



EISA Election Observer Mission to the 2019 National and Provincial Elections in South Africa

Preliminary Statement

1. Introduction

This statement presents the preliminary findings, conclusions and recommendations of the EISA election observer mission (EOM) deployed to the 8 May 2019 national and provincial elections in the Republic of South Africa. It reflects the mission's observations as of the conclusion of the counting process at voting stations. Because the transmission and tallying of results is still underway, this statement does not cover the EOM's assessment of the election results management process. EISA will issue a final report covering the entire process about three months after the close of this mission.

2. Preliminary findings:

2.1. Political environment

The 2019 elections are the sixth consecutive democratic national elections held in South Africa since the transition to democracy in 1994. Since the country held its first elections by direct universal suffrage 25 years ago, these elections represent a critical milestone in the country's democratic journey.

These elections are arguably the most competitive in South Africa's history, 76 political parties contested the election at both the national and provincial levels. At the national level, 48 parties contested the election, representing a 40% increase in the number of parties on the national ballot, 38 political parties contested at the provincial level although the number varied by province. With 36 parties on the ballot, Gauteng Province had the highest number of parties. The increase in the number of parties suggests that political competition is increasing.

The pre-election context was shaped by several factors: the outcome of the 2016 municipal elections; enquiries into cases of corruption and the debate on 'State Capture'; the leadership transition within the governing African National Congress (ANC) violent service delivery protests; alleged political killings and xenophobic attacks in some regions; and the recent flooding across parts of KwaZulu Natal (KZN) and Eastern Cape provinces. These issues shaped the tone of the campaigns and raised concerns about electoral security and operations.

Within this context, the EISA EOM notes the commitment and engagement by the Independent Electoral Commission (IEC) in a manner that engendered confidence in the pre-election period.

2.2. Legal Framework

The legal framework governing elections in South Africa is provided by the 1996 Constitution, the 1998 Electoral Act, the 1996 Electoral Commission Act, the Public Funding of Represented Political Parties Act, 1997 and other legislation which has bearing on the electoral process.¹

The Constitution recognises fundamental rights and freedoms that serve as the foundation for a democratic dispensation. It guarantees the right to life, equality, dignity, privacy, security of person, and the right of access to justice. It also provides for freedom of expression, assembly, association, conscience, and access to information. It further guarantees various civil liberties and human rights, including the right to vote and contest for elections, the right to form or participate in the activities of a political party, and the right to free and fair elections. The Constitution also enshrines the doctrine of separation of powers. The South African Constitution provides for the establishment of an independent election management body (the Independent Electoral Commission)² that is adequately resourced and staffed by qualified persons.

Ahead of the 2019 elections, several reforms strengthened the legal framework governing the elections. The Electoral Act (EA) and Electoral Commission Act (ECA) were amended through the Electoral Laws Amendment Act, 2019. The ECA was amended to allow for the electronic submission of party registration applications; expand the jurisdiction of the Electoral Court to include the adjudication of intra-party disputes; and prohibit the unauthorized use or licensing of the logo and other emblems of the IEC.

Amendments to the EA addressed voter registration, the voters' roll, voting districts and voting procedures. They require that the Chief Electoral Officer (CEO) must certify the voters' roll to be used for the elections; notify the relevant parties if a candidate's name appears on more than one party list, and give parties the opportunity to substitute the name of that candidate or re-order the party lists. The amendments also provide different voting procedures for voters without addresses on the voters' roll; list circumstances under which party agents may object to a voter who's name appears on the voters' roll; limit the class of persons who may apply for accreditation for voter education to juristic persons; and align the provision regarding the circumstances in which new ballot papers may be issued to voters with those that apply to local government elections. While some of the reforms were made in response to Constitutional Court decisions³, others are part of broader reforms to improve the electoral process.

¹ the Political Parties Funding Act, 2018 was enacted in January 2019, it which is not yet in force

² The IEC is established as a Chapter Nine institution

³ Electoral Commission Vs Mhlope and Others

The mission notes that the legal framework provides sufficient basis for the conduct of democratic elections and that the constitutional and legal framework complies with international and regional standards for the conduct of democratic elections. The mission further notes that the reforms contributed to the improved quality of the voters' roll and to the IEC's compliance with the rule of law in the electoral process, and consequently strengthened public confidence in the process.

However, the amendment restricting accreditation of persons who may conduct voter education to juristic persons is restrictive: it eliminates the possibility of individuals or groups who have the necessary skill and expertise but are not legally organised as juristic persons from being accredited to engage in voter education.

2.2.1. The Electoral System

The electoral system in South Africa is a closed party list proportional representation system. In terms of the 1996 Constitution and national legislation, members of the national assembly are elected based on a common national voters' roll. Seats are allocated to contesting political parties based on proportional representation, that is, according to the percentage of votes received during the elections (with no minimum entry threshold). The President is elected indirectly by parliament after the parliamentary election to serve a term of 5 years to which he/she may be re-elected once. The National Assembly is made up of 400 members who are elected through proportional representation based on lists supplied by political parties before the elections. The party lists are compiled in order of priority. Members of the provincial legislatures are elected in the same manner.

The mission notes that the proportional representation system has its own advantages and disadvantages. As a main advantage, the proportional representation system makes it possible for all political interests, including those of smaller political parties to be represented in the legislature in proportion of votes received during elections. Similarly, because candidates are chosen in accordance with the party lists, the process enables political parties to deliberately include less represented groups such as women, youth, minorities, persons with disabilities and other marginalised groups in their party lists to ensure fair democratic inclusion. For instance, women's representation in the national assembly has increased from less than 2.7% in 1994 to about 42% currently. The EISA EOM commends political parties that have taken deliberate steps to promote gender equity within their policies. Such deliberate policies must be encouraged as good practice across all parties.

On the other hand, the major weakness of the proportional representation system is that because voters do not directly elect their representatives, the accountability between voters and their political representatives is weak. Political party leaders, not voters, decide who represents the party in the legislature.

The mission further notes that while not expressly prohibited, the electoral system does not make room for independent candidates. This limits the principle of equal opportunity to vote and to stand for election. The mission notes that this omission is currently a subject of litigation before the Constitutional Court.⁴

2.2.2. The Election Management Body

The Constitution establishes the Independent Electoral Commission (IEC) and provides for its composition and mandate. The constitutional provisions are supplemented by the Electoral Commission Act of 1998 which provides further details on the functioning of the IEC. The constitution guarantees the functional, fiscal and institutional independence of the IEC. The EOM notes that independence is further guaranteed through the reporting structure which mandates IEC to report to parliament.

2.2.3. Party and Campaign finance

The legal framework allows both private and public funding of political parties. Public funding of political parties is provided by the Represented Political Parties Fund (RPPF) established under the Public Funding of Represented Political Parties Act, 103 of 1997 (PFRPPA). The RPPF receives allocations from parliament and private donations which are disbursed to political parties represented in the national and or provincial legislatures by the IEC. 10% of RPPF is allocated to the political parties on the basis of equity while the remaining 90% is allocated on the basis of proportional representation. The legal framework provides for the reporting of expenditures and imposes sanctions for non-reporting and irregular expenditure.

Since 1994, private funding of political parties has been unregulated, a situation which has contributed to an uneven playing field for political competition in the country. The EISA EOM welcomes the enactment of the Political Parties Funding Act, 2018, which regulates private contributions to political parties. The EOM notes that this was one of its recommendations from previous election observation reports.⁵ However, the EISA EOM also notes that due to the late enactment of the law, the IEC was unable to finalise the guidelines for operationalisation of the PPFA ahead of the 2019 elections.

2.2. Voter registration

The legal framework governing voter registration is inclusive and provides for the enfranchisement of citizens, both within and across the borders of South Africa. The IEC is responsible for compiling and maintaining the National Common Voters' Roll. While voter registration is continuous, eligible voters are required to register before proclamation of the election date.⁶

⁴ New Nation Movement and Others Vs Electoral Commission and Others

⁵ The EISA EOM to the 2016 municipal elections made a recommendation on improvement of the framework for regulation of party and campaign finance in South Africa

⁶ The voters' roll closes for an election on the day that the date of the election is proclaimed (published in the Government Gazette).

Voter registration for the 2019 elections concluded on 26 February 2019 when the proclamation of the date for the 2019 elections was made. For the 2019 elections, voter registration weekends were on 10-11 March 2018 and 26-27 January 2019 inside South Africa. The registration drives saw a total of 1,194,314 new voters added to the voters' roll. This brought the total registered voters for the 2019 elections to 26,736,820, representing 74.6% of the voting age population. The 2019 voter registration process was affected by the ruling of the Constitutional Court requiring the IEC to capture the physical address of all voters. In this regard, the IEC captured the physical addresses of over 85% of the registered voters ahead of the 2019 elections.

Consistent with the election timetable and in line with the principles of transparency, the voters' roll was made available for public inspection from 1 to 8 March 2019. Fifteen objections to the voters' roll were considered and sustained. The voters' roll was certified and published on 18 March 2019. It was made available electronically to all political parties. At the request of political parties, hard copies were also made available.

2.3. Party Campaigns

The EISA EOM observed the final week of party campaigns across the 9 provinces, and observers attended 14 campaign events across four provinces.⁷ The EOM noted that parties conducted their campaigns freely in a context that was largely free of fear and intimidation. There were reports of isolated incidents of violence in Kwa Zulu Natal Province where there were politically motivated killings. The EOM notes the efforts by the SAPS to arrest the perpetrators of the crime.

The EOM observed that political parties commendably conducted largely peaceful campaigns and upheld their commitment to the code of conduct that was signed on 20 March 2019. The peaceful pre-election environment provided an atmosphere for South Africans to freely express their support for their chosen political parties.

2.4. Political parties and nomination of candidates

South Africa is a multi-party democratic state with a vibrant political culture where parties can register and operate without undue restrictions. A record 76 political parties were registered to participate in the elections.

To enhance transparency, each step in the party registration and nomination process was open to objections and dispute resolution before finalisation. Following public inspection of candidate lists, 53 sets of objections were raised, 52 of these were dismissed by IEC and only one involving a candidate who had flouted a qualification requirement was sustained. The mission noted that the IEC maintained the registration

⁷ Gauteng, Eastern cape, Kwazulu Natal and Free State Provinces

costs for candidate nomination applied during the 2014 elections. These are R 200 000 for the national elections and R 45 000 per province.

The EOM notes the Electoral Court decision faulting the IEC for its failure to Gazette the registration of the political party known as Black First Land First (BLF) to enable interested parties to appeal against the registration if they desire, contrary to the provisions of the Electoral Act.

The legal framework provides for an enforceable code of conduct for political parties that all political parties are expected to abide. By signing, they pledged their commitment to free and fair elections and upholding the Code of Conduct. Similar signing ceremonies for parties contesting provincial elections were conducted.

2.5. Gender, Youth and Persons Living with Disabilities (PLWDs)

South Africa is party to international and regional instruments that protect human rights and promote equality⁸. Section 9 of the Constitution guarantees the principle of equality before the law and the right to equal protection and benefit of the law. It guarantees equal treatment for all South Africans and prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. The state is obligated to enact national legislation to promote the achievement of equality and prevent or prohibit unfair discrimination. One such law is the Employment Equity Act which ensures that designated groups (black people, women and Persons Living with Disabilities - PLWDs) have equal opportunities to gain employment. It stipulates that they must be equally represented in all job categories and levels of the workplace. Besides this law there are no other laws that expressly promote political participation of women, youth and PLWDs. Further, political parties are not obligated to consider or promote participation of these groups in development of party lists. Their inclusion is thus left to the goodwill of party leaders.

Women constitute 42.7% and 35.2% of the members in the National Assembly and the National Council of Provinces respectively, this ranks South Africa as 10th in the world.⁹ The mission commends the IEC's positive steps to include women. Of the 189,000 election staff recruited for the elections, 73% were women. While at 55% of the electorate, women constitute a majority of the registered voters for the 2019 elections, however, their participation as candidates is not commensurate with this percentage, as they constitute only 40% of the total candidates for the 2019 elections.

⁸ These include the Convention on the Elimination of Discrimination Against Women (CEDAW), Convention on the Political Rights of Women; African Charter on Human and Peoples Rights African Union Charter on Democracy, Elections and Governance, SADC Declaration for the Prevention and Eradication of Violence Against Women and Children; SADC protocol on gender and development, SADC Principles and Guidelines Governing Democratic Elections as well as the SADC Principles for Election Management, Monitoring and Observation (SADC-PEMMO).

⁹ https://data.ipu.org/content/south-africa?chamber_id=13312

Furthermore, the mission noted commendable efforts by the IEC to promote youth participation. There were special registration drives on university campuses; a majority (59%) of the staff recruited for the elections were below the age of 35 and 20% were under 25 years old; and the IEC elections 2019 communications campaign also focused on encouraging participation by young and first-time voters. The EOM however noted the reduction in registration rates among the youth for the 2019 elections. The number of registered youths in the 18 -19 age bracket dropped by 47.2% (from 646,313 in 2014 to 341,236 in 2019). The number of registered voters in the 20-29 age bracket also registered a 4% drop from 5,759,236 in 2014 to 5,299,297 in 2019. Indeed, compared to the voter registration statistics in 2014 when the 20-29 age bracket formed the second highest group of voters at 22.68%, in 2019, this age bracket only represents 19.89% of the total registered voters.

In partnership with the South African National Council for the Blind (SANCB), the IEC developed the Universal Ballot Template (UBT) to aid voters with visual impairments to have an independent and secret vote during elections. The IEC also provided guidelines for assisting these voters. The EISA EOM welcomes the special voting arrangements allowing for the inclusion of persons outside their districts, disabled and infirmed voters through home visits as a good practice.

2.6. Role of Security

Security institutions play important roles in the electoral process by maintaining a peaceful election environment. The South African Police Service (SAPS) is responsible for supporting the safety and security of the elections.

Through the National Joint Operational and Intelligence Structure (NATJOINTS), the SAPS undertook a Crime Threat Analysis to assess and determine the extent of crime in the country and identify problem areas which may require security reinforcements. Security concerns regarding political killings and service delivery protests were noted in KZN and North West respectively. There were also recent xenophobic attacks in Durban, but these were regarded as isolated incidents. A multi-disciplinary team was established and dispatched to KZN to address the security concerns.

In its consultation with SAPS, the EOM gathered that the SAPS trained and deployed 51,000 police officers to each of the 22,924 voting stations. The EISA EOM observes that the pre-election period was generally peaceful and calm.

The EISA EOM specifically appreciates the efforts of the SAPS to provide security for its observers in their selected areas of deployment.

2.7. Preparedness of the Independent Electoral Commission

The EOM notes that the IEC delivered on the election calendar. The IEC recruited and trained 189,000 election staff. The EOM commends the efforts of the IEC to address concerns that were raised about the design of the ballot. Their rearrangement of the parties on the ballot for the 2019 elections made it possible for voters to make more informed choices. The IEC also made specific efforts to ensure that eligible voters who

were affected by the floods in parts of KZN and Eastern Cape had an opportunity to vote by setting up temporary voting stations in the affected areas.

Consulted stakeholders, including political parties, lauded the IEC for its transparency, open communication, and engagement with stakeholders. They expressed their confidence in the IEC's effective management of the process.

The mission took note of concerns reported in the media regarding lost ballot boxes in Limpopo during the special voting on 6 May 2019. EISA EOM commends the swift action taken by the IEC to address the issue.

2.8. Special Voting

The legal framework allows for special voting for two categories of citizens: diaspora voters and voters within the country who are unable to cast their votes in their registered districts on election-day.¹⁰ The EOM notes that this provision guarantees the right of equal participation to all eligible voters regardless of their location or situation.

For the 2019 elections, the IEC approved 29,334 applications out of a total 30,532 applications for diaspora voting, marking a 10% increase from 2014. This relative increase is indicative of the continued interest of South Africans living abroad to participate in public affairs. Diaspora voters cast their votes for the national legislature on 27 April 2019. The IEC granted 774,094 special votes application of which 58.4% were through home visits and 41.6% were cast at voting stations.

EISA observers witnessed the special voting on 6 and 7 May 2019 at 62 voting stations and 35 home visits across all nine provinces. All teams reported that the process was well organised in line with set guidelines. Observers also noted that there was limited voter awareness of the required procedures for special voting, as a number of voters turned up to vote without prior application for special voting.

Observers present at voting stations noted that the stations were laid out in an appropriate manner. In the case of home visits, observers expressed concern about voter privacy as there were many party agents that accompanied IEC officials during the visits with as many as nine (9) party agents in one home. In some cases of home visits, the EISA observers were not allowed access to the homes and therefore their observations were limited.

The EOM notes media reports that ballot boxes were found in the streets of Tzaneen, Limpopo. The IEC investigated the matter which led to suspension of an IEC officer. An official was also arrested for non-compliance with the requirements for secrecy of the

¹⁰ These include the physically infirm, disabled and pregnant; election officials and security service personnel involved in the election; registered voters unable to vote in the voting district in which they are registered to vote on Election Day owing to their intended absence.

ballot during special voting. The EOM commends the IEC for its quick response to these incidents.

3. Election day findings

The EISA observers visited 295 voting stations across the nine provinces. Election day was largely peaceful across the country. However, the EOM notes confirmed reports of service delivery protests in the following areas: Lokomazi, Secunda, Bushbuckridge and Vumani. The mission notes the efforts by the IEC and the police to contain these challenges in a timely manner to ensure that the electoral process was not interrupted. However, the elections were postponed in Holpan due to the protests.

Opening procedures were observed in 21 voting stations. The observers reported that 50% of the stations they visited opened on time. For the other half of the stations that opened late, the average delay was between 10 to 30 minutes. Only one team reported a delay of over an hour. The reasons for the delayed opening were poor preparations by polling officials and late arrival of polling materials.

In half of the voting stations visited, queues were present at closing time. The trend was prominent in stations that had sub-stations. All voters in the queue at closing time were allowed to vote.

Voting was conducted mostly in line with stipulated procedures. The IEC provided the 'no-address list' to capture details of voters whose addresses were not registered.

Election materials were available in adequate quantity in over 90% of the stations visited. There were however isolated reports of shortage of materials later in the day. In some of the areas visited in Port Elizabeth, the form 24A for registering home addresses had run out by afternoon. EISA observers also noted that some voting points had to be relocated because of damage caused by heavy rains and strong winds in Port Elizabeth.

EISA observers reported that over 80% of the stations visited were accessible to PLWDs, which enhanced the inclusivity of the process. On average over 50% of the polling staff in all voting stations visited were women.

The presence of party agents was noted in all the stations visited which further assured the transparency of the process. EISA observers reported that the stations were laid out in a manner that guaranteed secrecy of the ballot. The EOM noted that election staff struggled to implement the setup of sub-stations in a manner that reduced voters' waiting time. It was observed that substations were mostly merged into one venue and all voters remained in the same queue regardless of their assigned substations, thus contributing to slow moving queues. The observers noted that the zip machine malfunctioned at a few voting stations, which necessitated officials to resort to the hard copy of the voters' register.

Observers were present at the closing and counting in 16 polling stations. They observed that the stations closed at the stipulated time and voters who were in the queue cast their vote.

All voting stations visited followed closing and counting procedures. Reconciliation procedures were largely practiced although the procedures were not uniformly applied across the stations visited. Observers also noted a few discrepancies. Where this occurred, a recount was ordered. One team reported a lack of compliance with the counting procedures in Dihlabeng, Maluti Hoogland School. It was observed that there was no reconciliation of ballots, essential election materials were not sealed and packed properly, and the presiding officer had to be reminded by party agents to count the special votes. The EOM also noted that due to the high volume of voters per voting station and the merging of sub-stations, the counting process was lengthy.

EISA observers were also present at IEC municipal offices and provincial results operation centres on 9 May. The EOM considers the independent auditing of the election results before release as a good practice to be emulated in order to promote credibility and transparency of the process. The EOM will comment more broadly on the results management process in its final report.

The EOM notes the allegations of multiple voting in some areas of the country. The EOM observed that the indelible ink used during the process was easily removable, however it does not have direct evidence of multiple voting. It is important to mention that in comparison to the voter turnout recorded in 2014 (73.48%), it seems that there is so far, no unusual increase in voter turnout in the 2019 elections. This would have been expected in a situation of widespread multiple voting. The EOM notes the actions taken by the IEC so far, to bring perpetrators of this violation to account and its commitment to investigate further.

4. Recommendations

Based on its findings, the EISA EOM offers the following preliminary recommendations that will be expanded in its final report:

- Reconsider the timing of legal reforms and enactment of laws within the electoral cycle to ensure that laws can be operationalised well ahead of elections.
- To address the concerns of multiple voting, consider creating a harmonised digital voter register to ensure that the Zip-Zip machines can be used to track persons who have already cast their ballot and serve the purpose of a double check alongside the hard copy registers.
- Put in place adequate mechanisms for management of sub-stations to ensure that the number of voters per voting point is easily manageable. This will quicken the process and reduce voters' waiting time and the length of the vote count.
- Raise citizen awareness on the procedures for application for special voting

5. Preliminary Conclusion

Overall, the 2019 elections were conducted within a strong legal and institutional framework that guarantees democratic elections. The key players in the process conducted themselves in accordance with stipulated laws and guidelines. South Africa, through these elections, met its obligations to democratic elections, set out in the different international instruments to which it is party.

The EISA EOM notes the recent allegations of electoral fraud by some political parties. The EISA EOM has not observed an unusual increase in voter turnout in comparison to previous elections. Such an increase would have been expected in the case of widespread multiple voting.

We call on the aggrieved parties to freely express their dissatisfaction within the confines of the law. We call on South Africans to maintain their trust in the judiciary. The EISA EOM wishes to further encourage political leaders to be measured and well informed in their pronouncements, to avoid misleading or inciting the public. Political parties should also work with the IEC to determine the extent of the alleged multiple voting and its overall impact on the process.

The EISA EOM commends South Africa for its continued commitment to democracy and the conduct of a peaceful electoral process. The Mission encourages the country to maintain the good practices that have been identified in this report.