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LAWYERS  
 for  
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 RIGHTS

**TELEFAX TRANSMISSION**

DATE 29/8/93  
 MESSAGE FOR Melody Bennett  
 FAX NUMBER (011) 397 2211  
 SENDER Bealle van Pret, Governor, IFEE Lobbying Commission  
 NUMBER OF PAGES (INCL. THIS ONE) 6

**COMMENTS**

*Dear Melody,*  
 Will you please make sure that each member  
 of the Ad hoc Working Committee: I/E gets  
 one for this evening.  
 Thanks again;  
 Bealle.

PLEASE CONTACT SENDER IN THE EVENT OF AN ERROR IN TRANSMISSION

THANK YOU

## MEMORANDUM

TO: AD HOC WORKING COMMITTEE : INDEPENDENT ELECTORAL  
COMMISSION BILL

FROM: LOBBYING COMMISSION, INDEPENDENT FORUM FOR ELECTORAL  
EDUCATION

DATE: 29 AUGUST 1993

1 Determination and certification of election results, and  
declaration

It is imperative that the Commission's determination, certification and evaluation of election results should be final and not subject to appeal or review by any court or the Special Electoral Court. There must be finality as to the certification of the election results. This must happen relatively soon. The South African society is a volatile one. The effect of drawn-out uncertainty on the outcome should be avoided at all costs. It will result in an escalation of violence.

Experience of other countries

- Namibia's certification was by UNTAG. No appeal. Outcome accepted by DTA despite criticism of voting in Ovamboland. This brought peace.
- In Nigeria the recent election results declared void - violence followed. The unpreparedness to accept the final verdict of the democratic process was the real reason why the results were contested.

That is also the final test here: Will the finality of the democratic decision be accepted? If yes - then plan for a process which will ensure free and fair elections.

Irregularities during campaigning should be addressed and remedied then. It should not be possible for any party to use them as excuses for not accepting the results. Is there adequate provision in the bill for such control and remedies? We feel that the machinery is provided for through the Special Electoral Tribunals, Electoral Appeal

Tribunals and especially the Special Electoral Court. The latter is appointed by the Transitional Council and not the IEC; it will consist of judges from the Appellate Division of the Supreme Court, the Supreme Court, as well as a suitable expert and it has the power to review any decision of the Commission. This means that the action and procedure of the IEC can be effectively checked and therefore the certification must be final.

If there is still a lack of trust among parties, it can only be addressed by creating legitimate, independent and competent structures - not by contesting the outcome.

In the light of the above, we request that the following should be given serious consideration:

- 2 To address the problem of lack of trust, and to make sure that the IEC remains independent, we request that the requirement which was omitted in the fourth draft be revived. If we insisted that every member of the IEC was only eligible if he/she did not hold any political or public office 18 months prior to his/her appointment, it may go a long way to address fears and lack of trust of parties.
- 3 We still feel that the decision to restrict membership of the Commission to those who give up all other employment may well mean that appropriate people are excluded. While we understand that the Commissioners will have to give almost exclusive attention to this task. there may be some examples (such as senior church leaders) where a person may not be able to relinquish all other responsibilities.

In the light of the above, clause 6(1)(a) and (b) of the fourth draft, with regard to the conduct required of members, should read as follows:

- 6(1) Every member of the Commission shall -
- (a) be appointed in her/his individual capacity, and shall, notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform her or his functions in good faith and without fear, favour, bias or prejudice;
  - (b) serve in full-time capacity;

(c) within 30 days . . .

4 Because of the urgency of their task and time constraints that exist, we still recommend that consideration be given to the appointment of between three to five alternate (reserve) members for the IEC. They would have to attend meetings but not have the vote and could effectively and speedily replace a member if necessary.

5 As far as process is concerned, we would like to again stress the importance of public participation in the appointment of members of the IEC by the Forum (and its successors).

6 Definitions

"Republic" means the Republic of South Africa, including any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei."

The above would suffice as definition and would serve to prevent the suggestion of separation from the RSA, which is misleading.

7 Conclusion

- If it is accepted that there must be a new political order in South Africa;
- if this is to come about peacefully;
- if elections form part of the peaceful transition;

then the results must be accepted.

As this Act needs to be read in conjunction with the Code of Conduct for parties, the Electoral Act and the Electoral Code, we urge the Forum to make appropriate drafts available to us for comment and to contextualise our perspective of the IEC.

## IFEE Membership

1. Applied Broadcasting Centre - John Van Zyl
2. Akanani - Themba Mavimbela
3. ASCA - Ndumiso Ngada
4. Audio Waves - Thami Ntenteni
5. Black Sash - Sheena Duncan
6. Broadcast Monitoring Project - Bronwyn Keene-Young
7. CBM - Renee Alberts
8. CCH - Riaan Terblanche
9. CDS - Robert Mopp
10. CIB - Jeanette Minnie
11. CIE - Bernie Mullen
12. ECF - Zwo Nevhutalu
13. Electronic Media In Education Forum - Nicola Golumbik
14. FAWO - Beata Lipman
15. FDA - Wayne Mitchell
16. Free Market Foundation - Mark Swanepoel
17. HAP - Ntombi Mekgwe
18. HSRC - Jabu Sindane
19. ICT - Jeff Marishane
20. IDASA - Paul Graham
21. IFEE Co-ordinator - Pumla Gqirana
22. IFEE Media Commission Convenor - Barry Gilder
23. IFEE Media Co-ordinator - Champa Goolab
24. IFEE Border - Ntombazana Botha
25. IFEE Durban - Ntombifuthi Zondo
26. IFEE Karoo
27. IFEE OFS - Thabo Manyoni
28. IFEE Pmb - G. Wannenburg
29. IFEE Pretoria - Alice Coetzee
30. IFEE W. Cape - Domini Lewis
31. IFEE W. Tvl - Sam Present
32. IFEE N. Tvl - Themba Mavimbela
33. IFEE E. Cape - Gift Zokufa
34. IMSSA - Ilona Tip
35. JEP - Sheila Sisulu
36. KLTC - David Kgabodiso
37. Learn and Teach
38. Lawyers for Human Rights - Cecille van Riet
39. Matla Trust - Terence Tryon
40. Methodist Church - Dimitri Palos
41. MPD - Richard Mkholo
42. National Land Committee
43. NYDCC - Leema Mofokeng
44. Regional Research and Reporting Corporation - H. du Preez
45. SACBC - Sean O'Leary
46. SACC - Eddie Makue
47. SACHED Trust - Glen Masokoane

