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Ad Hoc Committee on Funding of Political Parties

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Attention:
 The Secretary
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Black First Land First submissions on the Public Funding of Represented Political Parties Act, 103 of 1997 to the Ad Hoc Committee on the funding of political parties

PUBLIC FUNDING

Salient provisions of the Public Funding of Represented Political Parties Act, 103 of 1997

Introduction

The Public Funding of Represented Political Parties Act, 103 of 1997 (the Public Funding of Represented Political Parties Act) established the Represented Political Parties Fund to finance the parties represented in parliament and in provincial legislatures. The said Act makes provision for the President of Republic of South Africa (RSA) to issue and promulgate regulations elaborating those details that are not directly provided for in the Act. The Fund is accordingly regulated in terms of the Public Funding of Represented Political Parties Regulations, 1998.

It is further administered in terms of Section 4(1) of the Public Funding of Represented Political Parties Act by the Chief Electoral Officer "under the oversight of the Independent Electoral Commission". In terms of Section 4(2) "[t]he IEC is expected to keep full financial records and accounts for each financial year" which in turn, and in terms of Section 8 of the said Act "must be submitted to the Auditor-General for auditing and then, within 30 days of the issue of the Auditor-General's report, to Parliament".

Income of political parties according to Section 2(2) of the Public Funding of Represented Political Parties Act 1997, "include(s) parliamentary appropriations, donations, interest on bank balances held, investment income and moneys accrued from other sources".

Allocation of public funds to political parties

In terms of Section 5(1)(a) of the Public Funding of Represented Political Parties Act those political parties represented "in the National Assembly, or in any of the provincial legislatures, or both, in that particular financial year" are allocated funds.

Furthermore in terms of Section 5(1)(b) of the Public Funding of Represented Political Parties Act funds may be used by a party for "any purpose" that is in line with "its functioning as a political party in a modern democracy", including:

- "(i) the development of the political will of people;
- (ii) bringing the political party's influence to bear on the shaping of public opinion;
- (iii) inspiring and furthering political education;



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- (iv) promoting active participation by individual citizens in political life;
- (v) exercising an influence on political trends; and
- (vi) ensuring continuous, vital links between the people and organs of state".

No provision is made in the Act as to how much funds should be allocated to each political party; and how these funds are to be distributed. However the Public Funding of Represented Political Parties Regulations, 1998 (Regulations) makes specific provisions for the announcement of the total amount of funds that will be available for allocation. To this end Regulations 2(1) provides as follows:

"The total amount of funding available for allocations from the Fund during a particular financial year must be announced by the Commission by notice in the Gazette within two weeks of the beginning of that financial year".

Furthermore, Regulation 5(1) provides for the payment of the funds to the political party to be made in four equal installments. More specifically it indicates as follows:

"All allocations to which a political party is entitled as determined in terms of regulations 3 and 4, must be paid to the political party in question in four equal instalments, each within three months of the previous payment. The first instalment must be paid within four weeks of the beginning of the financial year in question".

In terms of Section 5(2)(a) of the Public Funding of Represented Political Parties Act, funds are allocated in accordance with a formula that is based on proportional representation of the members a party has in the National Assembly and in the Provincial Legislatures; and a minimum amount that serves as a threshold so as to promote fairness and equity. Accordingly, the Regulations make the following provisions in Regulation 2(2)(a) and (b):

"(2) The allocations from the Fund to be made and paid to each of the political parties concerned are calculated by -

- (a) allocating ninety (90) per cent of the total amount of funding determined in terms of subregulation (1) proportionally in accordance with regulation 3; and
- (b) allocating ten (10) per cent of the total amount of funding determined in terms of subregulation (1) equitably in accordance with regulation 4"

Furthermore the determination of the proportional allocation (alluded to in Regulation 2(a)) is elaborated in Regulation 3 as follows:

"3. The proportional allocation is determined by dividing the amount contemplated in regulation 2 (2) (a) proportionally among the participating parties in any legislative body referred to in section 9 (3) (a) of the Act, in accordance with the number of seats awarded to each participating party in the National Assembly and the provincial legislatures jointly".

As alluded to above in terms of the Regulations, 90% of the financial year allocation is paid proportionately in relation to the aggregate of each party's seat representation in the total seats of the National Assembly and Provincial legislatures; and the balance of 10% of the fund, as indicated in Regulation 4 quoted below, is proportionately divided between the provinces in accordance with the number of seats in



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each province. To this end the provincial allocations, in turn, are equally divided between the parties in each of the legislatures. Regulation 4 settles "[e]quitable allocation" as follows:

"4. The equitable allocation is determined in the following manner:

(a) The amount contemplated in regulation 2 (2) (b) must be allocated to the respective provinces in proportion to the number of members of the respective provincial legislatures as contemplated by section 105 (2) of the Constitution; and

(b) the allocation to a particular province in terms of paragraph (a) must be divided equally among the participating parties in the legislature of that province".

The effect of public funding on party performance

The current allocation of public funds in terms of the Public Funding of Represented Political Parties Act and the Regulations, as elaborated above, hinders the development of the smaller political parties and hence undermines participatory democracy. Hence mechanisms need to be put in place to prevent parties from entering into corrupt arrangements so as to source private funding to supplement the public funding they receive from State coffers.

To this end there is a huge difference between the public funds allocated to the African National Congress (ANC) and the Democratic Alliance (DA), due to the number of seats they obtain in the National Assembly and Provincial legislatures as compared to the other parties, on the one hand and the other political parties on the other hand.

To address this challenge BLF proposed the following remedial action:

Amend the percentage allocation in Regulation 2 (2) (a) to 60% and the percentage allocation in Regulation 2 (2) (b) to 40%. Regulation 2 as amended will accordingly read as follows:

"(2) The allocations from the Fund to be made and paid to each of the political parties concerned are calculated by -

(a) allocating sixty (60) per cent of the total amount of funding determined in terms of subregulation (1) proportionally in accordance with regulation 3; and

(b) allocating forty (40) per cent of the total amount of funding determined in terms of subregulation (1) equitably in accordance with regulation 4"

PRIVATE FUNDING

Introduction

Currently private funding of political parties is not really regulated. More specifically, save for legislation indicating that private funding is allowed, both the Electoral Act of 1998 and the Public Funding of Represented Political Parties Act of 1997 are silent on the issue of private funding. To this end there is no limitation in law as to the amount of money a political party can spend on an election campaign. Political parties are also not obliged to disclose who their private donors are or the amounts that they have received in this respect. Accordingly, public disclosure relating to the party's income and expenditure is left to the party's discretion.



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The business or investment interests of a political party; the party's membership fees; and the funds raised by the party generally, represent a small proportion of the funds needed to supplement the public funds allocated to the smaller parties. Smaller parties are evidently poor at securing private funding due to the fact that they are further away from power than the ruling and the main opposition parties. They accordingly have huge dependence on public funding. The bigger parties, on the other hand, by virtue of their close proximity to power get most of their funding from private donors.

Case law on disclosure of private donors

In "Institute for Democracy in South Africa and Others v African National Congress and Others (9828/03) [2005] ZAWCHC 30; 2005 (5) SA 39 (C) [2005] 3 All SA 45 (C) (20 April 2005)" the subject of private funding of political parties was challenged. In this regard the applicants sought an order inter alia for the Court to declare "that the respondents are obliged in terms of s 32(1) of the Constitution and s 11 and s 50 of the Promotion of Access to Information Act, to give access to any adult South African citizen on due and proper request, to their donations records relating to all the donations they received during the period 1 January 2003 to 1 May 2004. the Court to declare".

In opposition to the application, the Respondents argued that compelling full disclosure of private donors would deter potential donors who wanted to remain anonymous for various reasons.

The application did not succeed. The Court pointed out that it was "ill equipped – compared with the legislature – to perform the task that the applicants are seeking to impose upon it". To this end the Court held that "the respondents are not obliged to disclose such records".

Quite clearly, the Court was of the correct view that the subject of compelling full disclosure of private donors is the domain of the Legislature and to this end appropriate legislation must be put in place.

Conflict of interest

Evidently, private funders traditionally fund particular political parties with an intention of securing their own political or other interests. This gives rise to a conflict of interest situation relating to corruption which in turn serves to undermine the connection between the political party concerned and its voters. There is a need to create conditions conducive for participatory democracy to thrive and not be distorted by money.

Any party that is in power or is close to power and to this end is in a position to influence the policy direction of the country is likely to attract funding from dubious donors. While some political parties or their representatives may resist this kind of funding, others may be seduced by its trappings.

Thus far the African National Congress (ANC) and the Democratic Alliance (DA) have been resisting any meaningful regulation of party funding from private donors, as they currently benefit the most from such funding,

There is a great need for legislation to be put in place so as to regulate private funding. This legislation must not be undermined by an absence of capacity or political will. It must also cater for appropriate measures that are enforceable.

BLF accordingly propose the following rules to regulate against corruption relating to the funding of political parties including their electoral campaigns:

1. Political parties must get both public and private support



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Both the State and the citizens should be free to give support to political parties. Objective, fair and reasonable criteria should be applied regarding the distribution of both private and state funding. The State should ensure that any support from itself (state) and/or citizens does not undermine the independence of political parties. Private funding, including funding by foreign donors, to political parties should be facilitated by regulations to:

- prevent a conflict of interests situation from occurring;
- promote full disclosure of donations;
- prevent clandestine or secretive donations;
- avoid prejudice to or undermining the program of political parties;
- guarantee independence of the political parties.

BLF accordingly calls for total disclosure of all the private funding of the current political parties. We further ask that, going forward, political parties be prohibited from directly receiving funds from private donors. We propose that an Independent Political Party Funding Commission be set up to receive and administer funding from private donors and to this end that the said funds be distributed equitably to all political parties in terms of an agreed criteria.

We ask further that the value or amount of the private funds allocated to political parties be limited and that the allocation of such funds be the same for all the parties. To this end regulations limiting private funds must be put in place. Also measures to prevent such limitations from being transgressed must also be adopted. The identity of private donors must also be revealed by the Independent Political Party Funding Commission and to this end private donors must be compelled to reveal their identities to the Commission.

2. Tax deductibility of donations to political parties

We ask that any tax that is deductible in respect of donations to political parties be limited.

3. Donations by state owned or controlled entities

Public authorities or other entities that are state owned or controlled must be prohibited from making donations to political parties.

4. Donations to political parties by legal entities

Donations to political parties from legal entities must be properly recorded in the books of such legal entities. Furthermore, all the shareholders or other members of the relevant legal entities must be informed of such donations.

Donations from legal entities in the form of goods or services for the purpose of public administration should also be limited

5. Regulation of funds to elected representatives and candidates for elections



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The proposed regulations canvassed above regarding the funding of political parties should apply in the same way to "the funding of electoral campaigns of candidates for elections"; and "the funding of political activities of elected representatives".

Limitation on electoral campaign expenditure

Any funding needs of political parties, relating to electoral campaigns, that are excessive must be curbed. To this end the amount given to political parties from private funds must be limited.

Expenditure Records must be kept

Proper records of all expenditure relating to the electoral campaigns of "each political party, each list of candidates and each candidate" must be kept.

Books and accounts must be kept

Political parties and those entities connected to such political parties must be required to keep comprehensive and consolidated books and accounts. This should include the accounts of the relevant associated entities.

Records of all donations must be kept

Each political party must record in their books and accounts all donations received by them which in turn must include the nature and value of each donation. This must be the case even if such donations will be received in the future via an Independent Political Party Funding Commission that BLF had proposed above.

Independent Monitoring Authority

An Independent Monitoring Authority must be set up in relation to monitoring and supervising the funding of electoral campaigns and political parties. This must include monitoring and supervising all the accounts of political parties, the expenses entailed in electioneering campaigns and the publication and presentation thereof.

Obligation to present accounts to Independent Monitoring Authority

Political parties must be required to present and make public their accounts, indicated above. They must do so regularly and, at the minimum, annually to the Independent Monitoring Authority.

Specialized capacity

Capacity should be developed in relation to the "judiciary, police or other personnel" towards combatting the illicit "funding of political parties and electoral campaigns".

Penalties

The contravention of any rules relating to the funding of political parties and electioneering campaigns must be subjected to appropriate penalties.

REPEAL THE IEC's DEPOSIT REQUIREMENT



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Political parties are currently required to pay an amount of R600 000 in order to contest elections in the whole country. This amount constitutes R45 000 for each province and R200 000 for National contestation.

BLF calls for the repeal of the provisions of the Electoral Act, No.73 of 1998 – which confers powers on the Independent Electoral Commission (IEC) to make a determination and to impose the deposit in question – requiring a deposit to be paid before a party can be considered eligible to contest the elections. We submit that instead of a deposit each political party submits a list of a minimum of fifty thousand (50 000) signatures of those people intending to vote for the political party in the upcoming elections. This would serve as a strong indication of the significant support that the political party enjoys – enough to represent one seat in parliament.

BLF rejects the imposition of this deposit. It is both unfair and unreasonable to new entrants to elections. Furthermore it benefits those political parties that have access to huge and sometimes dubious private funding over those that don't. This constitutes unfair discrimination. It also serves to exclude entry of those political parties that don't have and cannot afford the deposit. It accordingly excludes the poor. It further violates the "Political rights" guaranteed in Chapter 2, Section 19 of the Constitution (Act 108 of 1996) which provides that:

"[e]very citizen is free to make political choices, which includes the right–

(a) to form a political party; ...

(c) to campaign for a political party or cause".

The requirement for the payment of a huge deposit accordingly undermines true democracy as it excludes full participation in a society that is supposed to be built on democratic values.

References

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