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OFFICE OF THE TREASURER GENERAL

18 JULY 2017

Parliament of South Africa
Parliament Street
Cape Town City Centre
Cape Town
8000


Dear Sir/Madam

**RE: SUBMISSION OF AFRICAN NATIONAL CONGRESS' DOCUMENT ON
POLITICAL PARTY FUNDING**

Please receive the African National Congress' document on Political Party Funding.

Please acknowledge receipt.

Yours sincerely


Dr Zwelini Mkhize

TREASURER GENERAL


The People Shall Govern !



FUNDING AND REGULATION OF POLITICAL PARTIES TO DEEPEN DEMOCRACY IN SOUTH AFRICA

ANC submission to the parliamentary committee on party funding - July 2017.

INTRODUCTION

1. This document offers background information and proposes a framework for discussion on how to improve political party funding arrangements in South Africa. The document considers three inter-related issues:
 - Regulation of private funding of political parties
 - Financial transparency and accountability of political parties
 - Enhanced public funding for activities that promote and support democracy
2. The main conclusion of the document is that enhanced public funding should only be considered in the context of and improved regulatory architecture for the financial operations of parties. Such a framework should build transparency and financial accountability, regulate private finance and increase public confidence in the democratic system.
3. The next section summarises current legal and financial arrangements in respect of public funding of political parties, and the size of the current public funding envelope. The document then summarizes international practices in respect of public funding and compares these with South African arrangements. The next section highlights a number of issues that should be considered when discussing reforms and lastly the document proposes a set of the principals that would underpin reforms. It concludes with proposals on how to take the matter forward.

PUBLIC FUNDING FOR POLITICAL PARTIES IN SOUTH AFRICA

4. Public funding of political parties in South Africa is regulated by Section 236 of the Constitution, which states that “to enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis”. The *Public Funding of Represented Political Parties Act* (103 of 1997) – hereafter the Public Funding Act – is the national legislation which gives effect to this constitutional imperative. But public funding of party activities extends far beyond the scope of this Act.

5. There are several mechanisms through which funds are allocated in support of the political functions of parties:
- The Represented Political Parties' Fund.
 - Funds appropriated by Parliament for party caucuses, party leaders and to support constituency work.
 - Funds appropriated by provincial legislatures.
6. The Represented Political Parties' Fund is established by the Public Funding Act and administered by the Independent Electoral Commission (IEC). Ninety per cent of the funds are allocated to parties in terms of their representation in the National Assembly and legislatures (the "proportional allocation"). The remaining ten per cent is divided proportionally amongst provinces, and equally amongst the parties represented in each provincial legislature ("equitable allocation"). Table 1 shows that in 2017/18 political parties will receive almost R141 million through this fund.

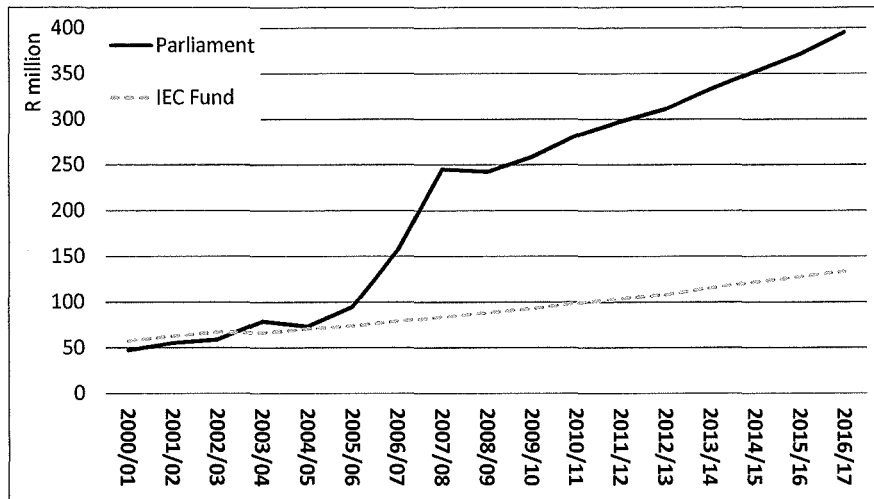
Table 1: Allocations from the Represented Political Parties Fund (2017/18)

	Proportional allocation	Equitable allocation	Total	Share of Total
ANC	80 571 921	3 008 777	83 580 698	59%
DA	27 467 700	3 008 777	30 476 477	22%
EFF	8 392 908	3 008 777	11 401 685	8%
IFP	3 051 967	914 197	3 966 164	3%
COPE	915 590	990 016	1 905 606	1%
UDM	1 220 787	343 642	1 564 429	1%
Other	5 035 745	2 798 773	7 834 518	6%
TOTAL	126 656 618	14 072 959	140 729 577	100%

Source: National Treasury

7. In terms of the Public Funding Act, public funds must be held in a separate bank account opened by the party, which is required to keep separate books and records in relation to the account. The account must be audited on an annual basis and the Auditor-General may at any time audit the books, records and financial statements of the account. However, private financing of political parties is largely unregulated in South Africa and there are no legal requirements that compel parties to submit their broader accounts to public scrutiny.
8. Funds are also appropriated on Parliament's Budget Vote to support the parties represented in the national legislature. These funds are allocated to MPs through their party caucuses in support of their function as public representatives. They include transfers for constituency support, political party support and party leadership support. While the allocations to party head offices administered through the IEC have barely kept pace with inflation, the resources transferred to parties from parliament's budget vote have expanded rapidly over the last decade. In 2001, less than R50 million was allocated. Last year, Parliament appropriated R395.1 million. These funds are subject to accountability systems established by Parliament.

Figure 1: Allocations for political parties by Parliament and the IEC Fund



Source: National Treasury

9. Substantial funds are also appropriated for the same parties by Provincial Legislatures. Indeed, table 2 shows that provincial legislatures spent R626.7 million as transfers to political parties and payment of constituency allowances in the last fiscal year, exceeding the amount transferred from the national sphere. In terms of the Constitution, the power to legislate in respect of funding for political parties is a matter for the national legislature, and provincial legislatures may be acting outside the Constitution by voting these transfers. There is a danger that future legal challenges may render this funding source void.
10. Taking various sources of funding together, public funding to political parties and public representatives now exceeds R1.1 billion per annum (table 2). This survey has not included the local sphere, where arrangements are made by individual municipalities.

Table 2. Allocations for political parties from public sources (national and provincial)

	2016/17	2015/16
Represented political parties fund (IEC)	133 719 173	127 394 147
Parliament	395 150 145	371 033 000
Political party support	100 952 415	94 791 000
Constituency support	284 799 105	267 417 000
Party leadership support	9 398 625	8 825 000
Total national appropriations	528 869 318	498 427 147
Provincial appropriations	626 839 089	552 361 343
TOTAL	1 155 708 407	1 050 788 490

Source: National Treasury

SOUTH AFRICA’S PARTY FINANCING SYSTEM IN INTERNATIONAL CONTEXT

11. South Africa must develop a model of party financing which is tailored to national requirements, but there is much to learn from practices in other countries. The scope, function and quantity of public financing of political parties varies considerably between nations. In some cases public funding does not exist. In others all party expenses are covered by the taxpayer, with private donations banned outright.

12. In modern democracies, public funding is frequently provided to parties for following types of activity:
 - Operational expenditure including offices and personnel at national and sub-national level.
 - Election campaign-related expenditure.
 - Educational activities and institutions, including voter education, political education and citizenship education.
 - Policy development and dissemination, often through party-linked political foundations.
 - Parliamentary activities, including direct support for the organisation of the “parliamentary party” and resources to enable public representatives to fulfil their representative functions.
13. Public funding is applied in the context of a regulatory model, which reflects the priorities, objectives and conditions of the country in question. Although each country has its own regulatory practice, the spectrum of arrangements falls between two extreme cases: (a) a highly regulated system with full public funding and (b) a laissez-faire system.
14. A **highly regulated system** is one in which no private funding of political parties is allowed, but where substantial public funding provides for party activities. The use of public funds, and the activities for which they may be deployed are strictly regulated. This aims to ensure that the political system is free from the influence of private or sectional interests realised through direct financial support. Private sources of finance are completely outlawed. The amount of resources that parties can deploy on election campaigns or other activities is limited by the extent of public funding. Public funding covers not only operational expenditure and campaign financing, but supports political education, policy development and other party activities that build democracy. In such a system there is often an independent funding agency. Full audits of party expenses for operational and electoral costs are conducted regularly.
15. In **laissez-faire systems** the private funding of political parties is entirely unregulated and there is no public contribution to party financing. Parties are left to regulate themselves, and the voters must take account of the facts when choosing who to elect. Political parties might more directly represent financial interest in society, but information about the source of funding remains opaque. In such a system opposition parties can fund their activities without fear of interference from government. The resources devoted to election campaigns are not legally limited, and parties that are most effective in raising money are better placed to win elections.
16. Table 3 (at the end of this document) summarises party funding practices in a selection of thirty five countries. It includes most of the electoral democracies in the developing world, a number of African countries, as well as the most significant western democracies.
17. In comparison with the other countries listed in Table 3, South Africa is almost unique amongst democracies in having almost no regulation of private financing and no explicit regulations on party spending, reporting and oversight. Most countries have a greater degree of public funding, and also far more stringent regulation of party financial transparency and private sources of funding.
18. Parties in South Africa are only required to report on the use of public funds, which constitutes a small share of their overall spending. This implies that the bulk of political party finances remain closed to public scrutiny and clouded in secrecy. In this respect, South Africa resembles

– more than any other country on the list – the laissez-faire system described above. Unlike the case in most other laissez-faire systems, however, South Africa already⁷ provides significant public funding to its political parties. Although these funds must be accounted for and audited, the restrictions on the uses of these funds are minimal.

19. The following provisions, which are common in most of the countries surveyed, are not explicitly catered for in South African law:
- In almost all countries registered parties are required to report regularly on their finances and these reports are made public.
 - Donations from foreign interests are banned in most countries. In some cases, such as Sweden, it is a criminal offence.
 - In most countries donations from corporations with government contracts or those in which government owns a share are restricted.
 - Anonymous donations are either banned outright, or subject to a limit in almost all countries (e.g. in Canada donations less than \$20 can be anonymous; in Germany the limit is EUR500).
 - There are explicit legal bans on state resources being used to finance party activities (other than the properly regulated resources) and on state resources being used in favour or against a political party.

ELEMENTS OF IMPROVED REGULATION AND FUNDING

20. Increased public funding could be warranted as part of a programme to strengthen democracy, build transparency and accountability and ensure that all political parties achieve financial sustainability in a manner that is ethical, lawful and predictable. It is, however, problematic to separate the question of enhanced public funding from the regulation of private donations and the overall financial transparency and accountability of political parties.
21. Seen in this light, it is important to consider three principles that would need to be considered together as part of a new regulatory architecture:
- Regulation of private financing of political parties
 - Financial transparency of political parties.
 - Enhanced public funding for activities that promote and support democracy

Regulation of private financing

22. Currently, the limited nature of public funding for core party activities leads to extensive reliance on private donations. Not only are the various sources of financing fungible – making the efficacy of requirements in respect of public funding suspect – but the reliance on private funding fuels the perception that anonymous donations from business interests are a means to subvert democratic processes, promote factionalism in parties, dilute the voice of citizens and undermine the constitution.
23. Disclosure rules and the exclusion of certain categories of donor could help to build public trust in the party political system, thereby enhancing the democratic process. For instance, the law could require all private donations above a certain amount to be reported to the public or to a trustworthy and legitimate official institution. This could be a key mechanism in confronting

conflicts of interest and improper influence on parties or candidates. On the other hand, concerns may be raised that disclosure would negatively affect opposition parties if donors are concerned about the financial consequences of risking their reputation with the party of government. This points to the need for a holistic approach to the challenge, and for an appropriate balance between public and private support.

24. Many countries outlaw donations from certain types of donor. For instance, several prohibit foreign funding from government sources, externally domiciled institutions or multinational corporations. Donations from companies that are fully or partially owned by government are also commonly prohibited. In some countries, this exclusion is extended to companies that do substantial business with government. In Chile for example, companies for whom public tenders and contracts account for a significant proportion of annual turnover are restricted from donating to political parties. The exclusion of donations from certain sectors or economic activities may also be considered (e.g. the gambling or alcoholic beverage industries).

Financial transparency and accountability

25. Perceptions of undue influence and corruption are fuelled by the absence of transparency and financial accountability. Currently, political parties are not required to disclose or report publicly on either the private sources of their finances or the uses to which funds are put. This contributes suspicion and mistrust within parties and amongst citizens. It creates fertile ground for corruption, waste and inefficiency and makes it difficult for parties to plan financially and organisationally.
26. It is essential to consider how to require greater transparency and financial accountability of parties. This applies both to the source of funds, but also critically to the use of funds. A publicly disclosed, fully audited statement of accounts covering all financial transactions should be a basic requirement for parties represented in Parliament and provincial legislatures.
27. Investments from which parties derive funds or party-linked vehicles that pursue such investments should also be regulated. At the least such regulation should include stringent transparency requirements. A code or guidelines for appropriate investment activities could also be considered.

Enhanced public funding

28. Given current fiscal constraints, increased funding for political parties would imply a shift in resources from other important public priorities. Other items of recurrent spending – like education, social welfare or health spending – would need to be sacrificed as resources are reprioritised towards political parties.
29. This does not mean that public funds should not be increased, but it does imply that strong arguments need to be made to back up such a choice. The public policy objectives that would be served by such allocations would need to be clear. The question of how the funding instruments would ensure “value for money” in the realisation of those objectives would need answering.

30. The size of public funding of parliamentary and legislature caucuses – which now exceeds R1 billion – would also have to be reconsidered if the allocation to party head offices is to be significantly expanded. For instance, increases in operational spending, policy institutes and political education activities could be funded by shifting resources from the parliamentary party (i.e. the caucus). In the context of a sound regulatory framework, the balance between parliamentary and extra-parliamentary activities could be left to the discretion of each party.

Scope and purpose of public funding

31. Money allocated through the Represented Political Parties Fund may not be used for investment in business activities, to top up salaries of public representatives or for any activity that is in contradiction with the Parliamentary code of ethics. The Public Funding Act mandates the use of funds for “any purposes compatible with its functioning as a political party in a modern democracy”. This includes:
- The development of the political will of the people;
 - bringing the political party’s influence to bear on the shaping of public opinion;
 - inspiring and furthering political education;
 - promoting active participation by individual citizens in political life;
 - exercising influence on political trends; and
 - ensuring continuous, vital links between the people and the organs of the state.
32. If restrictions on private funding are imposed, attention may need to be given to mechanisms that support the following activities which may be inadequately funded at present:
- Election campaigns
 - On-going voter education, political education and citizenship education
 - Policy development and dissemination
 - Operational expenditure related to the maintenance of an extra parliamentary party organisation
33. While these activities certainly fall within the broad scope of the Act and could in theory be accommodated within the current envelope, there is a case for rationalising the current system and extending the scope of public funding to explicitly cover some of these activities. The regulatory and accounting environment may differ in the context of each specific activity. For instance, the rules and procedures applied to election campaign finance might differ from those applied to voter education between elections. In many countries specific measures are in place for the direct funding of party-linked policy institutes or funding for the conduct of on-going educational work between election periods.

Avoiding bias against new entrants

34. It is important that public funding should not be allocated in a manner that entrenches the current party system. Public funding should enable the evolution of democratic politics and respond to this dynamically in a rules-governed framework. This implies a balance between proportionality (i.e. funding proportional to demonstrated party support) and coverage (i.e. ensuring fair treatment of all political forces). Such a balance could be achieved through the provision of some additional resources to smaller political forces and new political initiatives. It should be noted that little provision is currently made for the funding of parties at the local sphere of

government. The current framework also does not accommodate independent candidates who are not linked to established parties, or new parties that are not currently represented in Parliament.

Institutional framework

35. Further consideration should be given to the institutions that administer public funding, oversee the regulation of private donations, and scrutinize adherence to transparency requirements. Institutions tasked with these roles would need to operate without fear or favour, ensuring impeccable application of the law. Currently the IEC is provided funds from the Department of Justice's budget vote, while party caucus funds are administered by Parliament. Whether the IEC and Parliament should continue these roles would require further discussion. Once the public mandate is enhanced to include oversight and monitoring of political party finances more broadly, competencies that do not reside in these institutions – such as enforcement and the application of penalties – would need to be considered.

PRINCIPLES THAT SHOULD UNDERPIN REFORM PROPOSALS

36. Drawing on the discussion above, the following approach to the reform of political party funding is proposed:

(i) First regulate, then fund

Increased public funding should be seen as part of a programme to strengthen democracy, combat corruption, build transparency and accountability and ensure that all political parties achieve financial sustainability in a manner that is transparent, ethical, lawful and predictable. Before any expansion to the public funding of political parties is considered, a new party funding regulatory model should be established founded on the principles of full financial transparency of political parties and the effective regulation of private financing.

(ii) Fund activities that support democracy and enhance participation

Increased public funding should be directed towards those activities that support democracy and enhance citizen participation in politics. This means that funding should support policy development, political education and voter education activities between elections. In particular, more funding for party operational/administrative activities and party sponsored political institutes should be considered. This could be supported by greater allocations to parties from the fiscus and also a re-allocation of funds from party caucuses to these activities.

(iii) Strong regulation of private financing

Enhanced public financial support should be introduced at the same time as comprehensive regulation of private financing of political parties. In other words, a single Act should cover public funding, private donations and party financial transparency. This should include clear rules on the identification of donors and the size and type of funding they provide.

(iv) Financial transparency and accountability of political parties

Public allocations should go only to parties that publish comprehensive audited financial statements on an annual basis covering all transactions. These financial statements should cover expenditure and the use of funds for all the activities of the party and subsidiary bodies,

whether financed by the public funds or other sources. The income side of the audit would ensure compliance with the disclosure rules in respect of private finance. Political parties would become subject to provisions that ordinarily face other public institutions in a democratic society. Public funding should be withheld from parties that fail to comply with these provisions, and more serious penalties should be considered for gross violations.

(v) Allocating funds to promote a dynamic democracy

Funds should be divided between parties proportionally, largely in line with current practice. However, additional resources should be allocated to the smallest parties in order to support political diversity and prevent the system favouring incumbents. Consideration should also be given to means that would provide support for new entrants to the party system and independent candidates not affiliated to a political party.

TABLE 3: Regulation of political party financing in selected democracies [data source from www.idea.int/political-finance]

	Argentina	Bolivia	Botswana	Brazil	Cameroon	Canada	Chile	Colombia	Côte d'Ivoire	Ethiopia	France	Germany	Ghana	India	Japan	Kenya	South Korea	Malaysia	Mauritius	Mexico	Mozambique	Netherlands	Nigeria	Philippines	Portugal	Rwanda	Senegal	South Africa	Spain	Sweden	Tanzania	Thailand	UK	USA	Zambia		
BANS AND LIMITS ON PRIVATE INCOME																																					
Ban on donations from foreign interests to political parties?	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓		✓	✓	✓	✓	✓						✓	✓			
Ban on corporate donations						✓					✓						✓				✓	✓		✓	✓									✓			
Ban on donations from corporations with govt contracts or partial govt ownership	✓			✓		✓	✓		✓	✓	✓	✓	✓	✓	✓		✓				✓				✓	✓				✓					✓		
Ban on donations from Trade Unions	✓			✓		✓	✓			✓	✓						✓								✓											✓	
Ban on anonymous donations*	✓	✓		✓		!	!	✓	✓	✓	✓	!	✓	✓	!	✓	n/a	n/a		✓	n/a			✓	✓	✓	✓	n/a				✓	!	!	!		
Ban on state resources received by political parties (excl. regulated public funding)?	✓	✓	n/a	✓	n/a	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	n/a	n/a	✓	✓	n/a	n/a	✓	✓	✓	✓	n/a		✓	✓	n/a	✓	✓	✓	✓	
Ban on any other forms of donation	✓	✓		✓		✓	✓	✓		✓		✓			✓		✓			✓				✓	✓	✓				✓					✓		
Limit on amount a donor can contribute over a time period (not election specific)	✓	✓			✓	✓					✓				✓	✓									✓										✓		
PUBLIC FUNDING																																					
Provisions for direct public funding to political parties	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓				✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		
Provisions for free or subsidized access to media	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓		✓	✓	✓		✓						✓	
REGULATIONS ON SPENDING																																					
Ban on vote buying?		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Bans on state resources being used in favour/against a political party	n/a	✓	n/a	✓	n/a	n/a	✓	n/a	✓		n/a	✓	n/a	✓	✓	✓	✓	n/a	n/a	✓	✓	n/a	✓	✓	n/a	✓	✓		n/a	n/a	✓	✓	✓	✓	✓	✓	
Limits on the amount a political party can spend	✓		✓			✓	✓	✓						n/a			✓			✓				✓	✓											✓	
REPORTING AND OVERSIGHT																																					
Do political parties have to report regularly on their finances?*	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓		✓		✓	✓	✓	✓	!	✓	✓	✓	✓	✓	✓	✓		
Do political parties have to report on their finances in relation to election campaigns?	✓	✓	✓	✓		✓	✓	✓		✓			✓				✓		✓	✓	✓		✓	✓	✓				✓							✓	
Reports from political parties and/or candidates made public?*	✓		✓	✓		✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓		✓			!								n/a	

n/a indicates that data is not available

* for anonymous donations, an exclamation mark [!] indicates that there is a limit on the size of anonymous donations, beyond which the identity of the donor must be revealed.

** South Africa is listed as having a requirement for parties to report publicly on finances, but this applies only to public financing - which accounts for a small proportion of total party income