DRAFT POLITICAL PARTY FUNDING BILL:

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

Submitted by: THE PUBLIC AFFAIRS RESEARCH INSTITUTE

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16 October 2017

Submission

The Public Affairs Research Institute (PARI) is an academic institution attached to the Universities of the Witwatersrand and Cape Town which undertakes research and policy development in relation to public administration and state institutions. Our approach is multi-disciplinary, and we aim to be evidence based and collaborative, as well as critical and independent. We have pioneered the field of institutional studies in South Africa, undertaking some of the leading research work on the nature and functioning of the South African state. PARI has a particular interest in the issue of political party funding because it impacts on the functioning of the state in two interrelated ways.

Deficiencies in the regulation of political party funding have led to the rise of business models within parties in the control of the state in which the party is funded on the back of deals involving the leveraging of state power. This usually takes the form of an exchange, between business and a political party, of finance for favourable regulatory or procurement decisions.

Power relations in this exchange vary. In some cases, powerful business actors are seen to exploit both state and party in their own interests. In other cases, emerging entrepreneurs are exploited by parties, with irregular and substantial solicitation of resources for party political activity, under threat of being denied fair competition for government contracts, serving to undermine their productive growth.

Parties also make use of state resources in various less obvious ways to assist them in their campaign activities, ranging from denying other parties or their supporters legitimate access to a range of state resources, to using employment in the administration as a base for party political activities. The latter activities are not explicitly criminalised in terms of legislation, although they arguably contravene provisions of the Constitution (RSA 1996), the Electoral Act (No. 48 of 1997) (RSA 1998) and the Promotion of Administrative Justice Act (No. 3 of 2000) (RSA 2000), as well as codes of conduct for public representatives and civil servants. Both of these mechanisms flourish in circumstances where the institutional capacity of the state is weak, and often the capacity of the state is deliberately weakened for this purpose. This creates a vicious cycle in which the state is progressively and systematically brought under political control for purposes other than the public interest, blurring the crucial line between party and public administration.

Given the current state of the regulation of political party funding, the Draft Political Party Funding Bill is timely and ought to be expedited. This brief submission makes recommendations towards strengthening the Draft Bill and its future implementation should it be passed into law.

1. The Draft Bill

The Draft Bill in its current form goes a long way towards addressing the shortcomings in our current system. The Bill builds on the existing system in important and highly necessary ways to move towards striking a balance between the public funding of political parties and allowing for private donations in fair and transparent ways, thus closing the gaps where our current system falls short. This extends to prohibiting the use of government resources in support of or against political parties, and setting limits to the private funding of political parties. This would bring the South African political party funding system in line with how the use of both public and private money is regulated in mature democracies the world over. Further, the Draft Bill establishes the principle of transparency more firmly in the South African electoral system by stipulating unambiguous disclosure requirements for political parties and introducing penalties for failure to comply with legislative requirements.

While this Draft Bill and cognate legislation, including the Promotion of Access to Information Act, can be strengthened, we believe there is an urgent need to put in place a political party funding law of this nature in South Africa. It is thus our view that *this Draft Bill should be concluded and brought before the National Assembly without delay*. In keeping with this view of the urgent need for such a law to be in effect, we shall limit our comments to a few brief recommendations.

2. Recommendations

a) REGULATIONS

Section 23(1) stipulates that the President may make regulations in respect of matters contemplated in 6(2), 7(2)(e), 10(1) and 14(2) by proclamation in the *Gazette*. Both sections 6(2) and 10(1) concern matters that are central to the success of any law regulating the funding of political parties. 6(2) concerns the prescribed funding Formula based on equity and proportionality while 10(1) deals is on the prescribed Threshold above which all donations must be disclosed.

The Formula is crucial for establishing a system of funds allocation that will be seen to be fair by Represented Political Parties in respect of both funds from the Represented Political Party Fund and the Multi-Party Democracy Fund. At the same time, the success of regulating the private funding of political parties will depend centrally on the Threshold being set at the outset.

We, therefore, recommend that Regulations be developed simultaneously with the Bill and that the Committee recommend to Parliament that the Regulations be proclaimed at the same time as, or soon after, this Bill is signed into law by the President. Our view is that this Bill will stand or fall on the strength of the regulations on the Formula and Threshold. The

regulations are thus of central importance. The Bill will have no effect without the regulations. Hence its promulgation in the absence of regulations will be of little significance.

b) THRESHOLD

We propose that the Committee make a strong recommendation that the President sets the Threshold for disclosure relatively low in the regulations. A high threshold would defeat the purpose of the Bill, allowing individuals and corporates to subvert the regulation of the funding of political parties that this Draft Bill is designed to effect by potentially allowing the donation of substantial amounts of money by individuals and businesses without the requirement to disclose such donations.

c) PARTY-OWNED BUSINESS INTERESTS

The Draft Bill is silent on the business interests of political parties generating funding for the political party in question by doing business with the state. We recommend that among prohibited donations be included funds generated by businesses that are directly owned by, of are closely associated with, political parties. Similarly to the prohibition of bias by public servants when discharging their duties in the Code of Conduct contained in regulations issued in terms of the Public Service Act (No. 103 of 1994) (Department of Public Service and Administration 2016), bias and potential corruption that results from companies owned by, or associated with, political parties doing business with the state should be prohibited.

d) LOCAL GOVERNMENT AND INDEPENDENT CANDIDATES

The Draft Bill only makes passing reference to the funding of political parties and independent candidates by municipal councils in clause 22. While the prohibition of the funding of political parties is in line with the Constitution and the Financial Management of Parliament and Provincial Legislatures Act (Act no. 10 of 2009), as contemplated in 22(1) of the Draft Bill, it is our view that the funding of independent candidates, although seemingly outside of the scope of this Draft Bill and the mandate of the Ad Hoc Committee, requires consideration. The Draft Bill only considers funding for political parties represented at national and provincial levels. The absence of a mechanism for independent candidates and for small political parties with representation only at local government level to be able to raise and to receive funding will imperil such independent candidates and political parties, and serve to undermine their ability to sustain themselves even if elected into office. This has the potential ultimately to undermine democracy.

We recommend that the definition of "represented political party" in the Definitions be amended to include independent candidates and political parties represented at local government level.

e) ADMINISTRATIVE FINES

Clause 19 indicates that the Commission "may impose an administrative fine in accordance with Schedule 1". Our view is the sums outlined in Schedule 1 as the maximum permissible fines for contravening the Political Party Funding Act, 2017 (once enacted) are too low to

serve as a deterrent to political parties that have the ability to raise large sums of money. The lowness of the sums contemplated in the schedule is such that both wealthy potential donors and political parties can deliberately contravene the law and factor the administrative fine into their budget.

We recommended that fines be sufficiently stiff to discourage untoward behaviour. Instead of being the fixed amounts as laid out in Schedule 1, these penalties could be in the form of fines that are percentages of the allocation due to the offending party from both the Represented Political Parties Fund and the Multi-Party Democracy Fund. The possibility of losing significant portions of their funding in addition to the potential loss of donations received in contravention of the law is likely to serve as a sufficient deterrent and thus encourage compliance with the law.

3. Future consideration

The Political Party Funding Draft Bill is a good start in regulating political party funding in South Africa. The country deserves that the Bill be passed into law in an expeditiously manner as it is long overdue. For future amendments to the law regulating political party funding, we suggest that limits on how much money political parties may spend on election campaigns be considered. A limit on the amounts allowable would reduce the pressure on political parties across the board to raise ever larger amounts of money. It would thus reduce the need to undertake unlawful actions by representatives of political parties in order to raise the require amounts of money for running election campaigns. Our view is that this kind of regulation would not be feasible at this stage and should thus be held in abeyance for future consideration.

References

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