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**Elections and the electoral system in South Africa:
Beyond Free and Fair Elections**

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LIST OF ABBREVIATIONS

ANC	African National Congress
DP / DA	Democratic Party / Democratic Alliance
IFP	Inkatha Freedom Party
NP / NNP	National Party / New National Party
UDM	United Democratic Movement
ACDP	African Christian Democratic Party
ID	Independent Democrats
FF	Freedom Front
UCDP	United Christian Democratic Party
PAC	Pan Africanist Congress
FA	Federal Alliance
MF	Minority Front
AEB	Afrikaner EenheidsBeweging
AZAPO	The Azanian People's Organisation
AITUP	Abolition of Income Tax and Usury Party

1. INTRODUCTION

Ever since 1994, South Africa has possessed most of the institutions, processes and mechanisms of a liberal democracy. This includes free and fair elections at national, provincial and local levels, effectively extending the franchise to all South Africans. The 1994 elections were criticised for ineffective measures for voter registration, instances of political parties being denied access to voters, and weak administration. By the 1999 elections, however, the voter's roll had been conscientiously compiled, campaigning had largely adhered to a code of conduct adopted for elections, and the Independent Electoral Commission's (IEC's) management of the elections process had been greatly improved.¹ Subsequently the IEC's administration of the 2004 elections was described as "world class" when judged against internationally recognised criteria for free and fair elections.²

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Beyond systematic enfranchisement, elections and electoral systems are vital indicators of the level and extent of democratic consolidation. This paper is a modest attempt to analyse how the South African electoral system and South African elections foster democratic consolidation. There is particular reference to opposition and meaningful debate within the national legislature, the provincial turnover of power and the potential for participatory democracy at local levels.

2. ELECTORAL SYSTEM AND ELECTIONS

The South African Constitution guarantees universal adult suffrage, a national common voter's roll and regular elections.³ It provides for a national assembly consisting of no fewer than 350 and no more than 400 men and women elected as members under an electoral system based on a national common voter's roll and results, in general, in proportional representation. It also provides for a minimum voting age of 18 years.⁴ The Constitution provides for provincial legislatures consisting of representatives elected as members in the same fashion as those elected to the national legislature save that such election is based on the province's segment of the national common voter's roll.⁵ To complete the three spheres of government, the Constitution outlines a system of local government consisting of municipalities. At local government level members are elected by a mixed electoral system, consisting of a party's list of candidates drawn up in order of preference for election by proportional representation, combined with a system of ward representation, based on that municipality's segment of the national common voters roll.⁶ In all three spheres of government, the Constitution directs that electoral arrangements be provided for by national legislation.

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In accordance with the constitutional requirements, South Africa uses a proportional representation (PR) electoral system, based on fixed party lists. Half of the 400 national assembly members are chosen from nine provincial lists and the other half from a single national list prepared by each party. Provincial parliaments are chosen from the party lists for each provincial legislature. This ensures an almost complete proportionality with no votes 'wasted'. The Droop quota is used to apportion seats: this quota results in seats being awarded through the largest remainder method. So if a seat is left unfilled after all allocations have been made, the political party with the highest remainder of unallocated votes will be given that seat. No mandatory threshold for parliamentary representation exists, thus ensuring inclusiveness by enabling even very small parties representation in parliament.⁷

Political parties present three sets of candidate lists: 200 national assembly nominations on a national list; 200 national assembly candidates representing the nine provinces in the assembly; and nine lists of representatives for the provincial legislatures. Parties are not obliged to contest all legislatures and many without the necessary resources opt to contest only those in which they believe they have the necessary support to win seats. Voters use two ballot papers: one to vote for the national assembly and one to vote for the provincial legislature in which they live. Seats are allocated to each party in accordance with its share of the vote. In this system voters choose between parties not personalities: so political parties hold the seats, not individuals. If a member resigns, dies or is expelled from the party, the party that holds that seat chooses another party member to take up the seat. After the election, the members of the assembly elect a President and the provinces each elect a Premier.

A National Council of Provinces (NCOP) functions as a second house of parliament and is made up of 90 members: ten from each province. These members are not elected but nominated, after the election, by their respective parties as represented in the legislature in proportion to their strength in the legislature.

The PR system used in South Africa has been described as ultimately democratic because no votes are 'wasted' and the low threshold ensures that even the smallest of parties is represented in parliament, thus facilitating nation building and political stability. The PR system is also easier to administer than either a mixed system (such as that operating at local government level) or the Westminster or First Past the Post system, given the number of illiterate voters in the country. Some analysts argue this system is ideal because South Africa is currently engaged in a number

of programmes for social and economic reform which require the full attention of politicians, away from the burdens of a constituency system. Criticism of the PR system has mainly been around the lack of a constituency element reducing accountability to voters. It is argued that under the PR system, members of parliament (MPs) and members of provincial legislatures (MPLs) do not have to satisfy voters to be elected but rather leaders of political parties in order to stay on party lists.

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The local government electoral system differs from the national and provincial electoral system of pure proportional representation. In the elections of metropolitan councils and local councils, half the councillors represent wards and half are chosen from party lists in the order in which their names appear on the lists. Electoral representation is, therefore, through the mixed member representative system which combines the accountability of direct personal representation with the equity of proportional representation. In the ward elections the ward councillor need not represent a party; he or she can be an independent. The candidate who obtains the most votes wins the seat. In addition to their elected members, municipal councils may also include traditional leaders in their proceedings. The number of traditional leaders may not exceed 20 % of elected councillors and traditional leaders sit on councils ex officio - they do not have voting rights.⁸

Ever since the advent of democracy in South Africa there have been three sets of national and provincial elections (1994, 1999, 2004) and two local government elections (1995, 2000).

3. OPPOSITION AND THE NATIONAL ASSEMBLY

South Africa's choice of electoral system reflects its mode of transition to democracy - ie. a negotiated settlement. Proportional representation, because of its inclusiveness, was seen as a way to mitigate conflict and create a sense of national inclusiveness among all groups - especially minorities.⁹ Indeed this was vital to the transition, as the first democratic government was a Government of National Unity (GNU), as prescribed by the interim constitution (Act 200 of 1993). The essential element of transition was to include as many groups and parties as possible and ensure their representation. The table below illustrates that although the African National Congress (ANC) won the majority of votes cast in the 1994, 1999 and 2004 national elections, opposition parties still managed to maintain some representation in parliament.

Party	1994 %	National Assembly Seats	1999 %	National Assembly Seats	2004 %	National Assembly Seats
ANC	62.65	252	66.35	266	69.68	279
DP / DA	1.73	7	9.56	38	12.37	50
IFP	10.54	43	8.58	34	6.97	28
NP / NNP	20.39	82	6.87	28	1.65	7
UDM			3.42	14	2.28	9
ACDP	0.45	2	1.43	6	1.6	6
ID					1.73	7
FF	2.17	9	0.80	3	0.89	4
UCDP			0.78	3	0.75	3
PAC	1.25	5	0.71	3	0.73	3
FA			0.54	2		
MF	0.07	0	0.30	1	0.35	0
AEB			0.29	1		
AZAPO			0.17	1	0.27	0
AITUP			0.07	0		

Opposition parties unable to attract significant support from black voters have become increasingly provincial in nature.

A multi-party system of democracy (as mandated by the Constitution) effectively supports two basic tenants of democracy. Firstly, it ensures political alternatives for voters. Secondly it provides diversity, opposition and oversight within the legislature. To what degree however, are these tenants being fulfilled in the case of the South African legislature?

The state of opposition politics has been the subject of much debate in the light of claims that South Africa is a dominant party system. Indeed, the ANC has not only consolidated but actually increased its support in the course of the 1999 and 2004 elections. Some analysts suggest that this situation is unlikely to change as the ANC, notwithstanding its failures, has shifted resources in the direction of its main constituency, the rural poor. Furthermore, black middle class voters, despite sharing certain material interests with their white contemporaries, still remain the beneficiaries of government's affirmative action policies and are unlikely to sway electoral preference.¹¹ There is also an assertion, by other analysts, that opposition politics cannot flourish in South Africa because of a middle class whose commitment to the dominant party outweighs that to a neutral state or the need for opposition politics.¹² Opposition parties unable to attract significant support from black voters have, therefore, become increasingly provincial in nature. Many analysts have argued that the only real electoral opposition to the ANC can come from within the tripartite alliance (this is an alliance consisting of the ruling ANC, and its partners - the South African Communist Party and the Congress of South African Unions ((COSATU)), a

labour federation). Indeed parliamentary opposition would only be viable if its primary base were the black working class whose support is already well elicited by COSATU.¹³

At the outset of democracy in 1994, it was argued by some that robust opposition would have in fact been fatal in the South African case at the inception of democracy. This argument goes that should the National Party (NP) have refused to join the post-1994 election GNU and adopted the role of opposition, it would have claimed the white and coloured electorate and affected foreign investment and the ANC would have been forced to 'fight back'.¹⁴ Similarly if the Inkatha Freedom Party (IFP) had indeed backed out of negotiations there would have been violence in the province of KwaZulu-Natal (formerly Natal).¹⁵ A decade later it is questionable whether this argument still stands. The NP, having reconstructed itself into the New National Party (NNP) and having formed various coalitions in order to survive, suffered dwindling electoral support and eventual demise. The IFP, on the other hand, has begun to lose support - even in its stronghold of KwaZulu-Natal - and consequently its ability to lobby for positions of political influence. Furthermore, the accumulative accounts of government corruption and citizen dissatisfaction with delivery may have begun to warrant viable opposition through which voters can redirect their mandate.

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The reality, however, is that despite these accounts of corruption and citizen dissatisfaction with delivery, voters have returned the ruling party with increased support rather than turning to the opposition as one might have expected. Some analysts have argued that this has been a function of the fact that there is no viable alternative black opposition party at present that black voters (in the vast majority) can turn to. Others have said that this is product of the ANC, as the main party of liberation, reaping the 'liberation dividend'; they argue that it will be psychologically very difficult for black voters to turn away from the party of liberation and vote for an opposition party. But neither of these analyses, however, can account for the fact that the ANC's support has increased - that it has actually won new converts from opposition parties. What might well affect the electoral fortunes of the ANC, as stated above, would be a breakaway group from the ruling alliance of labour (COSATU) and the SACP to form an opposition party. Herein lays both the party's strength and its Achilles heel - it contains, at least at present - the only viable alternative within its own ranks. A split in the alliance could unleash this opposition and divert votes to this entity if it chose to oppose the ANC.

Activity within the national assembly is also supported by a system of multi-party democracy. The national assembly is supposed to be a forum for lively debate on issues tabled for legislation. Opposition MPs are seen as a

mechanism for bringing forth alternative views and preferences which should ultimately enrich the legislative process. This in itself also provides a valuable oversight function with regards the ruling party. In the South African case, however, opposition parties view themselves as severely limited. This has as much to do with the limitations on their resources as it does with their ability to participate meaningfully in the activities of the legislature. According to the system of proportionality, parties in the national assembly are allocated state resources, such as funding and broadcast time during elections, according to the proportion of the vote that they attained. This principle is extended to the activities of the national assembly. Parties are allocated speaking time proportionally and usually have to fund their constituency offices from funding other than the limited funding allocated by the state. Limitations on resources notwithstanding, testimony from opposition MPs reveal that the national assembly is not an arena of lively debate because the majority view, because it is so large, “rides across everything else”. Furthermore, these MPs charge that there is a “clear reluctance” by ruling party MPs to dissent to bills and policies tabled by cabinet. According to these MPs, levels of debate are also weak; in fact they contend that significant issues are often played down or avoided because “it is seen as almost disrespectful to contest the executive.” Opposition MPs do, however, concede that there is probably more debate and discussion within parliamentary committees and perhaps the ANC caucus.¹⁶

The KwaZulu-Natal electorate after decades of being dominated by KwaZulu (former homeland) officials, which essentially constituted the IFP, have begun to exhibit a familiarity with the concept of freedom of choice.

Despite the abovementioned concerns, it would be unwise to dismiss the fixed list PR system as it currently stands as a mechanism for consolidating national assembly activity. Bolstering parliamentary resources and skills may go a long way to improving legislative activity. Increasing parliamentary research capacity, for example, will ensure that MPs have access to specialist knowledge to enable them to debate more authoritatively in both the national assembly and the committees. Likewise, the role of plenary sessions and the mechanism of question time could be used more effectively to ensure more accountability and points of debate. The Constitution grants the legislature oversight of the executive but the current lack of debate and dynamism within the legislature has lead to the view by some that, “South African legislatures have not been particularly active as overseers of government action”.¹⁷ Having said that, however, it should be pointed out that the legislature has been the locus of several heated debates on corruption and corrupt practices by both parliamentarians and government officials. For instance, the so-called “travelgate” scandal, which involved the illegal use of MP’s travel vouchers, was revealed and debated in the assembly. Similarly, the “arms scandal” involving illegal kickbacks to such as luxury motorcars at ridiculously low rates. One MP, ANC Chief Whip, Tony Yengeni, was found

guilt in a court of law and dismissed from parliament because of this scandal, which was spearheaded by the opposition. It is clear that the opposition is not docile: it is using whatever space there is to both provide oversight and engage in debate. The biggest concern lies with the ruling party - because it holds more than 2/3 of the seats in parliament it is essential that its MPs take the lead in providing oversight and debate in the chamber. For the reasons stated above, this role has not been forthcoming as enthusiastically or as consistently as could be.

4. THE TURNOVER OF POWER

Samuel Huntington contends that a democracy becomes consolidated when an electoral regime is fully entrenched and capable of delivering free and competitive elections and if “the party or group that takes power in the initial election at the time of transition loses a subsequent election and turns over power to those election winners, and if those election winners then peacefully turn over power to the winners of a later election.”¹⁸ While a turnover of power at the national level in South Africa is not imminent, the 2004 election marked a turnover of power at the provincial level for the first time since the transition to democracy. KwaZulu-Natal (KZN) is a case in point. In the first democratic election of 1994 the Inkatha Freedom Party (IFP) won control of the province with 50.32 % of the provincial vote and 41 seats in the provincial legislature. In the 1999 election the IFP managed to retain control of the province, with 41.90 % of the vote and 34 seats in the legislature. In the 2004 election, however, the IFP only managed to secure 36.82 % of the vote and 30 seats in the legislature, effectively losing control of the province to the African National Congress (ANC).¹⁹

Notwithstanding the theoretical merits of the ward system there have been some significant practical pitfalls.

Party	1994			1999			2004		
	Votes	%	Seats	Votes	%	Seats	Votes	%	Seats
ANC	1 181 118	32,33	26	1 167 094	39,38	32	1 287 823	46,98	38
IFP	1 844 070	50,32	41	1 241 522	41,90	34	1 009 267	36,82	30

The IFP’s steady decline in KwaZulu-Natal in the past two elections has been concurrent with the ANC’s ascendancy. In 1994 the ANC won 32.23 % of the vote and 26 seats, in 1999 it won 39.38 % and 32 seats and in 2004 it won 46.98 % and 38 seats.²⁰ Much is made of the lack of electoral opposition to the ANC at national level but its victory in KwaZulu-Natal and in the Western Cape in the 2004 elections gave the party control of all nine provinces; it thus seems that provincial level electoral opposition is also

diminishing. Notwithstanding the dilemmas and dangers associated with party-dominant democracy, the ANC's victory in KwaZulu-Natal signals a growing commitment to and engagement with democratic processes in the province.²¹

Looking beyond Huntington's two turnover test, the 2004 provincial election in KwaZulu-Natal is illustrative of the fact that there is a growing respect for the institutions, mechanisms and processes of democracy in South Africa. Firstly, the IFP although probably anticipating a loss (opinion polls conducted before the election predicted a tight race in the province with a likely ANC victory), still competed in the election and brought its complaints regarding electoral irregularities before the IEC signalling its willingness to accept its authority. Secondly, the KwaZulu-Natal electorate after decades of being dominated by KwaZulu (former homeland) officials, which essentially constituted the IFP, have begun to exhibit a familiarity with the concept of freedom of choice. This is illustrated by the drop in levels of support for the IFP in its traditional rural strongholds of Ulundi, Nongoma and Msinga. Rural electorates in the province thus seem to be more acquainted and more comfortable with the idea of exercising their right to vote. Indeed this phenomenon is closely linked to the reduced levels of violence and intimidation around elections. The overwhelming view appears to be that violence as a means for competing for power is no longer fashionable - this in itself reveals a commitment to the democratic process.²²

It is argued that strengthening the links between MPs and voters would increase the accountability of the latter to the former.

5. PARTICIPATORY DEMOCRACY

According to the Municipal Systems Act, a municipal council has to provide a democratic and accountable government, encourage the involvement of the local community and consult the local community about the options, level, quality, range and impact of municipal services.²³ The Act also promotes the development of a culture of community participation by directing that a municipality encourage and create conditions for the local community to participate in the affairs of the municipality. This includes building participation capacity within communities as well as building the capacity of ward councillors whose mandate it is to foster this participation. The legislation identifies various mechanisms and processes to facilitate participation. These include instituting ward committees, holding public meetings and facilitating community based consultation.

The local government electoral system where half the councillors are chosen from party lists and half represent wards, is well tailored to meet the legislative mandate of encouraging public participation. The ward system is a means of strengthening voter-representative ties within

constituencies. Local constituencies have an opportunity to select a representative to the municipal council from within their own community. Essentially this accomplishes two goals. Firstly, communities have a more accessible method of engaging with politicians and secondly, they have a means to become empowered on issues directly affecting them. The establishment of ward committees is a way to institutionalise community participation. Ward committees are chaired by ward councillors and include representation by local schools, churches and community organisations.

Notwithstanding the theoretical merits of the ward system, there have been some significant practical pitfalls. Ward councillors as a mechanism to bring community concerns to the Council have, to date, been poorly utilised. Evidence from various local level service delivery initiatives suggest that there is a long way to go before communities become more participatory in the affairs of their municipalities through their ward councillors. A concession initiative to extend the provision of water to a newly demarcated municipal area in province of Mpumalanga in 1999, illustrates the failure of ward councillors to fulfil their mandate. The concession raised issues of a lack of community acceptance of the project and extremely low levels of payment for services. In both instances ward councillors in the area could have been valuable tools for mediation between communities and the municipality. Instead there was growing dissatisfaction over services not being provided for free by the state. The municipality was viewed as having abdicated its duties to the concessionaire.²⁴ Likewise, an initiative in KwaZulu-Natal in 1999 for the provision of electricity using solar power also reveals the weaknesses around the ward councillor roles. In this case, ward councillors played no role in the life of the initiative. Instead, service consumers began to build a relationship with the service provider (concessionaire) and a valuable opportunity to build community-municipal bonds was squandered.²⁵

Notwithstanding the theoretical merits of the ward system, there have been some significant practical pitfalls.

The fact that ward councillors have yet to consolidate their roles has been explained by the fact that their specific area of activity is not defined clearly enough. Furthermore, the advent of ward committees has yet to take root as a positive means of facilitating local level participation. Reports from various municipalities indicate that it has been difficult to institute ward committees because there are no general guidelines on how to establish them.²⁶ Furthermore, committees suffer because of the lack of attendance and public interest. In many cases the voluntary nature of the work involved does little to attract membership and participation. It should be noted however, that the apparent lack of interest may have more to do with logistical elements such as lack of transport or scattered homesteads, as opposed to general apathy.²⁷

Insofar as the need to consolidate the participatory aspect of the local election system is concerned, the PR system, aside from guaranteeing proportionality in general, has the added benefit of ensuring representativeness. As the tables below indicate, the representation of women by ward allocation is essentially minimal. The PR allocations, however, are closer to achieving gender parity.

The introduction of the constituency element within the South African electoral system may prove to be valuable.

Women and Men Ward Councillors by Province²⁸			
PROVINCE	WOMEN (% TOTAL OF WARDS)	MEN	TOTAL WARD SEATS
Eastern Cape	95 (15.8 %)	507	602
Free State	51 (17.5 %)	240	291
Gauteng	86 (19.3 %)	360	446
KwaZulu-Natal	96 (12.9 %)	648	744
Mpumalanga	63 (15.7 %)	338	401
North West	77 (23.6 %)	249	326
Northern Cape	39 (23.1 %)	130	169
Northern Province	57 (13.1 %)	379	436
Western Cape	68 (20.7 %)	261	329
Total	632 (16.9 %)	3 112	3 744

Women and Men PR List Councillors by Province²⁹			
PROVINCE	WOMEN (% OF TOTAL PR)	MEN	TOTAL
Eastern Cape	266 (37.9 %)	436	702
Free State	127 (38.3 %)	205	332
Gauteng	206 (43 %)	273	479
KwaZulu-Natal	294 (34.3 %)	564	858
Mpumalanga	188 (40.3 %)	276	464
North West	156 (40.6 %)	227	384
Northern Cape	84 (41.2 %)	117	201
Northern Province	195 (39.1 %)	304	499
Western Cape	123 (32.2 %)	259	382
Total	1 639 (38.1 %)	2 661	4 300

6. CONCLUSION

Proponents for change of the electoral system for South Africa (at national and provincial levels) have largely emphasised the strengthening of the constituency element. It is argued that strengthening the links between MPs and voters would increase the accountability of the latter to the former. Alternative electoral systems that have been put forward for South Africa, adhering to the constitutional requirement for proportionality, include a 50 % single member constituency with a 50 % closed list system, and a multi-member closed list system.

The first would entail 50% of MPs being elected in geographically defined constituencies and the other 50% drawn from a closed national list. The country would then have to be divided into 200 constituencies, each represented by one MP on the principle of first past the post (FPTP). This would mean, however, that the number of voters per constituency would be extremely large, effectively diluting accountability. Furthermore, use of the FPTP system would entail 'wasting votes' - it would for example, be possible for a candidate to win a constituency with only 30 % of the vote assuming that the other 70 % of the vote was spread among other parties, each one of which obtains fewer than 30% of the vote. The second system would therefore be a better choice. It would entail 300 of the 400 MPs being elected in 43 multi-member constituencies and the remaining 100 from a closed national list. The advantage of this system is that no new constituencies would have to be delimited, as their boundaries would correspond with existing municipal/district boundaries. Also, no constituency would have fewer than two MPs.³⁰

The introduction of the constituency element within the South African electoral system may prove to be valuable. Arguably, South Africa has moved beyond the need for national inclusiveness at political level and has reached a point where some measure of adversarial politics would test, if not consolidate, the quality of democracy. Should MPs and MPLs be directly representing constituencies debate and activity within the legislatures would become accentuated. Members of the national assembly and provincial legislatures would be less inclined to uphold the views of their executive bodies (to ensure positions on party lists) and more inclined to lobby for the wishes of their constituencies. In the light of continued and growing ANC electoral dominance, it is vital that legislatures become lawmaking forums that represent interests across the political spectrum. It would, however, be well to be wary. Evidence from the local level electoral system, incorporating a constituency element, as outlined above,

is that South African citizens are not engaging actively enough with their political representatives.

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