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SUBMISSIONS

SUBTHEME COMMITTEE 6.1
THEME COMMITTEE 6

ELECTION COMMISSION

19 JUNE 1995

**SUBMISSIONS TO THEME COMMITTEE 6
SUBTHEME COMMITTEE 6.1**

VOLUME 10

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**AFRICAN CHRISTIAN DEMOCRATIC PARTY
SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 6.1**

ELECTORAL COMMISSION

The true character and legitimacy of a system of government is found in the principles enshrined in the democratic ideal where the population is guaranteed the right to a regular, free and fair election process.

The will and maturity of the people is established when it is recognised that authority is democratically administered by the people. However, to exercise their authority responsibly and legitimately, the population need mechanisms to facilitate the process.

Democracy is enigmatic and contradictory by nature. It invariably occurs that good citizens give their support to presumably frustrating leadership, only to realise that once in position of power, the stature and public confidence of these leaders diminish, and that the people are, in turn, having to call for their removal.

Unfortunately in the majority of instances, those who possess outstanding moral leadership qualities are often found to be among the governed than being the governors.

As this seems to be the precarious position of the democratic process, and a principle rather to tolerate than to discard for something less flexible, we express our faith in the morality of suffrage, and believe that the electoral procedure is best managed by a trusted election body, such as an election commission.

ELECTION COMMISSION

The ACDP supports the idea that an election commission should be *independent* and *representative*.

We regard the status of independence as significant in that all political parties and institutions are insured of equal standing, as well as it protects against philandering and favouritism.

It is also necessary that the election commission be representative, reflecting a character of population participation.

We further believe it to be advisable to view the election commission as a permanent structure of society with limited functions during non-election periods, dealing with issues on an advisory and analytical level.

The election commission should adopt a strict code of principles, which will outline their position on transparency, legitimacy, impartiality/non-partisanship, efficiency etc.

It should also adopt a strict ethical finance policy. It should further operate on administratively correct guidelines and demand respect from the general public.

The election commission should be in close working relationship with the various local government authorities in order to ascertain demographic changes and to assist where necessary with the upkeep of voter registration and voters roll administration.

The election commission can be incorporated into a statutory body, to provide judiciary weight to their function.

As it was the tradition of the past that the election process was handled by the department of Home Affairs to ensure efficiency and availability of resources, this may continue to be so, but that a greater involvement be supplied to the election commission within these structures.

We further are of the opinion that an independent election commission should have recourse to an independent media commission.

POSTSCRIPT

We must at all times strive to govern with integrity, yet should we not have been able to accomplish much, may we at least be able to say we've passed the test that has been put before us as expressed by the following extract :

"What do you expect from society and its government? We must be clear about that.

Do you wish to raise mankind to an elevated and generous view of the things of this world? Do you want to inspire men with a certain scorn of material goods?

Do you hope to engender deep convictions and prepare the way for acts of profound devotion?

Are you concerned with refining mores, elevating manners, and causing the arts to blossom? Do you desire poetry, renown, and glory?

Do you set out to organise a nation so that it will have a powerful influence over all others? Do you expect it to attempt great enterprises and, whatever be the result of its efforts, to leave a great mark on history?

If in your view that should be the main object of men in society, do not support democratic government; it surely will not lead you to that goal.

But if you think it profitable to turn man's intellectual and moral activity toward the necessities of physical life and use them to produce well-being, if you think that reason is more use to men than genius, if your object is not to create heroic virtues but rather tranquil habits, if you would rather contemplate vices than crimes and prefer fewer transgressions at the cost of fewer splendid deeds, if in place of a brilliant society you are content to live in one that is prosperous, and finally, if in your view the main object of government is not to achieve the greatest strength or glory for the nation as a whole but to provide for every individual therein the utmost well-being, protecting him as far as possible from all afflictions, then it is good to make conditions equal and to establish a democratic government.

But if there is no time left to make a choice, and if a force beyond human control is already carrying you along regardless of your desires toward one of these types of government, then at least seek to derive from it all the good that it can do; understanding its good instincts as well as its evil inclinations, try to restrain the latter and promote the former."

(see De Tocqueville, Democracy in America; p226)

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OFFICE OF THE SECRETARY GENERAL

Please find our Preliminary Submission
on Electoral Commission for TC 6.1
enclosed.

M. C. Ramaphosa
Per: M. C. Ramaphosa

DRAFT ANC SUBMISSION - THEME COMMITTEE 6.1

ELECTORAL COMMISSION

1. Guiding Principles

The ANC considers the following guiding principles to be relevant to the debate concerning the establishment of the South African Electoral Commission:

1. A multi-party state shall exist in South Africa based on the principle of democratic majority rule.
2. Regular elections shall be held, at no longer than five year intervals, with the creation of a common voters roll based on adult universal suffrage at all levels of government.
3. Parliament is to be the expression of the will of the people.
4. There shall be democratically elected government at national, provincial and local levels.

2. The Democratic Constitutional State

The need for a South African Electoral Commission emanates from the values and principles underpinning democratic constitutionalism, including the following:

1. The South African state should have the character of a democratic constitutional state, expressing a balance between democracy and constitutionalism.
2. The principle of democracy, including the fundamental right to vote.
3. The administration and supervision of elections by an independent body, to be called the South African Electoral Commission. It is proposed that the Electoral Commission consist of 6 persons of integrity elected by a 75% majority of all members of the National Assembly. Such Electoral Commission shall be granted the necessary authority to administer and direct the conduct of the elections in South Africa.

- 3.1 The powers and functions of the Electoral Commission should be prescribed by a national law, subject to the democratic values enshrined in the constitution.
- 3.2 The Electoral Commission should be governed by the following values and principles:
- * independence;
 - * impartiality;
 - * efficiency and effectiveness;
 - * professionalism; and
 - * transparency.

07/06/95

DEMOCRATIC PARTY SUBMISSION TO SUBTHEME COMMITTEE 6.1

AN INDEPENDENT ELECTORAL COMMISSION

Introductory Comments

The delivery of free and fair elections at regular intervals is at the core of democracy. In order for the electorate to trust the electoral process, and indeed for the government of the day to enjoy legitimacy, the electoral process must be as impartial as possible. For this reason the Democratic Party proposes a constitutional provision establishing an Independent Electoral Commission.

An impartial electoral commission is one which has no stake in who wins or loses an election, and which is not susceptible to improper influence. Its main objective is to create a level playing field on which all political players may compete on an equal basis. Should a department of government control the electoral process, the Democratic Party feels the delivery of free and fair elections could be severely compromised. Government departments at national or provincial level should perform the bulk of the work around an election, but control must vest in an independent body.

Composition of the Commission

The DP advocates that the Commission be chaired by a judge and comprised of individuals with relevant experience and expertise who also have a reputation for independence and integrity. No person who has been a public representative or office bearer for a political party or organisation during the previous three years should be eligible. A transparent appointment procedure, at arm's length from the executive, should be specified (as in the case of the Human Rights Commission).

Privileges and Authority

The members of an independent commission should be afforded various privileges and immunities. The status of commission members could be equivalent to judges. In order to ensure their independence, they should only be removed for gross dereliction of duty and for financial improprieties. Procedures for their

removal from office should be specified. They must not be eligible for appointment to public office, or to the public

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service, for a specified period after completing service. It is essential that the appointment, terms of office and removal procedure be specified in the Constitution. The working procedures and powers of the commission can be fleshed out by an appropriate Electoral Act.

Funding

In light of the huge amount of monies unaccounted for by the 1994 Independent Electoral Commission, the Democratic Party feels that the commission's accounts should be subject to audit by the Auditor-General.

Responsibilities

Given the divisions in our society, the DP believes the commission ought to have authority over the following functions and powers; some of which it may delegate to sub-committees or other persons:

- * interpreting the electoral law and adopting regulations;
- * designating and training of provincial election officials;
- * certification of candidates and registered parties;
- * demarcation of constituencies;
- * investigating and adjudicating complaints, including those presented directly to the commission and appeals from subordinate bodies.



National Party
Nasionale Party

Federal Council
Federale Raad

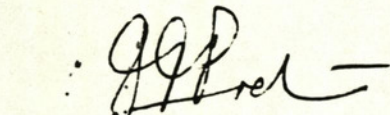
1 June 1995

Mr Hassen Ebrahim
Executive Director
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Dear mr Ebrahim

Enclosed please find the National Party's preliminary submission on the election commission for Sub Theme Committee 6.1.

Kind regards


S J DE BEER MP

NATIONAL PARTY PRELIMINARY SUBMISSION

THEME COMMITTEE 6

SUBTHEME COMMITTEE 6.1: ELECTION COMMISSION

A INTRODUCTION

The principle of regular, free and fair elections is fundamental to a future democratic system in South Africa. This is confirmed by Constitutional Principle VIII which provides for "representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation". It is therefore imperative that the administration of elections be conducted with the necessary impartiality and efficiency so as to ensure a credible, transparent and, ultimately, legitimate election process. Without legitimate elections democracy itself is in jeopardy. In developing democracies, in particular, the legitimacy of the system itself depends *inter alia* on the extent to which the electorate accepts the validity of the elections. The mechanism to which this responsibility is assigned is therefore of vital importance. The National Party hereby submits its general views on this matter. If necessary, a further, detailed submission may be made at a later stage.

B POINTS OF DEPARTURE

The primary objective of any election process is to arrive by legal means at an accurate, reliable and legitimate reflection of the will of the people with regard to the election of their representatives in government. In accordance with this objective, the National Party believes that **impartiality** and **efficiency** are the two most important criteria with which the administration of elections must comply. All the other criteria mentioned, for example, by Mr Peter Harris in his presentation to the Subtheme Committee, such as independence, professionalism, transparency, impartial and speedy adjudication and stability, relate to those two basic

requirements. By **impartiality** we mean that the election process must be conducted without political bias, it must be free from direction of any outsider, political party or any other person with a direct interest in the election, and it must be protected against interference or manipulation of any kind. It goes without saying that the **efficiency** with which the election process is conducted is crucial not only for its smooth and expeditious finalisation, but also for its credibility and legitimacy. Inefficiency tends to create suspicion against the impartiality of the process.

In practice, impartiality and efficiency may sometimes appear to be in conflict. An impartial electoral agency may lack the know-how or manpower to ensure efficiency, or an efficient agency may lack the independence to be accepted as being sufficiently impartial. In this submission, the National Party endeavours to put forward a proposal that can bridge these apparently conflicting points of departure and can ensure an impartial and efficient election process.

C THE STATE v AN INDEPENDENT BODY

The basic question of which body should administer elections in order to ensure the necessary impartiality and efficiency is sometimes presented as a simple choice between the state apparatus and an independent body. In other words, either the state, through its department responsible for elections, conducts the process, which may affect its impartiality, or an independent body is created to take up the responsibility, which may affect the efficiency with which the process is conducted. We believe this is an over-simplification and that it is indeed possible to reconcile these apparently conflicting options.

D AN ELECTORAL COMMISSION

1. The National Party believes that a **permanent independent electoral commission** should be in charge of future elections at all levels. Such a commission must

manage every election in accordance with the principle of regular, free and fair elections and with the purpose of ensuring that the result provides an accurate, reliable and legitimate reflection of the will of the people in the election of their representatives.

2. The commission must be independent and impartial and must be able to perform its functions without bias or interference of any kind. The National Party believes that this can be ensured, *inter alia*, firstly only if **the basic principles governing the composition, powers and functioning of the commission are included and entrenched in the constitution**. Provisions analogous to those on the Public Protector and Auditor-General should be considered in this regard. Secondly, the commission must be directly responsible to Parliament and must submit annual reports to Parliament on its activities and findings. A special parliamentary committee should be established to evaluate the work of the commission.

3. In order to ensure the efficiency of the election process, the National Party believes that **the expertise and experience that have been acquired over the years in the Department of Home Affairs be utilised** in the administration of future elections. South Africa can ill afford it financially and politically to simply allow that know-how to go to waste. For this reason, we propose as follows:

(a) The electoral commission contemplated above must appoint a chief electoral officer, as well as permanent and professional officials, to take responsibility for the actual conduct of elections. The commission should recruit experienced officials from the Department of Home Affairs. Furthermore, other officials operating at local level should also be involved in the actual conduct of elections at grass-roots level. For practical purposes, regional offices should be established in the various provinces.

(b) It is incumbent upon the electoral commission to **control and monitor** the election process and the administration of the election by the chief electoral officer. This is the position in countries such as Australia, India and Canada.

(c) The conduct of the commission and the chief electoral officer and all officials must at all times be in accordance with the principles of **independence, transparency, accountability, professionalism, efficiency and impartiality**. For this purpose, all officials involved should undergo training on a continuous basis. The chief electoral officer is accountable to both the commission and parliament.

4. With regard to the **adjudication of electoral disputes**, we believe that the function of the electoral commission is to control and monitor the election process and not to act as referee. Control and adjudication cannot be the responsibility of the same body. Special provision for the expeditious and impartial adjudication of disputes is therefore required. That could take the form either of referring disputes to the Supreme Court to be adjudicated on a priority basis or, in view of the specialised and urgent nature of electoral disputes, to a special electoral court.

E CONCLUSION

The National Party believes that the above proposal can reconcile and give effect to the criteria of impartiality and efficiency, can bring together the need for an independent electoral agency and the utilisation of existing expertise and experience, and can facilitate the objective of regular, free and fair elections. If we succeed in ensuring that future elections be conducted according to the principles of justice, fairness and transparency, democracy itself will be served.

1 JUNE 1995