



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

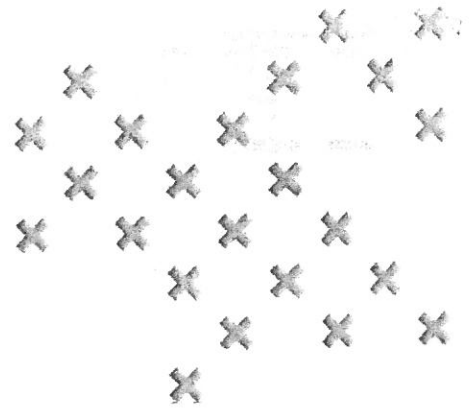
Date Submitted: 16 October 2017
Submitted To: Cindy Balie
Parliament of South Africa
Per email: cbalie@parliament.gov.za

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

AND TO: Members of Parliament and of the Ad Hoc Committee
Ms Dorries Dlakude
Mr Donald Gumede
Mr Robert Lees
Ms Lindiwe Maseko
Dr Pieter Mulder
Mr Floyd Shivambu
Mr Narend Singh
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1. Introduction

My Vote Counts NPC (MVC) welcomes the call for written comment by the Ad Hoc Committee on the Funding of Political Parties (Ad Hoc Committee) on the Draft Political Party Funding Bill 2017, gazette on 19 September 2017. This document serves as MVC's formal written submission to the Ad Hoc Committee in response to the call for comment.

MVC's mission is to improve the accountability, transparency and inclusiveness of elections and politics in the Republic of South Africa generally, including but not limited to:

- campaigning to reform the political party funding system in the Republic, through the introduction of legislation and other regulatory measures;
- campaigning to reform the electoral system of the Republic; and
- creating platforms which aim to unite citizens and organisations in finding democratic solutions to the challenges of our time, with a particular focus on civic, legal and political education.

This submission is divided into two main sections. The first section focusses on specific clauses in the Draft Political Party Funding Bill (the Bill) and MVC's comments regarding these clauses. The second section raises issues that have not been fully addressed by the Bill but which MVC submits should be included in the Bill.

2. Comments regarding the DRAFT POLITICAL PARTY FUNDING BILL

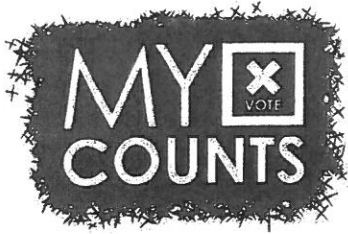
Definitions:

'represented political party' means a political party with representation in the national and provincial legislatures;

MVC believes that this Bill should provide a comprehensive legal framework for political party funding. This comprehensive framework, as indicated through the written and verbal submissions to this Ad Hoc Committee by many civil society organisations in July and August this year, should include national and provincial legislatures as well as political parties and independent candidates represented in the municipal councils at the local government level.

We propose that the definition should read as follows:

"represented party" means a political party with representation in the national and/or provincial legislatures and/or in the municipal council, and duly elected ward candidates in the municipal councils of the Republic;



(3) Establishment of Multi-Party Democracy Fund

3.(5) Any contributor contemplated in subsection (3)(a) may request the Commission not to disclose their identity or the amount of the contribution.

MVC submits that information about donations to the Multi-Party Democracy Fund (MPDF) should be made public. In our previous submission to this Committee we proposed that a separate fund should be established to allow for anonymous donations in support of 'multi-party democracy'. We therefore accept that individuals may choose to keep their identities anonymous when donating to the MPDF, however we do not agree that the amount donated should be withheld. Withholding the amount donated would deny the public information about the number of donations that the MPDF received.

We propose that this clause should be amended to read:

'Any contributor contemplated in subsection (3)(a) may request the Commission not to disclose their identity.'

(5) Management and control of Funds

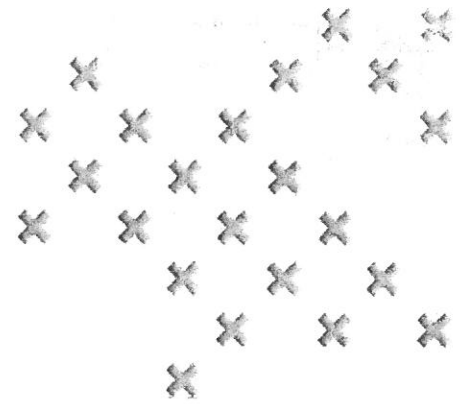
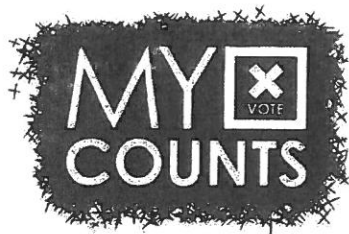
MVC proposes that a percentage of between 3% and 5% from the funds within the MPDF should be set aside to provide for the resources required to manage the receipt of funds and disclosures pertaining to the MPDF. The regulations should address how the exact amount between 3% and 5% will be determined annually.

We propose that the following clause should be added after 5.(2):

'5.(3) Between 3% and 5% of the funds deposited into the Multi-Party Democracy Fund must be allocated to the Commission to provide for the financial support required to manage the Multi-Party Democracy Fund.'

(6) Allocation and payment of money to represented political party

Several organisations have made submissions to this Committee submitting that the current 90/10 allocation split is unfair to smaller political parties. We believe that the decision as to what the percentage allocation from the RPPF and the MPDF should be viewed as a policy issue that must be addressed by this Committee and not be left to regulations. We submit further that this Committee should consider making separate determinations for the allocations from the two funds in order to ensure that smaller political parties are not prejudiced.



We propose that the following clauses should be included in this section of the Bill:

'Allocations from the RPPF to be made and paid to each of the political parties concerned are calculated by –

- (a) Allocating seventy (70) per cent of the total amount of funds on a proportional basis per annum; and
- (b) Allocating thirty (30) per cent of the total amount of funds on an equitable basis per annum.

Allocations from the MPDF to be made and paid to each of the political parties concerned are calculated by –

- (a) Allocating fifty (50) per cent of the total amount of funds on a proportional basis per annum; and
- (b) Allocating fifty (50) per cent of the total amount of funds on an equitable basis per annum.'

(7) Purposes for which money from these Funds may be used

7.(2)(d) for any other prescribed purpose.

All purposes for which these funds may be used should be prescribed in this section of the Bill. We propose that this sentence be removed.

(8) Direct Funding of Political Parties

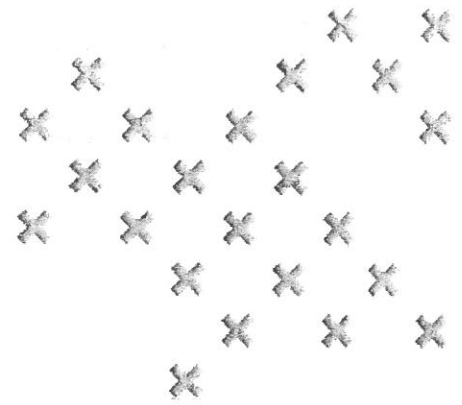
8. For the purposes of this Chapter –

'donation' – includes a donation in kind and a donation made to a member of a political party;

MVC does not agree that members of political parties should be allowed to accept donations. The reason for our disagreement is that there will be no regulation of these funds that members of political parties receive or disclosures regarding these donations.

We submit that the definition should be amended to read as follows:

'donation' – includes a donation in kind and a donation in monetary value made to a political party;'



*'donation in kind' – (a) includes –
(i) any money lent to the political party other than on commercial terms;*

MVC proposes that all donations in kind above the estimated value of R10 000 should be declared as a donation. We submit further that any financial amounts donated to political parties, as a loan (whether on commercial terms or not) above a certain value should be considered a 'donation' and not a 'donation in kind', and should be disclosed as such. The possibility that political parties could receive loans that are later 'written off' and are in all respects 'donations' but are not disclosed as such, cannot be contained or managed and therefore should not be allowed.

We submit that this definition 8.(a)(i) 'any money lent to the political part other than on commercial terms', should be removed.

(9) Prohibited Donations

MVC submits that companies that do business with the state should not be allowed to fund a political party directly. The perception that businesses that do business with the state gain favour because they donate to a particular political party is very damaging to the trust that the public should have in our political system. This perception cannot be managed and should be avoided. Companies that do business with the state should rather donate to the MPDF, if they wish to support political parties.

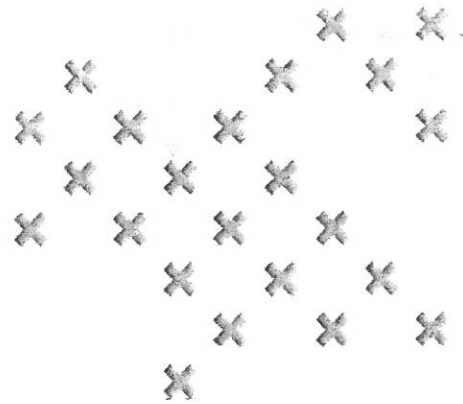
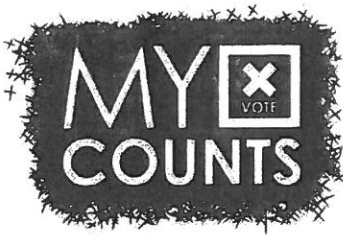
**We therefore submit that the following clause should be included in the Bill after 9.(1)(e):
'Companies that have a business relationship with any state entity or have had a business relationship with a state entity in the past 24 months.'**

9.(3) Nothing in subsection (1)(b) prevents a political party or a member of a political party from accepting a donation from a foreign entity for the purpose of –

- (a) training or skills development of a member of a political party; or*
- (b) policy development of a political party*

The allowance in this clause is very concerning. The policy development of a political party should never be directly supported by a foreign entity. In essence this means that we are allowing foreign sources to directly support the policy direction of our political parties. The process that a political party undertakes to develop policy could also be lengthy and comprehensive, which means that this allowance could amount to millions of rands of direct funding to political parties for this purpose. The 'training and skills development of a member of a political party could also amount to hundreds of thousands of rands per member of a political party.

We submit that section 9.(3)(a) and (b) should be removed from the Bill.



(10) Disclosure of donations to political party

10(1) *A political party must disclose all donations received above the prescribed threshold, to the Commission, in the prescribed form and manner.*

The threshold over which political parties should disclose information about donations in full should be included in this Act. We submit that this threshold is a very important determination that should be addressed as a policy issue by this Committee. MVC further proposes that a threshold of R10 000 should be considered and that amounts below R10 000 should be disclosed as an aggregated amount.

We therefore propose that the clause should be amended to read as follows:

'A political party must disclose all donations and donations in kind received above the threshold amount of R10 000, to the Commission, in the prescribed form and manner.'

16. Commission's power to issue directions

16.(2) *The direction must indicate the following sanctions that the Commission may impose if the political party fails to comply with that direction:*

(d) the cancellation of the registration of the political party in terms of the Electoral Commission Act.

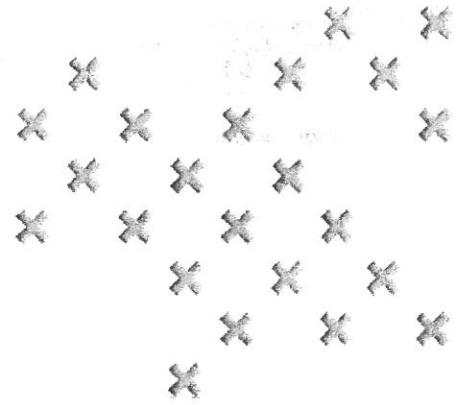
MVC believes that the cancellation of the registration of a political party may be too harsh a sanction for a political party under the provisions of this Bill. The Bill should rather provide for the Commission to impose a financial fine on the part of the political party and a criminal sanction on the part of the political party representatives, ie. the members of the Party's highest decision-making body and the party's chief financial officer.

MVC therefore proposes that 16.(2)(d) should be removed and replaced with this clause as follows:

'The direction must indicate the following sanctions that the Commission may impose if the political party fails to comply with that direction:

(d) the imposition of an administrative fine amounting to fifty (50) per cent of the donations that the political party received in that financial year;

(e) and/or the instituting of criminal charges against the members of the political party's highest decision-making body and the Party's chief financial officer.



Schedule 1

MVC submits that the amounts included in this schedule are not high enough to discourage transgressions of this Act.

We propose the following:

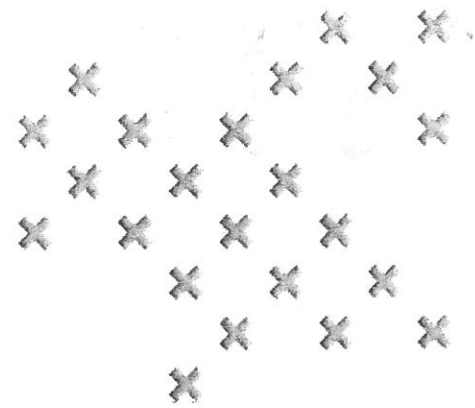
<i>Previous Contraventions</i>	<i>Contraventions of sections 12, 13(1) to (4) or 14(2) or (3)</i>	<i>Contraventions of sections 9(1), 10(1) or 11</i>
No previous contravention	R300 000	R1 000 000
A previous contravention of the same provision within 2 years	R750 000	R2 000 000
Two previous contraventions of the same provision within 3 years	R1 500 000	R4 000 000
Three previous contraventions of the same provision within 3 years	R3 000 000	R6 000 000
Four previous contraventions of the same provision within 3 years	R5 000 000	R10 000 000

3. Overall Concerns with the Bill

Exclusion of local government level(LGL) political party representation and independent candidates

We are extremely concerned that the political parties represented at the local government level as well as independent candidates represented in municipal councils are not being considered within the scope of this Bill. We understand that the Ad Hoc Committee has a limited timespan within which to complete its work, however we are of the view that the Committee is able to address the regulation of political funding at this level of government without delaying the passing of this Bill through Parliament.

We propose that the Committee include a section in the Bill that addresses the disclosure requirements for the funding of political parties and independent candidates represented at the local government level. The inclusion of this clause would not require an amendment of the Constitution as it pertains solely to a disclosure mechanism and does not address the public funding of political parties at a local government level.



We propose further that the Committee include a clause that requires Parliament to institute a process to investigate the public funding of political parties and independent candidates represented at the local government level as well as the possible funding of political parties not yet represented in any of the legislatures or municipal councils, and a timeframe in which this process should be finalized.

Too many issues left to Regulations

We are also dismayed that several aspects of political party funding that should be addressed at a policy level is being left to regulations. This includes thresholds, the disclosure mechanism, the allocation to political parties from the MPDF and the RPPF, as well as the necessary cap on donations to political parties. We submit that the Ad Hoc Committee should address these aspects through the current Bill.

4. Conclusion

MVC is supportive of the current process undertaken by the Ad Hoc Committee, and makes these comments with the view that this Bill can be improved in order to meet its objectives of comprehensively regulating political party funding. We hope that our comments are considered and also request the opportunity to make a verbal submission to the Committee in order to engage further on the proposals provided herein.