

POLITICAL PARTY FUNDING BILL

EXECUTIVE SUMMARY

Up until recently, political parties have been mostly united in their opposition to transparency of their private funding. On 27 March 2018, the National Assembly adopted the Political Party Funding Bill. Twelve out of thirteen political parties represented in Parliament were in support of adopting the Bill. It now has to go to the National Council of Provinces. This Bill is the first drafted legislation to provide for and regulate private funding to political parties. In addition, the Bill includes a disclosure regime for private donations received by political parties. My Vote Counts welcomes the Bill, but is still campaigning for amendments before the Bill is adopted as the current formulation contains loopholes for private funding sources to remain secret, among other issues with the Bill.

INTRODUCTION

On 6 May 2017, Parliament finally resolved to establish the Ad Hoc Committee on Political Party Funding. The Committee was established to inquire and make recommendations towards a model of public and private funding for national and provincial legislatures, and as a potential means of regulating private funding to political parties.

On 19 September 2017 the Draft Political Party Funding Bill was published and the Committee extended an invitation to the public to submit written comments/submissions.¹ Various organisations, individuals and trade unions submitted their input on the Bill. After deliberating on the submissions and subsequently redrafting the Bill, the Committee approved the Bill on 28 November 2017.²

The Bill was formulated to provide and regulate sufficient funding for represented political parties through:

- The establishment and management of a public and private fund;
- Prohibitions on certain donations made directly to political parties;
- Regulation on disclosure of accepted donations; and
- Assigning powers and duties to the Independent Electoral Commission (IEC) to administer and manage funds.³

This policy brief will outline the content of the Bill and what should still be amended.

ESTABLISHMENT AND MANAGEMENT OF TWO FUNDS

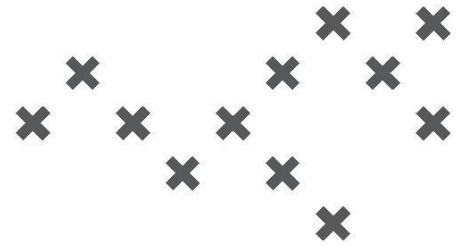
Public Funding of Represented Political Parties

According to Section 236 of the Constitution, the state is required to provide funding to political parties represented in the national and provincial legislatures.⁴ The Public Funding of Represented Political Parties Act of 1997 (PFRPP) regulates public funding and allows for disclosure of the amount of the funds and how parties spend these funds. The passing of the Bill would repeal the existing PFRPP Act and establish a public fund called the Represented Political Party Fund (RPPF).⁵ Anything in the PFRPP Act is still applicable to the RPPF, unless otherwise stated in the Bill. According to the practices from the PFRPP Act, the IEC has a bank account where public funds are allocated, and political parties also have a separate bank account from their other bank accounts where all public funds are deposited by the IEC.⁶

Multi-Party Democracy Fund

The second and newly proposed fund that the Bill seeks to establish is the Multi-Party Democracy Fund (MPDF). The MPDF is limited to providing funding to political parties participating in the national and provincial legislatures. This fund will collect private donations.⁷

The private fund is prohibited from receiving donations from an organ of state, state owned enterprises, a foreign government or foreign government agencies.⁸ The IEC has to set up a separate unit and separate



account where all money from the MPDF is allocated.⁹ Political parties also have to set up a separate bank account from their other bank accounts, where all monies allocated to it from the MPDF will be deposited by the IEC.¹⁰ Just as the PFRPP mandates the IEC to allocate the money according to a prescribed formula, the Bill stipulates that the MPDF would also be allocated according to the same prescribed formula.¹¹

The PFRPP Act allocates 90% of public funds according to how many seats a party holds in the national and provincial legislatures and 10% equitably between political parties annually.¹² In the submissions on the Bill, civil society organisations (CSOs) requested that the percentage of the prescribed formula be changed. Subsequently, the prescribed formula in the Bill allocates two-thirds ($\pm 66,67\%$) of the money proportionally and a third ($\pm 33,33\%$) of the money is allocated equitably.¹³ This new formula applies to both Funds.

Any money that is not immediately required for allocation to a political party may be invested into the Public Investment Corporation (PIC), an investment management company owned by the South African government.¹⁴

Reporting of the Funds by the IEC

For each financial year the IEC must keep records of money received or accruing to the funds as well as the allocations and payments made to political parties.¹⁵ Traditionally, the IEC has reported monies allocated according to the PFRPP Act to Parliament. This Bill also requires the IEC to report the amount received and accrued by the Funds, the allocations made from the funds to parties, the amount spent by each party according to what is permitted in the Bill as well as report on all private donations made to political parties in that financial year.

PERMISSIBLE SPENDING OF THE PRIVATE FUND

The IEC has to monitor compliance to make sure parties spend only on what is permitted. The permissible spending clause in the Bill applies to the Funds and not to other donations directly allocated to political party bank accounts. The list of permissible spending in Clause 7 is rather vague and ambiguous. The money may be used for any purpose related to the functioning of a political party, including:

- “(a) the development of the political will of the people;*
- (b) bringing the political party's influence to bear on the shaping of public opinion;*
- (c) inspiring and furthering political education;*
- (d) promoting active participation by individual citizens in political life;*
- (e) exercising an influence on political trends;*
- (f) ensuring continuous and vital links between the people and organs of state; and*
- (g) complying with the provisions of this Act.”¹⁶*

DIRECT FUNDING OF POLITICAL PARTIES

Besides the Funds, donors provide donations directly to political parties. There is no existing legislation that monitors where these donations come from and one of the stated intentions of the Bill is to regulate private funding.

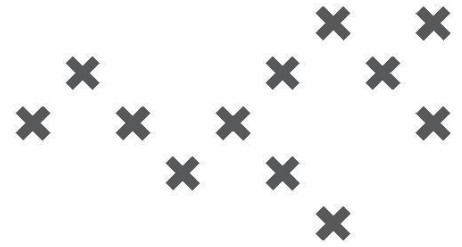
Prohibited donations

Clause 8 of the Bill prohibits political parties from receiving money from foreign governments or foreign government agencies, foreign persons or entities, organs of state or state-owned enterprises. However, Clause 8(4) states that a political party may accept a donation from a foreign entity for the purpose of “training or skills development of a member of a political party; or policy development by a political party.”

Clause 10 of the Bill allows for donations to a member of a political party by a “person or entity” if the donation is for “party political purposes.” Also, parties are prohibited from accepting donations that it “knows, ought to know or suspects originates from the proceeds of crime.”¹⁷ Any suspicion of such a donation has to be reported to the IEC by the political party. Furthermore, there is an upper limit on the amount that a single donor or entity may give to a political party. A donor is prohibited from donating more than R15 million per annum.¹⁸

Disclosure of Direct Funding

Clause 9 of the Bill states that political parties have to disclose all donations received that stand at the amount of or above the threshold to the IEC. The disclosure threshold stands at R100 000.¹⁹ The “threshold” was determined in order to reduce the administrative burden on political parties and the IEC to record each and every single donation.²⁰



Dual disclosure

In submissions submitted on the Bill, CSOs requested that the Bill insert a dual disclosure mechanism so that donors, and not just political parties, have to disclose.²¹ The final draft included a dual disclosure mechanism in Clause 9, where it states that a juristic person or entity that makes a donation directly to a political party above the prescribed threshold has to disclose the amount donated to the IEC. The IEC has to publish these disclosures on a quarterly basis every year. One major concern is that in Clause 3(5), it states that donors may make a request to the IEC that the amount of their donation or their identity remain private. This is a concern as it refutes the stated purpose of the Bill.

WHAT SHOULD BE INSERTED, REMOVED OR CHANGED?

Ambiguity of permissible expenditure of the Funds

The list of permissible spending of the Funds is vague. There should be specific references to exactly what parties are allowed to spend the money on. Clear stipulations will make it easier to monitor if parties are complying with permissible expenditure provisions.

Remove request for identity or amount of donation to remain private

Clause 3(5) states that any contributor to the Funds "may request the Commission not to disclose their identity or the amount of the contribution." This defeats the original purpose of the Bill of upholding accountability, transparency and openness. Clause 3(5) should be removed.

Include local government

The opportunity to receive funding from the MPDF should be extended to local government who play an integral role in governing at the local level. A section in the Bill should also include the disclosure requirements of private funding to elected representatives at the local government level.

Amend allocation of Funds

The 'prescribed formula' for each fund allocates two-thirds ($\pm 66.67\%$) proportionally and one-third ($\pm 33.33\%$) equitably to political parties represented in the national and provincial legislatures. Minority parties that struggle to collect money for campaigns are unfairly disadvantaged in this regard. Several CSOs have argued for the MPDF to have a different allocation formula to the PFRPP. The formula for the MPDF should be changed so that 50% of the funds are allocated proportionally and 50% is allocated

equitably per annum.

Amend disclosure threshold

The regulations state that the prescribed threshold stands at R100 000, which does not take the South African economic context into account. The average voter does not have access to this level of funding to provide political parties. All substantial donations should be considered for the risk of influence and MVC proposes that the threshold be reduced to R10 000.

Remove donations permitted to political parties for training skills and policy development

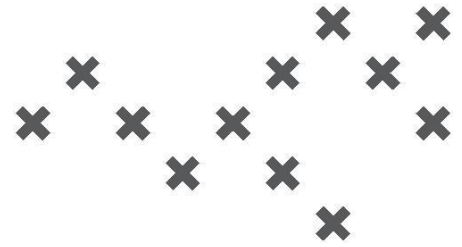
Donations from foreign governments and foreign government agencies are prohibited, but in Clause 8(4) it states that foreign entities are permitted to donate to political parties for the purpose of "training or skills development" or for "policy development of a political party." If entities are permitted to fund parties for the purposes mentioned above then it could allow for political parties to receive large sums of money. Policy development is also unclearly defined and provides the loophole in the Bill for political parties to justify any funding from foreign entities as policy development. Clause 8(4) should be removed.

Remove donations to members for party political purposes

Clause 10 of the Bill prohibits funding directly to members of political parties, unless it is received for "party political purposes." No individual should be allocated money directly from a donor as donations should be provided to the party. If a member were to receive a donation directly in their bank account from a donor, it would be difficult to monitor such donations and whether that money received is utilised for party political purposes. Money that goes to a member's bank account would not need to abide by the same disclosure requirements as money allocated to the Funds or directly to political parties' bank accounts.

Include disclosure threshold for voluntary donations

The definition of "donation in kind" is subject to transparency provisions of the Bill, but the definition excludes personal services provided on a voluntary basis.²² Influence is not purely based on financial contributions, but influence is also possible through providing voluntary services. Certain services can be quantified as a big expense, of which parties would not be compelled to reveal. Some voluntary



services, e.g. handing out pamphlets for the party, may be hard to quantify. However, if a voluntary service or a service at a reduced cost is provided that would otherwise be paid for (e.g. legal services, public relations, accounting, management or consulting), then that service should be disclosed as a donation in kind.²³ The Bill should include a disclosure threshold for voluntary services above a prescribed amount that would also be reported in the quarterly disclosures.

Include regulation of parties' investment vehicles

The regulation of investment vehicles was part of the original mandate of the Bill, but has not been regulated by the Bill. In order to provide all necessary information on parties' income, it is important that each represented party disclose all details of their financial interests.

Include prohibition of donations from companies doing business with the state

The perception that companies that do business with the state may have undue influence, because they fund a political party, is very dangerous. Therefore, companies that do business with the state should be prohibited from funding political parties. It may be the case that the company once conducted a service for the state, but did not conduct further business or have any subsequent interaction. In this case, there should be a stipulated "cooling off period."

Amend the definition of "donation in kind"

A "donation in kind" includes any money lent to the political party other than on commercial terms. To avoid loopholes, all financial contributions, regardless of whether they are on commercial terms or not, should be regarded as donations and not "donations in kind." The term "lent" is dangerous as loans can be written off and would not have to be disclosed as a "donation" or "donations in kind." Such loans cannot be managed or contained.

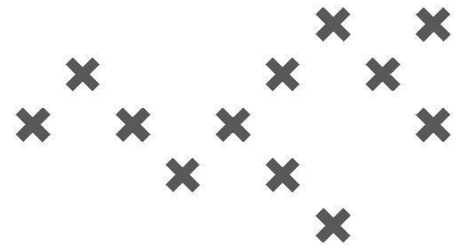
CONCLUSION

If the Bill is adopted by the National Council of Provinces and is then effective before the 2019 elections, the public may anticipate information that would allow for them to more effectively evaluate political parties' relationships with corporations and wealthy individuals.

CSOs have long campaigned for the regulation of political parties' private donations. Parliament

should be commended for the speed in which this Bill was formulated as this legislation is long overdue. The submissions to the Committee concerned loopholes where both donors and political parties can navigate around the stipulated rules to maintain secrecy surrounding private funding. Unless Parliament sufficiently addresses these amendments, political parties will have leeway to circumvent their constitutional obligation to disclose their private donations. The Bill is a step closer to allowing for transparency of private funding to parties.

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- ² Parliamentary Monitoring Group (PMG). (2017). Political Party Funding Bill: Adoption. Available at: <https://pmg.org.za/committee-meeting/25592/>
- ³ The Political Party Funding Bill of 2017. p.2.
- ⁴ Section 236 of The Constitution of the Republic of South Africa Act 108 of 1996.
- ⁵ Clause 25 of the Political Party Funding Bill of 2017.
- ⁶ Section 6 of the Public Funding of Represented Political Parties Act of 1997.
- ⁷ Clause 3 of the Political Party Funding Bill 2017.
- ⁸ Ibid.
- ⁹ Ibid.
- ¹⁰ Ibid.
- ¹¹ Clause 6 of the Political Party Funding Bill of 2017.
- ¹² Section 10(1) of the Public Funding of Represented Political Parties Act of 1997.
- ¹³ Schedule 2(2) of the Political Party Funding Bill of 2017.
- ¹⁴ Clause 4 of the Political Party Funding Bill of 2017.
- ¹⁵ Clause 5 of the Political Party Funding Bill of 2017.
- ¹⁶ Clause 7 of the Political Party Funding Bill of 2017.
- ¹⁷ Clause 8 of the Political Party Funding Bill of 2017.
- ¹⁸ Schedule 2(7) of the Political Party Funding Bill of 2017.
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- ²³ Council for the Advancement of the South African Constitution (CASAC). (2017). Submission on Draft Political Party Funding Bill. 16 October. Available: <http://www.casac.org.za/wp-content/uploads/2017/10/CASAC-SUBMISSION-ON-DRAFT-BILL-FINAL.pdf>.