

MODULE V INDEPENDENT CANDIDATES

2024

NATIONAL AND PROVINCIAL ELECTIONS



Published by the South African National Editors' Forum
<http://sanef.org.za>

Prepared with the assistance of ALT Advisory
<https://altadvisory.africa/>

Funded by the Open Society Foundation for South Africa
<https://www.osf.org.za/>

April 2024

This work is licensed under a Creative Commons Attribution 4.0 International License. This means that you are free to share and adapt this work so long as you give appropriate credit, provide a link to the license, and indicate if changes were made. Full licence terms can be found at <https://creativecommons.org/licenses/by/4.0/legalcode>.



This module is part of a comprehensive set of online election resources which will be updated from time to time in the run-up to the 2024 elections. For further information on the 2024 elections, please visit <https://elections.sanef.org.za>



Contents

1.	What are independent candidates?.....	4
2.	How will independent candidates fit into the electoral system?.....	5
3.	The legal framework.....	7
4.	Case law	7
5.	Suggested resources	10



MODULE V | INDEPENDENT CANDIDATES

Overview of this module

- A definition of independent candidates, and the list of independent candidates in the 2024 national and provincial elections.
- How independent candidates will fit into the electoral system, and what voters in the 2024 national and provincial elections can expect.
- The legal framework for independent candidates in South Africa.
- Recent case law concerning independent candidates.

1. What are independent candidates?

An independent candidate is an individual contesting an election that is not associated with any political party. Independent candidates have always been permitted to run in municipal elections as independent ward candidates.¹ However, due to recent legal developments, independent candidates are now also able to run in national and provincial elections.

The 2024 elections will be the first national and provincial elections where it will be possible to vote for an independent candidate.

To run as an independent candidate, a person must:²

- Be a South African citizen;
- Be registered on the South African voters' roll;
- Obtain 1000 signatures of support in their respective constituencies;
- Not be a member of a political party registered for the election at the time of nomination; and
- Not have been declared unqualified to stand in elections by a competent court.

2024 LIST OF INDEPENDENT CANDIDATES

As of March 2024, there are 5 independent candidates contesting seats in the National Assembly in the 2024 national elections. These are:³

- Anele Mda, for the Gauteng region;
- Lehlohonolo Ramoba, for the Gauteng region;
- Lovemore Ndou, for the Limpopo region;
- Ntakadzeni Phathela, for the Limpopo region; and
- Zackie Achmat, for the Western Cape region.

There are also 6 independent candidates contesting a seat in a provincial legislature in the 2024 provincial elections:⁴

- Ramotswabodi Sesing in the Free State;
- Bongani Cibi in Gauteng;
- Tshepo Mogano in Gauteng;

¹ Electoral Commission of South Africa, 'Independent ward Candidates' (accessible [here](#)).

² Electoral Amendment Act 1 of 2023 at section 31B, read together with *One Movement South Africa v President of South Africa and Others* [2023] ZACC 42.

³ Electoral Commission of South Africa, 'Candidate List for 2024 National and Provincial Elections' (accessible [here](#)).

⁴ *Id.*

- Thanasagren Moodley in KwaZulu-Natal;
- Matsobane Mokonyane in Limpopo; and
- Lovemore Ndou in Limpopo

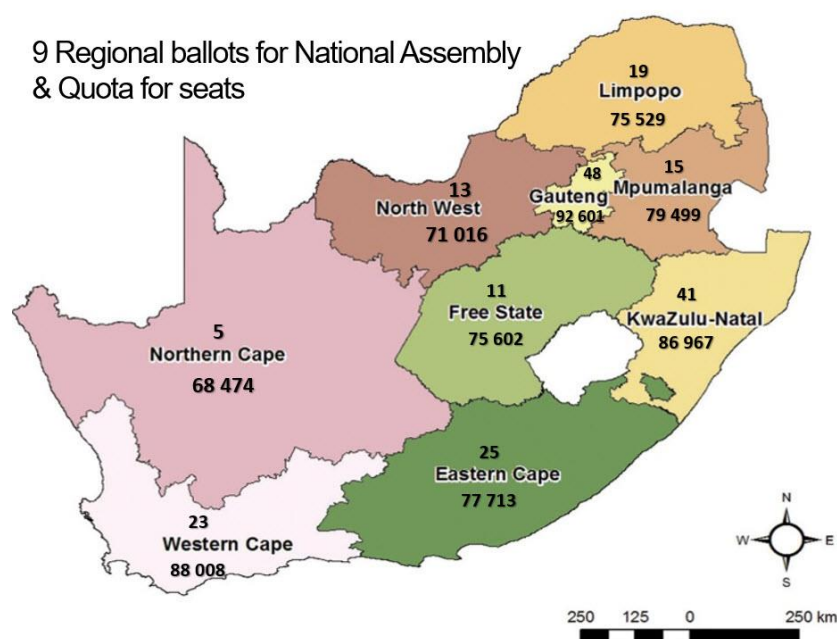
2. How will independent candidates fit into the electoral system?

Independent candidates will be incorporated within the existing electoral system.

The National Assembly

In the National Assembly, the two-tier multimember compensatory proportional system will continue to apply. The 400 seats in the National Assembly, the maximum number of seats as per the Constitution, remains and will be structured in terms of a 200/200 split:

- Compensatory seats: 200 seats are reserved for the National list, and therefore can only be contested by political parties.⁵
- Regional seats: the remaining 200 seats will be divided up among the 9 regions (provinces). The number of seats for each region will differ according to the number of voters per region. These seats can be contested by both political parties and independent candidates.⁶



Quota for National Assembly regional seats 2024, as calculated by the Electoral Commission⁷

Accordingly, in the national elections independent candidates will be able to contest the 200 regional seats, alongside political parties, while compensatory seats can only be contested by political parties. This split seeks to achieve general proportionality for political parties.⁸ While the total votes for a party in a region (province) will determine the number of seats that they hold, independent candidates can only occupy one seat⁹ – even if they contest in multiple regions.

⁵ Electoral Amendment Act 1 of 2023 at Schedule 1A, item 1(b).

⁶ *Id* at item 1(a).

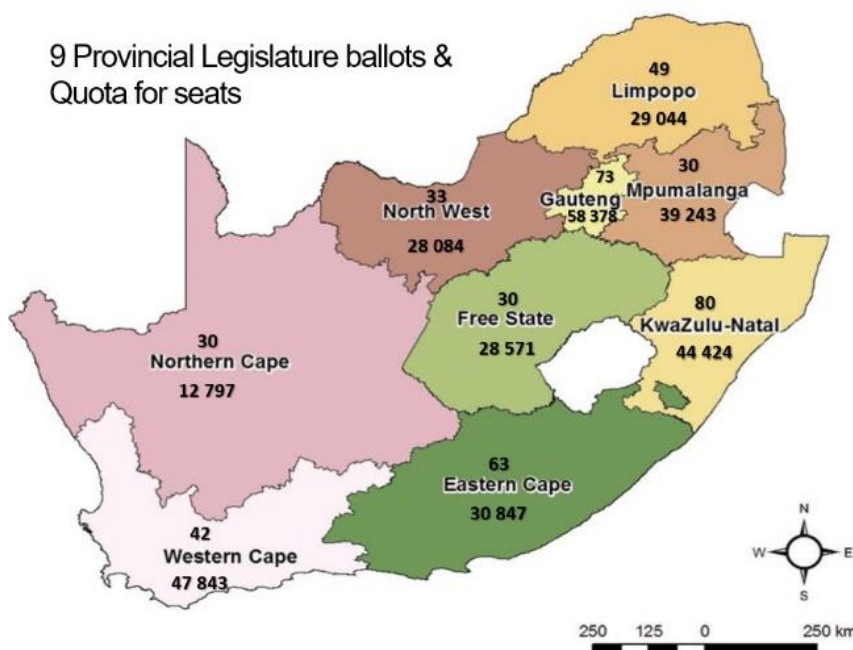
⁷ Electoral Commission of South Africa, 'What's new in the 2024 Elections?' (accessible [here](#)).

⁸ *Id*.

⁹ Electoral Amendment Act 1 of 2023 at Schedule 1A, item 5(f).

Provincial legislatures

In provincial legislatures, the single-tier proportional system will continue to apply. In each provincial election, political parties and independent candidates will compete for the number of seats as determined by the Independent Electoral Commission of South Africa (“IEC”). The seats will be allocated to parties and independent candidates in terms of a quota system, as has always been the case.¹⁰ Independents can only be allocated one seat per individual.¹¹ Therefore, similarly to the National Assembly, if an independent candidate has been allocated more than one seat in a province, they will be allocated one seat and forfeit any additional seats.¹²



Quota for 2024 Provincial Legislature seats, as calculated by the Electoral Commission¹³

What can voters expect on election day?

Given the changes to the composition of the National Assembly and provincial legislatures brought about by the introduction of independent candidates, voters can expect some differences on election day compared to previous elections. In short, voters will be presented with three ballots, two for the national election and one for provincial elections.¹⁴

1. The first ballot will be for the election of the compensatory 200 seats in the National Assembly.¹⁵ This ballot will comprise only of political parties.
2. The second ballot will be for the election of the regional 200 seats in the National Assembly.¹⁶ This ballot will comprise political parties and independent candidates. This ballot will vary from region to region, as it will reflect the political parties and independent candidates that contest the relevant regional election.
3. The third ballot, the provincial ballot, will be for the election of members of the provincial legislature in each province.¹⁷ This ballot will also vary from province to province, as it will

¹⁰ *Id* at item 9.

¹¹ *Id* at item 11(e).

¹² *Id* at item 12(2).

¹³ Electoral Commission of South Africa, 'What's new in the 2024 Elections?' (accessible [here](#)).

¹⁴ *Id*.

¹⁵ South African Government, '2024 General Elections, 29 May' (accessible [here](#)).

¹⁶ *Id*.

¹⁷ *Id*.

contain the names of political parties and independent candidates that are contesting the provincial election in that particular province.

3. The legal framework

Section 19 of the Constitution sets out political rights to which every citizen is entitled. The Electoral Act 73 of 1998 was amended in 2023 in compliance with the *New National Movement NPC judgment*, which is set out below, to give effect to this right and make provision for independent candidates in national and provincial elections. The new legal framework is now the Electoral Amendment Act 1 of 2023 (“Electoral Amendment Act”).

The Electoral Amendment Act makes provision for independent candidates to run in provincial and national elections. It sets out the requirements that people must comply with to run as independent candidates,¹⁸ makes provision for objections to independent candidates,¹⁹ and dictates the technicalities of independent candidates in the electoral system.²⁰ The Electoral Amendment Act also sets out the system of representation in the National Assembly and provincial legislatures, given the introduction of independent candidates.²¹

4. Case law

The legal position of independent candidates has recently been clarified by the judiciary. The following case law provides useful guidance on the justification for independent candidates in national and provincial elections, the composition of the National Assembly given the introduction of independent candidates, as well as what is required of independent candidates to be able to run in an election.

***New Nation Movement NPC and Others v President of the Republic of South Africa and Others* 2020 (6) SA 257 (CC)**

In 2020, the Constitutional Court held that the Electoral Act was unconstitutional to the extent that it required that adult citizens may only be elected to the National Assembly and Provincial Legislatures through their membership of political parties.²² This judgment is the reason why independent candidates can now run for office in national and provincial elections.

The Applicants, comprising of New Nation Movement NPC (“New Nation”) and others, argued that the Electoral Act was unconstitutional as it unjustifiably limited the rights to stand for public office and to hold office, if elected, as is conferred by section 19(3)(b) of the Constitution. Further, they argued that making political office accessible only through membership of a political party similarly unjustifiably limited the right to freedom of association in terms of section 18 of the Constitution.²³ The Respondents, on the other hand, argued that section 19(3)(b) does not require that membership of National Assembly and provincial legislatures must include independent candidates, and that other sections of the Constitution — such as sections 1(d), 46(1)(a), 105(1)(a), 57(2), 178(1)(h) and 236 — indicate that section 19 should not be interpreted as the Applicants contended.

¹⁸ Electoral Amendment Act 1 of 2023 at section 31B.

¹⁹ *Id* at section 31E.

²⁰ *Id* at section 31D and section 31F.

²¹ *Id* at Schedule 1A.

²² *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* 2020 (6) SA 257 (CC) (accessible [here](#)).

²³ *Id* at para 10.

The Court's judgment

The Constitutional Court held that, although the Constitution does not expressly provide for the right of individuals to run for political office as independent candidates, the principle of harmonious interpretation must be applied here.²⁴ This interpretation requires courts to read a right in the Constitution in such a way that does not offend other constitutional rights.²⁵ Through looking at international and foreign law, the Court reasoned that the right to freedom of association entitles everyone to choose who they want to associate with and the freedom to choose who *not* to associate with.²⁶ This right requires the State to allow the freedom *not* to associate with others in a political party.²⁷ Forcing individuals to join a political party to run for office would violate this right.²⁸ To do so would not only infringe on the right to freedom of association but also the right to freedom of conscience and the right to dignity.²⁹ Therefore, the Court held that section 19 of the Constitution must be read in such a manner that does not contravene these rights; section 19 must be read as obliging the State to allow independent candidates to run for office.

In conclusion, the Court held that to the extent that it makes it impossible for independent candidates to stand for political office without being a member of a political party, the Electoral Act limits the section 19(3)(b) right to political participation.³⁰ This limitation, according to the Court, was not reasonable and justifiable in terms of section 36(1) of the Constitution.³¹ The State was ordered to remedy this constitutional defect. This led to the 2023 amendment of the Electoral Act which has been discussed above.

Independent Candidate Association South Africa NPC v President of the Republic of South Africa and Others 2024 (2) SA 104 (CC)

This matter concerned the split of seats in the National Assembly. The Applicant argued that item 1 of schedule 1A of the Electoral Amendment Act is unconstitutional as it is inconsistent with sections 1(c), 3(2)(a), 9(1), 19(2), 19(3) and 46(1)(d) of the Constitution.³² Item 1 in Schedule 1A reads as follows:

“The seats in the National Assembly are as determined in terms of section 46 of the Constitution and item 1 of Schedule 3 and are allocated as follows:

- (a) Half the seats are filled by independent candidates from lists of candidates of parties contesting the nine regions and these shall be referred to as regional seats; and
- (b) half the seats are filled by candidates from lists of candidates of parties and these shall be referred to as compensatory seats.”³³

In terms of schedule 1A, 200 regional seats are to be filled by independent candidates and candidates from political parties and the 200 compensatory seats are to be filled by candidates from the lists of political parties only. Independent candidates are excluded from contesting compensatory seats.³⁴ The Applicants argued that this 200/200 split would result in independent

²⁴ *Id* at para 20.

²⁵ *Id* at para 18.

²⁶ *Id* at paras 30 – 48.

²⁷ *Id* at para 59.

²⁸ *Id*.

²⁹ *Id* at para 62.

³⁰ *Id* at para 112.

³¹ *Id* at paras 113- 120.

³² *Independent Candidate Association South Africa NPC v President of the Republic of South Africa and Others 2024 (2) SA 104 (CC)* (accessible [here](#)) at para 1.

³³ *Id* at para 24.

³⁴ *Id* at para 33.

candidates needing more votes to secure a single seat in the National Assembly compared to political parties.³⁵ This, they argued, unjustifiably limits the right to vote and the right to stand for public office.³⁶ Further, they argued that a different split would negate the risk of overhang³⁷ — which is where there are more elected officials than there are seats in the national assembly.³⁸

The Court's judgement

In its judgment, the Constitutional Court held that the 200/200 split passed constitutional muster as it is grounded in proportional representation and would have little risk of overhang.³⁹ The Court held that the argument that a vote for an independent candidate carried less weight than a vote for a political party was without merit, as it was based on the assumption that a voter would vote for the same candidate on both provincial and national ballots.⁴⁰ Voters are free to split their votes between ballots.⁴¹ Further, this argument failed to appreciate that in a two-tier system, which is provided for by the Electoral Amendment Act, there are different quotas for compensatory and regional sets.⁴² Therefore, the Court held that the 200/200 split does not infringe on section 19 of the Constitution, as the argument that a vote for an independent candidate does not have equal weight and that independent candidates do not stand an equal chance of being elected is without merit.⁴³ The Court accordingly dismissed the application.⁴⁴

One Movement South Africa v President of South Africa and Others 2024 (2) SA 148 (CC)

This case dealt with the number of signatures that independent candidates require to run in an election. One Movement South Africa NPC (“One Movement”) argued that section 31(B)(3) of the Electoral Amendment Act, which required independent candidates and new political parties to secure and produce supporting signatures of registered voters in the relevant region amounting to 15% of the quota of the relevant region in the preceding election in order to be allowed to contest an election, was unconstitutional as it infringed on independent candidates’ rights to disassociate, their right to make political choices, their right to stand for public office, their right to dignity, and their right not to associate with the political party system.⁴⁵

The Court's judgement

The majority of the Constitutional Court held that section 31B(3) infringed on the rights contained in section 19 of the Constitution to stand for public office and other associated rights as the 15% requirement placed significant time, resources, and energy burdens on independent candidates.⁴⁶ Further, the State failed to show that the limitation was reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom. The Court found that the 15% requirement relied on the wrong quota and was therefore arbitrary; was extensive in comparison to signature requirements in other jurisdictions; there was a limited relation between the limitation and its purpose; and there are less restrictive means to achieve the same purpose.⁴⁷

³⁵ *Id* at para 34.

³⁶ *Id* at para 42.

³⁷ *Id* at para 71.

³⁸ *Id* at para 69.

³⁹ *Id* at para 116.

⁴⁰ *Id* at para 109.

⁴¹ *Id* at para 125.

⁴² *Id* at para 119.

⁴³ *Id* at para 137.

⁴⁴ *Id* at para 159.

⁴⁵ *One Movement South Africa v President of South Africa and Others 2024 (2) SA 148 (CC)* (accessible [here](#)) at para 25.

⁴⁶ *Id* at para 291.

⁴⁷ *Id* at paras 301 – 342.

The Court accordingly ordered the State to cure this constitutional defect, with the order being suspended for 24 months. During this period of suspension, the 15% requirement is to be struck out and a 1000 signature requirement is to be read in.⁴⁸ Therefore, independent candidates in the 2024 election only require 1000 signatures to run.

5. Suggested resources

- Corruption Watch, 'Independent Candidates' Big Win Ahead of 2024 Polls' (accessible [here](#)).
- Electoral Amendment Act 1 of 2023 (accessible [here](#)). Electoral Commission of South Africa, 'Candidates List for 2024 National and Provincial Elections' (accessible [here](#)).
- Electoral Commission of South Africa, 'What's New in the 2024 Elections?' (accessible [here](#)).
- GroundUp, 'Constitutional Court rules 1,000 signatures required for independent candidates to contest elections' (accessible [here](#)).
- Helen Suzman Foundation, 'Electoral Reform: Do Independent Candidates Strengthen the Institution of Parliament?' (accessible [here](#)).
- South African Government, '2024 General Elections, 29 May' (accessible [here](#)).

ENDS.

⁴⁸ Id at para 347.

