

ELEVEN

Financing the ANC: Chancellor House, Eskom and the dilemmas of party finance reform

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On 8 April 2010 the World Bank approved a US\$3.75 billion loan to help South Africa achieve a reliable source of electricity supply. The loan, the World Bank's largest lending engagement with South Africa since the end of apartheid, was provided to South Africa's state-owned power utility, Eskom, and was brought about by the circumstances surrounding South Africa's energy crisis of 2007–8, and the global financial crisis that exposed South Africa's vulnerability to an energy shock and accompanying severe economic consequences. Named the Eskom Investment Support Project (the Eskom Project), the World Bank loan will co-finance the completion of the 4800MW Medupi coal-fired power station (US\$3.05 billion), the piloting of a utility-scale 100MW wind-power project in Sere and a 100MW concentrated solar-power project with storage in Upington (US\$260 million), and low-energy efficient components, including a railway to transport coal with fewer greenhouse gas emissions.¹

According to Ruth Kagia, the World Bank country director for South Africa, the Eskom project offers the World Bank an opportunity to 'strengthen its partnership with the government of South Africa'. This, according to Vijay Iyer, the World Bank energy sector manager

for Africa, is the ‘biggest grid-connected renewable energy venture in any developing country’.² The project received strong political support from South Africa. President Jacob Zuma, in a motivating letter to Robert Zoellick, the World Bank president, described South Africa’s energy sector, and Eskom’s role in it, as of ‘strategic national importance’ urging Zoellick ‘to do all [he could] to expedite support to ... Eskom’.³

The Eskom project, however, did not receive strong support from all sectors of the South African polity. While the representatives of the governments of the US, the UK and the Netherlands on the World Bank board abstained from voting in favour, citing concerns around the country’s lack of progress on developing renewable alternatives, the most significant reservation came from the ranks of political opposition in South Africa, and in particular, the official opposition. The leader of the official opposition, Western Cape provincial premier Helen Zille, went to the extent of lobbying the governments of the US and UK not to support Eskom’s request for a World Bank loan. The rationale for the opposition was that the Eskom project would ‘enrich the [governing] ANC by a clear profit of an estimated R1 billion without any tax’. This, according to Zille, is the ‘result of a corrupt deal in terms of which the ANC in the state [through Eskom] has given a contract corruptly to the ANC in business, to Chancellor House, to enrich the ANC as a political party’. This, the Democratic Alliance further argued, ‘is a massive conflict of interest’ as a result of which the ruling political party would make a clear profit of R1 billion through a commercial transaction with a public enterprise.⁴

Given the high-level involvement and extent of political support for the Eskom project, Zille’s allegations are very serious. In particular, they point to some of the major problems, but also necessities, facing advanced and emerging democracies – the financing of political life, the relationship between ruling parties and public enterprises, and the opportunities this all creates for political corruption. What is ‘political finance’ and ‘political corruption’? How is it both a necessity

and problem in the politics of democracy? What significance, if any, does it have for the Eskom project, particularly with regard to the ANC investment arm Chancellor House? This essay will deal with the politics of party finance with respect to the role of Chancellor House in the ANC in particular, and with respect to debates on the need for its regulation in general.

Party finance defined

All political parties face common problems of how to find sufficient financial resources to fund their general activities. Competition between political parties and the pressures of maintaining governing political parties in power drive up the costs of political campaigning and intensify the search for additional and new income streams. In this environment, money is the key variable; ‘money buys the access, favours, skills, goods and services that are essential to effective party activity’.⁵ Money is instrumental, and its importance, Alexander writes, ‘lies in the ways it is used by people to try gain influence, to convert into other resources, or to use in combination with other resources to achieve political power’.⁶ Money is thus a ‘transferable and convertible resource which helps mobilise support for, and secures influence with, political parties’.⁷ Political finance thus generally refers to money that is used for electioneering, the costs of maintaining party offices and employing permanent staff, carrying out policy research, and engaging in political education, voter registration and other regular functions of political parties.⁸ Beyond campaigns and parties, money is also spent on other direct political purposes such as political foundations, political lobbying, media-related work, and litigation in politically relevant cases.⁹ Therefore, the numerous channels through which money is poured into politics can lead to serious problems of definition, which consequently makes political finance a difficult matter for regulation and control.

Beyme identifies three main forms of party finance: intra-party finance, external finance and public finance.¹⁰ Intra-party sources of finance refer to membership fees which finance political

party activities. Other sources of internal finance include income from investments, additional contributions from members and supporters through party rallies, and the sale of party newspapers and publications.¹¹ However, when political parties develop trading and investment arms, which inescapably bring them into direct contact with the commercial and private sector, lines between internal and external sources of finance may blur. This is further complicated when governing parties (especially dominant parties) establish commercial enterprises that engage in business transactions with the government sector, eventuating in conflicts of interest and political corruption.

External sources of funding refer to money received from private organisations and individuals. Usually, this takes the form of financial support given by organised constituencies within parties, such as money given by trade unions to progressive social democratic or labour parties. External funding can also be derived from the close relations that develop between ruling political parties and large corporate enterprises. This particular source of funding tends to attract the most adverse comment as it raises questions of who is beholden to whom and for what, and the extent to which parties are accountable to voters and their core constituencies. Thus the motives of private contributors to political parties are often called into question, with suspicions particularly aroused when there are attempts to conceal or disguise donations. As Williams puts it, 'what the Americans call influence peddling, what the French call *pantouflage* and what ordinary citizens everywhere call corruption tends to undermine public trust in parties and encourages cynicism about politicians, their motives and their loyalties'.¹²

Public funding is presented as a way of freeing political parties from the obligations created by their dependence on income from business groups.¹³ The risk, however, is that parties may simply exchange one form of dependency from another – 'as parties and their office-holders become more dependent on the state, they are less beholden to their voters, supporters and members, and this may erode ties of loyalty and weaken accountability'.¹⁴ Public funding can thus

serve to simply strengthen the orientation of parties towards the state and, at the same time, contribute to their shifting away from society at large.¹⁵ In addition to reinforcing the linkages between parties and the state, public funding may also serve to encourage a particular conception of democracy and political parties, by which parties are ‘increasingly seen as an essential public good for democracy and less exclusively as the private voluntary associations which are the instruments of civil society’.¹⁶

Party finance, political corruption and conflict of interest

From Beyme’s categorisation, it is thus possible to see where the opportunities and incentives for political corruption arise. While corruption is a contested concept, most approaches to the subject rest on the distinction between a formal obligation to pursue the public good and conduct which is construed as private and which serves to undermine the public good.¹⁷ Significantly, it focuses attention on the extent to which parties are seen as public rather than private organisations, giving the term both a legal dimension and a matter of popular and media perception. The emphasis is on political corruption, as opposed to corruption generally, and attention is devoted to the public sphere in which political actors operate, i.e. the ‘interface between the public and private spheres – such as when politicians or functionaries use their privileged access to [state] resources (in whatever form) illegitimately to benefit themselves, [political parties] or others’.¹⁸ Boundaries are therefore very important: political corruption does not include those activities which take place wholly outside the public sphere, such as private sector business or financial corruption.

Alatas has developed a broad-ranging typology of political corruption on the basis of a minimalist definition: ‘corruption is the abuse of trust in the interest of private gain.’¹⁹ He identifies five forms or types of corruption: defensive, investive, nepotistic, autogenic and supportive. In so doing, he draws distinctions between high and low level (i.e. grand versus petty), local and national, personal

and institutional (i.e. personal enrichment and political party), and traditional and modern forms of corruption (i.e. nepotism and patronage versus money laundering and creative accounting).²⁰

Political corruption essentially involves a conflict between the personal interests of a decision-maker in the private and public sector and those of the entity that he or she serves. This ‘conflict of interests’ involves a clash between the public duties of the decision-maker concerned and his/her personal interests, and occurs when the public office-holder ‘puts his/her personal or financial interests ahead of the public interest’. In the simplest terms, ‘the official reaps a monetary or other reward from a decision made in his or her public capacity’.²¹ That these interests may at times not result in the public official improperly executing his/her public duties is inconsequential – even the appearance of impropriety undermines the public’s faith in the political process as fair and erodes public confidence in a free society and democratic government. Conflicts of interest thus create the perception that public officials do not make decisions in the public interest, and that the financial pressures associated with the politics of political parties are more important in deciding positions on issues of public policy than the achievement of the common good. These issues – party political finance, and the conditions and opportunities it creates for political corruption and conflicts of interests, real or perceived – are at the heart of the Eskom project, especially with regard to the involvement of Chancellor House Holdings, the investment arm of the ANC, in particular, and the conduct of business between the ANC and the government in general.

The ANC Inc.: Chancellor House and Eskom

The ANC launched its first investment arm in 1992. As part of the transition to democracy, and in preparation for registering and functioning as a political party, the ANC set up the Batho Batho Trust with Nelson Mandela, Walter Sisulu and Tokyo Sexwale as trustees. The trust established Thebe Investments. Thebe took over the ANC’s financially troubled Movement Marketing Enterprises, which then

had the franchise to sell Nelson Mandela T-shirts and other ANC memorabilia, and soon became the ANC's investment arm. Thebe acquired Dakawa Properties, which owned 51 Plein Street, where the ANC headquarters of Luthuli House is located, and Oriole Travel, then the ANC in-house travel agent.²² Over time Thebe acquired significant shareholding in the private health, financial and insurance sectors. However, the relationship between the Batho Batho Trust/Thebe and the ANC gradually became distant – in the late 1990s, Batho Batho significantly diluted its stake in Thebe. In 2006 Batho Batho rejected the suggestion of Mendi Msimang, ANC treasurer-general, that the proceeds of its sales be used to pay off ANC debts of around R100 million, and insisted rather that 'the ANC's request for funding would be adjudicated like that of any other applicant'.²³ Set up by the ANC, in the interests of the ANC, Batho Batho no longer answered its master's call.

It is in this context of party financial insecurity that the emergence of Chancellor House Holdings should be understood. Chancellor House Holdings was formed in March 2003 through the initiative of Mendi Msimang, a very close confidant and associate of Thabo Mbeki, who was instrumental in its conceptualisation. In his treasurer-general's report to the ANC's Polokwane Conference, Msimang pointed out that Chancellor House was set up to make the ANC self-sufficient at a time when the ANC was going through a turbulent financial period 'and needed an investment mechanism to ensure funding on a sustainable basis'.²⁴ In his report to the ANC's National Financial Committee, Msimang said that Chancellor House 'had given the ANC a sound portfolio of investments' and that 'a deficit of R76 million had been transformed into a surplus of R67 million at the end of 2007'.²⁵ As it turns out, Chancellor House Holdings is a true success story and has enabled the ANC to achieve a sound financial position. The Chancellor House investment portfolio is reported to have a market value in excess of R1.75 billion, making the ANC one of the wealthiest political parties in the world.²⁶ Funds from Chancellor House cover the monthly expenses and salaries

of officials and other related costs.²⁷ Unlike other BEE ventures linked to senior ANC members, Chancellor House is not a personal enrichment exercise but rather a commercial enterprise explicitly set up to fund the ANC as a political party.

Chancellor House has focused strongly on the minerals and energy sector in which the 2004 Mineral and Petroleum Resources Development Act and its associated empowerment charter created lucrative BEE opportunities. The Chancellor House Trust is the sole shareholder of Chancellor House Holdings, whose subsidiaries include Chancellor House Mineral Resources Investments, Chancellor House Energy Resources and Chancellor House Marine Investments. The Chancellor House Trust deed specifies no beneficiaries, but the trustees are Popo Molefe, CEO of Lereko Investments and chairperson of the Chancellor House Trust, and Salukazi Dakile-Hlongwane, an executive director of Nozala Investments. Molefe also serves as the chairperson of the state-owned Petroleum Oil and Gas Corporation of South Africa (PetroSA), and the Armaments Corporation of South Africa (Armscor). The chairperson of Chancellor House Holdings is Professor Taole Mokoena, a distinguished surgeon and Pretoria-based medical academic, and the managing director is Mamatho Netsianda, the former deputy defence secretary. Ultimately, Mendi Msimang is the boss of Chancellor House, and through him the Mbeki faction in the ANC is in firm control over its vast financial resources.

Chancellor House's major investments are thus in energy, mining, engineering, IT and logistics.²⁸ Its biggest mining investments are in the strategic manganese reserves in the Kalahari through United Manganese Kalahari (UMK), a joint venture between Chancellor House, Pitsa Ya Setshaba Holdings and Renova Manganese Investments (RMI), a Bahamas-registered subsidiary of the Renova Group controlled by Russian oligarch Viktor Vekselberg.²⁹ UMK was awarded 'new order' prospecting rights by the Department of Minerals and Energy (DME) to eight farm portions in the Kuruman district of the Kalahari, totalling some 15,200 hectares. RMI controlled 49 per cent of UMK, with Chancellor House and Pitsa

both controlling 51 per cent. UMK was funded by Renova to the amount of US\$20 million, 'effectively gifting nearly half this sum to Chancellor and Pitsa as RMI partners'.³⁰ However, with the Kalahari being home to 80 per cent of the world's known commercially exploitable manganese resources, and South Africa accounting for just under a fifth of world production, the UMK project itself could reach a value well in excess of R1 billion.³¹

The granting of prospecting rights to UMK has aroused suspicion, especially in view of the complaints of two other ANC-related BEE companies, Kalahari Resources and Dirleton Minerals and Energy, who lost out on the deal.³² These suspicions were increased by investigative journalist reports on shareholder composition revealing the close proximity of Kalahari Resources to Kgalema Motlanthe and of Dirleton to Zwelakhe Sisulu.³³ They were further clouded by reports that Motlanthe is alleged to have presided over a meeting aiming to influence Renova to include Kalahari but not Chancellor House in the UMK consortium.³⁴ Given that Mbeki's faction has controlled Chancellor House, Motlanthe's lobbying against its inclusion in the deal indicates that the ANC's multiple investment arms, controlled by competing factions, have become weapons in intra-party factional wars. This view is strengthened by the political fall-out from the Eskom project.

Chancellor House's recent and most controversial investments are in the energy sector. Chancellor House is a 25 per cent shareholder in Hitachi Power Africa, the local subsidiary of Babcock-Hitachi Europe. Hitachi Power Africa 'was formed in 2005 in response to Eskom's programme to install new generation capacity' which was heavily reliant on the construction of coal-fired power stations.³⁵ Controversy arose out of Hitachi's interest in the Eskom project. In March 2006 Eskom had invited tenders for a project under a new electricity plan that involved a contract to construct the Medupi coal-fired power station near Lephalale in Limpopo. Tenders for the boiler works were received from Alstom S&E and Steinmüller Africa in consortium (the Alstom Steinmüller Consortium) and from Hitachi

Power Africa and Hitachi Power Europe in consortium (the Hitachi Consortium).³⁶ In terms of the evaluations, the Alstom Steinmüller Consortium's tenders ranked first overall. In August 2007 Eskom accepted the Alstom Steinmüller Consortium tender but subject to certain conditions, i.e. technical and commercial issues that had a bearing on the scope of the works and would have had an impact on the price that was tendered. These conditions became a thorny issue between Eskom and the consortium, to the extent that the consortium rejected Eskom's proposed mechanisms to deal with the outstanding issues. As the matter could not be resolved, Eskom decided to approach the other tenderer, the Hitachi Consortium, which subsequently resubmitted its tender 'to a comparative evaluation against that of the Alstom Steinmüller Consortium' and emerged as the preferred tender.³⁷ After approval by Eskom's board of directors, the contract was concluded at the end of October 2007.

The procurement process was reviewed by Deloitte & Touche. Inquiries were made to identify any conflict of interests of board members that had tendered for the Medupi boiler contract. These inquiries 'consisted only of public record corporate entity searches relating to South African registered entities'.³⁸ Deloitte identified the involvement of a 'political entity' and stated: 'In the course of the assignment, we learnt that Chancellor House, a company allegedly owned by the African National Congress (ANC), is a shareholder in Hitachi Power Africa.' Deloitte stressed that it could not make a call on whether or not this had had a bearing on the tender process: 'Although it may be inferred that the ruling party may be both player and referee in such a situation, *no information was brought to our attention that any political influence was exerted in relation to the Project Alpha (the Medupi) tender process.*'³⁹

Further, as far as the procurement process prior to the decision of the board is concerned, Deloitte 'did not identify any material irregularities or deviation from the applicable policies or legislation'.⁴⁰ The significance that this procurement process and resultant contract have for the issue of political party finance, and its opportunities for

political corruption and conflict of interest, turns on the involvement of Eskom's then chairperson of the board, Valli Moosa. Moosa is the chairperson of Lereko Investments, whose CEO, Molefe, is chairperson of the Chancellor House Trust. Significantly, Moosa is not only a senior member of the ANC through his membership of its National Executive Committee (NEC), and chairperson of one of its strategic sub-committees (Committee on Realignment of Opposition Forces), but is also a key member of the party's National Finance Committee. According to the ANC's constitution, the committee has to report at least twice a year on the finances and budget of the ANC.

Moosa's chairmanship of the Eskom board, and subsequent involvement in the awarding of the Medupi boiler contract to the Hitachi Consortium (Chancellor House Holdings has a 25 per cent stake in Hitachi Power Africa), were the subject of an investigation by the Public Protector. The Public Protector's investigation found that there was a conflict between Moosa's personal interests in the ANC and his duty towards Eskom. The Public Protector's report stated: 'There can be no doubt that Mr Moosa, as a member of the NEC and its Finance Committee, owed a duty to the ANC to act in its best financial interests. Likewise, as the Chairperson of the Eskom Board of Directors it was expected of him to act in the best financial interests of Eskom. These two interests were therefore in direct conflict at the time when the awarding of the contract to the Hitachi Consortium was considered by the Board.'⁴¹

The concept of conflict of interest, however, covers all types of interests that could affect or be perceived to affect the objectivity of a decision maker.⁴² Personal interests are 'defined separately as potential, direct or indirect interests in any entity in any capacity and include political interests'.⁴³ Therefore, membership of the governing institution (NEC) of a political organisation (ANC) is a personal interest. This raises a deeper question on the role of the ANC. The Public Protector, however, had a limited brief: the Public Protector Act does not afford him the powers to investigate the conduct, affairs and relationship of private entities, and political parties, like businesses,

are private institutions. This is an unfortunate circumstance as the conflict of interest, and potential for political corruption, arose from the personal (party political interest) of Moosa. Consequently, the issue of whether political parties should be allowed to be involved in business dealings with public entities is a matter for parliament to consider and for legislation to resolve and regulate. Chancellor House's role and Moosa's involvement in the Eskom project form an instance of political corruption. It involved the use of privileged access to Eskom through the chairmanship of the board (of a party member of the National Finance Committee) to directly benefit the ANC.

The dust had yet to settle on the issue of Chancellor House's stake in Hitachi, when the political stormclouds gathered. In early April 2010, in response to the controversy, ANC treasurer-general Mathews Phosa told the *Sunday Times* that he had advised Chancellor House to exit from Hitachi and that Chancellor had agreed to do so within six weeks: '[the ANC] took a decision to disinvest. Initially, there were different views, but we now have agreed to disinvest, and Chancellor House has accepted that. But as a shareholder, we can only give advice to Chancellor House.'⁴⁴ Phosa further admitted that Chancellor's investment was a conflict of interest and didn't mince his words about what it implied: 'We're definitely not interested in getting involved in shady deals and taking advantage of the taxpayer to raise money. We want to set a proper example and be accountable.'⁴⁵ Phosa was further quoted in *Engineering News* as saying that Molefe, chairman of the Chancellor House Trust, had been briefed about the planned sale of shares in Hitachi and that there was consensus around the issue. In order to withdraw from Hitachi, Chancellor would have to offer its 25 per cent shareholding in Hitachi Power Africa back to Hitachi.

Phosa, however, spoke too soon; all the other relevant parties contradicted him. First, Robin Duff, chief financial officer of Hitachi Power Africa, said it had not been approached by Chancellor House, and he knew nothing about the repurchasing of the shares. Second, Professor Mokoena, chairman of Chancellor, and Hermanus

Loots, a non-executive board member, confirmed that there were no plans to sell the shares, stressing that they could not even foresee an urgent board meeting on the issue. Mokoena further emphasised that Chancellor was an independent company and ‘nobody tells the directors what to do’.⁴⁶ Third, Molefe shrugged off suggestions from Phosa that he was supposed to lead the disinvestment process, saying that he was not authorised to speak for the ANC or the company. Molefe also stressed that Phosa did not have the authority to speak for Chancellor House or the trust and that he should stick to ‘building [ANC] branches’.⁴⁷ Fourth, Gwede Mantashe, secretary-general of the ANC, contradicted Phosa, saying that ‘such a decision cannot be taken at Luthuli House as the Chancellor House board of directors operated independently of the ANC’.⁴⁸

But Phosa was adamant that Molefe agreed to pull out: ‘He [Molefe] said to me: “Six weeks is reasonable.” I’m just telling you this because there is a lot of nonsense in the air. I said: “Popo, you accept six weeks is reasonable?” He said, “Yes.”’⁴⁹

Phosa also did not mince his words on those who sought to protect Chancellor House: ‘I’m saying to you that Popo is being less than frank. He knows what we discussed. He went to AMB Capital to work out the options. If what is reported is true [Molefe’s denial of any agreement to pull out], then he is lying. Full stop.’⁵⁰ Molefe replied by simply stating that he couldn’t care less what Phosa said or thought, and that he was at liberty to ‘say whatever he wants to say to the press’.⁵¹

Thus, days after Phosa promised the ANC would sell its stake in Hitachi Power Africa, it became clear that not only was the party leadership divided on the issue but Phosa, the only figure publicly opposed to continuing Chancellor’s stake in Hitachi, was isolated. Phosa’s attack on Chancellor, however, was not new. In the immediate aftermath of his election as ANC treasurer-general after the 2007 Polokwane Conference, he vowed to clean up corruption and party funding and said that he would open an investigation into Chancellor House.

What is clear from the political dynamics around Chancellor House's involvement in the Eskom project and United Manganese Kalahari is that neither Phosa nor his predecessor had oversight of private funding of the ANC. Msimang had control over financial resources channelled from Chancellor but not from other sources. The decentralised private funding regime of the ANC has created conditions in which competing factions have built up competing funding vehicles for the ANC in an attempt to gain control over the organisation, and then over the state. This has led to the gradual erosion of the authority of the office of the treasurer-general, threatening the independence of the party and the integrity of its procedures, and the emergence of a political culture in which power and authority are vested within the faction that amasses and controls the most financial resources.

In this context, Chancellor House has emerged as the 'goose that lays the golden egg'; a commercial enterprise that effectively controls the ANC. Not only does Chancellor pay out the monthly salaries of ANC officials, it also paid off the ANC's most controversial debts. According to Msimang's report to the National Finance Committee, the money made by Chancellor House enabled the party to repay R11 million as a result of the fall-out from the Oilgate scandal.⁵² Chancellor thus represents the continued dominance of the Mbeki faction, and the hostility towards its transactions with the government should be understood within that context. Mantashe's defence of Chancellor seems more an attempt to mediate between the competing interests of the relevant factions.

The need for private party finance reform

The Chancellor House issue raises general questions about the need for legislation to regulate the conduct of business between government entities and the investment arms of political parties, especially ruling dominant parties. The premise of the arguments for such legislative regulation is that this could serve as a legitimate means for curtailing illicit practices and behaviour around the political dynamics of party

finance. Putting parties under intense public scrutiny relates to the desire to restrict or control the influence of private money and to limit its distortion of the democratic political process. The concern here is to prevent a situation where 'certain private interests, rather than general public interests, would come to guide the conduct of parties and elected officials'.⁵³ Thus, since public funding would relieve parties from having to satisfy their financial supporters, or subvert the rules in their search for new income streams, it would diminish political corruption. The introduction of public legislation on party financing would give the state 'a larger degree of control over the role of money in politics and a greater opportunity to legitimately exercise some degree of supervision over party financial activity, which should [in theory] further reduce the potentially excessive influence of private contributors at the expense of the public interest'.⁵⁴

This can be seen from the recent interest of national and international governmental institutions and non-governmental organisations in regulating the funding of political parties and illicit practices of party finance. Internationally, these include bodies such as the European Parliament (which investigated the funding of political parties in European Union members states), the Council of Europe, the International Institute for Democracy and Electoral Assistance (IDEA) (which has published a handbook on party and campaign finance), and Transparency International (which focuses on party finance and corruption).⁵⁵ In South Africa, the bodies have included the Institute for a Democratic South Africa (Idasa) and the Institute for Security Studies (ISS), which have argued for the disclosure of all substantial private donations that political parties receive.

What emerges from the recommendations and guidelines of these organisations is a strong plea for the state to guarantee the accountability of parties and the transparency of party financing through legislation and public control. At the centre of this is the issue of whether, or to what extent, political parties are seen as public rather than private organisations. After all, parties occupy a paradoxical position; they are bodies that perform a public function (developing policy for

government, selecting and presenting candidates for election, as well as providing the personnel for both government and opposition) but are regulated by private law to the extent that the ‘legal base on which they operate is simply the law of contract developed from the rules and practices of the party in question’.⁵⁶ Political parties are thus voluntary associations and as such do not necessarily have a legal personality, even though in some circumstances it is possible for them to be sued or prosecuted in their own name. This legal status (or lack of it) often obscures the reality that even though they are private bodies, they perform public functions.⁵⁷

The proponents of reforms have not, however, considered the full implications of their arguments. While the introduction of legislation may give the state a larger degree of control and supervision over the role of money in politics, it may in turn discourage parties from looking for additional sources of income and consequently remove a key incentive to establish a more structured relationship with civil society.⁵⁸ This may drive parties towards a dependence on public funds and, especially in dominant party systems, could facilitate the access to, and thereby encourage, the unauthorised use of state resources.⁵⁹ Consequently, the strong dependence on public finance in dominant party systems strengthens the pervasive patterns of patronage and corruption, and may serve to entrench parties within the state. Significantly, regulation runs the risk of contradicting and progressively undermining the organisational autonomy of parties and their status as private and voluntary associations, ‘turning parties into a unique type of public utility’.⁶⁰ Consequently, the more the activities of parties are regulated by public law, ‘the more this will lead to their being defined as public service agencies’; this could weaken their internal hierarchical order and undermine the capacity of political parties for institutional integration.⁶¹

Concluding remarks

The Chancellor House case study and the South African party political finance regime in general thus pose a serious dilemma. It

is clear that some regulation of the conduct of business between the government and political parties is necessary, especially with regard to governing parties. However, such regulation should be mindful of the private nature of political parties as voluntary associations, which are created and regulated by their own constitutions and not by legislation. Further, the fact that the actions of political parties attract widespread public interest ‘does not make its functions “public” in the legal sense.’⁶²

A possible way out of this dilemma would be to give special recognition for political parties in national legislation. Germany’s Federal Constitution may provide a way out. Article 21 of the Basic Law states: ‘The political parties participate in the forming of the political will of the people. *They may be freely established.* Their internal organisation shall conform to democratic principles. *They shall publicly account for the sources of their funds and for their assets.*’⁶³ While acknowledging the voluntary nature of political parties, this does provide a framework for the regulation of their finances. This in turn provides a foundation for the establishment of internal party reforms to conform to the legislative framework. Centralising party finance in accordance with a national legislative framework may hinder individual elected representatives and party functionaries from engaging in illicit activities. It may also remove the headaches of treasurers-general competing with wealthier internal factions who threaten to hold the parties in question to ransom. There are, however, no easy and simple answers. As Nassmacher declares: ‘Rule-making covering the role of money in politics needs to be a multifaceted search for the optimum, not the transfer of a perfect set of rules already applied elsewhere.’⁶⁴