

02 November 2022

Dear Ms. S Shaikh, MP, Chairperson: Select Committee on Security and Justice

As the Rivonia Circle, we are responding to your call for written submissions on the **Electoral Amendment Bill [B 1B – 2022] (National Assembly – sec 75)**. Before delving into the details of our submission, we take note that your announcement carries Parliament’s tagline: ***Parliament – Following up on our commitment to the People – Making your future work better.*** This is indeed the noble idea and commitment of any parliament in a truly representative constitutional democracy. It is our view that this Bill, in its current form will not pass constitutional muster and will not make the people’s future work better.

For this reason, we implore you and the select committee to view our submission in serious light within the constitutional issues we are raising.

Firstly, we are of the view that the very tagging/classification of the Bill is unconstitutional. The Bill is currently classified as a **section 75 Bill**, meaning it is dubbed as “not affecting provinces”. This is incorrect for several reasons:

1. The Bill seeks to include independent candidates in provincial elections.
2. The fact that national and provincial elections happen on the same day is an outcome of coordination between the Independent Electoral Commission (IEC), the Premiers and the President. They then arrive at a common date. Theoretically, these elections could take place on separate occasions for whatever reason.
3. Provincial elections are proclaimed by the Premiers, and therefore are squarely a provincial function.
4. Therefore, each provincial legislature should be empowered to conduct public participation to hear the views of citizens in their provinces, to hear their views on electoral reforms necessary to ensure a fair and just way for the inclusion of independent candidates.
5. This Bill will have a material impact in the composition of provincial legislatures, and we believe in the composition of provincial delegations to the National Council of Provinces (NCOP) itself.

6. The composition and election of provincial legislatures is governed by section 105 of the constitution, whereas that of the National Assembly is found in section 75. This is because these are not one in the same elections, despite being held on the same day historically.
7. It is, therefore, erroneous to classify this Bill as a section 75.

We propose that the Bill be reclassified to be a section 76 Bill, to give provinces meaningful participation in the amendment of the Electoral Act, as mandated by the Constitutional Court in June 2020.

Secondly, the Bill detracts from the principle established in both sections 75 and 105 that South Africa must always have **“an electoral system that results, in general, in proportional representation”**. This is so for a few reasons:

1. The current Bill leads to votes of independent candidates being discarded, once a candidate reaches the threshold for the number of votes needed to secure a seat.
2. For illustration purposes, if an independent candidate/political party needs 35 000 votes to secure a seat and an independent candidate secures 70 000 votes (theoretically two seats), the other 35 000 votes are simply discarded. Yet, if a political party gets 70 000 votes, it secures two seats.
3. The problem becomes even larger if consideration is given to the fact that the discarded 35 000 votes do not mean the seat in the legislature or national assembly is discarded. Far from it.
4. The seat automatically accrues to political parties. Simply stated, a vote for independents translates to a percentage vote for the major political parties. **We attach a submission by Michael Atkins made to the National Assembly to this effect.**
5. Therefore, the outcome of an election can never be proportional representation, in general.
6. The proposition in the Bill will not, in our respectful view, lead to the execution of the principle that "one person one vote of equal value". Those who vote for an independent candidate can only influence the occupation of one seat. Those who vote

for a political party have potential to influence the occupation of more than one seat. This is generally unfair and distorts the value of the votes.

7. This proposal is about favouring established political parties and fails to level the playing field for independent candidates and voters in general.

We propose that the only possible way to remedy this is to establish 300 electoral constituencies that will be within each province, demarcated to also cater for provincial legislature seats and have independent candidates contest with individuals from political parties, rather than contesting political parties. There is a model operating at local government to this effect.

Thirdly, there is political impasse on the establishment of electoral constituencies in South Africa. Some established political parties argue that such a move would lead to the disappearance of smaller political parties. However, this is untrue for several reasons:

1. Local government elections have demonstrated that a carefully considered electoral system, that balances electoral constituencies (i.e. wards) and proportional representation lists, can lead to an explosion of representation for smaller political parties and/or civic organisations/movements.
2. The above is demonstrable in the City of eThekweni where there are 19 organisations occupying 23 seats in a council of 222 seats.
3. Electoral constituencies would ensure that all geographic spaces of the country have representation in our legislatures and at the national assembly. Currently, there is no guarantee that at the national assembly all our local municipalities have someone who hails from them.
4. The current electoral system of proportional representation and the proposed Amendment Bill under consideration do not guarantee localised geographic proportional representation.
5. The constitution in section 19 (3) demands a political electoral system of citizens and not political parties. Therefore, parliament should concern itself with considering such an system and not be concerned about which political parties will be vanquished and which will be given prominence – this is best left to the voters.

We propose, in accordance, with many civil society organisation and citizens who are calling for an electoral system for the national assembly that results in 300 seats from electoral constituencies, with 100 seats derived from proportional representation lists of political organisations and civic movements.

Fourthly, the Bill establish unfair, unjust and serious barriers to entry for independent candidates. These barriers to entry go against section 9 (2) of the constitution that states, “equality includes the full and equal enjoyment of all rights and freedoms”. This Bill disproportionately favours political parties over independent candidates, in that:

1. The number of signatures (20% of the number of votes needed to secure a seat in the previous election) needed for independent candidates to qualify for nomination in an election is far higher than the number of signatures expected for registering political parties.
2. The definition of provinces as electoral constituencies is disadvantageous to independent candidates, in that it expects an individual to contest for votes across an entire province against political parties that have established infrastructure, volunteers and personnel across the said province. Automatically, the independent candidate is turned into a one-person political party by this Bill.
3. The above, obviously impairs the doctrine of equality so enshrined in our constitution.
4. The provinces have **not been demarcated** to establish that they are fairly considered to be composed in such a way that independent candidates have a fair and equal chance to make it to the national assembly no matter where they are.
5. Under this proposed Bill, independent candidates from populous provinces have a disproportionate possibility to be elected than independent candidates from the least populated provinces in our country.

We propose localised electoral constituencies that are demarcated with clear guidelines to achieve fairness and equality for all who chose to participate in any national and/or provincial elections. Failing which, we propose that if this Bill is to pass, the current provinces must be re-demarcated to ensure a fair and equal chance for independent candidates in their participation.

Fifthly, the Bill is sustaining closed party lists. Our research shows that people are partly checking out of the electoral process (seen in the sharply declining voter turnout) because it favours political parties more than it does the voters. People we have encountered are unhappy that:

1. They do not have a say on who should go and represent them in parliament, the political parties decide.
2. They cannot make trade-offs with political parties because they do not know who to hold accountable.
3. Good politicians can be excluded from future parliaments if they do not toe the party line and there is nothing that voters can do about that.
4. Parliament is not representative of the people because people do decide who must represent them.
5. There is a great distance between political parties and citizens, leading to the current trust deficit in the political system.

We propose that the select committee must consider a localised electoral system that returns power to people. For this to be effective, a recall clause must be made possible for voters in their electoral constituencies to pass petitions that lead to a motion of no confidence in an incumbent representative. This will go a long way in fostering an electoral system that is accountable to voters more than political parties.

We trust that you will consider our submissions with the seriousness they deserve. For the above stated reasons, **the Rivonia Circle moves to #RejectTheBill.**