

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE 457 OF 2020

MR MOSIUOA GERARD PATRICK LEKOTA, MP

**NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBER'S BILL AND
INVITATION FOR COMMENT ON THE DRAFT ELECTORAL LAWS
AMENDMENT BILL, 2020**

Mr Mosiuoa Gerard Patrick Lekota, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), intends to introduce the Electoral Laws Amendment Bill, 2020, in Parliament during the fourth quarter of 2020. An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

To date, the electoral system for the National Assembly and Provincial Legislatures in South Africa is one where political parties (and not individuals) contest elections. After each general election, each qualifying party is allocated a number of seats in the National Assembly and Provincial Legislatures, calculated according to a formula contained in Schedule 1A of the Electoral Act, 1998 (Act No. 73 of 1998) ("Electoral Act, 1998"), reflecting as closely as possible the proportion of votes that qualifying parties obtained in the general elections. Each party determines which of its members will fill the seats so allocated.

While the requirement of proportionality is met in such a system, voters are estranged because a direct relationship with a member of Parliament is absent and a lack of accountability of members of the relevant legislatures to its voters prevails much to their chagrin. The increasing and continuing alienation of voters from the political system is detrimental to democracy and the well-being of society at large.

From the time the Freedom Charter was agreed to, the clear intention was to allow the people to be close to their representatives to allow for them to be seen to be governing with them. However, the kind of partnership that was envisaged in the Freedom Charter never materialised after the demise of Apartheid. Furthermore, it quickly became clear that the continued arrangement to use the "closed list" proportional representation system was going to impede the transformation of South Africa, and be detrimental to the interests of the majority who had long suffered political oppression under both colonial and Apartheid rule and continue to be excluded from economic life of South Africa.

As the years wore on and every attempt to reform the electoral system was stymied in Parliament for one reason or the other, voter disenchantment grew correspondingly. To

exacerbate the situation, voters are unable in terms of the current Electoral Act, 1998, to choose an independent candidate to represent them in Parliament more effectively.

This situation has prevailed despite the fact that section 19(3)(b) of the Constitution provides that:

“Every adult citizen has the right to stand for public office and, if elected, to hold office.”

However, the content of this right entrenched in section 19(3)(b) was finally determined in the recent Constitutional Court judgment in the *New Nation Movement NPC and others v the President of the Republic of South Africa and others* matter (“*New Nation Movement judgment*”).¹ In this matter, the Constitutional Court considered whether the Electoral Act, 1998, unjustifiably limits the right in section 19(3)(b) and also in section 18 (freedom of association) of the Constitution by making the accessing of political office possible only through membership of political parties. After considering and examining the content of these rights, including other sections of the Constitution, the Constitutional Court declared the Electoral Act, 1998, to be unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties - thus paving the way for independent candidates to stand for elections.

While voters who vote for an independent candidate will enjoy the benefits thereof, all voters, without exception, should equally enjoy a very direct link between themselves and their genuine representatives for reasons that are abundantly obvious. This is absolutely necessary in fast tracking the ever so long delay in tackling the upliftment of the majority of South Africans who have not benefitted to the extent that they should have with the coming of democracy.

Hence, the argument for combining proportionality with constituency representation is overwhelming. Only persons have the capability of representing voters in a granular manner, not political parties. To achieve this personal association with a public representative, each of South Africa’s current fifty-two districts could, as per their population size, serve as a larger or smaller multi-member constituency which could be contested by individuals as well as political parties through an “open list” proportional representation system.

At present, most districts in South Africa are failing dismally and serially with local government being in a perpetual and lamentable crisis. With a district becoming a constituency, a scaffolding of political representation becomes immediately possible in each district. Each district, therefore, will have councillors as well as dedicated representatives serving in the National Assembly and Provincial Legislatures as well. The constitutional requirement for inter-governmental cooperation will also be meaningfully enhanced in this way at once.

¹ CCT 110/19 [2020] ZACC 11.

Hence the Electoral Laws Amendment Bill, 2020 (“the draft Bill”) will seek to address the *New Nation Movement* judgment by amending relevant electoral legislation in order to make provision for independent candidates to stand for public office in provincial and national elections, without requiring such candidate to be a member of a particular political party. It will provide for a legislative mechanism to allow independent candidates to stand for election and allowing elections to happen in constituencies that align with districts using the “open list” proportional representation, which will best serve the interests of every South African and most particularly those who have remained marginalised, neglected and increasingly alienated from the politics of the day.

The draft Bill will therefore, *inter alia*, seek to amend:

- the Electoral Commission Act, 1996 (Act No. 51 of 1996), so as to provide for, and to regulate, the registration of independent candidates;
- the Electoral Act, 1998 (Act No. 73 of 1998), so as to, *inter alia*, give full effect to section 19(3)(b) of the Constitution, which provides that every South African citizen has the fundamental right to stand for public office and, if elected, to hold office; to ensure that individuals can stand for office as independent candidates without having to stand for office by virtue of his or her membership of a political party; to provide for the creation of constituencies along current district boundary lines and the replacement of the “closed list” proportional representation system with the “open list” proportional representation system with greater requirements for all candidates to uphold the Constitution and to give impetus to the realisation of the Bill of Rights; and to promote democratic governance and electoral accountability; and
- any other relevant legislation so as to provide for independent candidates to participate in election broadcasts and political advertisements on an equitable basis with political parties; to provide for independent candidates to receive financial and administrative assistance to enable them to perform their functions effectively; and to provide for related and other consequential matters.

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly by **30 September 2020**. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to Speaker, PO Box 15, Cape Town, 8000, or emailed to speaker@parliament.gov.za and copied to mlekota@parliament.gov.za

Copies of the Electoral Laws Amendment Bill, 2020, may, after introduction, be obtained from:

The Congress of the People (COPE)
PO Box 15, Cape Town, 8000
Telephone: 021 403 8915
E-mail: mlekota@parliament.gov.za