

THE MELROSE ARCH MEMORANDUM

IDASA SYMPOSIUM: Political Donations: Roles and Responsibilities

Melrose Arch, Johannesburg, 6-7 October 2005

A Note of Discussions & Recommendations

A meeting of representatives of the business and civil society sectors, and political parties, convened by Idasa at Melrose Arch, Johannesburg, on 6-7 October 2005, noted the following:

GUIDELINES FOR REGULATIONS IN SOUTH AFRICA

The Symposium heard from international experts: Professor Keith Ewing, Kings College, London; and, Professor Akiko Ejima, University of Meiji, Tokyo.

Regulations should address a country's contextual peculiarities:

Party funding is an international issue but no single model exists.

Universal principles:

1. The prevention and elimination of corruption
2. Ensure adequate funding of parties to allow them to perform multiple functions
3. Encourage citizen participation and engagement in political parties
4. Promote equality and fairness between electors, parties and candidates
5. Transparency and disclosure are main pillars for control
6. Public attention is crucial: the media should provide the information for the public to analyse.

Competing principles: which act as barriers or constraints on regulations:

Human Rights pertaining to the party are affected: such as privacy rights; freedom of association; freedom of expression; arbitrary search and seizure.

Why large, undisclosed donations are problematic:

1. Corruption: "Thin" conception: political favours are bought. Favouritism: donors expect help in the legislative process, and the seeking of contracts. Legal donations can also have this effect. "Thick" conception: destroys purity of democratic process, representative institutions and personnel. Business rarely contributes for altruistic reasons or civic duty but rather to gain access to decision makers and glean returns from government.

2. Political equality: undermines equality between electors and candidates.
3. Decrease in electoral turnout due to a loss of confidence in the democratic process. Electors perceive that corporates have undue influence.
4. Large donations are problematic to regulate:
 - A. The party structure creates barriers to regulation:
Example: UK: trade unions are major donors for Labour Party- do you cap these donations?
 - B. Evasion and avoidance: need sophisticated policing system
5. Access to information rights are undermined.
6. Participatory democracy is undermined
7. Smaller parties are undermined.

Choosing Party Funding Regulations:

Two main regulatory options:

Soft regulation: Germany and Scandinavia

Hard regulation: Japan, UK, Canada

A Menu of options exists:

1. Disclosure
2. Regulation Controls: supply of money to parties.
3. Control Spending: demand side
4. State funding: for wealthy countries
5. Monitoring and enforcement: an independent gatekeeper or regulatory authority is crucial. Should have security of tenure (mirroring a high court judge) and security of funding which government alone should not determine.

Possible Solutions:

1. Transparency and self-regulation – use the fear of a hostile public response to push parties to reform.
2. Contribution controls – restrict types of donors and limits on amounts. Indirect restriction by companies/unions: they are required go gain shareholder approval for donations.

3. Reduce demand for money (demand side initiatives) – tough spending controls on elections (caps on candidate spending), free broadcasting, state funding.

The impact of scandals on the reform process:

Political scandals can lead to reform – Japan and UK are examples.

The impact of scandals on regulations once adopted:

Scandals discourage donations from business because they do not want to be associated with the related damage to their corporate image and future relations with government. The decrease in corporate donations is partly due to this. When reforms follow damaging political scandals involving corrupt relations they are less effective in terms of instilling trust and integrity into the system because parties and politicians have already lost the trust of the public.

The Japanese case

Japan presents a useful case study for examining measures in a problematic context. In 1994 Japan adopted reforms as a response to extensive scandals that threatened the integrity of the democratic process and thereby the political system as a whole. The regulations adopted were wide reaching, comparatively severe to other models and included the introduction of public funding and changes to the electoral system.

Associated Problems:

- No inspection body in Japan, missing monies go unchecked. A loophole exists at local level where politicians are still able to receive unregulated donations.
- Corporate donations have decreased due to the introduction of regulations, public funding and economic recession in Japan.
- Parties therefore lack money that once came from the business community.
- Dependency on public funding has increased (84% of total income of parties), the state has more control of parties, and parties lack money required for elections.
- While regulations are necessary, too many regulations can cause problems.

THE ROLE AND POSITION OF THE BUSINESS/CORPORATE DONOR COMMUNITY IN SOUTH AFRICA:

Noting concerns about the issue in the broader corporate community, the business working group agreed that:

- There is a need to develop mechanisms to protect the integrity of donations, including the possible creation of a “Third Party”, intermediary body to collect and distribute donations according to an agreed voluntary formula.

- That such a body should be governed by the corporate donor community itself.

Further noting the need to build capacity in all political parties, in the interests of a strong multiparty democracy, that:

- Donations should be made on more of a project basis between elections, to support a full range of operating and developmental costs, rather than only to fund election campaigning.
- That the formula for distribution of donations needs careful exploration and that a comprehensive process needs to be put in place to enable the business community as a whole to consider the options, hear from other key stakeholders and arrive at a policy position.
- BUSA and CHAMSA offered to lead the process.

Overall, business would be inclined towards a minimalist regulatory framework – with limited obligations imposed on corporations. The focus on disclosure requirements should lie with the recipient political parties.

In preference, greater emphasis should be placed on developing a strong voluntary approach to the subject.

THE ROLE OF CIVIL SOCIETY IN SOUTH AFRICA:

Policy suggestions:

- Central Fund: can benefit from the genuine commitment by business to donate in support of a multi-party democracy. Breaks the direct link between donors and political party thereby protecting both. Relieves state resources.

Advocacy suggestions:

- Further research to identify 'contextual peculiarities' to South Africa, which, in turn, can be used to inform on what policy options are suitable for SA. 'Marry context to principles'.
- Use Constitution, African Union Convention on Preventing and Combating Corruption, 2003 and campaign for the ratification of the AU Convention.
- Attempt to find comparative examples from developing countries such as Brazil and India.
- Define timing for new legislation - legislation should be introduced and passed by next national election.
- Further educate media about the issues.

- Create sustained action among large pool of civil society organisations/ broaden the base of organisations involved in this process.
- Identify those within government who would be prepared to take greater risks and leadership on this issue.
- Lobby unions/shareholders to be brought more centrally into the debate.
- Achieve agreement on basic principles by all stakeholders first and then move debate towards policy options.

THE ROLE OF POLITICAL PARTIES

Policy suggestions:

(The working group focussed on transparency and disclosure)

1. It was agreed that a multi-party democracy fund was desirable. There was however some discussion as to whether companies should still be permitted to donate money to single political parties. It was agreed that this could happen but only where there has been disclosure of the amount (above a certain thresh-hold that is).
2. The fund should set regulations on how the money received should be spent by the parties.
3. Disclosure: The IEC should be the body that enforces disclosure through the oversight of political parties' financial statements submitted to the IEC.
4. Disclosure should be on a quarterly basis and sanctions for non-disclosure should be considered. The reporting period should be more frequent during an election period.
5. The political party should be compelled to disclose as opposed to the donor company.
6. Listed companies should have to report back to their share-holders on any donations given to political parties. The same principle would apply to trade unions that would have to report back to their members.
7. The threshold amount above which there should be disclosure was set at R50 000 per year. This should be a static figure to avoid any complications or confusion. The vexing issue of subsidiaries and holding companies was also raised. Some companies would inevitably be able to circumvent this threshold by getting each of their subsidiaries to donate R49 000. It was agreed that this was an issue that needed further discussion.

8. In-kind donations should be calculated at market value.
9. Payments to political parties should not be in hard cash - harsh penalties should follow for those political parties and / or companies which deliberately undermine the system.
10. Any amount of foreign funding above R50 000 should be given to the IEC for distribution and not to specific political parties.
11. Public Funding: the current equity: proportionality formula as laid down in the Regulations made pursuant to the Public Funding of Represented Parties' Act of 1997 should be changed to something that is closer to a 50:50 split.
12. In addition, only those parties who had competed in the elections should be entitled to the equity allocation.

THE ROLE OF IDASA

Idasa is committed to continuing to support the process and inform the debate, directed towards finding a social consensus around the rules of the game – both voluntary and statutory.

At the suggestion of the participants, Idasa will continue to support the political parties' forum by convening and facilitating its discussions.

At appropriate moments, Idasa will seek to convene multi-sector conversations, such as the symposium, and between times will endeavour to inform each sector of the progress of the other and to promote positive engagements between them as the process moves forward.

When called upon by other stakeholders, Idasa is available to share its knowledge and where appropriate to bring in additional expertise to assist.

Specifically, Idasa will conduct a feasibility study in relation to the idea of a Third Party intermediary body.

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