



The 2014 Elections, the IEC, and Good Governance

1. Introduction

It is obvious from the number of posters on street lights, and from the sharp political rhetoric in the public space, that the electioneering season is in full swing. Despite the hype and razzmatazz surrounding the fifth democratic election in South Africa, it is salutary to recall the basic principle set out succinctly by the African Union in its *Declaration on the Principles Governing democratic Elections in Africa*: 'Democratic elections are the basis of the authority of any representative government.'¹

If free and fair elections are a key feature in consolidating democracy, then the process should include independent, impartial electoral bodies to run the elections. It should also include respect for human rights, especially freedom of association and of the media, and active citizen participation. There should be legal channels for appealing contested decisions at every level and in every sphere of the electoral process. It is against this (not exhaustive) list that the quality and validity of this election should be judged.

2. Pre-election Issues

Thirty-three parties have registered to compete in the national elections, the highest number of parties to have contested an election to date². Seventeen of these are contesting elections for the first time. In the 1994 elections, 19 parties participated. The Western Cape, with 26 parties, has the highest number of parties contesting a provincial poll; with 16 parties on their ballots,

Limpopo, Mpumalanga, North West and Northern Cape provinces share the lowest number.³ In 2009, only half the parties which contested the elections won seats, while nine parties failed to muster more than 10 000 votes. The number of active and viable parties is to a degree a sign of a vibrant multi-party democracy, just as well organised, and patently free and fair elections are in themselves a sign of democratic consolidation.

Despite objections from a number of smaller parties with regard to the very high sums required, each party which wishes to contest nationally and in all nine provinces is asked to pay a deposit of R605 000: R200 000 to be on the national ballot paper, and R45 000 per province. The Economic Freedom Fighters (EFF) took the Independent Electoral Commission to court, claiming that these 'exorbitant' deposits prejudiced smaller parties and denied their supporters the right to vote for the party of their choice if that party was prevented from registering due to lack of funds.

Several commentators defended the need for hefty deposits in order to prevent frivolous registrations. It was pointed out that about 200 parties are registered with the IEC, and if parties with negligible support were to appear on the ballot form, voting would be unnecessarily complicated.⁴ In the event, the Gauteng High Court dismissed the EFF's application, holding that the deposits were a reasonable measure to ensure that only 'serious' parties made it onto the ballot paper.

On Tuesday 18th March the IEC, the custodian of free and fair elections, published the schedule for ensuring that the procedural aspects of the elections comply with the legislative standards for the conduct of elections. To date, the first phase of the selection of presiding officers and deputy presiding officers has been completed. Lists of such officials have been made public, and political parties have had the opportunity to scrutinise the lists and raise objections to any nomination, especially with regard to nominees whose political affiliations might cast suspicion on their impartiality. In the meantime, extensive training of these prospective officials has taken place in all the provinces.

On 28th March the IEC will publish the names of the candidates on the various party lists, and the public and political parties will have until 5pm on 1st April to lodge objections to any nominations; on 7th April the IEC will rule on such objections. There will then be a window of opportunity for appeals against the IEC rulings, and on 15th April the Electoral Court of Appeals will make its final decision. A week later the IEC will publish a final list of candidates, and shortly thereafter issue certificates to all candidates.⁵

It is worth noting in this regard that the Constitution lays down that, in general, political leaders are to 'heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; and to improve the quality of life of all citizens and free the potential of each person.'⁶ Legislation also specifically forbids the candidature of persons convicted of offences resulting in 12 months' imprisonment (or longer) without the option of a fine, unless there has been a pardon.⁷ It also forbids unrehabilitated insolvents from being candidates as well as people declared insane by a competent court.

3. The Electoral Code of Conduct

Since 1998 a Code of Conduct governing campaigning has been included as a schedule to the Electoral Act, and the IEC is empowered to add provisions as it deems fit. Parties, their agents and their candidates are required to subscribe to the code on submission of their nominations; failure to adhere to code is punishable by disqualification. The code is designed to promote free and fair elections. Amongst the forbidden actions is any form of speaking or behaviour that intimidates others, promotes violence or plagiarises the

emblems of other political parties. Actions which deface or destroy or tamper with another party's election material are also forbidden. Interestingly, special mention is made of the abuse of a position of power, privilege or influence, including parental, patriarchal, traditional or employment authority, to influence the conduct or outcome of an election.⁸

4. Informing Voters

It is clear that the procedural aspects, the Code of Conduct, and the sundry provisions of the various election-related pieces of legislation are designed to ensure that the norms for a free and fair election are implemented, and that remedies are available where there is abuse of such norms. Hence, an essential aspect of the electoral environment is that citizens are aware of their rights in this regard, and that the relevant information is known and disseminated. Voter education is thus an integral part of a free and fair election. This is especially true (but not exclusively) for first time voters. It is often said that elections cannot be equated with democracy *per se*, but that the regular exercise of the vote and the institutionalisation of democratic procedures is a benchmark for consolidating democracy. By the same token, taking responsibility for enhancing democratic practices and participation in such acts adds to the credibility of a democratic state.

The first votes will be cast on 30th April when citizens resident outside of the country will have an opportunity to vote at one of the diplomatic missions. This will be catered for in terms of Electoral Amendment Act 18 of 2013; such voters would have to have registered and filled in the special VEC 10 form. In the 2009 national election South Africans could vote if they were overseas, but only if they had previously registered to vote locally. Mosotho Moepya, the chief electoral officer said recently: "The IEC takes great pride in enabling all South Africans to exercise their democratic right to vote, wherever they may be."⁹ This remark should be qualified, as voting is only possible for those who can get to South African diplomatic missions in 108 countries. Often, this would involve travelling many hundreds of kilometres in countries such as the USA, Canada, China and Australia. Electronic or postal voting, which might allow for even greater participation by those living outside of South Africa, is not an option for the 2014 election.

Special votes will be cast on 5th and 6th May. People who have made application to cast their votes on these days because they will be on duty at the election or because they cannot travel to the voting station due to infirmity, disability or pregnancy, will have their chance to vote, 7th May will mark election day for all others eligible to vote. The IEC has determined that there are 25.3 million names on the voter's role, and that there are 22 261 voting districts with about as many voting stations.

Full information on the procedural aspects of the elections can be found on the IEC website: www.elections.org.za

5. Conclusion

We might do well to ponder the words of the Congregation for the Doctrine of the Faith in its *Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life*:

*'Today's democratic societies [...] call for new and fuller forms of participation in public life by Christian and non-Christian citizens alike. Indeed, all can contribute by voting in elections for lawmakers and government officials, and in other ways as well, to the development of political solutions and legislative choices which in their opinion will benefit the common good.'*¹⁰

Finally, on a lighter note with regard to Facebook friends, the DA has 71 377; the ANC has 58 178; and the EFF 64 477.¹¹

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¹ Declaration 1 (XXXVIII) 2002.

² The IEC announced on 25th March that four of the 33 had failed to meet the deposit requirements; the remaining 29 nevertheless still constitute the largest number of competing parties in a South African election.

³ www.southafrica.info/about/democracy/elections-180314.htm

⁴ There is a clear distinction between registering *as a political party* and registering *to contest a specific election*. Only the latter carries the deposit requirement.

⁵ Cape Times, 19th March 2014.

⁶ Preamble: Constitution of Republic of South Africa, 1996.

⁷ Constitution of Republic of South Africa, 1996, s47(1) (e).

⁸ Electoral Act 73 [1998] www.content.eisa.org.za/old-page/south-africa-code-conduct

⁹ 7th January 2013. www.Politicsweb.co.za

¹⁰ November, 2002.

¹¹ Cape Times, 18th March 2014.