



BLF

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Ad Hoc Committee
on Funding of Political Parties

16 October 2017

Attention:

The Secretary
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BLACK FIRST LAND FIRST SUBMISSIONS ON THE DRAFT POLITICAL PARTY FUNDING BILL, 2017 TO THE AD HOC COMMITTEE ON THE FUNDING OF POLITICAL PARTIES

INTRODUCTION

This presentation will deal with the following scope points:

1. Public funding
2. Private funding
3. BLF's proposals to regulate against corruption regarding political party funding
4. Call to repeal the IEC's deposit requirement
5. Oral presentation at public hearings on 7 and 8 November 2017

PUBLIC FUNDING

Introduction



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The Public Funding of Represented Political Parties Act, 103 of 1997 (the Public Funding of Represented Political Parties Act) established the Represented Political Parties Fund to finance the parties represented in parliament and in provincial legislatures. The said Act makes provision for the President of Republic of South Africa (RSA) to issue and promulgate regulations elaborating those details that are not directly provided for in the Act. The Fund is accordingly regulated in terms of the Public Funding of Represented Political Parties Regulations, 1998.

In the first leg of this process all civil society organisations and other interested individuals and entities were invited by the Ad Hoc Committee on Funding of Political Parties (this Committee) to comment on the Public Funding of Represented Political Parties Act which then led to this Committee considering those views and putting together and publishing a Draft Political Party Funding Bill, 2017 (Draft Political Party Funding Bill) for public comment.

In this context it must be stated that - in terms of the allocation and payment of funds to represented political parties - the effect of the provisions of Clause 6 (1) to 6(4) of the Draft Political Party Funding Bill in no way suggests any material deviation from the relevant provisions of the Public Funding of Represented Political Parties Act and the Regulations.

To this end in terms of Section 5(2)(a) of the Public Funding of Represented Political Parties Act, funds are allocated in accordance with a formula that is based on proportional representation of the members a party has in the National Assembly and in the Provincial Legislatures; and a minimum amount that serves as a threshold so as to promote fairness and equity. Accordingly, the Regulations make the following provisions in Regulation 2(2)(a) and (b):

“(2) The allocations from the Fund to be made and paid to each of the political parties concerned are calculated by –

(a) allocating ninety (90) per cent of the total amount of funding determined in terms of subregulation (1) proportionally in accordance with regulation 3; and

(b) allocating ten (10) per cent of the total amount of funding determined in terms of subregulation (1) equitably in accordance with regulation 4”

Furthermore the determination of the proportional allocation (alluded to in Regulation 2(a)) is elaborated in Regulation 3 as follows:

“3. The proportional allocation is determined by dividing the amount contemplated in regulation 2 (2) (a) proportionally among the participating parties in any legislative body referred to in section 9 (3) (a) of the Act, in accordance with the number of seats awarded to each participating party in the National Assembly and the provincial legislatures jointly”.

As alluded to above in terms of the Regulations, 90% of the financial year allocation is paid proportionately in relation to the aggregate of each party's seat representation in the total seats of the National Assembly and Provincial



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legislatures; and the balance of 10% of the fund, as indicated in Regulation 4 quoted below, is proportionately divided between the provinces in accordance with the number of seats in each province. To this end the provincial allocations, in turn, are equally divided between the parties in each of the legislatures. Regulation 4 settles “[e]quitable allocation” as follows:

“4. The equitable allocation is determined in the following manner:

- (a) The amount contemplated in regulation 2 (2) (b) must be allocated to the respective provinces in proportion to the number of members of the respective provincial legislatures as contemplated by section 105 (2) of the Constitution; and
- (b) the allocation to a particular province in terms of paragraph (a) must be divided equally among the participating parties in the legislature of that province”.

Clause 6 of the Draft Political Party Funding Bill provides inter alia as follows:

"Allocation and payment of money to represented political party

6. (1) The Commission may only allocate money from the Funds to a represented political party.

(2) Any allocation from the Funds must be made to a represented political party in accordance with the prescribed formula.

(3) The prescribed formula must be based on—

(a) in part, an equitable allocation taking into account a weighted scale of representation for an allocation to a political party with representation in the National Assembly or any provincial legislatures; and

(b) in part, a proportional allocation taking into account the relationship that the number of a political party’s representatives in both the National Assembly and the provincial legislatures bears to the sum of the seats in these legislatures.

(4) The Commission must apply the prescribed formula taking into



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account the number of representatives of each political party and the number of seats in the respective legislatures based on the results of the election".

The effect of public funding on party performance

The allocation of public funds in terms of the Draft Political Party Funding Bill as well as in terms of the Public Funding of Represented Political Parties Act and the Regulations (elaborated above), hinders the development of the smaller political parties and hence undermines participatory democracy. This situation effectively encourages parties to enter into corrupt arrangements so as to source private funding to supplement the public funding they receive from State coffers.

To this end the huge difference between the public funds allocated to the African National Congress (ANC) and the Democratic Alliance (DA), due to the number of seats they obtain in the National Assembly and Provincial legislatures as compared to the other parties, will continue via the proposed provisions of the Draft Political Party Funding Bill.

To address this challenge BLF proposes the following remedial action:

Indicate a definite percentage allocation so that a new provision in this regard will accordingly read as follows:

"The allocations from the Fund to be made and paid to each of the political parties concerned are calculated by –

(a) allocating sixty (60) per cent of the total amount of funding determined proportionally. The proportional allocation shall be determined by dividing the amount contemplated herein proportionally among the participating parties in any legislative body in accordance with the number of seats awarded to each participating party in the National Assembly, and the provincial legislatures jointly.

(b) allocating forty (40) per cent of the total amount of funding determined equitably. The equitable allocation shall be determined in the following manner:

(i) The amount contemplated herein shall be allocated to the respective provinces in proportion to the number of members of the respective provincial legislatures as contemplated by section 105 (2) of the Constitution; and

(ii) the allocation to a particular province in terms of paragraph (i) must be divided equally among the participating parties in the legislature of that province".

PRIVATE FUNDING

Disclosure



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The Electoral Act of 1998 and the Public Funding of Represented Political Parties Act of 1997 allows for private funding of political parties but makes no provision for the regulation of such funding. The Draft Political Party Funding Bill makes the following provision in Clause 10(1) regarding the disclosure to the Independent Electoral Commission of donations including private funding received over the "prescribed threshold":

"A political party must disclose all donations received above the prescribed threshold, to the Commission, in the prescribed form and manner"

Moreover Clause 11 (1) provides that "No person or entity may make a donation to a member of a political party for party political purposes nor may a member receive any donation except on behalf of the party".

The fact that a political party is allowed not to disclose the amounts received by it below the prescribed threshold in itself provides the opportunity for corruption. To circumvent this problem, political parties must be made to give total disclosure in this respect.

No limitation on spending on election campaign

The Electoral Act of 1998, the Public Funding of Represented Political Parties Act as well as the Draft Political Party Funding Bill provide for no limitation as to the amount of money a political party can spend on an election campaign. This should be regulated.

Proximity to power determines how much funding can be secured

The business or investment interests of a political party; the party's membership fees; and the funds raised by the party generally, represent a small proportion of the funds needed to supplement the public funds allocated to the smaller parties.

Smaller parties are evidently poor at securing private funding due to the fact that they are further away from power than the ruling and the main opposition parties. They accordingly have huge dependence on public funding. This situation of smaller parties being under funded can be rectified if the remedial action proposed above regarding definite percentage allocation of funds is implemented.

Conflict of interest

Evidently, private funders traditionally fund particular political parties with an intention of securing their own political or other interests. This gives rise to a conflict of interest situation amounting to corruption which in turn serves to



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undermine the connection between the political party concerned and its voters. There is a need to create conditions conducive for participatory democracy to thrive and not be distorted by money.

Any party that is in power or is close to power and to this end is in a position to influence the policy direction of the country is likely to attract funding from dubious donors. While some political parties or their representatives may resist this kind of funding, others may be seduced by its trappings.

The Draft Political Party Funding Bill makes provision for certain prohibited donations. To this end Clause 9 states as follows:

"Prohibited donations

9. (1) Political parties may not accept a donation from any of the following sources:

- (a) Foreign governments or foreign government agencies;
- (b) subject to subsection (3), foreign persons or entities;
- (c) organs of state;
- (d) state-owned enterprises; or
- (e) the National Lottery as defined in section 1 of the Lotteries Act, 1997 (Act No. 57 of 1997).

(2) A political party may not accept a donation that it knows or ought reasonably to have known or suspected originates from the proceeds of crime and must report that knowledge or suspicion to the Commission.

(3) Nothing in subsection (1)(b) prevents a political party or a member of a political party from accepting a donation from a foreign entity for the purpose of—

- (a) training or skills development of a member of a political party; or
- (b) policy development of a political party".

The prohibitions in Clause 9 do not provide safeguards for the exceptional cases where private funding is allowed as contemplated in Clause 9(1)(b) and 9(3) therein. To this end those exceptional cases are not immune to the opportunities for corruption. To elaborate - since as indicated in clause 9(3) read with 9(1)(b), nothing prevents "a



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political party or a member of a political party from accepting a donation from a foreign entity for the purpose of ... training or skills development of a member of a political party; or ... policy development of a political party", then the purpose for which the donation is accepted creates opportunities for corruption which in turn leads to a conflict of interest situation as indicated above. This is especially so where the foreign entity represents white monopoly capitalist and or imperialist interests.

BLF's PROPOSALS TO REGULATE AGAINST CORRUPTION REGARDING POLITICAL PARTY FUNDING

BLF accordingly proposes the following rules to regulate against corruption relating to the funding of political parties including their electoral campaigns:

1. Political parties must get both public and private support

Both the State and other entities including citizens should be free to give support to political parties. Objective, fair and reasonable criteria should be applied regarding the distribution of both private and state funding. The Draft political Party Funding Bill mimics the Public Funding of Represented Political Parties Act in relation to public funding allocations to political parties. As pointed out above regarding Clause 10(1) of the Draft political Party Funding Bill, the fact that a political party is allowed to not publicly disclose the amounts received by it beneath the prescribed threshold, provides the opportunity for corruption.

To this end the Draft political Party Funding Bill does not give the necessary assurance - via putting in place appropriate mechanisms - that any support from the state and/or other entities including citizens will not undermine the independence of political parties. Private funding, including funding by foreign donors, to political parties should be facilitated by the following regulations, which the Draft political Party Funding Bill does not lay the basis for:

- prevent a conflict of interests situation from occurring;
- promote full disclosure of donations;
- prevent clandestine or secretive donations;
- avoid prejudice to or undermining the program of political parties;
- guarantee independence of the political parties.

BLF accordingly calls for total disclosure of all the private funding of the current political parties. We further ask that, going forward, political parties be prohibited from directly receiving funds from private donors. We propose that an



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Independent Political Party Funding Commission be set up to receive and administer funding from private donors and to this end that the said funds be distributed equitably to all political parties in terms of an agreed criteria.

We ask further that the value or amount of the private funds allocated to political parties be limited and that the allocation of such funds be the same for all the parties. To this end regulations limiting private funds must be put in place. Also measures to prevent such limitations from being transgressed must also be adopted. The identity of private donors (which the Draft political Party Funding Bill is silent on - it speaks only of disclosing the donation) must also be revealed by the Independent Political Party Funding Commission. To this end private donors must be compelled to reveal their identities.

2. Tax deductibility of donations to political parties

We ask that any tax that is deductible in respect of donations to political parties be limited.

3. Donations by state owned or controlled entities

Public authorities or other entities that are state owned or controlled must be prohibited from making donations to political parties. Insofar as the Draft Political Party Funding Bill makes provision for this in Clause 9(1) we are amenable - we ask that the prohibition be extended to include all public authorities.

4. Donations to political parties by legal entities

Donations to political parties from legal entities must be properly recorded in the books of such legal entities. Furthermore, all the shareholders or other members of the relevant legal entities must be informed of such donations.

Donations from legal entities in the form of goods or services for the purpose of public administration should also be limited

5. Limitation on electoral campaign expenditure

Any funding needs of political parties, relating to electoral campaigns, that are excessive must be curbed. To this end the amount given to political parties from private funds must be limited.

6. Expenditure Records must be kept

Proper records of all expenditure relating to the electoral campaigns of "each political party, each list of candidates and each candidate" must be kept.



7. Books and accounts must be kept

Political parties and those entities connected to such political parties must be required to keep comprehensive and consolidated books and accounts. This should include the accounts of the relevant associated entities. The Draft political Party Funding Bill is silent on this.

8. Records of all donations must be kept

Each political party must record in their books and accounts all donations received by them which in turn must include the nature and value of each donation. This must be the case even if such donations will be received in the future via an Independent Political Party Funding Commission that BLF had proposed above.

9. Independent Electoral Commission to monitor and supervise both funding of electoral campaigns and political parties

The Independent Electoral Commission (established in terms of section 3(1) of the Electoral Commission Act, 1996) must monitor and supervise the funding of political parties as well as its electoral campaigns. This must include monitoring and supervising all the accounts of political parties, the expenses entailed in electioneering campaigns and the publication and presentation thereof.

10. Obligation to present accounts to the Independent Electoral Commission

Political parties must be required to present and make public their accounts, indicated above. They must do so regularly and, at the minimum, annually to the Independent Electoral Commission.

11. Obligation to publish lists of private funders and amounts of funds received

Each political party must be required to publish annually a list of its private funders, the amount of funds received from each funder and the dates when such funds were received. This must be regulated by the Parliament.

12. Specialized capacity

Capacity should be developed in relation to the “judiciary, police or other personnel” towards combatting the illicit “funding of political parties and electoral campaigns”.

13. Penalties



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The contravention of any provision of the law relating to the funding of political parties and electioneering campaigns must be subjected to appropriate penalties. The penalties provided for repeat offenders in the Draft political Party Funding Bill should include referral of the responsible person(s) concerned in the relevant political party, for criminal prosecution and upon conviction to be appropriately punished.

CALL TO REPEAL THE IEC's DEPOSIT REQUIREMENT

Political parties are currently required to pay an amount of R600 000 in order to contest elections in the whole country. This amount constitutes R45 000 for each province and R200 000 for National contestation.

BLF calls for the repeal of the provisions of the Electoral Act, No.73 of 1998 – which confers powers on the Independent Electoral Commission (IEC) to make a determination and to impose the deposit in question – requiring a deposit to be paid before a party can be considered eligible to contest the elections. We submit that instead of a deposit each political party submits a list of a minimum of fifty thousand (50 000) signatures of those people intending to vote for the political party in the upcoming elections. This would serve as a strong indication of the significant support that the political party enjoys – enough to represent one seat in parliament.

BLF rejects the imposition of this deposit. It is both unfair and unreasonable to new entrants to elections. Furthermore it benefits those political parties that have access to huge and sometimes dubious private funding over those that don't. This constitutes unfair discrimination. It also serves to exclude entry of those political parties that don't have and cannot afford the deposit. It accordingly excludes the poor. It further violates the "Political rights" guaranteed in Chapter 2, Section 19 of the Constitution (Act 108 of 1996) which provides that:

"[e]very citizen is free to make political choices, which includes the right-

(a) to form a political party; ...

(c) to campaign for a political party or cause".

The requirement for the payment of a huge deposit accordingly undermines true democracy as it excludes full participation in a society that is supposed to be built on democratic values.

ORAL PRESENTATION AT THE SCHEDULED PUBLIC HEARINGS ON 7 AND 8 NOVEMBER 2017



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As the BLF President I request to make an oral presentation, on behalf of BLF, on the subject matter during the period 7 to 8 November 2017. We await your confirmation as per your letter dated 28 September 2017 that BLF's submissions will enjoy priority in this second phase of the process.

Submitted on behalf of BLF by its President, Andile Mngxitama

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