



Submission

to the

Ad Hoc Committee on the Funding of Political Parties

regarding the

**Review of the Public Funding of Represented Political
Parties Act 103 of 1997**

14 July 2017

Introduction

The Catholic Parliamentary Liaison Office (CPLO) welcomes the opportunity to comment on this matter, which has important implications for our multi-party democratic system. The CPLO is an office of the Southern African Catholic Bishops' Conference, tasked with liaising between the Church and Parliament/Government, commenting on issues of public policy, and making submissions on legislation.

We support the resolution adopted by the National Assembly on 6th May 2017, to the effect that:

- the effective functioning of political parties is vital for our constitutional democracy;
- parties require adequate funding in order to carry out their functions; and
- there should be transparency about their funding in order to build public confidence in the political system.

The Constitution repeatedly emphasises the link between 'openness' and 'democracy' (eg: s 1(d); s 36(1); s 39(1)). Part of that openness, we believe, is that the public should have access to information about the political parties that contest for power in our democratic system. Such information includes the sources of the parties' funding.

We make the following comments.

The Right to Information about Party Funding

1. While political parties are not state entities or part of the public sector, they are also not simply private bodies; they represent the public, and through their presence in the national or provincial legislatures they carry out a range of public and constitutional duties. This applies to all the parties represented in the legislatures, regardless of size.

2. The party(ies) that win elections go on to form the government, and thus once again play a very public role and exercise the most public of powers. It is a matter of routine for us to refer to "the ruling party" or "the governing party". It is also routine for governing party conferences, and its office-bearers, to suggest or determine policies for the government (which they control) to follow.

3. The same applies to opposition parties. In a democracy, they stand to become the governing party at any time. They put forward policies for consideration by the electorate, and they often oppose the (public) policies advanced by the governing party. They carry out the same kind of public and constitutional duties as the governing party.

4. The public therefore have a clear interest in knowing how political parties are funded and who funds them, in order to determine whether such funding exerts any influence on the policies a party adopts or on how it carries out its duties of governance or opposition. In particular, the public is entitled to ask whether a given public policy or public decision favours a private interest, and – if so – whether party funding reveals a link between the policy or decision on the one hand, and the interest on the other.

5. The main argument against the public disclosure of political party funding seems to be that some donors who choose to fund opposition parties fear that they might lose out on government contracts, or be otherwise disadvantaged, if such funding is made public. It may also be that some companies fear they will lose customers or suffer reputational damage if their political donations are disclosed.

6. These considerations may be valid, but they cannot outweigh the electorate's right to information about party funding. In any event, some of these arguments reinforce a negative attitude to political involvement. Providing funds for a political party or parties should be seen as a positive contribution to a healthy multi-party system. We should not allow a situation to prevail where such donations are seen as suspicious or ethically questionable.

7. Any donor who feels that they have been discriminated against in the matter of a contract or a tender due to the fact that they have donated to a political party, ought to have legal recourse. Parliament should stipulate that no public entity may take account of a tenderer's or contractor's political donations when awarding a tender or contract.

Regulation of Private Funding

8. The main form of regulation that is required where private funding is concerned, is disclosure. The duty to disclose should rest on the party receiving the donation, not on the donor.

9. There does not seem to be a need in South Africa to place a ceiling on the amounts that donors may give to parties. Any such ceiling would constitute a limitation of the right to participate in party political activities, and it is difficult to see how such a limitation would be justified.

10. If a situation should arise where one party becomes so financially strong that it is able to dominate the others, to the detriment of the multi-party system (for example by being able to buy disproportionate advertising), Parliament could consider intervening. Alternatively, the principle of equity, provided for in s 5(2)(ii) of Act 103 of 1997, could be applied in order to 're-balance' the situation.

11. Parties should submit full details of private funding received to the Electoral Commission annually. Such details should include:

- The amounts of money received from each donor;
- Any donations 'in kind';
- The identity of the donor; and
- Whether or not the donation was conditional and, if so, what the conditions were.

In order to minimise the administrative burden, it might be wise to set a threshold under which donations need not be disclosed to the Commission. This could be set at a level that avoids parties, and the Commission, having to list thousands of minor individual donations or membership fees, but which ensures that any significant donations are disclosed.

12. The Commission, in turn, should table a report in Parliament which provides full disclosure of such private funding. This could take place at the same time as the Commission reports to Parliament – in terms of s 8 of Act 103 of 1997 – on its management of the Represented Political Parties’ Fund.

Investment Entities Owned by Political Parties

13. Transparency in this area is as important as it is regarding private donations to parties. The public must be in a position to judge whether a party’s investment interests are influencing its policies or decisions. For example, if a party in government nationally or provincially happens, through its investment arm, to own shares in certain companies, and such companies are consistently favoured in the awarding tenders, legitimate suspicions might arise.

14. The same applies to parties in opposition. It might be found, for instance, that they encourage or oppose certain expenditures or policies in a way that correlates with their investment interests. It should be noted that it makes little difference whether a party controls an investment entity or merely invests funds in it. In both cases there is potential for impropriety.

15. Political parties should be required to submit full details of their investments annually to the Electoral Commission. When the Commission reports to Parliament in terms of s 8, it should also table a report providing full disclosure of the parties’ investment interests.

The Represented Political Parties’ Fund

16. S 2 of Act 103 of 1997 makes provision for the Fund to receive moneys appropriated to it by Parliament, as well as “contributions and donations to the Fund originating from any sources...” The 2016 Annual Report of the Fund shows that the only income it received was from the parliamentary allocation and interest. No private donations were received. The same was true in 2015, 2014, 2013 and for many previous years.

17. Parliament should consider ways of encouraging the private sector to contribute to the Fund, possibly by making such donations tax deductible. Companies and wealthy individuals, in particular, should be more conscious of the need to contribute to political stability and the consolidation of democracy by supporting our multi-party system. If they do not wish to donate to an individual party, they should take advantage of the existence of the Fund, which helps to support all parties equitably.

Conclusion

We wish the Committee well in its deliberations, and we would appreciate the opportunity to make an oral presentation.

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