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The Electoral Amendment Act (1 of 2023): A Challenge to Women Representation in Electoral Office in South Africa

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Abstract

South Africa passed the Electoral Amendment Act (1 of 2023) in April 2023. This act enabled independent candidates to contest national and provincial elections. The number of women in electoral office in South Africa has increased exponentially from 29% (NA) in 1994 to 36% (NA) in 2019. Whereas the seats at the NCOP moved from 31.5% in 1994 and 46% in 2019. The number of women contesting as independent candidate was low in 2024. Equally, the number of women candidates on party lists for both National Assembly and the National Council of Provinces was below 40%. This study evaluates the Electoral Amendment Act (1 of 2023) and the challenge it poses to Women representation in electoral office in South Africa. The author argues that the Act does not support or favour the increase of women in electoral office.

Keywords: Electoral Amendment Act, Women representation, Elections, Gender, Electoral office

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1. Introduction

On 11th of June 2020, the Constitutional Court of South Africa (herein referred to as the Court) handed down judgement in *New Nation Movement v President of South Africa* matter. The court ruled that the Electoral Act of South Africa (SA) (Herein referred to as the Electoral Act) was inconsistent with the Constitution as it did accord measures for independent candidates to contest elections for the NA and Provincial Legislatures ([Constitutional Court, 2023](#)).

As a result, the President of South Africa signed the Electoral Amendment Bill into an Act on the 17th of April 2023 ([Republic of South Africa, 2023](#)). This amendment was made in compliance with the court's judgement by adding independent candidates as contesters of national and provincial elections in S.A, and other related provisions ([Republic of South Africa, 2023:2](#)). However, O'Regan (2024) reports that the IEC had only recorded sixteen submissions from potential independent candidates who sought to contest the 2024

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elections, and only two of them were women. This study evaluates the Electoral Amendment Act (1 of 2023) and the challenge it poses to women representation in electoral Office in S.A.

2. Methodology

A conceptual review of different literature sources and relevant websites, journal articles was conducted. That data was harvested from electronic sources and only narratives relevant to the title of the study was used. The study is one dimensional as covers on the qualitative side of the research. It largely looks at the challenges posed by the Electoral Amendment Act to women representation in electoral office in S.A.

3. Background

The much-publicised landmark Constitutional Court judgement of the 11th of June 2020 created an opportunity for independents to contest national and provincial elections (O'Regan, 2024). According to the Constitutional Court (2023) from 1994 to 2019, the election of representatives in the National Assembly (NA) of South Africa (S.A.) was based on a two-tier compensatory system, which filled the 400 seats in the NA. The other 200 seats were filled from regional lists submitted by political parties and 200 were compensatory seats based on the national lists of political parties.

The notion of independent candidates was long applicable at local government where ward councillor positions were contested by both independent candidates and political party candidates. O'Regan (2024) reports that South Africa has already seen a rise in the number of independent candidates during the 2021 local government elections.

According to Gender Links (2024), South Africa's women representation in electoral office rose to 43% in 2009. Furthermore, Thwala (2023:116) tabulated a reflection of women representation in electoral office from 25 countries and reported that S.A had already achieved 36% women representation in the NA and 46% in the National Council of Provinces (NCOP) in 2019. It is important to always differentiate between number of women in the NA (with 400 permanent seats) and the NCOP (with 90 permanent seats).

Women in S.A. are faced with discrimination, and inequality in various aspects of life, including politics, illiteracy, lack of capital, discouragement from spouses, to mention but a few. These challenges are some of the barriers to women active participation in politics. They obstruct the participation of women in electoral office (Ofusori, 2023). Globally, women are according to Bibler *et al.* (2014) continuing to endure marginalisation and underrepresentation in electoral processes and the public office itself. Therefore, it is not easy for women to contest for electoral office. To this end, S.A. has not adopted electoral legislation that directly creates a favorable ground increased women in electoral office or regulate equal representation.

4. Why is the Electoral Amendment Act (1 of 2023) Posing a Threat to Women Representation in Electoral Office in South Africa?

4.1. The Challenge of the 200 National Seats and 200 Regional Seats

The split of the 400 seats to and the allocation of 200 seats to national ballot and 200 to the regional ballot (direct proportional representation from each province) does not put in place a mechanism to ensure women representation. Gender Links (2024) analysis of party-to-party women on regional and national lists were both below 40%. As already stated in the introductory section of this article the list independent candidates at provincial level was dominated by men. Table 1 below compares party women representation in S.A. 2024 national and provincial elections.

Table 1 indicates that women representation in both national and regional lists of 15 political parties contesting the 2024 elections in S.A. was below 40%. It was also not given that all the women appearing on the political party list would be elected. Hence the risk of decline in the number of women in elected in 2024 was high. In addition, Thwala (2023:117) observed that election of women through constituencies was difficult. The contestation of Women as independent candidates is unlikely to enhance the number of women in electoral office as men dominate the political arena in South Africa. Out of the fifteen political parties reflected in Table 1 above none is led by a woman.

Table 1: Party to Party Comparison of Women and Men Candidates in the 2024 National and Provincial Elections

Political Party	National Seats (200)		Regional Seats (200)	
	Female	Male	Female	Male
African National Congress (ANC)	52%	48%	50%	50%
Economic Freedom Fighters (EFF)	48%	52%	51%	49%
United Democratic Movement (UDM)	45%	55%	28%	72%
Rise Mzansi	44%	56%	39%	61%
Inkatha Freedom Party (IFP)	42%	58%	23%	77%
Build One South Africa (BOSA)	39%	61%	33%	67%
GOOD	37%	63%	33%	67%
Democratic Alliance (DA)	37%	63%	27%	73%
African Christian Democratic Party (ACDP)	36%	64%	39%	61%
Patriotic Alliance (PA)	35%	65%	45%	55%
Umkhonto Wesizwe Party (MKP)	30%	70%	33%	67%
CONGRESS OF THE PEOPLE (COPE)	24%	76%	33%	67%
VRYHEIDFRONT PLUS (VF+)	21%	79%	27%	73%
ACTION SA	17%	83%	21%	79%
Total	39%	61%	36%	64%

Source: Gender Links (2024)

4.2. Funding and Cost of Contesting Elections

Thwala (2023:119) noted that the UNDP, the UN Women (2015:65) and Ndirangu *et al.* (2017:745) raised the issue of escalating cost of candidate registration as a barrier to women participation in electoral office. The cost for registration (a deposit required by the IEC) and campaigning against well-oiled political parties further affect independent Women candidates in South Africa and the world.

Thwala (2023) raises a concern that raising funds for election registration and campaigning will be difficult as it compete with other family priorities, and poverty. According to the Republic South Africa (2022) women unemployment in South Africa was already standing at 35.5% in the second quarter of the year 2022. StatsSA further report that about 47.0% of women were economically inactive in S.A. during the second quarter of 2022. These figures further indicate the complexities facing women in contesting elections as independents in the country.

To this end, the Electoral Amendment Act (1 of 2023) does not provide measures that give female candidates a relief from the heavy financial burden posed to economically inactive and downtrodden women to participate in the elections. Furthermore, the economy of South Africa has gender and colour. The current electoral design in S.A. favors the more economically active gender (male) and the more privileged white females. This observation is also made by Thwala (2023:23) that African women do not possess the financial resources to withstand their male counterparts.

In addition, Ofusori (2023) argues that Women in SA are exposed to limited financial resources and political networks. The author further indicate that financial resources and political networks are crucial for entering and successfully contesting for electoral office. Ofusori (2023) also indicate that the cost of campaigning and

participating in political activities is expensive, and women could find it difficult to access funding and support for their campaigns.

Thwala (2023:119) recommends that the exorbitant registration fee for independent candidates should be reduced. The author further calls for a deliberate financial support programme for women contesting elections. Such a support should be given in preparation, during and after the elections. The financial support to women candidates should be given by both the IEC and political parties

4.3. Gender Stereotypes against Women Independent Candidates

The UN Women (2020:10) observes that women contesting for electoral office are exposed to different threats (both psychological and physical) which discourages women from contesting the election. It would be difficult for female independent candidates to contest the elections against the male dominated and men led political parties. Whilst South Africa has adopted the principle of 50/50 gender parity, the journey towards eliminating the gender stereotypes in the electoral environment is still long.

There is also an underlying risk of exposing independent women candidates and to a larger extent female candidates to sexual harassment as they canvass for the electoral support. According to Ongaro *et al.* (2019) during the 2017 general elections in Kenya a female candidate would on more than one occasion feel her breast being touched or fondled by the potential voters. This places the candidate in a difficult decision-making process. Either ignore the act and focus on winning support of the voters or addressing the experience violation and alienating herself from the potential voters.

As a result, Thwala (2023) recommends (i) the adoption of special measures for the protection of women candidates (including independent women candidates) during the elections to prevent harassment, (ii) and replacement of woman by another woman where a seat is lost in the midst of the term of office to maintain the gender balance. In addition, Banda (2021:5) recommends that countries must allocate sufficient resources for capacitation of women at the last year before the elections are held.

4.4. Difficulty in Running an Individual Campaign for Women Independents

In contesting elections, the women independent candidates would be expected to go into male dominated sectors of our societies and canvass for their support, conduct door to door at households and farms. Thwala (2023:23) observed that women's participation in elections is hindered by political, legal, social, economic, and social barriers arising from their gender. In addition, the author notes that little effort is put to protect women candidate from various forms of victimisation despite the well documented challenges.

In addition, Ofusori (2023) also wrote that women are under-represented in almost all the leading political parties and top positions in SA, and this has led to the extension of gender inequalities in various sectors of the country. Therefore, political parties in SA can collectively resolve the under-representation of women in electoral office. It is recommended by Thwala (2023:119) that the Act should have a clause that (i) institutionalise the quota seats allocated for the empowerment of women and achieving equal representation, (ii) and that women should be trained continuously on leadership and electoral processes.

4.5. Gender Sensitising the Electoral Act in SA

At present, it can be deduced that the current version of the Electoral Act is inadequately gender sensitised. It poses a risk to the goal of increased women in electoral office. Therefore, there is a need for a legislation governing elections in SA and subsequent regulations to be considerate of the material conditions confronting women in the country. Bibler *et al.* (2014) argues that there is need for development and adoption of gender sensitive electoral laws.

The gender sensitive legislations must in particular address registration fees and candidates' processes, the funding of campaigns for women in general. South Africa should therefore undertake a review of all elections related legislation whether they are favorable for increased women representation in electoral office. Furthermore, the legislative review should also assess the electoral system and ensure that it sustains the representation of women in electoral office. Ofusori (2023) cautions that some electoral systems might not be conducive to promoting women's representation. The single-member constituencies can discourage women

due to the gender stereotypes experienced women candidates. The author recommends that proportional representation are ideal for increased women representation.

5. Conclusion

In the aftermath of the New Nation II judgment on the 11th of June 2020, Parliament was according to the Constitutional Court (2023) obliged to design an electoral system that would accommodate both independent candidates and political parties. This culminated in the adoption of the Electoral Act Amendment Bill by Parliament and the subsequent signing of the Electoral Amendment Act (1 of 2023) by the President of South Africa in April 2023. However, the electoral amendment act poses a threat to increased representation of women in electoral office in the country. Primarily, the threat is imposed by the socio-economic barriers affecting the ability of women to contest for electoral office.

At the apex point are the cost factors (candidates' registration fees, campaign fees). The author thus conclude that the act missed an opportunity to redress the barriers to increased women representation in electoral office. The Electoral Amendment Act creates a favorable platform for a lesser number of women candidates both independent and political party candidates. The amended electoral act in its current design justifiably reduces the probability for increased women participation electoral office and equal representation in public office. The two houses of parliament of S.A. and the nine Provincial Legislatures (who conferred the mandates to the NCOP) did adequately look at the amendments through gender lenses, this should be done through all legislation that are processed by parliament and legislatures.

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