



HELENSUZMAN
F O U N D A T I O N

For attention: Portfolio Committee on Home Affairs, Mr Eddy Mathonsi

Email: electoralact1@parliament.gov.za

27 January 2023

Submission on the National Council of Provinces Proposed Amendments on the Electoral Amendment Bill [B1B - 2022].

We attach our written submission in response to the invitation for comments on the National Council of Provinces Proposed Amendments to the Electoral Amendment Bill [B1B - 2022].

We would like to confirm our interest in making oral representations at a later convenient date.

Should you have any queries, it would be appreciated if you could contact me at the following email address: nicole@hsf.org.za.

Yours sincerely

Nicole Fritz

Director



1. Introduction

1.1. The Helen Suzman Foundation (“HSF”) is a non-governmental organisation whose main objective is to promote constitutional democracy, rule of law and the rights of vulnerable persons who are unable to utilise the ordinary political process in order to do so.

1.2. We welcome the opportunity to make submissions to the Portfolio Committee on Home Affairs on the amendments that the National Council of Provinces proposes (“NCOP Amendments”) to the Electoral Amendment Bill [B1B - 2022] (“Bill”).

1.3. We view this submission as a way of fostering constructive dialogue between civil society and government, in order to advocate for electoral reform that will produce national and provincial legislatures that are accountable and responsive to voters.

1.4. We do not do this on our own. The HSF acts in coalition with its civil society partners, represented by the Defend our Democracy campaign, in affirming that “at its heart, electoral reform should be about having a political system wherein we can directly hold those whom we vote into power to account.”¹

1.5. To this end, the HSF, in summary, submits that the NCOP Amendments –

1.5.1. regrettably do nothing to remedy government’s failure to initiate amendments to the Electoral Act 73 of 1998 (“Electoral Act”) that will enhance the accountability and responsiveness of national and provincial legislatures;

1.5.2. nonetheless propose an initiative which holds out the prospect of constructive reform — namely, the Electoral Reform Consultation Panel (“Panel”) — but only if

¹ The Defend our Democracy Electoral Reform Campaign Launch Statement can be read [here](#).



establishment of the Panel is accompanied by genuine intention on the part of government to engage the Panel so that meaningful electoral reform might be secured in time for the 2029 national elections;

1.5.3. provide inflexible timeframes for the Panel to carry out its functions;

1.5.4. place too much of the oversight of the Panel in the Minister of Home Affairs' ("Minister") hands and do not provide a meaningful role for Parliament in constituting and monitoring the Panel; and

1.5.5. should alter its proposed signature requirement for registration to lower the barriers for incoming independent candidates and new political parties to contest elections.

2. Another Missed Opportunity to Achieve Meaningful Electoral Reform.

2.1. The HSF has repeatedly commented on government's attempts to amend the Electoral Act since the Constitutional Court's ("Court") judgment in *New Nation Movement*² held that the Act was unconstitutional for want of accommodating independent candidates.³

2.2. Despite the Court's narrow finding on the Electoral Act's constitutional defects, the HSF has consistently maintained that government should use the opportunity given to it by *New Nation Movement* to bring about broad and meaningful electoral reform in South Africa.

² *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* (CCT110/19) [2020] ZACC 11; 2020 (8) BCLR 950 (CC); 2020 (6) SA 257 (CC) (11 June 2020).

³ The HSF's previous submissions on amendments to the Electoral Act can be read [here](#), [here](#), [here](#), and [here](#).



2.3. Our recent history of State Capture bears witness to how members of provincial and national legislatures continually failed to rise above party interests and play their crucial oversight function in preventing and detecting corruption. This regrettable track record sends a clear message that it is time to depart from our current pure party list electoral system, which incentivises accountability to party structures over accountability to voters.

2.4. Together with other civil society groups, HSF has sought to engage extensively with government over several years as to why the current pure party list system must give way to a mixed member proportional system.⁴ In this regard, the HSF broadly shares in the recommendation made by the majority of the Ministerial Advisory Committee on Electoral System Reform.

2.5. The HSF submits that a mixed member proportional system would break South Africa's current pattern of party loyalty over public interest by providing a direct line of accountability between members of legislatures and the voters who put them there.

2.6. Unfortunately, government has chosen not to amend the Electoral Act, strangling *any* sort of meaningful electoral reform that might be offered South Africans and the NCOP's Amendments do nothing to change that. The result is that South Africa faces, following the 2024 elections, another five years of national and provincial legislative authority devoid of desperately needed accountability and responsiveness to voters.

2.7. Given the limited scope of this call for comment, we do not rehearse our assessment of government's efforts at electoral reform in this submission – our more detailed comments in this regard can be read [here](#).

⁴ An in-depth report detailing the HSF's research on electoral reform is available [here](#).



3. The Proposal to form the Panel

3.1. Nonetheless, the HSF, welcomes the proposal to form the Panel, functioning as it would “to independently investigate, consult on, report on and make recommendations in respect of potential reforms of the electoral system” after the 2024 elections.

3.2. We do so, however, on condition that the Panel’s proposed creation entails an explicit recognition that imminent electoral reform must go beyond the current Bill’s plan to minimally incorporate independent candidates in time for the 2024 national elections.

3.3. However, given that s 46(1)(a) of the Constitution envisages that our electoral system be “prescribed by national legislation,” the National Assembly, through the Portfolio Committee for Home Affairs, should act with the Minister in appointing the Panel’s members and in consultation with the Independent Electoral Commission (“IEC”).

3.4. To the extent that the Panel is required to report its progress, it should do so both to the Portfolio Committee for Home Affairs and the Minister. This stands to reason as it is the responsibility of the National Assembly to ultimately usher in electoral reform and it should be involved in monitoring the Panel’s progress.

3.5. Moreover, given the complexity of the Panel’s work, the HSF suggests that it be wrested from the strict time periods of operation that clause 23(3) of the NCOP Amendments propose. We propose instead that the Panel should be able to decide which of its functions it pursues before and after the 2024 elections, given that it will be best placed to assess its members’ capacity, availability and expertise.



4. The Proposed Amendment to the Signature Requirement for Registration

4.1. In HSF's submission to the NCOP Select Committee on Security and Justice dated 8 November 2022,⁵ the HSF urged that the signature requirement for registering independents be reconsidered, because it placed an unduly high burden on independents wishing to contest national elections – especially relative to the much lower threshold required for new political parties to register.

4.2. The NCOP Amendments now propose the equal treatment of new political parties and incoming independents. They do this by setting a standard signature requirement for registration at 20% of the relevant quota of votes required by the Electoral Amendment Bill [B1B - 2022] to secure a seat in either the provincial or national legislatures in the preceding election.

4.3. This means, however, that incoming independents and new political parties would now have to garner a far larger number of signatures than is currently required for registration of new political parties.⁶ Given that 1 000 signatures is presently the stipulated number for registration of new political parties, there appears to be no good reason to markedly increase the signature requirement and create new barriers for participation in national elections.

⁵ This submission can be read [here](#).

⁶ See Annexure 6 of the Regulations to the Electoral Commission Act 51 of 1996.



5. Conclusion

5.1. The HSF has submitted that the NCOP's Amendments fall short of meaningfully enhancing the accountability and responsiveness of national or provincial legislatures ahead of the next elections.

5.2. Nevertheless, the HSF has welcomed the proposal of the Panel, if government can commit to its work resulting in meaningful and timely electoral reform.

5.3. Further, to enhance the effectiveness of the Panel's work, we suggest that it be freed from the strict timeframes to which clause 23(3) of the NCOP's Amendments would subject it and that a role for the National Assembly, through the Portfolio Committee for Home Affairs, be created in constituting and monitoring the Panel.