



Submissions by Corruption Watch: Daft Political Party Funding Bill, 2017

Introduction

1. Corruption Watch is a non-profit civil society organisation. It is independent, and it has no political or business alignment. Corruption Watch intends to ensure that custodians of public resources act responsibly to advance the interests of the public. Its ultimate objectives include fighting the rising tide of corruption, the abuse of public funds in South Africa, and promoting transparency and accountability to protect the beneficiaries of public goods and services.
2. Corruption Watch has a vision of a corruption free South Africa, one in which educated and informed citizens are able to recognise and report corruption without fear, in which incidents of corruption and maladministration are addressed without favour or prejudice and importantly where public and private individuals are held accountable for the abuse of public power and resources.
3. As an accredited Transparency International Chapter in South Africa, core to our mandate is the promotion of transparency and accountability within private sector and state institutions aimed at ensuring that corruption is addressed and reduced through the promotion and protection of democracy, rule of law and good governance.
4. Corruption Watch made written submissions on Public Funding of Represented Political Parties Act, 103 of 1997 ("the Act") read in accordance with Regulation 10(1) of the Act¹ on 21 July 2017 and made oral submissions on 15 August 2017. These submissions focused broadly on policy decisions which would be crucial to achieving greater transparency and accountability in respect of party funding.

¹ Published under Proclamation R117 in *Government Gazette* 19478 of 20 November 1998

Key Concerns

5. We commend the Ad Hoc Committee on the Funding of Political Parties (“the Committee”) on the prompt preparation of the Draft Political Party Funding Bill, 2017 (“the Bill”)² and welcome the opportunity to make written submissions on the Bill.
6. However, there are still a number of issues which are central to our concerns about party political funding and which have been inadequately addressed and in some instances, not at all.
7. Although we have some questions and concerns about public funding, our main concerns relate to the continued lack of transparency around the private funding of political parties. This involves the failure of the Bill to address funding from investment vehicles owned by political parties as well as funding from companies that do business with the state. In relation to private funding, which poses the greatest risk to the independence of political parties, we made a number of suggestions based on OECD guidelines³ that either involved outright bans of certain funding or strict regulation and enforcement however, these important suggestions are not reflected in the Draft Bill. The OECD Framework on Financing Democracy and Supporting Better Public Policies and Averting Policy Capture remains, we submit, the most appropriate framework for guiding the Committee’s consideration of reform in party political finance and the Draft Bill should be assessed with due reference to these guidelines.
8. It is important to note that transparency in party funding prevents and deters corruption and malfeasance related to party funding and that steps taken to address transparency in party funding are necessary for the protection and promotion of multi-party democracy, the primary objective of these amendments. The Committee now has the opportunity to ensure that issues of transparency and accountability are addressed in a meaningful and decisive manner and I hope that our suggested amendments will be considered seriously and accepted.

² Published under Notice 726 of *Government Gazette* No. 41125 of 19 September 2017.

³ OECD Framework on Financing Democracy and Supporting Better Public Policies and Averting Policy Capture, OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Public Governance Reviews, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264249455-en>

9. Before considering specific clauses in the Draft Bill, a key question raised during oral submissions related to the question of a level playing field. We submit that a level playing field in respect of outright equity of funding will never be achieved, as parties receive funding in accordance with their needs. A larger political party serves a larger constituency, has more offices, administrative and other expenses and would by its nature require more funding. A larger party would also receive the most public support and so would receive more funding in line with that support. Our submissions on a level playing field are simply to say that although we acknowledge the need for larger parties to receive more funding, we must acknowledge that larger parties, particularly the most represented party would also have access to state resources in addition to a bulk of public and private funding which would result in a completely unfair and inordinate advantage over smaller parties, which may be allocated a share of funding that is not even enough to cover its basic expenses. Therefore, when considering a level playing field, the objective is to promote a level playing field that would in effect promote a multi-party democracy. This does not amount to complete equity but involve putting in place measures that allow for competitiveness and for parties to compete in relation to their scale. A smaller party, could for example, be requested to submit a justifiable budget related to its expenses and activities which would allow for it to function better and more effectively, as opposed to its efforts being compromised from the start.

Comments on Public Funding

10. For ease of reference our previous submissions on public funding included the following:

- 10.1. Establishment of a multi-party democracy fund to receive and distribute private sources of funding;
- 10.2. Disclosure of all sources of funding, including information about beneficial owners and a prohibition of anonymous donations (depending on formula for distribution, unknown sources could still have influence over the most representative party, alternatively the proceeds of crime could be channelled into the fund therefore measures should be put in place to prevent anonymity);
- 10.3. Disclosure of expenditure / comprehensive reporting, this would allow the public to how political parties spend money allocated from the fund;

- 10.4. Enabling scrutiny of timely, reliable, accessible and intelligible reports. In this regard, information about the sources of funding as well as the manner in which those funds are spent by political parties should be made available by the Commission in a timely manner but should also be reliable and importantly, accessible which means available on a number of communication platforms and available in a format which is easily understood;
 - 10.5. Capping of expenditure which takes into account all sources of funding and which involves capping the total amount that could be spent by political parties in any given funding cycle to promote a level playing field;
 - 10.6. A review of allocations in terms of the formula in order to promote a level playing field which would involve reviewing the formula for allocations from public fund in favour of more equitable distributions;
 - 10.7. A review of funding for local structures / smaller parties to promote multi-party democracy;
 - 10.8. Public sector integrity and transparency, codes of conduct, conflict of interest and asset disclosure provisions, risk mapping, whistle-blower protection and whistle blower mechanisms;
 - 10.9. Appropriate and enforceable sanctions and capacitated and independent oversight bodies;
 - 10.10. The consideration of increases to public funding only when private and other funding sources are fully transparent.
11. In light of our previous submissions which were based on the OECD guidelines, there are issues that arise in relation to the Draft Bill which are considered below:
 12. Firstly, we had suggested the establishment of a multi-party democracy fund to receive all private sources of funding which would then eliminate the need for political parties to receive private sources of funding directly, this would include funding from potentially risky funding

sources. Therefore, although clause 3 establishes a Multi-Party Democracy fund, we had hoped that this fund would receive all private sources of funding so as to no longer allow political parties to receive funding directly and we are concerned about the dual process which has been established, a process which does little to change the existing funding model for political parties as set out in section 2 of the current Act.

13. Secondly, without knowing the formula to be used for the distribution of funds from the Represented Political Party fund and the Multi-Party Democracy Fund, we submit that if the formula remains the same or is amended only slightly, there is still a risk of local and foreign business and other entities being in a position to influence the most representative party as a bulk of the funds would be still be apportioned to it.
14. Thirdly, given our inability to comment on the implications of the formula in reference to the Draft Bill, we suggest that regulations should be drafted simultaneously to ensure that affected and interested parties are able to comment on the effects of any proposed formula on the operation of the Draft Bill. The same applies to the determination of thresholds for private funding which is dealt with further below.
15. Finally, related to the question of the formula, which we are unable to substantively comment on without the draft regulations, it appears that there will be one formula for both funds. We suggest that a different formula for each fund, with fixed minimum funding for smaller parties may assist in promoting a level playing field.

Comments on Private Funding / Direct Funding of Political Parties

16. For ease of reference our previous submissions on private funding included the following:
 - 16.1. Banning or regulating certain types of private funding such as:
 - 16.1.1. Foreign interests (ban);
 - 16.1.2. Corporations with government contracts or partial government contracts (ban);
 - 16.1.3. Trade unions, state owned entities (ban)

16.1.4. Investment and other corporate entities owned by political parties (ban or regulation);

16.1.5. Corporate funding (regulation and detailed reporting or ban and all corporate funding to be made into Multi-Party Democracy Fund);

16.2. No anonymous donations;

16.3. No direct candidature funding;

16.4. Disclosure by private donors;

16.5. Whistle-blower protection / mechanisms.

17. As indicated in paragraph 12 above, we had anticipated a multi-party democracy fund to be a vehicle to receive private sources of funding so as to replace direct funding or at least replace those types of direct funding that would bear the most risk of abuse, such as funding from companies that do business with the state and funding from investment vehicles and other entities owned by political parties. We are therefore surprised by a dual mechanism which allows for all types of funding, resulting in very little transparency or reduction of risk. Our comments on specific clauses appear below:

18. Firstly, clause 8 a states that “donation includes a donation in kind and a *donation made to a member of a political party.*” (My emphasis). However, clause 11 prohibits donations to a member of a political party which results in a contradiction with clause 8. We suggest that clause 8 be amended to delete reference to “*a donation made to a member of a political party*” and be combined with the definition of a ‘donation in kind’ so as to have a single definition of a donation which is clear and succinct.

19. Secondly, it appears that political parties may receive funding from citizens, both here and abroad, from any company (including companies owned by political parties and companies which do business with the state) and from trusts. Funding from companies and individuals may also be in the form of loans, money paid on behalf of a political party for any expenses incurred, and the provision of assets, services or facilities and sponsorships for political

parties. We are concerned about the non-regulation of funding from companies that do business with the state as well as funding from investment vehicles owned by political parties and suggest that the requisite amendments be included to address these vital issues. This does not necessarily involve complete bans but detailed and specific regulation so as to avoid abuse.

20. In this regard, even if donations from companies that do business with the state were disclosed in terms of clause 10, we would not, as civil society be in a position to assess whether such donations had an influence over the award of a state contract to the company. We therefore suggest a ban on donations from companies that do business with the state, allowing such donations to be made into the Multi-Party Democracy Fund.
21. We note that all donations which would include the monetary value of donations in kind would be required to be disclosed by political parties.
22. In respect of investment vehicles owned or partially owned by political parties, we suggest that this should be carefully regulated. Although donations from such investment vehicles above a certain threshold would be disclosed, we are still concerned about the source of funds used to generate income for the investment vehicles. We submit that for investment vehicles owned by political parties as well as trusts and other corporate entities which make donations to political parties, beneficial ownership information should be obtained and made publicly available so as to ensure transparency in relation to the sources of funds and not just the amount of the donation. Civil society and the general public should be placed in an informed position so as to interrogate sources of funding.
23. Thirdly, we note from clause 9(3)(a) that a political party or a member of a political party may accept a donation from foreign entity for the purpose of policy development of a political party. We are uncertain as to what is meant by policy development in this clause but this clause allows for the precisely the type of influence by foreign interests over the policies of our political parties that we would want to prevent. We therefore suggest that this clause be deleted.
24. Finally, while we note that in terms of clause 10, all donations above a certain threshold must be disclosed which would include donations from entities which are of concern to us as well as all donations in kind, we are yet to know the prescribed threshold which is to be determined

in regulations. We are unable to comment on the implications of any prescribed threshold on the Draft Bill and therefore suggest that regulations be drafted simultaneously so as to enable us to do so.

Comments on General provisions

25. We note from clause 15(4) that complaints relating to the income or expenditure of a political party can be lodged with the Commission which could then investigate the complaint. We suggest that this clause be amended to include a reference to complaints about the sources of funding given our concerns about the transparency of funding sources, especially when they arise from a trust and other corporate entities. We are uncertain as to whether the Commission has an existing complaints handling mechanism which would facilitate the filing of these complaints but given our experience in handling complaints of corruption, such a mechanism requires resources, both human and financial. We hope that these resources are made available to the Commission in order to ensure the proper administration of such a mechanism. Resources should also be allocated to ensure that all members of the public are made aware through various media platforms of this reporting mechanism. It is also unclear as to whether persons who make reports to the Commission would be protected from reprisal by those being reported. We suggest that this section be amended to allow for proper and meaningful whistleblower protection.
26. Finally, the Committee is well aware of the recent High Court judgment in *My Vote Counts v President of the Republic of South Africa and Others*.⁴ The judgment evinces the incredible importance of transparency in party funding and although the matter involved a frontal challenge to the Promotion of Access to Information Act (“PAIA”)⁵ and a subsequent finding by the High Court that PAIA be amended by Parliament to include access to party funding information, we believe it is still within the scope of work of this Committee to ensure that the sources and amounts of direct funding to political parties as well as sources of public funding is made available to the public, irrespective of threshold amounts or any requests for

⁴ [2017] ZAWCHC 105

⁵ 2 of 2000.

anonymity. Such information is compiled by political parties for purposes of their internal audits and submissions to the Commission and would not pose any additional burden on them.

27. Ultimately, we submit that complete and meaningful transparency is essential for all citizens to be able to assess where political parties obtain their funding from, whether such funding influences their political party policies and whether the sources and amounts of funding are acceptable in accordance with a voter's own views and opinions. We hope that these amendments lead to a more accountable and transparent model for the funding of political parties so as to prevent corruption and maladministration to ensure that all citizens are able to vote in an informed manner.

**Submitted by Corruption Watch on 16 October 2017
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