



South Africa

29 June 2023

The Role And Challenges Civil Society In South Africa Has In Relations To Elections

Let us start briefly with the law we will be using in 2024. It is absurd, it may be silly, but there is a good chance it is constitutional, and so we will be using from now on until 2024 – after which I do hope it will be confined to the dustbin of history, as was the floor crossing schemozzle.

Let me pose a scenario. Zachie Achmat, a gay Salt River community activist with leftist leanings and a propensity for state intervention overcomes all the hurdles the Act puts in his way, competes in the election and does extremely well. In fact, he does better than 35 of the parties that competed in the last election. He wins one seat in the National Assembly – but many thousands of people who voted specifically for him have their votes cast back into the counting pool, because however well he does, he can only hold one seat.¹ The parties lick their lips because those votes – specifically not for them or any other independent candidate, carefully considered – are now up for grabs.

But that is not all. After taking up his seat in Parliament Zachie's health declines. (We will assume he does not get disillusioned by always being at the back of the party queue for jobs, committee posts, speaking time and so on). He has to resign. His supporters are ready – they have a min-Zachie already lined up for the by-election. But there is no by-election. No.² Somewhere in the Northern suburbs a rich free marketeer managed to almost get enough votes through his campaign of misinformation against the ANC and the state. Apparently, the nation now turns to him to take up Zachie's seat, because after all independent candidates are interchangeable.

Don't believe me. Read it and weep.

¹ Schedule 1 A as amended section 7 (2)(a) ff

² Schedule 1 A as amended section 23 (2)

But more importantly than all this – because it is entirely possible that independent candidates will realise this and rather just create lots of little pop-up parties, this law does not address any of the election issues which civil society groups and active citizens have been complaining about, nor does it deal with our particular political malaise, about which a bit more later. I have spent last week with ten community organisations and their leaders – in KwaMashu, Marrianridge, Mbombela, Elim, Alexandra, Uitenhage, Mbizana, Flagstaff, and Marikana.

They are worried about the risks to real community based independent candidates based on their experience of elections at ward level – no go areas, threats to life – and on the quality of many independent candidates – disgruntled former party people who lose a primary or get told their time is up – which increases intra-party violence, especially if these candidates know where skeletons are buried.

Like us, they see the gap between the average age of registered voters and the average age of eligible citizens expanding. And they worry about how to persuade younger people to register and vote – even though they spend nearly all their available resources running programmes to get people registered and voting. I heard of one campaign which offered to take young people to Home Affairs to get their IDs sorted out; another which resorted to telling people to register to vote not because they believed it would make a difference to their lives but because it would mean they finally had a desperately need proof of residence for all the FICA bureaucracy they encounter. Their strongest message – that there is a link between voting and service delivery – may be less useful in 2024.

They talked about how political parties interrupted their programmes and the threats they faced because they were providing independent education about our polity, governance, and the manner in which voting establishes the governments which impact our lives for good or ill.

And they groaned out loud when I suggested that they tell people it was their civic duty to vote because of the blood that was shed to bring them democracy – the scepticism about that word, brought on by the conditions within which their communities live and their experience of state services is perhaps a discussion for another day. But if persuading people that voting in national elections will actually lead to a better life is difficult, I am absolutely sure that these organisations will have particular difficulties persuading people to vote for provincial legislatures – they have for years now just been engaging locally or leapfrogging our provinces – who “don’t ever reply” – to national advocacy and litigation.

But back to the elections – in my workshop I had agents of change who had been Presiding Officers, Party Agents, and Observers – they saw all of these as potential routes of active citizenship in an election. In fact, they were pretty sure that finding young people working

roles during election time was more likely to get them to vote – participation in elections was a corollary to participation in the society more broadly.

They observe that the elections are already on – the Premier of Gauteng’s job drive is not interpreted as a result of his recent elevation but driven by the looming election and gloomy polling. They expect more of this. They also expect the usual political frisson and state incapacity that occurs during primary season – a frisson that collapses into violence in certain parts of the country.

And they expect continuing misinformation and disinformation to confuse potential voters – sometimes merely the result of the rush of spectator coverage from countries with larger social media and journalistic presences; sometimes manufactured to support party factions; and more occasionally between parties. There seems to be a particularly pernicious, if small, network of Facebook pages promoting the idea that the votes of those who choose not to vote are allocated to the ruling party.

That confusion is not going to be helped when people realise that they will have three ballot papers next year, and that two of them are going to have a combination of parties and independent candidates on what may (or not) be a compendium rather than a sheet of paper. But those of us here will have no difficulty explaining the Provincial, Regional and National Compensatory ballots, and if the IEC have the time and resources to continue to roll out their truly admirable online presence and technical capacity, voter information should not be too difficult if parties also do their part by giving accurate rather than merely partisan advice.

This amendment to our electoral system has been a long time coming – once a decision was taken not to bother with the Van Zyl Slabbert report – neither the main recommendation nor the minority suggestion – criticism of the simple, accessible, and fair system adopted from 1994 has grown. Most of the criticism ascribes the decay of political ethics and belief in the efficacy of the vote to this system in which parties and party control of elected representatives are preferenced over a direct relationship between an elected representative and the voters of a particular locality. The assumption is that political accountability will be enhanced and identification of voters with the elected body, because of their knowledge of particular representatives will increase. Forgotten are the values of inclusiveness – both of quite minute groups in society and of women and minorities – and of party accountability – that understanding that even large long term decisions affecting communities can be traced back to the party that proposed it, the parties that voted for it, and the parties that had responsibility for the implementation of the decision. In 2024, the entry of independent candidates is likely to make it even easier for parties to shrug off this responsibility and, as has been their wont for some time, to run ‘against themselves’. The data on South Africans’ disillusion with elections and our present electoral system is well documented through the Afrobarometer, the braai conversations, the WhatsApp groups, and the column inches in our newspapers.

People have an ambivalence about the coming election – nothing will change, everything will change. And within this ambivalence is some anxiety – anxiety about the stability of any governments that are established following the elections because of their experience of living in cities where Mayoral chairs are shiny with the number of people sitting and slipping from them; and anxiety about whether parties will take actions to prevent change – manipulating the sentiments of voters, channelling fraudulent votes into the counting process, hacking the vote consolidation, or undermining trust in the announced results. This is not the place to think about the first of these anxieties. But the second does seem to be amplified by the lasciviousness with which people and the media follow the shenanigans of the Trumps of the world, look with amazement at the internal election behaviour of the two largest parties, and contemplate the state capture report where so many state institutions have been corrupted by private interests. South Africa has a very robust and transparent electoral system, but this time around things which have in the past been taken for granted may need to be taken out, dusted off, and used properly – like the codes of conduct, the accessibility of voting and counting to all contestants’ agents and observers, and to ensuring that the IEC’s independence is protected and promoted – both at the national level and in voting stations, where the selection of officials beyond reproach and with community legitimacy will be critical.

We are gathered today because of this risk. But election observation has an intrinsic flaw – seen most recently in Sierra Leone – it sees that things may be going wrong, in part or completely. But it cannot stop what it sees, and in many cases is concerned more with the greater damage that might be done if an election result is declared to be illegitimate. As importantly, it places its major effort on election day and poll watching, by which time ‘the steal is over’, as one might say.³

Civil society need to consider an support programme throughout the electoral cycle, from the selection of IEC Commissioners (as is happening this week), through engaging with the quality of election law and regulation, the practice and performance of parties and their funding mechanisms, the extent to which voters are able to participate in governance between elections, especially in regard to regulatory and procedural integrity and record keeping on the part of legislatures, and then as the elections draw closer the access of eligible voters to registration⁴, voting sites, and accurate information about the election, the timing of the election calendar and in particular scrutiny of the voters roll and candidates, the transparency of results and trust that their vote has indeed been counted and allocated correctly, and a competent and trustworthy establishment of the new governments. Such a programme will field observers and community conciliators at appropriate times in the cycle, I am sure – but it will also contribute to the success of the elections in many other ways. We have the building blocks for this – the vigorous campaign over the amendment to the electoral act, the fight about party funding law, the innovation around information reliability, the many organisations already undertaking voter education – but they are only partially aligned and joined up, and there are gaps and difficulties with revenue models. We did this before, and I am sure we can do it again.

³ Cheeseman & Klaas, *How to Rig an Election*, Yale University Press, 2018

⁴ We still don’t know why this cannot be an automatic process based on the acquisition of an ID.

South Africa establishes around 23 000 voting stations on election days. Many of these will operate routinely, be staffed by competent independent officials, have agents from more than one political party, be visited by one or other of the observer missions, and have well informed and regular voters. Counting will be straightforward and not take too long. By now we must surely be aware of the problem areas – overcrowded stations, volatile areas, places where party homogeneity suppresses other voter choices or access to the voting station, places where chaos can provide cover for vote packing – these are the places where the IEC will want to place extra effort, where domestic observers may be most needful, and where management of information and misinformation will be essential.

In a context where doubts exist about the outcome of the election – either because of lack of trust in the election management body or perhaps, to support them against the noise of parties wanting to undermine trust in their results, parallel vote counts (a carefully designed sample of voting stations observed closely and the results independently tabulated) are a critical tool. Are we in this context? Or do we feel we will be in 2029 and therefore should be testing this technique next year? If so, civil society will need to learn from other countries and start work on this pretty soon.

In the past I argued that the IEC should play a role, using its convening and statutory power, in convening civil society actors around the support roles I have mentioned above. I do not know whether it continues to do this, but in my limited experience at the time, I underestimated the inflexibility of any statutory body to respond to the dynamics and complexity of civil society and their understanding of what they could and should do. The forum I saw in operation became a moribund gathering of all civil society actors broadly defined seeking a role and resources rather than a space where those already running autonomous programmes enter into regular and routine dialogue with the statutory duty bearer. Things may have changed – but I would now make the argument that civil society should do the convening and inviting – taking its own agency, even if this results in less cohesion, it is likely to result in more authenticity and more activity.

During elections, there are roles for people who are not able or willing to take part directly in the hurly burly – this is now accepted globally, in part because of the groundbreaking practice of our own IEC. International observer groups will come looking for domestic observers, however constituted. With a year to go, more or less, this initiative can do much to make the 7th democratic election, taking place during the 30th anniversary of us achieving the freedom which makes our country so vibrant and places the future so squarely in our own hands, a free, fair, credible, and legitimate exercise in choosing who will govern and how.