



NATIONAL ANTI-CORRUPTION ADVISORY COUNCIL (NACAC)

**SUBJECT: ADVISORY NOTE TO THE PRESIDENT REGARDING THE ELECTORAL
MATTERS AMENDMENT BILL**

Date: 11 April 2024

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1. In August 2023, the National Anti-Corruption Advisory Council (NACAC) submitted an advisory to the President of the Republic of South Africa, recommending that certain provisions of the Political Party Funding Act (PPFA) be strengthened¹ in order to prevent systemic political corruption.
2. The NACAC recognises that sufficient financial support for political parties is essential for maintaining and enhancing the vitality of South Africa's democracy. We hold the view that adequate public funding is essential.
3. We also hold the view that political parties should be able to raise funds from private sources. However, the unregulated influence of money in South African politics, presents imminent dangers to our constitutional democracy and our ability to end cycles of capture and undue influence by private actors in policy making process, regulatory bodies and procurement systems.

¹ (1) The PPFA should not include the Corrupt Donation Crime, recommended by the State Capture Commission, as a separate offence. Instead, it should reference section 13 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 ("PRECCA"), which already criminalises corrupt donations.

(2) Any amendments to the current thresholds for disclosure and caps on donations should be postponed until sufficient evidence is available to make informed decisions regarding more appropriate thresholds and caps.

(3) Natural persons who donate amounts above the section 9(1)(a) threshold should be required to disclose their donation directly to the Independent Electoral Commission.

(4) Natural persons and juristic entities should be prohibited from circumventing the section 8(2) cap by making multiple donations through related juristic entities

(5) Strengthen section 10 of the PPFA by requiring that all private monetary donations to political parties be deposited directly into the bank account specifically created for donations in section 12(1)(a).

(6) Subject donations made to internal party races to the same disclosure thresholds, and prescribed maximum caps, as those which the PPFA applies to party political funding.

(7) Mandate disclosure of sources of investment income for political parties' investment vehicles, subject to the prohibited sources of income imposed on political parties themselves in section 8(1)

(8) Regulate donations received by independent candidates and establish guidelines for how independent candidates receive money from public funds established in sections 2 and 3.

(9) The Political Party Funding Unit within the Independent Electoral Commission be adequately resourced and staffed to effectively conduct oversight, monitoring of donations, and investigate complaints

4. We welcome some of the proposed amendments in the Electoral Matters Amendment Bill (EMAB), such as the inclusion of a provision which criminalises the receipt of a political donation on a quid pro quo basis, as well as regulating the receipt of donations for independent candidates.
5. We also note amendments relating to regulations 7 and 9 of the PPFA, which provides the President, acting on a resolution of the National Assembly, the power to determine the upper donation limits to political parties and independent candidates, as well as the threshold for disclosure to the Independent Electoral Commission (IEC).
6. In the event that the President enacts these provisions of the EMAB without concurrently issuing a proclamation, based on a resolution of the National Assembly, that specifies both the disclosure thresholds and the maximum limits on donations, there will be no legal obligation for political parties and independent candidates to reveal their funding sources, nor shall there be any imposed upper limit on the amount of donations that they may receive.
7. Given that Parliament is currently on recess and will dissolve in a matter of weeks, it appears improbable that the National Assembly will adopt a resolution (based on evidence, and in-line with the criteria outlined in EMAB²) for the President to act on. Additionally, the President is constrained from unilaterally setting these upper limits and disclosure thresholds without a formal resolution from Parliament. Thus, it is likely that for an indeterminable period, there will be no upper limit and disclosure thresholds on political funding, including during the upcoming 2024 general election.
8. The NACAC is concerned that this lacuna in law, during a critical election period, may increase corruption-risks in relation to both quid pro quo and *clientelistic*³ corruption, as well as bring into question the integrity of the election.

²Section 7(2) of the Electoral Matters Amendment Bill: (a) The actual fiscal contribution to public funding for political purposes; (b) inflation; and (c) the actual costs of running a party and running elections, as submitted by parties.”

³ Office-holders decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the office-holder. *McLoy v State of New South Wales* (2014), High Court of Australia, Para 37.

9. In this regard, we believe that these provisions of the EMAB can be challenged on the following grounds:

9.1. 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 participate in elections.⁴

9.2. Information on private funding of political parties and independent candidates must be recorded, preserved, and made reasonably accessible.⁵

9.3. The detection of corruption in political processes requires transparency.

9.4. The prevention of undue influence of private actors and corruption in political processes, requires upper limits.

10. In light of the above, the NACAC recommends the following:

10.1. The President is advised to assent the EMAB into law, but specify an alternative commencement date for the sections of the Bill concerning disclosure thresholds and donation limits. To avoid a lacuna, protect the integrity of our electoral process, and mitigate risks of corruption, we recommend that the sections of the Bill addressing disclosure thresholds and donation limits become effective on 1 July 2024. This approach ensures a seamless transition and reinforces the legal framework governing political financing in the interim period.

⁴ My Vote Counts v The Minister of Justice and Correctional Services & the Democratic Alliance [2018] Constitutional Court, p1 paragraph 1.1.

⁵ My Vote Counts v The Minister of Justice and Correctional Services & the Democratic Alliance [2018] Constitutional Court, p1 paragraph 1.2.