

RESPONSES OF THE ELECTORAL COMMISSION TO PUBLIC SUBMISSIONS ON THE ELECTORAL AMENDMENT BILL (22 OF 2013)

By the close of the submission period on the 6th September 2013, a total of six submissions were made to the Portfolio Committee on Home Affairs. Of these six submissions, three made oral submissions to a sitting of the Portfolio Committee on the 10th September. A further submission was received by the Electoral Commission on the 12th September. This brings all submissions to a total of seven. The following institutions or persons made submissions:

- Ubuntu Centre
- AFRIFORUM
- Commission on Gender Equality
- Mr. Itumeleng Mmusi (Co-ordinator of the Disabled in John Gaotsewe District)
- Mr. Red Haines
- Parliamentary Liaison Office of the South African Catholic Bishops Conference (SACBC)
- Ms. Hendrietta Bogopane-Zulu (MP), Deputy Minister: Women, Children and Persons with Disabilities

SUBMISSIONS AND RESPONSES

Definitions: SACBC submits that it is not clear whether "identity card" in the definitions section of the Amendment Bill also refers to the green bar-coded identity document. The problem is compounded by the fact that not all citizens would have identity cards by the time of elections.

Response: *The Department of Home Affairs indicates that the green barcoded Identity Document will still be a competent form of identity for all purposes including voting. The Electoral Commission technology will work on both the green barcoded identity book and the new smartcard identity document.*

Registration of Voters: Ubuntu Centre raises a concern about sections 8 (2) (c) and (d) (Act 73 of 1998) in that, they argue, these sections discriminate against persons with psychosocial disabilities and those who are detained under the Mental Health Act in that the chief electoral officer may not register persons in those categories. This is in conflict with the Constitution and the UN Convention on the Rights of People with Disabilities. Furthermore, the Mental Health Act has been superseded by the Mental Health Care Act of 2002 which provides that mental health care users have all rights in the Constitution.

The SACBC and AfriForum welcome the creation of the international segment of the voters roll for accommodating citizens who are ordinarily resident outside of the Republic.

Response: *many jurisdictions do not permit persons with mental disabilities to register as voters due to concerns about faculties to form informed opinions. In the United States forty four (44) out of fifty (50) states do not allow persons with mental disabilities to register to vote whilst in Europe only nine (9) out of twenty seven (27) allow citizens in these categories to register as voters.*

In the South African system, the Chief Electoral Officer may not register a person if such a person has been declared by a High Court to be of an unsound mind. Furthermore the exclusion relates to those detained under the Mental Health Care Act. The exclusion is not arbitrary and automatic. These exclusions come into operation at the instance of the Court after examining medical evidence presented before it.

Reference to the Mental Health Act should be corrected to Mental Health Care Act of 2002.

Nomination of Candidates: The Commission on Gender Equality proposes amendments to section 27 of the Act (73 of 1998) that lists of candidates must be constituted by names of women and men who alternate and that the number of women and man on the list must not differ by more than one. Essentially this proposal enforces the quota and "zebra system" on the compilation of the candidate lists. Possible sanctions for non-compliance could include the seats remaining vacant, or reduced allocations on party funding as well as fines.

The Chief Electoral Officer (CEO) shall return the party's list of candidates if it does not comply with the quota and zebra principles allowing the party an opportunity to correct the list. Failing which the Electoral Commission could disqualify such non-complying party.

Furthermore, any person including the CEO may object to non-compliance to the Commission by a date to be established in the election timetable. Presumably the Commission would have to decide such an objection.

Response: *It is common cause that Constitutionally and through other legislative instruments, the rights of women must be advanced and the Electoral Commission supports this principle. The proposals of the Commission on Gender Equality are noted as necessary to ameliorate the country's history of patriarchal relations. It is important that consensus be reached with political parties before such quotas are*

legislatively enforced. This is, in our view, a national policy matter which must be decided by political parties in parliament.

The impact of these proposals will entail a need for the duration of the election timetable to be extended. Presently the timetable requires no less than 69 days from the date of proclamation of an election to voting day. These proposals will need to extend the time table by a further 20 days to a total of 90 days. This means the period between proclamation and voting date must be increased. Related to this is the delay in the printing of the ballot paper. Ballots cannot be printed until the lists of candidates are certified.

Right of Prisoners to Vote: SACBC welcomes the amendments related to the right of prisoners to vote.

Proposed Response: *The Constitutional Court has unequivocally expressed itself on the rights of prisoners to vote.*

Special Votes: AfriForum welcomes the proposed dispensation permitting all registered citizens abroad to vote in the election of the National Assembly. They recognize the complexity of the provision of a ballot in the elections of provincial legislatures. Pertinently, they argue that some of the citizens who are ordinarily resident do not have properties in the Republic whilst some have multiple properties in several provinces.

AfriForum further submits that whilst it presents challenges for registered to travel to missions of the Republic for purposes of voting, the principle of using home territory is sound.

The SACBC also welcomes the proposed dispensation on special votes for all citizens outside of the Republic. However, they do raise a concern about the provincial ballot. They argue that there is sufficient time between now and the elections to make necessary preparations for the provincial ballot.

Deputy Minister Bogopane-Zulu raises the issue of whether persons with visual impairments would be allowed to use the Universal Ballot Template (UBT) during special votes presumably at home or in the office of the presiding officer, whilst retaining the possibility of assistance from a person for purposes of voting.

Mr. Itumeleng Mmusi is requesting that a database of persons using braille in John Gaotsewe District be created as they are neglected.

Response: *The mixed reaction to the issue of the provincial ballot is indicative of inherent complexity. The supreme consideration in the matter is the inalienable need*

to maintain the integrity of the election. This matter is before the Portfolio Committee and the Western Cape High Court where it will be fully explored.

The use of the UBT in both the voting stations and during special voting days will be reinforced in the intended amendments to the Elections Regulations.

The possibility of bringing in a person for assistance, if desired, for purposes of voting is retained in terms section 39 (2) of the Act (Act 73 of 1998).

Our outreach division is continually in consultations with the disability sector for purposes of making improvements to electoral process by accommodating the needs of persons with disability including monitoring the correct use of the UBT. Furthermore, interactions with persons with visual impairments in the John Gaotsewe District will be undertaken through our outreach programme.

E-voting: Mr. Red Haines is proposing that the proposed bill does not include provisions for electronic voting technology despite other countries including Namibia adopting the use of such technology.

Response: *The Electoral Commission convened a seminar on e-voting technologies earlier this year. Political parties amongst other participants expressed divergent opinion on the desirability of such technology at the moment. This is a matter on which there has to be constant discussion and advocacy. However based on the outcomes of the recent seminar the introduction e-voting technology and its cost implications require further exploration over time.*