

Michael Atkins
Westridge
Durban
30 November, 2022

To: Mr Sy Mamabolo
Chief Electoral Officer

CC: Mr Mosotho Moepya
Chairperson: Electoral Commission

Ms NN Mapisa-Nqakula
Speaker: National Assembly

Ms S Shaikh
Chairperson: NCOP Select Committee on Security and Justice

Mr Ms Chabane
Chairperson: Home Affairs Portfolio Committee

CC: Mr Lawson Naidoo
CASAC
Mr Koogan Pillay
70s Group, Defend Our Democracy

Dear Mr Mamabolo,

RE: COMMISSION PRESENTATION TO NCOP

Thank you for your letter dated 28 November, wherein you set out a motivation for the assumptions underlying the presentation made by the Commission to the National Council of Provinces on November 14, as articulated in my letter to yourselves on November 23.

I maintain, nonetheless, that the Commission incorrectly advised the NCOP that my proposal produced the same seat allocations as the Bill, and that as a consequence the Select Committee did not apply its' mind to the particular proposal in my submission. You defend your assumptions, but do not attempt to rebut this claim.

Your position boils down to the assertion that, because in your scenario it is difficult to ascribe voting intentions in the PR ballot of the 700,000 voting for independents in the regional ballot, it should be assumed that they do not vote at all in the PR ballot.

In summary, these are the problems with this reasoning:

1. It is agreed that there are different methods to model the manner in which the ballots given to the hypothetical 700,000 voters would be cast in the PR election, and that for the purposes of analysis, some assumptions would be needed. The problem is that the position adopted by the

Commission is not neutral, but is itself an assumption. It is easy to demonstrate that this is the least reasonable of the available assumptions.

2. You say (para 1.3), “it is possible that those who voted for independents in the regional elections could also elect not to vote for parties in the compensatory ballot”. This line of reasoning is anticipated in the 5th paragraph of page 4 of my letter. We cannot know whether individual voters will cast ballots for parties, but collectively we do know, on the basis of data available from other elections. For modelling purposes, the statement is objectively false.
3. The Commission seems not to realise that your model compares the seat allocation for two identical sets of 16.7 million votes added together, with one of those sets of 16.7 million votes. It is obvious that doing this will produce the same seats allocation, for any set of votes. You communicated a tautology to the NCOP as though it was a finding.

To reiterate, only under highly contrived assumptions can my proposal produce the same results as the Bill. It can easily be shown that these assumptions do not hold true for existing data sets, namely those voting for independent candidates in local government elections, or for those voting for parties in provincial elections that are not on the national ballot.

Regardless of the merits of the modelling approach taken by the Commission, it is not one that can be used to compare the effect of my proposal to that of the Bill. You have also not ever responded to the assertion in my submissions that the Bill partially disenfranchises those voting for independent candidates in regional elections.

I have not alleged that the intent of the Commission was to mislead Parliament. But that is nonetheless the effect of your analysis and advice. This is an objective claim, and not a matter where consensus applies. I have consistently distinguished between difference of viewpoint, and the objectively false statement made to the NCOP.

I therefore restate my view that the Commission has a formal responsibility, in light of your statutory duties of independence and impartiality, to inform Parliament that the seat allocation I proposes does not produce the same outcomes as the Bill, in order to allow Parliament to apply its’ mind to a substantive public submission that has hitherto been overlooked on the strength of the Commission’s incomplete and incorrect analysis.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael Atkins". The signature is written in a cursive, flowing style.

Michael Atkins