



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

Introduction

1. Corruption Watch (“CW”) 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. Corruption Watch welcomes the opportunity to make submissions on the Party Funding Bill, [B33-2017]¹ (“**the Bill**”) read in accordance with the Memorandum on the Objects of the Party Funding Bill, 2015 (“**Memorandum on Objects**”).
4. In our previous submissions we noted that the issue of party political funding threatens the democratic functioning of the state, both in South Africa and in jurisdictions around the world. Democracies function and thrive when people, not politicians, ruling parties or big business, are responsible for their political choices and this basic rule for democratic governance is fatally threatened when power and money come to bear on those choices both directly and indirectly. We once again would like to take this opportunity to refer this committee to the

¹ Published in *Government Gazette* No. 41125 on 19 September 2017.

*OECD Framework on Financing Democracy and Supporting Better Public Policies and Averting Policy Capture*² (the “**OECD Framework**”) as a useful guide in the reform party political finance.

5. According to the OECD Framework, “when government policy making is captured by individual donors with a significant amount of power and money, in whose favour the rules are bent leads to the erosion of democratic governance, the pulling apart of social cohesion, and undermining of crucial concepts that underlie democracy such as equal opportunities for all”³.
6. In *My Vote Counts NPC v President of the Republic of South Africa and Others*⁴, the court held that “political parties were the 'vehicles the Constitution had chosen for facilitating and entrenching democracy', and public funding impacted on whether such parties achieved those aims. Further, the right to vote was a right to cast an informed vote ; in this regard, the identity of funding contributors, and what they contributed, provided important information to voters about a party's likely behaviour; further, such funding information could facilitate the detection of post-election favours”⁵. As the above judgment demonstrates, every voter needs to exercise their constitutionally guaranteed right to vote with a degree of responsibility, which entails considering all the available information (which includes information about who exactly is funding particular political parties) and making informed decisions when electing a particular political party to act their democratically elected representative.
7. In light of these considerations, we submit that the importance of the regulating the funding of political parties should not be overlooked, to ensure that donors (with immense financial resources and power) do not influence the outcome of elections or the policy making process once a party has been elected. In what follows we set out our key submissions in relation to the Bill for the committee’s consideration.

² 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>.

³ Ibid at 23.

⁴ *My Vote Counts NPC v President of the Republic of South Africa and Others* 2017 (6) SA 501 (WCC).

⁵ Ibid at para

Foreign Persons and Other Entities

8. The definition of foreign persons needs to be amended. It currently provides that a foreign person means “*any person or entity other than a - (a) citizen or permanent resident of the Republic; (b) company registered in terms of the Companies Act; or (c) trust registered in terms of Trust Property Control Act*.”⁶ The definition does not take into account companies that are registered in South Africa but are owned or their largest shareholder is a foreign entity. This definition should be amended to take into account issues of beneficial ownership. Companies need to be scrutinised to ensure that we know who the shareholders are. In its current form the definition could be a loophole to circumvent the prohibition against receiving foreign funding and contributions.
9. Secondly, it appears that political parties may receive funding, 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.
10. 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.
11. We note that all donations which would include the monetary value of donations in kind would be required to be disclosed by political parties.

⁶ Clause 1 of the Political Party Funding Bill, 2017.

12. 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.
13. 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.
14. CW aligns itself with the views held in the OECD Framework that political parties need to be responsive to their constituencies and in the development of policy should not be influenced by foreign interest but should rather be influenced by the ordinary citizens who voted them into power⁷. The OECD Framework goes on to note that foreign interference in elections is a danger to a country's sovereignty⁸. Accordingly, in allowing foreign entities to fund a particular political party's policy development, we stand to risk what the OECD Framework has termed "policy capture"⁹. The risks involved in policy capture include; the use of political influence in the public service to arrange for donors to earn contracts, get access to public loans or earn other benefits, which such donors would ordinarily not be entitled to and other unlawful behaviour by public officials involved in policy making and public procurement¹⁰. These considerations equally apply in respect of donors who do business with the state. It is

⁷ 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> at 22.

⁸ Ibid at 48.

⁹ Ibid at 15.

¹⁰ Ibid at 22.

imperative that an elected government should be responsive to the needs of its people and not the needs of donors.

Allocation and Payment of Money to a Represented Political Party

15. Clause 6 read together with schedule 2 of the Regulations to the Bill¹¹, provides that two-thirds of the total amount of funding available for allocations from each of the funds will be distributed proportionally, while one-third of the total amount of funding available for allocation from each of the funds will be distributed equitably¹². According, to regulation 3 proportional allocation is determined by dividing the amounts from each of the funds proportionally among the represented political parties in accordance with the number of seats awarded to each party in the National Assembly and the provincial legislature jointly¹³. Regulation 4 provides that equitable allocation is calculated by allocating to the national and provincial legislatures in proportion to the number of members of each of those legislatures¹⁴. The allocation to a particular legislature must be divided equally among the represented political parties in each of those legislatures¹⁵.

16. The OECD Framework reports that there is correlation between campaign spending and performance in elections¹⁶. The allocation of funds to political parties is important for levelling the playing field and encouraging competitive electioneering¹⁷. The risk of having allocation of funds distributed according to votes or share of seats in past elections hinders smaller parties (with less access to funds) from contesting with the bigger parties in a meaningful way¹⁸. The elections need to be highly contested to ensure that our democracy functions optimally. The OECD Framework notes that in states where the equal access to public funding is available, this creates incentives for new the creation of new parties to compete with the bigger parties¹⁹.

¹¹ Clause 6 read with Schedule 2 of the Regulations on the Political Party Funding Bill, 2017.

¹² Regulation 2(2) of the Regulations on the Political Party Funding Bill, 2017.

¹³ Regulation 3 of the Regulations on the Political Party Funding Bill, 2017.

¹⁴ Regulation 4(a) of the Regulations on the Political Party Funding Bill, 2017.

¹⁵ Regulation 4(b) of the Regulations on the Political Party Funding Bill, 2017.

¹⁶ 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> at 41.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

The OECD Framework reports further that where allocation of funds has been based on a parties previous performance in elections, this has resulted in a replication of past election results²⁰. An equal allocation of funds will ensure that the bigger political parties do not become complacent in the positions that they hold and it encourages parties to work harder to restore and maintain public faith or stand the risk of being replaced by another political party. We submit that the committee consider adopting a model of allocation of funds which allows for equal distribution of funds.

Parliament's Role

17. We note that in terms of clause 22 the Independent Electoral Commission (the "IEC") must in respect of each financial year, prepare a report in relation to each of the established funds and the donations made to political parties to Parliament. The Bill, however, does not prescribe how Parliament is required to deal with the reports it receives from the IEC, it specifically does not clarify whether Parliament can or should publish this information for the public.
18. CW previously made submissions in which we highlighted that Parliament's role in being able to translate findings and oversee reports in a timely and accessible manner should be clarified and enhanced. We urge the committee to consider prescribing that Parliament upon receiving such reports from the IEC, making such reports available to the public.
19. We hope that our submissions are useful to the committee and that the committee takes our submissions into consideration. We further request to participate in the parliamentary hearings and to make oral submissions before the committee.

Submitted by Corruption Watch on 8 June 2018
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²⁰ Ibid.