



COUNCIL
FOR THE ADVANCEMENT OF THE
SOUTH AFRICAN
CONSTITUTION

SUBMISSION TO THE AD-HOC COMMITTEE OF THE NATIONAL COUNCIL OF PROVINCES ON THE POLITICAL PARTY FUNDING BILL, [BILL33 – 2017]

1. The Council for the Advancement of the South African Constitution (CASAC) welcomes the opportunity to make representations to the AD Hoc Committee with respect to the Political Party Funding Bill (2017) which was passed by the National Assembly on 2017 March 2018.
2. The Bill as it currently stands is a product of months of extensive deliberations by the National Assembly's Ad-hoc Committee on the Funding of Political Parties. Wide-ranging public consultations were held on two occasions, experts were engaged and robust debate was had amongst political parties on all the key issues contained in the Bill.
3. The result of this exemplary process has been a historic and ground-breaking Bill which will set South Africa's political party finance legislation as amongst the most transparent and accountable in the world. Whilst the fundamental constitutional objective of transparency in the private funding of political parties was achieved, several ingenious additions are incorporated which further adds to the efficacy and operation of the new legislative framework. These include *inter alia*:
 - The establishment of the new Multi-Party Democracy Fund which will encourage donations made indiscriminately to all political parties and allow donors who wish to remain anonymous to contribute to South Africa's multi-party democracy;
 - The rectification, at least in part, of the injustices caused by the formula for the distribution of public funds to political parties in terms of Section 236 of the Constitution;
 - The "dual disclosure" regime requiring disclosure by both political parties and donors in certain instances which further enhances the accountability, transparency and accuracy of the reporting system;

- A cap on the total amount of donations a party may receive from a particular donor in order to curb the possibility of a single donor or entity “capturing” the interests of a single political party;
 - Achieving a sufficient balance between protecting national sovereignty by banning certain forms of foreign donations whilst maintaining the opportunity for foreign bodies to contribute to our democracy in a positive manner by enhancing the capacity and skills of political parties in South Africa.
4. Whilst the Bill makes great strides in enhancing transparency in the private funding of political parties, it is not perfect. No piece of legislation can be free of any imperfections but through regular re-evaluation, amendments, regulations and the jurisprudence of the courts, it is developed and improved through time.
 5. We are concerned that amending the Bill at this time, will require it to be referred back to the National Assembly for its approval. This would unduly and unnecessarily delay the implementation of the crucial provisions of this Bill and allow the culture of secrecy that taints political party funding in South Africa to continue for longer than is necessary. The 2019 election campaigning has already begun and parties are already receiving significant contributions to their campaigns. The Bill needs to be passed as a matter of urgency to avoid yet another election in South Africa being clouded by campaign finance secrecy.
 6. Whilst CASAC strongly advocates that the Bill be passed in its present form, if the Ad-hoc Committee of the National Council of Provinces believes that the Bill should be strengthened we suggest that the following improvements can be considered:
 - 6.1 In line with the concerns raised by the Economic Freedom Fighters (EFF) in the National Assembly, the wording of Section 10 of the Bill could be improved. The purpose of this provision in its current form is to prevent donations intended to be for a political party being given to members of that party who then may not pass the donation on to the party and/or be used as a means to avoid disclosure. The EFF’s contention is that the current wording may be interpreted to mean that donations cannot be made to members of a political party (even those that are ordinary members and not public representatives) for *bona fide* financial assistance for purposes not related to their party of choice, eg. a study bursary. Whilst this may be a legitimate reading of the provision, there is surely no possibility that an adjudicative body would interpret the provision as such nor impose any penalty for a member of society financially assisting another person in good faith simply because the latter holds a membership card of a political party;

- 6.2 The previous formula for the allocation of public funds to political parties of 90% in terms of proportionality and 10% on the basis of equity, which we submitted was unconstitutional, has been corrected to a degree. There is still a question, however, whether the new formula of two-thirds proportionality and one-third equity would pass constitutional muster. Whilst the political parties negotiated and agreed to this revised formula in the National Assembly process, the meaning of a constitutional provision cannot be negotiated as a political settlement but rather has an objective meaning determined in light of the purport and object of the provision in question. The empowering provision, Section 236 of the Constitution, does not suggest the principle of proportionality be given more weight than equity. The purpose of the provision is stated as “to enhance multi-party democracy” which suggests, if anything, that the principle of equity should be preferred. We would therefore support that this formula be further revised to achieve a 50/50 split between proportionality and equity – which we maintain is the most appropriate formula to give effect to Section 236 of the Constitution.
- 6.3 The threshold prescribed by the Regulations of R100 000 above which donations must be disclosed is considerably on the high side. CASAC would support this amount being lowered to R50 000.

CONCLUSION

7. Despite the suggestions put forward in paragraph 6 above, CASAC urges the National Council of Provinces to pass the Bill in its current form, to avoid unduly delaying its implementation to the detriment of transparency of and public confidence in the 2019 electoral process. The Bill in its current form is an extremely astute and practical piece of legislation that would have great benefit to South Africa’s democracy. It needs to be passed, promulgated and implemented as a matter of urgency.
8. We attach copies of our earlier submissions to the National Assembly’s Ad Hoc Committee for your information. CASAC requests the opportunity to make an oral submission to the Ad Hoc Committee on 14 June 2018.

6 June 2018