

**PRESIDENT VS. PUBLIC PROTECTOR:
THE BOSASA SAGA AND ITS IMPLICATIONS FOR DEMOCRACY**

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If the aim of the Public Protector was to reveal the ANC's worst-kept secret about presidential contestations and to smoke out contributors to one of the candidates at its 2017 NASREC national conference, she has succeeded remarkably.

According to her office, the banking information on list of donors, beneficiaries and transactions came into its possession legitimately. It is not clear though where email exchanges which, according to the Presidency, were illegally obtained were sourced from. Some of these have now been leaked to the media and were splashed in the Sunday Independent, leading to speculation about the intentions of the sources of some of the information or the office of the public protector itself.

Curiously, the authors of said article include two of the troupe of journalists who fed us the story about a 'rogue unit' at the South African Revenue Service (SARS) while they were still in the employ of a rival publication. Their previous employer long ago apologised for the articles, which presumably were planted to justify the repurposing and destruction of SARS.

The 'rogue unit' story helped to lay the basis for the demolition of a world-class revenue collector; and South Africa is still smarting from the effects of that campaign.

We are all left to wonder about the objectives of the latest campaign. The evidence at the judicial commissions on state capture and SARS suggests malevolence of the worst kind.

If the aim of the Public Protector was to embarrass the CR17 campaign and, through this, inject into public debate, reflections on funding of intra-party contestations, she has done quite well. In part, this is because it is easy to develop a narrative of 'capture by private interests' from leaks such as these, irrespective of detailed explanations and the track record of the post-NASREC incumbent.

But are these 'remarkable successes' real or imaginary?

Lest we forget, the core issue under investigation was not about any of these matters. As the title of the Public Protector's report suggests, it was about "an improper relationship between the President and African Global Operations (AGO), formerly known as Bosasa". Without detracting from the right of the Protector to expand an investigation, the essence of this case was about clarifying how a misleading question in parliament led to a misleading answer. This, the President later acknowledged and corrected.

As speculation swirls, a legitimate discussion has arisen about funding of political activities and transparency around this. "We need to know" says political analyst Ralph Mathekga in the Sowetan newspaper (12 August 2019). "...we need to know who is the highest bidder because money buys favours". It may well be that, as a matter of principle, in order to avoid what the Public Protector refers to as "the risk of some sort of state capture by those donating these monies", there should be transparency around any political donations. The Political Party Funding Act was introduced precisely to help address this problem.

But, does this necessarily mean that all political donations are meant to, and do in fact, buy favours? Assuming the leaked list of CR17 donors is accurate, it seems to contain names of people who were profoundly concerned about the danger of state capture. Most of these individuals were openly involved in the public campaign on how to revitalise the integrity of the state and they identified with Ramaphosa's campaign platform on this issue as well as the need to re-ignite economic growth. In this instance, there was substantive commonality of interest, in the manner that broad fronts with minimum areas of agreement have been forged over the ages.

So, no new news here, except that some of the donors may have preferred to remain anonymous. How to resolve this issue of anonymity for the period before the party funding act came into force – how to find the balance between what is interesting to the public and the public interest – is a matter that requires ongoing reflection across the board.

The CR17 team has sought to explain how the funds were raised, how they were used and accounted for, and the intricacies of Ramaphosa's involvement. This, they assert, included an explicit understanding that no favours would derive from making the contributions. Further, in line with the finding of the parliamentary Ethics Committee on the case of the leader of the Democratic Alliance during his own campaign, they argue that there was no personal benefit and therefore no obligation to declare.

There is now a temptation, on the part of some within the ANC, to come up with donor lists relating to the other NASREC presidential candidates, with social media in overdrive. Besides the danger of self-mutilation at the instance of external forces, splashing mud does not address the fundamental issue on how to manage internal political contestations – let alone the fundamental national challenges of higher rates of investment, job-creation and poverty-reduction.

At its recent meeting, the ANC National Executive Committee (NEC) agreed to review internal electoral contestations, including "rules and regulations for lobbying and funding of individual campaigns for leadership". While recent experiences have much to do with this decision, the organisation does acknowledge that this tendency started to grip national conference campaigns in the build-up to the 2007 Polokwane conference. Since then, it has become standard fare; and the organisation has lost its innocence on this matter.

The practice had been brewing in sub-national and some league structures before then. At the extreme end of the scale are the observations the ANC has made about actual vote-buying at conferences. In some instances, public resources are deployed in such activities. For instance, there was recently an allegation – which in 2018 drew the attention of the Hawks – of branch delegates in Maluti-a-Phofung being employed as general workers in order to support a particular slate at the NASREC conference.

It is against the background of practices which had evolved over more than a decade that those members who were seeking to restore the integrity of the ANC, in the build-up to NASREC, had to agonise: whether it would be possible to assume leadership of the organisation and turn it around without open campaigning and resources. Was it going to be possible to detoxify the organisation in the medium to long-term without using, at the immediate and tactical level, some dose of toxicity?

This is water under the bridge. As the NEC statement suggests, the question is how to deal with the challenge of money politics going forward.

The starting point in this regard is whether the Political Party Funding Act provides for internal party contestations. Were the legislators aiming to address this matter when they included provisions that no “person or entity may deliver a donation to a member of a political party other than for party political purposes” and, inversely, that a “member of a political party may only receive a donation...on behalf of the party”? Even if this may not have been the case, these assertions can form a basis around which regulations on support for any candidate in any political contestation can be formulated. Or the law itself may need to be amended to take into account internal party contestations.

In addition to this, there are some lessons that all South African parties can learn from some of our neighbours on how to manage election of senior leaders. Tanzania ‘s Chama cha Mapinduzi, Mozambique’s FRELIMO and the Botswana Democratic Party, variously, have systems of open declaration of presidential candidatures and vetting of the candidates by some senior structure. The party itself then arranges organisational platforms for the contestants to interact with the membership and argue their case.

A system such as this would reduce the need for war chests and, combined with relevant aspects of the party funding act, it would set the parameters for internal campaigns. This would promote positive behaviour; but even more importantly ensure that there are penalties for any violations by the candidates and their supporters.

The Public Protector has been found by the courts to have got many fundamental things wrong; and the strongest censure was recently delivered by the Constitutional Court in the form of personal punitive costs. There may yet be serious consequences for her. But, on the issue of funding in internal party contestations, perhaps we need to cut her some slack: she seems to have blundered her way into becoming an unconscious tool of history.

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