

# SA Democracy Incorporated

## Corporate fronts and political party funding

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### Research question and methodology

The research that informs this paper is based on the thesis that unless it is regulated, party funding will become the biggest test to the country's sanctified separation of power as enshrined in the Constitution: if state power is abused to direct resources to support political parties, the basis of fair political contestation is undermined. Access to the democratic decision-making process is put up for sale, which not only undermines the management of political parties but also the overall governance project at national level. One of the explicit aims of this study was to uncover some of the sources of political party funding and possible links to corrupt transactions. During the course of writing this paper, researchers became aware of a new corporate front used by the ruling African National Congress (ANC) to seek profit on its behalf. This is provided as a case study of the broader thesis. The research includes a quantitative analysis of funding to the Democratic Alliance (DA). The views of the smaller parties were not canvassed for the purpose of this research and will feature in a forthcoming monograph to be published by the Institute for Security Studies.

### Introduction

On 20 April 2005 Judge Benjamin Griesel dismissed a high court application by civil society group the Institute for Democracy in South Africa (Idasa) aimed at forcing the DA, the ANC, the Inkatha Freedom Party (IFP) and the former New National Party (NNP) to reveal their major private financial donors.

Idasa took the litigation route using the Promotion of Access to Information Act after failing to convince parliament to pass legislation that would compel par-

ties to disclose such information. The litigation formed part of a broader campaign to lobby for transparency in, and regulation of, private funding to political parties by a group of civil society organisations such as the Black Sash, the Institute for Security Studies (ISS), Transparency South Africa, the South African Catholic Bishops' Conference and the South African Council of Churches.

Judge Griesel found that access to records of private donations was not required for the exercise and protection of the constitutional Section 19 right to free political choice. But the court also held that the judgment did not mean "that political parties should not, as a matter of principle, be compelled to disclose details of private donations made to their coffers".<sup>2</sup> The court was certain that private donations should be regulated by means of specific legislation.

Unless it is regulated, party funding will become the biggest test to the country's sanctified separation of power as enshrined in the Constitution.

The political parties argued that a legislative process was the best way to design the regulation of private donations. The ANC said that such legislation should embody national policy perspectives and balance the interests of all people, including the electorate, political parties and their donors. The ruling party buttressed its argument with reference to Article 10 of the African Union Convention on Preventing and Combating Corruption of 2003. As a signatory, South Africa would be obliged to adopt measures to "incorporate the principle of transparency into funding of political parties,"<sup>3</sup> it said.

The ANC has been promising to legislate the private funding of parties since 1997, when the Public Funding of Represented Political Parties Bill was enacted. At the party's National General Council (NGC) in July 2005, a proposal was floated suggesting more rigor-

ous regulation of party funding as a result of increasing awareness among the party's membership of the risk that its policies, and even its soul, might be mortgaged to the highest bidder. The resolution stated:

To safeguard the integrity of the ANC, and our system of multiparty democracy, there should be a significant increase in public funding for political parties in parliament, operating at both national and provincial level. The ANC should explore measures to increase transparency and accountability about private donations to political parties.<sup>4</sup>

An ANC task team – consisting of Trevor Manuel, minister of finance, Sankie Mthembi-Mahanyele, deputy ANC secretary-general, Frank Chikane, director-general in the Presidency, and Saki Macozoma, businessman and National Executive Committee (NEC) member – has tentatively been discussing how to regulate private funding in the context of a debate about concerns that certain party members were making fast money on the strength of party connections.<sup>5</sup> The ANC has become increasingly alarmed by the marriage of the ruling party and business. There are fears that the redistributive aims of black economic empowerment (BEE) are being perverted by government officials, politicians and party officials wanting to get rich quickly.

In conjunction with developing a code of conduct to regulate the relationship between ANC officials and business, the task team is also looking at regulating party political funding because of the obvious interconnections.

“We run into difficulties when the intent of the donor is not the same as [that of] the recipient,” said Manuel. “You’ve got to recognise that you can’t have full transparency or total opacity – it’s going to have to be something in the middle.”<sup>6</sup> The work of the task team is being done ahead of the ANC’s policy conference in June 2007. While party-specific rules of this nature are fundamentally important, they won’t necessarily translate into the long-anticipated parliamentary process to legislate party political funding.

More than a year after Judge Griesel’s judgment, when the various political parties pledged to set the legislative ball rolling, there has been no movement. Eshaam Palmer, chief legal adviser in parliament, confirmed this fact. “Usually the ruling party would lead the charge on such a matter, but there has been nothing yet,” he said.<sup>7</sup>

None of the opposition political parties involved in the Idasa litigation have made moves to begin the

legislative process either. While the DA repeatedly argues that it submitted a private member’s Bill to Parliament in 2002 calling for the prohibition of donations above a certain threshold, this party, like the IFP (the NNP has since disbanded), appears to be biding its time waiting for the ruling ANC to take the lead, after which reform should follow.

It is the reluctance to legislate that goes to the heart of the private funding debate: as political parties seek to protect the identity of their benefactors they are condoning the lurking danger posed to South Africa’s democracy by the corrupting tendency of undisclosed funding.

It is an accepted fact among advocates of party finance regulation in South Africa that political parties are never going to be funded through state allocations and members alone. In October 2006 the ANC tabled a proposal in Parliament’s Chief Whip Forum to expand the treasury’s annual financial allocation to political parties represented in parliament by about a third.<sup>8</sup> This was in line with a decision taken at its July 2005 NGC to call for more state funding of political parties in parliament. The proposal was still being debated at the time this paper was published, but if it is accepted the ANC alone will stand to gain R310 million.

The official reason given by the ANC was that it needed to beef up the capacity of its MPs to carry out their constituency work. However, speculation was rife that the money would be used to fund its party work.<sup>9</sup>

It is equally accepted that the purpose of regulating private funding is not to stop such funding, but rather to ensure that parties are sufficiently funded from sources that are neither corrupt nor potentially corrupting.

Mendi Msimang, treasurer-general of the ANC since 1997, justified the lack of legislation in South Africa by stating that we “are not a settled democracy”.<sup>10</sup> “We in the [ANC] are duty bound not to take any money that is not kosher. People do things for the ANC out of their own volition. People must understand that the ANC has always been clean,” he said.<sup>11</sup>

But the murky relationship between money and politics has been at the heart of almost every major scandal faced by political parties and the government since 1994. The blurred nexus between party, government and state has become the defining struggle of the democratic era, as the following examples illustrate:

- *Arms deal*: In 1998 the government decided to purchase about R30 billion worth of new defence

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equipment as part of the biggest arms procurement package in the democratic South Africa. This ultimately resulted in the country's largest political fallout since 1994, as ANC cadres were pitted against each other after tender irregularities and political patronage blew into the open. (See more details on page 12.)

- *Jacob Zuma-Schabir Shaik drama:* ANC Deputy President Jacob Zuma has been implicated for his “generally corrupt” relationship with his economic adviser Schabir Shaik, who was found guilty in 2005 on two counts of corruption and one of fraud for his profiteering in the arms deal through his company Nkobi Holdings. Shaik offered Zuma financial favours to the value of R1.1 million, which the former deputy president allegedly accepted in return for political endorsement of Nkobi Holdings during the arms deal procurement process and later political immunity during the investigation. (See more details on page 12.)
- *Oilgate:* An investigation by the South African weekly newspaper *Mail & Guardian* in 2005 into private party funding revealed how R11 million of public money was diverted to ANC coffers ahead of the 2004 elections.<sup>12</sup> (See more details on page 12.)
- *Peter Marais/David Malatsi case:* In 2003 former Western Cape premier Peter Marais and the province's former environment MEC David Malatsi, both members of the former NNP, were accused of receiving donations totalling R400,000 on behalf of the party from Italian developer Count Riccardo Agusta in 2002. The donations were allegedly made to secure environmental approval by the province of Agusta's proposed Roodefontein golf estate development at Plettenberg Bay. In October 2006 Marais was found not guilty on two counts of corruption and Malatsi was convicted on one count of corruption.<sup>13</sup>
- *Jurgen Harksen scandal:* German fraudster Jurgen Harksen provided R500,000 funding to the DA in 2000 at the time that he was a fugitive from justice. Gerald Morkel, the DA mayor of Cape Town, received the funding on behalf of the party. No link to corruption was identified by the Desai Commission of Enquiry appointed to investigate the scandal.
- *The life and death of Brett Kebble:* The slain mining magnate's use of BEE to support ruling party factions financially, in exchange for political protection, is well documented. During his tenure as

chief executive of mining companies JCI and Western Areas, Kebble helped establish a string of BEE deals spanning mining, telecommunications, finance, property, pharmaceuticals and engineering.<sup>14</sup> Many of these deals benefited ANC-aligned individuals, most famously the ANC Youth League. Forensic investigators tasked with unravelling Kebble's estate have uncovered records of well over R25 million paid to the ANC and its structures by him.<sup>15</sup>

It would be disingenuous to assume that the former ruling National Party (NP) did not also rely heavily on private party funding that involved similar political trade-offs. For example, the Afrikaner Broederbond – the secret society that guided NP policy under apartheid – formalised covert elite networks of Afrikaner

political and economic power “that set out to capture the strategic heights of the state and the economy by deploying members into the public service, corporations and the judiciary.”<sup>16</sup> These individuals then carried an undefined and undisclosed debt of loyalty to the movement.

While the problem of private funding of political parties in South Africa is historical, the focus on it is more acute now, partly because there is the political space for the media and civil society to interrogate it and partly because there has been a growth in corporate

power compared with the power of the government and the ruling party.

Specifically, BEE has inadvertently created the opportunity for connectivity between some in the moneyed and political classes that by its nature carries offsets that may well be party funding arrangements – a lurking danger that political parties have recognised.

### **Black Economic Empowerment explained**

This paper should not be read as an assault on the principles of BEE but rather as an attempt to focus on the potential risk for the subversion thereof for narrow political or personal benefit. Such action undermines a policy that is designed to play a meaningful role in transforming the South African economy. It is therefore also important to understand the background to BEE.

The advent of South Africa's democracy in 1994 transferred political power to the black majority but it left economic power largely in the hands of the white minority. BEE, one of South Africa's most instrumental policies, aims to rectify this inequality by increas-

## The blurred nexus between party, government and state has become the defining struggle of the democratic era.

ing black ownership, control and management of state, parastatal and private economic activity in the formal sector.<sup>17</sup> While the concept of BEE emerged as early as 1994 it was only legislated in 2004 when it became clear that persuasion to transform was not enough as some sectors of the economy were implementing narrow forms of empowerment based only on ownership and management. Under the Broad Based Black Economic Empowerment Act promulgated in January 2004, ownership is only one of the seven main criteria upon which empowerment credentials of businesses in South Africa are assessed (out of a total score of 100). The others are management control (10%), employment equity (10%), skills development (20%), preferential procurement (20%), enterprise development (10%) and corporate social investment (10%). Through the newly formed Financial Services Charter Council, companies undergo annual evaluation and earn certificates of compliance with the Department of Trade and Industry. Government and parastatals are obligated by law to award tenders or state contracts only to companies that are fully BEE compliant.

Central to BEE is state intervention, which is intended to promote black ownership and management of the economy. But it is precisely the centrality of the state to BEE that has led to the common charge of cronyism, influence-peddling and the creation of a black aristocracy against a backdrop of increasing poverty. The argument generally follows the line that the black capitalist class that has been promoted by BEE is highly dependent on state policies, protection and preferences and operates extensively through political networks.<sup>18</sup> Where BEE has been misapplied either for political or personal financial gain – and there are many examples – this criticism is justified. But there are as many examples, if not more, of how the policy has pulled thousands of poor up by the bootstraps – a fact that is often lost in the clamour over its abuse. BEE is seminal to South Africa's democracy, this paper is based on that premise, and where the policy is open to abuse it is in the public interest to bring it into the open.

### **Background: The debate since 1994**

The lack of accountability in the private funding of political parties in South Africa is a sign of a deeper malaise. As party funding scandals have become more visible since 1994, so the desire and need to confront the problem have increased. Yet the harder the media and civil society have fought for exposure and transparency, the harder the political and capital

classes have kicked against this precisely because they have both tended to prefer the unaccountable *status quo* since they have so much to hide.<sup>19</sup>

There is no shortage in South Africa of examples where both elements of corruption – gratification (money or other benefit) extended by one party in exchange for (political) influence unduly exercised by another – are alleged to be present, but where the opacity of the system has prevented the public from judging for itself.<sup>20</sup>

Politicians have a stock response: our finances are secret; but trust us, we never accept donations with strings attached. In an interview, ANC treasurer-general Mendi Msimang was insistent that the ANC “never accepts donations with strings attached” and justified Oilgate (detailed later in the research) as “an isolated example and something that won’t happen again...Sandi Majali approached the ANC offering to help us and we accepted that”.<sup>21</sup>

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This is not a good enough explanation for an electorate that is becoming increasingly cynical about the political system as they have observed a string of corrupt party funding transactions (see examples in the introduction).

Whatever the identity of private donors, there is a widespread perception – real or imagined – that money buys influence and politicians and elected officials are beholden to those who fund them. In 2005, for the second year running, Transparency International's authoritative Global Corruption Barometer found that political parties are viewed by citizens as the most corrupt sector. In 2005, of the 69 countries surveyed 45 ranked political institutions at the top of the chart. At four on a scale of one to five, with five considered “extremely corrupt”, political corruption was a dominant concern of respondents.<sup>22</sup> In a country as unequal as South Africa, political corruption also has a grave impact on social progress.

The argument for legislation generally follows the same line: allowing the wealthy, whether individuals or corporations, to buy political influence by secretly donating as much as they want to political parties may result in further marginalisation of the poor who are unable to buy such influence. In addition, without transparency on private donations, citizens would never be able to make an informed assessment of government policy decisions.

At the heart of the funding debate is the question of political inequality:

The one time citizens experience true equality is when they cast their vote at the ballot box. Where there is no control over the private funding given to political parties a situation of unfairness and distortion of electoral competition may arise[,] ultimately undermining the equal value of each person's vote. When wealth is allowed to buy influence and access by unregulated secret donations the effect on political rights and participatory democracy could lead to the average citizen's voice being eclipsed by the undue influence wield[ed] by wealthy donors.<sup>23</sup>

In the authoritative Centre for Public Integrity's Global Integrity Survey released in 2004, South Africa ranked a commendable sixth out of 25 countries. But in one category, "electoral and political processes," it fell to 18th place – well below countries like Panama, Nigeria and Ukraine – as a result of the near-zero score on "political party finances".<sup>24</sup> The survey measured six categories: civil society and media, electoral and political processes, branches of government, civil service, oversight mechanisms and anti-corruption mechanisms. The survey carried a clear message: the absence of enforceable party funding legislation was a measurable threat to the integrity of South Africa's democracy.

It is estimated that political parties spent between R300 million and R500 million during the 1999 election period, but only R66 million of this was public money.<sup>25</sup> The key source of state funding is an annual payment based on the number of seats held and votes won by each party in the previous election. In 2005 the Political Parties' Fund stood at R74,1 million, with the ANC getting R49,3 million, the DA R9,3 million and the balance divided between the 16 smaller parties represented in parliament and the provincial legislatures.<sup>26</sup>

State funding of parties in South Africa is governed by the Public Funding of Represented Political Parties Act 103, which came into effect on 1 April 1998. According to this Act, the administration and management of public funding is vested in the chief electoral officer of the Independent Electoral Commission (IEC). The funding is provided annually for those parties represented in parliament and therefore does not cover newly established political parties without representation in the legislature, until they make it to parliament through the electoral process. The majority allocation of public funding to political parties is determined by the proportion of their seats in both

the national and provincial legislatures. Up to 90% of the funding is distributed proportionally, with the remaining 10% allocated on the basis of a threshold payment. Parties are prohibited from using public funds for electoral campaigns and are required to close their books and return any unspent money to the IEC 21 days before an election.

However, as observed elsewhere, this public funding arrangement provides only a fraction of what parties want and need in South Africa, making rich benefactors a financial lifeline and leaving ample space for influence-peddling.

The case for increased public funding is the most obvious and strongly argued mechanism to reduce the potential for corruption, as the expense to sustain political parties would fall on the state and therefore the taxpayer.

### Public funding arrangements provide only a fraction of what parties want and need.

In 2002 South African Constitutional Court Judge Albie Sachs led a commission into constitutional and electoral reform in Mauritius. His final report was unequivocal in its recommendation that to eliminate the potential for political corruption, private funding of parties should be heavily proscribed and more state funding should be made available:<sup>27</sup>

Even though we were only concerned with public funding of political parties by the State, we have thought it necessary to recommend that companies should only be allowed to make donations in favour of political parties through [a] Fund as created by law. Monies so donated by companies are to be distributed to no particular political party but to all those who would qualify for funding under the law. There is no need to insist on how powerful and rich corporations have, through financial pressure, tried the world over to influence those likely to exercise political decisions. This explains why many democratic countries have thought it wise to ban altogether any possibility of political patronage by powerful Companies. Suffice it to say that we had the advantage of receiving somebody who has exercised ministerial responsibility and who had the courage to invite us to recommend the banning of political patronage by the Chief Executives of important companies with shareholder's money. He remarked: "they never give something for nothing".

We therefore recommend that every political party should be made accountable to [an

electoral] commission for its campaign expenditure for electoral purposes during the campaign period and that lavish overspending by any political party should henceforth invalidate the election of its candidates just as lavish overspending by any candidate exposes his/her election to the danger of being declared null and void”.

Idasa is facilitating consultation between business, civil society and political parties towards reaching consensus on managing party donations. Yet the process is painfully slow, and without the support of the country’s legislative powers any consultations spearheaded by civil society will achieve limited success.

Sixteen large corporations voluntarily disclosed donated money to political parties in 2004. While this set a precedent in terms of encouraging transparency, business was primarily concerned with avoiding damage to their corporate image if the information leaked out. The majority of the companies that disclosed also tended to donate proportionally to the political parties, making it easier for them to disclose, arguably to lessen the chances that an ANC-run department or council would penalise them. Among the businesses that disclosed were Standard Bank, Liberty Group, Anglo Gold, Sanlam, Mvelephanda, Sappi, Kumba, Cell C, MTN, Absa and Gencor.

Jaco Maree,<sup>28</sup> CEO of Standard Bank, explained that until the 2004 general election the bank had a blanket policy not to fund political parties. But in that year “we were put under enormous pressure and decided that we had to do something.”<sup>29</sup> He said the bank developed a formula based on the proportion of parliamentary seats each party held, and announced their plans publicly. “We didn’t want to play God and say half the money would go to the ANC and the other half to the DA. So we decided to do it proportionally.”<sup>30</sup> The bank implemented a minimum cap of R10,000 per parliamentary seat. “By doing it this way there was no element of political favouritism, rather we were representing the will of the electorate.”<sup>31</sup>

Maree said that, based on the success of their funding formula in 2004, the bank had taken a decision to fund political parties annually, not only in an election year, and make this part of their annual financial reporting. This will have significant ramifications in terms of formalising a culture of party funding and in compelling other companies to record their donations

publicly. Maree is an advocate of transparency in political party funding, but believes, against the grain of his business colleagues, that the responsibility for disclosure should lie equally with donors and the political parties. “The responsibility to disclose funders should not only fall on political parties, but on the companies themselves in upholding good corporate governance,”<sup>32</sup> he said.

At present, private donors may support a political party without either entity being obliged by law to disclose this financial support.

At a party-funding symposium facilitated by Idasa in October 2005, which brought together business, political parties and civil society as a first step towards finding consensus on the rules for party funding – both voluntary and statutory – business indicated that disclosure should lie with the recipient political parties.

### Private donors may support a party without any obligation to disclose their support.

The Johannesburg Securities Exchange (JSE) has already attempted to entrench a culture of transparency and disclosure through its voluntary Social Responsibility Index (SRI), the first of its kind in a developing country.<sup>33</sup> The SRI aims to increase an awareness of companies’ social responsibility and a commitment to measuring their “triple bottom line”<sup>34</sup> performance. The

index is an attempt to get companies to disclose voluntarily as much information as possible – and be rated on it – about their commitment to social upliftment and good corporate governance. In the latest (2005) version, SRI companies are encouraged also to disclose any donations made to political parties.<sup>35</sup>

Yet the reality remains that civil society’s efforts to promote transparency are constrained by the lack of legislation, which also protects big business and political parties from disclosing too much information.

South Africa’s raft of anti-corruption laws (although partly emasculated by the lack of implementation and enforcement) are a partial disincentive to the abuse of office by politicians for personal gain because they are legally bound to disclose publicly all personal financial interests. But the *lacuna* is that political parties have no similar obligation, which means that politicians or officials who make biased decisions to advance the commercial interests of their parties are unlikely to be caught out. “[This] gives tremendous incentive to party fundraisers to extort ‘donations’, including shares, from companies that compete for state contracts; or for companies wanting state contracts to offer to share the spoils with the party.”<sup>36</sup>

## Party funding in South Africa: The potential for the co-optation of government and party by business

Auditor-General Shauket Fakie dropped a political bombshell with the release in March 2006 of his report called *Performance audit on declarations of interest by ministers, deputy ministers and government employees*.<sup>37</sup> This document, which revealed an endemic amount of business moonlighting by civil servants who had circumvented the panoply of anti-corruption legislation, pitted Fakie against the ANC, government leaders, civil servants, and the legislature.

The report revealed that more than 52,000 government employees have interests in 20,000 close corporations, private companies or public companies. Of these interests, 655 are held in JSE-listed companies. At least 14 ministers and deputy ministers and more than 1,600 provincial ministers and other designated employees were found to have 3,747 directorships in 3,600 entities. Twenty-nine senior employees at the Presidency had 139 directorships

in 135 entities, 24 of which are JSE listed. Also scoring high in listed entities were senior employees in the departments of justice (41), labour (25), trade and industry (27) and foreign affairs (10).<sup>38</sup>

The report divided government employees into two categories – designated (chief director level and above), and non-designated (the rest). Designated employees are required by the Executive Members' Ethics Act to make annual disclosures of any financial interests, while non-designated employees, the biggest culprits identified by the Auditor-General, are only obliged to obtain permission before performing external remunerative work, which they generally fail to do. The Auditor-General has called for legislation to regulate this situation, which is untenable given the potential for conflicts of interest.

Fakie came under attack from various quarters, most vociferously from parliament's ethics committee, which all but rejected his report, arguing that it was based on outdated information from the Companies and Intellectual Property Registration Office (Cipro),

### An overview of South Africa's anti-corruption legislation

#### ***Preventing and Combating of Corrupt Activities Act 2004***

This Act codifies offences of corruption and bribery, extending this from the offices of corrupt public officials to corruption in corporate boardrooms. It also deals with the role of private capital as a source of public corruption. It makes provision for the protection of witnesses and places a duty on individuals holding positions of authority to report corrupt activity. This provision, in particular, ensures that senior managers in government, parastatals and the private sector can blow the whistle on corruption. Failure to report corrupt activities carries a maximum penalty of 10 years' imprisonment.

#### ***Executive Members Ethics Act 1998***

This Act and the pursuant Code of Ethics published in the *Government Gazette* requires Cabinet ministers and deputy ministers to disclose to an official in the office of the president, and members of executive committees to disclose to an official in the office of the premier, all their financial interests when assuming office. The Act provides for both annual and transactional disclosure, which relates to a transaction that a public servant may be involved in.

#### ***Amended Public Service Regulation of 2005***

This requires designated civil servants (director level upwards) to declare their financial interests annu-

ally to the office of the Public Service Commission. Non-designated employees (below director level) are only required to obtain approval before performing remunerative work outside their government employment. Financial disclosures are not required for non-designated employees.

#### ***Protected Disclosures Act 2000***

This Act protects whistle blowers, particularly in the public sector. The South African Law Reform Commission has been drafting recommendations to tighten the Act so that it better protects whistle blowers. This process has been underway for five years.

#### ***Promotion of Access to Information Act 2002***

This Act gives effect to the constitutional right of access to any information held by the State and any information that is required for the exercise or protection of any rights.

#### ***Public Funding of Represented Political Parties Act 1997***

This governs the annual disbursement of public funds to political parties according to a stipulated formula. See the introduction for more details.

a database of all registered companies and their directorships.<sup>39</sup> This was despite the fact that the Auditor-General's report included a qualifying clause stating that the Cipro information could be outdated.<sup>40</sup>

The criticism from the ethics committee, which was echoed by the ANC's NEC, its highest decision-making body outside conferences, was in the opinion of these researchers an attempt to deflect attention from the fundamental principle embodied in the report, namely that an increasing number of public officials are brazenly pursuing business interests, most of which are undeclared and a significant proportion of which have the potential for conflicts of interest as the companies of these officials are cropping up in business transactions with the government.

The Auditor-General has started probing the extent of corruption involving government tenders awarded to businesses with public officials and members of the executive as directors. "This points to the heart of the problem and for me is the serious stuff," he said. "We are already aware of quite a number of such cases."<sup>41</sup>

The South African Communist Party (SACP), the ANC's partner with the Congress of South African Trade Unions (Cosatu) in the Tripartite Alliance, expressed its concern about this trend in a statement released in April 2006 to commemorate the 13th anniversary of the death of Chris Hani:<sup>42</sup>

We need to reaffirm our commitment to serve the public without expectation of personal gain. To this end the SACP is concerned about the rapidity with which many of our public representatives and civil servants are engaged in private business activities, declared or undeclared. We reiterate our call that we need to strengthen the culture of serving the public without mixing this with private business activity. At this rate, the single biggest threat to our national democratic revolution will soon be that of public interest being submerged by private business interests.

In a seminal discussion document written by the SACP's secretary-general Blade Nzimande and printed in the party's monthly political journal *Bua Komanisi* in May 2006, he again notes the "excessively compradorist and parasitic" nature of "emerging black capital (as the key faction most closely associated with the ANC and the state)."<sup>43</sup>

Its compradorism reflects its reliance on the patronage of established capital, not just for-

eign, but also, in particular, established sector of domestic capital...Its parasitism is reflected in its reliance upon and symbiotic relation with the upper echelons of the state apparatus (BEE charters, with their ownership quotas and tender policies) that are driving the emergence of this class faction, putting pressure on established capital to cut this emerging faction "a slice of the action" in order to remain in favour with the "new political reality"...Political tensions within the state and ANC leadership group are "resolved" (i.e. managed) by allowing some to be "deployed" into the private sector. However, the converse of this is that the leading financial and mining conglomerates are increasingly reaching into the state and the upper echelons of the ANC and its Leagues – actively backing (betting on) different factions and personalities, and seeking to influence electoral outcomes and presidential successions.<sup>44</sup>

### An increasing number of public officials are pursuing business interests that have the potential for conflicts of interest.

In his thought-provoking speech delivered at the fourth Nelson Mandela annual lecture at the University of Witwatersrand in July 2006, President Thabo Mbeki added his voice to the growing concern about the rise of crass materialism in South Africa:<sup>45</sup>

With reference to this lecture, the central point made by [economic historian] Karl Polanyi is that the capitalist market destroys relations of 'kinship, neighbourhood, profession and creed,' replacing these with the pursuit of personal wealth by citizens who[,] as he says, have become atomistic and individualistic. Thus every day and during every hour of our time beyond sleep, the demons embedded in our society, that stalk us at every minute seem always to beckon each one of us towards a realizable dream and nightmare. With every passing second, they advise, with rhythmic and hypnotic regularity – get rich! get rich! get rich!...It is perfectly obvious that many in our society having absorbed the value system of our capitalist market, have come to the conclusion that, for them[,] personal success and fulfilment means personal enrichment at all costs...<sup>46</sup>

In the United States the co-optation of political parties and government by business, is acute. For example, every one of the 10 largest contracts awarded for work in Iraq and Afghanistan after the destruction following the United States invasions of those countries went to companies employing former high-ranking government officials, and all top 10 contractors are established donors in American politics, contributing nearly \$11 million to political parties since 1990.<sup>47</sup>



Charles Lewis, the director at the Washington DC based Centre for Public Integrity, remarked as follows about the cancerous contamination of politics by powerful financial interests in the United States in his publication *The buying of the President*:

Hundreds of former public officials routinely shill for powerful corporate interests, well-paid fixers who facilitate the successful synergy of mixing politics and business – in which public and private sensibilities are blended until they're almost indistinguishable – produces a natural, if not essential, elixir that practically all real "players" by definition must drink.<sup>48</sup>

In South Africa, the same dangerous cocktail may be gaining momentum as many political personalities with impeccable political credentials have moved into the private sector followed by top public servants. This has been facilitated predominantly by BEE, which is increasingly being distorted by some government officials, politicians, corporate capital and party officials seeking different forms of connectivity rather than the more noble intentions of BEE: to ensure that a transfer of wealth takes place from the top echelons of white capital to the mass base of poor black people. (See the introduction for information about BEE.)

This does *not* mean that all black capitalists and corporate managers are paid-up members of the political elite, for there are significant streams of BEE transactions, businesses and individuals who have emerged from other routes – professional, educational and recruitment – and others who may be connected to the ruling-party but do not trade on it. This paper also recognises that participation in the market in South Africa has, for well over a century, been politically and racially structured and at the heart of BEE is the difficulty of how to redress the legacy of racial inequality without inhibiting economic growth. "Critiques of the current restructuring of the South African capital market therefore need to be historically and sociologically aware, concerned with a search for an appropriate combination of legitimacy (racial redress) and efficacy (does it inhibit or promote economic growth?)."<sup>49</sup>

Having said this, there are increasing examples of how BEE is being debased by a capitalist class that operates within a sphere of capital accumulation fostered by close connections to the state, usually through the direct involvement of senior ANC members in business. This has created a porosity between party, business and state, with increasing examples of political

patronage, influence-peddling, cronyist practice and party funding emerging.

In 2003 the former Sasol chief executive Pieter Cox faced the wrath of President Thabo Mbeki after he cited BEE as an investment risk factor in a document the company had to compile in terms of the New York Stock Exchange regulations. Mbeki lashed out that Sasol was guilty of "bigotry" and had an "outdated mindset".<sup>50</sup> Minister in the Presidency Essop Pahad later developed Mbeki's argument: "...BEE should be viewed as the engine of our economic future and the factor that, more than any other, will link our two disparate economies."<sup>51</sup>

The strong response from the Presidency reflected the government's belief that big business was too slow to buy into economic transformation. Cox's follow-up explanation, on the other hand, demonstrated the dilemma that faces South African corporate capital: "We believe empowerment is a risk. But we also know that it is an even bigger risk if we don't do empowerment."<sup>52</sup>

With the dawn of democracy corporate capital was acutely aware that to remain competitive it had to eschew its apartheid allegiances and gain favour with the new ANC-led government – all within an increasingly competitive and globalised environment.

Its attempts to adapt to this new political economy, with BEE at the apex, threw capital into a state of extreme uncertainty – a situation it abhors. This was exacerbated by the fact that BEE, formulated in the spirit of compromise and pragmatism that has characterised the best of the ANC since 1994, had moved from being largely persuasive with hardly any direct government involvement in the 1990s to becoming more intrusive and regulatory with the promulgation of the Broad Based Black Economic Empowerment Act of 2004. The Act places a host of obligations on companies that want to do business with government and the state provides substantial support to empowered businesses through tenders, permits and procurement as well as the allocation of share capital in state-owned enterprises.

[Corporate capital] might, ideologically, preach the need for the state to minimise regulation of the market. However they were acutely aware, not just of the precedent of Afrikaner economic empowerment (of which some of them were a product), but of the way in which the corporate structure of South Africa had been affected

Increasing examples of political patronage, influence-peddling, cronyist practice and party funding are emerging.



by the imposition of sanctions in the 1980s. They were therefore acutely aware of the need to adjust to the new style, rules, impositions and demands of democratic politics, and most notably those of the ANC, which were to take centre stage after 1994.<sup>53</sup>

The best way that corporate capital knows to create certainty is to buy it, and so it was that throughout the 1990s and up to the present it has gained access to the powers-that-be through “such devices as loans to, and joint ventures with, BEE companies, as well as scrambling to compete for the dismally small pool of qualified black managers”.<sup>54</sup>

While BEE has gone some way towards fulfilling its ideals of broad based empowerment – according to the most comprehensive study to date on the rising black middle class, this group makes up 10% of the black adult population and accounts for 23% of total consumer power in South Africa<sup>55</sup> – it has also converged politics and business as the capitalism being promoted by the ANC-led government through BEE is highly-dependant on state policies, protection and preferences and operates extensively through political networks associated with the ANC.

Hence BEE at some levels has come to serve both the moneyed and the political classes as an elite group of entrepreneurs whose skills lie not only in fulfilling the demands of their particular industry, but also in lending certainty and new business opportunities – from the state or state opportunity – to companies that have empowered them. These BEE entrepreneurs trade on their political access, which has suited corporate capital well because it has brought certainty where it had none.

A 105-page report called *Money and morality* released in October 2006 by the Institute for Justice and Reconciliation warned of anxiety among ordinary South Africans about corruption by government officials and their connections in the private sector.<sup>56</sup> “It is a truism among the masses that it is the well-connected few who are getting rich as a result of political or other connections,” noted the report.<sup>57</sup>

The incestuous relationship between largely white-controlled business, government and empowerment was reinforced in a public lecture delivered by President Thabo Mbeki’s brother, Moeletsi Mbeki,<sup>58</sup> at the Wits Institute of Social and Economic Research in April 2006, where he told his audience that the ruling class had developed into two dominant classes through

black economic empowerment. These were the black upper middle class that dominated the political life of the country, and the economic chiefs, the owners and controllers of minerals and energy firms. While he spoke specifically of this relationship between the two classes in the context of the country’s minerals-energy complex, it applies generally across the country’s economic sectors.

The effect of this voluntary wealth distribution on the country has been the emergence of a new class of “unproductive, rich black politicians who have become key political allies of the economic oligarchy,” Moeletsi Mbeki said.<sup>59</sup>

Hence it is that several leaders within the Tripartite Alliance and the ANC itself – Jeremy Cronin, deputy secretary-general of the SACP, Cosatu general secretary Zwelinzima Vavi, Archbishop Desmond Tutu, finance minister Trevor Manuel and President Thabo Mbeki himself – have decried in recent years the fact that South Africa is in danger of moving towards a state of crony capitalism where the black capitalist class operates within a sphere of capital accumulation fostered by close connections with the state.

The best way that corporate capital knows to create certainty is to buy it.

Oilgate (detailed below) is a classic example of this dangerous cocktail. It was alleged that before empowerment company Imvume’s donation to the ANC, party secretary-general Kgalema Motlanthe wrote a letter in support of a trip by Imvume principal Sandi Majali to Iraq, where he asked for allocations of Iraqi oil to supply South Africa through Imvume. The Deputy President, Phumzile Mlambo-Ngcuka, in her former capacity as minister of minerals and energy, also authorised her most senior officials to accompany Majali on this trip. Imvume later got the requested oil allocations.

In his book *Bus stop for everyone*,<sup>60</sup> political analyst Tom Lodge cites the former treasurer-general of the ANC, Makhenkesi Stofile, telling an audience in Mafikeng in 1997 that R2 million donations to the ANC had become customary among black business people. In return for this generosity “we opted for the role of facilitators for black business in the country,” Stofile said.<sup>61</sup>

Several ANC senior leaders who spoke on condition of anonymity said that in addition to political endorsement of selected BEE groups and individuals by the ruling party there was a growing trend for individual party members to use their positions of power to advance their personal business interests.<sup>62</sup>

Trevor Manuel said one of the key reasons the party

was currently formulating a code of conduct to govern the interface between party and business was to ensure “that certain standards are put in place to prevent any member of the ANC owning the party.”<sup>63</sup> “We need to ensure that at no time do ANC members [in business] trade on their political capital. I’m not sure if you can stop ANC officials seeking remuneration [outside the party], but if you go around trading on your full-time position as an ANC member, that’s what we’re trying to stop,” he said.<sup>64</sup>

This fluidity between state, party and business has allowed politicians in government and party officials to build networks of patronage (and arguably to extort kickbacks if they are that way inclined). And alongside this mix there is tremendous space for straight party funding deals.

Mendi Msimang, treasurer-general of the ANC, said: “The BEE arrangements [legislation] are there because of the work done by political parties...We appeal to the good sense and the patriotism of the ANC members in business to help the party. These people belong to branches and have consciences.”<sup>65</sup>

The implicit suggestion here is that party members in business are morally expected to provide funds to the ANC. This is in line with the historical tradition of loyalty to the ANC above all else and is also in reciprocation for the financial leg-up BEE has provided these business people. The ANC still has a top-down structural mindset, harking back to the struggle years, where loyalty to the political cause is prized above almost everything else, often even including competence.

There is endless debate within the party, but once an internal “consensus” is reached, everyone has their orders. As one diplomat and long-time observer of the party says, “People are deployed to do jobs that they are not fit to do, and the ‘consensus’ means a loyalty to people who do not work, or who are not effective...clientism hinders rational distribution of resources.”<sup>66</sup>

A major sticking point in South Africa’s democracy is the ANC’s continued policy of deploying cadres to institutions in a manner in which they retain party loyalty that may undermine or even trump their new independent institutional loyalty. While deployment was necessary in the formative years of democracy when the ANC needed to gain control of the commanding heights of the civil service and parastatals, these goals have been achieved and deployment has

now become a mechanism vulnerable to abuse in political endgames.

During the arms deal investigation, one investigator acknowledged that the investigation faced a “grey area” that flowed from a political process in which ANC cadres were consciously “deployed” by the party to wrest control of the areas of the economy that were considered strategic – like the arms industry. In that process, “mistakes” were made. The very “mistakes” for which [Jacob] Zuma was investigated, and Schabir Shaik charged, flowed from an attempt to politically manage and control the transfer of economic power – or at least strategic elements of it – from the alliance of Afrikaner nationalism and big business to an alliance of the ANC and big business. So although Zuma may have overstepped the line, the line itself is a very wide and dirty smudge, within which fall myriad empowerment deals – and the funding of the ANC itself, as well as its pet projects and competing factions.<sup>67</sup>

The fluidity between state, party and business has allowed politicians in government and party officials to build networks of patronage.

Where ANC politicians in government or in the party structures nominate people for BEE deals, for example, one of the expected off-sets, given this history of loyalty, may be party funding arrangements – the “good sense” and “patriotism” that Msimang talks about. In addition there is no reason why the ANC wouldn’t be deploying cadres

into the private sector (witness the use of nominee shareholders in the Transet/Skotaville example detailed below) in the same way that the party deploys cadres into government, state and parastatal positions.

President Thabo Mbeki chided party members at the ANC’s NGC meeting in July 2005 over the growing conflation of party, state and business and the blatant potential this creates for corruption, including financial support to the party:

To be a ruling party means that we have access to state resources. It means that those who want to do business with the state have to interact with those who control state power, the members of our movement who serve in government. It means that those of us who serve in the organs of the state have the possibility to dispense patronage. It therefore means that we have the possibility to purchase adherents, with no regard to the principles that are fundamental to the very nature of the African National Congress.

All this makes control of state power a valuable asset. It makes membership of the ANC an easy route to access state power. It makes membership of the ANC an attractive commercial proposition. It makes financial support for the ANC an investment for some of those who want to generate profits for themselves by doing business with government.<sup>68</sup>

The most famous example of this intersection, and the biggest party funding scandal in South Africa since 1994, was the media exposé known as Oilgate.<sup>69</sup>

### ***Oilgate and party funding***

An investigation by the South African newspaper the *Mail & Guardian* in 2005 into private party funding revealed how R11 million of public money was diverted to ANC coffers ahead of the 2004 elections.<sup>70</sup> South Africa's state oil company, PetroSA, advanced R15 million to Imvume Management – a company with close ties to the ANC – to pay for oil condensate it had to supply to the PetroSA production plant at Mossel Bay after winning a lucrative tender to do so. Imvume then transferred the lion's share (R11 million) to the ANC in the run up to the 2004 general elections. This left Imvume with inadequate resources to pay for the condensate, prompting PetroSA to release another R15 million directly to Gencore, the Swiss-based supplier. PetroSA partly justified its relationship with Imvume as an empowerment partnership:

The cornerstone of this deal is the policy adopted by PetroSA, which is a national initiative, black economic empowerment. PetroSA has a mandate to introduce hitherto disadvantaged South Africans into the oil and gas industry. PetroSA had a choice: to continue business as usual and exclude historically disadvantaged South Africans from the mainstream economy and prolong, if not propagate, the two-economies concept, or use our procurement muscle to bring fundamental change to the industry.<sup>71</sup>

Imvume's role as an ANC "front company" first emerged in February 2004, when the *Mail & Guardian* exposed its oil dealings with Saddam Hussein's Iraq. Imvume principal Sandi Majali obtained lucrative crude oil allocations from that regime when he travelled to Iraq with top ANC officials between 2000 and 2002. Later, companies in the Imvume group described Majali as ANC secretary-general Kgalema Motlanthe's "economic adviser".<sup>72</sup>

The essence of Oilgate was that PetroSA, and ultimately the taxpayer, subsidised the ruling party's election campaign: a blatant abuse of public resources.

### ***The arms deal and party funding***

The so-called "arms deal scandal" is another example of the murky relationship between state, business and party.

In 1998 the government decided to purchase about R30 billion worth of new defence equipment as part of the arms procurement package in a democratic South Africa, which ultimately resulted in the country's largest political fallout since 1994 as ANC cadres were pitted against each other after tender irregularities and political patronage blew into the open. The arms deal essentially led to the fall from grace of the country's deputy president, Jacob Zuma.

Zuma was fingered by Judge Hilary Squires for his "generally corrupt" relationship with his economic adviser Schabir Shaik, who was found guilty in 2005 on two counts of corruption and one of fraud for his profiteering in the arms deal through his company Nkobi Holdings.

Shaik allegedly offered Zuma financial favours, which the former deputy president allegedly accepted in return for political endorsement of Nkobi Holdings during the arms deal procurement process and later political immunity during the investigation.<sup>73</sup>

The National Prosecuting Authority found during its investigation of Shaik that the ANC owned a 10% stake in Nkobi Holdings, which meant that the ruling party probably stood to benefit from the arms deal.<sup>74</sup> The charge sheet against Shaik stated that Floryn Investments, a 10% shareholder in Nkobi Holdings, belonged to the ANC.

The charge sheet against Shaik stated that Floryn Investments, a 10% shareholder in Nkobi Holdings, belonged to the ANC.

There is every reason to suspect that the arms deal suffered from the same intentional confusion of national, party and personal interests. With regard to businessman Schabir Shaik, the overlap between private and party interests — and indeed the blurring of the boundary between the two — was built in from the start. His company, Nkobi Holdings, was named after the ANC's late treasurer-general, Thomas Nkobi, and Zuma has explicitly acknowledged that Shaik played a role in raising and managing funds for the ANC. In fact, it is arguable that all Shaik did was devise a business plan based on "unwritten rules of the game", which

The essence of Oilgate was that PetroSA, and ultimately the taxpayer, subsidised the ruling party's election campaign.

in effect institutionalise corruption on the basis of both funding the party and extending its control from the political to the economic sphere.<sup>75</sup>

Zuma was later also charged with corruption but the case was struck from the roll in September 2006 for administrative reasons.

### **Skotaville Press and party funding**

Nominee shareholding arrangements are often used to hide the real shareholders in a company because such arrangements are so difficult to penetrate. In 2003 the Johannesburg High Court awarded millions in damages to a printing company that claimed it had lost a Transnet privatisation tender to a company called Skotaville Press (now renamed African Impression Media) because it had refused an approach from an ANC treasury representative, Zwelibanzi “Miles” Nzama, to hand over 15% of its shares to the party.<sup>76</sup>

Nzama, together with ANC treasurer-general Mendi Msimang and Nomazizi Mtshotshisa, the chairperson of Telkom, are the trustees of an ANC fundraising vehicle called the ANC Fundraising Trust. The trust was registered in 2000 and has as its purpose not only to accept donations but also to hold shares in companies.<sup>77</sup>

The use of the Trust is a controversial fundraising mechanism as a potential conflict of interest arises every time a government official who is also an ANC member has to make a decision on a government or parastatal contract for which one of these companies has tendered.<sup>78</sup>

Nomazizi Mtshotshisa, for example, also served on the board of Admiral Industries, which supplied Telkom with clothing for workers. Telkom paid the company R5,4 million for the financial year ending 31 March 2004.<sup>79</sup> Mtshotshisa resigned as director of Admiral Industries on that date.<sup>80</sup>

In the Transnet scandal it emerged that a man called Thlalefang Sekano allegedly held the Skotaville Press shares on behalf of the ANC.<sup>81</sup> A recent company search showed Sekano is still a director of African Impression Media.<sup>82</sup> Sekano, who is also the executive chairman of the Communication Workers Investment Company, represented employees on Telkom's board, but is also a director of Telesafe Security, which was paid R39,9 million for security services by Telkom in 2004.<sup>83</sup>

### **The South African Oil Company and party funding**

Another large government deal that appeared to benefit the ruling party came to light when the media revealed in 2003 that an offshore company, the South African Oil Company (SAOC), had benefited from a Nigerian government oil contract issued in South Africa's name.<sup>84</sup> There were allegations at the time that the party was a shareholder or beneficiary in SAOC, which was mysteriously registered in the Cayman Islands, both a tax haven and a haven of corporate anonymity.<sup>85</sup> The party never confirmed nor denied this claim. However, it was clear that neither the oil, nor the revenue, was to benefit South Africa. Instead, ruling party-aligned interests were lined up to benefit in a classic example of what appeared to be political leverage from ruling-party government officials and politicians in exchange for financial benefit.

Most of these examples demonstrate an incestuous relationship between the ANC, business, parastatals, government and empowerment.

Kase Lawal, the man who provided the technical and financial muscle behind the South African-Nigerian oil deal, was quoted in a 1999 interview as saying that to team up with local partners is the best way to navigate “cumbersome”<sup>86</sup> government bureaucracy. Lawal's United States-based Camac Group held a 75% shareholding in the South African Oil Company.<sup>87</sup> “We add financing and technical expertise, and they provide political landscape experience, relationships and credibility,” he said.<sup>88</sup>

What most of these examples demonstrate is an incestuous relationship between the ANC, business, parastatals, government and empowerment, which suggests that the government's commitment to good corporate governance is politically expendable. The point about these connections is not to suggest that they indicate corruption; however, they do raise complex questions about the use of economic power to capture political space, and the use of political power to obtain economic benefit, whether for individual party members, or for the party itself.

As stated earlier, political parties have no legal obligation to declare their private interests, which means that politicians or officials who make biased decisions to advance the commercial interests of their parties are likely to get away with it.

Smuts Ngonyama, the head of the Presidency in the ANC, is unapologetic about the right of party officials to have business interests and the concurrent concentration of wealth in the hands of those who are politically connected. “It is the right of any per-



son to get into business. There is no law barring people from getting into business by virtue of them being members of the [ANC] National Executive Council. There is nothing wrong with it," he said.<sup>89</sup>

But it is the accumulation of connection, seen in so many of these deals, that creates tremendous space for party funding deals – a you-scratch-my-back-and-I'll-scratch-yours scenario – as Oilgate, the life and death of Brett Kebble, and the Chancellor House case study (see page 17) illustrate.

### Funding the opposition: The DA and double standards

"I've got to go and meet a donor,"<sup>90</sup> says Tony Leon, leader of the opposition DA standing up and ending an interview at the five-star Park Hyatt Hotel in Rosebank, Johannesburg. The hotel's ritzy boardroom is where Leon courts many current and potential donors – as party leader he is responsible for a team comprising the DA's senior leadership that interfaces with the most lucrative benefactors. "Delegations are sent to specific companies," said a senior MP. "The kind of company involved determines who goes on the delegation. There is an exclusive list of donors to which MPs have no access."<sup>91</sup> But if party leaders are to be believed, contributions from members – or "grass-roots" financing – make up the bulk of the party's war chest.

According to a senior party official, donations of varying sizes from individual members account for about two-thirds of the party's funds. It is alleged that in 2004 – the year of the last national election – the DA raised about R21 million from private funders, in addition to the R7,1 million it received from the IEC.<sup>92</sup>

According to the DA's court papers submitted in the litigation brought by Idasa to compel political parties to disclose their funders in 2003, the party said that between January and 21 August that year, it had received eight donations exceeding R50,000.<sup>93</sup> In an election year the number of donations would increase.

Grassroots financing comes from the following: (a) membership dues, i.e. the gross amount of income from regular subscriptions of party members; (b) voluntary donations from formal party members in excess of membership dues; and (c) contributions from other supporters (loyalists), including those who contribute through fund-raising events.<sup>94</sup>

The DA's annual subscription fee is R10. With a signed up membership base of about 60,000, the party would earn about R600,000 annually from its members.<sup>95</sup>

But party members have always been relatively unimportant for the income of the party and there is talk that, as part of an overhaul strategy the party is currently developing, it will phase out paid-up party membership altogether. Instead, to bind supporters more closely to it, it will use a sophisticated communications network – a mechanism the DA can capitalise on given that the bulk of its members are from the middle class and would generally have access to electronic communication.

Already the party relies on structured mailing lists and electronically generated personalised letters from party leaders to contact citizens and ask for donations. This strategy has carved out a new class of donors among young professionals and corporate business officials. The letters include Tony Leon's weekly *SA Today*, which replicates President Thabo Mbeki's *ANC Today*, and *DA@Work*, which is sent regularly to members and supporters of the party.

The DA has a permanent flow of cash from its officials. MPs and MPLs are required to pay a levy to the party that is a percentage of their annual parliamentary income. This varies between 5% and 10%.<sup>96</sup> Local government councillors are expected to pay a smaller levy.<sup>97</sup>

"There is an exclusive list of donors to which [DA] MPs have no access."

### National Assembly

The DA has 50 MPs in the National Assembly. According to the Independent Commission for the Remuneration of Public Office Bearers:<sup>98</sup>

- The average salary for MPs for the 2005/2006 financial year was R415,176 (the salaries range between R388,005 at the lower end and R426,811 at the upper end depending on experience).
- The leader of the opposition, Tony Leon, is paid an annual average parliamentary salary of R534,844.
- The chairperson of a committee or a joint committee is paid an annual average of R501,787. None of the committees are chaired by the DA.
- The chief whip of the official opposition, Douglas Gibson, and the deputy chief whip of the official opposition, James Ellis, are paid an annual average of R486,301.

Based on these figures, using the lower end of the levy required by the DA (5%), the party would annually receive:

- an average of R1 million from MPs;
- an average of R26,000 from Tony Leon; and
- an average R48,000 from the chief whips.

This comes to a total annual figure of R1,074,000.

## Provincial legislatures

The DA has 47 MPLs across the nine provinces. According to the Independent Commission for the Remuneration of Public Office Bearers:<sup>99</sup>

- The average annual salary for the leader of the opposition in each province is R486,301.
- The chief whip and the deputy chief whip in each provincial legislature is paid an annual salary of R458,019.
- MPLs are paid an annual average salary of R384,894.

Based on these figures, and using the lower end of the levy required by the DA (5%), the party would annually receive:

- an average total of R200,000 from the party's provincial leaders;
- an average of R400,000 from the chief whips; and
- an average of R900,000 from the MPLs.

In total, excluding the contribution from local government councillors, the DA would receive about R2,5 million annually from contributions by MPs and MPLs.

In addition, MPs and MPLs are expected to raise an annual contribution for the party from their constituencies, or to pay that out of their pockets. This averages R25,000, amounting to an additional total annual contribution to the party of about R2,4 million. Every election year each MP and MPL is required to donate an additional R20,000 to the party's coffers.

But all of this is still a pittance in comparison with the annual running costs of the party, which are about R50 million in total, according to one senior MP. Yet the party generally "manages to meet its needs," said DA chief executive officer Ryan Coetzee.<sup>100</sup>

The party receives minimal access to credit because banks are wary of lending money to political parties. "We can't get a credit line from banks," said Coetzee.<sup>101</sup> Generally individual DA officials put up their personal assets as surety to obtain loans, he says.<sup>102</sup>

The DA has not been without its party funding scandals. In 2002 the party was accused of receiving about R500,000 from extradited German fugitive Jurgen Harksen. In addition it was alleged that Harksen had paid former DA Western Cape premier and Cape Town mayor Gerald Morkel's rent of R55,655 during December 2001 and the payment of his legal fees of R219,182 during 2001.<sup>103</sup> The National Prosecuting Authority later exonerated the DA from allegations of money laundering and corruption, but the scandal

continues to hang over the DA and is an example of the money the party may be receiving from questionable sources.

It is also important to note that major party funding scandals are generally linked to the leverage provided by political office. The DA doesn't hold political power in any of the provinces, although it does have a reasonable power base at the local level – for example, the party has control, together with a coalition of other parties, of the Cape Town Metropolitan Municipality. It therefore cannot offer benefactors very much by way of access to power, a return they often seek. Private donations would generally come in the form of funds from either large companies who donate proportionally or individuals who are ideologically aligned with the DA.<sup>104</sup>

## The DA has not been without its party funding scandals.

In principle the DA has been opposed to unregulated private political party funding – the party's chief whip, Douglas Gibson, submitted a private member's bill to parliament in 2002, calling for the prohibition of donations to political parties from foreign governments, the prohibition of anonymous donations from any source if the amount in one financial year exceeds R50,000, and the declaration of the name and address of any donor whose donation in one financial year exceeds R50,000.<sup>105</sup>

But in 2005 it did an about turn and withdrew from a comprehensive party-funding symposium organised by Idasa as part of its Party Funding Campaign.<sup>106</sup> The symposium brought together business, civil society and representatives from every other political party to kick start the process of developing a formula, suitable for all affected sectors, to regulate the private funding of parties – a legislative lacuna in South Africa that threatens the fabric of the country's democracy.

Idasa accused the party of a "superficial" commitment to democracy. The DA said that they did not see the campaign to be in their interests and that donations made to the party were done privately and confidentially. More specifically, the party was concerned that by participating in the debate it would fuel potential and current donors' insecurities about being exposed. Ryan Coetzee said: "While we stand against private funding on principle, we would die as a political party without it."<sup>107</sup> Essentially the party has made a choice between protecting its financial benefactors and participating in a multi-stakeholder process seeking greater transparency in an area that is critical to the sustenance of democracy.

Gregory Krumbrock, executive director of the DA who filed the responding affidavit in response to Idasa's application, wrote:<sup>108</sup>

Gregory Krumbrock, executive director of the DA who filed the responding affidavit in response to Idasa's application, wrote:<sup>108</sup>

I oversee the DA's fundraising activities and have dealt personally with a number of donors. From personal experience I can say with confidence that disclosure of the donation records sought from the DA would [cause] existing and potential donors to refrain from making future donations to the DA or to reduce the amount of their donations...The DA's donors regard their support for [the party] as a private matter and would be distressed and embarrassed to have this information made public. Although this concern is more pronounced in the case of private individuals, it is also shared by corporate donors and by the persons who represent them.

It is for this reason that the DA, as a standard feature in its telephonic fundraising campaigns, expressly mentions to potential donors that confidentiality will be observed. Larger donations (such as those in excess of R50,000) generally involve personal contact between the donor and a senior representative of the party. In these dealings it is often expressly stated that the donation is to be treated in confidence.

Secondly, corporate donors have a natural concern that disclosure of their support for the DA may prejudice them in bidding for contracts awarded by organs of state controlled by other parties, particularly the ANC...It is not germane whether there would as a probability be discrimination in the event of disclosure...Even if donors believe that the risk of discrimination is slight, they (or at least some of them) are likely to consider that the risk is worth taking. Even if the concern were regarded by others as unfounded or irrational, it would...influence donor conduct. Again, I am able to say from experience that such concerns do exist among corporate donors.

It is a global concern among opposition political parties that they are disadvantaged by the fact that business houses are reluctant to donate to them for fear of economic reprisal from government.

On the other hand, ruling parties appears to have unlimited access to the use of government financial and human resources, including vehicles and control of the public media. The opposition has argued that this has created an uneven political playing field, to their detriment.

"Any big business is going to give more money to the ANC – it's instinctive for business to make friends with the [ruling party]," says DA CEO Ryan Coetzee. Coetzee says that small, medium and micro enterprises are more willing to donate to the opposition because they don't necessarily have "an institutional relationship with the ANC".<sup>109</sup>

On the other hand, opposition political parties could use this reasoning as a convenient defence to avoid or delay legislating the flow of private donations to parties.

Big business in South Africa must be credited with taking the initial steps toward greater transparency, and corporations such as Standard Bank and Anglo American have developed formulae whereby each political party receives donations according to its parliamentary representation. This arguably cuts out any scope or suspicion of favouritism. By Coetzee's own admission, big business largely has a long-term view of the economic and political value of maintaining a multi-party democracy, thereby avoiding the potential self-destruction of supporting only the ruling party.

Interestingly, it is alleged that the flow of donations to the DA tends to ebb and flow with the political climate. For example, in 2000 when the Zimbabwean land grabs began the DA experienced an increase in donations from business.<sup>110</sup>

It is a global concern among opposition parties that business is reluctant to donate to them for fear of economic reprisal from government.

Ironically, however, the DA's stonewalling of efforts to regulate private donations to parties could perpetuate the problems of the dominant party syndrome that it accuses the ANC of entrenching. Without legislative parameters, the ruling party has adequate room to use state resources and receive donations from opaque sources, thus enfeebling opposition parties, who by their own admission cannot compete with the ruling party's power advantage for donations.<sup>111</sup>

An attempt to interview David Maynier, National Director of Fundraising for the DA, about the party's funding strategy and its donors was unsuccessful. "Concerning a meeting to discuss party funding research for the Institute for Security Studies. The party does not discuss any matters relating to party funding or donors. Unfortunately, therefore, it will not be possible to meet you to discuss same," he wrote in an email.<sup>112</sup>

The DA, as the biggest opposition party, needs to fulfil its obligation to fight for transparency and should



be leading from the front to legislate this difficult terrain. It is essential to avoid the preservation of short-term interests and in turn allow the perversion of democracy.

## Case study: Chancellor House, a front company

### Introduction

This case study exposes a new corporate front used by the ANC to seek profit on its behalf.

The Chancellor House group of companies has quietly accumulated “empowerment” stakes in minerals, energy, engineering, logistics and information technology (see below for details of these investments). More often than not, these business opportunities have been dependent on the government’s discretion – the award of state tenders, mineral rights and the like. The ANC, as ruling party, has been both player and referee.

The case study reveals how the government awarded rights to strategically important manganese reserves to a consortium that included both Chancellor House and a Russian oligarch, Viktor Vekselberg (see details of the manganese rights below).

President Thabo Mbeki, whom Vekselberg is understood to have met when he first visited South Africa looking for mineral sector opportunities, later appointed Vekselberg – Russia’s third richest man – to his international investment council. It is unclear whether this meeting with Mbeki specifically included a discussion about such mineral sector opportunities.

The South African government’s embrace of Vekselberg comes in spite of well-publicised allegations of racketeering and corporate lapses against him (see details below). These allegations appear to have been overlooked in the glow of the growing relationship between South Africa and Russia, of which President Vladimir Putin’s visit in September 2006 was only the latest sign. Vekselberg was central to the business delegation accompanying Putin.

When it came to the manganese prospecting rights awarded to Vekselberg’s company, Renova, and the ANC’s company, Chancellor House, diplomatic expediency and the party’s funding needs may well, in our view, have trumped the public interest.

This exposé of Chancellor House follows the *Mail & Guardian’s* outing in 2005 of “Oilgate” company

Invume Management as effectively a ruling party business front. Invume landed sweetheart deals in Saddam Hussein’s Iraq after a lobbying effort involving senior ANC officials. And it diverted R11 million of South African state oil funds to the party before the 2004 elections (see previous section for more details).

### Chancellor House: About the company

It is no coincidence that Chancellor House’s namesake housed a small law firm that opened in downtown Johannesburg half a century before the “empowerment” group – in fact, as this article will show, a ruling party business front – was formed. In 1952 former ANC presidents Nelson Mandela and Oliver Tambo rented office space in a building called Chancellor House. Mandela wrote in his autobiography, *Long Walk to Freedom*:<sup>113</sup>

“Mandela and Tambo” read the brass plate on our office door in Chancellor House, a small building just across the street from the marble statues of justice standing in front of the magistrates’ court in central Johannesburg... For Africans, we were the firm of first choice and last resort.

In March 2003 Chancellor House Holdings was established.<sup>114</sup> Together with a number of like-named subsidiaries it occupies space in a modest office block in Rosebank, Johannesburg. This research reveals, as will be seen, that Chancellor House has entered business on behalf

of the ANC and is answerable to the party’s treasurer-general, Mendi Msimang. The Chancellor House group has quietly accumulated “empowerment” stakes in minerals, energy, engineering, logistics and information technology (see details below).

Chancellor House has focused strongly on the minerals and energy sector, where empowerment opportunities have mushroomed since 2004, when the new Mineral and Petroleum Resources Development Act and its associated empowerment charter came into effect. The group’s biggest known deal to date has been as part of a consortium that won prospecting rights to strategic and potentially very lucrative manganese reserves in the Kalahari in 2005 (see below). A separate consortium in which it has shares has tendered for the construction of an Eskom power station worth R26 billion in Limpopo (see details of Chancellor House’s investments).

According to one well-placed official who wants to remain anonymous, Msimang approached representatives of the Department of Minerals and Energy (DME) as early as 2002 seeking opportunities for Chancel-

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lor House, which was only formally constituted the following year. By 2004, said the official, Chancellor House “kept trying to get deals [from the DME]. It said the money was for the ANC”.<sup>115</sup> The official had little doubt: “You can speak to any senior ANC leader. There is no question, Chancellor is regarded as an ANC company...It is officially supposed to be an entity for ANC funding.”<sup>116</sup>

On paper, the beneficial ownership of Chancellor House Holdings is deliberately vague. A “charitable trust”, the Chancellor House Trust, is the sole shareholder of Chancellor House Holdings, according to the company’s share register.<sup>117</sup> Subsidiaries Chancellor House Mineral Resources Investments, Chancellor House Marine Investments and Chancellor House Energy Resources Investments are all 100% owned by Chancellor House Holdings,<sup>118</sup> which means that the group is fully owned for “charity”.

The Chancellor House Trust deed, lodged with the Master of the High Court, specifies no beneficiaries. But the deed does give a whiff of political purpose, saying that the “principal object” of the trust:

shall be to promote, encourage and facilitate the participation and involvement in all economic and political sectors of South African persons and entities which have been historically disadvantaged.<sup>119</sup>

In theory, the trustees have the discretion to “donate” the money to whomever they choose within the broad confines of this principal object. Our investigations show that in practice, however, the proceeds are intended for the ANC treasury. The trustees, according to the trust deed, are Popo Molefe, the ANC NEC member and former premier of the North West Province, and Salukazi Dakile-Hlongwane, the chief executive of Nozala Investments, a leading BEE company.<sup>120</sup>

Perhaps appropriate to the historical reference of the name “Chancellor House”, the founder of the trust is Professor Bernard Magubane, the ANC historian-activist.<sup>121</sup> Magubane has headed the Road to Democracy in South Africa project – an official history of the struggle – as well as government’s classification and declassification review committee, appointed to decide the status of sensitive historical documents.

Chancellor House Holdings’ directors are of similar pedigree. The founding directors in 2003 included Henry Makgothi, the treason trialist and former National Council of Provinces ANC chief whip, Sivi Gounden, who had served as director-general in the

Department of Public Enterprises until about the time Chancellor House was founded, and Irene Charnley, the unionist turned MTN director. Both Charnley and Gounden have since resigned as directors.<sup>122</sup>

The managing director is Mamatho Netsianda, the former deputy secretary of defence. Netsianda’s relationship with Msimang, the ANC treasurer-general, goes back to at least the late 1980s, when he served in the ANC London office under Msimang, who was then the ANC’s chief representative to the UK and Ireland.<sup>123</sup> Other directors are Edith Kuzwayo, formerly a legal adviser in the defence secretariat, and Tebogo Makgatho, who chairs the NGO information network SANGOnet and serves on the Black Information Technology Forum.<sup>124</sup>

The Chancellor House Holdings board is chaired by Professor Taole Mokoena, a surgeon who read for a doctorate in immunology at Oxford. Mokoena was appointed in 2001 to chair the Medical Research Council by health minister Manto Tshabalala-Msimang.<sup>125</sup> Mokoena is said to have tainted his ANC credentials in the 1970s when his personal ambition superseded the demands of the struggle, but to have made peace with alienated comrades in the 1990s. He is said to be close to Tshabalala-Msimang, who is married to the ANC treasurer-general.<sup>126</sup>

### In practice, the proceeds of the Chancellor House Trust are intended for the ANC treasury.

Mokoena’s proximity to Msimang himself is apparent from an intriguing item recorded by the Bahrain News Agency on 20 March 2005. On that day, it said, Sheikh Hamdan bin Rashid Al Maktoum, the Dubai deputy ruler and minister of finance and industry, had “reviewed with Mendi Msimang and Taole Mokoena, advisers to President Thabo Mbeki of South Africa, means of enhancing bilateral commercial, tourism and cultural ties.”<sup>127</sup>

Detailed questionnaires about the Chancellor House group and trust, as well as their role in ANC funding, were sent in August 2006 to trustees Molefe and Dakile-Hlongwane, to Chancellor House chair Mokoena and managing director Netsianda and to ANC treasurer-general Msimang. They were not answered.<sup>128</sup>

Approached for comment, Chancellor House Trust founder Magubane said: “Your assumption that it’s a front for the ANC is a bit far-fetched.”<sup>129</sup> He then put the phone down.

During the course of this research, accounts of three business people who have close knowledge of the Chancellor House group have been obtained. From

these accounts it is clear that they regard Chancellor House as a source of funding for the ANC. Details of the accounts are not provided here as it may compromise the informants who provided them.<sup>130</sup>

Apart from these three, others have also spoken about their knowledge, direct or indirect, of Chancellor's ANC connection. One business person who entered a deal with Chancellor said: "We did know that Chancellor House was linked to the ANC... We don't see it as a concern because we are satisfied as to their credibility."<sup>131</sup> Another, who was involved in a deal one step removed from one of the transactions described on these pages, said: "I think it is common cause that Chancellor is the ANC's – that it owns it. I have heard that Mendi [Msimang] chairs it."<sup>132</sup> Msimang does not chair Chancellor House, but this comment is consistent with information that the group answers to Msimang.

Two persons who should have intimate knowledge of Chancellor House claimed to be unaware of its ANC funding role. Gounden, one of the founding directors, stated: "During my tenure as director at CH, the shareholder of CH was the CH Trust, and the objectives of the trust were to promote the development of black women and youth, in particular. I was unaware and remain same, of any link to the funding of the ruling party."<sup>133</sup> It is not clear why Gounden maintains that "black women and youth, in particular" are the intended beneficiaries, as the trust deed makes no mention of this.

Robinson Ramaite, the former public service director-general, is involved in the Kalahari manganese deal alongside Chancellor House. "I don't know about any links to the ANC," he said. "I have not met with Uncle Mendi in any of my relations with [the manganese consortium]. I know him only as the [treasurer-general] of the ANC."<sup>134</sup>

Again, it is not clear why Ramaite should deny all knowledge of ANC links. Others in whose interests it may have been to deny all, gave at least a glimpse. Dilmar Abdoulaev, locally a director of Russian-headquartered Renova, which partners Chancellor House in the Kalahari manganese deal, confirmed that his company had met at least once each with Msimang and Kgalema Motlanthe, the ANC secretary-general. "We met to discuss how to align Renova's social programmes with the ANC's," he said.<sup>135</sup> There seems to be no obvious reason why Renova would have had to meet with the ruling party in a process that was supposed to have been government led.

And in a call to Msimang's office at ANC headquarters asking for the Chancellor House offices, the re-

ceptionist said: "Chancellor House has had some dealing with us; that is why people get confused as to whether they have their offices [here]."<sup>136</sup>

### **Chancellor House's investments**

Perhaps the biggest investment notched up by Chancellor House is the Kalahari manganese deal in partnership with, among others, Russian oligarch Viktor Vekselberg's Renova. Detailed below are some of its other investments.

#### **Energy**

Chancellor House is a 25% shareholder in Hitachi Power Africa, the local subsidiary of Babcock-Hitachi Europe.<sup>137</sup> Hitachi Power Africa was formed in 2005 in response to Eskom's programme to install new generation capacity, which will rely heavily on the construction of new coal-fired power stations. Hitachi Power Africa is 30% black-owned, with 25% reportedly belonging to Chancellor House Holdings.<sup>138</sup>

Hitachi Power Africa has tendered for Eskom's flagship project under the new electricity plan – a R26 billion contract to construct a 2,250-megawatt coal-fired power station at a site near Lephalale in

Limpopo.<sup>139</sup> According to Fani Zulu, the Eskom spokesperson, as of 23 October 2006 the tender had still not been awarded although industry expectations had been that it would be awarded by the end of September. "These long-term supply agreement negotiations seem to take a lot longer than expected," said Zulu. "We've learnt not to put a timeframe on them."<sup>140</sup>

While Hitachi Power Africa waits for news about the Eskom tender, it has been working on a R400 million deal to supply a medium-sized steam generator for an independent power producer in Vanderbijlpark, Gauteng.<sup>141</sup> Robin Duff, Hitachi Power Africa's managing director, preferred not to comment on the links between Chancellor House and the ANC.<sup>142</sup>

#### **Mining**

The chair of Chancellor House Holdings, Taole Mokoena, is also the deputy chair of newly listed gold mining company Wits Gold. Mokoena represents Wits Gold's largest BEE shareholder, the Continental Africa Gold Resources Consortium. When Wits Gold listed in April 2006, Continental held about 23%, according to Wits Gold's listing prospectus.<sup>143</sup>

Chancellor House appears to be one of the partners in the Continental consortium, although the size of its stake could not be established. Wits Gold chief

## **Did Renova have to meet with the ruling party in a process that was government run?**

financial officer Derek Urquhart confirmed: "I understand that Chancellor House is part of Continental but I have no details about [what their share is]. Continental has a direct share in Wits."<sup>144</sup>

Wits Gold appears designed to exploit the empowerment demands of the new Mineral and Petroleum Resources Development Act and its associated empowerment charter, which require BEE targets to be met as old order mineral rights are converted to new.

Wits Gold acquired mineral assets from AngloGold Ashanti, Gold Fields and the ARMGold-Harmony Freegold Joint Venture Company – established companies that may have struggled to meet the required BEE targets. As a 40% empowered company, Wits Gold then applied for new order rights on these properties from the Department of Minerals and Energy.<sup>145</sup>

The established companies have the option of taking back a 40% share once Wits Gold takes the properties to bankable feasibility stage. This suggests that Wits Gold in part provided an "outsourced BEE" solution to the established mining companies. By the time it listed, Wits Gold had already been granted new order gold prospecting rights to six of the nine areas it had applied for, covering an area of almost 80,000 hectares in the Witwatersrand Basin.<sup>146</sup>

The company has stated that its reserves were thought for the time being largely uneconomic to exploit, but it has estimated them to be the world's fifth largest, representing a highly leveraged option available on future moves in the gold price and exchange rates.<sup>147</sup> The market approved, valuing Wits Gold at R1.8 billion by August 2006.

The chair of Wits Gold is Adam Fleming, the brother of Roddie Fleming, a key player in the Kalahari manganese deal. Adam Fleming previously chaired Harmony Gold, a position from which he resigned in 2003.

Chancellor House is also alleged to be a shareholder in listed diamond company Afgem.<sup>148</sup> Afgem is best known for its earlier ownership of the world's biggest tanzanite mine, in Tanzania. In 2004 it sold the tanzanite rights. In 2005 it bought three diamond mines in South Africa and simultaneously entered a BEE deal with the Simeka Mining Consortium led by Robinson Ramaite, the former public service director-general.<sup>149</sup>

Afgem company secretary Robert Summers confirmed that Chancellor House was originally to have taken a direct empowerment stake in Afgem, but said that he had subsequently heard that Chancellor House would hold its stake through Simeka, which he said held 11.8% of Afgem. He was not sure whether that had happened.<sup>150</sup> Ramaite is also involved, alongside Chancellor House, in the Kalahari manganese deal.

### Engineering

In May 2004 Bateman, the global engineering and project management company headed by former public enterprises director-general Sivi Gounden, announced the establishment of an empowered local subsidiary, Bateman Africa. The new company's anticipated annual turnover was R1 billion.<sup>151</sup> Bateman said the new entity was 51% owned by BEE groups – including Chancellor House Holdings, which it said held 10%.<sup>152</sup> At the time, Gounden was not only Bateman's chief executive and a director of the new subsidiary, but also a director of Chancellor House Holdings.<sup>153</sup>

Bateman declared the new company had been created to "embrace the principles of South Africa's new mining charter and to work with the local industry in the development of mineral resources".<sup>154</sup> Bateman is a major supplier of equipment and services to the mining industry. Bateman is also active in the power generation sector, which is heavily regulated by government. Parastatal tenders are the sector's lifeblood.

In late 2005 Bateman entered a memorandum of understanding with Renova, the Russian-based company involved in the Kalahari manganese deal, to provide for "long-term cooperation between the two companies to promote and develop Renova's projects in the South African mining and metallurgical industry".<sup>155</sup>

Asked whether it was not problematic for Bateman Africa, as a company partly dependant on government opportunities, to be co-owned by an entity intended to fund the ruling party, Gounden said:

I was unaware and remain same, of any link to the funding of the ruling party...For the record, Bateman Africa is a Process Engineering company that supplies process engineering and construction related services to the mining industry in South Africa.

Our clientele are therefore the mining companies in South Africa, and not government departments or state entities.<sup>156</sup>

Wits Gold  
appears designed  
to exploit  
the empowerment  
demands  
of the new Mineral  
and Petroleum  
Resources  
Development Act  
and its associated  
empowerment  
charter.

Bateman, however, is on record as stating that it seeks power utility contracts in South Africa, from both the private and public sectors. A media release in 2005 said Bateman Africa “focuses on the provision of innovative solutions to the natural-resources, power-generation, infrastructure and industrial sectors”.<sup>157</sup> The main Bateman website states that Bateman “operates primarily in the South African power and energy sector...both the traditional power-generating and the independent power producers.”<sup>158</sup>

Another Bateman subsidiary, Bateman Howden, won a contract in 2005 worth an initial R34 million, to supply equipment to an Eskom power station.<sup>159</sup>

### Information technology

Until August 2006, Chancellor House co-owned Tsohle Technology Holding.<sup>160</sup>

Tsohle Technology Holdings, in turn, has two subsidiaries that have pursued significant government contracts. The one is Tatis Africa, a joint venture with Swiss-based Tatis, which supplies software solutions for customs and other law enforcement authorities.<sup>161</sup> Chancellor House Holdings’ chair, Taole Mokoena, is among the founding directors of Tatis Africa.<sup>162</sup>

Tatis Africa is part of a consortium that has tendered for the South African Revenue Service (SARS) tax and customs modernisation project, worth in the region of R500 million, according to a source close to the company.<sup>163</sup>

Charles Upchurch, chief executive of Tatis in Switzerland, commented:

In our due diligence to choose Tsohle as our joint venture partner we were aware that a principal investor in Tsohle is Chancellor House. We are not aware of any political connections of Tsohle or of Chancellor House, nor does Tatis Africa...need these political connections. Our software and our tenders for software are adjudicated on technical and cost considerations only.<sup>164</sup>

The second subsidiary is Tsohle Business Solutions.<sup>165</sup> Its directors have included Chancellor House directors Tebogo Makgatho and Henry Makgothi.<sup>166</sup> It is heavily dependant on government work, its website stating: “One of Tsohle’s main focus areas is the public sector.”<sup>167</sup>

In a separate web posting, it boasted about government contracts ranging from the Presidency to the police, the State Information Technology Agency, the

revenue service and the departments of minerals and energy, trade and industry, and justice.<sup>168</sup>

A Tsohle representative said in reply to questions: “We have no knowledge of the alleged purpose of Chancellor House. However, at no time that Chancellor House was a shareholder was TTH [Tsohle Technology Holdings] ever awarded a tender in respect of any Government contract. TTH has only been appointed as a subcontractor by successful tenderers who were awarded the prime contract.”<sup>169</sup>

The representative did not deal with Tsohle’s active pursuit of the SARS contract through Tatis Africa.

### Logistics

In July 2003 shipping group Grindrod formed an empowered subsidiary, Grindrod J&J Logistics. Grindrod’s announcement of the deal described its new empowerment partner merely as “a consortium led by the J&J Group”.<sup>170</sup> The J&J Group is chaired by Jay Naidoo, who was communications minister in former President Nelson Mandela’s cabinet.

Grindrod chief executive Ivan Clark has confirmed that the consortium included Chancellor House, holding 5% of Grindrod J&J Logistics. Clark said, “we were not told” that Chancellor House was owned by an ANC funding trust, but that “we did not inquire heavily”.<sup>171</sup> Asked if it would not concern him, he said: “At the end of the day, as a South African com-

pany, we were just hoping this provides a better South Africa, whether political or broad-based.”<sup>172</sup>

Grindrod J&J Logistics provides services including warehousing, bonded warehousing, container facilities and transport.<sup>173</sup> Bonded warehouses are private but government-licensed customs warehousing facilities.

In November 2003 Grindrod announced a second BEE deal involving the J&J Group and Chancellor House, among others. In this case, the BEE consortium would have acquired a 10% stake in Grindrod at holding company level. The deal collapsed, apparently because a rise in Grindrod’s share price made it unaffordable.<sup>174</sup>

### ***Manganese prospecting rights: Chancellor House’s biggest investment***

“Renova masters Africa”, a Moscow headline shouted in November 2004.<sup>175</sup> It was journalistic hyperbole perhaps, but the progress of Viktor Vekselberg, the oligarch behind the Russian investment group, has

“As a South African company we were just hoping this provides a better South Africa, whether political or broad-based.”

been remarkable. When Vekselberg visited South Africa in February 2004, he got to meet the president among others. Eighteen months later he co-owned rights to strategic manganese reserves in the Kalahari.

This is the story of how government, through the Department of Minerals and Energy (DME), awarded prospecting rights to a consortium set to benefit both Vekselberg, a man accused of gross lapses in corporate ethics, and the ANC treasury. The story is important because it might suggest that the government was swayed by a mix of diplomatic expediency – it was keen to improve economic relations with Russia in tandem with growing ties of friendship – and by the ruling party’s funding needs.

Vekselberg is ranked as Russia’s third-richest man by *Forbes* magazine, which estimates his personal wealth at \$10 billion.<sup>176</sup> But just how he acquired this fortune is contentious. He and other defendants are accused of racketeering and asset theft in multi-billion-dollar lawsuits in the United States and Russia (see page 30).

The ANC’s financial interest in the manganese deal is held through Chancellor House, which, this research shows, is a corporate front for the ruling party. Named after the downtown Johannesburg building that housed Nelson Mandela and Oliver Tambo’s law practice in the 1950s, Chancellor House has accumulated investments in minerals, energy, engineering, logistics and information technology.

The manganese assets, the subject of this case study, are located in the Kalahari Manganese Field in the Northern Cape. About 80% of the world’s known, commercially exploitable reserves are found in this area. Vast as these reserves are, they remain largely untapped: South Africa accounts for less than one fifth of world production.<sup>177</sup>

Two companies, Samancor Manganese and Assmang, have dominated extraction from the Kalahari Manganese Field and have been accused of hogging its untapped wealth. Along with Brazil’s CVRD and France’s Eramet, they dominate the world trade too – cartel-like if one believes the critics.<sup>178</sup>

Manganese is a strategic resource, essential in manufacturing steel. A new player with significant access to the Kalahari’s reserves is in a strategic position, because of the sheer volume of manganese waiting to be mined, to make a major impact on the world market.<sup>179</sup> South African manganese ore production and exports rose by 22,3% in 2004, and local sales value

increased by 6,8% in 2004 as a result of higher sales driven by strong demand.<sup>180</sup>

During the second half of the 1990s, the government started laying the groundwork for mineral reform through, among others, the 1998 Minerals and Mining Policy White Paper.<sup>181</sup> In the ensuing years it brought pressure to open the Kalahari reserves to new entrants.<sup>182</sup> In February 2003 Manne Dipico, then premier of the Northern Cape, said in his state of the province speech: “We are also working on a strategy to unlock iron ore and manganese reserves, and I trust that this will lead to meaningful black economic empowerment in our province”.<sup>183</sup> It was this impetus to open up, combined with the “use it or lose it” and empowerment provisions of the Mineral and Petroleum Resources Development Act of 2002, which would provide Vekselberg and his local partners with their gap.<sup>184</sup> Around the time that Dipico made his speech, Vekselberg was laying the groundwork to expand his by then already extensive mining and metals business out of Russia.

### Government awarded prospecting rights to a consortium set to benefit a man accused of gross lapses in corporate ethics, and the ANC treasury.

At a January 2003 press conference in Moscow, Roddie Fleming, heir to the Scottish Fleming banking dynasty, announced that he was going into a joint venture with the Siberian-Urals Aluminium Company (SUAL), Russia’s second largest bauxite and aluminium company.<sup>185</sup> SUAL is majority owned by Vekselberg’s multi-billion dollar investment and management group, Renova.<sup>186</sup> The plan at the time was to create a diversified SUAL Inter-

national, to which Fleming and some co-investors would have brought, inter alia, Mozambican tantalum rights and a ferronickel mine in Cuba. SUAL International, more attractive to investors because of its geographical and asset spread, was to have been listed on international markets the following year.<sup>187</sup>

If the pull of international capital was one reason for Vekselberg to get out of Russia, arguably another was the Kremlin’s attempts to cut the oligarchs down to size.<sup>188</sup> These men faced claims of billions of dollars in unpaid taxes on the spectacular wealth they had amassed since the collapse of the Soviet Union, often through forced acquisitions and hostile takeovers associated with the country’s flawed privatisation programme.

On 25 October 2003 Mikhail Khodorkovsky, the CEO of the oil group Yukos and one of the world’s richest men, was arrested by masked gunmen. He was sentenced to nine years in prison for fraud and tax evasion and ordered to pay \$613 million in back taxes and fines. Khodorkovsky’s fate shattered the oligarchs’



political immunity and came as extra motivation for them to externalize their asset base.<sup>189</sup>

It may be no accident that Vekselberg looked to South Africa. His new partner, Fleming, already had a foot in the door through his brother Adam, who had moved to South Africa in 1991 to represent family interests. Adam Fleming was well ensconced in local mining, having served as the chair of Harmony Gold between 1999 and 2003.<sup>190</sup>

Perhaps more importantly, the Flemings also had a long-standing relationship with the ANC treasurer-general, Mendi Msimang, whom they knew from his exile days in London, according to confidential source "X", who is acquainted with some of the players in this saga.<sup>191</sup>

A later foot in the door for Vekselberg was to be Brian Gilbertson, the South African who had led the 2001 merger that formed the world's premier resources company, BHP Billiton. Vekselberg hired him in August 2004 to head SUAL, briefing him to "successfully develop [it] into a leading international company".<sup>192</sup> Because BHP Billiton was the majority shareholder in Samancor Manganese, Gilbertson must have known only too well the opportunities hidden beneath the Kalahari soil.<sup>193</sup>

But it was Roddie Fleming who set the ball rolling in February 2004. When Vekselberg visited South Africa that month, Fleming is understood to have taken him to meet Mbeki. Fleming also facilitated meetings with the then minerals and energy minister, Phumzile Mlambo-Ngcuka "and the ANC".<sup>194</sup>

Mlambo-Ngcuka and DME director-general Sandile Nogxina confirmed in response to questions that they had met Vekselberg in the context of:

the promotion of increased investment in the minerals and energy sectors...At this meeting, Mr Vekselberg expressed his interest with regard to investing in the South African resource sector and therefore wanted to know the available opportunities and the procedures that prospective investors had to follow... Manganese rights applications, however, were not mentioned specifically as Mr Vekselberg showed interest in a wide range of commodities.<sup>195</sup>

Whatever other commodities they may have been interested in, Vekselberg and Fleming wasted no time pursuing manganese.

On 1 May 2004 the Mineral and Petroleum Resources Development Act of 2002 finally came into force. As of then the state owned all mineral rights. Existing rights-holders would have to convert their "old order" rights over time to "new order" rights, progressive empowerment targets would have to be met and rights not used would be lost.<sup>196</sup> No more hogging of reserves by the likes of the Samancor and Assmang old boys' club.

That same month Fleming and Mark Buzuk, an associate of Vekselberg, were in South Africa. If they were going to go for manganese rights in the Kalahari, they would need BEE partners – and where better to get "guidance" than from the same department that would adjudicate the applications?

According to confidential source X, DME director-general Nogxina and senior official Debbie Ntombela arranged a "beauty parade" to introduce a dozen or more prospective BEE partners to Fleming and Buzuk. The department showed no preference for any particular company from among these, the source said.<sup>197</sup>

Nogxina has confirmed the introductions. He too maintained that there was no favouritism and said that the DME's involvement went no further – "the DME does not participate in the selection of the parties with whom a deal may or may not be struck".<sup>198</sup>

From 2002 the state owned all mineral rights and existing rights-holders had to convert their "old order" rights to "new order" rights.

Nogxina held that there was "nothing untoward nor conflicting" about such introductions. They were justified in terms of the Act's provision that "the minister may facilitate assistance to any historically disadvantaged person".<sup>199</sup>

Much rode on Buzuk and Fleming's selection of BEE partners. The DME insisted that only BEE companies could apply for the manganese prospecting rights. Vekselberg's Renova would have to enter the deal as "financial and technical partner".<sup>200</sup>

At the time, a so-called "clarification document" issued by the DME was in force, supposedly to cover areas not dealt with by the new Act and its related empowerment charter.<sup>201</sup> The document specified that in cases where the mineral rights were historically state-owned – which included the Kalahari Manganese Field – "the state in its capacity as owner will require Black Economic Empowerment participation of not less than 51%". Interpreting this to the maximum, the DME specified that applicants for the Kalahari manganese prospecting rights had to be 100% empowered.<sup>202</sup>



Although it went way beyond the empowerment charter's specification of 15% in five years and 26% in 10 years, the DME justified the requirement on the basis that where the state was the unencumbered owner, it could set the empowerment bar as high as it chose.<sup>203</sup> DME decided on 100% because it felt "this house is mine; it belongs to me," said Jacinto Rocha, DME's deputy director-general of mineral regulation.<sup>204</sup> The "clarification" was abandoned in 2005.<sup>205</sup>

The Act requires the minerals and energy minister to adjudicate any prospecting application on a first-come-first-served basis, with a key criterion being whether the applicant "has access to financial resources and has the technical ability to conduct the proposed prospecting operation optimally...".<sup>206</sup>

The financial and technical capacity would tend to be that of the established miner, not of its BEE partners. But the DME's policy to award the prospecting rights to the BEE component meant two things: BEE companies were in a stronger negotiating position vis-à-vis their established partners.<sup>207</sup> And established companies were arguably motivated to seek BEE partners "acceptable" to the authorities, since their success depended so heavily on the BEE partners' success.

Nogxina disputed this, saying "your argument of acceptable BEE does not hold water. Renova did not have to comply with BEE requirements, because it never applied for any rights."<sup>208</sup> According to his version, Renova did not enter the equation as the BEE applicants were free to choose their technical/financial partners once they were awarded prospecting rights.

This is contradicted not only by the Act's requirement that the DME take financial and technical ability into account, but also by a 2005 article in the *Russia Journal*, quoting Nogxina as saying during the adjudication process that he had dispatched three DME experts to Russia "to assure themselves that Renova has the technical capacity".<sup>209</sup>

In July 2004 Renova registered a subsidiary in South Africa, Renova Investments, whose "primary goal", according to a contemporaneous press release, was "selecting prospective investment projects in the Republic of South Africa mining and metallurgy industries".<sup>210</sup>

The Renova release said that the group's experts had been assessing projects in South Africa for six months already – in other words since February, when Vekselberg visited – and that they had "closely studied the practical implementation of principles of the broad-based socio-economic empowerment policy in

[the] South African mining industry...The Renova shareholders after having made sure that this policy fully meets the basic business principles of the Renova group of companies, made a strategic decision to follow all the initiatives of the South African government in this industry."<sup>211</sup> Renova, in other words, had grappled with the demands of an enforced BEE partnership, and decided to embrace it. But the question was: who to embrace? Buzuk and Fleming's request for the DME to provide "guidance" on BEE partners was the first step.

Confidential source "Y", who was close to the unfolding events, remembers three specific BEE companies included in the DME's "beauty parade": the ANC's Chancellor House, Dirleton Minerals and Energy, whose principals included ANC stalwart Zwelakhe Sisulu, and Kalahari Resources, a company that, as will be seen, seems to have enjoyed a close relationship with ANC secretary-general Kgalema Motlanthe.<sup>212</sup>

Nogxina confirmed that Chancellor, Dirleton and Kalahari had been among the BEE companies introduced.<sup>213</sup> It was these three companies with whom Fleming and the Russians pursued negotiations to form a consortium.

Following the beauty parade, Buzuk wrote to Sisulu's Dirleton. He said

Renova regarded Dirleton as "one of the most perspective [sic] partners among a number of BEE groups with whom we are carrying [on] negotiations concerning the project, and we would be very glad to continue our co-operation in case all necessary permits, licenses and approvals as required for the project are granted by the government of South Africa."<sup>214</sup>

Buzuk pledged Renova's "technical, expert and financial support", backing Dirleton's application for manganese rights.

At the time, Chancellor was also a firm favourite to be included in the consortium, said confidential source X. According to this source, Fleming brought it to the deal as Msimang, the ANC treasurer-general, had "recommended" it and because Fleming's brother, Adam, was close to Professor Taole Mokoena, the chair of Chancellor House Holdings.<sup>215</sup>

In October that year Renova drafted an agreement for signature between it and three prospective BEE partners, who were confirmed in separate correspondence to be Dirleton, Kalahari and Chancellor.<sup>216</sup> The draft envisaged a joint venture with a share breakdown of 49% Renova and 51% the BEE partners. Renova, it said, would bear the initial funding and technical responsibilities.

Established companies were arguably motivated to seek BEE partners "acceptable" to the authorities.





Renova's draft also outlined the scope of the project: a \$300-400 million investment resulting in a project worth \$1 billion, incorporating not only prospecting and mining, but also beneficiation. The latter would have been music to the ears of government as it meant adding local value and job creation. Smelting facilities to produce manganese alloys were to be built in the Kalahari or at the Coega Industrial Development Zone, according to the draft.

While the stated intention to beneficiate locally may well have helped win prospecting rights from the DME, there have been questions about whether Renova had really intended to go through with this.<sup>217</sup> In late 2004/early 2005 Vekselberg and fellow oligarch Alexander Abramov tried to buy the Nikopol smelter in Ukraine from Victor Pinchuk, the son-in-law of the president whose chosen successor had just lost power in the Orange Revolution (see the background to the Russian partners on page 29).

It is not clear why Vekselberg would have needed smelters in both countries. Nikopol reportedly has more than twice the capacity that Renova said it wanted to install in South Africa.<sup>218</sup> In the end, Vekselberg and Abramov's bid for the smelter in Ukraine got bogged down in bribery allegations and political manoeuvring (see below).

Renova failed to answer detailed questions sent during the course of this research.

On 6 September 2006, during Russian President Vladimir Putin's state visit to South Africa and in a blaze of publicity, Vekselberg signed memoranda of understanding with the Coega Development Corporation (CDC) and Eskom regarding the proposed smelter.<sup>219</sup> This, however, brought scant certainty. A CDC statement at the time said Renova was still conducting a "feasibility study".<sup>220</sup> Vekselberg was quoted by *Business Day* as saying a "pre-feasibility study" was being completed for the smelter.<sup>221</sup>

The October 2004 draft agreement between Renova, Dirleton, Chancellor and Kalahari was never signed. The year was drawing to a close and still SUAL International remained unlisted, contrary to the plan when Fleming had joined forces with Vekselberg in January 2003. The relationship between Vekselberg and Fleming soured. As it was Fleming who had brought Chancellor to the table, Renova's relationship with Chancellor deteriorated too.<sup>222</sup>

And from ANC headquarters, it seems, the messages were mixed. According to confidential source X, Kgalema Motlanthe, the ANC secretary-general, presided over a meeting aiming to influence Renova to

include Kalahari but not Chancellor.<sup>223</sup> If this is true, why would Motlanthe have argued against the interests of an ANC business vehicle answerable to his colleague, Msimang? The composition of Kalahari provides a clue.

Daphne Mashile-Nkosi, the chair of Kalahari, refused access to the company's share register, by law a public document.<sup>224</sup> But what appears to be an early information sheet on its shareholder composition, prepared by Kalahari, reveals a picture of proximity to both Motlanthe and the ANC.<sup>225</sup> Motlanthe declined to answer detailed questions, including whether he had intervened on behalf of Kalahari and whether this was because of his relationship with some of its shareholders.<sup>226</sup>

The shareholders listed on the information sheet include Mashile-Nkosi, her husband, Stan Nkosi, and Siyanda Mining Corporation, a sister company of Imvume Management, the ANC-linked company involved in the Oilgate scandal.<sup>227</sup> Stan Nkosi and Motlanthe were close comrades during the struggle – they formed an ANC cell in Soweto, were arrested in 1976 and were tried and sentenced together on terrorism charges.<sup>228</sup> Siyanda and Imvume are both led by Sandi Majali. News reports in 2004 and 2005 exposed details of Motlanthe and Majali's close

relationship. They travelled to Iraq together when Majali sought oil allocations there, and company profiles described Majali as Motlanthe's "economic adviser".<sup>229</sup>

Amid the jockeying between Chancellor and Kalahari, relations between Renova and Dirleton also declined. Renova had wanted to guarantee itself 49% of the joint venture with 51% shared by the BEE partners, as envisaged in the October draft agreement. Dirleton, however, held out against fixing a percentage.

"We believe such a commitment and such a discussion would be premature until the manganese permit is awarded, and we can then assess what each party brings to the table," Dirleton wrote to Renova. "All we seek to do is to extract value for empowerment, which is the objective of government's policies."<sup>230</sup>

As the DME was to award the prospecting rights to the BEE partners, Dirleton seems to have been confident it could negotiate maximum advantage for itself. But Dirleton appears to have overplayed its hand – and Renova had an ace up its sleeve.

Although the formal adjudication process was still pending at DME, Renova appears to have obtained

There have been questions about whether Renova really intended to go through with beneficiating locally.

parallel political assurances. In Russia, Buzuk was quoted as saying that sometime during the summer (South African winter) of 2004 a “closed presentation” had been made to Mbeki and his government.<sup>231</sup> The Presidency failed to answer detailed questions submitted in preparation for this article.<sup>232</sup>

In September Lulu Xingwana, then deputy minister of minerals and energy, visited Moscow, where she reportedly met with Renova officials and publicly endorsed their plans.<sup>233</sup> Nogxina confirmed Xingwana’s visit, but denied she had “endorsed any particular company”.<sup>234</sup>

In November, the deal was sanctioned (or in the DME’s view “welcomed”) at a political forum still well removed from the DME and its pending formal adjudication. The occasion was the fourth session, held in Pretoria, of the bilateral commission between South Africa and Russia, called the Inter-governmental Committee on Trade and Economic Cooperation (ITEC). It was presided over by foreign affairs minister Nkosazana Dlamini Zuma and the Russian natural resources minister, Yuri Trutnev.<sup>235</sup> A business delegation accompanying Trutnev reportedly included Buzuk and Renova Moscow office head Alexander Zatulin. Vekselberg also visited South Africa around that time.<sup>236</sup>

The minutes of the ITEC session stated that the “parties welcomed and supported the intention of the Russian group of companies [Renova] to develop the project of prospecting, mining and processing of manganese ores in the Kalahari manganese basin”.<sup>237</sup>

According to Renova’s website, “Russian and South African officials approved the project” at ITEC.<sup>238</sup> Nogxina, who participated in the ITEC session, denied this was accurate, saying:

The welcoming of a project does not necessarily translate into approval thereof...We welcomed the intent expressed by Renova that they were prepared to do an empowerment deal involving beneficiation, prospecting and exploration in the South African resource sector.<sup>239</sup>

Whatever the correct interpretation of what had transpired at ITEC, Renova was confident. Five days later it wrote to Dirleton, giving notice that it wanted to terminate their relationship because the latter would not agree to Renova’s demand for 49% of the joint venture. “We are compelled to clarify the situation and make our own decision as to whom with and how we will act.”<sup>240</sup>

That same day, 24 November, the DME registered a manganese prospecting application by Pitsa ya Setshaba Holdings, a company less than a month old.<sup>241</sup> Dirleton, Chancellor, Kalahari and other BEE hopefuls had lodged their applications months earlier.<sup>242</sup> Pitsa ya Setshaba was soon to emerge as Renova’s choice to replace Dirleton in the consortium. Its founding director was one Lazarus Mbethe, formerly with Ditswammung, another BEE group vying for the manganese rights. Incidentally, Ditswammung had been represented in its application to the DME by Pulane Kingston, daughter of Msimang.<sup>243</sup>

Mbethe was soon joined on Pitsa’s board by, among others, Robinson Ramaite, the former Public Service and Administration director-general, and Jackie Sedibe, the widow of late defence minister Joe Modise.<sup>244</sup>

Pitsa’s ownership structure is opaque and repeated attempts to discover its full shareholding were thwarted.

Pitsa’s ownership structure is opaque. Repeated attempts to discover the company’s full shareholding have been thwarted, which means that widespread rumours that influential individuals were “cut in” could not be dispelled.<sup>245</sup>

On 7 December Dilmar Abdoulaev, locally a Renova director, wrote to Dirleton formally terminating their relationship on the grounds that Dirleton would not guarantee it a percentage shareholding in advance.<sup>246</sup> He sent a separate notification of this to the DME official responsible in the Northern Cape, where the applications were formally handled, and copied both missives to the DME’s Ntombela and the director-general, Nogxina.<sup>247</sup>

Dirleton had overplayed its hand and was out. In spite of Motlanthe’s alleged intervention, and for reasons not clear, Kalahari had also fallen by the wayside. Chancellor’s position was ambivalent, tainted as it was by the fallout between Vekselberg and Fleming. For a while it explored an alternative without Renova; on 10 December it signed a memorandum of understanding with Dirleton and another prospecting hopeful, the Northern Cape Manganese Company, to pool whatever prospecting rights they could get from the DME.

The memorandum made no mention of Renova, saying: “Upon being granted the manganese permit, the parties will begin a process of interviewing prospective strategic partners.”<sup>248</sup> The ink was barely dry on the memorandum, however, when Chancellor was back with Renova – according to some versions after tough negotiating by Fleming, who felt that he had been key to the facilitation of the entire deal and



would have neither himself nor Chancellor excluded.<sup>249</sup>

In late January/early February 2005 Chancellor House Holdings's managing director, former deputy defence secretary Mamatho Netsianda, reportedly joined Pitsa's Mbethe as Renova's guest in Moscow. Renova introduced them to Trutnev's natural resources ministry.<sup>250</sup>

On 16 February 2005, Chancellor and Pitsa signed a memorandum of understanding not unlike the one Chancellor had entered with Dirleton and the Northern Cape Manganese Company two months earlier, envisaging that they would pool all prospecting rights they got from the DME. This MoU, however, clearly identified Renova as the technical partner and set aside a 49% shareholding for it in the consortium to be formed.<sup>251</sup>

On 30 March Mlambo-Ngcuka, in her then capacity as minerals and energy minister, signed an approval granting prospecting rights jointly to Chancellor and Pitsa.<sup>252</sup> This was consistent with the DME's policy to award the rights to the BEE component, but it appears the DME took no chances: a subsequent partnership with Renova was a condition written into the prospecting title deed when it was formally registered by the DME on 17 May.<sup>253</sup>

Nogxina denied this was a "condition", claiming it was no more than "information that was incorporated into the [prospecting title deed] which was taken from the memorandum of understanding between Pitsa ya Setshaba and Chancellor House".<sup>254</sup> This is belied by the text of the deed, which states that there must be compliance with the shareholding provisions of the MoU and that any departure must be authorised by the minister.<sup>255</sup>

The deed registered rights to eight farm portions, totalling some 15,200 hectares in the Kuruman district of the Kalahari, to an entity called United Manganese of Kalahari (UMK). This was the name for the joint venture formed by Chancellor and Pitsa and in which Renova was to receive a 49% share.<sup>256</sup>

The partnership was consummated in September 2005, when the 49% was transferred. UMK's share register shows that contrary to what was envisaged in the MoU and the prospecting title deed, the recipient was not Renova Investments, the South African subsidiary of the Renova Group. The shares were transferred to Renova Manganese Investments, a company incorporated in the Bahamas, a corporate tax haven.<sup>257</sup>

This switch could arguably deprive South Africa of

tax income. The Bahamian ownership could also defeat transparency, as share registers there are not publicly available. According to a confidential source, however, the Bahamian company's shareholding had been split more or less equally between entities belonging to Vekselberg, Fleming and Buzuk. Fleming has since exited the Bahamian company and UMK altogether.<sup>258</sup>

At the time that Renova Manganese Investments took up its 49%, says the source, Renova injected \$10 million into UMK, which was then valued at about \$20 million.<sup>259</sup> Based on this figure, the ANC's Chancellor, with its half of the 51% BEE shareholding in UMK, was the owner of shares instantly worth about \$5 million (then about R31.5million). This will shoot sky-high if the project reaches a value, as predicted by Renova, of \$1 billion.

Pitsa applied for three of the farm portions two months after any other serious contender, yet bagged them for UMK.

There appears to be widespread unhappiness among the other BEE players who competed with Chancellor and Pitsa. They feel that UMK, the joint venture of these two companies, got more than it deserved.<sup>260</sup>

One of the fundamental principles of the Mineral and Petroleum Resources Development Act is that rights are awarded on a first come first served basis.<sup>261</sup> But records of the applications and awards show that UMK got eight farm portions, more than anyone else did, even though on five of those portions neither Chancellor nor Pitsa had put in

the first application.<sup>262</sup>

Three of the farm portions, Botha, Smartt and Rissik, were the most heavily contested, which means that they were probably regarded as most attractive. Pitsa, the new kid on the block, applied for them two months after any other serious contender, yet bagged them for UMK.<sup>263</sup>

Nogxina commented that the DME was not aware of unhappiness:

All groups of applicants were granted different properties. Pitsa was formed as a result of a split that happened in Ditswammung. Some shareholders of Pitsa therefore formed part of the original application. As part and parcel of solving the problems of disagreements between the two parties we allowed Pitsa to lodge their own application on all the properties in respect of which Ditswammung had applied.<sup>264</sup>

Nogxina's answer arguably reveals an extraordinary accommodation of Pitsa. When some shareholders, including Mbethe, left Ditswammung to form Pitsa,

the DME recognised the latter's belated application as dating from when Ditswammung had applied. This, at the very least, gave an unfair advantage to new stakeholders in Pitsa – Ramaite for example – who had not been part of the earlier applications. And it may well have disadvantaged other applicants who now had to compete with two companies where previously there had been one. In any case, it appears that Kalahari or Dirleton, and not Ditswammung, had lodged the first applications on Botha, Smartt and Rissik.<sup>265</sup>

If UMK – in other words, Vekselberg's Renova and related interests, the ANC's Chancellor, and the opaque Pitsa – were unfairly advantaged in the rights allocation process, what accounted for it? Vekselberg and his place in geopolitics could have much to do with it. As graphically illustrated by the Khodorkovsky debacle, the Kremlin has a love-hate relationship with Russia's oligarchs. They are regarded alternately as potentially useful or as a political threat. There are divergent views about Vekselberg's status vis-à-vis the Kremlin. According to one international Russian expert, who asked not to be named, "Vekselberg is allowed to exist in Russia, and that means something at least, although not much".<sup>266</sup>

But whatever his status back home, Vekselberg has positioned himself to assist and exploit the rapid thaw in relations between Russia and South Africa. This culminated in Vekselberg occupying pride of place in the business delegation that accompanied Vladimir Putin on his visit to South Africa in early September 2006.

As detailed above, Vekselberg had enjoyed high-level contact in South Africa as early as February 2004, when he was introduced to Thabo Mbeki. What followed was a flurry of "economic diplomacy", which that year included Xingwana's visit to Moscow, the reported "winter" briefing to Mbeki, and the endorsement of Renova at the fourth ITEC session in Pretoria.

In 2005 Nogxina visited Moscow in late February/early March.<sup>267</sup> In October delegates at another ITEC session, according to a Department of Foreign Affairs press release, "confirmed their support and mutual interest in the further implementation of [Renova's] manganese project".<sup>268</sup> And in November 2005, Mbeki appointed Vekselberg to his International Investment Council, an honour described by one commentator as "a sign of a maturing relationship between the two countries".<sup>269</sup>

In March 2006 Nogxina visited Moscow again as part of the preparations for the G8 summit held there in July 2006, and which was attended by Mbeki as one of a handful of non-G8 head-of-state observers.<sup>270</sup>

In August 2006 Nogxina was in Moscow again for a conference on Russo-African relations.<sup>271</sup> Nogxina's pervasive involvement in the developing relationship underscored the importance of economic relations, and specifically minerals and energy, to wider diplomatic ties.

Putin's visit to South Africa in September 2006 has been seen by commentators as sealing a relationship built on a shared interest in strategic minerals and South Africa's need to ally with emerging – or in Russia's case, re-emerging – powers. Russia's membership of the G8 and the UN Security Council are specifically attractive to South Africa.<sup>272</sup>

South Africa's ambition to take up a permanent seat on the United Nations Security Council – declared by President Thabo Mbeki as far back as 2004<sup>273</sup> – was dependant on the support of Russia, one of five permanent members on the council who have veto power. In October 2006 South Africa was voted to take up a non-permanent seat on the council as regional representative for Africa.<sup>274</sup>

On the second day of Putin's visit he and Mbeki attended a "round table" of Russian and South African business people. Vekselberg stole the show, signing not only memoranda relating to Renova's Coega smelter promise – which Putin

openly punted – but also an agreement between the business chambers of the two countries.<sup>275</sup> Vekselberg heads the foreign relations committee of the Union of Industrialists and Entrepreneurs, which represents big business in Russia.<sup>276</sup>

In mid-September 2006, back in Russia, Vekselberg met Putin again. There, according to a Moscow newspaper, Putin immediately asked about Africa: "With the recent goings on, a visit, your contracts; how do you evaluate the results of our joint work? What has to be done now? What other assistance [is needed] from the government?"<sup>277</sup>

Vekselberg replied: "South Africa in particular, as a state and as a field for sensible economic expansion, is a very important element of foreign policy, for the state as well as for business, I hope."<sup>278</sup>

Vekselberg, it seems, had positioned himself to be "Mr South Africa" in Russia, and "Mr Russia" in South Africa, straddling both business and diplomacy. This backdrop could explain why authorities here may have been motivated to regard Renova's pursuit of mineral rights in the Kalahari favourably.

But if South Africa's desire to boost ties with Russia helped motivate the decision to grant choice pro-

### Vekselberg has positioned himself to assist and exploit the rapid thaw in relations between Russia and South Africa.

pecting rights to UMK, what about Chancellor's role? The November 2004 ITEC support for Renova came at a time when Chancellor's position in the consortium was ambivalent because of Vekselberg and Fleming's deteriorating relationship. This suggests that Renova and Pitsa may have succeeded without Chancellor forming part of the consortium.

But the impact of the ANC company's presence should not be discounted. During the South African winter of 2004, Chancellor was still well entrenched in the consortium to be formed. At this time Renova needed all the help it could get, in what was clearly a political process, to gain a foothold in South Africa. And by the time Mlambo-Ngcuka and the DME awarded UMK its prospecting rights in 2005, Chancellor was again firmly part of the consortium, at Fleming's insistence.

If Fleming and Chancellor had not played a significant role in the process leading to the award of the prospecting rights, would Renova have allowed them to share in the spoils – as it did in the end?

Nogxina and Mlambo-Ngcuka denied in a shared answer that diplomatic expediency or Chancellor's ANC ties had played a role in UMK's success:

It is only those requirements that are specifically stated in the law that inform the decision to grant, or not, prospecting rights, and diplomatic considerations are not [among] such requirements...Membership of a particular party is also not a consideration that the law stipulates as far as taking a decision in this regard is concerned.<sup>279</sup>

### **Background to the Russian partners**

Viktor Vekselberg, the 48-year-old Russian oligarch, is not known for his corporate ethics. Described by *Forbes* as a "deal junkie", Vekselberg is ranked the third richest Russian and the 44th richest person in the world by the magazine. His net worth is about \$10 billion, accumulated predominantly through metals and oil.<sup>280</sup>

Vekselberg is one of Russia's infamous oligarchs – a tiny group of entrepreneurs who exploited the disintegration of the Soviet system to amass tens of billions of dollars.

In 2004 Vekselberg bought the largest private collection of Fabergé imperial eggs. No price was disclosed for the private sale, which was clinched before the eggs were due to be auctioned by the Forbes family, but it is rumoured that Vekselberg paid about \$100 million for them.

His stated intention was to return to his country "one of its most revered treasures,"<sup>281</sup> but the purchase allegedly also protects a portion of Vekselberg's wealth – their legal title is reportedly vested in the "non-profit cultural historical fund Time Connexion", keeping them out of the grasp of Russian tax authorities.<sup>282</sup>

Under Vladimir Putin's presidency, the state has tried to wrest back some of the proceeds of the oligarchs' asset grab.

Vekselberg's first business was reportedly involved in the importation of goods, mainly computers. His investment holding group, Renova, was established in 1991 and is currently registered in the Bahamas. It is currently worth about \$9 billion.<sup>283</sup>

Through Renova, Vekselberg orchestrated Russia's first successful hostile takeover, namely of the Vladimir Tractor Factory in 1994.<sup>284</sup> Later he bought medium-sized aluminium smelters and bauxite mines and in 1996 united them into Siberian-Urals Aluminium Company (SUAL) Holding, Russia's second-largest aluminium company.

Vekselberg reportedly made the bulk of his fortune when he and Mikhail Fridman's Alfa Group took over Tyumen Oil Company (TNK), which

merged with BP in 2003 for cash and BP shares worth about \$7 billion each. TNK-BP is now one of Russia's largest private oil companies.<sup>285</sup> In recent years, Vekselberg's methods of wealth accumulation have been challenged in courtrooms in Russia and the US.

### *Nikopol*

In civil litigation currently before the United States District Court in Massachusetts, Vekselberg and Alexander Abramov, a member of the board of Evraz Holdings, Russia's second largest steel maker, have been accused of jointly paying a \$25million bribe to officials in the Ukrainian government.<sup>286</sup> The bribe was allegedly paid in a bid to reverse Ukrainian government efforts to renationalise Nikopol, the world's second-largest ferro-alloy smelter, used primarily for manganese smelting.

The civil complaint, filed by Nikopol minority shareholders under US racketeering law in March this year, alleges<sup>287</sup> that in December 2002, soon after billionaire Victor Pinchuk married the daughter of then Ukrainian President Leonid Kuchma, the Ukrainian government announced it was prematurely lifting a moratorium on the privatisation of Nikopol. Three months later, the government announced the intended sale of a controlling interest in Nikopol. A consortium led by Pinchuk won a tender process designed to favour him.

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During the ensuing years Kuchma's regime became infamous for its "official robust criminal culture" and "the near-total corruption of its official economic life".<sup>288</sup> In 2004 Ukrainian voters took to the streets in support of what has become known as the Orange Revolution – so named for the campaign colour of its leader, opposition candidate Victor Yushchenko. Yushchenko ultimately defeated Kuchma's successor-designate, Viktor Yanukovich, and took office in early 2005.

Once elected president of Ukraine, Yushchenko appointed another leading opposition figure, Julia Timoshenko, as prime minister. She immediately set about reversing "the most obviously influenced and corrupt privatisations, including Nikopol's".<sup>289</sup> Pinchuk saw the writing on the wall and tried to sell his stake to Vekselberg and Abramov. But Timoshenko warned them not to because court rulings were affirming the government's position and it would renationalise.

As a final court verdict loomed, Abramov reportedly met with Yushchenko, who then appears to have backed him and Vekselberg.

Upon information and belief, in an attempt to block the new government's efforts to undo Nikopol's privatization, Pinchuk, Vekselberg, and Abramov conspired to pay up to \$50 million in bribes to top Ukrainian government officials, with Vekselberg and Abramov paying \$25 million and Pinchuk paying another \$25 million.<sup>290</sup>

When the final court verdict ruled in favour of the renationalisation, President Yushchenko promptly fired Timoshenko as prime minister.

The plaintiffs are claiming multi-million dollar damages from the defendants for allegedly looting Nikopol. The case is being contested by Abramov and Vekselberg, who deny its allegations and have brought a motion to dismiss the claim.

Renova did not answer detailed questions submitted in preparation for this paper.<sup>291</sup>

#### *Norex*

Norex Petroleum of Canada is demanding about \$2 billion in compensation in a lawsuit filed under US racketeering laws against Vekselberg, Renova and others. Norex's complaint alleges the defendants had used fraud, bribery and a variety of strong-armed tactics to appropriate Yugraneft, a Siberian oil company of which it was the majority owner.<sup>292</sup>

Once they had acquired Yugraneft, Vekselberg and his partners allegedly rolled it into Tyumen Oil (TNK),

which they sold on to BP in September 2003 to form TNK-BP, one of Russia's largest oil companies. The BP merger is the source of most of Vekselberg's wealth.<sup>293</sup>

The Norex court challenge queries whether the TNK assets that Vekselberg and his associates sold BP were properly theirs to sell. In a first ruling in 2004 a New York judge rejected United States jurisdiction over the case, but an appeal court overturned that judgment in 2005.<sup>294</sup> The appeal court ruling summarises part of Norex's claim as follows:

During the 1990s, Norex acquired a 60% interest in Yugraneft...Norex alleges that, by the end of the decade, defendants had hatched a scheme to take over Yugraneft by means of various Rico [Racketeer Influenced and Corrupt Organizations Act] predicate acts of mail and wire fraud, extortion, interstate and foreign travel in aid of racketeering enterprises, and money laundering.<sup>295</sup>

Renova and Vekselberg have denied Norex's claims and are opposing them in the case, which is pending.

Renova did not answer detailed questions submitted in preparation for this paper.<sup>296</sup>

Renova did not answer detailed questions submitted in preparation for this paper.

#### *Volgograd*

Vekselberg's multi-billion dollar aluminium company SUAL is also in the dock in the Russian courts for an alleged \$20 million share fraud.<sup>297</sup> Shota Mikhelashvili, the major shareholder (before it was allegedly stolen) in the Volgograd Aluminium Plant – one of Russia's biggest smelters – has brought the case against Vekselberg's company.<sup>298</sup>

In 2004 a Volgograd court ruled in Mikhelashvili's favour, invalidating a share emission for the plant, allegedly manipulated by SUAL shareholders to favour SUAL's takeover of the smelter.<sup>299</sup> Mikhelashvili has warned that this was only the start of a bid to recover a stake in the smelter worth about \$20 million.

### **Conclusion and recommendations**

Experience worldwide shows the immense difficulty of installing an effective system of party funding that is not open to abuse. Nonetheless, there is an escalating international discourse calling for the reform of party financing. This is driven largely by the recognition that regulation is necessary in order to sustain democracy. Scholars such as UK labour law professor Keith Ewing have made a strong case for global

standards to regulate party financing as a core element of the quality of democracy.<sup>300</sup>

There are no shortages of regulations and subsidies concerning political money. International experience includes bans or limits on private contributions, larger state subsidies for political parties or their candidates, control over political expenditure, and transparency rules for private contributions.

While regulation goes some way towards disincentivising corrupt activity, loopholes are found even in countries that have strict regulations. In Germany, Chancellor Kohl was forced to resign as the honorary chairman of the Christian Democrat Union following revelations of illegal donations to his party. However, this case also illustrates that regulation at least ensures that there is an improved chance of highlighting and rooting out instances of corruption when it does occur, by promoting disclosure and the right to know.<sup>301</sup>

What possibly makes South Africa unique, and which has opened up an uncharted wilderness, is the policy of Black Economic Empowerment.

It must once again be reiterated that the analysis of BEE in this research paper begins from the premise that in its true form the policy is a requisite piece of legislation to equalize South Africa's vast economic disparities based largely on race. But it has, as the examples given have demonstrated, opened up easy opportunities for personal enrichment ahead of a drive for entrepreneurship and productive investment. As a result there is increasing evidence of crony capitalism and influence-peddling encouraged by the more unscrupulous elements of established business.<sup>302</sup>

Any legislation developed to regulate the private funding of political parties in South Africa would have to take into account the reality that BEE has created an unregulated connectivity between corporate capital, the state and the ruling party in which the flow of political trade-offs, whether in the form of money or patronage, cannot be underestimated.

The need for specific party funding legislation goes beyond the important need to regulate the revolving door syndrome – in which many political personalities with impeccable political credentials have moved into private enterprise, mostly into sectors they oversaw in their government positions – because BEE has resulted in politicians who are still in government entering massive empowerment deals. Their stock re-

sponse when challenged on the potential for conflict of interest is that “there is no law barring us from entering business”.

This is precisely what makes the space for party funding, political patronage, and influence peddling so large: without legislation it is extremely difficult to expose corrupt transactions, and when they are uncovered, or the nexus of influence is clear, it is equally impossible to chastise those responsible because they have not done anything illegal.

South Africa's world-class anti-corruption jurisprudence is a mockery without legislation to govern party funding. This legislation should embody the universal principle of disclosure and should limit expenditure and the types of donors, bolster state funding, and provide for legal retribution in the case of non-compliance.

### The necessity for effective party funding legislation to preserve the integrity of South Africa's democracy cannot be overstated.

The necessity for effective party funding legislation to preserve the integrity of South Africa's democracy cannot be overstated. However, the difficulty in drafting such legislation cannot be underestimated, not only because international best practice has shown that no amount of regulation in this respect is fail-safe, but also because South Africa is in a state of social transformation and economic flux as the ANC-led government attempts to deracialise ownership and control of wealth through black economic empowerment.

To advance these objectives, the ANC has identified the motive forces as follows:

The black masses, those classes and strata that objectively and systematically stand to gain from the victory and consolidation of the [National Democratic Revolution]. It identifies the working class and the poor – in both rural and urban areas – as the core of these forces... These motive forces include the black, emergent capitalist class whose interests are served not only by the formal democracy, but also by the programme to change apartheid property relations... At the same time, the ANC needs to win over... all other sections of South African society, including the white workers, the middle strata and the bourgeoisie.<sup>303</sup>

Simultaneous to this necessary class project, the ANC has warned:

The rising black bourgeoisie and the middle strata are objectively important motive forces of transformation whose interests coincide with

at least the immediate interests of the majority. But some are dictated to by foreign or local big capital on whom they rely for their advancement...without vigilance, elements of these new capitalist classes can become witting or unwitting tools of monopoly interests, or parasites who thrive on corruption in public office...Examples abound in many former colonies of massive disparities in the distribution of wealth and income between the new elite and the mass of the people...In South Africa [there is ] ...a coterie of mainly black men co-opted into the courtyard of privilege.<sup>304</sup>

In the main, South Africa's economic transition is creating a capitalist class that operates within a sphere of capital accumulation fostered by close connections to the state and the ruling ANC. There are two aspects to this:<sup>305</sup> first, the direct political involvement of senior members of the ANC – whether party or government officials – in business while maintaining their official positions; second, members of the emergent black elite who have left the government for business but who naturally retain their political connections and clearly benefit from these associations in business.

While these connections do not necessarily indicate corruption they do suggest a fluidity and intimacy between business and politics, which provides for a constant flow of exchanges, including enormous space for straight party funding deals. The conflation of politics and business is becoming such a concern in South Africa that the ANC secretary-general described it as the party's "central challenge":<sup>306</sup>

The central challenge facing the ANC is to address the problems that arise from our cadres' susceptibility to moral decay occasioned by the struggle for the control of and access to resources. All the paralysis in our programmes, all the divisions in our structures, are in one way or another a consequence of this cancer in our midst.

The constitution of the country allows for all citizens to engage in legitimate business activity. Indeed, the Freedom Charter itself demanded that "All people shall have equal rights to trade where they choose, to manufacture and to enter all trades, crafts and professions". It did so because apartheid and colonialism has systematically suppressed the entrepreneurial talent of our people. Any path to the accumulation of assets amongst black people in general was ruthlessly crushed. Therefore, in ab-

stract, the accumulation of wealth by our people should not run counter to the progress of the revolution.

The problem lies in the fact that, in our efforts to make up for the debilitating weight of apartheid, many of us appear only too quick to sacrifice the moral and ethical standards that have characterised our movement. Moral degeneration, linked to the accumulation and control over resources, is not a consequence we can accept, since it threatens to extinguish the torch of freedom that our people have carried for so long. Because of their hopes and aspirations we are duty bound to act, as the ANC, in the vanguard of the struggle against moral decay and corruption.

These problems are not confined to a particular sphere of government or geographic area. Their pernicious influence and unacceptable consequences are apparent at local, provincial and national level.

Our position as a ruling party makes us particularly susceptible to such influences. Professionals within the public service are chosen because of their particular skills and talents. When their time in public service has come to an end it is only natural that they seek to continue to work in the spheres of society with which they are most familiar and best equipped to contribute. But these are circumstances that create fertile ground for corruption and graft. How can we act to

ensure that those exiting from the public service, either as professionals or public representatives, are prevented from using public resources to invest in their personal fortunes later in life?

Those who engage in business within our ranks should do so openly and in a transparent manner. Insidious practices such as sleeping partners should be avoided. Leaving public service to conduct private business after having placed reliable partners in leadership positions still in the public service is a malpractice, which is hard to prove but clearly prevalent. We should ask, whenever a public servant or representative leaves office and opens a business in the same line of work, shouldn't there be an automatic review by a dedicated government agency in order to eliminate the basis of suspicion and insinuations?<sup>307</sup>

Unless the fluidity between politics and the private sector is controlled, South Africa will end up on a slippery slope where politicians, government officials and political parties are pawns for wealthy corporate

The conflation of politics and business is becoming such a concern in South Africa that the ANC Secretary-General described it as the party's "central challenge".



interests, rather than representatives of the people. Serious policy battles will be overshadowed by a fight about access to economic benefits, and donations to

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## About this paper

The purpose of this research paper was to identify possible sources of private funding to South Africa's political parties, beyond the annual state allocation, which are potentially corrupting and/or subverting the will of the electorate. The lack of legislation to regulate the flow of private funds to political parties is one of the greatest threats to South Africa's sanctified democracy. The paper analyses how Broad-Based Black Economic Empowerment has been misapplied by some individuals and companies seeking party funding opportunities. The paper does not seek to attack the principle of BEE, which it fully supports; rather it critiques the exploitation of the policy for ulterior financial gains, revealing a new corporate front used by the ruling African National Congress to seek profit on its own behalf. The paper also provides a quantitative assessment of sources of funding to the opposition Democratic Alliance.

It was commissioned by the Cape Town based ISS Corruption & Governance Programme as part of a joint project with the Idasa Political Information Monitoring Service (PIMS) to promote debate on options to regulate private funding of political parties as well as the monitoring of party funding by researchers, civil society and the media. For more about the project and other views on the regulation of private funding to political parties in South Africa visit [www.whofundstheparty.org.za](http://www.whofundstheparty.org.za).

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