



RIGHT2KNOW

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R2K supplementary submission to the Ad Hoc Committee on the Funding of Political Parties

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ABOUT R2K

The Right2Know Campaign (R2K) launched in August 2010 and has grown into a movement centred on freedom of expression and the free flow of information. We are a democratic, activist-driven campaign that strengthens and unites citizens to raise public awareness, mobilise communities and undertake research and advocacy that aims to ensure the free flow of information necessary to meet people's social, economic, political and ecological needs and live free from want, in equality and in dignity.

Our Vision

"We seek a country and a world where we all have the right to know – that is to be free to access and to share information. This right is fundamental to any democracy that is open, accountable, participatory and responsive; able to deliver the social, economic and environmental justice we need. On this foundation a society and an international community can be built in which we all live free from want, in equality and in dignity."

Our Mission

- To co-ordinate, unify, organise and activate those who share our principles to defend and advance the right to know.
- To struggle both for the widest possible recognition in law and policy of the right to know and for its implementation and practice in daily life.
- To root the struggle for the right to know in the struggles of communities demanding political, social, economic and environmental justice.
- To propagate our vision throughout society.
- To engage those with political and economic power where necessary.
- To act in concert and solidarity with like-minded people and organisations locally and internationally.

For more information about the Right2Know Campaign, including financial records, please visit www.r2k.org.za.

Introduction

This is a supplementary submission to the comments made by the Right2Know Campaign to Parliament's d Hoc Committee on the Funding of Political Parties on 21 July 2017¹.

At the outset we acknowledge the progress made on the Committee Draft Bill on Funding of Political Parties.

For the sake of brevity, this submission will not restate all the points made in our initial submission, but will focus on a few key points.

Need for retrospective disclosure

- There is a critical need for political parties to make historical financial information available. In R2K's previous submission, this was referred to as a 'moment of truth'.
- At present there is no reliable public picture of political parties' finances and funding situation. Rough estimates suggest in the 2009 elections, the political parties together spent about R550 million on campaigning, with a small fraction of that (R93 million) coming from public funds. It has been suggested that spending in the 2016 local government elections may have been much higher, with one ANC office bearer suggesting the party's electoral budget was in the region of R1-billion. Even these basic numbers are essentially speculation.
- There are a range of questions that must be answered in order to critically evaluate the draft Bill. These include:
 - How many donations do political parties receive?
 - What is the average size of donation, and what percentage of donations fall below or above the proposed threshold for disclosure?
 - What are parties' total income and expenditure?
 - What is the sum of direct donations that will be prohibited under the draft Bill? (In other words, what funding shortfall will the regulations create?)
- Detailed information about parties' finances and spending is generally in the public interest. However, it is also of material importance to the Committee's task of regulation. Without this information, the draft Bill seeks to regulate party finances without a common understanding of the current conditions of party finances and whether the draft legislation is suited to these conditions. Parliament 'legislating in the dark'. When it comes to the need for public participation on the draft Bill, the public is especially

¹ The submission is available online: <http://www.r2k.org.za/2017/07/21/political-party-funding-submission/>

disadvantaged since it is assumed that Members of the Committee each have some knowledge of their own party's finances, but no clear picture of the finances of each other political party. Members of the public who are not senior leaders in any political party do not have even that limited insight.

- R2K therefore urges the Committee once again to ensure that all parties to make a joint disclosure of their previous financial records, as part of this reform process, to give the people of South Africa a necessary 'moment of truth', and bolster the Committee's ability to pass effective and appropriate regulations. It is entirely feasible to make such a disclosure without breaching legitimately confidential information; where it is genuinely necessary to prevent the disclosure of certain information, the record holder may sever (redact) sensitive information from a record before making it public.
- In the absence of this information, we are not in a position to make detailed comment on the draft Bill's provisions. However, a few additional points must be made.

Expenditure cap

- It is unfortunate that at present there is no benchmark on what reasonable campaign expenses are, in the absence of the disclosures discussed above. It is important that the legislative and regulatory framework set reasonable guidelines for national and provincial campaign spending so as to promote constructive democratic contestation among parties.

Public Disclosures

- Regular and proactive public disclosures of donation information are crucial in enabling the the public, civil society and the media to monitor compliance by political parties, and build a culture of accountability. In the recent *My Vote Counts vs the President of the Republic of South Africa and Others* judgment, the link between the public's right to know and the exercise of meaningful political rights was affirmed.
- The draft Bill makes provision for public disclosures annually, with more frequent disclosures in the lead-up to an election year. In our previous submission to the Committee, we proposed that the disclosures of information should be on a quarterly basis.
- We remain of the view that quarterly disclosures give the best (reasonable) effect to the intentions of the Bill -- to provide for regular, proactive disclosures of direct funding to political parties. Such public disclosures should apply to amounts above the prescribed threshold. We discuss threshold amounts in more detail elsewhere in our submission.

- The Bill correctly includes provisions for public disclosures of donations, which include goods and services. We are however concerned about the blanket exemption of *'personal services provided on a voluntary basis.'* We propose a prescribed value of such donations be provided, and those above the prescribed value be subject to the quarterly public disclosure regime.
- Transparency on the side of the private sector and corporate donors will be crucial to the effectiveness of monitoring donations. In our previous submission, we called for a dual disclosure process, where proactive disclosure by private companies of all corporate donations to political parties. We maintain the such a provision should be included in the Bill.
- Donations received by political parties through the multi-party democracy fund are subject to a secrecy clause. While donations to the Fund provide some distance between political parties and their donors, the risk of undue influence is not completely absent. We therefore propose that all donations above a prescribed threshold must be disclosed on a quarterly basis.

In summary, we ask for:

- Quarterly disclosures of all direct donations, goods and services and donations in kinds, above a prescribed threshold.
- Proactive public disclosures by private companies of all donations to political parties
- Quarterly disclosures of donations to the Multi-Party Democracy Fund above a prescribed threshold.

Bans on donations

- The draft Bill provides for necessary prohibitions on donations where the risk of undue influence, and a resulting threat to multi-party democracy, is extremely high. Not even public disclosure in these unique instances can alleviate the threat. We offer no objections with the prohibitions provided for in the Bill.
- However, the Bill is silent on two major areas where corruption and the undue influence of money in politics have marred our democracy:
 - Donations from private companies doing business with the state and;
 - The activities of political party investment vehicles, notably the ANC's Chancellor House.
- A history of corruption scandals, particularly in public procurement at all levels of government, already demonstrate the risk of this unique relationship. In R2K's previous

submission, we called for a complete ban on donations from private companies doing business with the state. We repeat this call in this submission, with the addition that where a company or its subsidiaries does business with a state, all executives and board members, beneficial owners, and spouses thereof, should make proactive disclosures of any donations to political parties.

- Some of the major funding corruption scandals have involved political party investment vehicles, and indeed could be said to be at the heart of political party funding corruption in South Africa. In the absence of a complete ban on political party investment vehicles, we call at the very least for a mandatory annual disclosure of the investments made by such funds and prohibition on their doing business with the state.

Disclosure threshold

- Recognising the deep seated inequality of our society, R2K has proposed for the minimum threshold for disclosures to be linked to indicators of continued economic, social and political inequality, such as the average household monthly income.
- However, it is necessary to reiterate that without the disclosure of parties' past financial profiles, it will be impossible to identify an appropriate and targeted threshold for donations.
- Any donations from substantially the same source within a calendar year must be disclosed within the quarterly disclosures as soon as they surpass this threshold.
- We consider any donor that is direct family, a shareholder or beneficial owner, a holding company or majority owned subsidiary or a trustee of another donor to be substantially the same donor, as identified in prior public submissions.

Public funding

- We propose that there is greater transparency and more regular and detailed publication of how public funds are both allocated and spent.
- Recognising that many public funding models on the continent still disadvantage smaller parties while promoting access to public resources of the majority, governing party, we ask the Committee to reassess the equation for sharing this public funding in order to safeguard and strengthen multi-party democracy. Any prescribed formula to this effect should adjust the current "90/10" split to ensure a larger minimum amount for every party.

- In terms of allocation, the national and provincial allocations should be separated out to ensure that the national and provincial realities in relation to representivity are affirmed.
- The national allocation ought to be divided according to the percentage of seats occupied by the parties represented in the National Assembly with a prescribed minimum amount;
- The provincial allocations ought to be divided equally across the 9 provinces and within the provinces divided according to the percentage seats occupied by the parties represented in the respective provincial legislature (with a prescribed minimum amount for the smallest parties);
- Regulations governing the spending of the public subvention must be enacted so as ensure they meet the reasonable campaign expenses for the parties.

Conclusion

The Right2Know Campaign wishes again to acknowledge the Committee's efforts to meaningfully reform the current secret and unregulated relationship between money and politics.