



Honourable Dikgang Stock, Chairperson
Ad Hoc Committee on Funding of Political Parties (National Council of Provinces)

26 June 2018

By email: egrunewald@parliament.gov.za

Dear Sir:

Re: Implications of Constitutional Court judgment on Multi-Party Democracy Fund – anonymity clause

1. The South African National Editors' Forum together with the amaBhungane Centre for Investigative Journalism NPC highly appreciates the opportunity the Committee afforded us to comment on the Political Party Funding Bill, 2017 during your recent public hearings.
2. In light of the recent Constitutional Court judgment in *My Vote Counts NPC v Minister of Justice and Correctional Services and Another*, we wish to highlight the importance of how – in the context of the judgment – the anonymity clause provided at cl 3(5) of the Bill will be reviewed.
3. Secrecy in private funding information according to the Constitutional Court judgment must be seen as antithetical to the intentions to regulate undue influence of such donors. It also infringes on the public and the media's right to information and freedom of expression.
4. Mogoeng CJ observed that “[*Transparency*] frees our public representatives to do what they promise and are obliged to do, unencumbered by potentially corrupt deals that could be enabled by undisclosed private funding. If secrecy thrives, then our constitutional project would be at risk of being betrayed or shipwrecked”. The judgment further states: “[w]e all therefore enjoy the right to freedom of expression in relation to information on private funding that is essential for meaningful participation in the electoral process.”
5. Mogoeng CJ noted that the media are “doubly” covered by the rights to freedom of expression, “in section 16(1)(a) of the Constitution in their entitlement to information that could help them exercise or protect any right”.
6. Sanef and amaBhungane are of the opinion, without prejudicing any other submissions we have made to the Committee, that clause 3(5) in its current form cannot be left unchanged.



7. The unregulated anonymity provision neither fulfills the original intentions of the Bill, nor does it meet the disclosure requirement as per the Constitutional Court judgment. The clause in effect allows for *'undisclosable private funding information'* and therefore might not meet constitutional muster.
8. We recommend that the Committee either amend the Bill to provide that information above a prescribed threshold may not be kept confidential, as per our proposal to the Committee during the recent public hearing on the 20 June 2018.
9. Alternatively, if that option is unfeasible due to the process currently underway, we recommend that the clause must make specific reference to an override through the provisions of PAIA. This will allow Parliament to deliberate on it once amendments to PAIA are considered in line with the Constitutional Court order. A PAIA override is provided at cl 9(4) of the current Bill which states *"Nothing in this section detracts from rights given effect to by the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000."* This clause could be amended to include cl 3(5), or a similar clause inserted as a new cl 3(6) of the Bill.
10. We trust this supplementary note will be useful to the Committee in finalising its work on the Bill.
11. Should you have any queries on the above please do not hesitate to contact us.

Yours faithfully,

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