



## INCLUSIVE SOCIETY INSTITUTE

7 February 2022

Mr E Mathonsi  
Committee Secretary  
Portfolio Committee on Home Affairs  
**Parliament of South Africa**  
By email: electoralact1@parliament.gov.za

Dear Mr Mathonsi,

### **SUBMISSION AND COMMENTS ON THE ELECTORAL AMENDMENT BILL [B1 – 2022]**

The Inclusive Society Institute (ISI) welcomes the introduction of the Electoral Amendment Bill [B1-2022] that aims to remedy the Electoral Act, Act 73 of 1998, which the Constitutional Court declared unconstitutional to the extent that it requires that citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties. In other words, the electoral act needs to provide for independent candidates to have the right to stand for election to the aforementioned legislatures.

The ISI, in responding to the Constitutional Court judgement, assembled an authoritative panel of experts to give consideration to what amendments are needed to give effect to the judgement. The panel also secured presentations on electoral models from a range of international experts. The panel applied its minds not only to that which is technically required to give effect to the judgement insofar as it will enable citizens to stand as independents in the elections, but also to use the opportunity to consider wider electoral reform that improves accountability of elected members of the legislatures towards the electorate and to improve the representivity of the electorate by 'their' representatives within the legislatures.

The ISI produced a comprehensive report on the outcome of their deliberations, which report, for the benefit of members serving in the portfolio committee, is attached hereto as Annexure A. The report finds that besides the order of the Court that the Electoral Act be amended within 24 months to provide for independent candidates, the judgment provides little guidance as to how Parliament should go about in giving effect to the order. The judgment contains no guidelines, parameters or requirements that Parliament must consider or comply with.

That said, any amendments to the Electoral Act giving effect to the Court order must comply with the Constitution. The provisions of the Constitution in respect of multi-party democracy, the right to vote, the right to free, fair and regular elections, proportional representation, the right to stand for public office, the right to freedom of association, and the provisions dealing with the participation of political parties in the proceedings of the legislatures probably constitute the most important parameters or boundaries within which the task must be accomplished (see Annexure B). This implies that as long as Parliament stays within these boundaries, it has a fairly wide scope when amending the Electoral Act to provide for independent candidates as *per* the order of the Court in the *NNM* case.

But the report comes to the conclusion that a minimalistic amendment, that is, by simply adapting the current system to allow for independent candidates to be included on the ballot paper is not only

administrative unmanageable, but also does little to improve accountability and representivity of public representatives towards the electorate:

#### Unmanageability:

In 2019 a record number of 48 parties made themselves available for election. This produced a lengthy and somewhat unwieldy ballot paper. A minimalistic amendment that provides only for the addition of independent candidate names onto the existing ballot paper design will mean an even more unwieldy and confusing situation for the ordinary voter. It is quiet conceivable that a wide range of individuals will make themselves available for election. Imagine a further fifty or so names added to the already 48 parties – the ballot paper will have to stretch over a number of pages.

#### Missed opportunity to improve accountability and representivity:

- The panel was of the view that the amendments to the electoral act provided an opportunity to give better effect to the constitutional principles of accountability, responsiveness and openness, as provided for in section 1(d) the Constitution – Act 108 of 1996. This would respond to growing calls within society for their public representatives to balance accountability between constituents and their parties.
- In the current system, perpetuated in the Electoral Amendment Bill [B1-2022], accountability to the voter is traded for party compliance.
- The model proposed by the panel promotes accountability to the electorate as it pertains to the representation in national and provincial legislatures, since oversight will be improved as MP's carry constituency mandates.
- Accountability is strengthened when the representatives are closer to the electorate.
- The system also ensures greater geographic representivity, in that there are geographically delineated multi-member constituencies (MMCs) spread across the length and breadth of the country.

This approach is premised on the idea that provincial constituencies may still be too large and might fail to adequately address the element of responsiveness and to some extent accountability, since the constituencies would not only remain too widespread, but specific geographic responsibility may be dodged, from among the multiple members in the provincial “constituencies”.

#### **Essence of proposal**

The proposals of the institute argues for a mixed constituency / proportional representation system, where, at the national level, 300 candidates would be elected via 66 multi-member constituencies (MMCs) comprising between 3 and 7 members per MMC, and 100 members via a compensatory PR list, which list will be used to ensure overall proportionality in terms of the number of votes cast in the election.

The MMCs would be based on the existing district and metropolitan council boundaries. The same concept will be applied at the provincial level.

The institute holds the conviction that the model being proposed by itself, best balances accountability and representivity, with executional practicality and simplicity, whilst adhering to the constitutional prescription of proportionality, in general.

The ISI's MMC proposal guarantees multi-party representation at constituency level across the country, which is important to ensure diversity across all geographic areas.

Detailed modelling as to the effect of the ISI's model is included in Annexure A. The modelling shows that should the 2019 national election have been held under this proposed system, the relative strengths of the parties in the National Assembly would have been exactly the same as the current configuration. The proposed system therefor holds no threat to existing power relationships, whilst simultaneously adding further advantages, such as improved accountability and representativity.

### **ISI proposal technically not miles apart from the draft Electoral Bill, but conceptually vast**

To give effect to the ISI's proposal it would require two small technical amendment to the draft Electoral Bill:

- The first being the increasing of the nine regions proposed in the Bill to sixty-six, with consequential amendments as to the quota of seats per region; and
- The second being a reconfiguration of the number of representatives allocated to the regions and the national list. From a national election perspective, the current draft Electoral Bill provides for two hundred representatives to come from the regions and two hundred from the national list. The ISI argues that 300 should come from the regions and one hundred from the national PR list.

### **Conclusion**

The ISI welcomes the introduction of the Bill, which should pass constitutional muster. That said, it is of the belief that a unique and timely opportunity to effect broader electoral reform that will strengthen South Africa's democracy and address the current trust deficit between the electorate and the public representatives, is, in the design of the electoral system proposed in the draft bill, being missed.

Consequently, the institute appeals to the portfolio committee to give serious considerations to the proposals being put forward by itself in the attached report. Furthermore, it avails itself to further discuss and to explain the system that it is proposing.

The institute will also appreciate an opportunity to make oral representations to the Portfolio Committee. Its delegation will be led by Mr Roelf Meyer, who convened the expert panel on behalf of the ISI, and myself.

Sincerely yours,

A handwritten signature in blue ink, appearing to be 'DW Swanepoel', with a stylized flourish at the end.

**DW SWANEPOEL**  
**CHIEF EXECUTIVE OFFICER**