



**SUBMISSIONS BY CORRUPTION WATCH:
PROPOSED REGULATIONS IN TERMS OF SECTION 24(2) OF THE POLITICAL PARTY
FUNDING ACT, 6 of 2018**

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 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 the 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 and oral submissions on the Public Funding of Represented Political Parties Act, 103 of 1997 read in accordance with Regulation 10(1) of the Act in 2017, and written and oral submissions on the Draft Political Party Funding Bill in 2017 and 2018 respectively.

Key Concerns

5. We commend the Electoral Commission (“**the Commission**”) on the prompt drafting of these proposed regulations (“**proposed regulations**”) in terms of section 24(2) of the Political Party Funding Act, 6 of 2018 (“**the Act**”), and we welcome the opportunity to make submissions on these Regulations.
6. Our key concerns with the proposed regulations relate to a continued lack of transparency around certain forms of donations made to the Multi-Party Democracy Fund and to political parties. In these submissions we will identify the concern with the continued ability for donors to make anonymous donations, albeit it to Multi-Party Democracy Fund, and the difficulties in accessing information held by the Commission on donations to political parties.
7. We have noted in our previous submissions 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 Preamble to the Act recognises the Constitution’s foundational values of accountability and openness and, as such, one of the purposes of enacting this legislation was to ensure and enhance the transparency around donations to political parties. Coming after the State Capture years, the Act was a vital legislative intervention in the fight against undue influence in our political system. It is our hope that these Regulations can be strengthened to ensure that the system created through the regulations does, in fact, realise the transparent political party donation system the Act envisioned.
8. Transparency has been recognised as a core value and facilitator of democracy and electoral processes, and the need for transparent funding of political parties has been especially highlighted.
9. The African Commission on Human and People’s Rights has recognised the importance of transparency in electoral systems. Article 2(1) of the *African Charter on Democracy, Elections and Governance* states that “[t]he objectives of this Charter are to: ... Promote the

establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs.”

10. The African Union’s *Convention on Preventing and Combating Corruption* requires states to “adopt legislative and other measures to ... [i]ncorporate the principle of transparency into funding of political parties”.¹

11. The Constitutional Court – in the judgment that paved the way for the Act and the overhaul of South Africa’s political party funding landscape – noted the link between a lack of transparency in political party funding and corruption:

Secrecy enables corruption and conduces more to a disposition by politicians that is favourable towards those who funded them privately once elected into public office. This is likely to flourish even where information on private funding is ‘held’ at the discretion of the funded and unlikely to be exposed to ‘the light of publicity’² ... Lack of transparency on private funding provides fertile and well-watered ground for corruption or the deception of voters.³

12. The adoption of the Act and, subsequently, these Regulations must be seen in the light of the African Union, African Commission and Constitutional Court’s commitment to transparency and the recognition of political party funding transparency as a tool to fight corruption. These Regulations must therefore serve as an effective instrument through which true transparency can be achieved and the goals of the legislative framework realised.

13. It is on this basis we make these submissions as we seek to strengthen the ability of the Regulations to facilitate transparency.

¹ Convention on Preventing and Combatting Corruption, article 10.

² *My Vote Counts NPC v Minister of Justice and Correctional Services and another* 2018 (5) SA 380 (CC), para. 45.

³ *My Vote Counts NPC v Minister of Justice and Correctional Services and another* 2018 (5) SA 380 (CC), para.. 48.

Anonymity of Donors

14. Regulation 4 addresses the “*Establishment of a Multi-Party Democracy Fund, Donations made and Request for Non-disclosure by Contributor*. Section 3(5) of the Act stipulates that “*Any contributor contemplated in subsection (3)(a) [a donor of a private source of funding] may request the Commission not to disclose their identity or the amount of the contribution*”.
15. Regulation 4 sets out the manner in which a donor can request that their identity and/or amount of the donation not be disclosed and the factors the Commission must take into account when determining whether to grant that request for non-disclosure.
16. As Corruption Watch indicated in previous submissions, there are two concerns about the continued ability for donors to the Multi-Party Democracy Fund to remain anonymous: as the most representative party receives the most funds there is still potential for donors to exercise undue influence over that most representative party; and the proceeds of crime could be channeled into the fund through anonymous donations.
17. Accordingly, we submit that the Regulations governing the Commission’s discretion in accepting anonymous donations should be tightened. The OECD Public Governance Review on *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture* (OECD Review) notes that “[w]here compulsory disclosure of information of all donors is not always feasible, donations above certain thresholds are usually disclosed to ensure transparency and mitigate the risks of undue influence”.⁴ Including a monetary threshold on non-disclosed donations (in a similar vein to the threshold imposed on direct donations to political parties) would assist in limiting the potential for undue influence.
18. It is important to note, as do the OECD, that although individuals may be discouraged from making donations if their donation cannot be kept confidential, this loss of privacy must be weighed against the important goal of “preventing public policies capture by party and election

⁴ OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Public Governance Reviews, OECD Publishing, Paris, page 68.

campaign donations”.⁵ It is, moreover, not at all clear why transparency should deter a donor making a contribution to this fund, whereas it is clear why some donors may wish a donation to a particular party to remain confidential.

19. We welcome the strong language included in Regulation 4(5) which requires the Commission to refuse any request for non-disclosure “(a) if there is reason to believe that any provision of the Act or any other legislation has been contravened by the contributor; or (b) the Contributor failed, without reason, to provide any of the information required in terms of Sub-Regulation 4(3)(a), (b), (c) and (d) above.” We believe that this adequately responds to our earlier concerns that the request for non-disclosure could be abused to hide proceeds of crime.

20. However, the broad discretion given to the Commission in determining whether or not to accept the request for non-disclosure does not ensure that the anonymous donations are not used to exert undue influence over the most representative party. Although the regulation does require that the Commission take into account the “source of the monies for the donation”⁶ and the “[a]ssessment of political exposure of the Contributor”,⁷ the Commission is not obliged to refuse the request for non-disclosure if there is a political motivation for that donation and request for non-disclosure. We submit that this Regulation should be strengthened to *require* the Commission to refuse the request if the source of the donation, the reason for the non-disclosure request and/or the political exposure of the Contributor indicate the risk of an attempt of undue influence. The granting of the request for non-disclosure should be reserved for extremely rare situations and the Regulations should be framed in such a way that there is no opportunity for abuse of this process to facilitate undue political influence.

Accessibility of Information on Direct Donations

⁵ OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Public Governance Reviews, OECD Publishing, Paris, page 69.

⁶ Regulation (4)(3)(d).

⁷ Regulation 4(3)(e).

21. As an organisation seeking to improve transparency in public life, we welcome Regulation 10 which requires that the Commission publish a list of all donations made and received in accordance with section 9(1) and 9(2) of the Act, and Regulation 8(5) which requires that a record of all disclosures of donations be kept by the Commission and be available for inspection by any person. However, we submit that these mechanisms do not go far enough to achieve a truly transparent political funding system.
22. Our first concern is that the Commission is obliged to publish the list of donations only quarterly. The OECD Review stresses that “[t]imely information is key where civil society organisations get involved as watchdogs over political financing”.⁸ It is not implausible to suggest that donors would time their donations strategically to ensure that the reporting is done only after an election. We submit that the Commission should be obliged to publish the list of donations on a monthly basis, and that special measures be implemented for reporting donations in the month preceding elections. At a minimum, we submit that special mechanisms should be required for the period between the last reporting cycle and any election.
23. We also submit that the list should be published through media outlets in addition to in the Government Gazette. This would ensure greater visibility of the information relating to donations made and received by political parties.
24. Of greater concern is the inaccessibility of the record of party disclosures. It is impractical for interested persons to have to physically inspect the record at Commission offices (particularly as this is only available during ordinary business hours). Given the potential that technology offers, we submit that this record should be made available online on the Commission’s website. This would be in line with the OECD’s comment that “[o]nline technologies facilitate information disclosure being organised in a timely, reliable, accessible and intelligible

⁸ OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Public Governance Reviews, OECD Publishing, Paris, page 72.

manner.”⁹ We acknowledge that this obligation would require Commission resources, but given the obligation to make available at all Commission offices a record of all disclosures we submit that it would not be onerous to make that record available in electronic format as well.

25. We also submit that the Regulations should place obligations on the political parties themselves to make available a list of their donation disclosures. In Italy, party financial accounts must be published on party websites as well as through official government sources.¹⁰ A similar obligation in these Regulations would ensure that political parties take responsibility for encouraging accessibility to and knowledge of the donations the parties have received. This would also broaden the spheres in which the information can be accessed which assists in greater accessibility and, therefore, transparency.

Conclusion

26. In conclusion, we submit that the Regulations should be strengthened to ensure a more rigorous framework for a truly transparent political party funding system in South Africa. These Regulations must be seen to act as an effective complement to the legislation and so must create the conditions for transparency of and accessibility to records of all party donors. The recommendations we make in this submission to tighten the conditions for anonymous donations to the Multi-Party Democracy Fund and to make the information on political parties’ donations more accessible would strengthen the framework established by these proposed Regulations and aid in making the political system the truly transparent one as envisioned by the African Union, the African Commission and our Constitutional Court.

Submitted by Corruption Watch on 31 July 2019
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⁹ OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Public Governance Reviews, OECD Publishing, Paris, page 72.

¹⁰ OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Public Governance Reviews, OECD Publishing, Paris, page 70.