COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION

21 July 2017

Mr Vincent Smith

Chairperson

Ad Hoc Committee on the Funding of Political Parties

Per email: cbalie@parliament.gov.za

Dear Mr Smith

Please find attached the submission from the Council for the Advancement of the South African Constitution (CASAC) to the Ad Hoc Committee in response to the advert of 12 July 2017 calling for public comment.

Yours Sincerely,

Naidoo.

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COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION

SUBMISSION ON PUBLIC FUNDING OF REPRESENTED POLITICAL PARTIES ACT AND REGULATION OF PRIVATE FUNDING OF PARTIES

EXECUTIVE SUMMARY

The Council for the Advancement of the South African Constitution (CASAC) welcomes the parliamentary process that has commenced, and which provides an opportunity to fill a very serious gap in accountability and transparency in governance, while also protecting political parties from corruption and enabling them to play their pivotal role in South Africa's democracy without undue and illicit interference.

Despite various international law obligations requiring South Africa to pass legislation, the funding of political parties in South Africa remains almost entirely unregulated, providing ample opportunity for unethical and dishonest donors to peddle influence in policy formulation and to meddle in domestic politics, enabling corrupt relationships to develop and undermining public confidence in both political parties and democratic politics more generally.

As a result, the issue has come before the courts on more than one occasion, and is about to do so again. Instead of the courts determining the rules of the game, Parliament now has an opportunity to address the harmful uncertainty that exists, and to set the framework for what is acceptable in terms of key principles of an effective, open and accountable party funding regime, including:

- Increased public funding to support capacity-building and policy development;
- The establishment of a multi-party democracy fund, to receive anonymous donations, foreign donations above a certain size and to increase the party funding envelope by

encouraging donations from those who currently decline to make donations directly to political parties because of the appearance of a corrupt relationship and/or because of numerous previous secret funding scandals in South Africa and around the world;

- The disclosure of substantial private donations, so that the electorate can make an informed choice when evaluating competing political parties in line with several constitutional rights and obligations;
- A cap on donations from any one source, to prevent undue influence from any one donor and to protect political parties from 'capture' by nefarious interests;
- Limitations on donations from foreign sources;
- The establishment of clear disclosure rules, for both donors and recipient parties, in terms of who must disclose what to whom and when and how;
- Clarification of the oversight and monitoring powers and authority of the Independent Electoral Commission (IEC), to ensure the integrity of the implementation of the new party funding regime.

I: INTRODUCTION

1. CASAC welcomes Parliament's establishment of an *Ad-Hoc* committee tasked with enquiring into, and making recommendations on, the regulation of the funding of political parties in South Africa.

2. This issue has been on the table in South African legal and political circles for over 15 years – arising through litigation, international obligations and resolutions taken by political parties. It is time for Parliament to finally address this issue as a matter of urgency.

II: THE NEED FOR SUCH LEGISLATION AND THE OBLIGATION ON PARLIAMENT TO ENACT IT

3. Not only is there a political and democratic need for comprehensive legislation on political party funding in South Africa, but there is also a legal obligation on Parliament to enact legislation to this effect. Essentially this is so for the following reasons:

   3.1 The protection and promotion of various constitutional rights and values;

   3.2 Legislation to govern the funding of political parties will help to combat corrupt practices that are enabled by the current lack of regulation and transparency;

   3.3 There are important international legal obligations that bind South Africa;

   3.4 Owing to the conflicting jurisprudence of the courts on this issue, it is appropriate for Parliament to assert its institutional legitimacy and capacity in dealing with a sensitive political issue;

   3.5 Honouring various commitments and resolutions undertaken by represented parties to enact legislation to this effect.

The Protection and Enhancement of Constitutional Rights and Values

4. The proposed regulatory framework will enhance the Constitution's founding values of accountability and openness which are required in our multi-party system of government. It will also give effect to the state's obligation to protect, promote and fulfil the rights contained in the Bill of Rights, including the right to equality, political rights, the right of access to information and the freedoms of expression and association. It is also necessary to further the vital constitutional goal of ensuring a fully participatory democracy.

Corruption and Undue Influence

5. A culture of secrecy allows corruption to flourish. This is undoubtedly true in relation to the private funding of political parties. Requiring the disclosure of information regarding the private funding of political parties will therefore assist in combatting corruption.

6. Large donations to political parties have the potential to unduly influence the policies and likely behaviour of political parties, especially when they are in government. Even if political parties argue that donations do not have this effect, the mere perception or apprehension from the public that donations could have such influence justifies legislation that will ensure enhanced public legitimacy of their fund-raising activities, in keeping with the constitutional values of accountability and openness.

7. Irregularities in political party funding has been the source of many corruption scandals around the world. These include:

- The Filesa case in Spain during the 1990s ;
- The Kohl-gate scandal in Germany in 2000;
- The One Israel affair in 2000;
- The Goldenberg affair in Kenya during the 1990s;
- Allegations that President Bill Clinton used public resources to fund his 1996 United States presidential election campaign.

- The Dassault affair in France during the latter parts of the 1990s where kickbacks were given to the Belgium Socialist party in exchange for government contracts to purchase fighter planes;
- The Costea Affair in Romania during the 1990s;
- The major scandal which came to light in the early 2000s which revealed that French President Jacques Chirac had accepted cash kickbacks from companies who were granted government contracts during his time as mayor of Paris;
- The saga regarding a large donation made by Formula 1 supremo, Bernie Ecclestone to the British Labour Party in 1997, which appeared to influence their policy towards tobacco advertising in Formula 1 motor racing;
- Revelations regarding the Croatian Democratic Union in 2001 where it was revealed that government contractors would only be paid out in return for substantial contributions to the party;
- The 1992 saga involving allegations that Brazilian President received kickbacks and illegal campaign contributions from companies doing business with the government;
- The Jamil Muhaud scandal in Ecuador in 1998;
- The Nobert Reuther affair in Germany in 2002 which involved the awarding of government contracts in exchange for political donations;
- The Bofor's affair in India in 1987 involving political donations in exchange for arms contracts;
- Scandals that led to "Operation Clean Hands" in Italy;
- The 2000 scandal involving former construction minister, Nakao Eiichi, in Japan.
- Other countries in which similar scandals have arisen include Antigua and Barbuda, Belgium, Cameroon; Papua New Guinea, Suriname, Pakistan, Czech Republic, Venezuela, the Bahamas, Mexico and South Korea.

8. South Africa has not escaped this global phenomenon. Secret donations to political parties since 1994 have led, or could have led, to significant corruption. In respect of the 'arms deal' in the 1990s, it has been alleged by amongst others, former African National Congress (ANC) MP Andrew Feinstein, that British Aerospace (BAE) made a substantial secret donation (of around $10m) to the ANC to encourage it to favour BAE in the tender process. Soon afterwards, in the early 2000s, the Democratic

Alliance (DA) was exposed as having accepted a secret donation of R300,000 from Count Ricardo Agusta, in return for planning permission having been granted by the DA-led Western Cape government, in breach of environmental protection procedure, for the development of a private estate in the Western Cape. In 2006, the 'Oilgate' scandal broke, which revealed that R11m of state (PetroSA) money had been channelled to the ANC via Imvume Holdings shortly before the 2004 national elections. In similar fashion, money was paid in the form of dividends and success fees to Chancellor House, a company largely owned and controlled by the ANC, by Hitachi Africa, when it won tenders for construction work on the Medupi power station (Hitachi had given Chancellor House a 25% share in the subsidiary). As a result, the Japanese parent company, Hitachi LTD, was subsequently prosecuted in the United States under the Foreign Corrupt Practices Act and paid a voluntary fine of US$19m in late 2015. The US Securities Exchange Commission based its case on the fact that "Chancellor House was a funding vehicle for the ANC". Most recently, during the ANC policy conference, the party's treasurer-general announced that the organisation had received a donation from the Gupta family, but that the donation was "not huge", giving understandable rise to further concern about the possibility of "capture" of the ANC (in addition to certain state institutions, which is now well established).

International Law

9. During the last few decades there has been a great global commitment for increasing transparency in both government and quasi-government institutions, including political parties. Thus many counties have taken measures to increase transparency in political party funding activities, with particular emphasis on the disclosure of details relating to their private funding.

10. The global trend towards transparency in political party funding has been articulated in several international covenants which bind South Africa. As held by the Constitutional Court in *Glenister v President of the Republic of South Africa*:

> "our Constitution takes into its very heart obligations to which the Republic, through the solemn resolution of Parliament, has acceded, and which are binding on the Republic in international law, and makes them

the measure of the state's conduct in fulfilling its obligations in relation to the Bill of Rights."[1]

11. The following international covenants deal with this issue and establish that there is an obligation to regulate the private funding of political parties:

11.1 In terms of Article 4.1(d) of the Southern African Development Community Protocol against Corruption (2001), each member state undertook to adopt "mechanisms to promote access to information to facilitate eradication and elimination of opportunities for corruption." It should be noted that the mere "opportunities" for corruption is sufficient to require states to take these measures. We submit that this clearly includes regulation providing for transparency in political party funding.

11.2 The United Nations Convention against Corruption (2003) states the following:

Article 7: Public sector

"3. Each State Party shall also consider taking 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."

11.3 Article 10 of the African Union Convention on Preventing and Combatting Corruption (2003) is very specific on this point:

"Each State Party shall adopt legislative and other measures to:
(a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and
(b) Incorporate the principle of transparency into funding of political parties."

[1] *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC) at para [178]

Uncertainty in the Jurisprudence of the Courts increases the Responsibility on Parliament and creates an opportunity to reach an appropriate fit-for-purpose 'South African solution'

12. Claims for the disclosure of information regarding the private funding of political parties have come before the courts. Further litigation is also pending in the Western Cape High Court. The following cases are directly on point:

Institute for Democracy in South Africa v African National Congress[2]

13. In 2005, IDASA launched an application in the Western Cape High Court in terms of the Promotion of Access to Information Act[3] ("PAIA"), requesting information regarding the private funding of political parties. They argued that such information was required for the exercise and protection of the right to vote. The application was dismissed. They key findings of the Court were:
    - Political parties do not qualify as public bodies in terms of PAIA;
    - Access to this information is not reasonably required for the exercise of the right to vote, which the Court framed as a negative right – protecting citizens against an interference with the right to vote, rather than requiring citizens to be fully informed of the parties for which they may vote;
    - Foreign law was deemed to be substantially irrelevant, the Court being of the opinion that the matter should be approached according to South Africa's own specific context;
    - Relying on the ANC's commitment to pursue legislation to this effect, the Court deferred to Parliament on this issue – holding that Parliament, and not the courts, was the appropriate body to regulate this issue.

14. It should be noted that the Court framed this issue in very narrow terms, limiting its finding to the specific request for the specific records at the specific time. It did not seek to establish a general principle that the disclosure of information regarding the private funding of political parties is not required in our law.

[2] *Institute for Democracy in South Africa v African National Congress and Others* 2005 (5) SA 39 (C).
[3] Act 2 of 2000.

My Vote Counts NPC v Speaker of the National Assembly[4]

15. In 2016, My Vote Counts approached the Constitutional Court, arguing that an analysis of PAIA, the Constitution and the international law obligations on South Africa placed an obligation on Parliament to enact legislation requiring transparency in the private funding of political parties, and that Parliament had failed to fulfil this obligation. For this, the applicants invoked the Constitutional Court's exclusive jurisdiction.

16. The Court split on the matter five Justices to four, yet the differences were more procedural than substantive. The majority held:

- PAIA is the legislation envisaged to give effect to Section 32(2) of the Constitution;
- The applicant's true argument was therefore not that Parliament had failed to enact any legislation on this issue, but rather its argument was that PAIA itself was deficient;
- Thus the applicant could not invoke the Constitutional Court's exclusive jurisdiction but must launch a frontal constitutional challenge in the High Court – challenging the validity of PAIA;
- A determination of whether such information was necessary for the exercise or protection of the right to vote was therefore not necessary owing to the Court's finding on jurisdiction;
- The matter is now before the Western Cape High Court where litigation is pending.

17. The minority determined that:

- Voters need to be fully informed of the parties who they are voting for in order to achieve the full extent of their right to vote;
- Thus, information regarding the private funding of political parties was reasonably required for the realisation of the right to vote and to ensure a fully participatory democracy.
- Accordingly, Parliament has an obligation to enact legislation to this effect and it was found that PAIA, the only existing legislation which could plausibly do this, did not fulfil this obligation;

[4] *My Vote Counts NPC v Speaker of the National Assembly and Others* 2016 (1) SA 132 (CC).

- Thus the minority would have upheld the applicant's argument.

18. An evaluation of the case law reveals certain uncertainties and conflicting pronouncements by the courts including:

    18.1 Whether political parties are private or public bodies;

    18.2 Uncertainty as to whether the issue should be approached with regards to existing legislation, or whether new legislation required;

    18.3 Uncertainty as to the practicalities of such disclosure as may be required;

    18.4 Whether it is appropriate for the courts to rule on such a politically sensitive issue.

19. The jurisprudence by no means rules out the possibility that a court may order Parliament to regulate the private funding of political parties. However, due to the uncertainty evident in the existing jurisprudence and the capacity as well as democratic legitimacy of Parliament to decide on such matters, we urge Parliament to take the initiative on this issue and finally enact legislation providing for transparency and regulation in all areas of political party funding.

Statements and Commitments by Political Parties

20. A number of political parties represented in the National Assembly have passed resolutions at party conferences and/or made public statements in support of legislation to govern party political funding, reflecting an important cross-party consensus in favour of greater transparency and regulation.

21. When the issue of the disclosure of information regarding the private funding of political parties first came before the courts in the *Institute for Democracy in South Africa* case, the then Secretary General of the ANC, Kgalema Motlanthe, urged the Court to "allow the political and legislative process to follow the proper course necessary for the adoption of a national policy through legislation regulating the

funding of political parties," and, noting the obligations on South Africa imposed by Article 10 of the African Union Convention on Preventing an Combatting Corruption, promised that "Parliament will fulfil this obligation."

21.1 Since this declaration by former President Motlanthe, the ANC has continued to assert their commitment to pursuing such regulation. At the 52nd National Conference of the ANC in 2007, it was resolved that:

> "The ANC should champion the introduction of a comprehensive system of public funding of representative political parties in the different spheres of government and civil society organisations, as part of strengthening the tenets of our new democracy. This should include putting in place an effective regulatory architecture for private funding of political parties and civil society groups to enhance accountability and transparency to the citizenry. The incoming NEC must urgently develop guidelines and policy on public and private funding, including how to regulate investment vehicles."

21.2 At its 53rd National Conference in 2012, it was resolved that:

> "Public funding should be expanded in order to promote and support democracy. Such funding will be accompanied by full financial accountability and transparency by political parties, including regulation of private financing of political parties."

21.3 At the very recent 5th National Policy Conference of the ANC in 2017, the ANC published a policy discussion document on "Legislature and Governance" which included the following statement:

> "The political party funding legislation must be prioritised and introduced to the National Assembly."

22. The Economic Freedom Fighters ("EFF") have championed the disclosure of all sources of political party funding since their inception.

22.1 Their Founding Manifesto states that:

> "All political parties should be obliged by law to publicly disclose their sources of funds in order to avoid political coup d'états financed by greedy multinational corporations and criminal associations that seek to have access to South Africa's resources. If political parties are interested in managing so many mineral resources and so much wealth in South Africa, they should be interested in disclosing their sources of funding".

22.2 This commitment still forms part of their policy on accountable government which is available on the EFF's website.

23. Therefore two of the three largest political parties in Parliament have made commitments to the regulation of party funding. The third, the Democratic Alliance, initially made similar statements but has since in several statements expressed reservations that requiring the disclosure of their private funding sources will result in them losing donors. They argue that donors will not want to be seen as being associated with opposition parties as it may reduce such donors' chances of being granted government contracts. Whilst we understand this concern, we believe it is effectively mitigated in at least three ways:

23.1 The overall increase in transparency with regards to funding of political parties will serve to uncover links between donors and entities that are granted government contracts. This will make it much easier to expose and challenge improper actions in public procurement;

23.2 The proposed increase in public funding;

23.3 The fact that we do not propose an outright prohibition on anonymous donations directly to political parties, only those above a certain threshold. Furthermore, as will be seen below, the DA will also receive a portion of anonymous donations above this threshold.

24. The United Democratic Movement ("UDM") has also championed transparency in the funding of political parties. Over the years, several public statements by the President

of the UDM, Bantu Holomisa, have been made in support of transparency in donations and regulation of funding.

III: GOVERNING THREE SOURCES OF POLITICAL PARTY FUNDING: THE KEY PRINCIPLES

25. The effect of our submissions will be that political parties will receive funding from three sources, each of which should be regulated differently. These sources are:
    25.1 Public Funding;
    25.2 Private Funding;
    25.3 Funding through an intermediary fund which we name the "Multi-party Democracy Fund".

a) Public Funding

26. Political parties receive public funding in terms of Section 236 of the Constitution and the Public Funding of Represented Political Parties Act, 1997 ("PFRPPA").

27. CASAC would support an increase in public funding for political parties owing to the importance of their roles in our constitutional democracy and to reduce their reliance on potentially influence-seeking private donors. However four vital conditions should be attached to such an increase:

    27.1 The regulation and disclosure of details relating to their private funding, based on governing legislation;

    27.2 A reasonable proportion of public funds should be earmarked for certain activities such as capacity building, policy development and political education.

    27.3 The allocation of public funds between political parties in terms of the PFRPPA should be revaluated;

    27.4 The availability of resources from the public fiscus.

28. Section 236 of the Constitution states:

> "To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis."

29. However, in terms of the regulations under the PFRPPA, that allocation is skewed 90% in favour of proportionality and 10% in terms of equity, meaning that larger parties receive the bulk of public funding. **Annexure 1** contains tables that outline how these allocations are currently made. We submit that this is not only unfair but also unconstitutional for the following reasons:

    29.1 The Constitution clearly envisages in Section 236 that equal consideration be given to the principles of equity and proportionality. It does not envisage that one so heavily outweighs the other. The current allocation is therefore not in accordance with Section 236 of the Constitution.

    29.2 The allocation also violates the constitutional principle of equality by unjustifiably favouring the biggest parties and unfairly discriminates against smaller parties. For South Africa's democracy to thrive, the political playing field must be as even as possible. The effect of this provision is the opposite – it perpetuates the status quo and prevents smaller parties expanding into the political "market".

b) Private Funding

30. Our primary submission relating to private funding is that the details of such funding should be disclosed. The reasons for this have been set out above. What follows below are specific submissions relating to the details and practicalities of such a disclosure regime.

Threshold Requirement

31. Direct anonymous donations to political parties under a certain threshold should still be permitted. Such a threshold should represent a substantial amount, but is less than

that which could have the potential to influence the policy decisions of a political party. The threshold amount is cumulative, thus disclosure cannot be avoided by a donor donating several amounts beneath the threshold which together add up to more than the threshold. Thus even if a donation falls beneath the threshold for disclosure it should be recorded by the political party in case further donations from the same donor in the same financial year takes the cumulative amount donated by that donor above the threshold.

The Definition of a "Donor"

32. The legislation should also define what amounts to the same donor, to avoid donors making several donations purporting to be from different entities when, in effect, it is the same donor. Thus we propose that the threshold apply to all donations made by *substantially the same donor*. For example the following should be treated as the same donor:

    32.1 A holding company and its majority owned subsidiary;

    32.2 An individual person(s) and a company in which the former is a shareholder;

    32.3 An individual person and partnership in which the former owns a majority share in the partnership;

    32.4 Any donor and a trust in which that donor is a trustee;

    32.5 The family of any donor.

Foreign funding

33. We appreciate that several political parties in South Africa rely heavily on foreign funding. Many wealthy states prefer to outlaw foreign donations to political parties, for example Canada, the United Kingdom, the United States of America, Japan, Sweden and Russia. However, such contributions are vital in developing countries. Therefore we do not suggest that foreign funding be banned outright. However, the potential for foreign corporations, political parties and governments to seek to

influence South African politics is a dangerous one, and, accordingly should be strongly regulated. Such regulations should include:

33.1 A limit on the amount any party can receive from a foreign donor of any form during a financial year. This amount may be substantial owing to the dependence of several South African parties on such sources of funding. However, the amount should be one that merely allows foreign funding to assist in building the capacity of our political parties and not rise to a level which enables foreign entities to influence policy in South Africa.

33.2 Any amount contributed above this should go into the Multi-party Democracy Fund (see below) and distributed accordingly;

33.3 A determination of which type of foreign donors should be permitted should be made. Donations from foreign political parties and corporations should be permitted but donations from foreign governments should not.

Timing of Disclosure

34. Political parties should be required to disclose this information annually during years where there is not an election. However, as is recognised in the United Kingdom, disclosure in the run up to elections takes on an added significance. Therefore we suggest that at least two disclosure periods be required during the 12 months before an election, including one during the month immediately before an election.

35. Merely requiring disclosure after an election will render the regulations meaningless and will not entitle citizens to a fully informed vote.

What should be disclosed?

36. Political parties should be required to disclose:

36.1 All expenditures;

36.2 All receipts of public funding and funds received from the Multi- party Democracy Fund;

36.3 The amount of any donation as well as the identity and address of the donor in respect of all other donations received above the threshold. In the interests of privacy, the address of individual persons who make such donations can be blanked out for the purposes of public disclosure;

36.4 If a party receives an anonymous donation above the threshold, it must take all reasonable steps to determine the identity of the donor. If they are unable to do so, the donation must be forfeited to the Multi-party Democracy Fund;

36.5 Any conditions attached to such donations. Conditions that seek to influence policy should be prohibited, but conditions relating to building specific features of a party's capacity may be permitted.

What Qualifies as a Donation?

37. If disclosures of donations are limited to purely financial contributions, these regulations will be easy to side-step, as seen in several foreign jurisdictions. Thus all contributions to political parties should be included in the definition of "donation" in the legislation, including:

37.1 Loans granted on terms favourable to ordinary commercial loans;

37.2 Voluntary services performed by a person or entity who would ordinarily charge for such services, or if such services are performed at a reduced price;

37.3 Goods provided for use or consumption free of charge or at a reduced cost.

38. The value of such contributions should be determined at a fair market value.

Who must Disclose?

39. In addition to the above disclosure requirements on political parties, if substantially the same donor cumulatively donates in excess of an agreed threshold to one party during a financial year, that donor must disclose as much to the oversight body (see below). The purpose of such a provision is to operate as a double accountability

mechanism in respect of large donations. On receiving a donation which raises the total amount given by the donor above this threshold, the political party must immediately inform the donor of this obligation, who must then lodge such disclosure within 14 days. There is also an obligation on the receiving party to pay over such amount as exceeds the threshold limit to the Multi-Party Democracy Fund.

40. Several states impose obligations on donors to disclose donations which they make to political parties, such as Australia, Italy, Russia, Switzerland and Ireland. For a comprehensive list of these states, refer to the table in **Annexure 2** attached.

Other Practicalities

41. Political parties should set up a single official bank account for the purposes of receiving donations which can be monitored.

42. No hard cash or cheque donations in excess of R2000 should be permitted.

43. The Independent Electoral Commission ("IEC), or other appointed oversight body, and individual political parties should make all funding records available for inspection by the public. This should be done in a form which makes these records as easy to access, read and interpret as possible. Online disclosure should be provided for. Records should be published within 7 days of each date requiring the submission of these records by political parties to the oversight body.

44. All political parties should be required to have their books audited by a registered auditor before disclosure.

c) Multi-party Democracy Fund

45. We propose the creation of this new fund to receive funding for political parties in certain forms. These include:

    45.1 Anonymous donations exceeding the agreed threshold, regardless of whether such donation was intended for a specific political party;

45.2 Donations of any amount which the donor does not wish to donate directly to any particular political party but rather prefers it to be received by and distributed in terms of this fund;

45.3 Foreign donations from any foreign source in excess of the agreed threshold for foreign donations, and all donations from foreign governments;

45.4 Certain donations forfeited by political parties for lack of compliance with regulations.

46. The money in this fund should be allocated in the same manner as that which we propose with regards to public funds. *Viz.,* 50% should be distributed evenly between all political parties represented in Parliament and provincial legislatures and the remaining 50% should be distributed in proportion to the number of seats that such parties hold in legislatures.

47. An independent body should be in charge of managing this fund. The IEC could serve as this body, however its capacity would need to be increased and its governing legislation amended.

48. We attach two legislative examples of how such a fund may operate:

48.1 The first is the Promotion of Multi-party Democracy Bill (**Annexure 3**) which was presented to Parliament in 1997 during the negotiations which ultimately resulted in the PFRPPA. It created the idea of a "Multi-party Democracy Fund", managed by the Electoral Commission, which would receive public funds as well as domestic and foreign donations and distribute them according to a set formula.

48.2 The second is Papua New Guinea's Organic Law on the Integrity of Political Parties and Candidates, 2003 (**Annexure 4**), with particular reference to Sections 75 to 82, which creates a Central Fund which collects and allocates funding for political parties in a similar manner to what we suggest in respect

of the Multi-party Democracy Fund. The key features of the these provisions are:

48.2.1 Citizens are allowed to donate directly to political parties up to a certain threshold;

48.2.2 The Central Fund consists of monies received from public funding, donations intended to be for specific political parties but exceed the threshold; any donations made by an entity regardless of whether it is above or beneath the threshold if the donor wishes it to be distributed in terms of the Central Fund, all foreign donations (except from individuals) regardless of their value, foreign funding from individuals above a certain threshold as well as funds raised from the Commission;

48.2.3 The money is then distributed to political parties with consideration given to their representation in Parliament.

IV: ENFORCEMENT AND IMPLEMENTATION

49. Any of the proposed measures will be rendered ineffective without adequate enforcement and implementation. The independence of the oversight body is critical to the entire process and must be protected at all costs, both in its functioning and financing. This body must be provided with the financial and administrative capacity to enforce the new regulations. The IEC may be the best positioned body to carry out these functions, which would relieve Parliament of the need to create a new body, but its capacity would need to be enhanced.

50. The role of this body would be to:

50.1 Receive and publish all records of political party funding;

50.2 Manage and distribute funds from the Multi-party Democracy Fund;

50.3 Investigate irregularities in party funding;

50.4 Receive and investigate complaints;

50.5 Impose sanctions other than criminal sanctions;

50.6 Refer potential criminal activity to the National Prosecuting Authority.

51. The following principles and mechanisms are proposed for penal provisions to assist enforcement:

51.1 As is done in Canada, political parties should submit a deposit to the oversight body at the start of each financial year. A failure to comply with the regulations should lead to a forfeiture of this deposit;

51.2 Donations improperly received should be forfeited to the oversight body to be distributed between all represented political parties, excluding the defaulting body, on the basis of 50% equity and 50% proportionality, or returned to the donor;

51.3 Penalties should be graduated so as that penalties are more severe for repeat offenders as opposed to first time offenders, including fines being imposed in addition to the abovementioned penalties;

51.4 Acts of criminal behaviour should be prosecuted;

51.5 Political penalties such as the loss of seats in the legislature, the banning or suspension of political parties from running in elections or the loss of public funding should be avoided. Such penalties could be manipulated for political purposes.

V: THE USE OF INVESTMENT VEHICLES BY POLITICAL PARTIES

52. We appreciate that political parties may wish to own shares in investment entities in order to raise funds for their parties. However there is much potential for abuse with

regards to these entities and therefore should also be regulated. Such regulations should include:

52.1 All investments made by political parties should be disclosed, including the details of such entities, the extent of the shares that the political party owns and the income that they receive from them;

52.2 Consideration should be given to whether an entity, whose shareholders include a political party which is represented in Parliament, should be prohibited from contracting with the government.

VI: CONCLUSION

53. We urge all political parties represented in Parliament to support this important reform process and to enact the legislation that our international obligations require and our democracy so urgently needs. For the sake of democratic legitimacy, it will be in the best interests of all role-players for this to happen before a court makes an order for Parliament to take such steps, which may well be the case if Parliament stalls on enacting this legislation.

54. CASAC requests the Committee allow us to make further oral submissions on this issue at the appropriate time, and to present supplementary written submissions on the detail of the draft bill, as the parliamentary committee process unfolds.