



Electoral Institute for Sustainable Democracy in Africa

# **POLICY BRIEF ON PARTY AND CAMPAIGN FINANCE IN SOUTH AFRICA'S 2019 ELECTIONS**

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## EXECUTIVE SUMMARY

Adequate funding is essential for political parties to perform their core functions and achieve their objectives. The transparency of political party and campaign funding is an important element of electoral integrity, as it sets the basis for fair competition. A robust regulatory framework is the first step towards guaranteeing a transparent party and campaign finance regime. Another important aspect is enforcing the framework to entrench the rule of law and accountability.

Political party and campaign finance remain a contentious issue and in recent years has become central in several African states. Since 1998 South Africa has effectively regulated the public funding of parties, but the regulation of private funding remained controversial.

The calls for transparency in the private funding of political parties in South Africa culminated in the enactment of the Political Party Funding Act 6 of 2018 (PPFA) in January 2019. The PPFA aims to: provide for, and regulate, the public and private funding of political parties; prohibit certain donation sources; introduce mandatory disclosure of private donations that are above a stipulated threshold; make political parties more accountable to their constituents about their funding; establish structures to operationalise the Act within the Independent Electoral Commission (IEC); and provide penal measures for violations.

This enactment, coming as it did less than six months before the national and provincial elections, made it difficult for the IEC to operationalise the PPFA before the elections. The Act met with different reactions from political parties, private donors and other stakeholders who had a vested interest in South Africa's political landscape. EISA considers the enactment of the PPFA an important stride towards strengthening democratic practices in elections, preventing corruption, and fostering accountability by political parties to their electorate. The timing of the enactment was, however, a missed opportunity for the country to improve on the fairness of its electoral process by creating a more level playing field for all parties.

Though the PPFA was not in force during the 2019 elections, EISA considered its enactment an opportunity to assess and document the transparency and integrity of the 2019 electoral process. This policy brief reviews

the PPFA in order to assess its effectiveness in promoting transparency, preventing corruption and levelling the playing field for elections in South Africa. It presents the findings of the EISA research project and offers recommendations for a more effective regulation of private funding of parties in South Africa.

## BACKGROUND

South Africa dropped from a ranking of 38 in 2001 to 70 in 2019 on Transparency International's Corruption Perceptions Index. Moreover, its score dropped to 44/100 (Transparency International, 2019). To exacerbate this, the Public Service Commission reported a R1 billion loss due to public sector corruption during 2011/2012 (Corruption Watch 2013). These indicators paint a gloomy picture and further strengthen the call for political parties to tackle corruption by opening up their funding to public scrutiny.

Between 2011 and 2017, official government reports (including that of the Public Protector) and discussions in parliamentary committees routinely expressed concern about increasing corruption and patronage in the South African state. These included the controversial R250 million upgrade to President Zuma's private home, Nkandla, which became known as the Nkandla saga, or Nkandlagate. However, it is the degree to which corruption and neopatrimonialism infiltrated the state that became of particular concern. This phenomenon is widely evident on the African continent, where patrons use state resources to secure the loyalty of clients in the general population. The informal patron-client relationship extends from the national government down to individuals at local level and can be attributed to the ties that exist between political parties and their financiers.

Regulation of political party finance is essential to ensure the overall transparency of the electoral process, prevent corruption and promote equal competition among political parties. More importantly, it guarantees independence of parties from donor influence and prevents clientelist relationships. Globally, there is a growing awareness that organising well-administered elections does not enhance democracy if the outcome is decided by the banknote rather than the ballot (Magnus, 2014). Funds then become the determining factor, which both skews political competition and undermines the impartiality of the electoral process,

as parties do not have equal opportunities to compete. In addition, politicians with close ties to their financiers create a political environment vulnerable to corruption and patronage networks.

The 2019 elections in South Africa were the tenth consecutive democratic (local and national) elections since the end of the apartheid regime. Throughout this period, political parties have been legally entitled to both public and private sources of funding. While public funding had been regulated through the Public Funding of Represented Political Parties Act, private funding of political parties has had a controversial history. In the early 2000s, civil society approached the courts demanding that parties must be compelled to make private funding transparent. Parliament at the time undertook to deal with the matter, but it was not until January 2019 that the Act regulating both public and private funding of political parties was signed into law by the president.

Historically, scandals this century highlight the ongoing risks posed by unregulated party finance in South Africa. These transgressions include Oilgate in 2004; more recently in the Free State where government funds were redirected to the ANC's 2017 national elective conference (Myburgh, 2019); and the November 2018 decision of President Ramaphosa to repay funds received from Bosasa. In addition, there were claims that the EFF had received donations from self-confessed cigarette smuggler Adriano Mazzotti, which allowed the party to register and contest the general elections for the first time in 2014 (Qukula, 2014). These and other issues form the basis of arguments by civil society organisations calling for transparency in party funding (Friedman, 2017).

The IEC faced challenges in operationalising the PPFA as the Act was passed less than six months before the 2019 elections. The Commission had initially planned to implement the Act in phases, starting in April 2019. As a first step, the IEC published draft guidelines for the operationalisation of the Act which attracted over 4 300 submissions from the public (IEC, 2019). This necessitated an extension of the deadline to allow for more submissions on the draft. Subsequently, ten organisations submitted their comments on draft regulations regarding political party funding. The ANC, Inkatha Freedom Party, My Vote Counts, COSATU and Business Unity South Africa were among the electoral stakeholders that expressed their views on the matter (IEC, 2019).

## Towards operationalising the PPFA

While the IEC readied itself to implement the PPFA in mid-November 2019, two representatives of the IEC, along with CASAC (Council for the Advancement of the South African Constitution) visited the UK to examine how their EMB regulates political party funding. The delegation comprised Commissioner Mosotho Moepya and George Mahlangu, the Chief Executive for Party Funding at the IEC, accompanied by Lawson Naidoo, CASAC's executive secretary. In February 2020, the IEC held a briefing session in Cape Town to provide feedback about the visit to the UK, highlighting the following points:

- In the UK, political parties are allocated £19 million per party per election. This is considerably less than the amount spent by the top two parties in South Africa
- The IEC is in the process of conducting interviews for the new Political Party Funding Unit staff
- The IEC has finalised regulations for the new PPFA
- The IEC is also in the process of installing a new IT system and thereafter political parties will receive training
- The IEC has completed the first phase of the PPFA and they are waiting for the president to sign the commencement date.

Concerns raised by electoral stakeholders included regulating online campaigns through social media campaigns. Regarding in-kind contributions, the IEC stated that the parties should establish the commercial value of these donations for inclusion in their reporting. The IEC also mentioned its own concern that it might become the victim of political parties wishing to influence the management and distribution of these funds.

## INTRODUCTION

Since the release of the Public Protector's report on state capture in South Africa, the issue of party and campaign financing has dominated public discourse and has highlighted the need to regulate donations to political parties.

In 2018, the Constitutional Court declared that information on the private funding of political parties must be recorded and regularly made available to the public. This followed a My Vote Counts case where the NGO had approached the High Court for an order declaring that the Promotion of Access to Information Act (PAIA) was unconstitutional because it did not provide for political parties to disclose their private sources of funding (SAFLII, 2018).

The case followed a decades-long call from CSOs about the need to make private funding of political parties more transparent. In the early 2000s, the Institute for Democracy in South (IDASA) and, in their private capacity, two individuals working for IDASA, brought a case against five major parties before the High Court in Cape Town. In the case against parties such as the ANC, DA and IFP, IDASA sought an order compelling these parties to make their private funding more transparent by disclosing the identities of private donors who had contributed more than R50 000 (SAFLII, 2005).

After the 2004 elections, Parliament undertook to deal with the matter of private funding through legislation; but it was not until 2019 that the discussions led to the enactment of the PPFA.

## CONCEPTUAL NOTE

Political parties need funding to fulfil their fundamental functions before, during, and after elections. Party and campaign finance are just two of the elements in the political finance framework. Political party finance refers to monetary and in-kind contributions to and expenses incurred by political parties in their routine activities. Such activities encompass party administration, salaries, rental of permanent offices, training party members, intra-party meetings, policy development and citizen outreach. Campaign finance refers to all contributions and expenses, monetary and in-kind, made to and incurred by political parties and candidates for electoral purposes. This encompasses expenditures for election rallies, renting and hiring temporary offices, conducting door-to-door campaigns, campaign-related communications and transport, production of party regalia and other campaign materials for electioneering and advertising on mass media (OSCE ODIHR, 2015).

While the concept of party and campaign finance covers both public and private funding, this brief pays particular attention to campaign finance, especially the

private funding of campaigns in South Africa's 2019 elections. The decision to focus on private funding was informed by the newly enacted PPFA, which introduces the regulation of private funding of political parties and their campaigns.

Party and campaign finance regulation is a crucial aspect of the electoral process that impacts on its overall integrity. At the heart of party and campaign finance regulation is the principle of transparency and the prevention of corruption. Article 7 of the United Nations Convention Against Corruption (UNCAC), urges member states to adopt appropriate domestic legislation in line with the objectives of the Convention, in order to enhance transparency in the funding of candidates, and where possible the funding of parties. The same principle is enshrined in Article 10 of the African Union Convention on Preventing and Combating Corruption. Another important principle is that of equal treatment of all parties in the electoral process. This important principle is enshrined in the African Charter on Democracy, Elections and Governance and focuses more on the enforcement of regulatory frameworks.

In its Handbook on Observing Campaign Finance, the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) identified key features of a party and campaign finance system. These are: having a regulatory framework that distinguishes between party finance and campaign finance; that differentiates and strikes a balance between public, private and third-party financing of campaigns; and that stipulates reasonable restrictions on donations and campaign expenditure, campaign finance reporting and mandatory disclosure and oversight and monitoring (ibid.). These features are also stipulated as global best practice by the Global Commission on Elections, Democracy and Security in its 2012 report.

Regulation of party and campaign finance contributes to the overall integrity of electoral processes in the following ways: by promoting transparency and accountability in the electoral process; preventing abuse of state resources; guarding against foreign interference and undue influence in the electoral process; curbing the undue influence of private money in politics; levelling the electoral playing field; and safeguarding the integrity of political parties as institutions.

Within the South African context, the release of the State Capture Report by the Public Prosecutor in 2016 further highlighted the challenges posed by the illicit funding of politics by private interests, and the impact of political corruption on the country. A review of the existing regulatory framework for party and campaign finance once more took centre stage in the South African Parliament.

The enactment of the new law highlights the importance of campaign finance for a level playing field and the fairness and transparency of an electoral process. The enactment of the law provides a basis for defining and assessing the role of finance in South Africa's electoral politics.

## METHODOLOGY

EISA initiated a party and campaign finance research project to run from April to July 2019, in order to assess and document the transparency and integrity of the 2019 electoral process. The research is implemented within the framework of EISA's broader electoral support programme for the 2019 elections.

The project sought to:

- gather the perceptions of political parties and other stakeholders on the PPFA
- assess the impact of private funding sources in the 2019 elections
- identify observable trends in campaign finance and expenditure during the 2019 elections
- evaluate the effectiveness of the current institutional framework for party and campaign finance regulation
- make recommendations on the operationalisation of PPFA 2018.

This study is EISA's pilot research on the thematic issue of party and campaign financing. Through this pilot, EISA has developed a methodology for assessing party and campaign finance that can be adapted to different contexts. Researchers from six of South Africa's nine provinces were tasked with conducting field research to identify campaign donation and expenditure trends during the 2019 elections. Researchers were deployed in the Eastern Cape, Free State, KwaZulu-Natal, Limpopo, Mpumalanga and Western Cape.

The methodology included desktop research, direct observation of party campaign activities, polling station

visits on election day, cost verification and key informant interviews.

The research approach was developed and agreed on at a workshop attended by representatives of think tanks, and journalists in South Africa. Research was undertaken by provincial researchers under a lead researcher working with the elections and political processes team at the EISA head office.

Key research questions were:

- What does the enactment of PPFA 2018 portend for the electoral landscape in South Africa?
- To what extent does the PPFA 2018 comply with international benchmarks and best practise on party and campaign finance?
- How effective is the current institutional framework for party and campaign finance regulation?
- What were the observable trends in campaign finance during the 2019 elections?
- To what extent did political parties comply with the PPFA 2018?
- What is the overall impact of party and campaign finance on the fight against corruption in South Africa?
- What practical recommendations should be considered for effective regulation of party and campaign finance in future elections?

The researchers undertook desktop and field research using information from the following sources:

- Media reports
- Citizen observer group reports
- Expert opinion/ independent analysis (e.g. reports from groups such as EISA and IDEA)
- Field research including information from interviews with electoral stakeholders in civil society (NGOs, citizen observers, media experts, religious and traditional rulers)
- The IEC and other relevant government institutions
- Political parties and private sector representatives
- Other interest groups.

## LIMITATIONS

With the PPFA not yet in force during the elections, political parties and other stakeholders were reluctant to disclose information about their private donations as

it had not yet been mandated by law. In addition, the project covered only six of the nine provinces as EISA received very few applications from researchers in the North West and Northern Cape. One further challenge was the non-completion of the study by the researchers in Gauteng. To address this limitation, the findings on Gauteng were incorporated into the second chapter of the book which provides an overview of the context of the 2019 elections.

Lastly, although the IEC initially planned to implement the PPFA in two phases (the first on 1 April 2019 and the second from July 2019), they subsequently announced that they would not commence the implementation of the Act until after the 2019 elections. This decision was to allow additional time for the finalisation of the regulations and other key preparations.

## OVERVIEW OF THE POLITICAL PARTY FINANCE ACT OF 2018

President Cyril Ramaphosa signed the PPFA into law in January 2019, changing the face of political party funding in South Africa. The Political Party Funding Act is viewed as a step in the right direction in order to reduce corruption and improve the transparency of political party funding. The Act repealed the previous Public Funding of Represented Political Parties Act of 1997 (PFRPP) by expanding the scope of regulation to cover both public and private funding of political parties.

### MANDATORY DISCLOSURE AND REPORTING MECHANISMS

Previously, political parties were not compelled to disclose their funders or the amounts received from their donors. In terms of the Act, a donation of less than R100 000 does not need to be declared and there is a cap of R15 million that any one person can donate to a party per year. The Act does allow private donors to the multi-party democracy funds to remain anonymous should they so wish. However, all direct donations to parties above the stipulated ceiling must be disclosed. The Act prohibits parties from accepting a donation that it knows or should have known or suspected originates from criminal activities, and must report such suspicions to the IEC. The Act stipulates that political parties must now report this information to the IEC, which will publish the information on a quarterly basis.

Regulation and monitoring of public and private funding  
The Act establishes two funds to be administered by the IEC: the Represented Political Parties Fund (RPPF), which receives income from parliamentary appropriations, and the Multi-Party Democracy Fund (MDPF) which is funded by private donors. These funds are available only to parties represented in Parliament. The allocation of funds to political parties from both the RPPF and the MDPF works on a proportional and equitable basis. For the RPPF, 10% is allocated equitably amongst all the parties represented in Parliament and 90% is distributed according to the proportional representation of the parties. The MDPF distributes one third equitably amongst the represented parties and two thirds proportionally. There are some restrictions on the use of the MDPF, as the Act stipulates that the MDPF may not receive income from organs of state, state-owned enterprises, or foreign governments or agencies.

The IEC is responsible for allocating resources from the funds to the various political parties represented in the National Assembly and/or the provincial legislatures, based on the number of seats won in the respective structures. Payments to political parties are made quarterly. The money received from the funds may be used 'for any purpose compatible with its functioning as a political party in a modern democracy'. Punishment for contravening the Act can be a fine of up to R1 million or 30% of the party's income, whichever is the highest.

### DONATION SOURCES AND DONATION CEILINGS

The Act stipulates that a political party may not accept a donation that it knows or should reasonably know, or suspects, originates from the proceeds of crime and must report this suspicion to the IEC. While parties are prohibited from receiving funds from foreign persons and entities, nothing in the Act prohibits parties from accepting donations from these entities for the purpose of training or skills development of party members and policy development by a political party (Political Party Funding Act 6 of 2018, Section 8(4)).

The Act also sets donation ceilings of R15 million (per person or entity) and R5 million (from foreign entities) within a financial year (Political Party Funding Act 6 of 2018, Section 7 & 8).

## USE OF STATE RESOURCES

The lines between party and state resources are often blurred, particularly during electoral campaigns. The international IDEA Handbook on Funding of Parties and Election Campaigns mentions that abuse of state resources is regarded as one of the most common challenges. The PPFA guards against the abuse of state resources in South Africa by prohibiting the MPDF from receiving funds from organs of state or state-owned enterprises.

## PENAL PROVISIONS

The Act stipulates various disciplinary measures for political parties that do not comply. In order to monitor compliance, the Act may request parties to produce books, records and any other documentation relating to their income. The Act allows a mechanism whereby the IEC may apply to the Electoral Court for an order to compel compliance. The IEC may also suspend payment to political parties in violation of any of the compliance rules. A sentence of up to five years may also be prescribed for any persons in violation of sections relating to non-disclosure or concealment of donations exceeding the legal threshold limits. Failure to account for political party income and expenditure may lead to a two-year prison sentence (Political Party Funding Act 6 of 2018, Section 20(2)).

In November 2019, the National Assembly adopted the Political Party Funding Amendment Bill in order to strengthen the enforcement of the PPFA, and also passed an Amendment Bill to the Promotion of Access to Information Act (PAIA). This amendment introduces a new section that deals with the publication and availability of political parties' funding records. The bill has since gone to the National Council of Provinces (NCOP) for consideration.

## KEY RESEARCH FINDINGS ON PARTY AND CAMPAIGN FINANCE IN SOUTH AFRICA'S 2019 ELECTIONS

### PPFA VIS-À-VIS INTERNATIONAL BENCHMARKS

The Political Party Funding Act repealed and replaced the Public Funding of Represented Political Parties of

1997. In this regard, the amendment to the Act made a number of new provisions such as the establishment of the Multi-Party Democracy Fund that acts as a central pool for donors. All African countries, with the exception of Chad, Equatorial Guinea, Eritrea, Gambia, Somalia and South Sudan, have either signed or ratified the 2005 United Nations Convention against Corruption, which states that all states should consider taking appropriate legislative and administrative measures to enhance transparency in the funding of candidates for elected public office and, where applicable, the funding of political parties.

In addition, the African Union Convention on Preventing and Combating Corruption, asserts that each state party shall adopt legislative and other measures to proscribe the use of funds acquired through illegal and corrupt practices to finance political parties, and incorporate the principle of transparency into the funding of political parties. For SADC countries such as South Africa, the state provides public funding to political parties for elections, as stipulated in the Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO). This is necessary to level the playing field and as well as to strengthen the democratic process.

Moreover, the PEMMO recommends that:

- Public funding should be extended to all political parties and/or independent candidates where applicable
- The EMB should be responsible for the use of these public funds and beneficiaries of these funds must provide verifiable accounts to the EMB
- Consideration should be given to the establishment of rules governing the disclosure of all funding sources.

The PPFA is grounded on the South African Constitution and several other regional frameworks. It does, however, have some shortcomings. The Act mentions no measures to distinguish state resources from ruling party resources. The abuse of state resources can be defined as undue advantage obtained by certain parties or candidates through use of their official positions or connections to governmental institutions, in order to influence the outcome of elections (Magnus, 2011) The abuse of state resources is difficult to address through formal regulations alone, and also requires vigilance

and monitoring by civil society and the media. As some mandates of the leading political party and the government are similar, it becomes particularly difficult to outline the abuse of state resources.

As this Act is the first of its kind in the country in terms of regulating private funding, it makes provisions that are aligned to international benchmarks and best practice in party finance. However, there are still gaps within the Act. The Act does not provide for expenditure ceilings, but only for income. With the afore-mentioned allocation methodologies of both the RPPF and MPDF, this becomes problematic when attempting to level the playing field. The scope of the Act does not account for international party campaigns. The Act also fails to holistically envisage indirect contributions and expenditures. The Act prohibits donations that originate from suspicious entities but does not explicitly define these entities.

#### **STAKEHOLDER PERCEPTION OF THE PPFA**

The Act was signed into law a few months before the 2019 elections when focus was on campaign activities. This resulted in a lack of awareness of the PPFA and its content, especially at the local level. Researchers found that some political parties were unclear about the Act. Researchers also found conflicting views from the political parties about the PPFA. This speaks to the level of readiness at party level in responding to the mandates of the Act. In the Eastern Cape, the ANC mentioned that it supported the PPFA as it fosters accountability and transparency on election campaigns. The African Christian Democratic Party (ACDP) also echoed its support for the PPFA. In KwaZulu-Natal, the major political parties also showed support for the Bill.

Media in the Eastern Cape were in favour of the Act which they felt enhances transparency regarding the use of campaign finance, and ensures the accountability of political parties to the people. In the Western Cape similar sentiments were echoed by media outlets such as Cape Talk radio, Radio 786, the Cape Times and Cape Argus, which added that it was a great step towards improving political campaigning. Moreover, several media outlets recalled the Guptagate saga and stated that the Act would prevent a repeat in the future. There was consensus that the Act would be beneficial for future elections. Stakeholders from academia were, however, guarded about the Act, as they felt that South Africa's problems are not so much in policies but rather in their implementation.

In Mpumalanga, the media indicated that they had limited knowledge of the Act but were aware that it would bring changes to the political landscape. Experts were of the opinion that the Act would go a long way towards improving transparency in political party funding.

In Limpopo, CSOs such as My Vote Counts and Right2Know indicated that disclosure from political parties should not have needed a bill and that the information should be in the public domain. Their view was that if this information is made public it will be easy to curb corrupt relationships between parties and donors. Religious organisations welcomed the implementation of the PPFA which they believe will help to monitor the decision-making of political parties. Generally, private funding has a significant influence on the decision-making of political parties; thus, its regulation and disclosure will help citizens to hold political parties accountable.

EFF officials interviewed in the Free State stated that the PPFA had sinister intentions to disadvantage the financial wellbeing of smaller political parties which, unlike the ANC, do not have access to the benefits of the state. However, in KwaZulu-Natal, EFF officials interviewed supported the Act, mentioning that the financial transparency of political parties is long overdue. Another case of conflicting views came from the African Transformation Movement (ATM). The ATM president, Vuyolwethu Zungula, welcomed the Act, likening the secrecy around political party funding to the secrecy during the apartheid regime, adding that accountability is the essence of democracy. In contrast, an ATM official in KwaZulu-Natal criticised the Act and expressed the party's intentions to 'resist the legislation in every manner possible'.

In the Free State, the SABC indicated that there is a need to implement laws that will foster a culture of political accountability, considering the negative effects of donors on the national politics of the country. The same view was echoed by the Central Media Group on the need to support the disclosure provisions of the legislation, in order to ensure transparency in terms of how and where political parties obtain funding.

There was a consensus that foreign donations should be restricted as they may interfere in local politics. In Limpopo, both the ANC and EFF appeared to disagree with the Act and refused to share their views about it. The DA again referred researchers to their head office in

the Western Cape. The ACDP, National Freedom Party (NFP) and United Democratic Movement (UDM), felt that parties should be accountable and transparent without needing a law to enforce this. Most parties were also reluctant to reveal their funders. Political parties in the Western Cape all supported the Act but felt that it was signed into law too near to the 2019 elections for it to improve the electoral process, and it would only be properly effective in 2024.

The IEC has been tasked with administering the MPDF Fund. During the parliamentary process to investigate and draft the bill, the IEC was given a number of opportunities to engage with the Ad Hoc Committee on certain aspects of the Bill. One of these aspects was the recommendation as to which institution would be best mandated to oversee and administer the management of the Act. Suggestions included creation of new separate entities, the Auditor-General, Information Regulator or the election management body. In the end, Parliament chose the IEC to assume the responsibility for this expanded mandate. The IEC, however, did insist that the new mandate must be separately funded so as not to cannibalise resources set aside for elections (IEC, 2019). The IEC has proposed a structure that will deal with the PPFA but there has been little information about its composition and how it will operate. Experts on democracy and elections question the capacity of the IEC to oversee and monitor the implementation of the PPFA, which has a strong bearing on achieving the intended objectives of the Act.

## FUNDING SOURCES

### Direct contributions

**Membership fees:** party representatives who were interviewed confirmed that parties raised funds from membership fees. Parties also noted that in addition to membership fees, members also donated in kind. They were however not prepared to provide details of the exact amount of fees received as this was managed and disbursed from the party headquarters. Funds from membership fees were used mainly to produce party memorabilia, some of which was sold at party events and in other cases was given away for free.

**Public funding:** all parties represented in Parliament received funds allocated under the RPPF for the 2019 elections.

**Private donations:** During the electoral period, researchers observed that production of billboards, television and radio adverts and social media posts formed the greater part of party spending. MTN contributed R25 million to all political parties. The EFF mentioned that it received R1 million from private funding. Local businesses also contributed to political parties hoping to receive tenders. Of particular interest was the donation made to the ANC in the Western Cape by Iqbal Survé, whose company Ayo Technology was under investigation. After public outcry about the donation, the ANC issued a statement on the eve of the election, to the effect that the donation had been repaid to the donor (Phakathi, 2019). This case led to the suspension of the ANC treasurer in the Western Cape.

Overall, researchers noted that private businesses were hesitant to disclose their donations or political affiliations for fear of retribution.

### Indirect contributions

**Traditional and religious institutions:** There was little to nothing on the role of religious groups in elections. However, some politicians did visit a few churches during their Sunday services. In the Western Cape the DA used a church facility for its campaign, and in the Free State the ANC visited some churches. The role of traditional leaders was not common except in Limpopo where chiefs donated food and beverages to ANC door-to-door campaigners in Mamokgadi Village.

**Party affiliates:** The ANC has been in a tripartite alliance with the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU) since 1993. This working history has created a platform for indirect contribution and expenditure by COSATU and the SACP on behalf of the ANC. Both the SACP and COSATU organised Freedom Day and Worker's Day celebrations which became campaign platforms for the ANC. In the Eastern Cape, it was reported that EFF supporters in their party regalia were denied access to the May Day rally, while ANC supported were granted access to the event.

**Party volunteers:** Volunteers were engaged by political parties in all provinces to participate in election door-to-door campaigning. Some parties also used these volunteers as marshals for crowd control. On election day, volunteers were observed working as party agents,

stationed inside and outside the polling stations. The volunteers receive allowances for communication, meals and transport.

### **Campaign expenditure trends**

**Campaign rallies:** The top three parties, the ANC, DA and EFF, led campaign spending. In the Eastern Cape, campaign expenditure was mostly for transport, paraphernalia, fliers, food packs, venues and sound. However, some rallies were held in public facilities and no costs were incurred for these bookings. In the rural areas, the ANC provided handouts in the form of food parcels and blankets. As the town of Port St Johns had recently been hit by floods, the people received much-needed food relief. The Department of Arts and Culture carried the costs of Freedom Day celebrations. Although public holidays such as Freedom Day are national holidays, during the campaign season they provided a platform for the ANC and its ally, COSATU, to campaign. The abuse of state resources becomes blurred in such instances as it is difficult to differentiate between party and government resources and in-kind contributions. There was an additional security presence, ranging from local police to the military and private security.

In the Free State, the ANC's campaign expenditure at its rallies was estimated at R244 016. The DA's rallies were estimated at R185 733 and the EFF's R159 158. The use of state resources was also prevalent in the Free State, with the ANC enjoying the services of local traffic department and government vehicles. This was in contrast to rallies by smaller parties that did not enjoy the same level of protection. In total, political parties together spent approximately R2 billion for the 2019 national and provincial elections campaign, with the ANC spending R1 billion, the DA R600 million and the EFF, IFP, FF+ and others together spending the remaining R400 million.

In Limpopo, similar police motorcades were prevalent at ANC events. Churches were used either as venues for political events, or politicians attended the services to raise their public profile. In addition, a village chief offered catering services for the ANC and allowed his cars to be used.

**Media and advertising:** In Gauteng the media reported that during this year's election, expenditure of media

advertising skyrocketed. The DA printed 1.5 million election posters at an estimated cost of R30 million, which is regarded as the largest poster operation in the history of the DA. While one of the small parties, African Independent Congress, reportedly spent a total of R200 000 on 8 000 posters, other political parties did not reveal how much they spent on their posters and billboards (Whittles, 2019).

**Culture of handouts:** All political parties distributed regalia in the form of branded T-shirts, caps, doeks, berets etc for free. However, there was a noticeable trend in all provinces to sell party regalia in urban areas and give it away for free in rural areas. A culture of distributing food handouts was also noticed in provinces such as the Eastern Cape and KZN where political parties distributed food hampers to supporters.

**Use of state resources:** As mentioned previously, the abuse of state resources was not obvious. However, possible cases of abuse of state resources related mostly to the ANC, with the exception of IFP and EFF in KZN and Limpopo, respectively. In KZN, Free State, Limpopo, Eastern Cape and Mpumalanga there was a trend for ANC rallies to be provided with department of health mobile clinics, provincial government ambulances and provincial government emergency medical rescue service vehicles. Moreover, these services were not extended to other political parties. The ANC rallies utilised the services of metro police blue lights escort vehicles to and from their rallies. In KZN, the president of the IFP also used eThekweni metro police VIP motorcycle escort services to rallies. Lastly, it was noted that the ANC enjoyed live broadcast coverage from SABC News in most of their election campaign rallies, while the other political parties were not afforded the same coverage.

Most political parties stated that they are ready to comply with the PPFA as they already have functioning finance departments. However, this might be an oversight on their part as it will require more resources and a thorough understanding of the PPFA.

In total, political parties together spent approximately R2 billion for the 2019 national and provincial elections campaign, with the ANC spending R1 billion, the DA R600 million and the EFF, IFP, FF+ and others together spending the remaining R400 million.

## RECOMMENDATIONS

### 1. **Expeditious implementation of PPFA.**

Based on the findings from all provinces and the perceptions of all stakeholders, it is recommended that the Government should facilitate the allocation of adequate and sufficient support to the IEC so as to speed up the implementation of the PPFA. This is because the Act will enhance transparency and accountability, intercepting corruption and the abuse of state resources (by prohibiting donations from SOEs), prevent destructive foreign interference (by restricting donations from foreigners), discourage influence-peddling (capture of parties, party policy direction, privileged access to government corridors, and state capture), level electoral playing field (through donation caps and MPDF component) and restore the integrity of South Africa's multiparty democracy (by prohibiting dark money, and the commercialisation and monetisation of politics). Having a PPFA implementation road map will help to avoid further delays, although this should not suggest rushing the review process without considering inputs, concerns and submissions relating to the regulations from the various stakeholders.

### 2. **Stakeholder engagement and sensitisation.**

Stakeholders have different perceptions of the PPFA, with a considerable number clinging to consequentialist reasoning and a slippery-slope interpretation of the Act. Whilst the PPFA may have grave repercussions for some political parties, it may not be entirely valid or fact-based to dismiss the Act as a threat to the existence of smaller parties – a recurrent narrative during interactions with most stakeholders. For this reason, it is recommended that the IEC sensitise all stakeholders (political parties, business organisations, civil society groups, media houses and other key stakeholders). This should be through a structured education and information programme across all the nine provinces of the country in order to dispel the myths, misconceptions, misperceptions and misinterpretations of the Act. This programme should also target relevant IEC technical officials in all the provincial offices. To sustain the programme, a robust and solid PPFA communication strategy needs to be developed by the IEC. Guided by the communication strategy, efforts need to be made to ensure the publication of IEC reports relating to disclosed donations to allow for public scrutiny through

the IEC websites and other widely-accessible platforms. This is the case with several other countries, including Australia's Election Commission (AEC)'s Transparency Register which publishes all disclosure information and returns through an easily accessible website (Australian Electoral Commission, 2019), and the New Zealand Electoral Commission's database (New Zealand Election Commission, 2019), among others.

### 3. **Implementation of capacity building programme.**

In the same vein, the IEC may also need to design and roll out a capacity building programme comprising workshops or short-term training seminars for all political parties across all provinces and at national level. This is especially for those new to Parliament, so that they are assisted in preparing the requisite structures and operational modalities needed to implement the PPFA. The capacity building programme may cover issues pertaining to reporting modalities, electoral declaration systems, reporting formats, reporting parameters, disclosure mechanisms, the use of digital tools for online reporting, and other legislative requirements and obligations emanating from PPFA. All this will enhance the compliance and implementation capacities and capabilities of relevant players and stakeholders.

### 4. **Creation of joint structures for partnerships and collaboration in compliance monitoring.**

There is a distinct possibility and probability that some political parties may seek creative and innovative ways to circumvent and evade compliance. Tracing and tracking the flow of so-called dark money donations from non-permissible sources, or donations that exceed prescribed ceilings, will be a complex undertaking. The IEC may therefore need to use existing structures such as the National Party Liaison Committees (PLCs), provincial PLCs and municipal PLCs (which comprise representatives from registered parties) to meet regularly, share information and devise collaborative strategies on how best to monitor compliance by political parties. The Electoral Commission Act 51 of 1996 (which includes Regulations on Party Liaison Committees of 1998) provides for the function of Party Liaison Committees serving as 'vehicles for consultation and co-operation between the Commission and the registered parties' (Political Party Funding Act 6 of 2018, section 6) on electoral matters aimed at delivering free

and fair elections. Thus, it may still be within the scope of the PLC's mandate – as 'vehicles for consultation and co-operation' – to discuss PPFA compliance issues and strategies. If this is interpreted and/or considered to be ultra-vires on the part of the PLCs, this research recommends broadening the mandate of PLCs to facilitate the discussion of PPFA compliance issues. As one party official commented in an interview, 'political parties are the best watchdogs against each other'.

## **5. Whistleblower policies.**

Some individuals may be willing to volunteer information relating to the violation of the PPFA by political parties, private sector companies, SOEs, et cetera – information that may not be in the public domain. It is therefore recommended that the IEC, in line with the Protected Disclosures Act 26 of 2000, advocate for the adoption of whistleblower policies in political parties, private sector companies, SOEs, et cetera. Employees who inform on such matters would thus be protected and procedures developed for the whistleblowers to disclose relevant information without fear of reprisal or retribution. This will assist in reinforcing PPFA compliance. In addition, the IEC should link political party finance disclosure with anti-corruption activities. South Africa has various domestic laws on anti-corruption, for instance the Promotion of Access to Information Act 2 of 2000 that enables people to gain access to information held by both public and private bodies. This could be included in PPFA 2018 to promote a more coherent disclosure and monitoring of political party funding. As it is, elected and appointed officials participate in asset disclosure and the same should apply to political parties under the PPFA 2018. To complement this, the IEC needs to cooperate and liaise with the police so that they are constantly pro-active and ready to investigate possible violations of the Act by any parties or prospective donors.

## **6. Incorporation of election campaign expenditure ceilings.**

In light of the visible disparities between larger and smaller parties in terms of campaign finance expenditure budgets, it is recommended that the IEC consider reviewing the PPFA. The purpose would be to incorporate election campaign expenditure ceilings so as to level the electoral playing field in line with international best practice and global standards. Election campaign expenditure ceilings may have the

effect of limiting extravagant expenditure by political parties, and fuel vote buying. These influence election outcomes in favour of well-financed political parties, an aspect of political culture that undermines electoral democracy and the integrity of elections.

## **7. Further consultations on disclosure provisions and allocation criteria for RPPF and MPDF funds.**

The allocation criteria for RPPF Funds and MPDF Funds have been revised to allow for more equity and equality. However, the continued calls for greater equity from smaller parties may indicate the need for more dialogue and consultation with all stakeholders on the issue. This is to determine whether there is a need and basis for revising the allocation criteria in order to make South Africa's multi-party democracy more vibrant.

**8.** With regard to disclosure mechanisms, these may need further consultations to allow for a review of the Act so that the application of the disclosure provisions does not undermine the intentions of the law. PPFA 2018 regulations provide for the circumstances in which requests for non-disclosure may be declined; however, this must be done in such a way as to uphold the constitutional values of transparency and accountability.

Another recommendation is that the IEC should undertake due diligence whenever donors request anonymity. Non-disclosure should be granted only when there is substantial and overwhelming evidence that disclosure has serious repercussions for the donors in question. On a related aspect, the PPFA compels the disclosure (to the IEC) of all received donations that exceed the prescribed disclosure threshold of R100 000 in a financial year. There is a possibility that prospective donors may work with political parties to circumvent this legal requirement by using different entities or people to make multiple donations below the set threshold in order to evade disclosure. Therefore, it is recommended that legislative review should tighten such provisions. The legislative review process may also need to seek more consensus on whether the threshold is too low or is too high, since a number of interviewees had different opinions on the matter.

## 9. Abuse of state resources.

While the PPFA may be celebrated as giant step towards levelling an otherwise uneven electoral playing field, there appears to be a lacuna in the legislation as it does not address issues relating to the abuse of state resources for political purposes, mostly by incumbents. The PPFA only prohibits donations from organs of the SOEs and organs of the state (Political Parties Funding Act 6 of 2018, section 8); however, the same law is mute on the abuse of state resources by office holders or incumbents to advance the agenda of their parties. This undermines the spirit of the Act and may reserve the intended benefits of donation caps. This is not sufficiently covered elsewhere at law because Section C.2 of the Public Service Regulations of 2001 prohibits such but does not bind non-civil servants. The Electoral Code of Conduct rule on the abuse of positions of power, privilege or influence in the outcome of an election is too general and broad to make an impact. Thus, the efforts being made to level the electoral playing field through the PPFA may be derailed by the continued prevalence of cases of possible abuse of state resources. The IEC may need to review the Act so that it explicitly forbids the use of state resources in election campaigning. Such practices should be considered under the broader category of prohibited in-kind donations, which prejudice smaller and less influential parties whilst offering an unfair advantage to their larger counterparts. In addition, there may be a need to further strengthen the regulatory framework to capture issues around the use of government assets/facilities during election campaigns. These include the SABC and the use of provincial and municipal facilities as a form of indirect campaign contribution to ensure that the incumbent does not have an unfair advantage over other political parties.

### **Aligning political party constitutions with the PPFA.**

Since intra-party election campaigns fall outside the jurisdiction and purview of the PPFA, it is recommended that political parties consider aligning their party constitutions with the PPFA. Key provisions of the Act, such as disclosure of sources of funding, would then compulsorily apply to the intra-party donations made to party members during internal campaigning processes.

## CONCLUSION

The PPFA framework will play a crucial role in levelling the playing field through balanced funding and safeguarding electoral integrity. While the Act presents some gaps, rolling out phase 1 of the implementation will signal a great stride in the commitment towards transparency and accountability for South Africa's electorate.

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# About EISA

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- Electoral processes are inclusive, transparent, peaceful and well-managed;
- Citizens participate effectively in the democratic process;
- Political institutions and processes are democratic and function effectively; and
- EISA is a stronger and more influential organisation

The vision of EISA is "an African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment". This vision is executed through the organisational mission of "striving for excellence in the promotion of credible elections, participatory democracy, a human rights culture, and the strengthening of governance institutions for the consolidation of democracy in Africa".

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