



## OFFICE OF THE CHIEF ELECTORAL OFFICER

SOUTH AFRICA

28 November 2022

**Mr Michael Atkins**  
**Westridge**  
**Durban**

Per electronic e-mail: [atkins@itrend.co.za](mailto:atkins@itrend.co.za)

**Dear Mr. Atkins,**

### COMMISSION PRESENTATION TO NCOP

1. Thank you for your letter of 23 November, which the Commission has had opportunity to consider. In response, the Commission wants to convey some of the points of departure for its submission to the NCOP since this may contribute to a better understanding of its position.

1.1. In the first instance, we used actual election data, despite some limitations, to construct our models. This was to avoid, as far as possible, perceptions that the data used was manipulated to prove or disprove specific outcomes. For instance, to calculate the seats for independents in the regional component of the election, we used the 2019 results for the four parties whose votes we attributed to independents. From the data in Annexure 1 that accompanied our submission, you will notice that these independents did not meet the quota in any region in the first three instances,

## Electoral Commission

*Ensuring Free and Fair Elections*

and seats could only be attained with the largest remainder method. In the fourth case, in the Gauteng region, it could be either two with the largest remainders or one independent meeting the quota with some excess votes but not such a high number for the second independent not to be elected with the largest remainder method. Since percentage votes, given the high quotas in regional elections, do not necessarily result in a corresponding number of seats, we are satisfied that the method we used is reasonable for the purpose of our modelling.

1.2. Attributing voters' choices on the party ballot for those voters who voted for independent candidates in the regional component presents a conundrum. Would it be correct to attribute these to the larger parties, the smaller parties or evenly across parties? Your letter conveys what you describe as a "commonsense perspective". Whatever approach one may take would be debatable. Given that any position is based on entirely speculative assumptions, it is impossible to find general acceptance for a valid approach. We, therefore, decided not to attribute those potential votes to any party.

1.3. Our model is a scenario and, for a scenario, 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, coincidentally, fits with the basis on which the Constitutional Court was approached when voters expressed, as the Court found, an aversion to being associated with political parties. In this context, attributing party intentions to those voters and including this as a reliable basis, did not seem to us to constitute a scenario that is acceptable, if not dangerous.

1.4. An analogy with the position of independents in municipal elections may also need to be carefully considered. There may well be a difference between the (mostly) community members that contest wards in municipal elections as independents to represent their community and the independent in a national election that may be aiming at higher office. True or not, it illustrates the objective difficulty of attributing intentions. We believe that this factor in our scenario was not big enough to disturb the validity of the trend it illustrated to evaluate annexures 3 and 4. The source of the figures used and the assumptions relied upon were all illuminated in our submission to the NCOP and devoid of any attempt to mislead.

1.5. The prime reason for constructing the models marked annexures 3 and 4 in our submission to the NCOP was to test the practical implementation of the Bill as it then stood. This would then allow for decisions to be made to ascertain if the Bill meets constitutional precepts. Applying the same dataset and assumptions to other proposals in the public domain was a transparent and responsible attempt to establish if any would lead to what may be seen as an outcome closer to an overall proportional result. In this regard, it is imperative to compare outcomes using the same assumptions and dataset since comparing the model in annexure 4 with any number of other conflicting assumptions or datasets will naturally all lead to different outcomes.

1.6. In the context of the architecture of the current Electoral Amendment Bill, the Commission supports the use of two ballot papers for the elections of the National Assembly. With one ballot, voters supporting independent candidates could probably claim they were being discriminated against. Perceptions of the inequality of the vote may persist on the single ballot approach because of them not having an opportunity to cast a vote for compensatory seats in the National Assembly.

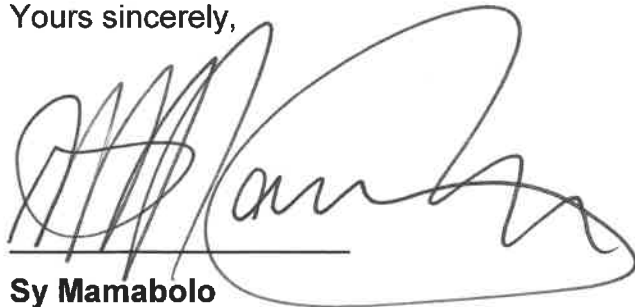
1.7. On the other hand, combining the outcomes of both ballots (excluding the votes and seats won by independents in the regions) to reflect overall party support is a valid approach for improving proportionality, inclusive of whatever way independent supporters may or may not cast a party vote. We understand that datasets can be constructed to prove the opposite and to support the alternative approach to base proportionality only on the compensatory ballot. But that would probably be based on having to interpret the party voting intentions on the second ballot of those that support independent candidates in the regions.

1.8. As earlier stated, the way those supporting independent candidates in the regions would vote in relation to parties in the compensatory seats cannot currently be reliably projected in scenario modelling and would be considered speculative. The models we constructed supported particular scenarios and did not aim in any way to simulate the outcome of the intentions or support expressed in respect of future

elections. It would, at least, have aggrieved those parties whose votes we, in the models, attributed to independents; should we have attempted to do so.

2. The Commission is a statutory body that is obliged to provide Parliament with its independent views and conclusions. Where the views of the Commission may be different from those of others participating in the democratic process, that cannot possibly be construed as an attempt to discredit or rebut those other submissions.
3. On the other hand, the Commission cannot be reasonably expected to develop its submissions on the basis of lending support or not to particular views without negating its constitutionally enshrined independence. While the Parliamentary process is deliberative and consultative, consensus is not a prerequisite. Maximising consensus may be the goal, but not at the cost of sacrificing the independence and impartiality of the Electoral Commission. It is for Parliament to decide on the merits of the various inputs that must be considered in making decisions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sy Mamabolo', written over a horizontal line. The signature is stylized and cursive.

**Sy Mamabolo**

**Chief Electoral Officer**

**Cc: Mr Zolani Rento**

**Committee Secretary: Select Committee on Justice and Security**