

# POLITICAL PARTY LIAISON COMMITTEES AS CONFLICT RESOLUTION MECHANISMS – THE SOUTH AFRICAN EXPERIENCE

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## **Abstract**

*With the advent of inclusive multiparty elections and democracy in South Africa and many parts of Africa and beyond in the 1990s, the need for cooperation between political parties and electoral management bodies has become important in order to avoid conflict situations from flaring up and to underpin legitimate and credible election outcomes. In South Africa structures such as the Party Liaison Committee (PLC), have been introduced during the early 1990s as a measure to resolve issues that have the potential for conflict. This article aims to describe the theoretical, legal and political environment that impacted on the evolution of the South African political party liaison committee system. It refers to the functions of the PLC and relates instances where the potential for conflict has been reduced during recent election periods. To illustrate the successes achieved, examples are referred to. The article ends with a reference to some of the strengths and weaknesses of the PLC and reaches a positive conclusion as to the success and future of the PLC.*

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**Keywords:** Party Liaison Committee (PLC); electoral justice; electoral conflict resolution; electoral transparency; political party co-operation.

**Slutelwoorde:** Partyskakeelkomitee; verkiesingsgeregtigheid; verkiesingskonflikresolusie; verkiesingsdeursigtigheid; partypolitieke samewerking.

## **1. INTRODUCTION**

Since the early 1990s, multiparty elections in Africa in particular, have become the most important manifestation of a democratic process. In countries where the election process and the results of elections are in dispute, the whole democratic process of a country is called into question. Prime examples of this are the disputed Kenyan elections held in 2007, the Zimbabwean elections in 2008 and 2013, the Cote d'Ivoire elections in 2010, and the Malawian elections in 2014. Political Party Liaison Committees or Party Liaison Committees (PLCs) – variously also called election committees, inter-party/multi-party liaison committees, peace committees, election panels or conflict management

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committees – play a very important role in ensuring the smooth functioning of the election processes, assisting in ensuring electoral justice and supporting the acceptance of election results. The focus of this article is on the legal political party structures involved in liaison work as complementary structures to the formal election management committees or commissions which supervise elections, such as the South African Electoral Commission (EC), popularly referred to as the Independent Electoral Commission (IEC).

The article does not deal with the macro issues, for instance where a stalemate is reached between leaders or parties due to a refusal to vacate office after having lost an election. Instead, it deals with the micro issues affecting the conduct of elections and the resolution of conflict. Besides South Africa, there are also other African countries that have established party liaison committees. However, the institutions in these countries have had varying degrees of success in relation to their respective electoral management bodies. These committees were formed in countries such as the Democratic Republic of the Congo, Ghana, Tanzania, Lesotho, Namibia, Malawi, Zambia, Zimbabwe, Kenya and Mali with the aim of forming communication channels with their respective electoral management bodies and political parties before, during and after the elections which they may contest. Not much is known about these committees in other parts of Africa. The South African PLC is probably more formalised than others and has a track record of good electoral governance and the successful resolution of conflict. The South African PLC is studied in the context in which it functions; that is as one of the larger African democracies and economies. Its role is also significant in view of the divided apartheid past from which the country is emerging.

The main thrust of this article is primarily to demonstrate the functions of the PLCs, the issues that they deal with, and the processes that they follow at national, provincial and local government levels. The argument is that communication between political parties and the IEC, and transparent decision-making is facilitated through PLC meetings. The aim is to ensure that election processes are managed effectively, thereby averting conflict and achieving legitimate and credible election outcomes, and electoral justice.

The general South African public is not familiar with the existence and functions of the PLC. Moreover, a literature search yields very little academic analysis of PLCs, either locally or internationally, with the exception of Afari Guyan's (2000) contribution on Ghana and Moepya's (in Matlosa *et al.* 2010:143-153) description of the more formal components of the South African PLC. The South African EC has a web page dedicated to Party Liaison Committees (see South African Electoral Commission), which includes a brief description of their functions, but it only allows authorised party representatives access to agendas, minutes and press releases included on the site. The methodology followed in eliciting information for

the article was to interview members who participated in the PLC processes and who were willing to share information. The author also referred to personal observations and the occasional official and non-official publication on PLCs. There is, therefore, a large knowledge gap about the functions of the PLCs and their successes and failures. It will be argued in this article that the South African PLC and its various formations have been successful in their operations. They perform very important functions in pre-empting conflict by following transparent processes and mediating between political parties and those in decision-making positions, and also by reacting to conflict, thereby supporting peaceful, legitimate and credible election outcomes.

## 2. THE THEORETICAL UNDERPINNING

There are several theoretical perspectives through which PLC activities can be viewed. It is self-evident that the casting of a ballot in an election must take place in a legal and administrative environment. The casting of a ballot is preceded and followed by a vast array of activities, regulated by a set of laws, rules and procedures. These activities may include voter registration, candidate nomination, the production of ballot papers, party campaigning, the actual voting process and the counting of the ballots. Mozaffer and Schedler (2002:7) refer to “electoral governance” to conceptualise these activities, which they see as the wider set of activities that create and maintain the broad institutional framework in which voting and election contestation take place. They see “electoral governance” as operating in three areas: rule-making, rule application and rule adjudication, following the Montesquieu notion of the separation of powers; but they view this relationship in a vertical rather than a horizontal sense. Rule-making involves the designing of the basic rules of the electoral game. Rule application involves the implementation of those rules and rule adjudication involves the resolving of disputes arising within the electoral game.

The *International IDEA Handbook*, published in 2010 (IDEA:1), conceptualises election activities by referring to elections and “electoral justice”, which involves the means and mechanisms, “for ensuring that electoral processes are not marred by irregularities, and for *defending electoral rights*. Electoral justice mechanisms include all the means in place for preventing electoral disputes, as well as the formal mechanisms for resolving them by institutional means and the informal mechanisms or alternative means for their resolution.”

The “electoral governance” model emphasises the structures, processes and design involved in ensuring legitimate and credible election outcomes; whereas the electoral justice model represents the ultimate guarantee of free, fair and genuine elections (and referendums), in keeping with the established electoral law (International Institute for Democracy and Electoral Assistance 2010:2). The South African PLC performs all three functions, including a rule-making,

adjudication and implementation function – which is executed at a lower level than central government structures that are constitutionally tasked with these functions – as well as a dispute prevention and resolution function. Thus, the South African PLC functions and processes fit within both of these models; that of “electoral governance” and of “electoral justice”.

Elections and in particular, general elections very often involve the mass mobilisation of large populations in limited timeframes and often with limited resources. Negotiating one’s way through the many complexities of election management and administration is no mean feat in most democracies, whether established or emerging. The idea then is that, if representatives of political parties that are contesting in an election communicate and deliberate in formalised or legal structures such as PLCs about the many electoral governance and electoral justice issues concerning the conduct of an election, these issues are more likely to be resolved in the pursuit of accepted and legitimate election outcomes.

Communication and deliberation then takes place in line with the theoretical framework of deliberative democracy. Democratic deliberation involves other-regarding, reciprocal, reasoned, inclusive and equal debate between the parties involved (Chappell 2012:7). One of the attributes of deliberative democracy is inclusiveness, where all members of a particular community or representatives of a political party are included in decision-making with a view to solving problems. Deliberative democracy takes place both at the micro and macro levels. Micro deliberation takes place face-to-face, at a clearly defined time and place, between well-defined participants. What is said and what decisions have been made are recorded (Chappell 2012:10-11). PLC deliberations take place at the micro deliberative level. By contrast, macro deliberation takes place in the public sphere and includes public debate, statements by politicians and the voice of civil society (Chappell 2012:12). An election campaign and an election are undertaken at the macro deliberative level.

The establishment of a PLC becomes part of the pact; that is, the deal negotiated between the political adversaries, the government and the opposition parties. The PLC becomes a “chosen structure” – very much in line with the rational choice theory – to produce stability and credible election outcomes (Blyth in Marsh and Stoker 2002:300). The choice made for establishing a PLC is very much in line with the “new institutionalism” approach, where the concern is with informal conventions of political life, as well as with formal constitutions and organisational structures (Lowndes in Marsh and Stoker 2002:91). Wolff (2011:1777-1778) takes the issue of institutional design further and acknowledges that, in divided societies, institutional arrangements can provide the context in which differences can be managed and accommodated in a non-violent political way, although there is no agreement in the literature on the most suitable institutions to achieve

this. However, in this article it will be illustrated how interactions can take place between structures, like political parties, through the formal structures created by legislation to deal with electoral matters.

### 3. THE SOUTH AFRICAN PLC – ITS ORIGINS

Prior to the unbanning of the African National Congress (ANC) and other political parties and liberation movements in February 1990, internal political contestation in South Africa was limited to racially-based parties. Following on a negotiated and transitional process in the early 1990s, former liberation movements were incorporated into mainstream politics and the arena of political contestation. Consequently, the number of contestants in the elections increased and the political and electoral environment changed. Up until the early 1990s, elections were supervised by the South African government's Department of Home Affairs. It was only the white population who could participate and therefore it was relatively small and easy to manage compared with the post-1994 period when between 17 and 20 million votes were cast (South African Institute of Race Relations 2013:868). Pre-1994 relations between political parties were conducted on an *ad hoc* basis between political parties, through third parties and at perchance meetings between party officials and candidates.

The idea for the establishment of an independent electoral authority for the peaceful settlement of disputes was mooted in December 1992 at an early meeting of the Convention for a Democratic South Africa (CODESA). CODESA was established to negotiate a new constitutional order for the country, following the signing of a national peace accord in September 1991 between various organisations .

CODESA Working Group 1, one of five working groups, was tasked with creating a climate for free political participation. One of its resolutions was that, "all disputes between political parties should be settled peacefully" (South African Institute of Race Relations 1993:499–500). In September 1993, the 26 parties involved in CODESA agreed to establish an interim Independent Electoral Commission (IEC) to oversee the general election which was to be held in 1994. In November 1993, the Independent Electoral Commission Act was promulgated by the South African Parliament, formally establishing an IEC. This was followed in December 1993 by the Electoral Act, which provided for the Transitional Executive Council (TEC), a structure established to assist in the transition to and preparation for the implementation of a democratic order in South Africa. The TEC was tasked to establish an interim party liaison committee until a national party liaison committee could be established by a future independent electoral commission. The interim party liaison committee consisted of the national election agents of all parties participating in the elections. The body was not allocated any

decision-making powers, but was mandated to establish liaison between the IEC and political parties on matters such as the administration of electoral agreements, staffing, location of voting and counting stations, the demarcation of voting districts and the number and location of foreign voting districts (South African Institute of Race Relations 1994:501).

The Interim Constitution, *Act 200 of 1993*, came into effect on 27 April 1994, providing for a Constitutional Assembly (CA) comprising 400 members elected from the National Assembly and 90 members from the Senate. The Constitutional Assembly was tasked to draw up a new constitution for the country. Six theme committees were formed by the CA to investigate a number of constitutional issues. The specialised Structures of Government Committee was mandated in August 1994 to look at the possible establishment of an election committee for South Africa (South African Institute of Race Relations 1995:333).

This mandate was carried through and incorporated into the 1996 Constitution of the Republic of South Africa, which came into effect on 4 February 1997. In terms of Section 190 of Chapter 9, provision was made for the functioning and composition of a permanent EC as a state institution supporting constitutional democracy, to be constituted in terms of national legislation. In terms of Section 190 of the Constitution, the EC must manage the elections of national, provincial and municipal legislative bodies in accordance with national legislation; it must ensure that the elections are free and fair; declare the results of the elections; and may assume additional powers and functions prescribed by national legislation.

The legal foundation for the PLC was further spelled out in Chapter 9 of the 1996 Constitution of the Republic of South Africa. In terms of Section 181(1), it provided for the establishment of institutions which will strengthen constitutional democracy, including an “Electoral Commission” (commonly referred to as the Independent Electoral Commission, IEC), among other institutions. Section 181(1) also states that such institutions will be independent and be subject to the 1996 Constitution and the law only; they must be impartial, and exercise their powers and perform their functions without fear, favour or prejudice. These institutions are accountable to the National Assembly.

A new Electoral Commission Act, *Act 51 of 1996*, was promulgated in September of that year. In terms of Section 5(1)(g), one of the functions of the EC was to, “establish and maintain liaison and co-operation with parties”. The appointment of members to the IEC is undertaken in terms of this Act.

To support the provisions of the 1996 Constitution, the Electoral Commission Act of 1996, in terms of Section 5(1)(9), provided for a set of regulations titled *Regulations on Party Liaison Committees, 1998*. These regulations came into effect on 19 June of that year. The Local Government Municipal Electoral Act and Municipal Electoral Regulations were adopted in 2000 to further support the

provisions of the 1996 Constitution. The Act and Regulations were drafted to regulate municipal elections in 2000.

From 1998 onwards, a party liaison committee system came into being to manage the relations between the competing parties. Initially, in the early 1990s, individuals liaised with one another. Later this relationship became more formalised through the enactment of legislation and the adoption of regulations and practices. The establishment of the EC and the PLC were, therefore, a product of the negotiated process leading to a new constitutional order in the country. Racially inclusive elections were held in South Africa at parliamentary, provincial and local government levels in 1994, 1995/1996, 1999, 2000, 2004, 2006, 2009, 2011 and 2014.

During the 1994 and the 1995/1996 local government elections, political parties liaised at the behest of the then serving IEC chairman in terms of an interim South African constitution and the Electoral Act, *Act 73 of 1988*. Therefore, a more formalised PLC structure has been active in the elections since 1998 with the publication in that year of *Regulations on Party Liaison Committees* (Regulations on Party Liaison Committees 1998).

#### **4. THE PLC REGULATIONS**

The regulations are brief and state that the formal structures of PLCs will facilitate such liaison and provide for:

- a party liaison committee at the national sphere of government, with not more than two representatives from every registered party represented in the national assembly;
- a provincial liaison committee for each of the nine provinces, with not more than two representatives from every registered party represented in the legislature of the province concerned;
- municipal party liaison committees for a single municipality or a group of municipalities, with not more than two representatives from every registered party represented in the municipal council and not more than two representatives represented in the party liaison committee for the province, but not represented in the municipal council, and not more than one representative of every independent councillor represented in a municipal council.

By following internal processes, political parties nominate persons to serve on these committees. These representatives are not remunerated. According to the regulations, the PLCs will serve as vehicles for consultation and cooperation between the EC and the registered political parties concerned on all electoral matters aimed at the delivery of a free and fair election (Electoral Commission 1998).

## 5. THE LEGAL ENVIRONMENT IN WHICH PLCs FUNCTION

The legislation referred to above sets out the general “rules of the game” by which political contestation is to take place. Such rules may have conflict-exacerbating or conflict-mitigating effects, underpinned by various conflict causal factors, such as the electoral design, intra-party power struggles, factionalism and personality cults.

Besides the 1996 Constitution, the 1998 Regulations on Party Liaison Committees and the 1996 Electoral Act, liaison between political parties is more specifically regulated by Schedule 2 of the Electoral Commission Act, *Act 51 of 1996*, which provides for an Electoral Code of Conduct. Section 1 stipulates that the purpose of the Code is to promote conditions that are conducive to free and fair elections; but, specifically, Section 5, “Duty to co-operate”, states, “Every registered party and every candidate must liaise with other parties contesting an election and endeavour to ensure that they do not call a public meeting, march, demonstration, rally or any other public political event at the same time and place as that called by another party contesting the election.”

The Electoral Act and the Code of Conduct are enforceable by law in a court of law, including an Electoral Court, established in terms of Chapter 5 of the Electoral Commission Act of 1996.

In the current South African context, the IEC is the key supervisory body and its role and composition determine the scope for inter-party cooperation – that is, whether cooperation is enforced from above or is achieved voluntarily through party interaction. There are three electoral management models against which the South African experience needs to be measured.

Electoral management bodies can either heighten or lower conflict during an election process to determine a credible and legitimate election outcome. In general, in terms of Section 190(1) of the 1996 Constitution of the Republic of South Africa, the IEC is tasked to manage national, provincial and municipal elections, to ensure that those elections are free and fair, and to declare the results within a prescribed period of time as pointed out above. PLCs operate in all three spheres of government, namely one at the national level, nine at the provincial level and 284 at the local level. At the national and provincial levels they meet monthly or bi-monthly, and at the local level their existence and operation is sporadic and dependent upon local needs. PLCs are channels of communication between political parties, and their functioning is determined by the model of election management in place. Therefore PLCs are important components of the electoral commission model, underpinning their functioning and filling a gap between formal electoral management decision-making structures and political parties. The PLCs are subordinate to the IEC and it is, therefore, necessary to reflect on the nature of election management models and on which model the South African IEC follows.



Three broad types of election management models can be identified: the independent model, the governmental model and the mixed model – each functioning with varying levels of independence from their respective governments.

The independent model is funded from government sources, but not accountable to the executive branch of government and is managed by appointees from a broad spectrum of the population, besides appointees made from the legislature. Such a model is accountable to a legislature, as is the case currently with the South African IEC.

The government model is funded and appointed entirely by government. Elections are managed by the executive branch of government through a government department, as was the case in South Africa prior to the 1990s.

The mixed model is situated between the two, having a policy formulation, monitoring or supervisory function, and an implementation component which conducts elections and is performed by a government department. There is much debate in the literature and in practice as to what constitutes an independent electoral management model and how it should operate. A distinction needs to be made between normative and formal or structural independence. Normative independence requires independence in decision-making, whereas structural functioning may be carried out by formal governmental structures (ACE Electoral Knowledge Network). Although the South African IEC is normatively independent, political parties ask questions about its structural independence in view of the fact that government officials are used in the election processes, as is referred to below. Since the South African IEC fits in the mixed model, this association in turn determines how the PLC functions.

## **6. THE SOUTH AFRICAN PLCs: HOW DO THEY FUNCTION?**

The applicable legislation, as referred to extensively above, does not on its own ensure free and fair elections. Besides the wide-ranging legislative environment and its prescriptions in which the PLC operates, what scope does it have and how successful is it in promoting cooperation and resolving conflict, given the environment in which it functions? An electoral process has many dimensions and issues which cannot be covered entirely by legislation and policy documents. These issues include rule-making, adjudication and implementation functions, as well as dispute prevention and resolution functions. The PLC performs all these functions by filling the gaps.

The functions of the PLC coincide with the five-yearly election cycle, which generally involves the registration of voters and the compilation of a voters' roll; ward delimitation at the local government level; the setting of an election timetable; selection of candidates; the establishment of polling stations; party rallies and election day arrangements; the counting of ballots; the evaluation and debriefing of

the entire process; and planning for the next election and by-elections. Many of the issues discussed are of a technical nature, but it is, nevertheless, very important that it is dealt with in order to avert possible conflict between political parties on the one hand, and the IEC on the other.

The representatives of political parties attend PLC meetings with very definite views as to what is in the interests of their respective political parties, either in a by-election, or a local, or national general election (Napier 2009). With the skilful chairing of the PLC meeting, consensus is reached between the parties with regard to various technical issues. In this case, lengthy discussions will take place on the issues of concern until consensus is reached. A similar approach is followed in other PLC formations; that is, the decisions made are generally reached through consensus. Once a decision is arrived at, the content of that decision is fed back to the participating parties, either to act on in parliament when it involves legislative changes, or to party structures for implementation. The PLC has, in many instances, a recommendation function with respect to rules and legislative amendments that could be considered, such as to the content of the Electoral Act of 1998. The content of the discussions in the PLC, whether at the national, provincial or local levels, generally coincides with the election cycle, as referred to above. In all three spheres of government the PLC structures meet once a week after the proclamation of an election, twice a day on an election day, and every second month during inter-election periods to discuss issues that need attention or resolution (Tlakula 2007:109, 115). In addition, at the provincial level conflict resolution bodies are established with representatives from the respective parties in the province to liaise on issues of dispute. The aim is for individual representatives from the parties concerned to build personal contacts and relationships, so as to be able to tackle issues in dispute through informal channels (Moriarty 2012).

Besides its role in averting conflict, the South African PLC is used as a channel for informing political parties, through their PLC representatives and in a transparent manner, about current electoral issues. For example, the IEC held an extended PLC workshop in July 2007 to inform members about the impending floor-crossing window period from 1 to 15 September 2007 (a period prescribed in law when members could cross to another party without incurring penalties) and its implications for political parties at the three spheres of government (Independent Electoral Commission, Gauteng 2007). Likewise, a workshop was held with PLC members and IEC representatives setting out the legal requirements and management of the 2009 South African general election.

## **7. SOME EXAMPLES OF THE MANY SPECIFIC ISSUES DISCUSSED AND RESOLVED**

According to the minutes of a National Party Liaison Committee (NPLC) meeting with the political parties, held on 30 November 2005, the following were considered by the representatives of the 12 political parties present, as well as the IEC officials and a representative of the South African Police Services (SAPS): voter registration activity; the status of the voters' roll; identity documents; draft timetable for the local government elections to be held on 1 March 2006; procedures for submitting candidate nomination documents; changes in party logos; ballot paper samples; security arrangements; laws and regulations; cross-border municipalities; and zip-zip machines – which are electronic devices or scanners used to check voter registration details.

In the minutes, reference is also made to the ground rules for the conduct of voter registration and elections; incidents of political intolerance displayed by some political parties; and political parties that did not observe the ground rules during a voter registration weekend held earlier. It was noted that the legislation applicable on election day, cannot always be inferred to apply to voter registration periods. It was resolved by the members present that, “co-operation among themselves was of the essence in this regard and untoward behaviour of supporters must be reported to the structures of the party in order to have these matters addressed accordingly” (National Party Liaison Committee 2005) – thus illustrating an instance where the PLC performed a conflict avoidance and rule implementation function.

At a follow-up NPLC meeting, held on 11 January 2006, during which preparations for the 2006 local government election were discussed, members were informed that objections to the voters' roll were still being received and processed and that one free copy would be made available to participating parties, as well as additional copies for a fee.

Another issue discussed was targeted voter registration, where voting districts were split following an earlier ward re-delimitation exercise, requiring the re-registration of 28 000 voters in those voting districts. The submission of candidates' lists and payments were also discussed, detailing the procedures to be followed and the cut-off dates. Members of the PLC were also invited to participate in a ballot paper draw to determine the party sequence listing on the proportional representation ballot paper list for the local government election. Members were also informed that pocket-size booklets on relevant legislation would be distributed to political parties and that a small message system (SMS), distributed by mobile telephone, would be instituted to assist in re-directing voters to the correct voting stations. Party representatives were also invited to participate in the signing of an Election Code of Conduct to indicate their support for the proper conduct of the election.

A further NPLC meeting took place on 31 May 2006, following the 1 March 2006 local government elections, where members enquired whether voter registration was a continuous process and suggested that new possible voters be targeted to register to vote. Future by-elections were also discussed and members suggested that there be at least a period of 30 days between the date of proclamation, as well as the cut-off date for the submission of candidates' names (National Party Liaison Committee 2006a).

The NPLC meeting, held on 6 August 2008, deliberated on amendments to the following regulations: the registration of political parties; voting day activities outside voting stations; the submission of lists of candidates; and on party agents' presence at various stages in the voting process. The amendments were made in preparation for the forthcoming 2009 general elections. These amendments to the regulations were done in terms of Section 100(2) of the Electoral Act 73 of 1998, permitting the Commission to make regulations, after consultation with the party national liaison committee, regarding any matter it considered necessary or expedient in order to achieve the objectives of the Act.

At the same meeting, a circular, making provision for the re-demarcation of municipal boundaries, was brought to the attention of members, as well as the increase in the number of large metropolitan municipalities, the incorporation of other areas into the larger municipalities, and the disestablishment of District Management Areas (National Party Liaison Committee 2008b). Besides the information and implementation role that the PLC performs, it also performs a limited legislative and rule-making role, as referred to above.

In a NPLC meeting, held on 30 January 2013 in preparation for the 2014 national and provincial elections, consideration was given to the Draft Electoral Amendment Bill, providing for voters not resident in South Africa to vote at an overseas diplomatic mission. Concern was expressed by the political parties present that the Bill did not cater for both a national and provincial ballot for voters not present in their respective provinces on the day of the election, or those who are resident outside the country. For practical reasons this request was rejected (National Party Liaison Committee 2013).

An amendment to the Regulations on Party Liaison Committees 1998 was accepted, providing for representatives of political parties who may not be represented at any level of government to attend special meetings to discuss particular issues related to elections (National Party Liaison Committee 2013).

The meeting also considered the growth in the number of voting districts, from 20 859 in the 2011 local government elections to 22 198 for the 2014 national and provincial elections. The Committee members were informed that targeted communication and registration would take place in 2 283 voting districts

throughout the country – information which could be relayed to the respective political parties and their representatives (National Party Liaison Committee 2013).

## **8. THREE EXAMPLES WHERE POTENTIAL CONFLICT WAS AVERTED THROUGH CO-OPERATION WITHIN THE PLC**

The interim Party Liaison Committee, referred to above, played a role prior to the first inclusive democratic elections in South Africa in 1994. Following the Inkatha Freedom Party (IFP)'s decision not to participate in the 1993 negotiating process for a new constitution and its subsequent withdrawal from the elections scheduled for 27 April 1994, a ballot paper was printed without its inclusion. A series of inter-party negotiations ensued and, shortly before the election took place, the IFP agreed to participate and have its name included on the ballot paper. The ballot paper had already been printed and included the name of the former National Party (NP), whose name was last on the ballot paper. At that stage, the NP campaign had already proceeded and it was conveyed to potential voters that its name would appear last on the ballot paper. With the late inclusion of the IFP, the IEC had to add the party's name to the ballot paper. Since the ballot papers could not be reprinted, they did this by pasting a sticker of the IFP at the foot of the ballot paper. The NP could no longer inform its supporters that they are placed at the bottom of the ballot paper. Through a series of delicate negotiations in the interim PLC at the time, a potential conflict was averted (Kriegler 2013).

Another conflict situation was averted in the South African local government elections held on 1 March 2006. At about 10:00 (polling stations open at 07:00), the IEC was alerted to two irregularities in the distribution of ballot papers. In an entire KwaZulu-Natal local municipality, it was reported that 33 municipal wards did not receive the correct ballot papers – that is, candidate ballot papers for the incorrect ward were allocated to each of the 33 wards. By 10:00, voters had already begun to cast their ballots for their party of choice, as well as casting their vote for a candidate that was not standing for election in that ward. Members of the PLC were summoned to decide on how to correct the situation. The opposition parties proposed that the spoilt ballots be set aside and that, when voting was complete, each candidate would be allocated votes in proportion to those votes cast for each candidate. This proposal was rejected by the chairperson of the IEC in favour of not counting the incorrectly cast votes for candidates in each ward. This proposal was eventually accepted by the PLC representatives (Party Liaison Committee member 2010).

What would the implications have been if PLC party representatives had not agreed to this outcome? It should be noted that KwaZulu-Natal is a particularly volatile province with a strong history of conflict between the ANC and the IFP. If it was established after voting had been completed that there were irregularities,

it could have resulted in accusations and even violent conflict between parties and candidates. It could also have resulted in the election results not being declared within 72 hours of the polling stations' closing, as required by the Electoral Act, and even in by-elections in each ward, which would have been a costly exercise. The intervention of the PLC may also have averted a later Electoral Court challenge. These possible outcomes would have contributed to voters losing confidence in the electoral system and in the IEC as a supervisory body. By having political party representatives present in one locality who could deliberate on the problem and agree on a solution, serious conflict was avoided (Party Liaison Committee member 2010).

A problem arose during the 2009 South African general elections, when certain polling stations ran out of a supply of ballot papers. This resulted in long queues of angry voters not being able to vote. Additional ballot papers had to be obtained, thus delaying the process which would have resulted in queues of waiting voters outside polling stations at the closing time of 21:00. The national PLC members were then summoned to decide on how to deal with the shortfall in ballot papers, so as to allow those who still wished to vote, to do so. The unanimous decision of the parties was not to keep polling stations open beyond 21:00, but to allow those already queuing to vote, thus averting a possible series of accusations of unfairness in the management of the election and, possibly, even violence (Party Liaison Committee member 2010).

## **9. SOME CRITICISMS AND WEAKNESSES OF THE ELECTORAL PROCESS AND PLCs**

At the South African municipal level where a ward and party list system operates, questions were raised by opposition parties in the PLC about the independence of the officials involved in the management of elections. Officials employed by local authorities are tasked by the IEC with the administration of the local elections. These members include the employment of South African Democratic Teachers Union (SADTU) members. It was argued by the opposition parties that those local government officials and teachers were political party appointees or members of COSATU – a union affiliated to the governing party – and that this, in turn, was likely to compromise the independence of the IEC. It was further argued that such officials should not be employed by the IEC (Independent Electoral Commission 2008:40).

In a NPLC Debriefing Report of May 2006, in response to the concerns raised by PLC members about the independence of staff recruited, it was reported that staff may not be recruited from teacher unions that were affiliated to political parties or associated with local government ward committees. PLC members were further reminded that the names of people who were employed as Presiding Officers

(POs) and Deputy Presiding Officers (DPOs) had to be submitted to PLC members, who could raise substantive objections about their ability to serve the IEC without bias. Moreover, electoral staff who were high-profile political party officials were relieved of their duties as electoral officials. In two instances, in Limpopo and in the Free State, there were examples of such occurrences (National Party Liaison Committee 2006b).

A comprehensive debriefing report was presented on 17 August 2009 concerning the preceding 2009 general election. Issues considered during the review were the timetable; candidate nomination; logistics and infrastructure; recruitment and training of electoral staff; communication and civic education; code of conduct and conflict management; information technology; results operation centres; voting and counting; results and objections; and legislative review.

One of the highly contentious issues concerning the 2009 election was the provision of ballot papers, with a shortfall of ballot papers reported at various voting stations, as referred to above. According to the information supplied at the debriefing session, 23 181 997 voters were registered for this election; 28 502 500 ballot papers were printed for the national elections and 27 050 500 for the provincial elections, which were conducted concurrently; in other words, the ballot papers printed exceeded the number of registered voters in the country. Yet, shortages of ballot papers became a serious issue at many voting stations in urban areas and directed attention to Section 24A of the Electoral Act, which permitted voters to vote at polling stations of their choice within their province. Much was said at the debriefing session on the need for persons to register, for an analysis of who were registered as voters, and of the factors discouraging persons from voting as voters, as well as the further need for civic education.

Another highly contentious issue that was dealt with during the debriefing session was the participation of registered voters who reside outside the country in the 2009 elections. A court challenge resulted in 12 314 voters voting outside the country, of whom 2 457 were government officials. Some 9 857 votes were cast by registered voters living outside the country. This process placed an increased burden on political party infrastructure and is likely to increase in demand in future years, which participant political parties will need to take note of (National Party Liaison Committee 2009).

A weakness noted by one of the participants, is that the decisions taken by the PLC were not binding on the parties. It depended very much on the goodwill of the parties to abide with decisions made. Problems raised in the PLC, like poster vandalism, intimidation of voters and impersonation, may be investigated, but not resolved by the IEC. Such issues might be referred to the SAPS for investigation, but they were often not resolved due to a lack of understanding of the issues concerned, and a lack of training in basic election management issues.

Another weakness identified is the dominance of the larger parties in PLC meetings, not in terms of numbers, but through the resources that they have available to drive issues and to protect their interests (Moriarty 2010).

A further weakness identified by a senior manager of the EC was the lack of resources available to political parties at the local government level, in particular to attend PLC meetings. At parliamentary and provincial levels there was generally full attendance by political parties represented in PLC meetings. At those levels, resources were made available by political parties to attend meetings in view of their full time status and the availability of travel resources. At the local level attendance was generally erratic, although it increased nearer to election time (Abrahams 2015).

## **10. THE VALUE OF THE SOUTH AFRICAN PLC**

When a permanent PLC was established in 1998, there was a certain degree of suspicion and distrust between the PLC and the IEC, with PLC members questioning whether the IEC could truly be an independent body. Over time, the degree of trust has grown between the two and there is now a greater willingness to accept PLC inputs. Many of the decisions made by the PLC have found their way, through the respective political parties, to parliament for enactment in legislation. As can be seen from the above, PLC members have to deal with a wide variety of issues concerning election management. Many of the issues raised in the PLC, if not resolved, could be the source of conflict between parties and individuals. The success of PLC deliberations is largely determined by what the political parties contribute to the deliberations in the form of knowledge and expertise. The success of the PLC deliberations and of the decisions taken is further determined by the ability of political parties to convey that information to their members and to participants in the pre-election, election and post-election phases, with a view to achieving compliance (Moriarty 2010). Compliance with PLC decisions has certainly been eased through the general acceptance of the post-1994 constitutional order, which bridged many of the divisions of the past.

The IEC maintains that an indicator of the success of the PLC is the drop in the number of complaints received concerning no-go areas, political violence and intimidation. In the general election in 1994 it received 3 558 complaints, in 1999 some 1 032 complaints and in 2004 there were only about 108 complaints (Tlakula 2007:110,115). In the 2011 local government election some 49 complaints were logged on the IEC's system at a national level (Party Liaison Committee representative 2011), further suggesting the success of the PLC in dealing with electoral issues; but also suggesting a maturing of South Africa's democratic processes.



Many of the issues the South African PLC has to deal with, as stated above, are technical in nature, but very important to the efficient management of the electoral process. If they are not dealt with, they can derail a whole election process and lead to conflict. To deal with these technical matters, specialists from political parties can, through the PLC, engage in these issues and reach solutions which are generally not within the reach of ordinary party persons or the general public. The existence of the PLC allows for an on-going engagement between parties and the IEC. The PLCs have become a focal point for political parties and for the IEC to deal with, and to resolve election issues, often before the issues become issues of conflict. Although parties in the legislative sphere in South Africa are generally highly confrontational, they tend to put aside their differences on most issues when an agreement between PLC members has been reached (Party Liaison Committee member 2010).

Over time, the engagement between the PLC and the IEC in the South African context has matured, and now it is almost incomprehensible that a democratic electoral system such as South Africa's, could function successfully without a PLC. The PLC has become institutionalised and, without a doubt, reduced the potential for conflict resulting from electoral challenges. It has performed a very important oversight role and, by raising issues, certain corrective measures have been instituted; for instance the removal of electoral staff who might have political leanings from supervisory positions and the amendment of regulations to remedy specific procedural and other electoral governance weaknesses.

Since 1999 there have been a few serious disputes. However, these disputes were about election results, rather than procedural issues. This can be partly attributed to the effective management of conflict through the activities of the PLC in the pursuit of electoral justice. South Africa's procedural democracy is far more secure and better managed as a result of the deliberations between political parties in the PLC. As was pointed out above, the idea of the PLC to provide transparency in the electoral process was conceptualised early on during the negotiations for a new constitutional order in South Africa. The PLC is a product of the comprehensive constitutional pact negotiated over a number of years between political parties and the government of the day. As the new constitutional order becomes more institutionalised, so does the role of the PLC. Decisions arrived at through deliberations in the PLC are accepted and carried through by political parties. In summary, the institutional design and the deliberative process adopted for the operation of PLCs has proved to be suitable for the intended purpose of achieving electoral justice and securing the South African democratic state.

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