



31 October 2024

The Electoral Reform Consultation Panel

For Attention: Adv Richard Sizani

Per Email: ERCP@dha.gov.za

Re: CIVIL SOCIETY ELECTORAL REFORM PANEL'S SUBMISSION ON THE ELECTORAL REFORM CONSULTATION PANEL CALL

We write to you in response to the Electoral Reform Consultation Panel's call for public submissions.

The Civil Society Electoral Reform Panel (CSERP) is a coalition of representatives from various civil society organisations and social movements as part of the project on wider electoral reform in South Africa (SA). We are committed to the democratic principles of transparency and accountability, protection of rights, public participation, integrity and fairness. Through electoral reform, we envision a democracy in which people can exercise their political rights to advance the interests of the public, bridge the gap between the voters and their representatives to improve the accountability of elected representatives.

The 1994 elections were held under a transitional Constitution, and thus the proportional representation (PR) electoral system was adopted due to its simplicity at the time and the urgent need to hold elections. Following this, an Electoral Task Team was established to develop a new electoral system years before the 2004 elections. Now widely called the van Zyl Slabbert commission report, it recommended a multi-member constituency system as the PR system resulted in a lack of accountability. This was ignored. Over the years, there have been other

attempts to initiate electoral reform. Former President Motlanthe's High-level Panel¹ and the Zondo Commission² also included recommendations for electoral reform to enhance transparency and accountability.

The notable Constitutional Court judgement in the *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* handed down in June 2020 found that the Electoral Act, 1998 was unconstitutional and ordered that the Act be amended. Subsequent to this, Dr Aaron Motsoaledi (Minister of Home Affairs at the time) established a Ministerial Advisory Committee (MAC) to identify the impact that the Court's ruling would have on constitutional provisions; explore policy options for the electoral system that would address the defects of the Electoral Act; consult with stakeholders in the development of said policy options, and lastly, make recommendations.³

The MAC submitted a report of its findings to the Minister in June 2021. The committee was not able to reach consensus on their recommendations but managed to narrow them down to two options. Considering these recommendations, the Minister then appointed a legal team to draw up a draft of the Electoral Amendment Bill, along with possible legal implications, which was presented to Cabinet in November 2021. While there were delays, the Electoral Amendment Act was signed by the president in 2023, and included a clause which would ultimately allow for a new process of electoral reform. This stipulated for the appointment of an Electoral Reform Consultation Panel mandated "to independently investigate, consult on, report on and make recommendations in respect of potential reforms of the electoral system for the election of the National Assembly and the election of the provincial legislatures, in respect of the elections to be held after the 2024 elections".

Taking into consideration that this process has been employed two times prior, and failed to introduce substantive reform enhancing electoral accountability, it is of great importance that we take the opportunity to implore parliament to take measures to ensure that this time it is a meaningful process and not just a procedural one. Electoral reform can indeed strengthen democracy in SA.

CSERP's mandate is to conduct research and deliberate on different electoral systems and ultimately to recommend an electoral framework that will strengthen public accountability and deepen democracy. This research process and deliberations will unfold in the upcoming months. For this reason, the following submission does not provide recommendations but foregrounds the democratic principles that the CSERP process aims to give expression to as its research and deliberations ensue.

¹ https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf

² https://www.statecapture.org.za/site/files/announcements/672/OCR_version_-_State_Capture_Commission_Report_Part_VI_Vol_IV_-_Recommendations.pdf

³ https://static.pmg.org.za/Report_of_Ministerial_Advisory_Committee_on_electoral_System_Reform.pdf

The question of how best to design our electoral system has been a dominant one in South Africa since the dawn of democracy. Currently, SA still uses a closed-list proportional representation electoral system. At the time of the transition, the system was adopted in the interim due to its simplicity, inclusivity, stability and fairness. Over time, the debate on electoral reform continued in various pockets, and some changes have been made in recent years that do not directly speak to the challenges that the electoral system has posed to democracy in the past 30 years. While the initial critical challenges that the PR system was intended to mitigate persist today, there is a need for an electoral system that also addresses the flaws that have eroded the quality of democracy. Namely:

1. Transparency and Accountability

1.1. The closed-list proportional representation system as it stands allows for political parties to choose their preferred candidates in ranked order, and while this allows for simplified ballots and incentivises party unity, it does not allow the voter influence over their choice of candidate. While it prioritizes strengthening of political institutions and diversity, it limits the voter's choice. Further to this, it encourages members of parliament (MPs) to be more beholden to the political bosses who included them in the list as they are not directly accountable to specific constituencies that elect them.

1.2. This encourages political patronage within parties and undermines the principles of accountability and transparency to citizens. It creates conditions in which citizens have no voice over the quality of the officials selected by political parties to represent them. This creates opportunities for incompetence, corruption, and mismanagement to thrive at the expense of public good. The quality of public representatives and the resulting poor governance eventually leads to disillusionment in democracy.

1.3. Since there is no direct link between geographical regions and elected representatives, MPs are less answerable to communities. This introduces significant challenges to the 'accountability, and openness' called for in the founding provisions of the Constitution. In the current electoral system, elected officials are not necessarily incentivized to prioritise service delivery to citizens as they are not directly elected and are not required to report back to a constituency.

1.4. This means that the needs of the electorate are often neglected, and this has resulted in growing frustrations, a decline in trust in the state and therefore, a disengagement from democratic process such as elections. The 2024 elections saw the lowest voter turnout to date, around 59% of registered voters actually voted⁴ and this is reflective of an eroding democracy. Voting plays a significant role in the cycle of accountability.

2. The Electoral Amendment Act (1 of 2023)

The amendments to the electoral laws only focused on the inclusion of independent candidates within the closed-list PR system with no major changes to the electoral system itself. This created a Frankenstein-like system that disadvantaged independent candidates compared to political

⁴ <https://www.statista.com/statistics/1472825/electoral-turnout-in-south-africa/>

parties and made the electoral process more complicated for voters to use and understand. Specific deficiencies of the current system are listed below:

- 2.1. The biggest flaw of the Act is that it forces single individuals to contest against organisations, made up of many individuals, on the same ballot. As multi-member organisations, parties are inherently able to stand for election in multiple regions and the votes they receive across regions can be aggregated for them to win multiple seats for multiple individuals to occupy. Even if an independent candidate stands for election and wins support in multiple regions, they can only occupy one seat. This leads to wastage of votes of independents who win more than one seat. Furthermore, the votes an independent candidate wins across regions are not aggregated, so they have to meet the vote threshold for a specific region to win a seat to represent that region in the national assembly.
- 2.2. Further to this, parties are allowed to compete for all 400 seats in the national assembly by appearing on the national ballot and all nine regional ballots. Independent candidates are limited to competing for only 200 regional seats. Considering that an independent candidates can only contest in three regions, in practice they are eligible for even fewer than 200 seats.
- 2.3. In a democracy such as SA's, where representation and political participation are of utmost importance, inclusion cannot be reduced to a mere ability to participate with no prospect of success. The commitment to inclusion should be reflected in the systems that facilitate democracy in all spheres. A new electoral system should accommodate the balance of the inclusion of political parties and independents.
- 2.4. The current electoral system does not make provision for recall mechanisms that would allow voters the ability to remove elected officials when they do not fulfil their mandates in between elections. Against the background of decades of corruption, poor service delivery and administration, growing dissatisfaction with government's performance, an increase in unemployment and crime, the "Right to Recall" is an avenue that would enhance accountability and responsiveness that would ultimately improve the voter's immediate material conditions.

In conclusion, elections are integral to a legitimate democracy. We highlight the importance of prioritizing the people of South Africa through systems such as our electoral frameworks and others. Paramount to this is a deep commitment to deepening people's power, instead of political elites. This necessitates a focus on transparency and accountability, inclusivity and integrity in electoral reform. We note the guiding principles that will be used to evaluate various electoral systems adopted by ERCP and reiterate CSERP's support for the process while we embark on our own as civil society.

Organisations represented on CSERP:

Abahlali baseMjondolo (AbM), Afesis, Equal Education, Council for the Advancement of the South African Constitution (CASAC); Defend our Democracy (DoD); Institute of Election Management Services in Africa (IEMSA); My Vote Counts (MVC), Zabalaza Pathways Institute

Please refer any correspondence on this submission to CSERP secretariat, Boikanyo Moloto on Boikanyo@myvotecounts.org.za

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