



How ready will South Africa be for the 2024 Elections?

September 2023

Michael Atkins

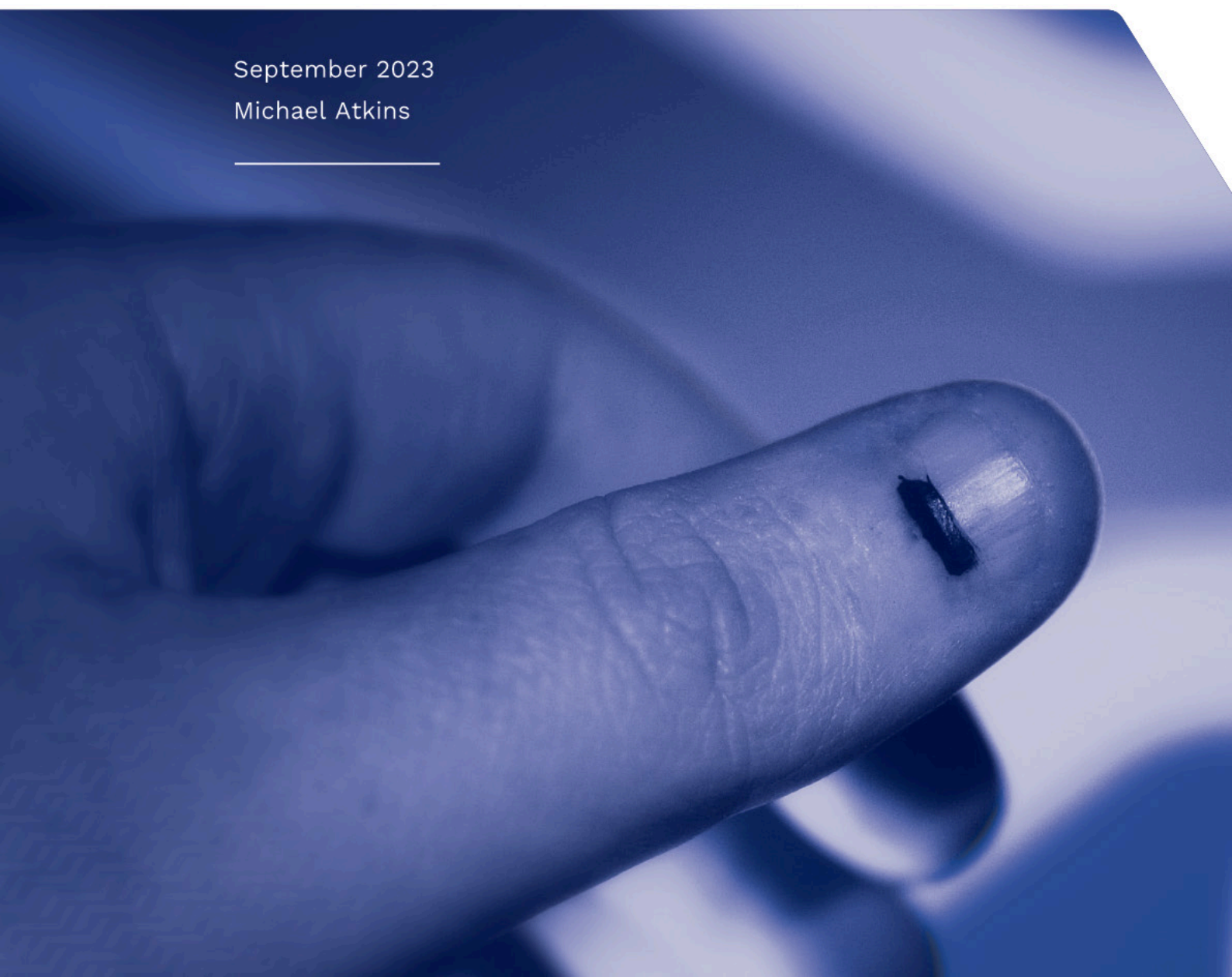


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Introduction

The national and provincial elections in 2024 will present distinctive challenges. This report aims to identify some of those challenges, assess how significant they are, and determine what their consequences might be.

In assessing the ability of the Electoral Commission of South Africa (IEC) to administer free and fair elections, we need to consider its capacity and readiness, as well as factors relating to changes to the Electoral Act and the introduction of independent candidates.

The 2024 elections are taking place in a context of worldwide challenges to democratic practice and a marked increase in disinformation. Domestically, social, economic, and political tensions have significantly heightened expectations concerning these elections. Coalitions are the topic of much debate, as is the need for 'rules' governing their formation and conduct.

All of this contributes to the pressure and responsibility placed on the IEC in conducting free and fair elections. However, there are also many proactive steps that political parties, the media, and civil society can take to ensure the elections are free, smooth and credible.

Problems and Concerns

Worldwide Decline of Democracy

Since the turn of the millennium, the world has witnessed a concerning decline in democracy across many nations, the so-called 'democratic recession'. This decline has been characterised by a weakening of democratic institutions, erosion of civil liberties, and increasing authoritarianism. Several factors have contributed to this phenomenon, including the rise of populist leaders, political polarisation, economic inequality, and the impact of global events such as terrorism and pandemics. Countries that once showed promising progress towards democracy have regressed, while established democracies have faced challenges in maintaining the rule of law and protecting fundamental rights.

Alongside this trend, trust in electoral processes has declined, with growing scepticism about the legitimacy and fairness of elections. In part, this has been driven by polarisation and populism, with disinformation campaigns playing a significant role. Perceptions of bias on the part of electoral authorities have increased. In some countries, leaders originally elected under fair conditions have prolonged their tenure in office by stifling dissent and restricting civil liberties.

In a connected world, South Africa should not simply assume that we are immune from these trends and pressures.

Overall Risk Factors for 2024

Amidst the various concerns relating to the 2024 national and provincial elections in South Africa, it is helpful to articulate the particular areas of risk before evaluating the outlook in relation to them, and then making recommendations.



Social and Political Tensions

Loadshedding, crime, coalition chaos, unemployment, zama-zamas, infrastructure failures, soft and hard xenophobia, and corruption are some of the headlines that confront us daily. The rioting and looting of July 2021 remain vivid in our memories, and many have not recovered from devastating floods that struck various parts of South Africa over the past few years. There is also the question of the impending criminal trial of Jacob Zuma to occupy our minds.

We can be reminded of the old joke: Murphy's Law of Thermodynamics – things get worse under pressure. Many are saying openly that the 2024 election is the most important since 1994, and we can reasonably expect heightened tensions in the build-up and possibly even over the election period.

Changes to the Electoral Act

The *New Nation* judgment in the Constitutional Court in June 2020 ruled that the Electoral Act was unconstitutional to the extent that it did not permit independent candidates to contest national and provincial elections. As a consequence of this ruling, the Electoral Amendment Act, 1 of 2023 was signed into law on 13 April 2023.

This act makes a number of changes to the electoral system and introduces various rules to deal with the implications of individuals being on proportional representation ballots.

The IEC is having to redevelop a number of their systems. After the NCOP approved the Bill in November 2022, the IEC pre-emptively decided to begin redesign and redevelopment, despite the changes to the Electoral Act not yet being finally approved and in force.

The first risk is that any new IT systems could have problems that are not detected until the systems are in operation.

The second risk is that there could be unforeseen problems or difficulties as a consequence of the new electoral system.

Constitutional Challenges to the Amended Act

The Electoral Amendment Act implements an electoral system unlike any in the world (or an amalgam of systems that does not exist anywhere). Two constitutional challenges have been filed, and it is not known yet whether the court will grant direct access to hear these challenges. This is important, as the conventional route of challenging the constitutionality of an act first in the high court would not reach any conclusion before the 2024 elections.

If the Constitutional Court does hear the challenges, along with others that would follow, then there is a risk that there could be changes to the electoral system at a point quite close to the election, making it difficult to introduce those changes in time.

Another risk is the logical possibility that the court could rule the entirety of the changes unconstitutional and decide that the 2024 election should be conducted using the previous electoral system.



If the court does not hear the challenges, or if no substantial changes are made to the new electoral system, then there is the risk that the constitutionality of the 2024 elections could be challenged after the fact.

Electoral Fraud and Simple Errors

The term ‘election rigging’ conveys the idea that the entire process or outcome of an election is predetermined. In the South African context, it is not a helpful term, being an all-or-nothing idea. Our systems are sufficiently robust and transparent that complete rigging of elections has never been feasible.

It is helpful, rather, to discuss the threat that electoral fraud poses. Small-scale, localised fraud occurs in any democratic environment. The question that we face is whether our systems are good enough to detect and defeat such efforts. The next question is whether there will be concerted efforts to influence the election by fraudulent means, coming from any party.

Given that many feel that the outcome of the 2024 national election, along with some of the provincial elections, is by no means certain, this increases the incentive for electoral fraud, as well as increasing the probability that fraud may affect particular outcomes.

Alongside the potential of fraud, analysis of past elections shows that certain errors in counting, recording, or capturing of results are not detected in result validation and audit procedures. Any such errors could contribute to individual incorrect outcomes.

Disputed Results

Disputes over the 2020 Presidential election in the United States of America have persisted stubbornly, despite multiple failures in court attempts to challenge or overturn outcomes in various states. Closer to home, there have been several disputed elections in Africa over the past 20 years, with varying outcomes, in places such as Kenya in 2007 and 2022, Ivory Coast in 2010, Zimbabwe in multiple elections, and Nigeria in 2023, among others.

Although there have been no prior instances of election results leading to civil unrest in South Africa, the prospect of the ANC losing electoral majorities, combined with the painful experience of the July 2021 looting, has created the spectre of upheaval following the 2024 election.

At the very least, there are concerns that sore losers (potentially from various parties) may dispute election results and destabilise the political environment, and potentially broader society as well. An additional risk is that legitimate queries concerning electoral processes or outcomes may be raised, and not adequately or speedily resolved.

Problems with Past Elections

In assessing our readiness to hold a successful election in 2024, it is necessary to take an objective look at some of the problems experienced in past elections, and to reflect on the possible implications for the next election.

Challenges in the 2021 Election

Delay Requested

In the midst of the Covid pandemic the IEC requested that the 2021 local government elections be postponed. Constitutionally, elections must be held within 90 days of the completion of the five-year period following the previous election. The previous local government election had been held on 3 August 2016, giving a “deadline” of 1 November 2021.

In April 2021, the President had proclaimed that the election would be held on Wednesday, 27 October. In May 2021, the IEC appointed retired Justice Dikgang Moseneke to lead a process evaluating conditions for the holding of free and fair elections in the context of the Covid pandemic. The report was presented on 20 July 2021, and adopted by the IEC on 23 July.

The report held that an election in October would likely not be free and fair. In response, the IEC resolved to seek permission from the Constitutional Court to postpone the election. Crucially, the IEC also cancelled the voter registration weekend initially scheduled for 17 and 18 July, and later postponed, on account of rising Covid cases, to 31 July and 1 August.

This decision effectively pre-empted the pending application to the Constitutional Court for a delay in the elections themselves, carrying the assumption that the election would be postponed, even while the election date of 27 October was proclaimed on 3 August, and the election timetable was pursued in other respects. This would have meant that no voter registration weekend would have been possible ahead of an election, for the first time since 1994. No warning was issued to voters that they should seek to register via other means, such as at municipal offices.

Constitutional Court

The IEC lodged its application with the Constitutional Court on 4 August 2021. The court heard the matter on 20 August and gave its ruling that the election could not be postponed later than constitutionally allowed ‘deadline’ of 1 November.

However, the court also concurred that it was unfair that voters had been denied the opportunity to register on a designated registration weekend, as was the norm. The IEC was ordered to open a fresh period for registration, if this was feasible, which the commission found it was. In terms of the court order, the IEC thus withdrew its initial proclamation of the election date and reissued it, after voter registration was complete, with 1 November as the new date for the local government election. The Constitutional Court also instructed that, except for amendments ‘reasonably necessitated’ by the new voter registration period, the election timetable should remain the same as before.

The court was quite severe on the IEC for having failed to hold a registration weekend prior to the initial proclamation of the election date:

It said: ‘The applicant’s failure to either hold a voter registration weekend prior to the Minister issuing her proclamation or its failure, if it was not to hold a voter registration weekend, to publicly announce that it would hold a voter registration weekend and afford voters a reasonable opportunity to register or update their voter registration details before the Minister could issue the proclamation, was a breach of its constitutional obligations. In terms of section 190(1) of the Constitution to “manage elections” and to “ensure that those elections are free and fair”.



The applicant's failure was also a breach of the applicant's obligation under section 7 of the Constitution to respect, promote and fulfil voters' rights to a free and fair election or rights to vote as provided for in the Bill of Rights. Section 7 obliged the applicant as an organ of state to "respect, protect, promote and fulfil the rights in the Bill of Rights".

Reopening of Registration

In the end, the registration weekend took place on 18 and 19 September. However, it was followed by a further controversy.

Under the initial timetable for the 2021 election, the ANC had made the mistake of failing to submit all its candidates' lists by the stipulated deadline during August 2021. Some lists were incomplete, and several were simply missing. Had this situation persisted, there would have been several municipalities where there would have been a change in government, or where the ANC would not have been represented at all. In total there were nearly 100 municipalities where the ANC failed to submit full candidate lists.

In the past, the IEC had been unyielding on requests to reopen candidate lists and had insisted that parties must meet election deadlines, and its stance had been backed up by the courts. However, there was one consequence of the registration saga that provided a legitimate reason to re-examine candidate lists. Some candidates' names might have been removed if there were problems with their registration as voters. The unexpected closing of voter registration without warning could also have barred some unregistered candidates from submitting their names.

What the IEC did in response to these potential problems was to reopen the submission of all candidates' lists until a new deadline of 21 September. However, this was an unconditional process, and was not confined to rectifying individual nominations affected by the earlier closing of voter registration. The IEC also argued that as the voters' roll had reopened, this meant that the deadline for registration of candidates also had to change, as the closing of voters' roll could not be after the deadline to register candidates had passed.

This afforded the ANC the opportunity to rectify the entire set of omissions from its candidates' list, irrespective of whether these errors were related to registration problems.

The party was thus able to submit a complete list of candidates to the IEC just before the commission's revised deadline.

The DA then approached the Constitutional Court, asking it to set aside the IEC's decision to extend the deadline for the submission of candidates' lists.

The Constitutional Court endorsed the IEC's decision, accepting that this change to the election timetable had been 'reasonably necessitated' by the re-opening of voter registration. While it is true that these were extraordinary times, and that excluding large numbers of ANC candidates might have caused upheavals, and been viewed as denying many voters the opportunity to vote for the party of their choice, the fact remains that this outcome ran counter to precedent, and that the ANC benefited greatly from this discretionary decision of the commission.

Whether the IEC acted improperly during this saga is a contested issue. What is clear is that, when a crisis arose, it acted consistently in the interests of the governing party. The situation does not prove the contention made by some that the IEC is biased in favour of the ANC, but nor does it remove such suspicions.

Multiple Voting in 2019

On Election Day in 2019, stories emerged of how easy it was to remove the ‘indelible’ ink markings from one’s hand and go to a different voting station in order to vote again.

While there was some action taken, and it is highly unlikely that there could be a repeat of this problem, it is clear that we have not been told the whole story.

Timeline of Responses:

- There are several statements and responses that are either contradictory or not properly explained.
- In the immediate aftermath, 20 arrests were made in KwaZulu-Natal. The IEC told the media that these resulted from analysing data from the ‘zip-zip’ machines, identifying those who had voted in more than one location.
- On 9 May, the day after the election, the Chief Electoral Officer, Sy Mamabolo, told the media that the results would be audited in conjunction with the CSIR, where the data from a statistically representative sample of zip-zip machines would be scrutinised.
- On 10 May, two days after the election, Mr Mamabolo was quoted in the media as saying, ‘We don’t have the evidence that anyone attempted to double vote.’
- On the same day, Commissioner Janet Love told the media that the statistician-general would conduct an analysis of 1 020 voting stations in what was termed an ‘independent technical assurance process’.
- On 16 May, the statistician-general’s report was released, concluding that there were ‘negligible risks of double voting’. The report (see details below) analysed the variation of the numbers of people in any voting station voting away from where they were registered, relative to the numbers for other voting stations in the same ward.
- In April 2020, the IEC’s report on the 2019 election contained the following references to the multiple voting saga:
 - ‘This is not to say that the 2019 NPE did not present new challenges and threats. Among these was the spectre of alleged double voting, which emerged on Election Day and cast a dark – but thankfully fairly brief – shadow over the elections.
‘We are also deeply grateful to the Statistician-General, Mr Risenga Maluleke, and his team. Without hesitation, they conducted a statistical analysis of voting patterns to help dispel any concerns over widespread multiple voting.’ – IEC Chair, Mr Glen Mashinini
 - ‘However, it was reports of alleged double voting that shook the integrity of the elections to its foundations. Fortunately, the remaining safeguards held and the quick thinking of election staff, supported by party agents, helped to identify attempts to double vote, through which 22 voters were arrested and indicted for electoral fraud’.
– Chief Electoral Officer, Mr Sy Mamabolo
- In September 2020, the IEC proposed changes to the Electoral Act.
- On 18 May 2021 the IEC chair said the following to the Portfolio Committee on Home Affairs:

‘The commission is pleased to report that as we took delivery of the 1 000 unit [sic] voter management devices, we hope this is to go a long way to ameliorate the perception of possible double voting because we now have devices to be in a position to detect anything and prevent it in time.’

- In an IEC information brochure concerning the voter management devices, the following is said:
 - ‘The device records voter participation live and ensures that no voter can cast their vote twice’; and
 - ‘It keeps a record of those who have voted and share nationally with other devices’.

Report by Statistician-General

The report by the statistician-general, presented on 16 May 2019, was a curiosity. Firstly, it is not clear why a sample of data points was selected for analysis, rather than the entire data set, which was as easy to provide as the sample was.

Secondly, the report analysed the sampled voting stations to compare the numbers of VEC 7 forms (used by those voting at a location other than the voting station where they are registered, in terms of s 24A of the Electoral Act) with the numbers of other voting stations in the same ward. Where there was a significant elevation in the number of forms used, this could indeed point to the possibility of double voting. However, the absence of such variation in no way rules out multiple voting.

Simply put, the absence of a particular positive signal of the given phenomenon cannot be interpreted as equating to the absence of that phenomenon. The test simply failed to prove that multiple voting did indeed take place.

If some voters had a plan to vote multiple times (obviously, this has not been established), then it would be conceivable that they might vote normally in their own voting station, and then visit neighbouring stations and vote again in each. This scenario would result in equally elevated numbers of s 24A votes in all locations, which would not be detected by the tests. Similarly, where people cast hypothetical additional votes in nearby voting stations that were in different wards, the test would not detect this.

Assessment

The bottom line is that we will not have the problem of multiple voting again. For the purpose of the coming election, this might be all that we need to know.

However, the contradictory messaging, and the reliance on a statistical analysis that did not answer the question at hand, creates the perception that the IEC wanted to obscure the true nature of the problem. There is an old saying that the cover-up is worse than the crime. Whether or not this constitutes a ‘cover-up’, it does raise questions concerning the openness and transparency of the IEC in relation to problems experienced during voting.

Failing to admit problems that are plain to see, or failing to investigate coherent concerns fully, is counter productive. It raises questions concerning the truthfulness of the IEC’s responses to other criticisms, even where these are not merited.

Election Result Accuracy

Informal and formal investigations by this writer over several election cycles have shown that there are weaknesses with the election result capture, verification, and audit procedures. It is possible to demonstrate this by examining various anomalies that exist within published election results, and where such anomalies cannot be explained by natural variation in voter behaviour.

Accuracy has not been a noticeable part of the discourse surrounding elections in South Africa over the past 25 years. Very little attention has been paid to this by political parties, the media, or even social media interactions. It has always seemed as though the politics of election results have crowded out considerations of accuracy.

People have seemingly assumed that there would not be a problem in this regard, albeit that loose accusations of bias or rigging are often bandied about. However, if the processes of capturing and checking results are not as good as they should be, then the concern arises that mistakes affecting outcomes might not all be discovered, or that electoral fraud may be perpetrated without being addressed. Regardless of the actual impact on election results, any avoidable inaccuracy diminishes trust in the outcomes of elections, and in the IEC.

A number of examples are presented to illustrate the claims made concerning the weaknesses in our systems. Patterns of errors of the nature shown here have existed in our results in each election since the national and provincial elections in 1999.

Individual Anecdotes

In the 2021 local government election, in the uMngeni municipality in KwaZulu-Natal, the voting station at Nxaxamalala Islamic School recorded the following results, which clearly cannot be correct:

Results Summary - All Ballots
Printed on: 2021/11/22 12:16:37

Electoral Event: LOCAL GOVERNMENT ELECTION 2021
Province: KwaZulu-Natal
Municipality: uMngeni
Ward: 0202008
Voting District: 0370006
Registered Population: 881
MEC2 Voters: 0

Party Name	Ward	PR	Total (Ward + PR)		DC 40%		Total - All Ballots (Ward + PR + DC 40%)	
Party Name	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes
ASANTU BATHO CONGRESS	0	0.00%	0	0.00%	0	0.00%	0	0.00%
AFRICAN CHRISTIAN DEMOCRATIC PARTY	0	0.00%	0	0.00%	0	0.00%	1	0.11%
AFRICAN INDEPENDENT CONGRESS	0	0.00%	0	0.00%	0	0.00%	6	0.68%
AFRICAN MANTUNCOBA COMMUNITY	0	0.00%	0	0.00%	0	0.00%	0	0.00%
AFRICAN NATIONAL CONGRESS	0	0.00%	80	33.06%	80	12.62%	77	31.69%
AFRICAN TRANSFORMATION MOVEMENT	0	0.00%	0	0.00%	0	0.00%	0	0.00%

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Party Name	Ward	PR	Total (Ward + PR)		DC 40%		Total - All Ballots (Ward + PR + DC 40%)	
Party Name	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes
AL JAMA-AH	0	0.00%	0	0.00%	0	0.00%	0	0.00%
AZANAN PEOPLE'S ORGANISATION	0	0.00%	0	0.00%	0	0.00%	0	0.00%
DEMOCRATIC ALLIANCE	0	0.00%	16	6.61%	16	2.32%	18	3.88%
DEVOTED CITIZENS OF MSUNDUZI	0	0.00%	0	0.00%	0	0.00%	0	0.00%
ECONOMIC FREEDOM FIGHTERS	392	100.00%	132	54.55%	924	82.65%	124	51.03%
INDEPENDENT (VILAKAD RUDOLPH PHULANI)	0	0.00%	0	0.00%	0	0.00%	0	0.00%
INKATHA FREEDOM PARTY	0	0.00%	12	4.96%	12	1.89%	14	5.76%
JUSTICE AND EMPLOYMENT PARTY	0	0.00%	0	0.00%	0	0.00%	2	0.23%
NATIONAL FREEDOM PARTY	0	0.00%	2	0.83%	2	0.32%	1	0.41%
PAW AFRICANIST CONGRESS OF AZANIA	0	0.00%	0	0.00%	0	0.00%	0	0.00%
SPECTRUM NATIONAL PARTY	0	0.00%	0	0.00%	0	0.00%	0	0.00%
THE ORGANIC HUMANITY MOVEMENT	0	0.00%	0	0.00%	0	0.00%	0	0.00%
UNITED DEMOCRATIC MOVEMENT	0	0.00%	0	0.00%	0	0.00%	0	0.00%

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In the 2019 national and provincial election, there was a significant disparity in provincial votes cast compared to national votes at the Danie Theron Primary School in Johannesburg, with provincial votes significantly exceeding the number of registered voters (the percentage poll – or turnout – for the national election in the voting station was unusually high – 94%).

NPE - 2019					
Gauteng			JHB		
Danie Theron Primary			32883170		
Registered:			2 678		
Party	Nat Votes	Prov Votes	Party	Nat Votes	Prov Votes
A.C.D	0		FREE DEMS	0	
AASD	0		GLC	0	
ACDP	23	18	GOOD	0	0
ACM	0	0	ICOSA	0	6
ACO	0	2	IFP	2	7
ADEC	0	0	IRC	0	0
AGANG SA	2	4	LAND	0	0
AIC	3	0	MF	0	
ALJAMA	0	0	NAPF	0	0
ANC	1 428	1 868	NFP	0	0
APC	0	2	NPA	0	
ARU	0	0	PA	0	0
ASC	0		PAC	3	4
ATA	0	0	PAU	0	0
ATM	9	5	PRM	0	
AZAPO	4	0	SAMEBA	0	
BLF	7	5	SRWP	2	4
BRA	0	0	UDM	3	8
COPE	5	0	VF Plus	4	11
CPM	0		WF	0	1
CSA	0		ZACP	0	
DA	418	954	ZPM	0	
DLC	0				
ECOFORUM	1	0			
EFF	598	1 028			
F4SD	0				
FN	2				
Total valid votes NAT Votes: 2 514 Prov Votes: 3 927					

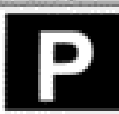
In the 2014 national and provincial elections at the voting station in the Gugulethu Civic Hall, there is a significant disparity between the votes received by the ANC in the national election and in the provincial election.

Electoral Event: 2014 NATIONAL ELECTION			
Province: Western Cape			
Municipality: CPT - City of Cape Town [Cape Town]			
Voting District: 97091163			
Voting Station Name: GUGULETHU CIVIC HALL			
Registered population: 1 850			
Party Name	Abbr.	No. of Votes	% Votes
AFRICAN CHRISTIAN DEMOCRATIC PARTY	ACDP	4	0.31%
AFRICAN INDEPENDENT CONGRESS	AIC	9	0.70%
AFRICAN NATIONAL CONGRESS	ANC	1 030	80.09%
AFRICAN PEOPLE'S CONVENTION	APC	4	0.31%
AGANG SOUTH AFRICA	AGANG SA	6	0.47%
AL JAMA-AH	NO_ABBR	0	0.00%
AZANIAN PEOPLE'S ORGANISATION	AZAPO	0	0.00%
BUSHBUCKRIDGE RESIDENTS ASSOCIATION	BRA	0	0.00%
CONGRESS OF THE PEOPLE	COPE	13	1.01%
DEMOCRATIC ALLIANCE	DA	43	3.34%
ECONOMIC FREEDOM FIGHTERS	EFF	132	10.26%
FIRST NATION LIBERATION ALLIANCE	FINLA	0	0.00%
FRONT NASIONAAL FRONT NATIONAL	FN	0	0.00%
INDEPENDENT CIVIC ORGANISATION OF SOUTH AFRICA	ICOSA	0	0.00%
INKATHA FREEDOM PARTY	IFP	0	0.00%
KEEP IT STRAIGHT AND SIMPLE	KISS	0	0.00%
KINGDOM GOVERNANCE MOVEMENT	KGM	0	0.00%
MINORITY FRONT	MF	0	0.00%
NATIONAL FREEDOM PARTY	NFP	0	0.00%
PAN AFRICANIST CON	PAC	32	2.49%

Electoral Event: 2014 PROVINCIAL ELECTION			
Province: Western Cape			
Municipality: CPT - City of Cape Town [Cape Town]			
Voting District: 97091163			
Voting Station Name: GUGULETHU CIVIC HALL			
Registered population: 1 850			
Party Name	Abbr.	No. of Votes	% Votes
AFRICAN CHRISTIAN DEMOCRATIC PARTY	ACDP	6	0.28%
AFRICAN INDEPENDENT CONGRESS	AIC	7	0.33%
AFRICAN NATIONAL CONGRESS	ANC	1 827	85.73%
AFRICAN PEOPLE'S CONVENTION	APC	2	0.09%
AGANG SOUTH AFRICA	AGANG SA	0	0.00%
AL JAMA-AH	NO_ABBR	0	0.00%
AZANIAN PEOPLE'S ORGANISATION	AZAPO	0	0.00%
CONGRESS OF THE PEOPLE	COPE	21	0.99%
DEMOCRATIC ALLIANCE	DA	59	2.77%
ECONOMIC FREEDOM FIGHTERS	EFF	157	7.37%
FIRST NATION LIBERATION ALLIANCE	FINLA	0	0.00%
INDEPENDENT CIVIC ORGANISATION OF SOUTH AFRICA	ICOSA	0	0.00%
INDIGENOUS PEOPLES ORGANISATION	IPO	1	0.05%
INKATHA FREEDOM PARTY	IFP	0	0.00%
KINGDOM GOVERNANCE MOVEMENT	KGM	0	0.00%
NATIONAL FREEDOM PARTY	NFP	0	0.00%
NATIONAL PARTY SOUTH AFRICA	N.P	0	0.00%
PAN AFRICANIST CON	PAC	31	1.45%



In the provincial election, the ANC was awarded more votes than the number of registered voters. The disturbing feature of this situation is that a hand-written result slip for the provincial election at the voting station in question contains figures that are different from those published.

P		Results Slip Provincial Ballot 2014		P	
Page 1 of 2		2014 PROVINCIAL ELECTION		Page 1 of 2	
Western Cape		Counting Officer: Ntombikayise Phelekezela			
CPT - City of Cape Town (Cape Town)		ID Number: [REDACTED]			
VD 97091163		Contact Number: [REDACTED]			
GUSULETU CIVIC HALL		Registered Voters: 1850			
Party Name	Party Name	Result	Party Signatures		
AFRICAN NATIONAL CONGRESS	ANC	980	<i>[Signature]</i>		
DEMOCRATIC ALLIANCE	DA	25	<i>[Signature]</i>		
ECONOMIC FREEDOM FIGHTERS	EFF	125	<i>[Signature]</i>		
AFRICAN CHRISTIAN DEMOCRATIC PARTY	ACDP	4			
AFRICAN INDEPENDENT CONGRESS	AIC	9			
AFRICAN NATIONAL PARTY	ANP	2			
AFRICAN PEOPLE'S CONVENTION	APC	6			
AGANGI SOUTH AFRICA	AGANGI SA	3			
AL JAMA'AH	NO_AJBR				
AZANIAN PEOPLE'S ORGANISATION	AZAPO	1			
CONGRESS OF THE PEOPLE	COPE	8			
INDIGENOUS PEOPLES ORGANISATION	IPO				
INDIPENDANT CIVIC ORGANISATION OF SOUTH AFRICA	ICOSA				
ISUKATHA FREEDOM PARTY	IFP				
KINDOGANI GOVERNANCE MOVEMENT	KGM				
NATIONAL FREEDOM PARTY	NFP				

2021: Cape Town Recounts

Following the 2021 local government election, the Cape Independence Party challenged certain of the results in Cape Town, on the basis that several of their supporters had reported voting for the party in voting stations that subsequently recorded zero votes for them. The party secured a single seat in the Cape Town Metro municipality but believed that it should have been awarded two.

In November 2021, the IEC agreed to recounts in 14 voting stations. Although these recounts added to the Cape Independence Party vote totals, this was not sufficient to secure the second seat that the party sought. Following an application to the Electoral Court, recounts in a further 35 voting stations were carried out. In total, 1 295 votes were added to the party's tally (along with various changes to other parties). When the results were recalculated, the Cape Independence Party was awarded a second seat in the Cape Town council (at the expense of the Democratic Alliance).

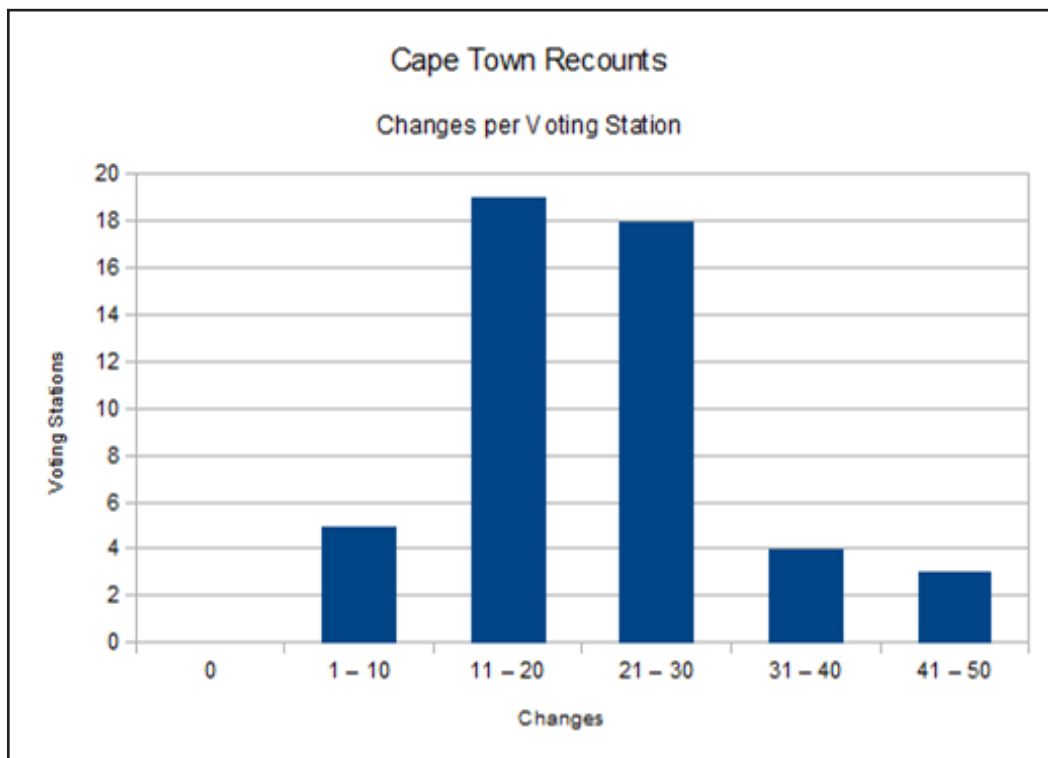
What the recounts do is give us a set of results against which we can test the accuracy of the counting, recording and data capturing processes of the IEC. The results for the voting stations in question as published by 9 November 2021 were compared individually with the results published after the recounts in April 2022. It is assumed for the purposes of comparison that the results following the recounts are entirely correct, and that all variations indicate errors in the original counts, or the recording of those counts.

In the 49 voting stations, a total of 4 038 individual results (each party or candidate in each voting station) were recounted. The following is a summary of the changes:

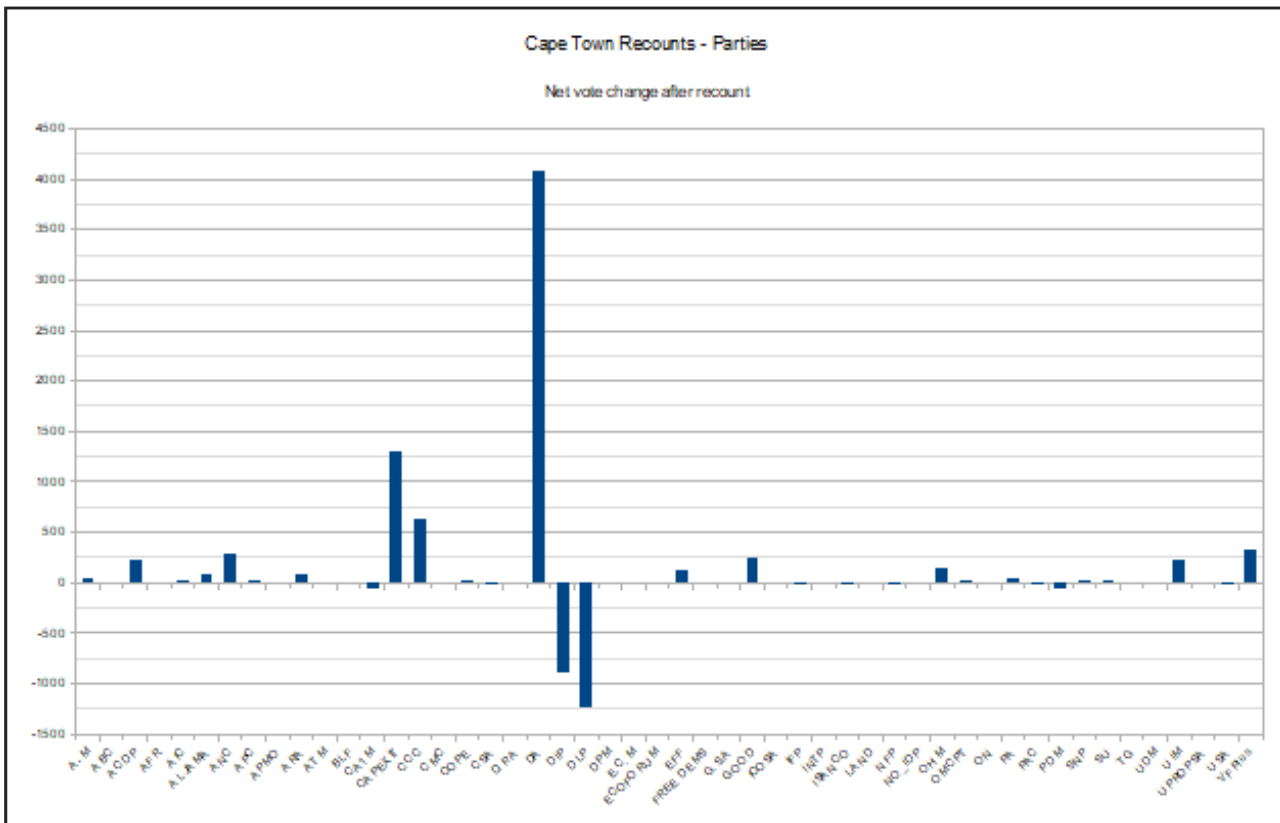
Voting Stations:	49
Total results:	4 038
Total Changes:	1 020
% of Results changed:	25.3%
Changes per Voting Station	21
False Zeros:	499
False Zero above 10:	110
False Zero above 50:	9
Total Votes Changed	15 133

False Zeros are results where a zero is written instead of a number. The majority of these were for low numbers, but there were 110 results where a vote total of 10 or more was replaced with a zero, and 19 where 50 or more votes were replaced by a zero.

This is the breakdown of the numbers of changes per voting station after the recounts:



The following is the net vote effect for the parties taking part in the election:



Statistically, we cannot take the 49 voting stations as a representative sample of the whole, given that they were chosen specifically as a consequence of evidence that errors existed. However, the presence of so many voting stations in one municipality containing so many errors is in itself of concern.

2021: Likely Errors Affecting Seat Allocations

An analysis of anomalies in published results following the 2021 local government elections showed a number of municipalities where results that appear to be errors would be material to the final seat allocations in those municipalities.

In the Ramotshere Moiloa (Zeerust) local municipality in North West, the votes in the Keaitse Middle School voting station in favour of the EFF were recorded as being 17, 197, and 18 respectively for the Ward, PR, and District Council ballots. The correct figure for the PR election was 19, and not 197.

In the original seat allocation, the additional 178 votes in favour of the EFF were sufficient to allow them to be awarded six seats, rather than the five that they were properly entitled to. The extra seat was at the expense of the Forum for Democrats (FFD), who were not initially awarded a seat in the municipality.

After being alerted of the likely error, the FFD lodged a late objection with the IEC, which initially declined to take it into consideration. After obtaining legal assistance from the Freedom Advocacy Network, an NGO, the FFD resubmitted their objection. The IEC concurred in December 2021 that the published result in that voting station was incorrect, and that the seat allocation should change. There were further delays, however, in that the municipality did not give effect to the notification from the IEC concerning the incorrect seat allocation.

Only after a successful application by the FFD in the Electoral Court was the seat finally allocated to them by the municipality.

In Bushbuckridge, objections were submitted to the IEC a few weeks after the election, and a provisional finding was reached that a seat change should be effected. The matter was not pursued beyond this point, however. This raised an interesting question in that the result at Aplos Primary School (Bushbuckridge, Ward 16) was nullified by the IEC subsequent to the election, following an objection concerning events at the voting station. The reasons for the nullification were never made public. The nullified results would have changed the effect on the seat allocation of the objections raised.

Similar analysis in twelve additional municipalities showed likely errors where a correction would result in a change in the allocation of a seat in the respective municipalities. One of the additional results was changed by the IEC about six weeks after the election. It should be noted that the anomalies listed may have valid explanations that are not immediately apparent, or that the resolution of anomalies may be different from what an initial analysis suggests.

In each instance, the anomalies were posted on social media following the election, and where possible the parties concerned were notified. The full details were communicated to senior management of the IEC (albeit several months after the election).

Suspicious Zeros

It is a fairly common occurrence for zeros to be written into a party's votes for a voting station instead of an actual number of votes. This can happen either at the recording of results within the voting station, or in the electronic capture of the results. Often, it happens with only one of the party's totals within that voting station.

At the EFF manifesto launch for the 2016 local government elections, Julius Malema claimed that the IEC 'stole votes' from the EFF in the 2014 election, in Alexandra in Johannesburg. (See [here](#)) The following is the official result for the voting station at the Zion Apostolic Church in Alexandra:

Detailed results				Detailed results			
Electoral Event: 2014 PROVINCIAL ELECTION				Electoral Event: 2014 NATIONAL ELECTION			
Province: Gauteng				Province: Gauteng			
Municipality: JHB - City of Johannesburg [Johannesburg]				Municipality: JHB - City of Johannesburg [Johannesburg]			
Voting District: 32850839				Voting District: 32850839			
Voting Station Name: ZION APOSTOLIC CHURCH				Voting Station Name: ZION APOSTOLIC CHURCH			
Registered population: 2 400				Registered population: 2 400			
Party Name	Abbr.	No. of Votes	% Votes	Party Name	Abbr.	No. of Votes	% Votes
AFRICAN CHRISTIAN DEMOCRATIC PARTY	ACDP	4	0.28%	AFRICAN CHRISTIAN DEMOCRATIC PARTY	ACDP	1	0.08%
AFRICAN NATIONAL CONGRESS	ANC	984	68.05%	AFRICAN INDEPEDENT CONGRESS	AIC	19	1.52%
AFRICAN PEOPLE'S CONVENTION	APC	0	0.00%	AFRICAN NATIONAL CONGRESS	ANC	1 075	85.79%
AGANG SOUTH AFRICA	AGANG SA	3	0.21%	AFRICAN PEOPLE'S CONVENTION	APC	3	0.24%
AZANIAN PEOPLE'S ORGANISATION	AZAPO	10	0.69%	AGANG SOUTH AFRICA	AGANG SA	9	0.72%
CONGRESS OF THE PEOPLE	COPE	1	0.07%	AL JAMA-AH	NO_ABBR	0	0.00%
DEMOCRATIC ALLIANCE	DA	9	0.62%	AZANIAN PEOPLE'S ORGANISATION	AZAPO	2	0.16%
ECONOMIC FREEDOM FIGHTERS	EFF	102	7.05%	BUSHBUCKRIDGE RESIDENTS ASSOCIATION	BRA	0	0.00%
FRONT NASIONAAL/FRONT NATIONAL	FN	301	20.82%	CONGRESS OF THE PEOPLE	COPE	10	0.80%
INDEPENDENT CIVIC ORGANISATION OF SOUTH AFRICA	ICOSA	0	0.00%	DEMOCRATIC ALLIANCE	DA	105	8.38%
AFRICA				ECONOMIC FREEDOM FIGHTERS	EFF	0	0.00%
INKATHA FREEDOM PARTY	IFP	0	0.00%	FIRST NATIONAL LIBERATION ALLIANCE	FINLA	1	0.08%
KINGDOM GOVERNANCE MOVEMENT	KGM	10	0.69%	FRONT NASIONAAL/FRONT NATIONAL	FN	0	0.00%
LEKGOTLA FOR DEMOCRACY ADVANCEMENT	LEKGOTKA	1	0.07%	INDEPENDENT CIVIC ORGANISATION OF SOUTH AFRICA	ICOSA	0	0.00%
MERAFONG CIVIC ASSOCIATION	MECA	0	0.00%	AFRICA			
MINORITY FRONT	MF	1	0.07%	INKATHA FREEDOM PARTY	IFP	0	0.00%

It seems clear that the EFF was indeed ‘robbed’ of votes in the provincial election. However, whether intentionally or unintentionally, this form of error occurs in many places.

The following table shows published results from voting stations in the 2019 national and provincial election, where parties obtained zero votes in one ballot, but 100 or more votes in the other ballot within the same voting station. While it is true that some voters will choose to vote differently on the two ballots (sometimes due to parties that do not contest both elections), there is a very low probability that 100 or more people could support a party on one ballot, but none of those do so on the other ballot. In reality, a contrast of zero and 50 or more very likely indicates an error.

NPE 2019 - Voting Stations with Suspicious Zeros

Prov	Mun	VD	Voting Station	Party	Nat Votes	Prov Votes
EC	BUF	10591185	SOPHATHISANA HIGH SCHOOL	EFF	0	227
EC	E C137	11570307	ELUHEWINI JUNIOR SECONDARY SCHOOL	ANC	0	284
EC	E C157	11590736	NTEKELELO JUNIOR SECONDARY SCHOOL	ANC	0	106
EC	NMA	10250020	PORTUGUESE CLUB	ACDP	148	0
EC	NMA	10251256	EDWARD KOEK METHODIST CHURCH	EFF	137	0
EC	NMA	10300239	PARKLANE COLLEGE	VF Plus	139	0
FS	FS184	22600044	WELKOM HIGH SCHOOL	VF Plus	0	136
FS	FS203	22820307	NALE DI EDUCARE	EFF	0	115
FS	FS204	22750343	TENT NEXT TO (TRANSNET OPEN SPACE)	ANC	131	0
FS	FS205	22750107	KATLEHO MPUMELELO SEC SCHOOL	ANC	491	0
FS	FS206	22750297	NEW LIFE IN JESUS MINISTRIES INT CHURCH	EFF	0	176
FS	MAN	21860298	SE NTRAAL SECONDARY SCHOOL	VF Plus	0	278
FS	MAN	21860366	TENT (NP V WYK LOUW STREET)	VF Plus	0	382
GP	EKU	32900071	EASTLEIGH PRIMARY SCHOOL	ACDP	0	216
GP	EKU	33020626	TENT (PHASE 1 EXT 28 153 EPUKIRO STREET)	COPE	0	724
GP	EKU	33010210	QUANTUM SECONDARY SCHOOL	EFF	0	213
GP	GT485	33270241	WELFARE ROOM (NO 1 HOSTEL)	IFP	0	133
GP	JHB	32861909	LEITSIBOLO PRIMARY SCHOOL	EFF	257	0
GP	TSH	32952315	TENT - WEKKER & MARY ETHEL	ACDP	106	0
GP	TSH	32960909	GONTSE PRIMARY SCHOOL	DA	109	0
GP	TSH	32953103	HATFIELD EMERGENCY SERVICES	EFF	150	0
GP	TSH	33110222	PAT PROJECTS	VF Plus	0	127
GP	TSH	32952999	OPEN SPACE ON CNR RAYNER & BELUS (TENT)	VF Plus	0	177
KZN	ETH	43380211	ISIPINGO BEACH INTERMEDIATE SCHOOL	DA	167	0
KZN	ETH	43390256	SITHE NGILE SECONDARY SCHOOL	EFF	382	0
KZN	ETH	43371323	GLENWOOD PRE-PARATORY SCHOOL	EFF	0	130
KZN	ETH	43370333	CC COMMUNITY HALL	IFP	0	122
KZN	KZN242	43624885	GWIJA PRIMARY SCHOOL	ANC	0	104
KZN	KZN282	43418066	NGQOLOTHI LUTHERAN CHURCH	EFF	0	134
LP	LJM354	76090282	FULL GOSPEL CHURCH - BET SHALOM	VF Plus	251	0
LP	LJM366	76470015	ALBERT LETHULI PRIMARY SCHOOL	EFF	0	121
MP	MP 302	54230194	MSEBE COMBINED SCHOOL	EFF	0	130
MP	MP 307	54140059	VUKANINI PRIMARY SCHOOL	EFF	0	350
MP	MP 313	54600162	FAITH REVIVAL MIRACLE CENTRES INT	VF Plus	200	0
NW	NW372	86662323	VOORWAARTS PRIMARY SCHOOL	VF Plus	202	0
NW	NW383	86550734	BUHRMANNSDRIF LAERSKOOL	VF Plus	0	117
NW	NW394	86740274	TSHWARANG THATA PRIMARY SCHOOL	EFF	203	0
NW	NW403	86900137	THUTO-TSEBA MIDDLE SCHOOL	EFF	147	0
NW	NW403	86870425	KHAYALE THU PUBLIC SCHOOL	EFF	0	116
WC	CPT	97120166	NG KERK BLOUBERGSTRAND	ACDP	111	0
WC	CPT	97100096	NG KERK DE EIKE KUILSRIVER	ACDP	0	138
WC	CPT	97110345	NG KERK SUIDERSTRAND	ACDP	124	0
WC	CPT	97120188	SAXON SEA EDUCARE CENTRE	ANC	137	0
WC	CPT	97140405	ELNOR PRIMARY SCHOOL	ANC	128	0
WC	CPT	97141338	FISANTE KRAAL HIGH SCHOOL HALL	EFF	122	0
WC	CPT	97100096	NG KERK DE EIKE KUILSRIVER	GOOD	0	137
WC	CPT	97140911	NG KERK LA ROCHELLE	VF Plus	0	217
WC	CPT	97110277	STRAND HIGH SCHOOL	VF Plus	0	153
WC	CPT	97110345	NG KERK SUIDERSTRAND	VF Plus	317	0

In the 2021 local government elections, there were 135 such voting stations, across 38 municipalities (out of a total of 23 148 voting stations and 213 local municipalities nationwide):

LGE 2021 - Voting Stations with Suspicious Zeros

Prov	Municipality	Voting Stations	Max Difference
EC	BUF - Buffalo City	2	146
EC	EC104 - Makana	1	121
EC	EC121 - Mbhashe	1	108
EC	EC122 - Mquma	1	146
EC	EC141 - Elundini	1	108
EC	EC153 - Ngquzu Hill	2	225
EC	EC156 - Mhlontlo	2	113
EC	EC157 - King Sabata Dalindyebo	2	164
EC	EC443 - Winnie Madikizela-Mandela	1	139
EC	NMA - Nelson Mandela Bay	3	114
FS	FS194 - Maluti a Phofung	2	104
FS	FS204 - Metsimaholo	1	113
GP	EKU - Ekurhuleni	15	668
GP	GT421 - Emfuleni	3	147
GP	JHB - City of Johannesburg	22	688
GP	TSH - City of Tshwane	14	530
KZN	ETH - eThekweni	14	218
KZN	KZN216 - Ray Nkonyeni	1	123
KZN	KZN222 - uMngeni	1	100
KZN	KZN225 - Msunduzi	4	154
KZN	KZN237 - iNkosi Langalibalele	1	102
KZN	KZN275 - Mtubatuba	2	151
KZN	KZN434 - Ubuhlebezwe	1	110
LP	LIM334 - Ba-Phalaborwa	1	150
LP	LIM343 - Thulamela	1	100
LP	LIM353 - Mlembele	2	249
LP	LIM367 - Mbagalawena	1	294
LP	LIM472 - Elias Mokoaledi	1	176
MP	MP302 - Msukaligwa	1	257
MP	MP303 - Mkhondo	1	110
MP	MP312 - Emalahleni	1	280
MP	MP326 - City of Mbombela	4	187
NC	NC451 - Joe Murolong	1	176
NW	NW371 - Moretele	2	293
NW	NW372 - Madibeng	2	101
NW	NW373 - Rustenburg	2	117
NW	NW375 - Moses Kotane	2	223
WC	CPT - City of Cape Town	16	875

Totals Written in Vote Blocks

A problem that occurs in a few places is that vote totals for a voting station are written in one of the vote columns for the voting station.

The following 13 voting stations from the 2021 local government election show this pattern:

LGE 2021 Voting Stations with Sum of Votes Written In to Vote Block

Prov	Mun	Ward	VD	Voting District	Registered	Ward Votes	PR Votes	DC Votes
EC	BUF	38	10870624	NONTO JUNIOR PRIMARY SCHOOL	585	76	142	
EC	EC157	33	11630269	ITHULELE SENIOR PRIMARY SCHOOL	449	470	157	158
GP	GT421	26	32930748	REACHOUT COMMUNITY PROJECT	2 603	1 852	1 024	1 011
GP	JHB	21	32861178	MOCHOCHONONO SCHOOL	2 044	1 755	808	
GP	THS	102	33040055	KGORO PRIMARY SCHOOL	1 845	809	395	
KZN	ETH	15	43390469	KWACUTSHWAYO PRIMARY SCHOOL	3 469	2 396	1 239	
KZN	ETH	58	43350421	LA MERCY COMMUNITY HALL	1 486	589	315	
KZN	ETH	92	43390357	NQHELE SECONDARY SCHOOL	3 679	1 510	722	
KZN	KZN294	2	43770089	ONDOKHULU PRIMARY SCHOOL	484	661	234	229
KZN	KZN433	2	43775578	NTSIBINI PRIMARY SCHOOL	98	183	60	64
MP	MP325	15	76160897	ROMAN CATHOLIC CHURCH	496	910	282	295
NW	NW375	10	86991979	OKOMELANG PRIMARY SCHOOL	2 110	1 874	664	649
NW	NW403	32	86930039	LIBRARY KHUMA EXT 8	2 548	926	1 830	930

The following 4 voting stations from the 2019 national and provincial elections show this pattern:

NPE 2021 Voting Stations with Sum of Votes Written In to Vote Block

Prov	Mun	Ward	VD	Voting District	Registered	NAT Votes	Prov Votes
FS	FS194	2	22320098	TENT NEXT TO UFS	1 041	683	331
KZN	KZN292	26	43600328	GLENHILLS REVIVAL CHURCH	650	663	333
MP	MP326	39	54910593	SKUKUZA REST CAMP	932	1 286	686
WC	CPT	32	97120201	REBECCA VAN AMSTERDAM HALL	2 973	2 118	1 128

Problems with the Voters' Roll

In a country such as South Africa, with a large rural population, and many people living in informal settlements, it is understandable that maintaining accurate addresses is particularly challenging. However, as experience has shown in other countries, the voters' roll, and location of voters within demarcated boundaries, can be a prime area for electoral fraud. At the very least, inaccurate registering of voters can cause a great deal of confusion, effectively disenfranchising voters.

Brief History

Following irregularities found with the voters' roll during by-elections in Tlokwe in North West in 2013, the Constitutional Court ruled in 2016 that all missing or incomplete addresses should be corrected, but that the 2016 local government elections could nonetheless go ahead.

Since then, the IEC has made slow but steady progress in improving the quality of the voters' roll, but many problems and inconsistencies remain.

In 2021, the IEC launched the online voter registration portal, which has seen a steady increase in use. The value of this system is that it allows those with internet access to make changes easily, without having to visit voting stations during registration weekends. It also allows for accurate capture of addresses. In the 2021 local government election report, the IEC said that over 500 000 registrations or updates had been processed.



Voter Management Devices

Aside from addressing the problem with multiple voting, and the fact that the zip-zip machines were very old technology, the Voter Management Devices (VMDs) which are replacing them have the added benefit that they facilitate a gradual improvement over time of the quality of the address data held in the voters' roll.

When the VMDs are used for voter registration weekends (starting in the 2021 local government elections) and for registration ahead of by-elections, all new or updated entries are located geographically via the devices. Aside from missing or incomplete addresses, this also creates a consistent format for addresses.

George By-Election

In the by-elections held in George on 19 July 2023, allegations were made that voters from other wards had been deliberately and fraudulently reregistered in the three wards facing by-elections. GOOD applied to the Electoral Court just before the election to have the by-elections postponed. This application failed, and GOOD since submitted objections to the results on the basis of the same complaints, which included a complaint that 188 (subsequently determined to be 174) voters were registered at a single address. News reports indicated that the Patriotic Alliance was also submitting objections to the IEC.

Without in any manner commenting on the actual merits of the objection, or pre-judging the outcomes, there are two very concerning factors that emerge.

Firstly, when an online publication carried a story regarding the GOOD objection, the IEC issued a statement responding to the news article, rather than describing or responding to the objection submitted. Why this was wrong is that the IEC statement purported to rebut the allegations described in the news article, without direct reference to the particulars of the objection submitted. Secondly, in doing so, the IEC apparently conflated two separate aspects of the complaint, and the rebuttal was effectively of something not alleged by the complainant. The IEC was at pains to establish that the 174 voters listed at one address were not new registrants in the ward, and therefore that their votes could not have wrongly affected the outcome. However, it seems fairly clear that the complainant did not make reregistration allegations specifically about those 174 voters, but merely pointed out a glaring irregularity in the voters' roll.

Secondly, the IEC statement described the allocation of a common address to the 174 voters as an 'inadvertent error' that occurred in the process of checking addresses against ward boundaries, in preparation for the by-elections. There was no explanation concerning how such an error could have occurred, or whether similar errors might occur at other times. The written statement did not confirm that those particular faults had been corrected, but in an interview, a Deputy Chief Electoral Officer, Mr Mashego Sheburi, confirmed that their details had been rectified.

The apparent lack of concern from the IEC that an error such as this could occur is disturbing. It may well be the case that the IEC will take steps to prevent similar occurrences in future, but we have no way of knowing this. From what was said, we can deduce that the error arose because the system could not locate the addresses of the people concerned, and these defaulted to a single address within the same ward.

We could further deduce that the address fell within the same voting district as those voters, but we do not know this (the implication being that voters may potentially have had their voting station arbitrarily changed).

What is more concerning is that the IEC's systems did not detect this anomaly, when a simple database query would pick it up.

Changes to the Electoral Act

The Electoral Amendment Act was signed by President Ramaphosa in April 2023, allowing independent candidates to contest national and provincial elections for the first time. However, the amendments enabling this are facing various constitutional challenges, which are yet to be considered at the time of writing.

Both the changes to the Electoral Act and the associated constitutional challenges present risks to the conduct of the election in 2024.

Key Features of the Amendments

The key features of the Act are:

1. Independent candidates are allowed to contest both national and provincial elections.
2. Voters will now be given two ballots for the National Assembly election:
 - A regional PR ballot for their province, displaying independent candidates and parties, who may gain votes only from within the particular province. A total of 200 seats are available in the regional elections.
 - A PR ballot to determine the overall representation of the National Assembly, including only political parties.
3. Both the regional ballot, but without votes cast for independent candidates, and the PR ballot are used in the calculation for the overall composition of the National Assembly seats.
4. The provincial ballot allows independent candidates to stand for provincial legislatures.
5. If any independent candidate secures enough votes for more than one seat in any election, they will only be awarded one seat. A recalculation takes place, with the excess seats being shared across political parties and remaining independent candidates.
6. An independent candidate may contest one provincial election, and / or one or more regional elections. If the candidate wins seats in more than one election, they can only take up one seat. The seats they do not take up are subject to a recalculation.
7. If an independent candidate vacates their seat in the National Assembly or a provincial legislature, then a recalculation is carried out among the remaining parties and independent candidates to allocate the seat.
8. In order to avoid excessively long ballot papers, with many independent candidates contesting the election, independent candidates are required to obtain as many signatures as 15% of the quota in the previous equivalent election. For the National Assembly, this ranges from about 10 000 to 14 000 signatures, and in provincial legislatures, it is between 3 000 and 8 000.
9. To avoid the discrepancy in signature requirements between independent candidates and political parties, any party that did not obtain any seats in the previous national and provincial elections is required to meet the same requirement.
10. An Electoral Reform Consultation Panel is to be formed that will take just short of two years to research and consult and then to submit proposals to Parliament in order to create an entirely new electoral system in time for the 2029 national and provincial elections.

Primary Problems with the Amendments

There are some fundamental problems with the underlying structure of the amendments, which creates contradictions or areas of unfairness in the new system. These are:

1. Having individuals on the same PR ballots as parties creates distortions of proportionality, which increase if support for independent candidates increases;
2. Because independent candidates may contest only the 200 seats in the regional elections, they require on average 85% more votes to secure a National Assembly seat than political parties (the seat allocation calculations are quite involved);
3. The recalculation method of allocating excess seats is biased in favour of the largest party in each context;
4. Allowing independent candidates to contest more than one election effectively disenfranchises those voting for them in the 'extra' elections;
5. The signature requirement is extreme, for both independent candidates and for small or new political parties. This has the effect of creating barriers to entry, unfairly favouring existing parties; and
6. Including regional ballots (with votes for independent candidates removed) in the calculation of the overall seat allocation in the National Assembly retains some of the distortions from proportionality from those regional ballots.

The bottom line is that some votes count less than other votes. And, in the distortions to proportionality that occur, there is a clear bias that favours the largest party the most in each context.

The only way that independent candidates can be accommodated within a proportional representation system is what is termed mixed-member proportional representation, along the lines of our local government elections, with constituency elections balanced by an overall proportional representation ballot.

With the introduction of the second ballot for the National Assembly, this election approximates a proportional outcome, albeit that we live with the absurdity of whole provinces being constituencies. Provincial elections remain a problem, although the numbers involved are reduced with the smaller sizes of the provincial legislatures.

Constitutional Challenges

Two constitutional challenges to the Electoral Act, as amended, have been lodged with the Constitutional Court. On 31 May, the Independent Candidates Association (ICA) requested direct access to the court for their challenge, while on 10 June One South Africa (OSA) lodged their case.

It should be noted that ICA and OSA are indirectly associated, organisationally speaking, and have co-operated throughout the whole process of responding to the Electoral Amendment Bill and now the final Act. Disclaimer: the writer has worked closely with both organisations, and prepared a formal report in each instance, supporting the respective applications.

Other parties have also prepared to join any constitutional case, including some of the original litigants in the New Nation case that led to the 2020 ruling. At the time of writing, there is no confirmation of such filings.

Parliament, the Department of Home Affairs, and the President, have opposed the applications, while the IEC has not done so. The case will be heard on an urgent basis on 29 August, with the applicants not asked to submit affidavits in response to the respondents replying affidavits.

Ordinarily, a constitutional challenge to an Act of Parliament is heard in the High Court, with any order of invalidity having to be confirmed subsequently by the Constitutional Court. However, given the very short time available before the national and provincial elections must be held in 2024, any challenge that followed this route would likely not be heard by the Constitutional Court before the elections, making such a challenge moot.

Independent Candidates Association (ICA)

As described above, the system introduced by the Electoral Amendment Act limits independent candidates to contest the 200 seats that are available in the regional elections for the National Assembly. This has the consequence that independent candidates require far more votes than the effective number required by political parties (the situation is complicated by the fact of the two-ballot system for the National Assembly).

This discrepancy creates an unfair barrier to entry for independent candidates.

The remedy proposed by ICA is to increase the number of seats available to the regional elections to 350, with only 50 seats being available for the balancing proportional representation calculations. Because there are only nine constituency (regional) elections, the number of balancing seats does not have to be high. The use of the 200 balancing seats was a carry-over from the original Electoral Act, where that number of seats served a different purpose.

The change proposed would create a near-equivalence in the votes required by independent candidates to gain a seat in the National Assembly, and those required by parties.

One South Africa (OSA)

The OSA challenge is premised on two main grounds, being the unfair signature requirements for independent candidates and unrepresented parties, and the recalculation mechanism used to fill seats vacated by independent candidates, which is biased in favour of the largest party.

The signature question, while presenting a simple case of unfair barriers to entry, is complicated by the reason for the requirement, being the avoidance of long ballot papers. It would not be reasonable to speculate on how the court will resolve these opposing imperatives, but it can be observed that the conundrum exists because of the electoral system chosen, where individuals are placed on the same proportional representation ballot as political parties. At face value, this is a contradiction in terms. While the concept of multi-member constituencies, balanced by an overall proportional ballot, would be a reasonable concept, the effective constituencies are whole provinces. While not having much direct meaning to most voters, the larger the constituency, the greater the number of aspiring candidates there will be. This is a problem directly of Parliament's making.

The recalculation question is interesting in that it not only affects the filling of vacancies, but also introduces a distortion of proportionality overall, where this can be shown to benefit the largest party in each instance.



The problem of a party's votes counting twice (firstly, for the original seat allocation, and then again for the allocation of any excess seats that independent candidates by their very nature cannot take up) is compounded by the fact that the largest party gains out of proportion to their original share of the votes.

The applicant's submission proposes that the recalculation be replaced with a system of awarding any vacant (and by implication, excess) seats by using the highest remainder seat allocation, where the most deserving unallocated votes would determine the awarding of any vacant seats.

Risks Pertaining to the 2024 Election

The primary risk posed to the holding of the 2024 election relates to timing: the timing of the court ruling, in combination with the legal mechanism to be employed to remedy any constitutional defect with the amended Electoral Act that the court may determine, and subsequently the preparations of the IEC to account for the amended rules.

If the court was to suspend any order of invalidity until after the election, then the risk would exist that aggrieved parties or candidates could launch a challenge on the outcome of the election itself. While many may find a wait-and-see approach appealing, the prospect of contested elections is most unattractive, albeit that a successful challenge could not make large differences to the outcome.

If the court suspends any invalidity of the Act for a period ending before the election, allowing Parliament the opportunity to remedy the faults, then the timing in relation to holding an election within the constitutionally specified deadlines would be precarious. There would also be the risk that Parliament might not complete its work in time, or correctly.

The third option is that the court 'reads in' limited changes to the amended Electoral Act to remedy the defects, possibly only for the time needed to hold the 2024 election. The court would normally be extremely reluctant to do the work of the legislative arm of government, and this could be justified only on the grounds of being the only reasonable means to ensure that a constitutionally compliant election is held within the constitutionally stipulated period. There is precedent for a temporary reading in by the court.

It can also be pointed out that the changes proposed do not affect the structure of the electoral system, per se, but rather adjust the calculations for seat allocation to produce a fairer outcome. This also mitigates the risk that a late decision may affect the planning of the IEC for the elections. For the proposed ICA remedy, there is essentially no change required to the systems, with only the numbers of seats in the regions being altered, which happens each election in any event. The proposed OSA remedy would require changes to the seat allocation process, and to the filling of vacancies. However, the required structure of the amended calculation already exists in the current systems.

The sensitivity of the signature requirements could, however, cause some disruption to preparations, depending on the nature and timing of the court's ruling.

Assessing the IEC's Readiness

It is not reasonable to ask the IEC to reveal the exact status of its internal preparations and organisational arrangements at this point. It is therefore necessary to make informed deductions based on known facts and the recent past.

Challenges Faced by the IEC

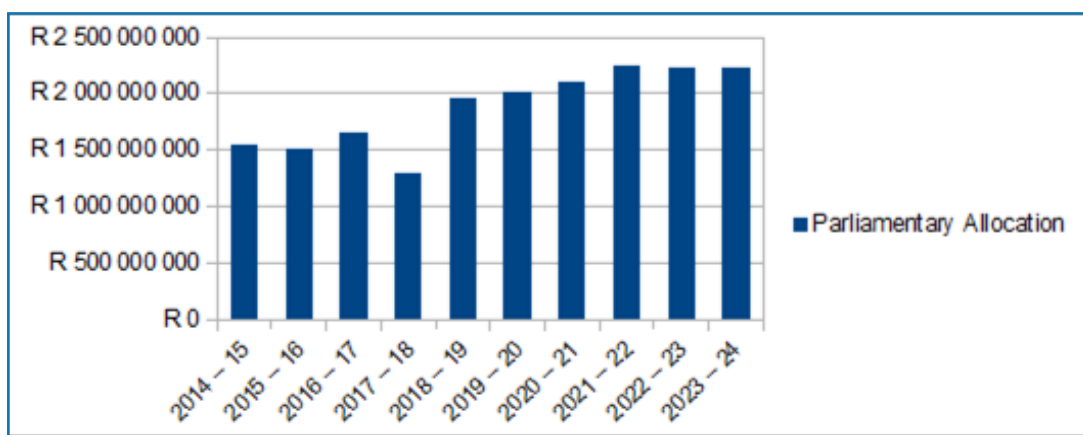
Budget Cuts

Problem Statement:

The parliamentary budget allocation for the IEC has been declining in real terms, with effective cuts expected to continue. This is as the numbers of voters and voting stations continues to rise, along with the number of staff needed to run an election.

In nominal terms, the parliamentary budget allocation for the IEC over the past 10 years is as follows:

Year	Parliamentary Allocation
2014 - 15	1 553 617
2015 - 16	1 510 400
2016 - 17	1 657 901
2017 - 18	1 299 912
2018- 19	1 965 004
2019 - 20	R 2 012 749
2020 - 21	R 2 100 534
2021 -22	R 2 250 255
2022 - 23	R 2 240 000
2023 - 24	R 2 232 000



The IEC is having to invest in new technology without compromising the quality of its work. While it is understood that the country as a whole is undergoing financial distress, the quality of democratic practice is something that should not be compromised. Various bodies have pointed out recently that the Represented Political Parties Fund was in the process of receiving very large relative increases in the same period that austerity is being imposed on the IEC.

In inflation-adjusted terms, the IEC's budget for 2023/24 is approximately 13% lower than its 2014/15 budget, despite having to organise more complex elections for a larger electorate.

Prognosis:

Thanks to the long experience of the current IEC commissioners and senior management, and its history of sound financial management, the IEC should be able to navigate the budgetary challenges without significant mishap.

However, there is a reasonable concern that budget cuts will have a negative effect on the quality of some aspects of the election preparation or execution, although this will be difficult to quantify.

Long Ballot Papers

Problem Statement:

Over the past three national and provincial elections, the number of parties participating has been increasing steadily. The number of parties contesting the national election went from 26 in 2009 to 29 in 2014, to 48 in 2019. Similar increases have been seen in elections for provincial legislatures.

With the introduction of independent candidates following the passing of the Electoral Amendment Act, 1 of 2023, there will likely be a further increase in the names on ballot papers for the regional ballot in the National Assembly election, and in provincial legislature elections. During the passage through Parliament of the Electoral Amendment Bill in 2022 and early 2023, much discussion was held about the potential problem of long ballot papers, and this was responsible for the controversial signature requirements for independent candidates and for parties with no seats in the National Assembly or provincial legislatures.

It is unclear how the introduction of independent candidates will affect the number of parties wishing to contest the election. It is also unclear what will transpire with the application by One South Africa to declare the high signature requirement unconstitutional.

We could have many more names on the ballot paper than at present, or perhaps even fewer names.

Having extra names would have two different consequences:

1. The IEC may need to alter the design and layout of ballot papers, and to procure the service of printing that can handle the altered size; and
2. Voters faced with long ballot papers may find the process confusing or may find it difficult to locate their preferred candidate or party.

The effect for the IEC is that additional costs will be incurred, and that longer lead times will be required to print ballots.

Prognosis:

It is difficult to estimate the effect for voters, except that there is a probability of an increase in the number of spoiled ballots, and the time taken to vote will increase, resulting in longer queues. The IEC is well aware of the ballot design and printing challenge, and there should be no major problem from that side.

If signature requirements are relaxed by the court, then there is a reasonable prospect of voting problems for some voters.

Staff Recruitment and Training

Problem Statement:

With about 24 000 voting stations being used, the IEC will deploy in excess of 280 000 staff over the election period itself. This represents a significant increase in comparison to previous elections (in 2019, about 200 000 staff were used).

This presents a challenge in terms of recruitment. While the IEC has the required systems and processes to recruit large numbers of staff, previous experience is a factor in recruitment. The availability of sufficient numbers of suitable candidates may be in question.

With a likely increase in the numbers of inexperienced or less experienced staff, the question of training comes into sharp focus.

Given the very large numbers of staff involved, with most being for short periods of time, the IEC naturally uses a cascading model of training, with permanent staff being used in a train-the-trainer capacity nationally, and then down to provinces. The IEC has a highly developed set of training materials and has recently developed online materials and assessments.

It is difficult, however, to obtain clear details of the precise nature and extent of training offered to all staff, particularly those without prior experience. While it was understood that there were severe challenges in the build-up to the 2021 election due to Covid and lockdowns, the reliance on presiding officers to train their own staff immediately prior to the election seemed to be somewhat unrealistic, given the many difficulties experienced by voters in that election.

We face a situation where several factors have changed since the last election. It is essential that training be thoroughly and comprehensively implemented and tracked. If this is not carefully monitored, then the risk of incorrect procedures being followed, or fraud going undetected, will increase. This is hard to quantify, but that makes it all the more important, as we won't know the extent of consequences that may follow.

Prognosis:

Risk: Moderate

Severity: Moderate

Risks for the IEC

In addition to the general risks associated with heightened social and political tensions that might affect the holding of the election in 2024, and in addition to the specific risks associated with the Electoral Amendment Act, there are particular concerns and risks that the IEC faces.

Management of Signatures

Problem Statement:

The Electoral Amendment Act, 1 of 2023, introduced the requirement for independent candidates and parties not represented in any legislatures, to submit large numbers of signatures to be allowed



to contest the election. Those signing must be registered voters.

The IEC is developing a new Candidate Nomination System (CNS) which includes the facility for the required signature forms to be uploaded. In addition, candidates and unrepresented parties must submit electronically a list of all ID numbers of voters who sign in support of their candidacy. While this new system was still under development, one new political party submitted the conventional application for registration as a party, accompanied by the ordinary list of 1 000 signatures. After being told that registration would take at least two months while the signatories were validated individually, this was eventually completed in just under four weeks, following an appeal to a senior manager.

Proposed amendments to the Regulations in terms of the Electoral Act were gazetted by the IEC on 28 July, wherein the requirements and forms were described. However, it seems that no provision has yet been made for the process to be followed should there be any problems with the signatures, or if the number of signatories successfully validated falls short of the prescribed requirements.

Given the tight timelines, there could be problems for parties and candidates who must supplement their lists with additional signatures.

It is also not clear what checks will be conducted to validate the electronic list of ID numbers against the handwritten forms with signatures. It would seem that manual validation of the handwritten ID numbers would be an impossibly onerous task.

Prognosis:

Risk: Moderate

Severity: Moderate

Changes to s 24A – Voters being Turned Away

Problem Statement:

In 2020, the IEC recommended to Parliament that s 24A of the Electoral Act should be amended to require that voters relying on this section to vote in a voting station different from the one in which they were registered first seek permission. This was accepted on the basis that it would reduce the likelihood of voters voting multiple times, as was reported during the 2019 election.

This could potentially disenfranchise a large number of voters if they are not aware that they should first seek permission to vote away from their voting station. In turn, this could create difficulties for IEC officials at voting stations if significant numbers of such voters arrive, expecting to vote.

In the 2019 elections, the numbers of voters listed as having voted via s 24A – that is, in a voting station other than the one where they were registered – are as follows:

Province	National	Provincial
EC	198566	208 963
FS	85 355	93 666
GP	526 199	530 761
KZN	453 691	468 309
LP	145 410	152 237
MP	129 001	137 411
NC	38 759	39 365
NW	93 778	106 280
WC	221 400	229 147
Total	1 892 159	1 966 139

This represents more than 10% of the electorate. While there are undoubtedly many who were casually seeking shorter queues, and it likely includes those engaging in multiple voting, this still represents a large number of voters who will potentially be affected.

Prognosis:

Risk: Moderate

Severity: Moderate

Confusion Over Additional Ballot

Problem Statement:

The Electoral Amendment Act, allowing for independent candidates to be represented in national and provincial elections for the first time, made provision for two National Assembly ballots. The first is a regional ballot, including both parties and the names of independent candidates contesting that region. The second is a proportional representation ballot, including only parties. The third ballot is then the ballot for the provincial legislatures, including both parties and independent candidates.

While voters are used to the extra ballot in local government elections, the confusion could exist that there are two National Assembly ballots, or that there is a regional ballot that is very similar to a provincial legislature ballot.

Prognosis:

Risk: Moderate

Severity: Low

Longer Counting Time

Problem Statement:

Given the addition of an extra ballot for the National Assembly, and the likelihood of longer ballot papers in the regional and provincial legislature elections, the time taken to count votes will be somewhat longer than usual.

Typically, with elections on a Wednesday, the results from the final voting stations are published after lunch on the Saturday, with the formal announcement of results taking place late on Saturday

afternoon. The IEC has up to seven days to make a formal announcement of results.

It is difficult to predict exactly how the extra ballot and names of independents will affect the time taken to complete counting, but an extra 50% added to the overall time would take the announcement of results through to the Monday morning.

It is further difficult to predict what other consequences there will be of the extended times, but various difficulties are possible:

1. More voting stations will have breaks in counting, or many voting stations will have more breaks during counting;
2. The availability of IEC staff through extended counting processes might be affected;
3. The availability of party agents and independent observers might be affected;
4. The security of counting venues and of the ballot boxes might be more prone to being compromised; and
5. The probability of errors or fraud becomes somewhat higher.

Prognosis:

Risk: Moderate to high

Severity: Moderate

Overall Prognosis

The overall prognosis is that, despite the risks, the IEC will probably rise to the challenge in most respects of ensuring that the main electoral processes are completed successfully. However, there is a high likelihood that there will be delays, difficulties, and frustration experienced in various stages of the electoral period by parties and candidates, and by voters.

While the challenges experienced are unlikely to derail the electoral process, the overall experience is likely to be somewhat degraded for many.

There is a moderate to high probability that some independent candidates and parties will be excluded from the election as a consequence of failing to meet the signature requirements, and that some of these will approach the courts, but this is unlikely to disturb the holding of the election.

It is almost certain that overall results will be announced somewhat later than normal. It would be unsurprising if the result is announced after five or six days instead of the usual three, even though the broad outcomes will be known within two or three days.

If there is a high number of errors in the counting, recording or capturing processes, then there is a significant risk that the IEC will find it difficult to announce the final results within the prescribed seven-day period. In this case, the IEC would need to approach the Electoral Court for an extension of the deadline. The National Assembly must hold its first sitting within 14 days of the results being announced, at which the Speaker and President are elected. Any reasonable delay in announcing results is thus not going to cause any form of constitutional crisis, although there may be political uncertainty during any such delay.

There is a moderate to high risk that there will be challenges to the published results that will be taken on appeal to the Electoral Court. If this happens, then there is a moderate probability of

individual seat allocation changes in the National Assembly and / or provincial legislatures in the weeks after the results are announced.

Any such changes would not have a major legal or constitutional effect, aside from the practical difficulties of replacing individual MPs or MPLs who have already been sworn in (the equivalent has happened following local government elections). However, if there are any changes after the fact, then there could be quite severe political ramifications of any of the elections result in a hung legislature, requiring the formation of coalition governments.

Recommendations

Given the importance of the 2024 election, there are a number of things that can be done to ensure that electoral processes are supported, and the integrity of elections is upheld.

As has been discussed, some of the challenges we face are particular to the immediate future, but some are of ongoing concern. Therefore, while it is possible to recommend a number of concrete steps in the short term, it is also helpful that we start now in fostering the culture that will protect and preserve elections in South Africa for a long time to come.

The key attribute for any successful election is that the process and the results must be trusted. The election must be free and fair and must be perceived to be free and fair.

There are several things that are needed to build trust, but the primary attribute is transparency. Whatever happens, including whatever goes wrong, should be available for public scrutiny. It is not the absence of problems or errors that primarily builds trust – it is the sure knowledge that any such problems and errors will be known, and that their resolution (or otherwise) will also be known.

In a world of disinformation and the rapid rise of over-the-counter artificial intelligence, the question of trust is critical. The question of transparency should thus also be at the front of the queue in electoral priorities. This is also likely to be a rapidly changing field, with the need to mitigate new risks as they arise.

Overall Elections Culture

It is a big ask for many in a heated political or social climate, but it is necessary to treat the integrity of electoral processes and of results as being of greater importance than the actual result in any given circumstance. The moment we are tempted to feel that a particular electoral outcome is of greater importance than the integrity of the process, we open the door for manipulation, even if through our inertia or lack of urgency.

It is therefore necessary to develop a culture of respect for elections. This is a deep, and multi-faceted imperative, and not something that will be accomplished by accident, or through short-term or simplistic means. It is necessary for many different people to appreciate the importance of electoral integrity, and the threats to free and fair elections, and then to take responsibility for playing their part to promote and support trusted processes. Our long-term wellbeing rests heavily on the success of this.

A major feature of such a culture is that problems and disputes give rise primarily to calls for objective resolution. There will always be inflammatory reactions, and affected parties will naturally tend to respond out of self-interest. The question is where the majority of discourse goes. What questions will the media ask, what demands will politicians make, and what comment will respected figures make?

And for ordinary people, what we listen to, and what messages we amplify and share, will play a role in how this culture is shaped. In an algorithmic world, we should not be naive concerning the effect of views, clicks, and likes.

Another important characteristic of a healthy culture surrounding elections is that stories are pursued to their conclusion. If we are interested in the substance of events more than the immediacy of the sound bite, we lay an important platform for future conduct.

Another priority is what could be termed the ‘inquiring mind response’ to events and news stories around elections. This is not ‘questioning’ that seeks pathologically to undermine every utterance of ideological opponents, but simply an engaging with the factual and logical substance of a situation, and how it is reported. Internal logical inconsistencies, and lack of factual verification should not be overlooked, or go ‘unpunished’.

We should shun, or rapidly rebut and dismiss any claims concerning elections that are not supported by evidence. For journalists, the simple act of asking politicians to back up assertions of electoral fraud, or of bias or malfeasance on the part of the IEC, should be normal.

Many of us tend to shy away from numbers, but it is always important that numerical claims are interrogated. We should make it a habit to ask whether quoted numbers make sense, and even whether calculations are accurate. It can be helpful to ask how particular numbers are arrived at. There is never any disrespect in verification.

It can readily be pointed out that these are optimistic aims, and that many areas of life would benefit from such attitudes. This is true, but the logical conclusion of such observations is that the aims are therefore too ambitious, and have no realistic prospect of success. The response to this would be to invoke the old saying that all progress depends on unreasonable men (and women, obviously). This writer takes the view that elections must be treated as a special case, and that every effort should be made to avoid or overcome the failings in public discourse so prevalent in other areas of life.

Much of what happens in society and in public discourse is a matter of habit. Habits can be changed. The argument is for the value and importance of changing our habits. This will take enough people simply doing the things that are necessary – asking the right questions, refusing to accept unsubstantiated accusations, and calling for objective responses to inflammatory situations.

Looking Beyond the Politics of Election Results

In a typical election cycle, with a Wednesday election, the overall ‘shape’ of the results is usually apparent by Friday afternoon (this will take longer with the changes to the Electoral Act, and the addition of an extra ballot). What we see in each election is that attention shifts from particular results and the electoral process to the politics of the results. Where coalitions might come into



play, parties are naturally highly engaged with how to navigate the process of discussions. What many do not realise is that parties have internal politics to deal with, in terms of decisions about who will take which place on the various provincial and national lists.

It does not help that most of the people directly involved in the election process are generally exhausted at this stage. It has proved very difficult in the past to garner any interest from either political parties or the media in individual errors in results. The ‘big picture’ has a tendency to obscure the details.

What is needed is for some to maintain a focus on the integrity of the electoral process, and the accuracy of results, throughout the period. Issues and problems that are detected at this stage must be followed up on. Sometimes it takes time to discover irregularities, or to gather the necessary information needed to sustain objections.

Electoral Regulations

On 28 July 2023, the IEC gazetted proposed amendments to the Regulations in terms of the Electoral Act and related legislation. Public comment is being sought, with a deadline of 27 August. Most of the changes are consequential to the passing of the Electoral Amendment Act, and are generally necessary and expected.

However, there are two areas of concern:

Section 55 Objections to Require an Affidavit

Firstly, it is proposed that objections submitted in terms of section 55 of the Electoral Act must be accompanied by an affidavit. This is dealt with in terms of a proposed wording change to Regulation 31.

For objections relating to errors detected in published election results, this requirement creates an added layer of effort, including printing and scanning documents in what would otherwise be a purely electronic submission. There is no inherent reason, legal or otherwise, related to such objections that an affidavit would be needed. The effect of this is to discourage or slow down the submission of such objections. It means that political parties or independent candidates must have access to a Commissioner of Oaths during the election period. This is an absurd requirement, as it cannot be the case that each party or candidate has their own designated Commissioner available at the election results centres. This would mean that parties or candidates would individually have to make special arrangements to get such affidavits certified, or common facilities would have to be provided at results centres.

The proposed amendment to the Regulations should be abandoned, or amended to include only those situations where it is warranted.

Dealing with Incomplete Lists of Signatures

As described above, the Regulations to the Electoral Act must lay out the requirements for candidates and unrepresented parties to submit the specified numbers of signatures in support of their candidature. What is missing is any description of the procedure to be followed in the event that the submitted signatures do not fully meet the requirements of the Electoral Act.

This would include the form of notification to parties or candidates, as is done currently in relation to the submission of candidate lists for parties.

What the IEC Can Do

Notwithstanding the organisational strengths and weaknesses of the IEC, there are some particular areas where proactive approaches could improve the electoral climate, even in the short term.

Transparency

In some respects, the IEC has an excellent record of making result and other data freely available via the internet. However, there are areas where more effort could be made to publicise and disseminate information that is relevant to the electoral process. The philosophy should be to publish all available information, excluding only material where a clear reason exists for doing so (such as unverified results or protecting the identity of whistle blowers or vulnerable complainants).

In particular, where there are faults, errors, or other problems with electoral processes, these should be openly published, along with information concerning the steps taken to resolve such problems. Although this would require the allocation of specific resources, the manpower requirement would be negligible relative to the massive workforce employed over the course of an election.

Transparency should not be passive ('we have nothing to hide') but should rather be active and proactive. Transparency should always be a conscious, focused, and dynamic effort.

The key principle should be that all relevant data is so freely and openly available that there exist no reasonable grounds to suspect that anything untoward has taken place (or could have taken place).

Availability of Data

In addition to verified results that are published on the IEC website, there are some improvements and additions that would enhance the transparency of the process and facilitate more effective scrutiny of results:

1. Copies of the scanned result sheets from each voting station should be made available online to political parties, the media, and registered independent observers. This should be carried out as part of the workflow involved in publishing individual results;
2. Scanned copies of the section 43 forms relating to ballot boxes and ballot papers should be made available online to political parties and independent observers;
3. The list of voting stations whose results have been published should be displayed for anyone to access (where this shows the sequence of publishing results). This is available to the media and large groups who apply for access via the API. The facility would enable parties and interested persons to check results as they are published; and
4. All additional data captured on results returns for individual voting stations should be available electronically for scrutiny. This includes:
 - the number of ballot papers supplied,
 - the number of counted ballot papers not disputed,
 - the number of counted ballots that were disputed,
 - the number of rejected ballots not disputed,
 - the number of rejected ballots disputed,

- the number of cancelled ballot papers,
- the number of unused ballot papers,
- the numbers of special votes cast,
- the number of s 24A ballots cast.

Publication of Objections and Complaints

The IEC should maintain a database of all objections or complaints submitted during an election period, and separately for by-elections.

This database should be displayed online in a clear, accessible format, including the supporting documents (having redacted personal details of individuals providing supporting information) and the current status of the objection or complaint. A simple categorisation of types and effects of complaints would help.

It should be possible for political parties, the media and the general public to scrutinise the information and to find the particulars of any objection. In particular, the actions taken in response to each objection, and the reasons for dismissing objections, should be available for scrutiny.

Evaluate All Objections Affecting Results

Section 55 of the Electoral Act provides for interested parties to submit objections that are ‘material’ to the determination of the final result of the election’.

In practice, it is common for parties to discuss possible errors with staff from the IEC, or to submit formal objections, only to be told that the particular objection would not be material to the outcome of the election.

This response is entirely erroneous, as it is logically not possible to determine whether a particular objection is material to the outcome until all results are known. Further to this, it is logically not possible to know whether a particular objection is material to the outcome without examining other objections. The simple fact is that the resolution of objections may be cumulative in effect or they may cancel one another out.

While objections involving large numbers may seem obviously material to the outcome of an election, and those involving low numbers may seem to be not material, the numerical structure of the seat allocation process means that it is mathematically too complex to predict the outcome with certainty in relation to any single objection.

While the handling of objections should be reviewed in the Act (see below), the IEC can implement clear policy guidelines and operational practices to improve the handling of objections:

1. No complaint or query should be dismissed or discouraged on the basis that the overall result would not change. There should be a set procedure for responding to such queries or complaints that directs the complainant to the formal objections process if any results may be affected by the complaint;
2. No formal objection that relates to votes cast or recorded should be declined on the basis of it not being material to the outcome of an election; and
3. Even objections relating to discrepancies in ballots cast may have an effect on vote totals and should thus be accommodated.

Role of Independent Observers

Registered independent observer groups should be accommodated, upon a sufficiently motivated request, to observe proceedings at the national results centre of the IEC, and at provincial results centres. The Commission should invite suitable independent observers, if available, to attend the political liaison (previously, party liaison) committee meetings at provincial and national level, as empowered by the Regulations to the Electoral Act.

Suitable representatives from such independent observer groups should be allowed to observe the process of verifying and auditing results. In addition, the resolution of objections should be open to scrutiny.

Documentary Record of Result Audit Process

In addition to allowing accredited independent observers access to the result verification and audit procedures, a full electronic record should be kept of all changes and corrections made during these processes.

This record should be made available for scrutiny by political parties, the media, and accredited independent observer groups.

Communication of s 24A Change

The change to section 24A of the Electoral Act, where voters must obtain prior permission to vote outside of their voting stations, creates the possibility of large numbers of voters being disenfranchised.

Ahead of the voter registration weekends in November 2023 and February 2024, the IEC should communicate this change very clearly to alert voters who have relied on this provision in the past that they should update their registration details where necessary.

In particular, there should be targeted communication campaigns in areas and with employers where there are known to be high numbers of workers working away from their home district or province. There should also be targeted communication campaigns directed at tertiary institutions to alert students of their need to register.

After registration has closed, and in advance of the deadline for requesting permission to vote away from the voting station where registered, there should be similar communication campaigns to inform voters of this requirement and of the processes for obtaining permission.

Improvements to the Voters Roll

While the work already done to improve the quality of data on the voters' roll has been important, it is clear that further work is required in the area of data integrity checks. There are also additional proactive measures that can be considered for recording addresses in areas where this is difficult.

Examples of data integrity investigations are:

1. Checking the numbers of voters registered at a single address;
2. Checking voters registered at business premises;
3. Checking suburbs or locations in given addresses that are located in different municipalities
4. Analysing patterns of birth dates and age of voters; and

5. Identifying incomplete or malformed addresses.

The key is that active interrogation of data quality can yield positive results. One possible avenue for such investigation could be to form partnerships with universities, where suitable postgraduate programmes include analysis and research that could help in this regard.

For areas where formal addresses are difficult, the IEC could explore the use of digital addressing, where simplified renditions of geographical co-ordinates are used to identify the places that people live. There are various systems available, such as What3Words, which codes co-ordinate locations as three English words, or the Google Plus Codes system that creates a 6-letter alphanumeric code for every location.

Technically, it would not be difficult to integrate such approaches into existing mapping systems used for voting districts and for the voters' roll. Research would be required, though, to investigate the social implementation of an approach like this.

Prioritising Accuracy

When it comes to election results, accuracy should be the main priority. It is always understood that errors will be made, and that fraud may be attempted at the local level, in various forms. From an organisation standpoint, therefore, the mitigation of errors and of fraud should be a primary objective for the IEC, once the logistics of voting and counting has been provided for.

This is a mindset. The concern over accuracy is not premised on whether incorrect seat allocations have happened in the past.

It has been shown that the objections process in the Act is focused on objections arising from observing events within voting stations, and not at all from scrutiny or analysis of results data. Errors and fraud that can be detected via such scrutiny are not anticipated in the Act.

A further legislative problem is the caveat that objections should be material to the outcome. While it is clear that trivial concerns over procedures or events should not be allowed to interrupt or delay the process of finalising results, the Act implicitly downplays small or individual errors. It could be said that this translates into the mindset of some who work for the IEC. As recommended above, no concern over accuracy should be summarily dismissed.

Prioritisation of accuracy should be driven from the top down. This does not have to be a punitive approach, but rather one where detection and correction of errors are sought, and applauded. The culture of valuing accuracy should be driven both implicitly and explicitly within the IEC. This can also be communicated externally, to the government, political parties and to the media.

To improve accuracy, it is clearly necessary to obtain an objective view on how accurate past election results have been.

In addition to researching voter satisfaction, the IEC should be researching the accuracy of published election results, in conjunction with relevant outside entities. This should be done retrospectively, perhaps over the past three election cycles for both national and provincial elections, and for local government elections.

Electoral Integrity Project

The writer is currently engaged with various civil society bodies to form an electoral integrity project that will contribute to various aspects of the electoral process. The aim is to provide constructive support to the work of the IEC.

For instance, the Electoral Act makes provision for independent observers. One aim is to provide co-ordination, support, and information-gathering for the efforts of independent observers. Other initiatives are aimed at the validation of published results.

Planning and preparation for the project are under way, and more information will be available in due course.

What Civil Society Can Do

Civil society can play a crucial role by organising to ensure that there are independent observers present at most, if not all, voting stations. It would be helpful if both the voting and counting processes were observed.

This is a major undertaking, but we have a strong and vibrant civil society at various levels. Importantly, this does not require only large, well-funded groups to be a success. Local groups of concerned citizens can play an enormous role of volunteering to observe the elections in their own district. There will also be many opportunities for individuals to volunteer their time to assist the various initiatives under way.

It would also be helpful if larger groupings such as churches and trade unions were to become actively involved in promoting such efforts, and in taking a stronger interest in the integrity of electoral processes, and in the accuracy of results. Where needed, such groups could engage in lobbying, and in speaking out in support of responsible, objective approaches to electoral integrity, and against unfounded or irresponsible claims made opportunistically

What Political Parties Can Do

Political parties already do a great deal through the deployment of party agents in voting stations. For parties to make an even greater contribution to the integrity of electoral processes, there are a few additional steps that they could take.

Firstly, it would help for political parties to consider the overall importance of electoral integrity as a priority, beyond their own particular interests in individual results. It is not always possible to predict with particular errors or anomalies what the effect on the overall outcome will be. Often, an error affecting one party can change the outcome for two other parties, because of the proportional representation calculations.

It would be helpful for more parties to dedicate a few of their people to follow up on the process of checking results, and to be willing to submit objections, even where these do not appear to affect their own results.

Political parties could also collaborate in the placement of party agents in voting stations where many parties do not have the resources to cover all locations. Everybody benefits from having party agents and observers in all locations.



Parties could also collaborate in relation to training of party agents, to be able to pick out the most common errors or avenues for electoral fraud.

Ideally, political parties could conclude an electoral integrity pact, unrelated to any other political considerations, or planning for potential coalitions. Aside from co-operating in relation to procedures and the accuracy of results, a key component of any electoral integrity pact would be the commitment to refrain from making vague or generalised accusations of election-rigging.

It is essential that any such claims be supported by direct evidence and directed towards the specified legal processes designed to confirm or dismiss such claims.

What the Media Can Do

As much as the media must perform the normal analyses of results and explore the political implications of election outcomes, it would be helpful for the media to devote explicit attention to irregularities and errors in results. In particular, it would be very helpful for stories to be followed up, as anecdotal accounts have a tendency of being forgotten very quickly.

What could be done is for the media to ask the IEC for updates on all objections submitted, and the status and outcomes of each. Where objections are not sustained, media outlets could ask the IEC for the reasons. Media outlets could also consider adding a dashboard on their websites, showing the numbers and status of objections.

It could also add value if the media were to interview representatives of civil society groups involved in observer efforts to obtain a perspective informed by those directly connected to the electoral process. This would also serve to raise the profile of civil society efforts to contribute to electoral integrity.

What Business Can Do

Clearly, the business community in South Africa has a direct interest in the integrity of the electoral process, and in the avoidance of social upheaval that might result from spurious claims of election rigging. And, if there have been election irregularities, it is in everyone's interests that these are addressed as effectively and speedily as possible.

What business could do is to support any civil society initiatives aimed at upholding the integrity of electoral processes and outcomes. This could be done at both a national and a local level. Where civil society organisations are deploying independent observers, businesses could support these efforts in both cash and kind.

One possible initiative could be to 'adopt' a voting station, where food and other support is offered to volunteers observing elections. Companies can also encourage staff members to participate in ensuring electoral integrity out of a sense of civic responsibility.

Changes to Electoral Law

Objections Relating to Recording and Capturing of Results

The Electoral Act makes no explicit provision for the submission of objections other than those arising within voting stations, relating either to the voting or the counting process.

‘55 Objections material to final results of election

1. Any interested party may lodge with the Commission an objection that is material to the determination of the final result of the election, in respect of proceedings provided for in –
 - (a) Part 1 of Chapter 4 concerning voting; and
 - (b) Parts 2 and 3 of Chapter 4 concerning the counting of votes.’

However, the Act does not describe the process of capturing results electronically, or the process of making objections relating to errors that may occur in the capturing of results. It is implicitly assumed that no errors will be made after results are transmitted to the IEC electronically, or that all such errors will be detected and corrected. Obviously, this assumption cannot be relied upon.

In practice, the IEC has accepted objections that arise from examining the published results, rather than merely the anticipated objections arising from within the voting and counting processes.

Section 55 of the Act should be rewritten to provide explicitly for objections arising from examination of the published results. A logical consequence of this change should also be that the normal deadline for the submission of objections should be a set time after the last voting station result has been published. It should not be standard practice to rely on the exception of condoning late submission of objections.

This, in turn, opens for question the timing of the determination and announcement of the result. Section 57(3) of the Act says that the result may be determined and announced even before all results have been received, with vague provisos relating to undue delays.

Essentially, the whole of sections 55 to 57 should be re-written to create logical consistency. If the period for submitting ordinary objections must be extended, and if the result may not be determined until all (ordinary) objections have been considered (in terms of s 57(2)(b)), then it follows that the existing sequence outlined in the Act is inconsistent.

Objections Should be Accepted from Accredited Observers

Given the fact that the effect of individual errors in results might not be apparent until all errors are considered, and the fact that errors directly relating to one party may have an effect on others in the seat allocations, there is a strong reason to allow suitable neutral entities to analyse results, and to submit objections. Some smaller parties do not have the resources to analyse results, or to predict how certain errors may affect them, while parties generally will not object to results perceived to be harmful to their own interests, or even to those not directly affecting them.

Therefore, there should be explicit provision to allow accredited independent observers to submit objections in relation to errors where sufficient cause for concern can be shown.

POPI and Redaction of voters roll

Given the legitimate concerns over POPI, the IEC no longer makes available copies of the voters’ roll with full ID numbers. This creates an immediate problem as it becomes much more difficult to carry out database checks by uniquely identifying voters.

Properly, versions of the voters' roll with full details should be made available to parties in order to allow correct scrutiny. The right to privacy is understood, but this cannot stand in the way of the right to free and fair elections, for which ongoing validation of the voters' roll is important.

If there is definitely no lawful means to make the full details available, then some form of hashing function should be used, where each voter is uniquely identified by a code derived from the full ID number, but where there is no direct means to reverse-engineer the codes to obtain the original ID numbers.

Conclusion

Elections and electoral processes are contested terrain. Around the world elections face growing threats relating to disinformation, manipulation of process, and the possibility of spurious claims of rigging. Many have expressed concerns that democracy is in decline, and social media seems to have contributed, perhaps counter-intuitively, to greater social polarisation. The incentives to use or abuse electoral processes for ulterior agendas are increasing. It used to be that there were things in society that were supposed to work, with no fuss or bother. We can no longer make this assumption about elections.

Therefore, we need to think about elections differently.

We know that democracy is about so much more than elections – due process, transparency, inclusivity, and the rule of law are indispensable. And yet, if the integrity of electoral processes is compromised in any significant respect, the whole edifice of democracy can come tumbling down. So, as much as we need an active civil society to get stuck into the problems of the country, we also need a robust, active approach to elections.

Although the behaviour of some politicians has led many to despair of democracy and voting, the moment we stand in the voting booth is one of the most profound. At that point, each person is as important as any other person in the country. My choice, my reasoning, counts as much as those of any other. My age, education, race, gender, bank balance, religious beliefs, are worth no more and no less than the least or the greatest among us.

It is necessary for us to preserve the sanctity of that moment, and of each vote. It is necessary to ensure that we have a fair and equitable electoral system, and it is necessary to ensure that nobody either robs us of our vote through errors or fraud, or dilutes it through ballot stuffing. For this to happen, the importance of electoral processes must be higher in our priorities, collectively. In addition to preserving and improving the integrity of processes, we have to ensure that trust in those processes and outcomes is also preserved. This is not something that will happen of its own accord, without conscious, proactive effort from all of the key people and institutions involved.

The IEC rightfully enjoys a great deal of respect as one of the institutions in the new South Africa to be a success story. It has had to face some extremely challenging circumstances, financial constraints, and logistical difficulties, and has weathered these storms well. Without in any manner detracting from this, the observation can be made that success is its own trap. Excellence is not a static thing – it can exist and grow only through continual nurturing and continual improvement. Uncritical praise serves to detract from this striving for improvement.



The IEC has always had a sound technology platform that gets the job done. Recent improvements in server capacity and the use of VMDs will make a positive difference going forward, but in other respects, systems and processes have remained static.

Two areas of concern are the accuracy of data and results, and the responses and communication when problems occur. This has not attracted much attention in the past, but could become critically important in the coming years.

Maintaining an accurate voters' roll is extremely challenging with so many living in rural areas or informal settlements. Improvements in recent years with respect to addresses are encouraging, but problems remain. While the overall outcomes of elections have not been invalid, there have been problems with the accuracy of results going back to the inception of the current systems. Recording, capturing, and validation processes have not been good enough.

What we do not see in public from the IEC is decisiveness, or a sense of urgency, in grasping the nettle when things go wrong. The standard response seems to be to play down the nature of problems. While the IEC may well get on and resolve issues in the background, its public communication does not inspire confidence.

This brings us to the important questions of how ready the IEC will be for the 2024 election and whether we can expect any major problems in the preparations for the election, the voting, and then in the counting and determination of results.

There are clearly risks involved with the changes to the electoral system and with the potential consequences of the constitutional challenges to the Electoral Act. However, the underlying organisational soundness of the IEC, together with the fact that the IEC has successfully negotiated very difficult situations in the past, means that the election should be conducted successfully in the main.

However, there may be some delays in voting and counting, and there is the possibility of larger-than-normal numbers of objections to the results.

It is not clear how well the IEC would deal with either concerted electoral fraud, or with multiple unsubstantiated claims of election-rigging. It has not been sufficiently proactive or transparent to build the public trust required to see off challenges of this nature.

This is where civil society can potentially play a very important role in providing ballast that would steady the ship in what might be very stormy seas in the aftermath of the election.

As much as many are looking to the 2024 election as a crisis point, or cathartic process, the fact remains that elections and electoral processes are likely to be a point of contention for some time to come. We simply cannot allow political tensions to be exacerbated by defects in our electoral systems. It is time for much more proactive support for the integrity of electoral processes.



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