

Submission to the NACAC on the Political Party Funding Act
Submitted by: The Civil Society Working Group on Party Funding
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Introduction

Money is an inextricable part of politics and democracy. We have seen through many examples — South Africa included — of the nature of money in politics. It can be destructive. We need only look at the most recent example of State Capture. However, a significant sphere of influence is with private donations to political parties. Covered briefly in the Zondo Commission, party funding represents an important area for accountability and transparency in politics. Given the large amounts of money donated to political parties, there exists an opportunity to subvert the democratic process through wealthy elites buying influence in political parties.

The Political Party Funding Act (PPFA) was the law created to address the issue of undue private influence in politics. However, two years since its inception there remain crucial areas of concerns around its efficacy in preventing this along with external threats to its core functions of accountability and transparency. The following is a submission made to Legislative Reform Reference Group of the National Anti-Corruption Advisory Council (NACAC) on:

1. The recommendation emanating from the State Capture Commission which notes that the Political Party Funding Act should be amended to “criminalise the making of donations to political parties on the expectation of, or to grant procurement tenders or contracts, as a reward for recognition of such grants having been made;”
2. The adequacy of the threshold required to disclose funding received from donors, as well as the annual cap on donations; and
3. Gaps in the current legislation which should be amended to prevent and combat corruption in South Africa.

Civil Society Working Group on Party Funding

In 2021, the Civil Society Working Group on Party Funding was convened by NGO, My Vote Counts. The Working Group is a civil society collective that works towards transparency in party funding and represents a unified opposition to guard against any threats to the PPFA. Therefore, the Working Group has jointly made the following submission to the working group of the NACAC.

The following organisations form part of a Civil Society Working Group on Party Funding:

1. Ahmed Kathrada Foundation
2. Alternative Information Development Centre
3. Corruption Watch
4. Council for the Advancement of the South African Constitution
5. Defend Our Democracy
6. Democracy Development Programme
7. Helen Suzman Foundation
8. My Vote Counts
9. Parliamentary Monitoring Group
10. Public Service Accountability Monitor

11. Organisation Undoing Tax Abuse
12. Right2Know Campaign

The Working Group is also supported by individual experts on political party funding.

Context of Political Party Funding Act

The reports from the Commission of Inquiry into Allegations of State Capture have shown the extent of the misappropriation of state funds, corruption at all levels of government, and fraud. However, as unique as State Capture may have been, it exposed an issue with democracy that is experienced the world over: the toxic relationship between money and politics. This is highlighted especially in political party funding where political parties have influential backers who — at the price of their steep donations — may be expecting a quid pro quo from political parties to whom they donate. This results in the political party becoming beholden to the donor and not the voter, as it should be. The relationship between money and politics can be seen in procurement or tender irregularities where there exists the potential for kickbacks. Private donations to political parties also have the potential to create opportunities for wealthy donors to exact a more favourable political environment. It does this by making the promise of more funds contingent on the political decisions and policies a party makes that are more aligned to the needs and wants of the donor. Additionally, intra-party campaign funding can pose a significant threat where politicians can secure private donations in the millions for their campaigns to hold office within their party. Where these election campaigns happen within parties — who are likely to form the government — these private campaign donors could exert undue influence on the politicians they support if they were to become president of the country or form part of the Executive.

The Zondo Commission has also highlighted areas of concern in awarding procurement tenders to political party donors or individuals who may then receive kickbacks from the party. This is presently not included in the PPFA. Procurement tenders could offer the potential for further corruption within a political party, and this must be addressed. However, procurement tenders are not the only way in which influence could possibly be wielded and its inclusion in the PPFA must be supported by addressing the other spaces for influence in a political party through private money. Influence could also come in the form of continued financial support (through private donation) if the party continues to make decisions favourable to the donor. The donor would therefore wield greater influence of the direction of the political party. This together with the potential for corruption found in unregulated procurement tender process could serve to undermine the goal of the PPFA to further political transparency and accountability.

The PPFA is a law that has long been in the making for South Africa. It became increasingly clear that greater frameworks/mechanisms for accountable and transparent politics would need to be implemented. While the PPFA was not necessarily conceived as an anti-corruption law, it does speak to corrupt behaviours or activities. At the very least it is an attempt to redress the perversion of a democratic process that we see as being vested with the voting public and not wealthy private individuals.

A key consideration for party funding is the amendment to the Promotion of Access to Information Act (PAIA). This amendment was born out of the Constitution Court ruling on the matter of *My Vote Counts (NPC) v Minister of Justice and Correctional Services*. The amendment allowed for the private funding

information of political parties and independent candidates to be recorded, preserved, and made available to the public. In its ruling the Constitutional Court made it clear that information on the private funding of political parties and independent candidates is essential for the effective exercise of the right to make political choices and to participate in elections. It is in this context the PPFA should be viewed as a key piece of legislation that:

1. Provide access to information necessary for the public and,
2. Enhances and protects transparency and accountability.

The PPFA is therefore necessary to ensure private and foreign donations do not exceed an acceptable threshold of influence and allow the public the ability to facilitate a check and balance on this influence. It is then a law that extends beyond procurement and related activities.

The PPFA so far: major trends, observations areas for concern

The PPFA has now been in place for two years, and we have been able to identify some key trends. Although working with a limited dataset, the observable trends from these first few years of disclosures are quite illuminating. The most startling information to emerge was the fact that every political party that disclosed had a small group of funders who contributed at least 50% to 70% of their overall donations. In the case of the larger parties such as the African National Congress (ANC) and the Democratic Alliance (DA), these were significant numbers. It was not just this fact of limited numbers of donors that was concerning but also who made the donations.

Given the information we have, we can note that:

1. Large donors to political parties are in the minority yet make up most of the overall donations

During the 2021/2022 financial year the ANC received just over R66 million in private donations. Of these donations, three were made at the upper limit of R15 million by the Batho Batho Trust, Chancellor House and United Manganese of Kalahari (UMK). Cumulatively, these donors gave R45 million to the ANC, which made up nearly 70% of its overall donations.

These donors are also mired in controversy. Chancellor House as a holding company does not have the source of its investment funds fall under the scope of the PPFA. Therefore, it remains unclear if any funds channelled through holding companies like Chancellor are proceeds of illegal activity. The Batho Batho Trust is partly owned by a company funded by Chancellor House and is also partly owned by the Shell Exploration Company. Shell has courted controversy in South Africa for its proposed exploration along the West Coast. Lastly, UMK, although represented as a South African company is owned by the Renova Group, which is in turn owned by the Russian oligarch Viktor Vekselburg.

A similar case is also true for the DA who received more than R46 million in private donations for the same period. R30 million came from just two donors: Mary Oppenheimer Slack who donated R15 million and Martin Moshal who donated the other R15 million. This means that 64% of the DA's private funding came from just two individuals.

ActionSA, a party not represented in the National Legislature, has also received large donations from Martin Moshal (R7.5 million) and members of the Oppenheimer family (R9.99 million cumulatively). These two donors constitute 62% of ActionSA's total donations.

These donations show how dependent political parties are on an elite group of private donors. It is not yet known if these donors were linked specifically to the awarding of tenders or involved in any procurement for the parties they donated to, but they would however not be prohibited from doing so. The possibility exists for these donors to exert more influence through this opportunity for continued business with the political party. This underscores the need for a prohibition or a limit on procurement tenders to donors who donate to political parties.

While the PPFA does not explicitly prohibit a party from doing business with, and accepting donations from the same person / entity, the value of the donations thus far is already significant given that political parties are dependent on these large donations; and this without the promise of continued business from political parties. Where there are procurement tenders awarded on the promise of kickbacks this also represents a significant concern if these political parties are represented in the National and Provincial Legislature or form part of the government where access to state or provincial resources could increase the level of kickbacks and influence.

2. The upper limit can be circumvented.

The PPFA makes no restriction on upper limits to donations by related persons or entities. There is not even full disclosure in this regard. Thus, political parties can receive multiple donations from entities related to the same persons, as long as any one natural person or legal entity, in its own right, does not donate in excess of R 15 million. This effectively renders the limit meaningless, as businesspersons and others can and often do operate through, and can set up, several companies (even shelf companies). There is no control and no restriction in this regard. This can lead effectively to the same person donating far in excess of any prescribed limit.

3. Lack of sufficient access to private funding information

While we can see general trends like this emerge because of the party funding disclosures, it still only represents a sliver of the funding picture. Our political parties also receive public funding, membership fees and levies which are governed by the PPFA. This information, however, is not published in its totality to the public. Therefore, the quarterly disclosures published by the IEC of private donations do not represent a full proactive disclosure of all private funding information as governed by the PPFA.

For the Civil Society Working Group one of the critical ways to mitigate the potential of private funding to undermine democracy is to ensure proper access to information. The right to access to information is a constitutionally protected right in South Africa and the PAIA amendment cemented the link between access to information and private sources of funding for political parties. The Constitutional Court was also clear in its ruling that there is a vital connection between the proper exercise of the right to vote and the right of access to information. And *“without access to information, the ability of citizens to make responsible political decisions and participate meaningfully in public life is undermined”*. It further noted that the disclosure of private funding would help the public to detect whose favours political players are likely to return, once elected to public office.

Both the PAIA amendment and the PPFA seem to really capture the spirit of access to information and proactive disclosure. The African Commission on Human and Peoples Rights According in its Guidelines on Access to Information and Elections in Africa (2017), the ‘legal framework of States and Parties shall provide for the proactive disclosure by political parties of:

- a) Receipt of campaign funding from both public and private sources;
- b) Campaign expenditure broken down into distinct line items and specifying the sources of funding and actual amounts;
- c) Annual audited financial reports; and
- d) All other information, proactively disclosed or available on request.

These and other measures in the Guidelines are intended to contribute to transparent, free, fair, and credible elections.

Presently the PPFA does not compel political parties to disclose all private funding donations received to the public. Instead, it provides that political parties submit audited financial statements to the IEC of all private funding donations. These are in turn not shared in totality with the public. Crucial party funding information is therefore outside the purview of the public. So, the multi-million-rand disclosures we have been able to see, although alarming, may only be one part of a much larger funding matrix we have yet to fully understand.

Both current disclosure thresholds are therefore unable to ensure complete or even reasonable access to foreign and private funding information and thereby limit the possibility of undue influence on political parties.

Possible amendments to the PPFA: Expanding its disclosure thresholds.

The Zondo Commission has shown how money distorts a democracy and eats away at the common good.

Recent political developments have indicated that some political parties including the ANC, may want to increase the disclosure threshold to R500 000. This means that more than 50% of the number of current declared donations would be omitted. Given that the PPFA does explicitly require audited financial statements of private funding to be published in full, it therefore means that an expansion of the disclosure threshold would also increase funding secrecy. At its current threshold, the PPFA is still not able to ensure comprehensive access to information.

The upper limit of R15 million has also been earmarked for possible amendment with some members of the ANC calling for this amount to be increased to R50 million or scrapped altogether. This cuts at the heart of the Act which aims to increase accountability and transparency in private funding. Increasing the upper limit will allow wealthy donors to exert more influence.

Lessons on party funding

When studying corruption globally a trend that emerges in research is that the highest levels of corruption are in “developing or transition countries”. There seems to be a correlation between the maturity of the democracy and the level of corruption, in that young democracies will see an increase in corruption because the democratic institutions (and branches of government) are still in their infancy and not yet capable of tackling corruption. In this regard, South Africa seems well on track in terms of ever-increasing corruption within the first decades of its democracy. Authors such as Monika Bauhr and Nicholas Charron have noted that those who feel excluded from a democracy tend to abstain from voting (or participating in general in any democratic process/institution), whereas those who benefit from corruption maintain loyalty to the corrupt regime. This perverse dynamic further limits the possibility of electoral change that would curb corruption. Enhancing accountability would therefore

need to create a shift from politics as self-enrichment to politics of public duty. One important way to assist in this is to regulate how money is used in politics. The following have been identified as some key global trends in party funding that may be beneficial to the South African context:

Publication of financial information

With transparency being a central component in most political funding regulatory systems, the way the financial data is made available has great importance. The possible amendments to the PPFA, as proposed by some political parties in the public sphere, represent a significant threat to the easy access of this information along with the weaknesses already identified in the Act. It must also be noted that the President, according to s24 (1) has the powers to set the threshold amounts if the Act were to be amended. This is a significant level of influence the President can wield over an important aspect of the PPFA. The ability to set thresholds may be better suited to the IEC.

Although some countries, including South Africa through the IEC, have e-filing systems in place for internal tracking and monitoring, there is an overall lack of information reported and published electronically in a format that enables the public viewer to undertake systematic searches of published information. This undermines the ability of the public, the media and civil society to analyse the operation of the legislation, monitor compliance with it and / or hold the regulator to account. Our current disclosure information already points to the same trend.

Monitoring compliance

The success of any funding legislation will depend on how well political parties adhere to it. This means that monitoring and evaluation mechanisms are crucial and more especially the enforcement of party funding punitive measures where political parties are not compliant. This has been identified as a key mechanism in ensuring the success of party funding or any broad-based corruption legislation. The PPFA allowed for the creation of the Political Party Funding Unit within the IEC which is tasked with ensuring that political parties adhere to the Act. This presents a number of issues most notable of which:

1. The IEC is mandated to ensure free and fair elections. The IEC serving as the enforcement and compliance body of the PPFA and the management of the Represented Political Parties Fund is an expansion on their specific mandate.
2. The Political Party Funding Unit is a small group, and its resources are limited. This may hamper its ability to act in a monitoring and enforcement capacity for the PPFA.

The establishment of a properly resourced and staffed oversight body is therefore crucial to the success of any party funding legislation. When issues of non-compliance are identified through the oversight body's monitoring program and / or alleged complaints filed with the agency, they will need to be assessed and, where appropriate, investigated. The PPFA does provide for this. However, given the current limitations of the Party Funding Unit it remains unclear how effective they will be. Party funding oversight bodies can serve as role models for transparency by having mechanisms in place that provide transparency about how they undertake their role and the decisions the oversight body makes. However, a cursory review shows that this is a lesson yet to be learned by many political finance regulators around the world.

The role of party funding oversight bodies is a difficult one given the possible political ramifications that can result from its decisions. In addition to external accusations, there are challenges that arise from the nature of the work itself — its cyclical nature, staffing needs and limited funding.

Recommendations

This submission therefore calls for the following considerations to strengthen the PPFA:

1. The R100 000 disclosure threshold should be reconsidered using data and analysis and to ensure maximum transparency.
2. With respect to the R15 million annual cap, this amount needs to be revisited using data and analysis and lowered.
3. The inclusion of a tracking mechanism that ensures that donors to political parties are not favoured in tender processes. This could fall within the domain of an over-arching procurement body such as the National Treasury.
4. The inclusion of a prohibition or limit on donations that come from interrelated donors.
5. Quarterly disclosures must include all information disclosed in forms 9(1) and 9(2) of the Act.
6. The inclusion of independent candidates in the scope of the Act in line with the new Electoral Amendment Act.

Conclusion

The Political Party Funding Act is an important piece of legislation for the continued effort against widespread corruption and undue influence in our democracy. The PPFA serves to ensure a degree of accountability and transparency in a crucial area of politics: private and foreign party funding. While political parties should be well financed in order to continue to be of benefit to the people, they cannot be allowed to be captured by private or foreign interests. The PPFA in its present form has allowed for some access to information needed both for holding politicians to account and for the exercising of the right to vote. However, the law is not without its issues, and it remains plagued by:

1. Ineffective and limited consideration of source of funds donated.
2. Omission of interrelated donors and declaration of all business interests by donors.
3. Lack of explicit compulsion of all private funding donations to political parties to be made public.

These allow for both the disclosure threshold and the upper limit cap to be easily circumvented. The law is also under external threat by political parties who intend to amend it by severely increasing both thresholds. The PPFA therefore requires urgent review to make sure that it can withstand these threats and become better able to address the concerns of accountability and transparency in private funding.

This submission has provided some points to be considered by the NACAC in its work on assisting in the improvement and establishment of effective anti-corruption measures. The PPFA is a significant law which must be allowed the opportunity to become an entrenched practice among political parties. It represents just one of many ways in which corruption may be mitigated in South Africa.

This submission is endorsed by the following civil society organisations:

- Ahmed Kathrada Foundation
- Alternative Information Development Centre

- Corruption Watch
- Council for the Advancement of the South African Constitution
- Defend Our Democracy
- Democracy Development Programme
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