



Citizens Parliament

Khoisan, First Nations

Nama Nation-	HRH King Corneels Links
Griekwa Nation-	HRH King Johannes Waterboer
Korana Nation-	HRH Queen Joyce Katz
Cape Khoi Nation-	HRH King Dirk Louis
San Nation-	HRH Queen Katrina Esau

20 February 2022

Parliamentary committee: Electoral Reform

For Attention:

Mr Eddy Mathonsi (083 709 8523)

Committee Secretary

By electronic mail: electoralact1@parliament.gov.za

PUBLIC COMMENT: ELECTORAL AMENDMENT BILL (B1-2022)

Introduction:

We the Khoisan Kingdoms and leadership was part of the birth of the New Nation Movement on 26-28 October 2017, Kairos Church, Bloemfontein. Our Khoisan First Nations under Royal Decree, representing the five main groupings in SA, directly joined the New Nation Movement represented by Princess Chantal Revell and Others in the case. We have engaged with the New Nation Movement and others in the Citizens Parliament. We are independently making this submission as a collective voice under Decree of the Khoisan First Nations Kingdoms.

Parliament is to secure a participatory democracy and ensure oversight and transparency.

In order for Parliament to comply with the *New Nation Movement*¹ Constitutional Court Judgment, where the Electoral Act² was declared unconstitutional³, Parliament is required to develop Legislation that will facilitate equal opportunity⁴ for citizens to exercise their political Constitutional rights⁵.

Parliament was given 24 months to develop this solution.⁶

Public Participation

¹ *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* [2020] ZACC 1.

² Act 73 of 1998.

³ Par. 4 of the majority judgment: “It is declared that the Electoral Act 73 of 1998 is unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties.”

⁴ Section 18 provides that “everyone has the right to freedom of association”.

⁵ Section 19(3)(b) provides that “every adult citizen has the right to stand for public office and, if elected, to hold office”.

⁶ Par 5: “The declaration of unconstitutionality referred to in paragraph 4 is prospective with effect from the date of this order, but its operation is suspended for 24 months to afford Parliament an opportunity to remedy the defect giving rise to the unconstitutionality.”

After 18 months, the Electoral Amendment Bill⁷ was gazetted⁸ on the 31st of December 2021, and introduced on the 10th of January 2022 – for comment by 21 February 2022. We hold that Parliament has failed to fulfil their mandate to ensure transparency or to secure participatory democracy, by failing to introduce the Bill timeously, and then by limiting the public’s opportunity for meaningful responses.

Objection

We strongly object to the proposed cosmetic alterations contained in this Bill. The order from the Constitutional Court was to amend the Electoral Act, to reflect equal opportunity (to those of political parties), for citizens to stand for public office and, if elected, to hold office. This is not a menial task, and will require the development of a robust system to accommodate, in a practical way, the incorporation of citizens into the current electoral regime. A wide range of solutions have been researched⁹ and proposed in the past.

Specifically, we object to:

1. The object of the Bill fails to recognize citizens and their Constituency Association’s Assemblies, Councils, Sectorial Parliaments and Citizens Parliament as legitimate platforms of citizens for effective interface, consultation on legislation, accountability and oversight with the three arms of Civil Government. The general reference to the people without proper facilitation through legislation has failed under the Parliament of political parties and it will fail if it just adds Independents with no reference to the citizens and their Constituency Association’s Assemblies, Councils, Sectorial Parliaments and Citizens Parliament for the individual Constituency and Provincial and National Constituencies.
2. The principle of 75% representation of Constituency Citizens by Constituency Emissaries (Independents) and 25% representation of proportional representatives as submitted by the Van Zyl Slabbert Report¹⁰ to Government in 2003, is still valid. The 50/50 proposed allocation in the Executive Bill, has no constitutional justification. Our submission is that the collective membership of political parties vs ordinary non-partisan citizens is, in actual fact, 1% membership of political parties and 99% non-partisan citizens and their associations. Furthermore, that our First Nation Kingdoms are allocated 20% of total seats allocated in National parliament and Provincial legislators as permanent allocation.
3. Two ballots are required for provincial legislatures and the National Assembly, one for representation of Constituencies by Constituency Independents and another one for proportional representatives. In counting, votes for Constituency Independents are shared amongst them only, including their Constituency Independents Caucuses in provincial legislatures and Parliament. Each vote for Constituency Independents should count in favour of Constituency Independents to the end of the counting process without any discarding.
4. The financial qualification is the gate and door to State Capture and corruption. Therefore, it should be replaced by the ethical code of conduct and a reasonable quota of voters’ support for the qualification of a candidate to both register and contest an election, instead of requiring monetary support to determine the legitimacy and qualification of candidates.

Amendments to the Bill

Further, the Citizen’s Parliament propose the following amendments to Bill [B1-2022].

1. Purpose of the Bill:

The stated objective of the apposed Bill [B1-2022] is too narrow and limits the scope of reform.

⁷ [B1-2022].

⁸ Government Gazette No. 45716 of 31 December 2021.

⁹ Electoral Task Team of January 2003 (Van Zyl Slabbert Report) and the High-Level Panel Report on the Assessment of Key Legislation and the Acceleration of Fundamental Change (Motlanthe Report).

¹⁰ See Fn 9.

Our submission is an all-encompassing objective:

“To amend the Electoral Act, 1998, and related legislation, to give full effect to section 19(3)(b) of the Constitution of the Republic of South Africa, to make provision for the direct nomination and election of non-partisan citizen’s emissaries in their diversity, permanent seats allocated to our First Nation of SA - to the National Assembly and provincial legislatures, to promote democratic governance and electoral accountability through both an open list voting system and a constituency based system; to provide for the establishment of constituencies and the review of constituency boundaries; to amend certain Schedules and to substitute Schedule 1A; and to provide for matters connected therewith.”

2. Definitions:

Act 73 of 1998, Section 1

Insert:

[all references to a “Party” or “Political Party” to include all citizen emissaries, including:

1. a “registered party”, registered in terms of section 15 of the Electoral Commission Act,
2. an “independent candidate”, registered in terms of section 15B of the Electoral Commissions Act, and
3. a “citizen association” registered in terms of section 15C of the Electoral Commissions Act.]

This eliminates the need to change every reference to a political party in all Legislation across the board, and it provides an opportunity to define and regulate the qualification and registration of “independent candidates” and “citizen associations”.

3. Body of text:

Act 73 of 1998

- 3.1 All reference to the financial qualification requirement to be removed for reasons advanced in point 4 of the specific objections above:

S 32A(3)(b) delete

S 32C(5) delete reference to qualification of candidates by payment of fee

S 106 1A delete reference to refunds

S 106 1A(2) delete reference to deposit

- 3.2 Section 7(a)(i-iv),
Section 8(a)(i-iv),
Section 8(b)(i-iv),
Section 11, Compensatory seats
Section 16(b)(i-iii)
Section 21(a)(i-iv)
Section 22(a)(i-iv)
Section 24(b)(i-iv)

Replace these sections with an equitable solution, work-shopped and developed with citizen representative movements.

This flies in the face of the Constitutional Court ruling as it does not provide a system that will accommodate citizen participation on an equal footing to political parties.

- 3.3 Section 35

Definitions:

Insert ‘citizen association’ means “citizen association” including “faith assembly and indigenous imbizo” and any non-partisan citizen association not registered as a political party, recognized to make political choices, including nomination of their own independent candidates to directly represent their individual and collective constituency best legitimate interests in provincial legislatures and Parliament

in terms of sections 18 and 19 and all other relevant sections of the Constitution of South Africa, and facilitated by national legislation.

Act 51 of 1996,

1. Insert:

Section 15B

“independent candidate” means a candidate not registered as a political party

Section 15C

“citizen association” including “faith assembly and indigenous imbizo” means any non-partisan citizen association not registered as a political party, recognized to make political choices, including nomination of their own independent candidates to directly represent their individual and collective best legitimate interests in provincial legislatures and Parliament in terms of sections 18 and 19 and all other relevant sections of the Constitution of South Africa, and facilitated by national legislation.

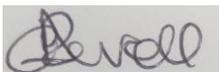
Conclusion

Once again Parliament has not only undermined the Constitutional Court judgment, but is also violating Section 2 of the Constitution with regards to its conduct of subjecting itself - as the collective representative of citizens to the Executive - thus failing to deal with the Constitutional Court directive in terms of Section 55 of the Constitution. This has resulted in the delay and waste of valuable time of more than one year and six months, deliberately limiting citizens' participation and failing to engage in adequate and meaningful consultation.

Therefore, Parliament must justify its failure in this regard. If it fails to convince the Constitutional Court, its expected application for an extension should not be granted. **Instead, the Constitutional Court should formally declare the conduct of Parliament and Executive inconsistent with the Constitution, for the endless violation of Section 2 of the Constitution, and for deliberately failing to uphold the Supremacy of the Constitution. This should result in the declaration of both the current Parliament and Executive as constitutional delinquents and their unconstitutional existence void and invalid as already determined by the Constitutional Court judgment of 11th June 2020, which was suspended for 24 months.**

Any constitutional means to remedy this constitutional and political crisis should include early elections and or Referendum in terms of the Referendum Act¹¹ as directed by the Constitutional Court under an Interim Administrator, under the supervision of the Constitutional Court.

Yours sincerely,



Princess Chantal Revell
Korana Royal House Administrator
Royal Decree Administrator
First Nation Kingdoms
Citizens Parliament

¹¹ 108 of 1983.