



INKATHA

Inkatha Freedom Party

Iqembu leNkatha Yenkululeko

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**COMMENTS BY THE INKATHA FREEDOM PARTY TO THE DRAFT BILL BY THE
TECHNICAL COMMITTEE ON THE INDEPENDENT ELECTORAL COMMISSION
DATED MAY 21, 1993**

Preliminarily, the IFP wishes to congratulate the Technical Committee on the Independent Electoral Commission [IEC] for having submitted an excellent draft Bill for the establishment of an IEC. The IFP endorses the general principles and perspectives of the Bill drafted by the Technical Sub-Committee and recommends its approval to the Negotiating Council, subject to the clarifications and conditions set forth herein.

The democratisation process in South Africa represents both the continuity and a discontinuity. This is especially important in the drafting of legislation. For this reason we would make slight amendments to the title of the draft by deleting such words as "new" or "interim". Thus the sentence after the words "facilitate" would read: "the elections of parliament to function in terms of the Constitution".

In the index we would alter the title 3 "binding on the State" to "Liability of the State."

Under Chapter Nine there is a spelling mistake.
At 24 which should be "offences" instead of "offenses".

At 25 should read "impersonation" and not "personation".

At 29 we would delete the word "transitional".

Chapter One

1. Definitions

1.1 The correct terminology is now "The Commonwealth". Thus the word "British" is no longer used. We would delete the word "British".

We would delete the word "other" before "international" so that it reads: "any international organisation" and we would delete "so" and add after the word "designated" the words "as such". We would delete the words "the new" before the word "parliament".

1.5. There is a spelling mistake. It should be electoral.

1.8 We would suggest that legally it would be more accurate and realistic to state "including citizens of such TBVC states as shall have been re-incorporated into the Republic".

1.11. We would delete the word "new" and the word "transitional" as a matter of idiomatic English elections can never be transitional. They are just "elections".

The first footnote on Page 2 refers to a submission by the ANC on citizenship. We would add that it is necessary to add: "birth outside South Africa where both parents are South African citizens."

1.15. We would substitute for the words "including the TBVC states" the words "including such TBVC states as shall have been reincorporated to the Republic by the commencement date."

1.17. We would delete the words "transitional".

Section 2. Application of this Act.

We would delete the word "initially" and the word "transitional". We would also substitute for the word "but" the word "and".

Section 3. We would render the title "Liability to the State".

Section 5. We would delete the word "the new" in line 2. Delete the word "transitional" in line 3. Delete words "the transitional" in line 6.

We draw attention once more to the contention that there should be electoral commissions at State or Regional level in terms of federal principles.

Section 6.3 substitute the word "the" for the word "represent" in line 4.

Section 7.

7.2 delete the word "transitional".

7.3.1. The usual expression is "without fear or favour, affection or ill will"

7.3.2. It should be "remunerated or not" and not "remunerated or otherwise".

We would suggest substituting the word "in" for the word "with" in the fourth line. Also we would delete the word "transitional". We would delete the word "transitional" wherever it occurs alongside "elections".

11.1. To add the word "are" between "elections" and "called" in line 5.

We note with concern that the draft assumes that the elections will be by means of ballot papers in the traditional manner used in previous elections in South Africa. Naturally we do not accept this as it assumes literate populations. We consider that the Forum and the Technical Committee must look at the system of elections that have been employed in Third World countries such as India, Bophuthatswana and elsewhere where parties were identified by their symbols and symbols or disks were used for voting purposes.

Furthermore there is no discretion on the exact form of proportional representation that will be used in the election. We believe that this must appear in the Electoral Act.

The IFP does not believe that it is not appropriate for a bill establishing an IEC to indicate that the next Parliament should be charged with the task of drafting and enacting a new constitution, thereby acting as a Constituent Assembly.

Accordingly, the definition of "Parliament" contained in the Bill should be limited to the enunciation that Parliament means the legislative body elected as a result of the next elections. The additional language does not serve any purpose in the context of the Bill, is improper and should be deleted.

The IFP is concerned about the fact that the definition of "this Act" includes "the regulations prescribed hereunder". The IFP believes that the Act and the regulations should remain in a hierarchical relationship so that the validity of the regulations can be judged against the terms and conditions set forth in the Act. In this regard, the IFP believes that the definition of "Regulations" should spell out that "the regulations are valid only to the extent that they are adopted within the parameters of the Act and that their validity can be challenged before a court of law".

The IFP believes that it would be advisable that the individuals with the final responsibility for the conduction of any of the three Directorates be appointed with the advice and consent of the Forum/Council.

We also seek clarity on the relation between the decisions and the regulations adopted by the IEC and the legislation on the electoral system. The IFP believes that the IEC should not adopt decisions or regulations on any substantive matter affecting the nature and dynamics of the electoral system. In this respect, the language of 17(3) should be clarified so as to avoid that the IEC assumes the power to create electoral districts. Instead of "electoral divisions" the following expression could be used: "geographic divisions for the purposes of organising electoral activities".

Section 17.7 should specify that the IEC should also "attend to the registration of representatives appointed by political parties who may act as returning officers, and polling and counting officers in addition to those appointed by the IEC". Obviously, the representatives of political parties will need to be allowed to maintain their political affiliations and this should be reflected in this section.

It may also be advisable to specify amongst the powers of the IEC the obligation to determine "arrangements to prevent the creation and implementation of any type of voting contracts, and gatherings aimed at verifying compliance with or promoting such voting contracts".

Moreover, it may be advisable to spell out clearly that also the arrangements undertaken by the Election Administration Directorate should be aimed at avoiding intimidation and double voting.

It also needs to be clarified that the IEC needs to establish procedures to ensure that disclosure requirements are not avoided by fragmenting a large donation in various smaller ones

Section 21 should recognise an appeal procedure to guarantee the rights of all political parties. This is made necessary by the extreme magnitude of powers and functions which are recognised to the Commission. The IFP suggests that this appeal procedure be not of a judicial but of a political nature and, therefore, proposes that all decisions by the Commission, including the adoption of regulations, could be appealed to the Forum/Council within eight days of their adoption and that such decisions and regulations will stand unless the Forum/Council sets them aside or amends them within eight days from the appeal date.

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