

**SUBMISSION TO THE AD HOC COMMITTEE ON THE FUNDING OF POLITICAL PARTIES
REGARDING COMMENTS ON THE DRAFT POLITICAL PARTY FUNDING BILL, 2017**

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Submitted To: Cindy-Joy Balie
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Per email: cbalie@parliament.gov.za

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

And To: Adv Bongani Bongo
Ms Dorries Dlakude
Mr Marshall Dlamini
Dr Malcolm Figg
Mr Nelson Godi
Mr Donald Gumede
Hu prof Nhlanhlakayise Khubisa
Mr Nqabayomzi Kwankwa
Mr Robert Lees
Ms Nocawe Mafu
Ms Lindiwe Maseko
Mr David Maynier
Dr Pieter Mulder
Ms Claudia Ndaba
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I make this submission in my capacity as a private South African citizen. I do not represent any organisation or body, political or otherwise.

Kind regards,
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Introduction

- [1] Contrary to many comments made in initial submissions to the Ad hoc Committee on the Funding of Political Parties (Ad Hoc Committee), the Draft Political Party Funding Bill, 2017 (Bill) is not going to bring about an end to corruption. This Bill is at most a necessary, but not sufficient, condition for a start in the fight against corruption.
- [2] I would propose that the purpose of the regulatory system that the Bill wishes to create should not overreach on openness by creating an over-regulated environment. Over-regulating would simply drive private funding practices underground, which would defeat the purpose of the Bill.
- [3] The majority of my submission rests on the idea that the right to vote requires making an informed vote. However, being informed does not necessarily mean having access to *all* information. In order to make an informed vote, one simply needs *sufficient* information.
- [4] I support the notion that political parties must report donations and other such monies, it is the form and function of such that I differ on. This will be explained in my submission.

Specific comments on Clause 8 regarding donations and donations in kind.

- [5] In the definitions given in Clause 8 of the Bill, a "donation" specifically *excludes* certain things. The text is:
8. For the purposes of this Chapter --
- 'donation' --
- ...
- (b) does not include --
- (i) a membership fee of the political party or any levy imposed by the party on its elected representatives; ...

- [6] Consider the following three scenarios where what is essentially a donation can be repurposed and would be explicitly excluded from reporting according to the Bill:
- [6.1] What is to stop a political party from introducing a 'Platinum' membership that has a large membership fee? Instead of someone making a donation, they could simply buy a large membership.
 - [6.2] What if a donor completed multiple (potentially fraudulent) membership forms splitting their "donation" across multiple membership fees. Alternatively, what if a donor simply paid for the membership of multiple people?
 - [6.3] What is to stop a political party from having a large donor become a member of the National Assembly for all of two weeks, have a levy of 500% imposed, and then resigning?
- [7] To accommodate such scenarios, I would propose that the Bill be amended so as to ensure that that:
- [7.1] All categories of membership that existed in the period of reporting, including the cost of such membership, and the number of members, be reported to and recorded by the Independent Electoral Commission (Commission) for publishing. The Commission should have the power to audit the validity of a membership.
 - [7.2] Any person completing a membership form can only complete one in the reporting period, and that the person is a real person that is also a registered voter. Additionally, that the cost for a membership has to be paid by the person and only that person to whom the membership form belongs.
 - [7.3] That any levy paid to a political party (by an elected representative or other person) be reported to and recorded by the Commission for publishing. This should either not be an aggregate amount, or should be aggregated by level of government.
- [8] Continuing on with Clause 8 of the Bill, the definition for a 'donation in kind' is the following:
8. For the purposes of this Chapter --
- ...
- 'donation in kind' --

...

(a) includes --

...

(iii) The provision of assets, services or facilities for the use of benefit of a political party other than on commercial terms;

...

[9] I would like to put forward the following scenario: What is to stop an individual or institution lending money to a political party, and then after some time, simply writing off the loan as bad debt? I would strike the word "other than on commercial terms" from the subsection.

What Constitutes a "Political Party"

[10] The Bill offers definitions for a "represented political party" and "political party" (which depends of the notion of a "registered party", which is not defined). But if you read these definitions, together with the activities described in Clause 7(1) of the Bill, there appears to be a mismatch.

[11] The following are given in Clause 7(1) of the Bill as, and I paraphrase here, "purposes compatible with the functioning of a political party in a modern democracy":

- (a) the development of the political will of the people;
- (b) bringing the political party's influence to bear on the shaping of public opinion;
- (c) inspiring and furthering political education;
- (d) promoting active participation by individual citizens in political life;
- (e) exercising an influence on political trends;
- (f) ensuring continuous and vital links between the people and organs of state; and
- (g) complying with the provisions of this Act.

- [12] If the list above (excluding (g)) form a pseudo "standard" for what is a "political party" - or at the very least, what is considered "politically active", then what differentiates the majority of Non-Governmental Organisations/ Non-Profit Companies, etc from a political party?
- [13] If the purpose of this Bill is to expose undue influence, what stops an NGO being formed to do the influencing on behalf of a political party? Many submissions were made on this Bill by organisations that expressly define themselves as performing the above functions, yet they are not considered "political parties"?
- [14] If the Bill is a step toward reaffirming faith in our political environment, then what the Bill considers as a "political party" needs to be expanded. If it is not, money that would go to a political party might well be shifted toward an NGO that shares the same message and branding as a political party. The only difference being that a political party is registered the contest an election and such an NGO is not.
- [15] Even Trade Unions are not considered "political parties". What is to stop then a federation of trade unions campaigning for, and behalf of, a political party, absorbing all their funding, and being immune from scrutiny by this Bill?
- [16] I would propose that, if an organisation is formed for the purposes of, or significantly engages in, shaping the political narrative, they should be subject to the Bill, in exactly the same way what we generally consider a political party to be.
- [17] However, much thought must be given as to when, how, and under what circumstances an organisation is considered to be "politically active". It would be very easy to overreach here.

Onus of Disclosure of Donations

- [18] Clause 9, Section 2 of the Bill provides the following:

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

[19] With this in mind, I have some questions for the Ad Hoc Committee to consider:

[19.1] What if there is no link between the donation and the person or entity that donated it? A member of the political organisation hears a knock on the door, and when they open it, there is nothing except for a brown box filled with printed t-shirts with the party's logo?

[19.2] What is the Commission to do with this knowledge or suspicion?

[19.3] Can the "donation" be used?

[20] I would propose, that if a donation exceeds a certain value, and the political organisation who received the donation cannot identify who donated it, then the donation cannot be used, and the Commission must take ownership of it.

[21] The Commission should be free to do with this donation what they like. If it is money, it can be deposited into the shared fund. If it is goods, they can be auctioned off and the proceeds deposited into the shared fund. The Commission could even destroy the donation if they believed it best. Whatever the Commission chooses to do, all pertinent details must be known to the public - reported and published.

[22] By taking the approach in [21], a political party cannot simply claim ignorance and still benefit from a donation. Additionally, if a person making a donation genuinely wants it to benefit the intended political party, they will identify themselves as the originator of the donation.

[23] Additionally, I would propose that the Bill makes explicit accommodations for the following:

[23.1] That members of the public be able to report knowledge or suspicions around dubious donations directly to the Commission, with immunity.

[23.2] That a person who has made any form of donation to a political party be allowed to disclose their donation directly to the Commission, with immunity.

[23.3] That should a political party fail to disclose a donation, the person to whom the donation belongs be allowed to alert the Commission, with immunity.

Prohibition on donation to member of political party

- [24] I can understand why Clause 11 prohibiting donations to members of political parties was included. But I also believe it to be short-sighted.
- [25] We have all acknowledged that money in the political system strengthens democracy in many ways, so then we also need to acknowledge that the internal democracy of a political party is similarly strengthened by money.
- [26] Banning donations to members would simply force donations underground. I can think of many scenarios where "donations" could be presented as perfectly legitimate activities that banning forced.
- [27] I would thus propose amending the Clause to reflect the following:
- [27.1] Allowing donations to members of political parties for party political purposes.
 - [27.2] That the donations made to members of political parties be subject to the same rules and regulations as those to political parties.
 - [27.3] That the Commission be empowered to be the custodian of all declarations of donations by all elected representatives across all spheres of political representation, rather than for this to be handled by individual legislatures and councils.

Allowing Anonymous Donations

- [28] I would propose that the Bill be amended to allow for anonymous donations. Though I could offer a far longer and more nuanced explanation, the following suffices:
- [29] The right to an *informed* vote is implied in the constitutional right to vote, whereas the right to privacy is explicitly guaranteed. The publishing of identifying information in the interests of an informed vote is unlikely to be regarded as a reasonable and justifiable limitation on one's right to privacy.
- [30] To set a threshold above which names are disclosed serves no purpose other than to taint those who can afford donations above that threshold with a presumption of

guilt. Rather than doing away with the threshold, this presumption can be avoided simply by allowing donations above the threshold to remain anonymous.

- [31] There are many legitimate reasons for an anonymous donation that have nothing to do with illegal activities, and there are better ways to monitor illegal activities than by insisting on disclosure of donations.
- [32] In order to strike a balance between the interests of transparency and privacy anonymous donations should be allowed, subject to the proposals outlined in [7], [20] and [21]. In addition to the political party which receives the donation knowing who the donor is, I would suggest that
- [32.1] The identity of the donor be disclosed to the Commission if requested, and that the donor's request for anonymity be respected by the Commission.
 - [32.2] That if the donation is suspected of being the proceeds from a crime, etc, the amount either be returned or deposited in the Party Fund.
 - [32.3] That anonymous donations be given an identification number by a political party, so that when listing the donations during disclosure periods, they can be tracked from one period to the next.
 - [32.4] Alternatively to [32.3], that anyone wishing to make an anonymous donation to one or more political parties do so directly through the Commission, and they assign an identification number that is unique to each party if required, where they can vet the source of the money and reason for the donation.
 - [32.5] That unique anonymous donations, if above the set threshold, be listed separately and not aggregated.
 - [32.6] That anonymous donations by an individual whose total is below the threshold in the reporting period not be required to get an identification number and need not even be known by the political party.
 - [32.7] That the amounts in [32.6] be reported in aggregate.
- [33] I would further propose, that the proposals outlined in [32] be explicitly included in the Bill and not just left to regulations.

Conclusion