



THE FW DE KLERK FOUNDATION

Our Constitution a Reality for all South Africans!

To: Honourable Mosa Chabane
Chairperson, Portfolio Committee on Home Affairs

Per email: chabane.mosa@gmail.com; mchabane@parliament.gov.za;
bnkangana@parliament.gov.za; emathonsi@parliament.gov.za

And to: Honourable Angela Thokozile Didiza
Speaker of the National Assembly

Per email: speaker@parliament.gov.za

**Re: Urgent request by the FW de Klerk Foundation for processing of
ERCP consolidated report on electoral reform ahead of 2029
elections**

From: Ms Daniela Ellerbeck
Manager: Constitutional Rights Programme
FW de Klerk Foundation

Date 5 February 2026

Dear Honourable Chabane

1. I write on behalf of the FW de Klerk Foundation ("the Foundation") to respectfully request that the Portfolio Committee on Home Affairs ("the Committee") **urgently consider and process** the consolidated report of the Electoral Reform Consultation ("ERCP").
2. The Foundation is a non-profit organisation dedicated to upholding the Constitution of the Republic of South Africa, 1996 ("the Constitution"). Our vision is to make our constitutional democracy a lived reality for all South Africans. To this end, the Foundation seeks, *inter alia*, to promote and protect the Constitution, strengthen democracy, and act in the interest of everyone in South Africa.

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3. Accordingly, the Foundation has a direct and legitimate interest in electoral system reform that strengthens accountability, representativity and responsiveness, consistent with the Constitution's founding values in section 1.
4. The Foundation appreciates the Committee's ongoing engagement with the ERCP process, including the request for guidance from Parliamentary Legal Services, and we recognise Parliament's constitutional role and the separation of powers throughout this important reform exercise.

Summary of events leading up to tabling of first two ERCP reports

5. Section 23 of the [Electoral Amendment Act, 2023](#) mandated a comprehensive review of the electoral system for elections beyond 2024. The Act required the Minister of Home Affairs ("the Minister") to establish the ERCP to independently investigate reform options, consult the public and submit a single consolidated report **within 12 months of the 2024 elections**. That report had to address advantages, disadvantages, and the legal and financial implications.
6. Upon receipt, the Minister must table the report in **both Houses of Parliament within 30 days** (section 23(7) of the Electoral Amendment Act). Read with [section 42\(1\)](#) of the Constitution, the reference to "*Parliament*" requires the involvement of both the National Assembly and the National Council of Provinces.
7. The ERCP received an [extension](#) of the deadline to submit their report to the Minister to 29 August 2025. On 18 September 2025, the Minister submitted two report(s) from the ERCP for tabling in Parliament.
8. Parliament announced the reports as follows in the Announcements, Tablings and Committee Reports ("ATC"):
 - 8.1. On [25 September 2025](#) for the NCOP (referred to the Select Committee on Security and Justice); and



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- 8.2. On [14 October 2025](#) for the National Assembly (referred to the Portfolio Committee on Home Affairs “for consideration” – i.e., without a requirement to report back to the House).

Legality of first two ERCP reports

9. On [18 November 2025](#), Parliamentary Legal Services (Messrs Moshokoa and Simani) briefed the Committee on the legal status and processing requirements for the ERCP outputs as set out in section 23 of the Electoral Amendment Act.
10. They advised the Committee that the two ERCP reports transmitted to Parliament - an [original report](#) and an [alternative report](#) - did **not** comply with the requirement in section 23 for a **single, composite report** containing all views. They further advised that both Houses of Parliament, i.e. the National Assembly and the National Council of Provinces, are legally obligated by the Electoral Amendment Act to consider the report and any subsequent recommendations, either through a joint process or coordinated parallel processes.
11. Parliamentary Legal Services concluded that, the ERCP had not produced - and thus the Minister had not tabled - a single, section-23-compliant report, which Parliament could process. They advised that neither the Minister, nor the ERCP, was *functus officio* and that the ERCP could still be instructed to produce a single, compliant report.
12. Parliamentary Legal Services recommended that any future referral be designated for **consideration and report**, and that Parliament consider if a **joint Committee or coordinated processes** would best fulfil the obligations of both Houses under section 23.

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Summary of events since

13. In communication with the Committee's Secretary, Mr Mathonsi, on 16 January 2026 and 22 January 2026 respectively, the Foundation was advised that the Committee had written formally to the Minister at the end of 2025 to request that he reconvene the ERCP so that it could produce one consolidated, compliant report. As a result, the Minister gave the ERCP until 30 January 2026 to submit this consolidated report to himself.
14. The Minister's instruction was confirmed at the meeting of the Committee on [27 January 2026](#).
15. The Foundation acknowledges the Committee has acted responsibly, in writing to the Minister of Home Affairs at the advice of Parliamentary Legal Services.
16. The Foundation understands that the ERCP has complied and delivered the consolidated report to the Minister, and that the Committee has scheduled the report for consideration on **31 March 2026** to allow time for the Minister to process and table it.
17. At the date of writing, according to the ATC, the Minister has not yet submitted this new consolidated report to Parliament. As such, the Speaker's Office has been unable to refer the consolidated report to the Committee for **consideration and report**. Nor has a joint Committee been established, **nor a coordinated processes been announced**, as recommended by the Parliamentary Legal Services.

Urgency and narrowing timeframes

18. With the 2029 national and provincial elections approaching, there is a **rapidly closing window for meaningful electoral reform**, especially reforms that would introduce a constituency-based component to strengthen **accountability to voters**, something which has been repeatedly requested by participants in public consultations.



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19. Reforms of this nature are likely to entail:

19.1. Either the executive or Parliament drafting an amendment bill to electoral legislation, as well as potential changes to the mandate of the Municipal Demarcation Board (or the establishment of another appropriate demarcation authority);

19.2. The formal tabling of the bill in Parliament;

19.3. Meaningful public participation at all stages;

19.4. The passing of the final bill by Parliament;

19.5. The President's assent to the final bill; and

19.6. A full electoral demarcation process must be undertaken by the now empowered demarcation authority.

20. The above is an inherently time-consuming, technically complex, and politically sensitive process that **requires** robust planning and an adequate lead-time.

21. Against this backdrop, the Foundation submits that scheduling the Committee's first engagement for **31 March 2026** - preceded by the Minister's tabling obligations and any referral to both Houses or a joint mechanism, and **followed by** the Committee's deliberations and report drafting – will likely leave Parliament insufficient time to:

21.1. Introduce and pass the necessary primary and secondary legislation while undertaking meaningful public participation; and

21.2. Adjust the mandate and operational readiness of the demarcation authority as required.

22. It will also leave the demarcation authority insufficient time to complete the demarcation itself, and, as a result, the Independent Electoral Commission will have insufficient time to prepare for the 2029 election.

Legal basis for urgency

23. The urgency arises from **Parliament's legal obligations** under:

23.1. Section 23 of the Electoral Amendment Act;

23.2. The Constitution's demands - particularly regarding accountability, responsiveness and openness (section 1), effective exercise of political rights and meaningful electoral choice (section 19), and the requirement that national legislation prescribe the electoral system for both the National Assembly and Provincial Legislatures (sections 46(1) and 105(1)).

24. It is submitted that the urgency also arises out of Parliament's **oversight role** and its obligations to **ensure meaningful participatory democracy**, and to adhere to the **rule of law** (section 1(c) of the Constitution) by acting rationally by passing legislation reasonably capable of achieving its legitimate purpose.

25. **Undue delay is likely to make it impossible to implement deeper structural reforms (such as constituency-based elements) in time for 2029.** Should that occur, Parliament's realistic options may be constrained to marginal or technical adjustments, rather than genuine, system-level reform capable of strengthening the link between voters and elected representatives. We note that the present electoral system **still does not give proper effect** to the constitutional rights to



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freedom of association (section 18) and the **political rights** (section 19) as enunciated in several Constitutional Court judgments.

26. This is precisely what occurred with the Electoral Amendment Act, 2023, where Parliament adopted the Ministerial Advisory Committee on Electoral System Reform's minimalist recommendation, which a minority of that Committee supported. The adoption of this approach led to a [fallout from stakeholders](#) that threatened to derail the 2024 elections. A compromise was, therefore, struck in terms of which the ERCP was included in the Electoral Amendment Act to address these concerns and to provide for a thorough review of the South African electoral system and identify appropriate options for the country.
27. **Undue delay risks undermining the very purpose of the ERCP and section 23 of the Electoral Amendment Act.**

Specific requests to the Committee

28. In a constructive spirit, the Foundation respectfully requests that the Committee:
- 28.1. Treat the processing of the ERCP consolidated report as a matter of priority and urgency.
- 28.2. Bring forward the scheduled 31 March 2026 engagement with the report. If the date cannot be advanced, ensure that subsequent steps (including tabling of bills, referrals, public hearings, and deliberations) are tightly time-managed **to safeguard the possibility of implementing electoral reform before 2029.**

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28.3. Engage early with the National Assembly Table and, where appropriate, the National Council of Provinces, so that both Houses can discharge their roles under section 23 - whether by establishing a joint mechanism, or by adopting clearly coordinated parallel processes that avoid duplication and delay, as recommended by Parliamentary Legal Services.

28.4. As part of that engagement, explicitly:

28.4.1. Consider the timelines required for any demarcation-related reforms (including any necessary change to the mandate of the Municipal Demarcation Board, or other relevant demarcation authority); and

28.4.2. Integrate this into the Committee's work programme to ensure that the demarcation authority has sufficient time to complete its tasks, together with necessary public participation, well before the 2029 elections.

Closing

29. The Foundation reaffirms its respect for the Committee's role and recognises the complexity and sensitivity of electoral reform. We share Parliament's commitment to an electoral system that promotes accountability, responsiveness, and openness, and that gives practical effect to the political rights of all South Africans.



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30. Thank you for your attention to this urgent matter and for your stewardship of a process of profound importance to our constitutional democracy.

Sincerely,

Daniela Ellerbeck

Constitutional Rights Programme Manager

FW de Klerk Foundation

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