



Summary of submissions

1. Purpose

The purpose of this document is to highlight key policy proposals emanating from the submissions received by the Ad-Hoc Committee on Political Party Funding (the Committee) following its invite for public comments on the Draft Political Party Funding Bill, 2017, which its main purpose is to regulate public and private funding of political parties.

2. Introduction and background

Following its establishment, the Committee held its first meeting to elect and deliberate on how it can best execute its mandate. The meeting resolved that as a point of departure, it should invite public comments on the Public Fund of Represented Political Parties Act (103 of 1997), referred as a Public Fund Act.

Pursuant to that resolution, the public was invited to submit written comments on or before 21 July 2017. After the cutoff date, the Committee received seventeen (17) submissions from all occupations, including individuals, civil society organizations, non-profit organizations, trade union, research institutions and religious groups. They were all invited to make oral representations the 15th and 16th of August 2017.

In spite of the above, after considering the public inputs in its deliberations, the Committee resolved to repeal the Public Fund of Represented Political Parties Act (103 of 1997). Consequently, it instructed Parliament Legal Unit to draft the Bill. On 15 September 2017, the Committee adopted a proposed Bill and resolved that it should be published for public comments.

In light of the above, twenty one (21) written comments were received from the public after the cutoff date of 16 October 2017. Almost the same category of submitters submitted in the first round, also made written comments to the proposed Bill, with the addition of the business community as a new category. They made unique and crucial comments with regard to the funding of political parties. Their comments cover a wide range of aspects which most of them are on legal and policy issues emanated from the proposed Bill. In addition, there were some issues proposed which were not covered in the proposed Bill.

Flowing from the above, this summary specifically highlights policy issues proposed by the public, which will require the Committee to take decisions on them. They are highlighted in the following paragraphs:

3. Key headings from proposed Bill from which policy issues highlighted

3.1. Multiparty Democracy Fund

All the public comments support the establishment of Multi-Party Democracy Fund whereby private donor who do not want to donate to a single political party but wishes to donate for the purpose of enhancing and promoting democracy can donate. However, they differ on how this Fund should operate and allocates funds to political parties, subsequently their proposals include amongst,

- This Fund should receive all private funding and therefore prohibit direct private funding to political parties. They believe that the prohibition of direct private funding to political parties is the best way to avert undue influence to the political system. Therefore, political parties should only be funded from public funds.
- The Fund should be empowered to distribute funds to duly registered political parties that are not represented in both Parliament and Provincial Legislatures. In this regard, they argued that by virtue of the purpose of this Fund, it would be appropriate to consider funding political parties without representations in either Parliament or Provincial Legislature, in particular those that have demonstrated a satisfactory track by competing in a number of successive national and provincial elections.
- Both, the purposes for which funds may be used for and the allocative formula should differ from those of the Represented Political Party Fund (Public Fund). They believe that if a Multi-Party Democracy Fund has the same purposes and allocative formula with that of Public Fund it will not serve its rationale for its establishment and otherwise it should have been collapsed to Public Fund. Subsequently, they are proposing that each fund should have its own allocative formula and purposes for which funds may be used for. Further, all the purposes for the use of each fund should be incorporated into the Bill not in the regulations.
- To do away with clause 3(5), which permits the donor to request the Commission not to disclose his/her, identity or amount donated in the Multi-Party Funding. In this regard, they proposed that this Fund should be subjected to the same robust transparency provisions as directed under donation, such as all donations above a certain threshold must be disclosed.

3.2. Disclosure and threshold

There are two competing views emanated from the public comments as far as disclosure is concerned and they are as follows:

- There are those who propose a total disclosure of all donations regardless of their value. To substantiate their proposal, they noted the recent judgment in the case between My Vote Counts and President of Republic of South Africa, whereby a reference was made to section 19(3), 32(1) and 7(2) of the Constitution.
- In contrary to a total disclosure, a substantial number of submitters argued that they noted the afore-said judgement. However, they also note the practicality of that; as such, it may be useful to establish a threshold for disclosure. They proposed that such a threshold should be relatively low since a high threshold would defeat the purpose of this Bill. In this regard, some suggest a maximum threshold of R5000, whilst others suggest R10000 and

others maintain that it should be an amount linked to indicators of continued economic, social and political inequality such as the average household monthly income. Moreover, there are those who suggest that a threshold should be determined in consultation with experts and should be in line with international best practice.

- Importantly, the proponents of establishments of threshold further propose that the disclosure should occur on a quarterly basis because a quarterly disclosure gives the best effect to the intentions of the Bill.
- In the spirit of complete transparency, some comments suggest that the duty to disclose should be extended to the donors as well (dual disclosure) and a proactive disclosure should be encouraged through tax allowances.

3.3. Allocative Formula

- There should be two (2) different formulas to distribute funds from both established Funds. Therefore, each Fund must have its own formula to allocate funds to political parties.
- A Formula to allocate funds received from Multi-party Democracy Fund should be skewed towards equitable; to circumvent the risk of local businesses being in a position to influence the most represented political party as the bulk of funds would still be appropriated to it when the formula is more bias to proportionality.
- For Public Fund, they argue that the biggest share allocated on a proportional basis hinders the development of smaller political parties and hence undermines participatory democracy. Therefore, they propose that the difference between proportional and equitable should be marginally smaller.

3.4. Donations

- It is proposed that all donations in kind above the estimated value of R10000 should be declared as a donation. Further, any financial amounts donated to political parties as a loan, whether, on commercial terms or not, above a certain value, for example R10 000 should be considered as a donation and it should be disclosed as such if it is above a prescribed threshold. The rationale behind this proposal is to avoid the possibility that political parties could receive soft loans or loans, which are later written off by the donors.

3.5. Prohibition of donation from foreign persons or entities and foreign governments

- Most of the comments received propose the scrapping section 9 (3) of the proposed Bill whereby a political party or a member of a political party is permitted from accepting a donation from a foreign entity for the purpose of training or skills development of a member or political party; and policy development. They argued that this clause is in contrast with the spirit of this Bill because it allows precisely the influence of foreign interests over the policies of our political parties.
- Others raised a concern on the rationale for prohibition of foreign governments to donate to Multi-Party Democracy Fund. They argue that they don't understand the rationale for why a donation to Multi-Party Democracy Fund should be prohibited because such foreign government/agencies has no control over how donation is allocated between political parties.

- 3.6. Capping Expenditure **(not covered in the Bill)**
- There are those who propose an introduction of caps/limits to the total amount that can be spent by political parties in any given funding cycle, including capping expenditure on election campaigns. They argue that it would be important if the Bill and its regulations set reasonable guidelines for national and provincial campaign spending so as to promote constructive contestation among parties and to level off playing fields. Moreover, they suggest that a cap/limit on expenditures of political parties would reduce the pressure on political parties to raise ever-larger amounts of money. It would, thus, reduce the temptation to undertake unlawful actions by political parties in order to raise the required amounts to run elections
- 3.7. Maximum cap/limit to direct funding of political parties **(not covered in the Bill)**
- It is proposed that a maximum cap/limit on the quantum of donation that can be made by a donor to a political party over a funding cycle be introduced. The motive is to prevent a risk of undue political influence by potential wealthy donors, which they can donate large sums of money to a political party.
- 3.8. Permissible fines contained in Schedule 1 of the Bill
- Some of those submitted argued that penalties contained in Schedule 1 of the Bill are too low to serve as a deterrent to political parties that have the ability to raise large sums of money. Subsequently, both wealthy potential donors and political parties can deliberately contravene the law and factor these fines or penalties into their budgets. Therefore, it is proposed that these fines should be in the form of percentages of the allocation due to offending parties from both Funds.
- 3.9. Political parties and independent candidates represented in local government level **(not covered in the Bill)**
- It is proposed that the Bill should include political parties and independent candidates represented in the municipal councils and local government level. They argue that even though they recognize the effect of section 236 of the Constitution to regulate political funding, this, however, should not preclude the inclusion of political parties represented at local government level as they are equally subject to principles of transparency and accountability.
- 3.10. The management fee for Multi-Party Democracy Fund **(not covered in the Bill)**
- There is a proposal to introduce a management fee of between 3 percent and 5 percent from the Multi-Party Democracy Fund to provide for resources to manage receipts and disclosures pertaining to the Multi-Party Democracy Fund. It is therefore suggested that the regulations should address the determination of this percentage, annually.

3.11. Regulation of companies doing business with the state and investment vehicles of political parties **(not covered in the Bill)**

- It is proposed that both businesses, which do business with the state and investment vehicles of political parties, should either be banned or regulated. Therefore, the Bill should incorporate them.

4. Conclusion

It is concluded that the thrust of this Bill resides in addressing the following policy issues:

- ✓ reaching a consensus on the allocative formula which have a mix features of both proportionality and equitability, with marginal differences;
- ✓ setting a threshold for disclosure which is relatively low so as to ensure transparency and accountability; and
- ✓ setting a reasonable cap/limit, which can deter the risk of undue political influence by wealthy potential donors.

Further, emanating from the public comments, it is clear that there are other policy issues, which the Committee resolved to exclude in the Bill, but the public viewed otherwise, and vice versa. These include amongst others; excluding capping of expenditures; capping an amount of donation from a donor to a political party over the funding cycle; inclusion of political parties and independent candidates represented in municipal councils; permitting foreign entities to donate for policy developments of political parties; and permitting a donor not to disclose his/her identity and value of donation to Multi-Party Democracy Fund.

