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ANNETTE LOVEMORE MP

Tel: 021 4
Fax:

E-mail: a
Cell:

18 October 2011

Hon MV Sisulu
Speaker National Assembly
Room E125

Fax:

Dear Speaker

PRIVATE MEMBER'S LEGISLATIVE PROPOSAL

I herewith submit to you, in terms of Rule 234(1), a Memorandum on a Legislative Proposal to allow South African citizens living abroad to register as voters and to extend accessibility to voting by South African citizens living abroad.

Sincerely

ANNETTE LOVEMORE
Shadow Home Affairs Minister: Democratic Alliance



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

Republic of South Africa
Tel: 011 312 3511
www.parliament.gov.za

ANNETTE LOVEMORE MP
Democratic Alliance

Tel: 011 312 3511
Fax: 011 312 3511

E-mail: alovemore@da.gov.za
Cell: 082 999 1111

18 October 2011

**Memorandum on Legislative Proposal to
Allow South African Citizens Living Abroad to Register as Voters
and to
Extend Accessibility to Voting by South African Citizens Living Abroad**

Submitted in terms of section 73(2) of the Constitution and National Assembly Rule 234

A : Particulars of the Proposed Legislation

It is proposed that (1) the Electoral Act 73 of 1998 (as amended), (2) the Regulations Concerning the Registration of Voters, 1998 (as amended), and (3) the Election Regulations, 2004 (as amended), be amended to allow for :

- a) South African citizens living abroad to register to vote in national and provincial elections;
and
- b) South African citizens living abroad to enjoy reasonable access to voting in national and provincial elections.

B : Objects of the Proposed Legislation

The proposed legislation is underpinned by the political rights conferred on all South Africans by Section 19 of the Constitution of the Republic of South Africa (Act 108 of 1996).

The proposed legislation is further motivated and justified by the four core values of an electoral system, namely *fairness, inclusiveness, simplicity and accountability*, as accepted by the Electoral Task Team in 2003.

In *Richter v Minister for Home Affairs and Others*, (CCT 09/09) [2009] ZACC 3, the values of *fairness* and *inclusiveness* were at issue. The Constitutional Court ordered, *inter alia*, that "special votes should be accorded to any registered voter who will be absent from the Republic on polling day and who gives notice in the prescribed time to the Chief Electoral Officer".

The order pertained only to voting in the NATIONAL election; voting in the PROVINCIAL election was not included due to the apparent burden of the logistical requirements on the Electoral Commission and the short time available to realise these requirements prior to the 2009 elections. It is submitted that, given adequate time, overcoming the logistical hurdles described by the Electoral Commission will not be problematic. Moreover, these logistical hurdles were, with respect, overstated by the Electoral Commission.

In addition, the order confined voting locations for those absent from the Republic to South African embassies, consulates and high commissions. No application had been made, by any of the parties, to extend voting to other locations. It is submitted that, given enough time, the Electoral Commission will be able to arrange for voting facilities at other identified locations.

In *The A Party and Another v Minister for Home Affairs and Others*, (CCT 06/09) [2009] ZACC 4, and *Moloko and Others v Minister for Home Affairs and Another*, (CCT 10/09) [2009] ZACC, the matter of voter registration abroad was considered. The court declared this matter to be "within Parliament's constitutional remit". The matter must thus be dealt with through amendments to current legislation.

The proposed legislation will :

- i. **Allow South Africans living abroad to cast their votes in provincial elections, as well as in national elections;**
- ii. **Increase the accessibility to voting by not limiting voting facilities to being located at South African embassies, consulates and high commissions; and**
- iii. **Allow South Africans living abroad to register (abroad) to vote in national and provincial elections.**

C : Financial Implications

The State will incur expenditure as a result of the proposed amendments. The extent of the financial implications will depend on the systems put in place to allow increased accessibility to voting by South Africans living abroad.

It is important to note that the Department of Home Affairs has officials stationed at most, if not all, missions abroad. The task of registering voters can simply be added to the job description of these officials.



ANNETTE LOVEMORE MP

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