

Union Buildings  
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21 January 2020

Dear President Cyril Ramaphosa

We write to you as civil society organisations who have fought for the constitutional principles of accountability, transparency, openness and responsiveness to be part of South Africans lived reality so that the right to access information becomes a part of the country's political fibre. Although small strides towards reform have been made, we are still at a critical point where simple solutions are barred, making the ideals of our constitutional democracy a distant reality.

The VBS Bank Scandal, controversial exposures of politicians or political parties receiving gifts from criminal businessmen, the current crisis at SOEs including Eskom and SAA, corporate-political collusion and other cases of corruption and poor governance, are all spillover effects of poor, ineffective or non-existent accountability and transparency mechanisms.

Today, marks one year since your Excellency assented to the Political Party Funding Act (PPFA) of 2018. Regrettably, you are yet to proclaim a date for the PPFA's implementation. Experts and witnesses before the Judicial Commission of Inquiry into State Capture, Fraud and Corruption (the Commission) have echoed civil society's tireless calls for the transparency of political parties' private funding to be disclosed. Not only does our Constitution protect the right to access information on the private funding of political parties, but these experts and witnesses have drawn links between levels of transparency and accountability with levels of corruption.

The Commission is seen as one of South Africa's most critical public inquiries in the country's democratic era. The investigatory rigour and platform for witnesses and whistle-blowers allows the Commission to expose the rampant corruption in South Africa. The Commission lifted the lid on various witnesses' experiences in the state capture project and has served as an eye-opening platform to expose how our democratic gains have been subverted by corruption which extends far beyond the "Gupta enterprise" under former President Jacob Zuma. However, the Commission is temporary and in order not to repeat the past, sustainable solutions are necessary in order to seriously tackle and deter corruption. The simple and necessary solution will enhance and strengthen the access to information (ATI) legislative framework.

We would also like to use this opportunity to raise concerns with related matters and recent legislative amendments brought about after the matter involving the June 2018 Constitutional Court judgement of *MVC NPC vs the Minister of Justice & Others*, where the constitutionality of the Promotion of Access to Information Act of 2000 (PAIA) was challenged in terms of its failure to provide ATI on political parties' private funding. In December, the National Council of Provinces adopted the Promotion of Access to Information Amendment Bill (the Bill). The amendments however have made ATI on political parties' private funding dependent on what will be recorded through the PPFA. Sadly, there has been no tangible progress towards disclosing information on political parties' private funding. Further, civil society organisations raised certain concerns on how the Bill does not fulfil the Constitutional Court's order due to the following:

1. First, the Bill does not place an obligation on independent candidates to record their private funding sources, and therefore Parliament has failed to fulfil the Constitutional Court order. The Bill and the PPFA therefore places an obligation on political parties to record donations above the prescribed threshold, but not independent candidates;

2. Secondly, the Constitutional Court order does not place any disclosure threshold limitation on the amounts of private funding allocations. While the Court order does not prescribe a specific amount, it does provide guidance on what access to information on party funding should seek to achieve. In paragraph four it states the following [...]:

“The need for efficiency and effectiveness in the prevention, containment and elimination of corruption linked to the private funding of political parties and independent candidates seems to cry out for urgent intervention[...].”

AND in paragraph five of the judgement it states that there is a need to:

“[...] minimise the risk of voters putting into office or even electing into government a political party or independent candidate who is corrupt or somehow compromised [...].”

Civil society organisations are aware of the administrative burden for the Electoral Commission (IEC) in terms of the PPFA. Therefore, the need to record all donations is to avoid the risk where a donor can allocate private funding through a variety of sources under the prescribed threshold, without a record of such a circumvention. Secondly, a donor may donate more than the prescribed threshold in tranches over one financial year, and this would not be disclosed as per the PPFA. If all private funding is not recorded, the Bill prevents interested persons or anti-corruption watchdogs from retrieving necessary records to uncover or expose corruption. The Bill should place an explicit obligation on political parties to record all private funding.

Therefore, in summary, we write to you to do the following:

1. Gazette a date for the implementation of the Political Party Funding Act, without any further delay;
2. Consider the constitutionality of the Promotion of Access to Information Bill and whether it, read with the PPFA, complies with the Constitutional Court order in the matter on [MVC NPC vs the Minister of Justice.](#)

You have the sole agency to heed to civil society's consistent calls for and set the precedent towards a more open, accountable and transparent political and electoral system.

The right of ATI is a necessary check which must be granted continuously, as a sustainable solution towards checking and preventing those who seek to use their office to abuse their power for selfish ends. Corruption thrives under secrecy which must be stopped. Not only is the implementation of the PPFA and access to party funding information necessary to deter corruption and for an informed electorate, but our ATI regime must allow citizens to access other requested information from political parties.

Currently, South Africans do not enjoy the right to know all the private entities or individuals who potentially and unduly benefit from access to power in political parties or in public office. Further, the pending ATI legislative framework must ensure that robust mechanisms are in place in order for transparency to legitimately and meaningfully address state capture, and that the relevant institutions are substantially and structurally resourced and independent to be able to fulfill their mandate.

We kindly request and encourage you to respond by 3 February and look forward to your response.

For any queries, please do not hesitate to contact Zahira Grimwood ([zahira@myvotecounts.org.za](mailto:zahira@myvotecounts.org.za)).

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Just Share

My Vote Counts

Media Monitoring Africa

Open Secrets

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