



**JOINT SUBMISSION TO THE INDEPENDENT ELECTORAL COMMISSION ON
THE PROPOSED REGULATIONS FOR THE POLITICAL PARTY FUNDING ACT**

Submitted by: My Vote Counts and Right2Know
Date submitted: 21 March 2019
Submitted to: Mr Nilan Rampershad, Independent Electoral Commission
Per email: rampershad@elections.org.za

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1. Introduction

- 1.1 My Vote Counts (MVC) and Right2Know (R2K) appreciate the opportunity to engage with and make written comment on the Independent Electoral Commission's (IEC) *Political Party Funding Act: Proposed Regulations*.
- 1.2 We commend the IEC for timeously drafting the *Proposed Regulations* at a time when it is under great pressure to prepare for the upcoming elections.
- 1.3 We recognise that in the past the IEC has expressed concerns that administering the regulation of party funding did not fall within its mandate. We must again express gratitude to the IEC for taking on this crucial role. The information related to the funding of political parties informs the political right to vote and as such we are of the opinion that the IEC is the institution best placed to facilitate this.
- 1.4 This document serves as our formal written submission in response to the call for comment.
- 1.5 The comments are intended to be constructive and an attempt to assist the IEC in developing Regulations that will most effectively contribute to the Political Party Funding Act's ("The Act") full implementation.
- 1.6 Any reservations that we may have with the Act itself are not included in this submission as they fall outside the ambit of this particular process.

2. Background – My Vote Counts

- 2.1 MVC is a registered non-profit company, established in 2012. The organisation's mission is to enhance the accountability, transparency and inclusiveness of the political and electoral systems in the Republic of South Africa generally, including but not limited to:

- a. Campaigning to reform the political party funding system through the introduction of legislation and other regulatory measures;
 - b. Campaigning to reform the electoral system;
 - c. Creating platforms which aim to unite citizens and organisations in finding democratic solutions to the challenges of our time, with a focus on civic, legal and political education.
- 2.2 MVC seeks to achieve its objectives and advance its work through research, advocacy, popular education and litigation.
- 2.3 We have been advocating for legislation to regulate party funding since the establishment of our organisation in 2012.
- 2.4 MVC has consistently followed and engaged with all the developments related to the Act and played a role in the process that led to the introduction of this new legislation.

3. Background – Right2Know

- 3.1 The Right 2 Know Campaign (R2K) is a registered non-profit organisation founded in 2010 as a civil society response to the threatened Secrecy Bill and has continued to advocate and campaign for openness, transparency and accountability in the public and private sectors. More specifically it does this by:
- a. Promoting and campaigning actively for greater citizen participation in the processes and decisions that affect their lives in all 3 spheres of government;
 - b. Campaigning for greater expression of people’s voice in all forms of media - and especially in an internet that fast and accessible and also

safe from surveillance and bullying and where private information is secure; and

- c. Campaigning for greater protection for citizens as they organise, express themselves and engage fully in the political process(es) including through peaceful protest action.

3.2 R2K pursues its mission by conducting research, providing popular education, mobilising in grassroots and policy advocacy and as appropriate through litigation.

4. The importance of transparency

4.1 Both R2K and MVC have been vocal about the need for greater openness and transparency about the funding of political parties, especially the private funding of the political parties.

4.2 Political parties perform an important public function and wield significant influence and even power when elected; openness and transparency about the private sources of their support will ensure that no undue influence is exercised and no special interests are served at the expense of the greater good.

4.3 It is therefore important that this piece of legislation, the Act, be operationalised as quickly and efficiently as possible. Recent revelations about the extent and depth of corrupt dealings between political leaders and private sector interests have significantly undermined our collective faith in the young democracy we have tried to build.

4.4 All political parties appear to be touched or tainted by these questionable practices; all political parties therefore need to work to re-establish our faith in them and the political and electoral process. Openness and transparency in relation to the sources of their significant donations is a start along that road.

4.5 To the extent that it is legally permissible, the IEC should therefore endeavour to make as much information related to political party funding open and accessible to the public. The more the public knows about the funding of our political parties, the greater is its power to hold leaders to account and to minimise corruption.

5. Regulation specific comments

5.1 The following comments are made with reference to specific regulations contained in the *Proposed Regulations*.

5.2 With respect to **Regulation 4(1)** that refers to the Commission having, 'the right to return any Donation made to the Multi-Party Democracy Fund...should the Commission be of the belief, or have reason to believe, or suspect, or have reason to suspect, that the source of the money relating to the said Donation is from: a)The proceeds of unlawful activity; or b) An Organ of State; or c) A State-Owned Enterprise; or d) Foreign Government or Foreign Agency:

5.3 Surely the IEC must be obliged to return any such donation, rather than having the right to do so. Perhaps the text should be changed to reflect this.

5.4 With respect to **Regulations 4(3) and 4(4)** referring to the Multi-Party Democracy Fund, the process of the non-disclosure application and the IEC's determination thereof:

5.5 There would be enormous value in the public having access to the following information:

- a. The number of requests that were made for non-disclosure;
- b. The breakdown of the number of requests for non-disclosure that were approved and those that were rejected;

- c. The monetary value of each donation that made a request for non-disclosure;
 - d. The cumulative monetary value of all donations that made a request for non-disclosure;
 - e. The reason/s provided for requesting non-disclosure, without identifying their identity;
 - f. The breakdown of the reason/s provided by the IEC to grant or reject non-disclosure requests.
- 5.6 MVC strongly supports the IEC making this information available to the public and any other information that may assist the public in having greater insight into the funding of political parties.
- 5.7 With respect to **Regulation 4(5)(a)** referring to the circumstances under which the IEC *must* reject a non-disclosure application:
- 5.8 In a scenario where a non-disclosure request is denied because the IEC, 'is of the belief that any provision of the Act or any other legislation has been contravened by the Contributor', there should be an explicit onus on the IEC to report this to law enforcement or the relevant authority.
- 5.9 It may be worth considering adding text to this effect to the *Proposed Regulations* as to further encourage truthful disclosures.
- 5.10 With respect to the general processes related to the non-disclosure request and decision:
- 5.11. It is unclear as to the process that will be followed regarding a request for non-disclosure that is denied. In such a scenario, is the donation returned or will this result in the donation being accepted, but that it is not anonymous?

- 5.12 According to form PPR1, the contributor must provide proof of the donation which suggests that non-disclosure is requested after the donation is made. If this is the case, it should be stated as such.
- 5.13 There needs to be an opportunity for the applicant to review an IEC decision that rejected their request for non-disclosure. It may assist the IEC in terms of the public's perception of its independence and fairness if there is another forum, not headed by the IEC, that can hear and rule on appeals.
- 5.14 In the case of the IEC accepting a request for non-disclosure, it is unclear if the applicant would then need to make the same request each time a donation is made. It should be stated explicitly that a new request for non-disclosure needs to be requested with every single donation.
- 5.15 With respect to **Regulation 8(5)** which states that a, 'record of disclosures...shall be kept by the Commission and shall be available for inspection by any Person during normal office business hours at the office of the Commission':
- 5.16 Given that the IEC has a limited number of physical offices, which will be inaccessible for many people due to distance and cost of travel, provisions must be made for the record to be electronically accessible on a website.
- 5.17 The electronic records will need to be searchable to make them worthwhile. We anticipate that there will be volumes of data and unless it is searchable, for example, by name of contributor, date of contribution, amount of contribution etc., it will undermine the entire process.
- 5.18 Given that disclosures will be continuously submitted to the IEC, the IEC needs to stipulate after what period of time a disclosure will form part of the record and be available for inspection.
- 5.19 With respect to **Regulation 13(e)** which refers to compliance with the use of funds by represented political parties and the auditor's opinion of the use of these funds:

- 5.20 The auditor's opinion should be accessible to the public.
- 5.21 With respect to **Section 14** which refers to the issuing of directives by the IEC:
- 5.22 The IEC should publish a list of directives issued and the political party to whom it was directed.
- 5.23 With respect to **Part B, Section 3(3)** which refers to the delivery of documents:
- 5.23 Would it be preferable for the IEC to produce cover page templates for submissions by facsimile and electronic mail? If this is left to senders, they will inevitably produce cover pages of various formats, potentially making it more onerous for the IEC to process.
- 5.24 With respect to **Schedule 1** that refers to the Schedule of Offences:
- 5.25 Will a person who submits, 'information found to be false, inaccurate or misleading in any manner whatsoever' be held personally liable?
- 5.26 If a fine is imposed, will this have to be paid by the individual who made the submission, or by the political party on whose behalf the submission was made? This needs to be made clear.
- 5.27 With respect to **Form PPR6**, 'Disclosure of Donations by a Juristic Person':
- 5.28 Allowing the amount donated to be an 'estimate value' will provide the opportunity for misinformation and a specific amount should be stipulated. In the case that it is not possible to provide an exact amount, the IEC needs to request that the estimate is justified with further documentation or explanation.

6. General comments

- 6.1 The following comments are made as general observations and are not in relation to any specific section of the *Proposed Regulations*.
- 6.2 **Whistle-blowers:** The *Proposed Regulations* make no mention of a policy for the protection of whistle-blowers. If for example, a member of the public has knowledge that a disclosure was made and it contained information that was, 'false, inaccurate or misleading in any manner whatsoever', and the IEC is not aware of this, there should be a provision for a person to make this known to the IEC.
- 6.3 **Language:** The process of submitting documents to the IEC, as well as the record of disclosures and other relevant documentation should be made available, with the resources available to the IEC, in languages other than English.
- 6.4 **Public education:** The IEC should conduct public education and awareness campaigns about the new legislation and regulations to ensure that people become aware of these new legal responsibilities.
- 6.5 **Independence:** With this additional role the IEC will be placed under greater scrutiny. It is imperative that the Commission remains entirely independent and that the public has full trust and confidence that it will implement the legislation without fear or favour.
- 6.6 Given the context in which South Africa currently finds itself, there is a need now more than ever for our institutions to be, and to be seen to be, completely neutral. For example, the IEC will now have to make decisions about what funds they accept and if requests for non-disclosure are granted or denied. In order to remain objective, it is vital that as much information as possible regarding these processes and others are made public. This will assuage fears that any person or entity is being given preferential treatment.

- 6.7 **Phased approach of rolling out the Act:** We note the IEC’s decision to rollout the implementation in stages over 3 years, with an initial focus on chapters 1 to 4 and 6 of the Act and to address the enforcement of the legislation in the future when there is capacity and funding.
- 6.8 We are supportive of this decision to the extent that it kickstarts this crucial process. We understand that there will be nothing to enforce if the structures and processes are not in place. We must emphasize that the enforcement is a crucial aspect and as soon as this phase can be implemented it must be.
- 6.9 **Funding from foreign entities:** The *Proposed Regulations* make no mention of the way that donations from foreign entities, as envisaged in Chapter 3, Section 8(4)(a) and (b), will be processed or monitored.
- 6.10 The Act makes provision for funding from foreign entities for the purpose of, ‘training or skills development of a member of a political party; or policy development by a political party’. There needs to be greater guidance as to what constitutes training, skills development and policy development. Perhaps there could be an application process made to the IEC by the foreign entity and/or the political party to provide clear detail of what the funds will be spent on. The IEC needs to have the ability to vet such donations and monitor the actual training, skills development and policy development.
- 6.11 **Forensic Investigators:** The IEC must ensure that it has forensic investigators and staff with the requisite skills to analyse and determine the veracity of the information that will be submitted to the IEC. It may also be prudent for the IEC to consider requesting assistance from other specialised units within government that process financial information.

7. Conclusion

- 7.1 We appreciate the challenge that the IEC has faced in producing these *Draft Regulations* in such a short time after the promulgation of the Act.

They are broad and leave room for changes to the forms and processes as informed by practice.

- 7.2 Our comments above seek to strengthen the *Draft Regulations* by highlighting some areas that could do with some tightening or clarity. Because the *Draft Regulations* are forward-looking and given the proximity to the 6th National and Provincial Elections, they are unfortunately silent on the content of the first submission by the registered political parties. For the reasons just stated, we propose that the first submission be one for the past 12 months (rather than the monthly or quarterly submissions subsequently).

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