



SUBMISSION TO THE AD HOC COMMITTEE ON THE FUNDING OF POLITICAL PARTIES

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Submitted To: Cindy Balie
 Parliament of South Africa
Per email: cbalie@parliament.gov.za

FOR ATTENTION: Chairperson of the Ad Hoc Committee on Funding of Political Parties
 Honourable Vincent Smith

AND TO: Members of Parliament and of the Ad Hoc Committee

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1. Introduction

My Vote Counts NPC (MVC) welcomes the call for written comment by the Ad Hoc Committee on the Funding of Political Parties (Ad Hoc Committee). This document serves as MVC's formal written submission to the Ad Hoc Committee in response to the call for comment. MVC's mission is *to improve the accountability, transparency and inclusiveness of elections and politics in the Republic of South Africa generally, including but not limited to: campaigning to reform the political party funding system in the Republic, through the introduction of legislation and other regulatory measures; campaigning to reform the electoral system of the Republic; and creating platforms which aim to unite citizens and organisations in finding democratic solutions to the challenges of our time, with a particular focus on civic, legal and political education.*

As a point of departure, MVC wishes to state, that as an organisation, we have resolved not to accept anonymous or secret funds, funds with conditions that may compromise the mission and objectives of the organisation, funds from political parties or funds directly from corporations or foreign governments. This resolution is aimed at preserving the independence of our organisation.

2. Background

This submission follows on several interactions between Parliament and MVC in the past five years. In 2012, MVC wrote to the Speaker of the National Assembly (the Speaker) requesting Parliament to initiate a process to regulate private political party funding. The Speaker at the time, Mr Max Sisulu, responded that, *'The matter of the regulation of the private funding of political parties is currently on the agenda of the Chief Whips' Forum of the National Assembly for discussion.'* Subsequent to this correspondence, MVC wrote to the Independent Electoral Commission (IEC) in 2013 to query the Commission's position on the regulation of the private funding of political parties. The IEC's response at the time, was *'that the Commission has not taken a*



decision on whether or not to support legislation to regulate private and public funding of political parties.'

In 2014, MVC wrote to all the political parties represented in the National Assembly, asking political parties to disclose who they received private donations from in the most recent financial year and the amounts per donor, in the interests of political party funding transparency. Later in 2014, MVC launched a Constitutional Court application to compel Parliament to introduce legislation to regulate private political party funding. In 2015, the Constitutional Court, in a majority judgement, ruled that MVC should challenge the constitutionality of the Promotion of Access to Information Act (PAIA) if MVC is unable to access the private funding information of political parties through the PAIA. In response to the Constitutional Court majority judgement, MVC sent PAIA requests to the political parties represented in the National Assembly in 2016. The PAIA forms asked each political party for the following:

'...a full record of all monetary donations received from private sources, including individual persons (local and foreign), companies (local and foreign), and foreign governments. This information is requested for the past 5 years and the record must specify, the date on which the funds were received, the amount received, the name of the funder, and if there were/are any conditions to the donation – what these conditions are?'

MVC received 4 written responses but none of the political parties provided the information requested. Consequently, MVC instituted a court case in the Cape Town High Court in July 2016, seeking an order to the following:

- *Declaring that information about the private funding of political parties and independent ward candidates (the latter concept as contemplated in section 16 of the Local Government Municipal Electoral Act, 2000) ("independent candidates") registered for elections for any legislative body established under the Constitution ("private funding information") is reasonably required for the effective exercise of the right to vote in*



such elections and to make political choices, in terms of sections 19(1), 19(3), 32 and 7(2) of the Constitution; and

- *Declaring that the Promotion of Access to Information Act, 2000 (“PAIA”) is inconsistent with the Constitution and invalid insofar as it does not allow for the continuous and systematic recordal and disclosure of private funding information;*
- *Directing that the declaration of invalidity in 2 above be suspended for 18 months in order to allow Parliament to remedy the defects in PAIA and to achieve the following outcomes:*
 - *The affirmation of the duty of political parties to disclose private funding information;*
 - *The automatic and regular disclosure of private funding information by political parties;*
 - *Access to all private funding information, whatever form the funding or the information may take;*
 - *The obligatory creation by political parties of records of private funding information in order to facilitate disclosure and access;*
 - *The obligatory maintenance of records of private funding information by political parties for at least five years after their creation; and*
 - *The disclosures contemplated above will be mandatory and no persons will be permitted to raise any basis for not disclosing the relevant information.*

It is on the basis of these initiatives, as outlined above, and within the purview of MVC’s High Court application, which will be heard on 15 and 16 August 2017, that we make this submission.

3. Principles for political party funding model

Any model of public and private funding must support and uphold the Constitution and our democratic electoral system. The principle of transparency, in order to ensure accountability, in our electoral and political systems is crucial. The current environment of secrecy with regards to private political party funding has led to an erosion of trust



and the perception of undue influence in the executive decisions of government, including the appointment of members of the Cabinet, the approval of business contracts between private companies and the state and, more recently, in the setting of government policy. We are cognisant that the current discourse of 'state capture' in the country is incomplete without a discourse on the 'capture' of our political parties.

Transparency and openness is therefore needed as confirmation to the South African public of who supports our democracy through the funding of our political parties. The public's trust in our politics can be rebuilt if there is greater transparency on the part of political parties. Therefore, while trust, inclusive participation and accountability are important principles to consider in crafting a model for public and private funding of political parties, it is the principle of transparency that should be the basis of any recommendations put forward by this Committee.

3.1 Proposal on disclosure and transparency requirements

MVC proposes that there should be frequent and periodic disclosure of donations that political parties receive. The periods for disclosures should be set separately for election years and non-election years (particularly for provincial and national elections), with a change in frequency for the periods directly before provincial and national elections. We know from the tracking of political party donations in other countries that there is an increase in the number of donations directly preceding an election. The increase in donations at this time as well as the public's right to this important information before an election necessitates more timely disclosures on the part of the political parties.

We also propose that a disclosure threshold should be set, with aggregated disclosure information for donations below the threshold amount and disaggregated information on donations above the threshold amount. This proposal is based on the understanding that a large amount of disaggregated information will be of little use to



ordinary South Africans concerned with and/or trying to understand political parties and where they accept funding from. Also, we are in considerate of the administrative burden that the disclosure of all donations, and in particular very small amounts, may have on political parties. We propose further that the Ad Hoc Committee should use the time and resources at its disposal, with the help of economists, to determine an appropriate and meaningful threshold for this disclosure. This determination is not possible for MVC because of the complete lack of information regarding the private funding of political parties. We urge the Ad Hoc Committee to make full use of the powers bestowed upon it through the National Assembly Rule 167 (a), to *'summon any person to appear before it to give evidence on oath or affirmation, or to produce documents'*. The Ad Hoc Committee should use these powers to request information from political parties so that the Committee has a clearer understanding of the funding practices and needs of political parties, and to ensure that the Committee is able to make recommendations that are based on factual information.

The disclosures we envisage above the threshold amount includes, the name of the donor, the amount received from the donor, the date on which the donation was received, and the conditions set for the donation by the donor (if any). The disclosure of donations below the threshold amount should be clearly disclosed as an aggregated sum during reporting. We propose that the IEC should be further capacitated as the oversight body for reporting and disclosures of public and private funding of political parties. The IEC should then make the disclosures and reports public proactively, in an electronic format, soon after receipt.

4. Proposal on private funding

MVC proposes that the private funding of political parties should be allowed but that consideration for the regulation of private funding proposals should discourage corruption and limit undue influence on our political parties. As indicated in the section



above, private funding should be allowed but the disclosure requirements would differ depending on the amount donated. We believe that setting a threshold for disclosure will allow South African individuals the freedom of association and the right to make political choices. This proposal therefore upholds those rights, but sets a disclosure threshold in order to mitigate the negative consequences of corruption and undue influence by preventing these rights from being practiced in secret.

5. Proposal on foreign funding

The MVC proposal on foreign funding is considerate of the need for political parties to have access to financial resources in order to fulfil their constitutionally mandated role. We are also cognisant of the role that foreign resources and support played in bringing forth the current democratic dispensation in the country. We accept, therefore, that it is possible for foreign sources of funding to be intended to support, protect and entrench our democracy. However, we are also aware of the dangers that foreign funding – in an increasingly shrinking global economy where the separation between corporate interests and national interests are sometimes difficult to distinguish – can have on a country's political system. The perception that it could be possible for foreign interests, in the form of countries, companies and individuals, to influence national decisions, be they executive or political, is a gravely dangerous one.

In order to guard against the perception of influence by foreign interests, we propose that there should not be any **direct** funding to political parties from foreign sources. Instead we propose the institution of a fund (private funds), separate to the Represented Political Parties Fund (public funds), into which any donations from foreign sources could be deposited and distributed fairly amongst political parties. In making this proposal, we confirm that foreign interests have no political rights, voting rights or freedom of association rights as enshrined in our constitution. Their role in donating to our political parties would therefore be considered as supportive of our constitutional democracy.



6. Proposal on public funding

MVC understands that financial and human resources are required in order for political parties to be effective in implementing their mandate. In fact, public funding is not only necessary but a public good. It is needed in order to relieve some of the pressure on political parties to get money from other sources.

For this reason, MVC does not object to the consideration for an increase in public political party funding. However, we are concerned that the IEC has limited capacity to carry out its oversight role regarding the monitoring and auditing of the reported expenditure by political parties of public funds received through the IEC. We therefore propose that a regulatory model that would ensure transparency in private political party funding and increased public funding should also allow for the Auditor-General to audit the reports on public expenditure provided by political parties. This partnership between the expertise of the Auditor-General and the oversight responsibility of the IEC would instill faith and trust in the distribution and disclosure on public funding to political parties.

We feel that it is also important that the Ad Hoc Committee, heeds the concerns of the public through the current discourse on political party funding. We are very concerned about the secretive environment of money flows pertaining to our political parties. MVC therefore proposes that any increase in public funding to political parties should firstly be reciprocated through greater transparency by political parties on the private funding they receive. It cannot be understated that the South African public has provided public funds to political parties for over 15 years without the public becoming any clearer as to what the political parties' financial needs actually are. Before any consideration is given to an increase in public funding, political parties should be prepared to open their books so that we understand what their real financial needs are, in order for a decision to be made as to whether and to what value public funding could be increased.



7.1 Proposal on Local Government level funding

The current public political party funding framework does not allow for public funding distribution to political parties and independent constituency representatives represented in local government municipal councils. This is a concern, as it could be argued that it is political representatives at the local government level that are more accessible and more responsive to the needs of the general public. The objects of local government, as outlined in section 152(1) of the Constitution, are as follows:

- *‘to provide democratic and accountable government for local communities;*
- *to ensure the provision of services to communities in a sustainable manner;*
- *to promote social and economic development;*
- *to promote a safe and healthy environment; and*
- *to encourage the involvement of communities and community organisations in the matters of local government’*

We submit that all the resources of local government should be utilised to achieve these objectives. We are therefore of the view, that it would be negligent to allocate any local government financial resources, be they from the other levels of government or self-generated by the municipality, to political causes. The Committee should also take this opportunity to assess the funding of constituency offices so that a holistic understanding of party funding can be obtained. We propose that funds from the Represented Political Parties Fund should also provide public funds to political representatives at the local government level.

7.2 Proposal on Provincial Government level funding

Several provincial legislatures have enacted legislation that allows for funding to political parties from the provincial legislature. The investigation that this Committee has embarked upon allows for an opportunity to consider a more equal and fair provincial funding system unlike the disparate situation that currently exists. The powers of the provincial legislature are included in section 114 of the Constitution.



These powers relate to the legislatures' roles in initiating, preparing, considering, passing, amending or rejecting a Bill, as well as their oversight and accountability role.

We are of the view that concern for the financial resources of political parties should not be the responsibility of provincial legislatures. MVC proposes that the public funding for political parties represented in the provincial legislatures should be distributed from a national Fund only. Provincial funds, whether allocated from national government or self-generated by the provinces, should not be used for political causes.

8. Proposal on political party expenditure

In order for the public to continue to trust our political system and to encourage a greater understanding of our political parties and the conditions under which they operate, we propose that there should be annual public disclosure on expenditure of both private and public funds by political parties. We believe that this level of understanding will engender trust in the democratic principles practiced within our political parties and encourage greater participation in our political system and our political parties.

9. Proposal for a “separate fund” for private political donations

We recognise that political parties need financial resources to operate. And we are of the view that public funds should rather be used to provide the services that the majority of our citizens need every day. MVC therefore proposes, as indicated in point 5 above, that a fund that accepts donations from foreign sources should be established. We propose further that in addition to the threshold (to be determined) as mentioned in point 4, there should be a cap on the amount that any South African individual or company can donate to a political party in any given financial year. South African individuals and companies wishing to donate above the capped amount to a political party would then be allowed to donate to this fund.



Donations to this fund should be without any conditions and the distribution or allocations from this fund should be determined but should not mirror the distribution or allocation from public funds. The differentiation should aim to create fairness between the public funding allocations and private funding allocations towards political parties. In addition, any companies that are contracted to the state, at any level, or that do business with the state should only be allowed to provide funding to political parties through this fund. Any funding from NGO's or trade unions to political parties should also be made through this fund. Political party donors that would like to remain anonymous could also provide funding through this fund.

10. Proposal for a ban on some funding sources

We are aware that in some instances political parties receive financial resources from State Owned Enterprises (SOEs) through the purchasing of tickets or 'sponsorship of tables' at political party events. How SOEs determine which political party events they will attend and the level of sponsorship (bronze, silver, platinum) they will purchase is not clear. We therefore propose that any form of financial relationship between political parties and SOEs should be banned.

In order to prevent the possibility that there may be attempts to bypass the regulation of private funding to political parties, we propose that 'third party' payments and provisions should be banned. In addition, the model on public and private regulation of political party funding should consider stating the legal and procedural recourse for any transgressions of the regulations that the public may undertake.



11. Conclusion

MVC is encouraged by the decision by Parliament to set up this Ad Hoc Committee. We view this as a voluntary commitment by political parties to end the secrecy that surrounds their funding. We are also pleased that recent statements on behalf of the Ad Hoc Committee have upheld the need for greater transparency on political party funding. This submission is in support of the work that the Committee is responsible for. We also request the opportunity to make a verbal submission to the Committee in order to engage further on the proposal herein.