

Reflections of the State of Electoral Democracy in South Africa



Resolutions of the Multi-Party Forum with specified long and short-term goals

as agreed upon at the meeting of the Multi-Party Forum's meeting with the Independent Electoral Commission on 7 April 2008

INTRODUCTION

These resolutions below address issues that may need legislative changes; others would need political parties as stakeholders to meet with the Independent Electoral Commission (IEC), whilst others still may require the attention of the Independent Communication Authority of South Africa (ICASA), or the Board of the South African Broadcasting Corporation (SABC). There are issues that may as well require legal action to be taken in the courts of law, if there is a deliberate intransigence being displayed by some institutions.

1. Party funding

Whereas the promotion and development of multi-party democracy depends upon adequate party funding;

And whereas public funding can come from the taxpayer or from the private sources; the dependence of political parties' on private donors be reduced and hence the possibility of influence-peddling which puts democracy up for sale to the highest bidder;

Recognising that such funding should – in line with international benchmarks and experience, and the principles of good governance – be regulated by law;

We resolve

- a) That the legislation regulating public party funding be reviewed and,
- b) To bring the proper enabling legislation for the regulation of party funding before Parliament for enactment before the end of 2008.
- c) That the distribution formula for public funding to be equitable and fair such that true democracy is promoted.

On the short-term:

The Multi-Party Forum will collect and assimilate the various party political positions on public party funding, using the document: "Regulation of Private Funding to Political Parties" as drafted by the Institute for Democracy in South Africa (IDASA), as a foundation to prepare a unified position on the matter.

On the long-term:

Once the appropriate research is completed, the Multi-Party Forum will initiate the process of amending the legislation regulating public party funding i.e. Public Funding of Represented Political Parties, Act 103 of 1997.

2. The IEC's level of independence

Whereas the IEC is by name an independent institution, in accordance with generally accepted democratic norms;

And whereas such independence can be defined as:

- a) Insulation from control by the Government or any external body, and
- b) Guaranteed access to adequate resources to be able to carry out its mandate;

And noting with trepidation that in South Africa both of the two abovementioned conditions for independence are not fully met;

Further noting that in 1993 the IEC commissioners were nominated by the African National Congress (ANC), the New National Party (NNP) and Inkatha Freedom Party (IFP), and that since then the political landscape has changed with new players arriving and the NNP disappearing, yet now the commissioners of the IEC are drawn almost exclusively from the ruling party or recycled from the 1993 era;

We resolve to review the IEC's governing act, as well as any other relevant attendant legislation, with a view to reshaping the institutional environment in which the IEC operates, to ensure that it is firstly totally independent from any Government department and reports directly and only to Parliament, and secondly to secure direct funding through Parliament for the IEC, to ensure that it is not beholden to a line function department who controls its access to financial resources.

We further **resolve** that the Commissioners must be appointed with the involvement of all political parties in a manner that is equitable and fair.

On the long-term:

1. The Multi-Party Forum is of the opinion that political parties must have greater oversight of and influence on the decisions made by the Commissioners of the IEC. We will agitate for political parties to have direct representation in the form of a person/s appointed as a Commissioner/s. It is acknowledged that the relevant legislation (the Electoral Commission Act, 1996, Act No. 51 of 1996) will have to be amended.
2. A mechanism has to be put in place whereby the decisions made by IEC Commissioners may be reviewed and/or appealed against.

3. Decision making level of the Political Liaison Committee (PLC)

Whereas the IEC currently tends to make unilateral decisions which are forced upon political parties;

We resolve that we will agitate that the PLC should be given decision making powers.

On the short-term:

The Multi-Party Forum will ask the IEC to provide clear written guidelines regarding the modus operandi of PLCs at all levels; specifically detailing decision-making processes.

On the long-term:

1. The Multi-Party Forum believes that the IEC has a Constitutional mandate to ensure that elections in South Africa were conducted in a free and fair manner. As stakeholders in the IEC and in elections in South Africa, we argue that the format of PLCs should be reviewed and that PLCs should be given decision-making powers.
2. It is recommended that the levels of the decision-making powers be clearly defined in a hierarchical structure with the highest level of decision making at the National PLC level.

4. Media

Whereas the media is often recognised as the “Fourth Estate”, because it is such a vital component of society and the democratic state;

And whereas the free flow of news and information is the lifeblood of democracy;

And recognising the immense influence of the media to shape public opinion and be a catalyst for change or for stability;

Notes with concern that party political bias in the media could significantly affect the fairness of electoral processes, the accountability of elected public representatives and the general enthusiasm of the public to participate and contribute to democracy;

Further noting with concern in particular, the history of abuse of public broadcasting for political ends in this country by the previous regime, and the disturbing incidents such as blacklists that have raised its ugly head in recent years at the public broadcaster;

Acknowledging that the ruling party inordinately benefits from live coverage of its partisan events, above and beyond its preferential media access and exposure as Government, in total contrast to the length and quality of coverage provided to any other political party.

Further notes that history has shown time and again that moves to censor or hamstring the media is consistently the first steps of a slide into dictatorship, and should therefore be resisted at all costs.

We have noted in the past how the ruling party has gained unfair advantage because party messages were conveyed under the guise of government position/opinion.

We resolve that - distinguishing between public and private media;

- a) We will resist any institutional or legislative move to censor, blacklist, boycott advertising or otherwise punish the media – outside of ombudsmen as well as the normal criminal and civil procedures relating to defamation or misrepresentation,
- b) We will through Parliament and the appointment of the Board ensure that the SABC is and remains a public broadcaster that is patriotic but independent and unshackled from Government or party political loyalties,
- c) We will through legislation, or legal action if necessary, ensure that the free advertising and news coverage on the public broadcaster before, during and after elections should – in line with international best practice – be more equitably managed to give all recognised political parties a reasonable opportunity to communicate with the electorate.

On the short-term:

1. The Multi-Party Forum asks that the IEC take greater responsibility, in terms of its Constitutional mandate to ensure free and fair elections, to regulate what is covered in the media regarding elections, giving fair coverage for all the political parties.
2. At the National Conference on the Role of the Media in Promoting Electoral Democracy to be held on 23 And 24 April 2008, we will raise the issue of ‘free advertising’, as regulated by ICASA, accessible to political parties during election time.
3. Regarding the “National and Regional Stations Formulae to Calculate the Allocation of Party Election Broadcasts” that form part of ICASA’s “Regulations Relating to Party Election Broadcasts, Political Advertisements, the Equitable Treatment of

Political Parties by Broadcasting Licensees and Related Matters” (as referred to in the Independent Broadcasting Authority Act, 1993). The Multi-Party Forum will review that schedule of regulations and make input on what it considers a more equitable formula.

4. The Multi-Party Forum will remain cognisant of the balance between the rights of established political parties in terms of the aforementioned ‘free advertising’ and the ‘mushrooming of political parties’ and possible abuse of ‘free advertising’.

5. Elections

- 5.1. Appointment of presiding officers
- 5.2. Role and treatment of party agents
- 5.3. Appointment of election staff
- 5.4. Appointment of Information Technology (IT) companies
- 5.5. Data capturing and announcement of results
- 5.6. Role of the National Intelligence Agency (NIA) and other security bodies
- 5.7. Safety of voting material in transit to voting stations and back to capturing centres
- 5.8. Statutorily mandated time frames for election planning and “following the agenda”
- 5.9. Appointment of municipal managers as Municipal Electoral Officers (MEOs)
- 5.10. Use of MEC7 (Sworn or affirmed statement of registration) during election

Whereas the running of a modern democratic electoral process is a complicated matter, depending upon a wide range of variables and the assistance of a large group of people;

Recognising that the actual logistical implementation of the electoral process is particularly vulnerable to abuse;

And also recognising that the people who are appointed in critical positions in the electoral process may have party political loyalties that affect their performance, and/or may also be beholden for their employment to the continued electoral success of the ruling party;

Specifically noting that the Congress of South African Trade Unions (COSATU) affiliates, in particular South African Democratic Teachers' Union (SADTU) members, are employed as election staff and presiding officers whilst COSATU is openly campaigning for the ANC and is represented at national executive committee level in the ANC;

We resolve to revisit the relevant legislation with a view to tightening the prerequisites for appointment and the role of presiding officers, party agents and/or election staff, and that the political parties will approach the IEC with a view to ending the employment of politically-biased staff.

We resolve to request Government to make a clear public statement specifically committing itself to withdrawing and preventing any influence the NIA, and other security bodies, may have or may have had over any aspect of the management or logistics (especially the role of IT service providers) of the electoral process or the IEC as institution.

On the short-term:

1. Section 24A of the Electoral Act
 - 1.1. Regarding Section 24A of the Electoral Act “Voting in voting district where not registered”, until the Act is amended, the IEC must assure the Multi-Party Forum that measures are in place to stop the abuse (in the form of ‘busing in

of voters') of this provision. Such measures must be tabled at the National PLC for input and approval by political parties.

- 1.2. Taking into consideration that the IEC has the power to determine the date/day of an election, the Multi-Party Forum asks that the election not be held in school holidays so as to minimise the need for voters to travel on election day.
 - 1.3. Political parties should specifically mandate their respective voting agents to assist each other in monitoring the voting process and to specifically report 'voting en masse'.
2. Appointment of IEC staff
- 2.1. Regarding the appointment of all IEC staff (and voter educators and presiding officers in particular) the IEC must ensure that such appointees have no declared and/or open alliances with organised labour and/or political parties.
 - 2.2. Given the impracticality of political parties being involved in the interview and appointment of presiding officers, the IEC must ensure that such appointees sign a code of conduct that bind them to the impartial administration of an election. It is requested that such a code of conduct should be tabled at a National PLC meeting. After the appointment of presiding officers, the Multi-Party Forum asks that the IEC give the assurance that all appointees have signed the code of conduct and that signed documents should be made available for inspection upon request. A disciplinary process should be in place should presiding officers be found in contravention of the code of conduct.
 - 2.3. Past presiding officers that have a proven record of impartiality and proper administration of elections should be re-employed where possible (also refer to Item 2 under the long-term goals).
3. Party voting agents
- 3.1. Regarding the rights of party voting agents on election day, the Multi-Party Forum requests that a clear directive should be issued from the national level of the IEC, e.g. the office of the IEC Chairperson, on exactly what the rights of party voting agents are and how they should be treated on election day - thus establishing a national benchmark.
 - 3.2. The Multi-Party Forum believes that the training of party voting agents is a matter of priority and should start as soon as possible. The Voting and Training Directorate of the Electoral Commission should clarify their responsibility in this regard (i.e. when, where, how, etc. such training will take place). The tools, e.g. counting manuals, rules and regulations, used by party voting agents should be made available timeously and in sufficient quantity to address the total need.
 - 3.3. Political parties should mandate their party voting agents to establish inter-party connections/relationships so that political parties may share the load of monitoring the electoral processes on election day - especially at voting stations where it is difficult for each of the political parties to have several voting agents to work in shifts, in other words, sharing the load and protecting each other's interests.
4. IT service providers
- 4.1. The quality of information on the voters roll is seriously questioned; the Multi-Party Forum asks that the IEC ensure that the data captured on the voters roll is up to date, accurate and clean (i.e. poor capturing of information leads to a poor database). Political parties should be satisfied that the voters roll meet the basic requirements for proper database administration.

- 4.2. The Multi-Party Forum asks that there should be a total review of IT service providers which the IEC employs. The IT systems used for the capturing of election results should receive special attention.
 - 4.3. The Multi-Party Forum wants the tendering process itself to be screened by political parties to ensure that the credible service providers are appointment in a credible fashion.
 - 4.4. The Multi-Party Forum wants to screen the IT companies appointed by the IEC as well, to be satisfied that they are not front companies for organisations and/or individuals who have a vested interest in the election results.
 - 4.5. Political parties should pool resources with regards to the whole issue of the IEC's IT service providers. Because of the highly technical nature of the matter, political parties must ensure that qualified experts express an opinion on the quality of the IEC's service providers. Such experts must express an opinion on the technology employed (including hardware, software, databases, communication systems, etc.) and the security of such systems i.e. to ensure that IT systems are tamper-proof.
5. Involvement of state security organisations
- 5.1. The Multi-Party Forum will request Government, and the IEC, to make a clear public statement specifically committing itself to withdrawing and preventing any influence the NIA, and other security bodies, may have or may have had over any aspect of the management or logistics (especially the role of IT service providers) of the electoral process or the IEC as institution.
 - 5.2. Given that the IEC has to ensure the safety of voting material (specifically looking at the security of ballot papers) on the eve of election, the Multi-Party Forum asks that more must be done to ensure that voting material is kept safe and secure. Anecdotal examples, of voting material being kept in the cars of presiding officers, suggest that not enough is done in this regard. We want the IEC to provide clear directives regarding the measures to ensure the secureness of voting material and who exactly is made responsible. The IEC must assure political parties that voting material is safe and secure at all times *before, on and after election day*.
6. Use of MEC7 (Sworn or affirmed statement of registration) during election
- 6.1. It is the considered opinion of the Multi-Party Forum that this form should no longer be used.

On the long-term:

1. Regarding Section 24A of the Electoral Act "Voting in voting district where not registered", recognising every South African's right to vote, the Multi-Party Forum is of the opinion that this provision is being abused and that the provision should be removed from the legislation.
2. In order to enhance the credibility of presiding officers, the IEC must maintain a pool/database of presiding officers that have a proven record of impartiality and proper administration of elections so that the experience and skills base is maintained and such persons are re-appointed.

6. Floor-crossing

Noting that floor-crossing is immensely unpopular among the electorate;

And further noting that almost all political parties have acknowledged the floor-crossing in it's current format – if not in general – is counter-productive, prone to abuse and disproportionately favouring the ruling party;

We **resolve** that we will support the process the Private Members Bills currently before Parliament and enact before the end of June 2008 legislation that scraps the current form of floor-crossing.

Because this matter is already before Parliament the Multi-Party Forum resolves that those parties that have representation in Parliament will support the scrapping of this legislation.

7. Creating an enabling environment of participatory democracy

- 7.1. Registration system
- 7.2. Effectiveness of PLCs at all levels
- 7.3. Calculation of seats – formulae/methods
- 7.4. Voter education
- 7.5. Accessibility of the result centres to all parties
- 7.6. Level of accountability of all stakeholders in the election process
- 7.7. Role of the Demarcation Board
- 7.8. Time allocation to political parties in Parliament

Whereas participatory democracy means the open and equitable participation of all political parties in the overall political management of electoral and democratic processes;

And whereas South Africa is a plural society that specifically crafted its democratic Constitution around the concept of multi-party democracy to ensure that a wide range of views are expressed, heard and accommodated;

Recognises that more could be done to improve the level of participation of all political parties in the electoral and democratic processes;

Acknowledges that there is an equity disparity in the proportion of time and resources in the electoral and democratic processes in favour of the ruling party;

We resolve to

- a) Amend where necessary the relevant legislation to improve the equitable and meaningful participation of political parties in the electoral process,
- b) Engage at parliamentary level to devise a system that gives fair and adequate opportunity to all the political parties, and to amend the rules of Parliament accordingly, and
- c) Revisit the role of the Demarcation Board and where it is held accountable

On the short-term:

1. Registration of voters
 - 1.1. The Multi-Party Forum calls for real transparency of the registration process and access to information. Political parties must be satisfied that the proper procedures were followed in the registration of voters and that the voters roll is an accurate reflection of the registered voter population.
 - 1.2. No registration by proxy should be allowed; the Multi-Party Forum believes that the person eligible for registration should register in person and should present his/her ID book to verify his/her identity.
 - 1.3. The Multi-Party Forum believes that the location of registration venues is problematic as this is sometime impractical and not properly advertised. The IEC should be more pragmatic in deciding on the location of registration venues and should better advertise the registration periods and location of venues.

2. Voter education
 - 2.1. The Multi-Party Forum asks that the IEC's detailed commitment with regards to voter education be spelled out to all political parties so that all stakeholders might be fully informed of what the IEC will be engaged in. This should include details on *when* the IEC will be doing voter education and *who* the service providers will be.
 - 2.2. We believe that the IEC should specifically focus on learners who will be eligible to vote in future elections. Although this has been said to have been done, the IEC must make a greater effort to maximise the formal environment where learners find themselves. The Multi-Party Forum believes that the IEC has a great responsibility towards the young voters of this Country, capacitating them to perform their civic responsibility and to protect them from indoctrination. We would like to know what the IEC's plans are in this regard and the information should be disseminated at the National PLC level.
 - 2.3. The Multi-Party Forum asks that the IEC provides ample material to political parties so that they may contribute to the process of voter education in a responsible manner. It should be discussed and clearly spelled out how political parties may participate in this process to ensure that political parties do not abuse voter education as electioneering/campaigning.
 - 2.4. Regarding the training material itself, the Multi-Party Forum requests that the IEC give political parties the opportunity to make input.
3. Result centres
 - 3.1. Political parties want to be assured of the effectiveness and security of the result capturing process (i.e. by witnessing the capturing of results). Acceding to our requests and suggestions regarding the IT systems and processes of the IEC – as mentioned above -, the Multi-Party Forum believes that much headway will be made in establishing the credibility of the results.
 - 3.2. The IEC must give political parties the opportunity to observe the 'dry-run' of the capturing systems i.e. when the IEC sets-up/prepares the IT systems for the capturing of the results, representatives of the political parties must be present to witness the tests of the system *before* election day.
4. Calculation of seats
 - 4.1. The IEC is requested to provide the formula for the calculation of seats to the Multi-Party Forum for scrutiny by the political parties.
 - 4.2. The Multi-Party Forum asks the IEC to make known the number of seats per legislature, if it has been (or will be) changed based on increased voter numbers.
5. Level of accountability of all stakeholders in the election process
 - 5.1. The Multi-Party Forum calls on all political parties to take responsibility for adhering to the rules regarding campaigning and should take responsibility for monitoring each other. During the campaign period, and specifically on election day, any form of intimidation or voter influence should be refrained from.
 - 5.2. Specifically regarding the enforcement of rules on the 'buffer zones' at voting stations, the Multi-Party Forum believes that this should be strictly adhered to and asks that the IEC should enforce these rules without fail.
6. Role of the Demarcation Board
 - 6.1. Acknowledging that demarcation is a continuous task, the Multi-Party Forum wants greater transparency with regards to the Demarcation Board's decision making process i.e. valid reason should be provided for the demarcation of certain areas. We believe that greater transparency would avoid situations where conflict arises and also curb the alteration of voting districts for seemingly frivolous and/or spurious reasons.

- 6.2. The Demarcation Board should be more sensitive to the timing of implementation of any demarcation changes. Specifically, the Multi-Party forum believes that any changes to demarcation should not be done close to election time as creates the perception of underhanded manipulation and it is confusing for the electorate and disruptive.
7. Allocation of opportunities for participation of political parties at the various levels of government (e.g. speaking time and number of speakers per political party)
 - 7.1. Political parties, at the relevant forums of government, should agitate for a change in the formula that is used to determine the allocation of time allowed for political parties to participate in debate as well as the number of speakers from each political party that is allowed to speak on a given subject.
 - 7.2. Looking at the coverage of debates on Parliamentary TV, the Multi-Party Forum believes that the current system impacts on the inequitable exposure the various political parties get on this station. Because of the structure of the broadcast time not all political parties' contribution gets fair air time.
 - 7.3. Multi-Party Forum believes it a model, that provides that fifty percent of the speaking time be allocated on an equitable basis and the other fifty percent be divided proportionally, could be considered.

On the long-term:

The Multi-Party Forum, as a forum where all political parties are represented, should make use of the provision that an independent audit of elections results is allowed.

8. Intra- and Inter-party democracy

We resolve to request the IEC to develop a policy on how it will foster and advance intra- and inter-party democracy in South Africa;

We resolve that multi-party forums (such as one hosted by the Netherlands Institute for Multiparty Democracy (NIMD)) should serve as platforms to discuss the issue of intra- and inter-party democracy.

On the long and short-term:

Acknowledging that intra-party democracy is within the ambit of each political party's own business and that they should take responsibility for it, the matter of inter-party democracy can be effectively addressed by this forum. It is agreed that political parties should explore every avenue available to promote inter-party democracy (recognising that the Multi-Party Forum as an example of inter-party democracy in action) and that parties should keep each other informed about learning opportunities in this regard.