



Ubuntu Centre

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The Ubuntu Centre, South Africa:

Submission to:

The Department of Home Affairs Portfolio Committee

Comment on Electoral Amendment Bill B222013

Date: 28 August 2013

The Ubuntu Centre South Africa is the only independent membership based Disabled People's Organization, run for and by people with psychosocial disabilities in South Africa. It is registered in the NPO Directorate in the Department of Social Services as a Non Profit Organization. The main activities of the organization are lobbying and advocacy for human rights and thus securing the dignity of people with psychosocial disabilities that remain a stigmatized, marginalized and discriminated vulnerable group in South Africa.

Thank you for inviting a submission to Home Affair Department regarding the amendments in the Electoral Bill 2013 on this very important matter of political participation rights.

Albie Sachs has said: "The vote of each and every citizen is a badge of dignity and personhood. Quite literally is says that everybody counts"

The proposed amendments to the Electoral Act 1998 leave Section 8(c) and 8(d)¹ of the Electoral Act No.73 of 1998 unamended. Therefore barriers remain for people with psychosocial disabilities to fully exercise their political right to vote.

1. 8(c) of the Electoral Act No. 73 of 1998 also states that persons declared by a High Court to be of "unsound mind" or declared "mentally disordered" may not be registered on the voters roll. This is discriminatory and excludes people with mental, intellectual and psychosocial disability from the voters roll.

The **Constitution of South Africa** is unambiguous in ensuring that all are equal before the law and specifically prohibits any discrimination based on disability. The Bill of Rights

¹ (c) has been declared by the High Court to be of unsound mind or mentally disordered;

(d) is detained under the Mental Health Act, 1973 (Act 18 of 1973); or



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Although the Mental Health Care Act 2002 does allow the deprivation of liberty by involuntary confinement for the provision mental health care, this in no way then prevents the exercise of political rights.

Home Affairs needs to clearly support the view that the Constitution is supreme and that the MHCA 2002 guarantees political rights are not removed, the Electoral Bill 2013 should remove mention of Mental Health Act 1973 to ensure that even those that are involuntarily detained and those receiving treatment under the Mental Health Care Act of 2002, can be registered to vote too.

3. Importantly, South Africa has signed and ratified the UN Convention on the Rights of People with Disabilities in 2008. Article 29 of the Convention obligates all State Parties to ensure that the right of persons with disabilities to vote and SA is obligated to this international law. People with psychosocial and intellectual disabilities are included in this Convention,

Article 29 also requires that Contracting States ensure "that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use." This requires that the South African Government provides reasonable accommodation and supports to people with disabilities to exercise their rights. This should be specifically mentioned in the amendments. Rather, supportive measures such as the production of user-friendly informative literature and voting materials and voting assistance should be considered for people with psychosocial and intellectual disabilities.

Furthermore, it should be noted that Article 29²; also guarantees

"States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

² <http://www.un.org/disabilities/convention/conventionfull.shtml>



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Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels."

The United Nations Committee on the Rights of People with Disabilities has when reviewing Country Reports, consistently commented on the right to vote. In 2012 in concluding observations to China it stated:

23. The Committee is concerned with article 26 of the Election Law, which excludes citizens with intellectual and psychosocial impairments from the voting process.

24. **The Committee recommends that the State party revise article 26 of the Election Law to ensure that all persons with disabilities have the right to vote on an equal basis with others.**

We trust that the Department of Home Affairs takes notes of our concerns and ensures the removal of 8c and 8d of the Electoral Amendment Act so that there are adequate guarantees for people with mental and psychosocial disabilities to exercise their right to vote. We hope that forthcoming regulatory and procedural supports for people with disabilities so as to included people with psychosocial and intellectual disabilities.

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