**SUBMISSIONS MADE ON THE 2020 ELECTORAL AMENDMENT BILL [B22-2013] SUMMARY & QUESTIONS**

**8 February 2021**

The following 5 public comments/ submissions were received in response to advert placed by the committee on Electoral Laws Bill 22 of 2020 as well as about 1550 submissions via the *Dear South Africa website* (of which about 1300 were against the bill, 26 were in favour and 200 were not fully in favour). The following table contrasts the sections of proposed amendments in the bill alongside the sections of the relevant electoral law as most recently amended in 2018, comments from various stakeholders, as well as possible questions to stakeholders & the Electoral Commission.

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| Bill Clause | Act Section  | Stakeholder name: comment & suggestions | Questions Responses |
| 8(a) | Electoral Act 16(2) &16(4) | **AmaBhungane Centre for Investigative Journalism and Dear South Africa submissions:** The deletion of section 16(2) has the effect that access to the voters’ roll for any person other than members of political parties and independent candidates is only possible by way of inspection at the designated electoral offices or through a timeconsuming and laborious Promotion of Access to Information Act (PAIA) process The proposed amendments to the Electoral Act 73 of 1998 (“the Act”) contained in the Bill have the potential to hamper the media’s ability to access information, namely the voters’ roll, with the result that the media could be impeded from performing properly its watchdog role in relation to elections. This has an impact on the media’s enjoyment of its right to freedom of expression. The group of “election watchdogs” includes the media (by which we mean any person practising journalism, including so-called citizen journalists). While our mandate pertains to the media specifically, we note that this group may also include other civil society actors — academics, researchers, and activists — whose work concerns electoral probity.Part of the work of investigative journalists is to undertake the laborious task of poring through official records to detect anomalies. In the context of elections, this exercise could unearth evidence of manipulation of the electoral process. Even small discrepancies could act as clues that result in the exposure of greater malfeasance. It is for this reason that journalists should be given as much access as possible, subject only to essential reasonable limitations, to information relevant to the conduct of elections. The voters’ roll contains more than 20 million names. Even discrete segments may run into many millions of names. Scrutiny of the voters’ roll is painstaking work, and may well require computer-assisted analysis, such as search functions. This is not possible if only physical inspection is permitted. Those who are close to the relevant offices are more easily able to access the voters’ roll. This advantages those in urban areas, while unfairly prejudicing those who live and work far from urban centres.As the information on the voters’ roll contains personal information of third parties who are natural persons held by a public body, section 34 of PAIA would apply. Under section 34(1), the request would have to be refused – unless any of the circumstances in 34(2) apply. In this case, as the voters’ roll would be “publicly available” in the sense of being open for inspection at the IEC’s offices in terms of section 16(1) of the Act, section 34(2)(c) would apply. Consequently, the request for access to the voters’ roll “may not be refused”. The operation of PAIA is therefore no different to section 16(2) of the Act. This means that under PAIA, there is therefore no gain for privacy of voters in removing section 16(2) of the Act. 3.11.4.2. Secondly, there is much to be lost if requests can only be made through PAIA. This includes the introduction of a 30-day time period within which to respond to the request, which may be extended further. We propose that section 16(2) of the Act be retained, but amended to provide for access only for election purposes and in accordance with the provisions of the Protection of Personal Information Act, 4 of 2013 (POPIA). POPIA grants those with a legitimate purpose a right to access and process personal information, subject to prescribed safeguards. It prescribes the conditions that apply to the processing of personal information, and imposes sanctions for abuse. Section 7 of this Act exempts journalists (among others) from the provisions of POPIA “to the extent that such an exclusion is necessary to reconcile, as a matter of public interest, the right to privacy with the right to freedom of expression”. There is no reason why electoral laws should go further than POPIA where concerns arise with regard to personal information.A further alternative recommendation would be to extend the criminal sanction provided for in section 16(4) to include any person who uses the voters’ roll for any purpose unrelated to the conduct of elections. This could address concerns that the voters’ roll is being abused for commercial gain. | Following substatntive submissions to the Select Committee by among others amaBhungane, section 16(2) is reinstated in the Bill. It is however, redrafted to strike a balance between the right to privacy and the right to access to information. The redrafted provision accommodates the submissions by the Information Regulator and amaBhungane as will be evident from the correspondences of the two organizations. The Electoral Commission proposes the below formulation to section 16(2) and the insertion of a new section 16(2A):  *(2) “The chief electoral officer must provide a certified copy of, or extract from, a segment of the voters’ roll as it exists at that time, to any person who has paid the prescribed fee, if the chief electoral officer is satisfied that:**(a) it is required by such person for the purpose of –**(i) monitoring the accuracy of the information in the voters’ roll;* *(ii) statistical or research purposes; or**(iii) any other purpose that is prescribed; and**(b) doing so would not involve unlawful processing personal informationin terms of POPIA.* *(2A) Anyone using a certified copy of, or extract from, a segment of the voters’ roll obtained under subsection (2), or any of the personal information it contains, for purposes other than those specified in subsection (2) is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment.* |
| 8(d) | 16(5) | **AmaBhungane Centre for Investigative Journalism**The new section is vague and provides for a wide discretion to be conferred upon the chief electoral officer to decide which information must be redacted. Excessive redaction may unreasonably restrict the ability of political parties and independent candidates to monitor the accuracy of the voters’ roll.Section 16(3) of the Act contains three types of personal information: names, identity numbers, and addresses. All three are important when determining whether fraud in relation to the voters’ roll has taken place. The proposed amendment limits the access of political parties to an unredacted voters’ roll in a way that undermines their right to check its accuracy and integrity. There is no reasonable justification for this approach. The proposed new access provisions are not suited for that purpose. We therefore propose that this clause not be inserted into the Act.A strong safeguard exists where it is an offence in terms of section 16(4) to use the voters’ roll for a reason unrelated to elections. Therefore, our view is that there should be no redaction of these voters’ rolls. Rather, other safeguards should apply to prevent misuse. However, should it be deemed necessary that some information be redacted from the voters’ roll to protect voters’ personal information, we propose that this be limited to certain digits of the identity number, excluding the first six digits, being the date of birth. Under no circumstances should full identity numbers be redacted.**Suggested Drafting** (Insertions are indicated by underlining while deletions are indicated by ~~strikethrough.)~~(1) A copy of the voters’ roll as it exists at any time must be available for inspection during office hours at the Commission’s head office, and the provincial and municipal segments of the voters’ roll must be available for inspection at the times and venues mentioned in a notice published by the chief electoral officer in the Government Gazette. (2) The chief electoral officer must provide a certified copy of, or extract from, a segment of the voters’ roll as it exists at that time, to any person who has paid the prescribed fee, provided that such person may use it only for election purposes and in accordance with the provisions of the Protection of Personal Information Act, 4 of 2013. (3) Notwithstanding subsection (2), the chief electoral officer must, on payment of the prescribed fee, provide copies of the voters’ roll, or a segment thereof, which includes the addresses of voters, where such addresses are available, to all registered political parties and independent candidates contesting the elections. (4) The voters’ roll with addresses referred to in subsection (3) may only be used by political parties and independent candidates for election purposes and anyone using such voters’ roll for other purposes is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment. **Alternative proposal: subsection 4** The voters’ ~~roll with addresses~~ rolls referred to in subsection (2) and subsection (3) may only be used by ~~political parties and independent candidates~~ for election purposes and anyone using such voters’ roll for other purposes is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment. **Alternative proposal: subsection 5** The chief electoral officer ~~must~~ may redact up to five digits of the identity numbers of voters, excluding the six digits indicating the voter’s date of birth, appearing on the voters’ roll provided to a registered party or an independent candidate in terms of subsection (3) as may be necessary for the protection of the personal information of voters against unreasonable disclosure. | A proposed redraft of section 16(5) is included below to clarify the personal information to be redacted in order to protect the personal information of voters: (*5) The chief electoral officer must redact the identity numbers of voters, excluding the six digits indicating the voter’s date of birth, appearing on the voters’ roll provided in terms of subsection (2) or (3), save where the requester satisfies the chief electoral officer that:**(a) exceptional circumstances require the full identity number to be disclosed; and**(b) doing so would not involve unlawful processing personal information in terms of POPIA.*  |
| Entire Bill | All Electoral Acts | **J . P. Wolhuter:** Proposes that rather than political parties or individual candidates which concentrate too much power in too few; that representation and voting be arranged into “groups” representing first choice of a language according to the 2011 cencus figures he provided:1. For election purposes these percentages for each Group is used to determine the amount of members to be appointed. If the election for the government require 400 members to be elected the IsiZulu Group will provide 400x22,7%=92 members, the IsiNdebele Group 400x2,1%=8 members, etc.2. The smaller Groups can join together in a coalition but the total percentage may never be more than the highest Group percentage, in this instance 22,,7%. For instance Afr + Eng = 23,1, no coalition possible.3. The election of the government with the president and ministers and senior personnel in the government is elected by the population, Each Group submit two names to be on the ballot paper. Each voter has two (2) votes but only one (1) vote per Group. This rule will prevent that not more than two (2) members per Group could be elected. The most votes per candidate will become the President while the next 14 or more of the candidates ((12 language Groups + independants ) the deputy President, Speaker, Whip and ministers. All positions must be appointed by the President.4. In the event of any dispute, at least seven (7) ministers must agree om the action of the matter at hand.5. Cuurent voters against the winner have no representatives since voters have no input on PR candidates. The second vote on the ballot paper rectifies this matter and the voter has an input.6. Sections 46(1)(d) and 105(1)(d) of the constitution compel results in PR representation. This must be changed. | The submission appears to be concerned with the choice and design of an electoral system. There is a separate Parliamentary process to review the electoral system for National and Provincial Elections. |
| Entire Bill | All Electoral Acts &Constitution  | **The 70s Group & Patriotic Movement SA**: Direct Elections including for the President are Necessary In South Africa: Voters do not elect any politician directly except for ward councillors. Politicians are appointed to legislatures by their respective political parties following elections, the number from each political party determined by the proportion of the vote they received in the electoral contest. This means the voters do not have the right to choose their president, their member of parliament, their provincial premiers and their mayors. This renders politicians bound to their political parties rather than the voters, and indicates that electoral reform should address the effective denial of the electoral rights of citizens. At present, a constitutional right of citizens themselves to elect their leaders is not in place, realised or guaranteed. The following are proposals which should be considered:**Direct Representation (DR):*** DR in governance structures is in the interest of participatory democracy, growth, development, and security in South Africa.
* DR ensures that elected political office bearers are directly accountable to the electorate.
* DR opens doors for a diversity of candidates to be elected, irrespective of gender, colour and ethnicity. In contrast, when parties compile lists of candidates, inter and intra party dynamics and political survival issues result in lists that often result in selection of candidates not worthy of political leadership positions.
* DR narrows the gap between the people and those who rule them.
* DR creates a more effective channel of communication between the leaders and the rural and urban citizenry, the affluent and the peasants.
* DR offers a greater chance of preventing dominance of the political system by just one political party and a party political elite.
* DR will eliminate the risk of election manipulation. Elected representatives will have a say in the appointment of certain officials in the public service and diplomatic services.
* DR is unaffected by district divisions, which in South Africa are determined by independent processes, and will thus not be vulnerable to gerrymandering. Districts only serve a logistical purpose for organising elections.

**Presidential Elections** We propose that all individuals irrespective of political party affiliations must have the right to stand for presidential elections, and be elected by name as an individual. The voters must have the right to directly elect their president, who will in turn have the right to appoint her/his cabinet. At the moment the president is elected by members of parliament. Members of parliament are not directly elected by the voters, but are appointed by the political parties according to the respective internal party electoral process. The voters are used as voting fodder without the rights to elect their representatives directly. We propose that schedule 5 procedure for elections of the president be amended. The president must be elected on the basis of one citizen one vote and not by the National Assembly. Chapter 5 section 86 of the constitution should be amended. **Members of Parliament** We propose that members of parliament be elected directly by the voters unlike at present, when they are appointed by their party headquarters (or party secretariat). At present citizens have the right to vote only for a political party to represent them in the National Assembly, and not for an individual candidate who will be directly accountable to voters in a constituency, with elections taking place across the country in large, multi-member constituencies. The Constitutional Court has ruled that all individuals irrespective of political party affiliations have the right to stand as a member of parliament, and that voters should have the right to directly elect their members of parliament. We propose that 75% (300) of members of parliament be elected on a multi-member constituency basis. This will include candidates nominated by political parties, NGOs as well as independent candidates. We propose that 25% (100) of members of parliament be appointed by political parties as per ratio of the votes the party gets. This will need constituencies to be drawn up on a national, demographic basis so that 300 MPs can be elected in large, multi-member constituencies. We propose that the ratio of the votes of independent candidates and minority parties should be used to support the candidate with the highest vote ratio We hereby propose that The Electoral Laws Amendment Act 34 of 2003 be amended. **Provincial Premiers** We propose that all individuals irrespective of political party affiliations should have the right to stand as candidates for provincial premiership of the provinces where they live. Voters should have the right to directly elect their Provincial Premiers. At present the voters, vote for a political party to represent them in the provincial legislature, with the hope the party will nominate credible individuals for legislature. This is undemocratic. **Mayors** We propose that all individuals irrespective of political party affiliation should have the right to stand as candidate for mayor in the towns, cities and metropolitan constituencies where they live. Voters should have the right to directly elect their mayor. | The Bill does not address the findings of the Constitutional Court judgement handed down in June 2020 in the *New Nation Matter.* There is a separate Parliamentary process to review the Electoral Act in order to bring it in line with the Constitution following the judgement of the Constitutional Court.The Municipal Electoral Act is not implicated by the judgement and so is the election of Mayors and other office bearers at municipal sphere. |
| clause 20 | Municipal Electoral Act Section 47 | **City of Cape Town: The Municipal Electoral** Act governs a ‘voting procedure’ for municipal elections. This section prescribes the method by which voters may vote in detail. Voters must vote by entering a voting compartment at their voting station, marking a ballot paper in a way that indicates their preference, and placing the marked ballot in the ballot box. Clause 20 of the Bill authorises the Commission to prescribe a different voting procedure for those voters whose names appear on the voters’ roll, without addresses. Clause 20 represents an **impermissible delegation by parliament** of its legislative function to determine the voting method for elections, to the Electoral Commission; and provides the **Commission with an impermissible unfettered discretion**, with no checks and balances and no duty to consult the public. **Impermissible delegation** Although it is appreciated that parliament may delegate its law-making powers, it must be consistent with the Constitution: See Executive Council of the Province of the Western Cape v Minister for Provincial Affairs and Constitutional Development, Executive Council of KwaZulu-Natal v President of the Republic of South Africa [1999] ZACC: [122] The authority of Parliament to delegate its law-making functions is subject to the Constitution, and the authority to make subordinate legislation must be exercised within the framework of the statute under which the authority is delegated. It is also trite that where the Constitution indicates that a matter must be prescribed in national legislation there is a strong indication that the legislative function may not be delegated by Parliament - see Executive Council of the Province of the Western Cape:[125] The Constitution uses a range of expressions when it confers legislative power upon the national legislature in Chapter 7. Sometimes it states that “national legislation must”; at other times it states that something will be dealt with “as determined by national legislation”; and at other times it uses the formulation “national legislation may". Where one of the first two formulations is used, it seems to me to be a strong indication that the legislative power may not be delegated by the legislature, although this will of course also depend upon context. The Constitution requires that municipal elections must take place in terms of an electoral system that is prescribed by national legislation: See S157(2) - The election of members to a Municipal Council as anticipated in subsection (1)(a) must be in accordance with national legislation, which must prescribe a system .... In addition, the Constitutional Court has on numerous occasions confirmed that Parliament has the “constitutional authority and duty" to design the electoral system and that the details of our electoral system are a matter left to Parliament. In this regard see AParty and Another v The Minister for Home Affairs and Others, Moloko and Others v The Minister for Home Affairs and Another (CCT 06/09, CCT 10/09) [2009] ZACC 4: [5] Parliament has the constitutional authority and duty to design an electoral scheme to regulate the exercise of the right to vote. This is apparent from sections 46(1), 105(1) and 157(5) of the Constitution. In New National Party this Court held: The right to vote contemplated by section 19(3) is therefore a right to vote in free and fair elections in terms of an electoral system prescribed by national legislation which complies with the aforementioned requirements laid down by the Constitution. **The details of the system are left to Parliament…****Unfettered discretion** Clause 20, and for that matter the Bill itself, does not provide any guidance to the Commission on the design of a different voting method. It opens the door to arbitrary or capricious decision-making and allows the Commission to unilaterally design a system without any guidance from Parliament. Clause 20 also ignores the constitutional requirement of **public participation** in the law-making process. The law-making function is irrevocably connected to public participation:See S59(1)(a): The National Assembly must ..... facilitate public involvement in the legislative and other processes of the Assembly and its committees.  | The amendment to section 47 of the Municipal Electoral Act brings the Act in line with section 38(8) of the Electoral Act to create consistency on how voters without addresses on the voters’ roll cast ballots on voting day. The salient principles underpinning the amendment in section 47 are as follows:1. A voter without an address on the voters’ roll cannot be disenfranchised;
2. A voter without an address on the voters roll on voting day must first supply their address before they are issued with a ballot paper and permitted to vote;
3. The supplied address must locate within the ward in which the voter intends to vote;
4. Agents of contestants may object to the voter being permitted to vote in that ward based on the address supplied.

The rephrasing below is proposed to make it clear that Parliament has legislated the manner of the different voting procedure:*20. Section 47 of the Local Government: Municipal Electoral Act, 2000, is hereby**amended by the insertion after subsection (6) of the following subsections:**‘‘(7) The Commission may prescribe a different voting procedure, which must accord with the provisions of this section, for those voters whose names appear on the voters’ roll, without addresses: Provided that if such voter’s place of ordinary residence is located outside the relevant—**(a) ward on whose segment of the voters’ roll that voter’s name appears, the voter concerned may not vote in the ward election contemplated in section 22(1)(b) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);**(b) local or metropolitan municipality on whose segment of the voters’ roll that voter’s name appears, the voter concerned may not vote in the election contemplated in section 22(1)(a) or the ward election contemplated in section 22(1)(b) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);**(c) district municipality on whose segment of the voters’ roll that voter’s name appears, the voter concerned may not vote in the election for members of the district council contemplated in section 23(1)(a) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).’’*  |
| Clause 14 | Section 50(1) | **Dear South Africa and Mr Ferdinand Rothmann**The Bill has reworded section 50(1) to remove all references to ballot papers currently in the Act. These omissions will make it difficult, if not impossible, to achieve a proper ballot reconciliation.The submission is further opposed to the introduction of a different method for voters who appear on the voters’ roll without an address. | The amendment provides for the form to be regulated instead of it being in the Act. This is intended to allow flexibility in accommodating any additional requirements or rationalization of information on the form. For example, the introduction of sections 38(8), 41(1A), Regulation 18A and 19(4) of the Election Regulations have implications for the form.These provisions have combined to introduce “new categories” of disputed votes that are not finalised at the voting stations. These are reserved for adjudication by the Commission. Depending on the determination by the Commission these votes may have to be included in the final count of the votes at the station.The proposed change is thus not to limit the information that must be recorded on the form. The intention is to retain the requirements for the counting officer to account for the ballot papers at that voting station. The change is to regulate the form to enable flexibility to respond to new and emerging requirement without watering down the reconciliation requirement. Reference to the categories of ballot papers will be included in the regulated form which will be an annexure to the regulations. |
| Clause 9 | Section 24A of the Act.  | **Dear South Africa** The submissions do not support the Bill because of what they perceive to be an enabling provision permitting voters to vote in voting districts in which they are not registered. According to the submissions this will facilitate voter fraud by enabling “bussing in” of voters and create opportunity for unregistered persons to vote in elections.The net submission is that persons should not be permitted to influence the outcome of elections in areas in which they are not register and or they are not ordinarily resident.  | Amendments to section 24(A) of the Electoral Act are intended to ensure that existing safeguard for the continued franchise of voters who unavoidably find themselves outside the voting districts in which they are registered on voting day during **National and Provincial Elections** is adjusted. The amendment it introduces controls to the existing practice to safeguard the credibility of elections by requiring that voting using section 24(A) should be by prior notice to the CEO. Thus, the proposed amendments intend to do away with existing applications for section 24(A) at a voting station on voting day. This is done in order to obviate accusations and possibilities of voters voting more times than they are entitled. This will thus preserve the credibility of the electoral process and electoral outcomes.There is no corresponding provision in Municipal elections and ward by-elections. So, the possibility of persons voting in wards and or Municipalities in which they are not registered on voting day does not arise.  |
| Clause 9 | Section 24A of the Act | **Dear South Africa** The submissions support the provision facilitating the participation by voters in voting districts other than those in which they are registered with the necessary safeguard. The support is in recognition that “many citizens have experienced change in their circumstances due to financial reasons, employment opportunities and family circumstances”. | Amendments to section 24(A) of the Electoral Act are intended to ensure that existing safeguards for the continued franchise of voters who unavoidably find themselves outside the voting districts in which they are registered on voting day during **National and Provincial Elections** are adjusted and enhanced.This is achieved by making a section 24A vote only available by prior notice to the CEO.  |
| Clause 13 | S. 33 of Electoral Act  | **Dear South Africa x 1:** It appears in a) of the above clause that anyone, who wants to vote outside the Republic of South Africa, has to notify “ the [Commission within 15 days after the proclamation of the date of the election] chief electoral officer”. This is hardly enough time, particularly in the circumstance where a person only knows much later that he/she will be outside the Republic. The wording is also a little unclear, because in c) of the above clause mention is made that “he or she notifies the chief electoral officer in the prescribed manner by no later than the relevant date stated in the election timetable”. The two statements appear to contradict one another. | The amendment dispenses with the current requirements for voters to:1. notify the Chief Electoral Officer within 15 days of proclamation of the date of the election of their intention to vote outside the Republic in respect of voters and the mission at which they intend to vote, and
2. apply for a special vote at the mission on the date designated for special votes at the missions of the Republic.

Removal of reference to 15 days in the Act is intended to enable the Commission to regulate notification period in the election timetable thereby afford flexibility to consider a reasonable period which will not be shorter than 15 days. Furthermore, the amendment removes the requirement for voters who are registered at the specific mission of the Republic to notify the CEO if they intend to vote at that specific mission. These will be assumed to have an intention to vote in the segment where they are registered outside the Republic unless they indicate othwerwise. |
| Not in the Bill |  | **Dear South Africa.** There were submissions from individuals who have either indicated support or objection to the Bill without indicating a specific provision of the Bill or advancing a specific reason for their objection or support. A review of the submissions suggests that there are possibly three broad areas that are implicated by the submissions.The first seem to suggest an attack to the Bill on Constitutional grounds. The second area suggests concerns with the cost to the state if a form of electronic voting is authorised.The third is that the Bill introduces electronic voting.  | While the submissions provided scant details, responses are proferred from what could be discerned.The Bill has been certified for constitution compliance by the State Law Advisor.The Bill does not make any provision for or introduction of electronic voting. For this reason there are no additional cost to the state arising from electronic voting. |

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