

15 September 2022

TO: Mr Mosa S Chabane, Chairperson: PC on Home Affairs

Email: electoralact1@parliament.gov.za

AND TO: Dr Aaron Motsoaledi

Minister of Home Affairs

Email: Mamokolo.Sethosa@dha.gov.za

Dear Mr MS Chabane

**READVERTISEMENT OF THE ELECTORAL AMENDMENT BILL CALL FOR COMMENTARY  
OUR REF: PG 1907 – 010**

1. The Minister of Home Affairs has initiated the Electoral Amendment Bill B1 of 2022, which seeks to accommodate independent candidates in the existing electoral system with minimal changes to the governing legislation. The Electoral Amendment Bill (B1-2022) presented to Parliament, is in accordance with the minimalist option provided in the 9 July 2021 Report of the Ministerial Advisory Committee (MAC) on Electoral Reform.
2. This submission speaks to the invitation directed to the members of the South African public to comment on the Electoral Amendment Bill (B1-2022) as formally introduced to Parliament on 10 January 2022. This submission represents the opinion of the Organisation Undoing Tax Abuse (OUTA).

**OUTA'S INTEREST IN THE BILL**

3. This submission is guided by Constitutional Court's declaration that the Electoral Act 73 of 1998 has been found to be unconstitutional. This judgment was made June 2020, in *New Nation Movement NPC v President of the Republic of South Africa*, wherein the Organisation Undoing Tax Abuse (OUTA) was *amicus curiae*<sup>1</sup>. OUTA supported the Applicants' argument that the Constitution requires the adoption of an electoral system, at the national and provincial level, that permits candidates to stand for public office independent of a political party. A constitutionally compliant electoral system, regardless of the form that it takes, must create room for Members to exercise these constitutional rights fully, in their individual and representative capacities.
4. On 28 February 2022 OUTA submitted its written comments on the Bill, followed by the oral presentation to the Portfolio Committee of Home Affairs on 1 March 2022.

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<sup>1</sup> CC case no: 110/19; WCHC case number: 17223/18

5. Since the submission and oral presentation, OUTA has remained active in its endeavours to raise awareness on the Electoral Amendment Bill by engaging with the public and other Civil Society Organisations (CSOs).

#### **THE IMPACT OF THE BILL ON THE PUBLIC AND LACK OF PUBLIC PARTICIPATION**

6. As indicated in the submission and presentation of commentary on the Electoral Amendment Bill (B1-2022), OUTA remains concerned over the lack of public participation and education campaigns. Several requests from CSOs, which OUTA has endorsed, have been directed to the Portfolio Committee. The requests were to collaborate on the concerns raised and to recommend changes that will be within the interest of the South Africans. The Portfolio Committee has not reciprocated these requests by extending an invitation, and have instead decided to ignore these calls.
7. Not attending to these requests for additional input between April and end of August 2022, have resulted in an amended version of the Electoral Amendment Bill that still fail to meet constitutional viability.

#### **PROBLEMATIC ELEMENTS IDENTIFIED IN THE BILL**

8. OUTA finds the following additional provisions problematic:

*(d) The amendment to 31A of the Bill to allow independent candidates to contest more than one region for a seat in the NA.*

*(h) The amendment to 31B(3)(a) of the Bill. A completed prescribed form must be attached to the nomination of an independent candidate confirming that the candidate has submitted names, identity numbers and signatures of voters who support the candidate, totalling at least thirty percent of the quota for a seat.*

*(o)(iii) The Bill ensures that vacancies for independent candidates are filled through a recalculation.*

*(o)(iii) The Bill provides that independent candidates contesting in more than one region cannot aggregate their votes.*

#### **RATIONALE BEHIND PROBLEMATIC ELEMENTS IDENTIFIED IN THE BILL**

9. The following concerns refer:
  - 9.1. (d) Should independent candidates contest more than one region for a seat in the NA, the votes cast in the regions not reaching the highest figure, will be discarded.

Such an approach wholly limits proportional representation by the discarding of votes in favour of the independent candidate which is in contrast to the wish of the electorate when they cast their votes in other regions.

- 9.2. (h) The concern here is regards to the signatures of voters who support the candidate, totalling at least 30% of the quota for a seat. This is a barrier to entry. For example, should the quota be 45,000 seats, the independent candidate will require 13,500 signatures. A political party only requires 1 000 registered voters to sign the Deed of Foundation. This places an unfair burden on the independent candidate.
- 9.3. (o)(iii) The votes and seat allocated to the independent candidate – who has vacated the seat – will be discarded. Based on this recalculation, the vacant seat is awarded to an eligible independent candidate or party – with the next highest votes – that contested the preceding election. This means that the seat may go to a political party, not with certainty to another independent candidate. This goes against the wishes of the voter who specifically wanted an independent candidate to represent them, not a political party.
- 9.4. (o)(iii) This concern is linked with the concern raised in item (d) above. Votes cast for the independent will be wasted, going against the wishes of the electorate.

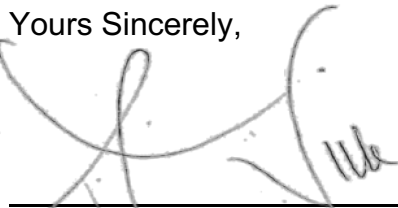
## **RECOMMENDATIONS**

10. In recognition of the foregoing considerations, OUTA recommends the following:
  - 10.1. Visibly prioritise education campaigns informing the public of the content, timelines and implications of the amendments to the Electoral Act 73 of 1998;
  - 10.2. Actively engage with civil society organisations to promote awareness of citizens' right to vote, the reasons for voting, and to improve voter turnout and responsiveness;
  - 10.3. Critically review the Bill in light of submitted public commentary and actively make changes based on sound principles and constitutional values;
  - 10.4. Recognise the democratic rights of every citizen whose vote has a right to count, and
  - 10.5. Respect the right of independent candidates on the basis of equality and fairness in proportional representation on the same constitutional terms afforded to political party candidates.

**CONCLUSION**

11. Every adult South African has the right to stand for public office and contest elections as an individual and if elected, to hold the office into which she or he is elected. Together with this, every vote ought to count and not be wasted.
12. We trust these comments and recommendations are received with due consideration, and we look forward to receiving your response.

Yours Sincerely,



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