

SUBMISSION ON THE FUNDING OF POLITICAL PARTIES

Introduction

1. The South African History Archive (SAHA) is pleased to make this submission in response to the Call for Written Submissions issued by the Ad Hoc Parliamentary Committee on the Funding of Political Parties. We are however gravely concerned about the limited time made available for public comment on a matter of such significant public concern. This is especially so given that the need to ensure better transparency, openness and accountability with respect to the funding of political parties has, for well over a decade, been recognised as something Parliament needs to pay careful attention to.
2. Established in 1988, SAHA is an independent human rights archive committed to documenting and promoting greater awareness of historical and, since 1994, contemporary struggles for justice. As well as servicing a traditional academic and research community (both domestically and internationally), the organisation positions notions of accessible archive and records as central components of the human rights and governance culture, discourse and practice. In this regard, SAHA promotes awareness, and tests the parameters, of South Africa's access to information legislation, and ensures its archive is made available to communities and constituencies that ordinarily would not access these materials.
3. In 2001, SAHA established its Freedom of Information Programme (FOIP), and since then has been at the forefront of efforts to test the parameters of the Promotion of Access to Information Act, 2000 (PAIA). Through FOIP, SAHA assists individuals, communities, non-governmental organisations, activists and researchers with requests for information as well as submitting its own requests. In total SAHA has submitted over 2000 access to information requests to a range of public and private bodies. SAHA also, since 2015, offers training to local government officials on compliance with PAIA.
4. We note that the Committee has called for comment on how the Public Funding of Represented Political Parties Act, 1997 may be strengthened to allow for greater transparency in the manner in which political parties are funded. In particular there was a request for input on (a) the model of public and private funding for political parties and (b) the desirable and possible means of regulating all forms of private funding as well as investment entities owned by political parties.
5. SAHA notes that there are a great many ways in which funding can be regulated, SAHA's particular expertise however lies in transparency and freedom of information. With its considerable expertise, established reputation and distinctive commitment to ensuring recognition of the critical role of accessible archive and records as central components of the realisation of human rights and achievement of good governance SAHA is uniquely placed to comment on the role of access to information in relation to political party funding. As such this submission is limited to commenting on the need for transparency in the manner in which political parties are funded, and the desirable and possible means of ensuring such transparency.

The need for transparency and openness

6. It is universally recognised that political parties play a very important role in any modern democracy, particularly our Constitution gives recognition to this unique but critical role. Given especially the representative role that political parties play within South Africa's constitutional democracy, it is critical that these bodies act with transparency and openness. Legislative regulation in the area of private funding of political parties, and in particular as a minimum first step to ensure transparency and openness, is long overdue.
7. It is well recognised, nationally and internationally, that transparency and openness is required in order to combat corruption. Corruption in turn undermines accountability and transparency as well as the realisation of socio-economic rights. Information about who has provided funding of some kind or another will enable South Africans to identify some instances of *quid pro quo* corruption. The light shone on these kinds of transactions will likely, to a large extent, also deter corrupt practices. South Africa has in fact committed itself, in several international legal instruments (including, for instance, the African Union Convention on Preventing and Combating Corruption), to combatting corruption by ensuring mechanisms are in place that will guarantee access to information that could assist in the fight against corruption. In other words South Africans should have access to information that will enable them to hold to account those that abuse public power for personal gain, and South Africa has a duty to deter such abuse of power.
8. Not only corruption, but also the appearance of corruption needs to be dispelled through transparency. The proper functioning of the South African constitutional democracy requires that South Africans have confidence in the political system and therefore in the political parties and politicians that represent them in the legislature. Access to information plays a key role in this regard, in that South Africans that are able to verify against official records what their political representatives claim and that are able to see, with these records, where their representatives' allegiances are will have greater confidence in their representatives and therefore in the political system. In other words South Africans should have access to information that will dispel fears of abuse of public power and that will instil public confidence in political representatives and therefore in the political system.
9. The provision of significant funding leads to access to politicians (this is clear from the internationally recognised practice of "double dipping" – funding politicians across the political spectrum in order to ensure access to whomever may eventually hold a seat in government). This access provides opportunities to funders to express their views on issues that affect them, and that are regulated by government, to members of government or the legislature – something the poorest of South Africans do not have the opportunity to do. It is therefore critical that South Africans at least know when casting their ballot who might have access to the representatives they are placing in Parliament. Meaningful exercise of the right to vote therefore requires knowledge about the access that funding will get key proponents of particular views on matters that will affect the everyday lives of South Africans. This means that full realisation of the constitutionally recognised right to vote is necessarily dependent, at a minimum, on transparency and openness about significant funding provided to political parties. In other words, South Africans should at least be able to weigh up, when they cast

their vote, who it is that will have the ear of the various political parties on issues that are of concern to them.

The role of record-creation and record-keeping

10. Parliament clearly chose, with the enactment of the Promotion of Access to Information Act, 2000 (PAIA), to give effect to the right of access to information, by providing a mechanism for accessing records. This necessarily requires that there be legislated record-creation and record-keeping duties.

11. It is clear from the manner in which PAIA intersects with other legislation that these record-creation and record-keeping duties are imposed in sector-specific legislation. This is apparent from provisions (to name just a few) in:

- 10.1. The Companies Act, 2008 requiring for instance that securities registers be created and kept (indefinitely);
- 10.2. The Consumer Protection Act, 2008 requiring, amongst other things, the recording of agreements between suppliers and consumers;
- 10.3. The Regulations to the National Credit Act, 2005 requiring for instance that reasons for declining credit must be recorded, and kept for at least three years;
- 10.4. The Electronic Communications and Transactions Act, 2002 requiring, amongst other things, that permission for the collection of personal information must be recorded and retained in writing; and
- 10.5. The Electoral Act, 1998 requiring, for instance, that objections be recorded and retained and that a voters' role be created, maintained and made publicly accessible.

A lacuna

11. Given the critical need for access to information about private funding provided to political parties in order to ensure meaningful exercise of the right to vote and in order to combat corruption and further to ensure confidence in the South African constitutional democracy, it is clear that this is information that should be recorded, maintained and made publicly accessible.
12. Existing electoral legislation – including the Public Funding of Represented Political Parties Act, 1997, as sector-specific legislation, makes no provision for the recording, maintaining and making publicly accessible information about private funding provided to political parties. This is clearly a lacuna that Parliament urgently needs to address.
13. SAHA calls on Parliament to ensure that this gap in the electoral legislation is addressed through the enactment of provisions (in, existing or new, legislation aimed at giving effect to political rights broadly and the right to vote specifically) that will ensure that information about significant funding to political parties is recorded and made publicly accessible. Any increase in public funding should be made conditional upon the disclosure of information about significant private funding received. This will necessarily require the determination of a threshold amount which needs to be clearly defined in consultation with experts.

Conclusion

14. Clearly, in order to combat corruption, instil greater public confidence in the political system and to ensure meaningful exercise of the right to vote, South Africans need access to information about significant private funding provided to political parties. Parliament therefore ought to ensure that legislation giving effect to the right to vote makes provision for the recording of information about private funding provided to political parties and for public disclosure of records of significant funding to political parties.
15. Unfortunately the short time available for the formulation of submissions has meant that this submission has been short and brief. This submission is also brief because SAHA has limited its input to issues that fall within its area of expertise. SAHA's expertise lies in the roles of transparency and access to information in ensuring the realisation of other human rights – such as, in this instance, the right to vote and the role of record-keeping in ensuring access to information. Should you require further written or oral submissions on these issues, SAHA would be happy to assist. Please contact Toerien van Wyk on the details below.

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