**REPORT OF THE MINISTERIAL ADVISORY COMMITTEE ON ELECTORAL SYSTEMS REFORM**

**Presented to the Honourable Minister of Home Affairs**

**By**

**The Ministerial Advisory Committee on Electoral Reform**

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# ACRONYMS

ACDP African Christian Democratic Party

AMS Additional Member System

ANC African National Congress

ASRI Auwal Socio Economic Research Institute

ATM African Transformation Movement

AV Alternative Voting

BUSA Business Unity South Africa

COPE Congress of the People

COSATU Congress of South African Trade Unions

CSOs Civil Society Organisations

DA Democratic Alliance

EC Eastern Cape Province

EFF Economic Freedom Fighters

ETT Electoral Task Team

FF+ Freedom Front Plus

FS Free State Province

HSF Helen Suzman Foundation

IEC Electoral Commission of South Africa

IFNASA Indigenous First Nation Advocacy South Africa

ISI Inclusivity Society Institute

FPTP First Past the Post

HLP High Level Panel

MAC Ministerial Advisory Committee

MDB Municipal Demarcation Board

MMC Multi member constituency

MMP Mixed Member Proportional

MPs Members of Parliament

MPLs Member of Provincial Services

PR Proportional Representation

NC Northern Cape Province

NCOP National Council of Provinces

NNM New Nation Movement

NPE National and Provincial elections

SACC South African Council of Churches

SAFTU South African Federation of Trade Unions

SMC Single Member Constituency

SNTV Single Non-transferable Votes

STV Single Transferable Votes

UJ University of Johannesburg

UKZN University of Kwazulu Natal

WC Western Cape Province

# EXECUTIVE SUMMARY

Pursuant to the Constitutional Court judgement and subsequent consultations between the NA and the Executive, the Honourable Minister of Home Affairs Dr Aaron Motswaledi established the Ministerial Advisory Committee (MAC) to help develop policy options on the electoral system that address the defects of the Electoral Act 1998. The former Minister of Constitutional Affairs, Mr Valli Moosa, was appointed as the MAC Chairperson. Members of the Committee are:

* Advocate Pansy Tlakula – the former Chairperson of the Electoral Commission of South Africa (IEC).
* Advocate Vincent Maleka – a Senior Counsel.
* Dr Michael Sutcliffe – former member of the Municipal Demarcation Board (MDB) and former Ethekwini Municipal Manager.
* Dr Nomsa Masuku – Commissioner of the Electoral Commission of South Africa (IEC).
* Dr Sithembile Mbete – Senior Lecturer at the University of Pretoria.
* Mr Norman du Plessis – former IEC Deputy Chief Elections Officer.
* Prof Daryl Glaser – Head of Department: Political Studies at Wits University.

In pursuit of its mandate, the MAC carried out its business through regular meetings, comprehensive review and analysis of existing literature and documents submitted by think tanks and other stakeholders on South Africa's electoral system and electoral systems on the African continent and beyond. It adopted the fairness, inclusiveness, simplicity, accountability, gender equality, proportionality, effective participation of independents, genuine choice, effectiveness, and legitimacy principles.

The MAC review of written submissions by electoral stakeholders, including civil society organisations (CSOs), think tanks, political parties, organised labour, and business, revealed that stakeholders welcomed the Constitutional Court judgement. Still, a few worried that a proliferation of independents would make matters worse, for example, by exacerbating patronage politics. While many expressed a desire for greater individual and local representation and accountability of members of Parliament (MPs) through the introduction of constituencies, a few questioned whether the electoral system lay at the root of the current dissatisfaction with government and worried that these changes would make little difference to democratic quality. Those supporting change in the electoral system expressed various views about preferred electoral system alternatives, with some favouring multi-member and others single-member constituencies. There were also other MMC proposals, such as the local rather than regional multi-member constituencies.

The MAC explored various options and heard from a range of public stakeholders in the course of its deliberations. But, first, it had to determine whether it should seek to satisfy the Constitutional Court requirement with little disruption to the existing electoral system or address public aspirations for an electoral system that includes a significant element of local and representation and individual accountability voters.

In the end, the MAC members could not reach a consensus on a single option but succeed in narrowing down the options to a fairly stark choice. These options are:

**Option 1: The slightly modified multi-member constituency (MMC), which stakeholders referred to as the minimalist option.**

This option entails modifying the existing multi-member electoral system to accommodate independent candidates in the national and provincial elections without many changes in the legislation. Those in favour of this option believe that it does not interfere with the constitutionally required general proportionality and is the best option for ensuring inclusiveness, gender representation, simplicity and fairness for independents. The following MAC members support this option:

Advocate Pansy Tlakula

Mr Norman Du Plessis

Dr Michael Sutcliffe

**Option 2: The mixed-member model incorporating single-member constituencies**

This option entails combining the first-past-the-post and proportional representation, making it a mixed-member proportional (MMP) system resembling the current local government electoral system, albeit with some improvements. It involves electing MPs from 200 single-member constituencies and the remainder from a single national multi-member constituency. Thus, voters would vote for a single MP to represent them in single-member constituencies (their first vote) and for a party to represent them in the single national multi-member constituency based on competing for closed party lists (their second vote). Those in favour of this option believe that it does not interfere with the constitutionally required general proportionality and is the best option for ensuring inclusiveness, gender representation, simplicity and fairness for independents.

The following MAC members support this option:

Mr Valli Moosa

Professor Daryl Glaser

Dr Sithembile Mbethe

Advocate Vincent Maleka

# 1. INTRODUCTION

The Bill of Rights in the Constitution of the Republic of South Africa 1996 assures peoples freedoms, including the freedom to partake in political and electoral processes directly or through freely chosen representatives. The country has organised five national and provincial elections (NPE) since the country's first and epoch-making 1994 elections that ushered in a democratic dispensation. It has also successfully conducted five municipal elections since the collapse of Apartheid in 1994. Both the NPE and municipal elections follow a five-year cycle. The polls have, over the years, presented lessons and opportunities for the consolidation of electoral democracy in South Africa. While the frequency of the NPE and municipal elections is assured, there is always an increased demand on the Electoral Commission of South Africa (IEC), political parties, government, and all electoral stakeholders to ensure the integrity and quality of the electoral processes. In June 2020, the Constitutional Court released a judgement declaring the electoral law as unconstitutional.

## **Constitutional Court Judgement on Electoral Act**

On 11 June 2020, the Constitutional Court 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 (NA) and Provincial Legislatures (PLs) only through their membership of political parties". The Constitutional Court directed Parliament to rectify the defective sections of the Electoral law within a period of 24 months.

The Constitutional Court decision followed a challenge by the New Nation Movement (NNM), Ms Chantal Dawn Revell, GRO and Indigenous First Nation Advocacy South Africa (IFNASA). They contested the Electoral Act limiting of independent candidates' participation in the NPE.

Section 57A of the Electoral Act provides for the political party-based candidate lists to represent the NA and PLs. In addition, clauses 1,2 and 3, as well as clauses 11 and 12, specifically provide for the nomination of candidates by political parties contesting the NA and PLs elections, respectively.

The Constitutional Court judgement has effectively triggered the electoral system reform process ahead of the 2024 NPE. This process entails several albeit related multi-stakeholder activities. Key among these are the NA and the Executive-driven processes in response to the Constitutional Court Judgement. In addition, the Portfolio Committee on Home Affairs and the Select Committee on Security and Justice have, together with the Ministerial Advisory Committee (MAC), carried out comprehensive stakeholder consultations regarding the electoral system review.

## **Establishment of the Ministerial Advisory Committee**

The Honourable Minister of Home Affairs, Dr Aaron Motswaledi, established the Ministerial Advisory Committee to identify the extent of the constitutional provisions affected by the constitutional court ruling, develop policy options on the electoral system that address the defects of the Electoral Act 1998 based on a body of research that underpins policy options, and recommend possible options to be considered in the South African setting, consult with stakeholders in the development of the options. In addition, outline clear values against which to assess each of the options, take into caccount the electoral implications such a policy may introduce.

The former Minister of Constitutional Affairs, Mr Valli Moosa, was appointed as the MAC Chairperson. Members of the Committee are:

* Advocate Pansy Tlakula – the former Chairperson of the IEC.
* Advocate Vincent Maleka – a Senior Counsel.
* Dr Michael Sutcliffe – former member of the Municipal Demarcation Board (MDB) and former Ethekwini Municipal Manager.
* Dr Nomsa Masuku – Commissioner of the IEC.
* Dr Sithembile Mbete – Senior Lecturer at the University of Pretoria.
* Mr Norman du Plessis – former IEC Deputy Chief Elections Officer.
* Prof Daryl Glaser – Head of Department: Political Studies at Wits University.

The Committee was administratively supported by the Home Affairs Department Secretariat led by the Chief Director, Mr Cecil Sols and technically by Dr Victor Shale, seconded to the Home Affairs Secretariat by IEC South Africa.

# 2. SOUTH AFRICA ELECTORAL SYSTEM OVERVIEW

## **2.1 National and Provincial Elections**

The electoral system for the NPE elections is PR provided for under Section 46 of the Constitution for the NA election and Section 105 of the Constitution for the PLs election. The system was adopted at the advent of democracy as an ideal consociational instrument at the country's critical political transition. Thanks to a high level of proportionality and the absence of an artificial threshold for representation, the system has ensured the inclusion of minorities in South Africa's electoral politics since the dawn of democracy.

South Africa's PR system divides the country into nine multi-member constituencies that follow the lines of South Africa's nine provinces. Voters are offered competing ranked closed party lists, and voters cast one ballot for a party list of their choice. Their vote is first used to determine parties share of votes in their constituency. They are then combined nationally to determine overall proportionality, with deviations from proportionality corrected from national and/or provincial party lists. For provincial elections, a single-tier or straight proportional system applies, and in this case, a province is treated as a single constituency.

Given that the national and provincial elections are held simultaneously, the PR follows a two-tier compensatory closed party list format. A quota of the total valid number of votes per party is used in the seat calculation procedure. This means that participating parties are allocated seats in a legislature in proportion to the number of votes secured (IEC 2019 Election Report). Political parties contesting the NPE submit candidate lists for the 400-member National Assembly and provincial legislatures. The list categories are:

* A National Assembly list or national to national list comprising 200 candidates.
* A National Assembly list or province to national list comprising 200 candidates.
* Nine provincial lists or provincial to province lists comprising candidates equivalent to the number of seats available in each provincial legislature.

The IEC predetermines the number of representatives for each region for every election in accordance with the number of registered voters. The proportional allocation of members of political parties for a region from closed party lists is determined by the votes cast in a region. In that sense, each region has a separate election, and votes are not transferable between regions to determine regional outcomes. After allocating regional members of the NA the votes for all parties in all regions are aggregated to determine each party's allocation of representatives from closed national lists to ensure overall proportionality.

The electoral system was appraised for the first time in 2002 because the Constitution did not provide the electoral system to be used beyond the 1999 NPE. Accordingly, an Electoral Task Team (ETT) was established by Cabinet in March 2002 to formulate the parameters of new electoral legislation and draft it to prepare for the NPE of 2004. The ETT report contained two recommendations. Its majority recommendation was that "…constituency representation should be built into the system", while the minority recommendation was that the electoral system existed up to 1999 should be retained unchanged. Notwithstanding the two opposing recommendations, the ETT was unanimous that:

* The core values of fairness, inclusiveness, simplicity and accountability should reflect in the electoral system.
* Preoccupation with accountability should not jeopardise the values of fairness, inclusiveness and simplicity.
* The electoral system should not be replaced or radically altered.
* The electoral system enjoyed considerable support and served South Africa well through two sets of national and provincial elections and significantly contributed towards transitional stability.

The electoral system was not changed and has since been used for 2004, 2009, 2014 and 2019 elections.

In 2017 a High-Level Panel (HLP) led by the former President of the Republic of South Africa Kgalema Motlanthe was established by Speakers' Forum to "assess the content and implementation of legislation passed since 1994 concerning its effectiveness and possible unintended consequences". Focusing on three thematic areas; (i) poverty, unemployment, and the equitable distribution of wealth, (ii) land reform: restitution, redistribution, and security of tenure; and (iii) social cohesion and nation-building, the HLP assessed implementation, identified gaps and proposed action on laws that require strengthening, amending or change.

Whilst not a central feature of their investigation, the HLP underscored the need to strengthen parliament accountability to the public through more direct linkages between Members of Parliament (MPs) and their constituencies. To achieve this, the HLP recommended the amendment of the Electoral Act to provide for an electoral system that makes MPs accountable to defined constituencies in a PR and constituency system for national elections.

## **2.2 Local government elections**

The electoral system for local government elections must comply with Section 157 of the Constitution, allowing for either a purely PR system or a mixed-member system. However, the system must result in general proportionality.

The existing local government system defined in national legislation is a mixed-member proportional system (MMP). It is a combination of the first-past-the-post (FPTP) electoral system for Ward Councillors standing in single-member constituencies and Proportional Representation (PR) electoral system for (PR Councillors) elected from closed party lists. Voters cast separate ballots for PR and Ward Councillors. Overall proportionality is determined by parties' shares of the Ward and PR votes combined.

The system is regulated in at least four different statutes, the Electoral Act 73 of 1998, the Local Government: Municipal Structures Act 117 of 1998, the Local Government: Municipal Electoral Act 27 of 2000 and the Local Government: Municipal Systems Act 32 of 2000. The electoral system determines seat distribution for the different municipal spheres in South Africa, namely, the Category A (Metropolitan) councils, Category B (Local municipalities), and category C (District municipalities). Currently, there are eight metropolitan councils, 205 local municipalities, and 44 district municipalities.

# 3. THE MINISTERIAL ADVISORY COMMITTEE METHODOLOGY AND PROCESSES

In pursuit of its mandate, the MAC carried out its business through regular meetings, review of existing literature on South Africa's electoral system, and electoral systems on the African continent and beyond. It also conducted public consultations with key electoral stakeholders.

## **3.1 Principles**

The MAC adopted the following principles to guide the assessment and choice of the electoral system.

* **Inclusiveness (national unity):** This is one of the central values enshrined in the South African Constitution. South Africa's electoral system should yield a broad representation of the South African population's demographic, ethnic, racial, and religious diversity. This remains a significant value, 27 years after Apartheid. The demarcation of constituencies must not reinforce Apartheid spatial patterns.
* **Fairness:** The system must provide for one person one vote of equal value.
* **Simplicity:** A balloting procedure that must be understandable and reduce incidents of spoilt ballots and also contribute to the credibility of the elections.

* **Accountability:** Accountability can be defined as 'the obligation of those with power or authority to explain their performance or justify their decisions. Accountability is linked to responsiveness, that government officials will listen to the grievance of the people and respond effectively. It is an essential aspect of the social contract between the people and their representatives. Essentially an accountable government is one that fully expresses the will of the people and has built-in mechanisms to prevent attempts to usurp the will of the people. Over the years, one of the prime criticisms of South Africa's ruling elite is that they are not accountable to citizens.
* **Gender Equality:** Section 1 of the Constitution enshrines equality and non-sexism as two of the founding values of the Republic. Section 9 of the Constitution enshrines the right to equality. The MAC should avoid selecting a system that will result in a reversal in gender equality.
* **Proportionality:** Whatever system is chosen must 'result, in general, in proportional representation (section 46(1)(d) and 105(1)(d) of the Constitution).
* **Effective participation of independents:** In the New Nation judgement, the Constitutional Court ruled that the Electoral Act should be amended to enable adult citizens to exercise their constitutional rights to stand for public office in national and provincial elections *without* joining a political party. Any system recommended by the MAC must enable the substantive participation of independent candidates.

* **Genuine choice:** Pursuant to the spirit of the Constitutional Court judgement, the electoral system should provide the voters with the chance to select not only among political parties and lists but also among individual candidates.
* **Effectiveness**: Given the likelihood of a high number of independent candidates both for the national and provincial levels, the electoral system should have the ability to generate a manageable number of candidates through an in-build threshold for candidate nomination.
* **Legitimacy**: the electoral system should reflect (much as the Constitution) genuine national consensus and not be seen by significant sectors of the population as flawed and unfair.

## **3.2 Review of relevant documents**

In erms of the terms of reference (TORs), the Honourable Minister requested the Committee to specifically review and analyse the following documents in developing their advice:

* SA Constitution.pdf
* Presentation - Home Affairs Committee, Parliament (1) (1).pdf
* Private Members Bill - [B34-2020] (The Electoral Laws Second Amendment Bill (2020) (Cope Bill).
* Judgment - New Nation v President of SA and Others - Constitutional Court-4
* Electoral Task Team Report - Slabbert Report
* The 2017 Report of the High-Level Panel on the assessment of key legislation and the acceleration of fundamental change.
* Home Affairs submiussion on the electoral system and reform.

The MAC not only reviewed and analysed these documents but it also believes that its advice must be framed within the existing Constitutional architecture. In addition, the MAC also reviewed several reports and documents submitted by different organisations on the electoral system. These include:

* The Council for the Advancement of South African Constitution (CASAC) 2021 Proposal for Electoral Reform.
* The Helen Suzman Foundation (HSF) 2020 proposed National Assembly electoral reform document.
* The Inclusivity Institute (ISI) 2021 proposed electoral model for South Africa.
* The 70s Group May 2021 electoral system submission document.

These submissions were comprehensively reviewed and analysed.

## **3.3 Public Consultations**

The MAC consulted with key stakeholders who will be directly and indirectly affected by the outcome of the exercise. A detailed list of stakeholders who made submissions to the MAC is attached as annexure 2 to this report.

# 4. OVERVIEW OF THE EMERGING ELECTORAL SYSTEMS OPTIONS

## **4.1 Stakeholder perspectives**

The interpretations of what the 11 June 2020 Constitutional Court Judgement requires are as diverse as the consulted documents and electoral stakeholders CSOs, think tanks, political parties, organised labour and business. Such interpretations shaped several proposals that the MAC considered. A number of stakeholders welcomed the Constitutional Court judgement, but a few worried that a proliferation of independents would make matters worse, for example, by exacerbating patronage politics.

While many expressed a desire for greater individual and local representation and accountability of MPs through the introduction of constituencies, a few questioned whether the electoral system lay at the root of the current dissatisfaction with government and worried that these changes would make little difference to democratic quality.

Those supporting change in the electoral system expressed various views about preferred electoral system alternatives, with some favouring multi-member and others single-member constituencies.

There were also other MMC proposals by stakeholders. For example, one of the proposals was the local rather than regional multi-member constituencies. These proposals can be considered variants of the Van Zyl Slabbert model. These variants would incorporate independents (as they are required by the Constitutional Court) in various ways.

In some, independent individuals compete with other party-affiliated individuals. In other cases, where independents compete with parties, some manner is determined for rendering independents functionally interchangeable with or equivalent to parties so that they can seamlessly fit into a system based on party voting.

They propose constituencies based on the existing metropolitan or district boundaries and favour the restoration/enhancement of proportionality from national lists of candidates, whether drawn from closed party lists or standing as individuals.

On voting, some favour a situation where voters vote for individuals in the local MMCs while others prefer that the voters vote for parties. In addition, there are those that would have local-MMC votes distributed proportionately and those that would have them selected in order of how many votes they get.

Regarding proportionality, there are those who fancy a separate vote to restore national proportionality and those who think that national proportionality would be restored by aggregating a single vote across MMCs.

None of the proponents of Slabbert-inspired local-MMC variants favour a typical continental European style open party ballot, but they all prefer compensatory top-up to restore proportionality.

## **4.2 Multi-Member Constituency variations**

The MAC acknowledges that there are too many MMC system variations, both theoretically and in practice, to be fully covered in this report. A broad but not exhaustive categorisation, would however, include systems with the following characteristics:

### 4**.2.1 Parallel systems**

Where a number of representatives are elected from multi-member constituencies and where a number are elected on a proportional basis for which a separate ballot is used. The two ballots lead to separate outcomes independent of each other. Such a system does not lead to overall proportionality and thus does not meet the requirements of our Constitution.

### **4.2.2 Compensatory systems**

Where a number of representatives are elected from multi-member constituencies and where a number of compensatory seats are subsequently allocated in accordance with the support of each successful party to ensure proportionality. Such systems are categorised as two-tier compensatory systems, and they meet the requirements of our Constitution. Such systems fall into two broad categories.

1. The systems where boundaries are adjusted according to the number of representatives to be elected. There are two alternatives of the first category of systems where boundaries are adjusted. A widely used option has a defined number of representatives, for example, 5 per constituency.

These systems require the demarcation of constituency boundaries to ensure that each contain an approximately equal number of voters. There are, however alternatives where the number of representatives varies between set parameters, for example, between 3 and 7 representatives per constituency. Such systems also require demarcation of constituency boundaries but offer greater opportunities to keep to at least some existing legal or administrative boundaries.

1. The systems where existing boundaries as constituency boundaries are fixed and the number of representatives to be elected are adjusted in accordance with the number of registered voters. These systems raise few or no demarcation issues.

The submissions to the Committee on multi-member constituency systems included many variations, often without defining details, and a common theme did not emerge.

A potential two-tier compensatory system with fixed boundaries is illustrated hereafter. The particular option is chosen for illustration purposes only as it expands on the current electoral system that functions on the same basis, where 200 representatives are elected from 9 multi-member constituencies with provincial boundaries as fixed boundaries. The allocation of an additional 200 compensatory seats taking overall voter support for each successful party into account ensures a proportional outcome.

The example is based on the same core principles with municipal district council and metro council boundaries as electoral boundaries and expands the current 9 multi-member constituencies to 52 constituencies. That would consequently align electoral boundaries at all three levels of government.

All two-tier compensatory systems lead to an outcome of proportional representation, in general, and the choice of which to favour would not fundamentally favour or disadvantage political parties regarding the total number of seats they attain.

# 5. PREFERRED OPTIONS

Guided by the 2020 Constitutional Court judgement that citizens enjoyed the right to stand for political office independently of political parties, this MAC set about finding a model for an electoral system that could accommodate independents while preserving benefits of the existing electoral system, notably the constitutional requirement of general proportionality of representation.

The MAC explored a variety of options and heard from a range of public stakeholders in the course of its deliberations. One question that confronted the MAC early on was whether the Committee should seek to satisfy the Constitutional Court requirement with as little disruption to the existing electoral system as possible, or whether it should use the occasion to attempt to address public aspirations for an electoral system that includes a greater element of local and representation and individual accountability to voters.

In the end the MAC members were not able to reach a consensus on a single option, but the Committee did succeed in narrowing down the options to a fairly stark choice. These options are:

* **Option 1:** The slightly modified multi-member constituency (MMC) which accommodates independents but requires relatively minimal changes to the constitution. This option favours inserting independents into the existing electoral system, enabling independents to compete with political parties for votes. It was supported by the following MAC members: Advocate Pansy Tlakula, Mr Norman Du Plessis and Dr Michael Sutcliffe.
* **Option 2:** The single-member constituency (SMC) option: This Option favours introducing single-member constituencies, with proportionality secured via party lists. Here independents would stand as individuals in constituencies and compete together with associates for the party-list vote. It was supported by the following MAC members: Mr Valli Moosa, Dr Sithembile, Advocate Vincent Maleka and Professor Daryl Glaser.

We hope that in simplifying the options to a stark choice, the MAC will have succeeded in equipping the Minister and others to choose the future electoral system.

The preferred options are discussed below regarding what they are, how the national and provincial legislatures are composed, proportionality, candidate qualification requirements, demarcation of boundaries, number of ballot papers, vacancies, and whether the option satisfies the principles adopted by the MAC. The option advocates for retaining the electoral system as provided for in sections 46 and 105 of the Constitution.

# 5.1 OPTION 1: A MODIFIED MULTI-MEMBER CONSTITUENCY (MMC) SYSTEM TO ACCOMMODATE INDEPENDENT CANDIDATES

|  |
| --- |
| This option entails modifying the existing multi-member electoral system to accommodate independent candidates in the national and provincial elections without many changes in the legislation, including not interfering with the constitutionally required general proportionality. |

### **5.1.1 Description of the option**

The option advocates for the retention of the electoral system. To accommodate independent candidates as per the Constitutional Court ruling, this option focusses primarily on the Constitutional Court judgement that independent candidates should be included in the electoral system. This should is the primary objective of any changes to the electoral system. This option states that this must also be done in the simplest possible way and be fair to independent candidates wishing to stand for elections.

Such changes would include amending the current definition of "party" in the Electoral Commission Act No 51 of 1996 such that 'party' refers to a registered political party and includes an independent candidate contesting elections, any organisation or movement of a political nature which publicly supports or opposes the policy, candidates, or cause of any registered party, or which propagates non-participation in any election.

The option recommends that the existing system of an MMC for the NA and a straight proportional vote for the PLs should remain as that would be fairest for independent candidates. It would, for example, allow that independent candidates wishing to stand for either national or provincial are then able to gain support for their candidacy from the largest possible area (in this case, the province in which they reside). This means that:

* + The province remains a "Constituency" for independents and other parties contesting for 200 seats in the NA elections, and
  + The province in which the independent candidates resides becomes the "Constituency" for independents contesting the PLs elections. Those favouring this option are of the view that demarcation of possible "constituencies" below the provincial level would go against some of the MAC principles given the existing spatial inequalities in South Africa, including economic, ethnic and other disparities. These inequities would make any demarcation process always subject to complaints of gerrymandering. It must be stressed that the greater the number of constituencies, the greater is the complexity and cost in running such elections.

### **5.1.2 Composition of the National Assembly and the Provincial Legislatures**

Under this option, the current composition of seats in the NA and PLs would remain unchanged. The NA would comprise the 200 regional seats and 200 compensatory seats (closed lists). The 200 regional MPs are elected in the nine regions (provinces/multi-member constituencies), and independent candidates would also be elected from these nine regions. The IEC determines the number of representatives for each region before an election on a proportional basis in relation to the number of registered voters in each region.

The votes cast for parties in each region determines the allocation of seats per party on a proportional basis. In essence, each region constitutes a separate election and votes cast in one region cannot be considered in any other region. As turnout varies in the different regions, the quota for determining the results in each region would also vary, resulting in a deviation from overall proportionality when the results of all nine regions are combined. In the 2019 election, this deviation came to 3,5 per cent.

The 200 Compensatory seats serve to restore overall proportionality where the votes for parties in the 9 regions are added together to determine the share of each party in the overall vote. This ensures the constitutional requirement for proportionality in general.

The allocation of seats for the independent candidates would be similar to allocating seats in municipal elections. In addition, the allocation of seats after the provisional allocation would no longer be based on the largest remainder but based on the highest average number of votes per seat already awarded. This would be fairest for independent candidates. Using the largest remainder would result in inequities when some smaller parties are elected to the NA and PLs with far fewer votes than the larger parties. This goes against the principle that there should be one person, one vote, one value.

In the case of PLs, the single ballot, including all parties (political, movement, independent), is a straight proportional election.

### **5.1.3 Proportionality**

This option does not envisage many changes to what obtains regarding the proportionality of the current electoral system. It suggests that independent candidates would be elected if they meet the quota, and once they have secured their seat, their votes would be discarded for the determination of a new quota for the determination of representation by other parties with PR lists.

### **5.1.4 Candidate qualification requirements under this option**

This option suggests the following qualification criterion for the NA and PL elections.

1. A residential qualification requirement for all candidates (independent and other parties) to restrict them to compete in more than one region.
2. A proof of sufficient voter support requirement for independent and unrepresented political/movement parties to manage the risk of too many names of parties on the ballots.
3. Satisfaction of the legal requirements for registration and proof of sufficient voter support requirement for political parties not already elected to the legislatures.

In light of the above qualifications, Parliament may have to determine whether independent candidates will pay election fees and whether they are entitled to funding be subjected to consider the issue of election fees and the funding of independent candidates once elected.

### **5.1.5 Demarcation of boundaries**

Under this approach, the provincial boundaries are contiguous to constituency boundaries and, therefore no need for demarcation in the case of the National Assembly. In the case of the PL, there would be no "constituencies" as this is the fairest for contesting independent candidates.

As indicated above, demarcation of possible constituencies below the provincial level carries the serious risk of complaints of gerrymandering.

### **5.1.6 number of ballot papers**

The option proposes no changes in the current number of ballot papers where a single ballot paper is used to elect political parties and independent candidates to the NA and PLs. The votes cast for parties (including independents) in each province would determine the allocation of seats per party on a proportional basis.

## **5.1.7 Vacancies**

Vacancies under this option will be as follows:

1. In the case of independents, vacancies for the NA and PLs would be filled by recalculating the result of the election disregarding the votes for the independent candidate.
2. In the case of vacancies in elected party representatives, the next person on the party list of the person who vacated the seat would replace the vacancy (process that happens now).

### **5.1.8 Evaluation of the option in terms of the key principles adopted by the MAC**

|  |  |
| --- | --- |
| **Principle** | **Detail** |
| **Inclusiveness (national unity)** | Retaining a PR system with an MMC component for the NA vote will continue the existing inclusiveness of the electoral system, yielding a broad representation of the demographic, ethnic, racial, and religious diversity of the population. In addition, using the province as the basis for "constituency" (for NA) and the PL is the fairest to allow independents the greatest chance of gaining support within and across these potential divides. |
| **Fairness** | The option allows for independents to have a fair opportunity to enter their names onto the NA and PLs ballots. |
| **Simplicity** | Poling and seat allocation procedures are simple, and stakeholders are familiar with them, and they will be far more cost-effective than systems requiring many more se[parate elections and/or an additional demarcation process. |
| **Accountability** | Accountability is a post-elections issue, and Parliament should ensure that mechanisms are in place to ensure elected representatives are accountable to citizens. |
| **Gender Equality** | This option has the potential to generate the highest levels of gender representation due to it being closest to a pure PR component. |
| **Proportionality** | This option satisfies the constitutional requirement of general system proportionality. |
| **Effective participation of independents** | This option ensures the fairest chance of representation of independent candidates in NA and PLs. |
| **Genuine choice** | This option allows for the voters to have a chance to select not only among political/movement parties and lists but also among independent candidates. |
| **Effectiveness** | Introduction of minimum candidature requirements, including the proof of sufficient voter support, ensures a manageable number of candidates through an in-built threshold for candidate nomination, whether or not it is an independent or party candidate |
| **Legitimacy** | The support provided by voters through their turnout in the improvement of the already widely supported electoral system by registered voters augments its legitimacy. |

# 5.2 OPTION 2: THE MIXED-MEMBER MODEL INCORPORATING SINGLE-MEMBER CONSTITUENCIES

|  |
| --- |
| This option entails combining the first-past-the-post and proportional representation, making it a mixed-member proportional (MMP) system resembling the current local government electoral system, albeit with some improvements. |

### **5.2.1 Description of the option**

This option can be understood as a member of the family of Mixed-Member Proportional (MMP) systems and as part of the sub-family of Additional Member Systems (AMS) found, for example, in Germany, New Zealand and the Scottish Parliament.

It involves electing MPs from 200 single-member constituencies and the remainder from a single national multi-member constituency. Voters would vote for a single MP to represent them in single-member constituencies (their first vote) and for a party to represent them in the single national multi-member constituency based on competing closed party lists (their second vote).

**Single-member constituency vote (200 constituencies)**

Two possibilities were suggested for conducting the single-member constituency elections (the first vote):

* **First-past-the-post (plurality)** – As in the local government system, the candidate that wins the most votes in a constituency wins the election.
* **Instant run-off or Alternative Vote (AV) (majority)– Voters select first and second preference candidates in their constituency.** If first preference votes fail to yield a 50 per cent plus one majority, second preference votes will be counted. This would ensure that MPs command the support of a majority in their constituencies and that constituencies are not won by unpopular minority parties. It would also ensure that a majority of voters in a constituency have an MP they can relate to, offsetting one disadvantage of single-member constituencies relative to MMCs.

The independent candidates standing in constituencies would stand in just one constituency.

**National Multi-member constituency vote (PR top-up)**

In the second vote, parties compile closed lists of candidates and voters vote for the party. Seats are distributed according to the number of votes each party wins. Only the national multi-member constituency, would count towards determining overall proportionality in Parliament. Seats won outright by a party in the single-member constituencies would be subtracted from their overall seat entitlement as determined by the second vote.

Independents would be able to compete with parties as free-standing individuals in the case of the single-member constituencies and together with associates (to receive excess votes) in the single national multi-member constituency**.** Some system of excess vote transfer is needed on the second ballot to ensure overall proportionality in the possibility that an independent will win enough votes to justify many seats but only be able to fill one of them.

A party candidate would be able to stand simultaneously in both a constituency and on the national list. If they win a constituency, any seat they win on the national list goes to the next person down on the party list. This ensures that parties can maximise the chances that their top leaders will be elected.

### **5.2.2 Composition of the National Assembly and the Provincial Legislatures**

**National Assembly**

**200 MPs would be elected from single-member constituencies, and the remaining 200 from a single national multi-member constituency.** A 50:50 split seems the best way of combining meaningful local constituency representation with the assurance of proportionality and options for maximising gender equity. Fewer constituencies would be too large for meaningful local representation. Our research suggests that there could be up to 265 seats without serious risk of overhang. However, it is safer to keep the number to 200, both to reduce as close as possible to zero the risk of overhang and to ensure that party leaders who favour gender equity have the option of securing it thanks to a sufficiently large number of MPs coming from closed party lists (which can be more easily gender-balanced than constituencies). The experience of local government suggests that the employment of a 50:50 ratio in South African conditions is compatible with high levels of gender equity.

**Voters will vote for a single MP to represent them in single-member constituencies (their first vote) and for a party to represent them in the single national multi-member constituency based on competing closed party lists (their second vote).** This is a system familiar to voters from the local government.

**Only the second vote in the national multi-member constituency will count towards determining overall proportionality in Parliament.** Seats won outright by a party in the single-member constituencies would be subtracted from their overall seat entitlement as determined solely by the second vote.

**Provincial legislatures**

A single set of constituencies would be simultaneously employed in elections for both the National Assembly and Provincial legislature. The balance of seats in each provincial legislature would be composed of closed party-list candidates. In the Northern Cape, where there would be too few such constituencies to balance the party vote, constituencies could be subdivided for provincial elections.

There will thus be inter-provincially varied ratios of constituency to list MLAs.

This system would enable national and provincial elections to be synchronised, as at present. It would also reduce the scale of the demarcation challenge.

### **5.2.3 Proportionality**

The second vote in the national MMC to determine overall proportionality in Parliament represents this option's decisive break from the current local government model, where 'all votes count. Seats won outright by a party in the single-member constituencies would be subtracted from their overall seat entitlement as determined solely by the second vote.

The logic behind this is clear and twofold.

First and most importantly, it allows for an appropriate division of voting incentives. When voting for a constituency MP, voters will be choosing the person they want representing their constituency, irrespective of party affiliation. When casting the second vote, voters will be deciding which party they want to run the country (or to have a stronger voice in Parliament). Voters might choose to split their vote, voting for one party locally and another nationally. Voters would not need to worry that voting for one party locally will decrease the chances of their nationally preferred party winning overall.

Second, if 'all votes count', independents and small parties would have a much-reduced chance of winning seats as they would have to fight multiple separate constituency elections to accumulate enough votes. If the second ballot alone determines overall proportionality, independents and small parties have two routes to election: they can win a seat if they win a plurality or majority in a constituency-based on geographically concentrated local support, or they could win seats by contesting the second ballot in what amounts to a single national MMC. In that case, they would be able to gather support from across the country.

### **5.2.4 Candidate qualification requirements under this option**

This single member option minimum candidate qualification requirements include:

1. A proof of sufficient voter support requirement for independent and unrepresented political/movement parties to manage the risk of too many names of parties on the ballots.
2. Satisfaction of the legal requirements for registration and proof of sufficient voter support requirement for political parties not already elected to the legislatures.
3. The NA will decide if residency requirements could be a condition.

### **5.2.5 Demarcation of boundaries**

**Constituencies will be demarcated by combining local government wards**. In order to facilitate cooperative government, they should not cross metro, district or provincial boundaries. Slight variations in numbers of voters or population per constituency would be offset by the second proportional vote.

**A given candidate will be able to stand simultaneously in both a constituency and on the national list**. If they win a constituency, any seat they win on the national list goes to the next person down on the party list. We do not think it a good idea to impose constituency residency requirements at this stage. However, if such requirements are imposed, it might be better for national party leaders to take up their list seat, triggering a by election for their constituency seat.

**All constituency MPs should have well-staffed constituency offices in those constituencies and regular surgeries there**. A party may decide to assign a list MP to a constituency where they do not have an elected constituency MP, to provide party supporters there with additional representational options.

### **5.2.6 number of ballot papers**

This option envisages the use of two ballot papers for the NA elections where voters would vote for a single MP to represent them in single-member constituencies (their first vote) and for a party to represent them in the single national multi-member constituency based on competing for closed party lists (their second vote).

The same will apply for PL elections.

Voters would be invited to cast four votes overall on election day – two for the National Assembly and two for the Provincial Legislature

### **5.2.7 Vacancies**

Vacancies under this option could occur in the following manner:

1. Death
2. Resignation from the legislature
3. Defection/expulsion from a party
4. Recall of a constituency MP/MPL by a designated proportion of registered voters in their constituency.

Vacancies under this option would be addressed in the following manner:

1. In the case of constituencies, vacancies for the NA and PLs would be filled through by-elections in the respective constituency for that seat.
2. In the case of vacancies in elected party-list representatives, the next person on the party list of the person who vacated the seat would replace the vacancy (a process that happens now).

### **5.2.8 Evaluation of the option in terms of the fundamental principles adopted by the MAC**

|  |  |
| --- | --- |
| **Principle** | **Detail** |
| **Inclusiveness (national unity)** | The principle of proportionality is retained in the national multi-member constituency election, which accurately reflects the views of the electorate nationally and provincially.The demarcation of constituencies by combining local government wards can be done in a way that does not reinforce apartheid spatial patterns. |
| **Fairness and Simplicity** | It is a relatively simple voting system, familiar to voters from local government. Voters cast two votes, one for a constituency representative and one for a party (at both national and provincial level). |
| **Accountability** | The option involves individual representation and accountability. Voters determine which particular candidate is elected in constituencies and pass judgement on candidate choices made by parties. Voters retrospectively hold candidates accountable at subsequent elections.  The option also involves direct constituency representation, where voters have a 'local' MP they can approach and represent their interests.  The option also involves direct constituency representation, where voters have a 'local' MP they can approach and represent their interests. All constituency MPs should have well-staffed constituency offices in those constituencies and regular surgeries there.  A party may decide to assign a list MP to a constituency where they do not have an elected constituency MP, to provide party supporters there with additional representational options. If the recall option is introduced, there is a still further accountability mechanism. |
| **Gender Equality** | The options 50:50 split seems to combine meaningful local constituency representation with the assurance of proportionality and options for maximising gender equity. The experience of local government suggests that the employment of a 50:50 ratio in South African conditions is compatible with high levels of gender equity. |
| **Proportionality** | The system is proportional to a significant degree due to the compensatory top-up from party lists to correct inter-party proportionality imbalances generated by constituency elections. |
| **Effective participation of independents** | The option accommodates independent candidates more naturally than many MMC models, including the closed party list model. Independents can simply stand as free-standing individuals in the local constituencies (as well as, with associates, nationally).  It also accommodates independents substantively, because they have two separate routes to winning seats. |
| **Genuine choice** | Voters will have a wide range of parties and independents to choose between. |
| **Effectiveness** | The model would entail some challenge in demarcating constituencies, but these can be ameliorated by combining existing wards. |
| **Legitimacy** | The system should command a wider legitimacy insofar as it meets a variety of public demands (e.g. for individual and local representation) while satisfying constitutional requirements of proportionality.  It involves direct constituency representation, where voters have a 'local' MP who they can approach and who can represent their interests.  It also provides two routes for independents to win seats. There is some potential complication in the possible politicisation of constituency demarcation, but this will be ameliorated by the assurance that overall proportionality will be retained. |

# 6. CONCLUSION

We would like to express our gratitude to the many stakeholders who took the trouble to provide us with verbal and written advice. We would also like to express our gratitude to the Minister for having afforded us the privilege to serve in this Committee and to make recommendations on a matter of national importance. **7. ANNEXURE 1: Consulted Stakeholders**

| **Stakeholder category** | **organisations** |
| --- | --- |
| **Political parties** | African Christian Democratic Party (ACDP)  African National Congress (ANC)  African Transformation Movement (ATM)  Congress of the People (COPE)  Democratic Alliance (DA)  Freedom Front Plus (FF+)  Economic Freedom Fighters (EFF) |
| **Civil Society Organisations** | Activate Change Drivers  Corruption Watch  My Vote Counts  One South Africa Movement  Youth Lab  The 70's Group  iTrends |
| **Organised Business** | Business Unity South Africa (BUSA) |
| **Organised Labour** | Congress of South African Trade Unions (COSATU)  South African Council of Churches (SACC)  South African Federation of Trade Unions (SAFTU) |
| **Academia** (Local and external) | University of Kwazulu Natal (UKZ)  University of Johannesburg (UJ) |
| **Research Outfits and Think Tanks** (Local and external) | Helen Suzman Foundation (HSF)  Inclusivity Society Institute (ISI)  Auwal Socio Economic Research Institute (ASRI) |
| **Faith Based Organisations** | South African Council of Churches (SACC) |