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**HOME AFFAIRS**

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**PUBLIC HEARINGS REPORT FROM THE PORTFOLIO COMMITTEE ON HOME AFFAIRS:**

**RESPONSES BY THE MINISTER OF HOME AFFAIRS**

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| **Clause 1** | The main issue raised in respect of Clause 1 is the definition of Clause 1*(e)*, which defines a region. The argument is that the definition of a ‘region’ is confusing in the context of elections as it is likely to be confused with a geospatial boundary. | The definition of region is properly defined in the Amendment Bill. The Department is of the view that there is no confusion thereto.  The term region was also maintained from the current Schedule 1A to the Act – “region” is chosen instead of “province” to avoid confusion between elections for the National Assembly and elections for the provincial legislatures |
| **Clause 4** | **Key issues raised by speakers regarding clause 31B:** There was a concern as to who Independent Candidates would be accountable to between elections and that they would thus be more susceptible to monetary individualistic influence. A solution offered by other submissions was that a body be established to monitor the behaviour and ensure discipline of Independent Candidates or that a clause be included on the role of Non-Profit Organisations role in holding independent candidates and political party candidates accountable on behalf of the people in the period between elections.  Concerns were raised that most independent candidates were male and that measures should be considered as part of requirements to ensure better gender representation. In addition, there were calls for setting minimum required percentages for persons with disabilities. | The difficulty with independent candidates is that they may not fully account to the electorate. However, the ConCourt judgment did not seek to introduce a “pseudo-political party” system save to allow for independent candidates to stand for election. Constituencies will hold independent candidates accountable  Noted, save that the right to stand for elections is subjective. The MAC Report was firm on the issue of gender representativity, as well as all other issues relating to representativity, and as enshrined in the Constitution, it is imperative that the principle of equality is not compromised. In this regard, the principle embedded in the Amendment Bill regarding compensatory seats, will enable political parties to cater for gender representation |
| **Key issues raised by speakers regarding clause 31B 4(3)*(a)*:** There are two opposing views on this clause. The first school of thought is that the Amendment Bill should prescribe a high number of signatures as proof of political support for both political parties. For example, some political parties propose that an independent should provide at least 15 000 to 20 000 signatures as proof of electorate support before they are eligible to contest provincial and national elections. Others go so far as to say that the number of signatures should be a third of that required to get a seat (up to 27000 of 82000 votes that could be needed for a seat in the bills new quota formulation). This school of thought argues that the high number of signatures will limit having candidates without the electorate's support on the ballot paper. This requirement will assist in reducing the size, cost, time and complexity required of a long ballot paper with many candidates.  The opposing view is that the number of signatures required for independent candidates should be reasonable. For these members of society, it is best to allow everyone who wants to contest to participate in elections to not further disadvantage Independent Candidates that may not have the capacity to do so and are already having to compete with well-established and better resourced political parties. It is the voters who will reject the candidates they do not want and the Electoral Amendment Bill must not have unnecessary barriers of entry to contest national general elections | The requirement to request signatures is not unconstitutional nor it creates a barrier. The IEC will consider, in developing regulations, the number of signatures required and what is reasonable. Delegating that decision to the IEC, as an independent institution, will ensure that the requirement is reasonable. |
|  | **Key issues raised by speakers regarding clause 31B4(3)*(f)*:** There were equally two opposing views on this clause in all of the provinces. The first view raised primarily by those who identified themselves to be belonging to political parties argued that the cooling-off period for one to resign from a political party and register themselves as an independent candidate should be increased from the proposed 3-months period to 6 months or more. Some even suggested that the cooling-off period should be one year. The rationale for this argument is that if a political party member loses a political contest within their party, they then resign from their political party to become independent candidates. Although this is their democratic right, it is misleading voters because these candidates are often just frustrated by internal political party processes.  The opposing view on this clause is that the recommended three-month cooling-off period should be retained, reduced to one month or removed. The rationale for this argument is that some political parties do not respect the wishes of their community on who must be recommended to be a political party candidate prior to elections. Instead, political parties force their preferred candidates on communities. If this happens, the person who is a preferred candidate of the community should be allowed time to resign from a political party to become an independent candidate so that the community still have an option of electing that person on the ballot paper. | The period prescribed allows for a “cooling off” period and minimises the risk of individuals aggrieved by party mechanisms from simply standing for elections  Comment is noted |
|  | **Key issues raised by speakers regarding clause 31E:** There was some confusion across several submissions around the use of the word “qualifications” of Independent Candidates where it was assumed to mean educational or experiential qualifications and that this would be unfair given that this is not required of Political Parties. In contrast others felt that the introduction of qualifications such as minimum and maximum age and education for all candidates would be beneficial to improve the quality of representation. | The term “qualification” does not relate to education or experiential qualification but the ability of an individual to be able to be included in the ballot paper. It means qualifying criteria rather than academic qualifications. |
| **Key issues raised by speakers regarding clause 31F(1)*(b)*:** Across all provinces there was a concern about a potentially longer ballot paper as members of the community anticipate that there will be many independent candidates contesting provincial and national elections.  Those who are not totally in support of independent candidates to contest elections argue that stringent measures of entry such as the high number of signatures and a high deposit fee would assist in addressing the challenge of a potentially longer ballot pater. These members of the community are of a view that a longer ballot paper will confuse voters particularly the elderly and illiterate which would lead to higher numbers of spoilt ballots. Therefore, the Electoral Amendment Bill should increase the threshold of participation in elections, in order to avoid purely opportunistic candidates. In addition, it is argued that the result would be that many small parties and candidates could occupy key seats that hold a balance in a legislature where no party gets over 50% of the seats. This would lead to unstable and temporary coalitions that could paralyse the government service delivery.  The opposing view is also concerned about a potentially longer ballot paper. However, these members of the community believe that the IEC is competent enough to design a ballot paper that will be suitable and not confuse the voter. General support for the independence, accountability and lower potential for corruption of Independent Candidates can also be included as in favour of this clause. Given that independent candidates strengthen democracy since they are not constrained by party political ideologies and policies, but the needs of the people.  It was also argued by some that the IEC should exploit the advances in the Fourth Industrial Revolution and introduce methods such as electronic voting if necessary. | The criteria developed may assist in curbing the list of those who qualify. |
| **Clause 6** | **Key issues raised by speakers regarding clause 6**: Many submissions across the provinces agreed with the insertion of Clause 6. They were synonymous in calling for hasher sanctions including disqualifications for any political party or independent candidate who contravene the code of conduct as well as more rigorous vetting of the qualifications of candidates and their support signatures. It was also recommended that mechanisms be put in place for the public to report any violations of the code or the requirements for Independent Candidates stated in Clause 4. 31B | The comment is noted |
| **Clause 8** | **Key issues raised by speakers regarding clause 8:** In all of the provinces, there are two opposing views with regards to the payment of non-refundable deposit fee that must be paid by independent candidates. The first view, which was primarily raised by people who identified themselves to be members of political parties (in particular the African National Congress and Economic Freedom Fighters) argued that the deposit fee for independent candidates should be set very high and should be non-refundable. The view is that if the deposit fee is set very low, there will be many opportunistic or questionable candidates, which could dilute voter participation if elections become too complicated with too many choices and higher numbers of spoilt votes. Those who support this view also believe that the deposit fee should be non-refundable and be forfeited to the State as it proposed in the Electoral Amendment Bill [B1-2022].  The second opposing view is that the deposit fee should be set very low so that no one should be excluded from contesting elections due to financial constraints. This school of thought argues that a very high deposit fee will limit political contestation to the elite few and exclude grass root organisations, women and person’s with disabilities who have community support but limited finances, particularly considering the country's current high unemployment rate and economy. Amongst those who argue that the deposit fee should be affordable, there was a small minority that also proposed that if even if an independent candidate doesn’t win a seat in the provincial or national legislature, their full deposit or a portion of it should be refundable.  A question was also raised as to whether the deposit paid was related or aligned to Political Party Funding Act. | The IEC will further develop regulations relating to the fee required. It might very well be that the deposit required may be equivalent to that paid by political parties. Delegating this function to the IEC, an independent institution, will ensure that the fee is reasonable. The administration of the ballot paper will remain the mandate of the IEC.  No, payment of the prescribed deposit fee cannot be aligned or related to the Political Funding Act. The two are completely separated and unrelated.  There will be consequential amendments relating to the Political Party Funding Act to include independent candidates |
| **Clause 11** | **Key issues raised by speakers regarding clause 11(1)*(a)* & *(b)* & (3):** The key emerging issues across the provinces are mainly on the contestation regarding the allocation of seats in the National Assembly and Provincial Legislatures between independent candidates and candidates representing political parties.  The first school of thought agrees with the Electoral Amendment Bill [B1-2022] proposal regarding the allocation of seats in the provincial and national legislatures. They argue that this proposal is most suitable for South Africa as it allows for the continuation of the Proportional Representation (PR) System which has served the country well without any contestation of the freedom and fairness of elections. Those who support this school of thought argue that it is only under the PR System that minority groups can find a political voice. For instance, small parties that represent minority groups (i.e. racial, cultural and religious) are most likely to have representation on the PR System.  The opposing view, supported mainly by communities who identified themselves as not members of political parties argued that the proposed seat allocation system is biased towards political parties. In their view, all 400 seats in the National Assembly should be equally contested by both independent candidates and candidates of political parties. They emphasise that there should be no number of seats that are reserved for contestation by political parties only. These members of the communities argued that any reservation of seats for political parties would be unconstitutional as it will not allow for an equal contestation as required by section 19(3)*(b)* of the Constitution. For them, if the voters want to be represented by 400 independent candidates they should be afforded that opportunity. There were also submissions calling for the proportion of regional versus compensatory seats to change to 75% (300) and 25% (100) respectively (from the 50/50 proposed in the Bill) as per the Van Zyl Slabbert report. Also in this general view it is argued that the closed party list must be scrapped in favour of an open list because it does not add value in electing a representative.  Regarding Clause 11.3 on the required number of candidates on the party list there were two submissions that they should be dealt with as a matter of compliance prior to the election rather than the complicated procedure concerning the forfeiture of seats dealt with in Clause 11.16 | The reality is that:  (i) Independent candidates are not political parties. A single candidate cannot hold more than one seat. There is, therefore, no practical system, of which we are aware, that would avoid this “wasted” votes issue.  (ii) An independent candidate chooses to run as an independent candidate rather than forming his or her own political party. In doing so, he or she accepts that he or she can only be elected to a maximum of one seat.  (iii) A voter voting for an independent candidate chooses to vote for the independent candidate rather than a political party. In doing so, the voter accepts that his candidate can only be elected to a maximum of one seat.  There can accordingly be no complaint of prejudice or unfairness by the independent candidate or the voter. |
|  | **Key issues raised by speakers regarding clause 11(4)(5)(6)(7)(8)(9) (Regional Seats):** The main issues raised on this clause which cut across the provinces is that term “regional seat” seems confusing in this regard (as per the objection stated in Clause 1 dealing with definitions).  Those who opposed this term argued that regional seats should be replaced by constituencies. They argued that the Electoral Amendment Bill should adopt the proposal made by the Van Zyl Slabbert Report supported by option two of the Ministerial Advisory Committee and the Lekota 2020 Private members Bill. Suggestions range from 66 to 200 constituencies. Of emphasis is that independent candidates and political party candidates must compete for the votes in their constituencies without reserving seats for political parties. The concern was also that in the Bill the proposed 9 regions would require 82 000 or 5.5% of votes for each independent candidate seat compared to the 40 000 in the last elections and that this was unfair when small political parties could get a seat with less than 1% of the vote. Further support for this view also calls for more extensive review of the electoral system as indicated:   1. In 1999, when Mandela left presidential office, he called for a review of the electoral system. 2. In 2002, President Thabo Mbeki established a task team, again led by Van Zyl Slabbert, to examine electoral reform and the team called for a more accountable system combining constituency based representation by voting for a specific individual and proportional representation – known as a mixed system. 3. In 2006, Parliament appointed an individual panel to assess the electoral system and they found it in need of electoral reform. 4. Since 2006, the last of the 4 investigations confirming the need for electoral reform, and no concrete action has been taken in 16 years ago and in addition the same political party has held office since 1994.   An alternative proposal for the calculations of regional seats was also proposed:  A two-stage process where all who meet the full quota for one seat, be awarded a seat – whether as parties or independents. Once no one is left who is entitled to a seat based on meeting the full quota threshold, the remaining seats should then be given to the parties that have the highest average of votes per seat won. Related to this is the concern that if Parliament is divided into many small fractions, forming government would be challenging. It would be a big danger to use the current formula for seats allocation and a lot of parties/candidates come in on less than on seat’s worth of votes. Votes required for the quota for one seat has often been between 40 000 and 60 000 per seat, depending on the legislature and voter turnout. However, some small parties have won seats on 10 000 votes in the National Assembly due to the formula for the largest remainder vote being used to allocate left over seats. In support of this it was stated that other countries with PR system have a much higher threshold of 3% - 7% of the votes before any seats are awarded. This could be done to maintain stable government. He maintained that it would be difficult to negotiate across dozens of fractions and totally acceptable in international practice to require significant support for representatives.  Another issue raised across provinces is “discarding votes” once an independent candidate meets the threshold for a seat. Many of those who opposed discarding of votes did not really offer alternative solutions but indicated discarding surplus votes goes against the equality clause in the Constitution and means that surplus voters are deprived of an opportunity to participate in an election. A PR list should be introduced to deal with situations wherein a candidate dies or resigns. But it is worth to note that One South Africa Movement and others argued that the ‘excess votes’ of independent candidates should be transferable to candidates identified by the winner of these excess votes in advance of the elections, as per the Lekota Bill. This would also better allow for the inclusion of Independent Candidates in the National Council of Provinces seats if their pre-determined affiliates could be represented in the NCOP if they have a seat in the National Assembly. This view was however rejected by more of the oral submissions than those in support. | There are 400 seats in the National Assembly. The first 200 seats are elected from each of the nine provinces or regions. The remaining 200 seats are compensatory seats designed to achieve the proportional representation required to be achieved by section 46(1)*(d)* of the Constitution.  It is correct that the independent candidates may only be elected to occupy the 200 regional seats.  The reality is that:  (i) Independent candidates are not political parties. A single candidate cannot hold more than one seat. There is, therefore, no practical system, of which we are aware, that would avoid the so-called “wasted” votes issue.  (ii) An independent candidate chooses to run as an independent candidate rather than forming his or her own political party. In doing so, he or she accepts that he or she can only be elected to a maximum of one seat.  (iii) A voter voting for an independent candidate chooses to vote for the independent candidate rather than a political party. In doing so, the voter accepts that his or her candidate can only be elected to a maximum of one seat.  There can, accordingly, be no complaint of prejudice or unfairness by the independent candidate or the voter. |
|  | **Key issues raised by speakers regarding clause 11(33) Vacancies:** Again, there were two opposing views on this clause. The first view which was mainly raised by those who identified themselves to be members of political parties is to support the proposal of the Electoral Amendment Bill [B1-2022] that vacancies left by independent candidates should be left vacant until the next election. Their rationale for supporting this proposal is that the country will be in perpetual elections, which disturbs service delivery and is very costly as political parties and independent candidates will continually be campaigning if the seats should be filled.  The opposing view is that any vacancy left by an independent candidate should be filled as early as possible in line with the local government benchmark. These members argue that the same way a political party is allowed to fill in a vacancy from their party list, independent candidates should be allowed to do the same. This presumes the above addition of a transferable vote from a list of “running mates” or affiliated independents stated by the vacating candidate prior to the election. Alternatively, vacancies could also be done through by-elections or filled by the most popular runner up in the elections that didn’t win a seat. | It would be utterly impractical and an unjustified financial strain on the fiscus, but also on the ability of the state to govern, to similarly provide for a replacement of the independent candidate through a by-election. This is because independent candidates are voted for at a provincial or regional level. As a result, the by-election would have to be organised at a provincial or regional level every single time there is a vacancy in the National Assembly. |