

‘Single-member constituencies provide a direct form of accountability’

Council for the Advancement of the South African Constitution

The following are highlights from the Proposal for Electoral Reform submitted to the Ministerial Advisory Committee on Electoral Reform by the Council for the Advancement of the South African Constitution (CASAC). *This is an edited version of the council’s submission to the Ministerial Advisory Committee chaired by Valli Moosa.*

CASAC urges Parliament to consider that the electoral system is the fundamental mechanism around which any democracy pivots.

While the legislative changes that are being considered by Parliament are aimed at satisfying the ruling of the Constitutional Court, it is also an opportunity to improve parliamentary representation in South Africa and strengthen the basis of our constitutional democracy. The amendment of the electoral system

must, however, take into account the trade-offs inherent to changing electoral systems.

The two most important principles guiding an electoral system are accountability and fairness; others include simplicity and inclusivity.

Accountability is a relatively simple principle: representatives should be held responsible for their performance by constituents, and constituents should have a way to register their disappointment or approval of the conduct of their representatives.

Fairness is a more complex principle, but it can be simplified as including both representativity and the expression of every voter’s voice through electoral mechanics. This means that the composition of a legislative body should more or less express the will of the people (ie proportionality), and votes should not be wasted or discarded where possible.

These two goals, at least where it concerns electoral systems, have differing solutions. Proportional representation is undoubtedly the fairest and most inclusive system, but it seems to have caused an accountability deficit and weakened the status of MPs in relation to their party hierarchies. Single-member constituency systems, on the other hand, produce obvious mechanisms of accountability. But these

are ‘winner-takes-all’ systems, ie many constituents’ votes are effectively not represented when the candidate they vote for is not elected.

It has become relatively orthodox to advance a multi-member constituency system with a proportional list component as the future of South Africa’s electoral system. This stretches back to the majority view of the 2002 Van Zyl Slabbert Electoral Task Team, which recommended a multi-member system based on the boundaries of district councils with a compensatory national party list.

It is CASAC’s contention that the multi-member system does not deliver direct accountability between representatives and constituents, but rather a diffuse accountability that could lead to blame-shifting among multi-member representatives. The fact that constituencies will necessarily be geographically and/or population-wise very large, militates against any direct relationship between MPs and the voter. Multi-member constituencies could also encourage the cultivation of electoral niches by representatives, rather than encouraging cross-cleavage campaigning, and appeals to all potential voters. The architecture of multi-member constituencies, at least as envisaged in the Van Zyl Slabbert report, would also result in significant over-representation ►►

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... accountability and fairness are the most important principles for an electoral system but they must be combined with simplicity and inclusivity.

of smaller constituencies, to the detriment of larger constituencies. The creation of an imbalance in voting power (ie increasing the comparative value of one voter's vote over another's) is an undesirable outcome.

For these reasons, CASAC prefers the adoption of a single-member constituency system, which delivers constituencies of relatively similar population size. This will of course entail the creation of fairly large constituencies in areas of low population density, but the benefits could easily outweigh the potential downsides.

Single-member constituencies provide a direct form of accountability: the local representative is the link between constituents and Parliament. A common dissatisfaction with representation in South Africa is that articulating grievances and having them heard by those with the power to address them is difficult if not impossible. Constituency representatives are an obvious mechanism for the collation of societal grievances or inputs on proposed legislation or policy.

The current system attempts to achieve this through setting aside specific 'constituency periods' and the assignment of constituencies to MPs, but few South Africans seem to know



who their constituency representatives are or how to contact them, and MPs have little incentive to pay attention to constituency grievances given their election is not dependent on any specific community's support. Moreover, there is no system in Parliament for MPs to report back on their consultations with their constituents. Parliament conducts public hearings on some issues of national importance, but these are mass gatherings, often stage-managed and ineffective in giving voice to ordinary people.

Single-member districts will require MPs to pay attention to the desires and concerns of their constituents if they wish to be re-elected. It also provides a mechanism for constituents unhappy with their representative to express their dissatisfaction through the ballot box at the following election.

The introduction of directly elected representatives should also have a positive upside for the behaviour of Parliament: MPs will be, at least theoretically, more powerful and will not be vulnerable to arbitrary removal from Parliament by party officials. This ought to comparatively empower Parliament

vis-à-vis parties and government, and therefore strengthen parliamentary oversight (although this should not be taken as a given). Examples of directly elected ward councillors voting against party lines in the interests of good governance at municipal level do exist, and this pattern could be replicated at national level. However, electoral system design will have to decide whether directly elected MPs on a party ballot could be removed by the loss of party membership or not. In other words, consideration must be given to deleting section 47(3) (c) of the Constitution. While giving constituency MPs security of tenure for their electoral term will strengthen their hand, it may also contradict the desires of their constituents who voted for representatives because of their party affiliation.

The accountability and directness of the link between constituents and representatives in single-member districts certainly seems a desirable outcome for an electoral system, especially in the South African context where accountability has been at best illusory.



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However, there are obvious disadvantages to single-member districts. The most obvious is that they produce unfair outcomes: while the voting system (two-round, transferable or not, etc) can mediate this effect, generally single-member districts are good for large parties and those with regional support concentration, and bad for smaller parties, especially those with widely dispersed support. Single-member districts with a first-past-the-post (FPTP)/Westminster voting system have the most disproportional outcomes. In effect, this would all but eliminate small parties from Parliament, and diminish the fairness and inclusivity of the current electoral system. FPTP also means that some voters' votes are wasted, in that their voice will not be represented if their preferred constituency candidate loses.

To compensate for this, and to ensure the constitutionality of the electoral system (which must result in terms of section 46(1)(d) of the Constitution 'in general in proportionality'), a proportional representation component must be included. The Van Zyl Slabbert majority view argued for a 300:100 split, where

300 constituency seats across 69 constituencies would be supplemented by 100 compensatory proportional seats. The number of constituency seats in comparison to proportional seats is something that is probably best decided based on how constituencies would be demarcated, and what the imbalances in registered voters are between existing demarcations. Several options prefer constituencies demarcated along municipal lines, which, while allowing for the grouping of people with similar general interests into electoral districts, would also create huge imbalances in constituency size and population. It may therefore be necessary for the number of seats in the National Assembly to be increased for the municipal demarcation option to be implemented.

Another issue that must be decided is whether the proportional list should be compensatory or separate from the constituency ballot. Compensatory lists are to correct the disproportionality of outcomes from constituency systems, by compensating affected parties with seats based on their vote share in constituency elections. It is a mechanism that does not accommodate independents or individuals contesting constituency elections – their votes would be lost/discarded in a compensatory list.

Separate proportional ballots would allow for voters to split their ballot, and vote in their constituency based on the performance of their representative, while still voting for their party preference at a national level.

Both systems have drawbacks, as do all electoral models. Separate ballots would not necessarily guarantee completely fair and proportional seat allocation outcomes, although they would soften the blow for smaller parties. A compensatory list, however, removes the option for a split ballot, which increases the voice available to a voter to express their preferences at

both local and national level. It may also be detrimental to smaller parties, who will have to run candidates in all constituencies if they wish to have a sufficient national vote share to be represented in Parliament. A separate ballot is thus a more appropriate choice, as it will allow small parties to run national campaigns and give voters more options to express their political preferences.

There are a number of further modalities that Parliament will have to consider, in terms of actual balloting systems (transferable votes, for instance), what would qualify a candidate for electoral victory (first-past-the-post or majorities achieved through two-round elections?) and the demarcation of constituencies.

Nevertheless, CASAC believes that the correct choice of electoral system in terms of the balance of accountability and fairness is a single-member constituency system combined with a separate national proportional ballot.

REFERENCES

- Council for the Advancement of the South African Constitution (CASAC). 2021. *Proposal for Electoral Reform*. Submission for Ministerial Advisory Committee on Electoral Reform. 30 April. Available at <http://casac.org.za/wp-content/uploads/2021/06/Proposal-to-MAC-290421.pdf>
- Motsoaledi, A. 2021. Debate on the Home Affairs Budget Vote 5, Dr Aaron Motsoaledi, Minister of Home Affairs, National Assembly, 19 May. Available at <https://pmg.org.za/briefing/32985/>
- Naidoo, L. 2021. 'Accountability must drive electoral reform.' *Business Day*. 25 May. Available at <https://www.businesslive.co.za/bd/opinion/2021-05-25-accountability-must-drive-electoral-reform/>. Accessed 4 August 2021.
- PMG. 2021a. Electoral Act amendment; Electoral Laws Second Amendment Bill; with Minister. Report on a meeting of the Portfolio Committee on Home Affairs. 09 February. Available at <https://pmg.org.za/committee-meeting/32156/> Includes presentation by Farouk Cassim.
- PMG 2021b Joint Electoral Reform Workshop; with Minister & Deputy Minister. Report on a meeting of the Portfolio Committee on Home Affairs and the Select Committee on Security and Justice. 16 March. Available at <https://pmg.org.za/committee-meeting/32562/>
- Report on a meeting of the Portfolio Committee on Home Affairs. 09 February. Available at <https://pmg.org.za/committee-meeting/32156/> Includes presentation by Farouk Cassim. **NA**