



Promotion of Access to Information
Amendment Draft Bill Submission
Presentation to

Portfolio Committee of Justice and Correctional Services, 2018

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OVERVIEW OF INPUT

- Our Assumptions;
- Guidelines on Access to Information in Elections, as developed by the ACHPR;
- Concerns, Additions and Suggestions:
 - Definitions;
 - Whistleblower Protections;
 - Digital Advertising;
 - PAIA in the Digital Era.

ABOUT MEDIA MONITORING AFRICA

- MMA non benefit trust operating since 1993, celebrating 25 years in 2018!
- Vision: a just and fair society empowered by a free, responsible and quality media;
- Human rights-based approach: MMA aims to promote the development of:
 - Media that is transparent, diverse, ethical and accountable to its audiences;
 - Critical and constructive communications by the powerful, and;
 - Informed, engaged and connected citizenry.

Funded by local & international donors;

Use machine learning to help hold media accountable.

OUR ASSUMPTIONS

- MMA welcomes the opportunity to work towards an electoral process in line with the vision contained in our Constitution;
- My vote counts decision: “the future of the nation largely stands or falls on how elections are conducted, who gets elected into public office, how and why they get voted in. Only when transparency and accountability occupy center stage before, during and after the elections may hope for a better tomorrow be realistically entertained”.

OUR ASSUMPTIONS

- The public's ability to make **informed political decisions** is central to the democratic process;
- Aligned to this is the ability of the media, civil society and watchdogs to **access relevant information** and share it with the broader public;
- **Without this ability**, the purpose and objectives of PAIA, as well as sections 1 and 19 of our Constitution would be **severely undermined**.

GUIDELINES ON ACCESS TO INFORMATION IN ELECTIONS

“It is the responsibility of States Parties to create an atmosphere that fosters access to information and to ensure ‘adequate disclosure and dissemination of information’ in a manner that offers ‘the necessary facilities and eliminates existing obstacles to its attainment’”

- ACHPR Guidelines on Access to Information in Elections
- For elections to be free, fair and credible, it is imperative that the electorate must have access to information at all stages of the electoral process;
- South Africa is a State Party to the treaty.

GUIDELINES ON ACCESS TO INFORMATION IN ELECTIONS

- State Parties are required to: “ensure that all stakeholders in the electoral process fulfill the responsibility of proactively disclosing information about the electoral process”;
- We urge the Portfolio Committee to widen the scope of the Bill to ensure the underlying objectives are realized in a holistic and effective manner.

CONCERNS, ADDITIONS AND SUGGESTIONS

On proactive disclosure

- Private funding of political parties and independent candidates **“must be recorded, preserved and made reasonably accessible”** – *as declared by the Constitutional Court;*
- “All relevant electoral stakeholders are obliged to create, keep, organize, maintain and manage information about the electoral process in machine readable formats and in a manner that **facilitates the right of access to information**” - *Article 11 of the ACHPR Guidelines on Access to Information in Elections;*
- We submit that section 52B(1)(a) of the Bill is aligned with *My Vote Counts* decision.

CONCERNS, ADDITIONS AND SUGGESTIONS

On definitions

- Definition of “political party” in the Bill does not align with the definition in the Political Party Funding Act 6 of 2018 (PPFA);
- The PPFA definition of “political party” should be amended to be in line with the broader definition contained in the Bill;
- The use of the word “and” in sub-section (b) of the definition should be amended to “or”;
- Neither PAIA nor the Bill contains a definition of “donation”. These should be included.

CONCERNS, ADDITIONS AND SUGGESTIONS

On Political Advertising

- We submit the Bill be amended to include specific provision for disclosures regarding political advertising, including political advertising online;
- Political parties should be required to keep a record of all political advertisements, including sponsor details;
- **Public access** to political advertisements is crucial for transparency, accountability and credibility;
- **Suggested definition** of “political advertising”: “any advertisement and or paid for content, advocating for or against the election of a party or candidate or outcome, that is published directly or indirectly as part of an election campaign”



WHISTLEBLOWER PROTECTIONS

Whistleblower protection

“Persons who, in good faith and in the public interest, disclose information about wrongdoing in the electoral process by a relevant electoral stakeholder or its employees, shall be protected from administrative, social, legal and employment-related sanctions or other sanctions of a similar nature”

- Article 11 of the ACHPR Guidelines on Access to Information in Elections

WHISTLEBLOWER PROTECTIONS

Whistleblower protection

- This statement is considered an **applicable regional standard** for State Parties;
- **Offers protection** against retribution where a person exposes wrongdoing that has the potential to undermine the credibility and fairness of an electoral process;
- Inclusion with cross-reference to the Protected Disclosures Act of 2000, to make a clear protection within the access to information framework.

PAIA IN THE DIGITAL ERA

- Currently, PAIA is time-consuming, expensive;
- **Narrow public interest override** is non-compliant with the ACHPR Model Law on Access to Information in Africa;
- Technologically outdated in that it does not contemplate access to information online, database and the exigencies of electronic information;
- MMA would like to formally offer support in updating PAIA in line with the current digital era, regional best practice and global developments, in order to ensure that South Africa, once again, assumes its place as the world-leader on the right of access to formation.



THANK YOU

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