**ORAL SUBMISSION TO THE INDEPENDENT ELECTORAL COMMISSION ON THE PROPOSED REGULATIONS FOR THE POLITICAL PARTY FUNDING ACT**

Submitted by: Right2Know

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# ABOUT​ ​R2KThe Right2Know Campaign (R2K) launched in August 2010 and has grown into a movement centred on freedom of expression and the free flow of information. We are a democratic, activist-driven campaign that strengthens and unites citizens to raise public awareness, mobilise communities and undertake research and advocacy that aims to ensure the free flow of information necessary to meet people’s social, economic,​ ​political​ ​and​ ​ecological​ ​needs​ ​and​ ​live​ ​free​ ​from​ ​want,​ ​in​ ​equality​ ​and​ ​in​ ​dignity.

# Our​ ​Vision“​We seek a country and a world where we all have the right to know – that is to be free to access and to share information. This right is fundamental to any democracy that is open, accountable, participatory and responsive; able to deliver the social, economic and environmental justice we need. On this foundation a society and an international community can be built in which we all live free from want, in equality​ ​and​ ​in​ ​dignity.

Our​ ​Mission

* To co-ordinate, unify, organise and activate those who share our principles to defend and advance​ ​the​ ​right​ ​to​ ​know.
* To struggle both for the widest possible recognition in law and policy of the right to know and for its​ ​implementation​ ​and​ ​practice​ ​in​ ​daily​ ​life.
* To root the struggle for the right to know in the struggles of communities demanding political, social,​ ​economic​ ​and​ ​environmental​ ​justice.
* To​ ​propagate​ ​our​ ​vision​ ​throughout​ ​society.
* To​ ​engage​ ​those​ ​with​ ​political​ ​and​ ​economic​ ​power​ ​where​ ​necessary.
* To act in concert and solidarity with like-minded people and organisations locally and  
  internationally.

For more information about the Right2Know Campaign, including financial records, please visit [www.r2k.org.za](http://www.r2k.org.za).

The R2K welcomes the signing into law of the Political Party Funding Act earlier this year. We also welcome the commitment to move swiftly with the passing of the regulations to give effect to that Act. We commend the Commission for drafting the Regulations so swiftly and in a manner that seeks to give effect, comprehensively, to the Act.

South Africa’s electoral democracy runs on money. The Constitution gives political parties a unique and sacred duty to make electoral democracy work, and that role requires funding: posters and t-shirts must be printed, offices and venues must be rented, staff paid, busses chartered. All this to bring democracy to the front door step of the average citizen.

But herein lies the problem: outside of limited public funding, the vast majority of political parties’ funds come from private sources. Until now, that relationship between money and politics has been shrouded in secrecy. In that secret space, deals have been struck; policies have been influenced and tenders have been sold. The will of ordinary South Africans has been outbid by capital.

The Right2Know believes that the lack of transparency and regulation on private donations to political parties has created a climate of secrecy and political inequality, which has allowed corruption to thrive, eroded public faith in the electoral system, and undermined the values of our Constitution.

The mandate given to the Electoral Commission by this legislation carries with it the burden of reaffirming the public’s faith in our electoral and our political system and to re-establish the values in our Constitution in the aftermath of bruising revelations of just how pervasive the undermining of the political process has become by money. We have to get this right in our implementation.

The Right2Know believes this need for transparency goes beyond the need to root out corruption and malfeasance. This transparency is a crucial step towards greater political equality. As Constitutional Court Justice Edwin Cameron, in the minority judgment of My Vote Counts v Speaker of the National Assembly and Others, wrote:

“…the right to vote does not exist in a vacuum. Nor does it consist merely of the entitlement to make a cross upon a ballot paper. It is neither meagre nor formalistic. It is a rich right – one to vote knowingly for a party and its principles and programmes. It is a right to vote for a political party, knowing how it will contribute to our constitutional democracy and the attainment of our constitutional goals.

Does this include knowing the private sources of political parties’ funding? It surely does.”[[6]](http://www.r2k.org.za/2017/07/21/political-party-funding-submission/" \l "_ftn6) The public has a right to know who is bankrolling the political parties and candidates that seek their votes, and whose funds are spent.

It is therefore important that this piece of legislation, the Act, be operationalised as quickly and efficiently as possible. We have already missed the moment in relation to the National and Provincial Elections this year. With less than 18 months to our next important election, the implementation of this Act and Regulations becomes critical.

# Accessing Information

We have made several substantive proposals in our joint written submission with MVC on the operation of some of the regulations – especially as they relate to the public’s access to information. Mindful of the current climate of a lack of trust in the political system (as witnessed by the low voter turnout in the NPE2019 for instance), it is important that the principle of proactive disclosure and reporting should be adopted:

With respect to **Regulations 4(3) and 4(4)** referring to the Multi-Party Democracy Fund, the process of the non-disclosure application and the IEC’s determination thereof:

* There would be enormous value in the public having access to the following information:
* The number of requests that were made for non-disclosure;
* The breakdown of the number of requests for non-disclosure that were approved and those that were rejected;
* The monetary value of each donation that made a request for non-disclosure;
* The cumulative monetary value of all donations that made a request for non-disclosure;
* The reason/s provided for requesting non-disclosure, without identifying their identity;
* The breakdown of the reason/s provided by the IEC to grant or reject non-disclosure requests.

With respect to **Regulation 8(5)** which states that a, ‘record of disclosures…shall be kept by the Commission and shall be available for inspection by any Person during normal office business hours at the office of the Commission’:

Given that the IEC has a limited number of physical offices, which will be inaccessible for many people due to distance and cost of travel, provisions must be made for the record to be electronically accessible on a website.

The electronic records will need to be searchable to make them worthwhile. We anticipate that there will be volumes of data and unless it is searchable, for example, by name of contributor, date of contribution, amount of contribution etc., it will undermine the entire process.

# Resourcing:

**Phased approach of rolling out the Act:** We note the IEC’s decision to rollout the implementation in stages over 3 years, with an initial focus on chapters 1 to 4 and 6 of the Act and to address the enforcement of the legislation in the future when there is capacity and funding. We are supportive of this decision to the extent that it kickstarts this crucial process. We understand that there will be nothing to enforce if the structures and processes are not in place. We must emphasize that the enforcement is a crucial aspect and as soon as this phase can be implemented it must be.

**Forensic Investigators:** The IEC must ensure that it has forensic investigators and trained staff with the requisite skills to analyse and determine the veracity of the information that will be submitted to the IEC. It may also be prudent for the IEC to consider requesting assistance from other specialised units within government that process financial information.

**Adequate Resources:** It is important that the Commission be given adequate resources – physical and human - to fulfil this task. It cost the Commission in the order of R200m to collect and verify the addresses of voters in the run-up to the NPE2019. We remind the Commission that this was less than half of the R440m raised by one candidate in an internal election of one political party.

**Whistle-blowers:** The *Proposed Regulations* make no mention of a policy for the protection of whistle-blowers. If for example, a member of the public has knowledge that a disclosure was made and it contained information that was, ‘false, inaccurate or misleading in any manner whatsoever’, and the IEC is not aware of this, there should be a provision for a person to make this known to the IEC.

**Funding from foreign entities:** The *Proposed Regulations* make no mention of the way that donations from foreign entities, as envisaged in Chapter 3, Section 8(4)(a) and (b), will be processed or monitored.

The Act makes provision for funding from foreign entities for the purpose of, ‘training or skills development of a member of a political party; or policy development by a political party’. The needs to be greater guidance as to what constitutes training, skills development and policy development. Perhaps there could be an application process made to the IEC by the foreign entity and/or the political party to provide clear detail of what the funds will be spent on. The IEC needs to have the ability to vet such donations and monitor the actual training, skills development and policy development.

**Donations to Members of a Political Party:** Section 10 of the Act says that “*No person may deliver a donation to a member of a political party other than for party political purposes*” and further in s10(2) that “*a member of a political party may only receive a donation contemplated in subsection (1) on behalf of the party*.” The intention of the Act seems to be to regulate the public activities of a political party. Given the revelations recently about the cost and contributions by private donors to individual intra-party campaigns, would these donations fall within the scope of the Act and the Regulations? We would submit that they should.

# Conclusion

We appreciate the challenge that the IEC has faced in producing these *Draft Regulations* in such a short time after the promulgation of the Act. They are broad and leave room for changes to the forms and processes as informed by practice.

Our comments above seek to strengthen the *Draft Regulations* by highlighting some areas that could do with some tightening or clarity. Because the *Draft Regulations* are forward-looking, and given the proximity to the 6th National and Provincial Elections, they are unfortunately silent on the content of the first submission by the registered political parties. For the reasons just stated, we propose that the first submission be one for the past 12 months (rather than the monthly or quarterly submissions subsequently.