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Comment on Draft Political Part Funding Bill 2017

Date 22 September 2017

Dear Sir,
Section 236 of the constitution requires that national legislation be passed with the express intention to "enhance multi-party democracy". This is the yardstick against which this legislation needs to be measured.

In general, any funding legislation which is designed to (or inadvertently) increases the competitiveness of the most powerful party at the expense of the weaker parties and or makes it difficult for new parties to compete fairly is not enhancing multi-party democracy.

It follows that the intention of clause 6(3)(b) to make support from Government funding for political parties proportional to their existing representation in national or provincial Government is not enhancing multi-party democracy and is not "equitable" as is required by the constitution (it does not enhance political competition). In fact it can be argued that the party who are in power should receive proportionately less money as they have the advantage of speaking as the "Government of the day" and so get disproportionate attention by the media and are able to trumpet their achievements without cost. In addition, represented parties are funded for "constituency work" which is pro-rata to their representation. This means that they are funded to maintain their profile in communities (which is indistinguishable from political campaigning) and the larger parties get more monetary support for this than the smaller parties. This is undemocratic in the lead up to elections.
I would suggest that the three largest parties represented in national of provincial government should receive the same percentage of the money allocated from both of the Funds. Any represented smaller parties should receive a smaller percentage (perhaps one third of that allocated to the larger parties) and unrepresented parties who wish to stand for election should receive a yet smaller start-up grant provided that they can gather 10000 signatures in support of their party.
Financial support for "constituency work" (as envisaged in sections 57(2)(c) and 116(2)(c) of the constitution) should cease one year prior to the latest date when an election can be held.

The test that Government should set itself when considering this bill is "what would we want this bill to say if we were not currently in power." Similarly, the larger opposition parties should ask themselves the question "what would we want this bill to say if we were not one of the biggest parties in parliament." That is what democracy means.

In terms of individual provisions of the bill.
Chapter 2, clause 3(4) should include provision to prohibit donations from State owned enterprises and the national Lottery.

Clause 6 does not pay attention to the Memorandum of the objects of the bill – specifically 2.7.(a)(i) (in the memorandum) which requires a minimum allocation to all represented political parties. This would be provided for by my suggestion above.
In addition Clause 6(3)(a) seems to be a poorly worded version of Clause 6(3)(b) and is inequitable for the reasons stated above.

Clause 6(7) gives the Government the power to control at what intervals money will be allocated. This is an unfair advantage. Money for these political purposes should be allocated from the Represented Political party fund annually on a date set by this bill with the amount of money allocated decided in the national budget of that year. Money from the Multi-party democracy fund should be allocated to parties monthly as and when donations are received.

Clause 7 (1) and (2) should include all money (both that paid in terms of section 6(7) **AND** that raised by direct funding of political parties and not just the money paid in terms of section 6(7) alone. In particular Clause 7 (2)(c) is vital as any company or such like owned by a political party is an easy target for corrupt individuals wishing to curry favour with Government and is difficult to police.

Clause 7(2)(d) is clearly a typographical error and should read for any other proscribed purpose and not prescribed purpose.

Chapter 3 Direct funding of political parties
The main aim of this chapter of the bill is to bring into the light the financial influences on political parties and to prevent funding by bodies or individuals who may not have the best interests of the people of South Africa (such as foreign governments) at heart.
There is no apparent good pro – democratic reason why a company, corporation or trust should donate funds to a particular political party. It can be argues in regard to public companies especially that the staff and shareholders may not hold the same political views as the management making the decisions to donate.
I suggest that only natural people should be allowed to donate directly to individual parties (with their Identity Numbers as a reference – so that circumvention of the prescribed threshold for disclosure can be policed). Any company or other body which wishes to donate in the interests of promoting democracy should only be allowed to donate to the Multi – Party Democracy Fund.
Thus Clause 9(1) should include the prohibition of accepting donations from a legal but not natural person.

Clause 10 should include disclosure of any loans made to the party (even if interest baring) as these could be used to circumvent disclosure.

Chapter 4 Clause 13(4) should include provision of those financial statements to the public as well as to the Commission as the scrutiny by other political parties will be the best deterrent against breaking the rules of this bill.

Clause 14 (2) is of no purpose as parties will have money from the Funds as well as direct donations. They will therefore simply spend the money from the Funds first – so there will never be any money (from this source) carried forward. It is also not a reasonable provision as parties may strategically save money knowing that an election year is approaching and they should not be prevented from doing so.

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