ELECTORAL REFORM IN SOUTH AFRICA

THE TIME HAS COME

IRR

South African Institute of Race Relations

The power of ideas

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ELECTORAL REFORM IN SOUTH AFRICA: THE TIME HAS COME

Electoral reform is an issue which is gaining traction in South Africa. Although our current system has a number of advantages, it also has a number of significant flaws, which have led to calls for it to be reformed.

South Africa's electoral system is a closed-list proportional representation system.[i] One of the significant advantages of this system is that there is a very close correlation between the proportion of the vote that each party receives and the proportion of seats that it is awarded in Parliament.

Voters also do not select individuals but rather vote for parties. Before every election, each party presents a list of its candidates for Parliament to the Independent Electoral Commission. The lists are 'closed' – meaning that the public has no influence over them (although they are published before elections for voters to scrutinise). Some countries use an open list system, where voters have some influence over where candidates are placed on the list at elections, but this will be discussed in more detail below.

The electoral system the country adopted in 1994 was only intended to be an interim electoral system. It was introduced at the time as a system suitable for 'democracies with deep social divisions' as South Africa was (and still is). It was also selected for its 'inclusiveness, its simplicity, and its tendency to encourage coalition government'.[ii]

Initially, the ANC opposed a system of proportional representation (PR). Having initially favoured a more traditional first-past-the-post system, the party subsequently decided to support a PR system after all, partly because it became clear in the early 1990s that the ANC would win an election fairly easily, no matter what electoral system was in place. In addition, closed-list PR 'would also help party elites maintain discipline over backbenchers'.[iii]

> *The electoral system the country adopted in 1994 was only intended to be an interim electoral system.*

The system South Africa adopted in 1994 had no legal threshold of entry to Parliament. (Most countries which use PR require parties to gain a certain level of support, commonly 5% or even higher.) The lack of a threshold would ensure that parties at the extremes secured parliamentary representation. The thinking was that given their involvement in parliamentary democracy, they would moderate their more extreme views. By way of illustration of the low threshold, consider the example of Al Jama-ah, an Islamic fundamentalist party. It entered Parliament for the first time in 2019 after winning 31 468 votes (or 0.18%) out of over 17 million cast. Of the fourteen parties that won seats in Parliament in 2019, this was the lowest number of votes that any single party won while still securing a parliamentary seat.

However, despite the high fidelity of proportional representation, the system also displays a number of flaws. MPs are not elected from geographical constituencies but are rather sent to Parliament depending on how high they are on a party's list of candidates. These lists are controlled by the leadership of the various parties, meaning that MPs are often reluctant to go against the party line. As flagged above, this is often to the detriment of voters. An example that comes to mind is how few MPs representing the African National Congress (ANC) spoke out against former President Jacob Zuma's excesses.
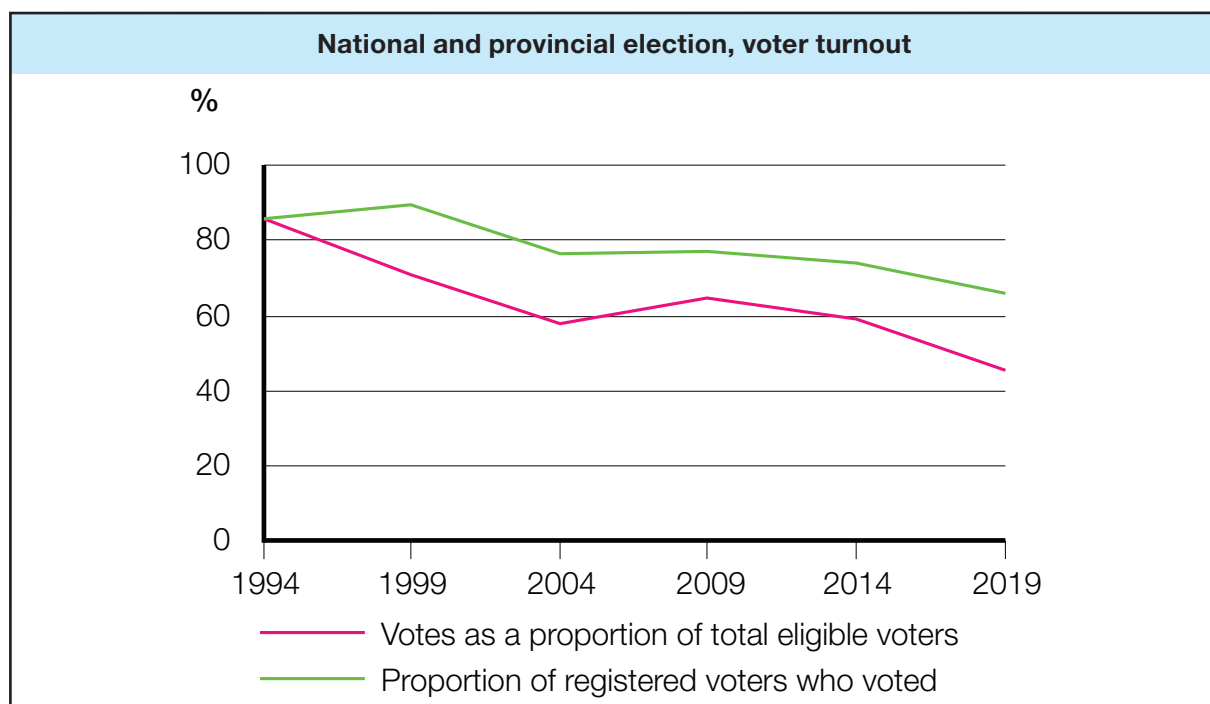
The lack of a link between geographical constituencies and MPs also has implications for the legitimacy of democracy. With no geographical constituencies for MPs to answer to, voters often feel that MPs do not represent them or their specific interests. There have been attempts by parties to assign constituencies to MPs, but these have generally not been successful in creating a pseudo-constituency system.

A further weakness in the current system is that individuals cannot stand for Parliament and must be elected on a party platform. Independents are de facto prevented from standing for Parliament. There are also significant financial resources required to gain access to the ballot. A deposit of R200 000 is required to be on the ballot for the National Assembly and R45 000 for a party to gain ballot access for a provincial legislature. It would thus cost a party over R600 000 to be on the national and each of the nine provincial ballots. In other countries, independents – even those campaigning on a single issue – are often elected to legislatures and can make neglected communities feel heard. An example is that of Dr Richard Taylor in the UK. In 2001 he decided to run for Westminster on a single issue. In his constituency of Wyre Forest, it had been decided in 2000 to close the casualty ward of the Kidderminster hospital, to the dismay of many local residents. Although he ran as the candidate of the Independent Kidderminster Hospital and Health Concern, he was effectively an independent. He successfully won the seat and retained it until losing it in the 2010 election.

The current system also appears to encourage voter apathy. In each election, the number of people simply opting to stay away from the ballot box increases, as voters likely feel that their voices are not being heard. The 2019 national election had the lowest voter turnout yet recorded in post-apartheid South Africa for a national election. Just under two-thirds of registered voters made their way to the ballot box in May of that year. This was the first time that fewer than 70% of registered voters turned out. In 1999, nearly 90% of voters had turned out. However, these proportions are even lower when we consider the percentage of voters who turned out compared to all those who were eligible but not registered to vote. Only 45% of all those who were eligible to vote did so last year, the first time that less than 50% of all eligible voters turned out.[iv]

Furthermore, in 2009 only 37.5% of registered voters cast a ballot for the ANC (against the 57.5% of the vote it won in the 2019 election). In terms of eligible voters just over a quarter of voters cast a ballot for the governing party.[v]

This has serious implications for the legitimacy of future elections and governments. Tweaking the electoral system may help make voters feel that they actually have a say, that their vote makes a difference and that their voice is being heard.

National and provincial election, voter turnout

— Votes as a proportion of total eligible voters
— Proportion of registered voters who voted

The weaknesses in the current system have been recognised for some time. What is often forgotten is that the current electoral system was never envisaged as being South Africa's permanent electoral system. Shortly after the 1994 elections, there was already talk of a revised electoral system, incorporating some constituency elements, with nearly all political parties represented in Parliament at the time, including the ANC, saying that this was desirable. There was a general expectation that the electoral system would be reformed by the 2004 election.[vi]

In 2002 the government decided to look at a new electoral system in earnest. A commission headed by the late Frederik van Zyl Slabbert (who had briefly been the leader of the opposition in the whites-only Parliament in the 1980s) was appointed. The findings of the Van Zyl Slabbert Commission are provided in some detail below. Despite its recommendation that the system be changed, a decision was made to retain the current system – this being the minority opinion of the commission.

In 2017, former president Kgalema Motlanthe also called for electoral reform. Motlanthe had chaired a 'high-level panel' which had looked at the efficacy of post-apartheid legislation. The High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (to give it its full name) raised questions about the effectiveness of Parliament and found a lack accountability to the public. In its report, the panel called for electoral reform: it said that it 'recommends that Parliament amends the Electoral Act to provide for an electoral system that makes MPs accountable to defined constituencies in a proportional representation and constituency system for national elections.'[vii]

However, in June 2018 the weaknesses in the current electoral system were once again brought to the fore when Chief Justice Mogoeng Mogoeng noted that independents should be allowed to stand for Parliament or provincial legislatures, but that this was not possible given our electoral system. The enjoyment of this right had not been proscribed by the Constitution. It was just not facilitated by legislation, said Mogoeng at the time.[viii]

> *There was a general expectation that the electoral system would be reformed by the 2004 election.*

Another court challenge was brought in April 2019 in the Western Cape High Court, shortly before the May general elections. The case was brought by, amongst others, the New Nation Movement and a person claiming to be a Khoi leader, Chantall Revell, the latter wanting to stand as an independent parliamentary candidate. The applicants had approached the courts because they claimed that electoral laws were invalid. The basis of their argument was that although the Constitution stated that 'every citizen has the right to stand for public office and if elected, to hold office', one had to be a member of a political party to do so. The applicants argued that this right was limited because individuals had to be a member of a political party to be a candidate for Parliament or a provincial legislature.[ix]

Judge Siraj Desai, who heard the case, dismissed the application, noting that nowhere in the Constitution did it say that 'standing for office must include standing for such office as an independent candidate'. He also said granting relief would have serious implications for the national election, scheduled for the following month.

Subsequently an appeal was granted for the matter to be heard by the Constitutional Court. The matter was heard in June, and the Constitutional Court found in favour of the applicants. It agreed that independents should be allowed to stand in national and provincial elections. The Court found that certain aspects of the Electoral Act were unconstitutional. In his judgment, Justice Mbuyiseli Madlanga said: 'It is thus declared that insofar as it makes it impossible for candidates to stand for political office without being members of political parties, the Electoral Act is unconstitutional.'[x]

Madlanga noted that the right of freedom of association included the right to not associate with other individuals. Madlanga noted in his judgment that forcing people to be members of a political party in order to stand for Parliament 'may be overly restrictive to the free spirited, it may be censoring to those who are loathe (sic) to be straight jacketed by predetermined party positions. In a sense, it just may at times detract from the element of self, the idea of a free self, one's idea of freedom'.

The Court gave Parliament 24 months to amend the Electoral Act.

At the beginning of July 2020, the ANC came out in favour of electoral reform which would include a constituency element. A meeting of the party's National Working Committee, which deals with the day-to-day running of its affairs, said that it supported three elements of electoral reform. These were holding national, provincial, and local elections on the same day; the use of electronic voting; and introducing some form of constituency representation at national and local level.[xi]

Although at first glance these proposals seem reasonable they carry an element of risk. As Professor Dirk Kotze of the University of South Africa notes, synchronizing elections would favour bigger parties. It is quite likely that national issues would overshadow municipal issues and 'local parties might be "swamped" by the national character of the campaigns.'[xii] Political analyst, Ebrahim Fakir, agrees and argues that aligning elections 'helps parties evade scrutiny and accountability for local performance, while allowing them to subsume local issues and subordinate them, to national (ideological and rhetorical) ones'. He also argues having elections for all three tiers of government on the same day would place an undue administrative burden on officials. It would also undermine electoral integrity and democratic effectiveness, says Fakir.[xiii]

Aligning elections 'helps parties evade scrutiny and accountability for local performance, while allowing them to subsume local issues and subordinate them, to national (ideological and rhetorical) ones'.

In addition, if we had to postpone the 2021 local elections until 2024 the terms of municipal councils would have been eight years. Although this may be constitutionally possible it must be asked whether this is in the best interests of the voters, especially in those municipalities where the lack of an outright winner in 2016 saw chaos. The cases of NMBM and Tshwane, and to a lesser degree, Johannesburg, come to mind. This is not to say that the exact same situation won't prevail after another election, but the voters should have the opportunity to change the composition of their councils at intervals more regular than every eight years.

Electronic voting is fraught with its own problems too especially if there is not a concurrent paper trail, or receipt for a voter to confirm that the way their vote was recorded electronically. This point may be moot however, as the IEC announced that there is no money to roll out electronic voting in South Africa.[xiv]

Senior leaders from the Economic Freedom Fighters (EFF) also welcomed the judgement allowing for independents to stand in elections. The EFF's 'commander-in-chief', Julius Malema, tweeted: 'Nothing new because we are already doing it at a local government level, we must just find a perfect way of practicing (sic) it nationally to strengthen our democracy. By the way, in the last local government elections, independent candidates collectively garnered 341 214 votes.' His deputy, Floyd Shivambu, expressed similar sentiments, and also took to Twitter to say: 'Let's welcome independent candidates to electoral politics in SA. Many will realise that convincing voters to vote for an agenda is not the same as gaining followers on social media. Let the independent candidates register and we will meet on the ground. Best wishes!'[xv]

South Africa will get a new electoral system – this is now inevitable and, some will argue, overdue. But what system will suit the country and retain PR (as required by the Constitution) while also ensuring that people unaffiliated with a political party can stand for Parliament and the provincial legislatures?

Much of the heavy lifting has been done by other countries around the world or by bodies such as the

Van Zyl Slabbert Commission, which use or have proposed innovative electoral systems that ensure there is accountability between voters and their representatives.

The following section will examine a number of electoral systems, and, where appropriate, include real-world examples of how these systems work.

The mixed-member proportional system

The mixed-member proportional (MMP) system is one that is fairly simple to understand and is already used at municipal level in South Africa. It is also used in a number of countries around the world, including Germany, New Zealand, and the country which South Africa territorially envelops, Lesotho.

In this system the relevant entity (country, province, or municipality and so on) is divided into single-member geographical constituencies. Voters receive two ballots – one to elect an individual to represent their geographical constituency and another to vote for a particular party. The number of seats in the legislature will normally be split evenly, with half being elected from the geographical constituencies and the other half allocated from the second ballot to ensure proportionality. In this way the geographical link between voters and their representative is maintained, while also ensuring that the makeup of the legislature is proportional to the overall election result.

To illustrate how such a system works in practice, let's consider the 2016 municipal election result in the Nelson Mandela Bay Municipality (NMBM), the municipality which includes Port Elizabeth and Uitenhage. That city is divided into 60 geographic wards, with another 60 allocated on the basis of proportional representation, to ensure proportionality in the composition of the city council.

In 2016 the ANC won just over 40% of the ward ballot, with the DA securing nearly 47% of the vote. Despite the ANC winning almost ten percentage points fewer of the ward vote than the DA, this was still enough for them to be the biggest party in 35 of the city's 60 geographic wards. The DA was the largest party in 24 wards, with the EFF being victorious in one. This was likely due to the ANC's support being spread over more wards, while support for the DA, while higher, was more concentrated.

> *This indicates how a link between a representative and a geographical constituency is maintained, while ensuring that proportionality is also secured, with none of the distortions common in first-past-the-post systems.*

If the municipal council was simply determined by which was the largest party in each ward, then the ANC would have easily been the largest party, even though it won the votes of only four-in-ten residents. However, the top-up system of awarding an additional sixty seats to ensure proportionality led to a very different result. The DA's final tally of seats on the 120-member council was 57, after it was awarded an additional 33 PR seats to ensure proportionality. The ANC was awarded an additional 15 PR seats to give it 50 seats. The EFF gained five additional PR seats to give it six seats.

Six other parties won seats. The United Democratic Movement won two seats with 1.9% of the vote, with the African Independent Congress, United Front, Congress of the People, African Christian Democratic Party, and Patriotic Alliance each winning one seat. The Patriotic Alliance secured a seat with as little as 0.3% of the vote.

This indicates how a link between a representative and a geographical constituency is maintained, while ensuring that proportionality is also secured, with none of the distortions common in first-past-the-post systems.

New Zealand's experience is also illuminating in this regard. That country had a FPTP system until the early 1990s, when it changed to an MMP system, following a referendum in 1993.

In the last election held under the FPTP system, the two largest parties – the National Party and the Labour Party – won 95 of the 99 available seats, despite winning less than a combined 70% of the vote.

Two other parties won two seats each, with the Alliance needing nearly 20% of the vote for its two seats, and New Zealand First securing nearly 10% of the vote to be awarded two seats.

In the next election, held three years later, 65 seats were awarded through geographical constituencies and 55 through party lists to ensure proportionality. The result saw the National Party win a third of the vote, and 30 of the constituencies. It was also awarded 14 additional PR seats to give it 44 seats in the country's parliament, much closer to its overall electoral result. Its closest rival was the Labour Party, with 28% of the vote, 26 constituency seats and 11 PR seats. NZ First and the Alliance both made it back into Parliament with NZ First gaining 17 seats (six constituency seats and 11 PR seats) with 13.4% of the vote. The Alliance secured 13 seats (one constituency seat and 12 awarded through PR) with ten percent of the vote. Two other parties also made it to parliament: ACT New Zealand won eight seats (one constituency seat) with six percent of the vote and United New Zealand one seat on 0.9% of the poll.

Currently 71 members are elected from constituencies and 49 seats are retained to ensure proportionality.

Since 1993 neither of the two major parties – National or Labour – have governed alone, always having been forced to do so in a coalition. The current government is made up of Jacinda Ardern's Labour Party (which came second to the National Party in the most recent 2017 election), NZ First and the Greens, which govern together in a coalition.

> *Since 1993 neither of the two major parties – National or Labour – have governed alone, always having been forced to do so in a coalition.*

To fit this system for South Africa there are a number of options. We could firstly simply split the 400 seats in the National Assembly into 200 constituency seats and 200 PR seats. If we consider that nearly 17.5 million people voted in the last general election, in 2019, then each constituency seat would represent approximately 87 500 voters. The actual number of constituents would be slightly higher, as everybody resident in a particular constituency would still be a constituent even if they didn't vote. This would situate South Africa approximately at the midpoint between two other MMP candidates when determining the average number of voters in a constituency. In New Zealand there are almost 40 000 voters for each constituency while in Germany there are over 150 000.

South Africa could also opt to increase the number of constituency seats to, say, 250 and have 150 seats to ensure proportionality. Another option is to increase the number of seats in the National Assembly. Currently the number of seats is constitutionally limited to no less than 350 and no more than 400, but there is no reason why the number of seats could not be increased. That said, 400 National Assembly seats may be enough for the foreseeable future to ensure that South Africans are well served by their representatives.

A variant of the MMP system was suggested by former IRR CEO and now policy fellow, John Kane-Berman.[xvi] In 2014 he suggested a bicameral legislature, each elected using a different electoral system. Writing in @Liberty, an occasional IRR publication, Kane-Berman suggested the National Assembly be reduced to 200 seats from the current 400, elected using the current PR system. An upper house, also with 200 members but elected on a constituency basis, would replace the National Council of Provinces. All legislation would require the assent of both houses.

The system is similar to the MMP system, although with the two different types of MPs (constituency and party-list) in separate houses.

Another advantage of the MMP system (apart from its constituency link and the fact that legislature seats reflect the wishes of the voters to a large degree) is that it is a fairly simple system to understand. Calculating seats is also not overly complicated. In addition, it would simply be a scaling-up of the system South Africa uses at municipal level, which also makes it attractive.

The Van Zyl Slabbert proposal

In 2002 the government decided to appoint a commission to investigate whether South Africa needed a new electoral system. The pure party-list proportional system used since 1994 had initially been envisaged only for the first election following the adoption of the final Constitution in 1996. Frederik van Zyl Slabbert, erstwhile leader of the opposition in the apartheid Parliament (who left organised white parliamentary politics in the mid-1980s due to frustration with the system), was appointed to chair the Electoral Task Team (ETT) which would investigate a new electoral system for the country.

The ETT released a majority report which proposed dividing the country into 69 multi-member constituencies. Each constituency would consist of between three and seven members, and 300 MPs would be elected from these multi-member constituencies. At the same time, 100 MPs would be allocated via party lists to ensure proportionality.

For example, in the proposed system Ekurhuleni would be divided into five constituencies, with two constituencies having three seats and three constituencies having four seats. Cape Town would also be split into five constituencies, but each would return four members to Parliament. By contrast, the much less densely populated southern Free State (including Bloemfontein/Mangaung) would consist of one constituency with seven representatives.

The ETT also considered that the individuals elected from the multi-member constituencies be put forward through an 'open list' process. This would mean, for example, that parties would put forward their seven candidates for a particular constituency. Voters would then have the option of ranking the various candidates, from their most-favoured candidate to represent them in Parliament, to least-favoured. Voters would not be restricted by party. In a three-member constituency, a voter could select a DA candidate, an ANC candidate, and an independent as their three preferred representatives in Parliament. However, the ETT also warned that, given South Africa's 'present' levels of literacy, an open-list method of electing candidates would not be feasible in the short to medium term. However, since South Africa achieved close to full literacy (97.1% of adults were literate) in 2018, it is not clear that this is still a valid concern, or whether it ever was.[xvii] The ETT recommended instead that a voter simply vote for a party, effectively accepting their candidate slate for a particular constituency wholesale (which is essentially what happens in our current system).

> *Each constituency would consist of between three and seven members, and 300 MPs would be elected from these multi-member constituencies.*

In the final proposal, the country would elect 300 members from 69 multi-member constituencies on closed lists and an additional 100 from another closed national list, to ensure proportionality.

The ETT also suggested a similar system to elect provincial legislatures. Each province would have a number of multi-member constituencies alongside closed party lists to ensure proportionality. For example, Gauteng would have 16 multi-member constituencies, returning 48 members in its provincial legislature, with an additional 25 seats being awarded on a proportional basis. Other provinces would have their legislatures split similarly.

However, the closed-list proposal by ETT does not make any provision for independents to stand, as voters would still vote for a party, rather than individuals, to represent them. Conversely, if an open list system was adopted then this problem would be solved. Instead of simply endorsing a party's slate, voters could select the individuals that they would like to represent them in Parliament and could also vote for individuals from different parties.

It should also be noted that the Van Zyl Slabbert Commission considered the MMP system but decided it would not be suitable.[xviii]

The DA proposal

In 2013 the DA proposed a new electoral system, in the form of a private member's bill.[xix] The DA's proposal was similar to that of the Van Zyl Slabbert Commission. It also called for 300 MPs to be elected from multi-member constituencies, with an additional 100 MPs from a top-up list to ensure proportionality. However, instead of having multi-member constituencies with a varying number of representatives in each, there would be 100 constituencies, each returning three members.

The number of constituencies in each province would depend on population size, ranging from 24 in Gauteng to two in the Northern Cape. In the DA proposal, parties would submit a list of five candidates for each constituency whose names and logos would appear on the ballot paper, although voters would still vote for a party, rather than candidates. It is not clear why each party would be required to put forward five names for a constituency when there are only three representatives in each constituency. Furthermore, voters would still have little control over which individual represents them in Parliament and would still simply be endorsing a party list presented to them.

The proposal also has no mechanism to allow independents to run, unless voters are presented with an open list, rather than a closed one, with the DA proposal suggesting the latter.

First-past-the-post

Many countries around the world use the first-past-the-post (FPTP) system, often those that have links to the United Kingdom. Not for nothing is it also called the Westminster system, named for the area of London where the British Parliament is located.

> *The Constitution requires any South African electoral system to be 'broadly proportional.'*

In this system all representatives are elected from single-member districts, with the person winning the most votes (not necessarily a majority) being elected to go to Parliament. In this system there is often little proportionality and there are many wasted votes. It is for this reason, and the fact that the Constitution requires any system to be 'broadly proportional', that it is unsuitable for South Africa.

In this system it is possible for a party which did not win the most votes to still emerge as the single biggest party in the legislature, and there are examples across the world of this being the case.

South Africa itself is an instructive example. In 1948 the National Party (NP) emerged as the party with the most seats, a turning point in our country's history, although it had won significantly fewer votes than Jan Smuts's United Party (UP). The NP won 37% of the (mostly white) electorate's support, compared to the UP which managed just under 50%. However, because of the way its vote had been concentrated (and the fact that NP-leaning rural constituencies had fewer voters than UP-leaning urban constituencies) it won 70 of the 153 seats in Parliament. The UP, despite being the favoured party of nearly half the electorate, won only 65 seats. The NP, with the support of the Afrikaner Party's nine seats, thus managed to form a government, allowing it to implement its policy of apartheid.

At the same time, the party which is the most popular among the electorate can still secure seats out of proportion with its popular support. In the 2019 election in the United Kingdom, Boris Johnson's Conservative Party won 43.6% of the vote, but 56% of the 650 seats in the House of Commons. The Labour Party won 32.2% of the vote and 31% of the seats. The biggest losers were the Liberal Democrats, who secured 11 seats in Parliament (1.7%) despite winning over ten percent of the vote. Whatever you may think of Boris Johnson, he secured a strong Parliamentary mandate despite more than half the British electorate voting for parties other than the Conservatives.

South Africa's local elections provide a similar example. In the 2016 local elections there were – across South Africa – 4 392 ward seats. Of these, the ANC won 3 411 (77.6%), over three quarters of the total. The DA won 739 seats (16.8%), while the EFF won only 11 seats (0.25%).[xx] This was despite the ANC winning only 53% of all ward votes cast, the DA 26.8%, and the EFF 8.1%. Extrapolated to a national election for Parliament, it is quite likely the numbers would be fairly similar, meaning the ANC would secure parliamentary support far higher than its support among the electorate.

2016 Local Government Elections
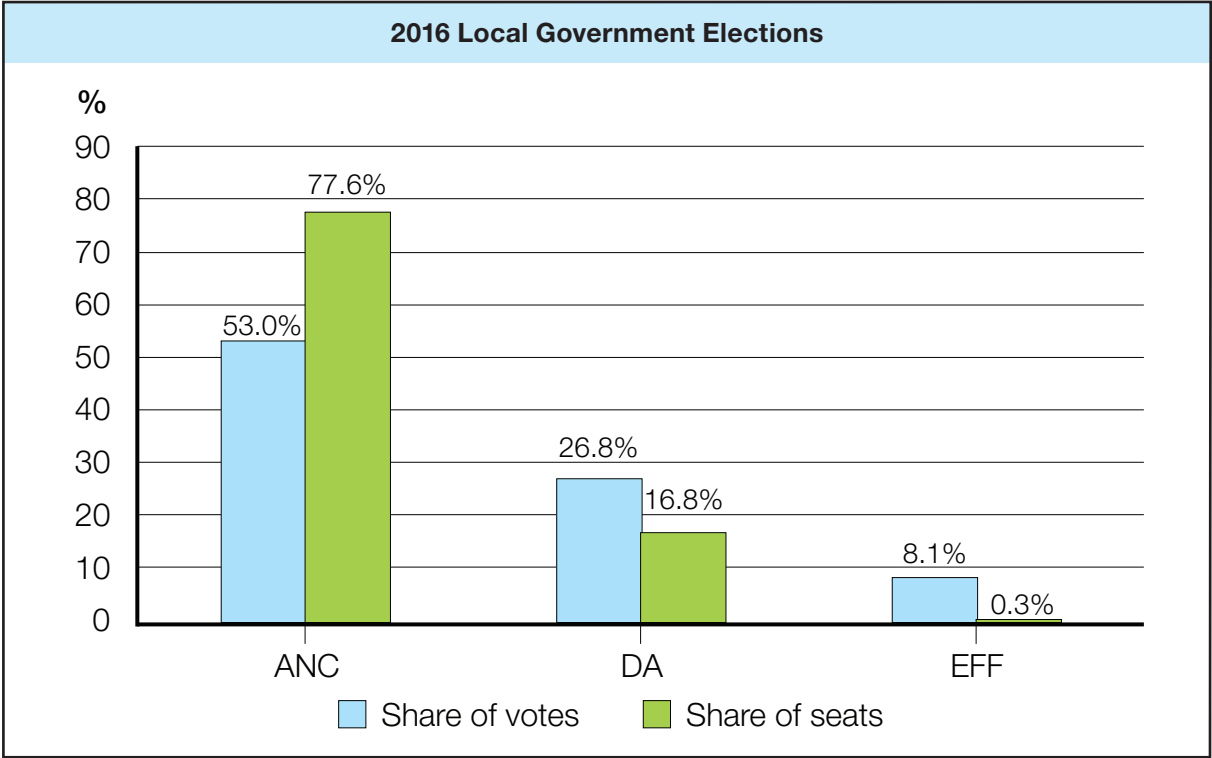
The FPTP system has a number of advantages – it is fairly easy to understand and it secures a link between a geographical area and a representative in the legislature. But the fact that it often results in very disproportionate outcomes means it is a non-starter in South Africa, given our constitutional requirements.

Single-transferable vote

The single-transferable vote (STV) system is a fairly complex one, which nonetheless retains a link between a constituency and representatives in the legislature. In this system, candidates in multi-member constituencies are ranked, resulting in an outcome which is proportional.

It is used in a number of countries around the world at various levels, including Australia, Malta, Scotland, and Ireland, with the latter using the system to elect members to the Dáil Éireann, the lower house of the Irish parliament. Most other countries which use the system use it to elect members to regional or local bodies.

In this system, voters in each multi-member constituency rank the candidates from most-favoured to least-favoured. Voters can rank as many or as few candidates as they like – they can simply put a 1 next to the name of only a single, favoured candidate, or rank all candidates from their favourite to least favourite.

To get elected, each candidate must meet a quota – the quota is determined by the number of positions available for representatives in the constituency and the number of votes cast. Any candidate that has been ranked Number One more times than the quota is elected. However, instead of being 'lost', any votes for a candidate falling short of the quota are transferred to the voter's next-favoured candidate.

If, after the first round of counting, nobody has met the quota, the candidate who was ranked first the fewest times is eliminated and their votes are distributed to each voter's second candidate.

The advantages of this system are that it remains broadly proportional and it retains a link to a geographic constituency. However, it is complex and might not succeed in a South African context.

Furthermore, it does not always reflect proportionality accurately. An example comes from the election held in the Irish Republic at the beginning of 2020. In that country, 160 legislators are elected from 39 multi-member constituencies, each with between three and five members. Sinn Fein emerged as the single biggest party but tied with Fianna Fail in seats. Sinn Fein won 24.5% of the vote and was awarded 37 seats in the 160-member lower house of the Irish parliament. Fianna Fail came second with 22.2% of the vote but also managed 37 seats. Fine Gael won 35 seats with 20.9% of the vote.

The remaining seats were split between six other parties and independents. Unlike in most other countries, independents in Ireland play an important role, partly because of the electoral system. Nineteen of the 160 seats are held by independents. This is equivalent to 12% of the seats in the legislature, very similar to the proportion of the vote – 12.2% – that independents won in the election.

Other countries use a similar system, where candidates in single-member constituencies are also ranked and votes are then distributed when a candidate fails to meet a certain threshold. This system is also called instant run-off voting (IRV) and could be described as a hybrid system of FPTP and the single-transferable vote system. It is notably used in elections for the Australian House of Representatives and in London mayoral elections. However, this system has a low level of proportionality and generally has all the disadvantages of FPTP without its simplicity. It lends itself better to elections for an executive position, such as a mayor or other leadership position, as it ensures that the person elected will have been the second choice of a relatively large number of people, potentially resulting in less polarisation. However, when this system is used to elect a legislature, there is often as little proportionality as in the FPTP system. For example, in the last Australian election, the Liberal/National Coalition won just over 50% of parliamentary seats with 41% of the vote. The Labor Party managed a third of the vote, but was awarded 45% of the 151 seats that were up for grabs. The Greens won 10% of the vote and got only one seat, showing how IRV does not lead to significant proportionality.

> *In the Lekota-Maimane proposal, elections would be in the nature of an open list STV system.*

Lekota and Maimane proposal

Mosiuoa Lekota, president of the Congress of the People (COPE), and Mmusi Maimane, former leader of the DA and currently head of the One South Africa movement, combined forces in August 2020 to suggest a new electoral system, which would also allow independents to stand, while combining elements of proportional representation and a constituency-based system.[xxi]

The constituencies proposed would be based on South Africa's 52 districts, with each constituency returning a certain number of representatives depending on the size of the population in each district. By way of illustration, they suggested that Cape Town would be entitled to 20 of the 300 constituency seats, or 6.7% of total seats. This is relatively close to the proportion of the population of the country that lives in Cape Town. The city has about four million residents, meaning that about six percent of South Africa's 60 million people live there.

They further proposed reducing the number of parliamentary seats to 350. The constituencies would return 300 MPs, while 50 would be allocated by party depending on how each party performed on the national ballot.

In the Lekota-Maimane proposal, elections would be in the nature of an open list STV system. Using this system 'allows voters to cast their votes for a candidate even when that candidate is on the list of a political party'.

In elections for the National Assembly, each voter would receive two ballots – one for the election from the constituency to the National Assembly, and another for a political party – to help ensure proportionality.

The system they propose is similar to the STV system in that excess votes for a candidate who has reached the threshold in a particular constituency to be elected to parliament are redistributed to other candidates. However, each candidate would nominate other candidates to receive their surplus voters. Candidates would be expected to tell voters prior to the election who their surplus votes would be allocated to.

This system resembles the Irish approach, but instead of allowing voters to decide on their second and third choices, this decision is left in the hands of the politicians. This simplifies the voting system significantly, but also keeps power in the hands of politicians. Nevertheless, it is a significant improvement over the current system, where voters have no say over which individual will represent them in Parliament.

The Lekota-Maimane proposal includes a number of other suggestions, among them, reducing the number of seats of the provincial legislatures, requiring women to make up at least one-third of all parties' nominated candidates, and using voting machines. They also suggest that each parliamentary candidate 'must at the time of nomination publish a personal manifesto setting out how and to what extent the candidate is committed to making real and visible the rights enshrined in Chapter 2 of the Constitution in order to engender optimal belief in the founding document of our democracy among citizens'.

Conclusion

It is inevitable that South Africa will get a new electoral system. The question is what form it will take.

There are two systems to which serious thought should be given when the electoral system is reformed. Both of these retain an element of proportional representation as required by the Constitution, as well as allowing a constituency element which will allow independents to run.

> *It is inevitable that South Africa will get a new electoral system. The question is what form it will take.*

The two systems which South Africa should consider adopting are the MMP system or the Van Zyl Slabbert proposal. Both of these have their advantages and disadvantages in the South African context.

As noted above, the MMP system is fairly easy to understand and is already used successfully at municipal level. There may be concerns that having only 200 constituency MPs may lead to each MP having too many constituents, making it difficult to be responsive to their needs. However, this is not an insurmountable problem. The number of MPs could be increased to allow for more constituency MPs, thus reducing the number of constituents each MP represents. Furthermore, it is not clear that the number of constituents would reflect an insurmountable number (some may argue that it's time MPs started earning their keep, and so no bad thing for them to be overworked). As mentioned earlier, each MP would represent fewer than 90 000 constituents (the number of voters divided by 200 seats). Including all eligible voters would mean that MPs would have about 130 000 constituents, fewer than the 200 000 each German constituency MP has. These numbers are far lower than those of the Lok Sabha, the lower house of the Indian Parliament. Here, each Indian MP represents – on average – over 1.1 million voters.

The MMP system also solves the problem of independents. People not affiliated with a political party would easily be accommodated on the ballot, as at municipal level.

In order to ensure that only serious contenders put their names forward to run as independent candidates, a requirement such as a monetary deposit would be required. To stand as an independent candidate at municipal level, candidates are required to pay a deposit of R1 000. To stand as a candidate for a provincial legislature or for Parliament, this amount could be increased so as to dissuade time wasters while also ensuring that those who are serious are not unfairly excluded due to onerous financial requirements. A deposit of between R5 000 and R10 000 would likely be considered fair for each independent candidate.

The second system which should be considered is the Van Zyl Slabbert proposal. All the heavy lifting around the design of such a system has already been done. It has been shown in the proposals by the commission that the system would effectively mirror our current PR system (in terms of seats awarded) while also ensuring strong linkages between representatives. Having multi-member constituencies also allays concerns about MPs being overwhelmed by constituency demands. However, an efficient system would have to be implemented to ensure that requests for help from constituents were met and not simply fobbed off on another MP from the same constituency.

The one issue with the Van Zyl Slabbert proposal is that it does not allow for independent candidates. As currently envisaged, voters in a constituency would simply be provided with a slate of candidates from each party and would select a party, rather than individuals. It would be a downscaled version of what we currently have at national level. The issue of having party bosses control MPs would still be a large problem.

The solution to this problem, as noted above, would be to have an open-list system.

In an open-list system, voters are given influence over how high candidates are on a list by being allowed to select individuals. They would not simply have to accept a slate provided by the party.

This could be modified slightly for the Van Zyl Slabbert system. The Van Zyl Slabbert proposal is made up of multi-member constituencies, ranging from between three and seven members. Having an open-list system in practice could work in the following way. In a four-member constituency, each party could put forward no more than four candidates, with independents being allowed to stand. Each voter would be provided with two ballots, on one of which they could select a political party (as is currently done in provincial and national elections). The second ballot would show the various parties' lists of candidates, as well as any independents standing in the constituency. In our hypothetical four-member constituency, a voter would mark the four names of those that they would like to see represent their constituency in Parliament. A voter's selection could all be from the same party or they could, for example, select two ANC candidates, a DA candidate, and an independent candidate. This would relieve voters of being beholden to a political party's slate and have – at least some – control over who would represent them in Parliament, while also allowing independents to stand. The other party ballot would be used to help determine the other 100 MPs, who would be elected through a party list to help ensure general overall proportionality.

> *Using the power of the vote gives people some control over their lives and ensures that those in power are reminded that they are servants of the people, not their masters.*

It may be argued that such a system is confusing or that ballot papers would be too long. Assuming that it would be too confusing does South Africans a disservice – the system would be easy to understand, especially if there was some time given over to voter education before elections. A number of countries use multi-member constituencies with open lists and it is a system which can work well in South Africa too. Furthermore, ballot papers may be long under such a system, but this is already the case in our current system. In 2019 there were 48 parties on the national ballot. In a constituency system it is unlikely that every single party on the national ballot would also put up candidates in every constituency, meaning that constituency ballots would, in some cases, be shorter than the current national ballot.

Both systems would satisfy various requirements that apply in the South African context. They are reasonably easy to understand. They introduce a constituency element which allows independents to stand, dilutes the power of party bosses, and introduces a form of direct accountability for elected politicians that is currently lacking. At the same time, both systems would retain an element of proportional representation, as required by the South African Constitution.

Of course, none of these changes would be the silver bullet that magically introduces accountability to our politics. Achieving that important goal requires a change in our political culture too. Our culture needs to become one that does not tolerate cabinet ministers ignoring parliamentary questions or treating them

as a nuisance, or the President of the Republic declining to take questions from journalists, but instead addressing the nation like a headmaster talking to a bunch of schoolchildren.

Nevertheless, giving voters more control over who they elect to the National Assembly and the provincial legislatures would be an important first step in ensuring greater accountability. In addition, having MPs who represent geographical constituencies will make it easier for voters to hold MPs to account, especially when they act in a way that violates their constituents' trust.

A new electoral system that increases responsiveness and accountability is long overdue in South Africa. It will not necessarily be the elixir that restores our flailing democracy, but it is a start. Voting directly for MPs would remind South Africans that their future is in their hands. Using the power of the vote gives people some control over their lives and ensures that those in power are reminded that they are servants of the people, not their masters.

References

i The system used at national level is the same as that used to elect provincial legislatures, so all the strengths and weaknesses discussed here also apply to provincial elections.

ii 'The South African Electoral System,' *Helen Suzman Foundation Brief*, 20 March 2014, https://hsf.org.za/publications/hsf-briefs/the-south-african-electoral-system

iii The South African Electoral System,' Wim Louw, *Helen Suzman Foundation Brief*, 20 March 2014, https://hsf.org.za/publications/hsf-briefs/the-south-african-electoral-system

iv *South Africa Survey*, 2020, Institute of Race Relations, Johannesburg

v Email correspondence with Gabriel Crouse, 16 September 2020

vi 'Electoral Systems and Accountability: A proposal for electoral reform in South Africa,' Murray Faure and Albert Venter, Electoral Institute of Southern Africa, 2001, https://www.eisa.org.za/pdf/faure.pdf

vii 'Motlanthe's panel calls for electoral reform,' Andisiwe Makinana, *City Press*, 3 December 2017, https://www.news24.com/news24/southafrica/news/motlanthes-panel-calls-for-electoral-reform-20171203-2

viii 'Electoral Act not in line with Constitution – lawyer for independent candidates,' OFM, 8 March 2019, https://www.ofm.co.za/article/sa/272410/electoral-act-not-in-line-with-constitution-lawyer-for-independent-candidates

ix 'Court bid to allow independent candidates in 2019 fails,' *Polity*, 18 April 2019, https://www.polity.org.za/article/court-bid-to-allow-independent-candidates-in-2019-elections-fails-2019-04-18

x 'Constitutional court judgment opens door for independent candidates to stand for election,' Ernest Mabuza, *The Times*, 11 June 2020, https://www.timeslive.co.za/politics/2020-06-11-concourt-ruling-opens-door-for-independent-candidates-to-stand-for-election-in-sa/

xi 'ANC backs major electoral reform, touting single election instead of two.' Stembile Cele, *HeraldLive* , 1 July 2020, https://www.heraldlive.co.za/news/politics/2020-07-01-anc-backs-major-electoral-reform-touting-single-election-instead-of-two/

xii 'Who stands to win or lose if South Africa were to hold all elections on the same day,' Dirk Kotze, *The Conversation*, 6 September 2020, https://theconversation.com/who-stands-to-win-or-lose-if-south-africa-were-to-hold-all-elections-on-the-same-day-145333

xiii 'Should national, provincial and local elections be on one day? Definitely not!' Ebrahim Fakir, *News24*, 13 August 2020, https://www.news24.com/news24/analysis/ebrahim-fakir-should-national-provincial-and-local-elections-be-one-day-definitely-not-20200813

xiv 'Elections: IEC plans for e-voting on the back burner as South Africa has no funds,' Qaanitah Hunter, *News24*, 16 September 2020, https://www.news24.com/news24/southafrica/news/elections-iec-plans-for-e-voting-on-the-back-burner-as-south-africa-has-no-funds-20200916?s=09

xv 'Gaining voters is not the same as gaining followers on social media, says Shivambu on Electoral Act,' *The Citizen*, 11 June 2020, https://citizen.co.za/news/south-africa/social-media/2301058/getting-voters-is-not-the-same-as-gaining-followers-on-social-media-says-shivambu-on-electoral-act/

xvi 'South Africa: A 12-point plan for prosperity,' John Kane-Berman, @*Liberty*, 13 February 2014, https://irr.org.za/reports/atLiberty/files/Liberty%20-%2012%20Point%20Plan.pdf

xvii *South Africa Survey*, 2020, p439

xviii 'Report of the Electoral Task Team,' Van Zyl Slabbert Report, 2003, pp19 and 20, http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/Van-Zyl-Slabbert-Commission-on-Electoral-Reform-Report-2003.pdf

xix Democratic Alliance, *The Electoral Amendment Bill*, 2013, https://docs.google.com/file/d/0B_-slGu8-FTxVGlhN2RCa1JYVVU/edit

xx Email correspondence with Paul Berkowitz, 20 July 2020

xxi 'The Path to Direct Elections in South Africa,' One South Africa Movement, 13 July 2020, https://osa.org.za/wp-content/uploads/2020/08/Policy-Paper.pdf