PRESS STATEMENT FOR IMMEDIATE RELEASE

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Independent Candidate Association lodges papers in Constitutional Court to challenge New Electoral Act

Today the Independent Candidate Association of South Africa (ICA) has launched papers in the Constitutional Court, challenging the recently passed Electoral Act, which we believe is irrational and unconstitutional.

For the past 5 years, the ICA and several civil societies have been actively involved in our plight to honour our Constitution so that all citizens are equally entitled to rights, privileges and benefits of the law. Central to this is securing a stronger electoral system whereby voters can directly elect and hold to account their public representatives.

Unfortunately, the decision by Parliament and the President to pass the Electoral Amendment Act of 2023, flies in the face of this. They have failed civil society, disregarded our voices and submissions. Almost three years after the government was ordered by the Constitutional Court to change the laws governing elections to allow for independent candidates to stand for office.

Both Parliament and the President were routinely warned that the proposed new law, as it was then, will not pass constitutional muster. It does not give full expression to the Constitutional Court's ruling in the New Nation Movement judgment which found the system by which we vote and elect our leaders to be unconstitutional.

Today's action is to launch a legal challenge to declare the Electoral Amendment Act unconstitutional. We remain of the belief that the act is unconstitutional and that it does not pass the requirement of "one vote is equal to one seat" and does not pass the constitutional provisions of " in general proportionality".

We believe that the constitutional rights and principles infringed are the following:

The court ruled in the New Nation Movement judgment that the right of independent adult citizens to stand for office has to be accommodated. It was incumbent on Parliament to design a system which accommodates them fairly and and not to adopt one which makes it considerably more difficult for independents to be elected for no good reason.

The 200-200 split in Parliament currently proposed (200 directly elected MPs; 200 PR list MPs) violates a number of overlapping chapter fundamental rights and other fundamental constitutional concepts.

We are asking the court to decide whether the electoral system fairly selects candidates for the purposes of representative democracy.

Firstly, the 200-200 split is arbitrary and contrary to the rule of law in section 1(c) of the Constitution. There may be a need for compensatory seats, but there can be no justification for selecting 200 as the number - other than the improper purposes of undermining the prospects of an independent getting elected.

Secondly, the 200-200 split violates section 3(2)(a) of the Constitution . The right to vote and to stand for public office is the right and benefit to which all citizens are equally entitled to. A vote for an independant for the National Assembly however, carries far less weight for no good reason.

Thirdly, the 200-200 split violates section 9.1 of the Constitution in that it arbitrarily differentiates between independent candidates and political parties. Although there may be a legitimate objective to having compensatory seats, this does not extend to a rise in the number of such seats to 200.

Fourthly, the 200-200 split violates section 19(3) of the Constitution because the right to a vote has equal weight and the right to stand for public office has an equal chance of being elected. The 200-200 split makes a vote for an independent count less towards the outcome and makes it more difficult for such a candidate to be elected for no good reason.

Fithly, the 200-200 split violates section 19 (2) of the Constitution which provides that every citizen has the right to free and regular elections. It will undermine the fairness of the outcomes of the elections.

Sixthly, the 200-200 split violates section 4(6)(1)(d) of the Constitution in that the electoral system elected could no longer result in “in general proportional representation” in that due to the unequal treatment of candidates, there is bound to be a large number of wasted and access votes for Independents and will be re-allocated to parties - skewing the outcome .

We remain committed to be a constructive force and our remedy is for the split to be 350-50. That is 350 directly elected MPs via a constituency based system, and 50 compensatory PR MPs. We will argue this is the most fair split, it will limit excess and wasted votes and give independents a fair playing field.

After five years on the trajectory of electoral reform, we have come to the conclusion that there are no perfect options . However , nobody is coming out to save us and there is no knight in shining armour. It remains up to us to remain courageous and sincere in our motives and do what is constitutionally correct.

We owe it to the people we serve and choose our collective legacy.

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