

## Select Committee on Security and Justice - IEC Presentation re Electoral Amendment Bill



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Dear Ms Shaikh,

I hereby request the opportunity to address a meeting of the Select Committee for Security and Justice in response to the presentation made by the IEC on Monday, 14 November.

I have concerns over how the IEC presented some of the logical concepts in their scenarios, and over how they responded to my submission to the Committee (Section 6). I would anticipate taking about 20 minutes to convey the core concerns.

I include a partial description of my concerns at your request. I trust that the written descriptions included here will not be used by the IEC to present "rebuttals" to the Committee before I get an opportunity to present them myself. As a former mathematics teacher, I can observe that there is a difference between written and oral communication, and my aim is to convey key ideas in an easy to understand manner. Obviously, there would be no complaint at the IEC being given an opportunity to respond subsequently.

I believe that the IEC in part misrepresented my submission, and mischaracterised some of the logical consequences of scenarios discussed, and how these impact on the validity of the Bill. I have conducted intensive analysis of the Bill over the course of the year, submitting thorough critiques in February, September and November. I have also engaged with the IEC over concerns with the Bill, and their inputs to the portfolio committee over the months. I did a presentation to the Commissioners in July, and also met with the CEO before making my most recent submission. At his request, I provided him with an advanced copy of my submission. I can also observe that several of the corrections proposed by the IEC over the past two months have been in direct response to submissions that I have made (either directly to them, or to Parliament). For example, the proposed amendment to Item 21 in Sch 1A is from an error that I pointed out in a meeting with the CEO on November 3).

Some of my particular concerns are as follows:

6.1 The IEC agrees with my observation concerning the absurdity, but later do not take this to its' logical conclusions.

6.2 The IEC mischaracterises the premise of my submission. A correct description of my most basic premise would be that for, "in general, proportional representation" to be attained, the seat share of parties should not deviate substantially from their vote share.

6.3 The IEC agrees with the principle I explain, but then goes on to say that in their scenario, there is no difference in the outcomes. This is critical. For any system, one or more examples or scenarios that have good outcomes do not PROVE that the system works. on the other hand, any reasonable or feasible scenario that shows the system not working DOES prove that the system is wrong. This is a basic logical principle. The IEC dismisses this submission because the example they choose does not happen to show the problem i describe.

6.4 It is a false statement that having two separate ballots "cannot mitigate the distortions to proportionality that the participation of independents brings along". In our local government (as Budlender argues), having two ballots DOES mitigate the distortions, although local government would be improved by employing the proposal that I make.

6.5 I agree with their statement that discarding ballots for independents is logically necessary in terms of the Bill. But they do not understand the nature of this complaint. I never speak from the perspective of the independent candidate. The problem is that the discarding of ballot has a numerical effect that distorts proportionality. It also means that any vote cast for an independent effectively also contributes to the seats gained by the largest party or parties. This can be shown by looking at the numerical calculations.

6.6 When I talk about the larger parties gaining more, it does not matter whether this is "engineered" or not. I never make that claim. I treat it as an unintended consequence, but one that is too harmful to allow in fair elections.

6.7 The IEC agrees that allowing independent candidates to win seats (and hence vacate) in more than one region creates more distortion. All they say is that it is mathematically unavoidable. They prove my point. I argue that the rights of voters to not have their votes discarded outweighs the rights of independent candidates to stand in more than one election.

1.2 The IEC, for the first time in the entire public discussion of the Bill, introduces the idea of "intra-party proportionality". This is a re-defining of terms. I argue that it is not valid. My position is that disproportionality is systemic, and hence the system cannot be described as, "in general, proportional representation". Proportionality can be measured by comparing parties' seat share with their vote share (the Bill would fail) or by parties' votes relative to each other, and then their seats relative to each other (the Bill might pass in these terms). The IEC does not justify their change in definitions. I agree that this is a subject for further debate, and one that will probably be aired thoroughly in the Constitutional Court.

1.4 The IEC does not mount an argument in the document as to why they hold the Bill to yield sufficient proportionality. They refer to "models illustrating the basis of the conclusion". Firstly, as i see it, they present "scenarios", and not "models". Secondly, they agree that these can only "illustrate" the conclusion. As I point out earlier, a favourable scenario cannot prove something, whereas an unfavourable one can disprove it. Simply put, the IEC does not provide any logical motivation for their assertion.

3.7 Stating that intra-party proportionality would always be obtained is a problem. As I have already argued, the concept will be contested. However, I am able to prove that the recalculation process suggested by the IEC in the Bill has its' own distortion over and above the fundamental problem. unlike what the IEC said to the Home Affairs Committee, this distortion does not need to be measured by simulations and statistical analysis. It can be proven with simple equations. The excess votes (or seats) are distributed among the parties in a proportion not based on their original voter support, but on a skewed alteration of those figures.

4.1.5 It is entirely false to state that "A single-member constituency system is thus potentially at least as vulnerable to problems of proportionality as any other", if they mean one balanced by a separate PR ballot.

5.2 The IEC states that the scenarios in submissions are "based on hypothetical data", and assume "great support for independent candidates. these are misleading or false statements. My scenarios are indeed hypothetical. I start from actual results, add independent candidates in some form, and then sometimes make small adjustments to party results to ILLUSTRATE what can go wrong. The IEC scenarios are equally hypothetical. that is not a problem at all. Only if it can be shown that the scenarios are unreasonable, or highly improbably, can the hypothetical scenarios be dismissed summarily.

Secondly, in my most recent submission, I use scenarios for the Limpopo provincial legislature with 11% and then with 8% of the total votes going to independent candidates. These may be fairly high, but they are not outlandish or unreasonable. You simply cannot have an electoral system that breaks, or is unfair, at these levels of support for independent candidates. Knowledge of these distortions would inhibit support for independents, and this would violate the entire spirit of the original judgment.

5.3 The IEC says that a two-ballot system with sub-regions would yield the same results. This is just false.

7.2 The IEC proposes that unrepresented parties have the same signature requirement as independent candidates. The NCOP is obviously competent to adopt this as a change to the Bill, regardless of the source of the proposal. However, it can be noted that this is clearly a policy proposal, and as such falls outside of the IEC's remit. They have repeatedly

Unfortunately, the Appendices to the IEC presentation were not available on the PMG website where I obtain my records of proceedings. Inferring from from the textual descriptions, I am likely to have additional comments to make once i have had an opportunity to study their scenarios. It is also obvious that I would not be able to ventilate all of these matters in a short presentation to the Committee. If permitted to address the Committee, I would prioritise, and focus on the most important concepts. I am confident that I can show that the IEC has not adequately addressed the content of submissions.

The matter of counting only the PR ballot to count for the overall National Assembly seat allocations could be crucial in the coming months. we all understand that we are in a very delicate situation concerning the validity of this Bill, and the holding of fair elections in 2024. If only the PR ballot is used for the calculation, then the structure of elections for the National Assembly would be very close to reaching full constitutional compliance. We understand that there is no time to change the arrangements for provincial legislatures, although it would be possible to reduce the extent of disproportionality by using a different recalculation method. These facts could be vitally important,a s they could provide the basis for the Constitutional Court to mandate a compromise arrangement for 2024. the court is reluctant to "write in' parts of any law, and even more so when it comes to electoral law. It could therefore be very important to get at least the National Assembly constitutionally compliant before the Bill is passed.

Michael Atkins