



SOUTH AFRICA

Memorandum

To: Ad Committee on Party Funding
Cc:
From: Electoral Commission
Date: 3 November 2017
Subject: Comment of the Political Party Funding Act

A. High-level overview

The Electoral Commission welcomes the Draft Political Party Funding Bill 2017 as a significant step forward in seeking to provide a single legislative framework for the disclosure and regulation of all public and private funding of all political parties.

The Electoral Commission would like to flag the following key issues:

1. **The appointment of the Chief Electoral Officer as accounting officer and Head of the Funds:**
 The Commission prefers the separation of election management and party funding management functions with a separate Head and accounting officer for each area reporting to the Commission
2. **Funding of political parties at municipal level (including independent candidates):**
 The Electoral Commission notes that political parties represented only on municipal level and independent candidates are excluded from the envisaged Act insofar funding is concerned.
3. **The current draft bill provides for the same formula and recipients for both the RPPF and MPDF:**

Electoral Commission

Ensuring Free and Fair Elections

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The Electoral Commission recommends allowing for potential differences in both recipients and formula used for distribution of funds from the RPPF and MPDF.

4. Clarity over which entities are covered by the envisaged Act and which are not:

The current draft Bill is somewhat unclear regarding the scope and application of the envisaged legislation and regulations to political parties/entities. It is critical that the legislation and regulations very clearly identify which entities and individuals are required to comply.

5. The lack of criminal offences for non-compliance:

The lack of criminal offences weakens the ability of the Electoral Commission to enforce compliance – most especially from individuals, organisations and entities which are not represented in legislatures. The Electoral Commission recommends that criminal offences be included in the Act to reinforce compliance.

6. The lack of incentive for donations to the MPDF:

While this is not a direct issue for this envisaged Act, the Electoral Commission notes that the MPDF is designed to rely on private donations to fund it. The lack of adequate and compelling incentives to donate to the fund will significantly impair efforts to raise funds and will threaten the viability of the MPDF.

7. Dual disclosure:

Based on enforcement and investigate practice, the Electoral Commission believes it would greatly enhance disclosure and enforcement if donors were also required to disclose donations to the Electoral Commission above the prescribed thresholds. This would significantly reduce the opportunity for recipients to fail to disclose donations and would provide corroborating information to enable efficient verification of information provided by political parties. It would also enable even-handedness with regard to sanction in the event of attempts by those outside of political parties to thwart the legislation.

8. Implications of the bill on audit firms and the Auditor General:

The Commission notes the impact of the Bill on the workload of audit firms auditing the books of political parties and the Auditor General and that there may be an impact of increased fees on the finances particularly of smaller parties.

9. Funding:

The Electoral Commission is under severe financial pressure and will not be in a position to carry any additional cost in relation to the funding of political parties. To

this end the Electoral Commission will require an initial start-up fee of an estimated R45 million to cover the cost of staff salaries and administrative overheads. Thereafter an annual management fee will be charged. It is proposed that the annual management fees be determined after a year when there will be more clarity on the impact that the management of the Funds has on the resources of the Electoral Commission.

B. Clause by clause comment on the bill

Chapter	Clause	Current Clause	Proposed Amendments
1	Definitions	Commission' means the Electoral Commission established by section 3 (1) of the Electoral Commission Act, 1996	' <u>Electoral Commission</u> ' means the Electoral Commission established by section 3 (1) of the Electoral Commission Act, 1996
1	Definitions	New clause	'Commission' means the five-member Commission as established by section 6 (1) of the Electoral Commission Act, 1996
1	Definitions	New clause	' <u>party</u> ' means a political party registered with the Electoral Commission
3	Definitions	New clause: To replace the definition of political party under chapter 3	' <u>political entity</u> ' means any entity that <u>accepts donations to support or oppose any registered party or its candidates in an election</u>
1	Definitions	New clause	' <u>organ of state</u> ' means any <u>organisation, agency or entity which relies on funding from the national fiscus and includes all government departments, government agencies, state owned enterprises and public institutions</u>
1	Definitions	New clause	' <u>election period</u> ' means the period <u>beginning 12 months prior to the expiry of the five year term of office of a legislature and ending with the announcement of election results, as per the reporting timetables published in a gazette.</u>
2	2	New clause	2 (4) The Electoral Commission may recover all costs related to the administration and management of the Represented Political Party Fund from the accounts of the Represented

			Political Party Fund in line with the prescribed regulations
2	3	New clause	3 (7) The Electoral Commission may recover all costs related to the administration, management and promotion of the Multi-Party Democracy Fund from the accounts of the Multi-Party Democracy Fund in line with prescribed regulations
2	3	New clause	3 (6) The Electoral Commission may undertake such fund-raising initiatives and activities as may be necessary to secure funding for the Multi-Party Democracy Fund
2	3	The Commission may not accept money received in terms of subsection (2) from - (b) any foreign government or foreign government agency	Delete (b) because donations from foreign agencies go into a transparent and regulated fund.
2	3	3. (3) Subject to subsection (4), the Commission must credit the account contemplated in subsection (2) with - (New)	A new addition: <u>(d) funds received in terms of Section 19 (Administrative fines)</u>
2	4	4. (2) The Commission may, with the approval of the Minister of Finance, carry forward any money standing to the credit of the Represented Political Party Fund at the end of the financial year to the next financial year as a credit balance.	4 (2) The [Commission may] <u>Accounting Officer of the Represented Political Party Fund must</u> , with the approval of National Treasury carry forward any money standing to the credit of the Represented Political Party Fund at the end of the financial year to the next financial year as a credit balance.

2	5	5. (1) The chief electoral officer of the Commission is the accounting officer and chief executive officer of the Funds and responsible for their management and administration.	5 (1) The [chief electoral officer of the Electoral] Commission [is the] <u>shall appoint a Head of the Political Party Funding who will be the</u> accounting officer of the Funds [and] responsible for their management and administration. (Note: Providing for a separate entity and accounting officer may require amendment to the Electoral Commission Act, 1996) providing for the Commission to appoint an accounting officer who is the Head of the Political Party Funding in addition to the existing provision covering the appointment of the Chief Electoral Officer.
2	5	5. (2) For each financial year, the Commission must keep records in accordance with the standards of generally recognised accounting practices in respect of each of the Funds, setting out -	5 (2) For each financial year, the [Commission] Head of the Political Party Fund must keep records in accordance with <u>the prescribed accounting framework [the standards of generally recognised accounting practices]</u> in respect of each of the Funds setting out -
2	6	6 (1) The Commission may only allocate money from the Funds to a represented political party	6 (1) The <u>Electoral</u> Commission may only allocate money from the [Funds] Represented Political Party Fund to a represented political party
2	6	6 (2) Any allocation from the Funds must be made to a represented political party in accordance with the prescribed formula	6 (2) Any allocation from the Funds must be made to a represented political party in accordance with the prescribed formula for that Fund
2	6	6(3) The prescribed formula must be	6 (3) The prescribed formula(s) must be based on –

		based on – (a)	
2	6	6(4) The Commission must apply the prescribed formula taking into account the number of representatives of each political party and the number of seats in the respective legislatures based on the results of the election.	(4) The <u>Electoral</u> Commission must apply the prescribed formula(s) taking into account the number of representatives of each political party and the <u>[number] sum</u> of seats in the respective legislatures based on the results of the election.
3	8 Definition	'foreign person' means any person or entity other than - (c) any trust registered in terms of laws of the Republic regulating trusts;	(c) any <u>[trust] entity</u> registered in terms of laws of the Republic regulating <u>such entities including trusts, not-for profit organisations, foundations, faith-based and religious organisations and non-governmental organisations</u>
3	9	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 the political party	Delete because this will create a unintended loophole wherein all monies received from foreign agencies are recorded against skills development and training costs even if not used for this purpose.
3	10	New clause	<u>10. (4) In the event of a dissolution of a legislature prior to the end of its prescribed term in terms of Section 50 and Section 109 of the Constitution or</u>

			<u>a re-run of an election by order of the Electoral Court, the Commission must prescribe the frequency, manner and form of disclosures of donations made to it bearing in mind the requirement for transparency and disclosure to enable an informed electorate</u>
3	10	10. (3) Despite subsection (2), the Commission must publish the donations disclosed to it during an election year on the following basis: (a) one month before an election; and (b) twelve months prior to the date contemplated in paragraph (a), on a quarterly basis	10 (3) Despite subsection (2), the <u>Electoral</u> Commission must publish the donations disclosed to it during an election <u>[year] period</u> on the following basis: <ul style="list-style-type: none"> • (a) <u>[one month before an election;] at the beginning of the election period;</u> and • (b) <u>[twelve months prior to the date contemplated in paragraph (a), on a quarterly basis] six months into the election period; and</u> • (c) <u>one month before the election.</u>
3	10	New clause (4)	10 (4) <u>The Electoral Commission must prescribe the form, manner and reporting timetable during an election period in a gazette prior to the start of that election period. Such prescribed form and manner of reporting may differ from that during non-election periods.</u>
3	10	New clause (5)	<u>(5) All persons or entities who make a donation to a political party above a prescribed threshold must disclose all such donations to the Electoral Commission in the prescribed form,</u>

			<u>manner and frequency.</u>
4	13	13 (1) A represented political party must- (a) deposit all donations received by that political party, membership fees and levies imposed by the political party on its representatives into an account with a bank registered in terms of the Banks Act 1990 in that party's name;	13 (1) A represented political party must - (a) deposit all donations received by that political party [membership fees and levies imposed by the political party on its representatives] into an account with a bank registered in terms of the Banks Act 1990 in that party's name; Add a sub-section that obliges all parties to provide information to the Electoral Commission with regard to the system that applies to the collecting of membership fees and levies.
4	13	13(2)(d) (ii) prepare a statement showing all donations all member fees and any levy imposed by the represented political party on its elected representatives during that financial year	13.(d) (ii) prepare a statement showing all donations [all member fees and any levy imposed by the represented political party on its elected representatives] <u>received</u> during that financial year In addition to statement of donations, provide information about the total amounts of income obtained from levies, membership fees and the amounts from any other sources including as a consequence of loans (a standard 'by-pass' that is used in commerce and which disguises the real financial state of affairs)
4	13	13 (3)...statements - (c) listing the donations under the prescribed threshold	13 (3)...statements - (c) listing the donations <u>above</u> the prescribed threshold

5	16	<p>16. (1) The Commission may issue a direction to a political party in the prescribed manner in order to avoid imposing a sanction –</p> <p>(a) after affording that party an opportunity to make representations;</p> <p>and</p> <p>(b) if it is of the opinion that the party fails to comply with this Act.</p> <p>(2) The direction must indicate the following sanctions that the Commission may impose if that political party fails to comply with that direction:</p> <p>(a) Suspension of payment of allocated money under section 17;</p> <p>(b) the recovery of money irregularly accepted or spent under section 18;</p> <p>(c) the imposition of an administrative fine in terms of section 19; or</p> <p>(d) the cancellation of the registration of the political party in terms of the Electoral Commission Act.</p>	<p>16. (1) The Commission may issue a direction to a political party in the prescribed manner in order to avoid imposing a sanction –</p> <p>(a) after affording that party an opportunity to make representations; and</p> <p>(b) if it is of the opinion that the party fails to comply with this Act.</p> <p>(2) The direction must indicate the following sanctions that the Commission may impose if that political party fails to comply with that direction:</p> <p>(a) Suspension of payment of allocated money under section 17;</p> <p>(b) the recovery of money irregularly accepted or spent under section 18;</p> <p>(c) the imposition of an administrative fine in terms of section 19; [or]</p> <p>(d) the cancellation of the registration of the political party in terms of the Electoral Commission Act; <u>or</u></p> <p><u>(e) lay a criminal charge in terms of section xx.</u></p>
5	19	19. (1) The	19. (1) The <u>Head of the Political Party</u>

		Commission may impose an administrative fine in accordance with Schedule 1 in respect of a contravention or repeated contravention of this Act.	<u>Funding [Commission] may impose an administrative fine in accordance with [Schedule 1] the prescribed schedule of fines in respect of a contravention or [a] repeated contraventions of this Act.</u> <u>(2) The Electoral Commission must credit the accounts of the Multi-Party Democracy Fund with any money paid in respect of subsection 19 (1)</u>
5	20	New clauses providing for criminal offences	<u>Criminal Offences</u> <u>20 (1) A person who wilfully and without just cause –</u> <u>(a) Fails or neglects to notify the Electoral Commission of a donation made to a political party above the prescribed threshold</u> <u>(b) Fails to or neglects to notify the Electoral Commission of the receipt of a donation above the prescribed threshold</u> <u>(c) Submits false, erroneous or incomplete information required under this Act</u> <u>(d) Refuses or neglects to comply with a directive or request from the Electoral Commission in relation to this Act</u> <u>is guilty of an offence and, upon conviction, subject to a fine or to imprisonment for a period not exceeding five years.</u>
5	20	20 (1) Any person may review or appeal any decision of the Commission made in terms of this Act. (2) Subject to subsection (3) the Electoral Court established in terms of section 18 of the	21 (1) Any person may appeal any decision of the [Commission] Head of the Political Party Funds made in terms of this Act. <u>(2) Appeals to any decisions of the Head of the Political Party Funding may be made to the Commission in the prescribed manner and form.</u> <u>[(2)] (3) Subject to subsection [(3)] (4), the Electoral Court established in terms of section 18 of the Electoral</u>

		Electoral Commission Act has the exclusive jurisdiction to hear and determine any review or appeal of any decision of the Commission under this Act.	Commission Act has the exclusive jurisdiction to hear and determine any review or appeal of any decision of the Commission under this Act.
6	21	21 (b) report on all donations to political parties in that year; and (c) submit the report and the Commission's books and records of account to the Auditor-General for auditing	22 (b) report on all donations <u>above the prescribed threshold</u> made to political parties in that year; and (c) submit [the report] and the [Commission's] Funds' books and records of account to the Auditor-General for auditing
6	22	Funding of political parties by legislatures and Municipal Councils	22(1) should include municipal councils.
6	22	22 (2) The accounting officer of a legislature as defined in section 1 of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act 10 of 2009) must annually in the prescribed form and manner disclose any funding provided to political parties under sections 57 (2) and 116 (2) of the	22 (2) The accounting officer of a legislature as defined in section 1 of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act 10 of 2009) and the Municipal Finance Management Act must annually in the prescribed form and manner disclose any funding provided to political parties under sections 57 (2) and 116 (2) of the Constitution respectively to the Electoral Commission <u>and must disclose such payments in their annual financial statements.</u>

		Constitution respectively to the Commission.	
6	22	New clause (3)	<u>22(3) The Electoral Commission must publish such received information in its annual report on political party funding.</u>
6	23	23 (1) The President, acting on a resolution of the National Assembly, may by proclamation in the Gazette make regulations in respect of matters contemplated in sections 6(2), 7(2)(e), 10(1) and 14(2)	23 (1) The President, acting on a resolution of the National Assembly, may by proclamation in the Gazette make regulations in respect of matters contemplated in sections 6(2), 7(2)(d) [(e)], 10(1) and 14(2)

