radio and television channels.⁷⁰ Although the PPFA requires parties to disclose donations above ZAR 100,000, there are ongoing debates about the adequacy of these regulations.

4.3 Engaging small donors

While major donors play a significant role in South African political funding, a moneyball approach encourages parties to also focus on small donors. In fact, careful scrutiny of the legislation reveals a very convenient loophole – while parties must record donations received from all sources, amounts below ZAR 100,000 must be regularly audited but do not have to be publicly disclosed.⁷¹ For Butler, this means that parties have canvassed for small-scale or “low-dollar” donors while simultaneously recruiting members and collecting small membership fees to support their operations without being required to disclose their details or the specific amount of their donations.⁷²

This strategy exploited a loophole in the PPFA which parties could use to help donors not keen to have their support publicly recognised and also to obscure the true extent of their party infrastructure. In theory,

⁶⁹ N Njilo, “ActionSA About-Turn on Governance with Tshwane Mayoralty at Stake”, *Daily Maverick*, 10 September 2024, <https://www.dailymaverick.co.za/article/2024-09-10-actionsa-about-turn-on-governance-with-tshwane-mayoralty-at-stake/> (accessed 1 April 2023).

⁷⁰ It is difficult to provide absolute amounts of expenditure for these activities, which were launched mostly after 10 May 2024 when the Electoral Matters Amendment Bill of 2024 was passed. Its provisions are discussed later in the chapter, but it effectively suspended all reporting regulations two weeks ahead of the election.

⁷¹ Political Party Funding Act 6 of 2018.

⁷² A Butler, “Most Party Funding Flies Below the Radar”, *Business Day*, 17 May 2024, https://www.businesslive.co.za/bd/opinion/columnists/2024-05-17-anthony-butler-most-party-funding-flies-below-the-radar/#google_vignette (last accessed 21 November 2024).

this strategy is particularly useful for established parties and is a generally sound strategy for raising money as well as increasing voter support. But, for newly registered parties, such operations might be out of reach on account of their limited financial and institutional capacity. Furthermore, because these amounts fall below the reporting threshold, it is difficult to ascertain the extent to which parties mined small donors.

Nevertheless, by analysing data on grassroots contributions and the promotion of issues that are relevant to these donors, parties can develop strategies to diversify their funding sources. This not only helps in compliance with donation limits, but also enhances the party's appeal to the broader electorate.

4.4 Using key challenges to political-party advantage

There are a number of challenges that political parties use to their advantage. The first and foremost concern is the ability (and willingness) to comply with the PPFA. As Piper and Schrire point out, the IEC plays a fundamental role in upholding the transparency of political financing by ensuring that political parties comply with the Act and, therefore, is central in regaining the public's trust.⁷³ But technical and bureaucratic delays have impeded the IEC's ability to oversee a party's compliance with the PPFA. In 2023, the IEC's budget was targeted for a cut of ZAR 800 million over a three period (2023–2025), including a sum of ZAR 281 million to be cut in 2024. The IEC noted that its ability to recruit the staff necessary to effectively discharge its functions under the PPFA was adversely affected by these cuts.⁷⁴

Calland and Graham also recognise the Act's uneven application, arguing that the PPFA's usefulness relies a great deal on political parties themselves and their commitment to adhere to the new standards.⁷⁵ Despite the capacity problems experienced by political parties, their books need

⁷³ L Piper and R Schrire, "Transparency and the Effectiveness of the Independent Electoral Commission in Regulating Political Party Funding", 33 (2019) *South African Governance and Political Issues*, pp 113–131.

⁷⁴ L Dentlinger, "IEC Warns Govt Budget Cuts Could Impact Meeting Amended Electoral Law Requirements", EWN, 28 February 2024, <https://www.ewn.co.za/2024/02/28/iec-warns-govt-budget-cuts-could-impact-meeting-amended-electoral-law-requirements> (accessed 1 March 2024).

⁷⁵ R Calland and P Graham, "The Effects of the Political Party Funding Act on South African Politics", 25 (2018) *South African Journal of International Affairs*, pp 545–562.

to be regularly audited, with the results submitted to the IEC in the last six months of each financial year. The PPFA also makes provision for the Auditor-General, at his or her discretion, to conduct an additional audit.

In fact, the fine for non-compliance is so lenient that parties, especially the smaller ones, prefer to incur temporary censure rather than expend valuable resources on ensuring compliance. The PPFA requires political parties to submit reports to the IEC on a quarterly basis for monies received from both the MPF and private donors. In terms of enforcement, the IEC can apply to the Electoral Court for an order to compel compliance. Should the party refuse, directives can be issued that, variously, suspend payment of any monies to be allocated; force the party to pay monies that were irregularly accepted or spent by instituting a civil claim; offset the liability against the monies due to the party from the MPF; or impose a fine. The fines are disaggregated based on the offence –for receiving donations from sources that are disallowed or not disclosing donations received above the ZAR 100,000 threshold, parties can be fined ZAR 500,000 or 10 per cent of income (whichever is higher). Depending on the number of offences committed within a three-year period, that amount can increase to ZAR 1 million or 30 per cent of income (whichever is higher). Should the party not account for other income received from, say, membership fees, fines range from ZAR 40,000 to a maximum of ZAR 150,000 depending on the number of offences committed during a three- year period.⁷⁶

Such sanctions have been instituted on very few occasions. The most recent was handed down on 10 May 2024 in the judgement delivered in *Electoral Commission of South Africa v African Independent Congress and others*.⁷⁷ Here, 486 political actors were found to be non-compliant with the PPFA's provisions and each fined between ZAR 10,000 and ZAR 40,000. As a result, there were calls to revise the reporting thresholds and the disclosure criteria to better balance the need for transparency and with protection of donor privacy.

For the PPFA to be effective, its provisions should be continually assessed and adapted to address emerging challenges and incorporate feedback from a range of stakeholders. According to a Human Sciences Research Council (HSRC) study, the public, a key stakeholder in the process,

⁷⁶ Political Party Funding Act 6 of 2018.

⁷⁷ *Electoral Commission of South Africa v African Independent Congress and others* (0011/23EC) [2024] ZAAC 11, Judgement, 10 May 2024, <https://lawlibrary.org.za/akn/za/judgment/zaec/2024/11/eng@2024-05-10> (accessed 30 December 2024).

has mixed feelings about the PPFA.⁷⁸ Confronted with the fact that relatively few political parties complied with the disclosure requirements between 2021 and 2024, respondents claimed to appreciate the aims of the PPFA but were sceptical about whether political parties have the political will to comply and further questioned whether the IEC had the capacity to effectively enforce the legislation. Similar sentiments were echoed by the other stakeholders (namely, businesses, civil society organisations, scholars, and policy-makers) who were also surveyed.⁷⁹

Nevertheless, there has been some response to the underlying issues. The amendment to the Executive Members' Ethics Act⁸⁰ (discussed above) was an attempt to monitor the ethical conduct of cabinet members, deputy ministers, and members of provincial executive councils and to curb rising campaign expenditure. The National Assembly's passing of the Electoral Matters Amendment Bill (EMAB)⁸¹ on 7 May 2024 is, to some degree, another example. The EMAB amended the PPFA in line with the provisions of the Electoral Amendment Act that allowed independent candidates to contest the 2024 national and provincial elections.⁸²

At the same time, the EMAB also heeded the ANC's calls (in its 2017 submission on the PPFA) for a higher threshold for disclosure, the raising of the amount of money a single donor can contribute per financial year, and removal of the ZAR 15 million cap on single donors. By removing the disclosure clause, the EMAB created a temporary lacuna in the law, one that will exist until the President establishes a new limit and threshold. The Act also amended the proportional MPF allocations to allow independent candidates to receive such funding, but rolled back the PPFA's allocation requirements and reverted to the levels seen under the 1997 Public Funding Act. In essence, the EMAB rendered the PPFA and its provisions meaningless, mere weeks before the 2024 national and provincial election. Political parties and the civil society organisation My Vote Counts have vowed to challenge the amendment.

78 HSRC, *supra* n. 24.

79 *Ibid.*

80 Executive Members' Ethics Act 82 of 1998.

81 Electoral Matters Amendment Act 14 of 2024 (Vol. 707, No. 50624, Cape Town, 7 May 2024), https://www.gov.za/sites/default/files/gcis_document/202405/50624gon4790electoralmattersamendmentact14of2024.pdf (accessed 2 June 2024).

82 Electoral Amendment Act 1 of 2023 (Vol. 694, No. 48432, Cape Town, 17 April 2023), https://www.gov.za/sites/default/files/gcis_document/202304/48432electoralamendmentact1of2023.pdf (accessed 2 June 2024).

Clearly, the effectiveness of these reforms depends on various factors: the ability of the IEC to enforce the relevant laws; how they are perceived by the public; and the extent to which political parties are willing to comply with the law.

5. Conclusion

This chapter has provided an analysis of the complex relationship between money and politics, doing so by drawing on publicly available information and exploring the potential costs and benefits of public and privately funded political campaigns. It acknowledges that while public financing does exist for political parties within South Africa, this funding is insufficient and its reporting requirements are too restrictive for parties to implement or the IEC to enforce. To supplement their resources, political parties have courted private donors to fund viable election campaigns and give citizens a greater choice at the ballot box. Donations from billionaires like Patrice Motsepe and Martin Moshal, whose financial contributions seem to shape policy priorities and party dynamics, often leading to concerns about the implications for democratic governance and public trust. The unequal distribution of wealth raises concerns that the wealthy may be able to exert disproportionate influence over the political process, potentially undermining the democratic ideal of political equality in which all citizens have an equal say.

This study has also shown that, prior to the enactment of the EMAB in 2024, business, civil society, and other likeminded stakeholders displayed some vigour and political will in complying with the legislation. Prominent decision-makers from political parties, parliamentary committees, civil society, and the broader public were all involved in the initial policy research discussions. The PPFA also includes a provision for the IEC to enforce the Act and stipulates specific reporting milestones and monetary sanctions for those found to be non-compliant. There is, too, a clear role for civil society to monitor and evaluate the PPFA's implementation and it is encouraged to provide recommendations for future amendments.

Unfortunately, there are also some drawbacks. First, the ANC-led government cut the IEC's budget by ZAR 281 million, effectively compromising the entity's ability to hire adequate levels of staffing for the monitoring and enforcement of the PPFA. Secondly, the EMAB's enactment completely suspended the necessary disclosure and donation limits needed to keep the system transparent and accountable. Enacting the EMAB illustrates just

how powerfully political parties (and their donors) can influence the legislative process. In this instance the ANC used its parliamentary dominance to hurry the process through on the pretext of providing state funding for the new independent candidates. It is worth noting that the EMAB also reversed the PPFA's disclosure and reporting provisions.

Lastly, even before the EMAB was enacted, the public was largely cynical about the party-finance regulatory process. According to the previously mentioned HSRC study, the public viewed these reforms as inadequate or merely symbolic.⁸³ In the end, what started out as a commitment to create more transparency and greater accountability may in fact have highlighted the willingness, especially by political parties, to keep political funding in the shadows, and paradoxically increased levels of distrust among the electorate.

The enactment of the PPFA represents a significant stride towards enhancing transparency and reducing the influence of undisclosed donations. However, as the political landscape shifts, so too must the mechanisms that oversee party financing, ensuring that they keep pace with both internal dynamics and external pressures. Despite the necessary but lofty ideals, the effectiveness of such mechanisms hinges on the will of political parties to comply with them and the ability of the IEC to oversee compliance. But while these reforms of party-funding laws can potentially build public trust and reinvigorate the electorate, their ultimate success relies on the public's perception that the law is being followed.

As political parties navigate these challenges, the need for transparency and public responsiveness in party finance remains crucial to ensuring that the interests of a few do not overshadow the needs of the broader electorate.

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Executive Members' Ethics Act 82 of 1998

Political Party Funding Act 6 of 2018

Promotion of Access to Information Act 2 of 2000

Public Funding of Represented Political Parties Act 103 of 1997