



Electoral Institute for Sustainable Democracy
in Africa

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South Africa 2014 Election Updates

EISA Election Update One

www.electionupdate.org.za

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Processes Issue

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Editorial

Since 1999 EISA has produced a series of Election Updates for every South African election, detailing and documenting the developments of the pre-election, election day, and post-election period in each of South Africa's nine provinces. These updates are circulated to a broad group of local and international electoral stakeholders, including local and international observer missions, local civil society organisations, political parties, academics and universities as well as a broader international audience interested in developments in South Africa.

The Election Update provides in-depth insight into the electoral and political process and provides an account of the extent to which democracy in South Africa is taking root after twenty years of political transition. It aims to reflect on the past two decades of democracy in South Africa, and examine potential issues impacting on the forthcoming 7 May 2014 elections. Specifically, the Election Update aims to:

- contribute to voter education aimed at promoting an informed choice by the electorate;
- promote national dialogue on elections and in the process inculcate a culture of political tolerance;
- influence policy debates and electoral reform efforts through published material;
- provide critical information and analysis to all electoral stakeholders on the electoral and political process; and
- serve as a historical record of the electoral process.

For these reasons, the Election Update series has become an indispensable resource on the political and electoral process as it unfolds in South Africa.

Over a series of eight issues, five which will be released before the 7 May elections, and a further three after, we aim to bring timely and relevant insights through providing information, data and analysis on selected themes germane to the electoral and democratisation process.

This first issue focuses exclusively on the process dimensions of this year's elections and focuses on the constitutional and legislative, institutional and administrative framework. It also provides a template guide to free and fair elections.

Our next four issues will provide analytical writing from selected scholars reflecting on themes such as twenty years of democracy in South Africa, the state of the opposition, the state of the governing alliance, as well as the impact of private funding and differential access to resources on electoral competition. Each of these issues will be backed up by data, information and analysis from each of South Africa's nine provinces. We hope that you will find these issues of some use and interest.

Legal Framework

In general an election and electoral process is one that serves to facilitate people's participation in the process of choosing leaders to represent them. The electoral system is thus a process that creates equality of opportunity for citizens to exercise choice and gives voice to their choice. Consequently, elections by their nature need to be process-driven, serving to systematise and manage the competition and contestation between contestants (political parties) over the issues and resources that may be at stake in society that the leaders they elect give direction to.

The legal framework of elections determines whether the playing field is level for competition among the parties. First there is the electoral system; secondly, there are the electoral procedures that determine the rules of participation in the election; thirdly, there is the conduct of the participants, which can only partly be regulated by the legal framework; and, finally, there are factors within a broader environment, such as the media, which are in some instances also subject to legal regulations.

The 1996 Constitution

In view of the Constitution's status as the supreme law, and therefore its constitutional supremacy, the Constitution provides the most important indication as to whether or not the electoral playing field is level in South Africa. It also implies that all legislative and executive actions in relation to elections have to be constitutional, which gives the judiciary a more prominent status in relation to the legislatures than in parliamentary systems. The constitutional provisions relevant to elections are the following:

- **Section 1(d)**: as a sovereign and democratic state, South Africa is founded on a set of basic values, including 'universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness'.
- **Section 19** (in the Bill of Rights): every citizen (not 'everyone' as in most of the other Chapter 2 clauses) is free to make political choices. This includes the right to form a political party, to participate in the activities of, or recruit members for, a political party, and to campaign for a political party. Every citizen has the right to free, fair and regular elections for any of the official legislative bodies. Every adult citizen has the right to vote in secret in elections for any of the official legislative bodies. Citizens also have the right to stand for public office and to hold office.
- **Sections 46 and 47**: prescribe the electoral system to be used for the National Assembly and the qualifications of candidates. The electoral system has to be determined by national legislation and it must be based on a common voters' roll, a minimum voting age of 18 years, and a system that 'result[s], in general, in proportional representation'.

To be a parliamentary member, one must qualify as a voter, but will be disqualified if:

- appointed by, or in the service of, the State and is remunerated for it; – he/she is a member of the other parliamentary house, a provincial legislature or a local council;
 - a non-rehabilitated insolvent;
 - declared to be of unsound mind
 - anyone convicted after 1994 of an offence and sentenced to more than 12 months' imprisonment without the option of a fine. The disqualification expires five years after the sentence has been completed.
- **Sections 105 and 106:** determine the electoral system and qualification of candidates for provincial legislatures. These provisions are a duplicate of those applicable to the National Assembly.

A third significant constitutional determination is that citizens have the *right* to free, fair and regular elections. Free and fair elections are therefore not only a noble objective but a right. Once recognised as a right, it must be enforceable. Who has to take responsibility for it? The first possibility is the government, but as the governing political party it cannot be 'player and referee'.¹ Institutions responsible for managing elections – in other words, the Independent Electoral Commission under direction of the Constitution, and relevant Statutes listed below as well as the judiciary through the Electoral Court – becomes the sole recognised authorities on electoral matters during the electoral period, while the government takes responsibility for the normal functioning of the State.

The relevant statutes governing the electoral process are the following:

- Electoral Act, 73 of 1998
- Electoral Commission Act, 51 of 1996
- Public Funding of Represented Political Parties Act, 103 of 1997
- Independent Broadcasting Authority Act, 153 of 1993

The Electoral Act constitutes a comprehensive framework that deals with all the technical aspects of general elections in the national and provincial spheres of government. Local government elections are governed by a separate electoral act. Only those aspects that can affect contestation between the parties and bureaucratic interference in the election will be discussed here.²

¹ Kotze, Dirk. "The Workings of the South African Electoral System: Is the Playing Field Level?" *EISA Election Update Compendium* 2009 EISA (2010), pages 16-19.

² Kotze, Dirk. "The Workings of the South African Electoral System: Is the Playing Field Level?" *EISA Election Update Compendium* 2009 EISA (2010), page 18.

The Electoral Act's section 26 determines the requirements for political parties to contest elections.

A party must be registered and must have submitted a list of candidates. **Section 27** prescribes how these lists should be submitted. In addition to the list, the party should bind itself and its candidates to the Electoral Code of Conduct. It should include a declaration by each individual candidate that he/she accepts the nomination and the Code of Conduct. The lists must be accompanied by a deposit for the national election and for each of the provinces in which the party is involved.³ The refundable deposit for parties contesting the National Assembly is R200 000, while parties contesting provincial legislatures will pay R45 000 per provincial election. The deposit is refunded should a party win a single seat in the contested election. The election deposits serve two purposes: a. they serve to reduce the prevalence of unscrupulous and joke contestants, and b. they serve to test a minimum level of connection between a contesting party in a purely proportional representation system and candidates in a first-past—the-post system. Serious and genuine contestants who demonstrate a minimum threshold of support are refunded their deposit.

In South Africa's purely proportional representation system with no threshold, parties attaining a seat are refunded their deposit. In other systems, such as a first-past-the-post system, candidates losing an election but demonstrating through the poll a minimum threshold of support (for instance five percent), have their deposits refunded. There are other tests that can be used to demonstrate the seriousness of political parties and to test their connection to a portion of the body-politic, such as through for example attaining a specified number of signatures of registered voters; this test is applicable only in simple first-past-the-post elections in relatively small constituencies. In a pure PR system such as South Africa's, the number of signatures required would be in the order of 50 000, which would place an undue and onerous compliance and regulatory burden on the electoral managers and administrators to vet, verify and authenticate these signatures. On a balance of considerations, therefore, the refundable deposit is thought to be the best threshold test, given the circumstances.

In addition, in a society such as South Africa's, with large informal settlements of a transitory and impermanent basis, large townships in which regulated street and stand addresses are not always available, together with large amounts of internal migration, verification and authentication of a people who might support a party's right to contest an election may be rendered near impossible. In addition, introducing an alternative will serve to reduce the entire electoral period, with shorter cut-off dates for political parties' list preparations and campaigning period because of the extended lead time that will be required for preparations by the Electoral Commission.

Section 31 is concerned with the regulations regarding the declarations of the final list of parties and candidates allowed to contest the election. The chief electoral officer has, as set out by the

³ Ibid.

Act, to compile the list of parties and or candidates by the date found in the election timetable. This is meant to ensure efficiency and to guarantee that the processes that lead to voting are on schedule and the entire operation runs smoothly.

See the Electoral Timetable on Page 12

Recent Developments in Electoral Law

There are two statutory developments that have been instituted recently. One relates to South Africans citizens who will be in other countries on the day of elections of May 7, and the other relates to South African citizens who are incarcerated.

Act No. 18 of 2013 Electoral Amendment Act provides South Africans who are currently, or will be residing, in another country on the day of the election the opportunity to vote. The amendment involved, inter alia, an insertion into section 33 of the Electoral Act that prescribes that the Commission must allow a person who lives in another country the opportunity to vote and those who may happen to be in another country on election day the chance to cast a vote as well. A registered voter either living abroad or who will be abroad on election day in South Africa (7 May 2014) must have a valid South African ID and a valid South African passport to be eligible to vote abroad on 30 April 2014.

In order for the amendment to the Act to be effected, the IEC, in conjunction with the Department of International Relations and Cooperation (DIRCO), has sought to provide the platform for South Africans living abroad to vote.

In terms of the amended regulations, South Africans living outside of the country who wish to vote in the national election were required to register in person either in South Africa or at one of South Africa's 124 embassies, high commissions or consulates-general, located in 108 countries. These South Africans need to be in possession of a valid South African identity document (either a green bar-coded South African ID book, a new smart-card ID or a valid temporary identity certificate) AND a valid South African passport in order to register. South African citizens living outside of the country and who are already registered as voters in South Africa do not need to register again.

Chapter 3 of the election regulations, which deals with special votes, has also been revised to accommodate voting by South African citizens abroad. It requires registered voters who will not be in South Africa on election day (including those who registered outside of the country) to notify the chief electoral officer of the IEC of their intention to apply to cast their ballot at a South African diplomatic mission. Notifications of intention to apply for a special vote are made online via the IEC's website (www.elections.org.za) using a VEC10 form that was made available once the President of the Republic proclaimed the election date. Online applications had to be made within 15 days of the proclamation.⁴

Act 73 of 2003, amended by the Electoral Laws Amendment Act 34 of 2003, in effect, deprived prisoners of the right to vote. The following is taken from the media summary of the

⁴ IEC website. <https://www.elections.org.za/content/For-Voters/How-to-register-and-vote-abroad/>

Constitutional Court Judgment from an application brought by the South African Institute for Crime Prevention and the Reintegration of Offenders (Nicro) and two prisoners serving sentences without an option of a fine:

“The Constitutional Court upheld an application by the National Institute for Crime Prevention and the Re-Integration of Offenders (Nicro) and two convicted prisoners serving sentences of imprisonment, for an order declaring certain provisions of the Electoral Act to be inconsistent with the Constitution and invalid. The provisions deprive prisoners serving a sentence of imprisonment without the option of a fine of the right to register and vote in the upcoming elections”.⁵

Under the Amendment, only those prisoners who were awaiting trial and prisoners given the option of paying a fine were allowed to register to vote. Therefore, the Constitutional Court’s majority judgment has insured that all prisoners are able to register to vote unless they do not meet the requirements as set out by Section 8 of the Electoral Act.

Some prisoners’ rights activists have criticised the IEC for being more concerned with registering overseas voters than those incarcerated potential voters inside of South Africa. This criticism stems from the fact that many prisoners are unable to get access to their identity document or money to secure a temporary identity document.

For the 2014 elections, Correctional Services, in consultation with the IEC, has set up stations inside prisons, where prisoners are able to register to vote. These stations will also be used on the day of the elections for prisoners to cast their vote. There are a total of 241 correctional services facilities that were able to arrange registration centers.

The Electoral Code of Conduct plays an important part in regulating proper conduct by the parties and candidates. Its purpose is to promote the values underscoring the Constitution in general and the elections in particular. It also serves as a basis on which political tolerance can be promoted. The Code includes a public commitment that everyone has the right to freely express his or her political beliefs, to challenge and debate the political beliefs of others, and to freely canvass and campaign. It also lists prohibited conduct such as the use of language or acting in a way that may provoke violence during the election or that may provoke intimidation. It also prohibits the use of inducements or rewards during the campaign, the carrying or display of arms and weapons, or abuse of a position of power. Violations of the Code, especially during the campaign period, are one of the categories of electoral disputes. A number of dispute resolution mechanisms are available to deal with these matters: (a) the party liaison committees, (b) the IEC

⁵ *Constitutional Court Judgment Media Summary*. Minister of Home Affairs v NICRO and Others, Case CCT 03/04 , Page 1

itself, (c) conflict mediation panels, (d) the police, and (e) the Electoral Court.⁶ Other acts or omissions not covered by these specific mechanisms are dealt with through the normal course of civil and criminal law.

The Public Funding of Represented Political Parties Act 103 of 1997, in section 10 (1) of the Act as amended by amended by proclamation: R47 GG 27986 31/8/2005, prescribes the allocation of funding to political parties, stipulating that the total amount of funding available for allocations from the Fund during a particular financial year must be announced by the Electoral Commission at the beginning of the financial year. The allocations from the Fund are distributed to the political parties on the formula of ninety (90) per cent of the total amount of funding available, allocated proportionate to the support parties enjoy (in terms of the number of seats held in the National Assembly and Provincial Legislatures jointly) and ten (10) per cent of the total amount of funding available, allocated equitably where the 10% is allocated to a province in proportion to the number of members of the provincial legislature and is then divided equally among the participating parties in the legislature of that province. Funds are paid to parties in four equal installments (on a quarterly basis, in other words). It is significant that, in the legislation, the purposes in connection with which amounts are spent show the amounts spent to be classifiable under certain categories.⁷

Section 5(1)(b) of the Public Funding of Represented Political Parties Act says that the allocation may be used “for any purposes compatible with [the party’s] functioning as a political party in a modern democracy”, and that these include:

- the development of the political will of people (i.e. allowing you to choose);
- bringing the party’s influence to bear on the shaping of public opinion (i.e. providing you with a choice);
- inspiring and furthering political education (i.e. keeping you up to date with what is available and who is offering what);
- promoting active participation by individual citizens in political life (i.e. getting people involved);
- exercising an influence on political trends; and
- ensuring continuous, vital links between the people and organs of state (i.e. developing the interface between citizens and public administration)

A political party may not:

- pay any direct or indirect remuneration or other benefit of any kind to any elected representative of the party or to any public servant at any level of government;

⁶ Op. cit. (Kotze).

⁷ Fakir, Ebrahim and Holland, Waseem. *ETDP SETA Political Parties Sector Skills Plan 2013/14 Update* (October 2013).

- finance or contribute directly or indirectly to any matter, cause, event or occasion if it contravenes any code of ethics binding on members of parliament or any provincial legislature;
- use the money directly or indirectly to start any business or acquire or maintain a right or financial interest in any business;
- use the money directly or indirectly to acquire or maintain a right or financial interest in any immovable property, unless if solely for ordinary party-political purposes; and
- use the money for anything else that is incompatible with a political party's functioning in a modern democracy.⁸

There is currently no regulatory framework or disclosure regime with respect to private sources of funding for political parties. This is a source of considerable discomfort and agitation among civil actors, with many mobilisation campaigns calling for private funding regulation. On the flipside of the divide, political parties across the divide, and at least the two main parties (the ANC and the DA), find common accord in displaying resistance to disclosing their private funding.

The Independent Communications Authority of South Africa (ICASA) is responsible for the 'Party Elections Broadcasts and Political Advertisements Regulations' in terms of Section 78(1) of the Independent Broadcasting Authority Act.

It regulates party-political advertisements and broadcasts during the election-broadcast period (i.e. from the submission date of party lists to the IEC, up to 48 hours before polling day). During this period the conditions are regulated for acceptance, editing and rejection of political adverts and broadcasts, the time period allocated to each party, and related broadcasting specifications. In this respect no difference is made between any of the parties.⁹

Sections of the Electoral Act specifically relating to voters:

Chapter 2 of the Act is the section that regulates the interaction of the category that will be engaged in the act of voting: the voters.

Section 5 places the duty of gathering and maintaining a voters' roll on the chief electoral officer.

Section 6 regulates who may apply to vote. The Act stipulates that anyone with a valid identity document may do so.

Section 7 prescribes that voters may register only in the district that they usually live in or in which a member of their household resides.

⁸ IEC website. <http://www.elections.org.za/content/Parties/Party-funding/>

⁹ Op. cit. (Kotze), page 20.

Section 8 deals specifically with those who must be excluded from the voters' roll. The section explains the criteria the chief electoral officer will employ to judge whether someone applying for registration on the voters' roll will be eligible. The chief electoral officer may not register an individual on the voters' roll if the person did not comply with the regulations as prescribed by the Act, or made the application in a fraudulent manner. Registration will be denied if the person is not a South African citizen, or has been declared to be mentally disordered by the High Court of South Africa, or detained under the Mental Health Act, 1973 (Act No. 18 of 1973). Of course, the Act guards against any duplication on the voters-roll by specifying that an applicant must ordinarily be a resident of the district in which they have applied and that an applicant cannot be entered into more than one voters-roll.

Sections of the Electoral Act that deal with processes are as follows:

Chapter 3, sections 17 and 18, advises that when the president announces the day of the election for the National Assembly and the Provincial Legislature, he or she must set a single date for voting, which was announced by President Jacob Zuma as May 7, 2014. This announcement was made on February 7, 2014, and gazetted on February 25, 2014 – formally proclaiming the election date and the beginning of the electoral period.

Section 20 stipulates that the election timetables must be announced by the Commission after consultation with the party national liaison committee. The Commission is required by law to establish committees on local, provincial and national level in order to facilitate dialogue and consultation between the parties contesting the election and the IEC. Every registered party that has representation in the National Assembly, provincial legislature and municipal councils is allowed to assign no more than two representatives to the relevant committees.

The party liaison committee is a platform that allows for the interface between parties contesting the elections and the Commission presiding over the election, in order to ensure that the elections are fair to all the parties and that practical issues are dealt with through interaction between these actors.

Election Timetable



2014
NATIONAL & PROVINCIAL ELECTIONS

TIMETABLE



OFFICIAL TIMETABLE

25 February	Voters' roll closes
Wed 5 March 2014	Notice: List of addresses of voting stations open for inspection (s64)
	Notice of routes of mobile voting stations (s67)
	Cut-off date: Certification and Publication of Voters' Roll by making it available. (s24)
Wed 12 March 2014	Notifications to CEO of intention to vote outside of the Republic (s33 [3] [4])
	Cut-off date for submission of lists of candidates (s27)
Tues 18 March 2014	Cut-off date - Notice of non-compliance by parties in respect of lists of candidates (s28)
Mon 24 March 2014	Cut-off date for parties to comply in respect of candidates lists (s28)
Fri 28 March 2014	Notice: Inspection of lists of candidates and accompanying documents (s29)
Fri 28 March 2014 & Mon 31 March 2014	Period in which lists of candidates and accompanying documents will be open for inspection (s29)
Tues 1 April 2014	Cut-off date for objections to candidates (s30)
Mon 7 April 2014	Cut-off Date - Commission decisions on objections and notification to objectors and parties (s30)
Mon 7 April to Thurs 17 April 2014	Applications for special votes to the MEO (s33 [1] [a] [b] [c], s33 [2], s33A [1] [a] [b] [c] s33 [2])
Thurs 10 April 2014	Cut-off date for appeals to Electoral Court against Commission decisions re objections to candidates (s30)
Tues 15 April 2014	Deciding of appeals by Electoral Court and notification of CEO and parties involved (s30)
Tues 22 April 2014	Cut-off date - Compilation of lists of parties and final lists of candidates who will contest the election (s31)
Thurs 24 April 2014	Issue of certificates to candidates (s31)
Wed 30 April 2014	Application & casting of special votes at foreign missions (s33 [3], s33 [4])
Mon 5 May 2014 & Tues 6 May 2014	Visitation for purposes of casting special vote (s33 [1] [a] s33A [1] [a])
	Casting of special votes at office of presiding officer (s33[1] [b] [c] s33 [2] s33A [1] [b] [c] s33 [2])
7 May 2014	Election Day

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VOTERS WITHIN SOUTH AFRICA

25 February		Voters' roll closes
5 March		IEC certifies voters' roll
7 April		Opening date for submission of special votes' applications at local IEC offices You can apply for a special vote if you can't travel to your voting station because you're physically infirm, disabled or pregnant; or you can't vote at your voting station on election day.
17 April	17h00	Deadline for submission of special votes' applications at local IEC offices
5 & 6 May	09h00 - 17h00	Home visits and special votes at voting stations
7 May	07h00 – 21h00	Election Day

VOTERS VOTING ABROAD

25 February		Voters' roll closes
25 February		Opening date for submission of VEC10 notifications Submit your VEC10 online at www.elections.org.za
12 March	Midnight (UTC+02:00)	Deadline for submission of VEC10 notifications
30 April		Voting day abroad

CANDIDATE NOMINATION PROCESS

25 February	08h00	Opening date for parties to submit candidate lists and deposits at IEC's national office
12 March	17h00	Deadline for parties to submit candidate lists
18 March	17h00	Deadline for IEC to notify parties of outstanding documents
24 March	17h00	Deadline for parties and candidates to submit outstanding documents
28 & 31 March		IEC opens candidate lists for inspection at IEC's national office
1 April	17h00	Deadline for submission of objections to candidates
7 April	17h00	Deadline for Commission decisions on objections to candidates
8 - 10 April		Appeals to the Electoral Court against Commission decisions re candidate objections
15 April	17h00	Deadline for Electoral Court decisions on appeals
22 April		IEC releases final lists of parties and candidates contesting the elections
24 April		IEC issues certificates to parties

The Electoral Authority

The Independent Electoral Commission (IEC)

The Independent Electoral Commission (IEC) is the body responsible for managing and administering elections. The IEC was established in terms of the 1993 Interim Constitution and later through the 1996 Act of Parliament. In its vision statement, the IEC declares its main objective as being to ‘strengthen constitutional democracy through the delivery of free and fair elections ...’ The IEC comprises five Commissioners appointed through a fairly elaborate and rigorous process. The appointment of the Commissioners for the IEC is done by the Constitutional Court, and conducted through five different stages as follows:

- Call for candidates through newspaper advertisements, and short-listing of candidates.
- Interviews of successful candidates conducted by a panel consisting of:
 - President of the Constitutional
 - Court (Chairperson)
 - Representative of Human Rights Commission
 - Representative of Commission on Gender Equality
 - The Public Prosecutor
- The interview panel then submits the names of eight nominees for Home Affairs (PCHA) for recommendation.
- The recommended candidates are submitted to the National Assembly for approval.
- Following National Assembly approval, the names of successful candidates are forwarded to the Minister of Home Affairs for submission to the president for appointment. This elaborate process ensures that the appointments to the Electoral Commission are transparent and non-partisan and therefore have the confidence of all political players. The body so established is therefore autonomous and an impartial manager of the electoral process. Furthermore, the Electoral Act of 1998 contains a binding Code of Conduct for political parties and their candidates. The purpose of the Code is to promote conditions that are conducive to holding free and fair elections, including the promotion of political tolerance, free campaigning and open public debate.

Since its establishment, the IEC has managed and conducted elections with an impartiality and professionalism that has earned it the confidence of all political and social players. The IEC has in fact become a role model of an Electoral Commission on the continent, and has been invited by a number of countries to assist with their respective election processes.¹⁰

¹⁰ Ajulu, Rok. “The State of Democracy and its Implications for 2009 Elections”. *EISA Election Update Compendium* 2009 EISA (2010), page 14.

Conduct of IEC

The conduct of Commissioners is governed by **Section 9 Act Electoral Commission Act, 51 of 1996**. The first segment of the Act is concerned specifically with the way that Commissioners in the IEC ought to conduct themselves. The Act obliges Commissioners to act with impartiality, to show no bias and to perform duties and functions without any favour.

Ultimately, this part of Section 9 prescribes that Commissioners embody independence. This segment of the Act also stipulates that Commissioners, if they are employed on a full-time basis, may hold no other office but in the Commission. This is to ensure that Commissioners are able to carry out their duties to the highest standards of excellence.

The second segment of Section 9 prescribes what Commissioners are prohibited from doing. These range from Commissioners not being eligible for any other political office through election or appointment, direct or indirect support for a party and or candidate, allow their credibility to be called into question by their affiliation with any group or association, or use any information gained in the Commissioner's office for private gain or profit.

To that end, Commissioners may not disclose any information to an external party within the ambit of their office. Lastly, Commissioners may not be eligible to be appointed as a Member of Parliament, provincial legislature or local government.

Negative Perceptions of the Electoral Authority

The IEC is one of the South African institutions that are meant to uphold and advance democracy. It has largely been able to escape being embroiled in any major controversies. The credibility of a body like the IEC is crucial to the continued credibility of the electoral process, and therefore the legitimacy of the outcome of the electoral process. In recent times, the IEC's credibility has been called into question on two fronts. One of these relates to findings in a Public Protector Report in 2013 that indicated tender irregularities in the leasing of the IEC headquarters. Following a forensic audit investigation, which was recommended by the Public Protector and later commissioned by the Treasury, the audit firm PricewaterhouseCoopers found that the chairperson of the IEC, Pansy Tlakula, who at the time was chief electoral officer, was responsible for a process that was not fair, equitable or transparent, and the process that took place amounted to gross maladministration.¹¹ Advocate Tlakula has herself referred this matter to the courts and the matter is therefore currently sub judice.

The other recent allegations that have emerged against the IEC have called into question issues relating directly to its functioning and operations as a facilitator, manager and impartial administrator of elections. After hearing an application of five independent candidates who were disqualified from running in a by-election in Tlokwe, the courts ordered that five out of eight by-elections be postponed. IEC official John Mokgodi disqualified candidates for not being able to meet the IEC requirements of at least 50 nominations. The court found that these candidates had in fact met the requirements and therefore their disqualification were invalid and ordered that five out of the eight by-elections be postponed.¹²

This was rectified through the IEC's internal supervisory and disciplinary processes. However, the controversy around the Tlokwe by-elections did not end with the undue disqualification of candidates. It later emerged that the subsequent Tlokwe by-election could possibly have been South Africa's first case of vote-rigging. Eight out of nine wards in the municipality were won by the ANC, and court papers from independent candidates and other parties allege that 2 500 questionable registrations of voters may have occurred. The application advanced by independent candidates, in which it was requested that the elections be set aside and an independent investigation be instituted, came amid allegations that range from the registration of voters whose addresses did not fall within the ward in which they were supposed to vote, to hundreds of voters being registered with incomplete and false addresses. Allegations even extended to the IEC colluding with the ANC to inflate the number of ANC votes in contested

¹¹ "Tlakula and IEC committee guilty of gross maladministration" SABC (26 August 2013), <http://www.sabc.co.za/news/a/2a78fc8040dd8ae49ebfbf434f2981a1/Tlakula-and-IEC-committee-guilty-of-gross-maladministration--20130826>

¹² Nandipha, Khuthala, "IEC credibility in question after Tlokwe judgment", Mail and Guardian Online (18 Sep 2013) <http://mg.co.za/article/2013-09-18-00-iec-credibility-questioned-after-tlokwe-judgment>

wards. The IEC, through the chief electoral officer, Mosotho Moepya, suggests that "no evidential material has been brought before the court in support of the allegations."¹³

The 2014 elections will be the first in South Africa where there are serious allegations against the credibility of the IEC, and many of the complaints have been taken to court. The Economic Freedom Fighters challenged the validity of the election deposit requirement. This case was dismissed by the court. Dating back to 2012/2013, allegations of improper electoral management and administration have been levelled against the IEC, most of these allegations arising from local government and municipal by-elections, specifically. Allegations have surrounded either issues of irregular voters being on the voters' roll (voters not registered in the area, voters being bussed in from other places or wards), improper and irregular behaviour of electoral officials, candidates being spuriously disqualified to benefit one or other party, or excluding ballot papers in the counting process.¹⁴ With respect to voters voting in by elections they are not entitled to, political parties bear some responsibility for bussing voters in towards where they are not supposed to vote, which is an offence. Voters are meant to register and vote where they live, and currently the IEC does not need proof of residence to register a voter.

Calls have been made for voter registration to occur on the basis of proof of address, but in a country like South Africa with large informal settlements, transient living arrangements as well as large amounts of internal migration, this requirement can effectively serve to disenfranchise a large portion of voters. In any event, early detection systems and internal oversight processes within the IEC have served in large part to mitigate the risks associated. For instance, for a by-election scheduled to have been held on 24 March 2014, the IEC detected inaccuracies on the voters' roll that could potentially have led to allegations of electoral fraud and on that basis sought to have the by-election postponed.

In any event, many of the most serious allegations against the IEC are germane to local elections and would not be pertinent at national level, since migration, or voting in a different voting station or ward within a province for the national and provincial election would not cause the problems they do at local level.

Systematically, political parties have called the credibility of the IEC into question, often for two primary reasons. The first alleges that the funding environment and media access is unfair. The second alleges that the IEC recruits as officials, members who belong to Unions affiliated to the Congress of South African Trade Unions, which is in alliance with the ANC. Both of these

¹³ "Independent candidates claim Tlokwe by-elections were rigged", South African Press Association, SAPA, 26 January 2014.

¹⁴ "IEC probes Nongoma by-elections" 2013-10-29. News 24. Available at; <http://www.news24.com/SouthAfrica/Politics/IEC-probes-Nongoma-by-elections-20131029>

allegations are misplaced. The public funding regulatory regime is determined by an Act of Parliament, and the adoption of a disclosure or regulatory regime governing private funding of political parties requires adoption and inception through Parliament. Neither of these is within the ambit or the authority of the Electoral Commission of South Africa.

With respect to biased electoral officials, the IEC requires close to (200 000) two hundred thousand electoral officials to execute an electoral process. Overall, the number of complaints made against electoral officials as a proportion of the number of actual electoral officials is miniscule. In addition, the fact the all parties are entitled to have party agents or poll watchers present at every voting station should allay fears of widespread irregular behaviour from electoral officials. In addition to party agents' presence in voting stations, further oversight and transparency mechanisms, through the multi-party liaison committees and conflict panels, provide further safeguards and complaints mechanisms in addition to the internal supervision and disciplinary codes as well as the adjudication of the electoral court in serious matters. This ought to instill confidence in the impartial administration of the elections. In addition, the vetting and verification processes used by the electoral commission in recruiting of staff are underwritten by legal safeguards in the Electoral Act 73 of 1998. Chapter 6, part 3, section 82 sets out criteria concerning the appointing of officers by expressly excluding candidates contesting the election, party agents as well as individuals holding political office in a registered political party. These provisions are further elaborated and given effect to in subsections of the Act, prescribing a declaration of secrecy as well as a prescribed oath to be taken by officials.

Thus, the oversight, transparency and accountability mechanisms within both the law and the consequent regulatory frameworks appear to be sufficiently robust to ensure the credible management and administration of the elections.

Electoral System

The electoral system that has been in place since 1994 is the list or proportional representation (PR) system. Prior to that, the apartheid regime used the British first-past-the-post (FPTP) system. The PR system applies only to the national and provincial elections. For the local elections, a combination of the FPTP and the OPR system was preferred. The rationale for this arrangement was the need to maintain some degree of accessibility and accountability at the local level.

The choice of the PR system was, however, informed by the political expediency of reconciliation. Recognising the exclusionary character of the FPTP, it was felt that the PR system would achieve the objective of deliberately broadening representation at the national and provincial levels, as each vote would count and there would be no winner-takes-all outcome. Furthermore, it was recognised that it would be a logistical nightmare attempting to demarcate non-racial constituencies in a country where apartheid social engineering had designated residential areas on a racial basis. Hence, no constituencies were drawn up and the entire country was treated as one constituency.¹⁵

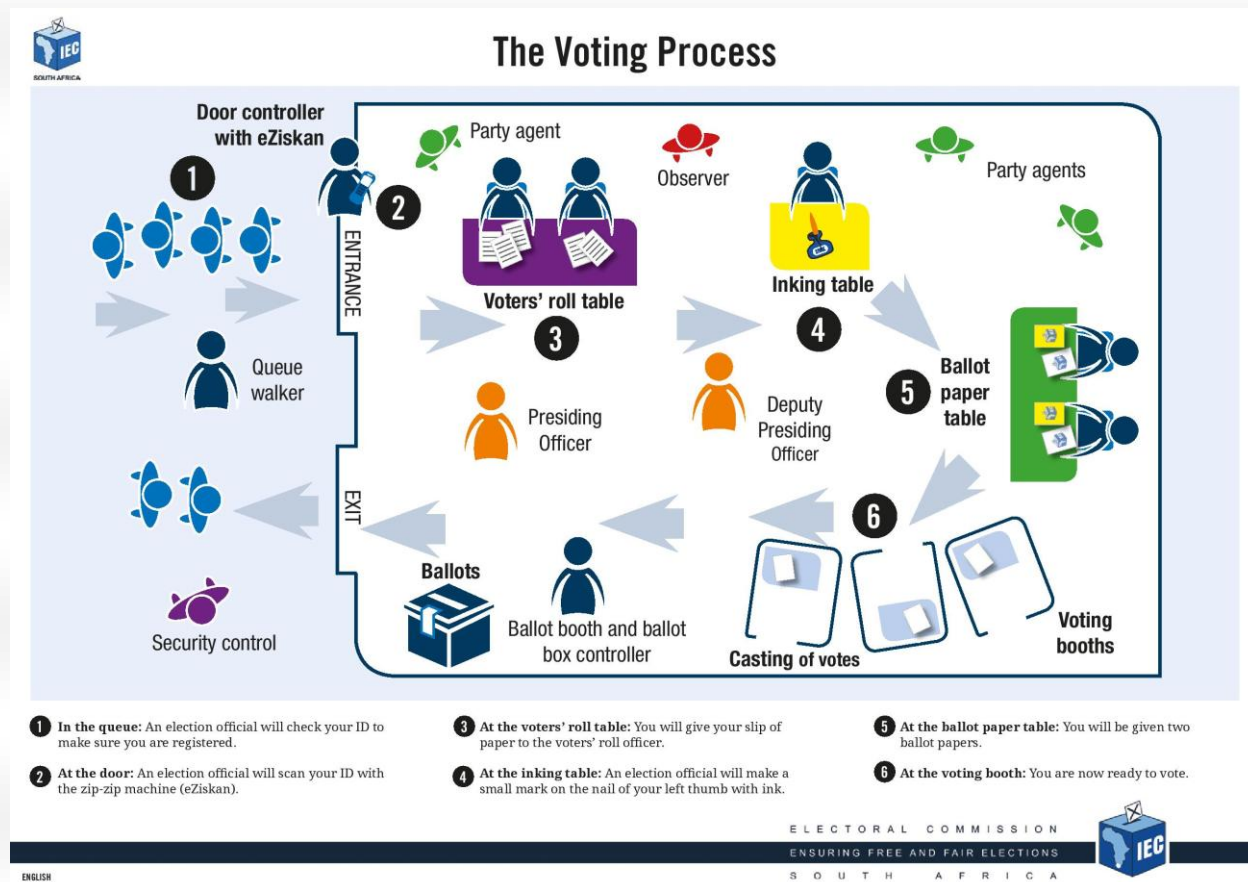
One of the main democratic advantages of the South African PR application is that it treats all votes as absolutely equal in value, because the threshold is the absolute minimum, namely the quota for one parliamentary seat. Small parties benefit from it, because their representation is directly equal to the number of votes they received. The problem with the electoral system is therefore not among the parties but between the parties and the voters.

Representivity is another consideration. According to the Report of the Independent Panel Assessment of Parliament (13 January 2009), Parliament will be representative if it is ‘socially and politically representative of the diversity of the people, and ensuring equal opportunities and protections for all its members’ (page 22). Representivity, according to the Panel, is determined by the rights in Section 19 in the Constitution. The Constitution’s main prescription is that the electoral system must result, in general, in proportional representation. Up to the 2004 general election the PR system based on rigid party lists was used.

The same system will also be used in the 2014 election. The system has been criticised mainly because it does not promote the values of accountability and representivity. In the absence of constituency representatives, voters feel alienated from the elected representatives. The Electoral Task Team (ETT), chaired by Frederick Van Zyl Slabbert, made the following succinct observation about the relevance of an electoral system for accountability and other democratic values (ETT, page 9):

¹⁵ Ajulu, Rok. “The State of Democracy and its Implications for 2009 Elections”. *EISA Election Update Compendium* 2009 EISA (2010), page 14.

*The point was emphasised that no electoral system can compel an elected representative to behave democratically, take care of a constituency or party responsibilities, or be a disciplined, dedicated Member of Parliament. In so far as these issues may relate to accountability, additional measures, policies, rules or regulations are needed to operate alongside or parallel with an electoral system.*¹⁶



¹⁶ Op. cit. (Kotze), page 19.

Workings of the electoral system

Under the PR system the whole country is treated as one constituency. Parties contesting elections prepare lists of candidates for the National Assembly as follows:

- A National Assembly List
- Province to National Assembly List
- Province to Province List for each of the nine provincial legislatures¹⁷

Calculation of Seats in National Assembly

For voters, voting is simple: they are given a ballot, which lists all the parties (with a picture of their logo), and they vote for the party list of their choice. The allocation is more complicated and takes place in two stages.

The composition of the National Assembly and Provincial Legislature is regulated by legal statute as per Schedule 3 of the Electoral Act and Section 46 of the Constitution called National Assembly. South Africans also cast two ballots—one for the national party list of their choice, and one for the provincial party list of their choice.

Seats in the National Assembly are allocated by means of a two-stage procedure that combines two methods of PR. In the first stage, the seats in each province are apportioned according to the largest remainder method. In each province a quota of votes per seat is calculated by dividing the total number of votes cast in the province by the number of provincial seats, plus one. The result plus one, disregarding fractions, becomes the required number of votes for a seat in the provincial legislature. To determine how many seats each party will receive in the region, its total number of votes is divided by the quota of votes per seat. This will produce a whole number, which is the number of seats initially allocated to the party, and a surplus or remainder. Once this calculation is performed for all parties, the sum or aggregate number of allocated seats is obtained. If this total is smaller than the number of regional seats, unallocated seats are awarded to the parties according to the descending order of their remainders. The seat distributions from all provinces are aggregated at the national level to obtain the number of regional list seats allocated to each party.

The second stage begins with the proportional distribution of all 400 seats in the National Assembly. To that end, a quota of votes per seat is determined by dividing the total number of votes cast across the nation by the number of seats in the National Assembly, plus one. The result plus one, disregarding fractions, becomes the quota of votes per seat. To determine the number of seats each party will receive, its total number of votes is divided by the quota of votes per seat. This will produce a whole number, which is the number of seats initially allocated to the party, and a surplus or remainder. Once this calculation is performed for all parties, the sum or

¹⁷ Op. cit. (Ajulu), page 14.

aggregate number of allocated seats is obtained. If this total is smaller than the number of seats in the National Assembly, unallocated seats are awarded to the parties according to the descending order of their remainders, up to a maximum of **five** seats. Any remaining seats are awarded to the parties following the descending order of their average number of votes per allocated seats.

The regional list seats won by a party are then subtracted from the total number of seats allocated to that party's list, and the remaining seats are filled by the candidates on the national list in the order determined before the election. In the event a party does not present a national list, the seats allocated to it at the national level are filled from its regional lists.

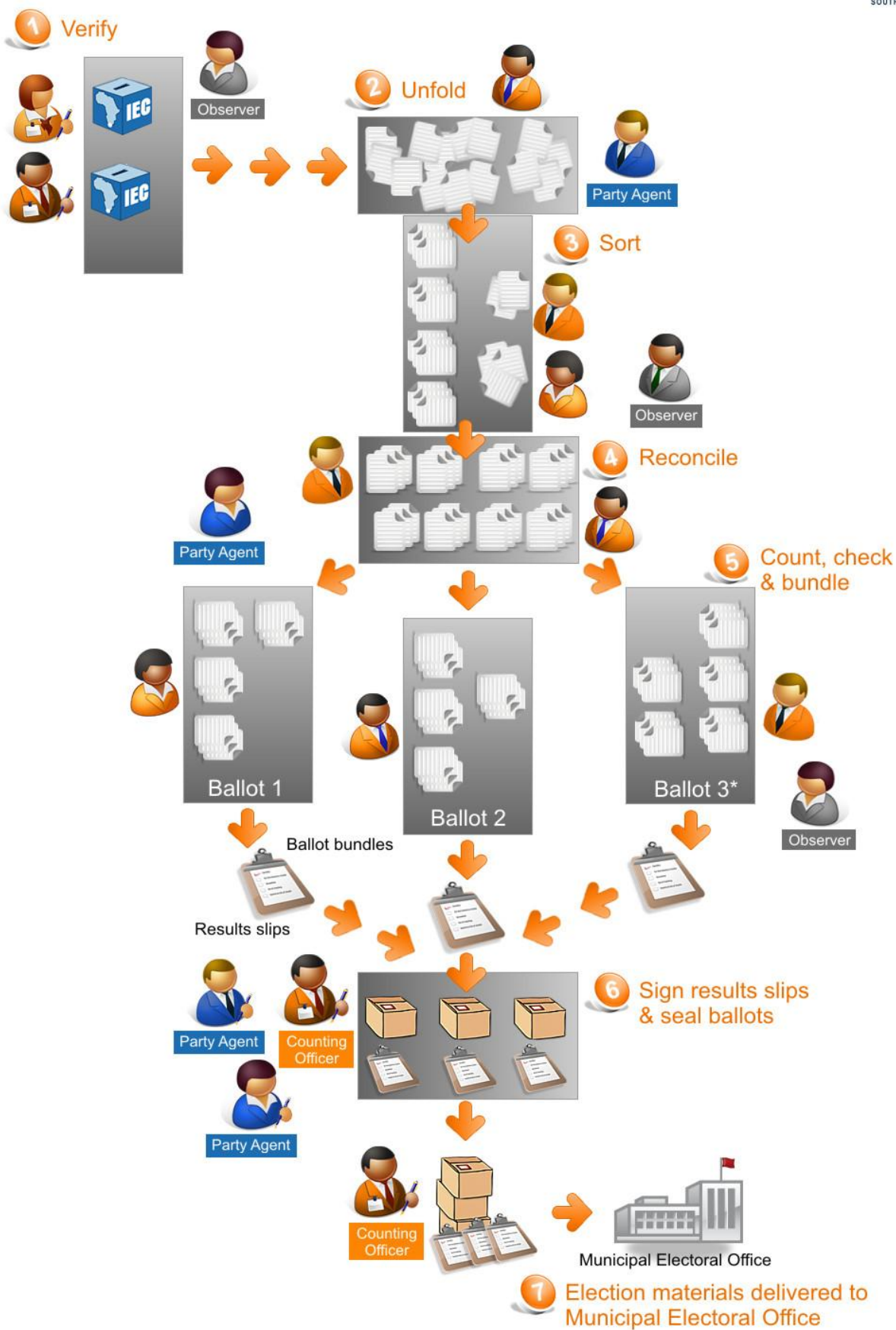
The largest remainder method of PR is also used to elect members of the nine provincial legislatures.¹⁸

For example, from the 1999 election, in order to allocate the 46 seats that Gauteng Province elects to the National Assembly, the total vote in the province for the provincial lists (3,707,595) was divided by 46+1, i.e. 47 to establish a quota for each seat of 78,885. Each party's vote was then divided by the quota + 1, i.e. 78,886. Thus, the ANC, which obtained 2,488,780 votes in Gauteng for its provincial list, was awarded 32 seats. The ANC received an additional 31 seats from its vote in Gauteng for its national list for a total of 63 seats from the province.

Province	Regional Seats			
	1994	1999	2004	2009
Eastern Cape	26	27	28	26
Free State	15	14	13	12
Gauteng	43	46	45	47
KwaZulu-Natal	40	38	37	39
Limpopo	20	20	21	19
Mpumalanga	14	14	14	15
Northern Cape	4	4	4	5
North West	17	17	17	14
Western Cape	21	20	21	23
Total	200	200	200	200

¹⁸ Alvarez-Rivera, Manuel. "The Republic of South Africa Electoral System", Electronic Resources on the Internet, (August 2010) <http://electionresources.org/za/system/>

THE COUNTING PROCESS



* Third ballot applies to municipal elections only

Criteria for Democratic Elections?

The democratic principle “the will of the people” is put into practice during the process of elections. The “will of the people” is realised through the assurance that voters are free to make an informed choice about who they wish to vote for, without fear of intimidation or harm, and those groups, individuals or parties, who will be contesting the elections are given the platform to freely conduct campaigns to garner the votes of free citizens. These platforms used by parties to campaign for votes ought to be regulated so that there is no bias towards any party in order to guarantee that the process is fair.

In modern liberal democracies, the phrase *free and fair* has become the principle that underpins elections for government offices. *Free* relates to the broader climate of expression, movement, speech and association and more specifically with voters being able to freely cast a vote. *Fair* relates to a reasonably level playing field that must exist between parties (incumbent, opposition) in the actions of campaigning, advocating and mobilising in an election. It also relates to the incumbents not unfairly using their office to hamper the electoral chances of others through the electoral administrators, media or security services.

The following is a table that depicts what ought to occur before, during and after an election in order for that election to be considered free and fair:

FREE	FAIR
POLLING DAY	
Freedom of movement, – speech (for candidates, the media, voters & others), – assembly, – association, – from fear in relation to election & electoral campaign, absence of impediments to standing for election (for political parties and independent candidates), & equal & universal franchise.	Transparent electoral process, election act & system that grant no special privileges to any political party or social group, independent & impartial electoral commission, impartial treatment of candidates by policy, army & courts, equal opportunities for parties & candidates to stand for election, impartial voter education, orderly campaign (observance of Code of Conduct), equal access to publicly controlled media, impartial allotment of public funds to parties, no misuse of government facilities for campaign purposes.
POLLING DAY	
Opportunity to participate in the election	Access to all polling stations for party representatives, accredited observers (local & international) & the media, secrecy of the ballot, no intimidation of voters, effective design of ballot papers, impartial assistance to voters (if required), proper counting procedures, proper treatment of void ballot papers, proper precautionary measures when transporting election materials, impartial protection of polling stations.
POST-POLLING DAY	POST-POLLING DAY
Legal possibilities of complaint	Official & expeditious announcement of election results, impartial treatment of any election complaints, impartial reports on the election results by the media, acceptance of the election results by all involved

Table 1: Elklit & Svensson's criteria for free and fair elections 1997: 32-46

2014 National and Provincial Elections – Voter Registration Statistics and Party Registration

The voters' roll for 2014 elections

The certification of the voter's roll for the May 7 2014 national and provincial elections indicates that there will potentially be 25 390 150 voters who will cast their votes on election day.

There are 2 208 153 more voters (9.5% increase) than there were on the voters' roll for the 2009 national and provincial elections. There is an overall increase of 7.2 million (39.72% increase) on the voters' roll from when it was first established in the 1999 elections.

The voters' roll reflects a total of 80.80% of registered voters when compared against the estimated voting age population according to estimates from Statistics South Africa. In comparison, registration levels stood at 80% in 1999, 84.6% in 2004 and 84.07% in 2009.

Gauteng has the highest number of voters, with just over 6 million, followed by KwaZulu-Natal with 5.1 million, the Eastern Cape with 3.24 million and the Western Cape with 2.9 million. Between them these four provinces make up almost 68% of all voters.¹⁹

The following are the provincial breakdowns:

NPE 2014 Certified Voters' Roll: 5 March 2014			
Percentage (%) registration against Stats SA VAP by province			
Province	STATS SA VAP Estimate	Certified Voters' Roll (5 March 2014)	% Voter registration
Eastern Cape	3 794 352	3 240 059	85.4%
Free State	1 685 198	1 449 488	86.0%
Gauteng	7 860 280	6 063 739	77.1%
KwaZulu-Natal	6 096 509	5 117 131	83.9%
Limpopo	3 004 795	2 440 348	81.2%
Mpumalanga	2 389 406	1 860 834	77.9%
North West	2 120 381	1 669 349	78.7%
Northern Cape	711 843	601 080	84.4%
Western Cape	3 771 271	2 941 333	78.0%
Out of Country		6 789	
Total	31 434 035	25 390 150	80.8%

An analysis of the changing pattern of the voters' roll over previous elections shows the continuing migration of people from rural areas to the major centres. The biggest increase in

¹⁹ Official Data of the Electoral Commission of South Africa

voter numbers over the past 15 years has come in the provinces of Gauteng (up 1.9 million), KwaZulu-Natal (up 1.67 million) and Western Cape (up 1 million). The smallest increase has come from the North West, which has grown by just 141 677 voters since 1999.

The following is a comparison of the voters' roll and turnouts for the previous national and provincial elections:

Voters' Roll Comparison and Turnout								
	Elections 1999		Elections 2004		Elections 2009		Elections 2014	
Province	1999 Voters' roll	Total Votes Cast (national ballot)	2004 Voters' roll	Total Votes Cast (national ballot)	2009 Voters' roll	Total Votes Cast (national ballot)	2014 Voters' roll	% Increase in registered voters from 1999
Eastern Cape	2 454 543	2 188 184	2 849 486	2 277 391	3 056 559	2 344 098	3 240 059	24.53%
Free State	1 225 730	1 094 776	1 321 195	1 022 044	1 388 588	1 069 127	1 449 488	13.29%
Gauteng	4 154 087	3 704 449	4 650 594	3 504 363	5 461 972	4 391 699	6 063 739	31.48%
KwaZulu-Natal	3 443 978	2 958 963	3 819 864	2 765 203	4 475 217	3 574 326	5 117 131	29.94%
Limpopo	1 847 766	1 660 849	2 187 912	1 657 596	2 256 073	1 570 592	2 440 348	22.10%
Mpumalanga	1 277 783	1 132 517	1 442 472	1 134 092	1 696 705	1 363 836	1 860 834	32.79%
North West	1 527 672	1 307 532	1 749 529	1 323 761	1 657 544	1 135 701	1 669 349	8.50%
Northern Cape	377 173	327 950	433 591	323 201	554 900	421 490	601 080	47.12%
Western Cape	1 864 019	1 601 922	2 220 283	1 605 020	2 634 439	2 049 097	2 941 333	41.33%
Out of Country							6 789	
Total	18 172 751	15 977 142	20 674 926	15 612 671	23 181 997	17 919 966	25 390 150	39.72%
Registered %	80.00%		84.60%		84.07%		80.80%	
Voter turnout %	87.92%		75.52%		77.30%		7 May 2014	

A gender analysis shows that women outnumber men by 13.94 million (54.9%) to 11.45 million (45.1%) on the voters' roll. The voters' roll also shows that South Africa is still a relatively young population, with 49.57% of the registered voters under 40 years old. The biggest segment of voters is those aged 30 – 39 (6.18 million) followed by 20 – 29 year olds (5.7 million) and 40 – 49 year olds (5 million).

The age and gender breakdown is as follows:

Age Band	Female	Male	Total	%
18 – 19	349 957	296 356	646 313	2.55%
20 – 29	3 098 577	2 660 659	5 759 236	22.68%
30 – 39	3 223 740	2 956 794	6 180 534	24.34%
40 – 49	2 693 943	2 313 558	5 007 501	19.72%
50 – 59	2 111 311	1 684 820	3 796 131	14.95%
60 – 69	1 301 401	963 313	2 264 714	8.92%
70 – 79	741 549	418 950	1 160 499	4.57%
80	417 825	157 397	575 222	2.27%
Total	13 938 303	11 451 847	25 390 150	

Parties that will appear on the National Ballot for the 2014 Elections

A total of 29 parties will contest the national elections on 7 May following the 24 March 2014, 17:00 deadline for parties to submit all outstanding documentation and pay election deposits, the Electoral Commission says on Tuesday.

This is four fewer than the 33 parties that had provisionally indicated their intention to contest the National elections. This remains the highest number of parties to contest a democratic National Election in South Africa's history.

The following parties failed to rectify their non-compliance in respect of the required election deposit for the national election and will therefore not be on the ballot paper:

- African Unite Party
- Iqela Lentsango – Dagga Party
- Lekgotla for Democracy Advancement
- South African Progressive Civil Organisation.²⁰

²⁰ From IEC website, <http://www.elections.org.za/content/About-Us/News/Four-Parties-removed-from-National-Ballot-Paper-for-7-May-Election/>

The following is the provisional list (in alphabetical order) of parties that will be contesting the national elections. In brackets we indicate which specific provinces, in addition to national, the parties are contesting.

1. African Christian Democratic Party (All Provinces)
2. African Independent Congress (Eastern Cape, Western Cape)
3. African National Congress (All Provinces)
4. African Peoples Convention (All Provinces)
5. Agang South Africa (Eastern Cape, Gauteng, Mpumalanga, Limpopo, North-West, Western Cape)
6. Al-Jama-ah (Western Cape)
7. Azanian Peoples Organisation (All Provinces)
8. BushBuckRidge Residents Association (Mpumalanga)
9. Congress of the People (All Provinces)
10. Democratic Alliance (All Provinces)
11. Economic Freedom Fighters (All Provinces)
12. First Nation Liberation Alliance (Northern Cape, Western Cape)
13. Front National (Gauteng)
14. Independent Civic Organisation of South African (Free State, Gauteng, Northern Cape, Western Cape)
15. Inkatha Freedom Party (All Provinces)
16. Keep It Straight and Simple (Only National)
17. Kingdom Governance Movement (Eastern Cape, Gauteng, KwaZuluNatal, Western Cape)
18. Minority Front (Gauteng, KwaZulu-Natal)
19. National Freedom Party (ALL Provinces)
20. Pan Africanist Congress of Azania (ALL Provinces)
21. Pan Africanist Movement (NO Provinces)
22. Patriotic Alliance (Free State, Gauteng, Northern Cape, Western Cape)
23. Peoples Alliance (Western Cape)
24. Ubuntu Party (No Provinces)
25. United Christian Democratic Party (All Provinces)
26. United Congress (Eastern Cape)
27. United Democratic Movement (All Provinces)
28. Vryheidsfront Plus (All Provinces)
29. Workers and Socialist Party (Gauteng, Limpopo, North West)

The following is the provisional list (in alphabetical order) of parties that will be participating in provincial elections only:

1. African National Party (Western Cape)
2. Indigenous Peoples Organisation (Western Cape)
3. KwaZulu-Natal Transport Alliance (KwaZulu-Natal)
4. Merafong Civic Association (Gauteng, Limpopo)
5. National Party South Africa (Western Cape)
6. Patriotic Movement of South Africa (Eastern Cape)
7. Sibanye Civic Association (Western Cape)
8. SINDAWONYE Progressive Party (Mpumalanga)
9. South African Maintenance and Estate Beneficiaries Association (Limpopo)
10. South African Political Party (North West)
11. South African Progressive Civic Organisation (Western Cape)
12. Truly Alliance (Kwa-Zulu Natal)
13. Ubumbano Lwesizwe Sabangoni (Kwa-Zulu Natal)
14. Unemployed Movement SA (Limpopo)
15. Ximoko Party (Limpopo)
- 16.

Province	Number of Parties
Eastern Cape	18
Freestate	15
Gauteng	21
KwaZulu-Natal	18
Mpumalanga	16
Northern Cape	16
Limpopo	19
North West	16
Western Cape	26

Table showing number of parties that paid the election deposit per province

Any objection to lists of candidates in terms of Section 30 of the Electoral Act (Act 73 of 1998) must be submitted to the Electoral Commission's head office in Centurion in writing before 17H00 on Tuesday 1 April 2014. Such objections must indicate the reason for the objection to a candidate and must show that a copy of the objection has also been lodged with the relevant political party.

The Commission will rule on the objections by Monday 7 April 2014 and any appeals to the rulings must be submitted to the Electoral Court by 10 April 2014.²¹

The final list of candidates contesting elections is to be published on 22 April and certificates will be issued to candidates by 24 April.

²¹ From IEC website, <http://www.elections.org.za/content/About-Us/News/Four-Parties-removed-from-National-Ballot-Paper-for-7-May-Election/>