

ZIMBABWE ELECTION SUPPORT NETWORK



POSITION PAPER ON THE FUNDING OF POLITICAL PARTIES IN ZIMBABWE

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List of Abbreviations and Acronyms

AIPPA	Access to Information and Protection of Privacy Act
DRC	Democratic Republic of Congo
MDC	Movement for Democratic Change
POSA	Public Order and Security Act
SADC	Southern African Development Community
ZANU (PF)	Zimbabwe African National Union (Patriotic Front)

1.0. Introduction

The financing of political parties is generally considered to be one of the critical factors for the success of multiparty democracy. In the case of the public funding of political parties, Friedman states that as African States attempt efforts to move towards democracy, public funding of political parties has become an important issue in some of the continent's politics¹. He says that several African States which are attempting democratisation do so in a context which makes political party funding a vital issue, for two reasons:

- The widespread perception in some societies that the ruling party uses State funds to support its activities, to the disadvantage of opposition parties which do not have access to such resources; and
- The reality that many African societies lack a strong private economy, meaning that opposition political parties cannot rely on contributions from wealthy supporters to make up for any resource advantage which the ruling party may have².

Opposition parties may, therefore, demand that they also enjoy State support if they are to compete on a relatively equal footing with the ruling party or other parties with considerable private funding³.

Apart from public funding, political parties may raise funds from private sources, such as membership fees, subscriptions and contributions, dues (e.g. members of parliament of the party may be levied a certain percentage of their government salary while ordinary members pay a stipulated monthly or annual subscription), donations by individuals or corporations (in cash or kind), fund raising activities (e.g. sale of party regalia), economic activities (e.g. establishing party newspaper/s, investing in property, or forming profit making companies), and loans. Some political parties may even rely on foreign funding. For instance, the Zimbabwe African National Union (Patriotic Front) (ZANU (PF)) has received considerable funding, material and other

¹ Friedman, "Public Funding of Political Parties in South Africa", p.1.

² Ibid. The Consultant is of the view that even where the private sector might wish to contribute financially or otherwise to political parties of their choice, the political environment in many African countries, with respect to such issues as patronage and reprisals, is such that it is not advisable for wealthy individual businesspeople or companies to make such contributions to opposition parties. They are in fact compelled by the circumstance to support the ruling party. The Country study: "Resuscitating party politics in Zimbabwe: scenarios for the 21st century", an analysis of the MDC and Zanu-PF from the perspectives of political leadership, political architecture and party constituencies observes at p.9 that failure by large corporate companies or even small ones to fund the ruling party is always seen as sympathy or support for the opposition. It may also result in the "loss" of contracts or favours from government. Contributions from MDC well-wishers used to be done in public until they became victimized and are now forced to fund the party anonymously.

³ This was the case in South Africa in the campaign period leading to the first democratic elections in 1994, where the Pan Africanist Congress, which had very little access to funding unlike the other competing parties, called for public funding for the political parties. See Friedman, op cit, p.2.

support since inception (though prior to independence it was considered more as a liberation movement than as a political party). Indications are that it continues to benefit from foreign funding and other support, despite the ban on foreign funding following the introduction of the Political Parties (Finance) Act [Chapter 2:11] of 2001. ZANU (PF) has never convincingly denied that it continues to enjoy foreign funding and other support⁴. The Movement for Democratic Change (MDC)⁵ has also enjoyed considerable foreign funding and other support since inception, although now in the light of the prohibition of foreign funding, it is unclear if it continues to receive that support. Chances are that it still does.

Masunungure states that public funding of political parties is a new concept in Africa and that the continent lags behind other regions of the world in the proportion of countries that have provision for public funding. He suggests that the relative absence of public funding in respect of emerging multiparty democracies in Africa is a reflection of the extent to which the transition programmes towards multiparty democracy are directed and dominated by 'incumbent authoritarian rulers' who have no shortage of financial resources. As far as such rulers and their ruling parties are concerned, public funding of political parties, which also benefits the opposition parties, would amount to propping up the opposition while eroding the advantages that incumbency confers⁶.

In the Southern African Development Community (SADC), about half of its members provide for public funding of political parties. In Angola, political parties represented in the National Assembly receive public funding. Similarly, in Namibia public funds are allocated to parties in the National Assembly, and in South Africa public funds are allocated to political parties currently represented in national and provincial legislatures. Political parties in Malawi benefit from public funding if they receive more than 10% of the vote in an election, while those in Zimbabwe benefit from public funding if receive at least 5% of votes cast in a general election. In Lesotho, public funding is provided to political parties to cover campaign expenses (half the funds are allocated to registered parties and shared equally amongst them, while the other half is distributed to each party in proportion to the number of candidates fielded. In Mozambique, one-third of the public funding is allocated

⁴ See for instance Coltart, "A Critique of the Broadcasting Services and the Political Parties (Finance) Acts", 2001, <http://davidcoltart.com/?cat=37> (24/09/09).

⁵ In this position paper 'the MDC' refers to both formations of the MDC. At the time that the current Act was adopted, the MDC was still one party and took a common position as regards the financing of political parties. The Consultant is not aware if any of the now two formations have since assumed a different position on the matter.

⁶ Masunungure, "The Regulation of Political Parties in Zimbabwe: Registration, Finance and Other Support", position paper prepared for the Zimbabwe Election Support Network (ZESN), 2006, pp.18-19.

to presidential candidates, one-third to political parties in Parliament in proportion to the seats held, and one-third to parties fielding candidates for Parliament in proportion to the number of candidates fielded. Botswana, the Democratic Republic of Congo (DRC), Madagascar, Mauritius and Zambia do not provide for public funding of political parties. In Tanzania, public funding of political parties was abolished in 2000⁷.

The management of political parties in Zimbabwe, especially during election periods, is an expensive affair. The viability of political parties will therefore largely depend on funding⁸. The current threshold for accessing public funding in Zimbabwe only benefits the MDC and ZANU (PF) and excludes smaller political parties. To survive, and perhaps even to grow, these small political parties will have to look elsewhere, within the confines of the law, for funding. It is believed that they have had to resort to 'overt and covert methods of funding' their activities⁹. Even the recipients of public funding themselves have to fund raise privately to supplement what they receive from the State, and this might include raising funds beyond the limits of the law.

Masunungure observes that "healthy political parties are often well-resourced political machines and the more resourced they are, the more they are likely to be in electoral contests", and that this applies to political parties in Zimbabwe. He further observes that the fortunes of parties are, by and large, determined by the amount of resources at their disposal. That is, their capacity to sponsor election candidates and organise effective campaigns is largely determined by access to financial, material and other resources. This also applies to their capacity to run a party secretariat and other affairs of the party¹⁰. In view of this, and also of other considerations discussed in this paper, the principle of public funding of political parties, in particular in Zimbabwe, appears to make sense.

⁷ Please refer to "Funding of Political Parties", <http://www.eisa.org.za?WEP/comprties.htm>, (24/09/09).

⁸ For instance, the Supreme Court in United Parties v Minister of Justice, Legal and Parliamentary Affairs and Others 1997 (2) ZLR 254 (SC) at pp. 269-270 observed that only by the spread of information, opinions and arguments, can voters make a responsible choice in determining whether they should support a particular candidate at an election or the party which that person represents. Effectual communication requires the expenditure of money e.g. distribution of leaflets entails printing, paper and circulation costs; speeches and rallies necessitate the hiring of venues and publicizing the function; and transportation, accommodation and meal expenses of candidates and/or party representatives have to be met.

⁹ See Country Study: "Resuscitating party politics in Zimbabwe: scenarios for the 21st century", an analysis of the MDC and Zanu-PF from the perspectives of political leadership, political architecture and party constituencies, p.8.

¹⁰ Masunungure, op cit, p.14. See also Onuoha, B., "Multi-Party Democracy and Party Finance in Nigeria", p.7. Onuoha avers that generally, public and other means of financing political parties will determine the financial strength of the party, which in turn often determines the overall strength of the party.

2.0. Justification for Public Funding of Political Parties

It is generally accepted by proponents of public funding of political parties that it contributes to the enhancement of democracy. Masunungure points out that:

... democracy does not come cheaply and therefore that in fact, state funding is needed for all political parties in countries with fragile democracies where the governing party has inexhaustible access to state resources that it routinely abuses to bolster its party activities and to campaign in elections against enfeebled opposition parties. Clearly, such a situation affects that democratic content and quality of elections¹¹.

He then quotes Fall as saying that the fairness of electoral processes and outcomes is, in turn, a major factor in the chances of successful consolidation of a fledgling democracy¹². The fairness of electoral processes and consolidation of democracy can be achieved, inter alia, by public funding of political parties. Public funding of political parties contributes to the consolidation of democracy in the following ways, among others:

- It creates relatively equal opportunities for political parties to set up their structures and run election campaigns;
- It encourages political players in the country to “channel their ambitions through the democratic process rather than through undemocratic means”¹³;
- Public funding of political parties promotes relatively equal strength for political parties, encourages competition and offers the populace genuine options to choose from. The resultant viability of political parties especially that of the opposition, reduces the extent to which the incumbent factor can be played by the ruling party to frustrate other parties¹⁴. The ruling party, with all possible financial advantage, would not find it easy to frustrate other parties since they would also be entitled to public funding¹⁵;
- “If voting is a constitutional right, then the state must be compelled to subsidise the assertion of a constitutional right”. In other words, the holding of elections is a public function and political parties have an

¹¹ Ibid, pp.16-17.

¹² Ibid.

¹³ Kumado, K., “Multi-Party Democracy and Political Financing – The Anglophone West Africa Experience”, p. 3, paper presented at the Sub-Regional Conference on Multi-Party Democracy and Political Parties Financing, 22-23 May, 1995, Accra, Ghana. See also Onuoha, op cit, p.13, and Friedman, op cit, p.4. The latter suggests that in the case of the first democratic elections in South Africa, public funding of political parties removed the basis for parties ‘which may have enjoyed the capacity to destabilize the post-election order’, like the Pan Africanist Congress, to claim that their tiny share of the vote was a consequence of funding constraints.

¹⁴ Kumado, op cit, pp. 3-4.

¹⁵ Onuoha, op cit, p.13. See also Masunungure, op cit, p.17.

important and decisive role to play in the electoral process as provided under the constitution. It must be permissible, therefore, for the State to make financial resources available not only for the elections themselves but also for the political parties that sustain them¹⁶;

- The need to reduce the advantage some parties might have by receiving far greater financial, material and other support than others and to ensure that no party with a potential to gain significant voter support is prevented from doing so by funding constraints¹⁷;
- To avoid reliance on foreign funding by political parties, which is in any event prohibited in many countries;
- To discourage political parties from resorting to unlawful means of mobilising financial and other resources; and
- To avoid over-reliance by political parties on corporations, wealthy entrepreneurs and other individuals who may regard politics as business and political parties as investments, the result being that through their donations they end up 'owning' the parties or being 'king-makers'. This can very easily promote self interest, at the expense of national interest, and thus engender corruption¹⁸.

Most of the above justifications for public funding of political parties were found acceptable by the Supreme Court of Zimbabwe in 1997, in the case of United Parties v Minister of Justice, Legal and Parliamentary Affairs and Others 1997 (2) ZLR 254 (SC). The Supreme Court said, with regard to the question of public funding of political funding, that unhindered freedom of political expression was essential to the proper functioning of a democratic system. Political parties contending for ascendancy should not be subject to legislative measures that limited their capacity to engage in dialogue and communicate arguments and opinions to enable the populace to make informed judgments as to how they should be governed. Public funding of political parties was a vital element of sound democracy both as an egalitarian measure and as a means of curbing the dependency of political parties upon private interests. The system of public funding had, however, to be respectful of pluralism and the possibility of political change. The court noted with approval that it had been recognized internationally that the regulation of public funding for political parties, particularly as regards elections, had five goals, viz: (i) to ensure equality of opportunity in a liberal democracy characterized by inequalities in the distribution of wealth; (ii) to make enough money available for competitive election campaigns to occur; (iii) to allow new entrants, while not encouraging frivolous candidates or propping up

¹⁶ Masunungure, op cit, p.15.

¹⁷ Friedman, op cit, p. 4.

¹⁸ See Masunungure, op cit, p.10.

decaying political organizations; (iv) to reduce the opportunity for undue influence; and, (v) to prevent corruption¹⁹.

The arguments in support of public funding of political parties must, however, be read in the light of certain realities which may raise questions as to the usefulness of public funding of political parties, such as the following:

- Friedman has observed that in the case of public funding of political parties during the 1994 elections in South Africa, the formula used to award funds to the political parties (generally parties got the same amounts for campaigning regardless of size) demonstrated that ‘the link between funding and voter support is not as direct as this theory supposes’. Rather, the election results showed that the amounts awarded to some of the parties did not help them to win a large chunk of the vote. In an environment where there are few voters who are not affiliated to any political party or have not taken a position as to which party to vote for and, more so, where the movement of voters across parties is minimal, public funding will have limited influence over voter opinion since voters are unlikely to be influenced by party campaigns²⁰.
- Public funding of political parties alone will not guarantee democracy. As Kumado argues, democracy cannot be achieved without inculcating in the populace democratic values, such as tolerance, freedom of speech, judicial independence, access to justice, respect for human rights and observance of the rule of law²¹. The institutionalisation and internalisation of democratic values in the larger society, popular acceptance of dissent, and the empowerment of the ordinary citizen is therefore critical²². Onuoha shares this view. He says that, “... regardless of financial arrangements within the parties themselves or among the parties, government and business, there is no way political parties will submit to democratic norms when the larger society has not cultivated the democratic values”²³.

¹⁹ Refer to p. 267 of the judgment.

²⁰ Friedman, op cit, p.4 and p.5. At p.6 Friedman notes that following the 1994 elections in South Africa, the ruling African National Congress lacked ‘enthusiasm for state funding’, one of the main reasons being its ability to win public support and get its supporters to vote, hardly needing to ‘introduce itself to voters’. However, as ZANU (PF) learnt in Zimbabwe, voters cannot be taken for granted for ever, especially if new strong opposition parties emerge and/or economic decline, declining democracy, human rights violations, non-respect for the rule of law, etc are involved.

²¹ Kumado, op cit, p. 5.

²² Onuoha, op cit, p.2.

²³ Ibid, pp. 12-13. Onuoha notes that in the case of Nigeria in the early 1990s, recommendations were made to the government to discontinue public financing of political parties since the attempt to encourage greater multi-party democracy through government funding of political parties did not bring about any appreciable changes in inter- and intra-party democratic practice.

In conclusion, it would appear that public funding of political parties is not per se objectionable. Objections tend to be directed against the unrestricted funding of political parties; bias towards the incumbent party (e.g. by imposing a high threshold for parties to qualify for funding); and the exclusion of small political parties, especially if they are not represented in the legislature. .

3.0. Prohibition of Foreign Funding of Political Parties

The commonest practice worldwide where the funding of political parties is regulated is that foreign funding is prohibited. Where it is allowed, it is likely to be to be severely restricted and tightly monitored. States appear to view foreign funding of political parties as an interference with their sovereignty. Their concern therefore is to eliminate foreign influence in party politics in the country through the funding of political parties and thus influencing, and at times interfering with, politics in the country.

In Zimbabwe, the Political Parties (Finances) Act [Chapter 2:11] of 2001 prohibits foreign donations to political parties or individual candidates. It is rather curious though that a foreign donation is defined in the Act to include a donation made by a non-resident Zimbabwean citizen, more so in view of the fact that non Zimbabwean citizens who have permanent residence status and are resident in Zimbabwe are entitled to donate to political parties²⁴. Presumably this is because it would be easy for foreign countries, companies or individuals to channel donations to political parties in Zimbabwe through Zimbabweans resident abroad under the guise that it is the Zimbabweans who are making the donations. However, as observed by Coltart, many countries that prohibit foreign funding do not also prohibit their citizens who are resident abroad from funding political parties in their home countries²⁵.

The MDC is not only opposed to the prohibition of non resident Zimbabweans from funding political parties, but it is also opposed to the general prohibition of foreign funding, which it views as a measure designed to inhibit the development of opposition political parties. It has argued that Zimbabwe is 'a fledgling democracy and has an extremely weak economy', thereby making it

²⁴ Section 2 of the Political Parties (Finance) Act defines a 'foreign donation' as a donation other than a local donation. A 'local donation' is defined as a donation by a permanent resident or citizen of Zimbabwe domiciled in Zimbabwe; a company incorporated in Zimbabwe which carries on business in Zimbabwe; or any association of persons, whether incorporated or unincorporated, consisting exclusively of permanent residents or citizens of Zimbabwe, domiciled in Zimbabwe. A 'donation' is defined as, in relation to a political party or candidate, any gift of money or property, subscription or affiliation fees, and money spent otherwise than by a political party or candidate to meet any expenses incurred by the party or candidate, and includes a loan, property or service provided to a political party or candidate otherwise than on commercial terms or below market valuation, and, in relation to a member of a political party, any aforementioned donation which is made for the purpose of securing the election of that member to any office in or for any purpose connected with the activities of that political party.

²⁵ Coltart, op cit.

extremely difficult for political parties to secure 'sufficient funding within Zimbabwe to purchase the necessary equipment and to develop rational policies'. The MDC though accepts that there needs to be some control on foreign funding lest a political party is bribed into adopting a foreign agenda which is not in the interests of the Zimbabwean people²⁶.

At the time the new law was enacted, the MDC believed that the ZANU (PF) government, then, banned foreign funding of political parties in a move that was aimed at hampering its growth as a young political party. The other side of the coin could be that ZANU (PF)'s intention was to limit perceived influence and interference in the domestic affairs of Zimbabwe through, inter alia, financial and material support to the opposition by perceived enemies of Zimbabwe, who were allegedly pursuing the regime change agenda in Zimbabwe²⁷. The issue remains contentious and perhaps requires further consideration by all stakeholders, with a view to arriving at a consensus. A consensus though appears at this stage to be very unlikely.

4.0. Public Funding of Political Parties in Zimbabwe

4.1. Background and Context

Public funding of political parties was introduced in Zimbabwe in 1992, with the enactment of the Political Parties (Finance) Act [Chapter 2:04] of 1992. Prior to that, political parties had to mobilise their entire funding privately. Political parties had to raise funds through membership dues and contributions, donations (in cash and kind by well-wishers), investments, fund raising activities, loans, etc. Generally, these would determine the financial strength of the party, which in turn often determined the overall strength of the party. Of course, as we will discuss further below, the ruling party had relatively easy access to State resources to finance its activities and election campaigns.

The Act provided for State funding of political parties which held a minimum of 15 seats in a 120 seat Parliament (or 12% of the seats). According to the Minister of Justice, Legal and Parliamentary Affairs, when introducing the new law in Parliament, the purpose of the law was to make provision for the State to finance political parties which were represented in Parliament. The law was intended to "facilitate those political parties who will have demonstrated to the electorate that they are a serious party by winning at least 12% seats in a

²⁶ Ibid. See also contributions by MDC members of Parliament when debating the Second Reading of the Political Parties (Finance) Bill, Parliamentary Debates Volume 27, No. 60, 3 April 2001, 6494.

²⁷ ZANU (PF) has accused mainly Britain and the United States of America of meddling in the internal affairs of Zimbabwe and peddling the regime change agenda.

house of 120 seats, which is a minimum of 15 seats”²⁸. This high threshold meant that at that time only ZANU (PF) qualified and was, therefore, entitled each year to the whole amount set aside for funding political parties. The threshold adopted in the Act was clearly designed to entrench the position of ZANU (PF) as the ruling party while sidelining other political parties and making the emergency of new ones difficult. The Act itself was in fact a mere formalization of what had existed since independence. ZANU (PF) was already a beneficiary of considerable public funding, thus creating a huge gap in financial resources between itself and other political parties²⁹. Some of the public funds were channelled to the party through ministries such as the Ministry of Political Affairs and the Ministry of National Affairs, which invariably were housed at the ZANU (PF) headquarters and tended to operate as if they were part of the ZANU (PF) secretariat.

The money for financing political parties was allocated by Parliament, under the Ministry of Justice vote. Considering that ZANU (PF) dominated and controlled Parliament, in effect ZANU (PF) decided how much would be allocated to political parties. In practice, the Minister of Justice recommended the amount to Parliament as part of the overall ministry vote³⁰. Payment to eligible political parties was proportional to the parties’ representatives in Parliament.

It is not surprising that opposition political parties were thoroughly disgruntled by this, not so much by the principle of public funding of political parties itself but the high threshold which only benefited ZANU (PF). They proceeded to challenge the offending provision (s. 3(3) of the Act) in the Supreme Court in 1997 as noted above, on the basis that it was inconsistent with section 20(1) of the Constitution, which provides for the right to freedom of expression. The Supreme Court agreed with the opposition parties that the threshold was too high. The court said that freedom of expression concerning the activities of the political party in power, and of other opposing parties, should be protected from hindrance, and that this is essential to the proper functioning of a democratic system. Any violation affects the right of the people to be informed, through sources independent of government, about matters of public interest. The court ruled that political parties contending for ascendancy ought not to be limited by over-stringent legislative measures in their capacity to engage in dialogue as widely as deemed necessary. The court therefore declared the section 3(3) of the Political Parties (Finance) Act of 1992 inconsistent with

²⁸ See Parliamentary Debates Volume 19, No. 20, 27 August 1992, 1300.

²⁹ Masunungure, *op cit*, p.24.

³⁰ See Parliamentary Debates Volume 19, No. 20, *op cit*, 1303, where the Minister of Justice, Legal and Parliamentary Affairs said that the amount of money to be awarded to political parties in any year would be determined by the Minister of Justice in consultation with the Minister of Finance.

section 20(1) of the Constitution, in that it violated the protection of freedom of expression. The government was forced to amend the Act and reduce the threshold to 5% of votes cast in the last general election³¹. Even then, no opposition party at the time qualified for funding under the new threshold and ZANU (PF) remained the sole recipient of public funding up to 2000.

The Political Parties (Finance) Act of 1992 was repealed and replaced by the Political Parties (Finance) Act [Chapter 2:11] in 2001. The purpose of the new Act, whose main difference with the old one was the prohibition of foreign funding, was to provide for public financing of political parties and to prohibit foreign donations to political parties and candidates.

With regard to State financing of political parties, section 3(1) of the Act provides that 'every political party' shall be entitled in each Parliamentary year to receive funding from the State³². However, not every political party actually receives public funding because section 3(3) of the Act prescribes a threshold for qualification for public funding. For a political party to qualify for public funding, its candidates must have received at least 5% of the total number of votes cast in the most recent general election³³. It shall be paid the same proportion of the total moneys appropriated as the total number of votes cast for its candidates in the election in relation to the aggregate of votes cast for all political parties that qualify for public funding.

The Minister of Justice, Legal and Parliamentary Affairs is required to publish a notice in the government gazette, with the approval of the Minister of Finance, no later than thirty days after the beginning of the financial year, specifying the total amount of moneys appropriated for all political parties and the amount that shall be paid to each individual political party³⁴. The Minister of Justice shall as soon as practicable after the publication of the notice pay each political party the moneys it is entitled to receive in terms of the Act³⁵. If a by-election to fill a vacancy in Parliament is held after a general election, the Minister shall adjust the amounts payable to political parties in respect of the

³¹ Please refer to United Parties v Minister of Justice, Legal and Parliamentary Affairs and Others, supra. See also Zimbabwe: Party Regulation and Funding, <http://www.eisa.org.za/WEP/zimpartiesc.htm>, (24/09/09).

³² 'Parliamentary year' is defined in section 2 of the Act as the period beginning on the day after the last polling day of the most recent general election and ending on the anniversary of that polling day or, in a year in which Parliament is dissolved, ending on the date of such dissolution. Section 5 of the Act provides that all moneys that are to be paid to political parties in terms of the Act shall be paid out of moneys appropriated for the purpose by Parliament in respect of each Parliamentary year.

³³ If a candidate is unopposed and thereby declared elected without a poll having taken place, he/she shall be deemed to have received the votes of all voters registered in the constituency concerned. Note further that at the time the law was enacted, Zimbabwe had a unicameral Parliament and the Senate had not yet been revived.

³⁴ Section 3(2) of the Act.

³⁵ Section 3(6) of the Act.

Parliamentary year following that in which the by-election was held, having regard to any changes in the total number of votes cast consequent on such by-election³⁶. Since it is only political parties which are entitled to public funding in terms of the Act (independent candidates are excluded), no account is taken of votes cast for any member of Parliament who stands as an independent candidate at the general election or by-election concerned but subsequently forms or joins a political party³⁷.

Political parties which qualify for public funding and wish to receive funding in terms of the Act shall, in terms of section 4 of the Act, make an application to the Minister of Justice, in the prescribed manner, not later than the end of the financial year in which a general election is held. The Political Parties (Finance) Regulations, 1995, Statutory Instrument 36 of 1995, contain a prescribed form which a political party applying for registration must complete. Basically the information required in the application relates to details of the political parties' candidates in the forthcoming general election, such as their national registration numbers and the constituencies for which they are standing for election³⁸. If the Minister is satisfied that the political party concerned qualifies for public funding, he/she shall accordingly notify the political party in writing that it qualifies for public funding. If he/she is not so satisfied, he/she shall reject the application and forthwith notify the political party giving the reasons for his/her. If the political party is aggrieved by the Minister's decision, it may appeal to the High Court from that decision, which may confirm, vary or reverse the Minister's decision.

There seems, however, to be a contradiction between the Act and the Regulations with regard to the full import of section 4 of the Act.

Section 4 of the Act, whose subtitle is "application for payment of moneys to qualifying political parties", requires political parties which qualify for public funding and wish to receive such funding to make an application to the Minister of Justice. The Consultant is of the view that this provision is quite clear. If any political party believes that it qualifies for public funding, it shall apply to the Minister of Justice so that it receives such funding. If the Minister is satisfied that the political party concerned indeed qualifies for public funding, then he/she shall notify the political party in writing that it qualifies for funding. If he/she is not satisfied that the political party is qualified for public funding, he/she will reject the application and immediately notify the political party.

³⁶ Section 3(4) of the Act.

³⁷ Section 3(5) of the Act.

³⁸ Section 2 of the Regulations as read with the Schedule.

Confusion is however created in section 2 of the Regulations, and this also forms the basis of the contradiction, which considers an application in terms of section 4 of the Act as an application for the registration of the political party as a prerequisite to accessing public funding. The subtitle of section 2 of the Regulations is “Application for registration of political party”. The substantive part of that section then goes on to say that “An application in terms of section 4 of the Act for the registration of a political party shall be in the form set out in the Schedule ...” In section 3 of the Regulations there are references to ‘registered political parties’. The Regulations have assumed, wrongly in the Consultant’s view, that applications by political parties in terms of section 4 of the Act are applications for the registration of the political parties. The applications are in fact applications for funding and not for registration. The Act does not make any reference to the registration of political parties by the Minister of Justice or indeed any other person. Where the Minister of Justice is of the view that a political party qualifies for public funding, he/she does not ‘register’ it, rather he/she notifies the political party that it qualifies for funding³⁹.

Another source of confusion created by the Regulations is that whereas the Act, in section 4, provides that political parties may submit their applications for funding to the Minister of Justice “not later than the end of the financial year in which a general election is held”, the Regulations require the application to contain information relating to the names of the political parties’ candidates “for election in the forthcoming general election”. Under section 4 of the Act, it would appear that a political party may apply for funding at any time before or after a general election, as long as it does not apply later than the end of the financial year in which the general election is held. It would however only make sense for a political party to apply for funding after the general election since it will then be in a position to know whether it qualifies for public funding. On the other hand, the requirement in the Regulations that the application should contain information relating to the concerned political party’s candidates for election in the ‘forthcoming general election’ presupposes that the application must be made before the general election.

Another notable aspect of the Act, which we have previously noted, is the prohibition of political parties, members of a political party or candidates from

³⁹ It would appear that this contradiction might have arisen from the fact that the Regulations were made on the basis of the repealed Act and were not revised and updated consequent to the enactment of the current Act. The Minister of Justice’s second reading speech in respect of the repealed Act suggests that the intention when public funding of political parties was first introduced was for parties to be registered with the Minister before a general election in order to access public funding – see Parliamentary Debates Volume 19, No. 20, 1302. See also United Parties v Minister of Justice, Legal and Parliamentary Affairs and Others, supra, at p.261 where the court interpreted sections 3 and 4 of the repealed Act as requiring the registration of political parties wishing to benefit from public funding.

receiving any foreign donation, whether directly from the donor or indirectly through a third person⁴⁰. The Act also prohibits citizens of foreign countries domiciled in a country other than Zimbabwe from, within Zimbabwe, soliciting donations from the public on behalf of any political party or candidate⁴¹. The need to prohibit foreign funding of political parties was one of the main reasons, if not the main reason, for repealing the old Act and replacing it with a new one⁴². The reason advanced for this is that the sovereignty of the State must be safeguarded and that its government must not be undermined. As the Minister of Justice put it:

Foreign donations usually come with foreign interests and strings attached. Generally the agenda of foreign donors to political parties are at the best unknown and at the worst inimical to the interest of the country. It is in the interest of the State to guard its sovereignty jealously.⁴³

Masunungure suggests that the prohibition of foreign funding “appears to have hurt all parties, big and small”. He notes that both ZANU (PF) and the MDC have in the past received significant foreign donations⁴⁴. While it is true that both ZANU (PF) and the MDC had prior to the prohibition of foreign funding have been beneficiaries of such foreign funding, both parties have not ceased accessing foreign funding on account of the prohibition. It remains very likely that both remain recipients of foreign funding and other support, now only being covert recipients than the overt recipients they were prior to the prohibition.

Lastly, section 8 of the Act provides that the Minister of Justice may prescribe by regulations, among other things:

- the form and manner in which records of donations shall be kept by political parties; and

⁴⁰ Section 6(1) of the Act. In terms of section 6(2) of the Act, any donation accepted by a member of a political party shall be deemed to have been accepted by the political party, unless the member wilfully fails to disclose such donation to the political party, in which case the candidate shall be personally liable for the offence. Further, section 6(4) of the Act provides that a political party, member of a political party or candidate shall be deemed not to have accepted a donation in contravention of the Act if, within thirty days of receiving the donation, the party, member or candidate returns the donation to the donor.

⁴¹ Section 7 of the Act.

⁴² In his Second Reading speech the Minister of Justice said, inter alia, that “[t]he Political Parties (Finance) Act which was enacted by Parliament in 1992, has been found to be inadequate in that it does not provide for fundamental issues such as ... prohibition of political parties or candidates from receiving foreign donations” – see Parliamentary Debates Volume 27, No. 60, op cit, 6495.

⁴³ Parliamentary Debates Volume 27, No. 60, op cit, 6495-6.

⁴⁴ Masunungure, op cit, p.24.

- the keeping by political parties of proper books of accounts, the audit of the accounts of political parties, and the form, content and publication of statements of accounts by political parties.

The Regulations made by the Minister of Justice to date only make provision for issues pertaining to the 'registration' of political parties in order to access public funding. They are silent with regard to issues pertaining to the maintenance of records in respect donations received by political parties and the maintenance of 'proper books of accounts, the audit of the accounts of political parties, and the form, content and publication of statements of accounts' by political parties.

We summarise below the key issues regarding public funding of political parties in Zimbabwe:

- public funding constitutes a major source of revenue for the political parties that are eligible to receive public funding⁴⁵;
- public financing of political parties in Zimbabwe is not only for the purpose of running election campaigns but also for financing other political party activities not necessarily related to elections;
- The threshold for qualification for public funding is 5% of the vote achieved in the previous general election. No other party at present, other than ZANU (PF) and the MDC, qualifies for public funding, and smaller parties have to rely on funds and other resources mobilised privately. The other parties, which are relatively smaller, remain disgruntled about the revised threshold, and have argued that unless they get funding, they will not perform well in elections to the extent of garnering the required minimum 5% of the total vote in a general election⁴⁶;
- while the Act provides for regulations to be made by the Minister of Justice prescribing, inter alia, the form and manner in which records of donations shall be kept by political parties and the keeping by political parties of proper books of accounts, the audit of the accounts of political parties, and the form, content and publication of statements of accounts by political parties, the Regulations are silent on these issues and, therefore, political parties are not required by law to disclose their source of donations or to account for the use of public funds allocated to them under the Act;
- the incumbent party, at least before the consummation of the Inclusive Government, has had the additional advantage of having State finances and other resources at its disposal;

⁴⁵ For instance, Masunungure, op cit, states at p. 26 that the MDC says that 60% of its funding is from the State, meaning that without public funding it would probably find it more difficult to function as a party.

⁴⁶ Ibid.

- the Act does not set a limit for donations lawfully received by political parties from private sources;
- The Minister of Justice has the mandate to publish a notice in the government gazette specifying the total amount of moneys appropriated for all political parties and the amount that shall be paid to each individual political party, and to pay the political parties;
- Political parties wishing to receive funding shall apply to the Minister of Justice for funding but not for registration.

4.2. The Role of Electoral Commissions

The general role of electoral commissions (the trend now is to establish independent electoral commissions) is to prepare for, conduct and supervise national and/or local government elections, and referendums and to ensure that those elections and referendums are conducted efficiently and fairly. For instance, the functions of the Zimbabwe Electoral Commission are, inter alia, to:

- prepare for, conduct and supervise Presidential and Parliamentary elections, local government elections, and referendums. It shall ensure that those elections and referendums are conducted 'efficiently, freely, fairly, transparently and in accordance with the law';
- supervise the registration of voters;
- compile voters' rolls and registers and to ensure their proper custody and maintenance;
- conduct voter education; and
- accredit observers of elections and referendums⁴⁷.

Electoral commissions may be charged with further responsibilities related to the conduct of elections. Thus in some countries electoral commissions may also be charged with the responsibility of administering and disbursing public funding to political parties. In the SADC, for instance, a number of countries distribute public funding to political parties through electoral commissions. In Angola and Mozambique, public funding is allocated or dispensed by their National Electoral Commissions. In Lesotho, the funds are allocated by the Independent Electoral Commission while in South Africa public funding is dispensed by the Chief Electoral Officer⁴⁸.

The approach in Zimbabwe is rather different. We have noted above that the Minister of Justice has the power to publish a notice in the government gazette, acting in consultation with the Minister of Finance, specifying the total amount of moneys appropriated for all political parties for that year and the amount that shall be paid to each individual political party. Political parties

⁴⁷ Section 100C of the Constitution of Zimbabwe.

⁴⁸ 'Funding of Political Parties', <http://www.eisa.org.za/WEP/comparties.htm>, 24/09/09.

wishing to receive funding shall apply to the Minister, and the Minister pays the political parties if they are eligible for funding. This is clearly undesirable because the Minister of Justice is an interested party; the Minister is a competitor. The Minister is involved in too many issues pertaining to public funding of political parties and could easily act in a manner that favours his/her own party and that is biased against other parties.

4.3. Registration of Political Parties

In many countries where there is political pluralism, the law, especially the constitution, will recognise the fundamental freedoms of association, assembly and speech. People are therefore free to form or join political parties of their choice, and the political parties themselves are free to run their affairs, conduct their activities and generally to exist and operate as they see fit. It is quite common that political parties will be regulated by the law, and may even have to be required to register in order to operate lawfully as political parties. There is nothing wrong per se with the regulation of political parties, especially where such regulation does not unduly restrict the enjoyment of the fundamental freedoms of association, assembly and speech.

Masunungure aptly concludes that when done in good faith, that is 'without ulterior and sinister motives', party regulation (and this includes the registration of political parties) "promotes transparency and democratic accountability to the public, curbs corrupt practices and provides for penalties for breach of the regulations". However, if the purpose of such regulation is to control political parties and unduly restrict their right to freedom of association and existence as political parties, then the move can be "a recipe for mutual suspicion and distrust which can further poison the political atmosphere"⁴⁹.

In the SADC, almost all countries regulate political parties and have a requirement for registration. In Angola political parties must be registered with the Constitutional Court/Supreme Court. Botswana requires political parties to be registered in accordance with the Societies Act, by the Registrar of Societies. Like Botswana, the registration of political parties in Zambia is governed by the Societies Act, which provides for the registration of parties with the Registrar of Societies. Similarly, the registration of political parties in Lesotho is governed by the Societies Act. Political parties must register with the Registrar General while they must register with the Independent Electoral Commission to participate in an election. In the DRC, political parties are registered with the Minister of Home Affairs. In Malawi, the registration of political parties is governed by the Political Parties (Registration and Regulation) Act, which requires registration with the Registrar of Political Parties. Tanzania also provides for the registration of political parties with the

⁴⁹ Masunungure, op cit, p.3.

Registrar of Political Parties, in terms of the Political Parties Act. The Constitution of Mauritius governs the registration of political parties in Mauritius. The Electoral Supervisory Commission has the responsibility to register political parties 14 days before nomination day. In Mozambique, registration takes place at two levels, i.e. registration with the Ministry of Justice to function as a party and registration with the National Electoral Commission to participate in an election. Political parties in Namibia are required to register with the Electoral Commission, while in South Africa political parties must be registered with the Independent Electoral Commission⁵⁰.

A common feature in the SADC countries which provide for the registration of political is that the law generally lays down registration requirements, conditions for registration or refusal of registration, suspension of registration, deregistration, party dissolution and appeals⁵¹.

Zimbabwe has no law requiring the registration by political parties in order to exist and operate legally. The law merely defines political parties. For instance, section 2 of the Political Parties (Finance) Act defines 'political party' as an "association of persons the primary object of which is to secure the election of one or more of its members to a local authority or Parliament". The Zimbabwe Electoral Commission Act [Chapter 2:12] of 2004 has a slightly broader definition of political party. It defines 'political party', in section 2, as "an association of persons the primary object of which is to secure the election of one or more of its members to a local authority or parliament, or to secure the office of president, or to campaign for a specified result at a referendum". The Electoral Act [Chapter 2:13] of 2004 has a rather vague definition of political party. It defines 'political party' in section 4(1) as "any political organisation".

Masunungure suggests that "[t]he only time registration is obligatory is during elections when a party wants to contest by fielding a candidate/s. That is, a candidate is required by law to be proposed and endorsed by a certain number of registered voters in his/her constituency and has to pay a candidacy deposit, which is returned if he/she gets a certain stipulated threshold of valid votes cast"⁵². The requirement by the Electoral Act for candidates in an upcoming election to file nomination papers does not constitute registration. It is intended merely to facilitate the smooth running of an election and to discourage pretenders who would otherwise pose serious administrative and logistical problems for those tasked with running elections.

⁵⁰ See "Registration of Political Parties", <http://www.eisa.org.za/WEP/comparties2.htm>, 24/09/09.

⁵¹ Ibid.

⁵² Masunungure, op cit, pp.2-3 and 11.

On paper, political parties are free to regulate their affairs as they deem fit and go about their business as they please, within the confines of the law of course. Also, theoretically, the State may not interfere in the running of political parties or unduly restrict their operations. This, sadly, has not been the case in Zimbabwe. The State has used various laws to interfere with the operation and activities of opposition political parties in the name of maintaining law and order. Since shortly after independence the ZANU (PF) government has used laws such as the repealed Law and Order (Maintenance) Act, the Public Order and Security Act (POSA), the repealed Miscellaneous Offences Act, and the Criminal Law (Codification and Reform) Act to interfere with and disrupt the activities of opposition parties, some of the notable ones being the old Zimbabwe African People's Union (Patriotic Front) (PF-ZAPU), the Zimbabwe Unity Movement (ZUM) and the MDC.

The above ties in with Masunungure's observation that it does not follow that political systems which require party registration are of necessity more authoritarian and therefore less democratic than where such registration is not required. He says that "[t]he absence of requirements for party registration may actually mask the existence of even more insidious legislation that suffocate or stifle the operations of the 'free-to-exist' political parties. People can form political parties as and when they wish, but then the operating environment can be so hostile as to enfeeble such political organisations". Therefore, political parties can be freely formed but are not as free to operate⁵³.

There remains a possibility that in future, political parties may be required to register if they are to exist and operate lawfully. There already has been some discussion around this. For instance, the former Electoral Supervisory Commission at some point lamented that the absence of laws for the registration of political parties had led to the emergence of 'fly-by-night' political parties. The Commission also felt that the registration of political parties would be in the interest of national security as the State could use the information availed through registration to carry out investigations to ascertain the party's intentions and to 'weed out potential saboteurs'. It therefore recommended that to curb this tendency, political parties should be formally registered⁵⁴.

While this proposal might have appealed to ZANU (PF) as the ruling party at the time, the opposition, especially the MDC, were against the introduction of a law which requires the registration of political parties. Their argument was

⁵³ Ibid, p.8.

⁵⁴ Ibid, p.1.

that such a law would be unconstitutional and negate the voluntary nature of political parties⁵⁵. ZANU (PF) would be hard pressed to argue that it supported the registration of political parties in good faith, in order to promote transparency and democratic accountability to the public. Indeed its motive, at least at that time, seemed to be the desire to control political parties and to unduly restrict their right to freedom of association and existence as political parties. On the other hand, while the MDC were justified to be fearful of such intentions on the part of ZANU (PF), it was misleading on their part to suggest that the registration of political parties is, per se, unconstitutional and a negation of the right to freedom of association.

In the light of the mistrust and, at times, acrimony between political parties in Zimbabwe, even with the advent of the Inclusive Government involving the MDC and ZANU (PF), it is perhaps advisable that for now the issue whether or not political parties must be registered and otherwise regulated must be held in abeyance. The Consultant therefore does not support the recommendation by Masunungure that a 'strictly impartial and inclusive body comprising of public-spirited citizens who have no partisan affiliations' must be created to register political parties and that no political party may participate in an election unless it is registered as a political party⁵⁶. The environment currently prevailing in Zimbabwe does not allow for an 'impartial' body comprising 'public-spirited' citizens.

4.4. Threshold to Access Public Funding by Political Parties

In United Parties v Minister of Justice, Legal and Parliamentary Affairs and Others, supra, the Supreme Court took the view, in relation to the threshold or formula used to allocate State funding to political parties, that the formula adopted to allocate State funding to political parties would determine whether the goals discussed in part 2 above would be achieved or not⁵⁷. Certain formulae would do no more than entrench and re-enforce the regime of the major political parties, and sideline their minor or new opponents⁵⁸.

It is generally believed that large political parties gain their support partly because they have the resources to influence public opinion. Therefore a formula which gives the large political parties more money than the smaller or

⁵⁵ Ibid.

⁵⁶ Ibid, p.5 and p.28. It makes no difference that Masunungure proposes, however, that parties that do not wish to participate in elections and therefore to be considered for public funding should not be compelled to register.

⁵⁷ The goals referred to here, which we have previously discussed, are to ensure equality of opportunity in a liberal democracy characterized by inequalities in the distribution of wealth; to make enough money available for competitive campaigns to occur; to allow new entrants, while not encouraging frivolous candidates or propping up decaying political organizations; to reduce the possibility for undue influence; and to prevent corruption.

⁵⁸ Refer to pp.267-269 of the judgment.

emerging ones leaves the larger parties better off while the small or emerging ones will stagnate or even collapse. This view is echoed by Masunungure, who says that in a developing society that has only recently adopted a democratic system and where party financing is only available to parties actually represented in the legislature, the exclusion of non-represented parties may indefinitely paralyse such parties. He says further that this has ‘the effect of protecting represented parties from competition’⁵⁹.

South Africa tried to avoid such an unfair arrangement in the first democratic elections in 1994. While the larger parties had one way or another accumulated considerable financial and other resources during the apartheid years and could therefore finance their election campaigns, the smaller parties did not have such resources and clearly required public funding to run their election campaigns. An Electoral Fund was therefore established to finance the campaign activities of any party registered to contest the election which could either:

- Demonstrate that it enjoyed at least 2% support in a credible opinion poll; or
- Collect at least 10 000 supporting signatures (half of the signatures comprising at least 1 000 signatures from voters in five provinces) if contesting the national ballot.

Half the fund was distributed among parties which met the above criteria and the other half among parties which actually won election to the national assembly or to a provincial assembly. Generally, the money was distributed equally, thus ensuring that both large and small parties had equal access to public funding⁶⁰. Public funding in South Africa is now accessed by political parties currently represented in national and provincial legislatures and it is allocated according a formula that takes into account the proportion of members a party has in the National Assembly and the provincial legislatures and a minimum threshold amount to ensure equity⁶¹.

In the other SADC countries where political parties benefit from public funding, it would appear that the trend is that funding is based on representation in the legislature, and that political parties receive State funding which is proportional to their share of votes or seats won. In Malawi,

⁵⁹ Masunungure, op cit, pp.14-15.

⁶⁰ Friedman, op cit, p.3. Parties which could show support in an opinion poll were awarded double the money to that awarded to parties which relied on signatures. Parties which won seats in the assemblies were awarded a share of the post-election 50% while those who failed did not. The election results however showed that these criteria to measure party support could be misleading. For instance, the Democratic Party and the Pan Africanist Congress demonstrated 2% support but did not win 2% support while the Workers List Party gathered 10 000 signatures but won less than 5 000 votes.

⁶¹ “Funding of Political Parties”, <http://www.eisa.org.za/WEP/comparties.htm>, op cit.

political parties which qualify for public funding must have received at least 10% of the vote in the election while the threshold in Zimbabwe, as we have already noted above, is 5% of votes cast in the election. In Namibia, public funds are allocated to political parties represented in the legislature in proportion to the votes won by the parties in the previous election. Lesotho and Mozambique take a slightly different approach. In Lesotho half the funds are allocated to registered parties and shared equally amongst them, while the other half is distributed to each party in proportion to the number of candidates fielded. In Mozambique one-third of the funds are allocated to presidential candidates, one-third to political parties in parliament in proportion to the seats held and one-third to parties fielding candidates for parliament in proportion to the number of candidates fielded⁶².

It seems generally acceptable that public funding of political parties must be based on some threshold or formula. In United Parties v Minister of Justice, Legal and Parliamentary Affairs and Others, supra, the Supreme Court held that it is justifiable to place a reasonable limitation (own emphasis) upon the payment of State funds to political parties. Such limitation, the Court said, encourages serious political contenders but discourages trifling parties from being established solely in order to secure public funding. It would be undesirable for tax payers' moneys to be wasted on parties which do not command any meaningful support or which clearly have no prospect of making any meaningful contribution to the growth and consolidation of democracy in the country. The Country Study on Zimbabwe observes that it has "become noticeable in Zimbabwe that a number of small parties emerge during election time" and that these have the effect of confusing the electorate and splitting votes. The study concludes that such parties do not serve to improve democratic principles in the country⁶³. Some countries though, such as Lesotho and Mozambique, disburse funds to political parties participating in an election so that the parties can finance their election campaigns.

⁶² Ibid.

⁶³ Country study: "Resuscitating party politics in Zimbabwe: scenarios for the 21st century": An analysis of the MDC and Zanu-PF from the perspectives of political leadership, political architecture and party constituencies (**Author and date?**), p.4.

4.5. Sources of Funding, Disclosure, Accounting, and Limits

Generally, in Africa there is limited regulation of the raising of funds by political parties. Not many African countries have comprehensive laws governing the raising of revenue, prescribing permitted sources of funding, or imposing ceilings or limits in respect of donations which well-wishers can make to political parties⁶⁴. While information relating to funds received from the State may be in the public domain, very little information is known, other than by the parties themselves, regarding funds raised from private sources. Even in the case of public funding, unless the law requires political parties to account for the money received from the State, the only information the public would know is the amounts granted to the parties but not how the money has actually been spent.

Is it desirable that political parties benefiting from public funding should not be required by law to account for the use of taxpayers' money? Clearly, it would be in the public interest for political parties to account for moneys receive from the public purse. It is unlikely that any political party would have any plausible objections to this.

Is it none of the business of the public to know the sources of funding of political parties, the amounts involved and the uses? Masunugure argues that to the extent that political parties perform 'a socially desirable function in a democratic system', they must be required to account publicly for the sources and uses of not only public funds obtained, but other sources of funding as well. This, he reasons, is meant to 'ensure public knowledge of all contributions large enough to have a significant influence on party policy'⁶⁵. This is a sound argument. Political parties must be transparent and accountable to the people.

Should political parties and candidates spend as much as they can mobilise in an election campaign, without any limit? It is desirable, and in the public interest, that there must be a ceiling on the amount of money that parties and candidates can spend. Considering that political parties have different means, even where they are all in receipt of public funding, if parties and candidates were allowed to spend as much as they pleased, as long as they have the money, this would create an uneven political playing field, a result which is unhealthy for fair elections and democracy. Larger parties or wealthier candidates would thrive at the expense of the smaller parties or poorer candidates.

⁶⁴ Masunugure, op cit, p.9.

⁶⁵ Ibid, p.17.

Some of the SADC countries already have some form of regulation in respect of the above issues. For instance, the law in Namibia requires that private funds received must be disclosed. In the DRC, political parties must disclose property ownership to the Minister of Home Affairs, as well as any donations or bequests. Political parties must also submit annual financial accounts to the Minister of Home Affairs. The Political Parties Act of Tanzania requires parties to disclose all funds received from outside the country and to submit annual audited accounts of funds and property. Political parties in Zambia may be required by the Registrar of Societies to submit their financial accounts for inspection at any time.

We have noted above that in Zimbabwe, the Political Parties (Finance) Act provides that the Minister of Justice may prescribe, by regulations, the form and manner in which records of donations shall be kept by political parties and the keeping by political parties of proper books of accounts, the audit of the accounts of political parties, and the form, content and publication of statements of accounts by political parties. However, the Minister of Justice has not done so⁶⁶.

4.6. Use of State Resources (Media, etc)

Onuoha observes, in the case of Nigeria in the early 90s and before, that:

... So far, multiparty democracy revolves around the political class, who in turn confiscate and subordinate the Nigerian state. Accordingly, any of the political factions in power usually takes over the state. Therefore, it will be no surprise that in any multiparty democratic exercise, the political class uses the instruments of the state to advance its advantages in party organisation, campaign and elections. It also includes advantages of financial sufficiency...⁶⁷

While Onuoha made the observation in respect of Nigeria in the early 90s and before, it rings true in many other countries today. As Masunungure puts it, in many African countries “elections are not really contests between candidates and parties; they turn out, in effect, to be contests between all opposition parties [and] candidates on the one hand, and the governing party’s candidates and the state on the other”⁶⁸.

⁶⁶ Surprisingly, when the law on public funding of political parties was first introduced in Zimbabwe, it was members of Parliament from the then ruling ZANU (PF) who suggested that the funds must be accounted for by the recipients. See for instance Parliamentary Debates Volume 19, No. 20, op cit, 1309, 1312, 1313 and 1314.

⁶⁷ Onuoha, op cit, p.24.

⁶⁸ Masunungure, op cit, p.22.

The use of official positions and State resources by ruling parties to strengthen themselves and to run election campaigns, to the disadvantage of other political parties, is a contentious issue. Opposition parties often cry foul and accuse the party in power of taking undue if not unlawful advantage of its control of government to frustrate them while consolidating its own position. In Zimbabwe, ZANU (PF) has taken advantage of and freely used public resources which include:

- Free air time on radio and television. For instance, its congresses/conferences get generous live coverage throughout on the Zimbabwe Broadcasting Corporation television and radio channels;
- Wide coverage and free advertising space in the State owned and controlled print media. For instance, a number of party propagandists run weekly columns in public newspapers where they write lengthy articles in praise of the party while attacking and denigrating other political parties and critics;
- Using state vehicles. For instance, ministers use government vehicles when attending to party business and running election campaigns, while the party leader, who is also the President, not only uses government vehicles but also planes and helicopters;
- Using government employees and equipment for party business. Some civil servants are roped in to support party activities and help in running election campaigns. For instance, a number of ministries have been created since independence to work hand in hand with the party and to support its activities. The ministries, which include Political Affairs and National Affairs, are conveniently housed at the party headquarters to be close to the party secretariat, and where they not only pay rent to the party but also pay bills for the party e.g. rates, water and electricity⁶⁹.

The public media is one of the most useful State resources at the disposal of the governing political party. This is aptly captured by Jain, who observes that in India (at least at the time he was writing), a highly centralised control over broadcasting has been accepted as a prerequisite for political power. He says that “[i]n the process, political propaganda potentially becomes the deciding factor in programming news presentation and commentary”⁷⁰. The State controlled media, both print and electronic, can be used by the ruling party to its advantage by, for example, giving sympathetic coverage on members of the ruling party and its government while ignoring the opposition⁷¹. In some cases the media can be used for direct propaganda purposes in favour of the

⁶⁹ See Masunungure, *op cit*, p.22 and Country study: “Resuscitating party politics in Zimbabwe: scenarios for the 21st century” an analysis of the MDC and Zanu-PF from the perspectives of political leadership, political architecture and party constituencies, *op cit*, p.10.

⁷⁰ Jain, “Political Broadcasting in India”, pp.16-17.

⁷¹ See Steven Friedman, *op cit*, p.1.

ruling party while attacking or denigrating opposition parties or distorting information and views by or regarding the opposition parties.

Even where it is not necessarily acting improperly, a ruling party has automatic and continuous access to voters since it gets more media exposure or coverage. For instance, its ministers regularly use the public media and other public resources to publicise their programmes, policies, etc⁷². Ruling party ministers will also get coverage by the public media even when they are speaking more as members of their political party than as ministers of government and putting across their party position rather than government position.

What we have discussed above in relation to the use of the public media applies to Zimbabwe in many respects. The Country Study observes that since independence in 1980, the State owned and controlled media has dominated the industry and that it was and still is pro-government in its form and content (under the current Inclusive Government arrangement it is pro the ZANU (PF) element of the government). For a long time there was no meaningful private media. When the private media eventually emerged and began to challenge the public media, the government viewed it with suspicion, accusing it of being the mouthpiece of the opposition. The use of repressive laws such as the Access to Information and Protection of Privacy Act (AIPPA), and even suspicious bombings of private media houses, resulted in the demise of private players like the Daily News, the Daily News on Sunday, the Tribune and Capitol Radio while journalists working for the private media are often harassed and charged on spurious grounds. While the private media continues to soldier on, though in a very difficult and oppressive media environment, ZANU (PF) has been able to air its propaganda freely with very little alternative voice of opposition⁷³.

Generally the MDC and other political parties are either denied access to or coverage by the State controlled media or they receive negative coverage, through distortion of information and views by or regarding those parties or denigrating or undermining them. ZANU (PF)'s monopoly of the State media in its totality, the closure of or undue interference with the private media, the absence regular alternative sources of news on the state of affairs in the country, etc means that the electorate relies on an unbalanced supply of news thus tilting the scales in favour of the party. Meanwhile, the MDC and

⁷² Ibid, p.6. See also Jain, op cit, p.13.

⁷³ Country study: "Resuscitating party politics in Zimbabwe: scenarios for the 21st century": An analysis of the MDC and Zanu-PF from the perspectives of political leadership, political architecture and party constituencies, op cit, pp.16-17.

other parties have little opportunity to disseminate their own information and views, and to counter attacks by ZANU (PF)⁷⁴.

The power of the media is summed up by Friedman, who says, in respect of the first democratic elections in South Africa, that:

Indeed, in a society such as South Africa, where most voters rely on vernacular language radio or television for their political information, the fact that all parties had access to these electronic media may have done more to ensure that all enjoyed access to voters than the electoral fund⁷⁵.

In the light of the above, it is the Consultant's view that with the exception of the state security apparatus (this includes the police, defence forces and intelligence agencies), especially in the case of Zimbabwe, the State owned and controlled media is the most powerful public resource at the disposal of a governing party.

5.0. Recommendations

It is ZESN's view that the principle of public funding of political parties in Zimbabwe is not really in question. Public funding of political parties is common throughout the world and, where this is done in a transparent, accountable and equitable manner, it encourages political pluralism and truly democratic practices while minimising the obvious advantage that governing parties have over other parties. It also helps to save from collapse due to the lack of funding, new or existing smaller parties which may be serious political contenders capable of making a meaningful contribution to political and electoral competition.

The law governing public funding of political parties in Zimbabwe, the Political Parties (Finance) Act, is not a perfect law. We have discussed above a number of its shortcomings, particularly with regard to issues pertaining to transparency and accountability. ZESN therefore makes the following recommendations to reform the law relating to public funding of political parties in Zimbabwe, with a view to ensuring equity, limiting corruption and undue advantage of incumbency and bigger parties, and promoting transparency and accountability.

- I. The law on public funding of political parties must be explicit as to why political parties should receive funding from the State i.e. to promote political pluralism and truly democratic practices in the country. We

⁷⁴ Ibid, pp. 17-18.

⁷⁵ Friedman, p.4.

have noted that democracy cannot be achieved without inculcating in the populace democratic values, through the institutionalisation and internalisation of democratic values in the larger society and the empowerment of the ordinary citizen. We have also noted that public financing of political parties without inter-party and intra-party democratic practice cannot bring about democratic governance at the national level. It is therefore proposed that provision for public funding of political parties must first and foremost be made in the Constitution, clearly stating that the purpose of such funding is to promote greater multi-party democracy and political pluralism. The Constitution must also state that political parties that wish to benefit from public funding must, as a prerequisite, conform to prescribed minimum standards for the promotion of democratic principles and standards within the parties. Pursuant to this, the Political Parties (Finance) Act must make provision for the prescription of minimum standards for democracy which must be adhered to by political parties, by an independent electoral commission after consultation with political parties and other stakeholders.

II. A matter that requires revisiting is whether political parties should be funded only for the running of election campaigns and not also for running normal party business or routine party operations⁷⁶. We have noted above that some countries provide State funding only for running election while other countries, like Zimbabwe, extend the funding to include normal party activities. The current beneficiaries, ZANU (PF) and the MDC, are likely to prefer the status quo. However, this should not preclude a reconsideration of the issue. It should be remembered that public funding of political parties was unilaterally introduced by ZANU (PF) in its current form for selfish reasons, although the MDC is now also a beneficiary. It is therefore desirable that stakeholders should be consulted on the issue. As a way forward to facilitate such consultations, it is proposed as follows:

- Presidential candidates who garner at least five per cent of the total vote in a Presidential election must be awarded public funding, the amount of which shall be based on the number of votes gained as a percentage of an amount that is approved by Parliament upon recommendation by an independent electoral commission;
- Each political party contesting a general election shall be entitled to public funding for election campaigning based on the

⁷⁶ The suggestion by Masunungure that public funding of political parties should be only for electoral purposes and that political parties must be able to fund their own operations outside the electoral arena must be taken seriously. See Masunungure, op cit, p.5 and p.28

number of its nominated candidates as a percentage of an amount that is approved by Parliament upon recommendation by an independent electoral commission. Nominated independent candidates shall also be entitled to funding, based on an individual candidate's share; and

- Political parties which garner at least five per cent of the total vote in a general election shall be entitled to public funding in each Parliamentary year, the amount of which shall be based on the number of votes gained as a percentage of an amount that is approved by Parliament upon recommendation by an independent electoral commission.

- III. Political parties must be required to present to an independent electoral commission and subject to oversight by Parliament, annual audited accounts in respect of funds received from the State. The funds should be audited by an international firm of Chartered Accountants or by a local reputable, independent and impartial firm approved by the independent electoral commission. The audited accounts must also be available for public inspection. We have noted above that Political Parties (Finance) Act empowers the Minister of Justice to prescribe by regulations, inter alia, the keeping by political parties of proper books of accounts, the audit of the accounts of political parties, and the form, content and publication of statements of accounts by political parties, and that the Minister of Justice has however not done so. It is ZESN's view that such crucial matters should not be left to the discretion of a minister. The Act itself must carry the necessary provisions while regulations can be used to provide for the small details.
- IV. Reasonable limits must be placed on how much individual Zimbabweans or Zimbabwean businesses can donate to political parties, in order to avoid the hijacking of political parties by wealthy individuals or companies, thus putting their personal interests ahead of national interests. This will limit corruption through, for instance, awarding lucrative contracts, trading licences, membership of parastatal boards or political appointments to financial backers or their connections. The actual limits can be determined from time to time by Parliament, upon recommendation by an independent electoral commission following consultations with political parties and other stakeholders. Funding of political parties by State organs (including municipalities) and corporations must be prohibited, as is the case in countries like Angola and Mozambique. This will ensure that State organs and corporations do not feel obliged to 'pay taxes' to the ruling party and also that the ruling party does not 'loot' State organs and corporations in order to finance its activities. To discourage donors and

their beneficiaries from circumventing this, the law must prohibit donations through third parties. Also, to ensure a relatively even political playing field, especially with regard to the financial disparity between bigger and smaller political parties, reasonable limits must be placed on election expenditures of parties and candidates. These limits can be determined from time to time by Parliament, upon recommendation by an independent electoral commission following consultations with political parties and other stakeholders.

- V. In the light of the immediate above, it is desirable that political parties must be required to maintain records of all donations received from private sources, together with proper books of accounts, subject to audit in the manner already suggested above with regard to public funding. Care must be taken, however, to ensure that the maintenance of such records and books of accounts is strictly for transparency and accountability purposes only, in the public interest, and not for ulterior purposes especially by the party in power. The information must not be used to 'flush out' who the donors of the opposition are and to impede their support for parties of their choice. The result of such a requirement must not be to imperil the donors. It is especially important that this is borne in mind when considering the timing of such a requirement, more so in view of how vindictive ZANU (PF) can be.
- VI. While foreign donations to political parties are prohibited, there is no law which prevents the government from receiving foreign donations, however they are channelled, for the purpose of supporting the electoral process e.g. voter registration, printing of ballot papers, making ballot boxes, public awareness campaigns and general support to the body responsible for running elections. Where such donations are received, this must be done in a transparent and accountable manner, so that individual parties, especially the governing party, should not benefit directly from the donation. Ideally, such donations must be managed and utilised by an independent electoral commission.
- VII. The Minister of Justice should not be involved in determining who qualifies for public funding and in allocating the funds to political parties because there is a clear conflict of interest and lack of transparency and accountability. An interested party should not determine how and when political parties should access funding, and administer the funds. That responsibility should rest with an independent and impartial body, presumably an independent electoral commission as is the case with other countries. Further, the budgetary allocation for political parties should not be administered as part of the Ministry of Justice vote but it

should be a stand alone budget to be administered and accounted for to Parliament by the independent body.

- VIII. The law appears to be silent on the use of State resources by political parties for party business and running election campaigns. We have noted above how ZANU (PF) has with impunity, in fact as if it is a 'birthright', used State resources to support its activities and for political campaigns. The law must clearly prohibit the use of State resources for party business by political parties, whether they are in government or not. A clear line must be drawn between ministers' responsibilities and duties as members of government and their responsibilities and duties as members of their own parties. The two functions should not be confused or be intertwined. In particular, no government ministry should operate from a building belonging to a political party. Equally, no political party should conduct its business in a government or other public owned building. There must be serious penalties for breaches, including reparations. Access to the public media must be in accordance with the SADC Principles and Guidelines Governing Democratic Elections, which must be domesticated.
- IX. It is recommended that the prohibition of donations by non resident Zimbabweans to political parties should be reviewed by stakeholders. The prohibition sounds so unreasonable that if there are no other reasons, other than selfish ones, the law must be amended to allow all Zimbabweans, wherever they are resident, to make donations to political parties. As a way forward, and to facilitate consultations with stakeholders, the law must be amended as suggested.
- X. Lastly, it may be necessary to review of the current threshold for qualification for public funding by stakeholders. It has already been noted above that the current threshold for accessing public funding in Zimbabwe only benefits the MDC and ZANU (PF) and excludes smaller political parties, though this would change if the recommendations in paragraph II are adopted. However, such a review must bear in mind the caution by the Supreme Court in United Parties v Minister of Justice, Legal and Parliamentary Affairs and Others, supra, that it is justifiable to place a reasonable limitation upon the payment of State funds to political parties in order to encourage serious political contenders while at the same time discouraging 'trifling' parties from been formed merely to access public funding. At the same time, the legislature must take cognisance of the rider which the Court added: that unless funding is provided in a manner that is non-exclusionary and tolerant of political pluralism and electoral competition it will do no more than entrench major political parties and treat far less fairly minor

or new opponents. A high threshold for entitlement to receive State funding makes it extremely difficult for small but meaningful voices to be heard⁷⁷.

The Consultant is well aware that monitoring and enforcing the law relating to funding of political parties is no easy challenge. Political parties are bound to be innovative and creative, and will find ways to circumvent the provisions of the law. This should not however be an excuse for not monitoring compliance by political parties and enforcing the law. The law governing political parties financing must clear on what the rules are, political parties must be regularly reminded of such rules, there must be stiff penalties for breaches of the rules, strong and effective enforcement mechanisms should be put in place, and the rules must be enforced strictly, vigorously and impartially. Of course, care must be taken to ensure that the law is not used, especially by the governing party, as an excuse to unduly interfere with the operation of political parties under the guise of enforcing the law. All political parties and other stakeholders must be consulted and involved as may be appropriate to ensure fairness and transparency.

Public funding of political parties cannot alone achieve the desired objective; political pluralism and genuine democracy. Political parties need to operate in a conducive operating and institutional environment, in order for them to 'grow and develop into healthy and functional entities'⁷⁸. While the appropriate regulation of political parties can contribute to the creation of such an environment, the control of political parties can be an unnecessary and indeed undesirable hindrance to the operation of political parties and to their growth. It is desirable, therefore, that laws such as AIPPA and POSA which restrict fundamental freedoms like association, assembly and expression must be reviewed.

As we have noted above, it is also crucial to inculcate in the populace democratic values, such as tolerance, freedom of speech, judicial independence and impartiality, access to justice, respect for human rights and observance of the rule of law, in order to promote and consolidate democracy. The parties themselves must embrace intra-party and inter-party democratic values and norms, for these to translate to the national level. Where there is no intra-party democracy, the ruling party cannot translate democratic values at the national level.

⁷⁷ See pp. 266-267 of the judgment. The Court held that in assessing whether the threshold is set too high, the court will take into account the practical effect of this funding system upon political parties in Zimbabwe. Any public funding regime that systematically excludes all but one or two political parties strongly suggests that the threshold is set too high.

⁷⁸ Masunungure, op cit, p.5.

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