**
Report of the Ad Hoc Committee on the Funding of Political Parties, dated 28 November 2017**

The ad hoc Committee on the Funding of Political Parties having reviewed the regulatory framework governing the funding of political parties represented at national and provincial legislatures, reports as follows:

1. **Introduction**

1.1 On 6 June 2017 the National Assembly (NA) resolved to establish the ad hoc Committee on the Funding of Political Parties (the Committee) in terms of NA Rule 253(1)(a).

1.2 The Committee was charged with inquiring into and making recommendations on the funding of political parties represented in national and provincial legislatures with a view to introducing, if necessary, amending legislation. In doing so, the Committee was to consider a model of public and private funding for political parties; and the need for, and possible means of, regulating private funding in all its forms (including investment entities owned by political parties). The Committee was set to report to the National Assembly by 30 November 2017.

1.3 The multi-party committee comprises eleven permanent and seven alternate members of Parliament, of which seven members represent the African National Congress , four members represent the Democratic Alliance , two members represent the Economic Freedom Fighters), and five represent other political parties.. The represented political parties selected the following members to serve on the Committee: Adv. BT Bongo, MP (ANC); Ms DE Dlakude, MP (ANC); Mr DM Gumede, MP (ANC); Ms NN Mafu, MP (ANC); Ms LM Maseko, MP (ANC); \*Ms CN Ncube-Ndaba, MP (ANC); Mr VG Smith, MP (ANC); \*Dr MJ Figg, MP (DA); Mr RA Lees, MP (DA); \*Mr D Maynier, MP (DA); Mr J Selfe, MP (DA); \*Mr MM Dlamini, MP (EFF); Ms L Mathys, MP (EFF); Mr N Singh, MP (Inkatha Freedom Party); Dr CP Mulder, MP (Freedom Front Plus); \*Prof. NM Khubisa, MP (National Freedom Party); \*Mr NT Godi, MP (African People’s Convention); and \*Mr NL Kwankwa, MP (United Democratic Movement). On 21 June 2017 the Committee unanimously elected Mr VG Smith, MP as its chairperson.

1.4 In executing its mandate the Committee, as a point of departure, reviewed the Public Funding of Represented Political Parties Act, No 103 of 1997 and its regulations. That process led to the decision to repeal the existing legislation, and develop a new framework to address the weaknesses identified in the existing legislation.

1.5 This report comprises three parts:

- Part A, reflecting on the review of the Public Funding of Represented Political Parties Act, No 103 of 1997 and its regulations;

- Part B, reflecting on the development of the Political Party Funding Bill, Bill 33 of 2017; and

- Part C, reflecting the Committee’s key observations and recommendations

**Part A**

**2. Review of the Public Funding of Represented Political Parties Act, No 103 of 1997**

On 21 June 2017 the Committee unanimously agreed to, as a point of departure, invite comment on the Public Funding of Represented Political Parties Act, No 103 of 1997. The call for public comment was published in all official languages on Parliament’s website as well as in national and regional newspapers.

**2.1 Public Comment**

2.1.1 The Committee received seventeen written submissions from the following individuals and organisations: South African Catholics Bishops Conference; African National Congress; Mr L Scott; My Voice Counts; Cool Youth Church; Council for the Advancement of the South African Constitution; Human Sciences Research Council; South African History Archive; the Right2Know Campaign; Corruption Watch; Forum of Cape Flats Civics; Democracy Development Programme; Public Affairs Research Institute; Mr K Gottschalk; Congress of South African Trade Unions; Azanian People’s Organisation; and the Black First Land First Movement. All but Messrs. Gottschalk and Scott, the Forum of Cape Flats Civics and the Black First Land First Movement participated in the public hearings which took place at Parliament on 15 and 16 August 2017.

2.1.2 All input received was in favour of public funding being increased so as to promote and strengthen democracy. They further agreed that public funding should be increased in line with what the fiscus could afford.

2.1.3 With regard to private funding, all commentators agreed that to prevent over-reliance on public funding, private funding should be allowed. However, such funding should be strictly regulated to prevent donors having undue influence on the political system. The majority proposed that the regulation of private funding should include full disclosure (above a certain threshold) by the recipients of monies received and funders’ details.

2.1.4 Several proposals also argued for that the use of both public and private funding should be regulated. In the main, they proposed the following:

- that recipients use a significant part of their public funding to finance activities that support and enhance participation;

- that recipients ring-fence a significant part of their private funding for capacity building and research;

- that restrictions be imposed on election campaigns-expenditure; and

- that the use of private donations to finance represented political parties’ operational costs be banned.

2.1.5 Several proposals argued for the establishment of multi-party democracy fund for the management of private funding. The majority argued that in order to ensure that the proposed legislative provisions and regulations are implemented, the Independent Electoral Commission (IEC) had to be adequately resourced.

**2.2 Independent Electoral Commission**

2.2.1 The IEC presented its proposals and concerns to the Committee on 17 August 2017.

2.2.2 The IEC indicated that to manage the existing public and proposed private funds while still executing its main function of ensuring free and fair elections, it would require significant financial and other resources to manage the funds, as well monitor compliance with the legislation and regulations.

2.2.3 They further proposed that the regulations should provide for a wide range of sanctions with varying degrees of severity, to motivate represented political parties to comply.

2.2.4 The IEC also emphasised that in order to protect its independence, careful consideration should be given to the establishment of a separate regulatory body mandated solely to monitor and enforce compliance with the new regulatory framework.

**Part B**

**3. Draft Political Party Funding Bill, 2017**

**3.1 Background**

3.1.1 On 22 August 2017 the Committee, having deliberated on the public input received, agreed that the Public Funding of Represented Political Parties Act would be repealed. The Parliamentary Legal Services Unit wa sinstructed to draft new legislation that would regulate both the private and public funding of political parties.

3.1.2 The Committee approved the Draft Political Party Funding Bill, 2017 on 14 September 2017.

**3.2 Overview**

3.2.1 In the main, the Political Party Funding Bill, 2017 (the Bill) proposes:

- the repeal of the Public Funding of Represented Political Parties Act, No 103 of 1997;

- the establishment of a Represented Political Party Fund (RPPF), managed by the IEC, to enhance multi-party democracy by providing funds to political parties that are represented in Parliament and provincial legislatures;

- the establishment of a Multi-Party Democracy Fund (MPDF), managed by the IEC, for the receipt, allocation and management of private donations to political parties that are represented in Parliament and provincial legislatures;

- a prescribed formula for the allocation of funds from the RPPF and MPDF to represented political parties, that is based on equitable as well as proportional allocations;

- purposes for which funds from the MPDF and RPPF may or may not be used;

- the regulation of direct funding to political parties, including the disclosure of all donations above a certain threshold; and the prohibition of direct funding to individual members of political parties;

- that represented political parties be required to account for the monies received from the above-mentioned funds, and to disclose certain information to the IEC; and

- that municipal councils be prohibited from funding political parties and independent candidates.

**3.3 Public Participation**

3.3.1 The draft bill was published in the Government Gazette on 19 September 2017. The Committee received 22 written submissions from the following individuals, organisations and institutions: the Black First Land First Movement (BLF); the South African Local Government Association (SALGA); the Information Regulator; the Department of Political Science at the University of South Africa (UNISA); the Organisation Undoing Tax Abuse (OUTA); the South African Editor’s Forum (SANEF) and amaBhungane Centre for Investigative Journalism; My Vote Counts; the Southern African Catholics Bishops Conference; the Council for the Advancement of the South African Constitution (CASAC); the Right2Know Campaign; the South African History Archive; the Helen Suzman Foundation; Corruption Watch; Business Leadership South Africa; the IEC; the Public Affairs Research Institute (PARI); the Commission for Gender Equality (CGE); the South African Human Rights Commission (SAHRC); Dr G. Ash; Mr R. Bryant; Mr N. Murray and Mr K Gottschalk.

3.3.2 The Committee held public hearings on 7, 8 and 10 November 2017. All but Mr K Gottschalk, the Public Affairs Research Institute, the South African Human Rights Commission and the Commission for Gender Equality participated in the hearings.

3.3.3 The following are the main comments and proposals emanating from the public input:

- while all commentators supported the establishment of a Multi-Party Democracy Fund, there were differing views on how this fund should be managed and how funds should be distributed;

- some were in favour of full disclosure of all donations regardless of their value, while others proposed that for practical reasons it would be best to determine a threshold for disclosure;

- monies from the two funds should be allocated according to two different formulae, with the Multi-Party Democracy Fund allocations skewed towards equitable distribution, and the Represented Political Party Fund allocations skewed towards proportional but with a marginal difference between the equitable and proportional allocations;

- all donations in kind above R10 000 should be declared;

- some proposed that all donations from foreign persons, entities or governments be scrapped, while others were of the view that they should be permitted to donate via the Multi-Party Democracy Fund;

- a cap on the quantum that a donor could donate over a funding cycle;

- reasonable guidelines should be outlined in the legislation and/or regulations for campaign expenditure so as to level the playing field;

- the fines contained in Schedule 1 should be represented in percentages of an allocation, instead of in monetary values;

- the legislation should include political parties and independent candidates at local government level too;

- a management fee of between 3 and 5 per cent of the allocation received from the Multi-Party Democracy Fund should be paid, to cover the cost of managing that fund; and

- companies that do business with the state and political parties’ investment vehicles should be banned from making donations, or their donations should be strictly regulated.

**Part C**

**4. Observations and Recommendations**

**4.1 Observations**

4.1.1 The Committee believes that there is a need to provide for and regulate funding to represented political parties.

4.1.2 The financial implications of the proposed legislation are limited to the resources the IEC would require to manage the additional fund. The Committee further notes the IEC’s concerns with regard to balancing its responsibility to manage elections in an independent fashion, and the proposed new responsibilities in terms of managing the two funds, and monitoring compliance with the legislation.

4.1.3 The Committee notes SALGA’s submission that the funding model, which only accommodates political parties represented at national and provincial legislatures, should also be extended to the local government sphere. In this regard, SALGA proposed two remedies: firstly, that a percentage of the income of the Multi-Party Democracy Fund be ring-fenced for political parties represented in municipal councils; and secondly, that the legislative and constitutional lacuna that is preventing political parties represented in municipal councils from benefitting from the Represented Political Party Fund, be addressed.

4.1.4 The Committee has noted the Western Cape High Court’s recent judgment that Parliament should remedy the defects in the Promotion of Access to Information Act, No 2 of 2000 (PAIA) to allow for the recording and disclosure of private funding of political parties and independent candidates.

**4.2 Recommendations**

4.2.1 The Committee recommends that Parliament passes legislation to provide for and regulate the funding of political parties represented in national and provincial legislatures. The legislation should:

- provide for the establishment and management of funds to fund represented political parties sufficiently;

- prohibit certain donations made directly to represented political parties;

- regulate disclosure of the donations accepted;

- determine the duties of represented political parties in respect of funding;

- provide for the powers and duties of the IEC;

- provide for administrative fines; and

- repeal the Public Funding of Represented Political Parties Act and provide for transitional matters.

4.2.2 The Committee recommends that the Represented Political Party Fund and the proposed Multi-Party Democracy Fund be managed by the IEC. The two funds should be managed by a separate business unit with its own chief executive who should report to the IEC’s accounting officer.

4.2.3 The Committee has noted SALGA’s proposals which its mandate does not allow it to address during this process. It recommends that Parliament pays due attention to SALGA’s concerns and proposals which are summarised in paragraph 4.1.3.

4.2.4 The Committee believes that the legislation it proposes will complement Parliament’s efforts to address the above-mentioned weaknesses in the PAIA legislation.

**5. Acknowledgement**

 The Committee wishes to express its profound gratitude to the individuals, organisations, and stakeholders who participated in our process, and contributed to development of the Political Party Funding Bill.

**Report to be considered.**