



## The 70s Group Input: Electoral Amendment Bill (B1-2022)

This constitutes the 3<sup>rd</sup> formal input made by the 70s Group on the necessity to have serious electoral reform to deepen democracy and make elected officials more accountable to the voters.

**The 70s Group is Anti-Sectarian, Anti-Racist and Anti-Sexist.** Constituted as a non-profit entity (Reg. No: 2018/421121/08) by that generation of activists of the late 1960s and 1970s when apartheid was at its height, we are committed to the quest for excellence in our country and enhancing social cohesion, through deepening the democratic project, building necessary bridges in a sea of tumultuous contestation, divisive rhetoric, and intolerance, thus restoring our common humanity in building our nation. In the aftermath of Sharpeville and the banning of the ANC and PAC, members of the 70s Group (then in their teens and early twenties) were stirred into becoming unashamedly political, despite intense security police harassment, jailing and banning orders. The 70s activists dented narrow ethnicity and *separate development*.

### 1. Background

The colonial conquest of South Africa (SA) brought about replacement of African forms of government and state with European forms of government and state. European forms of government mainly followed Roman Dutch law introduced by the Dutch from 1652 and by the British from 1795. The defeat of Bambatha in 1906 closed the chapter of Africans ruling themselves in SA.

The provinces of the Cape and Natal were governed by the British, while Orange Free State and the Transvaal were republics governed by Dutch settlers. These entities had governments ruled by the respective European colonisers in parallel to the subjugated African kingdoms and chiefdoms. By 1909 the Union of SA was affirmed in law by the Westminster Parliament following subjugation of the Dutch settlers (the Boers) by the British in the war of 1899-1902, resulting in the establishment of the Union of South Africa in 1910, with a franchise that essentially allowed only white men to vote for white male members of parliament. This replaced the qualified franchise in the former British-ruled Cape Colony, in which all males with property or an income above a certain level had been allowed to vote in the Cape Council<sup>1</sup>.

From 1910 white male voters in separate constituencies across the country voted for individual white male members to sit in the national parliament in Cape Town. In May 1930 white women could vote for and be members of parliament. Blacks - Africans, Coloureds and Indians - were still excluded from voting.

### 2. Whites-only constituency-based members of parliament before 1994

South Africa had white only Members of Parliament (MPs) who were elected by the white only

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<sup>1</sup> This non-racial but qualified franchise had allowed Dr Mpilo Walter Benson Rubusana (21 February 1858-19 April 1936), to be elected as the first African member of the Cape Council in 1909. Dr Rubusana was co-founder of the SA Native National Congress and the Izwi Labantu newspaper.

voters above the age of 18 years. Every constituency would be contested by white only candidates of the respective white only political parties. White voters held MPs individually accountable in their constituencies. White voters would replace MPs who did not behave according to their wishes. This was the case of JC Smuts who lost his seat in Standerton in 1948 when the white majority Afrikaners voted the Nationalist Party into office, replacing the United Party. This was how the whites-only parliament operated until 1994.

### **3. Advantages of the electoral system enjoyed by whites before 1994**

There are advantages to direct elections of all MPs by the voters:

- 3.1 There is individual accountability of MPs to the voters in each constituency in every general election;
- 3.2 In effect, MPs are directly employed as individuals by the voters and not deployed by their political parties;
- 3.3 MPs can be loyal to the constitution of the country and to the voters who elected them; and
- 3.4 Parliament is accountable to the people of SA.

### **4. Disadvantages of the constituency-based system**

These are possible disadvantages to direct election of MPs by voters in defined constituencies:

- 4.1 Votes of losing candidates may be lost and discarded, thus losing some representativeness; and
- 4.2 It becomes difficult for smaller political parties to be represented in parliament.

### **5. Proportional representation system: the closed list system from April 1994**

In 1994 the multi-party negotiations led to the adoption of a closed, party list system of election of MPs, also known as a 100 % proportional representation electoral system. Under these electoral laws, the voter only votes for a political party, and the country is treated as a single constituency. The voters cannot choose their MPs. The choice of MPs is left to the internal democracies of the political parties. The voters can only replace one political party with another party in proportion of MPs elected but they cannot replace any individual MP with another. Under this parliamentary electoral system, if the governing party headquarters into hands of those that are ins disrepute, that has corresponding effect on the state, with voters paralysed in between elections, being dependent on the dynamics inside the governing party.

Given that MPs are 100% dependent on the executive committee of their party for their selection and for remaining an MP at any time, MPs have no freedom of conscience when voting in the National Assembly. If they disagree with anything in legislation as presented to parliament, or if they are critical of anything in the conduct of their party, they stand obligated to hold the party line. They are not protected in being able to stay in parliament until the next general election, and they cannot appeal to voters to protect them. Several of the best MPs since 1994 were removed from the National Assembly by their parties for obeying their oath of office, which went against party dictates.

Retaining much of the current system, a compact reached in 1993, will indelibly harm SA further.

### **6. Advantages of the closed list system**

- 6.1 Highest possible proportional representation of parties in the National Assembly.
- 6.2 Most of the votes cast are used.
- 6.3 MPs from each political party are allocated from the party list in proportion to each party's percentage vote.

### **7. Disadvantages of the closed list system**

- 7.1 No individual accountability of MPs.
- 7.2 No individual responsibility of MPs to voters.

- 7.3 Uncritical support of MPs to party headquarters (HQ), instead of fealty to the Constitution and the country.
- 7.4 The cabinet and MPs appear to be employed by the HQ, instead of MPs being employed by the voters and cabinet being employed by the president.
- 7.5 When a party HQ falls into hands of disreputable special interests, impact extends to cabinet and MPs, to be just as tainted.
- 7.6 There is no loyalty of MPs to the voters and the voters cannot protect an MP against an errant party HQ.
- 7.7 MPs are solely loyal to the party HQ and not to the constitution of the country or the voters in their locality.
- 7.8 The president is also dependent to a high degree on the political administrative structures of the governing party, as are the premiers.
- 7.9 Removing voters from their elected representatives, adding to the extant socioeconomic insecurity and political uncertainty that have steadily become features of our fragile democracy, and which has made eligible voters refrain from participation.

## **8. Proposed Solution: Multi-Member Constituencies**

The proposed solution is to introduce large, multimember constituencies as recommended by the majority in the Electoral Task Team report of 2003, chaired by Dr Frederik van Zyl Slabbert. The majority recommendations of the report, which have not been cogently assailed to date, is proposed as a solution for the way forward. It proposes a hybrid system balancing the advantages of the Westminster system and the advantages of the closed list system currently used in South Africa. With a large multimember system, we will have individual accountability of three-quarters of elected MPs and maximum possible representation of political parties in the remaining one quarter of seats. There will still be no votes lost, as in the classic winner-takes-all constituency system.

All constituencies across the country will have roughly the same demography (number of voters), and each constituency will be specifically defined, enabling greater engagement with voters.

We propose that 75% (300) of MPs be directly elected by the voters in defined multimember constituencies and 25% (100) MPs be proportionately appointed by the respective political parties. This will guarantee that no votes will be lost, but voters will be able to choose the representatives they trust most.

## **9. Balancing Advantages and Disadvantages of 100% Proportional Representation and Constituency-Based Systems**

- 9.1 Parties will nominate candidates in each multi-member constituency to cover 75% (300) of seats in the National Assembly.
- 9.2 Local party branches in each multi-member constituency will select their own candidates for each seat in that constituency, in consultation with party HQ.
- 9.3 Party HQs will appoint candidates to cover 25% (100) of National Assembly seats according to the party list system, on the same basis as at present. This 75/25% split follows the recommendation of the majority of the government-appointed Electoral Task Team in its report in 2002, which was not followed by subsequent governments.
- 9.4 Parties will nominate candidates for each constituency for provincial parliament seats in the same way as for the National Assembly, with constituencies created according to the population density in the province.
- 9.5 Party HQs will appoint candidates for to cover 25% of provincial assembly seats, on the same basis as at present depending on population density in the province.
- 9.6 The African majority will directly elect their MPs as individual voters for the first time since Dr Mpilo WB Rubusana was elected to the Cape Council in 1909 representing the East Thembuland constituency.

- 9.7 Each MP from every party who has been directly elected in each multi-member constituency will be accountable to voters in that constituency for re-election at the next general election.
- 9.8 Each constituency MP in every multi-member constituency will be enabled to engage with their constituents, receiving their suggestions, answering their concerns, and otherwise being of assistance.
- 9.9 Voters in each constituency will be able to compare the performance of their own elected MPs with that of other constituencies.
- 9.10 Candidates will have to campaign directly in their own constituencies before every general election, so that they meet the voters.

## **10. A Description of Multi Member Constituency Elections**

Multi member constituencies allow for the voters in a specific constituency such as metro or city, or in large rural areas, to vote for more than one candidate.

In a constituency where there should be five (5) members of parliament, the voter will be allowed five choices for candidates across party lines as well as for independents. In a city like Cape Town with an estimated 3 million voters, voters could choose 6 members of parliament from their best six available candidates. Each political party will nominate its six candidates, including independent candidates in the metro. The first six candidates chosen by the tally of the highest votes will be elected to parliament. This will be a mixture of registered and contesting political parties as well as independent candidates, corresponding with their tally of votes.

If SA implements the Slabbert majority recommendations, the multimember constituencies will be applicable to 75% of MPs, which is equivalent to 300 MPs.

The 25% members of parliament - equivalent to 100 MPs - will be chosen in proportion to the votes tallied for each respective political party. The means of allocating proportion of votes for independent candidate will have to be realistically revisited.

## **11. Independent MPs with or without party affiliation in constituencies**

Following the judgement by the Constitutional Court of June 2020, parties and candidates for election as independent MPs will compete for each seat (100%) in the National Assembly, dependent on a new law being drafted under the direction of the Minister of Home Affairs.

Parties and independent candidates will compete in each seat (100%) in all provincial parliaments, dependent on the new law being drafted by Home Affairs.

Candidates will campaign directly in their own constituencies before every general election and will have direct contact with African voters for the first time since Dr Rubusana's election before the Union of SA was created.

## **12. Direct Elections of Office Bearers**

### **12.1 Presidential Elections**

We propose that the President of the Republic of South Africa be directly elected by the citizens (voters) on the basis of one person one vote. The president will get the mandate directly from the voters and not from their political parties. This will allow the President to effectively exercise executive authority irrespective of party affiliation.

### **12.2 Premiers' Elections**

We propose that each premier be directly elected by the citizens of the province on the basis of one person one vote. The premiers must be held directly accountable to the citizens (voters) in the province, rather than be appointed by the party HQ.

### 12.3 Mayors

We propose that the mayors of towns, cities and metropolitans be directly elected by the town, city and metropolitan dwellers. The mayor will be elected on the basis of one person one vote. The mayor will be held individually accountable by the dwellers rather than being a deployee of the party.

The 70s Group will gladly provide any further clarification that may be required so that an enduring and more representative and accountable system is ensured.

A handwritten signature in black ink, appearing to be 'Adv Lentswe Mokgatle', with a stylized, cursive script.

Adv Lentswe Mokgatle

Deputy Chairman - 70s Group