

# Is South Africa's Electoral System in Urgent Need of Change?

*The general elections in May have promoted some to debate whether South Africa might soon explode.<sup>1</sup> These apocalyptic musings made me think: is South Africa really a boiling frog? Supposedly, a frog placed in boiling water will jump out immediately. But placed in cold water that is slowly heated, the ensconced frog will ignore the rising temperature and eventually boil to death. The hypothetical boiled frog is a useful metaphor for thinking about the ability to respond to problems that creep up over time, especially at this juncture, 20 years into democracy.*



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## Electoral design

Electoral systems are not simply quinquennial instruments designed for the popular control of electing representatives into government. How and within what structure we permit others to act on our behalf has profound consequences for a democracy's strength and character.

Ex ante normative evaluations of electoral design seem to have traditionally centered on the attempt to predict the consequences of an intended system for governance ('Governance Framework'). That is, legislators and politicians try to gauge the impact of electoral design on dimensions of governance ranging from effectiveness, to the degree of responsiveness and accountability, to the degree of fairness to minority parties; more recently, they have also considered a design's ability to reduce conflict.<sup>2</sup> The classic argument for majoritarian systems, for example, is that they tend to produce stable and effective governments because they are less fractured and therefore more decisive.<sup>3</sup> Proportional systems however, tend to reflect the diverse makeup of an electorate and promote the multiplication of parties:<sup>4</sup>

*The heart of the debate concerns the central criteria, which an electoral system should meet, and whether strong and accountable government is more or less important than the inclusion of minorities...<sup>5</sup>*

## The seeds of electoral reform

Last year, politicians such as Cope's Mosiuoa Lekota, and political parties such as Agang and the Democratic Alliance ('DA'), reignited this old debate.<sup>6</sup> In one sense the reform debate is habitual because the closed-list proportional representation system ('PR System') adopted in 1994 was never intended to be permanent. The system was a transitional arrangement designed to broker power and make elections simple, fair and inclusive.<sup>7</sup> After the 1999 elections however, this arrangement was to end, which is why the Van Zyl Slabbert Electoral Task Team ('Task Team') was established in 2002.<sup>8</sup> The Task Team's mandate was to recommend a new

electoral system that complied with the basic constitutional requirements, primarily, that elections result, in general, in proportional representation.<sup>9</sup> The Task Team's recommendations, which advocated for a mixed system, were never implemented.<sup>10</sup>

In a more profound way, though, the debate is habitual because South Africans crave greater accountability.<sup>11</sup> In the wake of party political scandals and a lack of political alternatives, electoral reform has been cited as a much needed intervention; the PR System for national and provincial elections does not enable us to hold individuals to account. We are fed up with many politicians, especially in the ruling party, who simply toe the party line. Politicians at the end of the day are accountable to party bosses and we have no way to influence party lists. This impotence is often encapsulated most vividly through the protests by those least able to participate in public life and most burdened by the state of inequality.

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The Task Team Report ('Report') acknowledged exactly this. In dealing with the issue of accountability, the majority noted that:

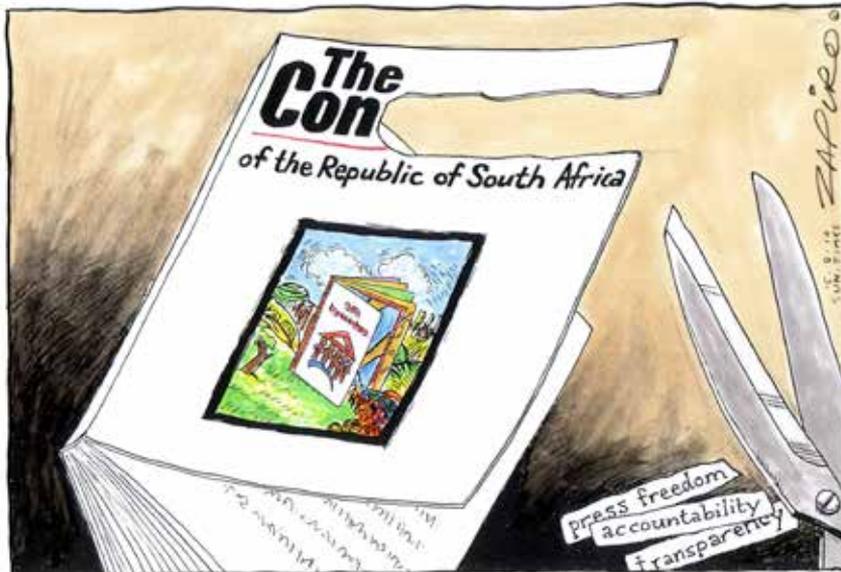
*'The only way to increase individual accountability significantly would be to create the possibility for a candidate to be rejected without concomitant rejection of a party. This could best be achieved by using open rather than closed lists, with voters influencing the order of candidates... Open lists would not only improve the accountability of individual candidates dramatically but would also substantially increase voter participation in the democratic process.'*

The Task Team majority did not make this recommendation. The Report recommended a watered down version, which enables parties, and not individuals, to contest specifically demarcated constituencies – the reason being that literacy rates would make a more complicated voting procedure impractical. In justifying their recommendation, the Task Team added that the problem with a focus on accountability within the context of electoral design, however desirable, is that the link between political party accountability and electoral design is inevitably more apparent than real.<sup>12</sup> As Eusebius McKaiser remarked less than a year ago, 'South Africa needs men and women in politics and government who are skilled and ethical. Electoral reform is not a silver bullet for our governance woes.'<sup>13</sup>

In light of these limitations, what should drive electoral reform and how do we achieve greater accountability?

## Reforming electoral reform

Although electoral theories that focus on effectiveness versus inclusivity are helpful, recent studies show that they are rarely conclusive. Contextual nuances, stakeholder interests and other political, social and economic dynamics make it difficult to predict how power relations will play themselves out over time, since these necessarily adapt and evolve. South Africa is a good example: we rightly selected the PR System because it is simple, fair and inclusive, but 20 years later, our greatest challenges have evolved.



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Because these underlying justifications are limited, the Governance Framework provides a poor basis for assessing the value of electoral design. In addition, ‘governance’ and the crisis in accountability is, in the first place, not a governmental problem. Nor is it exclusively a political problem; the lack of accountability is a global phenomenon that exists throughout markets – political, financial and social. President Zuma may be publicly castigated for building Nkandla, yet where is the outrage when the secret maze of global offshore money exposes money-laundering by the top class of professionals, managers and rentiers, including banks, or where construction cartels and bread companies collude to the tune of billions? Fetishising government corruption and a lack of accountability at the expense of a more nuanced analysis of the abuse of power, means that we never really get to the work of deepening democracy.

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Isaiah Berlin, all those years ago, in his Four Essays on Liberty recited a question, whether we should deeply care whether we are crushed by a popular government, a monarch, or a set of oppressive laws, as the main problem comes down to one that agonises over how much authority should be placed in one set of hands.<sup>15</sup> The rise of private power since Berlin’s famous essay, coupled with the complex restitutionary challenges faced by governments, especially in so-called third world countries, makes this inquiry even more relevant. Indeed, searching for ways to balance the authority placed in one set of hands is a helpful paradigm for thinking about the value of electoral reform. To this end, we should begin to think about electoral design from the perspective of its ability to enhance citizen participation. This conversation should be centered on: (i) our ability to influence party lists; (ii) ways to make constituencies work; and (iii) whether ordinary citizens should be allowed to join parties on ballots and contest provincial and national elections.

This suggestion forces us to assess the extent to which the design of government under the Constitution has coped with the challenges of modern democracy. The National Council of Provinces, for example, is an ambitiously designed federal house,<sup>16</sup> which must, 'ensure that provincial interests are taken into account in the national sphere of government'. In a federal system the subnational legislatures are usually expected both to deepen democracy by providing representation that is closer to the people and to promote more effective government by ensuring that policies reflect local needs and interests.<sup>17</sup> But its success, as Christina Murray points out, is highly questionable. The failure of constituency offices is a further blow to the challenge of establishing a representative and cooperative government. In pure financial terms the total annual budget for constituency allowances and associated services has increased from ±R60 million in 2002/2003 to ±R330 million in 2013/14.<sup>18</sup> This represents a 500% increase in the past decade – yet a recent poll shows that 83% of South Africans do not know where their local constituency office is.<sup>19</sup>

A 2009 Report by the Institute for Security Studies points out that South African democracy has seen a general decline in electoral participation in terms of registration and turnout.<sup>20</sup> The number of eligible voters who abstained in the last general

elections is around 40%.<sup>21</sup> But even if more people came to the polls, voter participation is a deceitful measure of a democracy's strength and character. Democracy is not primarily about voting at elections. It is about the day-to-day ability and willingness to participate in the decisions that affect our lives: public hearings on new bills; council meetings on by-laws; attending meetings at school governing bodies; deliberating and other public acts of participation. The conception of democracy as a system of popular sovereignty based on the participation of members in the political community who enjoy equal claim to an equal share in political decisions is one of South Africa's most treasured ideals.

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## Proposal

Neither the African National Congress nor the DA, alone, offers what the country needs. The spectacular rise of the Economic Freedom Fighters ('EFF') is a divisive talking point. Julius Malema's detractors worry about the empty promises of his populist rhetoric<sup>22</sup> while his growing supporters revel in the opportunity to challenge and overcome the intolerable burden of day-to-day living. What are the socioeconomic conditions that will shape these elections? Deep class inequality; local and global corporate lawlessness; an inefficient state apparatus that is most effective in servicing a new accumulating class of tenderpreneurs; anger from working-class communities; deep disaffection from the middle classes and a restive capitalist class worried that the ANC is not able to discipline the working class, or hold together the divided labour movement.<sup>23</sup>

Because the task of reform is so big, and the work needed to achieve equality and justice so great, electoral design should be amended in two important ways. The first is to enable citizens to exercise their constitutionally guaranteed right to stand for public office independently at a national and provincial level. Section 19(3)(b) of

the Constitution guarantees this right, 'Every adult citizen has the right to stand for public office and, if elected, to hold office.' This is an important step in deepening democracy in the sense that it allows communities, through a constituency-based system, to be represented by people who are familiar with the context-sensitive problems. This system should be balanced with a complementary system of proportional representation (a mixed system). This is not to say that this model does not bring with it a new set of challenges; of course it does and these should be debated. This is a quest for balance: of power, authority and participation.

The second is to relate electoral design with other electoral issues such as party funding.<sup>24</sup> The tendency to treat electoral systems as primarily about votes cast in an election means that we neglect to think about electoral systems holistically. We must take charge of this conversation and continuously acknowledge the electoral system as a formal institutional design mechanism that works within a much broader conceptual framework: electing, funding, financing, policy promises, political debt, international obligations and so on. It was reported by Mr Matthews Phosa that the ANC party raised R1.66 billion from 2007-2012. Yet there is no law that forces the ANC, or any political party, to disclose their funders. Understanding this network of patronage and influence of business on political process is crucial for greater accountability. The major political party funding scandals - the Arms Deal in 1999 (worth about R30-70 billion); Oilgate in 2004 (worth about R11 million); the Chancellor House deal with Eskom and Hitachi Power Africa (valued at R38 billion); and the Gupta family funding (said to run into millions) - emphasise the urgency with which party funding must be addressed before our next general election.<sup>25</sup>

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## Conclusion

As democracies evolve, citizens have and will be forced to reassess whether a particular electoral design ought to be amended. Often throughout history these design choices have arisen out of socioeconomic and political ruptures, such as civil wars or overthrowing oppressive regimes, which force communities to change how things are done.<sup>26</sup> But as Cass Sunstein writes, 'constitutional provisions should be designed to work against precisely those aspects of a country's culture and tradition that are likely to produce most harm through that country's ordinary political processes.' (My emphasis.) After decades of using a 'first past the post' system, New Zealand officially adopted mixed-member proportional representation in 1994 in order to give minority parties greater representation. This shows that change, without crisis, is possible.

As Alexis de Tocqueville points out in the classic text *Democracy in America*, when we live in a society that rarely forces us to act, the government acts negatively not by destroying but by preventing initiatives. Many factors have contributed to this predicament, over a long period of time. The consequence, though, is that the seductive promise of security and dependency on the state, and conversely, corporate livelihood, corrodes the democratic spirit. We simply do not have time to be citizens. We must be more attuned to this danger and instead organise more effectively to create democratic spaces where sentiments and ideas can renew themselves; where

the heart can be enlarged through communal living, and the human mind developed through the reciprocal action of men and women.<sup>27</sup>

In order for the frog not to boil, it is necessary to get outside of the structure holding everything together and turn down the heat a few notches. Electoral and party funding reform are two design interventions necessary to assist this process. But more than this, developing an up-to-date understanding of the interests, opportunities and constraints that drive political actors and the institutional environments within which they operate, is also necessary.<sup>28</sup> This entails changing the way we think about the purpose of representation, the responsibility of the citizen and, most crucially, an appropriate strategy for fighting inequality and injustice.

## NOTES

- 1 See J Steinberg 'The country of the oft-prophesied apocalypse' 21 February 2014 Business Day. 'People have been warning that South Africa might soon explode ever since the Union was formed in 1910. It's a habit. It's the way we think about our country.'
- 2 A Rocha Menocal, 'Why Electoral Systems Matter: An Analysis of their Incentives and Effects on Key Areas of Governance', (2011) Overseas Development Institute (ODI), London.
- 3 P Norris 'Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems' (1997) 18 International Political Science Review 297 at 298.
- 4 Menocal above note 2 at 4.
- 5 Norris above note 3 at 2.
- 6 <http://www.agangsa.org.za/2013/02/18/speech-rekindling-the-south-african-dream/> The DA submitted an Electoral Reform Bill ('Bill') to Parliament, which aims 'to provide for the demarcation of ... constituencies' in order to deal with the "alienation by voters from the political system." In reality, it was an attempt to snub Dr. Mamphela Ramphele's vow to make this issue its top priority for Parliament after the 2014 election.
- 7 The 1994 transitional arrangements were carried over to the 1999 elections in terms of items 6(3) and 11(3) of Schedule 6 to the Constitution.
- 8 You can access the Report (2003) and the Independent Panel of Assessment of Parliament (2009) here.
- 9 Section 46(1)(d) of the Constitution.
- 10 The current electoral system is regulated by the Electoral Act 73 of 1998. See para 4.5.1.9. of the Report. 300 seats in the National Assembly would be filled in this way, with the remaining 100 to be filled by the current PR System.
- 11 For example, "the major weaknesses of the system are the lack of accountability of members of the National Assembly to individual voters or identifiable groups of voters who elected them." Explanatory Memorandum to the DA's Electoral Bill.
- 12 Report at para 4.5.1.7.
- 13 'Why the ANC fears electoral reform' 11 March 2013 available at <http://www.iol.co.za/the-star/why-the-anc-fears-electoral-reform-1.1484046>.
- 14 See Lijphart Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries (1999).
- 15 I Berlin, 1969, 'Two Concepts of Liberty', in I. Berlin, Four Essays on Liberty, at page 27.
- 16 Murray 'Legislative, Executive and Judicial Authority in a quasi Federal State' available at [http://www.academia.edu/505689/Republic\\_of\\_South\\_Africa\\_Legislative\\_Executive\\_and\\_Judicial\\_Governance\\_in\\_a\\_quasi\\_federal\\_state](http://www.academia.edu/505689/Republic_of_South_Africa_Legislative_Executive_and_Judicial_Governance_in_a_quasi_federal_state) at page 6.
- 17 Id.
- 18 See the Appropriation Act, 2013.
- 19 <http://www.pa.org.za/blog/83-do-not-know-where-their-local-constituency-off>
- 20 Collette Schultz-Herzenberg 'Elections and Accountability in South Africa' ISS Paper 188 June 2009.
- 21 Id at 3.
- 22 'EFF election Manifesto', available at, <http://efffighters.org.za/wp-content/uploads/2014/02/EFF-ELECTIONS-MANIFESTO.pdf>.
- 23 Ndifuna Ukwazi Internal Memorandum.
- 24 Menocal above note 2 at 14.
- 25 See <http://www.groundup.org.za/content/da-electoral-reforms-ignore-main-problem-party-funding>
- 26 See J Elster 'Forces and Mechanisms in the Constitution-Making Process' (1995) 45 Duke Law Journal 364-396.
- 27 Tocqueville Democracy in America Book II, Part 4, Chapter 6.
- 28 Menocal above note 2 a 14.