**ISSUES FOR CONSIDERATION ELECTORAL AMENDMENT BILL DELIBERATIONS**

2 May 2022

**Clause 1**

1. Is the definition of “region” sufficiently clear as compared to a province?

Yes. The term “region” is synonymous with the provinces. Using different terms follows what is currently provided for in the Electoral Act – so as not to confuse the provincial-to-national seats in the National Assembly and the elections for the provincial legislatures.

1. Is there a need to redefine “Party Liaison Committees” as “Liaison Committees” or “Electoral Liaison Committee’s” along with the inclusion of such in amendments to Sections 20, 62 and 64 of the Electoral Act as well as related Clauses in the Electoral Commission Act to allow for the inclusion of Independents Candidates in these consultative bodies?

The term can be changed as proposed in sections 1, 20, 62 and 64 of the Electoral Act. Section 5(1)*(g)* of the Electoral Commission Act **must** be amended as the Commission established party liaison committees under that provision in Regulations.

**Clause 4**

1. Should amendments to 31A*(a)* and 31B(3)*(f)*, be removed to bring independents in line with political party candidates in terms of not being required to be ordinarily resident in the region in which they are registered to stand in an election?

At present, clause 2 currently provides that a party must provide the following with its list of candidates for national and provincial elections: “*(c) declaration, signed by each candidate appearing on the party’s regional list of candidates or provincial list of candidates referred to in Schedule 1A, confirming that he or she is registered to vote within the region or province in which the election will take place*;”. Accordingly, party candidates contesting regional seats in the National Assembly or provincial legislatures effectively are also only entitled to contest one province or region. (Party candidates on national lists do not have the same requirement.)

1. Should there be signature requirements in 31B(3)*(a)* for Independents as compared to none for party candidates?

There is a different calculus for party candidates and independent candidates. To register under the Electoral Commission Act parties must satisfy certain eligibility requirements that do not apply to independent candidates.

1. Should the deposit for independents in 31B(3)*(b)* be the same as parties given that they only qualify for one seat?

This is not currently provided for in the Bill. The Commission must set a reasonable deposit for independent candidates; this will likely be less than the deposit for political parties.

1. Should the requirement for the determination of the number of signatures required or the deposit needed for independents, be left to the IEC to formulate in regulations or should the formula for the determination of signature requirements or deposits be included in the Bill?

Counsel has expressed the view that the Commission, as an independent body, should be empowered to set this requirement which may need to change depending on population statistics in different regions and at different times. Whether the Commission should be responsible therefor or whether it should be set in the legislation is a policy question.

1. Should the requirement in 31B(3)*(f)* of not having been a member of a political party for 3 months prior to running as an independent remain, be increased or reduced?

Again, this is a policy question.

**Clause 8**

1. Depending on decisions on point 5 above on deposits, this section on refunds may have to change.

Noted.

**Clause 11**

1. Should the clause 11(1) ratio of regional and compensatory seat to Parties remain 50/50% (200 to 200 seats) or change to 75% to 25% or to allow all candidates to contest all 400 seats?

This is a policy question.

1. In 11 (4 to 9) should there be reference to constituencies (66 or 200) as in the Van Zyl Slabbert report or the Lekota Bill?

A single member constituency system, as suggested in the Van Zyl Slabbert and Lekota proposals, reflects the maximalist approach of the MAC which was not accepted.

1. In clause 11(5 to 8) on regional seats should the 3 rounds remain the same or a single round according to the Droop formula as proposed by the IEC to improve proportionality and inclusion of small parties? Alternatively a two-stage process was proposed 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 candidates that have the highest average of votes per seat won.

These are policy questions. Counsel are presently working on a memorandum discussing the IEC’s proposals.

1. Should clause 11.16 be removed in favour ensuring compliance prior to elections rather than forfeiting seats if parties don’t have enough candidates on their list after an election?

These are policy questions. Counsel are presently working on a memorandum discussing the IEC’s proposals which impact on this question.

1. In clause 11 (11 to 16 and 25) should the IEC draft a proposal for inclusion in the bill of the 3 ballot system for National Assembly Compensatory; National Assembly Regional and Provincial Legislature either with a requirement for being ordinarily resident in the region for all candidates or a removal of this requirement for all candidates?

These are policy questions. Counsel are presently working on a memorandum discussing the IEC’s proposals.

1. In Clause 11(34) how would it be responded in court to the objection that the major disadvantage of independents having their surplus votes discarded, effectively means they have no choice but to run as parties which then means the bill does not truly fairly address the Constitutional Court ruling for the inclusion of independents in the National Assembly and NCOP?

This raises complex legal, constitutional and policy questions which Counsel require more time to consider.

1. In Clause 11(34) should there be by-elections for replacing independents what would this cost according to which calculation of projected number of by-elections? Alternatively should votes be transferable as per the Lekota Bill where Independents have a list of “running mates” OR should (all or just independent) candidates with next highest number of votes in the initial election fill the seat? (If going with the DHA proposal of replacing vacant independent candidates’ seats with the candidate that received the next highest number of votes; will it not be argued that this gives political parties the benefit of replacing their seats with chosen candidates next on their list; whereas the independents and their support base could now be replaced by a political party or an independent with a completely different ideology?)

These are policy questions. Counsel are presently working on a memorandum discussing an alternative to filling seats vacated by independent candidates in the National Assembly and Provincial Legislatures (“pls”).

**Not in the Bill but to be considered for inclusion**

1. A proposed amendment to Chapter 5 (Section 68 and 69) of the Electoral Act is needed to allow for independents to have agents during elections.

Noted.