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## **Submissions by Corruption Watch: Public Funding of Represented Political Parties Act, 103 of 1997**

### **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 welcomes the opportunity to make submissions on the Public Funding of Represented Political Parties Act, 103 of 1997, [the “Act”] read in accordance with Regulation 10(1) of the Act.<sup>1</sup>
5. We note that the Committee is not asking for commentary on draft amendments but more broadly on public concerns about the current legislative and policy environment. Our

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<sup>1</sup> Published under Proclamation R117 in *Government Gazette* 19478 of 20 November 1998.

submissions are therefore based on broad policy considerations, which we submit that the Committee should take into account when formulating a new and more transparent approach to party political financing, by no means a small task given the unique, important but differing perspectives of all interested and affected parties.

6. The importance of ensuring transparency in the funding of political parties is recognised in the global convention against corruption. In this regard, Article 7(3) of the United Nations Convention against Corruption states that:<sup>2</sup>

*“Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.”*

7. In a foreword to a report of the International Institute for Democracy and Electoral Assistance which report should greatly enhance and guide the work of this Committee, Kofi Annan who is the Chair of the Global Commission on Elections, Democracy and Security,<sup>4</sup> highlights the importance of transparency in political finance saying that:

*“Citizens all over the world want political parties and governments to represent their views and be responsive to their needs. However, all too often parties are disproportionately representative of the interests of the donors who have largely financed them. If large corporations and rich individuals are able to buy greater influence through large campaign donations, then citizens can lose faith in, or be marginalized from, the political process. This is compounded by a lack of citizen participation in political parties, which further adds to people’s alienation from politics.*

*...Although the funding of electoral campaigns and political parties has an important role in the functioning of democracy, unregulated money in politics means that the political playing field is not level. The explosive growth in campaign expenditures fuels the perception that wealth buys political influence and threatens political equality. The abuse of state resources by the ruling party to put itself in an advantageous position also remains a problem in many countries. This lack of a level playing field prohibits*

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<sup>2</sup> General Assembly Resolution 58(4) of 31 October 2003 which can be accessed at:

[https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

<sup>3</sup> Funding of Political Parties and Election Campaigns: A Handbook on Political Finance, 2014

<http://www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf>

<sup>4</sup> The Global Commission on Elections, Democracy and Security was established as a joint initiative of the Kofi Annan Foundation and the International Institute for Democracy and Electoral Assistance (International IDEA).

*the equal participation and representation of all citizens in democratic political processes.*

*...There is clearly an urgent need to better control political finance. Governments should regulate political donations and expenditures effectively. This will require full transparency and disclosure of donations, with penalties for noncompliance. Effective monitoring and enforcement of regulations are also crucial.”<sup>5</sup>*

8. We fully ascribe to these statements and to the crucially important reference to transparency not only as a direct means to ensure the elimination of corruption and influence over political processes, but as a means to ensure that people remain at the centre of democratic governance, with political parties operating on a level playing field, so as to influence and guide peoples political choices fairly.
9. 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 hope that our suggestions on the usage of best practice guidelines will assist the Committee in formulating specific, contextual and meaningful guidelines for the reform of party political finance in South Africa.

### **Best practice guidance**

10. The OECD Framework on Financing Democracy and Supporting Better Public Policies and Averting Policy Capture is, we submit, the most appropriate framework for guiding the Committee’s consideration of reform in party political finance. This framework appears in and is discussed in detail in another important publication<sup>6</sup> of the OECD that we encourage the Committee to consider.

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<sup>5</sup> See above fn 3 at III – IV.

<sup>6</sup> 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>

Overall objective	Policy options and specific risks to mitigate	
Promoting a level playing field	Balancing funding through direct and indirect public contributions	<p>Direct funding which entails a monetary transfer to parties, candidates:</p> <ul style="list-style-type: none"> <li>- clear and equitable criteria such as equal access and proportionality</li> <li>- provision to promote gender equality.</li> </ul> <p>Indirect funding, including tax exemptions, subsidised access to media, meeting rooms, etc.</p> <p><i>Unintended consequences may include:</i>  <i>Risk of unbalanced playing field for the challengers and smaller parties if, for example, the criteria of allocation is based on past electoral performance.</i></p>
	Framing private funding	<p>Banning certain types of private contributions, in particular:</p> <ul style="list-style-type: none"> <li>- foreign interest</li> <li>- corporations with government contracts or partial government ownership</li> <li>- corporate donations, trade unions, etc.</li> </ul> <p>Limiting anonymous donations.</p> <p><i>Unintended consequences may include:</i>  <i>Risks of avoidance through third-party funding and other legislative loopholes.</i></p>
	Applying spending limits	<p>Clear limits based on absolute amount, percentage of total public funding, certain amount per citizen in the electoral district, etc.</p> <p><i>Unintended consequences may include:</i>  <i>Risk of avoidance through third-party funding</i>  <i>Risk of an uneven playing field for the challengers if there is abuse of state resources by the incumbent.</i></p>
	Limiting privileged access to state resources	<p>Controlling abuse of state resources:</p> <ul style="list-style-type: none"> <li>- ban the use of state resources for political purposes</li> <li>- ban state resources being given to, or received by, political parties or candidates (except regulated public funding)</li> <li>- ban disproportionate government spending on advertising before or during campaigns, hiring new public servants and signing large public contracts.</li> </ul> <p><i>Unintended consequences may include;</i>  <i>Risk of avoidance if the incumbents use the public resources to campaign for their votes in the name of "carrying out their legislative duties".</i></p>
Ensuring transparency and accountability	Requiring disclosures	<p>Requiring comprehensive reporting, including:</p> <ul style="list-style-type: none"> <li>- timely provision of information.</li> </ul> <p>Not limiting reporting to only how public funds have been spent, but also include private donations.</p>
	Enabling scrutiny	<p>Timely, reliable, accessible and intelligible public disclosure of reports.</p> <p>Promote media and civil society scrutiny.</p>
Fostering a culture of integrity	Applying the integrity framework in the public sector	<p>Code of conduct.</p> <p>Conflict of interest and asset disclosure provisions.</p> <p>Disclosure on lobbying.</p> <p>Risk mapping.</p> <p>Whistleblower protection.</p>
	Promoting standards of professionalism, integrity and transparency in private donors	<p>Self-regulation of financing of political parties and electoral campaigns:</p> <ul style="list-style-type: none"> <li>- appropriate accounting practices</li> <li>- private sector codes of conduct</li> <li>- responsible lobbying.</li> </ul>

Overall objective	Policy options and specific risks to mitigate	
Ensuring compliance and review	Assuring independent and efficient oversight	<p>Strengthen independence of monitoring body and process:</p> <ul style="list-style-type: none"> <li>- independent appointment of members</li> <li>- ensure security of tenure to members</li> <li>- independent budget for the body to conduct monitoring.</li> </ul> <p>Provide capacity:</p> <ul style="list-style-type: none"> <li>- sufficient resources</li> <li>- specialised auditing capacities and methodologies.</li> </ul> <p><i>Unintended consequences may include:</i>  <i>Risk of over-complication of procedures among many different institutions.</i></p>
	Applying dissuasive and enforceable sanctions	<p>Proportionate and dissuasive sanctions, for example:</p> <ul style="list-style-type: none"> <li>- lose public subsidies</li> <li>- confiscation of illegal donations or funds</li> <li>- fines</li> <li>- criminal charges such as imprisonment</li> <li>- ineligibility: loss of elected office, forfeiting right to run for elections</li> <li>- deregistration or suspension of a political party.</li> </ul> <p>Enforcement of sanctions in a timely manner.</p>
	Appraising the system	<p>Reviewing periodically - with the involvement of stakeholders - the functioning of the system and making necessary adjustments:</p> <ul style="list-style-type: none"> <li>- identify new risks to the policy objectives of the system</li> <li>- identify mitigation strategies.</li> </ul>
	Support to political parties	<p>Providing support to political parties to help them comply with regulations:</p> <ul style="list-style-type: none"> <li>- setting up a support unit within the monitoring agency focused on supporting compliance</li> <li>- dialogue between parties and monitoring agencies in order to facilitate adherence to the rules and allow for better understanding of political finance.</li> </ul>

11. Our key submissions in relation to some of the vital topics relating to the Act are summarised under the headings below.

*Nature and Scope of Disclosures and Financial Reporting in respect of the Represented Political Parties Fund (the “Fund”)*<sup>7</sup>

<sup>7</sup>OECD, Financing Democracy, Supporting Better Policies and Preventing Policy Capture, 2014 at para 60. [https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2014-September-8-10/Responses\\_NV/OECD\\_EN.pdf](https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2014-September-8-10/Responses_NV/OECD_EN.pdf) In this regard, it should be noted that “93% of OECD countries make information in the reports from political parties and/or candidates public. For example, in Italy, party financial accounts must be published on the websites of the political parties, the website of the Chamber of Deputies, as well as in newspapers, and the Official Gazette of the State. In the United Kingdom all parties' reported financial information i.e. donation/loan reports, campaign expenditure returns and statement of accounts are made available on the Electoral Commission's website. This includes pdf copies of invoices and receipts for campaign expenditure.

Even though in Spain, Sweden and Turkey regulations do not require publication of party financial information, there are several transparency initiatives. In Sweden, for instance, a joint agreement between many Swedish political parties promoting transparency. In Spain the Court of Audit report is published and normally contains summary information on parties' annual accounts that is published. In Turkey, some political parties publish summaries of their financial information.

- All political parties should be required to publicly disclose their sources of direct and indirect funding, including a statement on the use of state and other resources and/or other state sponsored incentives which allow for all aspects of their functioning. Clear guidelines around the meaning of direct and indirect funding and state and non-state resources should be developed
- The nature and scope of reporting needs to be detailed and clear, allowing for timely public and civil society scrutiny
- All funding into and allocations from the Fund and expenditure by all political parties of these monies should be made publicly accessible in a timely manner, this information should include audited financial statements
- Allocations from the Fund should be revised in accordance with various best practice models which allow for transparency, equity and the levelling of the playing field.
- Allocations should allow for increased funding to participating parties in provincial legislatures

#### *Foreign and Private Funding*

- Foreign funding and funding from any private interest that does business with the state should be banned, as well as from enterprises which are fully or partially owned by the state. This includes funding from investment and other corporate vehicles owned by political parties as well as funding from trade unions and other private entities.

#### *Capacity and Role of Oversight Bodies*

- The role, capacity and resources of oversight bodies like the Independent Electoral Commission and Auditor General should be revised with a focus on improving their ability to provide oversight and guidance and report back to the general public on their findings and concerns on a regular basis and in a timely manner. The role of parliament in being able to translate findings and oversight reports in a timely and accessible manner should be clarified and enhanced.

12. Various jurisdictions around the world have recognised that making changes to their handling of party political finance and agreeing across party lines to certain rules or regulations are important for transparency and democracy and ultimately the peace and security of their nation

states. A dearth of information exists on these best practices and given the short time frames allowed for commentary, we have not been able to distill these practices for the benefit of the Committee. However these can be further elaborated upon by Corruption Watch during oral submissions. Recognising that different jurisdictions will find different solutions to issues relating to party political financing given differing contexts and climates, we encourage the Committee to consider the publications referenced herein as well as a report produced by the National Democratic Institute for International Affairs (NDI) which encompasses a study of party financing in 22 Jurisdictions.<sup>8</sup>

13. We hope our submissions are useful to the Committee and kindly note our request to participate in the parliamentary hearings and to make oral submissions before the Committee.

**Submitted by Corruption Watch on 21 July 2017  
David Lewis; Leanne Govindsamy and Modupi Moloto**

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<sup>8</sup> (NDI), Money in Politics, A Study of Party Financing Practices in 22 Countries, 2005  
<http://www.eods.eu/library/NDI.Money%20in%20Politics.%20A%20Study%20Of%20Party%20Financing%20Practices%20In%2022%20Countries.pdf>