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ELECTORAL SYSTEMS: A CRITICAL SURVEY

by

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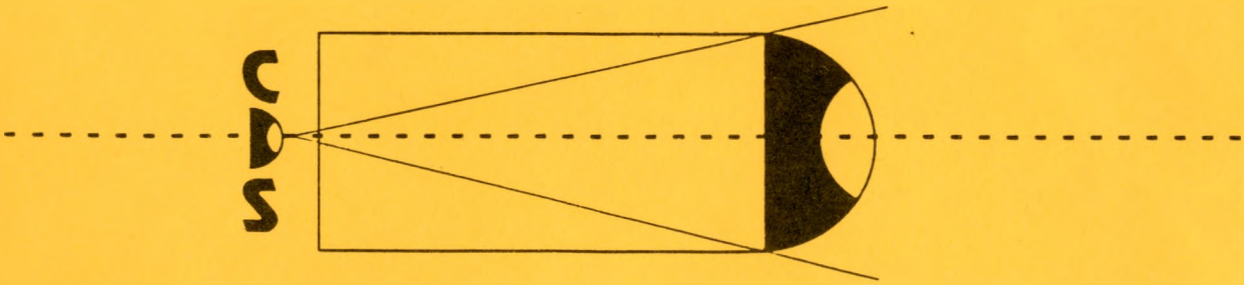

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PREFACE TO DISCUSSION DOCUMENT:

ELECTORAL SYSTEMS: A CRITICAL SURVEY

EVER SINCE UNION - AND BEFORE - black South Africans have been excluded from parliament, provincial councils and other law-making bodies. This means that blacks have never participated in the electoral process. The voting (electoral) system - its nature and workings - remained the sole preserve of white political parties and the Apartheid government of the day.

As a result of a conjuncture of circumstances (as per Harare Declaration), the African National Congress and the apartheid government are now engaged in talks. Hopefully this will ultimately lead to negotiations towards a new Constitution which will make provision for a single unitary, non-racial, non-sexist South Africa with universal franchise on one single common voters roll and one person one vote.

Part of the process of constitution-making for such a South Africa, will be the working out of a system of voting, an electoral system, which would be appropriate for the country. The African National Congress has recognised the need for a multi-party system, the right of all other political forces and organisations to organise and to compete for power on the political terrain. The ANC also recognises that all parties enjoying significant support should have the right to be represented in a Constituent Assembly and parliament.

The question which needs to be resolved is: What would be an appropriate electoral system to achieve the stated objective?

It is to place the issue before the people of our country and to ensure participation at the widest levels by all the organisations of the people in the process of constitution-making (including formulating and/or agreeing upon an acceptable system of voting), that the **African National Congress, Community Law Centre** (University of the Western Cape) and the **Centre for Development Studies** have organised a conference to be held in the Western Cape on 2 - 4 NOVEMBER 1990.

This conference will not be a decision-making one, nor will there be any resolutions at the end of the conference. The objective is to facilitate meaningful discussions throughout the country. To facilitate this process, we present a discussion document entitled "ELECTORAL SYSTEMS: A CRITICAL SURVEY" which has been prepared by Professor KADER ASMAL, a member of the Constitutional Committee of the ANC and Professor of Law at Trinity College, Dublin.

It is hoped that arising from these discussions, there will be more meaningful discussions and consultations amongst organisations such as trade unions, civic organisations, women's organisations and other sectoral organisations - ultimately leading to a situation which we would be better able to decide on an acceptable, unity building and democratic electoral system.

ADV. DULLAH OMAR,

DIRECTOR : COMMUNITY LAW CENTRE & MEMBER OF THE CONSTITUTIONAL COMMITTEE OF THE ANC

24.10.1990

1. INTRODUCTION

The first point about the electoral system is that any debate about the method of representation of peoples cannot be conducted in icy detachment. The central issue, as in all constitutional arrangements, is about power and how it is to be identified and distributed in a given political system. Much attention has been paid inside and outside South Africa to constitutional proposals where the primary motivation has been to protect the economic rights of the white racial minority and to obscure the total powerlessness of the black majority. These proposals cover the areas of minority rights or 'group rights', the provision of a veto on 'social' issues to racial groups, federal forms of government associated with race and 'power-sharing' in the executive.

But this attention to constitutional forms has obscured a much more serious and important development concerned with the electoral process. The apartheid regime has now conceded the principle of one-person one-vote. Think -tanks in the West and Liberal and big-business interests inside South Africa have moved away from the idea of communal or racial rolls towards an acceptance of universal suffrage at some stage of the governmental process. However, they have very carefully hedged their bets in two ways. Firstly, they have generally associated their acceptance of one-person one vote with proposals for intricate and complex machinery for the election of an executive which would deny the majority the right to rule and, therefore, bring about the changes necessary in a post-apartheid society.

Secondly, and more importantly, nearly every one of the proposals for constitutional change is posited on a rejection of the Westminster 'first-past-the-post' system, which the whites have operated in South Africa since 1910, in favour of proportional representation. One of the most important and significant examples of this drive towards proportional representation is found in the KwaZulu-Natal Indaba proposals of December 1986. The Indaba constitutional proposals are quite clear about their motive for supporting proportional representation. It is to ensure the 'representation of minorities and power-sharing' by guaranteeing 'minority group representation' in the first chamber and forestalling the capacity of 'any single party (having) more than 50% of the seats in the first chamber' (p5, Constitutional Proposals submitted to the Minister of Constitutional Development and Planning, 13 May 1987).

In Zimbabwe in 1980, and in Namibia in 1989, proportional representation was used for the first time in English-speaking Africa to elect the lower house.

This debate about the electoral system has a momentum of its own tending towards an unquestioning acceptance of the virtues of a system because those virtues seem self-evident. Alternatively, there can be great external pressure for the adoption of a particular method without full consideration of its effects. SWAPO had to accept a proportional representation system for the election in Namibia as it was imposed by the Contact Group of States. Yet this system proved to be its salvation.

In South Africa, all shades of white opinion seemed to be satisfied with the basic Westminster system until the early seventies. With the Presidents Council's support for 'constitutional' government, based on ethnicity and group right recognition, a ferment of proposals emerged. The South Africa Act of 1909, the product of an exclusively white National Convention, created a unitary state and, apart from the entrenched clauses, a constitution of extraordinary flexibility with a colour bar restriction on membership of the House of Assembly. The electoral system - with its Westminster model of government and a loading in favour of rural constituencies, favoured the conservative and rural sections of the white population. It therefore needed an oligarchical constitutional structure in which the white minority wielded unchallenged and effective political power. Ironically, a serious proposal for the use of proportional representation was not subsequently pursued.

Except for some minor areas, including the right of OFS local authorities to elect their members by proportional representation since the 1980s, the single member constituency system has been used for white elections and for the tricameral 'parliament'.

The desire to change the electoral system may therefore be closely associated with the need of certain groups to maintain their power in more discreet and sophisticated forms. The underlying assumptions behind electoral systems must therefore be traced.

2. ELECTORAL SYSTEMS

Electoral **systems** determine the way in which votes are cast and the relationship between votes and the allocation of seats. Electoral **law** determines the procedure to be adopted for the actual conduct of elections - secret ballot, counting of votes, impersonation, postal ballots etc. Two crucial elements associated with electoral systems are (i) the drawing up of constituency boundaries and the number of voters in the geographical area and (ii) the method of drawing up the electoral register. These are vital matters in the South African context because reliance on the existing power structure means the retention of power to manipulate totally the electoral process. It is for this reason that there was unhappiness in the Zimbabwean election of 1980 at the control over the election exercised by the Smith forces and disquiet that under Resolution 435 of 1978 the United Nations would merely 'supervise' and not 'organise' the independence election in Namibia.

This study refers only to the electoral system and provides insights into a large number of what may appear to be technical and esoteric aspects. But all of them should be seen in the context of specific historical experiences, and the way in which they operate has shaped a country's political culture.

One-party states, based on ideological or political patterns are ***sui generis***. Even where in some one-party systems certain functional interests are allowed to organise independently, there is no real independence of the major and controlling party. As our movement has committed itself to a multi-party system, this study therefore looks at 'Western' models, holding 'free' elections to a greater or lesser degree.

These may be grouped into three broad categories.

i) Electoral systems established by **evolution**. English-speaking and Scandinavian countries have had fairly long histories of free elections; their electoral systems are a century or more old, but there have been changes to reflect power interests.

ii) **Electoral systems established following a constitutional disruption a generation ago.** France, Germany, Italy and Austria have well established electoral systems. But in each country, the present constitution was only established after the Second World War and the change of regime was normally accompanied by a change in electoral system. What is taken for granted today was uncertain a generation ago. It is therefore significant that the system is often tailor-made to ensure a certain result. The West German list system was development to ensure that parties of the Left and Right would get no representation unless they obtain 5% of the vote. De Gaulle's 1958 electoral law for the National Assembly which had served its purpose was changed in 1985 to ensure that the Socialist Party would obtain a higher proportion of the seats under the proportional representation list system than under the two-state majority voting system. But the present French Government has gone back to the previous system to ensure that the combined right-wing majority would continue to obtain a majority of the seats.

iii) **Electoral systems newly established following a constitutional disruption.**

Spain, Portugal, Greece and Zimbabwe today have competitive elections but the electoral system of a country freely enjoying electoral choice after a period of authoritarian rule cannot be described as fully established. In any event, the history of the 'democratic' system in Greece shows that since 1946, it has changed on at least a dozen occasions to ensure (i) compliance with US demands in 1950 for a two-party system, (ii) the victory of the major parties or coalition of parties by allowing what is described as a 'reinforced' proportional representation whereby a party or a bloc obtaining a minimum proportion of the total votes (17%, 25%) may then participate in the distribution of seats allocated on the basis of its proportion of votes. This, of course, favors the larger parties and contradicts the received Western view that elections are determined by the actual votes cast!

3. WHICH KIND?

Electoral systems are generally devised or intended to serve the interests of those who hold or intend to continue holding power. Occasionally, these interests are frustrated, as in Greece in 1967 when the army negatived the electoral process by overthrowing the Government. The British imposed a most complex system of proportional representation on Ireland in 1920 in order to ensure the protection of British interests throughout the Protestants, while allowing the white Southern Rhodesians and other 'dominions' the Westminster model. Until 1964, elections in British Guiana were on the British model, with constituencies. But in the pre-independence election of 1964, the British imposed a unique system to ensure that Cheddy Jagaan's party would not win the election: separate constituencies were abolished, the whole country became a single constituency and the seats were allocated on the basis of the proportion of votes obtained, thus ensuring the triumph of a coalition of racially-orientated and conservative parties.

Elections lie at the heart of the democratic process and it is through the act of voting that government by consent is secured. Yet no country has solved the riddle first posed by Oliver Cromwell who was *'as much for government by consent as any man, but if you ask me how it is to be done, I confess I do not know'*. For modern democracies use a wide variety of different electoral systems and there is no hint of agreement as to which is best, each system having its characteristic virtues and defects. In addition, there are electoral systems which exist on paper but not in reality. Indeed, the only Royal Commission ever appointed in Britain to inquire into electoral systems declared in its report, published in 1910, that there were over 300 systems then in existence. There are, no doubt, many more now. Yet a classification of electoral systems does not have to be just a lengthy catalogue listing them one by one, for they can be analysed as variations upon a small number of basic types.

Electoral systems are the practical instruments through which notions such as consent and representation are translated into reality. For an electoral system is above all a method converting votes cast by electors into seats in a legislature. The purpose of this study is to categorise the main types of system actually employed in democracies.

The central factor differentiating one electoral system from another is the method by which it allocates seats. There are, broadly, three ways in which this can be done. Seats can be allocated to a candidate or candidates obtaining a plurality of the vote, to a candidate or candidates obataining a majority of the vote, or proportionately. There are, therefore, **plurality** systems, **majority** systems and **proportional** systems of election.

But there are a number of different methods of allocating seats proportionately. The central distinction is between a method based upon prefferential voting in multi-member constituencies - the single transferable vote - and the method of allocation based upon party lists. List systems can in turn be subdivided into those which allocate seats nationally and those allocating within multi-member constituencies, and further subdivided according to the method by which candidates are chosen. A system may require the elector to vote solely for a party list, the particular candidates elected being determined by their order on the list. or offer varying degrees of choice of candidate within a party list or even across party lines.

It is, therefore, a mistake to refer to 'proportional representation' as if it denotes a single type of electoral system. 'Proportional representation' is in fact a generic term denoting a number of different systems sharing only a common aim of proportionately between seats and votes. This common aim, however, does not prevent the various proportional systems diverging considerably, one from another; and their political consequences, therefore, can be quite different.

The electoral system which a country adopts depends more upon its political tradition and the particular needs to be realised than upon abstract consideration of electoral justice or good government. There is no reason, though, why this should always be so as nation building and protection of minorities are closely associated with the kind of electoral system that may be adopted.

There is a striking geographical dividing line between those countries using the plurality system and those which use proportional systems. For it is only in countries which come under British political influence - Commonwealth countries the United States and Britain herself - that the plurality system is used for the election of the legislature. It is not used in any continental country. Every continental democracy, except France, uses a list system, a method which has not been favoured in any Commonwealth country except Guyana and Sri Lanka.

The single transferable vote method of proportional representation, by contrast, is the Anglo-Saxon method of proportional representation. for it has been employed only in elections to the Irish and Tasmanian Lower Housed, the Australian Upper House and the Maltese legislature. It is also the only proportional system to have been tried in Britain: Northern Ireland, significantly.

4. PLURALITY

The plurality system, otherwise known as the single member constituency system, as it developed in Britain and in countries influenced by Britain, was originally closely linked to the notion of territorial representation. MPs represented not segments of opinion or ideological tendencies nor, of course, political parties, but constituencies. They were attorneys seeking the redress of grievances before committing their constituencies to the payment of the expenses of government. Representation was in no way regarded as a means of expressing individual rights or forwarding individual interests. It was this notion of representation which came to be adopted by the American colonists whose surroundings had recreated to a significant extent the conditions that had shaped the earlier experiences of the English people.

It was in America in the eighteenth century in the constitution of the colonies that the single-member constituency originated. Indeed, the single-member constituency formed the predominant basis of representation in Canada, Australia, New Zealand and the United States before it came to be accepted as the norm in Britain. From the fifteenth century, the plurality system operated in Britain mainly in two-member constituencies. Until 1885, single-member constituencies had only existed because they were too small to be entitled to more than one member; now they became the unit on which all representation was to be calculated and all future schemes of redistribution had to rest.

Paradoxically, by the time the plurality system in single-member constituencies came to be the norm in Britain, the idea of representation upon which it was based already seemed unreal; for it had been eclipsed by the growth of the party system; and already in the eighteenth century Edmund Burke had insisted that Parliament was:

'not a congress of ambassadors from different hostile interests, which interests each must maintain as an agent and advocate against other agents and advocates; but parliament is a deliberative assembly for one nation, one interest, that of the whole, where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole.'

With the growth of party and the eclipse of older ideas of territorial representation, the plurality system could no longer be defined as securing the representation of communities and it came under attack from advocates of proportional representation who insisted that it failed to need 'ideal' norms of democratic representation. The plurality system is seen as a means to stable and effective government which forces the voter to decide his priorities. It is conceded that the plurality system gives disproportional representation as there is (i) no relationship between votes gained nationally and seats won and (ii) a candidate does not have to win 50% of the seats in the constituency. But this is held to secure a positive benefit, since it is likely to yield single-party government without the need for coalitions. The plurality system secures this effect by systematically exaggerating the support of large parties while under-representing small parties (unless they are territorially concentrated).

The plurality system has been used in unicultural societies such as New Zealand and multi-cultural and deeply divided societies such as India, Canada and the United States. It is therefore not a self-evident proposition that some variant of proportional representation has to be used in a society with 'ethnic' or racial cleavages such as South Africa. But there is now great pressure in Britain for a move away from the plurality system because of its obvious undemocratic nature. The stresses of the Canadian federation may require changes, while the history of the US might have been different if some form of proportional representation had been in use!

The chief advantages of the first-past-the-post system are: firstly, the system is supposed to support effective government by ensuring that the changing mood is reflected in the number of seats obtained by the majority party; secondly, it minimises the role of parties based on race, caste or ethnicity (unless they are regionally organised) and emphasises policy and ideology; thirdly, it promotes and assists national parties with national policies ensuring larger parties; fourthly, it encourages a national approach to issues and provides a unifying bond and loyalty. Finally, it allows for a major swing of public opinion to be reflected in the number of seats won, which proportional representation does not, as shown in the landslide victory of the Labour Party, with its reconstruction ideals and the desire to build a new kind of society, in 1945. The Labour Government did not obtain a majority of the votes; neither did the Nationalise Party in South Africa in 1948 when the white electorate threw out General Smuts' United Party.

It has been suggested that an electoral system for South Africa should develop national thinking, instil the practice of anti-racist behaviour and the acquisition of genuinely shared patriotic consciousness. To encourage these basic values, an electoral system must encourage cohesiveness, rather than parochialism, centrifugal rather than fissiparous tendencies, unity over narrowness in behaviour.

The plurality system therefore has considerable advantages. It has been the tried and tested system in South Africa for over seventy years, it is part of South African culture, at least in relation to those who have controlled the levers of power. The drawbacks and serious disadvantages will be discussed later.

5. MAJORITY SYSTEMS

One of the principal criticisms of the first-past-the-post system is that a candidate may win a constituency on a minority vote. In nearly every country where the "plurality" system is used, large numbers of candidates are elected in a situation where the combined votes of the other candidates exceeds that of the winner, sometimes by very large margins. Majority systems seek to do away with the possibility of a candidate winning a constituency on a minority vote.

As a result, three different methods, using the constituency base, have been used in order to overcome this defect. Firstly, there is the Eastern Europe "exhaustive ballot" where the lowest polling candidate is eliminated and another vote held. This continues until a candidate wins at least half the votes. Secondly, the "double ballot" approach as in France. If an election in any constituency does not produce an overall winner, there is a second election a week later. Candidates who have gained the votes of 12.5% of the registered electorate in the first ballot can compete in the second ballot. The French parties usually make electoral deals to ensure that there are only two candidates on the second round. This system ensures that parties that form an alliance are able to compete in the first ballot and then arrange for the party with the larger vote to contest the second round. This system attempts to keep out minority parties and to ensure the stability of governments.

Both the exhaustive ballot and the double ballot are special to the historical situations in these European countries. Parties in these countries tend to be hostile to proportional representation, especially in France where government policy is clearly attached to the idea that there are no racial, cultural or ethnic minorities. These systems also discriminate against anti-system parties which cannot find allies.

The "alternative vote" or the Australian system is a preferential system of voting in single-member constituencies. The elector votes by expressing his first preference and such subsequent preferences as she chooses to; she may vote down the list 1, 2, 3, 4 or 5 if there are 5 candidates or she may vote for one of two only. If no candidate has an absolute majority of the vote (50% of those who vote + 1), the candidate with the fewest votes is eliminated and his second preference redistributed. This process continues until one candidate has an absolute majority of the vote. There is, of course, only one election.

Professor Horowitz of Duke University in a sustained defence of the alternative vote sees advantages for the system in South Africa. Alliances between parties are encouraged as allies can each put up candidates without fear of splitting the vote (as would occur in the plural system where only one candidate for an alliance can stand in a constituency). As a result, the elector is offered a wider choice of candidate.

I fear that the real reason as to why this system is being proposed for South Africa is that it will encourage anti-ANC parties by ensuring that the transfer of votes between non-ANC alliances will outweigh the initial and major first-preferences for the ANC.

Voters will not be able to put an **X** on the ballot paper as this would "spoil" the paper. The use of numbers in a society with a high degree of illiteracy would also create problems of a serious kind. Finally, the drawing up of constituency boundaries remains crucial.

Although both the second ballot (in most of its variants) and the alternative vote ensure that no candidate can win a seat unless she has the support of a majority of the voters in the constituency, they do not ensure that the party winning the election in the country as a whole will necessarily enjoy a majority of the votes. They do not achieve, and indeed do not purport to achieve, a proportional relationship between votes and seats. In France, for example in 1981, the non-Communist Left secured 62% of the seats in the National Assembly for only 38% of the vote in the first ballot and 50% of the vote in the ***tour décisif*** (a total of the party vote in seats won on each ballot).

In the Australian House of Representatives in 1977, the Liberals gained an absolute majority of seats with fewer votes than Labour which secured only a quarter of the seats, and the Liberal/National Country Party alliance secured a large majority of the seats on a minority of the popular vote.

Majority or plurality systems share one fundamental feature:

the number of seats which a party receives depends not only upon the number of votes which it gains, but upon where these votes are located. Under the plurality system, the number of seats which a party gains will depend upon the distribution as well as the size of its support. Under the alternative vote and second ballot systems, the ability of a party to form alliances with like-minded parties will be a further factor determining its electoral success. No system of election using only single-member constituencies can ensure proportional representation since votes for those supporting losing candidates are 'wasted'. There is, therefore, a very profound conflict between the idea of territorial representation and the ideal of proportional representation; or between the representation of territories and the representation of opinion or party.

But it is clear why France and Australia have adopted these unusual methods - it is to keep out minority parties and to ensure that instability of governments through multi-party representation does not bedevil the formation of the government, as happened with remarkable rapidity in the 4th Republic from 1945 to 1958. The Socialists introduced a short-lived system of proportional representation which resulted in the racist party of Le Pen winning over 10% of the seats in 1984; but the Chirac Government went back to the second ballot system as proportional representation 'favoured' the Socialists.

This is another sharp reminder that there are no ideal electoral systems, but in many countries electoral arrangements favour those who want to achieve certain aims and reach certain ends, namely the attainment of and retention of power. But this is not true of all societies.

6. SINGLE TRANSFERABLE VOTE

The single transferable vote - the Anglo-Saxon version of proportional representation - is a product of Victorian individualism, and its starting point was a radically different conception of representation from that embodied in the plurality system. Whereas representation under the plurality system was conceived of as territorial in nature, representation under this system was conceived as fundamentally personal; indeed in its early years, the system was often described by the term 'personal representation'. The elector was not properly represented simply because he voted for an MP who reflected his own point of view. That is why adherents of the single transferable vote regard electors who disagree with the policies of their MP as unrepresented and their votes wasted. The aim of the system is to ensure that the number of wasted votes is minimised and that as many of the electorate as possible are able to elect an MP of their choice.

The nineteenth century advocates of the single transferable vote were well aware that the territorial principle, supposedly embodied in the plurality system, was rapidly being overcome by the growth and development of organised political parties. The plurality system, in their view, fundamentally altered its nature when representation became that of party rather than that of territory. People of independent outlook would be squeezed out by the twin forces of the so-called tyranny of the majority and the party machine.

The single transferable vote is a method of election providing for preferential voting in multi-member constituencies. Its two central features are the attempt to secure proportional representation of political opinion and the provision for choice of candidate within, as well as between, parties. Proportionality would be secured since few votes are wasted; instead they are transferred, so that fair representation of opinion would be secured within each multi-member constituency. Votes which cannot be used to help elect a candidate - either because they are surplus to what he needs to secure election, or because the candidate has too few votes to be elected - are transferred to second or third candidates. The only votes which do not help to elect a candidate would be those case for the runner-up, and those votes which cannot be used because they are non-transferable, i.e. because the voter refused to indicate a full list of preferences. Thus, each elector would be represented by a candidate of the party of his choice, and the vast majority of electors would be represented by individual candidates of their choice. Only in this way could personal representation - which is 'real' representation - become a reality.

The single transferable vote gives the elector the power to choose between candidates of the same party.

This differentiates it sharply from the list systems of proportional representation, most of which offer only minimal choice or no choice at all. To the individualists who sponsored the single transferable vote, the representation of opinion was as important as the representation of the party, and the voter ought to be allowed not only to decide which party was to govern the state, but also to influence the policies it should follow. A central characteristic, therefore, of the single transferable vote is that it contains built-in primary election, and one which allows every elector, whether or not a registered member of a political party, to play a part. It works best where there is a maximum choice of candidates, with a large number of seats - five to seven in each constituency - rather than a small number of seats.

In conception, therefore, the single transferable vote may be seen as an attempt to translate into practical terms, the principle of the 'free development of individuality' which Mill wrote **On Liberty** to defend as 'one of the leading essentials of well-being'.

The single transferable vote has worked out very differently in practice. It has, with the exception of Australia, only been used in small, rural societies where political affiliations have been organised on 'political tribal lines' rather than being based on socio-economic cleavages. The characteristic features of the transferable vote have fitted well into such societies. But is is, in consequence, difficult to distinguish between the effects of the electoral system itself and those which flow from the nature of the society in which it operates.

A central concern of early advocates of the single transferable vote was to weaken the role of the rôle of the party machine. Some even hoped that it might lead to the abolition of parties altogether and their replacement by single issue groups. And yet, in those areas where the system operates, parties and party governments are not noticeably weaker than in other countries. In Ireland and Tasmania, the parties have often circumvented the purpose of the system - to provide a choice of candidate - by dividing multi-member constituencies geographically into bailiwicks, each candidate confining himself to one bailiwick and each bailiwick functioning as a single-member constituency. In addition, Ireland and Malta have seen the growth of personal political machines, organisations whose loyalty is owed to a particular candidate rather than to the party as a whole.

The hopes that the single transferable vote would lead to legislatures of high intellectual quality have also been confounded. Indeed, there have been frequent complaints of the calibre both of members of the Irish Dáil and the Tasmanian House of Representatives.

Legislators are said to be narrow and parochial, more interested in servicing their constituents and filling the pork-barrel than in holding the executive to account on policy issues. However, these may be criticisms more of the roles and expectations of rural societies than of the electoral system itself.

The single transferable vote has been found to yield a high degree of proportionality, not as great as list systems, but far higher than plurality or majority systems. Yet there have often been anomalies. In the elections in Malta in 1981, with only two parties competing, the system yielded, for the first time in sixty years in that country, an anomalous result, the Labour Party securing 49.1% of the first preference votes and 34 seats, while the Nationalists with 50.9% of first preference votes gained only 31 seats.

In Ireland, also, there has been some disproportionality. In both 1965 and 1969, Fianna Fail won an absolute majority of the seats on less than 50% of the vote and on a smaller vote than the two main opposition parties - Fine Gael and Labour - combined. In 1969, the Fianna Fail vote fell to 45.7% and the two main opposition parties gained 51.5% of the vote, yet Fianna Fail remained in Government and even increased its share of the seats. In 1973, by contrast, the Fianna Fail vote was higher than in 1969, and the vote of the two opposition parties - 48.8% - lower than in 1969. Yet, the Fianna Fail share of seats fell to 47.6% and it lost power to Fine Gael/Labour coalition.

Supporters of the single transferable vote profess themselves relatively untroubled by these anomalies. The purpose of the system, in their view, is not to secure proportional representation of the parties but proportional representation of opinion and, in particular, of opinion which cuts across party lines. But since they do not give a clear operational definition enabling one to measure proportionality of opinion it becomes difficult to offer any evaluation of their claim. Even so, defenders of the system can plausibly assert that it provides the voters with a greater degree of effective choice than other electoral systems. But critics would argue that this value is not worth pursuing if it means the introduction of larger multi-member constituencies and intra-party factionalism which, in their view, will militate against strong and effective government. In reality, this system encourages individualism and factionalism and minimises the possibility of strong government by encouraging the growth of small parties and their representation and by ensuring that ideology plays a smaller role than individual projection.

The single transferable vote system requires a high degree of sophistication by the voter as numbers have to be used when voting. It is also a complex system requiring an understanding of the quota and how votes are transferred from one candidate to another, while the election count takes a long time. Electoral boundaries and constituency revisions remain controversial and the allocation of the number of seats to a constituency can determine whether smaller parties or individuals could be elected.

7. LIST SYSTEMS

List systems, as used by every continental country except for France, constitute the other main type of proportional representation. Until recently, they were regarded as unsuitable by advocates of proportional representation in Anglo-Saxon countries. In 1976, however, the Hansard Society's Commission on Electoral Reform recommended that Britain adopt a variant of the West German electoral system, while in 1977 the Labour Government proposed a version of the Finnish electoral system for Britain's first elections to the European Parliament. But this proposal was turned down by the British House of Commons. List systems are of many different types with varying political consequences and it is a mistake to speak of 'the list system' as if there was only one type. They can be classified according to four criteria:

(i) whether the list is national or sub national ie., regional or local;

(ii) whether the proportional allocation of seats is at national level or in multi-member constituencies;

(iii) whether the system allows voters to choose between different candidates of their preferred party - or even across parties - or whether it confines them to voting for a party list, with the order of candidates being determined by the party; and

(iv) the nature and size of the threshold.

The 1986 KwaZulu-Natal Indaba proposals use a variation of the list system.

(i) National List systems are used by Israel and the Netherlands. Israel has no constituencies at all. In the Netherlands, constituencies do not determine how many seats each party wins. But they may determine which candidate fills the party seats. Other countries using list systems employ regional or local lists with multi-member constituencies.

(ii) Countries using national list systems allocate seats proportionately at national level. Other countries can choose to allocate seats either regionally or nationally. Countries using regional or local constituencies but allocating seats proportionately at the national level include Germany, Denmark and Italy. National proportionality is secured through the allocation of supplementary seats from a national pool. Allocation at national level will result in greater proportionality than allocation at regional or local level. In addition, small parties which cannot gain representation under a system requiring regional allocation - because they do not have sufficient strength in any one region - might secure representation under a system requiring national allocation, by acquiring support in a number of regions.

(iii) List systems may or may not allow the elector to choose between candidates of the same party. Israel is an example of a country where there is no choice at all: the elector simply votes for the party symbol and the candidates elected to the legislature are decided by the parties. Such a system is an example of the closed list. The West German system also allows the elector no choice between candidates of the same party; while the variant of it recommended by the Hansard Society Commission in 1976, whereby proportionality is secured through the election of the 'best losers' in single member constituencies may be seen as a 'hidden list' system, in that the names of the candidates on the list do not have to be presented to the electorate, as candidates on an actual list must be. Most countries allow some choice of candidate but this is often very limited. A typical ballot paper of a system allowing some limited choice - which may be called the flexible list - is the Belgian one.

On this ballot paper, the elector can either vote for the list in the order decided by the party, in which case he marks - the top of the ballot paper - the so-called ***casé de tete*** - or he may vote instead for a particular candidate by ticking a name on the list.

The possibility of a greater degree of electoral choice can be illustrated by the example of the open list system in Finland where there is no ***casé de tete*** and the elector is not presented with an ordered list at all, but instead with a series of names in alphabetical order. He votes by marking a spcae beside the candidate of his choice.

Finally, there is the case of the so-called free list in Switzerland and Luxembourg where, again, the candidates are not placed in any order of preference by the parties but, by contrast to Finland, the elector has not one vote but as many votes as there are candidates to be elected. He may cast his votes for candidates of different parties and accumulate two votes on any one candidate if he wishes.

Such wide scope for preference voting can be afforded only by relatively homogeneous high consensus societies in which the divisive forces on which opposition parties thrive are quite weak.

Both the open list and the free list systems give the voter control of the party list so that the list is no longer an ordered one. But they are still party list systems in that they share this central feature, that every vote (whether or not given in the first instance to an individual candidate) is automatically and without further reference to the voter's wishes, added to the total of the list on which that candidate appears.

Thus a vote for one candidate on a party list can help elect another candidate on the list of the same party, whom the voter might not support and might not approve of. Such a result can never happen under the single transferable vote; on the other hand party list systems are likely to provide, especially when allocation is at national level, a greater degree of proportionality than the single transferable vote.

(iv) However, not even the purest national list systems, such as Israel and the Netherlands offer complete proportionality. In every system there is a threshold, either implicit or explicit, limiting small parties. The Netherlands has a national threshold established by the number of members elected to the Lower House of the legislature - 150. This means that any party which cannot attract the support of 1/150 of the voters, i.e. 0.67%, will not secure representation. In Israel, there is a statutory threshold of 1% - the lowest explicit threshold in any 'democracy'; the highest is West Germany's where it is 5%.

For countries operating a regional or local constituency system, there is an implicit threshold set by the size of the constituency, except where the threshold is overcome by national allocation of seats. Parties which might have sufficient national support to gain seats where there is allocation at national level, may, if their support is very evenly spread, fail to secure sufficient votes in any one constituency to secure representation where allocation is at sub-national level. Under the single transferable vote system, of course, the threshold is set up the size of the quota and any party unable to secure enough votes to reach the quota anywhere will be unrepresented.

The Federal Republic of Germany is unique in that it combines a constituency-based system with a proportional system. Until 1990 - that is, before the reintegration of East Germany - the country was divided into 248 constituencies, with constituencies of varying size. Half of the members of the Bundestag are elected in single-member constituencies and the other half by the list system of PR. The ballot paper is divided into two parts. The right hand side lists the parties contesting the election in that province with, in small print, the names of the first few candidates on each party's list; on the left side are the names of the individual candidates in that single-member constituency, each being printed opposite the name of that candidate's party (if any). The elector marks one of those candidates, this being his first vote, and these first votes are counted exactly as in a 'South African' election i.e. the constituency member is elected on a relative majority. on the right hand half of the ballot paper, the voter marks the name of one of the parties and it is this second vote which determines the party's total number of seats.

The national totals of second votes serve an important purpose. In order to share in the distribution of list seats, a party must poll at least 5% of the second votes over the entire country or win at least three seats by first votes. The distribution of the national seats is in proportion to the total number of votes won nationally by each party, thus achieving the proportionality which the constituency system fails to achieve.

Lijphart (**Critical Choices for South Africa**, ed. Schrire, p10) says that '(a) disadvantage of the German system is that it is rather complex and that many voters do not fully understand it'.

Various proposals have been put forward as a solution to South Africa's 'ethnically and racially' divided population. Some have attempted to use the single-transferable vote in order to reduce the role of the ANC; others have proposed (as with the 'Institute for Social Inventions') formulae of extraordinary complexity whose avowed purpose is to allay white and 'minority' anxiety, to encourage 'centre parties' and to ensure continuity of government, which is the code-word for inserting parties which will not disturb the ***status quo*** of apartheid, after apartheid has been abolished.

The 1986 Indaba electoral proposals, on the other hand, are tailor made for the kind of governmental structure proposed. 68 out of the 100 seats would be elected on a constituency-based system with proportional representation. There would be 15 constituencies in Natal conveniently using the present local areas, ensuring that whites would be over-represented. Voters will vote in constituencies whose number of seats will be determined by an electoral commission. Parties or 'groups' will obtain the seats on the basis of whether they have attained the electoral quota, which is calculated by dividing the number of votes cast in the constituency by the number of seats allocated to that constituency.

The remainder of the 34 seats would be allocated in proportion to the vote they have attained across the province, in all the constituencies, thus combining a constituency list with a regional list. There is a scarcity of detail about how the electoral system is to be organised but this is in keeping with the avowed aim of ensuring that no party obtains more than 50% of the seats in the first chamber. Since the second chamber has an equality of seats for all the 'background' groups, there is a clear commitment to anti-majoritarianism in the Indaba proposals.

8.NAMIBIA AND ZIMBABWE

Some important political decisions will have to be taken fairly rapidly in order that consequential studies can be undertaken on such mattes as the appropriate regional or constituency units and population distribution. Also, depending on which electoral system obtains favour, the movement will have to embark on crash-courses for cadres to train them in the electoral rules which will operate the system which has been adopted.

W must learn from the experience of Zimbabwe and Namibia, especially as the latter has been held out as having some relevance for South Africa. Regretably, both in Zimbabwe and Namibia, there was hardly any systematic discussion on the electoral system. In the case of Zimbabwe, the Zimbabwean Constitution Order-in-Council of 1979 imposed a **party-list** system without a registration of voters and a number of seats was allocated to each one of the eight electoral districts. This was part of the Lancaster House deal and no real investigation was carried out on the relation between the allocation of seats and the electorate in each district. The white seats had a different arrangement.

In Namibia, even before the 1990 Constitution was adopted, the electoral system which was implemented in 1989 was the one proposed by the Contact Group of Western States and included in the principles attached to Resolution 435 of 1977, which formed the basis of the transfer of power. There was no negotiation between SWAPO and the Contact group and only the vague formula that the assembly would be elected under one-person, one vote, through a system of proportional representation.

The Namibian Constitution now provides (Article 46) for the 72 members of the National Assembly to be elected by registered voters by "general, direct and secret ballot". Although the electoral law is to be determined by act of parliament, Article 49 lays down that these members shall be elected on party lists "in accordance with the principles of proportional representation". Schedule 4 provides some details as to how the list system is to operate.

The upper house, known as the National Council, is constituted by two members being elected from each region (Article 69 (1). But proportional representation for the National Council is not entrenched in the Constitution as paragraph 2 of Article 69 empowers the election of the National Council to be "conducted according to procedures to be prescribed by Act of Parliament". Significantly, Article 106(3) specifically lays down that the "candidate receiving the most votes in any constituency shall be elected a member" of the Council for that constituency. In other words, the majority system prevails. There is also no provision for proportional representation for local elections.

The most significant conclusion to be drawn from the Namibian and Zimbabwean Constitutions is, therefore, that the list system is constitutionally prescribed only for the important lower house. In other countries, where proportional representation is used for elections to the national parliament the proportional representation system permeates other levels also, regional and local. If the representation of minorities was the motivation for the national list system, then the omission of the proportional representation for regions etc., is significant. I am not sure whether this is a good idea as a variation of electoral systems can be confusing, apart from the issue of retaining fair representation for different interests. It is therefore significant that the Thornhill Report on Local Government (May 1990) which enables local authorities to pick and choose "local options" of government, also allows local "indabas" to choose the local electoral system, hardly a credible proposition.

9.SOUTH AFRICAN BACKGROUND

It seems to me, having read a number of proposals on the electoral system from various South African, American and European sources, that the general perception of the ANC's position is that we are wedded to the system of direct election in equal constituencies, otherwise known as the "majority" or first-past-the-post system. Quite how this conclusion has been reached is not clear to me. If it is the received view, then we ought to be clear about the advantages of such an approach and the extent to which we should look at alternative systems, especially in the light of support for a list system evinced at the local government seminar organised by the ANC in October 1990.

On the other hand, there is virtually uniform opposition to the first-past-the-post system among nearly all the academic, "think-tank" and politically motivated writers on this topic. Some are motivated simply by an opposition to 'simple' majoritarianism; others are concerned that minorities (not always to be associated with ethnicity) may not be able to obtain representation under the present system and therefore propose reliance on some version of proportional representation, without having worked out the implications of such a system.

One real problem we face is that the regime has not signified in any way its preference. On the assumption that phrases such as "power-sharing", "no domination by one group", "participatory government" are really coded references to the continued role of whites as a group in the political life of South Africa, one may conclude that the regime would subscribe to an electoral system which would fortify such expectations. Even if the electoral boundaries are manipulated by a commission of their choice, it is difficult to see how the present system could **guarantee** adequate racial or white representation. It would appear to me that governmental thinking must surely be working towards some version of proportional representation. The Democratic Party has already supported PR (without being specific about the version) and the KwaZulu-Indaba proposals adhere to a regional list, together with the constituencies, which appears to me to be influenced by the West German system.

There is some evidence from the Namibian experience that the regime may not have had a firm grasp of the proportional representation system. On the other hand, there is a very developed culture of voting in single-member constituencies among the whites, with established procedures and rules for the conduct of the first-past-the-post system under the existing Electoral Acts. This is a reality which the white bureaucrats may not wish to buck.

10. EXISTING ARRANGEMENTS

Present constituency arrangements will not be able to be used automatically with the enfranchisement of the African majority. To a large extent, the white constituencies take into account the existing magisterial districts but the size of the constituencies and the number of the electorate are heavily affected by the "loading" factors permitted by the South African "Constitution" and laws. The first method for distorting the distribution of seats is allocating a stated number of seats to each of the four provinces and one to Walvis Bay (Section 49 of the Republic of South Africa Constitution Act, 1983). Secondly, the delimitation commission, in faxing the constituency boundaries is obliged to take into account seven factors (density of population, physical features, community or diversity of interests etc) which enables it to depart from the provincial quota by 15% more or less than the quota. In addition, if the constituency size is 25 000 square kms or more, the commission may reduce the number of voters "to a number equal to 70% of the quota" (Section 49(3), ibid).

There has grown up a whole culture of gerrymandering constituencies in white South Africa over the past forty or so years. The result is that heavily populated white Transvaal is under-represented (it took over 15 000 voters to elect a candidate there in the 1989 white election) while the Cape is over-presented (10 575 voters to a seat in 1989).

Having looked carefully at the map of white delimitation for 1989, my conclusion is that the present constituency size and criteria for electoral divisions and number of voters are totally inadequate for a non-racial electorate. I ignore the arrangements for the "Indian" and "Coloured" electorate under the 1983 Act (40 and 80 elected representatives respectively) as these constituencies were not South Africa-wide but limited to areas where these "ethnic" groups registered.

THe white electorate areas take into account only white registered voters. As a result, the variation in size of the constituencies and the number of the electorate are determined by white requirements. If you add the ten homelands to the "tricameral" areas, the picture changes dramatically. The breakdown of the population of the provinces (Sutcliffe's 1990 estimates based on the 1985 census) is as follows:

Cape Province:(30% of the population of 10 560 866

which the Transkei accounts for 3 203 491,

9% of the population)

Natal: 7 331 755

(21% of the population)

OFS: 2 969 731

(8% of the population)

Transvaal: 7 331 755

(42% of the population, of which the PWV

area accounts for 7 276 055, 20% of the

population)

The points to be made in relation to the present system are as follows:

i) That the majority system is simple for the electorate to understand. In a country with a high rate of illiteracy and without a culture of voting for the majority, clear symbols to identify the candidates will assist in the process of voting. However, simplicity can be retained also in a list system where symbols can be used for a national or regional list.

ii) The electorate can identify not only with the party but also with the candidate which would assist parties with candidates with a national profile. It has been argued that a voter seeks a relationship with his/her representative. In fact, parties now throughout the world seek to impose congenial candidates friendly to those who hold power in the party. Independants under the majority system are hardly ever elected and those who voted against the winner do not always see her as "their" representative. Party control of candidates under any system can be readily achieved. But it would be a foolish party which did not choose its list carefully to maximise its support.

iii) A mark x is easier to make than the use by the elector of numbers such as 1,2,3... which are necessary in the alternative vote method or in some of the systems of proportional representation. Symbols can also be used for a list system, however;

iv) The simple majority system is used in a significantnumber of countries, including countries with great cultural diversity or political differences in Asia, Africa and the Americas. However, the most established democracies use a variant of proportional representation which is now being proposed in a number of countries which have, up to now, used the constituency system.

v) There is an absolute need for registration of the voters. White South Africa has about the most developed system of registration of voters which is not only kept up-to-date constantly in a way rarely achieved in real democracies but the parties must be informed by the registrar of voters when voters move from one constituency to another! Without a proper register (which Zimbabwe did not have in 1980), it is not possible to hold any form of "free and fair" constituency-based elections. Under a "list" system such a fraudulent practice as "bussing" in voters does not make any difference; in any constituency based system (majority, alternative vote, exhaustive ballot), such a practice, if properly organised could make the difference between victory and defeat.

In the 1989 elections in Namibia, SWAPO won only 9 of the 23 electoral districts. However, its 57% of the votes - extraordinarily high in any circumstances - gave SWAPO nearly 57% of the seats. In a constituency based election, with sophisticated gerrymandering of boundaries, it would have been possible to minimise SWAPO's strength in the North and to maximise the scattered strength of its opponents. The result could have been different! Boundary manipulation is a much practised art.

Voter registration requires time and a considerable degree of organisation. Only when a regional list is used would it be necessary to register voters in that region.

vi) The delimitation of constituencies is a crucial matter. In nearly all countries, where constituencies play a role, this is done by a commission whose composition varies. In some countries, the composition of the commission is entrenched in the Constitution; in others it is determined by legislation or by government fiat. In Namibia, there is no delimitation commission for the conduct of the National Assembly elections as there no constituencies; regional and local government boundaries will be determined by a Delimitation Commission comprised of the judge of the Supreme Court and two other persons to be appointed by the President, with the approval of Parliament. This formula cannot be supported for a first free election in South Africa as there can be no confidence in appointments by a regime and a parliament in which the majority have had no say. An alternative composition of the Delimitation Commission would be on the Zimbabwean model (section 59), with the Chief Justice or the judge of the Appellate Division, plus three others appointed with the approval of the Chief Justice, following agreement or consensus by the principal political parties. Public hearings of the Commission should be held.

"Gerrymandering" of constituencies in a divided society, such as South Africa, could become one of the most contentious issues of all.

vii) In the constituency-based elections each party would have to provide an election machine geared to a particular candidate dealing with election material and election workers. Under a PR list system, the cost and the need for local expertise is averted.

viii)The issue of the "loading" factor referred to has tobe dealt with. The Zimbabwean Constitution permits up to 20% (section 60) but the grounds for doing so are more rational than the existing South African provisions. If, on the other hand, the national list or regional list system is used, the case for "loading" falls away.

But is there a case for "loading" at all? After all, what is meant by "one person, one vote, one value"?

ix) There is a strong case for a reference to an Electoral Supervisory Commission in the Constitution. Ther is no such body in the Namibian constitution, but there is in setion 61 of the Zimbabwean Constitution, as amended by Section 5 of the Constitution of Zimbabwe Amendment Act, 1987. A number of countries have such a commission and its role will be crucial in a first ever democratic election held in South Africa. In Namibia, complaints about registration and other irregularities were dealt with by the returning and chief returning officers with a complicated system of recourse to the high court. The Zimbabwean approach has much to recommend it. As in Zimbabwe, there has to be a distinction between the arrangements for the first election and the subsequent elections, especially in relation to the composition of the Commission. In Zimbabwe, the President appoints the members of the commission - the chairman and two other members are appointed after consultation with the Judicial Service Commission; two other members are appointed after consultation with the Speaker of the House of Assembly.

I suggest that for the first election in South Africa, a larger commission should be appointed and the Commission would have regional offices in order to expedite the investigation of complaints. If there are difficulties in constituting the Commission, this is one area where there could be international representation of individuals with a reputation for impartiality and fairness.

In Zimbabwe, the powers of the Commission are broad. It supervises the registration of voters and the conduct of the elections of the Upper and Lower houses of Parliament and has a consultative role in relation to changes in the electoral law. Electoral law is a complex arrangement and I would suggest that the interim arrangements which the ANC has in mind should charge such a body to scrutinise the existing electoral Acts with a view to proposing changes. In addition, the Commission should have the added duty of ensuring fairness concerning the treatment of elections by radio and television, with reasonable and equal access to political broadcasts by parties.

Supervision of radio and television, a matter of great importance to the ANC in the absence of a national newspaper, was a controversial and partisan issue in the first elections in Zimbabwe and Namibia and cannot be left to a regime which will be an active participant in the election process.

11. WHICH SYSTEM?

There are two basic objections to the present plural system in South Africa. First of all, in common with other first-past-the -post systems, governments are usually elected on a minority of the votes. Since 1948, the National Party has won every election without obtaining a majority of votes, one of the starkest examples being the 1981 white elections when, with 59% of the votes, it won 79.5% of the seats! Minority parties can be gravely disadvantaged as in the example of the HNP in the same election when with 14.8% of the votes, it won no seats at all! This seems gravely undemocratic as the preference of some voters finds disproportionate representation while one-seventh of the voters have no representation at all. It has been calculated that a party which wins 30% of the total votes could in fact win an overall majority under this system.

The second objection is that the votes of the losers, who may constitute a majority in a constituency, are altogether "wasted" in that these voters are not able to affect the result of an election. This may result in dangers in a fragmented society where minorities might never be represented and the perceived threat to their integrity or viability would be accentuated. It is considered by many democrats that such "wastage" is a form of disfranchisement, with dangerous implications.

On the other hand it must be pointed out, that proportional representation systems have virtually a built in mechanism to ensure that it is difficult for a party to obtain over 50% of the seats; they inevitably give rise to coalitions and 'wheeler-dealing'; compromised and equivocation often become operative ideals.

The list system has certain attractions and its use in Namibia may be used as a precedent. But the "pure" national list system where the seats are allocated on the basis of voting for a party (or a symbol) is found only in small countries (Guyana and Israel) or with small populations (Namibia). Unless there is a threshold (1% in Israel, 5% in West Germany), there will be a proliferation of small parties. In Israel, even with a threshold, rabid and extremist parties have had little difficulty in electing representatives but the system works there (through virtually permanent coalitions) because of fundamental agreement on the nature and basis of the State. Such agreement or consensus does not exist in South Africa.

In my view, the simple national list system is inappropriate for South Africa. Apart from the need for a substantial threshold, a national list election would resemble a series of referenda and totally deny any connection between a representative and a constituency. The advantages of (i) proportionality between votes and seats (ii) the virtual impossibility of manipulating boundaries and (iii) minority representation and (iv) ease of voting, are outweighed by the disadvantages of remoteness of the elected representatives from their constituents and the referendum-style of the campaign during "list" elections.

Remoteness can be mitigated in three ways. Firstly by inserting a totally regional approach (in which case the allocations of seats to the region, by reference to the population of the region, will require a proper census or prior registration) but "pure" regional lists do not result in total proportionality; or, secondly, by adopting the West German model, of single member seats combined with a national list to top up the seats in order to obtain a proper relationship between votes and seats. But this may appear to be too complex for South African conditions.

The third alternative to the simple national list system is to combine the national with a regional list. If ten regions or provinces with nearly equivalent populations (of around 3 million, to be determined by a delimitation commission) were set up in a National Assembly of 400, 200 of these seats would be allocated to the regions. Voting would take place in each region, which would return 20 members. Regional and local parties could then contest these elections, ensuring that minority groupings could find political representation and a closeness between representative and elected is maintained. The second 200 would be allocated on the basis of the total votes obtained by a party nationally. These seats would be allocated on a proportionate basis and to ensure that parties have a national and realistic profile, a threshold of anything between 3% and 5% could be used so that parties not attaining this threshold would not participate in the allocation of the "national list". There would, of course, be only one election and one vote.

Under this system, high profile national parties will succeed in getting their voters out; smaller regional parties, who may not do very well in the regional list, may obtain representation when their votes are totted up in the national list, providing they overcome the threshold.

12.CONCLUSION

Electoral systems can, of course, be chosen without reference to the structure of government. Some commentators have tied one particular electoral system to "consociational" or "power sharing" government. In my view, this is regrettable. We should, of course, consider the following factors:

i) Whether a presidential or prime ministerial government is adopted;

ii) A decision on whether a unitary or federal form of government is to be established;

iii) The extent to which regions are to be identified and whether the regions are based on existing provinces, or on the provinces and Bantustans or on a new geographical division, similar to the 14 ANC regions;

iv) The possibility of the second parliamentary chamber based on a criterion other than direct election in equal constituencies.

These are political issues concerned with power and th electoral system should not be isolated from these factors.

In the meantime, I make two recommendations. Firstly, that the ANC will soon have to take a decision on the electoral system. This should follow debate and discussion at all levels of the structures of the movement. Ultimately, the nature of the electoral system will have to be included in the constitution. The constitution should have a general reference to the right of the people to exercise political power through universal, equal, direct, secret and periodic elections, the right of all citizens over 18 years of age to vote, with exceptions laid down in law, the right of all citizens to hold public office under conditions of equality and freedom. Freedom of association shall include the right to establish or join political associations and parties.

There is a query as to whether a party which **advocates** racism or sexism could contest elections. Or, could this matter be left to the general law of the land which would forbid the advocacy of racism, sexism, chauvinism etc.

Secondly, I am convinced that for the first election, either for a constituent assembly or the first democratic parliament, the electoral system which ought to be used is the national list system. Such an election is in reality a referendum as to how power is to be distributed in such a parliament; it is concerned with determining which party, not individuals, is to operate power. It is a trial of strength and an indication of political support. In the South African context, reliance on the list system will avert such contentious issues as constituency delimitation, precise voter registration etc.

Careful thought must be given to what kind of electoral system would best be suited for South Africa. On balance, my recommendation would be for a combination of the national list system of proportional representation together with a regional list. For regional and local elections, it might be the most progressive position to support the "list" system.

South Africa does not have to take a system off the peg from another country. It would be better to establish the principles that should guide an electoral system and then design a system that follows those principles.

Commentators often talk about "proportionality" or "decisive government" as though they were the only principles that mattered but they are only two of at least five: proportionality; accountability-voters should have reasonable access to a representative whom they may wish to turn to; equal value, so every vote counts equally towards the result, with no votes wasted; and effective choice between the real contenders for power, not artificially induced coalitions to blunt the thrust towards reform and redistribution; legitimacy in that voters must feel that the system is "fair".

It is impossible to devise a system that fully satisfies each principle. Existing systems are a compromise between each one. The system chosen depends on the order of importance in which one puts them. For us in South Africa, therefore, a system which enhances the sense of participation of the voter to influence or affect political choices and provides democratic legitimacy for the new constitutional order, would appear to be the most appropriate.

Table 1: The electoral systems of 39 countries.

	A	B	C	D	E	F	G	H	I	J
Australia	M		2	M		148	148	Y3	Y	18
Austria	p	M6	2	PR	HA	183	9	Y4	N	18
Bahamas	M		2	PL		43	43	Y5	Y	18
Barbados	M		2	PL		27	27	Y5	Y	18
Belgium	M		2	PR	HA	212	30	Y4	N	18
Botswana	pE		2	PL		34	34	Y5	Y	21
Canada	M		2	PL		282	282	Y5	Y	18
Colombia	PE	PL4	2	PR	LR	199	23	N4	N	18
Costa Rica	PE	PL4	1	PR	LR	57	7	N4	N	18
Cyprus	PE	M5	1	PR	LR	56+	6	N5	Y	21
Denmark	M		1	PR	LR	179	19	Y4	N	18
Dominican Rep.	PE	PL4	2	PR	LR	120	27	N4	N	18
Ecuador	PE	M5	1	PR	LR	71	12	N5	N	18
Fiji	M		2	PL		52	52	Y5	Y	21
Finland	p	M*6	1	PR	HA	200	15	Y4	N	18
France	p	M7	2	PR	HA	577	104	Y5	N	18
West Germany	p		2	MX	HA	496**	248	Y4	N	18
Greece	p		1	PR	LR	300	56	Y4	N	18
Iceland	p	PL4	1++	PR	HA	60	8	Y4	Y	20
India	p		2	PL		542	542	Y5	Y	21
Rep.of Ireland	p	M7	2	PR	STV	166	41	Y5	Y	18
Israel	p		1	PR	HA	120	1	Y4	N	18
Italy	p		2	PR	LR	630	32	Y5	N	18
Jamaica	M		2	PL		60	60	Y5	Y	18
Japan	M		2	PL		511	130	Y4	Y	20
Luxembourg	M		1	PR	HA	64	4	Y5	N	18
Netherlands	M		2	PR	HA	150	1	Y4	N	18
New Zealand	M		1	PL		95	95	YE	Y	18
Norway	M		1++	PR	HA	157	19	N4	N	18
Papua New Guinea	M		1	PL		109	109	Y5	Y	18
Portugal	p	M5	1	PR	HA	250	20	Y4	N	18
Solomon Islands	M		1	PL		38	38	Y4	Y	18
Spain	M		2	PR	HA	350	52	Y4	N	18
Sweden	M		1	PR	LR	349	28	Y3	N	18
Switzerland	p		2	PR	HA	200	26	N4	N	18
Trinidad	p		2	PL		36	36	Y5	Y	18
United Kingdom	M		2	PL		650	650	Y5	Y	18
U.S. of America	PE	PL4	2	PL		435	435	N4	Y	18
Venezuela	PE	PL5	2	PR	LR	200	23	N5	N	18

KEY

A Head of state:M = monarch;P = directly elected president;p = indirectly elected president;E = president has executive powers.

B How president is elected:M = majoratarian;PL = plurality; term of office in years.

C Number of chambers in parliament or congress.

D How parliament or lower chamber is elected:M = majoratarian;PL = plurality;PR = proportianal representation;MX = mixed system.

E What type of PR is used:LR = largest remainder;HA = highest average·STV = single transferable vote.

F Number of elected members.

G Number of constituencies.

H Is dissolution possible? Y = Yes;N = No;term of office in years.

I Are by-elections possible? Y = Yes;N = No.

J Minimum voting age.

* In Finland an electoral college,which is elected by proportional representation,chooses the president by majoratarian vote.

\+ The number of Greek Cypriot MPs.Provision is made for elections of 24 Turkish Cypriot members,but these seats have remained vacant.

** The number of West German MPs is,on occassion rather high.

++ In Iceland and Norway the parliament,elected as a single chamber,is divided into two for certain purposes.

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