

## **INDEPENDENT CANDIDACY AND ITS IMPLICATION THEREOF**

The Constitutional Court Judgment ruled that the Electoral Act 73 of 1998 is in some parts inconsistent with the constitution and has given the Parliament 24 months to amend the legislation.

This judgment concerns the Independent Candidacy, yet, it has an impact on the electoral system, as ours is just a PR system at Provincial and National levels. This gives rise to a lone voice of the United Democratic Movement where it is on record for some time now that South Africa needs a Mixed Electoral System, a combination of both The Constituency-Based System and the PR System.

It seems, the Parliament has to adopt a Mixed system in order to tie those Independent Candidates onto a particular Constituency, failure which there will be Independent MPLs/MPs scattered all over the Province or Country simply because they are not tied onto any particular constituency. What's good for the goose is good for the gander - you can't have a system tying-up Independent Representatives onto a particular constituency whilst letting the political parties representatives roaming all over - therefore the political parties candidates will have to field their candidates through constituencies. Those constituencies could be the current local municipalities boundaries or districts boundaries.

The UDM is certainly for the mixed electoral system particularly because such will hold those that were elected through their constituencies, to account directly to those specific geographically defined communities that they represent, unlike those who would have been elected to office through party lists, and only account to those parties rather than to people.

UDM, is also of the view that, as much as the communities at a Ward level are 'enjoying' a half-baked mixed electoral system, the voters are given a

raw deal; they are able to elect a Ward Councillor but unable to recall or dismiss him. They are able to elect Independent Councilor but the electoral act makes no provision for the community to recall or dismiss him. There should be no ambiguity on the powers conferred to communities to 'hire and fire'; that is the only way that communities can be able to hold the Public Representatives accountable to them. The United Democratic Movement also notes that the Independent Councillor Candidates can only contest Ward Candidature; They are excluded in proportional representation on municipalities. The provision for the Independent Candidates to contest Provincial and National elections on the PR System, paves way for Independent Candidates to contest elections at Local Level (Local and District Municipalities).

But to the UDM's mind, the next important change is to have people directly elect Mayors, Premiers and President, with a clear mechanism of how to hold them accountable without being shielded by their parties. Such can only be possible through Constituency-Based part of a Mixed Electoral System.

In summary, the UDM encourages the parliament to take advantage of the ConCourt judgement by amending the Electoral Act in all areas where it has been found wanting; like having a Mixed Electoral System at Local Level and have a Proportional Representation at both Provincial and National Levels. Furthermore, allow the Independent Candidates at Local Level to benefit from the PR Electoral System as it is likely to be the case with the Independent Candidates at Provincial and National Levels.