**4. REPORT OF THE AD HOC COMMITTEE ON THE FUNDING OF POLITICAL PARTIES ON THE *POLITICAL PARTY FUNDING BILL* [B33 - 2017] (NATIONAL ASSEMBLY- SECTION 75), DATED 26 June 2018**

The Ad Hoc Committee on the Funding of Political Parties, having considered the ***Political Party Funding Bill* [B33 – 2017],** referred to it, and classified by the Joint Tagging Mechanism as a section 75 Bill, reports as follows:

1. **Introduction**

During 2017 the National Assembly resolved to establish an *ad hoc* committee to, *inter alia,* enquire into and make recommendations on funding of political parties in national and provincial legislatures. An extensive public participation process followed, culminating in the passing of the *Political Party Funding Bill* by the National Assembly on 27 March 2018 and the Bill’s transmission to the National Council of Provinces (NCOP) for concurrence. The NCOP established an Ad Hoc Committee on the Funding of Political Parties, on 18 April 2018, and the Bill was referred to the Committee on 19 April 2018.

1. **Process followed**

The Committee placed advertisements in the print media in all 11 official languages, calling stakeholders and interested parties to comment on the Bill. Eleven written submissions were received, as well as nine requests to make oral presentations. After considering the written submissions, the Committee invited all who requested to make oral presentations to do so. Eight stakeholders accepted the invitation and subsequently attended a public hearing on 20 June 2018 to make oral submissions. In addition to technical briefings by the legal and content advisers, the Committee also invited National Treasury and the Independent Electoral Commission (IEC) to give their views on the Bill during a meeting on 6 June and a follow-up meeting on 13 June 2018.

1. ***Political Party Funding Bill* [B33 – 2017]**

The Bill retains the existing Represented Political Party Fund, which is funded from public money, and establishes a new fund, the Multi-Party Democracy Fund, which is to be funded from private sources. The funds will be administered by the IEC. Most of the provisions regulating the funds are drawn from the Public Funding of Represented Political Parties Act (Act No 103 of 1997).

The Bill regulates direct private donations to political parties and prohibits donations from –

* + - Foreign governments and foreign persons (except for the purpose of training, skills or policy development);
		- State-owned enterprises (SOEs);
		- Organs of state; and
		- Proceeds of crime.

The Bill limits the amount any person or entity can donate in a financial year to R15 million; and prohibits donations made to a member of a party, except if the donation is for political party purposes and accepted on behalf of the party. The Bill requires the disclosure of all donations above R100 000 to the IEC by the political party and the donor, and the IEC must publish the donations disclosed to it on a quarterly basis. The Bill states that these disclosure requirements do not detract from the right to access to information under the Promotion of Access to Information Act (Act No 2 of 2000).

The Bill imposes accounting and reporting obligations on political parties and provides for unspent money from the funds at the end of the financial year and if a legislature is dissolved or its terms expired.

With regard to enforcement, the Bill gives the IEC monitoring and inspection powers and powers to suspend payments of money and recover money irregularly received or spent. The Electoral Court is given the power to review decisions of the IEC and to impose administrative fines.

1. **Submissions by stakeholders**
	1. **Mr J Powell**

Mr Powell proposed that Clause 3(5) be deleted, as in his view, it limited transparency. He further proposed that the requirement that the funds be invested with the Public Investment Corporation (PIC) be deleted, as this was a risky investment. With regard to Clause 6(1) and (6), he proposed to change the basis of the allocation of funds to political parties to those represented in national and provincial legislatures to those parties that have collected signatures (number to be assessed), which may not be collected by persons who are remunerated by the party.

* 1. **Mr F Strydom**

Mr Strydom was of the opinion that political parties should fundraise on their own and should be transparent on figures, and then budget on how they are going to use the funds.

* 1. **Mr S Xaba**

Mr Xaba inquired whether Parliament could help raise funds for disabled students, if they could fund political parties. He was further of the opinion that political parties that excluded the participation of disabled people, through the failure to provide for sign language or Braille, or did not have disabled people as part of their executive and did not support Early Childhood Development for disabled children, should not receive political party funding.

* 1. **Free Market Foundation**

The Free Market Foundation (FMF) submitted that the obligation on a political party and donor to disclose donations above a prescribed threshold, as contained in Clause 9 of the Bill, would mean that a donor may be victimised. The FMF was of the opinion that whereas the Bill was intended to give voice to international anti-corruption measures agreed to by South Africa, it may have the opposite effect if it was enacted now.

* 1. **CASAC**

The Council for the Advancement of the South African Constitution (CASAC) recognised that the Bill was the product of months of extensive deliberations and wide-ranging public participation and the engagement of experts. CASAC further noted that this process would set South Africa’s political party finance legislation as amongst the most transparent and accountable in the world. The Council urged the NCOP to pass the Bill in its current form to avoid unduly delaying its implementation. However, if the Committee was to propose amendments, CASAC submitted the following three proposed amendments:

* With respect to Clause 6, CASAC submitted that the appropriate formula for the distribution of funds under the Multi-Party Democracy Fund, was is 50 percent on the basis of proportionality and 50 percent on the basis of equity, because the new formula may not pass constitutional muster.
* With respect to Clause 9, CASAC proposed that the prescribed threshold in terms of subsection 1(a) should be lowered to R50 000.
* In Clause 10, the Council felt that the wording could be improved to allow for donors to make donations for *bona fide* financial assistance, such as a study bursary.
	1. **Auditor-General of South Africa**

The Auditor-General of South Africa (AGSA) indicated that it supported the Bill, but was of the view that Clause 12(5) was in conflict with section 188 of the Constitution, because it was not clear whether the funding of political parties from the Represented Political Parties Fund was for a public purpose. The AGSA further submitted that political parties should not audited by the AGSA because they were not accountable to Parliament for their running operations and the spending of their funds. Thirdly, the AGSA pointed out that it was in no position to take on more audits.

* 1. **COSATU**

The Congress of South African Trade Unions (COSATU) welcomed the Bill and its objects, and expressed support specifically for the equitable and proportional representation-based party funding; the prohibition of donations from foreign government and state agencies, South African state organs and SOEs; and proceeds of crime. However, COSATU opposed the principle of expanding public funding of political parties in a climate of austerity, poor service delivery and state and SOE job cuts. It further proposed that Clause 9(1) be deleted, to enable full transparency. It was COSATU’s opinion that any dilution of this principle would put the Bill’s progressive objectives at risk.

* 1. **My Vote Counts**

My Vote Counts (MVC) was of the opinion that the Bill should include public funding for political parties and independent candidates at local government level from the Multi-Party Democracy Fund.

MVC further proposed the following amendments:

* In Clause 1, “voluntary services” should be included in the definition of “donation in kind” and provision should be made to quantify the services for the purposes of the threshold for disclosure. The Bill should also regulate disclosure of political party investment vehicles.
* In Clause 3, MVC proposed the deletion of subsection (5), which allows for a donor to request that their identity or the amount contributed to the Multi-Party Democracy Fund not be disclosed.
* In Clause 5, to include a provision for the costs of the administration of the Multi-Party Democracy Fund to be paid for from the moneys deposited in the Fund itself (between 3 and 5 percent).
* With regard to Clause 6, MVC submitted that the formula should be 50/50.
* In Clause 7, MVC submitted that the permissible categories of expenditure of moneys allocated from the funds, were vague and open to interpretation.
* With regard to Clause 8, MVC felt that foreign entities should not be allowed to donate to political parties for “policy development” because the term was vague and foreign influence may be dangerous for our democracy. MVC further submitted that donations from companies doing business with the State should be prohibited; and that the limit that a single donor could donate should be lowered, as R15 million could make a political party entirely dependent on a single donor. It was proposed that the amount should be determined by what an average South African earns in a year, namely R34 644 per donor per financial year.
* Regarding Clause 9, MVC proposed that the prescribed threshold be lowered to R10 000, as R100 000 may be enough to influence a political party. In addition, subsection (3) should state to that the IEC should publish the information on a public platform.
* In Clause 10(1), MVC proposed that a member of a political party must not be allowed to accept donations for party political party purposes; and that all donations should go directly through the party.
	1. **Sanef and amaBhungane**

The South African National Editors’ Forum (Sanef), together with the amaBhungane Centre for Investigative Journalism, submitted that the Bill appeared to be silent on dividends or returns that political parties may receive by dint of an ownership stake in a company or any other form of investment. The intention may be for dividends to be treated as donations, in which case they would be subject to disclosure if above the prescribed threshold. However, it appeared that as soon as a party was entitled to benefits by dint of equity it holds or any other investment, it would no longer a donation and would not have to be disclosed. They felt that all dividends and other investment income should be disclosed in sufficient detail to reveal underlying conflicts of interest and for the audited financial statements and opinion to be made public.

Sanef and amaBhungane further proposed the following amendments:

* In Clause 1, “donation in kind” is defined with the effect that such donations are also subject to the transparency provisions of the Bill. However, the definition excludes “personal services provided on a voluntary basis”, meaning that an individual donation of skills will never have to be disclosed regardless of value. In addition, some services ordinarily rendered at a fee, such as accounting, management consulting, legal or public relations advice may amount to a very substantial benefit if provided voluntarily. Such a benefit should be disclosed if it exceeds the threshold for the disclosure of other donations, as the risk of undue influence is no different whether a donation is in cash or in kind. They therefore proposed that, after *“(b)* does not include personal services provided on a voluntary basis”, the following be inserted: “except where the cumulative value of such services provided by any person over a twelve-month period exceeds the prescribed threshold referred to in section 9(1)(a);”.
* In Clause 3, subsection (5), they proposed that “who contributes below a prescribed threshold” be inserted in line 21, between ”3*(a)*” and “may request”; and that the following new subsections be added: (6) The Commission must publish all contributions other than details of contributions envisaged in subsection (5) on a quarterly basis in the prescribed form and manner; and (7) The Commission must also publish all such contributions during an election year one month before an election, should it fall on a date other than a quarterly publication.
* With regard to Clause 8, they proposed that the definition of “donor” should include the concept of “substantially related sources” including family members, companies, subsidiaries and third parties.
* Regarding Clause 9, it was proposed that all donations must be disclosed to the IEC and not just donations above the threshold.
* Sanef and amaBhungane submitted that the prohibition on circumventing any provisions of Chapter 3, contained in Clause 10(3), did not go far enough; and that it should also apply to the rest of the Bill.
	1. **Right2Know**

Right2Know submitted that political parties should be required to disclose their previous spending on elections. They further proposed the following amendments:

* With regard to Clause 6, it was proposed that the formula to allocate public funding should be adjusted to promote political diversity, with a greater proportion of funds to be shared equally and a lesser amount to be shared proportionally.
* In Clause 8, a complete ban on donations from private companies doing business with the state was proposed; and they were further of the opinion that the Bill should prohibit party investment vehicles from doing business with the state.
* With regard to Clause 9, Right2Know indicated that the prescribed threshold of R100 000 was too high and should be reduced to no higher than the average household’s monthly income. They also submitted that Clause 9(3) was vague; and should state exactly how it should be disclosed.
	1. **Corruption Watch**

Corruption Watch (CW) made the following submissions:

* In Clause 1, the definition of “foreign person” needs to be amended to include companies registered in South Africa that are owned or controlled by foreign entities, which could be a loophole to circumvent the prohibitions.
* With regard to Clause 6, the proposal was that the allocation of funds should be equal amongst all represented political parties.
* In Clause 8, CW proposed that all donations from companies that do business with the state should be banned; that the beneficial ownership of investment vehicles owned by political parties that make donations should be made publicly available; and that the exception to the prohibition on foreign funding in respect of political party policy development would lead to foreign influence over the policy of the political parties and must be deleted.
* CW submitted that the Bill should require Parliament to make public the IEC reports submitted to the National Assembly in terms of Clause 22.
	1. **EFF**

The Economic Freedom Fighters (EFF) indicated that it welcomed the prohibition of donations from foreign governments or persons, except for skills and policy development; as well as the requirement for all political parties to disclose the donations they received. However, the EFF submitted that the funding mechanisms in the Bill were inadequate; particularly the formula used to determine the equitable and proportional distribution of funds to political parties. In this regard it was proposed that the split between equitable and proportional distribution be done on a 50/50 basis.

The EFF further indicated that the key reason it rejected the Bill in its current form, was that the wording of Clause 10 would result in the limitation and possible violation of the constitutional right to freedom of association; and would deter people from becoming members of political parties and politically engaged citizens. It therefore proposed the following new wording for Clause 10(1): “No person or entity may deliver a donation for political party purposes, to a member of that political party, other than for the realisation of that party’s political objectives.”

1. **Observations/Findings**

The Committee noted and deliberated on all the issues raised in the submissions and during the briefings and public hearings, including the following:

5.1 There is a general acceptance of the intention of the Bill to regulate direct private donations to political parties.

5.2 There is a general acceptance of the intention of the Bill to prohibit donations from foreign governments and foreign persons, except in respect of donations for the purpose of training, skills or policy development; from state-owned enterprises, organs of state and proceeds of crime.

5.3 The Bill intends to place a cap on how much any person or entity can donate in a year.

Further, the Bill prohibits donations made to a member of a party, except if the donation is for political party purposes and accepted on behalf of the party.

5.4 The Bill requires the disclosure of all donations above a prescribed threshold to the IEC by the political party and the donor.

The Committee further noted the concerns raised with regard to the following clauses that were perceived not to be in line with the Constitution:

5.6 The Auditor-General of South Africa (AGSA) submitted that Clause 12(5) was in conflict with section 188 of the Constitution, because it is not clear whether the funding of political parties from the Represented Political Parties Fund is for a public purpose.

The view of the Committee is that section 188(1) gives the AGSA the power to audit and report on the accounts and financial statements of “any other institution or accounting entity required by national legislation to be audited by the Auditor-General.” Section 188(2) states that in addition, subject to any legislation, the AGSA may conduct an audit of “any institution that is authorised in terms of any law to receive money for a public purpose”. The Bill also makes it discretionary for the AGSA to conduct an audit in terms clause 12(5). Both the Preamble and Clause 7 of the Bill make it quite clear that the funds from the Represented Political Party Fund is to be used for a public purpose. In any event, a political party falls within the ambit of section 188(1)(c) of the Constitution.

Parliament is mandated in terms of section 236 of the Constitution to regulate the funding of represented political parties and have done so in terms of this Bill, which includes making political parties account to Parliament through the IEC. Further, Clause 12(5) makes it discretionary for the AGSA to conduct such audits.

5.6 CASAC, My Vote Counts, Corruption Watch and the EFF submitted that the appropriate formula for the distribution of funds under the Multi-Party Democracy Fund was 50 percent on the basis of proportionality and 50 percent on the basis of equity, because the new formula may not pass constitutional muster.

The view of the Committee is that the formula is the product of extensive multi-party negotiations and was agreed to by all parties, other than one, in the National Assembly. Furthermore, the Committee was of the view that the new formula is in line with section 236 of the Constitution. This section provides that “To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis”.

5.7 CASAC and the EFF submitted that the wording of Clause 10 could result in the limitation and possible violation of the constitutional right to freedom of association; the EFF indicating that it would deter people from becoming members of political parties and politically engaged citizens.

The view of the Committee is that Clause 10 is clear: Members of political parties may only receive donations if it is for party political purposes and may only do so on behalf of a political party. Further, there is no possibility that a court would interpret the provision as preventing donations of a bona fide financial assistance to a person who happens to be a member of a political party. Again, when interpreting any legislation, the courts are expected to prefer any reasonable interpretation of the legislation that is consistent with the Constitution over any interpretation that is inconsistent with the Constitution. The same approach is also expressed in section 39(2) of the Constitution and stipulates ‘When interpreting any legislation … every court … must promote the spirit, purport and objects of the Bill of Rights’.

5.8 Despite some of the concerns raised, the Committee noted that there was a high expectation that the Bill be finalised by Parliament and enacted into law before the next general elections.

1. **Conclusion**

Having considered the ***Political Party Funding Bill* [B33 – 2017]** and submissions made by stakeholders, the Committee recommends the adoption of the *Political Party Funding Bill* [B33 – 2017] without proposed amendments.

Report to be considered.