

## Hybrid Parallel Electoral Model Combining Majority First Past-The Post, with Closed List Proportional Representation



Submission by **Ebrahim Fakir**, *Director of Programmes: Auwal Socio-Economic Research Institute (ASRI) to the Inclusive Society Institute (ISI) expert panel on electoral reform*

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This submission is made pursuant to a Constitutional Court Judgement of 11 June 2020, stating that the Electoral Act 73 of 1998 is unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties. The unconstitutionality hinged on the unjustifiable limitation on the right to stand for public office and if elected, to hold office. This right is conferred by section 19(3)(b) of the Constitution.

The Judgement does not prescribe, nor provide any guidance as to what the nature and character of the revised electoral system should be, nor any guidance as to how the Electoral Act must be amended, save to say that any amendment must make provision for the exercise of the section 19(3)(b) right. This implies that provision must be made for individuals, or independent candidates to be able to stand for election which would require an amendment to the Electoral Act, and consequently, the electoral system as a whole.

The proposal made in this submission is made with the overhaul of South Africa's representation, oversight, accountability and responsiveness governance architecture, in mind. It aims to centre the concerns of voters and citizens, making the electoral process an opportunity for voters to freely discern and deliberate on the electoral **choices** they wish to make at the level closest to them. It also provides an opportunity for voters to consider how best to exercise their **voice** in a system that caters to their most immediate concerns and which is also **simple** and easily understandable. While political parties are important for democracy and democratic governance, they are mere instruments, or ought to be mere instruments, in the hands of voters and so while the interests and concerns of political parties are valid, they are secondary in this proposal to the interests and concerns of voters/ citizens.

Elections, and the electoral system through which elections are conducted, are primarily political instruments rather than the technical, systemic exercises they tend to be viewed as. Electoral systems

have a profound impact on the nature and shape, political culture and party system, as well as the government regimes, systems and subsequent governance cultures in a society.

In general, an electoral system is a process which serves to facilitate people's participation in a process of choosing leaders to represent them. The electoral system is thus a process that creates the equality of opportunity for citizens to exercise choice and give voice to their choice. Consequently, elections, by their nature, would need to be process driven, serving to systematise and manage the competition and contestation over the issues and resources that may be at stake in society.

Each electoral system has distinct advantages and disadvantages; for instance pure proportional representation systems account for every single vote in determining the outcome of an election, but does not embed the potential for closer constituency responsiveness and accountability.

In addition, pure proportional systems provide inordinate power to political party bosses to determine policy. Pure First Past the Post systems (winner takes all), on the other hand, bear the potential for greater accountability to constituencies, allow ordinary members of political parties and back-bench legislators greater influence in policy by virtue of the constituencies they command, but are not always a fair reflection of the choices made by an electorate. In this system winners of an electoral contest in defined geographic constituencies, even by very slim margins, take all the power. All the other votes cast for candidates in these constituencies who might lose by small margins, are disregarded.

Mixed systems may minimise disadvantages and maximise advantages, but depending on the mix used, can potentially create such overwhelming systemic complexities that they are rendered indecipherable to citizens. In addition, they create serious complications in the management and administration of elections as well as the tabulation of results. This can cast a pall of doubt on the credibility of electoral processes and consequently serve to delegitimise the electoral outcomes as oversight over and transparency of the calculation and counting of outcomes are rendered ever more complicated. Simplicity of the electoral system should not be under-estimated as a great virtue.<sup>1</sup>

This proposal thus recommends a hybrid parallel system with two components. A First Past The Post System (FPTP) requiring a 50% +1 majority<sup>2</sup> to have won the seat for 350 Or 400 seats in a 600

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<sup>1</sup> The summative points about the strength and weaknesses of different electoral systems were first published in Fakir, E. 2014, "The Electoral System: Is There Virtue or Vice in Reform?" *Daily Maverick*, May 22.

<sup>2</sup> The majoritarian FPTP system, rather than a plurality FPTP system is being proposed here. The plurality FPTP system requires simply that the contesting independent or party candidate who gets the most votes wins the constituency seat. The majoritarian FPTP system requires that winning party or candidate must have more votes than all other contestants combined. Hence the 50% +1 requirement. This may, once all the constituencies around the country are collectively tallied up, result in a reasonably proportional outcome and would reflect the will of the majority of the voters to a greater extent than would the results in a plurality FPTP system.

The drawback of the majoritarian FPTP system is that it may require two rounds of voting where there is no clear winner with the required 50% +1 of votes. In such instances, a run-off between the top two

member Assembly and parallel to it, 250 or 200, closed party list PR seats. This would combine the benefits of proportional representation with single-member constituency representation.

This proposal is made, bearing in mind the following constitutional principles and democratic values.

**Constitutional Principles:**

- Accountability, responsiveness and openness – Act 108 of 1996, 1(d)
- Human dignity, equality and freedom – Act 108 of 1996, 7(1)
- Effective Choices & adopting a cause – Act 108 of 1996, 19(1), 19(1)(c), 19(3)(b)
- Maximising Representation. Representation of the people, preferably at its most basic and decentralised level – Act 108 of 1996, 42(3)

**Democratic Values:**

- Responsibility and Responsiveness
- Inclusivity, diversity and representativity
- Proportionality
- Oversight and Accountability - In 1. executive – legislative relations, 2. between party representatives, party organs, leaders and members and finally 3. between elected public representatives & the voting public/ communities/ constituencies.
- Simplicity and Transparency for voters, parties, candidates, and election management and administration.

The model would necessitate that section 46(1) be amended. Section 46(1) should read “the National Assembly consists of no fewer than 525 and no more than 600 members ...” and there be an amendment to section 46(1)d to read: “reflects an element of proportional representation in its result”. It also envisages a unicameral parliament with a single national assembly and no second chamber.

The NCOP would then disappear and all constitutional references to it, including in the legislative process be amended accordingly. If it is to be retained, its size would need to be reduced dramatically to at least half of its current membership.

The model envisages retaining the Provincial Legislatures in their current form, with reduced size and with the oversight powers maintained. Their legislative powers would largely remain intact, except to expand their scope with respect to the legislative process and that it be expanded to them sending a direct mandate on amendments to the National Assembly on legislation that is passed down to them for consideration and requiring Provincial input. This can be tabled through an administrative routine. If it is to be carried politically, the Provincial mandate can be carried out by one of the Proportional Representation MP’s that are elected from the Province, who will be the province’s lead delegate at the National Assembly.

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contestants will be required a few days later. This can prove prohibitively expensive and could result in voter frustration and election fatigue.

In orientation, the model seeks to harness the benefits of proportional representation without making it the primary feature of the system, and privileges increased responsiveness, accountability and a closer fit between constituencies and elected representatives (MPs) while simultaneously sublimating the overweening and inordinate influence, and extraordinary power of political party elites, party organs and party bosses. While parties will no doubt remain hugely influential, as will party elites and organs, this model does give greater leverage - even if only in theory - to voters in communities and constituencies. This proposal is made with the full awareness that direct constituency representation occurs at local government level through ward representatives. Though this has not necessarily increased responsiveness and accountability, the roots of such unresponsiveness and unaccountability lie in a political culture of impunity which are precipitated and facilitated by party organs and party disciplines.

This systemic and structural change, while no panacea to these ills, at least creates the opportunity for voters, and citizens to extract greater responsiveness from representatives and hinges on the logic that regulatory and systemic change may stimulate and incentivise behavioural and political culture changes, over time. It may also spur local social and economic development in making local representatives in a constituency, through identifiable constituency offices, responsible and accountable for attracting private and public investment in an area and may lastly, spur greater and more perspicacious oversight by elected representatives over government functions – thus far obscured by party diktat. In a developmental sense, it stimulates the local representative's oversight over the proper and prudent functioning of public services located in their constituencies – such as schools, hospitals, clinics and other government services and public infrastructure - since the original powers and functions of elected representatives with respect to questioning and probity, remain intact. It may, with well-developed oversight, and communications routines with local and provincial public representative and the relevant public service offices and officials, also aid problem identification and solution streamlining, creating efficiencies in government co-ordination and inter-governmental relations.

In the hybrid parallel system propose ere, of these 600 MPs, 400 would be elected from 400 single-member constituencies in a majoritarian first-past-the-post system (FPTP), with a 50%+1 majority.

Constituencies would correspond to the current, approx. 234 municipalities and their municipal boundaries (excluded here are the 44 district municipalities that don't exist as constituencies but as co-ordinating structures of 2 or 3 individual municipalities). These current municipal boundaries would then be reduced further, to enable the creation and delimitation of constituencies of a reasonable, meaningful and manageable size for effective representation. This delimitation and demarcation exercise would best be left to the Demarcation Board, using the Demarcation Act's current provisions to determine and delimit constituency sizes according to land mass, population density and concentration of services. This can be augmented if necessary. Of course, the gerrymandering of boundaries may be an issue, but the oversight and transparency safeguards in the current act and in electoral administration with regard to inspection, and objections and remediation of delimitations, are sufficiently robust.

The approach suggested here is premised on the idea that multi-member constituencies (in a mixed member proportional system) may still be too large and might fail to adequately address the element of

responsiveness and accountability, since the constituencies would not only remain too large, but more importantly, responsibility may be shirked from among the multiple members in the multi member constituencies.

The remaining 200 seats in the National Assembly would be elected from a closed party based proportional list with an appropriate number of PR seats to be allocated for election to each province based on population size, as is the current practice. This would be implemented to establish a degree of proportionality, by electing 200 MPs from the existing PR list without it resulting "in general", in a proportional outcome for the whole election result.

For greater proportionality in the overall outcome, the system could be changed for a more balanced distribution, such as 350 MPs from constituencies and 250 from a PR list, to have greater proportional representation, bearing in mind that this increases constituency sizes and therefore may affect responsiveness adversely.

It is also proposed that the model be replicated for provincial legislatures. It is recommended that the size of each provincial legislature be reduced by between 20% and 25%. That means each provincial legislature will be faced with a reduction of between 3 seats at the smallest and 16 at the largest, and it is estimated that on a combined 20% reduction across provincial legislature sizes, there will be at the least 80 seats reduced, available for absorption nationally.

The total number of seats to be elected in the provincial legislatures be on the basis that 2/3<sup>rd</sup> of seats be elected directly in constituencies, and 1/3<sup>rd</sup> off PR lists. The size of constituencies in the provinces combine two national constituencies into one, for provincial representation purposes in the provincial legislature.

Consequently, consideration would have to be given to costs.

First, with no NCOP or second chamber, or at least a drastically reduced second chamber, could allow for those costs to be allocated and absorbed in additional NA seats. Second the Provincial Legislatures will be reduced by at least 80 seats nationally (based on a 20% reduction), which will also be absorbed nationally. Thirdly, there is a definite need to moderate the remuneration, benefits and perks accruing to public representatives at national and provincial levels. Adjustments here should not be hard to deal with, nor prove unpopular with the public.

In this system, each voter would be given four ballots:

- one for the National Constituency Representative,
- one for the National PR (Party list),
- one for Provincial Constituency Representative,
- and one for the Provincial PR (Party list).

While this may prove administratively and logistically burdensome for Election Administration, they are not insurmountable problems provided there is adequate and proper planning, supervision and management. The greatest advantage, is that it retains the elements of simplicity and trust in the overall

electoral system for voters, in the process of voter registration, voting processes and procedures, vote counting, tabulation, audit and verification processes. It thus retains the element of simplicity with the robust oversight and transparency mechanisms in the entire electoral system and its management and administration.

This model consequently seeks to address the issue of inclusivity by allowing independent candidates to be elected from a mixed system, while addressing issues of accountability and responsiveness, and retaining a role for political parties throughout. It also has the advantage of relative simplicity and maintaining the elaborate and well-crafted transparency, oversight, accountability, and conflict resolution mechanisms that govern the supervisory architecture of election management and administration. It does have some implications for constitutional amendments – on proportionality and on sections dealing with the legislative process, but these should be relatively simple to effect.

**Ebrahim Fakir, Director of Programmes, ASRI — Submission to the expert panel on electoral reform of the Inclusive Society Institute (ISI)**

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