



## Policy Statement:

### BACKGROUND:

South Africa's constitution calls for a winner-take-all list-based electoral system. This means that each political party draws up a list of the people they would like to see in parliament. If you had a 100 seat parliament (South Africa's is much larger) then when all the votes for each party are tallied, the same proportion of seats in parliament are allocated to each political party, as it receives in votes. If a party achieves 55% of the vote it will get 55% of the seats in parliament (in the above example, 55 seats) so in that example the top 55 persons in that party's list go into parliament.

### CRITIQUE:

The **Direct Democracy Party** (The **DDF**) believe the list system distances candidates from the electorate, it makes the candidates answerable to the political parties, and in theory, the parties answerable to the electorate. In turn, this means that the only time a disgruntled constituent can have a meaningful dialogue with his parliamentary representative is at the next general election, when, if he wishes, he can vote for an alternative party. The **DDF** do not believe this is a particularly good system and are intent on changing it.

### STRATEGY:

#### VOTING

Under a DDF administration, members of the legislative assembly or lower house of parliament (hereinafter referred to as the Assembly), will be elected directly by the voters of each of the various constituencies.

### THE DDF WILL SCRAP PROPORTIONAL REPRESENTATION!

#### ASSEMBLY:

The nature of the Assembly will be determined by the legislative strengths of its members. That is, political parties and independent candidates will seek to present the most competent legislators as candidates for each seat in the Assembly.

- Candidates must reside in the constituency in which they are contesting a seat in the Assembly.
  - The intention is that the Assembly be populated by the most professional legislator available from each constituency, as determined by the constituents, in secret ballot, in general election.
- At the moment, a 50% + 1 majority is the minimum envisaged as required to secure a seat in the Assembly.
- For that to happen, a second round of voting may be required amongst the two candidates receiving the highest number of votes in the first round of voting, if each of those two candidates received less than the required 50% + 1 majority.



## **RECALL:**

In the same way that members of a constituency can vote for a candidate to enter Parliament, that same constituency will have a right to initiate a recall election, recalling a parliamentarian from Parliament, and replacing him with another candidate. This recall process can be initiated by a small proportion of the constituents in any constituency.

- The process could be initiated by 10% of a constituency proposing an IEC recall survey of a constituency.
- A 50% + survey result supporting a recall election would trigger a recall election.

## **PURPOSE OF THE ASSEMBLY:**

The purpose of the Assembly will be to write legislation required for the proper running of the country, as initiated by cabinet or private members of the Assembly, so it receives the overwhelming support of the upper house of parliament (hereinafter referred to as the Senate). By overwhelming, we mean a bill must receive an 80% approval rate from the Senate as a whole and not attract a veto from a minority peer group from within the Senate.

## **SENATE MINORITY VETO:**

In the event of a Senate minority veto rejecting a bill, if the veto is contested by a 2/3rds majority in the Assembly, the veto may be referred to the Constitutional Court for arbitration, even though the Constitutional Court would already have been involved in the application of a minority veto.

## **APPROVAL PROCESS:**

In order to navigate the approval process, the initiator of a bill or regulation would be advised to obtain approval in principle from the Senate for whatever legislation or regulation is envisaged, before investing in the process of detailed formulation and drafting of a bill or regulation, and then, as the bill progresses through the various stages of the lower house, or regulation through cabinet, seek the ongoing approval of the Senate, until the bill receives a 50% +1 or greater vote from the Assembly or Cabinet, approving the bill or regulation for final submission to the Senate for their approval.

## **REJECTED BILLS:**

Having gone through that process, even having gained approval in principle in the preliminary stages of drafting, the Senate is not obliged to give a bill or regulation that final approval. If the item is rejected by the Senate, for whatever reason, the item will be referred back to the Assembly or Cabinet which can resubmit it in altered form, or drop it from its proceedings. If a bill or regulation is rejected by the Senate three times, the item must be dropped from the Assembly's or Cabinet's calendar for a period of at least two years from the date of the last rejection.



## CONSTITUTIONALITY OF A BILL:

In addition to the approval of the two houses, a bill must at all times conform to the principles set out in the South African Constitution.

- Given cause, the Constitutional court can at any time declare a bill unconstitutional, at which point the bill will be referred back to the Assembly for correction.
- A bill which has been declared unconstitutional cannot proceed further in its passage through the Assembly or the Senate without that declaration being rescinded by the Constitutional Court, which it must do if the reasons for the original declaration no longer exist but may not do if those reasons persist.

## COUNCIL OF PROVINCES:

The South African Constitution defines a Council of Provinces, through which legislation must pass.

- The **DDF's** position on this council is that it is a council representing regional interests but is none the less rooted in the same party political process that determines the composition of the National Assembly and therefore it is likely to reflect the prevailing opinion of the lower house and, therefore, is effectively an extension of that lower house.
- From a constitutional perspective, the **DDF** would view the National Assembly and the Council of Provinces to be parts of a single body viz. the legislative assembly or lower house.
- The **DDF** has no preference at present regarding the continued existence both physically and functionally, of the Council of Provinces, but prefer to leave the question of its continued existence to future constitutional deliberations and actions.

## PROMULGATION:

(a bill becomes an Act of Parliament and a law of the land)

Legislation would be deemed promulgated when a bill is approved by both the lower house and the Senate and signed off by the Executive President or, in his or her absence, by his or her deputy.

## CONCLUSION:

- The DDF believe that the above processes and structures will only allow passage of bills and regulations which meet the approval of an overwhelming majority of the Senate and therefor probably, the overwhelming majority of the country's population.
  - The senate is a body intended to represent a broad cross-section of South Africa's population.
  - The Senate is a body of citizens and is not a body of professional parliamentarians.
- Having that body as the principle arbiter of the acceptability of a bill or regulation, is intended to make it difficult for parliament to approve a bill or cabinet a regulation, which is unlikely to meet the approval of a vast majority of South African's citizens, as attested to by the Senate's response to the bill or regulation.
- Importantly, a directly elected parliament allows constituents not only to know who their parliamentary representative is but to approach him or her and quiz and criticise him or her on their performance in Parliament. It allows for direct feedback between the constituents and their parliamentary representatives such as is not possible in a list-based system.
- Even more important is the recall, which allows constituents to replace a parliamentarian who is out of step with his or her constituency. **This is an essential element of direct democracy.**
- The DDF believe these processes and structures enhance the parliamentary and democratic processes.