

ELECTIONS 2024

Both ballot papers are equally important

WHEN South African voters go to the polling stations on May 29, they'll get three ballot papers, not two as used to be the case in national and provincial elections. Two of the ballot papers are for the election of the National Assembly, while the third is for the election of the provincial legislatures.

As is probably widely known, the Electoral Act has been amended to accommodate independent candidates, that is, candidates running on their own – not as candidates for a political party – vying for an individual seat in the National Assembly (or in one of the provincial legislatures).

This is a consequence of the Constitutional Court's 2020 judgment, which made it clear that it was a violation of section 19 of the Constitution, when the Electoral Act allowed only political parties, not individual adult South African citizens, to compete for such seats.

Various models for how the challenge to the electoral law should be addressed were discussed. Due to time pressure because of the upcoming 2024 elections, it was eventually agreed that the opportunity should not be used to discuss ambitious and far-reaching proposals for a new electoral model; consequently, only modest and unambitious amendments made it through the political process.

After a further round at the Constitutional Court, the situation for independent candidates is that they must collect considerably fewer supporting signatures than what is required for new political parties contesting elections, and they can run for only one of the 200 seats set aside to provide proportional representation of the nine electoral regions (that is the provinces), which are, in reality, large multimember constituencies, and that



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the quota used for their election is the one also used for each region for election of the candidates from the regional lists. Independent candidates can run in as many regions as they like, but their votes cannot be aggregated and/or used to vie for one of the other 200 seats, termed compensatory seats.

This was seen as implying that the IEC must provide voters in each region with two ballot papers for the election of the National Assembly, one region-specific, which also contains the names of independent candidates (if any), and one national, that is, the same across the country, containing only the names of the parties contesting the election.

With two ballot papers for the same election, voters may start to wonder: Which one is the more important – and do I really need to use them both? The question is easily answered, but it is, nevertheless, surprising that

even otherwise well-informed publicists have been confused by the new electoral set-up.

The confusion might be caused by the ballot paper to be used across the country being called the compensatory ballot paper, which is to be used for the allocation of the 200 compensatory seats in the National Assembly.

The terminology and this way of presenting the electoral system overlooks the fundamental fact that the overall proportional allocation of seats to parties in the Assembly is done by computing how many of all 400 seats (minus seats to independents) each political party is entitled to based on its share of all the votes cast across the country. That is on both ballot papers.

This is, of course, reminiscent of the system used in local government elections, but the addition of votes is, in fact, superfluous and does not make a lot of sense when independent candidates are not allowed to compete for the PR seats in local government elections or compensatory seats in National Assembly elections.

Be that as it may, the over-arching, national calculation was previously based on the votes cast on the one and only national ballot paper, but with regional differences that was no longer seen as a viable option.

The overall proportional allocation of all 400 seats (again, minus independents) could just as well be based on the compensatory ballot paper only, which is what one sees in other countries with, in this regard, comparable electoral systems, as Germany and New Zealand.

It can only confuse voters when attempts at explaining the new electoral system claim that the compensatory ballot is used to allocate the 200 compensatory seats and don't explain

how all votes for parties on both ballot papers are added together and that all 400 seats distributed proportionally are based on these numbers. Regional seats are then subtracted and the remainder becomes the number of compensatory seats each party is entitled to. It is really a pity that some media have not been able to present this clearly and correctly to the public.

One can only hope that the Electoral Commission will eventually be able to educate voters correctly about the functioning of the amended electoral system. One certainly hopes voters will not end up believing that the compensatory ballot paper is less important than the other national ballot paper, when, at the end of the day, they carry almost the same weight in the final allocation of Assembly seats to political parties. One can even ask if the translation of "compensatory" into other official languages might provide the understanding that such votes are less valuable than others?

If you are confused, you are probably not alone. But it's comforting to know that the Electoral Amendment Act also directs the minister of home affairs to appoint an Electoral Review Panel, which will hopefully suggest a new and better electoral system to be used in 2029 and thereafter.

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