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Political party finances: the public's right to know

R2K submission to Parliament's Ad Hoc Committee on the Funding of Political Parties

21 July 2017

ABOUT R2K

The Right2Know Campaign (R2K) launched in August 2010 and has grown into a movement centred on freedom of expression and the free flow of information. We are a democratic, activist-driven campaign that strengthens and unites citizens to raise public awareness, mobilise communities and undertake research and advocacy that aims to ensure the free flow of information necessary to meet people's social, economic, political and ecological needs and live free from want, in equality and in dignity.

Our Vision

"We seek a country and a world where we all have the right to know – that is to be free to access and to share information. This right is fundamental to any democracy that is open, accountable, participatory and responsive; able to deliver the social, economic and environmental justice we need. On this foundation a society and an international community can be built in which we all live free from want, in equality and in dignity."

Our Mission

- To co-ordinate, unify, organise and activate those who share our principles to defend and advance the right to know.
- To struggle both for the widest possible recognition in law and policy of the right to know and for its implementation and practice in daily life.
- To root the struggle for the right to know in the struggles of communities demanding political, social, economic and environmental justice.
- To propagate our vision throughout society.
- To engage those with political and economic power where necessary.
- To act in concert and solidarity with like-minded people and organisations locally and internationally.

For more information about the Right2Know Campaign, including financial records, please visit www.r2k.org.za.

Introduction

In this submission, the Right2Know Campaign calls for regulations to ensure full transparency in the funding and finances of South Africa's political parties, and to ensure a healthy multi-party democracy.

South Africa's electoral democracy runs on money. The Constitution gives political parties a unique and sacred duty to make electoral democracy work, and that role requires funding: posters and t-shirts must be printed, offices and venues must be rented, staff paid, busses chartered. All this to bring democracy to the front door step of the average citizen.

But here lies the problem: outside of limited public funding, the vast majority of political parties' funds come from private sources, and there is no legal requirement for political parties to disclose where they get that money. This legal blind spot means that the relationship between money and politics is shrouded in secrecy. In that secret space, deals have been struck; policies have been influenced and tenders have been sold. The will of ordinary South Africans has been outbid by capital.

How big is this problem? The lack of information from political parties makes it hard to say. It is known that the vast majority of political parties' funds come from private sources. In the lead-up to the 2009 elections, by one rough estimate the political parties together spent about R550 million on campaigning, less than R93 million of which came from the Electoral Commission of South Africa (IEC) and other public funds¹. At the same time, there are several signs that party spending (and thus fundraising) is on the rise. In the 2014 national and provincial elections, a leaked ANC document is reported to state that the party alone spent R429 million on election campaigns², while receiving less than R73 million in public funds from the IEC that same year³. At a conservative estimate, then, for every R1 of public funds provided by the IEC, political parties could be receiving R5 or R6 in undisclosed funds from private sources.

The Right2Know Campaign believes that the lack of transparency and regulation on private donations to political parties has created a climate of secrecy and political inequality, which

¹ Open Society Foundation for South Africa, Money and Politics in South Africa: The Party Funding Challenge, Money and Politics Project, Policy Brief OSF-SA, Cape Town 2011

² Qaanitha Hunter, Leaked: Broke ANC Spent R429m on Election, Mail & Guardian, 28 November 2014, <http://mg.co.za/article/2014-11-27-broke-anc-spent-r429m-on-election>

³ IEC, Represented Political Parties' Fund Annual Report, 2014

has allowed corruption to thrive, eroded public faith in the electoral system, and undermined the values of the Constitution. There is significant evidence that some of South Africa's biggest procurement and corruption scandals, such as the 1999 Arms Deal, have included donations in exchange for tenders. In particular, we believe these problems have done untold damage to democracy and service delivery at a local level⁴, where government's priorities in allocating essential services can easily be distorted by private interests⁵.

The Right2Know Campaign believes this need for transparency goes beyond the need to root out corruption and malfeasance. This transparency is a crucial step towards greater political equality. As Constitutional Court Justice Edwin Cameron, in the minority judgment of *My Vote Counts v Speaker of the National Assembly and Others*, wrote:

“...the right to vote does not exist in a vacuum. Nor does it consist merely of the entitlement to make a cross upon a ballot paper. It is neither meagre nor formalistic. It is a rich right – one to vote knowingly for a party and its principles and programmes. It is a right to vote for a political party, knowing how it will contribute to our constitutional democracy and the attainment of our constitutional goals.

Does this include knowing the private sources of political parties' funding? It surely does.”⁶

The public has a right to know who is bankrolling the political parties and candidates that seek their votes, and those funds are spent. We therefore believe that a comprehensive legal framework is needed to promote proactive, regular disclosure of parties' private funders. To move forward, we must first dispense with the fiction that political parties are private bodies. It is clear that political parties perform a vital public role that is at the heart of the democratic process; and this comes with the need for basic public accountability and transparency.

We also believe reforms are necessary to the public funding of political parties, including greater transparency and reporting on these funds, and a reallocation of such funds to promote multiparty democracy.

We therefore welcome Parliament's move to establish an Ad Hoc Committee on the Funding of

⁴ Right2Know Campaign, “Why we need to tackle secret deals in local politics and government”, Conference Paper for ‘Political Parties in South Africa: The Interface between Law and Politics’, University of Cape Town & My Vote Counts, Friday 28 August 2015. Available at: r2k.org.za/party-funding-conference-paper

⁵ Craig McKune, De Lille and the Contentious Clifton Scenic Reserve Megaproject, Mail & Guardian, 10 July 2015, <http://mg.co.za/article/2015-07-09-de-lille-and-the-contentious-clifton-scenic-reserve-megaproject>

⁶ My Vote Counts NPC v Speaker of the National Assembly and Others [2015] ZACC 31

Political Parties to investigate these issues.

The long road on party funding reform

At R2K's 4th National Summit (2014), the Campaign first called for Parliament to create legislation for transparency in party funding, and committed itself to engage in mobilisation and popular education on this issue. This resolution was reiterated at R2K's 2015, 2016 and 2017 National Summits. In the lead-up to the 2014 elections, R2K joined over 60 civil society organisations in issuing a calling for all parties to disclose their financial information⁷.

Unfortunately, 2017 marks two decades since Parliament first missed its opportunity to regulate private funding of political parties. In 1997, when Parliament adopted the Promotion of Multi-Party Democracy Bill (now the Public Funding of Represented Political Parties Act), it did so with the explicit exclusion of provisions that would regulate private donations to political parties. Between 2003 and 2005, when civic group IDASA took major political parties to court over their refusal to disclose their sources of funding, the ANC, through its then secretary general Kgalema Motlanthe, asked to dismiss the case on the commitment that Parliament would produce reform legislation⁸. However, in the intervening years, this issue received scant legislative attention; in 2010 one effort by a private member to introduce a legislative proposal was dismissed in committee. It would appear there were no further developments until 2012, when My Vote Counts wrote to the Speaker of the National Assembly to request that Parliament start working on legislation; the Speaker stated that the issue was on the agenda of the Chief Whips' Forum, but it seems no further steps were taken⁹.

This regrettable chain of events has denied South Africa the right to basic information about the financial matters of political parties over two decades.

Given these delays, the establishment of the ad hoc Committee is a positive step forward. However, with many missed opportunities for Parliament to engage on this policy question, explore reforms and conduct research, R2K believes that four weeks was not enough time for proper public participation and consultation that would have informed and guided the Committee's work; further, R2K believes the Committee erred when it did not grant public requests for an extension.

⁷ Letter to political parties, 31 March 2014. Available at: www.myvotecounts.org.za/2014/04/letter-to-political-parties

⁸ Institute for Democracy in South Africa and Others v African National Congress and Others [2005]

⁹ Letter from Speaker of the National Assembly to My Vote Counts, 10 December 2012

Proposals on private sources of funding

We believe a legal framework is urgently needed to promote transparency in the private funding of political parties. Key elements of such a law should include:

- Regular, proactive disclosure from all political parties of all information about private sources of funding, including the identity of the donor and each amount. This should include all forms of donation, include goods and services. We believe this reporting should be quarterly, not yearly.
- In light of the continuing poverty and inequality of our society, a minimum threshold for disclosure which should be set no higher than the average household monthly income¹⁰.
- Proactive disclosure by private companies of all corporate donations to political parties.
- A ban on donations from private companies doing business with the state. Parliament should investigate means for corporate entities to donate to a collective fund in the interests of multi-party democracy.
- Where a company or its subsidiaries does business with a state, proactive disclosure of personal donations to political parties from all executives and board members, beneficial owners, and spouses thereof.
- A ban on political parties' investment vehicles.
- Capacitating the IEC to conduct full oversight on private funding matters.

Public Funding of Political Parties

Public funding of political parties is essential to ensuring a vibrant multi-party democracy that is connected to citizens at the grassroots of society. Currently parties receive yearly funding from the IEC, and from Parliament and provincial legislatures for constituency offices. It is a point of concern that the amount of public funding allocated to political parties has been vastly outstripped by the influx of secret money from private sources.

However, it would be a mistake to simply increase the amount of public funding to political parties without addressing a range of problems with the public funding provisions. As it stands, there is insufficient transparency and scrutiny of how such public funds are allocated

¹⁰ The average monthly income of female-headed households was reported as R8242,58 in Stats SA's Living Conditions Survey 2014/2015 (Jan 2017)

and spent. In order to safeguard multi-party democracy, we must revisit the equation by which public funding is shared among political parties. Finally, there is an unfortunate risk that political parties may use this reform process as an opportunity to simply increase public funding before the 2019 national elections and defer any regulation of private funding to some future debate.

Key elements of such reforms to public funding of parties should include:

- Regular, proactive disclosure from all political parties of how public funds are spent.
- More detailed guidelines from the IEC on use of public funding.
- IEC-mandated audits of all party financial reports by the Auditor General.
- A review of constituency funding through Parliament and provincial legislatures.
- In the interest of strengthening pluralism in our multi-party democracy, the formula to allocate public funding should be adjusted to promote political diversity, with a greater proportion of funds shared equally among all political parties, and a lesser amount shared in accordance with proportional representation.

Given the risk of further delays in implementing regulation of private political funding, it is necessary to reiterate that under no circumstances should the Committee consider increasing public funding without introducing comprehensive reforms to the regulation of both private and public funding to political parties.

Need for a 'moment of truth'

How much money do parties spend on election campaigns? What is the average donation size?

These vital questions are impossible to answer until each elected party is willing to 'show its cards'. Without the answers, Parliament is tasked with 'legislating in the dark' -- creating regulations without any guiding data. South Africa's political parties now face a historic opportunity to overturn the legacy of political secrecy, and move South Africa forward. But this can only happen if there is full transparency on how money has shaped our politics in the past. R2K therefore believes that all parties that hold elected office should make a joint disclosure on their previous financial records, as part of this reform process, to give the people of South Africa a necessary 'moment of truth', and bolster the Committee's ability to pass effective and appropriate regulations.

Conclusion

The Right2Know Campaign does wish to acknowledge the efforts of the Committee to explore meaningful reforms to South Africa's political landscape. In addition to this written submission, the Right2Know Campaign asks for an opportunity to make an oral presentation on this submission.

We conclude this submission also by acknowledging the efforts of many democratic activists over many years to challenge the secret influence of money on politics in South Africa, before and after the democratic transition. This includes members of political parties, civil society organisations, media organisations, public bodies and oversight institutions, and individual members of the public. We hope these efforts will bear fruit at last. R2K firmly believes that every effort to put more knowledge in the hands of the people of South Africa on how political decisions are made is a contribution towards achieving greater accountability and responsiveness from our elected officials.

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