



INCLUSIVE SOCIETY INSTITUTE

Media release

Parliament persists in passing an unconstitutional Electoral Amendment bill

Parliament's Portfolio Committee on Home Affairs has called for public comments on a limited number of clauses in the Electoral Amendment Bill. These are in relation to the material amendments made to the Bill by the NCOP's Select Committee. The main amendments relate to the number of supporting signatures that independent candidates and parties will require to gain access to the ballot, some amendments to the calculation formula, and the inclusion of an Electoral Reform Consultation Panel.

The Inclusive Society Institute (ISI) has responded to the call for comment, wherein it has made proposals with regard to the number of supporting signatures and the Electoral Reform Panel (see the attached submission). With regard to the number of supporting signatures required, the Institute is of the view that it remains unreasonably high and that it could be viewed as a scheme to keep independent candidates out. On the panel, to avoid a potential conflict of interest that may arise, the Institute has raised some concerns related to the appointment of its members, in which the Minister is required to consult the Independent Electoral Commission. The IEC may have its own views on a desired system, which could perceivably impact its recommendation as to which members need to be supported. The ISI has proposed widening that consultation to include Parliament.

However, there remains a number of clauses not open for comment, that civil society continue to oppose on the basis of those clauses being unconstitutional. The ISI is particularly concerned with the provision that excludes independent candidates from aggregating their votes across provinces. In terms of our own legal opinion, which was shared with both the Portfolio and Select Committees, it is in breach with the constitutional principle of equality. This means that independent candidates need to be treated the same as political parties. It can therefore not be that independent candidates are prohibited from aggregating their votes from across provinces, whilst political parties can.

A number of civil society organisations have resolved to continue to challenge these unconstitutional provisions, and have **given notice of their intention to launch a legal challenge** should the Act be passed without remedying the constitutional deficiencies. Given the tight timeframes to prepare for the 2024 general election, such a court challenge will undoubtedly put the timeous and logistical preparations in jeopardy. To avoid a crisis, the Institute again appeals to the Portfolio Committee to give further consideration to the clauses in the Bill that civil society has flagged as potentially being unconstitutional.

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