

## The State of Party Funding in South Africa

Gary Pienaar<sup>1</sup>

*Political financing remains the number one corruption risk around the world ...*

Nathaniel Heller, Executive Director, Global Integrity

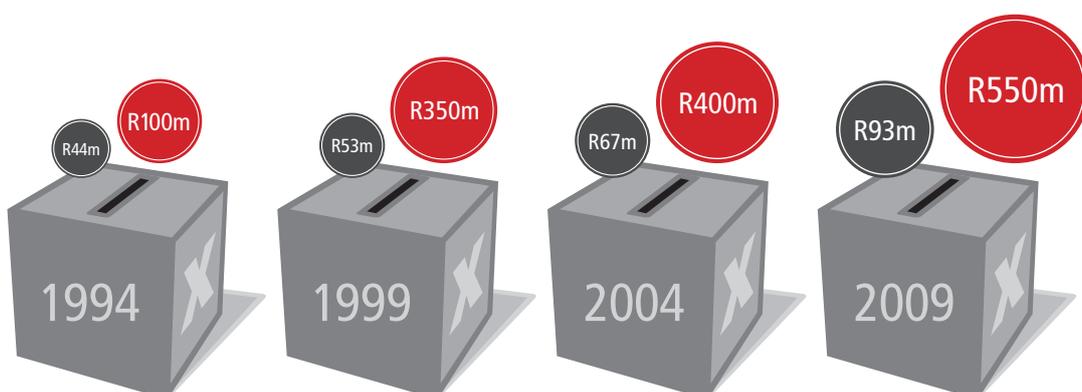
### Introduction

African National Congress (ANC) Treasurer General, Mathews Phosa, in discussing proposals to be presented to the party's June 2012 Policy Conference, stated that political parties need adequate funding, including increased public funding, especially for purposes of funding parties' election campaign costs. Private and foreign funding, as well as party investments, should also be regulated and be more transparent, he proposed.<sup>2</sup>

Leaving aside, for the moment, the difficult question of whether South Africa can 'afford' to divert additional public funds from other pressing socio-economic demands, although the 'investment' may be worthwhile if it helps to reduce the

*Campaign funding: Official public funding and estimated private funding in election years 1994–2009*

● Public funding  
● Private funding



ethical, legal and societal problems associated with the present situation, one may fairly ask how much is considered 'adequate' or 'sufficient' funding, and in whose estimation? What do political parties 'need' in order to operate 'effectively'? What should be their spending priorities? What are their current levels of income and expenditure? What do we know about how much public funding political parties already receive, and about how much they raise from various sources, such as private companies and individuals, or foreign governments and political parties? This paper aims to begin to assess primarily the last of these questions.<sup>3</sup> The objective is to describe and discuss what we have found, focusing on the big picture, rather than discussing the merits of particular donations or party practice.

We assess the existing legal and policy framework for political-party funding in South Africa and, relying on information in the public domain, we report on the Money and Politics Programme's (MAPP's) initial findings on what is known about the quantum and sources of public and private party funding in South Africa today. The primary challenge confronting the construction of a comprehensive picture of political-party funding is that South Africa in no way regulates private or foreign funding. Neither political parties nor their donors are presently required to disclose the size of donations made and received, or even the fact of the donation. Nor need a donor be identified in any way. Given the opacity that characterises private and foreign funding, it is impossible to accurately quantify funding for political parties from private and foreign sources.<sup>4</sup>

Nevertheless, the intention here is to identify and assess as best we can the quantity and quality of information in the public domain, but which is not always readily identifiable and easily available to the broader public. The underlying purpose of doing this is to identify what we know about the amount of funding political parties receive, the sources of that funding, and how complete and reliable available information might be. This paper therefore starts by describing the current legislative framework and formula for the public funding of political parties in terms of the Public Funding of Represented Political Parties Act 103 of 1997, which identifies the Electoral Commission (IEC) as the body responsible for the administration of the Public Fund established in terms of this Act. It also considers parliamentary funding for political parties' work inside Parliament, and Parliament's policy and practice on funding political parties' 'constituency' work, noting the steady growth of budgeted allocations over past years. It also examines efforts by most provincial legislatures to appropriate public funding for similar 'constituency' work, and considers questions that have been asked about the lawfulness of Parliament's constituency funding and of the funding disbursed in terms of provincial laws.

The paper also considers information gathered from publicly available sources on two samples of private companies' policies and practices in respect of political-party funding. The samples include the top forty companies (by market capitalisation) listed on the Johannesburg Securities Exchange (JSE) as at September 2012, as well as ten large unlisted domestic and multinational companies operating in South Africa.<sup>5</sup> A deliberate choice has been made not to include in the sample of unlisted companies many that have been the focus of attention arising from controversies about the nexus between cadre deployment into the public and private sectors, black economic empowerment (BEE), state procurement and political finance. While these issues are

undoubtedly an important part of the problem of unaccounted-for political finance, and sometimes unethical, illegal and unconstitutional conduct by public servants, the decision was taken to focus primarily on the policies and practices of more established or mainstream corporate actors.

### **Background: Political-party funding: Institutionalised conflicts of interest**

The arguments for urgent and comprehensive reform of South Africa's party-funding framework have been made elsewhere<sup>6</sup> and are merely summarised here.

For South Africa to meet the challenges found at the nexus of political, corporate and private corruption, and to live up to its promise of political equality for all, the state must strive to combine strict and independent enforcement of existing laws with fundamental reform of private money in politics under the Constitution. Legislative reform must address the unregulated means of institutionalised conflicts of interest and, at times, outright corruption which have become a fact of life in South African politics, beginning with political-party funding.

In the absence of either disclosure or regulation of the amounts and sources of party financial support, the problem of legalised and institutionalised corruption via party funding can only worsen. Three consequences of this situation point to the need for comprehensive reform of money and politics in South Africa today:

1. Loss of democratic accountability within political parties, and between political parties and citizens;
2. Increased campaign spending matched with declining voter participation amid concerns over fair electoral competition; and
3. A decrease in public trust and participation in politics.<sup>7</sup>

Each will be discussed briefly<sup>8</sup> before the paper returns to its primary focus: an exploration of what we know about the sources and scale of political finance in South Africa.

#### ***Loss of democratic accountability***

When political parties come to rely on the financial support of a few – and not just the votes of a majority – to win and maintain power, public accountability and internal party democracy are undermined.<sup>9</sup> Public funding of political parties currently



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accounts for only a small fraction of the total funds that parties raise. The rest – amounting to hundreds of millions of rand per year, most of it undisclosed – comes from private sources whose interests are unknown and cannot be assumed to represent the wider public interest.

Precious little is known about who gives what and why, and to which political parties, but the growing number of party-funding and associated scandals suggests that the resulting loss of public accountability is real. Suffice it to say here that the risk of conflicts of interest affects all political parties. The temptation to trade political influence for party financial support in response to increasing demands for funds is becoming a universal concern, especially in countries like South Africa that lack both limits on, and disclosure of, party funding. Outgoing ANC Treasurer General, Mathews Phosa, in speaking at an ANC fundraising policy workshop in June 2012, cautioned that South Africa is moving towards ‘dangerous territory’, as private funding of political parties is unregulated. He reiterated these long-expressed concerns in the following terms:

*We cannot have politics without money [...] But money is also dangerous. Rich parties can buy votes and forget to talk to citizens. Donors can shape government policy and attempt to corrupt and pervert its procurement decisions [...] Personal or factional war chests can fuel internal divisions, fund vote buying in internal elections, and accelerate factionalism [...] Ultimately, money can corrupt a political system and, in the long term, destroy its political parties.<sup>10</sup>*

Moreover, the loss of democratic accountability through unregulated party funding extends to the internal power dynamics of political parties. Incumbent ANC leaders have repeatedly bemoaned the rise of competing intraparty factions whose strength is largely determined by the level of access to funds from opaque sources.<sup>11</sup> For corporations or other interests seeking to influence government policy and lacking privileged access to politicians currently in power, the potential benefits associated with underwriting an opposing faction that ascends to power in the state can be very great. Such ‘pay-to-play’ incentives exist regardless of what kind of party-funding system is in place, but the attendant risks are aggravated in the absence of any regulation or meaningful disclosure of donations. The result we are seeing today is ‘a political culture in which power and authority are vested within the faction that amasses and controls the most financial resources’.<sup>12</sup> As political scientist Anthony Butler observes, ‘[m]oney is [...] not merely eating away at the foundations of South Africa’s democracy. It is also devouring the heart of the liberation movement itself’.<sup>13</sup>

### **More cost, less competition**

A second symptom of the problem of private money in South African politics is the increasing cost of campaigns and the corresponding lack of meaningful electoral competition. Available funding is a key determinant of the chosen modes of communication with voters and of campaigning – a significant comparative advantage with regard to the sources and quantum of funding merely exaggerates the impact. As a result of non-disclosure by political parties and donors, little is known about the full cost of campaigning. Nevertheless, official reports on public party funding issued by the IEC, combined with investigative reports and independent estimates of the

amount of private money political parties raise, show a marked increase in total spending as well as growing investments in expensive mass-media campaigns. Rising campaign costs create an arms war of sorts, where, to compete against larger parties, the smaller parties have to be able to spend similar amounts on campaigns. When access to private donor funds is skewed towards larger parties, smaller parties have little chance to reach diverse constituencies and contest elections on equal terms. This overexposure and underexposure impact negatively on voters' ability to make an informed decision. This situation can also result in the entrenchment of a party system where the largest parties dwarf smaller opposition parties, which then become marginalised or ultimately disappear from the political scene.

### *Declining trust and participation*

A steady stream of corruption scandals has been accompanied by steep declines in both the level of public confidence in government officials and in the level of public participation in electoral politics since 1994, and particularly from 2006 onwards. Surveys in 2011 and 2012 showed some recovery in levels of public trust in various government institutions,<sup>14</sup> although concerns about corruption in government and the private sector also rose. Between 83% and 91% of South Africans believe corruption is a serious and growing problem in the country.<sup>15</sup>

Participation by eligible voters in national elections fell by a third from 85.5% in 1994 to 56.6% in 2009.<sup>16</sup> The share of votes won by the ruling ANC climbed by 3.5% in the second and third elections after the party received its first commanding majority of 62.7% in 1994, and then fell by four points in 2009.<sup>17</sup> Participation in local elections has been far below that in national elections at roughly one-third of eligible voters (consistent with international trends), reflecting consistently very poor levels of trust in local government.<sup>18</sup>

As for the estimated five million South Africans who are not registered to vote and the five to ten million registered voters who routinely fail to turn out on Election Day, analysis by the Civil Society Information Service raises the worrisome prospect that 'the vote in South Africa may over-represent the rich [...] due to differential access to an identity book as well as better opportunities to register for the voter's roll and cast a ballot'.<sup>19</sup> The modest decline in ANC support between 2004 and 2009, and substantial non-participation of certain constituencies in elections, belies a more hopeful recent picture of improved public satisfaction with the direction of South African democracy and individuals' perceived ability to influence the political decisions that affect their lives. The 2008 AfroBarometer survey showed that less than half of South Africans were satisfied with democracy, down from roughly two-thirds of citizens in the period 2004 to 2006. The 2011 AfroBarometer survey indicated that 60% of adults were satisfied with democracy and that 66% of survey participants believed our democracy had 'minor' problems.

However, only one in four South Africans who participated in the 2008 AfroBarometer survey believed that local government councils allowed citizens like them to participate in public decisions or that local elected councillors and Members of Parliament (MPs) often or always tried to listen to what people like them had to say. More than half of citizens believe it is difficult for people like them to have their voices heard between elections and that there is little or nothing an ordinary person can do when he or she

has experienced problems with local government.<sup>20</sup> The SA Reconciliation Barometer 2012 survey<sup>21</sup> of youth attitudes showed local government receiving the lowest approval rating of 50%, with adults reporting fairly similar views. About 49% of both adults and the youth expressed scepticism about leaders' interest in, and responsiveness to, their concerns. The Reconciliation Barometer survey indicated that levels of trust in leadership were not high in any institution, with all at 50%. The survey found that only 38.5% of all respondents believed that the government was doing enough to fight corruption.

With these considerations in mind, it is necessary to ask why it is argued that the current legislative framework governing political parties fails to effectively address these concerns, contributing instead to the climate of marginalisation and mistrust.

### Public funding and private funding

The Constitution provides in section 236 for public funding in order to 'enhance multi-party democracy'. Political parties 'participating in national and provincial legislatures' will receive public funding on an 'equitable and proportional' basis. Monies are allocated in the national budget for distribution by the IEC in terms of the Public Funding of Represented Political Parties Act (or Represented Political Parties Act).

In the 2012/2013 financial year, political parties received approximately R110 million in public funding from the IEC, divided on a 90% proportional and 10% equitable basis among the parties represented in Parliament and in provincial legislatures.

While the amount of money provided for minor parties is small, they are heavily reliant upon public funding to carry out their normal functions and campaign on a limited basis in elections. For the ruling party, by contrast, public funding accounts for a small proportion of their overall income. In his report to the party's Electoral Conference at Mangaung in December 2012, the ANC's then-Treasurer General, Mathews Phosa, reported that it had raised R1.66 billion over the preceding five years.<sup>22</sup> Over this period, public funding from the IEC constituted only 15%, namely R218.6m.<sup>23</sup> In comparison, the party's Progressive Business Forum (PBF) raised R88.5 million from private donors and members at various events such as its business breakfasts and dinners with government leaders. Despite successfully raising what might reasonably be seen to be a substantial amount of money in the current South African context, it was too little to sustain the party's current annual staff wage bill of R130 million.

The official parliamentary opposition, the Democratic Alliance (DA), is less transparent about its funding receipts, fundraising performance and expenditure commitments.



“Minor parties [...] are heavily reliant upon public funding to carry out their normal functions and campaign on a limited basis in elections.

In this context, it has been observed that ‘[i]n an era when election outcomes tend to be determined less by the size of a party’s support base than the war chest at its disposal, public funding remains woefully inadequate [and] does not, as it should, relieve parties from the incessant pressure to raise funds’.<sup>24</sup> The accuracy of this observation can be assessed in the context of an assessment of the adequacy of known public funding when considered against estimates of the cost of running an election campaign.

**Table 1:** Official public funding and estimated private funding<sup>25</sup> in the election years from 1994 to 2009

National election	Public funding	Private funding
1994	R44m	R100m
1999	R53m	R350m
2004	R67m	R400m
2009	R93m	R550m

Table 1 shows that the rise in public funding for elections from roughly R44 million in 1994 to R93 million in 2009 (in step with inflation) is far outstripped by the estimated fivefold increase in private campaign spending from R100 million in 1994 to R550 million in 2009 (at twice the rate of inflation). Private funding estimates are too conjectural because of non-disclosure, but constitute a conservative baseline in the eyes of most observers. What is not in doubt, particularly following the ANC’s Mangaung Conference, is that the amount of private funding far surpasses public funding and is increasing at far above the rate of inflation. Moreover, using the estimates in Table 1 as a proportion of overall funding, public funding decreased from 30.5% in 1994 to roughly 14% in 2009.

The increase is partly credited to media-intensive campaigns, which favour emergent, ‘wholesale’ mass-media communications over conventional forms of ‘retail’, grassroots mobilisation.<sup>26</sup> The ANC’s reported R100 million contract with the international advertising agency, the Ogilvy Group, during the 2009 election<sup>27</sup> – which was more than the combined estimated spending by all other parties – is an indication of new and changing electoral strategies. As a result, ‘media-driven politics has escalated the costs of political competition to such an extent that the space has become primarily a platform for soliciting private campaign contributions rather than a means of enhancing the quality of representing the citizenry’.<sup>28</sup>

Comparative research on spending in political campaigns and its correlation with electoral competition in other democracies, especially the United States of America (USA), shows that parties which lack sufficient funding to communicate effectively with voters are highly unlikely to be elected, and, conversely, that the marginal effects of additional spending on election outcomes virtually disappear *once a reasonable spending threshold has been reached*.<sup>29</sup> The emergence of a so-called ‘wealth primary’ in the USA in which the federal candidate with more money than his or her opponents one year before election day is successful over 90% of the time, supports the funding-competitiveness hypothesis and produces a deterrent ‘war chest’ effect on the entry of opposing candidates or parties into the field. Nevertheless, in cases where all

parties reach a ‘sufficient’ (if unequal) spending threshold, the funding-based electoral advantage disappears and competition increases.

The remainder of this paper seeks to identify and quantify the sources of public funding, and to describe some sources of private funding. While foreign funding is not considered here, for reasons of the unavailability of meaningful data, it is expressly permitted by South African law and should therefore be included in any comprehensive analysis of party funding.

## Represented Political Parties’ Fund

Income from this Fund provides political parties with their most significant source of public funding, followed by funding at provincial level and parliamentary constituency funding.

Section 236 of the Constitution, 1996, provides for public funding as follows:

*To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.*

The IEC is one of the independent institutions established in terms of the provisions of Chapter 9 of the Constitution to strengthen constitutional democracy. It administers the Represented Political Parties’ Fund established in terms of the Represented Political Parties Act.<sup>30</sup> The Commission makes disbursements directly to political parties, which then account directly to the Commission. The Fund has no connection or interaction with any of the other political-party funding mechanisms or legislation.<sup>31</sup>

Consistent with the Constitution, the Preamble to the Act provides, *inter alia*, that:

*the money so allocated is to be utilised by parties for purposes arising from their functioning as political parties in a modern democracy.*

## Lawful uses of funding

Section 5(1)(b) of the Act elaborates in broad terms on the nature of authorised purposes for which its funds may be utilised by a political party, which purposes must be ‘compatible with its functioning as a political party in a modern democracy’. These purposes include, amongst others, the following:

- Developing the political ‘will’ of people;
- Influencing and shaping public ‘opinion’;
- Political education (presumably of members, representatives and the public);
- Promoting active participation by individual citizens in political life;
- Influencing political trends; and
- Ensuring ‘continuous, vital’ links between the people and organs of state (which, one imagines, include primarily legislatures).

### Unlawful uses of funding

Impermissible uses of monies allocated from the Fund are set out in section 5(3) of the Act and are as follows:

- Remuneration, fees or other benefits to any public representative or government official;
- Financing or contributing directly or indirectly to any ‘matter, cause, event or occasion’ in contravention of any code of ethics binding on any public representative in the national or provincial legislatures (It is notable that such support appears to be permissible in local government);
- Establishing, acquiring or maintaining any business or interest in a business, or in any immovable property, except where the property is to be used by the party for ‘ordinary’ party-political purposes; and
- Any other purpose ‘incompatible with a political party’s functioning in a modern democracy’.

While using monies from the Fund for purposes of investment in any business interest is not authorised, funds not immediately required can be invested through the Public Investment Commissioner. This requirement suggests a helpful model that would allow political parties to undertake a form of ‘passive’ investment of private funding while avoiding direct forms of investment in private companies which might produce conflicts-of-interest situations, such as shareholdings in companies that engage in business with the state.<sup>32</sup>

### Sources of funding

It is not generally known that the Fund established in terms of the Act also allows for the receipt of funds from sources other than the public. Section 2(2) of the Act provides:

*The Fund will be credited with –*

- monies appropriated to the Fund by Parliament;*
- contributions and donations to the Fund originating from any sources, whether within or outside the Republic;*
- interest earned on monies deposited in terms of section 3(1) and on monies invested in terms of section 3(2), if any;*
- monies accruing to the Fund from any other source [emphasis added].*

It is clear that the existing law provides for private and foreign (both public and private) donations to be made directly to the Fund rather than directly to political parties. According to the Commission, it has never been offered a donation or contribution from such a source.<sup>33</sup> This begs the question whether this is because interested contributors and donors were unaware of this possibility, or because direct funding of political parties is preferred for reasons of either affinity or desire for acknowledgement, recognition or possible benefit. In any event, despite the legislation, the Commission is not currently administratively capacitated to accept offers of this type.

### *Parties' accountability*

Section 5(1) elaborates on section 2 and provides that political parties are 'entitled' to monies from the Fund if they are represented in the National Assembly and/or any provincial legislature.<sup>34</sup> According to the Act and the Regulations, parties are required to comply with stringent accountability measures in order to continue receiving public funding. These measures include opening a separate bank account, appointing a named accounting officer, and the independent auditing of financial statements, which financial statements must be submitted to the IEC. In certain circumstances, unspent funds must be returned to the Fund. The Commission, in turn, must report to Parliament on political parties' compliance with these requirements.

Allocations are appropriated by Parliament<sup>35</sup> in terms of the provisions of section 5(2) of the Act, and according to the formula prescribed in regulations promulgated by the President in terms of section 10 of the Act. Regulations promulgated in terms of section 10 of the Act in 1998 and amended in 2005<sup>36</sup> also prescribe the timing and frequency of payments (to enable parties to plan their cash flow), and determine the formula for the allocation of monies from the Fund. In terms of amendments to the Regulations, payments are made to qualifying political parties on a quarterly basis, commencing within four weeks of the start of each financial year.<sup>37</sup> These payments are thus not linked only to expenditure related to election campaigns and are intended to enable political parties to maintain a stable core administrative structure.

### *Funding formula*

In accordance with the provisions of section 236 of the Constitution, section 5(2) of the Act provides that allocations from the Fund must be made in accordance with a prescribed formula based in part on 'the principle of proportionality' and in part on 'the principle of equity'. The current formula is prescribed in Regulation 2(2) and is as follows: 90% of the total amount of funding is allocated 'proportionally' and 10% of the total amount of funding is allocated 'equitably'.

Regulation 3 prescribes that the proportional allocation of 90% of the whole must be determined by dividing the total annual amount proportionally among the parties in accordance with the number of seats of each represented political party actually 'participating' in the National Assembly and the provincial legislatures 'jointly', or taken together.

Regulation 4 prescribes that the equitable portion (of 10% of the whole) must be shared among provinces in proportion to the number of members or seats of the respective provincial legislatures. '[T]he allocation to a particular province in terms



“According to the Act and the Regulations, parties are required to comply with stringent accountability measures in order to continue receiving public funding.

of paragraph (a) must be divided equally among the participating parties in the legislature of that province', i.e. regardless of their proportion or percentage of members or seats held.<sup>38</sup>

### *Criticisms of the current formula*

The formula has been the subject of criticism by opposition parties and other commentators,<sup>39</sup> on several grounds. The primary criticisms are summarised here. They centre largely on the view that although the stated purpose of public funding under the Constitution is to 'enhance multi-party democracy', this is a requirement which minority parties argue is going unmet because the vast majority of total public funding goes to the party in power.<sup>40</sup>

It should be noted, however, that the provisions of section 236 of the Constitution itself already envisage at least one limitation on the objective of enhancing multiparty democracy, and criticisms should be considered with this in mind. Thus, monies in the Public Fund are allocated only to political parties that have already achieved some electoral success and are therefore already 'participating' in the various legislatures. New political parties are accordingly not entitled to public funding. Public funding thus serves to entrench the status quo, to the disadvantage of electoral renewal.

The first criticism is that the current formula for allocation of public funds to political parties is inappropriate, because it further favours the status quo, advantaging the ruling ANC and, to a lesser extent, the largest opposition party, the DA. The constitutional provision, it is argued, does not prioritise either the proportional or the equitable principle. In fact, it lists them in reverse order to their appearance in the Act and Regulations, thereby, if anything may be inferred from this sequence, arguably favouring equity. Therefore, it is argued, the 90:10 weighting in favour of proportionality is unjustified both in principle and in extent. Indeed, as can be seen from similar derivative provincial legislation,<sup>41</sup> a formula of 80:20 is the norm in those laws.

Secondly, it unfairly favours the majority party, serving to entrench the majority party's position by allocating funds that arguably ought, on a reasonable and fair basis, to be more equitably distributed to all represented political parties. It does so to the detriment of opposition, smaller and emergent political parties, thereby having a stultifying effect on the constitutional value placed on multi-party democracy<sup>42</sup> and discouraging political and electoral vitality and diversity by unduly raising the threshold for financial viability of smaller and emerging political parties.

The practical outcome of the application of this formula to disbursements from the Fund may be seen by viewing the results of the 2009 general election as set out in Table 2, together with the total actual funding allocation to each political party represented in the national and provincial legislatures in Table 3. Table 3 shows recent disbursements from the Fund to the parties represented in Parliament and/or the provincial legislatures before and after the most recent general election in 2009.<sup>43</sup>

## Political parties in the National Assembly after the 2009 general election<sup>44</sup>

**Table 2:** Seat allocation of parties in the National Assembly as at 28 April 2009

Party	Votes received	% of total votes cast (% of 100%)	% of total votes only for parties in NA	Seats from national list	Seats from regional lists	Total no. of seats
African National Congress (ANC)	11 650 748	65.90%	66.39%	126	138	264
Democratic Alliance (DA)	2 945 829	16.66%	16.79%	32**	35	67
Congress of the People (COPE)	1 311 027	7.42%	7.47%	16	14	30
Inkatha Freedom Party (IFP)	804 260	4.55%	4.58%	9	9	18
Independent Democrats (ID)	162 915	0.92%	0.93%	3	1	4
United Democratic Movement (UDM)	149 680	0.85%	0.85%	3	1	4
Freedom Front Plus (FF+)	146 796	0.83%	0.84%	3	1	4
African Christian Democratic Party (ACDP)	142 658	0.81%	0.81%	3	–	3
United Christian Democratic Party (UCDP)	66 086	0.37%	0.38%	1	1	2
Pan Africanist Congress of Azania (PAC)	48 530	0.27%	0.28%	1	–	1
Minority Front (MF)	43 474	0.25%	0.25%	1	–	1
Azanian People's Organisation (Azapo)	38 245	0.22%	0.22%	1	–	1
African People's Convention (APC)	35 867	0.20%	0.20%	1	–	1
	17 549 115			200	200	400



Table 3: Allocations from the Represented Political Parties' Fund<sup>45</sup>

Selected years	1999/2000 <sup>46</sup>	2003/2004 <sup>47</sup>	2004/2005 <sup>48</sup>	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013 <sup>49</sup>
<b>Total allocation</b>	<b>55 650 000</b>	<b>66 653 000</b>	<b>70 652 000</b>	<b>88 335 569</b>	<b>92 914 923</b>	<b>98 925 805</b>	<b>103 900 782</b>	<b>108 236 911</b>
<b>Political parties<sup>50</sup></b>								
<b>ACDP</b>	972 805	1 404 822	2 045 396	2 177 425	1 299 465	1 383 531	1 453 108	1 513 751
<b>AIC</b>	Not yet in existence	Not yet in existence	Not yet in existence	Not yet in existence	373 013	397 145	417 117	434 525
<b>ANC</b>	33 545 304	42 573 853	46 238 905	61 113 511	58 056 247	61 812 040	64 920 567	67 629 921
<b>APC</b>	Not yet in existence	Not yet in existence	Not yet in existence	894 153	100 751	107 269	112 664	117 365
<b>AZAPO</b>	44 499	72 274	76 819	95 785	100 751	107 269	112 664	117 365
<b>COPE</b>	Not yet in existence	Not yet in existence	Not yet in existence	Not yet in existence	8 688 197	9 250 257	9 715 452	10 120 911
<b>DA*</b>	Not yet in existence	7 087 153	9 212 018	10 538 737	15 337 771	16 330 007	17 151 243	17 867 022
<b>DP*</b>	4 429 769	No longer in existence						
<b>FF+</b>	1 271 139	933 740	1 348 332	1 496 340	991 909	1 056 078	1 155 479	1 155 479
<b>ID</b>	Not yet in existence	270 277	1 346 694	1 249 562	1 475 671	1 571 136	1 719 014	1 719 014
<b>IFP</b>	4 702 734	5 050 841	4 979 167	5 403 084	4 241 241	4 515 617	4 940 637	4 940 637
<b>MF</b>	289 229	371 830	526 950	617 921	590 361	628 554	687 714	687 714
<b>PAC</b>	653 768	610 995	793 923	95 785	100 751	107 269	117 365	117 365
<b>UCDP</b>	329 979	535 951	596 838	744 194	581 271	618 875	677 125	677 125
<b>UDM</b>	1 777 737	1 779 752	2 406 218	1 611 974	977 520	1 040 758	1 138 717	1 138 717

\*Party became eligible/came into existence/no longer exists after floor crossing

Allocations per party per province for the 2012/2013 financial year are set out in Annexure A to this paper.<sup>51</sup>

It is evident from the allocations set out in Table 3 and Table 4 that allocations in election years are not significantly larger than allocations in preceding or succeeding years.

**Table 4:** Public Fund allocations in election years<sup>52</sup>

1994	R44 000 000
1999/2000	R55 650 000
2004/2005 <sup>53</sup>	R79 000 000
2009/2010	R93 000 000

## Parliamentary constituency allowance

### *A brief history*

A rather curious history lies behind the creation of this allowance, and its lawfulness may be open to question. Originally, a Cabinet decision authorised payment from 1978 of a constituency allowance to political parties represented in Parliament. Its stated purpose was to enable political parties represented in the National Assembly to establish infrastructure to enable members to communicate with constituents and to serve their interests. At the time, of course, South Africa's apartheid-era, whites-only electoral roll was based on a constituency system.

More recently, several provisions in the new, democratic-era Constitution have been relied on to enable Parliament to replace the outdated Cabinet decision and to authorise a similar allowance – despite the current pure proportional electoral system that knows no authoritatively defined and delineated constituencies. These provisions include the Constitution's founding values of 'accountability, responsiveness and openness' in section 1(d), which is partly elaborated on in section 59's requirement of public access to, and involvement in, the legislative and other processes of the National Assembly. Further, section 57(1)(b) of the Constitution provides that:

*[t]he National Assembly may [...] make rules and orders concerning its business, with due regard to **representative and participatory democracy, accountability, transparency and public involvement** [emphasis added].*

Section 57(2)(c) of the Constitution provides that:

*[t]he rules and orders of the National Assembly **must provide for [...]** financial and administrative assistance to each party represented in the Assembly **in proportion to its representation**, to enable the party and its leader to perform their functions **in the Assembly effectively** [emphasis added].*

These provisions appear to have been interpreted to include the provision of financial support that is apparently aimed at enabling parliamentarians to integrate their work inside Parliament with their work outside Parliament, primarily through the constituency offices. Although there were earlier policies in this regard dating back

to the initial years of the new Parliament, Parliament adopted a further policy<sup>54</sup> in July 2005 on political-party allowances. The policy regularised existing practice in terms of the Cabinet decision and sought to ensure greater transparency regarding the allocation of funds, certainty regarding their permissible usage, and enhanced accountability for their use. The policy seeks to realise this last objective by incorporating, by reference, the accounting and reporting provisions of section 6 of the Represented Political Parties Act.

Consistent with the current proportional representation electoral system, political parties – rather than the IEC or Parliament – determine which of their MPs are allocated to a particular constituency office and where it will be located. These offices are required to serve all members of the public equally – not merely supporters of a particular member’s political party.<sup>55</sup> Thus, although the current electoral system is a pure proportional system that is not based on legally delineated constituencies, political parties in Parliament’s National Assembly have agreed to allocate each of their members to a party-defined area<sup>56</sup> in order to facilitate more effective communication with members of the public who reside or work in those areas.

### *Questionable legality*

The questionable legality of this policy arises from an interpretation of the provisions of section 57(2) of the Constitution that appear to clearly refer only to the principle of proportionality, and arguably appear to be intended to enable support for political parties’ and their leaders’ activities within Parliament. On the other hand, an absolute distinction between MPs’ internal and external activities may be artificial given the reality of the close complementarity between MPs’ representative, oversight and other responsibilities. What is often overlooked, however, is that section 57(2) refers to the National Assembly and not to the National Council of Provinces.

### *Administration*

The policy specifies<sup>57</sup>, in Annexure A, permissible usage of the allowance, which is closely related to the normal anticipated operations of a constituency office. The purpose and objectives of the allowance and offices are specified<sup>58</sup> as being for the benefit of all constituents within the area surrounding the constituency office. It is therefore clear that the allowance may not be used to fund partisan political activities or campaigns.

In terms of the policy, the Secretary annually pays a lump sum amount determined by the Presiding Officers into each political party’s bank account. As can be seen from Table 5, the amount has increased significantly during the Third Parliament. The lump sum amount is determined proportionally by multiplying the annual amount per member by the party’s number of seats as determined at the last general election. Parties must account in detail annually to the Secretary to Parliament for their use of the allowance. Financial reports must be independently audited by a registered auditor and party leaders must certify the accuracy of the narrative report and extensive supporting documentation. Unspent funds must be returned. Failure to comply with the policy’s requirements can result in suspension of further payments.<sup>59</sup>

Funding in terms of section 57 for political parties’ use inside Parliament has, in practice, been itemised separately in Parliament’s ‘Associated Services’ budget as ‘Political party support: Contribution to operations’ and ‘Party leadership support:

Contribution to political parties for party leaders' remuneration'.<sup>60</sup> Moreover, as a result of reporting opacity in regard to these intra-Parliamentary funds, it is not a simple task to ascertain whether allocations to political parties in Parliament have been done on a strictly proportional basis as is required by section 57(2).

In addition to this allowance, each party's parliamentary caucus is provided with a Political Party Operational Support Allowance and a Political Office Bearers Allowance/Party Leadership Allowance. The latter varies according to whether the member is a whip, a party leader or leader of the official opposition. Various national and international membership fees for MPs and parliamentary staff are also paid as part of the total amount transferred for these 'Associated Services'. These amounts are transferred as subsidies from the national fiscus through Parliament by means of the annual Appropriation Act. As an example of the proportion of this appropriated amount that is constituted by the constituency allowance, the Appropriation Act 2012 provides for a total amount of R311 327 000 for political parties, of which R230 309 000 is allocated for constituency allowances.<sup>61</sup> Table 5 shows that these increases 'largely reflect an increase in funds for constituency support',<sup>62</sup> growing from just over half of the allocation for associated services to well over two-thirds.

**Table 5:** Parliamentary constituency allowance paid to represented political parties 2002–2012<sup>63</sup>

Financial year	Total annual constituency allowance	Total annual appropriation for 'Associated Services'
2002/2003 <sup>64</sup>	34 977 000	60 142 000
2003/2004 <sup>65</sup>	37 775 070	72 896 000
2004/2005 <sup>66</sup>	40 796 894	77 490 000
2005/2006 <sup>67</sup>	59 955 694	96 246 000
2006/2007 <sup>68</sup>	105 750 220	157 889 000
2007/2008 <sup>69</sup>	188 000 946	245 503 000
2008/2009 <sup>70</sup>	202 801 000	263 073 000
2009/2010 <sup>71</sup>	198 413 000	258 606 000
2010/2011 <sup>72</sup>	209 325 000	281 914 000
2011/2012 <sup>73</sup>	220 838 000	287 925 000
2012/2013 <sup>74</sup>	230 309 000	311 327 000

### *National Council of Provinces recognised as part of Parliament for purposes of political-party funding*

The Report by the Parliamentary Oversight Authority (POA) on its activities during 2010<sup>75</sup> reflects that it adopted, inter alia, the following changes to the Policy on Political Party Allowances:

1. 'Parliament' was defined so as to include the National Assembly and the National Council of Provinces (NCOP), in accordance with the provisions of section 42 of the Constitution of the Republic of South Africa;
2. The wording of the policy was changed to include NCOP representation of parties in the calculation of administrative and constituency allowances; and



3. While the wording of the policy indicated that each political party would determine the internal arrangements for control of the funds disbursed, 'it was expected that some of the funds would be made available to ensure that parliamentary representatives were able to perform their parliamentary duties effectively'.<sup>76</sup>

The NCOP comprises 90 members<sup>77</sup> and consists of nine provincial delegations, that is, a delegation for each of the nine provinces. A delegation consists of six permanent delegates and four special delegates. The Premier of a province is the head of that province's delegation, but he or she can select any other member to lead the delegation in his or her absence.

### *The public benefit of the constituency allowance is unclear*

The value and efficacy of the contribution made by constituency offices to enabling public involvement in Parliament's legislative and oversight activities have been strongly criticised by many, including the Report of the Independent Panel Assessment of Parliament.<sup>78</sup> As a result, the public benefit of this consistently increasing expenditure in support of political parties has come into question. The Afrobarometer public opinion survey, Round 5 of 2011, revealed that 95% of respondents had not contacted an MP during the preceding year,<sup>79</sup> and that a mere 3% of South Africans could correctly name 'their' MP,<sup>80</sup> compared with a 12-country average of 41%.<sup>81</sup>

While a copy of the original version of Parliament's policy is available on Parliament's website, the more recent two-year-old amendment is not. It is unlikely, therefore, that any member of the public is aware that the NCOP members can now have at least six constituency offices in each province. When directly approached for details of parties' constituencies, constituency offices and contact details, Parliament was unable to assist and referred enquiries directly to political parties, at the same time acknowledging that it should be able to provide this information and accordingly undertaking to gather and collate it.<sup>82</sup>

Likewise, detailed information on the allowance is not readily available to members of the general public unless they purchase the *Government Gazette* or have access to the Internet and know to look for the annual Appropriation Act. *The Star*, Johannesburg's leading daily newspaper, was apparently met with a blunt refusal when it asked Parliament for copies of represented political parties' financial statements – which they are obliged to furnish Parliament with – or even a breakdown of how much each party received. Instead, Parliament referred all enquiries to the parties themselves.<sup>83</sup> The newspaper reports that, while the DA, UDM, ID, ACDP and FF+ all responded positively or undertook to do so, the ANC and the IFP 'declined point-blank'.

These responses are inconsistent with the stated purposes and objectives of the policy, which include enhanced transparency and accountability in respect of the use of the funds. On the other hand, while transparency is an objective of the policy, it is perhaps pointedly limited to the allocation of funds and does not explicitly require adherence to this principle by political parties or dispensing institutions regarding expenditure.<sup>84</sup>

Problems with misappropriation and accurate and timely reporting on expenditure have been experienced in both the National Assembly and in various provinces.



At times, funding has reportedly been suspended until parties have shown that they have returned to a state of compliance.<sup>85</sup> Informal conversations with some party representatives suggest that parties' ability to accurately account for the funding they receive is at best uneven. This is perhaps especially true for smaller parties for which the costs of proper expenditure management and independent auditing threaten to overwhelm the benefit of public funding received. A further problem of uneven accountability is that there is a danger that political parties may use constituency funds to finance their operations.

### Provincial party funding

In 2007, the Gauteng Provincial Legislature passed what turned out to be the first of several laws enacted by various provinces that provide for the appropriation and distribution of funds to political parties. As far as it has been possible to establish, eight of the nine provinces have adopted legislation providing for funding to be allocated and disbursed to political parties represented in the respective legislatures.<sup>86</sup> While the Western Cape Act could not be located, an amount for constituency funding had been allocated for the 2012/2013 financial year. Mpumalanga appears to have only a draft Bill at this time.<sup>87</sup>

**Table 6:** Disbursements to political parties in terms of provincial legislation on funding of political parties

Province	Name of Bill/Act	Year of enactment	Regulations	Formula	Amount disbursed in 2012/2013 or most recent year available
Eastern Cape	Eastern Cape Political Party Fund Act <sup>88</sup>	1 of 2010	26 November 2010	100% proportionately	R75m <sup>89</sup>
Free State	Free State Political Party Fund Act <sup>90</sup>	3 of 2008	Not found	Not found	R52m <sup>91</sup>
Gauteng	Gauteng Political Party Fund Act <sup>92</sup>	3 of 2007	28 November 2007	80:20	R58m <sup>93</sup>
KwaZulu-Natal	KwaZulu-Natal Funding of Represented Political Parties Act <sup>94</sup>	7 of 2008			R30m <sup>95</sup>
Limpopo	Limpopo Political Party Fund Act <sup>96</sup>	4 of 2008	19 August 2009	100% proportionately	Not found
Mpumalanga	Mpumalanga Political Parties Support Fund Bill <sup>97</sup>	2008	Not found	Not found	Zero <sup>98</sup>
Northern Cape	Northern Cape Political Party Fund Act <sup>99</sup>	7 of 2009	30 November 2009	80:20	R22m <sup>100</sup>
North West	North West Political Party Fund Act <sup>101</sup>	2010	11 August 2011	80:20	R11m <sup>102</sup>
Western Cape	Not found	Not found	Not found	Not found	R29m <sup>103</sup>

## Summary of key provisions of provincial legislation

The provisions of existing provincial laws are similar to one another in many respects and also reflect the scheme and key provisions of the national Represented Political Parties Act, suggesting a degree of preplanning and coordination. Their key provisions appear to be derived extensively from the provisions of the national Act. For example, where the provincial Acts are publicly available on the Internet, it is provided in their preambles that the funding is to be used by ‘political parties for purposes arising from their function as political parties in a modern democracy’. Each law provides for authorised and unauthorised uses akin to those in the national Act. Similarly, each permits the fund established in terms of the provincial Act to receive ‘contributions and donations’ from the provincial legislature as well as from ‘sources within or outside the Republic’. Most provide for a proportional and an equal component for the allocation.<sup>104</sup>

The management and administration of the funds is the responsibility of the secretaries of the provincial legislatures. Each political party must nominate an accounting officer for the administration of an allocation once disbursed, and the allocation must be kept in a separate bank account. As is the case in respect of funds received from the national Fund, several provincial laws provide that monies that are not immediately required may be invested with the Public Investment Corporation (PIC). Parties’ financial statements must be independently audited and may also be audited by the Auditor-General. The legislature’s secretary is given the authority to suspend an allocation to a political party if ‘upon reasonable grounds it is found that a party has failed to comply with the requirements of the Act’.

### *Unique statement of objectives*

The North West law appears unique in that it also aims to ‘minimise dependency of political parties on private funding’ and to ‘encourage political parties to disclose their sources of private funding’.<sup>105</sup> A range of possible explanations can be offered for this objective, such as that it reflects the real difficulty faced by political parties whose energies are diluted by the constant need to raise funds. It can equally reasonably be interpreted as implicit acknowledgment of the risks of dependency on private funding, particularly when doing so in a non-transparent way.

### *Formula for allocation of funds*

The formula for the allocation of funds in most instances is that 80% of the total money available from the provincial funds is to be allocated proportionately in terms of representation in the legislature, while 20% must be divided equally amongst all represented parties. The Regulations for the Eastern Cape provide in section 6(2) that the allocations must be disbursed proportionately as prescribed for in section 5 of the Eastern Cape Act. The formula for Limpopo in section 6(2)(a) provides that the total allocation must be divided by the total number of votes cast for each political party. Section 6(2)(b) states that the distribution of funds will be determined by the ‘average monetary value per voter to be multiplied by the actual number of votes cast in favour of each political party during the most recent general election’. Such provisions appear to indicate entirely proportional systems in these two provinces. Regulations for the Free State could not be located.

As noted above, both the fact that the 80:20 formula has been widely adopted, and the fact that at least two provinces have opted for what appear to be quite different



formulae, despite all the provincial laws purporting to draw their justification from the Constitution and the national Act, highlights the significance of the questions that have been raised about the appropriateness of the 90:10 formula used since the national Fund's inception.

### *Legality of provincial laws*

Shortly before the 2009 general elections, media reports suggested that the National Treasury and the Department of Justice and Constitutional Development were querying the rationale behind the provincial legislation, as well as provincial competency to pass such legislation. Civil society organisation Idasa took up the question of the lawfulness of the provincial Acts in a letter sent to the Chief Electoral Officer of the IEC and to the auditors-general for the provinces of Gauteng, KwaZulu-Natal and the Free State, which provinces had passed the disputed legislation at that time. Idasa referred the matter to the respective provincial auditors-general, as the authorities responsible for pronouncing on the regularity of public expenditure, and to the IEC given its responsibility to administer the public fund established in terms of the Represented Political Parties Act. The letter was copied to the secretaries of the legislatures that had adopted the Acts.

Idasa's concerns arose from the provisions of the national Act's empowering provision, namely section 236 of the Constitution, which envisages only national legislation for both national and provincial party funding. This view was fortified by the fact that section 104 of the Constitution declares provincial legislatures to be competent to pass laws dealing only with the issues prescribed in section 104 of the Constitution, read with Schedules 4 and 5. Only the national legislature may therefore pass laws concerning elections or related matters. The fact that there was then just over a month until the general election suggested that the Bills and Acts were intended to bolster political parties' electoral funding at provincial level, but possibly using unconstitutional means. Consequently, the then-proposed provincial Bills, as well as those already passed, appeared to be unconstitutional.

Idasa requested the auditors-general to urgently advise on the legal competence of provincial legislatures to pass this legislation, and on whether or not any disbursement or expenditure in terms of these laws would be viewed favourably by the auditors-general. The IEC, in turn, was asked to advise whether or not any entity apart from the Commission is empowered to disburse public funds for political parties at provincial level.

Both the Commission and the offices of the auditors-general took the view that the matter fell outside their constitutional mandates. Idasa therefore referred its concerns to the Public Protector's Office. After making preliminary enquiries, the Public Protector advised that the Gauteng legislature had requested, and had received, two contradictory legal opinions, and had opted to follow the advice in the opinion in favour of the constitutionality of the Gauteng Act. In the circumstances, the Public Protector declined to take a view in favour of either opinion.

At this stage, it is unclear whether others may share Idasa's concerns about the legality of the provincial legislation. Some parties are reported to have expressed concerns about the legality of the Bills, and some political parties have claimed to have refused

to accept funds allocated to them (or reportedly, at least initially, refused to accept the funds concerned) or have returned funds deposited into their accounts.<sup>106</sup> It is unclear whether these political parties have been consistent across all legislatures and over time. For example, a recent news report asserted that the DA in one province had accepted receipt of its allocation despite originally expressing strong opposition to the legislation.<sup>107</sup>

### **Reporting and accountability**

Various records have been identified indicating that the provincial Acts and Regulations have resulted in envisaged allocation and disbursement activity. Thus, there are indications that budget allocations and transfers have been made, that payments have been disbursed, and that expenditure reports and audited financial statements have been submitted, or at least are due. However, reliable and consistent funding life cycle records have proven very difficult to locate, making it impossible to assess using desktop study analyses how much political parties receive from these sources. There appears to be little consistency in record-keeping. For example, while evidence could be found of antecedent Bills and subsequent Regulations, it was not always possible to locate particular provincial Acts. Further, annual Auditor-General reports, and annual reports by legislatures or premiers' offices do not always refer to these Acts and the funding allocated, making it difficult to establish whether or not the funds were actually disbursed, whether any amounts were returned as unspent, or whether there was proper accounting and reporting.

Parties appear to have experienced frequent problems in managing and accounting for these funds. For instance, with reference to the KwaZulu-Natal Political Parties Fund, the Auditor-General report for 2008/2009 stated that management had not ensured that processes were in place to ensure that all political parties submitted audited financial statements to confirm that funds spent were for the purposes intended by the Fund's enabling legislation.<sup>108</sup> While this cannot be said to be standard practice, neither is it an isolated problem.<sup>109</sup>

Auditor-General reports examined have expressed no reservations concerning the legality of the provincial legislation, although mention has been made of unspecified 'non-compliance with statutory requirements', and there have been some delays by unnamed political parties in submitting the required audited expenditure reports. It is unclear whether this has always been the reason in those instances where the Auditor-General's Office reports that the legislature has not submitted these reports for its scrutiny.

Where records are available, recent budgeted allocations and expenditure appear to range between R11 million and R50 million in particular provinces, although it is not always clear what proportion of this is for parties' constituency work or for support to enable parties to perform their (other) tasks in each provincial legislature.

### **Private funding of political parties**

Private funding for political parties is unregulated in South Africa; there are no constraints, no limits and no disclosure requirements. Where disclosure does take place, it is voluntary.<sup>110</sup> As a result, the extent of the practice, as well as the individual and overall amounts of donations are unknown, with estimates based largely on information that companies choose to declare and on media reports concerning individual donations.

Because of the widely acknowledged risks of conflicts of interest, suspicions of subversion of the general public interest, as well as instances of corruption known or suspected to have taken place, private funding of political parties continues to attract attention from the ruling party. Little is known, however, of corporate donations apart from media reports of occasional civil litigation or criminal prosecutions<sup>111</sup> and of statements by some corporate donors, including state-owned enterprises, which have chosen to reveal their financial support of the ruling party. These disclosures may cast doubt on claims that disclosure necessarily entails harm to future business prospects or that some undue benefit will follow.<sup>112</sup> Opposition parties have frequently expressed reluctance to reveal their donors' identities, largely on the basis that those donors fear that this may disadvantage them when competing for state tender contracts, given that public procurement processes are, in part, influenced by the ANC's declared policy of 'cadre deployment'<sup>113</sup> where the blurred separation between party and state makes procurement notoriously susceptible to manipulation for personal or sectional gain.<sup>114</sup>

The JSE's Socially Responsible Investment (SRI) Index<sup>115</sup> encourages a degree of transparency and accountability concerning political-party donations by JSE-listed companies. The social pillar of its environmental, social and governance (ESG) framework provides an option for listed companies to incorporate in their code of ethics/conduct a company's own 'guidelines on political donations' and 'disclosure of political donations, if any'. The Index stops short of making either the inclusion of guidelines in any ethics code, or the disclosure of any donations, a requirement for compliance with the indicators set out in the Index. The annual survey that ranks listed companies' performance in adhering to the Index's standards does not endeavour to assess the rate of uptake of this optional policy component or the scale of funding which companies may decide to disclose.

Some national business associations have recognised the risks associated with non-transparent financial support to the integrity of the state and political parties, as well as to their own reputations, and have adopted codes of conduct that seek to encourage corporate transparency surrounding political donations where they are made. Thus, for example, Business Unity South Africa's (BUSA's) Charter of Ethical Business Practice<sup>116</sup> declares that:

*[I]ntegrity requires doing what we say, and always acting in good faith. This builds trust, which is necessary for business to thrive.*

Integrity, the Charter continues, requires members to commit, *inter alia*, to:

- Refraining from activities that are corrupt or can be seen as promoting corruption in society.
- Being transparent when funding political activities.

However, despite this and other similar initiatives and exhortations by South African business, implementation and adherence by members is not measured or enforced, either by BUSA or the JSE's SRI unit. MAPP therefore examined two sets of business entities operating in South Africa with a view to assessing what information is available about their conduct and practice regarding political donations. Two relatively random samples are considered: firstly, the largest public companies in South Africa – the top 40 (by market capitalisation) listed on the JSE; and, secondly, a sample of ten unlisted/private companies.<sup>117</sup>



Listed companies, whether their shares are traded on the South African exchange or on foreign bourses, such as those in New York or London, are subject to increasingly stringent regulatory control, partly as a result of the regulatory and banking failures that contributed to the global financial crisis of 2008 and its aftermath. Tighter regulation has extended beyond listing requirements to wider disclosure and reporting obligations, in addition to a range of voluntary standards introduced following earlier large corporate failures and fraud. In South Africa, tighter regulation has included significant amendments to the Companies Act of 2008.<sup>118</sup> For example, Regulation 43 of the Regulations promulgated in terms of the Companies Act<sup>119</sup> requires all listed public companies, all state-owned companies and all larger unlisted companies<sup>120</sup> to establish a social and ethics committee. The committee is accountable to the company's board and must report annually to shareholders on the company's performance regarding, among other things, corruption and stakeholder relationships. More specifically, Regulation 43(5)(a) prescribes the committee's functions as including some of the more significant voluntary global standards, such as the following:

*To monitor the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to:*

- (i) *social and economic development, including the company's standing in terms of the goals and purposes of –*
  - (aa) *the 10 principles set out in the United Nations Global Compact Principles;<sup>121</sup> and*
  - (bb) *the OECD recommendations regarding corruption;*
  - (cc) *the Employment Equity Act; and*
  - (dd) *the Broad-Based Black Economic Empowerment Act;*
- (ii) *good corporate citizenship, including the company's:*
  - (aa) *promotion of equality, prevention of unfair discrimination, and reduction of corruption;*
  - (bb) *contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and*
  - (cc) *record of sponsorship, donations and charitable giving [emphasis added].*

### **A word on methodology**

Several practical problems were encountered by MAPP researchers. Firstly, there is no (free) publicly available and authoritative list of the largest private companies. While membership and ranking in this list might change as performance and fortunes vary over time, anyone interested in this type of information must pay for it, either by using official records held by the Companies and Intellectual Property Commission<sup>122</sup> or by enlisting the assistance of a private research organisation.<sup>123</sup> The preferred methodology was to assess only publicly available information within a reasonable period of time, which impacted significantly on content analysis and what researchers reported on.



Secondly, as is evident from Table 8, and as with listed companies, corporate reporting practice is inconsistent. For example, the Companies Act Regulations which require the establishment of social and ethics committees were introduced only relatively recently.<sup>124</sup> Partly as a result, compliance across companies varies. Additionally, presentation of information is not standardised. Some companies publish broad-ranging or comprehensive, ‘integrated’ annual reports, while others prefer to publish a more traditional annual report, which includes financial information, and a separate ‘sustainability’ report addressing corporate social, environmental and ethical performance – the ‘triple bottom line’ – as well as corporate-governance matters. Moreover, many companies are in the process of moving towards an integrated approach, meaning that relevant information may be found in different places in succeeding years.<sup>125</sup> Unlisted companies, although sometimes extremely wealthy and influential market participants, often do not publish even the traditional annual report with its narrower focus on the (single) bottom line.<sup>126</sup>

On occasion, these different reports may include merely the fact of various ‘corporate social responsibility’ activities, including donations of staff time, expertise or funds. It is here that, sometimes, political donations or a framework policy are mentioned. Often, however, no mention is made of important details, such as the identities of any recipients or the actual amounts involved. Thus, the current version of the Global Reporting Initiative (GRI) Reporting Guidelines<sup>127</sup> does not include a requirement of detailed disclosure of political contributions as a core component. Rather, Indicator SO 6 provides for disclosure of only the total contributions as an optional extra, in the following terms: ‘Total value of financial and in-kind contributions to political parties, politicians, and related institutions by country.’ This level of disclosure is regarded as unsatisfactory, as it provides almost no useful information. It would be far more meaningful if disclosure included details of amounts per recipient. Only then would citizens be provided with sufficient information to enable them to assess whether corporate behaviour poses a risk of undue political influence.

Thirdly, and frequently, where a company has a code of ethics or code of conduct that deals with conflicts of interest, the giving and receipt of gifts, bribery and the like, it may be referenced in one or other of these reports, but little detail is provided concerning its terms. The code itself is not always published on the company’s website; even less likely is the publication of relevant provisions of such codes when and where corporate practice is reported.

The overall result is that the list of companies in Table 8 is necessarily random and inconsistent. The primary criterion for inclusion in the sample is annual turnover.<sup>128</sup> However, the choice of companies presented also relies on the availability of information.

Table 7 summarises the findings of the Top 40 MAPP survey and illustrates the diversity of policy and practice across companies, as well as the gaps in available data.

Table 7: Political donations policy and practice of the JSE's top 40 listed companies<sup>129</sup>

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated				
				Previously	2009/2010	2010/2011	2011/2012	
1. British American Tobacco plc	NBI, GRI	<p>Group companies may make contributions to political parties and organisations and to the campaigns for candidates for elective office, provided that such payments:</p> <ul style="list-style-type: none"> <li>• are not made to achieve any improper business or other advantage or to influence any decision by a public official to the advantage of the Group or any Group company; and</li> <li>• are not intended personally to benefit the recipient or his or her family, friends, associates or acquaintances.<sup>130</sup></li> </ul>	The Audit Committee is responsible for reviewing donations made for political purposes throughout the Group. <sup>131</sup>	No political donations in South Africa were reported. <sup>132</sup>	No political donations in South Africa were reported. <sup>133</sup>	No political donations in South Africa were reported. <sup>134</sup>	£4 979 – sponsored dinner table at ANC's National Elective Conference. <sup>135</sup>	
2. SAB Miller plc	BLSA, NBI, GRI, JSE SRI Index	<p>Donations made by exception where local laws permit them and where they promote values of a multiparty democracy.<sup>136</sup> 'Our group-wide policy on political donations stipulates that they must be properly authorised, comply with local laws, be consistent with the objective of promoting multi-party democracy and, crucially, be reported in full in our Annual Report...'<sup>137</sup></p>	Occasional donations to selected parties in election year.	1999: R5m. <sup>138</sup> 2004: R5m. <sup>138</sup>	R5m. <sup>139</sup>	No donations to South African political parties were reported. <sup>140</sup>	'No political donations were made during the period.' <sup>141</sup>	
3. BHP Billiton plc	BLSA, NBI, GRI, JSE SRI Index	<p>BHP's Code of Conduct states that BHP does not make political donations to any political party, politician, elected official or candidate for public office. BHP prohibits: sponsorship or hosting of functions organised by political parties; free or discounted use of BHP premises or equipment as an in-kind donation to a political party.<sup>142</sup></p>	Billiton 'will not make political contributions in cash or in-kind anywhere in the world and will not participate directly in the activities of political parties'. <sup>143</sup>		'No political contributions or donations for political purposes were made during FY2009.' <sup>144</sup>	'No political contributions or donations for political purposes were made during FY2010.' <sup>145</sup>	'No political contributions/donations for political purposes were made to any politician, elected official or candidate for public office during FY2011.' <sup>146</sup>	

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated			
				Previously	2009/2010	2010/2011	2011/2012
4. Anglo American plc	BLSA, NBI, GRI, JSE SRI Index	Anglo American has a policy of not making donations to, or incurring expenses for the benefit of, any political party in any part of the world, including any political party or organisation <sup>147</sup> as defined in the United Kingdom's Political Parties, Elections and Referendums Act of 2000. <sup>148</sup>	Although it is not Anglo American's policy to make donations to political parties, an ad hoc donation was approved by the board and distributed to parties in Parliament proportionately in 2004. <sup>149</sup>	2004: R6m. <sup>150</sup>	No political donations were made during 2009. <sup>151</sup>	No political donations were made during 2010. <sup>152</sup>	No political donations were made during 2011. <sup>153</sup>
5. MTN Group Ltd	BLSA, NBI, GRI, JSE SRI Index	The MTN Group is politically neutral. <sup>154</sup>	The MTN Group is politically neutral. The company adheres to the South African IEC rules and has previously provided funding to all political parties according to their total representation of votes within the national Parliament. <sup>155</sup>	No reference is made in the 2004 Business Report to any policy concerning donations to political parties. <sup>156</sup>	R13m. <sup>157</sup> 'During the year under review, the Company distributed funding in support of the democratic elections held in South Africa' <sup>158</sup>	'GRI SO 6: Total value of financial and in-kind contributions to political parties, politicians and related institutions by country: MTN remains politically neutral in all countries of operation.' <sup>159</sup>	'GRI SO 6: Financial/in-kind contributions to political parties.' See statement of formula in 2011 Sustainability Report (left). <sup>160</sup>

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated			
				Previously	2009/2010	2010/2011	2011/2012
6. Richemont (Compagnie Financière Richemont SA)		Richemont's operating companies may make contributions to political parties or similar organisations only to the extent permitted by local law and with the prior approval of the chairperson. Such donations will be fully and transparently disclosed in the Group's internal reporting and in the statutory reporting of the entity involved in accordance with local legal and regulatory requirements. <sup>161</sup>					
7. Sasol Ltd	BLSA, NBI, GRI, JSE SRI Index	Sasol does not fund political and religious activities. <sup>162</sup>	'Contributions to political parties or government officials may be interpreted as an inducement for future beneficial treatment, and interference in the democratic process. Sasol businesses therefore do not make payments or other contributions to government officials or political parties or take part in party politics.' <sup>163</sup>				

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated			
				Previously	2009/2010	2010/2011	2011/2012
8. Naspers	GRI	Individual directors and employees are free to make contributions. Donations by the company need to be approved in advance by the chief executive or chairperson 'or appropriate subsidiary board'. <sup>164</sup>	<p>The prohibition on donations by Naspers includes:</p> <ul style="list-style-type: none"> <li>• Any contributions of group/company funds or other assets for political purposes.</li> <li>• Encouraging individual employees to make any such contribution.</li> <li>• Reimbursing an employee for any contribution.<sup>165</sup></li> </ul> <p>No criteria or reports of particular instances could be located.</p>				
9. Standard Bank Group Ltd	BLSA, NBI, JSE SRI, Equator Principles JSE SRI Index	Until 2004, Standard Bank had a policy of not funding political parties. <sup>166</sup> The Bank now supports the democratic process in South Africa through financial contributions. <sup>167</sup>	<p>In 2005 the bank adopted a new formula in terms of which the bank approves an amount for a multiyear period. The first rollout started in 2006<sup>168</sup> and the second rollout was in 2010 and will end in 2014.<sup>169</sup></p>	2004: R5m.	R5m.	R2.1m.	R2.1m.

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated		
				Previously	2010/2011	2011/2012
10. Vodacom Group Ltd	BLSA, NBI, GRI JSE SRI Index	Vodacom's Code of Conduct states that the company will not make gifts or donations to any political party or intervene in any party-political matters. <sup>170</sup>				
11. FirstRand Ltd	BLSA, NBI, GRI, Equator Principles, JSE SRI Index	FirstRand does not make political donations. Guidance on political donations and solicitation of gifts is provided in the Code of Ethics. <sup>171</sup>	'Through the FirstRand Foundation we are involved in initiatives which promote learning and understanding of democracy. We are not aligned to any particular political party and do not make any donations to any party.' <sup>172</sup>			'FirstRand does not make donations to political parties. Guidance on political donations and solicitation of gifts is provided in the Code of Ethics. No issues of impropriety or unethical behaviour on the part of any of the directors were drawn to the attention of the committee during the year.' <sup>173</sup>



Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated		
				Previously	2009/2010	2010/2011
12. Kumba Iron Ore Ltd	BLSA, NBI, GRI, JSE SRI Index	Kumba prohibits donations to any politician, political party or related organisation. <sup>174</sup>	Occasional donations are distributed to parties based on their representation in Parliament. Reason unclear / unstated. It is possible that company policy has changed.	2004: R1m to 'South African political parties'. <sup>175</sup>	2009/2010	2010/2011
						'SO 6: Total value of contributions to political parties, politicians, and related institutions – zero.' <sup>176</sup>
13. Anglo American Platinum Ltd	BLSA, NBI, GRI, JSE SRI Index	Anglo American Platinum ('Anglo Platinum') has in the past made occasional donations from time to time to political parties. <sup>177</sup> More recently it has adopted the position that it 'will not make donations to politicians or political parties'. <sup>178</sup>	Anglo Platinum gave donations to parties on condition that they held more than ten seats in Parliament. <sup>179</sup>	In 2004, Anglo Platinum contributed R1m to the R6m donated by its mother company, Anglo American, to political parties. <sup>180</sup>	2009/2010	2010/2011
						On the matter of 'political donations', Kumba's Responsibility Report 2010 refers the reader to page 78 of the Board of Directors' Annual Report 2010. However, the relevant section of the report 'Corporate Governance Report' contains no reference to the issue.
						'SO 6: Total value of financial and in-kind contributions to political parties, politicians and related institutions by country. No contributions made.' <sup>182</sup>
						No reference to the issue in either the Annual Report or the Sustainable Development Report. <sup>183</sup>

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated		
				Previously	2009/2010	2010/2011
14. Old Mutual plc	BLSA, NBI, UN GC, GRI, UN PRI, JSE SRI Index	Old Mutual SA's stance on donations is apolitical. The Group does not support political parties with financial donations or in-kind contributions. It prefers to support civil society initiatives 'because they are designed to benefit society generally. From time to time, these initiatives may include political figures, yet this should in no way be taken to imply support for or affiliation to these figures or the political parties they represent. <sup>184</sup>			Unknown. <sup>185</sup>	'The Group made no EU or other political donations during the year.' <sup>186</sup>
15. Absa Group Ltd	BLSA, NBI, Equator Principles JSE SRI Index	Absa has established a Democracy Support Programme. <sup>187</sup>  'Donations are not linked to commercial benefits' <sup>188</sup>	Absa adheres to the IEC provisions to choose qualifying parties, which must also have at least three seats in Parliament. <sup>189</sup> All qualifying political parties benefit from this programme.	2007: R2.4m. 2008: R2.6m. <sup>190</sup>	R2.56m. <sup>191</sup>	R2.6m. <sup>192</sup>  R2.8m. <sup>193</sup>
16. AngloGold Ashanti	BLSA, NBI, GRI, JSE SRI Index	AngloGold Ashanti has established a policy on party-political donations to promote multiparty democracy. <sup>194</sup>	AngloGold Ashanti has established its own criteria for distribution of funds. These criteria attach greater value to equity and diversity than to proportionality in electoral performance. <sup>195</sup>		R4m. <sup>196</sup>	USD1 369. <sup>197</sup>  USD18 000. <sup>198</sup>
17. Shoprite Holdings Ltd	GRI	Whilst Shoprite supports democracy in South Africa, it does not make political donations to individual parties. <sup>199</sup>				SO 6 is not self-assessed or reported. <sup>200</sup>  'Whilst Shoprite supports democracy in South Africa, it does not make political donations to individual parties.' <sup>201</sup>

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated		
				Previously	2009/2010	2010/2011
18. Nedbank Group Ltd	BLSA, NBI, GRI, Equator Principles, JSE SRI Index	<p>The Nedbank Group supports South African democracy, but it does not make donations to political parties. Nedbank's apolitical stance extends to declining to fund any activities that are undertaken under the auspices of political parties.<sup>202</sup></p> <p>'SO 6: Total value of financial and in-kind contributions to political parties, politicians and related institutions by country. Nedbank's policy does not allow for contributions to individual political parties.'<sup>203</sup></p>		'While Nedbank Group fully supports the SA democratic system, it does not contribute to individual political parties.' <sup>204</sup>		
19. Impala Platinum Holdings Ltd	BLSA, NBI, GRI, JSE SRI Index	<p>Impala Platinum ('Implats') has adopted a policy that no political donations will be made by the company, either directly or in kind.<sup>205</sup></p>				No donations were made during the year. <sup>206</sup>
20. Sanlam Ltd	BLSA, NBI, GRI, UN PRI, JSE SRI Index	<p>Sanlam does not make donations to any political party.<sup>207</sup></p>	'We will not do anything that may be regarded as an attempt to exert influence in unduly favouring any party, including the offering, giving or receipt of any gift or gratification.' <sup>208</sup>	Unknown. <sup>209</sup>	Unknown. <sup>210</sup>	Unknown. <sup>211</sup>
						While it is Sanlam's policy to support the development of democratic institutions and social initiatives across party lines, it does not provide support for any individual political party, financially or otherwise. <sup>212</sup>

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated			
				Previously	2009/2010	2010/2011	
21. Gold Fields Ltd	BLSA, NBI, GRI, JSE SRI Index	<p>As a rule, Gold Fields does not make political contributions whether in cash or in kind.<sup>213</sup></p> <p>If a contribution is made by Gold Fields it will have been:</p> <p>(i) approved by Gold Fields' Board of Directors; (ii) permissible under local law; (iii) not made with any promise or expectation of favourable treatment in return; (iv) be accurately disclosed in the books and records.<sup>214</sup></p>	<p>'Ethics and corporate governance. Gold Fields is committed to ethical and fair business dealings and promotes a corporate culture that is non-sectarian and non-political and which is socially and environmentally responsible.'<sup>215</sup></p>	<p>Annual Report 2004 not found.<sup>216</sup></p>	<p>Gold Fields did not report on GRI SO 6.<sup>217</sup></p>	<p>'Gold Fields does not make financial contributions to any political parties nor does it receive financial assistance from any of its host governments.'<sup>218</sup> However, the same report also states: 'We arranged a total of 14,000 visits to World Cup matches. This included ... [s]ocial and political leaders from all countries.'<sup>219</sup> The Report also reports on three BEE transactions worth a total value of R2.1 billion, (USD298 million), which 'mark an important milestone in meeting our 2014 BEE equity ownership requirements, as well as our maintenance of a stable political and social licence to operate.'<sup>220</sup> (Emphasis added)</p>	<p>'The updated Code [of Ethics] also prohibits contributions to political parties, either in cash or in kind, unless specifically approved by the Gold Fields Board of Directors. This is the first time that the prohibition of facilitation payments and political contributions has been written into Gold Fields policy, and represents a further step in promoting a zero tolerance approach to corruption and bribery.'<sup>221</sup> (Emphasis added) No payments were made during 2011.<sup>222</sup></p>



Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated		
				Previously	2009/2010	2010/2011
22. Remgro Ltd	BLSA, GRI, JSE SRI Index	Donations are made to qualifying institutions on an annual basis for a specified period and, although donations cover a wide range of areas, there are two exceptions, viz. political parties and religious institutions. Remgro respects its employees' choice to get involved in such activities but does not, itself, exercise this choice. <sup>223</sup>	No reference to the issue in the Annual Report. <sup>224</sup>	While donations are made to 'deserving institutions', ... 'there is one notable exception: political parties'. <sup>225</sup>	While donations are made to 'deserving institutions', ... 'there are two noticeable exceptions: political parties and religious institutions'. <sup>226</sup>	No change over the previous year. <sup>227</sup>
23. Bidvest Group Ltd	BLSA, NBI, GRI, JSE SRI Index	No political contributions, either monetary or in kind, will be made by the Group unless prior authorisation is obtained from the Bidvest Board and such contributions are disclosed in the Annual Report. <sup>228</sup>	No reference to the issue in the Annual Report. <sup>229</sup>	'SO 6: Total value of financial and in-kind contributions to political parties, politicians and related institutions by country. Bidvest has a policy not to make any financial and in-kind contributions to political parties, politicians and related institutions'. <sup>230</sup>	SO 6: 'No such donations made'. <sup>231</sup>	No reference to the issue could be located. <sup>232</sup>
24. Aspen Pharmacare Holdings Ltd	GRI, JSE SRI Index	Aspen does not make political donations. <sup>233</sup>	No reference in Integrated Sustainability Report or Corporate Governance Report 2004. <sup>234</sup>	'Aspen's Code of Ethics prohibits contributions to political parties, organisations and political representatives, thereby conserving the Group's apolitical position'. <sup>235</sup>	GRI SO 6 is not mentioned in the 2010 Annual Report. <sup>236</sup> Nor is the issue apparently referred to at all.	'Aspen does not make payments or other contributions to political parties, organisations or their representatives or take part in party politics'. <sup>237</sup>

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated			
				Previously	2009/2010	2010/2011	
25. Exxaro Resources Ltd	BLSA, NBI, GRI, JSE SRI Index	Exxaro declares that the primary purpose of political donations is to strengthen and consolidate democracy by ensuring that political parties are able to function effectively. <sup>238</sup>	In 2011, Exxaro's board approved a policy on political party funding. Exxaro agrees with the Institute for Democracy in Africa's corporate guide to political donations, which states that: "a clear policy on political funding provides for certainty, consistency and reduces the suspicion that companies are funding parties for their own narrow and commercial self-interest".  Exxaro has developed a detailed set of criteria and various formulae according to which it may allocate funds. These criteria include proportionality, and pro-competition, and the ruling party alone, or including one or more opposition parties. <sup>239</sup>	Exxaro did not exist in its current form in 2004.	SO 6: Zero. <sup>240</sup>	SO 6: Zero. <sup>241</sup>	Explicitly outside the terms of its policy, in 2011 Exxaro donated R3.5m to the ANC for its centenary. <sup>242</sup>
26. Tiger Brands Ltd	GRI, JSE SRI Index	Tiger Brands Ltd respects the rights of individuals to freedom of expression and association, to make contributions and to be members of political organisations in their own capacities. But Tiger Brands is not affiliated to any particular political organisation, and therefore does not make contributions to such entities, candidates or campaigns. <sup>243</sup>			'The group does not support, financially or otherwise, any individual political party.' <sup>244</sup>	'The group does not support, financially or otherwise, any individual political party.' <sup>245</sup>	No reference to the issue. <sup>246</sup>

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated				
				Previously	2009/2010	2010/2011	2011/2012	
27. RMB Holdings Ltd	NBI, JSE SRI Index	The group does not make political donations. <sup>247</sup>		No reference could be found to the issue in the Annual Report. <sup>248</sup>	No reference could be found to the issue in the online interactive Annual Report. <sup>249</sup>	No reference could be found to the issue in the online interactive Annual Report. <sup>250</sup>	No reference could be found to the issue in the online interactive Annual Report. <sup>251</sup>	
28. Woolworths Holdings Ltd	BLSA, NBI, GRI, JSE SRI Index	In addition to a conflicts-of-interest policy, Woolworths has 'a set of values that guides the manner in which it conducts business with its stakeholders. A code of ethics supports these values and sets out the standards that we expect to attain when dealing with all customers, suppliers, business partners, employees, competitors, community and our shareholders. In addition, the code contains guidelines with respect to gifts, travel and entertainment as well as a code of conduct for our business partners.' <sup>252</sup>  None of these documents could be located on the corporate website, although a values statement appears in the 2012 Integrated Report. <sup>253</sup>  However, the company's Good Business Journey Annual Report 2012 states that no financial or in-kind donations had been made to 'political parties, politicians and related institutions' as 'no donations [were] made as per company policy'. <sup>254</sup>		'In celebration of 10 years of democracy, Woolworths made a once-off donation to various political parties.' <sup>255</sup> Although Woolworths subscribes to GRI, it did not mention or report on SO 6. <sup>256</sup>	The Good Business Journey Annual Report mentions SO 6 and refers the reader to the Annual Report, where the matter is not mentioned. <sup>257</sup>	The Good Business Journey Annual Report mentions SO 6 and refers the reader to the Annual Report, where the matter is not mentioned. <sup>258</sup>	'No donations made as per company policy.' <sup>259</sup>	

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated			
				Previously	2009/2010	2010/2011	2011/2012
29. Growthpoint Properties Ltd	GRI, JSE SRI Index	Growthpoint's ethics code doesn't mention party funding, but the code is binding and requires that the company complies with all applicable laws of the country and with JSE rules, and that directors do not hold positions that give rise to a conflict of interest. Should a conflict arise, full disclosure must be made to the board. <sup>260</sup>		Annual Report could not be located.	Unknown. <sup>261</sup>	No reference to the issue in the Annual Report, although it mentions the company's 'Code of Ethics and business conduct'. <sup>262</sup>	No reference to the issue in the Integrated Annual Report. <sup>263</sup>
30. Steinhoff International Holdings Ltd	JSE SRI Index	No political donations are to be made by Steinhoff or any of its subsidiaries, directly or indirectly, to candidates for political office, political parties or committees in any country. <sup>264</sup>  'Bribes and Political Contributions Various anti-corruption treaties, laws and regulations require that neither Steinhoff, its employees nor its representatives and agents directly or indirectly, pay commercial bribes or kickbacks or make payments to government officials, government employees or political candidates or parties for the purpose of obtaining, retaining or directing business to any person. Steinhoff expects all employees to comply with these treaties, laws and regulations. Penalties for violating the anti-bribery provisions of these laws can be severe and often include heavy fines and prison sentences.' <sup>265</sup>		'Bribes and political contributions. Adherence to anti-corruption laws and regulations is non-negotiable.' <sup>266</sup> No specific reference to the issue in the Annual Report.	Not located. <sup>267</sup>	Not located. <sup>268</sup>	No reference to the issue in the Integrated Annual Report. The company's 'comprehensive board charter will be reviewed during 2012, and revisions reported in the 2012 Integrated Report.' <sup>269</sup>

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated			
				Previously	2009/2010	2010/2011	2011/2012
31. Investec plc Ltd	BLSA, NBI, GRI, JSE SRI Index	<p>Investec does not make political donations or incur any political expenditure in the United Kingdom (UK) and European Union (EU), as stipulated in the UK Companies Act, 2006.<sup>270</sup></p> <p>On Investec's website, under the heading 'Philanthropic donations', it is stated that Investec does not make donations to any charities that are politically affiliate<sup>d</sup>.<sup>271</sup></p>	<p>The statement of policy appears to allow Investec to make donations outside of the UK and the EU, as it is also stated in the Code of Conduct that Investec and its subsidiaries are authorized to make donations to political organisations not exceeding the value of £25 000.<sup>272</sup></p>	<p>'We supported the two main political parties in South Africa with Investec Limited donating a total of R2.5 million during the financial year.'<sup>273</sup></p>	<p>Investec plc and any subsidiary is authorised to 'incur political expenditure not exceeding £75 000 (seventy five thousand Pounds Sterling) in total.'<sup>274</sup></p>	<p>Undetermined.<sup>275</sup></p>	<p>Undetermined.<sup>276</sup></p>
32. Truworths International Ltd	GRI, JSE SRI Index	<p>The group supports multiparty democracy, but does not make any contributions to any political party in South Africa or elsewhere.<sup>277</sup></p>	<p>Annual Report not located.</p>	<p>'The Group supports the multi-party democratic process but as a matter of policy does not make any donations to any political parties in South Africa or elsewhere.'<sup>278</sup></p>	<p>The company does not self-assess and report on GRI SO 6.<sup>279</sup></p>	<p>'The Group supports the multi-party democratic process but does not make any donations to any political parties in South Africa or elsewhere.'<sup>280</sup></p>	
33. Imperial Holdings Ltd	BLSA, NBI, GRI, JSE SRI Index	<p>It is Imperial Holdings' policy not to make political donations.<sup>281</sup></p>	<p>Not located.</p>	<p>'It is the policy of the group not to make contributions to political parties and no such contributions were made during the year.'<sup>282</sup></p>	<p>Not located.<sup>283</sup></p>	<p>'It is the policy of the group not to make contributions to political parties and no such contributions were made during the year.'<sup>284</sup></p>	

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated			
				Previously	2009/2010	2010/2011	2011/2012
34. Assore Ltd	GRI	Assore believes that, owing to the fact that executive management is highly involved in the day-to-day running of processes, ethical issues are dealt with on an ongoing basis by senior management who interact with staff at all levels. Senior management ensures that high ethical standards that are in line with board expectations are maintained. They believe, therefore, that establishing a documented code of conduct and ethics would be superfluous. <sup>285</sup>		Not located.	Not located.	Not located.	SO 6 is not self-assessed or reported on. <sup>286</sup>
35. Capital Shopping Centre Group plc	JSE SRI Index	It is the Group's policy that it does not make donations 'directly to political parties'. <sup>287</sup>				'No political donations were made in the year'. <sup>288</sup>	'No political donations were made in the year'. <sup>289</sup>
36. Massmart Holdings Ltd	BLSA, NBI, GRI, JSE SRI Index	Massmart's Code of Conduct does not make any reference to the funding of political parties. Its Code of Conduct states that, for any further information on ethical leadership and corporate citizenship, Chapter 1 of King Code III should be consulted. However, the Code does state that the board and employees of Massmart are expected to: avoid conflicts of interests; and refrain from giving or receiving gifts that will make it difficult for Massmart to engage with suppliers objectively and without favour. <sup>290</sup>  'We are apolitical'. <sup>291</sup>			S06: As a matter of policy, 'Massmart does not make donations to political parties or related institutions'. <sup>292</sup>	Undetermined: The issue is not mentioned in the Annual Report. <sup>293</sup>	Undetermined: The issue is not mentioned in the Annual Report. <sup>294</sup>

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated			
				Previously	2009/2010	2010/2011	2011/2012
37. Mondi plc Ltd	BLSA, NBI, GRI, JSE SRI Index	Mondi does not permit contributions or donations for political purposes. <sup>295</sup> Mondi does not engage in bribery or any form of unethical inducement or payment, including facilitation payments, and does not make political donations or incur political expenditure. <sup>296</sup>		Undetermined. <sup>297</sup>	Undetermined. <sup>298</sup>	'No Mondi Group companies make contributions or donations for political purposes. Corrupt practices, including bribery and facilitation payments are strictly prohibited.' <sup>299</sup>	'Mondi does not permit contributions or donations for political purposes.' <sup>300</sup>
38. Mr Price Group Ltd	GRI	The Group encourages the personal involvement of associates in political activities, but the Group does not make any donations to political parties unless specifically authorised by the Chief Executive Officer. <sup>301</sup>		Undetermined. <sup>302</sup>	Undetermined. <sup>303</sup>	Undetermined. <sup>304</sup>	'The group is apolitical.' <sup>305</sup>
39. Discovery Holdings Ltd	BLSA, NBI, GRI, JSE SRI Index	Discovery's Code of Conduct states that the company will not make, promise or give anything of value to government officials, and these include employees of any government, political parties, candidates for political office and employees of public institutions. <sup>306</sup>	According to the Code of Conduct, bribery extends to the following: gifts, especially expensive gifts; entertainment, travel and hospitality that go beyond business needs; loans; personal favours; payment for travel when there is no clear business purpose for doing so; political or charitable organisation payment or benefit for a person who has facilitated a transaction; and payment to an individual's family member in an effort to influence that individual. <sup>307</sup>	Undetermined. <sup>308</sup>	SO 6 is listed as: 'Not reported yet, to be considered.' <sup>309</sup>	SO 6 is listed as: 'Not reported yet, to be considered.' <sup>310</sup>	SO 6 is listed as: 'Not reported yet, to be considered.' <sup>311</sup>

Table 7: Political donations policy and practice of the JSE's top 40 listed companies (continued)

Company	Affiliation	Policy or statement of practice	Frequency of, and formula for, distribution/and other donations	Amount donated		
				Previously	2009/2010	2010/2011
40. Life Health Care Group Holdings Ltd	GRI	No mention could be found of political party funding. A Code of Conduct is referred to in the 2011 Annual Report, but the Code could not be found. The Report mentions the existence of a conflict-of-interest policy, which ensures that directors avoid any situation that might cause conflicts of interest and disclose all conflicts of interest that occur in terms of section 75 of the Companies Act 2008. <sup>312</sup>		Annual Report not located. <sup>313</sup>	Undetermined. <sup>314</sup>	SO 6 not self-assessed and reported. <sup>315</sup>
41. Foschini Group Ltd	NBI, GRI JSE SRI Index	No donations are made to political parties. <sup>316</sup>		SO3 erroneously listed concerning political donations. Referral via hypertext link to Corporate Governance Report for more information where a section on 'Donations to Political Parties' states that 'In]o donations are made to political parties.' <sup>317</sup>	SO 6 erroneously reported as SO7, but the report nevertheless indicates that '[n]o donations are made to political parties.' <sup>318</sup>	'SO 6: No donations are made to political parties.' <sup>319</sup>

**Table 8:** Political donations policy and practice of ten large unlisted companies operating in South Africa

Company	Revenue/turnover	Integrated report/ annual report/ sustainability report	Policy or statement of practice	Amount donated/frequency of and formula for distribution/ other donations
1. Spar Group Ltd	R48 100bn	Integrated Annual Report 30 September 2011. <sup>320</sup>	Social and Ethics Committee established. <sup>321</sup> No mention of a policy on political donations.	Undetermined.
2. JD Group Ltd	R25 284bn	Integrated Report 2012. <sup>322</sup>	A Code of Ethics has been adopted. <sup>323</sup> The Group has endorsed BUSA's Charter of Ethical Business Practice. <sup>324</sup> An Anti-bribery and Anti-corruption policy has also been adopted. The Social and Ethics Committee adopted the nine principles of the OECD and the ten principles of the UNGC. <sup>325</sup> The company participates in the GRI Index. <sup>326</sup>	No donations have been made. <sup>327</sup>
3. ABB Group GRI, UN GC	USD37 990bn. <sup>328</sup>	Annual Report 2011.	A Code of Ethics has been adopted. <sup>329</sup> Political and charitable contributions are subject to detailed internal policy and controls. Bribery and corruption are prohibited in all business dealings, whether with public officials or private-sector business partners.  As a rule, facilitation payments are not permitted. <sup>330</sup> In terms of ABB's Code of Conduct, contributions to political parties, politicians and associated institutions are permitted only in 'exceptional' circumstances and with the approval of ABB's Chief Integrity Officer. <sup>331</sup>  The reports contain very little specific, detailed information on South African operations.	In 2011, ABB Inc. in the USA made 'employee-raised donations through its Political Action Committee (PAC)'. <sup>332</sup>  The GRI Indicator list discloses SO 6 (financial and in-kind) contributions of USD500 in 2011, USD9 000 in 2010 and zero in 2009. <sup>333</sup>  It is unclear whether any similar donations were made in South Africa.

Table 8: Political donations policy and practice of ten large unlisted companies operating in South Africa (continued)

Company	Revenue/turnover	Integrated report/ annual report/ sustainability report	Policy or statement of practice	Amount donated/frequency of and formula for distribution/ other donations
4. GlaxoSmithKline (GSK) GRI	£27.4bn. <sup>334</sup>	Annual Report 2011.	<p>In compliance with the United States (US) Sarbanes–Oxley Act, 2002, GSK adopted a Code of Ethics that deals with, among other matters, political contributions.<sup>335</sup></p> <p>With effect from 1 January 2009, GSK adopted a global policy ending the provision of political contributions in any market in which the company operates. This includes financial and in-kind contributions made by the company.<sup>336</sup> GSK has also adopted an Anti-corruption Policy.<sup>337</sup></p>	SO 6 is self-assessed but details are not reported in the GRI Index. <sup>338</sup> Instead, the Index refers to the 'Our Behaviour' section at 77. There is no such section in the 2011 Annual Report and the 'Our Behaviour' web page <sup>339</sup> appears to contain no relevant details.
5. Ford Motor Company of South Africa (Pty) Ltd, GRI, UN GC	USD136 264bn. <sup>340</sup>	Annual Report 2011. <sup>341</sup>	<p>No mention could be found in the 2011 Annual Report of a code of ethics or a policy on political donations.</p> <p>In the 2011/2012 Sustainability Report,<sup>342</sup> however, mention is made of Ford's commitment to the United Nations (UN) Global Compact. On the 'Ethical Business Practices' web page, various elements of the 'Code of Conduct Handbook' are mentioned, including 'Gifts, favors and conflicts of interest' and 'Working with governments (political activities)'. No additional detail is provided or accessible there.<sup>343</sup></p> <p>However, the following statement of the company's 'Policy on Political Donations' provides that the 'Ford Motor Company does not make contributions to political candidates or political organisations nor otherwise employ Company resources for the purpose of helping elect candidates to public office, even when permitted by law.</p> <p>...continued &gt;</p>	<p>The company partially reports on GRI SO 6.<sup>345</sup></p> <p>No details are provided concerning any possible contribution or donation in South Africa.</p>

Table 8: Political donations policy and practice of ten large unlisted companies operating in South Africa (continued)

Company	Revenue/turnover	Integrated report/ annual report/ sustainability report	Policy or statement of practice	Amount donated/frequency of and formula for distribution/ other donations
5. Ford Motor Company of South Africa (Pty) Ltd, GRI, UN GC			Nor do we take positions for partisan political purposes – that is, specifically for the purpose of advancing the interest of a political party or candidate for public office. These policies remain unchanged, notwithstanding the US Supreme Court’s January 2010 decision that loosened restrictions on corporate independent expenditures [in the United States]. <sup>344</sup>	
6. Dimension Data (Pty) Ltd	USD5 792bn. <sup>346</sup>	Annual Business Review 2011.	The company has adopted an Ethics Policy; Anti-bribery and Corruption Policies; Hospitality and Gifts Policies; and a Whistleblowing Policy. The Ethics Policy <sup>347</sup> declares that ‘[c]orrupt or illegal practices will not be tolerated. Bribes or any other illicit payments will neither be paid nor accepted, and all employees must comply with the Group’s Anti-Bribery and Corruption Policy.’ It further provides that <sup>348</sup> ‘[t]he Group is non-political. It does not make contributions to political parties or allow its assets and services to be used in any way which favours any particular political grouping, other than in the provision of its normal products and services, under its usual terms and conditions of sale, at arm’s length prices.’ <sup>349</sup>	
7. De Beers Consolidated Mines (Pty) Ltd	USD7 378bn.	Report to Society 2011.	‘Governance and revenue transparency ... Political donations – The Family of Companies does not participate in party politics. In exceptional cases, political donations may be made in support of the democratic process. They are made only to pro-democratic registered parties that are committed to the protection of human rights, good governance and the rule of law, and are fully disclosed.’ <sup>350</sup>	No political donations were made in 2011. <sup>351</sup>

Company	Revenue/turnover	Integrated report/ annual report/ sustainability report	Policy or statement of practice	Amount donated/frequency of and formula for distribution/ other donations
8. Consol <sup>352</sup>	Not available. See adjacent column for explanation.	Annual reports are unavailable without registration. <sup>353</sup>	The Company's Code of Ethics <sup>354</sup> provides, <i>inter alia</i> : 'POLITICAL SUPPORT – 'Company funds, goods or services, ..., must not be used as contributions to political parties or their candidates, and Company facilities must not be made available to candidates or campaigns.' <sup>355</sup> Consol's CSI policy investment criteria provide that '[i]nvestment will not be directed at assisting any political party.' <sup>356</sup>	
9. Denel SOC <sup>357</sup> Ltd, GRI	R3 568bn.	Annual Report 2012.	The Code of Ethics regulates only the receipt of gifts, not the giving thereof. <sup>358</sup> Denel's Statement of Values <sup>359</sup> includes: 'Integrity – We are honest, truthful and ethical'.	GRI SO 6 is not assessed or reported on. <sup>360</sup>
10. Hollard Insurance Group <sup>361</sup>	R16 633 5bn.	Integrated Annual Report 2012. <sup>362</sup>	No reference is made in the Integrated Annual Report to a code of ethics, but the availability of 'ethical guidance' is mentioned. <sup>363</sup> The Integrated Annual Report also refers <sup>364</sup> to an addendum on 'Governance' to be found at the end of the Annual Report, but it is not to be found there. <sup>365</sup> Hollard's corporate social investment (CSI) web page makes no reference to a policy on political donations, but neither are such donations included in the company's <sup>366</sup> list of 'current and past areas of CSI focus'.	Undetermined.

## Observations and concluding remarks

A few (occasionally speculative) observations are noted below.

1. Assuming some degree of accuracy of the estimates of overall expenditure by South African political parties, it is clear that *political parties and their election campaigns are expensive operations to maintain*. While it is widely accepted that money in politics is necessary, it is equally evident that – as may be observed from the first-ever USD2 billion US presidential election campaign<sup>367</sup> – more money is not necessarily conducive to an elective process that either affirms ethical probity or narrows excessively destabilising social or political divisions. If political parties are to diligently and with integrity perform their representative and other democratic functions, they also need to increase their accountability and transparency towards the citizens they claim to represent.
2. Consistent with the increasing cost of election campaigns, some companies considered above have made donations only in election years, or larger amounts at those times, while others have opted to provide financial support on a more regular, predictable basis. While this latter practice may enable political parties to plan more effectively, it may tend to increase reliance and dependence on these corporate actors. In contrast, it is possible to imagine a scenario in which a more substantial donation at election time can enhance the donor's policy leverage.
3. *Known public funding constitutes only a small share of total funding* – at least insofar as declared ANC funding is concerned. Other political parties are less readily forthcoming about their overall fundraising strategies and performance, funding receipts and expenditure commitments. The uncertain legal status of provincial party funding and the questionable validity and utility of several aspects of 'constituency' allowances, as well as the often poor record of transparent accountability for public funds currently received, raise legitimate questions concerning proposals that additional public funding may be the answer to unregulated and unaccountable private funding. This is a separate matter from the question whether public funding may, indeed, form a useful part of a comprehensive reform package. South African citizens would be within their rights to require from political parties far greater transparency and accountability for their (the political parties') use of existing public funding before any increase is seriously considered. Precise details of public funding appropriations and allocations political parties receive from various sources, what they use it for and how effectively they use it to enhance the quality of our democracy, are legitimate – and vital – questions.
4. The *existing formula for the allocation of public funding from the Public Fund at national level* (i.e. 90:10) is controversial because it appears to favour incumbents over challengers. While there are questions about the constitutionality of provincial public funding laws, practice at provincial level exhibits a greater degree of flexibility. There are instances where *the national formula is not uniformly replicated in the provinces*. It is unclear whether the reasons for these variations may have included particular seat allocations at the time when the provincial legislation was passed, or other considerations of equity. In any event, these

variations may suggest that the national formula may not be the only legitimate approach, or necessarily the most appropriate.

5. While details of total annual funding and allocations to individual parties from the Public Fund are disclosed, *very little detailed information is readily available even about public funding from other sources*. It may be possible to calculate parties' allocations from Parliament's constituency allowance,<sup>368</sup> but the same is not possible for the provinces, due to the failure in their budgets, appropriation enactments and financial statements and reports to consistently itemise funding sources, and because of the varying formulae adopted. Moreover, parties' reports on their expenditure of these public funds are not proactively disclosed and, as mentioned earlier, annual Auditor-General reports in respect of each province do not consistently refer to and report on appropriations from the national Public Fund or from parliamentary and provincial funds. These accountability deficits render it beyond conclusive determination whether and what amounts of funding were actually disbursed and legitimately spent.<sup>369</sup>
6. *The gap between current levels of public funding and estimated expenditure remains considerable.*<sup>370</sup> It is of profound concern in a democracy founded on the principles of transparency and accountability that the difference between these two amounts is apparently raised by political parties within the context of a discredited laissez-faire policy environment. It is in this non-transparent and unregulated space that both established and emerging businesses, as well as wealthy individuals, are able to engage in the purchase of political and policy influence, as well as of lucrative state contracts. Not all companies examined here have made the conduct of their executives and directors subject to restraint in terms of their policies or ethics codes. The possibility that increased public funding might play a part in reducing this gap, and its possible impact on public policy, is a debate worth having.
7. Notably, *almost all companies in both samples have taken an explicit position on political donations*, whether in favour or otherwise. This is more consistently the case for listed companies, although the accuracy of this assertion may be questioned on the basis of the different size, scope and representivity of the samples.
8. Also evident is that *the amounts disclosed do not resemble the estimates and reports of private funding* noted earlier.<sup>371</sup> Several of the reported donations are of relatively modest size in the context of assessments of, especially, relatively credible estimates of election-year expenditures by political parties. This observation begs the question concerning the nature and range of sources of political parties' income. Assuming that these expenditure estimates have some basis in fact, one or more possible inferences may be drawn regarding the '*funding gap*', although it is difficult to test their accuracy until more comprehensive research is undertaken. Even then, however, the fact that donor disclosure is not required by law is likely to mean that even extensive and comprehensive research may not yield conclusive and reliable results, since accuracy depends at this stage on full disclosure by the individual company concerned.
9. *Reporting on private funding by both listed and unlisted corporations is, at best, not according to consistent and clear criteria and standards*. At the very least, it is evident from the research reported here that locating relevant information is not

a simple task. The vast diversity of corporate practice, both among different entities and by individual corporations over time, and the lack of data presented in a standardised or systematic manner which is publicly available, greatly complicates data gathering. Despite increased global and national regulatory and voluntary standards and scrutiny, companies retain considerable liberty to report on their activities in the manner of their choosing. As the research underpinning this paper shows, corporate practice varies widely, making it not only difficult to locate relevant information, but also making accurate overall assessment almost impossible. A single, coherent and generally applicable standard of reporting does not exist. The Global Reporting Initiative, like the JSE's SRI Index, allows companies to decide their level of adherence to the standards and, hence, their disclosure and reporting. One company mentioned above has reported that it has been considering for three years whether or not to measure and report on its policy and conduct concerning political donations. Nevertheless, even where a particular policy position has been adopted, clear criteria and cut-off points for political donations, such as vote share thresholds or particular policy positions, are not always clear, leaving opportunity for discretion. Among companies that have opted to remain engaged in this form of support, those which publicly detail their policy and criteria are the exception.

10. *This, at least, is one practical reason why potential corporate influence on political policy is difficult to estimate or evaluate.* The modest sizes of the samples used for this analysis serve only to emphasise the extent and significance of the information gap. As noted earlier, listed corporations are only a subset of the pool of potential private donors. It is possible that the vast numerical majority of such donors are not subject even to such voluntary standards or emerging legal or customary standards and levels of scrutiny applicable to the larger entities which are the subjects of this brief study. For example, as is evident from some companies' ethics policies and codes noted above, not all executives and directors are required to refrain from political donations in their own name. *Citizens are, as a result, obliged to make their own assessments, largely on the basis of reports by investigative journalists. Trust between elected representative and citizens, and between companies and customers, seems likely to be the principal casualty, with potentially significant negative implications for our political, social and economic health.*<sup>372</sup>
11. The domestic impact of *increasingly assertive and extensive foreign regulatory scrutiny and enforcement action in terms of anti-corruption legislation*, especially by the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act, seem likely to be important areas for future scrutiny. This is in addition to the growing impact of more rigorous international standards of good practice, such as the OECD Anti-bribery Convention, and the resulting heightened pressure for South Africa to improve its compliance and enforcement performance, including through greater use of its tough Prevention and Combating of Corrupt Activities Act 12 of 2004.<sup>373</sup> Their significance is reflected in the emerging implications of the new provisions of the amended South African Companies Act and Regulations.<sup>374</sup> In this regard, it is important to record that listed companies, particularly transnational entities, operate under increasingly stringent corporate governance constraints and greater global scrutiny than do private companies, and therefore

have less latitude for largesse, at least formally.<sup>375</sup> The scope of the role of newly established social and ethics board subcommittees, and the nature of the reporting which they undertake, could be significant areas to monitor.

12. A recent media report highlights the risks potentially associated with particular business deals with ‘politically exposed persons’<sup>376</sup> (PEPs). It also offers an insight into possible opportunities for political parties arising from otherwise legitimate and lawful BEE deals.<sup>377</sup> The report entitled ‘Investigators: Gold Fields bribed Mbete’<sup>378</sup> reflects an internal investigation reportedly undertaken at the behest of the mining company’s board following a BEE share deal involving Baleka Mbete, who was then, and is currently, ANC national chairperson.<sup>379</sup> Gold Fields was allegedly compelled by the Department of Mineral Affairs to identify an ‘empowerment partner’ before the Department would issue a new-order mining licence. One of the partners identified was Mbete, who reportedly benefited in an amount of R25 million. The internal investigation reportedly found that the deal, concluded through Mbete’s intermediary, amounted to bribery, although – crucially – it made no finding concerning Mbete’s conduct and state of mind. The media report states: ‘It is likely that it was perceived that Mbete, as ANC chairperson, would have been able to influence department officials.’ The board apparently rejected the finding and the investigator’s recommendation to ‘self-report’ in terms of anti-bribery laws in the hope of lenient treatment.<sup>380</sup> As Gold Fields has a secondary listing in the USA, the Securities and Exchange Commission (SEC) is investigating the allegations.<sup>381</sup>
13. The most pertinent consideration for purposes of understanding political finance flows in South Africa is the fact that any participant in, or beneficiary of, an otherwise entirely legitimate BEE deal – as in any other business or employment contract – is free to share any part of the proceeds with any political party or candidate without any public disclosure. The negative impact of an arrangement of this kind on the legitimacy of an otherwise widely supported law designed to redress generations of economic exclusion, as well as on the system of mineral-resource regulation, is not difficult to imagine. Concern over the negative impact of large sums of undeclared funding on the internal functioning of political parties has been noted above.
14. A related inference that can be drawn from the discrepancy between estimated expenditure by political parties and reported donations is that *perhaps not all direct donations have been disclosed*. Certainly, some of the corporate policies mentioned here are sufficiently vague and flexible so as to retain scope for discretionary ad hoc donations, such as to individual politicians or candidates, or the payment of monies other than ‘donations’. Examples of the form of such payments could include ‘corporate social investment’ in ‘charitable’ or ‘community’ projects, or ‘fees’ or other ‘costs’ to entities linked to, or associated with, political parties, such as a political leader’s personal foundation<sup>382</sup> or the ANC’s PBF.<sup>383</sup> In several instances, moreover, unlike BHP Billiton’s policy, for example, the possibility of in-kind support is not explicitly regulated. FirstRand’s policy appears quite contradictory, both forbidding political donations and appearing to provide for their possibility by setting out some form of guidance in this regard. By contrast,

Exxaro has declared its adoption of an unusually detailed policy and criteria. In line with the media report mentioned in the preceding paragraph, a further mode or avenue of support could be an empowerment partnership, including one of the kind commonly concluded in terms of the Broad-Based Black Economic Empowerment Act.<sup>384</sup>

15. *It is also possible that the largest listed companies are not the largest donors.* Even within this relatively small sample, where some formal corporate donation has been made or is declared, the donated amounts involved vary quite widely – between R1 million and R13 million – but are generally relatively modest. Moreover, high net-worth individuals (as is apparently envisaged in the case of Naspers’ policy position), whether or not they are directors of listed or unlisted companies, and as with more average voters, may choose to make donations in their personal capacity. It may also be the case that many smaller donations are made by a broader spread of private donors.
16. It is uncontroversial to observe that *it is probably universal custom in almost every kind of relationship*, whether personal or business-related, to *expect some form of gratitude or reciprocation in return for a gift*. It would be the exceptional individual who did not either expect some reciprocation or feel some obligation to offer reciprocation following receipt of an especially large or valuable gift. It is, moreover, equally probable to anticipate that the greater the perceived value of the gift or gifts, the greater the likelihood of a more profound sense of appreciation, affection, affinity and loyalty – and obligation. The possibility of thereby influencing public policy is generally acknowledged.
17. *That, however, is to view the donor–recipient relationship primarily from the perspective of the donor, and to assume that the recipient’s most significant relationship is with the donor.* The above-mentioned example of the controversial BEE deal suggests the possibility of additional nuanced variations. Firstly, the sense of obligation between the donor and recipient described above might, of course, not arise if the recipient believes that the ‘donor’ has some form of prior obligation to the recipient individually or as a representative of a social group. In that instance, it is foreseeable that the ‘donation’ may be seen as less of a ‘payment’ than a ‘repayment’. Secondly, if, instead of the recipient’s primary loyalty being towards the ‘donor’, the ostensible recipient (perhaps an individual) is partly or wholly an intermediary between the ‘donor’ and another group or entity which ultimately receives at least part of the money, the primary impact of the donation might then also be significantly different, for instance if the ostensible recipient/intermediary also feels a greater sense of fealty to a relationship other than with the ‘donor’, such as with a particular social group or a group of friends or comrades, or to a political party. In these circumstances, it is not improbable that a proportion of the monetary value of a BEE transaction, ostensibly intended to benefit an individual as a representative of a social class, in fact inures to the advantage of the political organisation with which that individual feels closely associated.
18. This type of scenario raises equally important questions concerning the impact of large donations by individuals (such as the ‘intermediary’ in the example above)

on relationships within a political organisation. A more or less voluntary donation (regardless of the original source of the funds) by a party member to the party itself may give rise to a reciprocal sense of obligation and entitlement that has apparently become dangerously commonplace, within the ANC at least.<sup>385</sup> It is unlikely that the impact would be different in any other political party. These considerations may contribute to an understanding of the significant disjuncture between reported political party income and formal donations reported by the largest listed companies considered here. They may also mean that the focus of this research – on the formally declared and reported direct ‘donations’ by corporate entities to political parties – may have been (mis-)directed at an avenue of political finance that is no longer the most significant channel for political fundraising in South Africa. Perhaps, instead, this avenue has become too fraught and too complex – indeed, so closely scrutinised and regulated, initially internationally but subsequently nationally, too – that it is increasingly avoided and has significantly atrophied. Perhaps, too, it has waned rather quickly because an alternative avenue has presented itself – in the shape of an unintended consequence of the policy of BEE.

19. Finally, it is appropriate to observe that *what citizens do not know about political-party funding far exceeds what we do know*. Our everyday life experiences confirm that *what we don't know has the potential to cause us significant harm*. The same is likely to be true of political-party funding. Associated with that fear of the unknown, partially glimpsed, is legitimate public concern about the fairness and equity of both the means and the trajectory of transformation in our democracy.

A broad range of concerns is identified in this paper, and several additional avenues of research are necessary in order to reveal a more comprehensive understanding of the roles played by money in our politics, in our economy, and in our society more generally. What we think we know appears to suggest that there may be some potentially profound implications for both our constitutional democracy and for the structure of the society and economy that underpin it. While economic transformation and broader inclusion must be among the primary goals of public policy, the concern is increasingly voiced that a new, narrow elitism appears to be entrenching itself. A precise and comprehensive picture of the means by which both old and new elites sustain themselves is simultaneously the subject of conjecture, uncertainty and some discomfort. The suspicion has arisen that some necessary policy interventions, with laudable social and economic objectives, have been subverted for narrow personal or sectional gain. On the other hand, the continued failure to address other long-standing policy gaps, such as the regulation of political finance, may be playing a part in facilitating the undermining of an otherwise broadly welcomed policy initiative. Inevitably, mistrust deepens and may become entrenched. As it does, the energy and dynamism that should be generated by a shared vision of nationhood continue to elude us.

In some instances, acceptable answers and sustainable solutions must be found in the form of comprehensive legislative reform. At the same time, difficult policy choices and trade-offs will have to be made. In almost every instance, it seems clear that the fundamental long-term needs of the vast majority of South Africans must be

prioritised over the immediate convenience of a few. Above all, an inclusive and wide-ranging national debate, long mooted by several ruling party representatives and studiously avoided by virtually all political parties, save a few which have chosen to speak and act on their principled declarations,<sup>386</sup> must be held without further delay. That debate requires further investigation and closer analysis, as well as deliberate, focused and concerted joint action. If leadership is not to be found where citizens might ordinarily expect to find it, broad civil society must encourage its emergence.

While political and party funding remain unregulated in South Africa, opportunities flourish for a few to wield influence over the political sphere as well as in the changing form and direction of economic transformation. The consequences for the democratic accountability of elected leaders, for broadened access to economic opportunity and participation, as well as for policy outcomes that enhance public trust seem to be subject to grave risks.

## Endnotes

- 1 I am grateful to my colleague, Mandisa Dyantyi, for her assistance with the early research for this paper. The author is indebted to Collette Schulz-Herzenberg for valued comments and advice. Any errors are my own.
- 2 See, for example, 'Party funding reform urgent: Phosa' *IOL News* 7 June 2012. Available at: <http://www.iol.co.za/news/politics/party-funding-reform-urgent-phosa-1.1314203>.
- 3 Additional questions for possible later consideration include: 'What do they spend it on?'; and 'What value do they obtain for their expenditure?'
- 4 Given the complete absence of regulation in South Africa, the sources and size of foreign donations are particularly difficult to identify and quantify. They are therefore not considered in this paper.
- 5 The most recent (September 2012) Top 40 list is available at <http://www.jse.co.za/Products/FTSE-JSE/Indexreviews.aspx>. No list could be identified of even the ten largest unlisted (or privately owned) companies operating in South Africa. The sample therefore includes a random selection of ten 'large' companies, selected on the basis of what appears from a randomised scoping to be substantial annual turnover and perhaps reflective of the widely divergent range of practice.
- 6 See, for example, 'Money and politics in South Africa: Meeting our next democratic challenge', Money and Politics Programme policy paper (MAPP), 25 October 2011. Available at: <http://osf.org.za/publication-types/money-and-politics-project/>.
- 7 For details of this third symptom, see 'Money and politics' (note 6 above).
- 8 All these issues are discussed in greater depth in MAPP's 'The state of party funding in South Africa policy paper', February 2013.
- 9 See, generally, Carne Ross, Chapter 2 'The pact' in *The Leaderless Revolution*, Simon & Schuster, London, 2011.
- 10 'SA's party funding system "dangerous"', *IOL News* 8 June 2012.
- 11 See, for example, 'Leadership renewal, discipline and organisational culture', ANC National General Council discussion document 2010: para 41–42. 'The above approach primarily addresses formal party funding. But what about monies raised by candidates and lobby groups, with no accountability and disclosure about the sources (and legality) of such resources, nor how these monies are being used? This could lead to 'those with money having more influence about the direction of the ANC than its membership'. It was suggested that the party's approach to party financing 'will therefore have to be broader, so that it also deals with the "informal" party financing, which is so much more insidious and dangerous to internal democracy'. Available at <http://www.anc.org.za/docs/discus/2010/leadership.pdf>. See also a media report quoting respected ANC MP Professor Ben Turok, 'Money "sowing seeds of factionalism" in ANC' in *Business Day* 12 December 2012. Available at <http://www.bdlive.co.za/national/politics/2012/12/12/money-sowing-seeds-of-factionalism-in-anc>. ANC and South African President Jacob Zuma's address to the party's Mangaung Elective Conference reiterated previously expressed concerns about the growing influence of private money on the coherence, integrity and 'discipline' within the party: 'Comrades, we must also frown upon other alien practices such as the use of money to buy the support of ANC members. We should not allow a situation where those who have money turn members of the ANC into commodities.' Political Report to the 53rd National Conference, 16 December 2012. Available at <http://www.anc.org.za/show.php?id=9989>.
- 12 Zwelethu Jolobe in Anthony Butler (Ed.) *Paying for Politics: Party Funding and Political Change in South Africa and the Global South*, Jacana, Johannesburg, 2010, at 214.
- 13 Butler (note 12 above) at 250.
- 14 AfroBarometer 2011 and SA Reconciliation Barometer 2012.
- 15 TNS January 2012; the Human Sciences Research Council's South African Social Attitudes Survey (SASAS) 2011.
- 16 SA Electoral Commission (IEC) statistics; Butler (note 12 above) at 12.
- 17 SA IEC statistics; Institute for Democracy and Electoral Assistance (IDEA) statistics.

*The Money and Politics Project (MAPP) was a programme of the Open Society Foundation for South Africa in 2012. Gary Pienaar was a Senior Researcher for MAPP in 2012. This policy paper, and its accompanying policy briefs, are a report of the work he completed for MAPP. OSF-SA would like to express its appreciation to Gary Pienaar and the Expert Review Committee that commented on earlier drafts of these documents.*



- 18 SA IEC statistics; AfroBarometer 2011 survey results show that local government scores the lowest level of public trust, namely 43%.
- 19 Ebrahim-Khalil Hassen, 'Devil in the data: South Africa's rich overrepresented in the vote', South African Civil Society Information Service, 3 June 2011. Available at: <http://www.sacsis.org.za/site/article/681.1>.
- 20 Afrobarometer (May 2009), 'The quality of democracy and governance in Africa', Working Paper No. 108.
- 21 Conducted by the Institute for Justice and Reconciliation. See <http://reconciliationbarometer.org/>.
- 22 'ANC looks at cuts to staff as its operating costs soar', *Cape Times* 18 December 2012.
- 23 The above-mentioned newspaper report did not mention either the amount or the proportion of public or overall funding received in terms of party-funding legislation passed by the various provincial legislatures.
- 24 Sokomani in Butler (note 12 above) at 172.
- 25 'Money and politics' (note 6 above) 6, fn 52. These figures are estimates drawn from a variety of sources that appear consistent, although it is unclear whether they reflect expenditure by all political parties or by only the larger parties.
- 26 See 'Money and politics' (note 6 above) at 5, and the sources cited there.
- 27 Roger Southall & John Daniel, *Zunami!: The 2009 South African Elections*, Jacana, Johannesburg, 2009, cited in 'Money and politics' (note 6 above).
- 28 Sokomani in Butler (note 12 above).
- 29 For analyses of campaign spending effects on election outcomes in the USA, see Gary Jacobson (2004), *The Politics of Congressional Elections* and Daniel Weeks (2008), 'Does money buy elections?' Americans for Campaign Reform policy paper, January 2008 at <http://www.acrreform.org/research/does-money-buy-elections/>; also cited in 'Money and politics' (note 6 above).
- 30 Act 103 of 1997.
- 31 Funding has, until recently, been allocated to the Fund through Vote 24 – Justice and Constitutional Development, Programme 5. From 1 April 2013, the Fund received funding via Vote 4 – Home Affairs.
- 32 See, for example, 'SA democracy incorporated: Corporate fronts and political party funding', Vicki Robinson & Stefaans Brümmer, Institute for Security Studies, ISS Paper 129, November 2006. Available at <http://www.idasa.org/media/uploads/outputs/files/Corporate%20Fronts%20and%20Pol%20Party%20Funding.pdf>.
- 33 Discussion between a senior IEC official and one of the writers during April 2012.
- 34 Representation in the National Council of Provinces (NCOP) is not considered by the Act.
- 35 Section 2(2)(a) of the Act.
- 36 Published under Proclamation R117 in *Government Gazette* 19478 of 20 November 1998 and amended by Proc. R47 GG 27986 31 August 2005.
- 37 Regulation R. 24 of 16 April 2009.
- 38 Put differently, the equitable allocation to political parties is shared among political parties represented in the provincial legislatures only. It is determined by (a) the proportion of members in the respective provincial legislatures; and (b) the proportion of that province's 'segment of the national common voters roll' (section 105 of the Constitution). The allocation to the parties in a particular province must be divided equally among the participating parties in the legislature of that province.
- 39 See, for example, the arguments summarised by Sokomani in Butler (note 12 above). See also the statement by General Bantu Holomisa, leader of the UDM, '50/50 model needed for state funding of political parties – Holomisa', *Politicsweb* 21 February 2012. Available at: <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71654?oid=281406&sn=Detail>; and 'Elections 2009: It's the money', *Politicsweb* 6 April 2009. Available at: <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=124145&sn=Detail>.

- 40 See, for example, Sokomani in Butler (note 12 above) at 171.
- 41 See below.
- 42 See, for example, Susan Booyesen & G Masterson, 'Chapter 11: South Africa' in Denis Kadima & Susan Booyesen (Eds), *Compendium of Elections in Southern Africa 1989–2009: 20 Years of Multiparty Democracy*, EISA 2009, Johannesburg, 390–391, cited in 'South Africa: Political party funding', EISA, March 2011. Available at: <http://www.eisa.org.za/WEP/souparties2.htm>.
- 43 IEC annual reports on the Fund are available at: <http://www.elections.org.za/content/DynamicDocs.aspx?id=278&BreadCrumbId=278&LeftMenuId=251&name=home>.
- 44 Source: Parliamentary Monitoring Group.
- 45 Table 3 includes only those parties existing at the date of writing. Thus, for example, the New National Party (NNP) no longer existed in the 2006/2007 financial year. Readers should be aware that some parties' exclusion from the table creates the *appearance* of totals not tallying. Detailed annual allocations per party are drawn from available annual reports by the IEC on its administration of the Represented Political Parties' Fund. Available at: <http://www.elections.org.za/content/DynamicDocs.aspx?id=278&BreadCrumbId=278&LeftMenuId=251&name=home>.
- Its report for 2011/2012 is not yet available. *Government Gazette* Notices and Appropriation Acts were initially used to confirm allocations. Subsequently, information was received directly from the IEC during October 2012. See further fn 49 below.
- 46 Appropriation Act, 1999. Available at: [http://www.legalb.co.za/SANatTxt/1999\\_000/1999\\_031\\_000-Act-v19990331asunamended.html](http://www.legalb.co.za/SANatTxt/1999_000/1999_031_000-Act-v19990331asunamended.html).
- This is earliest record located of the allocation of monies to this Fund. The transfer was effected through the then Department of Constitutional Development.
- 47 Appropriation Act, 2003. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=67993>.
- 48 Appropriation Act, 2004. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=67952>.
- 49 Appropriation Act, 2012. Available at: [http://www.parliament.gov.za/live/commonrepository/Processed/20120724/442161\\_1.pdf](http://www.parliament.gov.za/live/commonrepository/Processed/20120724/442161_1.pdf)
- Government Notice No. 201 *Government Gazette* 35226 dated 4 April 2012 reflects a figure of R108 236 911. This amount is confirmed by figures received directly from the IEC during October 2012. These figures for individual party allocations for the years 1999/2000, 2003/2004, 2004/2005, 2011/2012 and 2012/2013 received directly from the IEC have been used in Table 3.
- 50 Key to abbreviations: ACDP – African Christian Democratic Party; AIC – African Independent Congress; ANC – African National Congress; APC – African People's Convention; AZAPO – Azanian People's Organisation; COPE – Congress of the People; DA – Democratic Alliance; DP – Democratic Party; FF+ – Freedom Front Plus; ID – Independent Democrats; IFP – Inkatha Freedom Party; MF – Minority Front; PAC – Pan Africanist Congress of Azania; UCDP – United Christian Democratic Party; UDM – United Democratic Movement.
- 51 Information supplied directly by the IEC on request.
- 52 Figures are rounded off. It will be evident that slight variations exist in figures from different sources. This may be a matter of how they are reported.
- 53 See [http://www.justice.gov.za/reportfiles/anr200607/ANR%20200607\\_dojcd\\_part04a.pdf](http://www.justice.gov.za/reportfiles/anr200607/ANR%20200607_dojcd_part04a.pdf). The figure supplied by the IEC is R70 844 436.
- 54 Policy on Political Parties Allowances, approved on 20 July 2005, available at: <http://www.parliament.gov.za/content/POLICY%20on%20political%20parties%20allowances~2.pdf>.
- 55 Clause 8.7 of the policy.
- 56 As these areas are defined according to political parties' interests and priorities, they may, in practice, overlap.
- 57 In clause 8.8.1.

- 58 In clause 4 'Purpose' read with clause 6 'Objectives/principles'.
- 59 See, for example, 'Given half a chance, MPs will bend the rules' Judith February in *Business Day* 7 December 2011. Available at: <http://www.bdlive.co.za/articles/2011/12/07/judith-february-given-half-a-chance-mps-will-bend-the-rules>.
- 60 This helpful distinction is largely absent from provincial appropriation budgets.
- 61 Appropriation Act, 2012. Available at: [http://www.parliament.gov.za/live/commonrepository/Processed/20120724/442161\\_1.pdf](http://www.parliament.gov.za/live/commonrepository/Processed/20120724/442161_1.pdf).
- 62 See, for example, the Report of the Independent Panel Assessment of Parliament, 2009, at 59. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=94365>.
- 63 The constituency allowance data for the period 2002/2003–2007/2008 are drawn from the Report of the Parliamentary Oversight Authority (POA) 25 August 2009, in ATC No. 80 for 2009 dated Thursday 22 October 2009. Available at: [http://www.parliament.gov.za/live/commonrepository/Processed/20110926/185148\\_1.pdf](http://www.parliament.gov.za/live/commonrepository/Processed/20110926/185148_1.pdf). (Note: For accurate figures, refer to the Annual Financial Statements of Parliament.)
- The slight variations between the figures in the POA and those available in the various Appropriation Acts, where the amount reflected in the former is usually higher, may be explained by reference to an Adjustment Act passed during the course of the particular financial year.
- 64 Appropriation Act, 2002. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=68063>.
- 65 Appropriation Act, 2003. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=67993>.
- 66 Appropriation Act, 2004. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=67952>.
- 67 Appropriation Act, 2005. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=67893>.
- 68 Appropriation Act, 2006. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=67858>.
- 69 Appropriation Act, 2007. Available at: [http://www.saflii.org/za/legis/num\\_act/aa2007176.pdf](http://www.saflii.org/za/legis/num_act/aa2007176.pdf).
- 70 Appropriation Act, 2008. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=85432>. However, according to the POA Report (note 63 above), the constituency allowance 'remained unchanged' – see 1147 of the ATC. The Appropriation Act has been preferred.
- 71 Appropriation Act, 2009. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=105366>. It is unclear why the allocation appears to have decreased for this financial year, particularly as 2009 was an election year. Although the Bill was enacted only in July 2009, this is true of most years. In any event, the trend of a steady annual increase resumed the following year.
- 72 Appropriation Act, 2010. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=128799>. According to Parliament's Annual Report for 2010/2011 at 47, 'parties submitted audited financial statements with three having qualified audited opinions and those affected have submitted interventions to rectify the situation.' Available at: [http://www.parliament.gov.za/content/final\\_Annual%20Report\\_30\\_Aug\\_2010-2011\\_1.pdf](http://www.parliament.gov.za/content/final_Annual%20Report_30_Aug_2010-2011_1.pdf).
- 73 Appropriation Act, 2011. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=148140>.
- 74 See the Appropriation Act, 2012, above.
- 75 Available at: <http://d2zmx6mlqh7g3a.cloudfront.net/cdn/farfuture/mtime:1303203567/files/docs/110317POA.htm>.
- 76 It is unclear whether this third aspect of the policy amendments should be taken to indicate that any greater latitude was thereby afforded to parties to allocate the allowance or other components of the allocation any differently. The context suggests otherwise.

- 77 See [http://www.parliament.gov.za/live/content.php?Item\\_ID=34](http://www.parliament.gov.za/live/content.php?Item_ID=34). Despite this almost 25% increase in the number of MPs who would benefit from this allowance, there was, perhaps rather curiously, no concomitant increase in the total amount appropriated for Associated Services, or in the constituency allowance itself.
- 78 And also of Parliament's own 'Democracy Offices'. See 58ff, 62ff and 99 of the Report.
- 79 Question 30b. Details of Afrobarometer survey are available at <http://www.afrobarometer.org/>, although Round 5 results had not been posted as at 30 August 2012.
- 80 It is unsurprising that survey participants were unable to identify 'their' MP given that no such role or identity is conceived of in a pure proportional electoral system such as South Africa's. It is assumed that the Afrobarometer question was aimed at assessing participants' awareness of the identity of the MP/s appointed for their area by one or more political parties.
- 81 See 'Mystery of how political parties spent a whopping R298m' *The Star* (Johannesburg) 11 July 2011. Available at: <http://www.iol.co.za/the-star/mystery-of-how-political-parties-spent-a-whopping-r298m-1.1096444?ot=inmsa.ArticlePrintPageLayout.ot>.
- 82 Enquiries by MAPP research associate Geoff Kilpin during the period June to September 2012.
- 83 *The Star* (note 81 above).
- 84 See clause 6.7.
- 85 'COPE: What KPMG found', *Politics Web* 8 November 2010. Available at: <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71639?oid=210219&sn=Detail&id=71639>. See also 'Party finances healthy, says ANC' *IOL News* 23 November 2011. Available at: <http://www.iol.co.za/dailynews/news/party-finances-healthy-says-anc-1.1184505?ot=inmsa.ArticlePrintPageLayout.ot>.
- 86 Gauteng Political Party Fund Act 3 of 2007. Available at: <http://gpl.gov.za/index.php/bills-and-acts/acts.html>.
- KwaZulu-Natal Funding of Represented Political Parties Act 7 of 2008. Available at: <http://www.kznlegislature.gov.za/Portals/0/KZN%20Funding%20of%20Political%20Parties%20Act-2008.1.pdf>.
- Eastern Cape Political Party Fund Act 1 of 2010. Available at: [www.greengazette.co.za/.../provincial-gazette-for-eastern-cape-2474-](http://www.greengazette.co.za/.../provincial-gazette-for-eastern-cape-2474-).
- Free State Political Party Fund Act 3 of 2008. The link at [www.fs.gov.za/.../Microsoft%20Word%20-](http://www.fs.gov.za/.../Microsoft%20Word%20-) appears to be no longer active.
- Northern Cape Political Party Fund Act 7 of 2009. Available at: [www.greengazette.co.za/.../provincial-gazette-for-northern-cape-135...Act](http://www.greengazette.co.za/.../provincial-gazette-for-northern-cape-135...Act). The Regulations are available at: [www.greengazette.co.za/.../provincial-gazette-for-northern-cape-136](http://www.greengazette.co.za/.../provincial-gazette-for-northern-cape-136).
- Limpopo Political Party Fund Act 4 of 2008. Available at: [www.greengazette.co.za/.../provincial-gazette-for-limpopo-1669-of-](http://www.greengazette.co.za/.../provincial-gazette-for-limpopo-1669-of-).
- This link is to the Regulations of 19 August 2009, which refer to their empowering legislation – Act 4 of 2008.
- North West Provincial Political Party Fund Act 3 of 2010. Available at: [www.greengazette.co.za/.../north-west-political-party-fund-act-2010-](http://www.greengazette.co.za/.../north-west-political-party-fund-act-2010-).
- As for Limpopo, the link is to the Regulations dated 11 August 2011, which refer to the Party Funding Act of 2010.
- 87 Telephonic enquiries were made during July 2012 with the Mpumalanga Legislature's Finance Department, which revealed that the Speaker's Office was considering a Bill.
- 88 Eastern Cape Political Party Fund Act 1 of 2010, promulgated on 29 June 2010. Available at: [www.greengazette.co.za/.../provincial-gazette-for-eastern-cape-2474-](http://www.greengazette.co.za/.../provincial-gazette-for-eastern-cape-2474-).
- 89 EC Appropriation Bill, 2012. Available at: <http://www.treasury.gov.za/documents/provincial%20budget/2012/2.%20Provincial%20Appropriation%20Bills/Eastern%20Cape%20Appropriation%20Bill%20&%20Schedules.pdf>.

- 90 Available at: <http://www.fs.gov.za/INFORMATION/Documents/ProvActs/2009/Microsoft%20Word%20-%20POLITICAL%20PARTY%20FUND%20ACT%20Eng.pdf>.
- 91 2012/2013 Free State Provincial Legislature budget estimate. Available at: [www.treasury.gov.za/.../2012/.../FS%20-%20Vote%2002%20-](http://www.treasury.gov.za/.../2012/.../FS%20-%20Vote%2002%20-). The funds are allocated to constituent, research and office allowances payable to represented political parties. The estimate states that funds will also be availed in respect of the Political Party Fund Act 4 of 2008. It is unclear whether any part of this is a transfer payment from the national Fund. The estimate comprises 'Facilities and Benefits for Members and Political Parties – R3 197 000' and 'Political Support Services – R46 012 000. The Free State Appropriation Bill, 2012, however provides for a slightly different amount of R50 million. Available at: <http://www.treasury.gov.za/documents/provincial%20budget/2012/2.%20Provincial%20Appropriation%20Bills/Free%20State%20Appropriation%20Bill%20&%20Schedules.pdf>.
- 92 Gauteng Political Party Fund Act 3 of 2007. Available at: <http://gpl.gov.za/index.php/bills-and-acts/acts.html>.
- 93 The Gauteng Provincial Legislature's annual budget estimate for the 2012/2013 financial year stated that political-party funding would increase from R48.7 million to R57.7. Available at: <http://www.treasury.gov.za/documents/provincial%20budget/2012/4.%20Estimates%20of%20Prov%20Rev%20and%20Exp/GT/2.%20Estimates%20of%20Prov%20Rev%20and%20Exp/GT%20-%20Vote%2002%20-%20Gauteng%20Provincial%20Legislature.pdf> (at 71). It is unclear whether this budget was in respect of an allocation from the national or provincial fund. The Gauteng Appropriation Bill, 2012, makes no reference to political-party funding. Available at: <http://www.treasury.gov.za/documents/provincial%20budget/2012/2.%20Provincial%20Appropriation%20Bills/Gauteng%20Appropriation%20Bill%20&%20Schedules.pdf>.
- 94 Funding of Represented Political Parties Act 7 of 2008. Available at: <http://www.kznlegislature.gov.za/Portals/0/KZN%20Funding%20of%20Political%20Parties%20Act-2008.1.pdf>.
- 95 KwaZulu-Natal Appropriation Bill, 2012. Available at: <http://www.treasury.gov.za/documents/provincial%20budget/2012/2.%20Provincial%20Appropriation%20Bills/KwaZulu-Natal%20Appropriation%20Bill%20&%20Schedules.pdf>.
- 96 The Limpopo Political Party Fund Act was apparently adopted on 26 November 2008. This is inferred from the Regulations promulgated in 2009, which refer to the Act. Available at: [www.greengazette.co.za/.../provincial-gazette-for-limpopo-1669-of-](http://www.greengazette.co.za/.../provincial-gazette-for-limpopo-1669-of-). The invitation to comment on the Bill, dated 26 November 2008, is available at: [www.greengazette.co.za/.../provincial-gazette-for-limpopo-1562-of-](http://www.greengazette.co.za/.../provincial-gazette-for-limpopo-1562-of-). The Appropriation Bill, 2012, had not been posted on the National Treasury website as at 3 September 2012.
- 97 Mpumalanga Political Party Support Fund Bill, 2008. Available at: [http://www.mpuleg.gov.za/docs/reports/2008/political\\_party.pdf](http://www.mpuleg.gov.za/docs/reports/2008/political_party.pdf).
- 98 The Mpumalanga Appropriation Bill, 2012, makes no reference to political-party funding. Available at: <http://www.treasury.gov.za/documents/provincial%20budget/2012/2.%20Provincial%20Appropriation%20Bills/Mpumalanga%20Appropriation%20Bill%20&%20Schedules.pdf>.
- 99 Northern Cape Political Party Fund Act 7 of 2009. Available at [www.greengazette.co.za/.../provincial-gazette-for-northern-cape-135...](http://www.greengazette.co.za/.../provincial-gazette-for-northern-cape-135...) [www.greengazette.co.za/.../provincial-gazette-for-northern-cape-136](http://www.greengazette.co.za/.../provincial-gazette-for-northern-cape-136). Regulations.
- 100 Northern Cape Appropriation Bill, 2012. Available at: <http://www.treasury.gov.za/documents/provincial%20budget/2012/2.%20Provincial%20Appropriation%20Bills/Northern%20Cape%20Appropriation%20Bill%20&%20Schedules.pdf>.
- 101 The promulgation of the North West Political Party Fund Act, 2010, is inferred from the promulgation of the Regulations, which are available at [www.greengazette.co.za/.../north-west-political-party-fund-act-2010-](http://www.greengazette.co.za/.../north-west-political-party-fund-act-2010-).
- 102 The North West Appropriation Bill, 2012. Available at: <http://www.treasury.gov.za/documents/provincial%20budget/2012/2.%20Provincial%20Appropriation%20Bills/North%20West%20Appropriation%20Bill%20&%20Schedules.pdf>.

- 103 Western Cape Appropriation Bill, 2012. Available at: <http://www.treasury.gov.za/documents/provincial%20budget/2012/2.%20Provincial%20Appropriation%20Bills/Western%20Cape%20Appropriation%20Bill%20&%20Schedules.pdf>.
- No record could be found of a Western Cape Political Party Fund Act. It is possible that this amount is an appropriation/transfer from the national Fund.
- 104 See below for details.
- 105 Section 2(1)(b) and (c) – assuming that the Act retains these provisions from the Bill published for public comment.
- 106 Information includes a statement by an MP during a meeting with one of the writers on 20 August 2012.
- 107 ‘DA dips into parties’ fund after all’ *Natal Witness* 24 February 2012. Available at: [http://www.witness.co.za/index.php?showcontent&global%5B\\_id%5D=77285](http://www.witness.co.za/index.php?showcontent&global%5B_id%5D=77285).
- 108 Auditor-General Report on KwaZulu-Natal for 2009/2010 at 29. Available at: [http://www.agsa.co.za/Reports%20Documents/KZN\\_GEN%20REPORT%20pfma%202008-09.pdf](http://www.agsa.co.za/Reports%20Documents/KZN_GEN%20REPORT%20pfma%202008-09.pdf).
- 109 For example, the Auditor General’s report on KwaZulu-Natal for 2009/2010 at 71 reported that parties had again not submitted their audited financial reports in due time. Available at: <http://www.agsa.co.za/Reports%20Documents/PMFA%202009-10%20KZN%20report.pdf>.
- 110 Initial corporate disclosures were encouraged by Idasa following the publication of its handbook, *Thinking It through: A Corporate Guide to Political Donations* Idasa, 2004. Subsequent corporate disclosures are arguably more likely to be made as a result of the growing influence of sustainability reporting, encouraged by various global and South African corporate governance standards and codes, although still not a standard requirement. But see MAPP’s separate policy brief, ‘The business case for party-funding reform’, which endeavours to argue that disclosure is fast becoming a normative standard, and is a result, in part, of tightening international anti-bribery laws and standards.
- 111 See, for example, a report on civil litigation by estate administrators to recover donations to the ANC by late businessman Brett Kebble. Available at: <http://m.news24.com/citypress/Politics/News/How-Kebble-bought-our-favour-ANC-20120428>; and a report on fundraising by the ANC’s PBF during the party’s Policy Conference in June 2012: ‘R500 00 for dining with Zuma’, available at: <http://m.iol.co.za/article/view/s/11/a/247585>. The report indicated that about 600 guests would pay between R2 500 and half a million rand, although some claimed to have been ‘invited’.
- 112 For example, ‘Why did Telkom donate money to SACP coffers?’ *IOL News* 18 July 2012. Available at: <http://www.iol.co.za/the-star/why-did-telkom-donate-money-to-sacp-coffers-1.1343688>.
- 113 ‘That the ANC used this model consciously is not speculation, as evidenced by the speech of the ANC’s Treasurer-General to the ANC’s 1997 Conference.’ See Chapter 7 ‘Ensuring reproduction: The ANC and its models of party funding, 1994 to 2011’ in *Who Rules South Africa? Pulling the Strings in the Battle for Power* Martin Plaut & Paul Holden, Jonathan Ball, 2012 at 198.
- 114 See, for example, ‘State procurement system review to ensure value for money: National Treasury update; Anti-Corruption Unit: DPSA update’ – Portfolio Committee on Public Service and Administration, Parliamentary Monitoring Group, 29 August 2012. Available at: [http://www.pmg.org.za/report/20120829-update-national-treasury-progress-made-regarding-review-state-procure?utm\\_source=Drupal&utm\\_medium=email&utm\\_campaign=Free%20Alerts](http://www.pmg.org.za/report/20120829-update-national-treasury-progress-made-regarding-review-state-procure?utm_source=Drupal&utm_medium=email&utm_campaign=Free%20Alerts).
- 115 Available at: <http://www.jse.co.za/About-Us/SRI/Criteria.aspx>.
- 116 The Charter is available at: <http://www.busa.org.za/projects.html>.
- 117 The decision to examine this sample was not based on any prior indication that these companies are either significant or minor donors, or that their practice is in any way representative or constitutes good or bad practice. The sample simply represents a relatively non-partisan point of departure from which to try to understand current corporate policy and practice. The same approach has been adopted when considering a second, smaller

sample of ten unlisted/private companies, as to which see below. An attempt has been made to assess recent and current practice, where records could be located in the public domain within a reasonable period of time.

- 118 Act 71 of 2008, which was further amended by the Companies Amendment Act 3 of 2011.
- 119 Companies Regulations, 2011, promulgated in terms of the provisions of section 223 of the Companies Act, 2011, by regulation Notice R. 351 in *Government Gazette* No. 34239 dated 26 April 2011.
- 120 See the criteria set out in Regulation 26(2). Unlisted and state-owned companies are explicitly included within the scope of these provisions. Nothing prevents either a small or very large private company from making a donation to a political party, elected politician or candidate for public office. Similarly, nothing prevents them from disclosing or declining to disclose any information about that donation, should they so choose. It was therefore considered both useful and necessary to also assess the practice of at least some of the larger privately owned companies operating in South Africa.
- 121 Principle 10: 'Businesses should work against all forms of corruption, including extortion and bribery.'
- 122 The CIPRO is the successor to the Companies and Intellectual Property Registration Office (CIPRO) – see section 185 of the Companies Act.
- 123 Such as *Who Owns Whom?* published by McGregor's. See <http://www.whoownswhom.co.za/web/>.
- 124 The Act and Regulations came into effect on 1 May 2011; see: <https://www.saica.co.za/News/MediaKit/Publications/Communiqu%C3%A9/Communiqu%C3%A930April2009/Companies-Act71of2008/tabid/1452/language/en-ZA/Default.aspx>.
- 125 These changes are the result of several factors, including the successive reports of the South African King Commission on corporate governance, and its corporate governance code, available from the Institute of Directors of South Africa – see <http://www.iodsa.co.za/PRODUCTSSERVICES/KingReportonGovernanceinSA/KingIII.aspx>; and the Global Reporting Initiative (GRI) aimed at promoting a 'sustainable global economy'; see <https://www.globalreporting.org/reporting/latest-guidelines/g4-developments/Pages/default.aspx>.
- 126 Examples include Dis-Chem Pharmacies and Consol Glass.
- 127 Version 3.1 2000–2011. Available at <https://www.globalreporting.org/resourcelibrary/G3.1-Sustainability-Reporting-Guidelines.pdf> at 38.
- 128 However, in the absence of a publicly available ranking of annual turnover of unlisted companies, no claim is made that these are the largest.
- 129 In keeping with their JSE listing, companies are listed according to market capitalisation, starting with the largest. Where no information is presented in Table 7 (e.g. where no donations are listed in recent years), it is because none could be either identified or located on a company website. Company data was gathered during the period November 2012 to mid-2013.
- 130 'Political Contributions' in 'Public Contributions' at 16 of *Standards of Business Conduct September 2011*. Available at: [http://www.batsa.co.za/group/sites/bat\\_7n3ml8.nsf/vwPagesWebLive/DO7NAGCG/\\$FILE/medMD8LBFLQ.pdf?openelement](http://www.batsa.co.za/group/sites/bat_7n3ml8.nsf/vwPagesWebLive/DO7NAGCG/$FILE/medMD8LBFLQ.pdf?openelement).
- 131 'Political Contributions' in 'Audit and Accountability' under 'Corporate Governance' at 61 of the BAT Group's 2012 Annual Report. Available at: [http://www.bat.com/group/sites/uk\\_3mfnf.nsf/vwPagesWebLive/DO52AK34/\\$FILE/medMD962MGH.pdf?openelement](http://www.bat.com/group/sites/uk_3mfnf.nsf/vwPagesWebLive/DO52AK34/$FILE/medMD962MGH.pdf?openelement).  
The only other political donation made by the Group was in Samoa.
- 132 'Political Contributions' in 'Accountability and Audit' under 'Corporate Governance' at 72 of the BAT Group's 2009 Annual Report. Available at: [http://www.bat.com/group/sites/uk\\_3mfnf.nsf/vwPagesWebLive/DO52AK34/\\$FILE/medMD83VF6K.pdf?openelement](http://www.bat.com/group/sites/uk_3mfnf.nsf/vwPagesWebLive/DO52AK34/$FILE/medMD83VF6K.pdf?openelement).  
The only political contribution reported was £76 969 in Australia.
- 133 'Political Contributions' in 'Accountability and Audit' under 'Corporate Governance' at 64 of the BAT Group's 2010 Annual Report. Available at: <http://www.bat.com/group/sites/>

uk\_\_3mnfen.nsf/vwPagesWebLive/DO52AK34/\$FILE/medMD8QZFTC.pdf?openelement.

The only political contributions reported totalled £114 245 in Australia, Canada and the Solomon Islands.

- 134 'Political Donations' in 'Audit and Accountability' under 'Corporate Governance' at 65 of the BAT Group's 2011 Annual Report. Available at: [http://www.bat.com/group/sites/uk\\_\\_3mnfen.nsf/vwPagesWebLive/DO52AK34/\\$FILE/medMD8SSECK.pdf?openelement](http://www.bat.com/group/sites/uk__3mnfen.nsf/vwPagesWebLive/DO52AK34/$FILE/medMD8SSECK.pdf?openelement).
- The only political donations reported totalled £209 104 in Australia and Jamaica.
- 135 BAT 2012 Annual Report. This is a relatively modest sum in comparison with amounts donated in other countries in previous years. However, the impact of the exchange rate may have been a factor.
- 136 SABMiller Annual Report 2009, Directors Report – see under 'Donations'. Available at: [http://www.sabmiller.com/files/reports/ar2009/governance/directors\\_report.html](http://www.sabmiller.com/files/reports/ar2009/governance/directors_report.html).
- 137 SABMiller Sustainable Development Report 2011 at 32. Available at: [http://www.sabmiller.com/files/reports/2010\\_SD\\_report.pdf](http://www.sabmiller.com/files/reports/2010_SD_report.pdf).
- 138 'SABMiller Announces South Africa's political donations'. Available at: [www.sabmiller.com/index.asp?pageid=149&newsid=890](http://www.sabmiller.com/index.asp?pageid=149&newsid=890).
- 139 SABMiller Annual Report 2009, Directors Report (note 136 above).
- 140 SABMiller Annual Report 2010, Directors Report at 48. Available at: [http://www.sabmiller.com/files/reports/ar2010/2010\\_annual\\_report.pdf](http://www.sabmiller.com/files/reports/ar2010/2010_annual_report.pdf).
- 141 SABMiller Annual Report 2011, Directors Report at 54. Available at: [http://www.sabmiller.com/files/reports/ar2011/2011\\_annual\\_report.pdf](http://www.sabmiller.com/files/reports/ar2011/2011_annual_report.pdf).
- 142 BHP Billiton Annual Report 2011, at 142. Available at: [http://www.bhpbilliton.com/home/investors/reports/Documents/2011/BHPBillitonAnnualReport2011\\_Interactive.pdf](http://www.bhpbilliton.com/home/investors/reports/Documents/2011/BHPBillitonAnnualReport2011_Interactive.pdf).
- Also found in BHP Billiton Code of Business Conduct, at 3. Available at: <http://www.bhpbilliton.com/home/aboutus/ourcompany/Pages/codeofbusconduct.aspx>.
- 143 BHP Billiton Sustainability Report 2011 at 37. Available at: [http://www.bhpbilliton.com/home/aboutus/sustainability/reports/Documents/2011/BHPBillitonSustainabilityReport2011\\_Interactive.pdf](http://www.bhpbilliton.com/home/aboutus/sustainability/reports/Documents/2011/BHPBillitonSustainabilityReport2011_Interactive.pdf).
- 144 No reference to the issue in the Sustainability Report 2009. Available at: <http://www.bhpbilliton.com/home/investors/reports/Documents/2009/sustainabilitySummaryReport2009.pdf>. However, the Annual Report 2009 contains the above statement at 169. Available at: <http://www.bhpbilliton.com/home/investors/reports/Documents/2009/annualReport2009.pdf>.
- 145 BHP Billiton Annual Report 2010 at 181. Available at: <http://www.bhpbilliton.com/home/investors/reports/Documents/bhpBillitonAnnualReport2010.pdf>.
- 146 BHP Billiton Annual Report 2011 at 155. Available at: <http://www.bhpbilliton.com/home/investors/reports/Documents/2011/BHPBillitonAnnualReport2011.pdf>.
- 147 Anglo American plc Annual Report 2011, Director's Report 2011, at 119. Available at: [http://ar11.angloamerican.com/\\_assets/pdf/final/AA\\_AR2011\\_Gov\\_DirRep.pdf](http://ar11.angloamerican.com/_assets/pdf/final/AA_AR2011_Gov_DirRep.pdf).
- 148 An act of the Parliament of the United Kingdom that sets out how political parties, elections and referendums are to be regulated in the United Kingdom. Available at: <http://www.legislation.gov.uk/ukpga/2000/41/contents>.
- 149 'Anglo discloses SA political donations' Laurian Clemence. Available at: <http://www.polity.org.za/article/anglo-discloses-sa-political-donations-2004-02-14>.
- 150 <http://www.southafrica.info/news/business/354099.htm>.
- 151 Anglo American plc Annual Report 2009 at 72. Available at: [http://ar09.angloamerican.solutions.investis.com/downloads/Anglo\\_American\\_2009\\_Annual\\_Report.pdf](http://ar09.angloamerican.solutions.investis.com/downloads/Anglo_American_2009_Annual_Report.pdf).
- 152 Anglo American plc Annual Report 2010 at 113. Available at: <http://www.angloamerican.co.za/~media/Files/A/Anglo-American-South-Africa/Attachments/media/annual-report-2010.pdf>.
- 153 Anglo American plc Annual Report 2011 at 119. Available at: <http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/reports/aa-annual-report-2011.pdf>.



- 154 MTN Sustainability Report 2011 at 50. Available at: [http://www.mtn.com/Sustainability/Documents/tabs/PDF/MTN\\_Sustainability\\_report2011.pdf](http://www.mtn.com/Sustainability/Documents/tabs/PDF/MTN_Sustainability_report2011.pdf).
- 155 See note 154 above.
- 156 MTN Group Ltd Business Report 2004. Available at: [http://www.mtn-investor.com/reporting/annual\\_reports/br\\_2004.pdf](http://www.mtn-investor.com/reporting/annual_reports/br_2004.pdf).
- 157 'MTN donates R13 million to political parties' Nozipho January-Bardill. Available at: <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=121240&sn=Detail&pid=71619>.
- 158 MTN Group Annual Report 2009, Corporate Governance Report. Available at: [http://www.mtn-investor.com/mtn\\_ar09/book1/cg\\_regulatory\\_4.html](http://www.mtn-investor.com/mtn_ar09/book1/cg_regulatory_4.html).
- 159 MTN Group Sustainability Report 2010 at 66. Available at: [http://www.mtn.com/Investors/Financials/Documents/MTN\\_Sustainability\\_report2010.pdf](http://www.mtn.com/Investors/Financials/Documents/MTN_Sustainability_report2010.pdf).
- No additional information, explanation or elaboration is provided in the Sustainability Report, the Integrated Report or the Corporate Governance Report for 2010.
- 160 MTN Group Sustainability Report 2011 at 50. Available at: [http://www.mtn.com/Investors/Financials/Documents/MTN\\_Sustainability\\_report2011.pdf](http://www.mtn.com/Investors/Financials/Documents/MTN_Sustainability_report2011.pdf).
- No details are provided.
- 161 Richemont's Corporate Social Responsibility Guidelines at 8. Available at: [http://www.richemont.com/images/csr/2012/extract\\_corporate\\_social\\_responsibility\\_guidelines\\_based\\_on\\_jul08\\_version.pdf](http://www.richemont.com/images/csr/2012/extract_corporate_social_responsibility_guidelines_based_on_jul08_version.pdf).
- Richemont has interests in 20 other entities. An analysis of their policies and practices is beyond the scope of this study.
- 162 Guide to the Application of Sasol's Code of Ethics, at 7. Available at: [http://www.sasol.com/sasol\\_internet/frontend/navigation.jsp?navid=6900012&rootid=2](http://www.sasol.com/sasol_internet/frontend/navigation.jsp?navid=6900012&rootid=2).
- The use of the term 'activities' appears to signal a broader and more comprehensive statement of intent that may be interpreted, for example, to include donations to individual candidates.
- 163 Guide to the Application of Sasol's Code of Ethics (note 162 above) at 7. The Code is available at: [http://www.sasol.com/sites/default/files/content/files/Sasol\\_Code\\_Ethics\\_1341835864434.pdf](http://www.sasol.com/sites/default/files/content/files/Sasol_Code_Ethics_1341835864434.pdf); and the Guide at: [http://www.sasol.com/sites/default/files/content/files/Sasol\\_Ethics\\_Guide.pdf](http://www.sasol.com/sites/default/files/content/files/Sasol_Ethics_Guide.pdf).
- 164 Naspers' Code of Ethics and Business Conduct at 6. Available at: [http://www.naspers.co.za/cmsAdmin/uploads/naspers\\_code\\_of\\_ethics\\_and\\_business\\_conduct\\_oct\\_2010.pdf](http://www.naspers.co.za/cmsAdmin/uploads/naspers_code_of_ethics_and_business_conduct_oct_2010.pdf).
- No criteria or reports of particular donations could be located.
- 165 See the updated Code of Ethics. Available at: [http://www.naspers.com/cmsAdmin/uploads/code-of-ethics-and-business-conduct\\_june-2012.pdf](http://www.naspers.com/cmsAdmin/uploads/code-of-ethics-and-business-conduct_june-2012.pdf).
- 166 'Standard Bank to donate R5 million to parties' James Myburgh. Available at: <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=120489&sn=Detail>.
- 167 Standard Bank's Sustainability Report 2011 at 15. Available at: <http://www.standardbank.co.za/standing/campaigns/cibDocs/SBPlcAFS2011.pdf>.
- 168 'Standard Bank to donate R5 million' (note 166 above).
- 169 Standard Bank's Sustainability Report (note 167 above).
- 170 Vodacom Code of Conduct at 3. Available at: [http://www.vodacom.com/pdf/code\\_of\\_conduct\\_new.pdf](http://www.vodacom.com/pdf/code_of_conduct_new.pdf). As in several other instances, this brief statement does not clearly exclude the possibility of 'non-interventionist' donations to politically aligned entities or individuals.
- 171 See 'Ethics Management' under 'Sustainability'. Available at: [www.firststrand.co.za/Sustainability/Pages/ethics-management](http://www.firststrand.co.za/Sustainability/Pages/ethics-management). The Code could not be located in order to clarify this terse statement. It is potentially contradictory to say that no political donations may be made, but then provide guidelines – unless, perhaps, 'political' and/or 'donations' have

a particular meaning, for example, in terms of which donations in kind may be permissible, but not directly to a registered political party per se.

- 172 FirstRand Sustainability Report Summary 2004 at 19. Available at: <http://www.firststrand.co.za/Sustainability/ReportsToSocietyFRB/SustainabilitySummary2004.pdf>.
- 173 FirstRand Integrated Annual Report 2011 at 72. Available at:  
<http://www.firststrand.co.za/InvestorCentre/Annual%20Reports%20Archives/FirstRand%20annual%20report%202011.pdf>.
- 174 Kumba Iron Ore's Sustainability Report 2011, under 'Donations and Gifts'. Available at:  
[http://www.kumba.co.za/reports/kumba\\_ar2011/sustainability/ov\\_gov.php](http://www.kumba.co.za/reports/kumba_ar2011/sustainability/ov_gov.php).
- 175 'Kumba donates funds to political parties'. Available at: <http://www.miningweekly.com/article/kumba-donates-funds-to-sa-parties-2004-03-09>.  
See also Kumba Resources Annual Report 2004 at 88. Available at: [http://www.exxaro.com/financials/annualreport2004/pdfs/kumba\\_ar2004screen.pdf](http://www.exxaro.com/financials/annualreport2004/pdfs/kumba_ar2004screen.pdf).
- 176 Kumba Iron Ore Sustainable Development Review 2009 at 69. Available at: [http://www.kumba.co.za/pdf/reports/kumba\\_ar09/sustainable\\_review\\_full\\_2009.pdf](http://www.kumba.co.za/pdf/reports/kumba_ar09/sustainable_review_full_2009.pdf).
- 177 Anglo Platinum's Sustainable Development Report 2003, under 'Social Impacts'. Available at:  
[http://www.angloplatinum.com/investors/reports/ar\\_03/sd\\_rprt/social\\_impacts/society.htm#3](http://www.angloplatinum.com/investors/reports/ar_03/sd_rprt/social_impacts/society.htm#3).
- 178 Under 'Business Integrity' at 6 of 'Good Citizenship: Business Principles, Living our Values' booklet 2012. Available at: [http://www.angloplatinum.com/pdf/Business\\_principles\\_Booklet-2012.pdf](http://www.angloplatinum.com/pdf/Business_principles_Booklet-2012.pdf).
- 179 Sustainable Development Report (note 177 above).
- 180 <http://www.polity.org.za/article/anglo-discloses-sa-political-donations-2004-02-14>.
- 181 Sustainable Development Report 2009 at 140. Available at: [http://angloplatinum.investoreports.com/angloplatinum\\_arpdf\\_2009/downloads/angloplatinum\\_sdr\\_2009.pdf](http://angloplatinum.investoreports.com/angloplatinum_arpdf_2009/downloads/angloplatinum_sdr_2009.pdf).
- 182 Sustainable Development Report 2010 at 155. Available at: [http://investoreports.com/angloplatinumar2010\\_pdfs/downloads/angloplatinum\\_sdr\\_2010.pdf](http://investoreports.com/angloplatinumar2010_pdfs/downloads/angloplatinum_sdr_2010.pdf).
- 183 Integrated Annual Report 2011. Available at: [http://angloplatinum.investoreports.com/angloplatinum\\_iar\\_2011/downloads/angloplatinum\\_iar\\_2011.pdf](http://angloplatinum.investoreports.com/angloplatinum_iar_2011/downloads/angloplatinum_iar_2011.pdf).  
Sustainable Development Report 2011. Available at: [http://angloplatinum.investoreports.com/angloplatinum\\_iar\\_2011/downloads/angloplatinum\\_sdr\\_2011.pdf](http://angloplatinum.investoreports.com/angloplatinum_iar_2011/downloads/angloplatinum_sdr_2011.pdf).
- 184 Old Mutual Corporate Citizen Report 2008 at 41. Available at: [http://www.oldmutual.co.za/corporate\\_report/downloads/OM-CCR-Volume-1-About-Us.pdf](http://www.oldmutual.co.za/corporate_report/downloads/OM-CCR-Volume-1-About-Us.pdf).
- 185 Old Mutual's Annual Report and Accounts 2010 is available at: <http://financials.oldmutual.com/download/11181/2011-04-04-Old-Mutual-Annual-report-and-accounts-2010.pdf>. The report could not be downloaded and searched electronically, and no mention of the issue could be found using a manual search in the anticipated sections of the report.
- 186 Old Mutual's Annual Report and Accounts 2011 at 106 under 'Governance' at 133ff. Available at: <http://financials.oldmutual.com/download/12153/Old%20Mutual%20Annual%20Report%202011.pdf>. Individual companies in the Group appear to be at liberty to take their own decisions about 'political donations'.
- 187 Absa's Integrated Sustainability Report 2009 at 4 under 'Sustainability'. Available at: [http://financialresults.co.za/2010/absa\\_ar2009/downloads/22\\_full\\_sustainability\\_review.pdf](http://financialresults.co.za/2010/absa_ar2009/downloads/22_full_sustainability_review.pdf).
- 188 Absa GRI Report 2011, SO 6. Available at: [http://absa.investoreports.com/absa\\_iar\\_2011/absa-at-a-glance/gri-index/](http://absa.investoreports.com/absa_iar_2011/absa-at-a-glance/gri-index/).
- 189 Absa's Integrated Sustainability Report (note 187 above).
- 190 Absa's Integrated Sustainability Report 2009, under 'Democracy Support Programme'. Available at: [http://financialresults.co.za/2010/absa\\_ar2009/sustainability\\_integrated\\_sustainability.html](http://financialresults.co.za/2010/absa_ar2009/sustainability_integrated_sustainability.html).
- 191 See: [http://financialresults.co.za/2010/absa\\_ar2009/sustainability\\_integrated\\_sustainability.html](http://financialresults.co.za/2010/absa_ar2009/sustainability_integrated_sustainability.html).

- 192 See [http://absa.investoreports.com/absa\\_ar\\_2010/governance-remuneration-risk-and-controls/governance-and-accountability/corporate-governance-statement/](http://absa.investoreports.com/absa_ar_2010/governance-remuneration-risk-and-controls/governance-and-accountability/corporate-governance-statement/).
- 193 See: [http://absa.investoreports.com/absa\\_iar\\_2011/absa-at-a-glance/gri-index/](http://absa.investoreports.com/absa_iar_2011/absa-at-a-glance/gri-index/).
- 194 AngloGold Ashanti's policy on political-party donations. Available at: <http://www.anglogold.co.za/NR/rdonlyres/4A23E9BB-D0E1-4B95-AF35-774350CE9402/0/12PoliticalDonationsPolicy.pdf>.
- 195 See note 194 above.
- 196 'AngloGold Ashanti announces party political donations for South Africa's 2009 election'. Available at: <http://www.anglogold.co.za/Additional/Press/2009/AngloGold+Ashanti+announces+party+political+donations+for+South+Africa%E2%80%99s+2009+election.htm>.
- 197 This was part of a total amount of USD760244 donated to various political parties in Brazil, the USA, South Africa and Guinea. The donation in South Africa was 'towards membership of the Progressive Business Forum [a forum to facilitate the interaction between party leaders and business people]'. GRI SO 6 (Additional) at 63 of AngloGold Ashanti's Annual Review 2010 (Supplementary Information). Available at: <http://www.anglogold.co.za/subwebs/InformationForInvestors/Reports10/sustainability/files/AGA-supplementary-information-2010.pdf>.
- 198 'In South Africa, an amount of approximately USD18000 was paid to the African National Congress Youth League. Its purpose was to enable AngloGold Ashanti personnel to attend the League's conference where the question of mines nationalisation was being discussed. It was not intended as a donation. The amount is however declared as it was, in effect, a financial contribution to a political organisation. No other political party donations were made.' See AngloGold Ashanti's Sustainability Report 2011 (Supplementary Information). Available at: <http://www.aga-reports.com/11/sustainability-report/supplementary-information/responsible-gold>.
- 199 Shoprite Holdings Corporate Governance, under 'Corporate Responsibility'. Available at: <http://www.shopriteholdings.co.za/pages/1019812640/corporate-responsibility/corporate-governance/Corporate-Governance---Internal-Accountability.asp>.
- It is possible to interpret this statement to mean that the company may consider donations to several political parties, provided that these donations take place simultaneously.
- 200 Shoprite Annual Report 2010, Governance and Sustainability at 56. Available at: <http://www.shopriteholdings.co.za/InvestorCentre/Documents/2010/GovernanceAndSustainability.pdf>.
- 201 Shoprite Holdings Integrated Annual Report 2011 at 27. Available at: [http://www.shopriteholdings.co.za/InvestorCentre/Documents/June\\_2012\\_Shoprite\\_WEBIntegrated\\_Report.pdf](http://www.shopriteholdings.co.za/InvestorCentre/Documents/June_2012_Shoprite_WEBIntegrated_Report.pdf).
- 202 'Enterprise Governance and Compliance' in Nedbank's Sustainability Report 2008. Available at: [http://www.nedbankgroup.co.za/financials/2008Sustainability/governance\\_political.asp](http://www.nedbankgroup.co.za/financials/2008Sustainability/governance_political.asp); and Nedbank's 'Overview'. Available at: <http://www.nedbank.co.za/website/content/sponsorships/>.
- 203 See: <http://www.nedbankgroup.co.za/sustainabilityGRI.asp> (undated).
- 204 Nedbank's 2009 Annual Report at 202. Available at: [http://financials.oldmutual.com/download/10106/2009\\_nedbank\\_annual\\_report.pdf](http://financials.oldmutual.com/download/10106/2009_nedbank_annual_report.pdf).
- As mentioned elsewhere, however, this phraseology may leave open the options of donations to individuals or individual candidates, or, perhaps less defensibly, multiple simultaneous donations to political parties.
- 205 Impala Platinum's Integrated Annual Report 2011 at 86. Available at: [http://www.implats.co.za/implats/downloads/2011/annual%20reports/Implats%20AR\\_Combined\\_LoRes.pdf](http://www.implats.co.za/implats/downloads/2011/annual%20reports/Implats%20AR_Combined_LoRes.pdf).
- 206 Impala Platinum's Sustainable Development Report 2011, 'Statutory reporting and notes to the non-financial statements'. Available at: [http://www.financialresults.co.za/2011/implats\\_sr2011/cn-statutory.php](http://www.financialresults.co.za/2011/implats_sr2011/cn-statutory.php).
- 207 Sanlam's Code of Ethics and Conduct. Available at: [http://www.sanlam.co.za/wps/wcm/connect/sanlam\\_en/Sanlam/About+Sanlam/Business+Vision+and+Strategy/Code+of+Conduct+and+Ethics/](http://www.sanlam.co.za/wps/wcm/connect/sanlam_en/Sanlam/About+Sanlam/Business+Vision+and+Strategy/Code+of+Conduct+and+Ethics/) under code of conduct and ethics. As with many companies, the possibility of donations to individuals is not apparently explicitly excluded.

- 208 Code of Ethics and Conduct (note 207 above).
- 209 Annual Report 2009 could not be downloaded.
- 210 Annual Report 2010 could not be downloaded.
- 211 Annual Report 2011 could not be downloaded.
- 212 Sanlam Integrated Annual Report 2011 Vol. 2 at 154. Available at: <http://www.sanlam.co.za/wps/wcm/connect/f8de35004ab300bcaadfef203556fee9/Sanlam+Volume+2+hi.pdf?MOD=AJPERES>.
- 213 Gold Fields Code of Ethics at 8. Available at: [http://www.goldfields.co.za/pdf/code\\_of\\_ethics\\_24102011/coe\\_english.pdf](http://www.goldfields.co.za/pdf/code_of_ethics_24102011/coe_english.pdf).
- 214 Note 213 above.
- 215 Gold Fields Sustainable Development Report 2009 at 60. Available at: [http://goldfields.co.za/reports/annual\\_report\\_2009/pdf/sus\\_dev\\_2009.pdf](http://goldfields.co.za/reports/annual_report_2009/pdf/sus_dev_2009.pdf).
- 216 See: [http://www.goldfields.co.za/reports/annual\\_report\\_2004/downloads/pdfs/Goldfields\\_AR\\_04\\_complete.pdf](http://www.goldfields.co.za/reports/annual_report_2004/downloads/pdfs/Goldfields_AR_04_complete.pdf).
- 217 Gold Fields Annual Report 2009 at 87. Available at: [http://goldfields.co.za/reports/annual\\_report\\_2009/pdf/full.pdf](http://goldfields.co.za/reports/annual_report_2009/pdf/full.pdf).
- 218 Gold Fields GRI Sustainability Report 2010 at 13. Available at: [http://www.goldfields.co.za/reports/annual\\_report\\_2011/pdf/gri\\_intergrated.pdf](http://www.goldfields.co.za/reports/annual_report_2011/pdf/gri_intergrated.pdf).
- The report indicates that SO 6 is not reported on, but provides no reason, which it ought to do in terms of GRI's (like King III's) 'comply or explain' approach. It does, however, refer the reader to the 'IAR' (assumed to mean the Integrated Annual Report) at 172. The Annual Report 2010 (for the year ended 30 June 2010) is not stated to be an 'integrated' report and nothing of relevance was identified at 172, available at: [http://www.goldfields.co.za/reports/annual\\_report\\_2010/pdf/full.pdf](http://www.goldfields.co.za/reports/annual_report_2010/pdf/full.pdf). However, the statement quoted here may be found at 173 of its 'Integrated Annual Report for the 6 months ended 31 December 2010', which is rather curiously available at: [http://www.goldfields.co.za/reports/annual\\_report\\_2011/pdf/full\\_new.pdf](http://www.goldfields.co.za/reports/annual_report_2011/pdf/full_new.pdf).
- 219 See Gold Fields Integrated Annual Report 2010 (note 218 above) at 158. Neither the identity of the leaders, nor the costs of arranging and undertaking are disclosed.
- 220 Note 219 above at 173. Many politically 'well-connected' individuals are repeatedly part of several BEE deals by a large number of companies using a diverse range of processes/structures/vehicles. Accordingly, many of these deals may, in effect, entail an element of indirect funding support to political parties, as those individuals may choose to donate without legal restriction or transparency requirement any part of the proceeds of those deals to a political party or individual candidates. The concept of a 'social and political licence to operate' is mentioned also at 15 of the Gold Fields Integrated Annual Review 2011, available at: [http://www.goldfields.co.za/reports/ar\\_dec\\_2011/pdf/integrated\\_ann\\_rev\\_2011.pdf](http://www.goldfields.co.za/reports/ar_dec_2011/pdf/integrated_ann_rev_2011.pdf).
- Gold Fields should not be singled out here: many companies understand BEE as a 'social, economic and political imperative'.
- 221 Gold Fields Integrated Annual Review 2011 (note 220 above) at 25. Available at: [http://www.goldfields.co.za/reports/ar\\_dec\\_2011/pdf/integrated\\_ann\\_rev\\_2011.pdf](http://www.goldfields.co.za/reports/ar_dec_2011/pdf/integrated_ann_rev_2011.pdf).
- See also 154.
- 222 Note 221 above at 154.
- 223 'Investing in the Community' at 105 of Remgro's 2012 Integrated Annual Report. Available at: [http://www.remgro.com/pdf/2012/Remgro\\_AR\\_2012\\_ENG.pdf](http://www.remgro.com/pdf/2012/Remgro_AR_2012_ENG.pdf).
- 224 Remgro Annual Report 2004. Available at: [http://www.remgro.com/financials/annual2004/PDF/remgro\\_annualreport2004.pdf](http://www.remgro.com/financials/annual2004/PDF/remgro_annualreport2004.pdf).
- 225 Remgro Annual Report 2009 at 43. Available at: [http://www.remgro.com/financials/annual2009eng/pdfs/00\\_ar2009ENG.pdf](http://www.remgro.com/financials/annual2009eng/pdfs/00_ar2009ENG.pdf).

- 226 Remgro Annual Report 2010 at 73. Available at: [http://www.remgro.com/financials/annual2010eng/pdfs/00\\_ar2010ENG.pdf](http://www.remgro.com/financials/annual2010eng/pdfs/00_ar2010ENG.pdf).
- 227 Remgro Annual Report 2011 at 105. Available at: [http://www.remgro.com/pdf/Remgro\\_Integrated\\_Report\\_2011.pdf](http://www.remgro.com/pdf/Remgro_Integrated_Report_2011.pdf).
- 228 Bidvest Group Code of Conduct, March 2012, at 3. Available at: <http://www.bidvest.com/downloads/Bidvest%20Group%20-%20Code%20of%20Ethics.pdf>.
- 229 Bidvest Annual Report 2004. Available at: <http://www.bidvest.com/downloads/pdf/Bidvest%20complete.pdf>.
- 230 Bidvest Annual Report 2009. Additional sustainability information available at: [http://financialresults.co.za/bidvest\\_ar2009/003.htm](http://financialresults.co.za/bidvest_ar2009/003.htm).
- 231 Bidvest Annual Report 2010. Additional sustainability information available at: [http://bidvest.com/financials/ar/bidvest\\_ar2010/002b.php](http://bidvest.com/financials/ar/bidvest_ar2010/002b.php).
- 232 Bidvest Annual Integrated Report 2011. Available at: [http://bidvest.com/ar/bidvest\\_ar2011/downloads/bidvest\\_ar2011.pdf](http://bidvest.com/ar/bidvest_ar2011/downloads/bidvest_ar2011.pdf) and [http://bidvest.com/ar/bidvest\\_ar2011/downloads.php](http://bidvest.com/ar/bidvest_ar2011/downloads.php).
- 233 Aspen Annual Report 2011, 'Corporate Values and Ethics'. Available at: [http://financialresults.co.za/2011/aspen\\_ar2011/corp-gov.php](http://financialresults.co.za/2011/aspen_ar2011/corp-gov.php).
- 234 Aspen Holdings Annual Report 2004, Integrated Sustainability Report. Available at: [http://www.aspenpharma.com/southafrica/Annrep\\_2004/downloads/aspen\\_intg\\_sustainability.pdf](http://www.aspenpharma.com/southafrica/Annrep_2004/downloads/aspen_intg_sustainability.pdf).  
Corporate Governance Report. Available at: [http://www.aspenpharma.com/southafrica/Annrep\\_2004/downloads/aspen\\_corpgovernance.pdf](http://www.aspenpharma.com/southafrica/Annrep_2004/downloads/aspen_corpgovernance.pdf).
- 235 Aspen Pharmacare Holdings Limited Annual Report 2009 at 86. Available at: <http://www.aspenpharma.com/SiteResources/documents/Aspen%20Pharmacare%20Holdings%20Limited%20Annual%20Report%202009.pdf>.

However, an employee's 'right to participate in political activities, in his/her personal capacity, is acknowledged provided that it does not compromise productivity and that it does not, in any way, link the employee's political actions to Aspen'.

- 236 Aspen Pharmacare Holdings Limited Annual Report 2010 at 99. Available at: <http://www.aspenpharma.com/SiteResources/documents/Financials/2010/Aspen%20Pharmacare%20Holdings%20Limited%20Annual%20Report%202010.pdf>.
- 237 Aspen Pharmacare Holdings Limited Annual Report 2011 at 70. Available at: <http://www.aspenpharma.com/SiteResources/documents/Aspen%202011%20Annual%20Report%20Low%20res.pdf>.
- 238 Exxaro Integrated Annual Report 2011 at 53. Available at: [http://www.exxaro-reports.co.za/reports/ar\\_2011/integrated/pdf/integrated\\_annual\\_report.pdf](http://www.exxaro-reports.co.za/reports/ar_2011/integrated/pdf/integrated_annual_report.pdf).
- 239 Note 238 above.
- 240 Exxaro Annual Report 2009. Available at: [http://financialresults.co.za/2010/exxaro\\_ar2009/gov\\_gri.htm](http://financialresults.co.za/2010/exxaro_ar2009/gov_gri.htm).
- 241 Exxaro Annual Report 2010. Available at: [http://financialresults.co.za/2011/exxaro\\_ar2010/gr-gri-index03.html](http://financialresults.co.za/2011/exxaro_ar2010/gr-gri-index03.html).
- 242 Exxaro Integrated Annual Report 2011 at 53. Available at: [http://www.exxaro-reports.co.za/reports/ar\\_2011/integrated/pdf/integrated\\_annual\\_report.pdf](http://www.exxaro-reports.co.za/reports/ar_2011/integrated/pdf/integrated_annual_report.pdf).
- 243 Tiger Brands Code of Ethics at 5. Available at: <http://www.tigerbrands.co.za/TBG%20Code%20of%20Ethics.pdf>.
- 244 Tiger Brands Integrated Annual Report 2009, 'Corporate Governance'. Available at: [http://financialresults.co.za/tiger\\_ar2009/corporate\\_governance\\_04.htm](http://financialresults.co.za/tiger_ar2009/corporate_governance_04.htm).
- 245 Tiger Brands Integrated Annual Report 2010, 'Corporate Governance'. Available at: [http://financialresults.co.za/2010/tiger\\_ar2010/gv\\_corp\\_gov03.php](http://financialresults.co.za/2010/tiger_ar2010/gv_corp_gov03.php).

The reporting statement here is noticeably narrower than the provision in the Code of Ethics (above).



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- 247 RMB Holdings Corporate Governance, 'Ethics'. Available at: [http://www.rmbh.co.za/about\\_corporategovernance.htm](http://www.rmbh.co.za/about_corporategovernance.htm).
- 248 RMB Holdings Annual Report 2004. Available at: [http://www.rmbh.co.za/financial\\_annual2004.htm](http://www.rmbh.co.za/financial_annual2004.htm).
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- 250 RMB Holdings Annual Report 2010. Available at: <http://www.rmbh.co.za/reports/annual2010/index.htm>, and <http://www.rmbh.co.za/reports/annual2010/corporateGovernance.htm>, and <http://www.rmbh.co.za/reports/annual2010/sustainabilityReport.htm>.
- 251 RMB Holdings Annual Report 2011. Available at: <http://www.rmbh.co.za/reports/annual2011/index.htm>, and <http://www.rmbh.co.za/reports/annual2011/corporateGovernance.htm>, and <http://www.rmbh.co.za/reports/annual2011/sustainabilityReport.htm>.
- 252 [http://www.woolworthsholdings.co.za/governance/governance\\_policies.asp](http://www.woolworthsholdings.co.za/governance/governance_policies.asp).
- 253 2012 Integrated Report at 25. Available at: [http://www.woolworthsholdings.co.za/downloads/2012/2012\\_integrated\\_report.pdf](http://www.woolworthsholdings.co.za/downloads/2012/2012_integrated_report.pdf).
- 254 Good Business Journey Report 2012 at 95. Available at: [http://www.woolworthsholdings.co.za/downloads/2012/good\\_business\\_journey\\_report\\_2012.pdf](http://www.woolworthsholdings.co.za/downloads/2012/good_business_journey_report_2012.pdf).
- It is not entirely clear whether this means that it is company policy not to make such donations, or whether no donations were made during this financial year that were in accordance with company policy.
- 255 Woolworths Annual Report 2009, 'Sustainability Report' at 44. Available as a zip file at: [http://www.woolworthsholdings.co.za/investor/financial\\_results.asp](http://www.woolworthsholdings.co.za/investor/financial_results.asp).
- 256 Note 255 above at 47.
- 257 Woolworths Good Business Journey Report 2009 at 58. Available at: [http://www.woolworthsholdings.co.za/downloads/whl\\_good\\_business\\_journey\\_2009.pdf](http://www.woolworthsholdings.co.za/downloads/whl_good_business_journey_2009.pdf).
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- 259 Woolworths Holdings Ltd Good Business Journey Annual Report 2011 at 83. Available at: [http://ceowatermandate.org/files/endorsing/2011\\_good\\_business\\_journey\\_report.pdf](http://ceowatermandate.org/files/endorsing/2011_good_business_journey_report.pdf).
- See comment in fn 253 above.
- 260 See: <http://www.growthpoint.co.za/Pages/CompanyEthics.aspx>. They are stated at this link to be available only on the company's intranet and to be available only to employees.
- 261 Growthpoint Properties Annual Report 2009 cannot be located and downloaded from: <http://www.growthpoint.co.za/Pages/AnnualResultsReview.aspx>.
- 262 Growthpoint Properties Annual Report 2010. Available at: [http://www.growthpoint.co.za/annualresultsreview/Annual\\_Review\\_Full\\_Version.pdf](http://www.growthpoint.co.za/annualresultsreview/Annual_Review_Full_Version.pdf).
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- 264 Steinhoff International's Code of Ethics at 13. Available at: [http://www.steinhoff-international.com/downloads/SHF\\_CODE\\_OF\\_ETHICS.pdf](http://www.steinhoff-international.com/downloads/SHF_CODE_OF_ETHICS.pdf).
- 265 Steinhoff Corporate Sustainability Report 2012, under 'Steinhoff Code of Ethics: The Steinhoff Code of Conduct – Ethical Behaviour Is Good Business'. Available at: [http://www.steinhoffinternational.com/corporate\\_sustreport\\_people\\_codeethics.php](http://www.steinhoffinternational.com/corporate_sustreport_people_codeethics.php).
- 266 Steinhoff Annual Report 2009 at 76. Available at: [http://www.steinhoffinternational.com/downloads/ar\\_2009.pdf](http://www.steinhoffinternational.com/downloads/ar_2009.pdf).

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- 269 Steinhoff's Integrated (Annual) Report 2011 at 82. Available at: <http://www.steinhoff-international.com/downloads/steinhoff-IR-2011.pdf>.
- 270 Investec Annual Report 2011 at 10. Available at: [http://www.investec.co.za/content/dam/investec/investec-international/documents/Investor%20Relations/Financial%20Results/financialresults2011/Notices\\_of\\_AGM.pdf](http://www.investec.co.za/content/dam/investec/investec-international/documents/Investor%20Relations/Financial%20Results/financialresults2011/Notices_of_AGM.pdf).
- 271 Investec Sustainability Report 2012. Available at: <http://www.investec.co.za/about-investec/sustainability/people/people-south-africa/Philanthropic-Donations.html> under 'Philanthropic Donations'.
- 272 Investec Annual Report 2012 at 391. Available at: <http://www.investec.co.za/content/dam/investec/investec-international/documents/Investor%20Relations/Annual%20Report%202012/DLC%20annual%20report%202012%20FA.PDF>.
- 273 Investec Sustainability Report 2004 at 22. Available at: <http://miranda.hemscott.com/ir/invp/ar2004/download/pdf/final-sustainability.pdf>. See also 'SO 1–3: Policies to manage impacts on communities, to address bribery and corruption, and political contributions on request. Bribery and corruption policy is available on request. SR: pages 19, 32, 33 and 39' – at 45.
- 274 Investec Annual Report 2009 at 329 'AGM Resolution 37'. Available at: [http://investec.investoreports.com/investec\\_ar\\_2009/downloads/investec\\_ar\\_2009.pdf](http://investec.investoreports.com/investec_ar_2009/downloads/investec_ar_2009.pdf).
- It is unclear whether this resolution applied for longer than the financial year in respect of which it was taken. No reference is made to the issue in the Business Responsibility Report 2009, available at: [http://investec.investoreports.com/investec\\_ar\\_2009/downloads/segmented/segment\\_5.pdf](http://investec.investoreports.com/investec_ar_2009/downloads/segmented/segment_5.pdf), or in the Risk and Governance Report 2009, available at: [http://investec.investoreports.com/investec\\_ar\\_2009/downloads/segmented/segment\\_3.pdf](http://investec.investoreports.com/investec_ar_2009/downloads/segmented/segment_3.pdf).
- 275 Investec Annual Report 2010. Available at: [http://investec.investoreports.com/investec\\_ar\\_2010/downloads/investec\\_ar\\_2010.pdf](http://investec.investoreports.com/investec_ar_2010/downloads/investec_ar_2010.pdf).
- This could not be downloaded and searched electronically. The reference on 271 to the Our Business Responsibility 2010 Report available at <http://www.investec.co.za/about-investec/sustainability.html> yielded no additional relevant information. There is no evident discussion of 'sustainability' issues.
- 276 Investec Integrated Annual Report 2011. Available at: [http://investec.investoreports.com/investec\\_ar\\_2011/downloads/investec\\_ar\\_2011.pdf](http://investec.investoreports.com/investec_ar_2011/downloads/investec_ar_2011.pdf).
- This could not be downloaded and searched electronically. There is no evident discussion of 'sustainability' issues. GRI SO 1–8 are mentioned at 35 of the Sustainability Report 2011, available at <http://viewer.zmags.com/publication/98e2e8f9#98e2e8f9/35>, and the reader is referred back to the 'Risk and Governance' and 'Directors' Report' sections of the Annual Report. In the Directors' Report under 'Donations', the reader is referred to 240–242 for further information. These pages deal with corporate social investment; no mention is made of any kind of political donation. No mention of the issue could be found in the Risk and Governance section of the Annual Report.
- 277 Truworths International Ltd Annual Report 2010 at 114. Available at: <https://www.truworths.co.za/assets/investor/2010/Annual%20report%20June%202010.pdf>.
- 278 Truworths International Ltd Annual Report 2009 at 95. Available at: <https://www.truworths.co.za/assets/investor/2009/Truworths%20AR%20commentary.pdf>.
- 279 Truworths International Ltd Annual Report 2010 (note 277 above) at 152.
- 280 Truworths International Ltd Annual Report 2011 at 114. Available at: <https://www.truworths.co.za/assets/investor/2011/Integrated-annual-report-22.09.11.pdf>.
- 281 See, for example, Imperial Sustainability Report 2011 at 39. Available at: <http://www.imperial.co.za/CMSFiles/File/Documents/2011AnnualResults/ImperialSustainabilityReport2011.pdf>.

- 282 Imperial Holdings Annual Report 2009 at 40. Available at: [http://www.imperial.co.za/cmsfiles/file/documents/2009/imperial\\_annualreport2009.pdf](http://www.imperial.co.za/cmsfiles/file/documents/2009/imperial_annualreport2009.pdf). This refers the reader to: <http://www.imperial.co.za/sustainability2009/report.pdf> for additional information; see 25.
- 283 Imperial Holdings Annual Report 2010 at 41. Available at: [http://www.imperial.co.za/ar2010/downloads/imperial\\_annual\\_report\\_2010.pdf](http://www.imperial.co.za/ar2010/downloads/imperial_annual_report_2010.pdf), which refers the reader to: <http://www.imperial.co.za/sustainability2010/report.pdf> for further information, but which cannot be found.
- 284 Imperial Sustainability Report 2011 at (note 281 above) at 39. Available at: <http://www.imperial.co.za/CMSFiles/File/Documents/2011AnnualResults/ImperialSustainabilityReport2011.pdf>.
- 285 Assore Annual Report 2011 at 54. Available at: [http://investinginafrica.net/wp-content/uploads/2012/10/Assore\\_Annual-Report\\_2011.pdf](http://investinginafrica.net/wp-content/uploads/2012/10/Assore_Annual-Report_2011.pdf).
- 286 Assore Integrated Annual Report 2011, GRI Index. Available at: [http://www.assore.com/financials/annual\\_2011/gri\\_index.html](http://www.assore.com/financials/annual_2011/gri_index.html). The Sustainability Report 2011 is available at: [http://www.assore.com/financials/annual\\_2011/sustainability\\_report.html](http://www.assore.com/financials/annual_2011/sustainability_report.html).
- 287 Part of the Capital Shopping Centre Group plc included Liberty Holdings, and was recently rebranded to 'Intu'. Intu's 'Business Code of Practice 2010' is available at <http://www.intugroup.co.uk/who-we-are/governance/corporate-policies/> or [http://www.intugroup.co.uk/media/106937/business\\_code\\_of\\_practice\\_2010\\_rebranded\\_2013.pdf](http://www.intugroup.co.uk/media/106937/business_code_of_practice_2010_rebranded_2013.pdf).
- 288 Capital Shopping Centres Group Annual Report 2010 at 41. Available at: <http://www.companythumbs.com/PDF/2010/CSCG.L.pdf>.
- 289 Intu 2012 Annual Report at 91. Available at: [http://www.intugroup.co.uk/media/198213/intu\\_annual\\_report\\_2012.pdf](http://www.intugroup.co.uk/media/198213/intu_annual_report_2012.pdf).
- 290 Massmart Code of Ethical Conduct at 21. Available at: [http://www.massmart.co.za/downloads/pdf/2011/Massmart\\_Code\\_of\\_Ethical\\_Conduct\\_2011.pdf](http://www.massmart.co.za/downloads/pdf/2011/Massmart_Code_of_Ethical_Conduct_2011.pdf).
- 291 Massmart Annual Report 2010 at 23. Available at: [http://www.massmart.co.za/invest\\_profile/financial\\_results/2010/massmart\\_ar2010/downloads/massmart\\_annual\\_report\\_2010.pdf](http://www.massmart.co.za/invest_profile/financial_results/2010/massmart_ar2010/downloads/massmart_annual_report_2010.pdf).
- 292 Massmart Annual Report 2009, Sustainability. Available at: [http://www.massmart.co.za/invest\\_profile/financial\\_results/2009/massmart\\_ar09/sustainability/gri\\_iii.asp](http://www.massmart.co.za/invest_profile/financial_results/2009/massmart_ar09/sustainability/gri_iii.asp).
- 293 No reference to the issue could be found in Massmart's Annual Report 2010 (downloaded and electronically searched). Available at: [http://www.massmart.co.za/invest\\_profile/financial\\_results/2010/massmart\\_ar2010/downloads/massmart\\_annual\\_report\\_2010.pdf](http://www.massmart.co.za/invest_profile/financial_results/2010/massmart_ar2010/downloads/massmart_annual_report_2010.pdf).
- 294 No reference to the issue could be found in Massmart's Online Annual Report 2011, available at: [http://www.massmart.co.za/invest\\_profile/financial\\_results/2011/massmart\\_ar2011/governance/compliance.asp](http://www.massmart.co.za/invest_profile/financial_results/2011/massmart_ar2011/governance/compliance.asp).
- 295 Mondi Ltd Sustainability Report 2012 at 9. Available at: [http://www.mondigroup.com/PortalData/1/Resources/sustainability\\_2012/Mondi-sustainable-development-review-2011.pdf](http://www.mondigroup.com/PortalData/1/Resources/sustainability_2012/Mondi-sustainable-development-review-2011.pdf).
- 296 Mondi Group Business Integrity Policy at 2. Available at: [http://www.mondigroup.com/PortalData/1/Resources/sustainability/documents/Mondi\\_Business\\_Integrity\\_Policy.pdf](http://www.mondigroup.com/PortalData/1/Resources/sustainability/documents/Mondi_Business_Integrity_Policy.pdf).
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- 298 Mondi Group Annual Report and Accounts 2009. Available at: [http://www.mondigroup.com/microsite/AR2009/files/mondi\\_AR09.pdf](http://www.mondigroup.com/microsite/AR2009/files/mondi_AR09.pdf) could not be downloaded and electronically searched. A manual search revealed nothing of relevance.
- 299 Mondi Group Sustainable Development Review 2010 at 11. Available at: <http://www.mondigroup.com/microsite/AR2010/files/mondi-ltd-AR10.pdf>.
- 300 Mondi Group Sustainable Development Review 2011 at 9. Available at: [http://www.mondigroup.com/PortalData/1/Resources/sustainability\\_2012/Mondi-sustainable-development-review-2011.pdf](http://www.mondigroup.com/PortalData/1/Resources/sustainability_2012/Mondi-sustainable-development-review-2011.pdf).
- 301 'Business Code of Ethics' in Mr. Price Code of Conduct at 9. Available at: <http://www.mrpricegroup.com/CorporateGovernance/CodeOfConduct.aspx>.

- 302 Mr Price Group Annual Report 2004. Available at: [http://www.mrpricegroup.com/MRPG/media/MRPG/Files/mrprice\\_ar2004\\_Final.pdf](http://www.mrpricegroup.com/MRPG/media/MRPG/Files/mrprice_ar2004_Final.pdf), but could not be downloaded for electronic search. No reference to the issue was found during a manual search.
- 303 No reference to the issue could be found in the Mr Price Group Annual Report 2009. Available at: [http://www.mrpricegroup.com/MRPG/media/MRPG/Files/2009\\_AnnualReport.pdf](http://www.mrpricegroup.com/MRPG/media/MRPG/Files/2009_AnnualReport.pdf).
- 304 No reference to the issue could be found in the Mr Price Group Annual Report 2010. Available at: [http://www.mrpricegroup.com/MRPG/media/MRPG/Files/MRPG\\_AnnualReport2010.pdf](http://www.mrpricegroup.com/MRPG/media/MRPG/Files/MRPG_AnnualReport2010.pdf).
- 305 No additional or specific reference to the issue could be found in the Mr Price Group Integrated Annual Report 2011 at 14. Available at: [http://www.mrpricegroup.com/MRPG/media/MRPG/Files/mrp-ar2011\\_full.pdf](http://www.mrpricegroup.com/MRPG/media/MRPG/Files/mrp-ar2011_full.pdf).
- 306 Discovery Code of Conduct at 4. Available at: <http://ir.corporate.discovery.com/phoenix.zhtml?c=222412&p=irol-govconduct>.
- 307 Discovery Code of Ethics at 4. Available at: <http://ir.corporate.discovery.com/phoenix.zhtml?c=222412&p=irol-govconduct>.
- 308 No reference to the issue could be found in the online interactive Discovery Annual Report 2004, available at: [https://www.discovery.co.za/investor\\_relations/2004\\_annual/2004\\_financial\\_frameset.html](https://www.discovery.co.za/investor_relations/2004_annual/2004_financial_frameset.html).
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- Discovery Sustainability Report 2011. Available at: [https://www.discovery.co.za/discovery\\_coza/web/linked\\_content/pdfs/investor\\_relations/sustainability\\_report\\_2011.pdf](https://www.discovery.co.za/discovery_coza/web/linked_content/pdfs/investor_relations/sustainability_report_2011.pdf).
- 312 Life Healthcare Annual Report 2011 at 82. Available at: [http://www.lifehealthcare.co.za/ir/Financial\\_Info/Life%20Healthcare%20Integrated%20Annual%20Report%202011.pdf](http://www.lifehealthcare.co.za/ir/Financial_Info/Life%20Healthcare%20Integrated%20Annual%20Report%202011.pdf).
- 313 No annual report or similar report could be located, possibly because the company is a relatively new entity.
- 314 Life Healthcare Annual Report 2010. Available at: [http://www.lifehealthcare.co.za/IR/Financial\\_Results/2010/Annual\\_Report/pdf/full.pdf](http://www.lifehealthcare.co.za/IR/Financial_Results/2010/Annual_Report/pdf/full.pdf). This could not be downloaded and electronically searched. No reference to the issue could be found during a manual search.
- 315 Life Healthcare Annual Report 2011. Available at: [http://results.lifehealthcare.co.za/life\\_healthcare\\_ar2011/gov\\_gri.php](http://results.lifehealthcare.co.za/life_healthcare_ar2011/gov_gri.php).
- 316 'Donations to political parties', available at: [http://www.tfg.co.za/investor/annual\\_reports/ar\\_2012/governance/donations.asp](http://www.tfg.co.za/investor/annual_reports/ar_2012/governance/donations.asp).
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- 320 See 21 of Report.



- 322 <http://jdggroup.co.za/2011/downloads/JD%20Group%20-%20Integrated%20Report%202012.pdf>.
- 323 See 107 of the Integrated Report.
- 324 See 'Tax and other payments' and note 323 above at 95.
- 325 See 107 and note 324 above.
- 326 See 108 (note 325 above).
- 327 See 116–117 (note 326 above).
- 328 ABB Group Annual Report 2011 at 8. Available at [http://www05.abb.com/global/scot/scot266.nsf/veritydisplay/a0c275c1bfc6423ec12579fa003b7cd4/\\$file/ABB%20Group%20Annual%20Report%202011%20-%20English.pdf](http://www05.abb.com/global/scot/scot266.nsf/veritydisplay/a0c275c1bfc6423ec12579fa003b7cd4/$file/ABB%20Group%20Annual%20Report%202011%20-%20English.pdf). This is the global figure. Turnover from South African operations is not disaggregated.
- 329 See 14 of the Group's 2011 Annual Report. Further reference is made to Swiss and New York stock exchange regulations and standards.
- 330 However, in September 2010, following voluntary disclosure of suspect payments uncovered by ABB's internal audits and reviews, the company reached settlements with the US Department of Justice (DoJ) and the Securities and Exchange Commission (SEC) in connection with suspect payments by certain subsidiaries related to the UN Oil-for-Food Programme. Settlement payments of USD 58 million were made by the company to the DoJ and SEC following breaches of the anti-bribery provisions of the US Foreign Corrupt Practices Act. See the Group Annual Report 2011 at 106.
- 331 See: [http://www05.abb.com/global/scot/scot266.nsf/veritydisplay/5a9e94030a4e6182c1257a0100173f49/\\$file/ABB%20Group%20Sustainability%20Performance%202011.pdf](http://www05.abb.com/global/scot/scot266.nsf/veritydisplay/5a9e94030a4e6182c1257a0100173f49/$file/ABB%20Group%20Sustainability%20Performance%202011.pdf) at 9.
- 332 ABB Sustainability Performance Report (note 331 above) at 9.
- 333 ABB Sustainability Performance Report 2011 at 41. Available at: [http://www02.abb.com/global/abbzh/abbzh258.nsf/0/0414b84a9db79322c12579bc002e8523/\\$file/abb+group+sustainability+performance+2011.pdf](http://www02.abb.com/global/abbzh/abbzh258.nsf/0/0414b84a9db79322c12579bc002e8523/$file/abb+group+sustainability+performance+2011.pdf). The reporting methodology is unclear and it is therefore unclear whether these figures are total amounts or whether they should be read as representing thousands of dollars, that is, USD500 000 and USD9 000 000, although especially this latter amount seems improbable.
- 334 2011 Annual Report at 2. Available at: <http://www.gsk.com/content/dam/gsk/globals/documents/pdf/GSK-Annual-Report-2011.pdf>.
- 335 See: <http://www.gsk.com/about-us/governance/sarbanes-oxley-act-2002.html>.
- 336 See GSK Policy on Political Contributions 4 November 2010, at 1. Available at: <http://www.gsk.com/content/dam/gsk/globals/documents/pdf/Policy-Political-Contributions.pdf>. See also GSK's Anti-Corruption Handbook at, *inter alia*, 19. Available at: <http://www.gsk.com/content/dam/gsk/globals/documents/pdf/GSK-AntiCorruption-Booklet.pdf>.
- 337 See: <http://www.gsk.com/content/dam/gsk/globals/documents/pdf/Policy-Preventing-Corrupt-Practices.pdf>. The Policy prohibits employees from, *inter alia*, offering or authorising 'any improper inducements to any third parties, particularly government officials'.
- 338 GSK Corporate Responsibility Report 2011 at 21. Available at: [http://www.gsk.com/content/dam/gsk/globals/documents/pdf/corporateresponsibility/GRI\\_Index\\_2011.pdf](http://www.gsk.com/content/dam/gsk/globals/documents/pdf/corporateresponsibility/GRI_Index_2011.pdf).
- 339 See: <http://www.gsk.com/responsibility/our-behaviour/public-policy-and-patient-advocacy.html>.
- 340 This is the figure for global operations. Revenue generated by Ford South Africa is not disaggregated. Neither could relevant information be located at: <http://corporate.ford.com/microsites/sustainability-report-2011-12/world-apa>.
- 341 Available at: [http://corporate.ford.com/doc/2011\\_annual\\_report.pdf](http://corporate.ford.com/doc/2011_annual_report.pdf).
- 342 <http://corporate.ford.com/microsites/sustainability-report-2011-12/blueprint-governance-sustainability>.
- 343 Nor is any additional information available from the 'Downloads' page at: <http://corporate.ford.com/microsites/sustainability-report-2011-12/downloads>.

- 344 <http://corporate.ford.com/microsites/sustainability-report-2011-12/blueprint-governance-public-participation>.
- 345 Ford's Annual Sustainability Report 2011. Available at: <http://corporate.ford.com/microsites/sustainability-report-2011-12/gri>. The SO 6 indicator contains a link to Ford's 'Policy on Participation in the Policy-Making Process', which, in turn, contains a statement on its 'Policy on Political Contributions' (see fn 344 above). While there are exceptions involving employee collective contributions to the Ford PAC, the position in South Africa is not explicitly stated.
- 346 Dimension Data Annual Business Review 2011. Available at: [http://www.dimensiondata.com/Lists/Downloadable%20Content/FY11AnnualBusinessReview\\_129840442607612692.pdf](http://www.dimensiondata.com/Lists/Downloadable%20Content/FY11AnnualBusinessReview_129840442607612692.pdf).
- 347 At para 2.2.
- 348 At para 2.6.
- 349 See: <http://www.dimensiondata.com/rgn/za/AboutUs/GovernanceRiskAndEthics/Pages/Home.aspx>; and [http://www.dimensiondata.com/Lists/Downloadable%20Content/DimensionDataEthicsPolicy\\_129636552974531250.pdf](http://www.dimensiondata.com/Lists/Downloadable%20Content/DimensionDataEthicsPolicy_129636552974531250.pdf).
- 350 See 21 of the 2011 Report to Society (RTS). Available at: [http://www.debeersgroup.com/ImageVaultFiles/id\\_1874/cf\\_5/De\\_Beers\\_RTS\\_single\\_pages.PDF](http://www.debeersgroup.com/ImageVaultFiles/id_1874/cf_5/De_Beers_RTS_single_pages.PDF). The Company's Anti-Corruption Policy is referred to at 29–30 of the RTS. The RTS continues at 30: 'Looking ahead – The enhancement of our corruption prevention procedures will continue in 2012, focusing initially on identifying and managing corruption risk presented by individuals and organisations acting on our behalf. We will expand our scope to include relationships with third party suppliers and political and charitable donations, as well as continuing to roll out the programme to strengthen due diligence processes developed in 2011.' (Emphasis added)
- 351 RTS (note 350 above) at 21.
- 352 Better known as 'Consol Glass'.
- 353 See: [http://www.consol.co.za/irj/go/km/docs/site/pages/consol\\_reports.html](http://www.consol.co.za/irj/go/km/docs/site/pages/consol_reports.html).
- 354 See: [http://www.consol.co.za/irj/go/km/docs/site/pages/code\\_of\\_ethics.html](http://www.consol.co.za/irj/go/km/docs/site/pages/code_of_ethics.html).
- 355 The relevant provision of the Code of Ethics includes the following: 'The Company encourages the personal participation of its employees in the political process and respects their right to absolute privacy with regard to personal political activity. The Company will not attempt to influence any such activity provided there is no disruption to work-place activities and it does not contribute to industrial unrest. Consol CSI. Available at: [http://www.consol.co.za/irj/go/km/docs/site/pages/consol\\_csi.html](http://www.consol.co.za/irj/go/km/docs/site/pages/consol_csi.html).
- 356 See: [http://www.consol.co.za/irj/go/km/docs/site/pages/consol\\_csi.html](http://www.consol.co.za/irj/go/km/docs/site/pages/consol_csi.html).
- 357 SOC = 'state-owned company'. The inclusion of an SOE in this list may surprise some readers. However, it is common practice for SOEs to, at least, undertake corporate social investment. See, for example, 'SOEs commit over R131m to social initiatives', *SANews.gov.za* 30 October 2012, available at: <http://www.sanews.gov.za/news/12/12103010351001>. While SOEs are clearly not 'privately owned' companies, they are unlisted corporate entities.
- 358 Referred to at 74 of the 2012 Annual Report. Available at: [http://www.denel.co.za/annual\\_report.html](http://www.denel.co.za/annual_report.html).
- 359 Available at: <http://www.denel.co.za/values.html>. See also 5 of the 2012 Annual Report.
- 360 Denel SOC Ltd Annual Report 2011, GRI Content Index at 105. Available at: [http://www.denel.co.za/pdf/annual\\_report\\_2012.pdf](http://www.denel.co.za/pdf/annual_report_2012.pdf).
- 361 Hollard's website asserts that it is 'South Africa's largest privately owned insurance group' – see: [http://www.hollard.co.za/about-hollard#/about-hollard?&\\_suid=1357913396565065271129286758](http://www.hollard.co.za/about-hollard#/about-hollard?&_suid=1357913396565065271129286758).
- 362 Available at: <http://www.hollard.co.za/hollard-annual-report-2012/>.
- 363 See: <http://www.hollard.co.za/hollard-annual-report-2012/#p=2> at 44. Hollard's Conflict of Interest Management Policy, available at: [http://www.hollard.co.za/docs/FAIS\\_Conflicts\\_of\\_Interest\\_Management\\_Policy\\_2011.pdf](http://www.hollard.co.za/docs/FAIS_Conflicts_of_Interest_Management_Policy_2011.pdf) appears to deal largely with the conduct of its financial advisors.

- 364 At 3 of the Annual Report.
- 365 The company website provides an online form that may be used to contact the company with any general enquiry – available at <http://www.hollard.co.za/contact-us>. A request for the addendum made via this mechanism during November 2012 had received no response by 31 January 2013.
- 366 See: <http://www.hollard.co.za/about-hollard/who-we-are/corporate-social-investment>.
- 367 'More than \$1 billion apiece raised to elect President Obama, candidate Mitt Romney in 2012 campaign cycle' *New York Daily News* 7 December 2012. Available at: <http://www.nydailynews.com/news/politics/1b-apiece-raised-elect-obama-romney-article-1.1215543>. See also: '2012 Presidential election cost hits \$2 billion mark' *Huffington Post* 6 December 2012, available at: [http://www.huffingtonpost.com/2012/12/06/2012-presidential-election-cost\\_n\\_2254138.html](http://www.huffingtonpost.com/2012/12/06/2012-presidential-election-cost_n_2254138.html); and 'The 2012 money race: Compare the candidates' available at: <http://elections.nytimes.com/2012/campaign-finance>.
- 368 By dividing the 90% proportional amount of the total allocation by the number of seats held, doing the same with the 10% equitable portion, and tallying the two.
- 369 The complexity of this attempt to explain the problem is itself testimony to the lack of clarity that surrounds current practice in a country that is ranked at number one globally for the transparency of its budget process. See [http://internationalbudget.org/wp-content/uploads/2011/06/2010\\_Rankings.pdf](http://internationalbudget.org/wp-content/uploads/2011/06/2010_Rankings.pdf). Transparency is measured by 'timely access to comprehensive information contained in eight key budget documents'.
- 370 This paper has not considered foreign donations owing to the even greater difficulty in identifying and quantifying them.
- 371 See 'Public Funding and Private Funding' at 6ff.
- 372 See, in this regard, 'The business case for party-funding reform' herein, MAPP 2013.
- 373 See 'Recommendations of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions', OECD Working Group on Bribery in International Business Transactions, 26 November 2009; and 'Recommendations for Multinational Enterprises on Combating Bribery, Bribe Solicitation and Extortion', Chapter VII in OECD Guidelines for Multinational Enterprises, OECD 2011. See also 'Busting Bribery: Sustaining the Global Momentum of the Foreign Corrupt Practices Act', David Kennedy & Dan Danielsen, September 2011, Open Society Foundations, New York.
- 374 See, for example, 'Aggressive new measures' Steven Powell, *Without Prejudice* September 2012 at 30ff; and 'The cost of paying bribes', Steven Powell, *Without Prejudice* October 2012 at 20. For a closer consideration of the implications of these international and foreign measures for businesses operating in South Africa, see 'The business case for party-funding reform' herein, MAPP 2013.
- 375 See 'The business case' (note 374 above).
- 376 The term 'politically exposed person' is used in international anti-money laundering and anti-bribery measures and standards, such as agreed by the Financial Action Task Force (FATF). See: <http://www.fatf-gafi.org/documents/documents/peps-r12-r22.html>. A similar concept of a 'senior or prominent public figure' is envisaged by UNCAC (article 52), while PRECCA contemplates 'foreign public official', 'official' and 'public officer' (section 1: Definitions) among others. The definition of 'official' includes a 'director, functionary, officer or agent serving in any capacity whatsoever in a ... political party'...
- 377 The sensitivities associated with criticism of BEE have long been noted. See, for example, 'Editorial: Empowerment, not enrichment' *Business Day* 16 September 2013. Available at: <http://www.bdlive.co.za/opinion/editorials/2013/09/16/editorial-empowerment-not-enrichment>. Carol Paton has observed that 'BEE transactions by their nature institutionalise corruption, a point that has been made over and over again by many critics, including many on the left of the ANC's political alliance.' See: 'NEWS ANALYSIS: SEC to tackle a wall of silence over methods behind BEE deals', Carol Paton, *Business Day* 16 September 2013, available at: <http://www.bdlive.co.za/business/mining/2013/09/16/news-analysis-sec-to-tackle-a-wall-of-silence-over-methods-behind-bee-deals>.
- 378 *Mail & Guardian* 6 September 2013. Available at: <http://mg.co.za/article/2013-09-06-00-investigators-gold-fields-bribed-mbete>.

- 379 <http://www.anc.org.za/show.php?id=4169>.
- 380 While Mbete has contested the substance of the media report, the newspaper stands by its story; see: 'Gold Fields deal tarnishes BEE' *Mail & Guardian* 13 September 2013. Available at: <http://mg.co.za/article/2013-09-13-00-editorial-gold-fields-deal-tarnishes-bee>.
- 381 'Gold Fields acknowledges SEC investigation' 10 September 2013. Available at: [http://www.goldfields.co.za/news\\_article.php?articleID=1836](http://www.goldfields.co.za/news_article.php?articleID=1836).
- 382 Donors to private and personal 'charitable' foundations reportedly include De Beers, Harmony (Gold Mining) and Patrice Motsepe's African Rainbow Minerals – see 'The foundations on which the president's empire is built', *amaBhungane* 10 August 2012, available at: <http://amabhungane.co.za/article/2012-08-10-the-foundations-on-which-presidents-empire-is-built>. However, for example, para 4.6 of Harmony Gold Mining's Code of Ethics dated 28 October 2011 provides: 'You may not contribute Harmony funds or resources to political campaigns, political parties, political candidates or anyone associated with them.'
- 383 As mentioned above, the *Cape Times* of 18 December 2012 reported that the PBF had raised R88.5 million for the ANC. See also, in this regard, 'Cash flush, publicity shy', *Financial Mail* 7–12 December 2012 at 39ff, where it is stated that the PBF currently has about 6 000 members. These mechanisms are separate and in addition to party-linked investment vehicles, such as Chancellor House, Thebe Investment Trust, etc. Mathews Phosa described such party-owned or party-linked companies and investment vehicles as '[t]he most complex challenges' facing the party – see 'SA's party funding system 'dangerous'', *IOL News* 8 June 2012.
- 384 Act 53 of 2003, as amended.
- 385 'The biggest threat to our movement is the intersection between ... business interests and holding of public office... . Election to a position is seen to be an opportunity for wealth accumulation.' Gwede Mantashe, ANC Secretary General, 2009. This concern found further expression in an ANC discussion document prepared for the party's National General Council in 2010, 'Leadership renewal, discipline and organisational culture', paras 41–42 at p10. There, the problem was described as one of 'monies raised by candidates and lobby groups, with no accountability and disclosure about the sources (and legality) of such resources, nor how these monies are being used'. This could lead to 'those with money having more influence about the direction of the ANC than its membership'. It was suggested that the party's approach to party financing 'will therefore have to be broader, so that it also deals with the "informal" party financing, which is so much more insidious and dangerous to internal democracy.'

Then-ANC Treasurer General Mathews Phosa was recently more explicit about the risks associated with unregulated private funding. Reports on a workshop prior to the party's June 2012 Policy Conference quote him as declaring that political parties need funding to operate, while observing that money is dangerous and could lead to corruption and abuse. Referring to the impact of private funding on political parties, he said: 'We should not have a situation where an individual ... or a company is able to have too much undue influence on a political party or a political system. ... Our democracy should not be available or sold to the highest bidder... . There is room for private funding but it must be regulated. At the moment it is not.'

See also a media report quoting respected ANC MP Professor Ben Turok – 'Money "sowing seeds of factionalism" in ANC' in *Business Day* 12 December 2012. Available at: <http://www.bdlive.co.za/national/politics/2012/12/12/money-sowing-seeds-of-factionalism-in-anc>.

- 386 Consider, for example, the repeated efforts over many years by the Independent Democrats (generally support by the United Democratic Movement) to introduce in Parliament private members' Bills to effect comprehensive party-funding reform, as well as the generally more modest efforts by the Democratic Alliance, using the same avenue, to do the same in a more fragmented way. All of these efforts have been met with concerted refusal by the ANC to countenance substantive discussion, often on the flimsiest of grounds and by dubious means.

*The Money and Politics Project (MAPP) was a programme of the Open Society Foundation for South Africa in 2012. Gary Pienaar was a Senior Researcher for MAPP in 2012 – these policy briefs are a report of the work he completed for MAPP. OSF-SA would like to express its appreciation to Gary Pienaar and the Expert Review Committee that commented on earlier drafts of these briefs.*

