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SUMMARY OF SUBMISSIONS ON THE CONSTITUTION FOURTEENTH AMENDMENT BILL OF 2008, AND THE CONSTITUTION FIFTEENTH AMENDMENT BILL OF 2008

A. SUBMISSIONS SUBMITTED IN TERMS OF SECTION 74(5) OF THE CONSTITUTION TO THE MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT			
NO.	STAKEHOLDER / NAME	COMMENTS	
		CONSTITUTION FOURTEENTH AMENDMENT BILL	CONSTITUTION FIFTEENTH AMENDMENT BILL
1.	Northern Cape Provincial Legislature (08 FC 4)	Supports	Supports
2.	Eastern Cape Provincial Legislature (08 FC 9)	Supports	Supports
3.	Electoral Commission (08 FC 10)	Supports	Supports
4.	Portfolio Committee on Finance, Office of the Premier and Legislature of the Free State Provincial Legislature (08 FC 11)	Supports	Supports
5.	Mossel Bay Municipality (08 FC 14)	Supports	Supports
6.	North West Provincial Legislature (08 FC 15)	Supports	Supports
B. SUBMISSIONS SUBMITTED AS A RESULT OF THE PRESS STATEMENT ISSUED BY THE CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT			
NO.	STAKEHOLDER / NAME	COMMENTS	
		CONSTITUTION FOURTEENTH AMENDMENT BILL	CONSTITUTION FIFTEENTH AMENDMENT BILL
1.	Mr L Mangala (08 FC 1)	Supports	Supports

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2.	Mr F R Comer (08 FC 2)	Supports	Supports
3.	Southern African Catholic Bishops' Conference (08 FC 16)	<p>(a) Supports</p> <p>(b) Effect of abolition of floor crossing is that a representative who feels that his or her party has deviated from its electoral mandate will be unable to express this without running the risk of being replaced.</p> <p>(c) There is an urgent need for fundamental electoral reform in South Africa. Many civil society organisations have called for the adoption of an electoral system that would provide some form of direct accountability between the electorate and the elected. Such systems are well-established in various countries.</p> <p>(d) There is a growing realisation that our present electoral system places too much power in the hands of small groups of party leaders and that it hinders proper levels of accountability by elected representatives.</p> <p>(e) Urges the Portfolio Committee to attend to the question of electoral reform.</p>	Supports
4.	IDASA (08 FC 17)	<p>(a) Supports</p> <p>(b) The legislation should form part of a greater review of South Africa's electoral system by the Portfolio Committee. Such a review has the potential to revisit some of the weaknesses relating to the accountability of representatives to their constituents, and to enhance South Africa's democratic edifice.</p>	Supports

SUMMARY OF SUBMISSIONS ON THE GENERAL LAWS (LOSS OF MEMBERSHIP OF NATIONAL ASSEMBLY, PROVINCIAL LEGISLATURE OR MUNICIPAL COUNCIL) AMENDMENT BILL, 2008

A. SUBMISSIONS SUBMITTED IN TERMS OF SECTION 154(2) OF THE CONSTITUTION TO THE MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT		
NO.	STAKEHOLDER / NAME	COMMENTS
1.	Northern Cape Provincial Legislature (08 FC 4)	Supports
2.	Portfolio Committee on Finance, Office of the Premier and Legislature of the Free State Provincial Legislature (08 FC 11)	Supports
3.	Mossel Bay Municipality (08 FC 14)	Supports
4.	Electoral Commission (08 FC 10)	<p>(a) Ad clause 1: The repeal of section 16A of the Electoral Commission Act, 1996, is not supported for the following reasons:</p> <p>(i) In terms of section 16A of the Electoral Commission Act, 1996, a registered party may apply to the Chief Electoral Officer, in the prescribed manner, to change its registered name, abbreviated name, distinguishing mark or –symbol.</p> <p>(ii) Section 16A cannot be used to merge parties or to form a new party distinct from the already registered party. Where two or more parties decide to merge to form a new party, the new party must be registered by adhering to the requirements for the registration of parties.</p> <p>(iii) Where one party merges with another party by becoming part of that party, it cannot use section 16A to change its name to that of the other party, as it would be in contravention of section 16 of the Electoral Commission Act, 1996.</p> <p>(iv) Any registered party may, in terms of section 17 of the Electoral Commission Act, 1996, apply to be deregistered. If such deregistered party have representatives in any legislature, those representatives will lose their seats.</p> <p>(v) When a party changes its name it is not deregistered, but carries on under its new name.</p> <p>(vi) When section 16A was inserted in the Electoral Commission Act, 1996, it was not with the intention to deal with the consequences of floor crossing.</p>

- (vii) Parties and representatives will not be allowed to use section 16A to surreptitiously indulge in floor crossing.
- (b) **Ad clauses 2, 3, 5, 6, 8 and 9:**
- (i) Once floor crossing has been abolished, there will be three situations in which the unspent balances of all moneys have to be repaid to the Electoral Commission (the Commission) in terms of sections 5(4) and 9(1), (3) and (4) of the Public Funding of Represented Political Parties Act, 1997 (the Funding Act). It is suggested that each of those three situations should be reviewed.
- (ii) Repayment in terms of section 9(1) of the Funding Act:
- (aa) Section 9(1) provides as follows:
- "(1) Any unspent moneys, as at the end of the financial year, in the special banking account kept by a political party in terms of section 6(1)(a), will be shown in that party's relevant books and records of account as a credit balance carried forward to the next financial year. However-
- (a) the moneys that may so be carried forward, may be limited to an amount representing a prescribed percentage of the allocations that had been made for that financial year; and
- (b) moneys so carried forward to the next financial year may not be taken into account in determining any allocation to be made to the party concerned during that financial year."
- (bb) There is no known principle to support the provision in section 9(1) that a percentage limit may be prescribed on the amount of unspent balances of moneys that may be carried forward as a credit balance from one financial year to the next.
- (cc) The Funding Act prescribes no criteria for the determination of the percentage that may be carried forward or to indicate why only a percentage may be carried forward.
- (dd) Historically there may have been a number of occasions when a party's annual financial statements revealed a small amount of unspent balances of moneys, 50% of which had to be repaid to the Represented Political Parties' Fund (the Fund).
- (ee) It is recommended that the proviso to section 9(1) should be repealed.
- (iii) Repayment in terms of section 9(3) and (4) of the Funding Act:
- (aa) Section 9(3) and (4) provides as follows:
- "(3) (a) If Parliament and every provincial legislature are dissolved in terms of the Constitution, every political party that is represented in any or all of those legislative bodies must close its books and records of account kept in terms of section 6 not later than 21 days before the date set for the election of those legislative bodies and within 14 days thereafter submit an audited statement in respect of those books and records of account to the Commission.
- (b) Not later than the day immediately before the date set for the election,

		<p>such a political party must repay to the Commission the unspent balances, as at the date when its books and records of account are so closed, of all the moneys that had been allocated to it in terms of section 5.</p> <p>(4) (a) If Parliament or any provincial legislature is so dissolved in any other circumstances, every political party represented in the legislative body that dissolves, must close its books and records of account kept in terms of section 6 not later than 21 days before the date set for the election of the dissolving legislative body and within 14 days thereafter submit an audited statement in respect of those books and records of account to the Commission.</p> <p>(b) (i) The representation of a party mentioned in paragraph (a), in a dissolving legislative body, must be calculated by the Commission as a percentage of the party's representation in all of the legislative bodies contemplated in subsection (3) (a).</p> <p>(ii) That determined percentage of any unspent balances, as at the date when those books and records of account are closed, of all moneys that had been so allocated to the political party, must be repaid to the Commission not later than the day immediately before the date set for the election.*</p> <p>(bb) Only two occasions could be found where a party was obliged to, and did, repay unspent balances of moneys to the Fund (i.e. R28 000 and R 2 000).</p> <p>(cc) There is no apparent valid principle underlying these provisions.</p> <p>(dd) It is recommended that section 9(3) and (4) be repealed. Parties will then be relieved of the unnecessary burden of an interim closing of their books and records of account, having those books and records of account audited, having audited statements submitted to the Commission and repaying the unspent balances of all moneys, all within a period of three weeks ending on the day before the date of the national and provincial elections.</p> <p>(iv) <u>Repayment in terms of section 5(4) of the Funding Act:</u></p> <p>(aa) Section 5(4) provides as follows:</p> <p style="padding-left: 40px;">*(4) The allocation of moneys from the Fund to a political party will end when the party ceases qualifying therefor in terms of subsection (1) (a). Subject to section 6A, a political party must within 21 days after the date on which it has so ceased to qualify, repay to the Commission the unspent balances, as at that date, of all moneys that had been allocated to it in terms of this section.*</p> <p>(bb) Historically only two parties have ceased to qualify for allocations from the Fund.</p> <p>(cc) Under these circumstances there is a practical case to be made out for the affected party not to be able to carry forward any unspent balances of moneys from year to year <i>ad infinitum</i>, subject to, amongst others, the Fund's supervision to ensure that those funds are not spent irregularly.</p>
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- (dd) The party's "ceasing to qualify" was probably unexpected and the party might not have had the opportunity to timeously terminate post-term regular obligations in respect of office and employee expenses. It is therefore unfair to demand immediate repayment of the unspent balances of moneys.
- (ee) It is proposed that section 5(4) be amended to provide that a party must at a date not later than six months after the date on which it "ceased to qualify" or on which the party was dissolved, whichever is the earlier, close its books and records of account, submit an audited statement to the Commission and repay any unspent balances of moneys still remaining in the account to the Commission within thirty days after the date on which the accounts were so closed.
- (ff) The obligation to close the books and records of account of a party, to submit an audited statement and to repay to the Commission the amount of the unspent balances of moneys should be placed on the last accounting officer and the leader of the party, jointly and severally. The last accounting officer and the leader of the party should also in their personal capacity be jointly and severally liable to so repay the amount of the unspent balances of moneys.
- (gg) Should these proposals be accepted, the need for clause 5 falls away.
- (hh) The processes provided for in the proposed new section 6B appear to be cumbersome and expensive. Those processes might have been necessary in respect of the merging of parties, etc. in terms of the floor crossing arrangements, but it would appear that they were and are not necessary in the pre and post floor crossing situations.
- (c) **Ad clause 7:**
- (i) As South Africa has abandoned the principle and practice of sending a person to prison for debt, the provisions that criminalise the failure to comply with the obligations specified in section 9A of the Funding Act are not supported.
- (ii) The coupling of criminal offences to what is essentially accounting and financial obligations appears to be inappropriate.

MISSIONS SUBMITTED AS A RESULT OF THE PRESS STATEMENT ISSUED BY THE CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT

OLDER / NAME	COMMENTS
t)	<p>Ad clause 7:</p> <p>(a) Section 35(3)(h) of the Constitution provides that every accused person has the right "to be presumed innocent". "Guilty" has the opposite meaning to "innocent". Section 35(3) of the Constitution further "defines the tasks to be performed before the accused can be declared guilty". In order to be consistent with the Constitution, the word "guilty" should be removed from section 9A of the Funding Act. It is</p>

		<p>proposed that section 9A be formulated as follows:</p> <p>*Offences and penalties</p> <p>9A. It is an offence to—</p> <p>(a) fail to comply with section 5(3), 6(2), (3) or (5) or 6B(3), (4), (6) or (9)(b); or</p> <p>(b) fail to comply with a direction in terms of section 6B(9)(a).</p> <p>Any person found guilty is liable to a fine or imprisonment for a period not exceeding two years."</p> <p>(b) Arriving at a decision of guilt in terms of a fair procedure, as prescribed by the Promotion of Administrative Justice Act, 2000, also satisfies the requirements of the Constitution. The notice and comment or public hearing procedure should be specified clearly in the law. It is proposed that the following paragraph be inserted in section 9A:</p> <p>"(c) continue with an activity after—</p> <p>(1) the decision by the authority in terms of a PAJA approved procedure with no intention of an appeal;</p> <p>(2) a ruling by a tribunal; or</p> <p>(3) a ruling by a competent court."</p>
2.	Southern African Catholic Bishops' Conference (08 FC 16)	Supports