



SUBMISSIONS MADE ON THE ELECTORAL AMENDMENT BILL [B22-2013] SUMMARY & QUESTIONS

9 November 2020

The following Public comment/ submissions were received in response to the latest Amendment [22 of 2020] to the Electoral Laws: 12,305 via the *Dear South Africa website* and summarised by them and another 28 from other stakeholders.

The following table contrasts the sections of proposed amendments in the bill alongside the sections of the relevant electoral law as most recently amended in 2018, & where applicable comments from various stakeholders as well as possible questions to stakeholders & the Electoral Commission.

2020 Bill Clause	Section & Act	Stakeholder name: comment & suggestions	Questions / Responses
Entire Bill		Institute for Race Relations, M. Rockett, Maxine, D. de Caires e Freitas, B. Enslin, J. Steyn, J. Barnard, D. Brand, E. Stewart, L. Blaauw, N. Khathi, N. Buthelezi, J. Gordon, Y. Petse, J. van den Berg, V Nunes, L. Janse van Vuuren, R. Endres, F Van Zyl, Dear South Africa x >11 141 against: Call for comments on the bill was published in the <i>Sunday Times</i> on 11th October 2020, with the deadline for the sending in of written submissions set at 'no later than 30 October 2020 at 16:00'. This is less than 3 weeks and is too short a period for adequate public consultation according to several court cases on the constitutional requirement for public consultation. Several Requests for at least 30 days and more newspapers.	Parliament ResponseA further 5 day extension till 6 November (26 days) was given allowing for close to 10 000 more submissions.
Entire Bill		Institute for Race Relations: Since September 2015, all new legislation and regulation in South Africa has had to be subjected to a 'socio-economic impact assessment' before it is adopted. This must be done in terms of the Guidelines for the Socio-Economic Impact Assessment System (SEIAS) developed by the Department of Planning, Monitoring, and Evaluation in May 2015. The aim of this new system is to ensure that 'the full costs of regulations and especially the impact on the economy' are fully understood before new rules are introduced. However, no SEIAS assessment nor final SEIAS report has been appended to this Bill to help inform the public to 'know about' the issues and have a reasonable opportunity to influence the decisions.	To IEC: Why was no Socio Economic Impact Assessment done for the bill?
Entire Bill		R. Setzer: I object in the strongest of ways in the fact that the government want to change the electoral law, I am highly suspicious of what this government is planning. C. Archibald I think passing this Bill means that the voting process will be open to manipulation by the Governing party. I get the impression that the ANC is desperate to stay in power at all costs as people are now understanding how badly we are being governed, with so many dishonest people in positions of power. I can't believe that the Bill would pass Constitutional safeguards.	

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Clause 6	S23(3) Electoral Act	<p>Institute for Race Relations, Dear South Africa x>846 Not Fully, Dear South Africa x >11 141 against: Clause 6 of the Bill deletes Section 23(3) of the Electoral Commission Act of 1996. This sub-section currently provides that: ‘Any regulation [made by the Commission] which affects state expenditure shall be made with the concurrence of the minister of finance.’ Once the Bill is enacted, however, the need for his concurrence will fall away. This is disturbing at a time when South Africa’s public debt is mounting so rapidly that interest payments already cost the state R2.1bn a day.</p> <p>Provisions in the Bill suggest that the IEC is proposing to introduce an electronic voting method for the country at all three tiers of government. Electronic voting machines require such ‘large initial investments in hardware and proprietary software’ that the only way to help spread their costs is to give them ‘a lifetime of 20 to 30 years’. However, ‘it is almost impossible to prepare decades in advance for potential vulnerabilities, which multiply as technology advances’. This again to inflate costs when other key sectors are already underfunded. The finance minister should not be barred from vetoing such spending by this Bill</p>	<p>To IEC: What was the intention of the IEC in removing Clause 23(3) and how will treasury now monitor the spending of the IEC on its regulations?</p>
Clause 9	S.24A Electoral Act S. 47 Municipal Electoral Act	<p>Fish Hoek Valley Ratepayers & Residents Association; Section 24A in Electoral Act and Local Government: Municipal Electoral Act should require a unique geocode to replace address so that the IEC can properly control the voter to be able to vote in a specific ward, local, metropolitan or district municipality.</p> <p>Dear South Africa x >11,141 There is a very good reason why voting must be done at a specific voting point. Each area knows how many voters to expect that reside in the area. Proper compiled lists to ensure reliable control is required otherwise voter rigging, corruption, bribery and counting fraud may take place. People will manage to vote multiple times and this thwart a reliable voting system. Our constitutional rights will be infringed upon.</p> <p>Dear South Africa x >318: Agree with the notion to allow flexibility to vote across different regions from where they initially registered for voting with suitable controls.</p>	<p>To IEC: Is there a cost effective means by which a geocode rather than the address could be used in Clause 9?</p>
Clause 13	S. 33 of Electoral Act	<p>Dear South Africa x 1: It appears in a) of the above clause that anyone, who wants to vote outside the Republic of South Africa, has to notify “ the [Commission within 15 days after the proclamation of the date of the election] chief electoral officer”. This is hardly enough time, particularly in the circumstance where a person only knows much later that he/she will be outside the Republic. The wording is also a little unclear, because in c) of the above clause mention is made that “he or she notifies the chief electoral officer in the prescribed manner by no later than the relevant date stated in the election timetable”. The two statements appear to contradict one another.</p>	<p>To IEC: Could more than 15 days be allowed for voters abroad t register after the proclamation of an election?</p>
Clause 14 & 21	S.38 Electoral Act S.47 Municipal Electoral Act	<p>Fish Hoek Valley Ratepayers & Residents Association, I. Pauw Attorneys (on 44(1), D. de Caires e Freitas, B. Enslin, J. Steyn, J. Barnard, D. Brand, L. Blaauw, Y. Petse, V. Nunes, L. Janse van Vuuren, R. Endres, V. Van Zyl, P Hoffman, Dear South Africa x >11 141</p>	<p>To IEC: Could the clause not be crafted to more specifically refer to what alternative voting methods</p>

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	44(1) Constitution	<p>against, Dear South Africa x>846 Not Fully, Dear South Africa x >11 141 against, Helen Suzman Foundation: Clause 14 of the Bill seeks to amend section 38 of the Electoral Act through the addition of a new sub-section. The new sub-section will confer upon the Independent Electoral Commission (“the IEC”) the power to “prescribe a different voting method” to that prescribed in the Electoral Act. Clause 21 of the Bill seeks to introduce an identical amendment into section 47 of the Municipal Electoral Act. The effect of clauses 14 and 21 will be that, notwithstanding the detailed provisions governing the voting method in the relevant legislation, the IEC will be empowered to prescribe a different voting method for national and provincial elections and for local government elections.</p> <p>The Sections of these Acts prescribe the detailed method by which voters may vote in detail. Voters must vote by entering a voting compartment at their voting station, marking a ballot paper in a way that indicates their preference, and placing the marked ballot in the ballot box. The HSF submits that this is an impermissible delegation of Parliament’s constitutional legislative function to prescribe the details of our electoral system (Constitution Section 44(1)).</p> <p>The IEC may be empowered to unilaterally make prescriptions on a matter of such foundational importance to our democracy without any guidance from Parliament. There is genuine public concern that a change to the prescribed voting method may open the door to electoral fraud – in particular, electronic voting is seen as more vulnerable to electoral fraud than our currently prescribed voting method.</p>	are being considered rather than an open statement that includes potential policy shifts?
Clause 14 & 21	S.38 Electoral Act S.47 Municipal Electoral Act 44(1) Constitution	<p>Dear South Africa x >318. Of those in favour of electronic voting, the following was nonetheless expressed: 1. Where the public are not able to vote via an online submission, voting stations should still be erected. 2. Electronic vote with a mobile phone number that is registered to a person on the voters’ roll should be allowed. RICA</p> <p>3. Quantum voting system. Block chain system which cannot be rigged.</p> <p>4. ID Book for voting must be presented but then the voting stations must also be electronic so that no one person can vote twice.</p>	To IEC: If the IEC intends to introduce e-voting, what security measures will be used?
Clause 14 & 21 Memorandum	S.38 Electoral Act S.47 Municipal Electoral Act 44(1) & 190(1)(b) Constitution	<p>Institute for Race Relations, Michael Rockett, Sandra J van Vuuren, P Hoiffman, : No further explanation is provided in Memorandum 2.1.14 of the Objects of the Bill as to why ‘a different voting method’ might be needed. Nor is any explanation given as to why the Commission should have the power, in introducing a new voting method, to override any contrary provisions in both the Electoral Act or ‘in any other law’.</p> <p>The IEC have indicated on several occasions that electronic voting is being considered in this regard to reduce costs and improve efficiency. However, although traditional manual voting systems are not entirely immune to irregularities, international experience confirms that the safeguards they provide are far stronger than those available under electronic systems. In</p>	IEC: Is the intention to introduce Electronic Voting through regulations? This should rather be specifically be included in future legislation once the appropriate policy consultation including Parliament and Political Parties has taken place.

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		<p>particular, traditional voting systems are far more transparent because they provide a paper trail and can be observed at every stage. The IRR attach an entire separate paper on why electronic voting is less secure and has in fact been abolished by early adopters like the Netherlands.</p> <p>Clause 21 All the concerns earlier outlined about the costs and vulnerabilities of electronic voting systems apply with equal, if not greater, force in the municipal context. The practical difficulties of securing adequate internet access, technical support, network access, and reliable electricity supplies are likely to be still more severe in many remote rural municipalities. This will make the costs and vulnerabilities of electronic voting at local level even greater.</p> <p>Advocate Paul Hoffman SC has pointed out, Section 190(1)(b) of the Constitution requires the IEC to ‘ensure’ that elections, at all three tiers of government, are ‘free and fair’. The IEC cannot fulfil this obligation under an electronic voting system when the opportunities for the rigging of elections conducted in this manner are legion and widely known to be so. Dear South Africa x >11 141 against: In addition to the above In place of an electronic voting method, measures should be put in place to address corrupt behaviour. While in theory electronic voting should be auditable, computer systems are vulnerable to hacking & therefore rigging results. In addition it would require that every political party should be permitted to audit the results independently which would be very expensive but would be the only fair way to ensure the elections are “free & fair”</p>	
Clause 15	S50(1) Electoral Act	<p>Institute for Race Relations, Dear South Africa x >11 141 against: Under the current wording of Section 50(1) of the Electoral Act, the counting officer, ‘after determining the result at a voting station’, must complete a form reflecting, among other things, ‘the number of ballot papers supplied to the voting station’, the result at the voting station, the ‘number of counted ballots’ that were either accepted or disputed, and the number of ballot papers that were ‘rejected’, ‘cancelled’ or ‘unused’. These requirements provide important safeguards against the risk of valid ballots being wrongly discarded and/or fraudulent ones being inserted instead. Under the Bill, by contrast, Section 50(1) is to be reworded, so that it reads: ‘After determining the result at a voting station, the counting officer must complete a prescribed form reflecting the result of the count in respect of each ballot conducted at the voting station’.</p> <p>All the references to ballot papers now contained in Section 50(1) are to be omitted, which will make it difficult, if not impossible, to achieve a proper ballot reconciliation. Confusingly, moreover, the new wording refers to ‘each ballot conducted’ at the voting station, rather than to ‘each ballot cast’ at the station. The proposed sub-section is thus difficult to understand, introducing further uncertainty. Yet vagueness of this kind is contrary to the doctrine against vagueness in laws, as stressed by the Constitutional Court in the Affordable Medicines Trust case.</p>	<p>To IRR: Reference is made in your submission to Section 51(1) of the Electoral Act but content appears to be related to 50(1) as stated here.</p> <p>To IEC: Why is reference to ballot papers removed and the words ballot ‘conducted’ used rather than ‘cast’ as before?</p>

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Memorandum 4	N/A	<p>Institute for Race Relations: 4 of the Memorandum on the Objects of the Bill states that ‘most of the amendments proposed by this Bill relate to normal operations related to elections. For this reason, the financial implications thereof have already been taking into account when compiling the budget for those elections’.</p> <p>This statement brushes over the high costs of acquiring the hardware and proprietary software needed for an electronic voting system, as earlier outlined. It also brushes over the high recurring costs that will be needed in overcoming problems – and in curing fresh defects as technologies changes and additional steps must be taken to ward off new threats.</p> <p>In addition, the finance minister is to be barred from any say over this additional expenditure, whereas (under the current rules) his ‘concurrence’ would be required.</p>	<p>To IEC: Has the IEC considered the cost implications of potential future electronic voting in its internal costing of the bill?</p>
Not in Bill	Local Government Municipal Electoral Act, Consitution	<p>70s Group, Dear South Africa x >318 pro the bill: Allow for the direct election of Mayors in towns and cities including for independent candidates in the Local Government: Municipal Electoral Act as per the ConCourt ruling CCT 110/19 pertaining to National and Provincial Legislatures. If this is not brought into effect by this or the next election will it not make the bill unconstitutional?</p> <p>S. Govender: My view is that we scrap the system of governance by political parties and move in the direction of direct representation by the people of a representative of an area representing about 50 000 people. In this way the numbers of people in parliament will be reduced bringing the cost down and allowing for greater expenditure in poorer areas. I think that you need to ask yourself what is the need for political parties if we have representatives. Furthermore since there is no allegiance to a party but to the people of their area,they cannot walk out of meetings but would have to listen to the various individuals views so as to support a view that is supported by the majority. Presently this is not the case but rather party views that are not even supported by the masses on the ground.</p>	<p>To IEC: Is there any reason why direct election of Mayors could not be included in the current bill?</p>
Not in the Act	All electoral laws	<p>MG Buthelezi: I am of the opinion that there should not be the Electoral Commission Act of 1996, Electoral Act of 1998 and Local Government Act of 2000. The one that needs to be amended should not be amended because for the world to change, the existing law must be changed. Instead of having elections, it would be better for the country to be ruled by kings and chiefs as it was in the past.</p> <p>I think the upcoming elections here in South Africa should not be held, but the land should be returned to the rightful owners.</p> <p>Zulus, Xhosas, Sothos, Tswanas, Ndebeles, Pondos, Shanganes, Vendas and other Africans.</p>	