PMG PARLIAMENTARY MONITORING GROUP

Political Party Funding Bill: public hearings Day 2

Ad Hoc Committee on the Funding of Political Parties

08 November 2017

Chairperson: Mr V Smith (ANC)

Meeting Summary

Most presenters congratulated the Committee on the speed and efficiency with which work had been done on the Bill. A frequently used analogy was that the Committee was building a road to stand the test of time. Presenters were closely questioned, especially on the funding formula, the cap on donations and the threshold below which donations would not be disclosed, as Members tried to come to grips with a final position on these.

The South African Catholic Bishops Conference noted that there were two separate funds but there was no real difference in the funds, except for the sources. The Multi-Party Democracy Fund should allocate money for promoting democracy and therefore should be for represented and not-yet-represented parties which had established a track record. It was an intuitive instinct to resist foreign influence. However, the IEC would be administering those all funds. Foreign agencies might want to promote democracy, and it would be a pity if the funds could not be accepted. The Bishops Conference suggested that one would want as little as possible of the key issues in Regulations - the right to know had to be included in the Bill. Investment arms of political parties needed to be tackled in the Bill as not having a reference to them defeated the Bill's purpose.

Members explained that the principle of the threshold and the cap would be included in the Bill, and the amounts in the Regulations that could be more easily changed, when the need arose. Would R10 000 influence a party? If not, why have R10 000 as a threshold? Was it realistic to have no capping? What about the Namibian situation where they believed that donations of 5% of the party's budget would not be sufficient to influence the party? Why should South Africa accept money from foreigners, especially from countries that probably had a worse human rights record? Why include prohibitions on investment vehicles if funding from the investment arms had to be disclosed?

The Council for the Advancement of the South African Constitution (CASAC) did not support a ban on foreign entities donating to political parties. CASAC doubted whether political parties could raise sufficient funding locally to promote and expand democracy. There should be no ban on any category of donors donating to the Multi-Party Democracy Fund (MPDF). CASAC supported the notion that MPDF donors could remain anonymous, except for disclosure to the IEC, as that had been one of the reasons for the development of the fund. The pressure on donors, especially via social media, was another reason for anonymity. It said the rationale for the Multi-Party Democracy Fund suggested a 50/50 proportional and equitable split for the Fund.

Members asked if it were financially viable to fund all 200 political parties registered with the IEC? One Member needed clarity on how loans could become a tax evasion issue. How did CASAC visualise the dual disclosure being rolled out? Could a company really not donate because it worked with organs of state? How could the Bill deal with the huge state resources that were used by the governing party to influence voters at election time? Was a cap not necessary to prevent party capture? Should the actual figures for the formula be put in the Act or should the Act contain only the principle that the formula had to support multi-party democracy?

Right2Know stated there was a critical need for political parties to disclose historical financial and funding information to provide a reliable picture of previous political party funding. In the last local elections, an ANC official had disclosed that that party had spent R1 billion. Right2Know requested that disclosures be made available quarterly instead annually. Two areas had already marred the country's democracy with evidence of corruption: donations from private companies doing business with the state; the investment companies linked to political parties. Right2Know called for a complete ban on companies doing business with the state as the relationship was simply too close to countenance.

Members did not understand the insistence on retrospective information. It would be impossible to get accurate and full information. How enforceable was retrospective information and what legal framework would allow for that disclosure? Was the request for quarterly disclosures instead of annual a nice-to-have? How substantive would that be in the disclosure process?

The South African History Archive noted that for access to information, proper recordkeeping was critically important. SAHA proposed the inclusion of a clause in the Bill to promote this aspect of access to information. Criteria should be included in the Bill to guide the setting of the threshold. Compliance had to be enforceable to ensure disclosure and auditors needed to audit with a specific disclosure requirement. If a person supported the Multi-Party Democracy Fund, there did not seem to be a reason for keeping the support secret. However, if names were not going to be disclosed, the public needed to know what types of business were supporting democracy. There should be full disclosure of all donations to the IEC so that the IEC could check the validity of the donations.

The Chairperson asked if specifying a website for disclosure would be a temporary mechanism as technology would change. Would disclosure on a website not prevent engagement by those who did not have access to the internet? Did the keeping of books for auditors not imply good recordkeeping?

The Helen Suzman Foundation focused on four areas: funding at national and provincial level; the Multi-Party Democracy Fund; specific drafting recommendations, and Regulations. The Foundation welcomed the accountability and transparency for private

funding but believed that the same level of scrutiny should apply to public funding, at national and, particularly, at a provincial level. National Treasury had indicated that there was little transparency at provincial level. The Foundation registered its concern that the concrete figures in the Regulations were not going to be made available until after public comment on the Bill had closed.

The Chairperson noted that it was not the first time that the issue of two separate funds had been raised. It would have to be dealt with it. How did the Foundation feel about the two funds being separate? It was noted that Members could not determine how much provinces spent. There was no constitutional restriction on how much money provinces could choose to spend on political parties.

Corruption Watch referred to the relevancy of the OECD Framework which contained a list of best practices. Members had spoken about needing a guideline and the Framework provided excellent guidance. Anonymous donations at the request of the donor were not acceptable. There was still a possibility that a single donor could influence a party. On the Multi-Party Democracy Fund, Corruption Watch hoped for a more equitable formula than the 90/10. Contentious funds from investment arms and companies doing business with the state could only donate to the MPDF. The two funds would then clearly have separate purposes and there should therefore be different formulas for each of the funds. Private funding had a high risk, especially when it came from companies that did business with the state, investment arms and trusts.

Members asked what figure would be sufficient as a minimum amount for each party. Would 1%, which would mean a minimum of R1.4 million, be sufficient? If the formula ensured that the smallest beneficiary received above 1%, would that be adequate? Members suggested that if no companies that did business with the state could donate to political parties, most funding would be cut off. Corruption Watch had stated that no political party should receive private funding directly. Why did Corruption Watch want to take away a person's freedom of choice in supporting a political party? Should foreign funding be permitted?

My Vote Counts suggested that donations to the Multi-Party Democracy Fund should be separate and anonymous in support of multi-party democracy. The amount donated should not be withheld as the public had the right to know about the number of donations and the amount donated. Any contributor to the Multi-Party Democracy Fund may request the IEC not to disclose that person's identity but he or she could not request that the amount be withheld. My Vote Counts suggested two separate formulas for the two funds. The organisation proposed a 70/30 split for public funding and for the Multi-Party Democracy Fund, a 50/50 split because the vote of the people had to be considered. My Vote Counts did not think that members of political parties should be allowed to accept donations as it was an obvious loophole for abuse. All donations in-kind above an estimated value of R10 000 had to be declared and all loans to political parties should be disclosed. My Vote Counts believed that companies that did business with the state should be prohibited from donating directly to political parties.

Members asked how one would deal with overdrafts. A R10 000 threshold might not be administratively possible. The Committee did not want to pass an Act that was incapable of being implemented. Members had thought that My Vote Counts was the lead disciple in total disclosure to ensure an informed vote. Did the public not need to know who was giving money to political parties anonymously via the Multi-Party Democracy Fund? The Committee agreed there was a need for a guiding principle on which to base the threshold.

Business Leadership South Africa (BLSA) commended the initiative of the Committee and fully supported it. Precisely because BLSA members understood that private funding could open up political parties to undue influence and corruption, they wanted to see that everything was above board. The Bill would assist BLSA members against corruption and undue influence in tenders. Transparency far outweighed privacy. When politics worked, the economy worked and business worked.

Members had a concern that if businesses were forced to declare and disclose, businesses would be scared off from donating. Was that so? Would businesses be less willing to donate if they had to disclose, either to the IEC or through its annual report? Would businesses donate as good corporate citizens?

The Chairperson indicated that the IEC would present its position on 10 November and then the Committee had to finalise the Bill.

Meeting report

The Chairperson welcomed everyone to the second day of the public hearings on the Political Party Funding Bill. He noted that several Committee members were not present as numerous committee meetings were being held on the day and, in addition, Ms Maseko and Mr Singh were somewhere in Africa on parliamentary duty. Mr Godi was chairing SCOPA and would attend after lunch. Other members would join as soon as they were done with their other committee meetings. As most of the presenters had presented in the previous round of public hearings, they would be required to focus closely on the draft Bill.

Southern African Catholic Bishops Conference submission
Adv Mike Pothier, SACBC Research Coorinator, congratulated the Committee on the work done on the Bill and the speed and efficiency with which it had been done. SACBC broadly supported the Bill.

Adv Pothier noted that there were two funds but there was no real difference in the funds except for the sources. Why were there two funds as that could only result in duplication of costs? That situation would change if the money could be used for a different purpose. SACBC would like to see differences in the way the money was used. He suggested that the Multi-Party Democracy Fund should allocate the money for promoting democracy, i.e. it should be for represented and not-yet represented parties which had established a track record and had come close to gaining a seat. SACBC was not talking about fly-by-night parties so there was a need to develop

criteria, such as the party should have contested two or three elections and gained a minimum number of votes. Alternatively, the MPDF funds should be skewed in favour of equity.

He addressed donations from foreign governments to the MPDF, noting that there was an intuitive instinct to resist foreign influence. However, the IEC would administer all funding and could decide where the funding went. Foreign agencies might want to promote democracy, as they did around the world, and it would be a pity if the funds could not be accepted.

The prescribed formula for the allocation ratio had to move to at least 70/30 or even 60/40. One of the reasons was that larger parties found it easier to attract private funding but it was necessary to allow for dynamic movement and new blood in politics.

Certain definitions were addressed and SACBC asked that attention be given to those. SACBC strongly supported disclosure on the basis of the right to know. SACBC supported a threshold but there should be a cumulative threshold. It was in the Regulations but the reference to the threshold should be in the Act. Regulations can be amended without public comment. If the Act was being amended, the public would then have a right to give input. SACBC suggested R10 000 as a threshold, it was not sure what was difficult in disclosing to the IEC and it did not see this as an administrative burden. He did not think that party membership should be disclosed. It did not believe that a cap on private donations was necessary as South Africa was not seeing multi-million rand donations. The Regulations suggested a cap but there was no empowering provision in the Bill. SACBC supported the provision for publication of donations by the IEC. It should not be a burden and annual reporting was adequate. Clause 11 was confusing. Did it apply to people who received donations or were making donations? Why state that no person may subvert or circumvent one particular chapter? Surely no one should circumvent any law?

In general terms one would want as little as possible in the Regulations. The right to know had to be included in the Bill. The investment arms needed to be included. Not having a reference to the investment arms, defeated the purpose of the Bill. There had to be information about whether investment houses were investing or there was no knowledge. Where did an investment arm get its money?

Adv Pothier noted that there was a non-existent track record of people donating to the Multi-Party Democracy Fund and it would not change. Hence, the Committee should consider a tax incentive or something to get it going.

Discussion

The Chairperson stated that the Committee believed that the principle of the threshold and the cap should be included in the Bill, and the details should be in the Regulations because the details would change depending on factors such as inflation. For example, if the cap were R10 million and inflation was such that after a year, it was no longer relevant, the entire Act would have to be changed. He reminded the public that only three figures would be in Regulations: the threshold, the ratio and the cap. If the principle of the cap was not in the Bill, it would be included. The Chairperson had said the previous day that he had been told that he was building a Rolls Royce but the road was potholed, and he should be building a durable road that any car could drive on.

Mr J Selfe (DA) added that Clause 23(i) stated that the President had to take the Regulations to the National Assembly, which was a deliberate inclusion to allow for public input.

Mr Selfe responded to the distinguishing features between the two funds, in which one of the funds could be used to empower political parties, but at the same time move away from the two persons and the fax machine party towards serious contenders whose track record should be considered. He agreed that the track record could be considered but, in each election, there had been one emerging party that had made it into Parliament from nothing, such as Cope, the Independent Party, the Economic Freedom Fighters. If one wanted to go that way, one would have to think of another way of recognising serious players rather than a track record of votes. He asked about the SACBC's reasoning for there being no need for a cap if there was disclosure. If that were the case, why not allow foreign funding? One could test it in the same way. Adv Pothier had stated that it was a different kettle of fish altogether when Hitachi made a huge donation and was awarded a tender? Mr Selfe asked why it was a different kettle of fish.

Mr Selfe thought that R10 000 as a threshold was too low and would lead to huge costs to administer. The cost of compliance would simply be too high. Donations to members of political parties were donations given to candidates, such as NDZ17.

Mr D Gumede (ANC) asked why the Constitution stipulated it should be equitable and proportional if everyone wanted the formula to be 50/50. On the issue of disclosure requirements, he agreed that the public had the right to know. Did Adv Pothier think that the information should be on a graded basis with different mechanisms for disclosing different types of information? In Parliament, Members had seen the abuse of information. They had experienced the attacks by social media on people who had shares in a particular company. For example, one may have 100 shares in Standard bank, which was an insignificant number of shares, but politician could be condemned for that shareholding. Furthermore, any information was used by astute politicians against Members. Would R10 000 influence a party? If not, why have R10 000 as a threshold? He knew that people declared honestly, but he had heard that people were accused of not reporting accurately.

Mr Gumede noted the comments on capping. It was interesting that SACBC said that there should be no capping. Would that not lead to donations in the Western Cape, or another province, that were on a scale that could influence certain influential people? For example, someone may want an oil rig, which would have negative consequences, but a donation could pave the way for approval. Ten billion could soon be thousands of billions. A political party could be influenced. Was it realistic to have no capping? What about the Namibian situation where it was believed that donations of more than 5% of the party's budget would be sufficient to influence the party. He agreed with SACBC regarding the investment companies. He also agreed with tax incentives as people should be rewarded for supporting a stable government.

Ms L Mathys (EFF) wanted clarity. She was just confirming that the MPDF recommendation was 50/50, i.e. in line with the Constitution. She reminded him that constituency funds were proportional. She appreciated the specific recommendations. The Committee was trying to build a stable democracy and had to consider every angle. One scenario was that someone gave R20 million in donations each year and then withdrew the donation, unless certain political decisions were taken. Would parties be captured? That was what the Committee was trying to avoid. The Committee needed to ensure that politicians made decisions in the best interest of South Africans.

The Chairperson noted that SACBC did not understand why there was a problem with a ban on foreign donations to the MPDF. He did not understand why developed countries banned foreign funding but South Africa was supposed to accept money and be babysat by a country that probably had a worse human rights record. It was patronising to think that South Africa should be dependent on someone else for democracy funding 23 years into democracy. One day the foreigner would pull the rug. Then what happened? South Africa had a Rolls Royce Constitution and yet the country was told to accept foreign donations from countries that had bad human rights records. He, personally, really thought that it was wrong. Why should South Africa accept money from foreigners? Other presenters could suggest acceptance of foreign donations but he warned that the presenters would be challenged.

SACBC stood by its position that the figures should be statutory and should be contained in the Act as they were not variable details. For example, in the Criminal Act, the type of fraud that was criminal as well as the amount concerned was contained in the Act. The details were considered important enough to be contained in the Act. He had noted that the Regulations would go to Parliament but he was not sure whether that would come with public input. He was not sure that Regulations came with an obligation for full public comments and engagement.

The only parties that would have access to either fund were those parties that had representatives. Why had one to gain a seat at either national or provincial election to receive funding? In one election, one needed to get 40 000 votes to get a seat and in other years one might need 55 000 votes to get a seat. It didn't seem to be logical or an adequate basis for a decision. Why should those who were already part of the process be the only ones to be funded in respect of multi-party democracy? SACBC had made one suggestion about the criteria for determining valid parties, but there were probably others. With respect, he thought maybe it was natural for those in Parliament and legislatures not to divide the kitty even further. Why should those who were already in power want to see others popping up all over the show?

In response to the question about private overseas funds being a different kettle of fish, Adv Pothier stated that SACBC inherently did not want foreign powers to influence domestic politics in South Africa. SACBC did not want some political party to be perfect for some geopolitical purpose, to guarantee support at the United Nations, or whatever it might be. It could be argued that the public would know soon enough, but the problem was that the harm could have been done by then. He noted that political parties could accept foreign money policy development and skills training and development for members of the parties. SACBC did not know exactly what development policy encompassed, but there was an opening for political parties to receive donations from foreign entities. Perhaps it pointed to a need for clarity in definitions of those things.

R10 000 as a threshold was a starting point and the SACBC was not wedded to the exact amount. He believed that it was good to have a starting point at a low figure from which political parties could justify their way upwards. In the world of civil society R10 000 was a significant amount of money but good luck to the DA if that was not significant to them. It should not be unreasonably high as the public asked who was giving money to parties. It was not clear why people could not donate to candidates within political parties, for example, at a public function. Why was there a negative cast on contestation? Why could one not support candidates for office? One could not contest without money.

He responded to Mr Gumede about SACBC's suggestion of a 50/50 split of the funding. The Constitution said that a certain amount ought to be equitable and some had to be proportional. The current 90/10 would always overly favour the largest party. Graded disclosure would not be workable. It would not be possible to decide which donations would be private or secret. Would the IEC make the decision? What if a party disagreed with the IEC? A graded disclosure would defeat the purpose of the Bill. Although the concept of a threshold was understood, SACBC would not want to see other donations not being disclosed. The best way of fighting sensationalism in the media would be to make information even more freely available. If information was abused, the response should be to fight with more information rather than with less information. If there was no cap, one would find out soon or later that someone had donated a large sum of money. There was no evidence that large donations were a problem in the country. There might be a chance to rush legislation through before funding was revealed, but then the voters would know what had happened. Was there a need to cap? He did not see a need to cap.

In response to Ms Mathys, he hoped that not all parties would want to adopt policies friendly to corporate South Africa. He had hoped that the majority of political parties, if not all parties, would have the integrity not to be captured. He did not see it as a realistic scenario. If they did succumb to the influence of corporate South Africa, those parties that traded on a non-corporate party policy would have betrayed its policy and would lose its voters who would move to another party.

Were foreign donations patronising? He agreed that they could be but the country already received large sums from all countries for the enhancement of education, infrastructure, etc. EU funding was accepted. China was the greatest abuser of human rights and yet South Africa received vast sums of money from China. Should South Africa not accept funds from other countries, especially when there were no strings attached? He was not suggesting that the country went cap-in-hand begging for funds but, why not be open to receiving money in appropriate situations? He understood Mr Smith's point but thought that the IEC would manage it.

The Chairperson returned to the point of non-represented parties. Responding to the question asking about the magic of having a seat, he referred SACBC to the Constitution which stated that funding was only for represented political parties. Section 236 stated that funding was for parties participating in the national or provincial legislatures. He was not against newcomers, although there

were many difficulties, but the Bill had to adhere to the Constitution. He was concerned about including tax incentives as the Minister of Finance had not been in favour of a tax rebate, and he did not want it to become a money bill.

The Chairperson noted that investment vehicles had been discussed in the Committee. Why include investment vehicles in the Bill if any funding from the investment arms had to be disclosed? A point was made that one could not prove that the investment companies were investment arms of the political party. How could one prove it? The Committee's rationale had been that it was about the money given to the party.

Adv Pothier understood that Section 236 meant that a minimum amount of support had to be provided to represented parties. He did not believe that opening it to a larger group would be in contravention of the Constitution. As far as income tax was concerned, the Committee could ask the Finance Minister to include it in the tax regulations, but he understood that tax deductibility was not favoured by Finance Ministers in the country. About the investment vehicles, he agreed that a party could set up an investment arm and keep it at arm's length but everyone knew that Chancellor House was the ANC investment arm. Investment arms could be used to hide the source of funding. It was necessary to avoid an investment arm doing business with a company that had contracts with the state. The investments of the political parties should be disclosed. It was about the investments and where the money was coming from. To exclude that from the Bill robbed it of its force and effect.

Council for the Advancement of the South African Constitution (CASAC) submission
Mr Lawson Naidoo, Executive Secretary of the Council for the Advancement of the South African Constitution (CASAC) complemented the Committee on the way in which it had handled the matter and commended political parties, especially the ruling party, for bringing the matter to Parliament. It showed the commitment of political parties to deal with the matter in the right way. It was better to deal with the matter in Parliament than in court.

CASAC would address the issues of foreign funding, definitions of donors, disclosure obligations. Except for foreign governments, CASAC did not support a ban on foreign entities donating to political parties. CASAC doubted whether political parties could raise sufficient funding locally to promote and expand democracy and to support the ideals of the parties. There should be no ban on any category of donors donating to the Multi-Party Democracy Fund (MPDF). CASAC supported the notion that donors could remain anonymous as that had been one of the reasons for the development of the fund and because of the pressure put on people, especially via social media. The identity of the donor would be disclosed to the IEC. The rationale for the MPDF suggested a 50/50 proportional and equitable split.

CASAC believed that the formula should be in the Bill which would mean that it had to pass muster and so should enhance multi-party democracy. The most logical reading of Section 236 certainly suggested a 50/50 split and any other formula had to be constitutionally compliant and justifiable in the context of enhancing multi-party democracy. Over R900 million was being given to parties from the state per annum. Those funds could be re-allocated. Each party should receive a minimum of 1% of the fund.

Dual disclosure had been raised previously, i.e. donors should make a disclosure to the IEC. A dual measure would ensure donations were properly disclosed so that parties could not hide or misreport donations. CASAC proposed an upper limit on donations to parties per annum. CASAC asked that a definition of a donor be included in the Bill to avoid the splitting of donations. A definition for donations in-kind should not exclude personal services. Also, parties should not be able to create a premium membership fee. All loans should be disclosed as those loans could be written off.

The deregistration of political parties was open to abuse and should be dealt with by the Electoral Court and not the IEC. The amount of the fines should be an amount equal to a proportion of each party's allocation from the Represented Political Parties Fund (RPPF).

CASAC wanted investment vehicles to be regulated. The formulas should be included in the Act. CASAC requested that the large pool of public funding that went to political parties should be subject to the Financial Management of Parliament and Provincial Legislatures Act, 2009.

Discussion
The Chairperson pointed out to CASAC the difficulties that the organisation had created for the Committee by wanting donors to be anonymous. That was an issue that had resulted in conflicting opinions by presenters and was creating difficulties for the Committee. He asked how CASAC could say that there could be anonymous donors while, at the same time, supporting the judgement of the Western Cape High Court which had declared that all donations to political parties had to be disclosed. That seemed to be a contradiction. The Committee had been told that allowing anonymous donations would violate the Cape High Court judgement. He asked who would benefit from the 50/50 split in the MPDF with a 1% "start-up". Who would benefit from the funding? Some presenters had suggested that it should go beyond the represented parties. There were 200 political parties in the IEC. Was it financially viable? Depending on who would benefit, the number amongst whom it had to be split could be either 15 parties, or 200 parties. The game changed drastically.

Mr Selfe had looked at the analysis of countries allowing or prohibiting foreign donations. He had looked for a correlation between countries banning foreign donations and the extent of their democracies. An example was Zimbabwe which banned foreign donations but it was well-known that Zimbabwe wanted to stifle any opposition. Was the 1% split in CASAC's submission a new addition? He had not seen it in the written submission. That was affirmed by Mr Naidoo.

Mr Selfe appreciated the position of CASAC that loopholes should be closed but he was of the opinion that CASAC had suggested requirements that would be too onerous, e.g. disclosing to the IEC. Donors would probably determine that the hassle factor was not worth making the donation and so the party would lose its donation because the person did not want to have the hassle of having to report it to the IEC. On familial donations, he could not see his daughters' rights being inhibited by his decisions and vice versa. CASAC

should not think that he could go to his daughters and ask them to whom they had made party donations so that his donation would not exceed the limit. If that were the intention, he could tell CASAC that his daughters would tell them to get lost and that what they did with the money was their business and not his. Investment arms would require incredibly complicated policing. If investment arms could not do business with the State, what would be the situation if the holding company or a subsidiary was in business with the state? The IEC did not have the capacity to police such details. The legislation had to be rough and ready and practical to achieve its objective. Lots of legislation was full of good intentions but hopeless in implementation. The laws relating to poker was exactly one of those laws with good intentions but impossible to implement.

Ms Mathys found the study of the countries that accepted foreign donations quite interesting. Of course, but it showed was that the wealthier countries did not need foreign donations, while poorer countries relied more heavily on foreign donations. Did a country remain poor because it relied on foreign donations? She was confused about the issue of declaring loans and t tax evasion. How did CASAC visualise the dual disclosure being rolled out? She supported the notion of proportional sanctions.

The Chairperson said that the more he heard people talking about foreign donations, the more he, personally, despised the notion. 76% of rich countries did not accept donations. 86% of poor countries did accept foreign donations. He stated that there were people who were passionate about the sovereignty of South Africa, and he was one of them. He would rather be poor and free. It could not be that the poor always had to be beholden. The issue of investment arms had been discussed. The question of doing business with the State was also difficult. What if someone was doing business with the State as in supplying soup to a school or books to a library? Did that mean that that company could not donate because it was working with organs of state? Others had suggested that the criteria should be that a company could not do a large percentage of its business with the state. But how would that be monitored?

Ms Mathys stated that the Committee had had a lengthy discussion about the use of state resources for electioneering purposes, as well as the problems with investment arms. She asked for some input on how to deal with the situation when huge state resources were used to influence voters just before an election. SASSA gave grants and blankets and homes were opened just prior to elections.

Mr Naidoo noted that anonymous donors were limited to the MPDF and so there was no conflict with the High Court judgement. He thought that the MPDF should be divided between represented political parties only, and not all registered political parties. There might be room to debate that. The regulatory framework had to be workable so CASAC was open to adapting some of its recommendations to achieve the objective of being workable. In terms of taxation, if a company made a large loan to a political party, the company did not pay tax on the money until it was repaid. However, if the loan was written off, no tax was paid on the amount. It was not the over-riding issue but a subsidiary effect.

Prof Richard Calland, member of the CASAC Advisory Council and the Executive Committee, had found, in his experience, that anonymous donors had shied away from donating to political parties because they did not want to be sucked into an unethical relationship. They did, however, want to participate in democracy. Some corporate donors did not want any publicity, so why shy away from such donations? Why could any donor not give quietly and with no one except the IEC knowing? He agreed that no political party would want a dependence on any donor, much less an interfering foreign donor. However, when the country as a whole was engaging in foreign relations, why exclude political parties. That seemed inconsistent and unwise. There might be cases where a political party might want to learn from another country or system but could not afford to do so, except if a foreign donor paid for it. It would be unwise to exclude such a donation.

The investment arms created a difficult dilemma but when one was balancing the need for political parties to raise funds legitimately in order to sustain themselves, and on the other hand, the need to introduce real and serious accountability, the ballot should fall in the favour of the second proposition. It might be inconvenient, but it was the right thing to do. The new system regime should increase donations. If political parties wanted to have investment arms, they were playing in the commercial market, and they had to play on the safe side as there were inherent risks. Duties and responsibilities were triggered when parties made that choice. There were constraints in doing such business which could result in certain advantages. Unfortunately, as in Chancellor House, where a political party had a controlling share in an investment company, the party would get caught in scandals where things were not above board. The Hitachi case was one such case which had led to a prosecution in the United States. In an unregulated system, it was the norm and that, in itself, argued strongly for regulation.

CASAC did not want to chase donors away by demanding disclosure. However, it seemed that a donor making a donation above a specified amount, would be a well-resourced person and it would not be an onerous task to the IEC. Companies were used to making disclosures and had the relevant systems to make disclosures. It was a small price to pay for the transparency of the system.

Mr Mike Law, Researcher at CASAC, addressed the issue of the MPDF. He noted that a fear had been expressed that no one would donate to the fund. If the Committee started to restrict the donations to the fund, it would make it more difficult to obtain donations. If the Committee wanted the fund to work, restricting entities that could not donate would make it more difficult to raise funds. He agreed that more research into the impact of donors to countries could be done.

He wanted to speak about loopholes. He had studied how loopholes had caused policy to fail in some countries. Perhaps the threshold for donors should be higher. In Russia, both parties filled in a simple form with signatures. If the system were used in South Africa, both forms would have to be submitted to the IEC. The problem would be the ignorance of donors about the requirement to declare the donation. The political party would have to inform the donor of the obligation to disclose.

The Chairperson agreed that the use of state resources had to be tackled. The Chairperson was sceptical about the requirements for parties to disclose when families together exceeded the limit. He did not think that parties would know the members of a donor's family. For example, there were a million Smiths. The previous presenter had said that a cap was not necessary, but CASAC seemed to think that a cap was necessary to prevent party capture. The previous presenter did not believe that it had happened and so there

was no need for a cap. What was the view of CASAC, taking that opinion into account?

Should the actual figures for the formula be put in the Act or could it just contain a principle that the formula had to support multi-party democracy? He did not want the ad hoc Committee to have to review the Act annually? The figures could change too quickly. It was possible to include in the Regulations that the ceiling should be raised annually. The Committee did not think that it was wise to insert the figures in the Act.

Ms Mathys asked what principle should be the guiding principle for the formula. The public was supposed to come and give advice. Should the 50/50 or whatever formula was decided upon be in the Act? The Act should not be subject to frequent change. The percentages should be aligned to the Constitution and the Committee could not come back in a year's time and change the percentages. Principles should weather all sorts of situations.

Prof Calland noted that the principle that should guide the upper limit was over-dependence as no political party to be overly-dependent on a single donor or a couple of donors. The question was how to translate over-dependence into a number. That was the problem for him. The public simply did not know what the numbers were. He could not give an appropriate amount as the public had no information on the funds received by political parties. He did not know the budget of political parties, the amount of donations, the number of donors or where the donations came from. All he could suggest, therefore, was that principle should be a prevention of over-dependence and those with knowledge of the numbers would have to work out what that figure should be. The rule might be that no donor could donate more than a certain percentage of the total budget of a party. What that percent would be would depend on the figures but it could be, for example, 30%. That was how one would translate the principle of overdependence into a number.

Mr Naidoo noted that in the current climate of state capture, a large donor might exist and might well have captured a political party but the public simply would not know about it. He believed that the formula should be in the Act as the formula should not be changed as a regular process. If circumstances were such that the Act needed to be changed, then would be because a major change was required and because it was primary legislation, the public would have the opportunity to comment on any changes.

Right2Know Campaign submission
Mr Murray Hunter, National Advocacy Coordinator, and Mr Ghalib Galant, National Working Group, presented on behalf of the Right2Know Campaign.

Mr Hunter noted that it was a short supplementary submission which flagged some of the issues which had been raised on the original draft and had been discussed with the Committee, as well as few issues from the draft Bill. Right2Know wanted to acknowledge the speed and efficiency of the Committee's work.

Mr Galant stated there was a critical need for political parties to disclose historical financial and funding information. There was no reliable picture of political party funding. In 2009, R550 million was spent on the elections with only R93 million coming from public funding. In the last local elections, an ANC official said that that party had spent R1 billion. The public did not know whether that was true or not. If civil society did not have any information about the current funding situation, it was impossible to discuss the Bill. Without information about current political party funding, Parliament was legislating in the dark. The public was even more in the dark. Right2Know urged that political parties made a disclosure of previous funding so that the legislation could be legitimate. There were ways of making the disclosure. So much of the Bill hung on having knowledge of the funds, without which, there was no guarantee that the Bill would be effective. Parties needed to provide disclosures to set a baseline.

Mr Murray repeated the request of Right2Know that disclosures should be quarterly instead annually. HSRC Researcher, Gary Pienaar, had noted that a number of countries disclosed more frequently than annually so the Committee could look at the research to see how it was done. Right2Know recommended quarterly to ensure transparency and compliance. The organisation was pleased to see the Bill dealt with in-kind disclosure but was concerned about a lack of disclosure on personal services. There should be a prescribed value for voluntary services. Where the private sector and corporate sector were making donations, a dual disclosure system was required. There had been discussions on complete confidentiality of donations to the MPDF. Right2Know suggested that a threshold could be set above which donations had to be disclosed.

Mr Galant noted that the Bill dealt with the threat of undue influence on parties, which was a major risk and one that was of great concern to the public. Not even public disclosure could help in those unique instances. There were two areas where donations had already marred the country's democracy with evidence of corruption. Those were donations from private companies doing business with the state and, secondly, the investment companies linked to political parties, of which the most well-known was the investment arm, Chancellor House. The danger of purchasing business with the state was evident. Right2Know called for a complete ban on donations from companies doing business with the state as the relationship was simply too close to countenance. Subsidiaries of companies that did business with the State, and the Board members, should also proactively disclose when they made donations. Major corruption scandals had involved investments vehicles in South Africa. In the absence of a complete ban on investment arms, Right2Know called for, at least, an annual disclosure by investment vehicles and a ban on doing business with state.

Mr Murray added that it was difficult to find an appropriate threshold, without some disclosure from political parties. Right2Know had talked about linking it to markers in society such as the expenditure of an average household per month.

Mr Galant proposed that national and provincial funding be split as democracy was expressed in different ways at national and provincial levels and across the various provinces. The national allocation should be according to the number of seats. Provincial allocation should be across the 9 provinces and the number of seats in each legislature.

Discussion

The Chairperson addressed the comment that Parliament was regulating in the dark. That assumption assumed that the Bill was only about the upper limit, lower limit and the formula. As that was not the case, the lack of information was not rendering the Bill weak and irrelevant. The Bill was more about disclosure. He did not understand the insistence on retrospective information. It would be impossible to get accurate and full information. Funds had not been audited in the past. How enforceable was retrospective information? What legal framework would allow for that disclosure?

Ms Mathys asked if the principle for disclosure being linked to the monthly average income was for a single month's income or multiplied by 12 to make it an annual figure. Right2Know was recommending that certain funding of parties was not constitutional. The constituency allowance was made according to seats and was stipulated in the Constitution, so there was no discussion about that. Political party support funding, however, was stipulated in the Constitution as being equitable and proportional. Funding according to the number seats found no expression in the Constitution. It was disappointing. She pointed out that all accounts in the EFF were audited annually.

Mr T Godi (APC) referred to request for quarterly disclosure instead of annual. Was it a nice-to-have or how substantive would it be in the disclosure process?

Mr Hunter replied that Right2Know understood that it would be a difficult ask but the organisation had assumed that all funds would have been audited. Why? He explained that the information would determine what the minimum donation threshold should be. How many donations and at what level they were made was unknown. Some parties had raised a concern that disclosure would reduce donations, but if no one knew how much parties had received previously, it would be impossible to understand the effectiveness of the legislation and whether there was a shortfall in funds, which then would have to be made up by the State. Right2Know believed that political parties would voluntarily reveal political party funding, if consulted. Transparency would be served by quarterly disclosures. Quarterly disclosure was better than annual disclosure, but annual disclosure was better than none at all.

Mr Galant's concern was that the discussion might be concerned only with the national level and provinces had not been fully considered.

Dr P Mulder (FF+) stated that retrospective information was a nice-to-have but it was not the mandate of the Committee to make information available for research. The audited statements were available but it was not the mandate of the Committee.

Mr Galant added a comment about upper limit. R1 billion had been spent on an election, mostly public money. He did not know how so much money could be justified. Right2Know suggested that there had to be a limit on the cost to society for political campaigning. How much money was there for elections? Surely that was part of the mandate of the Committee? The political environment should not get sucked up into chasing the money.

The Chairperson said that it was not possible from the Committee point of view but civil society could undertake the research on retrospective information to create a baseline as it would be valuable. Perhaps Right2Know would like to undertake the research.

South African History Archive (SAHA) submission

Ms Torien van Wyk, Co-Director of the South African History Archive (SAHA), thanked the Committee for the hard work and the speed at which the work had been done. She noted that the SAHA written submission contained specific details, including addressing typographical errors. She would just highlight a few issues.

SAHA did not see the point for two separate funds as the different sources would be reflected in the account books. Although SAHA understood the constitutional imperative, it believed that funds should be used to encourage the development of unrepresented parties. Ms van Wyk noted the SACBC submission.

In respect of access to information, there were three issues to be kept in mind. Firstly, records had to be kept; secondly, keeping of the records was important; and, thirdly was the disclosure of records. SAHA proposed the inclusion of a clause in the Bill to promote those aspects of access to information and suggested something along the lines of the reference to recordkeeping in the Local Government Act. Further details as to how to manage records, disclosure on a website and availability at central and satellite offices should be included.

Section 236 limited public funding to represented political parties at national and provincial level, but the Bill should set timeframes for addressing the matter at local government level. SAHA believed that inequality of wealth required that inequality of access by the poor be recognised. If one supported the MPDF, there did not seem to be a reason for keeping the support secret but, at the very least, the kind of business could be disclosed so that the public could know what types of business were supporting democracy. Public disclosure could be limited but there should be full disclosure of all donations to the IEC so that the IEC could check the validity of donations. The IEC could also do analyses for public consumption. Information had to be usable, so there need for categories of disclosure in order for it to have meaning. A list of possible categories was included in the written submission.

Criteria should be included in the Bill to guide the setting of the threshold. There was a need to ensure compliance with disclosure and auditors needed to audit with a disclosure requirement. Specific details in the Bill were addressed in the written submission.

Discussion

The Chairperson asked about Clause 7 (1)(f) in the Bill. He did not see that that clause moved obligations from the state to citizens. The primary role of politicians was to represent the people and to link the public with the organs of state. That was the purpose of the political party representatives and the funds.

The fact that books had to be audited suggested that there should, by default, be good record keeping. He thought it would make the document too onerous if all the details suggested by SAHA were to be included.

Mr Godi agreed that recordkeeping was covered.

Ms Mathys said that there was no mandate regarding local government but SAHA had requested that there be disclosure of funding at local government level. That would be better placed in local government legislation. She explained that there would be disclosure of the full amount of all monies received and, secondly, there would be disclosure of donors above the threshold.

SAHA did not intend that political parties should not be a link between the public and organs of state but that organs of state could not abdicate their constitutional duty to engage with their constituencies. Ms van Wyk accepted that the Committee was looking at the matter from a different angle.

She agreed that auditing required supporting documents but that did not mean that people would adequately keep records or ensure the integrity of recordkeeping. For example, in the companies' Act, certain records had to be kept forever. Disclosure to the auditors was not the same as disclosure to the IEC and the public.

She appreciated the explanation by Ms Mathys regarding the fact that there was no mandate around local government. However, she believed that there should be recordkeeping at local level.

The Chairperson suggested that making information available on a website could be decidedly temporary as technology could replace websites with something else in a brief period of time. He noted how computer disks and so on had been surpassed by the advance of technology. Disclosure on a website would also suggest that information was being disclosed only to those who had access to the internet. The Committee's job was to ensure that the Bill would stand the test of time. The Committee was building a road to stand the test of time. Being too specific would be limiting. The IEC would ensure disclosure via its own regulations as information had to be available to everyone in South Africa and outside of the country.

Ms van Wyk accepted that the wording suggesting that the disclosure be made as widely and cheaply available as possible, was adequate.

Helen Suzman Foundation submission

Mr Rafael Friedman, Researcher at the Helen Suzman Foundation, presented the Foundation's submission which focused on four areas: funding at national and provincial level; the multi-party democracy fund; specific drafting recommendations, and Regulations. He indicated that the Foundation welcomed the accountability and transparency in respect of the private funding but would like to see the same level of accountability and transparency in respect of public funding, particularly at a provincial level, where large sums of money flowed from the state to political parties with little scrutiny. National Treasury had indicated that there was little transparency at provincial level. Public accounts did not show how much was being allocated by legislatures to political parties to carry out their duties. The Foundation also had a concern about the proportion of public funding paid out at provincial level. Over R588 million was allocated by provincial legislatures compared to R498 million by the National Assembly, and that included the political party funding. There was no reason why allocations should be greater at provincial level than at national level. The allocation per MPL was higher than the allocation per MP in five out nine provinces, and had no relation to legislature size or population.

In Clause 2.23 of the Memorandum attached to the Draft Bill, it is stated that Municipal councils were prohibited from allocating funding to political parties but it was not evident in the text of the Bill. That point needed to be clarified.

MPDF had been established in the Bill for the purpose of providing funds for political parties. Apart from the source, the MPDF replicated political party funding. It was unnecessary to establish the MPDF, as private funds could go through the existing mechanism. A separate fund increased administrative costs. There was a concern at the ease at which disclosure could be subverted by making cash donations. The Foundation had listed specific recommendations in the written submission.

The Foundation wished to register its concern that the concrete figures in the Regulations were not going to be made available until after the period for public comment had closed.

Discussion

The Chairperson noted that it was not the first time that the issue of two separate funds had been raised but the Committee had not dealt with it adequately. It would have to be dealt with it.

On provincial funds, the Bill could only say that funding had to occur in strict conformity with Section 116 of the Constitution. That was all that could be done at national level. Provinces worked according to their own affordability and requirement. A Committee at national level could not determine how much provinces spent. There was no constitutional restriction on how much money provinces could choose to spend on political parties.

Ms Mathys asked for clarity on the determination of allocations by the Foundation. At national level, constituency funds were disbursed based on the number of seats, as per provincial constituency allowances. Those funds were separate and specified for constituency work. Then, there was political party funding disbursed through the IEC and some provinces also made funds available to political parties. The Foundation was correct in stating that there was no consistency. The Committee had talked extensively about that issue in the provinces. The MPDF was a different fund to encourage donations. No donations had ever been made to the fund. She herself had not known about the fund until she had sat on the Committee on Funding.

The Chairperson informed Mr Friedman that Section 35 explained about the MPDF fund. The main point had been an option for no disclosure of private funds. However, the differences between the funds had been minimised. The Committee had said that a second account could be opened.

Dr Mulder explained that the two funds were dealing with two types of money – public and private.

In terms of the provinces, the Foundation understood the complexity of the national and provincial relationship. He did not present a legal position, although a legal approach could be pursued as it was a matter of serious concern.

The figures indicated the total amounts taken from the Budget Votes. The Auditor General had also indicated that it was difficult to discern what a lot of that money was being allocated to. That in itself was a concern. The point about the two accounts was not that there was an objection to a separate fund. There just did not seem to be a rationale for adding the cost of managing two separate funds. The Foundation was not too concerned about the mixing of private and public funds as the regulation and purpose seemed to be the same.

The Chairperson said that there had been an outcry about putting private money into a single fund with the R140 million from the fiscus. It was about showing how much had come from the public purse and what had come from donations. The Committee would check with IEC. He did not think that there was additional administration as the separation was into two bank accounts. The Committee would consider it further.

Ms Mathys noted that the Foundation had presented total amounts. She noted that the provinces actually separated the funds into various amounts for particular purposes. She could, therefore, not understand why the provinces could not provide figures broken down into functions.

The Chairperson noted that the Auditor General's Office had mentioned that it had struggled to verify the information.

The Foundation had had similar difficulties.

The Chairperson asked how did the Foundation felt about the two funds being separate?

The Foundation did not think that public funding should erode or replace public funding.

Dr Mulder stated that the current Act allowed for donations but no one had donated to the fund in 20 years. It was also about a perception that the MPDF had nothing to do with public funding. The Committee had heard that the concept of a separate multi-party fund had been well received.

Mr Friedman believed that the decision had to be made by the IEC. The Foundation's submission had an administrative basis not an ideological basis.

Corruption Watch submission

Adv Leanne Govindsamy, Legal and Investigation Unit Head at Corruption Watch, thanked the Committee for the meaningful process thus far. The first submission by Corruption Watch had related to the OECD Framework and the organisation submitted that that Framework was still relevant. It contained a list of best practices. Members had spoken about needing a guideline and the Framework provided excellent guidance. The framework indicated how to take account of local context.

On the MPDF, Corruption Watch had hoped for a different formula from the 90/10, one that would be more inclined to equity. The organisation submitted that contentious funds from investment arms and companies that did business with the state etc, should be required to invest in the multi-party fund, which would have a more equitable distribution. Therefore, direct funding from those organisations to parties could be disallowed. The two funds would then clearly have separate purposes. If the formula for public funding remained the same, or changed only slightly, it would be important to have a 50/50 split, or a more equitable split, in the MPDF because it supported multi-party democracy. There should be a distinction between the formulas for each of the funds. There should be a minimum amount for each party to balance out the needs of smaller parties.

Anonymous donations at the request of the donor were not acceptable. There was still a possibility that a single donor could influence a party and hence Corruption Watch did not support anonymous donations.

Private funding had a high risk, especially when it came from companies that did business with state, investment arms and trusts. There should be a limit to cumulative donations because the risk factor was so high. It was important to know beneficial owners. FICA regulations would apply. There had to be an obligation to disclose source of funds and an obligation for the IEC to publish information. Corruption Watch was not sure that there had been sufficient discussion about how information was to be disclosed, so a principle needed to be included in the primary legislation about how the information would be disclosed to ensure public access.

Two technical issues were raised, including the definition of a donor. In Section 9 (3) (a) it was not clear what was meant by allowing foreign funds for the development of policy.

Finally, Adv Govindsamy referred to the Communications aspect of reporting and the security of information.

Discussion

The Chairperson addressed the question of a minimum amount for each party. What would that figure be? Someone had suggested

1% which would mean a minimum of R1.4 million. If the formula ensured that the lowest beneficiary received above 1%, would that be adequate? Would it negate the need for a minimum requirement? Secondly, if the Committee went with the notion that no companies that did business with the state could donate to political parties, most funding would be cut off. Most parties received some sort of funding from the banks and mining companies but even banks, mining companies, etc. did business with state. If the Committee went that route, the public purse would have to bridge the gap in funding. Currently banks shared the available funding between parties. He wanted to make the point that prohibition of donations from companies that did business with the state would drastically reduce funds available to political parties. He asked Adv Govindsamy to give him an example of any company that did not do business with the state. He defied anyone to identify a sizeable company that did not do business with the state. He was not fighting, but just putting his point across.

Mr Selfe suggested that if the Chairperson was not fighting, he did not know what fighting was. However, he agreed with the Chairperson that just about every corporation in South Africa did business with the state or one of its entities. He raised the point of the abuse of state resources, which was partly covered in the Corruption Watch submission. In 2014, in Atlantis, there had been a SASSA hand-out of grants, blankets and food parcels and Marius Fransman had informed the citizens that the ANC was giving all of that to the people. Did Adv Govindsamy think that such instances would be covered by the Act? A second and similar event took place in the Free State when Mr Ace Magashula spoke about handouts from the ANC. He agreed that the Bill covered services and sponsorships, but he did not think that abuse of state resources was covered by the Act and he would appreciate a view on it. The suggestion had been presented that abuse of state resources was covered by the Electoral Act but he was not sure that the Committee could allow such rampant abuse to take place without dealing with it in the Bill before them.

Secondly, the Corruption Watch written submission had stated how it hoped that the MPDF would receive all private funding so that no political party would receive private funding directly. Why did Corruption Watch want to take away a person's freedom of choice in respect of supporting a political party?

Ms Mathys noted that Corruption Watch had raised the question of the capacity of the IEC. The IEC had expressed a willingness to manage the fund as the administrative agency. She referred to the proposal regarding the capping of expenditure in order to level the playing fields. What would be the guiding principle if the Committee went down that path? On the issue of funding by corporates, she wanted to point that the EFF did not accept funding from banks and mining houses as there had been no disclosure about their funding and they funded other things on the side.

Mr Gumede asked Adv Govindsamy what her position was on disclosure. Should it be total disclosure or should disclosure be regulated? Should any foreign funding be permitted?

Ms Mathys asked for the views of Corruption Watch on the guiding principles for proportional and equitable, and whether the formula should be captured in Regulations or the Bill. She liked the point in the submission that public funding could be increased only when all other funding was transparent and accountable. She thought that was quite progressive thinking.

Adv Govindsamy responded to the issue about a minimum. The intention was that every party received sufficient funding to be able to operate effectively. That might require that each party submitted a budget as common minimum amounts might be inappropriate, considering the varying sizes of parties. One size fits all would not necessarily meet the objective. The OECD Guidelines suggested that private funding be either banned or highly regulated. What was the harm to be prevented? The harm to be prevented was that of private companies doing business with the state by obtaining irregular tenders. Some said it applied only to donations in respect of the ruling party in the country or province. Corruption Watch was not trying to say that political parties should not receive funding, but the matter had to be addressed. She had envisioned all private funds going into the MPDF and then back into political party accounts but, as the Chairperson had indicated, private donors might decide not to donate at all. The point, though, was to avoid risks.

On private sources of funding, Corruption Watch was focussing on investment arms and companies doing business with the state, but had no objection to private donations. In terms of the issue regarding state assets, Corruption Watch but believed that the Section did cover it. She did not understand why Mr Selfe questioned whether it would be covered. Corruption Watch had seen the issues regarding IEC resources, but for Corruption Watch, it was about reporting channels. There were a number of reporting channels in government, but people did not use them. Funding had to be allocated to ensure appropriate channels were created.

On the capping of expenditure, the OECD Guidelines had suggestions regarding capping. Corruption Watch wanted total disclosure. What was at stake was voter confidence. In response to the question of foreign funding, she asked the question of what harm foreign donations could do and the harm was influence. The Section in the Bill on foreign funding was confusing. The organisation proposed a 50/50 split for funds in the MPDF and closer to equity in the Represented Political Party funding.

Ms Mathys asked about the ratio for funding.

Adv Govindsamy stated that it should be 50/50 in the MPDF and should address the requirement of proportionality and equity. Her view was based on the past split of 90/10. She believed that there was some discretion regarding the ratio but she would lean towards equitability. It could be in either the Bill or the Regulations, so long as there would be consultation should it be changed.

The Chairperson asked about the threshold and the difficulty of pegging the threshold. Some political parties deducted up to R5 000 per month from salaries, which would be R60 000 per annum. Ordinary South Africans would give R2 000 to R5 000. Parties were saying it would be too much administrative work to report and disclose every R2 000. Would R50 000 per annum be too little? Some churches demanded a tithe but one-tenth of a salary could be a large amount of money. How did one find a good threshold in a country where there was such inequity but was as low as possible? The average family household would be impossible to gauge in realistic terms. The Committee was looking for some direction.

Ms Mathys asked about party levies. Should levies be considered a donation? The legislation did not include a membership fee or a levy. The EFF wanted to be clear about that as it did not want complaints later that EFF members had not disclosed their levies.

Adv Govindsamy stated that the Bill already permitted non-disclosure of membership fees and levies. Right2Know had raised a concern about super membership fees, which was a valid concern. Why did civil society want a threshold? The public needed to know who was supporting a political party. So, it could be about a single amount but also about a cumulative amount. There could be a graded approach depending on the size of the funding. As far as the administrative burden was concerned, she would have thought that those records were already available. It was about the potential for harm, hence the threshold had to be low. Adv Pothier had said it could be about R10 000. The threshold would have to be a balance between administrative burden, which would have to be properly understood, and the potential for harm.

My Vote Counts (MVC) submission
Ms Janine Ogle, MVC Coordinator, accompanied by Dr Elizabeth Biney, MVC Researcher, informed the Committee that MVC had been campaigning for disclosure of funds since 2012. The decision to go to court was made when there was no move to address the issue. However, this Committee had begun its work even before the case ended and should be lauded for that.

Donations to the MPDF should be separate and anonymous in support of multi-party democracy. The amount donated should not be withheld as the public had the right to know the number of donations and the amount donated. Any contributor to the MPDF may request the Commissioner not to disclose the person's identity but the amount could not be withheld. On the allocation to represented political parties, the split of 90/10 was unfair to smaller parties. The formula for both the MPDF and the represented political party fund was a policy decision that had to be addressed by the Committee and not left to the Regulations. MVC suggested that there be two separate formulas for the two funds. MVC proposed that the public funding be a 70/30 split and for the MPDF, a 50/50 split was proposed because the vote of the people had to count.

MVC did not think that members of political parties should be allowed to accept donations as it was an obvious loophole for abuse. The clause should be amended to state that donations could be to parties only. All donations in-kind, above an estimated value of R10 000, had to be declared. All loans to political parties should be disclosed as a donation because the possibility existed that loans would be written off and it was not possible to manage this. MVC believed that donations from businesses that did business with the state should be prohibited as the perception that donations could be linked to tenders was very damaging to the state. Such companies should rather donate via the MPDF.

De-registration of political parties for violating the terms of the Bill was too harsh a sanction and a financial penalty should rather be imposed, as well as a criminal sanction against the political party representatives, i.e. the highest decision-making officials, including the Chief Financial Officer.

Overall concerns included the exclusion of the local government level. The Cape High Court judgement had said that even independent candidates could reasonably be expected to disclose. MVC understood that it was not part of the mandate of the Committee but the Committee had to ensure that the National Assembly was alerted to the urgent need to regulate funding at the local government level, as already stressed by many organisations.

MVC was concerned that too many issues had been left to the Regulations but supported the decision to work on the Regulations in conjunction with the Bill. The lack of Regulations on party funding had been a concern for MVC in that, in order to effectively exercise the right to vote, the public needed information to be able to make an informed vote. Information about the private funding of political parties was part of that information that informed the choice of the voter.

Discussion
The Chairperson asked about loans to political parties. He understood the concern about converting loans to donations and so loans should be banned. He did not know whether any political party could operate without an overdraft at a bank, which was a de facto loan. If the loan were on commercial terms, it could be accepted, but, then again, a contract could be torn up. How did one deal with overdrafts? Was an overdraft covered? Should it be covered?

Dr Mulder indicated that the clause on loans had tried to circumvent turning loans into donations. The Committee wanted to prohibit someone from giving money but disguising it as a loan. However, political parties operated as businesses. If a political party had a bond or overdraft, did it have to be declared?

Mr Selfe presented a scenario in which members of political parties accepted donations. Hundreds of thousands of members signed up other members and took the R10 membership fees as a donation and gave them membership cards. In that sense, members were raising money from members. Mr Selfe noted an extraordinary convergence in the submissions that had been made by civil society. He noted that MVC had suggested a R10 000 threshold. He was not sure if it was administratively possible to declare every donation above that level. He did not want to pass an Act that was incapable of being administered because of requirements or procedures that could not be administered.

Ms Mathys referred to the suggestion by MVC that the penalties in Schedule 1 were not high enough. She asked about the possibility of using a percentage, rather than an actual amount, as a penalty. Could MVC speak to the idea of a percentage? She noted that commercial loans and overdrafts would find expression in the audited books so she assumed MVC was talking about friendship loans. If so, how could those be addressed? MVC had suggested that the exclusion of local government be addressed through the Regulations without hindering the Bill, but how could that be done without a mandate or a principle in the Bill?

Mr Gumede admired the maturity of the MVC presenters. They were an asset to the country and very responsible and patriotic under very difficult circumstances. Unfortunately, he did not agree with everything that they had presented. The Committee was prepared to engage about disclosure. On loans, he agreed with Members who had spoken, as he thought that MVC had had in mind someone who wanted to give a loan as a disguised donation. The matter of donations from companies doing business with the state was dependent on discussion in the Committee, but he did agree that it would be better to be forbidden to donate directly to parties. The Committee did not have the mandate to deal with local government but Members would see what they could do. He fully agreed that disclosure was essential to gain the trust of the electorate.

The Chairperson had thought that Members would jump on the statement that MVC was not averse to a MPDF donation being disclosed to the public by amount but not by name. Adv Tlakula had said that such a position could be challenged in the Constitutional Court. He had thought that MVC was the lead disciple on total disclosure. He had supported MVC because knowing who had given the donation enabled people to make an informed vote. Would the public not want to know who was giving money to political parties that went anonymously via the MPDF? He was somewhat astounded at the position of MVC as he had obviously misinterpreted their position. He noted that MVC would be supported by Prof Calland. He asked for comment on the matter.

Dr Biney explained that total disclosure meant MVC asked how much money was in the kitty. Because MVC was aware that privacy was a right, it accepted that certain details did not have to be disclosed below an agreed upon threshold. MVC wanted detailed disclosure above the threshold. The organisation wanted a bigger financial picture and more detail above the threshold to colour in the picture. MVC wanted transparency. Openness was an important principle but the compromise was between the right to privacy and transparency. MVC was of the opinion that local government should have been part of the mandate. She asserted that the looting started at the bottom before it got to the top. The importance of the issue could be addressed in a clause.

Dr Biney said that all presenters had responded to the question about the threshold by explaining that they were not economists nor did they have access to information about political party funding. Any numbers that the presenters came up with would be random and thumb sucking. MVC had considered R10 000 a fair amount, only to find that it was a minuscule amount to political parties. The clause on donations to members had suggested that the party would be giving donations to its members. There needed to be some clarity in this clause and there needed to be regulation to ensure that members collecting funds actually handed the money in to party officials.

Ms Ogle stated that loans should not be banned but disclosed. Loans not on commercial terms should be disclosed, preferably as a donation. She referred to a court case in which someone had given millions of rand to a person who had said he represented the ANC but that money was never handed in to officials. She noted that the DA had certain policies about receiving donations. Why could those policies not be shared with the Committee to inform the Regulations? There was a huge disparity in caps in countries across the world but in South Africa, cognisance had to be taken of the local economic situation. R10 000 was a lot of money for the average South African. When it came to sanctions, percentages might well be a better suggestion because the amounts suggested might be no more than a slap on the wrist for bigger parties but a significant amount for smaller parties.

The report to the National Assembly could address the concern of the public about funding at local government level. Alternatively, a clause could be inserted in the Bill to address the need for regulation of local government funding.

The Committee had to decide whether the advantages of the system would trump the disadvantages? MVC believed that the banning companies that did business with the State trumped the disadvantage of some companies no longer donating. MVC policy was that it could not accept anonymous donations, donations from foreign governments and companies. It was a principled stance to protect the work the organisation did. The principle in the Bill had to be that democracy had to be defended.

Ms Ogle addressed the issues from the court case. Total disclosure was disclosure by everyone who donated above a specific threshold, say R10 000. It would include names and details. Any donations below R10 000 had to be disclosed in terms of amounts but no names. The MPDF was not included in the order of the judgement which was why MVC considered anonymous donations to MPDF acceptable.

The Chairperson summarised. The Committee agreed with the recommendation that there had to be total disclosure of donations to political parties above a threshold and limited disclosure below the threshold. There was no threshold in the MPDF. MVC had no problem if the donor to the MPDF was not known by the public. The Committee had thought that there had to be total exposure when donating to the MPDF. The reality about deciding a threshold was that no one person knew what all parties received in donations. In an attempt to find a threshold, his reasoning had been to work out a realistic amount that an ordinary South African would donate per month. The point of the threshold was there purely for administrative purposes. Therefore, the Committee was looking for a principle on which to base the threshold.

Ms Mathys understood that donations would not come from the poor. But there was a need for a guiding principle. It was also important that politicians did not spend so much time on administrative work that they could not attend to their primary duties. She asked MVC to dig deep to come up with a guiding principle.

Dr Mulder understood that NGOs asked about each and every cent. They asked how much had been given to a party. The question should be: what amount would influence the party? R10 000 was not an insignificant amount to any political party, but the question was whether the amount would influence the party to take a specific decision. The threshold did not need to be an amount.

Ms Ogle noted that in its first submission, MVC had said that it was looking for an amount that would not influence parties but that MVC could not state an amount as the organisation did not have insight into the quantum of donations. She, therefore, agreed with Dr Mulder, but still could not give an amount. Civil society received donations online as once-off or monthly donations. Those donations

were in the region of R20. Donations online were small. What MVC viewed as a lot of money was not what political parties viewed as a lot of money but there was no disagreement on principle.

Dr Biney stated that MVC wanted the bigger picture when it came to donations to the MPDF. The Court's decision talked about direct funding to political parties. MVC asked how much was flowing privately into the party coffers. That information was important to an informed right to vote.

Business Leadership South Africa (BLSA) submission
Ms Busisiwe Mavuso, COO at Business Leadership South Africa (BLSA) explained that Business Unity South Africa (BUSA) was the umbrella body under which BLSA had positioned itself.

It was a simple submission in which BLSA commended the initiative of the Committee and fully supported it. Precisely because BLSA members understood that private funding could open up political parties to undue influence and corruption, BLSA wanted to see that everything was above board. The Bill would, in fact, assist BLSA members against corruption and undue influence in tenders. Transparency far outweighed the issue of privacy. BLSA knew and understood that when politics worked, the economy worked, then business worked, and business benefitted.

Discussion
The Chairperson did not want to do things for malicious compliance so the Committee wanted to engage. He asked how many businesses BLSA and BUSA represented.

Ms Mavuso indicated that BLSA represented 80 companies on the JSE so that was 80 big companies. BLFSA met every two months and the Board met every month. Members included Old Mutual, JSE, Discovery, Investec, Chamber of Mines and so on. BLSA was a member of BUSA where there were 15 organisations that represented business, which meant that BLSA engaged with all important players in business.

The Chairperson explained that the Committee had a concern that if businesses were forced to declare and disclose, businesses would be scared off. Was that so? Another concern was there should be an obligation for businesses to disclose to IEC or through their annual report. Would that make businesses less willing to donate?

Ms Mathys appreciated the submission and the scope of BLSA. She had expected a little more meat. One of the companies in the BLSA was Standard Bank. She knew that Standard Bank donated to political parties, but that Standard Bank also handed out funding on the side. How far was business willing to go to disclose donations? The JSE did not obligate companies to disclose. Was business going to be happy to disclose donations, both monetary and in-kind?

Mr Gumede said that he did not have a problem because Ms Mavuso's points were principle points. What would shareholders say if the company had to disclose donations and shareholders saw that the company had donated X amount that could have been profits to the company.

Dr Mulder remarked that Ms Mavuso was correct that there was a specific relationship between politics and the business. He understood that some businesses served all South Africans and they did not want to be seen to be taking sides. A multi-party fund had been created so that a business could say that it was a good corporate citizen that made donations to enhance democracy in the country. A company would not be associated with a particular party. Would businesses donate as good corporate citizens, or would the fund not be sufficient to encourage donations?

Ms Mavuso replied that business had not been as vocal as it had been in the last six months since the election of the Chairman of the Board, Mr Jabu Mabuza, and CEO, Mr Bongang Mohale. Their mandate came from the companies. As a result of the information on state capture – and it was only because there was a functioning democracy that evidence of the state capture had come to the fore – business had said that transparency had become critical to prevent funding from creating undue influence and illicit gains. BLSA understood that the economy relied on a healthy political environment. BLSA had been very vocal through Mr Mabuza. Business had to ensure that there was transparency. By donating to the MPDF, business could support democracy. In choosing to donate to the MPDF, business was making it clear that it did not agree with the current allocation in which the large parties were favoured above the smaller parties. They wanted to see a fairer distribution. Business did not want to keep the status quo. By supporting the MPDF, business would be non-partisan and would be supporting the functioning of constitutional democracy. For the country to achieve what it wanted to achieve, constitutional democracy was critical and was supported. The submission had been endorsed and supported by the 80 companies listed on the JSE.

The Chairperson believed that the Committee could breathe a little sigh of relief because the Committee was not on its own. He asked that Ms Mavuso follow the progress of the Bill. He assured her that the 90/10 formula would change. It was not sustainable and not fair. Healthy politics meant a healthy economy and vice versa. He was grateful that business had come to the party to make South Africa a better place for all. Those who said that by making donations transparent, the Committee would drive big business away had heard from business itself.

The Chairperson announced that the Committee would be meeting with the IEC on 10 November. Members would prepare the Bill for sending to the House. At the same time, the Committee was busy with Regulations. The key issues in the Regulations were the 90/10 split, the upper limit cap and the lower threshold below which disclosures would not be made. The Regulations were an adaptation of the previous Regulations. These Regulations would be signed by the President and if they had to be changed, they would be changed in Parliament. The Committee was determined to meet the parliamentary deadline of 30 November 2017. The Committee was creating a Bill that would stand the test of time, regardless of the economic or political environment. Three or four Committee

meetings would suffice to complete the work.

Meeting adjourned