



**SUBMISSION TO THE ADHOC
COMMITTEE ON THE FUNDING
OF POLITICAL PARTIES**

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1 INTRODUCTION

At the outset it is acknowledged that the development of the Bill has come a long way, and that SALGA attended almost all meetings of the ADHOC Committee in order to fully understand the basis of each proposed clause.

The Bill in its current form is supported in principle, with the exception of a number of specific clauses which are illuminated in this submission with specific proposals for insertion of amendment. The structure of this submission is not limited to specific clauses but provides a sufficient articulation of the constitutional and legislative basis for municipalities to appropriately structure themselves to meet requirements necessary for a firm multi – party democracy. This submission therefore is meant to facilitate a meaningful engagement with the ADHOC Committee for purposes of creating a shared understanding of local government and therefore consensus on why it is justified for the extension of this benefit for the local sphere of government.

2 CONSTITUTIONAL AND LEGISLATIVE CONTEXT

2.1 Introductory context

The strategic thrust of all Constitutions across the community of nations seek to **articulate**, although with differing degrees of **intensity and detail**, the **shared aspirations** of a nation; **the values** which bind citizenry and institutions together; the **envisioned society**, the **character of the state** and a **form of government** considered appropriate for each of these nations.

Correspondingly, the South African Constitution which across the globe has been hailed as one of the most progressive in the world, sought to expressly provide **unambiguously**, the character of our state and the preferred form of government. Flowing therefrom, the state is constituted as National, Provincial and Local Spheres of Government which are distinctive, interdependent and interrelated. Linked thereto, the Constitution allocates original powers and functions to the three spheres of government on an either exclusive or concurrent basis in accordance with Schedules 4 and 5. Unlike at a national and provincial levels where in terms of sections 85 and 125 respectively the government is vested with executive powers in terms of section 151 (2) the Constitution vests both executive and legislative powers in Municipal Council thereby enjoining a municipality in addition to implementing national and provincial policies and legislation to develop and preside over the implementation of its own by-laws. Specifically for the local sphere of government in section 152 (1) (a) (e) the

Constitution enjoins municipalities to realise five (5) objectives including the under – listed critical objectives.

- (a) To provide democratic and accountable government for local communities;
- (e) To encourage the involvement of communities and community organisations in the matters of local government.

The distinctive element recognises that each sphere exists in its own right; it is the final decision-maker on a defined range of functions and is accountable to its constituency for its decisions. However, in terms of section (1)(c) and (d) the constitution unambiguously states that; the Republic of South Africa is one, sovereign, democratic state founded on the following values:

- (c) Supremacy of the constitution and the rule of law.
- (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness. In the subsequent section (2) the **supremacy** of the Constitution is emphasised and it is explicitly stated that law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

The Constitution further imposes numerous other obligations to municipalities. For instance, in terms of section (6) (b) the Constitution states that municipalities must take into account the language usage and preferences of their residents. This provision is inextricably linked to section (16) (1) (b) which guarantees for citizenry the freedom to receive or impart information or ideas and by implication includes the spirit of section (32) (1) (a) and (b) on access to information and the concomitant provisions of the Promotion of Access to Information Act, 2 of 2000; all of these constitutional and legislative provisions, impose obligations to all the three spheres of government included local government to ensure meaningful participatory democracy.

2.2 Legislative Basis for Effective Interface between Citizenry and Municipalities in South Africa

2.2.1 Introduction

The advent of democracy in 1994, and the attendant maturing system of local government in (2000), brought about a new democratic local governance system which promotes adherence to fundamental constitutional values and principles. Such values and principles include transparency, accountability and an open and inclusive system of governance through community involvement in governance, and planning as well as democratisation of development.

The Constitution has entrenched local government as a sphere of government, alongside the national and provincial spheres. With this constitutional recognition, the

local sphere of government is now vested with the mandate of development of the local communities by providing services that improve the social and economic conditions of the people. This mandate of local government is precast in the concept of Developmental Local Government which has been defined as local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs thereby improve the quality of their lives. The Constitution further provides for a variety of fundamental rights that constitute the core of the mandate of municipalities which in their dispersal require a meaningful involvement of the people.

To further articulate the developmental mandate of a democratic local government system in South Africa, the Local Government White Paper (1998) outlined mechanisms to ensure citizen participation in policy initiation and formulation, monitoring and evaluation of decision-making and implementation. Flowing from the Constitution of the Republic and the vision to work towards a truly developmental local government system; several transformative legislative precepts were enacted and these are summarised below with a specific foci on community involvement and public participation. While the intention is not to outline all crucial legislative provisions for purposes of demonstrating how crucial political constituency work is in local government in South Africa. These legislative precepts are succinctly outlined below;

2.2.2 White Paper on Local Government

The **Local Government White Paper (LGWP) of 1998** substantively outlined the strategic vision for local government transformation in South Africa and in particular proposes four principles for community participation e.g.

- i. To ensure political leaders remain accountable and work within their mandate;
- ii. To allow citizens (as individuals or interest groups) to have continuous input into local politics;
- iii. To allow service consumers to have input on the way services are delivered;
- iv. To afford organised civil society the opportunity to enter into partnerships and contracts with local government in order to mobilise additional resources.

As stated above, the White Paper accordingly encourages municipalities to develop mechanisms to ensure citizen participation in policy initiation and formulation, and the monitoring and evaluation of decision-making and implementation. The White Paper is a broad statement of intent and therefore carries very limited compelling statutory mechanisms as such, this broad vision for local government transformation

substantively informed a number of transformative legislations whose relevant sections are summarised below;

2.2.3 Local Government Municipal Structures Act 1998

The Structures Act unequivocally compels the sector to establish a democratic system of local government in line with the Constitution of the Republic. The Act clearly sets the tone in terms of the intended qualitative departure from an undemocratic system of local government into a democratic system whose structures are prefigured to kowtow with the fundamental values of the Constitution. In its preamble the Act states *that* **WHEREAS** *past policies have bequeathed a legacy of massive poverty, gross inequalities in municipal services, and disrupted spatial, social and economic environments in which the people continue to live and work;*

It further states that, WHEREAS there is fundamental agreement in the country on a vision of democratic and developmental local government, in which municipalities fulfil their constitutional obligations to ensure sustainable, effective and efficient municipal services, promote social and economic development, encourage a safe and healthy environment by working with communities in creating environments and human settlements in which all people can lead uplifted and dignified lives;

The Structures Act therefore is a key piece of legislation for community involvement and public participation at the local sphere of government in South Africa. The Act, in sections 71 and 72 (extensio) provides for the establishment of Ward Committees in all Metropolitan and Local Municipalities to enhance participatory democracy. The explicit obligation on municipalities in terms of this provision is a requirement to ensure a system of governance that through well-established mechanisms strives to balanced aggregative and deliberative forms of democratization. The roles, responsibilities, and regulations pertaining to these Ward Committees are set out in part four of the Act. The Act further provides a broad guide in terms of how to constitute Ward Committees.

Schedule five of the Act outlines some of the responsibilities of Ward Councilors and these encapsulate the requirement for quarterly "progress" reports to the public. In section (72 (3)) as required in terms of section (152 (1) (e)) of the Constitution, elaborates on the roles and functions of Ward Committees, whose primary objective is to enhance participatory democracy in local government.

With regard to the expected role of the Executive, the Act compels them (in section (44) (3) (g) to produce an annual report reflecting the extent to which the local community has been involved in municipal affairs. The Executive is further compelled

to ensure that due regard is given to public views, and a report on the effect of consultation on the decisions of the Council. Correspondingly, in Schedule 5 the Act stipulates that each Councillor must report back quarterly to the public, and that indicators have to be developed to inform these quarterly reports. The Act in sections (73 (4)) and (73(5) (d)) provides for a municipality to commit resources to enable Ward Committees to perform their functions and exercise their powers effectively.

2.2.4 Local Government Municipal Systems Act 32 2000

The Local Government Municipal Systems Act is of equal importance in relation to the parameters of community involvement and public participation. In its broad legislative statement of intent, the Act seeks to define the legal nature of a municipality as including the local community within the municipal area, working in partnership with the municipality's political and administrative structuresⁱ; It also seeks to provide for community participation; to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government;

In its preamble the Systems Act sets the tone to a qualitatively break with the past and states that; **WHEREAS** a fundamental aspect of the new local government system is the active engagement of communities in the affairs of municipalities of which they are an integral part, and in particular in planning, service delivery and performance management; it further states that; **WHEREAS** the new system of local government requires an efficient, effective and transparent local public administration that conforms to constitutional principlesⁱⁱ;

In subsequent provisions the Systems Act emphasizes the need for community participation in governance processes. Furthermore, it sets out various methods and obligations for municipalities in terms of facilitating engagement with the communities they serve. These include following:

- i. In section (16), the Systems Act compels municipalities to develop a culture of municipal governance that complements formal representative government with a system of participatory governance. In terms of this section, municipalities, "must" for this purpose; (a) encourage and create conditions for the local community to participate in the affairs of the municipality, including in (i) the Integrated Development Plan, (ii) the performance management system, (iii) performance review processes, (iv) the budgeting processes, and (v) strategic decisions relating to services.

- ii. Further thereto, in terms of section (16(1) (1)) specifically, municipalities must also contribute to building the capacity of local communities to enable them to participate in the affairs of the municipality. In Section (16 (1) (a) (iii)) it refers to public participation in the Performance Management System, primarily through ongoing participation and the production and dissemination of the annual report. Sections (42) and (44) also related to the Performance Management System stipulates requirements for setting targets and indicators and criteria for implementation.
- iii. Related to the foregoing are provisions of section (21) which compels municipalities to put in place public communications processes. This can happen through newspapers, radio broadcasts or official notices at municipal offices.
- iv. Section 21(4) (5) further compels each municipality to institutionalise systems and processes that are geared to equip municipal inhabitants to engage with the Council in terms of public written and oral submissions and the requirements to draft and make accessible simplified forms for such purposes including in instances where assistance should be provided to those who are unable to write or complete such applicable forms.
- v. The Systems Act substantively addresses all aspects that are crucial to empower the voice of communities and municipal inhabitants in particular in terms of budgeting, planning, performance planning and reviews, reporting, setting of tariffs etc.

Fundamentally, the Systems Act instructively outlines the responsibilities for Ward Councilors including a requirement for a minimum number of meetings that must be convened at ward level for reporting purposes. In terms of section (5) (1) (e) (i)) each municipality is obliged to ensure that all Council proceedings are open to the public including an obligation to notify the public of such meetings; read sections (16, 17, 18, 19, 20, 21, 21A, & 21B) of the Act.

2.2.5 Municipal Planning and Performance Regulations (2001)

This is further detailed in the Local Government Municipal Planning and Performance Management Regulations (2001) where in terms of Section (15) communities should participate in monitoring, measuring and reviewing municipal performance. The same section enjoins a municipality if there are no other municipal wide structures for community participation, to establish a forum. Such fora are to be representative and enhance community participation in the integrated development planning process in the development, implementation and review of municipalities' performance management

systems. These regulations compel municipalities' to allow the community to participate in the setting of appropriate key performances indicators and performance targets.

2.2.6 The Local Government Municipal Finance Management Act no. 56 of 2003

The MFMA relates more specifically to the financial management of local municipalities. The Act is relevant to public participation to the extent that it promotes financial accountability and transparencyⁱⁱⁱ. Financial matters must, in terms of the Act, *be discussed at council meetings and included in annual reports*, as such, section (127 (5)) specifically states that municipalities must make public, and invite local communities to submit representation, immediately after their annual reports are tabled. It further state that in terms section 129 (3) *municipalities must make their annual reports public within seven days of adoption of such a report.*

More specifically, section (21(1) (b)) of the MFMA, compels the Mayor to table the budget and the IDP at least ten months before the start of the budget year. The MFMA further instructs the Accounting Officer (MM) in terms of section (22 (a)) to oversee the process during which the budget is made public and must invite public responses on the budget. In line with the two requirements above, the Council has a collective obligation in terms of section (23 (1)) to consider the views of the community with regard to the budget. Section (53(3)(a)) further enjoins the Mayor to be accountable for monthly revenue and expenditure projections, quarterly service targets, and performance indicators that must be made public not later than 14 days after the implementation plans have been approved. The Act further enjoins all including other spheres of government who play an active role in terms of sections (141(3) (a) (iv) (c) (i) and (141(3) (c) (ii) (bb) of the Act to consult communities and community organisations during the process of formulating a Financial Recovery Plan which by implication is applicable to municipalities that are under administration or are receiving an intensive hands on support. Most importantly, the act is designed to complete the participatory planning continuum. The assumption is that, a community and civil society organisations shall have participated meaningfully in packaging of the situational analysis, prioritization and development of targets as well as indicators as provided for in other legislations. The MFMA further provides in section (133) for community organisations and civil society to address a duly constituted council when it considers the annual report.

The above is a high – level exposition of key local government legislative prescripts guiding the local sphere of government to nurture a culture of inclusive governance and public participation. A proper understanding of these is crucial in order to appreciate

the strategic importance of providing sufficient resources to municipalities to consolidate constituency work and deepen democracy. Read together with the provisions of the Constitution, it clearly demonstrates how – non – negotiable is inclusive participatory democracy. As a constitutional requirement and a qualitative defining feature of South Africa's hard earned democracy, the local sphere of government as is the case with the provincial and national spheres should be resources to ensure that local democracy is deepened.

2.3 Political Party Funding a Global Phenomena

Literature is replete with scientific backed perspectives on the shifting trends which globally have led to Political Parties being vulnerable to private influence thereby compromising democracy. The traditional model of Political Parties living completely or to a large extent on the regular contributions of their members does not apply anymore in practice. The importance of other sources of income has increased enormously. These developments in turn have created new opportunities for potential influence on the part of those willing to give money to a political party in exchange for subjective influence. This poses a huge danger on the quality of democracy and diminished the value of citizenry and citizen's vote and voice.

The organisation and day to day functioning of Political Parties, Community based Organisation and Independent Candidates in interfacing with citizens and all forms of social formations has wittingly and/or unwittingly created a link between money, and the actual practice of democracy thereby devastatingly diminishing the value of community voice and as stated above the power of choice in terms of by who and how a municipality should be governed.

This relationship has created concerns over the past few years in South Africa, as it became evident that money flows from private and at times sinister sources has often compromised the autonomy of Political Parties. Whilst this may seem too glaring at a National and Provincial level, it has actually been extremely destructive at a local government level as well.

With an increasing disconnect and a growing trust deficit between citizens and their elected leaders, a decline in political activism, and growing sophistication of anti-democratic forces, both Political Parties and Community Organisations are indispensable, voluntary and informal associations where people share commonly understood values, customs and attitudes to their role in politics is the corner stone of our democracy.

Increasingly the mechanism of aggregated political representation seems ineffective in accomplishing the central ideals of democratic politics as such this system fails to facilitate active political involvement of the citizenry, forging political consensus through dialogue, devising and implementing public policies. The effectiveness of this system of government requires a perfect balance between the aggregative and deliberative models of democracy where post-election there is a sustained interface between the elected public representatives and the general population on a variety of governance, politics and development matters.

In the local government sector as is the case in other spheres as well, Political Parties, Community Organisations and Ward Councillors are an essential component of democracy. By competing in elections, mobilizing citizens behind particular visions of society and through their performance they offer citizens meaningful choices in governance, avenues for political participation and opportunities to shape a country's future. When public confidence in Political Parties is compromised, the entire democratic process suffers. As in all democratic societies, in South Africa Political Parties are expected to represent citizens' multiple and often conflicting interests.

3 WHY A FORMALISED, STRUCTURED AND FUNDED SYSTEM CONSTITUENCY IN LOCAL GOVERNMENT WILL ENHANCE EFFORTS TO DEEPEN DEMOCRACY

3.1 Introduction

Since the dawn of democracy in 1994, there has been an unquestionable commitment in terms of the Constitution and the various subordinate legislative provisions in South Africa to ensure inclusive participatory governance. This commitment to participatory governance is reflected in an impressive host of laws and policy documents which not only seeks to implant a culture of inclusive participation, accountability, openness and transparency but also entrench these provisions as compelling legislative precepts so that all municipalities comply.

However, it is SALGA's considered opinion that there is an inherent contradiction between the explicitly stated form of government and the character of South Africa's democracy required of the three spheres of government in terms of section (1) of the Constitution and the following;

- (a) The omission or the exclusion of the local sphere of government in the Constitutional provisions in terms of section 57 (1) (c) which is applicable to the

National Parliament and its attendant provision in terms of section 116 (2) (c) which is applicable to the Provincial Legislatures.

- (b) The omission or exclusion of the local sphere of government in the Constitutional provisions in terms of section 236 to enact a national legislation to provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis to enhance multi-party democracy. That such a legislation creates a legislative framework for funding to be utilised by Political Parties for purposes arising from their functioning as political parties in a modern democracy. The implied implication of this exclusion creates a misleading impression that the local sphere of government does not have a similar obligation to realise the required multi-party democracy.
- (c) The meagre allocation to the local sphere of government from the national fiscus thus making it practically impossible for all municipalities to provide sufficient resources for inclusive participatory governance and deepening of democracy.

SALGA has noted thus, that in line with the provisions of sections 57, 116 and 236, Parliament has put in place a number of legislative and policy instruments to regulate appropriation of money for purposes of funding of Political Parties and the leader of the Official Opposition. Succinctly it can be stated that there are several sources of funding available for represented political parties in the legislative sector.

- a) **Constituency funding** which is designed to enable a political party to do its political work which must include, educating voters, interacting with voters and creating a general awareness.
- b) **Caucus funding** which assist each represented political party to undertake its caucus activities
- c) **Funding for the leader of the opposition** this funding general is aimed at providing any necessary administrative support to the office of the leader of the opposition including the ruling party.
- d) **Election Campaign funding**: this specific fund unlike the other three above is managed by the Independent Electoral Commission to enable represented political parties understand its elections campaign.

These are funding windows that are at the moment only extended to Political Parties that are represented at National and Provincial Legislatures. The draft Bill does not seem to suggest any amendment to this arrangement. It would thus appear that the Bill

has been developed in response to the public discourse demanding stringent legislative provisions to regulate Political Party Funding.

3.2 The Funding of Political Party Bill

In response thereto on the 6th of May 2017 the National Assembly resolved to establish an AD HOC COMMITTEE, in terms of National Assembly Rule 253 (1) (a), to “enquire into and make recommendations on funding of political parties represented in national and provincial legislatures in South Africa with a view to introducing amended legislation if necessary and, in so doing, consider –

- a) the model of public and private funding for political parties; and
- b) the need for, and possible means of, regulating private funding in all its forms as well as investment entities owned by political parties

The ADHOC Committee has since published the aforementioned Bill still without any provisions extending this benefit to the local sphere of government. The Bill in its current form seeks to repeal The Public Funding of Represented Political Parties Act 103 of 1997.

Considering the above stated constitutional limitations in terms of lack of provisions for political party funding in the local sphere of government, SALGA firmly believes that the constitutional mandate of the National Assembly in terms of **section 44** which enjoins national legislative with the authority in terms of sub-section (a) the power

- (i) To amend the Constitution; as well as
- (ii) To pass legislation with regard to any matter, including some matters within a functional area listed in Schedule 4.

The Constitution in terms of section (2) further states that Parliament may intervene, by passing legislation in accordance with section 76(1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary

- (a) To maintain national security;
- (b) To maintain economic unity;
- (c) To maintain essential national standards

3.3 Comments on certain clauses of the Bill

The Bill as it is, currently continues to make provisions for **only represented Political Parties** and therefore excludes the local sphere of government. For the Bill to be applicable to the local sphere of government SALGA is of the view that certain provisions will have to be amended and these include:

To regulate the public and private funding of political parties, in particular: the establishment and management of Funds to fund represented political parties adequately; to prohibit certain donations made directly to political parties; to regulate disclosure of donations accepted; to determine the duties of political parties in respect of funding; to provide for powers and duties of the Commission; to provide for administrative fines; to repeal the Public Funding of Represented Political Parties Act, 1997 and provide for transitional matters; and related matters.

- SALGA proposes inclusion of the following in the **long title** of the Bill
 - o **Community Organisations and Ward Councillors**
- SALGA proposes insertion of throughout the Bill
 - o including represented Community Organisations and Ward Councillors
- **Definitions**
 - o Financial year: proposes flexibility to accommodate the financial year ending 30th June each year which is applicable to local government
 - o Represented political party: and municipal council
- **Section 2: Represented Political Party Fund**
 - o Amend sub – section (1) to include and Community Organisations and Ward Councillors
 - o Amend sub – section (2) and represented in Municipal Councils
- **Section 3: Establishment of Multi-Party Democracy Fund**
 - o Amend to include represented Community Organisations and Ward Councillors in Municipal Councils
 - o
- **Section 6: Allocation and payment of money to represented political party**
 - o Amend sub – section (3) (a) and (b) and sub-section (6) to include represented Community Organisations and Ward Councillors in Municipal Councils
- **section 7: Purposes for which money from these Funds may be used**

- *sub – section (2) (a) (i) SALGA supports this provision subject to an agreement with respect to inclusion of the Political Parties, Community Organisations and Ward Councillors represented in Municipal Councils*
- *sub – section (2) (b) amend to include Municipal Councils*
- **Section 8: Direct Funding of Political Parties**
 - **Donation** *sub – section (a) and (b) amend to insert and Community Organisations and Ward Councillors in Municipal Councils*
 - **Donation in kind (section (a) (iv) is incomplete)** *sub – section (a) amend to include, Community Organisation and Ward Councillor in Municipal Councils*
- **Section 9: Prohibited donations**
 - *Sub – section (1) (2) and (3) amend to include Community Organisations and Ward Councillors*
- **Section 10: Disclosure of donations to political party**
 - *Sub – section (1) amend to insert Community Organisation and Ward Councillor in Municipal Council*
- **Section 11: Prohibition on donation to members of political party**
 - *Sub – section (1) insert Community Organisation and Ward Councillor in Municipal Council*
- **Section 12: Political Party to furnish information to Commission**
 - *amend the sub-heading to include and **Municipalities** (this is linked to SALGA's proposal for funding of Community Organisations and Ward Councillors to be directly allocated to a Municipality to be managed by the Office of the Speaker)*
- **Section 13: Represented Political Party to account for money paid to them by the Funds**
 - *Amend the sub – head to include a Municipality*
 - *Sub – sections (1) and (1) (a) (2) (a) (d) (ii) and (d) (i) (ii) (3) (a) (d) (5) insert and Community Organisation in Municipal Councils*
- **Section 14: Unspent money at the end of the financial year**
 - *Sub – sections (1) (2) insert and Municipalities*
 - *Sub – section (3) include provisions of section 139 (1) (c) with respect to dissolution of a Municipal Council w.r.t. the second part of the section insert Municipality*

- **Section 15: Commission's monitoring and inspection powers**
 - o Sub – section (1) and (4) insert and Municipality
- **Section 16: Commission's power to issue directions**
 - o Sub – section (1) (a) (2) insert and Municipality and sub – section (2) (d) insert Community Organisation and Ward Councillor
- **Section 17: Power to suspend payment of money**
 - o Sub – section (1) insert Municipality
- **Section 18: Power to recover money irregularly accepted or spent**
 - o Sub – section (1) (2) (b) (ii) (3) b insert a Municipality
- **Section 21: Report to Parliament (incorrectly numbered)**
 - o Sub – section (1) (b) (3) insert Municipality
- **Section 22: Funding of political parties by Legislatures and Municipal Councils**
 - o As stated in section 4.1 above in this submission, the cited constitutional and legislative provisions in **section 22** of the Bill other than the omission or exclusion do not apply to the local sphere of government. It is SALGA's considered view as stated above in terms of section 44 of the Constitution that Parliament should consider creating an enabling constitution scheme for extension of this benefit for Political Parties, Community Organisations and community representatives (Ward Councillors) represented in Municipal Councils.
 - o However, SALGA is also of the view that, whilst the aforesaid legislative lacuna, Parliament should be able to extend the benefit derived from the new creation of this Bill: **Multi – Party Democracy Fund** as the source of these funds will be from private donors.

The foregoing read together with provisions of **section 7** of the Bill interweaves perfectly with the Constitutional and Legislative mandate of local government as substantively elsewhere in this submission.

In terms of the above mentioned provisions of **section (7) sub – section (1)** of the Bill states that the money paid in terms of **section 6(7)** may be used by that political party for any purpose compatible with its functioning as a political party in a modern democracy including—

- (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.

It is proposed that in the local sphere of government, sections (b) and (c) should not be applicable to Ward Councillors as this category of Public Office Bearers in their official capacity is directly elected as community representatives.

As stated in our comments on **section (7) (2)** SALGA supports this provision with specific proposals which are embedded throughout the comments made on each relevant sections of the Bill.

Accordingly, SALGA strongly believes that, a democratic political culture is crucial for the legitimacy, smooth functioning and ultimately deepening of democracy. That, the culture of passivity and apathy obedient and docile citizenry, is not consistent with South Africa's envisioned democracy. As such in order to quell prospect for apathy and abstention which are inimical to democracy a ruling party or collation in a municipality accepts its responsibility to create an enabling environment for a substantively inclusive participatory democracy thereby investing in a social fabric of many and varied institutions, political organisations and associations. That when that happens, there are greater prospects for a flourishing and deepened local democracy where citizens are willing to take part in public debate, elect representatives and join political parties and most importantly, while continuing with their own structures of social dialogues willingly participates and find value in their involvement in municipal created and convened platforms. That without this meaningful interface between Councillors and communities our local democracy will begin to wither and become the preserve of small, select groups which in most cases leads to elite capture of the democratic processes. Although complex, the unique structural configuration of the electoral system of local government in South Africa creates enough opportunities to achieve the foregoing.

4 A DIFFERENTIATED POLITICAL PARTY FUNDING MODEL FOR LOCAL GOVERNMENT IN SOUTH AFRICA

4.1 The complexity of the applicable electoral system in Local Government in South Africa

4.1.1 The political role expected of Councils and Councillors in terms of deepening democracy

It is common cause that, a democracy needs strong and sustainable Political Parties with the capacity to represent citizens and provide policy choices that demonstrate their ability to govern for the public good. In the South African context, the electoral system of local government creates space for a direct majoritarian system through communities directly electing Ward Councillors as their representatives in a Municipal Council. Section (2) of the Local Government Municipal Systems Act makes further provisions to ensure a more meaningful presence and active participation of communities and community organisations in the affairs of a municipality. This act further empowers citizenry in terms of section (62) to take keen interest on decisions of a Political Office Bearer or municipal official and where such decisions negatively impacts them and undermine their rights they can appeal to the appeal authority which is the Municipal Council.

As an essential ingredient to guarantee vibrancy of our local democracy a Municipal Council is made up of Proportional Representative (PR) and Ward Councillors (WC). They represent diversity, and are responsible for ensuring their multiple and often conflicting interests whether based on political ideology, locality, and gender are represented and accounted for in municipal decision-making processes.

Councillors as required of all public representatives in all spheres of government are expected to maintain a meticulous balance between the aggregative and deliberative models of democracy, meaning that upon assuming responsibility as councillors, they are obliged to provide leadership to all municipal inhabitants while continuing to discharge their party political mandate. Accountability thus is to the people as a whole not along partisan lines other than when in their own political party structures and meetings.

Unarguably therefore, representative democracy carries with it heavy moral responsibilities because public representatives are entrusted with the allocation and distribution of public resources. This is a delegated responsibility. Public representatives and by extension municipalities exercises delegated power and sovereignty resides in the demos, the people that delegated it, hence the Latin phrase:

delegata potestas non potest delegari i.e. delegates can-not hold more powers than those that delegated them¹.

There exists therefore, a special accountability relationship between citizens and elected councillors. They are obligated to work on behalf of citizens and to help improve the quality of life in the constituencies they represent. To be effective in this role, Councillors need to understand the interests and issues of their constituencies. Likewise citizens need the opportunity to express their views and discuss their issues with Councillors. Citizen ability to hold elected Councillors accountable is derived through the ballot box as well as through constant interface between them in-between elections.

Communities in general and obviously citizens specifically in the context of local government expect to have constant contact with Councillors. **This is at the core of the proposed section (7) in the Bill.** When carried out effectively, constituent relations can help councillors as public representatives to successfully fulfil their political and community mandate and thereby bridge the trust deficit that was found to be a huge challenge during the state of local government assessment and thus prioritised as part of the back to basics approach.

4.1.2 The proposed approach to formalise, structure and resource constituency work in local government

The proposed structured and mandatory constituency work at local government level will obviously have implications in terms of the required administrative and political management responsibility for both the Speaker of a municipality and the Whip of the Council. The specific methods a Councillor prefers will depend on a variety of factors including the extent to which resources are availed and the Councillors' capacity as an all – rounder in terms of the workings of the political system and community dynamics. It is strongly recommended though that within the broader context of differentiation, the system should have a minimum set of standards to guarantee relative similarity.

4.1.2.1 A separate funding regime and management system for Ward Councillors & Community Organisationsiv

The hybrid political model used in the local government system in South Africa will require the centrality of both the Speaker and Council Whip with respect to the determination of both community constituencies and political constituencies. Accordingly, the proposed use of Wards as formal designated constituencies is

¹ Prof Mazibuko

recommended. The implication of this proposal is that the approach to be used for Ward Councillors will be completely different to that used for PR Councillors.

With respect to leadership and management both Ward Councillors and Community Organisations will continue to be accountable to the Speaker, the proposed funding for Community Organisations and Ward Councillors should be under the control and management of the Office of the Speaker. It is therefore recommended that, the obligation to exercise oversight and ensure efficient and effective management and monitoring of compliance with provisions of **sections (7) (10) and (11)** of the Bill be assigned to the Municipality. That a specific provision be made for this function to be assigned to Office of the Speaker. It is also recommended that the proposed **sections (6) (13) (14) (15) (16) (17) and (18)** which seeks to regulate the authority to whom payment should be done be assigned to the Municipality. Lastly, it is further recommended that, the obligation to report to the Funds as proposed in the Bill in respect to periodic audits, interaction, compliance and reporting be assigned to the Municipality with the Municipal Manager as the Accounting Officer.

4.1.2.2 Adoption of a similar funding model for political parties represented in Municipal Council with the proposed National and Provincial legislature approach

A democracy needs strong and sustainable Political Parties with the capacity to represent citizens and provide policy choices that demonstrate their ability to govern for the public good. With an increasing disconnect between citizens and their elected leaders, decline in political activism, and growing sophistication of anti-democratic forces, democratic Political Parties are continually challenged. Regardless, in democratic societies, Political Parties are therefore indispensable voluntary and informal associations of society, where people share commonly understood values, customs and attitudes to their role in politics (Leiserson 1955).

Political Parties straddle the space and span the connective linkages between citizens and government, and between a multitude of social formations and the general public. A direct democracy where every citizen is directly involved in all political decisions might prove to be too complex within modern mass societies. This is why a modern democracy needs institutions and organisations that represent the will and the interests of the citizens to be as dependable and free from political influence as possible. Political Parties are therefore an essential component of democracy. By competing in elections, mobilizing citizens behind particular visions of society and through their performance they offer citizens meaningful choices in governance, avenues for political participation and opportunities to shape a country's future. When public confidence in

Political Parties is compromised, the entire democratic process suffers. As in all democratic societies, in South Africa Political Parties are expected to represent citizens' multiple and often conflicting interests.

The general practice over the past decades included the following sources of funding for political parties.

- a) **Constituency funding** which is designed to enable a political party to do its political work as outlined in **section (7)** of the Bill.
- b) **Caucus funding** which seeks to assist each represented political party to finance its caucus activities including putting in place the necessary administrative, content advice and research capability within the legislature or parliament.
- c) **Funding for the leader of the official opposition** this funding generally is aimed at providing any necessary administrative support to the office of the leader of the official opposition.
- d) **Campaign election funding** this specific fund unlike the other three above is managed by the Independent Electoral Commission it is primarily meant to provide financial support to represented political parties in provincial and national legislatures for them to conduct their election campaigns.

These are funding windows that are at the moment are only extended to Political Parties that are represented at national and provincial levels. It is SALGA's submission that a similar model be extended to the local sphere of government with the associated legislated provisions in terms of a political party's required internal capacity, to clearly delineate these funds from their general accounts, to reporting, disclose sources of their funds as well as met the financial management requirements imposed by the Independent Electoral Commission as the Fund Managers.

4.1.3 Emerging patterns in terms of oversight and accountability mechanisms in terms of applicable parliamentary regulatory instruments

The emerging general practices across the globe in terms of mechanisms that are used by various countries to regulate how to access and what conditions would apply for Political Parties to access public funding include obligation to Political Parties to fully disclose their funders and account on how they have expended the allocated funding. Within this context, SAGA acknowledged the Western Cape High Court ruling with respect to aligning PAIA with all applicable legislations to political party funding. Concomitantly, SALGA supports the proposed **sections (7) (8) (9) (10) and (11)** which substantively provide for accountability, transparency, full disclosure and prohibitions.

In addition, SALGA fully supports the proposed provisions in **sections (5)** which enjoins the Chief Electoral Officer to the Accounting Officer and Chief Executive Officer of the Funds as well as **sections (15) (16) (17) (18) and (19)** which provides the necessary powers for the Commission to deal with transgressions.

The South African Local Government Association therefore proposes a two pronged approach; **(firstly)** that a percentage of the generated income of the **Multi – Party Democracy Fund** be ring-fenced for political parties represented in Municipal Councils and that it be allocated as proposed in section (6) of the Bill, **(secondly)** that Parliament should urgently consider addressing the constitutional and legislative lacuna in order to ensure that the local sphere of government benefits from **Represented Political Party Fund** allocated as provided for in **section (6)** of the Bill.

With regards to oversight and accountability mechanism, it is recommended that, in the local sphere of government, the role of the **Auditor General be extended to include these funds** and that, in the policy dispensation, civil society, community organisations and interested individual municipal inhabitants be empowered to inspect reports of municipalities in offices provided by the Commission.

5 CONCLUSION

The South African Local Government Association firmly believes that lack of constitutional and legislative provisions is significantly outweighed by the urgency to introduce and formalise political party funding in the local sphere of government. As proposed in this submission, the best approach that Parliament must follow to address this lacuna and to navigate the inherently complex model of political and community representation in Local Government is to separate how Ward Councillors and Political Party funding is considered.

As is the case with other spheres of government, this submission is informed by SALGA's commitment to (i) Protect the integrity of our from appropriation by both local and foreign private individuals and companies (ii) to support efforts towards entrenching a culture of accountability, openness and transparency with respect to funding of political parties in the Republic as well as (iii) to compel them to fully disclose their sources of funding in cash and in kind. It is on this basis that relevant provisions in the Bill as proposed as supported.

Concretely SALGA proposes that (i) Community Organisations and Ward Councillors must be funding through a Municipality and the Speaker should administer the funds

supported by the Municipal Manager as the Accounting Officer (ii) That the Municipality through the Accounting Officer be responsible for reporting to the IEC which will be managing the Funds (iii) Political Parties to be funded directly and the provisions of the Bill in terms of management, reporting, disclosures and auditing apply as proposed in the Bill and lastly it be made mandatory for the Auditor General to audit such funds and lastly (iv) the final legislation takes into account that there are two annual planning and budgeting cycles one ending in April as proposed in the Bill as the other which ends in June as proposed for inclusion by SALGA.

SALGA firmly believes that the Bill may be justified to exclude the local sphere of government as a beneficiary of the **REPRESENTED POLITICAL PARTIES FUND** on the basis of the constitutional and legislative lacuna however; it is proposed that Parliament exercises its mandate as provided for in section 44 to amend the Constitution in order to provide for funding of represented Political Parties, Community Organisations and Ward Councillors in Municipal Councils.

SALGA however is of the opinion that the **MULTI – PARTY DEMOCRACY FUND** as a new addition in the legislative scheme created to enable the donor community and other sources to donate funds to strengthen our democracy is an open opportunity for all the three spheres of government.

In our view, therefore, there is no constitutional and legislative basis to exclude local government from benefiting from this fund. As such the Bill should be amended to include the local sphere of government.

i Read together with section 2 of the Systems Act

ii Read section 195 of the Constitution together with section 50 of the Systems Act

iii Read together with sections 1, 152 and 195 of the Constitution as well as section 50 of the Municipal Systems Act.

iv The inclusion of Community Organisations in this proposed model is mainly informed by an assumption that firstly, in most cases, they contest Wards in Municipalities and secondly, in the majority of instances they are basic activist organisations which might not meet the basis funding requirements that may be imposed by the Commission as articulated in the Bill.