

## PROPOSAL FOR THE USE OF SECRET BALLOT IN THE KEY DECISION OF PARLIAMENT:

28 January 2015

### A. INTRODUCTION

- 1) South Africa's electoral system is a proportional representation system wherein 400 Members of Parliament are directly elected through universal suffrage and importantly through a secret ballot to constitute a National Assembly. The National Assembly is the highest legislative body which elects a President, Speaker and Deputy Speaker through a secret ballot.
- 2) While candidates for the National Assembly are submitted through Political Party lists, they are directly elected in that the Independent Electoral Commission publishes the names of all candidates who are contesting for elections during the general elections. Subject to the Constitution, the elected representatives are replaced by the political parties who submitted their names for elections, yet this does not take away the fact that they were directly elected.
- 3) While Members of Parliament who have been elected through a secret ballot carry the right and obligation to elect the President, Speaker and Deputy Speaker through a secret ballot, the decisions they take after these elections are not by secret ballot. South Africa's Parliamentary system and Rules prescribe that members of parliament should cast votes for or against proposed decisions, budget votes, reports, and motions of no confidence through an open vote.
- 4) This submission argues that whilst a dominant system of Parliamentary democracy in the African continent do not provide for secret ballots on key decisions, such undermines the principle and spirit of democracy. Democracy means different things to different people, but essentially it is understood as an equal, free, and fair opportunity to canvass and be canvassed for a particular outcome and when majority of those canvassed take a particular posture, the majority outcomes are accepted.
- 5) The submission argues that substitution of secret ballot in Parliamentary decision making processes disempowers the directly elected Members of Parliament from taking independent, free, and fair opportunity to decide what is wrong and what is right for the country. The substitution of a secret ballot in Parliamentary decision making processes also disempowers the voters who after casting their secret votes once after every five years, they have no cogent space and opportunity to persuade members of parliament on key policy issues and decisions because such is the preserve of political parties represented in parliament.
- 6) The submission constitutes a key towards democratisation of Parliament and opens space for thorough democratic participation and will therefore do the following:
  - (A) Explain why the South African Parliament should adopt secret ballot for certain decisions.
  - (B) Explain why a secret ballot is sacrosanct in any democratic system.

- (C) Propose specific mechanisms and criteria upon which secret ballot should be utilized.
  - (D) Propose specific amendments to the Rules of the National Assembly.
  - (E) Conclusion
- 7) Section 19(3) (a), Chapter 2 of the Constitution of the Republic of South Africa (Bill of Rights) affirm the right of every citizen to vote through a secret ballot. The right to use secret ballot is sacrosanct in all democracies, and if South Africa were to internalize and realize real form and content of democracy, Parliament should accept that Members of Parliament can and should utilize secret ballot on key decisions.
  - 8) Usage of secret ballot in Parliamentary decisions does not seek to undermine the electorate, but is meant to empower them in between elections that they can influence decisions. Both liberal and Left wing politics recognize the sacrosanct nature of secret ballot in democratic decision making processes, and this is what should be upheld by the South African Parliament. That the electorate chose a certain political party with its candidates in general elections does not mean that the electorate and the political party representatives in a legislature agree with each and every decision the political party takes prior to the next general elections.
  - 9) Members of parliament have taken an oath to obey, observe and maintain the Constitution and in the process of exercising their legislative mandate, they are required to vote on number of issues before Parliament.
  - 10) Members of Parliament like every citizen of the country have the right to freedoms enshrined in the Constitution and specifically in respect to the voting procedure, the freedom of expression and the freedom of association in terms of sections 16 and 18, respectively.

## **B. WHY IS THE SECRET BALLOT SACROSANCT IN A DEMOCRACY?**

- 11) Democracies are characterised by protection not just for political parties, unions, interest groups and churches or associations but also by the protections the very elected Members to make objective decision consistent with their principles in the face of pressure from interest groups, and public opinion.
- 12) Secret voting for citizens, then, reflects an important democratic idea: that citizens' rights to vote does not depend on the approval of others, or on the demonstration of special virtues, attributes or possessions. While democratic rights to freedom of expression and association mean that citizens are free to consult anyone they want, the secret ballot means that they can share in collectively binding decisions without having to bare their souls to anyone who asks. A secret ballot is therefore essential for the following reasons:
  - (a) Secret voting protects the voter from intimidation and coercion by the political parties that deployed or delegated members of parliament.
  - (b) In cases of members of parliament, it gives them freedom to use their votes to confirm their consciences and beliefs, instead of being forced to toe a party line even on things that they do not necessarily agree with.

- (c) Linked with the need for direct constituency elections, it allows parliamentarians to represent fully the needs and beliefs of their constituencies, which may be in direct contradiction with the party line.
  - (d) Members of parliament do not become mere voting crowd, rubber stamping decisions taken elsewhere. Through a secret vote, they exercise their rights as thinking leaders of society.
- 13) Lack of secret ballot in any system that is defined as democratic has many negative consequences, and these include:
- (a) It undermines accountability of voters for their choices;
  - (b) It discards information that might assist voters with their decisions;
  - (c) It reinforces a norm of non-participation and apathy regarding political activity;
  - (d) It discourages voting by reducing the consequences of participation;
  - (e) It encourages a view of voting as an individual choice rather than as a social act; and, of special interest to theorists,
  - (f) It reduces the possibility of cooperation across issues, e.g. vote trading that may improve overall welfare.
- 14) It is important to highlight the fact that in many instances where a hybrid system of voting in institutions was applied, the results of voting were different. In many instances, the outcomes of an open ballot versus an anonymous ballot have been different, meaning that representatives do not always act in group behavior and conduct on key decisions.
- 15) The Parliament of South Africa recurrently subjects keys decisions it has to take to rigorous debates and discussions, and these are meaningless if all decisions are subjected to an open vote because even those who were persuaded by an argument from different political parties are still subjected to the political party-line. This cannot be correct and should be remedied through an introduction of a secret ballot.
- 16) While not consistent and genuinely principled in some of its decisions, the United Nations assertion and observation on democratic participation made in 2001 can and should be relied upon. Then, the UN observed,

**'To be sustainable, the democratic order of a State must be authentic and reflect the culture, history and political experience of its citizens. Democracy must be seen as a process that requires much more than the conduct of elections. While recognizing the importance for democracy of periodic free and fair elections, a democratic system should also provide opportunities for people to participate fully in all aspects of society. Viewed from this perspective, another essential element of democracy is the rule of law. Democracy must encompass those principles, rules, institutions and procedures that ensure representation and accountability and protect the individual or groups against arbitrary behaviour, injustice or oppression by the State or other actors'** (UN General Assembly Resolution 56/499. 2001).

- 17) This observation constitutes a critical and core understanding and appreciation that democratic processes should protect the individual against arbitrary behaviour, injustice or oppression by the State or other actors. This understanding should be understood within the context that other actors might be political parties and that it is not only the ruling or majority political party that might acquire less votes than their representation in Parliament, but all political parties represented.

#### **C. MECHANISMS AND CRITERIA UPON WHICH SECRET BALLOT SHOULD BE UTILISED.**

- 18) The rules of the National Assembly should be amended to provide for the use of the secret ballot in the following instances:
  - (a) The election of the President
  - (b) The election of the Speaker and the Deputy Speaker
  - (c) The resolutions tabled before the House for approval
  - (d) The reports tabled before the House for adoption
  - (e) The motion of no confidence on those who have been voted through secret ballot.
  - (f) The Bills tabled before the House for approval
- 19) Any member of the House may call for a secret ballot upon a matter being put before the House for consideration, adoption or approval.
- 20) Upon a member calling for a secret ballot, the Speaker shall put the motion before the House for consideration.
- 21) The adoption for the motion by the House for voting through the use of the secret ballot should meet a minimum threshold of 15% of the total "AYES" of members present in the House.
- 22) Should the motion not meet the minimum threshold of 15% as above mentioned it shall fall away.
- 23) It should be emphasized that it cannot be constitutionally correct that a President, Speaker or Deputy Speaker who was elected in Parliament through a secret ballot is subjected to an open vote in the instance where there is a motion of no confidence. The inclusion of secret ballot in the Rules of the National Assembly when dealing with a motion of no confidence does not require a constitutional amendment, but a Rule adjustment which acknowledges that those who have been voted through secret ballot should be voted out through secret ballot.
- 24) This principle should apply not only to motions of no confidence, but also on key reports which parliament should adopt and have massive implications on the nature, form and content of our democracy. Secret ballot should also apply to decisions on legislation which change the content and meaning of our democracy.

#### **D. PROPOSED AMENDMENTS TO THE RULES OF THE NATIONAL ASSEMBLY**

- 25) Currently, voting in the National Assembly is done electronically (Rule 77), and through proclamations of both 'Ayes' and the 'Noes' (Rule 80 (2)), none of which is secret. This not only violates the constitutional provision of a secret ballot, but also violates the rights of members to freely express themselves as individual members of the House.
- 26) Rule 77 is often applied when voting on a motion and when there is contestation when parliament is voting for a President or the Speaker.
- 27) These rules should be collapsed into one, with different processes for particular occasions.
- 28) The EFF proposes amendments as follows for each of the voting provisions in the Rules:
- (a) Rule 8 should be amended to read as follows:
    - (i) At its first sitting this House shall elect one of its members as the President of the Republic (see section 86 (1) and (2) of the constitution
    - (ii) If there is more than one name nominated for the position of President, the process must be by a means of a secret ballot, with each member of this House afforded an opportunity to apply their mind and conscience in electing a president
    - (iii) The voting for the President must be presided over by the Chief Justice of the Constitutional Court.
    - (iv) For the purposes of counting the votes, the Office of the Chief Justice shall take full responsibility
  - (b) Rule 9: After the election of the President, the Speaker and Deputy Speaker shall be elected following the same process as stipulated in Rule 8 above
  - (c) Rule 77. Electronic Voting System:
    - (i) The provision that the electronic voting system can only be used at the discretion of the Presiding Officer should be repealed.
    - (ii) The rule should be amended as follows:
      - The electronic voting system shall be a compulsory voting system for adoption of resolution, reports, Bills and any other matter put before the House for consideration; unless otherwise a motion for the use of the secret ballot has been adopted.
      - This system must be amended such that the vote cannot be traced back to a member to curb punitive actions taken against the member should s/he vote against a party position
23. Rule 80 (2): This provision must be completely deleted from the Rules of the National Assembly.
24. Rule 102A which deals with motions of no confidence should be amended as follows:
- (a) Rule 102A (8): The vote on a motion of no confidence on the president, a member of cabinet, the cabinet itself or the Speaker may not be conducted via the electronic voting system, it must only be done through a secret ballot.
  - (b) Rule 102A (9): A special body comprising one member from all political parties involved in the National Assembly shall be elected to serve as an electoral commission should a motion of no confidence be put before the House.

Inclusion of these clause would only help to further democratise Parliament, and encourage member to take their responsibilities more seriously, and not depend on positions only imposed by their parties.

## **E. CONCLUSION**

The fundamental principle of any democratic system is freedom. South Africa has positioned participatory democracy within the framework of constitutional democracy. Participation of the people in democratic processes is intended to transform their social and economic circumstances and this remains the preferred and an essential feature of any socialist system. Internal democratic processes within parliament lead to decisions that directly impacts on the welfare of citizens and how perspective on how they interface with all spheres of government. Parliament as an institution of democracy should uphold values and principles that foster and deepen democratic participation of members of parliament in accordance with the Constitution.

Members of Parliament are burdened with the constitutional responsibility to transform the circumstances of their respective constituencies for the better. Parliament though its rules must protect and maintain the individual constitutional rights of its members to fulfil their mandate without fear and prejudice.

The EFF proposes to the rules committee to agree to amend the rules of the National Assembly to explicitly make provision for the use of a secret ballot in order to deepen democracy within Parliament in line with the Constitution of the Republic. As a matter of principle, superiority of logic should triumph over party political loyalty, and such cannot be realized when Members of Parliament are subjected to open votes.