**ELECTORAL AMENDMENT BILL DELIBERATION DECISIONS & OUTSTANDING ISSUES**

4 July 2022

**Clause 1: Definitions**

1. Members reached consensus that the following definitions should be retained in the Bill:

**‘province’** means a province referred to in section 103 of the Constitution;

**‘region’** means the territorial area of a province;’’.

1. Members agreed in principle that independents candidates should be included in the concept of “party liaison committees”. Consensus was also reached that the terms “party liaison committee” should accordingly be amended. The IEC proposed the term “political liaison committee”.

The Committee is yet to decide on the proposal by the IEC or consider an alternate name.

**Clause 2: Party candidates registered to vote in the region – s27(2)(cA) [new section]**

This is a new requirement placed on party candidates appearing on the party’s regional list or provincial list to confirm that he or she is registered to vote within the region or province in which the election will take place.

Refer to discussion under clause 4 relating to the requirements for independent candidate’s vs party candidate.

**Clause 3: Technical amendment to newly inserted section 27(2)(cA)**

Clause 3 amends section 28 of the Act, which provides for non-compliance concerning submission of lists of candidates, to provide for technical amendments by including reference to the newly inserted paragraph 27(2)(cA) in section 28 of the Act.

**Clause 4: Nomination of independent candidates**

**Residency and registration requirements for independent candidates – s31A(1)(a) and (b) and 31B(3)(e)**

This provision states that in order for an independent candidate to be nominated to contest an election, they must be an ordinary resident within the region they are contesting, registered as a voter for that region or province concerned, and must sign a declaration confirming that his or her residential address is situated within the region or province in which the election will take place.

It is noted that party candidates have a different requirement, as 27(2)(cA) provides that political party candidates must be only registered to vote within the region or province, which is a different requirement to that of the independent candidate. We would like to emphasise, that if the intention is for the same requirements (i.e. residency and registered to vote) to apply to both independent candidates and Party Candidates, then these clauses should be redrafted. We further wish to remind the Committee that there is no residency requirement for Independent Candidates intending to contest a ward in local government elections. Section 16(1)(b) of the Local Government: Municipal Electoral Act, 2000 requires a nominator of the independent candidate to be resident and registered to vote in the ward. The IEC raised the similar concern and made certain proposals in this regard. The Committee is yet to reach consensus on this issue.

**Signature requirement – s31B(3)(a)**

This provision provides that the nomination form of an independent candidate must contain the prescribed minimum number of signatures of voters whose names appear on the segment of the voters’ roll for the region or province in which the candidate is standing for election.

There is consensus among members that a nomination for independent candidates should be accompanied by a prescribed number of signatures of voters in support of their nomination.

However, an outstanding issue is the actual number of signatures required or the formula to be contained in the Bill.

The Committee is referred to section 17(2)(a) of the Local Government: Municipal Electoral Act, 2000, which **expressly** stipulates that an independent ward candidate’s nomination must be accompanied by the prescribed form with the signatures **of at least 50 voters** whose names appear on the municipality’s segment of the voter’s roll for any voting district in the contested ward. It is suggested that guidance be sought from the IEC and the Department on how this number of 50 was determined in order to assist the Committee in deciding how many such signatures a candidate would require for purposes of contesting national and provincial elections. The IEC had agreed to provide suggested formulas for determining the number of signatures.

This requirement of signatures in the Local Government: Municipal Electoral Act, 2000, is only in respect of the independent ward candidate.

**Deposit requirement – s31B(3)(b)**

This provides that a deposit equal to a prescribed amount (if any), should be attached to a nomination submitted for an independent candidate.

There was consensus reached that independent candidates should pay deposits.

However, the Committee is yet to decide whether independent candidates should pay the same deposit as parties. The Committee is referred to section 27(3)(a) of the Electoral Act, 1998, which provides that the Commission may prescribe the amount of the deposit that must be paid by a registered party. In addition, section 27(3)(b) then states that the amount to be deposited by a registered party contesting an election of a provincial legislature, must be less than the amount for contesting an election of the NA. Should the Committee decide that a lower deposit be paid by an independent candidate, then the Bill could possibly contain a provision similarly to section 27(3)(b) above.

**“Cooling-off Period” – 31(B)(3)(f)**

This provision requires a prescribed declaration from the independent candidate, confirming that he or she has not been a member of any political party for at least three months preceding the date of nomination.

Consensus was reached on this matter but clarity is sought regarding whether the IEC would have enough time to verify and process signatures.

**Multiple Regions**

A question that arose from deliberations is whether to allow independent candidates to run across several regions (as per the IEC’s latest proposal) or just for one region and nationally (like for political parties). More members were of the view that independent candidates should only be able to contest in the region where they are registered as voters. The other view was that independent candidates should be allowed to participate in all regions and aggregate their votes if they fail to secure a seat to promote proportional representation and contest the elections at a national level. The IEC pointed out that although independent candidate could contest in all regions they could only get a seat where they have the highest number of votes. If they fail to secure a seat, they cannot aggregate the votes as this is a separate ballot (for PR/Compensatory).

This issue needs to be decided upon by the Committee and how it would impact on party candidates.

**Clause 5**: **Lists of independent candidate**

This clause amends section 57A of the Act, which provides for the system of representation in the National Assembly and the provincial legislatures, by expanding the application of Schedule 1A to the Act to include candidate lists and lists of independent candidates.

**Clause 6:** **Contravention of Code**

This clause substitutes section 94 of the Act, which provides for the contravention of the Electoral Code of Conduct, to expand the application of the section to independent candidates.

**Clause 7: Electoral Code of Conduct**

This clause amends section 99 of the Act which provides for the Electoral Code of Conduct and other codes, by providing that every independent candidate, before that independent candidate may be placed on a list of independent candidates in terms of section 31F, must subscribe to the Electoral Code of Conduct.

**Clause 8: Forfeiture of Deposits**

This clause provides for the return and forfeiture of a deposit, to provide for the Commission to refund to an independent candidate any deposit paid by such candidate in terms of section 31B(3)(b) if the candidate is allocated a seat in the legislature whose election the independent candidate contested.

**Clause 9:** **Effect of certain irregularities**

This clause amends section 110 of the Act, which provides for the effect of certain irregularities by including reference to independent candidates.

**Clause 10: Schedule 1 - Election Time Table**

This clause amends Schedule 1 to the Act, which provides for the election timetable, to include independent candidates in the election timetable.

**Clause 11: Schedule 1A System of Representation in National Assembly and Provincial Legislature**

**National Assembly: allocation (item 1)**

This item provides that half the seats (200) in the National Assembly are filled by independent candidates and party candidates contesting the 9 regions (regional seats), and half (200) of the seats filled by party candidates (compensatory seats).

Consensus is required on whether this ratio should remain or should change to 300 (regional seats) and 100 (compensatory seats).

**Regional Seats: Droop Quota (item 4 – 8) *See Also item 17: Provincial Legislature contains 3 the same three round system of seat allocation.***

These items in the Bill proposes a three round system when allocating regional seats. A Hare quota is used in the first two rounds is used to allocate independent candidate seats, and in the 3rd round is the Droop Quota used to determine party candidates’ seats.

The IEC recommended a simplification of the 3 round allocation system by adopting a single round allocation using a Droop quota and the highest remainder method. The Department indicated in their submission to the Committee of 21 June 2022, that this was a policy question and that Counsel was working on a memorandum to discuss the IEC’s proposal. The Committee will need to deliberate further once they have received the Department’s memorandum.

A further concern regarding the calculation of regional seats is the disregarding of votes allocated to independent candidates, once those independent candidates are awarded seats. CLSO had argued that being an Independent Candidate required “not associating”, and an Independent Candidate may only occupy one seat at a time, therefore once the minimum number of votes required to secure a seat is determined all additional votes may not practically be utilised. The CLSO concluded that there were no constitutional issues in this regard. However, the Department indicated that this was a complex legal, constitutional and policy question, and Counsel would require more time to consider this issue. The Committee should consider Counsel’s opinion on the matter.

**Ballot Papers (item 25)**

This item provides that the IEC must produce separate ballot papers for the election of members of the National Assembly and of members of the provincial legislature.

The IEC’s draft proposal includes a 3 ballot system for the National and provincial elections (ie. First ballot for the election of the compensatory seats in the NA; the second for the regional seats in the NA; and the third ballot for the provincial legislature).The Department in their submission of 21 June 2022, indicated that Counsel was working on a Memorandum discussing the IECs proposal. The Committee to consider this Memorandum prior to resolving this issue.

**Vacancies (item 34)**

This item provides that in the event of a vacancy in a legislature in a seat allocated to an independent candidate, the seat in question will not be filled until the next election.

The Committee agreed in principle that the vacancies should be filled and members suggested that the next highest available Independent Candidate or Party Candidate should be used to fill the vacancy, some members felt that there should be a recalculation. The IEC had suggested a possible amendment to item 34, and the Department indicated that Counsel was presently working on a Memorandum discussing alternatives to filling vacant seats in both the National Assembly and Provincial Legislature. The Committee is yet to reach consensus on how these vacancies should be filled.

**Agents: Section 58 and 59 of the Electoral Act to be amended in the Bill**

The Committee agreed and supported that Independent Candidates should also be allowed to appoint agents on their behalf to observe election proceedings (i.e. voting; counting of votes; determination and declaration of the result of an election).

However, the Committee questioned how this should be done and is yet to resolve this question.

Some guidance on this question can be sought from the current provisions relating to the appointment of agents, namely:

1. Section 58 of the Electoral Act, 1998, which deals with the appointment of party agents provides the following:

*“ 58(1) Every registered party contesting an election may appoint—*

1. *two party agents for each voting station or, if voting or counting at a voting station takes place in more than one room or separately enclosed area, two party agents in respect of each room or area; and*
2. *four party agents for each venue where the proceedings provided for in Part 3 or 5 of Chapter 4 take place.”*
3. Part 3 proceedings refer to the counting of votes at a place other than a voting station, and Part 5 proceedings refer to the determination and declaration of the final result of the election.
4. In addition, section 39 of the Local Government: Municipal Electoral Act, 2000, which deals with the appointment of party agents and independent ward candidate agents provides the following:

*“39 (1) A party contesting an election may appoint a number of agents for the election equal to—*

1. *two or more agents per voting station as may be indicated by the Commission, if voting at the voting station takes place in more than one room or separately enclosed area; and*
2. *four agents per venue where the counting procedure is performed at a venue other than the voting station.*

*(2) An independent ward candidate may appoint a number of agents for the election equal to—*

1. *one or more agents per voting station in the ward, if voting at the voting station takes place in more than one room or separately enclosed area; and*
2. *two agents per venue where the counting procedure is performed at a venue other than the voting station.”*