

1/3/4/2/21

REPUBLIC OF SOUTH AFRICA

**INDEPENDENT ELECTORAL
COMMISSION BILL**

(As introduced)

(MINISTER OF HOME AFFAIRS)

[B 151—93 (GA)]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
ONAFHANKLIKE
VERKIESINGSKOMMISSIE**

(Soos ingedien)

(MINISTER VAN BINNELANDSE SAKE)

[W 151—93 (AS)]

ISBN 0 621 15231 5

BILL

To make provision for the conduct of free and fair elections for the National Assembly and any other elected legislature contemplated in the Constitution of the Republic of South Africa Act, 1993; to make provision for the conduct of certain referendums by the Independent Electoral Commission; and to provide for matters in connection therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

Section

CHAPTER I		5
<i>Interpretation and Application of Act</i>		
1. Definitions		
2. Application of Act		
3. Act binding on State and State President		
CHAPTER II		10
<i>Independent Electoral Commission</i>		
4. Establishment and objects of Commission		
5. Constitution of Commission		
6. Conduct required of members		
7. Disclosure of conflicting interests		15
8. Independence of Commission		
9. Dissolution of Commission		
10. Conditions of service, remuneration and allowances of members of Commission and International Advisory Committee		
11. Vacation of office, removal from office and filling of vacancies in Commission		20
12. Meetings of Commission		
13. Powers, duties and functions of Commission		
14. International Advisory Committee		
15. Administration and staff of Commission		25
16. Expenditure of Commission and budget		
17. Accountability and finance		
18. Determination and certification of election results, or declaration		
CHAPTER III		
<i>Election Administration Directorate</i>		30
19. Establishment of Election Administration Directorate		
20. Constitution of Election Administration Directorate		
21. Powers, duties and functions of Chief Director: Administration		
CHAPTER IV		
<i>Election Monitoring Directorate</i>		35
22. Establishment of Election Monitoring Directorate		

WETSONTWERP

Om voorsiening te maak vir die voer van vry en regverdigde verkiesings vir die Nasionale Vergadering en enige ander verkose wetgewer in die Grondwet van die Republiek van Suid-Afrika, 1993, beoog; voorsiening te maak vir die voer van sekere referendums deur die Onafhanklike Verkiesingskommissie; en voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

INDELING VAN ARTIKELS

Artikel

5

HOOFSTUK I

Uitleg en Toepassing van Wet

1. Woordomskrywing
2. Toepassing van Wet
3. Wet bind Staat en Staatspresident

10

HOOFSTUK II

Onafhanklike Verkiesingskommissie

4. Instelling en oogmerke van Kommissie
5. Samestelling van Kommissie
6. Gedrag van lede vereis
- 15 7. Openbaarmaking van botsende belange
8. Onafhanklikheid van Kommissie
9. Ontbinding van Kommissie
10. Diensvoorwaardes, besoldiging en toelaes van lede van Kommissie en Internasionale Advieskomitee
- 20 11. Ontruiming van amp, ontheffing van amp en vul van vakatures in Kommissie
12. Vergaderings van Kommissie
13. Bevoegdhede, pligte en werksaamhede van Kommissie
14. Internasionale Advieskomitee
- 25 15. Administrasie en personeel van Kommissie
16. Uitgawe van Kommissie en begroting
17. Rekenpligtigheid en finansies
18. Bepaling en sertifisering van verkiesingsuitslae, of verklaring

HOOFSTUK III

30

Direktoraat Verkiesingsadministrasie

19. Instelling van Direktoraat Verkiesingsadministrasie
20. Samestelling van Direktoraat Verkiesingsadministrasie
21. Bevoegdhede, pligte en werksaamhede van Hoofdirekteur: Administrasie

HOOFSTUK IV

35

Direktoraat Verkiesingsmonitering

22. Instelling van Direktoraat Verkiesingsmonitering

23. Constitution of Election Monitoring Directorate
 24. Powers, duties and functions of Chief Director: Monitoring

CHAPTER V

Election Adjudication Secretariat

25. Establishment of Election Adjudication Secretariat 5
 26. Constitution of Election Adjudication Secretariat
 27. Powers, duties and functions of Secretary

CHAPTER VI

Electoral Tribunals

28. Establishment and constitution of Electoral Tribunals 10
 29. Powers, duties and functions of Electoral Tribunals

CHAPTER VII

Electoral Appeal Tribunals

30. Establishment and constitution of Electoral Appeal Tribunals
 31. Powers, duties and functions of Electoral Appeal Tribunals 15

CHAPTER VIII

Special Electoral Court

32. Establishment and constitution of Special Electoral Court
 33. Powers, duties and functions of Special Electoral Court

CHAPTER IX

General Provisions

34. Application of Act in event of conflict with other laws
 35. Dissolution of directorates, Secretariat and tribunals
 36. Appeal and review
 37. Remuneration and allowances of members of tribunals and Special Electoral Court 25
 38. Secrecy
 39. Offences and penalties
 40. Legal proceedings against Commission
 41. Regulations 30
 42. Short title and commencement

CHAPTER I

Interpretation and Application of Act

Definitions

1. In this Act, unless the context otherwise indicates— 35
 (i) "Administration Directorate" means the Election Administration Directorate established by section 19; (iv)
 (ii) "Appeal Tribunal" means any Electoral Appeal Tribunal established in terms of section 30; (ii)
 (iii) "candidate" means any person whose name appears on a list of nominations by any registered party to become a member of the National Assembly or any other legislature in terms of the Constitution and the Electoral Act; (xvi) 40
 (iv) "Chief Director: Administration" means the person appointed to that office by the Commission in terms of section 20(1); (ix) 45
 (v) "Chief Director: Monitoring" means the person appointed to that office by the Commission in terms of section 23(1); (x)

23. Samestelling van Direktooraat Verkiesingsmonitering
 24. Bevoegdhede, pligte en werksaamhede van Hoofdirekteur: Monitering

HOOFSTUK V

Verkiesingsberegtingsekretariaat

- 5 25. Instelling van Verkiesingsberegtingsekretariaat
 26. Samestelling van Verkiesingsberegtingsekretariaat
 27. Bevoegdhede, pligte en werksaamhede van Sekretaris

HOOFSTUK VI

Verkiesingstribunale

- 10 28. Instelling en samestelling van Verkiesingstribunale
 29. Bevoegdhede, pligte en werksaamhede van Verkiesingstribunale

HOOFSTUK VII

Verkiesingsappèltribunale

30. Instelling en samestelling van Verkiesingsappèltribunale
 15 31. Bevoegdhede, pligte en werksaamhede van Verkiesingsappèltribunale

HOOFSTUK VIII

Spesiale Verkiesingshof

32. Instelling en samestelling van Spesiale Verkiesingshof
 33. Bevoegdhede, pligte en werksaamhede van Spesiale Verkiesingshof

HOOFSTUK IX

Algemene Bepalings

34. Toepassing van Wet in geval van botsing met ander wette
 35. Ontbinding van direktorate, Sekretariaat en tribunale
 36. Appèl en hersiening
 25 37. Besoldiging en toelaes van lede van tribunale en Spesiale Verkiesingshof
 38. Geheimhouding
 39. Misdrywe en strawwe
 40. Regsgedinge teen Kommissie
 41. Regulasies
 30 42. Kort titel en inwerkingtreeding

HOOFSTUK I

Uitleg en Toepassing van Wet

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
- 35 (i) “ander wetgewer” enige wetgewer beoog in die Grondwet, uitgesonderd die Nasionale Vergadering en Senaat; (xxiv)
 (ii) “Appèltribunale” ’n Verkiesingsappèltribunale ingevolge artikel 30 ingestel; (ii)
 (iii) “direktooraat” die Direktooraat Administrasie of die Direktooraat Monitering; (x)
 40 (iv) “Direktooraat Administrasie” die Direktooraat Verkiesingsadministrasie by artikel 19 ingestel; (i)
 (v) “Direktooraat Monitering” die Direktooraat Verkiesingsmonitering by artikel 22 ingestel; (xxi)

- (vi) "Chief Executive Officer" means the person appointed to that office by the Commission in terms of section 17(1); (xi)
- (vii) "Commission" means the Independent Electoral Commission established by section 4(1); (xx)
- (viii) "committee" means any committee of the Commission established under section 13(3)(c); (xix) 5
- (ix) "Constitution" means the Constitution of the Republic of South Africa Act, 1993; (vii)
- (x) "directorate" means the Administration Directorate or the Monitoring Directorate; (iii) 10
- (xi) "election" means any election conducted in terms of the Electoral Act for the National Assembly or any other legislature; (xxxvii)
- (xii) "Electoral Act" means the Electoral Act, 1993; (xviii)
- (xiii) "Electoral Code of Conduct" means the Electoral Code of Conduct for Political Parties contained in Schedule 1 to the Electoral Act; (xxxviii) 15
- (xiv) "Electoral Tribunal" means any Electoral Tribunal established in terms of section 28; (xxxix)
- (xv) "International Advisory Committee" means the International Advisory Committee established in terms of section 14; (xiii) 20
- (xvi) "international member" means any person appointed as a member of the Commission in terms of section 5(2)(a); (xiv)
- (xvii) "international observer" means any person appointed as a representative of the United Nations, the Organization of African Unity, the European Community, the Commonwealth or any other inter-governmental organization or foreign government accredited for that purpose by the Subcouncil on Foreign Affairs of the Transitional Council in consultation with the Department of Foreign Affairs, in order to observe and report on the electoral process; (xv) 25
- (xviii) "judicial office" means any appointment as a judge of the Supreme Court, whether permanent or on an acting basis; (xxix) 30
- (xix) "member" means any member of the Commission appointed in terms of section 5(1); (xxi)
- (xx) "monitor" means any person appointed as such in terms of section 24(1)(a); (xxii) 35
- (xxi) "Monitoring Directorate" means the Election Monitoring Directorate established by section 22; (v)
- (xxii) "National Assembly" means the National Assembly which together with the Senate shall constitute the Constitutional Assembly as contemplated in the Constitution; (xxiii) 40
- (xxiii) "observer" means any observer registered with the Monitoring Directorate in terms of section 24(1)(b) (xli);
- (xxiv) "other legislature" means any legislature contemplated in the Constitution, excluding the National Assembly and Senate; (i) 45
- (xxv) "Parliament" means Parliament as contemplated in the Constitution; (xxvi)
- (xxvi) "party" means any registered party, and any party, organization or movement of a political nature which publicly supports or opposes the policies, candidates or cause of any registered party, or which propagates non-participation in any election or the non-acceptance of the results certified by the Commission; (xxvii) 50
- (xxvii) "political office" means any executive appointment or elected office, including any elected or nominated public representative of a party, whether involving remuneration or not, or any other paid office, in the service of a party; (xxviii) 55
- (xxviii) "prescribe" means prescribe by regulation; (xl)
- (xxix) "public office" means any appointment or position in the service of the State, or any corporate or other body, institution or concern owned or controlled, whether directly or indirectly, by the State, and includes any such appointment or position in the legislative, executive or judicial organs of the State at any level of government, but excludes any appointment to judicial office and any academic 60

- (vi) “geregistreeerde party” ’n geregistreeerde party soos omskryf in artikel 1 van die Kieswet; (xxx)
- (vii) “Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1993; (ix)
- 5 (viii) “hierdie Wet” ook die regulasies; (xxxix)
- (ix) “Hoofdirekteur: Administrasie” die persoon in daardie amp deur die Kommissie ingevolge artikel 20(1) aangestel; (iv)
- (x) “Hoofdirekteur: Monitering” die persoon ingevolge artikel 23(1) in daardie amp deur die Kommissie aangestel; (v)
- 10 (xi) “Hoof- Uitvoerende Beampte” die persoon ingevolge artikel 17(1) in daardie amp deur die Kommissie aangestel; (vi)
- (xii) “Hooggeregshof” die Hooggeregshof van Suid-Afrika, en die Hooggeregshof van die Republiek van Transkei, Bophuthatswana, Venda of Ciskei indien sodanige Republiek die bepalings van hierdie Wet en die Kieswet formeel as deel van sy reg ingelyf het; (xxxviii)
- 15 (xiii) “Internasionale Advieskomitee” die Internasionale Advieskomitee ingevolge artikel 14 ingestel; (xv)
- (xiv) “internasionale lid” ’n persoon ingevolge artikel 5(2)(a) as ’n lid van die Kommissie aangestel; (xvi)
- 20 (xv) “internasionale waarnemer” ’n persoon aangestel as ’n verteenwoordiger van die Verenigde Nasies, die Organisasie vir Eenheid in Afrika, die Europese Gemeenskap, die Gemenebes of enige ander inter-regeringsorganisasie of buitelandse regering vir daardie doel deur die Subraad oor Buitelandse Sake van die Oorgangsraad in oorleg met die Departement van Buitelandse Sake geakkrediteer ten einde die verkiesingsproses waar te neem en daarvoor verslag te doen; (xvii)
- 25 (xvi) “kandidaat” ’n persoon wie se naam verskyn op ’n lys van nominasies deur ’n geregistreeerde party om ’n lid te word van die Nasionale Vergadering of enige ander wetgewer ingevolge die Grondwet en die Kieswet; (iii)
- (xvii) “kieser” enige stemgeregtigde kieser soos beoog in die Grondwet en die Kieswet; (xli)
- 30 (xviii) “Kieswet” die Kieswet, 1993; (xii)
- (xix) “komitee” ’n komitee van die Kommissie kragtens artikel 13(3)(c) ingestel; (viii)
- (xx) “Kommissie” die Onafhanklike Verkiesingskommissie by artikel 4(1) ingestel; (vii)
- 35 (xxi) “lid” ’n lid van die Kommissie ingevolge artikel 5(1) aangestel; (xix)
- (xxii) “monitor” ’n persoon ingevolge artikel 24(1)(a) as sodanig aangestel; (xx)
- 40 (xxiii) “Nasionale Vergadering” die Nasionale Vergadering wat saam met die Senaat die Grondwetlike Vergadering soos beoog in die Grondwet uitmaak; (xxii)
- 45 (xxiv) “Oorgangsraad” die Uitvoerende Oorgangsraad by artikel 2 van die Wet op die Uitvoerende Oorgangsraad, 1993, ingestel; (xl)
- (xxv) “openbare amp” ’n aanstelling of pos in die diens van die Staat, of enige regspersoon of ander liggaam, instelling of instansie deur die Staat besit of beheer, hetsy regstreeks of onregstreeks, en ook enige sodanige aanstelling of pos in die wetgewende, uitvoerende of regsprekende organe van die Staat op enige vlak van regering, maar nie ook enige aanstelling in ’n regterlike amp en enige akademiese aanstelling by ’n universiteit of tersiêre opvoedkundige inrigting nie; (xxix)
- 50 (xxvi) “Parlement” die Parlement soos in die Grondwet beoog; (xxv)
- 55 (xxvii) “party” ’n geregistreeerde party, en enige party, organisasie of beweging van ’n politieke aard wat in die openbaar die beleid, kandidate of saak van enige geregistreeerde party ondersteun of opponeer, of wat nie-deelname aan enige verkiesing of die nie-aanvaarding van die uitslae gesertifiseer deur die Kommissie propageer; (xxvi)
- 60

- appointment at any university or tertiary educational institution;
(xxv)
- (xxx) "registered party" means any registered party as defined in section 1 of the Electoral Act; (vi)
- (xxxix) "regulations" means the regulations made under section 41; (xxx) 5
- (xxxii) "Republic" means the Republic of South Africa, including any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei which formally incorporated the provisions of this Act and the Electoral Act as part of its law; (xxxix)
- (xxxiii) "Secretariat" means the Election Adjudication Secretariat established by section 25; (xxxii) 10
- (xxxiv) "Secretary" means the person appointed to that office by the Commission in terms of section 26(1); (xxxiii)
- (xxxv) "Senate" means the Senate as contemplated in the Constitution; (xxxiv) 15
- (xxxvi) "Special Electoral Court" means the Special Electoral Court established by section 32; (xxxv)
- (xxxvii) "State" means the Republic; (xxxvi)
- (xxxviii) "Supreme Court" means the Supreme Court of South Africa, and the Supreme Court of the Republic of Transkei, Bophuthatswana, Venda or Ciskei if such Republic has formally incorporated the provisions of this Act and the Electoral Act as part of its law; (xii) 20
- (xxxix) "this Act" includes the regulations; (viii)
- (xl) "Transitional Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993; (xxiv) and 25
- (xli) "voter" means any eligible voter as contemplated in the Constitution and the Electoral Act. (xvii)

Application of Act

2. (1) The provisions of this Act shall apply in respect of— 30
- (a) the first elections to be conducted for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act; and
- (b) any referendum conducted under the supervision of the Commission in terms of subsection (2),
- until the First National Assembly and all other legislatures have been validly 35 constituted.
- (2) Upon the advice of the Transitional Council the State President shall by proclamation in the *Gazette* declare—
- (a) the holding of a referendum; and
- (b) that the provisions of this Act shall, subject to subsection (3), apply in 40 respect of the holding of that referendum.
- (3) The State President shall in consultation with the Transitional Council by proclamation in the *Gazette* make regulations for the holding of such a referendum, in which case the provisions of this Act shall, subject to such regulations, apply *mutatis mutandis* in respect of the holding of such referendum, 45 whether nationally or within any particular geographic region, or in respect of any specified issue, as the case may be.
- (4) In the event of any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei deciding formally to incorporate the provisions of this Act and the Electoral Act as part of its law, such agreements as may be required to secure the 50 co-ordinated implementation of the relevant legislation may be concluded and any such agreements shall have the force of law.

Act binding on State and State President

3. (1) This Act shall bind the State.
- (2) This Act shall bind the State President in so far as he or she shall be obliged 55 to act in accordance with the advice of the Transitional Council wherever so provided for in this Act.

- (xxviii) “politieke amp” enige uitvoerende aanstelling of verkose amp, met inbegrip van enige verkose of genomineerde openbare verteenwoordiger van ’n party, hetsy besoldiging betrokke is al dan nie, of enige ander betaalde amp in die diens van ’n party; (xxvii)
- 5 (xxix) “regterlike amp” ’n aanstelling as ’n regter van die Hooggeregshof, hetsy op ’n permanente of waarnemende basis; (xviii)
- (xxx) “regulasies” die regulasies kragtens artikel 41 uitgevaardig; (xxxi)
- (xxxi) “Republiek” die Republiek van Suid-Afrika, met inbegrip van enige van die Republieke van Transkei, Bophuthatswana, Venda of Ciskei wat formeel die bepalings van hierdie Wet en die Kieswet as deel van sy reg ingelyf het; (xxxii)
- 10 (xxxii) “Sekretariaat” die Verkiesingsberegtingsekretariaat by artikel 25 ingestel; (xxxiii)
- (xxxiii) “Sekretaris” die persoon in daardie amp deur die Kommissie ingevolge artikel 26(1) aangestel; (xxxiv)
- 15 (xxxiv) “Senaat” die Senaat soos in die Grondwet beoog; (xxxv)
- (xxxv) “Spesiale Verkiesingshof” die Spesiale Verkiesingshof by artikel 32 ingestel; (xxxvi)
- (xxxvi) “Staat” die Republiek; (xxxvii)
- 20 (xxxvii) “verkieping” enige verkiesing ingevolge die Kieswet vir die Nasionale Vergadering of enige ander wetgewer gevoer; (xi)
- (xxxviii) “Verkiesingsgedragskode” die Verkiesingsgedragskode vir Politieke Partye in Bylae 1 by die Kieswet vervat; (xiii)
- (xxxix) “Verkiesingstribunaal” ’n Verkiesingstribunaal ingevolge artikel 25
- 25 (xl) “voorskryf” by regulasie voorskryf; (xxviii) en
- (xli) “waarnemer” ’n waarnemer by die Direktoraat Monitering geregistreer ingevolge artikel 24(1)(b). (xxiii)

Toepassing van Wet

- 30 2. (1) Die bepalings van hierdie Wet is van toepassing ten opsigte van—
- (a) die eerste verkiesings wat gevoer word vir die Nasionale Vergadering en alle ander wetgewers ingevolge die Grondwet en die Kieswet; en
- (b) enige referendum gevoer onder die toesig van die Kommissie ingevolge subartikel (2),
- 35 totdat die eerste Nasionale Vergadering en alle ander wetgewers geldig saamgestel is.
- (2) Die Staatspresident verklaar op advies van die Oorgangsraad by proklamasie in die *Staatskoerant*—
- (a) dat ’n referendum gehou word; en
- 40 (b) dat die bepalings van hierdie Wet, behoudens subartikel (3), ten opsigte van daardie referendum van toepassing is.
- (3) Die Staatspresident vaardig in oorleg met die Oorgangsraad by proklamasie in die *Staatskoerant* regulasies uit vir die hou van so ’n referendum, in welke geval die bepalings van hierdie Wet, behoudens sodanige regulasies,
- 45 *mutatis mutandis* van toepassing is ten opsigte van die hou van sodanige referendum, hetsy nasionaal of binne enige bepaalde geografiese streek, of ten opsigte van enige bepaalde aangeleentheid, na gelang van die geval.
- (4) In die geval van ’n besluit van enige van die Republieke van Transkei, Bophuthatswana, Venda of Ciskei om formeel die bepalings van hierdie Wet en
- 50 die Kieswet as deel van sy reg in te lyf, kan die ooreenkomste wat vereis mag word om die gekoördineerde uitvoering van die betrokke wetgewing te verseker, aangegaan word en het sodanige ooreenkomste die krag van wet.

Wet bind Staat en Staatspresident

3. (1) Hierdie Wet bind die Staat.
- 55 (2) Hierdie Wet bind die Staatspresident vir sover hy of sy moet handel in ooreenstemming met die advies van die Oorgangsraad waar aldus in hierdie Wet bepaal word.

CHAPTER II

*Independent Electoral Commission***Establishment and objects of Commission**

4. (1) There is hereby established a commission to be known as the Independent Electoral Commission. 5
- (2) The objects of the Commission shall be—
- (a) to administer, organize, supervise and conduct, whether directly or indirectly, free and fair elections for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act;
 - (b) to promote conditions conducive to free and fair elections; 10
 - (c) to determine and certify the results of elections, and to certify to what extent such elections have been free and fair;
 - (d) to conduct voter education; and
 - (e) to make and enforce regulations for the achievement of such objects.

Constitution of Commission

5. (1) The Commission shall, subject to subsection (2), consist of not fewer than 7 and not more than 11 members, who shall be appointed by the State President upon the advice of the Transitional Council, and who shall be impartial, respected and suitably qualified men and women, do not have a high party political profile, are themselves voters, and represent a broad cross-section of the population. 20
- (2) (a) The State President shall, upon the advice of the Transitional Council, appoint not more than five persons (not being citizens of the Republic) from the international community as members of the Commission in a non-representative capacity. 25
- (b) Such international members shall have the same rights and powers as other members, excluding the power to vote, and shall not constitute part of any quorum in terms of this Act.
- (3) (a) The State President shall, upon the advice of the Transitional Council, designate two members as Chairperson and Vice-Chairperson of the Commission, respectively: Provided that if the Transitional Council so decides, it may advise the State President to designate two members as Co-Chairpersons in lieu of a Chairperson and Vice-Chairperson, and designate which one of them shall preside at the first meeting of the Commission. 30
- (b) In the absence of both such Chairperson and Vice-Chairperson, or both such Co-Chairpersons, as the case may be, the remaining members shall by simple majority nominate another member as acting Chairperson of the Commission. 35
- (c) The international members shall not be eligible to serve as Chairperson, Co-Chairperson, Vice-Chairperson or acting Chairperson.
- (4) The State President shall from time to time, upon the advice of the Transitional Council and subject to subsection (1), appoint additional members to the Commission, subject to the maximum number contemplated in that subsection. 40

Conduct required of members

6. (1) Every member and international member of the Commission shall— 45
- (a) be appointed in his or her individual capacity, and shall, notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice;
 - (b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office. 50
- (2) No member or international member of the Commission shall—
- (a) during his or her term of office be eligible for appointment or nomination to any political or public office, whether involving remuneration or not, 55

HOOFSTUK II

*Onafhanklike Verkiesingskommissie***Instelling en oogmerke van Kommissie**

4. (1) Daar word hierby 'n kommissie met die naam die Onafhanklike
5 Verkiesingskommissie ingestel.

(2) Die oogmerke van die Kommissie is—

- (a) om vry en regverdigde verkiesings vir die Nasionale Vergadering en alle
ander wetgewers ingevolge die Grondwet en die Kieswet, hetsy
regstreeks of onregstreeks, te administreer, te organiseer, oor toesig te
10 hou en te voer;
- (b) om omstandighede bevorderlik vir vry en regverdigde verkiesings te
bevorder;
- (c) om die uitslae van verkiesings te bepaal en te sertifiseer, en te
sertifiseer in watter mate sodanige verkiesings vry en regverdig was;
- 15 (d) om kieseropvoeding te lei; en
- (e) om regulasies uit te vaardig en toe te pas vir die bereiking van sodanige
oogmerke.

Samestelling van Kommissie

5. (1) Behoudens subartikel (2) bestaan die Kommissie uit minstens 7 en
20 hoogstens 11 lede deur die Staatspresident op advies van die Oorgangsraad
aangestel, en wat onpartydige, gerespekteerde en toepaslik gekwalifiseerde
mans en vroue is, nie 'n hoë partypolitiese profiel het nie, self kiesers is, en 'n
breë deursnee van die bevolking verteenwoordig.

(2) (a) Die Staatspresident moet, op advies van die Oorgangsraad, hoogstens
25 vyf persone (wat nie burgers van die Republiek is nie) vanuit die internasionale
gemeenskap as lede van die Kommissie in 'n nie-verteenwoordigende hoedanig-
heid aanstel.

(b) Sodanige internasionale lede het dieselfde regte en bevoegdhede as ander
lede, uitgesonderd stemreg, en maak nie deel van enige kworum ingevolge
30 hierdie Wet uit nie.

(3) (a) Die Staatspresident moet op advies van die Oorgangsraad twee lede as
onderskeidelik Voorsitter en Ondervoorsitter van die Kommissie aanwys: Met
dien verstande dat indien die Oorgangsraad so besluit, hy die Staatspresident
kan adviseer om twee lede as Medevoorsitters in plaas van Voorsitter en
35 Ondervoorsitter aan te wys, en aan te wys watter een van hulle by die eerste
vergadering van die Kommissie moet voorsit.

(b) In die afwesigheid van beide sodanige Voorsitter en Ondervoorsitter, of
beide sodanige Medevoorsitters, na gelang van die geval, moet die oorblywende
lede by gewone meerderheid 'n ander lid as waarnemende Voorsitter van die
40 Kommissie benoem.

(c) Die internasionale lede is nie benoembaar vir diens as Voorsitter,
Medevoorsitter, Ondervoorsitter of waarnemende Voorsitter nie.

(4) Behoudens subartikel (1) moet die Staatspresident van tyd tot tyd op
advies van die Oorgangsraad en behoudens die maksimum getal lede in daardie
45 subartikel beoog, addisionele lede in die Kommissie aanstel.

Gedrag van lede vereis

6. (1) Elke lid en internasionale lid van die Kommissie—

- (a) word in sy of haar individuele hoedanigheid aangestel, en moet,
50 ondanks enige persoonlike mening, voorkeur of partyverband, onpar-
tydig en onafhanklik dien en sy of haar werksaamhede in goeie trou en
sonder vrees, guns, partydigheid of vooroordeel verrig;
- (b) in 'n heelydse hoedanigheid dien met die uitsluiting van enige ander
plig of verpligting voortspruitend uit enige ander diens of beroep of die
bekleding van enige ander amp.

55 (2) Geen lid of internasionale lid van die Kommissie—

- (a) is gedurende sy of haar ampstermyn beskikbaar vir aanstelling of
nominasie in enige politieke of openbare amp nie, hetsy vergoeding

and such ineligibility shall, in respect of such public office, continue for a period of 18 months reckoned from the date upon which such term of office as a member has terminated, save in respect of the resumption of any previously held public office at the same level;

- (b) whether directly or indirectly, in any manner give support to, or oppose, any of the parties or candidates participating in the elections, or any of the issues in contention between such parties or candidates; 5
- (c) by his or her membership, association, statement, conduct or in any other manner, place in jeopardy his or her perceived independence, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission; 10
- (d) make private use of or profit from any confidential information gained as a result of his or her appointment and functions as such member; 11
- (e) divulge any such information to any third party save in the course and scope of his or her official functions and with the prior approval of the Commission; 15
- (f) accept any remuneration, emolument or benefit, of whatever nature, arising from any other employment or occupation or the holding of any other office, unless specifically authorized thereto by the State President, acting upon the advice of the Transitional Council; 20
- (g) during his or her term of office be eligible to serve as a member of the Transitional Council, Parliament or any other legislature, and such ineligibility shall continue for a period of 18 months reckoned from the date upon which such term of office has terminated; and
- (h) after having served as such member, be eligible to serve as a member of the Parliament or any other legislature for which that Commission was responsible to conduct elections, during the term of such Parliament or legislature. 25

Disclosure of conflicting interests

7. (1) Subject to subsection (2), a member or international member shall not at any meeting of the Commission— 30

- (a) be present;
- (b) exercise a vote;
- (c) in any other manner participate in the proceedings thereof, during the discussion of any matter before such meeting in respect of which he or she has any financial or other interest which might preclude him or her from performing his or her functions in a fair, unbiased and proper manner. 35

(2) If at any stage during the course of any proceedings before the Commission it appears that any member or international member has or may have an interest which may cause such a conflict of interests to arise on his or her part— 40

- (a) such member shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether such member is precluded from participating in such meeting by reason of a conflict of interests; and 45
- (b) such disclosure and the decision taken by the remaining members regarding such determination, shall be recorded in the minutes of the relevant meeting.

(3) If any member or international member fails to disclose any interest as required by subsection (2) or, subject to that subsection, is present at a meeting of the Commission or in any manner whatsoever participates in the proceedings of the Commission in relation to such matter, such proceedings may be reviewed, varied or set aside by the Commission. 50

Independence of Commission

8. (1) The Commission shall function without political or other bias or 55

- daarby betrokke is al dan nie, en sodanige nie-beskikbaarheid duur, ten opsigte van so 'n openbare amp, vir 'n tydperk van 18 maande voort bereken vanaf die datum waarop sodanige ampstermyn as 'n lid verstryk, behalwe ten opsigte van die hervatting op dieselfde vlak van 'n openbare amp voorheen beklee;
- 5 (b) verleen op enige wyse, hetsy regstreeks of onregstreeks, ondersteuning aan, of opponeer, enige van die partye of kandidate wat aan die verkiesings deelneem, of enige van die aangeleenthede in geskil tussen sodanige partye of kandidate nie;
- 10 (c) stel deur sy of haar lidmaatskap, assosiasie, verklaring, gedrag of op enige ander wyse, sy of haar waarneembare onafhanklikheid in gevaar nie, of benadeel op enige ander wyse die geloofwaardigheid, onpartydigheid, onafhanklikheid of integriteit van die Kommissie nie;
- (d) maak private gebruik van, of trek voordeel uit, enige vertroulike inligting verkry as gevolg van sy of haar aanstelling en werksaamhede as sodanige lid nie;
- 15 (e) openbaar enige sodanige inligting aan enige derde party nie behalwe in die loop en omvang van sy of haar amptelike werksaamhede en met die voorafgaande goedkeuring van die Kommissie;
- 20 (f) aanvaar enige besoldiging, emolument of voordeel, van watter aard ook al, wat voortspruit uit enige ander diens of beroep of bekleding van enige ander amp nie, tensy spesifiek daartoe gemagtig deur die Staatspresident handelende op advies van die Oorgangsraad;
- (g) is gedurende sy of haar ampstermyn beskikbaar om te dien as 'n lid van 25 die Oorgangsraad, die Parlement of enige ander wetgewer nie, en sodanige nie-beskikbaarheid duur vir 'n tydperk van 18 maande voort bereken vanaf die datum waarop sodanige ampstermyn verstryk; en
- (h) is, nadat diens as sodanige lid verrig is, beskikbaar om te dien as 'n lid van die Parlement of enige ander wetgewer waarvoor daardie Kommissie verantwoordelik was om verkiesings te hou nie, gedurende die 30 termyn van sodanige Parlement of wetgewer.

Openbaarmaking van botsende belange

7. (1) Behoudens subartikel (2) mag 'n lid of internasionale lid nie by enige vergadering van die Kommissie—
- 35 (a) teenwoordig wees nie;
- (b) stem nie;
- (c) op enige ander wyse deelneem aan die verrigtinge daarvan nie, gedurende die bespreking van enige aangeleentheid voor sodanige vergadering ten opsigte waarvan hy of sy enige finansiële of ander belang het wat hom of haar 40 mag verhinder om sy of haar werksaamhede op 'n billike, onpartydige en behoorlike wyse te verrig.
- (2) Indien dit te eniger tyd gedurende die loop van enige verrigtinge voor die Kommissie blyk dat enige lid of internasionale lid 'n belang het of mag hê wat so 'n botsing van belange aan sy of haar kant mag veroorsaak—
- 45 (a) moet sodanige lid onverwyld en ten volle die aard van sy of haar belang openbaar en die vergadering verlaat ten einde die oorblywende lede in staat te stel om die aangeleentheid te bespreek en vas te stel of sodanige lid uitgesluit is van deelname aan sodanige vergadering as gevolg van 'n botsing van belange; en
- 50 (b) moet sodanige openbaarmaking en die besluit deur die oorblywende lede betreffende sodanige vasstelling geneem in die notule van die betrokke vergadering opgeneem word.
- (3) Indien enige lid of internasionale lid in gebreke bly om enige belang te openbaar soos vereis in subartikel (2) of, behoudens daardie subartikel, 55 teenwoordig is by 'n vergadering van die Kommissie of op enige wyse hoe ook al deelneem aan die verrigtinge van die Kommissie met betrekking tot sodanige aangeleentheid, kan sodanige verrigtinge deur die Kommissie hersien, gewysig of tersyde gestel word.

Onafhanklikheid van Kommissie

- 60 8. (1) Die Kommissie verrig sy werksaamhede sonder politieke of ander
[B/W 151—93]

interference and shall, save as may in this Act be expressly otherwise provided, be independent and separate from the Transitional Council, any party, any government and its administration or any other functionary or body, whether directly or indirectly representing the interests of any such entity.

(2) Any power of any of the entities referred to in subsection (1), in so far as it relates to the administration, organization, conduct and supervision of any election, shall be subject to the powers of the Commission, to which such entities shall be accountable for such of their acts and decisions as may influence or affect any election. 5

Dissolution of Commission 10

9. The Commission shall be dissolved upon the completion of its mandate on a date fixed by the State President by proclamation in the *Gazette*.

Conditions of service, remuneration and allowances of members of Commission and International Advisory Committee

10. The conditions of service, remuneration, allowances and other benefits of members of the Commission and the International Advisory Committee shall be determined by the Transitional Council after consultation with the State President. 15

Vacation of office, removal from office and filling of vacancies in Commission

11. (1) A member of the Commission may be removed from office by order of the Special Electoral Court on an application lodged by or on behalf of— 20

- (a) the State President;
- (b) the Transitional Council;
- (c) Parliament; or
- (d) any registered party eligible to participate in the election, or at least 1 000 voters: Provided that no such application by such party or such voters shall be heard save with the prior leave of the Chairperson of the Special Electoral Court, who shall first satisfy himself or herself as to the existence of probable cause, and who may impose such conditions upon the grant of leave, including the imposition of time limits for the institution of any such proceedings, as he or she may consider appropriate, 25 30

if the Special Electoral Court is satisfied as to the existence of good and sufficient reason therefor as contemplated in subsection (2).

(2) In considering any such application the Special Electoral Court shall determine that good and sufficient reason exists for the removal from office of a member of the Commission, in case of— 35

- (a) serious misconduct;
- (b) unfitness or incapacity, including continued ill health;
- (c) a material contravention of or failure to comply with the provisions of section 6(1)(a) or (b) or (2)(a), (b), (c), (d), (e) or (f) or 7(1) or (2); or 40
- (d) any other reason which the Special Electoral Court may consider material and inconsistent with such member's continuance in office.

(3) If a member of the Commission tenders his or her resignation in writing to the State President, is removed from office in terms of this section, or dies, the State President shall, upon the advice of the Transitional Council, either— 45

- (a) allow such appointment to lapse, provided there remains at least the minimum number of members provided for in section 5(1); or
- (b) appoint some other suitably qualified person as a member for the unexpired portion of the term of the Commission. 50

Meetings of Commission

12. (1) The Commission may meet at any place in the Republic determined by the Chairperson or a Co-Chairperson, as the case may be, for the purpose of performing its functions.

partydigheid of inmenging en is, behalwe waar in hierdie Wet uitdruklik anders bepaal word, onafhanklik en afsonderlik van die Oorgangsraad, enige party, enige regering en sy administrasie of enige ander funksionaris of liggaam, hetsy regstreeks of onregstreeks verteenwoordigend van die belange van enige sodanige entiteit.

(2) Enige bevoegdheid van enige van die entiteite bedoel in subartikel (1), vir sover dit betrekking het op die administrasie, organisasie en voer van en toesighouding oor enige verkiesing, is onderworpe aan die bevoegdhede van die Kommissie, aan wie sodanige entiteite verantwoordelik is vir daardie van hulle handelinge en besluite wat enige verkiesing mag beïnvloed of raak.

Ontbinding van Kommissie

9. Die Kommissie ontbind by die voltooiing van sy mandaat op 'n datum deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

Diensvoorwaardes, besoldiging en toelaes van lede van Kommissie en Internasionale Advieskomitee

10. Die diensvoorwaardes, besoldiging, toelaes en ander voordele van lede van die Kommissie en die Internasionale Advieskomitee word bepaal deur die Oorgangsraad na oorleg met die Staatspresident.

Ontruiming van amp, ontheffing van amp en vul van vakatures in Kommissie

11. (1) 'n Lid van die Kommissie kan van sy of haar amp onthef word deur 'n bevel van die Spesiale Verkiesingshof op aansoek ingedien deur of namens—

- (a) die Staatspresident;
- (b) die Oorgangsraad;
- (c) die Parlement; of

(d) 'n geregistreerde party bevoeg om deel te neem aan die verkiesing, of ten minste 1 000 kiesers: Met dien verstande dat geen sodanige aansoek deur sodanige party of sodanige kiesers aangehoor word nie behalwe met die voorafgaande verlov van die Voorsitter van die Spesiale Verkiesingshof, wat hom- of haarself eers moet oortuig van die bestaan van waarskynlike grond, en wat die voorwaardes mag oplê by die toestaan van verlov, met inbegrip van die oplê van tydsbeperkings vir die instelling van sodanige verrigtinge, wat hy of sy toepaslik ag,

indien die Spesiale Verkiesingshof oortuig is van die bestaan van goeie en voldoende rede daarvoor soos in subartikel (2) beoog.

(2) By oorweging van so 'n aansoek bepaal die Spesiale Verkiesingshof dat daar goeie en voldoende rede vir die ontheffing van 'n lid van die Kommissie van sy amp bestaan in die geval van—

- (a) ernstige wangedrag;
- (b) ongeskiktheid of onvermoë, met inbegrip van voortdurende swak gesondheid;
- (c) 'n wesenlike oortreding van of versuim om te voldoen aan die bepalings van artikel 6(1)(a) of (b) of (2)(a), (b), (c), (d), (e) of (f) of 7(1) of (2); of
- (d) enige ander rede wat die Spesiale Verkiesingshof wesenlik en onbestaanbaar met sodanige lid se voortgesette bekleding van sy of haar amp ag.

(3) Indien 'n lid van die Kommissie sy of haar skriftelike bedanking aan die Staatspresident aanbied, ingevolge hierdie artikel van sy of haar amp onthef is, of te sterwe kom, moet die Staatspresident op advies van die Oorgangsraad, óf—

- (a) sodanige aanstelling laat verval, mits daar ten minste die minimum getal lede soos in artikel 5(1) bepaal, oorbly; óf
- (b) 'n ander paslik gekwalifiseerde persoon as lid vir die onverstreke gedeelte van die Kommissie se termyn aanstel.

Vergaderings van Kommissie

12. (1) Die Kommissie kan op enige plek in die Republiek deur die Voorsitter of 'n Medevoorsitter, na gelang van die geval, bepaal, vergader vir die doel van die verrigting van sy werksaamhede.

(2) Meetings may be convened at any time at the instance of the Chairperson or a Co-Chairperson or the Vice-Chairperson, as the case may be, or at the instance of any two other members, and shall be convened at such intervals as circumstances may require.

(3) A quorum for a meeting of the Commission shall be 75% of the members. 5

(4) (a) Subject to paragraph (b) and section 5(3)(b), the decision of two-thirds of the members present at a meeting of the Commission shall be the decision of the Commission.

(b) The Commission shall in terms of section 18(b) certify that an election was substantially free and fair, only if at least 75% of the members present at the meeting of the Commission concur. 10

(5) The Commission may determine its own procedures to be followed at its meetings.

Powers, duties and functions of Commission

13. (1) The Commission may exercise the powers and shall perform the duties and functions conferred upon or assigned to it by this Act or any other law. 15

(2) The Commission shall—

(a) assume responsibility for the administration, organization and conduct, whether directly or indirectly, and the supervision of the administration, organization and conduct of any election; 20

(b) take such measures as it may consider necessary for the prevention of intimidation of voters, candidates and parties;

(c) be responsible for the education of voters concerning—

(i) democratic principles and values;

(ii) the electoral process and mechanisms; 25

(iii) the right to free political canvassing and campaigning;

(iv) secrecy of voting; and

(v) any other relevant matter,

by means of—

(aa) literature and the use of other media, including distribution and publication of suitable literature, advertisements and dissemination through radio, television and the public printed media, having due regard to the variety of languages spoken and varying levels of education throughout the Republic; and 30

(bb) workshops, seminars and meetings, as it may consider appropriate; and 35

(d) submit monthly reports in writing concerning its functions, which reports shall be delivered at the same time to the Transitional Council and the State President, and such reports shall be public documents. 40

(3) The Commission shall have power—

(a) to hear and determine appeals against decisions or actions of the Chief Directors: Administration and Monitoring in respect of prescribed matters, which decisions or actions may be confirmed, varied or set aside; 45

(b) to give instructions to the Chief Directors: Administration and Monitoring in respect of matters concerning their functions, which power may be exercised either upon request from the said Chief Directors or at its own initiative; and

(c) to establish such committees as it may consider necessary for the effective exercise and performance of its powers, duties and functions, and determine the composition, quorum for a meeting and a decision, procedure and functions thereof. 50

International Advisory Committee

14. (1) The State President shall, upon the advice of the Transitional Council, establish a committee to be known as the International Advisory Committee to advise the Commission on any matter regarding the performance of its functions as may be requested by it. 55

(2) Vergaderings kan te eniger tyd in opdrag van die Voorsitter, 'n Medevoorsitter of die Ondervoorsitter, na gelang van die geval, of in opdrag van enige twee ander lede, belê word, en word van tyd tot tyd belê soos omstandighede vereis.

5 (3) 'n Kworum vir 'n vergadering van die Kommissie is 75% van die lede.

(4) (a) Behoudens paragraaf (b) en artikel 5(3)(b) maak die besluit van twee derdes van die lede wat by 'n vergadering van die Kommissie teenwoordig is, 'n besluit van die Kommissie uit.

10 (b) Die Kommissie sertifiseer ingevolge artikel 18(b) dat 'n verkiesing wesenlik vry en regverdig was slegs indien 'n meerderheid van ten minste 75% van die lede teenwoordig by die vergadering van die Kommissie saamstem.

(5) Die Kommissie kan sy eie prosedures bepaal wat by sy vergaderings gevolg moet word.

Bevoegdhede, pligte en werksaamhede van Kommissie

15 13. (1) Die Kommissie kan die bevoegdhede uitoefen en moet die pligte en werksaamhede verrig wat by hierdie Wet of enige ander wet aan hom verleen of opgedra word.

(2) Die Kommissie—

20 (a) moet verantwoordelikheid aanvaar vir die administrasie, organisasie en voer, hetsy regstreeks of onregstreeks, en vir die toesighouding oor die administrasie, organisasie en voer, van 'n verkiesing;

(b) moet die maatreëls tref wat hy nodig ag vir die voorkoming van intimidasie van kiesers, kandidate en partye;

25 (c) is verantwoordelik vir die opvoeding van kiesers betreffende—

(i) demokratiese beginsels en waardes;

(ii) die verkiesingsproses en -meganismes;

(iii) die reg tot vrye politieke werwing en veldtogvoering;

(iv) geheimhouding van die stemming; en

30 (v) enige ander tersaaklike aangeleentheid, deur middel van—

(aa) literatuur en die gebruik van ander media, met inbegrip van die verspreiding en publikasie van toepaslike literatuur, advertensies en disseminasie deur radio, televisie en die openbare gedrukte media, met behoorlike inagneming van die verskeidenheid tale gepraat en die verskillende vlakke van opvoeding oor die hele Republiek; en

35 (bb) werkwinkels, seminare en vergaderings wat hy toepaslik ag; en

40 (d) moet maandeliks skriftelike verslae betreffende sy werksaamhede voorlê, welke verslae terselfdertyd aan die Oorgangsraad en die Staatspresident afgelewer moet word, en sodanige verslae is openbare dokumente.

(3) Die Kommissie is bevoeg—

45 (a) om appêlle teen besluite of handeling van die Hoofdirekteur: Administrasie en Monitering ten opsigte van voorgeskrewe aangeleenthede aan te hoor en te beslis, welke besluite of handeling bekragtig, gewysig of tersyde gestel kan word;

50 (b) om opdragte te gee aan die Hoofdirekteur: Administrasie en Monitering ten opsigte van aangeleenthede betreffende hulle werksaamhede, welke bevoegdheid uitgeoefen kan word hetsy op versoek van genoemde Hoofdirekteur of op sy eie inisiatief; en

55 (c) om die komitees in te stel wat hy nodig ag vir die effektiewe uitoefening en verrigting van sy bevoegdhede, pligte en werksaamhede, en die samestelling, kworum vir 'n vergadering en 'n besluit, prosedure en werksaamhede daarvan te bepaal.

Internasionale Advieskomitee

60 14. (1) Die Staatspresident moet op advies van die Oorgangsraad 'n komitee instel met die naam die Internasionale Advieskomitee om die Kommissie op sy versoek te adviseer oor enige aangeleentheid betreffende die verrigting van sy werksaamhede.

(2) The International Advisory Committee may consist of persons (not being citizens of the Republic) from the international community appointed in a non-representative capacity by the State President upon the advice of the Transitional Council.

(3) The International Advisory Committee may determine its own procedures to be followed at its meetings. 5

Administration and staff of Commission

15. The Commission shall, in addition to the other powers conferred upon it by this Act or any other law, for the purpose of achieving its objects, have the power to— 10

- (a) appoint staff to assist it or a Chief Director of a directorate or the Secretary in the performance of its or his or her functions, and after consultation with the Minister of State Expenditure determine their conditions of service, remuneration, allowances and other benefits, including those of— 15
 - (i) members of committees who are not members of the Commission;
 - (ii) the Chief Directors: Administration and Monitoring and the Secretary; and
 - (iii) other officials;
- (b) request the secondment to it of skilled personnel from any public service, subject to any law applicable to such personnel in that regard, to assist the Commission, the Chief Directors of the directorates or the Secretary in the performance of its, his or her functions; 20
- (c) open and maintain its own financial accounts; and
- (d) take such steps, including legal steps, as are necessary to give effect to this Act or any decision taken under this Act. 25

Expenditure of Commission and budget

16. (1) The expenditure in connection with the exercise of the Commission's powers and the performance of its duties and functions shall be paid out of money appropriated by Parliament for such purpose. 30

(2) The Commission shall budget for and be allocated the necessary resources or additional resources to enable it to exercise its powers and perform its duties and functions effectively.

Accountability and finance

17. (1) The Commission shall at its first meeting or as soon thereafter as possible appoint a person to the office of Chief Executive Officer, who— 35

- (a) shall be responsible for the management of and administrative control over the staff appointed or seconded in terms of section 15(a) or (b), respectively, in respect of the Commission;
- (b) shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)— 40
 - (i) be charged with the responsibility of accounting for State money received or paid out for or on account of the Commission, the directorates and the Secretariat; and
 - (ii) cause the necessary accounting and other related records to be kept;
- (c) may exercise the powers and shall perform the duties and functions which the Commission may from time to time confer upon or assign to him or her in order to achieve the objects of this Act, and shall for the purposes thereof be accountable to the Commission. 45

(2) The records referred to in subsection (1)(b) shall be audited by the Auditor-General. 50

(3) The Chief Executive Officer, and the persons referred to in section 15(a) or (b), shall exercise their powers and perform their duties and functions in an impartial manner and shall, in so doing, be subject to such provisions of the laws governing the public service of the Republic as may be indicated by the Commission and to the extent so indicated by the Commission as well as the Exchequer Act, 1975, and the Auditor-General Act, 1989 (Act No. 52 of 1989). 55

(2) Die Internasionale Advieskomitee kan bestaan uit persone (wat nie burgers van die Republiek is nie) vanuit die internasionale gemeenskap in 'n nie-verteenwoordigende hoedanigheid deur die Staatspresident op advies van die Oorgangsraad aangestel.

5 (3) Die Internasionale Advieskomitee kan sy eie prosedures bepaal wat by sy vergaderings gevolg moet word.

Administrasie en personeel van Kommissie

10 15. Die Kommissie is, benewens die ander bevoegdhede aan hom verleen by hierdie Wet of enige ander wet, vir die doel om sy oogmerke te bereik, bevoeg om—

- (a) personeel aan te stel om hom of 'n Hoofdirekteur van 'n direktoraat of die Sekretaris by te staan by die verrigting van sy of haar werksaamhede, en na oorleg met die Minister van Staatsbesteding hulle diensvoorwaardes, besoldiging, toelaes en ander voordele te bepaal, met inbegrip van dié van—
 - (i) lede van komitees wat nie lede van die Kommissie is nie;
 - (ii) die Hoofdirekteure: Administrasie en Monitering en die Sekretaris; en
 - (iii) ander beamptes;
- 20 (b) die afstaan aan hom te versoek van bekwame personeel van enige staatsdiens, behoudens enige wet van toepassing op sodanige personeel in daardie verband, om die Kommissie, die Hoofdirekteure van die direktorate of die Sekretaris by te staan by die verrigting van sy of haar werksaamhede;
- 25 (c) sy eie finansiële rekeninge te open en te hou; en
- (d) die stappe, met inbegrip van regstappe, te doen wat nodig is om gevolg te gee aan hierdie Wet of enige besluit kragtens hierdie Wet geneem.

Uitgawe van Kommissie en begroting

30 16. (1) Die uitgawe in verband met die uitoefening van die Kommissie se bevoegdhede en die verrigting van sy pligte en werksaamhede word bestry met geld vir daardie doel deur die Parlement bewillig.

(2) Die Kommissie begroot vir en word die nodige bronne of addisionele bronne toegewys om hom in staat te stel om sy bevoegdhede, pligte en werksaamhede effektief uit te oefen en te verrig.

35 Rekenpligtigheid en finansies

17. (1) Die Kommissie moet by sy eerste vergadering of so spoedig moontlik daarna 'n persoon in die amp van Hoof- Uitvoerende Beampte aanstel, wat—

- 40 (a) verantwoordelik is vir die bestuur van en administratiewe beheer oor die personeel onderskeidelik aangestel of afgestaan ingevolge artikel 15(a) of (b), ten opsigte van die Kommissie;
- (b) behoudens die Skatkiswet, 1975 (Wet No. 66 van 1975)—
 - (i) belas word met die verantwoording van Staatsgeld ontvang of uitbetaal vir of ten behoeve van die Kommissie, die direktorate en die Sekretariaat; en
 - 45 (ii) die nodige rekeningkundige en ander verwante aantekeninge laat hou;
- (c) die bevoegdhede kan uitoefen en die pligte en werksaamhede moet verrig wat die Kommissie van tyd tot tyd aan hom of haar mag verleen of opdra ten einde die oogmerke van hierdie Wet te bereik, en is vir daardie doeleindes aan die Kommissie aanspreeklik.

50 (2) Die aantekeninge bedoel in subartikel (1)(b) word deur die Ouditeur-generaal geouditeer.

(3) Die Hoof- Uitvoerende Beampte, en die persone in artikel 15(a) of (b) bedoel, oefen hulle bevoegdhede uit en verrig hulle pligte en werksaamhede op 'n onpartydige wyse en is, aldus doende, onderworpe aan die bepalinge van die wette op die staatsdiens van die Republiek wat die Kommissie aandui en in die mate aldus aangedui deur die Kommissie sowel as die Skatkiswet, 1975, en die Wet op die Ouditeur-generaal, 1989 (Wet No. 52 van 1989).

Determination and certification of election results, or declaration

18. Upon completion of the ballot, the Commission shall as expeditiously as possible, but not sooner than 2 days and not later than 10 days after the close of the poll—

- (a) determine and certify the results of the election; and 5
- (b) either certify in respect of the National Assembly and each other legislature that the election was substantially free and fair; or
- (c) declare that it was unable to certify it as such.

CHAPTER III***Election Administration Directorate*** 10**Establishment of Election Administration Directorate**

19. There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Administration Directorate.

Constitution of Election Administration Directorate 15

20. (1) The Administration Directorate shall consist of a Chief Director: Administration, one or more deputy directors and such other officials as the Commission may consider necessary and appoint to enable that Directorate effectively to perform its functions in terms of this Act and the Electoral Act.

(2) In effecting the appointment of the Chief Director: Administration and any deputy director, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Transitional Council. 20

Powers, duties and functions of Chief Director: Administration

21. (1) The Chief Director: Administration shall have the powers, duties and functions conferred upon or assigned to him or her by or under this Act and the Electoral Act. 25

(2) Any decision or action taken by any functionary of any sub-structure of the Administration Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to the Chief Director: Administration, who may confirm, vary or set aside any such decision or action. 30

(3) The Chief Director: Administration shall—

- (a) operate independently of the Chief Director: Monitoring and the Secretary;
- (b) be under the supervision of the Commission; and
- (c) carry out the instructions of the Commission, to which he or she shall be accountable. 35

(4) The Chief Director: Administration may delegate the power to hear and determine appeals in terms of subsection (2) to any deputy director appointed in terms of section 20(1), and may delegate any other power conferred upon him or her by or under this Act and the Electoral Act to any official of his or her directorate as he or she may consider necessary. 40

CHAPTER IV***Election Monitoring Directorate*****Establishment of Election Monitoring Directorate**

22. There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Monitoring Directorate. 45

Bepaling en sertifisering van verkiesingsuitslae, of verklaring

18. By voltooiing van die stemming moet die Kommissie so spoedig moontlik, maar nie eerder nie as 2 dae en nie later nie as 10 dae na die sluiting van die stemming—

- 5 (a) die uitslae van die verkiesing bepaal en sertifiseer; en
- (b) hetsy ten opsigte van die Nasionale Vergadering en elke ander wetgewer sertifiseer dat die verkiesing wesenlik vry en regverdig was; of
- (c) verklaar dat hy nie in staat was om dit as sodanig te sertifiseer nie.

10

HOOFSTUK III

Direktoraat Verkiesingsadministrasie

Instelling van Direktoraat Verkiesingsadministrasie

19. Daar word op die datum waarop die Kommissie saamgestel word 'n direktoraat met die naam die Direktoraat Verkiesingsadministrasie ingestel.

15 **Samestelling van Direktoraat Verkiesingsadministrasie**

20. (1) Die Direktoraat Administrasie bestaan uit 'n Hoofdirekteur: Administrasie, een of meer adjunk-direkteurs en die ander beamptes wat die Kommissie nodig ag en aanstel om daardie Direktoraat in staat te stel om sy werksaamhede ingevolge hierdie Wet en die Kieswet effektief te verrig.

- 20 (2) By die doen van die aanstellings van die Hoofdirekteur: Administrasie en enige adjunk-direkteur, moet die Kommissie die advies van die Oorgangsraad aanvra en, waar gegee, oorweeg, maar is nie daaraan gebonde nie.

Bevoegdhede, pligte en werksaamhede van Hoofdirekteur: Administrasie

21. (1) Die Hoofdirekteur: Administrasie het die bevoegdhede, pligte en werksaamhede by of kragtens hierdie Wet en die Kieswet aan hom of haar verleen of opgedra.

- 25 (2) Ten enige besluit of handeling deur 'n funksionaris van 'n substruktuur van die Direktoraat: Administrasie in enige geografiese distrik of streek ten opsigte van 'n voorgeskrewe aangeleentheid kan daar geappelleer word by die Hoof-
- 30 direkteur: Administrasie, wat so 'n besluit of handeling kan bekragtig, wysig of tersyde stel.

(3) Die Hoofdirekteur: Administrasie—

- 35 (a) tree onafhanklik van die Hoofdirekteur: Monitering en die Sekretaris op;
- (b) is onder die toesig van die Kommissie; en
- (c) voer die opdragte van die Kommissie uit, aan wie hy of sy aanspreeklik is.

- 40 (4) Die Hoofdirekteur: Administrasie kan die bevoegdheid om appèlle ingevolge subartikel (2) aan te hoor en te beslis, delegeer aan 'n adjunk-direkteur ingevolge artikel 20(1) aangestel, en kan enige ander bevoegdheid aan hom of haar by of kragtens hierdie Wet of die Kieswet verleen, aan 'n beampte van sy of haar direktoraat delegeer soos hy of sy dit nodig ag.

HOOFSTUK IV

Direktoraat Verkiesingsmonitering

45 **Instelling van Direktoraat Verkiesingsmonitering**

22. Daar word op die datum waarop die Kommissie saamgestel word 'n direktoraat met die naam die Direktoraat Verkiesingsmonitering ingestel.

Constitution of Election Monitoring Directorate

23. (1) The Monitoring Directorate shall consist of a Chief Director: Monitoring and such other officials as the Commission may consider necessary and appoint to enable that Directorate effectively to perform its functions in terms of this Act. 5

(2) In effecting the appointment of the Chief Director: Monitoring, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Transitional Council.

Powers, duties and functions of Chief Director: Monitoring

24. (1) The Chief Director: Monitoring shall— 10

- (a) appoint monitors and co-ordinate their functions to observe and report to him or her upon the electoral process, including political meetings, canvassing, advertising and other campaigns; 10
- (b) register observers and regulate their activities, and publish guidelines and, if he or she considers it necessary, a Code of Conduct binding upon all such observers; 15
- (c) facilitate the role of international observers and provide them with information and assistance as may be required to enable them to perform their duties; 15
- (d) investigate alleged infringements of the Electoral Code of Conduct, other alleged electoral offences and any other matters justiciable in terms of this Act and the Electoral Act and report to the Commission thereon; 20
- (e) issue and execute prescribed search warrants and subpoenas and seize items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, other alleged electoral offences and any other matters justiciable in terms of this Act and the Electoral Act, with the assistance of the National Peacekeeping Force as defined in section 1 of the Transitional Executive Council Act, 1993, the police or defence forces, as may be requested by the Commission; 25
- (f) initiate or co-ordinate meetings between the various registered parties participating in the election with a view to mediating and, if possible, resolving issues and disputes arising in the course of the election, by negotiation and mutual agreement; 30
- (g) issue prescribed warnings concerning alleged or threatened infringements of the Electoral Code of Conduct; 35
- (h) report to the Commission upon the electoral process as required by it;
- (i) operate independently of the Chief Director: Administration and the Secretary;
- (j) be under the supervision of the Commission; 40
- (k) carry out the instructions of the Commission, to which he or she shall be accountable; and
- (l) have such other powers, duties and functions as may be prescribed.

(2) Any decision or action taken by any functionary of any sub-structure of the Monitoring Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to the Chief Director: Monitoring, who may confirm, vary or set aside any such decision or action. 45

(3) The Chief Director: Monitoring may delegate any power conferred upon him or her by or under this Act to any official of his or her directorate as he or she may consider necessary. 50

CHAPTER V

Election Adjudication Secretariat

Establishment of Election Adjudication Secretariat

25. There shall be established on the date on which the Commission is constituted a secretariat to be known as the Election Adjudication Secretariat. 55

Samestelling van Direktoraat Verkiesingsmonitering

23. (1) Die Direktoraat Monitering bestaan uit 'n Hoofdirekteur: Monitering en die ander beamptes wat die Kommissie nodig ag en aanstel om daardie Direktoraat in staat te stel om sy werksaamhede ingevolge hierdie Wet effektief te verrig.

5 (2) By die doen van die aanstelling van die Hoofdirekteur: Monitering moet die Kommissie die advies van die Oorgangsraad aanvra en, waar gegee, oorweeg, maar is nie daaraan gebonde nie.

Bevoegdhede, pligte en werksaamhede van Hoofdirekteur: Monitering

24. (1) Die Hoofdirekteur: Monitering—

- 10 (a) stel monitors aan en koördineer hulle werksaamhede om die verkiesingsproses, met inbegrip van politieke vergaderings, werwing, advertering en ander veldtogte, waar te neem en daarvoor aan hom of haar verslag te doen;
- 15 (b) registreer waarnemers en reguleer hulle aktiwiteite, en publiseer riglyne en, indien hy of sy dit nodig ag, 'n Gedragskode wat bindend is vir al sodanige waarnemers;
- (c) fasiliteer die rol van internasionale waarnemers en voorsien hulle van inligting en bystand wat vereis mag word om hulle in staat te stel om hulle pligte te verrig;
- 20 (d) ondersoek beweerde skendings van die Verkiesingsgedragskode, ander beweerde verkiesingsmisdrywe en enige ander aangeleenthede beregbaar ingevolge hierdie Wet en die Kieswet en doen daarvoor verslag aan die Kommissie;
- 25 (e) reik voorgeskrewe lasbriewe vir visentering en getuiedagvaardings uit en voer hulle uit en lê beslag op items vereis in verband met die ondersoek van beweerde skendings van die Verkiesingsgedragskode, ander beweerde verkiesingsmisdrywe en enige ander aangeleenthede beregbaar ingevolge hierdie Wet en die Kieswet, met die bystand van die Nasionale Vredesmag soos omskryf in artikel 1 van die Wet op die
- 30 Uitvoerende Oorgangsraad, 1993, die polisie of verdedigingsmagte, soos deur die Kommissie versoek;
- (f) inisieer of koördineer ontmoetings tussen die verskillende geregistreerde partye wat deelneem aan die verkiesing met die oog op bemiddeling en, indien moontlik, die bylê van kwessies en geskille wat voortspruit uit die loop van die verkiesing, deur onderhandeling en onderlinge ooreenstemming;
- (g) reik voorgeskrewe waarskuwings uit betreffende beweerde of dreigende skendings van die Verkiesingsgedragskode;
- (h) doen verslag aan die Kommissie oor die verkiesingsproses soos deur hom vereis;
- 40 (i) tree onafhanklik van die Hoofdirekteur: Administrasie en die Sekretaris op;
- (j) is onder die toesig van die Kommissie;
- (k) voer die opdragte van die Kommissie uit, aan wie hy of sy aanspreeklik is; en
- 45 (l) het die ander bevoegdhede, pligte en werksaamhede soos voorgeskryf.
- (2) Teen enige besluit of handeling deur 'n funksionaris van 'n substruktuur van die Direktoraat Monitering in enige geografiese distrik of streek ten opsigte van 'n voorgeskrewe aangeleentheid kan daar geappelleer word by die Hoofdirekteur: Monitering, wat so 'n besluit of handeling kan bekrachtig, wysig of tersyde stel.
- (3) Die Hoofdirekteur: Monitering kan enige bevoegdheid aan hom of haar by of kragtens hierdie Wet verleen, aan 'n beampte van sy direktoraat delegeer soos hy of sy dit nodig ag.

HOOFSTUK V

Verkiesingsberegtingsekretariaat

Instelling van Verkiesingsberegtingsekretariaat

25. Daar word op die datum waarop die Kommissie saamgestel word 'n sekretariaat met die naam die Verkiesingsberegtingsekretariaat ingestel.

Constitution of Election Adjudication Secretariat

26. (1) The Secretariat shall consist of a Secretary and such other officials as the Commission may consider necessary and appoint to enable the Secretariat effectively to perform its functions in terms of this Act.

(2) In effecting the appointment of the Secretary, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Transitional Council. 5

Powers, duties and functions of Secretary

27. (1) The Secretary shall—

(a) co-ordinate the functions of the Electoral Tribunals, the Electoral Appeal Tribunals and the Special Electoral Court; 10

(b) perform the administrative work connected with the performance of the functions of those Tribunals and that Court;

(c) operate independently of the Chief Directors: Administration and Monitoring; 15

(d) be under the supervision of the Commission; and

(e) carry out the instructions of the Commission, to which he or she shall be accountable.

(2) The Secretary shall have such other powers, duties and functions as may be prescribed. 20

CHAPTER VI

Electoral Tribunals

Establishment and constitution of Electoral Tribunals

28. (1) The Commission shall, subject to subsection (2), establish such number of Electoral Tribunals with jurisdiction in respect of prescribed geographic areas as it may consider necessary to adjudicate and decide prescribed matters concerning alleged electoral irregularities and alleged infringements of the Electoral Code of Conduct. 25

(2) An Electoral Tribunal shall consist of one person, who shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities appointed to that office by the Commission. 30

Powers, duties and functions of Electoral Tribunals

29. (1) An Electoral Tribunal hearing any matter falling within its jurisdiction, shall enquire into the matter in the prescribed manner, consider it and make such decision or give such order as in its opinion is fair and just. 35

(2) An Electoral Tribunal finding any person or party guilty of contravening or failing to comply with any prescribed matter or any provision of the Electoral Code of Conduct, may impose any such penalty or sanction as may be prescribed in terms of this Act and the Electoral Act as it may consider appropriate in the circumstances. 40

(3) An Electoral Tribunal shall have such other powers, duties and functions as may be prescribed.

CHAPTER VII

Electoral Appeal Tribunals

45

Establishment and constitution of Electoral Appeal Tribunals

30. (1) The Commission shall, subject to subsection (2), establish such number of Electoral Appeal Tribunals as it may consider necessary to hear and determine appeals and to review decisions from the Electoral Tribunals.

Samestelling van Verkiesingsberegtingsekretariaat

26. (1) Die Sekretariaat bestaan uit 'n Sekretaris en die ander beamptes wat die Kommissie nodig ag en aanstel om die Sekretariaat in staat te stel om sy werksaamhede ingevolge hierdie Wet effektief te verrig.

5 (2) By die doen van die aanstelling van die Sekretaris moet die Kommissie die advies van die Oorgangsraad aanvra en, waar gegee, oorweeg, maar is nie daaraan gebonde nie.

Bevoegdhede, pligte en werksaamhede van Sekretaris

27. (1) Die Sekretaris—

- 10 (a) koördineer die werksaamhede van die Verkiesingstribunale, die Ver-
kiesingsappèltribunale en die Spesiale Verkiesingshof;
- (b) verrig die administratiewe werk verbonde aan die verrigting van die
werksaamhede van daardie Tribunale en daardie Hof;
- 15 (c) tree onafhanklik van die Hoofdirekteure: Administrasie en Monitoring
op;
- (d) is onder die toesig van die Kommissie; en
- (e) voer die opdragte van die Kommissie uit, aan wie hy of sy aanspreeklik
is.

20 (2) Die Sekretaris het die ander bevoegdhede, pligte en werksaamhede soos voorgeskryf.

HOOFSTUK VI

Verkiesingstribunale

Instelling en samestelling van Verkiesingstribunale

28. (1) Behoudens subartikel (2) stel die Kommissie die getal Verkiesingstri-
25 bunale in met jurisdiksie ten opsigte van voorgeskrewe geografiese gebiede wat hy nodig ag om voorgeskrewe aangeleenthede betreffende beweerde verkiesingsonreëlmatighede en beweerde skendings van die Verkiesingsgedragskode te bereg en te beslis.

30 (2) 'n Verkiesingstribunaal bestaan uit een persoon, wat 'n prokureur, advokaat, landdros of akademiese regsgeleerde by 'n universiteit moet wees met minstens vyf jaar ondervinding in een of meer sodanige hoedanighede deur die Kommissie in daardie amp aangestel.

Bevoegdhede, pligte en werksaamhede van Verkiesingstribunale

29. (1) 'n Verkiesingstribunaal wat enige aangeleentheid aanhoor wat binne sy
35 jurisdiksie val, moet die aangeleentheid op die voorgeskrewe wyse ondersoek, dit oorweeg en die beslissing of die bevel gee wat na sy oordeel billik en regverdig is.

40 (2) 'n Verkiesingstribunaal wat enige persoon of party skuldig bevind aan 'n oortreding van of 'n versuim om te voldoen aan enige voorgeskrewe aangeleentheid of enige bepaling van die Verkiesingsgedragskode, kan die straf of sanksie oplê wat ingevolge hierdie Wet of die Kieswet voorgeskryf is wat hy in die omstandighede gepas ag.

(3) 'n Verkiesingstribunaal het die ander bevoegdhede, pligte en werksaamhede soos voorgeskryf.

HOOFSTUK VII

Verkiesingsappèltribunale

Instelling en samestelling van Verkiesingsappèltribunale

30. (1) Behoudens subartikel (2) stel die Kommissie die getal Verkiesings-
appèltribunale in wat hy nodig ag om appèlle aan te hoor en te beslis en
50 beslissings van die Verkiesingstribunale te hersien.

(2) An Electoral Appeal Tribunal shall consist of three persons appointed by the Commission, of whom—

- (a) the Chairperson shall be a judge of the Supreme Court;
- (b) one shall be an attorney, advocate or magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities; 5
- (c) one shall be a suitable person, who may or may not be legally qualified or experienced.

Powers, duties and functions of Electoral Appeal Tribunals

31. (1) An Electoral Appeal Tribunal hearing any appeal or reviewing any decision shall enquire into the matter in the prescribed manner, consider it and confirm, vary or set aside the decision, order, penalty or sanction of the Electoral Tribunal, or make such other decision or give such other order or impose such other penalty or sanction as in its opinion the Electoral Tribunal ought to have made, given or imposed. 15

(2) An Electoral Appeal Tribunal shall have such other powers, duties and functions as may be prescribed.

CHAPTER VIII

Special Electoral Court

Establishment and constitution of Special Electoral Court 20

32. (1) There is hereby established a court to be known as the Special Electoral Court with the powers, duties and functions referred to in section 33.

(2) The Special Electoral Court shall consist of—

- (a) a Chairperson, who shall be a judge of the Appellate Division of the Supreme Court, and two judges of the Supreme Court designated by the Chief Justice; and 25
- (b) two other members, of whom—
 - (i) one shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities; and 30
 - (ii) one shall be a suitable person, who may or may not be legally qualified or experienced, appointed by the Transitional Council.

Powers, duties and functions of Special Electoral Court

33. (1) (a) Subject to section 36(6)(a), the Special Electoral Court shall have power to review any decision of the Commission. 35

(b) Any such review shall be conducted on an urgent basis, and shall be disposed of as expeditiously as possible.

(2) (a) Subject to section 36(6)(a), the Special Electoral Court shall have the power to hear and determine an appeal against any decision of the Commission only in so far as such decision relates to the interpretation of any law or any other matter for which an appeal is provided in the Electoral Act. 40

(b) No such appeal shall be heard save with the prior leave of the Chairperson of the Special Electoral Court granted on application within the period and in the manner determined by that Court. 45

(c) Such an appeal shall be heard, considered and summarily determined upon written submissions submitted within three days after leave to appeal was granted in terms of paragraph (b).

(3) The Special Electoral Court shall have power to remove any member of the Commission from office under section 11. 50

(4) Subject to section 36(7), the Special Electoral Court shall have power to hear appeals against and review decisions of any Appeal Tribunal.

(2) 'n Verkiesingstribunaal bestaan uit drie persone deur die Kommissie aangestel, van wie—

- (a) die Voorsitter 'n regter van die Hooggeregshof moet wees;
 (b) een 'n prokureur, advokaat, landdros of akademiese regsgeleerde by 'n universiteit moet wees met minstens vyf jaar ondervinding in een of meer sodanige hoedanighede;
 (c) een 'n geskikte persoon moet wees, wat oor regskwalifikasies of ondervinding mag beskik al dan nie.

Bevoegdhe, pligte en werksaamhede van Verkiesingsappèltribunale

10 **31.** (1) 'n Verkiesingsappèltribunaal wat enige appèl aanhoor of enige beslissing hersien, moet die aangeleentheid op die voorgeskrewe wyse ondersoek, dit oorweeg en die beslissing, bevel, straf of sanksie van die Verkiesingstribunaal bekragtig, wysig of tersyde stel, of die ander beslissing of ander bevel gee of die ander straf of sanksie oplê wat na sy oordeel deur die Verkiesingstribunaal gegee of opgelê behoort te gewees het.

15 (2) 'n Verkiesingsappèltribunaal het die ander bevoegdhe, pligte en werksaamhede soos voorgeskryf.

HOOFSTUK VIII

Spesiale Verkiesingshof

20 Instelling en samestelling van Spesiale Verkiesingshof

32. (1) Daar word hierby 'n hof ingestel met die naam die Spesiale Verkiesingshof met die bevoegdhe, pligte en werksaamhede in artikel 33 bedoel.

(2) Die Spesiale Verkiesingshof bestaan uit—

- (a) 'n Voorsitter, wat 'n regter van die Appèlafdeling van die Hooggeregshof is, en twee regters van die Hooggeregshof deur die Hoofregter aangewys; en
 (b) twee ander lede, van wie—
 (i) een 'n prokureur, advokaat, landdros of akademiese regsgeleerde by 'n universiteit is met minstens vyf jaar ondervinding in een of meer sodanige hoedanighede; en
 (ii) een 'n geskikte persoon moet wees, wat oor regskwalifikasies of ondervinding mag beskik al dan nie,
 deur die Oorgangsraad aangestel.

Bevoegdhe, pligte en werksaamhede van Spesiale Verkiesingshof

35 **33.** (1) (a) Behoudens artikel 36(6)(a) het die Spesiale Verkiesingshof die bevoegdheid om enige besluit van die Kommissie te hersien.

(b) So 'n hersiening word op 'n dringende basis gehanteer, en word so spoedig moontlik afgehandel.

40 (2) (a) Behoudens artikel 36(6)(a) het die Spesiale Verkiesingshof die bevoegdheid om 'n appèl teen enige besluit van die Kommissie aan te hoor en te beslis slegs vir sover so 'n beslissing betrekking het op die uitleg van enige wet of enige ander aangeleentheid waarvoor daar vir 'n appèl in die Kieswet voorsiening gemaak is.

45 (b) Geen sodanige appèl word aangehoor nie behalwe met die voorafgaande verlot van die Voorsitter van die Spesiale Verkiesingshof verleen op aansoek binne die tydperk en op die wyse deur daardie Hof bepaal.

(c) Sodanige appèl word aangehoor, oorweeg en summier beslis op voorlegging van skriftelike betoë binne drie dae nadat verlot tot appèl ingevolge paragraaf (b) verleen is.

50 (3) Die Spesiale Verkiesingshof het die bevoegdheid om enige lid van die Kommissie van sy amp te onthef kragtens artikel 11.

(4) Behoudens artikel 36(7) het die Spesiale Verkiesingshof die bevoegdheid om appèlle teen beslissings van enige Appèltribunaal aan te hoor en beslissings daarvan te hersien.

(5) The Special Electoral Court shall determine its own practice and procedures and make its own rules.

(6) The Special Electoral Court shall have such other powers, duties and functions as may be conferred upon or assigned to it by the Electoral Act, the Transitional Executive Council Act, 1993, or any other law.

5

CHAPTER IX

General Provisions

Application of Act in event of conflict with other laws

34. In the event of a conflict between the provisions of this Act and those of any other law, the provisions of this Act shall prevail in so far as such provisions relate to the conduct and supervision of elections.

10

Dissolution of directorates, Secretariat and tribunals

35. (1) The directorates and the Secretariat shall be dissolved on the date upon which the Commission is dissolved.

(2) The Electoral Tribunals and the Electoral Appeal Tribunals shall be dissolved on final determination of the issues placed before them.

15

Appeal and review

36. (1) Any interested person, party or candidate who or which feels aggrieved by any decision or action taken by any functionary of a directorate in respect of any prescribed matter may, within the period and in the manner prescribed, appeal to the Chief Director of the relevant directorate against the decision or action in issue.

20

(2) Any interested person, party or candidate who or which feels aggrieved by any decision or action taken by the Chief Director: Administration or Monitoring in respect of any prescribed matter other than a decision or action on appeal referred to in subsection (1) may, within the period and in the manner prescribed, appeal to the Commission against the decision or action in issue.

25

(3) (a) Subject to section 33(2), there shall be no appeal against any decision of the Commission.

(b) Subject to section 33(1), any interested person, party or candidate may bring any decision of the Commission under review before the Special Electoral Court within the period and in the manner determined by that Court.

30

(4) Any interested person, party or candidate who or which feels aggrieved by any decision, order, penalty or sanction made, given or imposed by any Electoral Tribunal may, within the period and in the manner prescribed, appeal to the relevant Appeal Tribunal against the decision, order, penalty or sanction in issue.

35

(5) Any interested person, party or candidate may bring any decision of any Electoral Tribunal under review before the relevant Appeal Tribunal within the period and in the manner prescribed.

(6) Any—

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(a) decision of the Commission in terms of section 18; and

(b) decision or order of the Special Electoral Court,

shall be final and not subject to appeal or review.

(7) No appeal against or review of a decision of an Appeal Tribunal shall be heard save with the prior leave of the Chairperson of the Special Electoral Court granted on application within the period and in the manner determined by that Court.

45

Remuneration and allowances of members of tribunals and Special Electoral Court

37. (1) Subject to subsection (3), the Transitional Council may, after consultation with the Minister of State Expenditure, determine the remuneration and allowances payable to members of the Special Electoral Court.

50

(5) Die Spesiale Verkiesingshof bepaal sy eie praktyk en prosedures en maak sy eie reëls.

(6) Die Spesiale Verkiesingshof het die ander bevoegdhede, pligte en werksaamhede wat by die Kieswet, die Wet op die Uitvoerende Oorgangsraad, 5 1993, of enige ander wet aan hom verleen of opgedra word.

HOOFSTUK IX

Algemene Bepalings

Toepassing van Wet in geval van botsing met ander wette

34. In die geval van 'n botsing tussen die bepalinge van hierdie Wet en dié van enige ander wet gaan die bepalinge van hierdie Wet voor vir sover sodanige 10 bepalinge betrekking het op die voer van en toesig oor verkiesings.

Ontbinding van direktorate, Sekretariaat en tribunale

35. (1) Die direktorate en die Sekretariaat word ontbind op die datum waarop die Kommissie ontbind.

15 (2) Die Verkiesingstribunale en die Verkiesingsappèltribunale word ontbind by die finale beslissing van die aangeleentheid wat voor hulle geplaas is.

Appèl en hersiening

36. (1) Enige belanghebbende persoon, party of kandidaat wat hom of haar veronreg voel deur enige besluit of handeling van enige funksionaris van 'n 20 direktoraat ten opsigte van enige voorgeskrewe aangeleentheid kan, binne die tydperk en op die wyse voorgeskryf, na die Hoofdirekteur van die betrokke direktoraat teen die beslissing of handeling in geskil appelleer.

(2) Enige belanghebbende persoon, party of kandidaat wat hom of haar veronreg voel deur enige besluit of handeling van die Hoofdirekteur: Administrasie of Monitering ten opsigte van enige voorgeskrewe aangeleentheid 25 behalwe as 'n beslissing of handeling op appèl bedoel in subartikel (1) kan, binne die tydperk en op die wyse voorgeskryf, na die Kommissie teen die beslissing of handeling in geskil appelleer.

30 (3) (a) Behoudens artikel 33(2) is daar geen appèl teen enige besluit van die Kommissie nie.

(b) Behoudens artikel 33(1) kan enige belanghebbende persoon, party of kandidaat enige besluit van die Kommissie voor die Spesiale Verkiesingshof bring vir hersiening binne die tydperk en op die wyse deur daardie Hof bepaal.

35 (4) Enige belanghebbende persoon, party of kandidaat wat hom of haar veronreg voel deur enige beslissing, bevel, straf of sanksie gegee of opgelê deur enige Verkiesingstribunaal kan, binne die tydperk en op die wyse voorgeskryf, na die betrokke Appèltribunaal teen die bevinding, bevel, boete of straf in geskil appelleer.

40 (5) Enige belanghebbende persoon, party of kandidaat kan enige beslissing van enige Verkiesingstribunaal voor die betrokke Appèltribunaal bring vir hersiening binne die tydperk en op die wyse voorgeskryf.

(6) Enige—

(a) besluit van die Kommissie ingevolge artikel 18; en

45 (b) beslissing of bevel van die Spesiale Verkiesingshof, is finaal en nie onderworpe aan appèl of hersiening nie.

(7) Geen appèl teen of hersiening van 'n beslissing van 'n Appèltribunaal word aangehoor behalwe met die voorafgaande verlov van die Voorsitter van die Spesiale Verkiesingshof verleen op aansoek binne die tydperk en op die wyse deur daardie Hof bepaal.

50 Besoldiging en toelaes van lede van tribunale en Spesiale Verkiesingshof

37. (1) Behoudens subartikel (3) kan die Oorgangsraad, na oorlegpleging met die Minister van Staatsbesteding, die vergoeding en toelaes betaalbaar aan lede van die Spesiale Verkiesingshof bepaal.

(2) Subject to subsection (3), the Commission may, after consultation with the Minister of State Expenditure, determine the remuneration and allowances payable to members of the Electoral and Appeal Tribunals.

(3) Different or no remuneration or allowances may be determined under subsections (1) and (2) in respect of different members of those Tribunals and that Court. 5

Secrecy

38. (1) Every member of the Commission and every person employed in the performance of the functions of the Commission, the directorates and the Secretariat shall aid in preserving secrecy in regard to any matter or information 10 that may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as the publication of such matter or information is authorized by law.

(2) Any person who, in the exercise of powers or the performance of duties in terms of this Act, has obtained knowledge regarding the affairs of any registered party, candidate or voter, shall, subject to section 6(2)(e), not disclose such knowledge to any person other than is required in the course and scope of his or her duties or in response to a question lawfully put under order of any court of law or tribunal contemplated in this Act or the Special Electoral Court. 15

Offences and penalties 20

39. Any person who—

- (a) wilfully hinders or obstructs the Commission, a Chief Director of a directorate or the Secretary or a member of its, his or her staff in the exercise of its or his or her powers or in the performance of its or his or her duties or functions; 25
- (b) wilfully interrupts the proceedings at a meeting of the Commission or a sitting of an Electoral or Appeal Tribunal or the Special Electoral Court or misbehaves in any other manner in the place where such meeting or sitting is held;
- (c) in connection with any meeting of the Commission or sitting of such Tribunal or Court does anything which, if such meeting or sitting were proceedings in a court of law, would have constituted contempt of court; 30
- (d) does anything calculated improperly to influence the Commission or any such Tribunal or Court in respect of any matter being or to be considered by the Commission or such Tribunal or Court in connection with any decision or order; 35
- (e) wilfully contravenes or fails to comply with any provision of section 38, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

Legal proceedings against Commission 40

40. (1) The State Liability Act, 1957 (Act No. 20 of 1957), shall apply *mutatis mutandis* in respect of the Commission.

(2) In such application a reference to a Minister of a department shall be construed as a reference to the Chairperson or Co-Chairperson of the Commission, as the case may be. 45

Regulations

41. (1) The Commission may make regulations regarding—

- (a) governing the permissible nature and content of political advertising, which shall be determined and enforced by the Commission in conjunction with the Independent Media Commission established by 50

(2) Behoudens subartikel (3) kan die Kommissie, na oorlegpleging met die Minister van Staatsbesteding, die vergoeding en toelaes betaalbaar aan lede van die Verkiesings- en Appèltribunale bepaal.

- (3) Verskillende of geen vergoeding of toelaes kan kragtens subartikels (1) en (2) bepaal word ten opsigte van verskillende lede van daardie Tribunale en daardie Hof.

Geheimhouding

38. (1) Elke lid van die Kommissie en elke persoon wat in diens is by die verrigting van die werksaamhede van die Kommissie, die direktorate en die Sekretariaat verleen bystand by die bewaar van die geheimhouding betreffende enige aangeleentheid of inligting wat tot sy of haar kennis mag kom tydens die verrigting van sy of haar pligte met betrekking tot genoemde werksaamhede, behalwe vir sover die openbaarmaking van sodanige aangeleentheid of inligting by wet gemagtig is.
- (2) Enige persoon wat in die uitoefening van bevoegdhede of die verrigting van pligte ingevolge hierdie Wet kennis verkry het betreffende die sake van enige geregistreerde party, kandidaat of kieser, mag nie, behoudens artikel 6(2)(e), sodanige kennis openbaar aan enige persoon behalwe waar dit van hom of haar vereis word in die loop en omvang van sy of haar pligte of in antwoord op 'n vraag wettig kragtens 'n bevel van enige geregshof of tribunaal beoog in hierdie Wet of die Spesiale Verkiesingshof aan hom of haar gestel nie.

Misdrywe en strawwe

39. Enige persoon wat—
- (a) die Kommissie, 'n Hoofdirekteur van 'n direktoraat of die Sekretaris of 'n lid van sy of haar personeel in die uitoefening van sy of haar bevoegdhede of in die verrigting van sy of haar pligte of werksaamhede opsetlik hinder of belemmer;
- (b) die verrigtinge by 'n vergadering van die Kommissie of 'n sitting van 'n Verkiesingstribunaal of 'n Appèltribunaal of die Spesiale Verkiesingshof opsetlik onderbreek of hom of haar op enige ander wyse wangedra in die plek waar sodanige vergadering of sitting gehou word;
- (c) in verband met enige vergadering van die Kommissie of sitting van sodanige Tribunaal of Hof enigiets doen wat, indien sodanige vergadering of sitting verrigtinge in 'n geregshof sou wees, op minagting van die hof sou neerkom;
- (d) enigiets doen wat bereken is om die Kommissie of enige sodanige Tribunaal of Hof onbehoorlik te beïnvloed ten opsigte van enige aangeleentheid wat oorweeg word of oorweeg staan te word deur die Kommissie of sodanige Tribunaal of Hof in verband met enige besluit, beslissing of bevel;
- (e) opsetlik enige bepaling van artikel 38 oortree of versuim om daaraan te voldoen,
- is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar.

45 Regsgedinge teen Kommissie

40. (1) Die Wet op Staatsaanspreeklikheid, 1957 (Wet No. 20 van 1957), is *mutatis mutandis* van toepassing ten opsigte van die Kommissie.
- (2) By sodanige toepassing word 'n verwysing na 'n Minister of 'n departement uitgelê as 'n verwysing na die Voorsitter of Medevoorsitter van die Kommissie, na gelang van die geval.

Regulasies

41. (1) Die Kommissie kan regulasies uitvaardig betreffende—
- (a) die beheer van die toelaatbare aard en inhoud van politieke advertensies, wat deur die Kommissie in samewerking met die Onafhanklike Mediakommissie ingestel by artikel 2 van die Wet op die Onafhanklike

- section 2 of the Independent Media Commission Act, 1993, and the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993;
- (b) the issue, contents, form, and the practice and procedure in connection with the execution, of search warrants, subpoenas and the seizure of items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, alleged electoral offences and matters justiciable in terms of this Act; 5
 - (c) the manner in which proceedings, and the nature of proceedings which, may be instituted in the Electoral and Appeal Tribunals; 10
 - (d) the time limits within and manner in which appeals may be noted or decisions may be brought under review in terms of this Act;
 - (e) electoral irregularities and other matters in respect of which contraventions or failures to comply shall constitute cause for proceedings to be instituted in the Electoral Tribunals; 15
 - (f) the issue, contents, form and use of process, and the practice and procedure in connection with the service and execution thereof;
 - (g) the manner of recording or noting evidence or proceedings and the disposal thereof;
 - (h) the appointment and functions of sworn interpreters; 20
 - (i) orders, penalties and sanctions which may be given or imposed by an Electoral or Appeal Tribunal, and the execution thereof;
 - (j) the manner in which a person, party or candidate may be summoned to appear in an Electoral Tribunal to face charges of contravening or failing to comply with a regulation contemplated in paragraph (e) or an infringement of the Electoral Code of Conduct, and the manner in which one or more persons may be selected to represent such party in such Tribunal; 25
 - (k) the procedures for investigating alleged infringements of the Electoral Code of Conduct, electoral offences or matters justiciable in terms of this Act in order to bring such investigations to an expeditious conclusion; 30
 - (l) the practice and procedure to be followed by the Chief Director: Administration and the Chief Director: Monitoring in hearing appeals against decisions or actions of functionaries of their directorates, due regard being had to the principles of natural justice; 35
 - (m) the practice and procedure to be followed by the Secretary in the performance of his or her functions;
 - (n) fees and costs and the recovery thereof in respect of legal proceedings in terms of this Act; 40
 - (o) representation or absence thereof in respect of legal proceedings in terms of this Act;
 - (p) the practice and procedure to be followed by the Electoral and Appeal Tribunals in the conduct of their proceedings in order to bring such proceedings to an expeditious conclusion, due regard being had to fairness and justice; 45
 - (q) the regulation of the conduct of all persons, parties and candidates in so far as such conduct may promote or inhibit the conduct of free and fair elections;
 - (r) any matter required or permitted to be prescribed in terms of this Act; 50 and
 - (s) generally, all matters which in its opinion are necessary or expedient to be prescribed to achieve the objects of this Act.
- (2) A regulation under subsection (1) may prescribe penalties for any contravention of the provisions thereof or any failure to comply therewith of a fine or imprisonment for a period not exceeding two years. 55

- Mediakommissie, 1993, en die Onafhanklike Uitsaai-owerheid ingestel by artikel 3 van die Wet op die Onafhanklike Uitsaai-owerheid, 1993, bepaal en toegepas word;
- 5 (b) die uitreiking, inhoud, vorm, en die praktyk en prosedure in verband met die uitvoering, van lasbriewe vir visentering, getuiedagvaardings en die beslaglegging van artikels wat benodig word in verband met die ondersoek van beweerde skendings van die Verkiesingsgedragskode, beweerde verkiesingsoortredings en aangeleenthede beregbaar in-
gevolge hierdie Wet;
- 10 (c) die wyse waarop en die aard van verrigtinge wat in die Verkiesings- en Appèltribunale ingestel kan word;
- (d) die tydsbeperkings waarbinne en wyse waarop appèlle aangeteken of besluite of beslissings op hersiening gebring kan word ingevolge hierdie Wet;
- 15 (e) verkiesingsonreëlmatighede en ander aangeleenthede ten opsigte waarvan oortredings of versuim gronde sal uitmaak vir die instel van verrigtinge in die Verkiesingstribunale;
- (f) die uitreiking, inhoud, vorm en gebruik van prosesstukke, en die praktyk en prosedure in verband met die betekening en uitvoering daarvan;
- 20 (g) die wyse van opname of notulering van getuienis of verrigtinge en die beskikking daaroor;
- (h) die aanstelling en werksaamhede van beëdigde tolke;
- 25 (i) bevele, strawwe en sanksies wat deur 'n Verkiesings- of Appèltribunaal uitgereik of opgelê kan word, en die uitvoering daarvan;
- (j) die wyse waarop 'n persoon, party of kandidaat gedagvaar kan word om in 'n Verkiesingstribunaal te verskyn om te antwoord op aanklagte van die oortreding van of die versuim om te voldoen aan 'n regulasie beoog in paragraaf (e) of 'n skending van die Verkiesingsgedragskode, en die wyse waarop een of meer persone gekies kan word om sodanige party in sodanige Tribunaal te verteenwoordig;
- 30 (k) die prosedures vir ondersoek van beweerde skendings van die Verkiesingsgedragskode, beweerde verkiesingsoortredings of aangeleenthede beregbaar ingevolge hierdie Wet ten einde sodanige ondersoeke tot 'n spoedige afhandeling te bring;
- 35 (l) die praktyk en prosedure wat gevolg moet word deur die Hoofdirekteur: Administrasie en die Hoofdirekteur: Monitering by die aanhoor van appèlle teen besluite of handeling van funksionaris van hulle direktorate, met behoorlike inagneming van die reëls van natuurlike geregtigheid;
- 40 (m) die praktyk en prosedure wat gevolg moet word deur die Sekretaris by die verrigting van sy of haar werksaamhede;
- (n) gelde en koste en die invordering daarvan ten opsigte van geregtelike verrigtinge ingevolge hierdie Wet;
- 45 (o) verteenwoordiging of die afwesigheid daarvan ten opsigte van geregtelike verrigtinge ingevolge hierdie Wet;
- (p) die praktyk en prosedure wat gevolg moet word deur die Verkiesings- en Appèltribunale by die voer van hul verrigtinge ten einde sodanige verrigtinge tot 'n spoedige afhandeling te bring, met behoorlike inagneming van billikheid en geregtigheid;
- 50 (q) die regulering van die optrede van alle persone, partye en kandidate vir sover sodanige optrede die voer van vry en regverdige verkiesings kan bevorder of strem;
- (r) enige aangeleentheid vereis of toegelaat om voorgeskryf te word ingevolge hierdie Wet; en
- 55 (s) in die algemeen, alle aangeleenthede wat na sy mening nodig of dienstig is om voorgeskryf te word om die oogmerke van hierdie Wet te bereik.
- (2) 'n Regulasie kragtens subartikel (1) uitgevaardig, kan vir enige oortreding van die bepalings daarvan of enige versuim om daaraan te voldoen strawwe voorskryf van 'n boete of gevangenisstraf vir 'n tydperk van hoogstens twee jaar.

(3) Regulations under subsection (1) affecting State expenditure shall be made only after consultation with the Minister of State Expenditure.

Short title and commencement

42. This Act shall be called the Independent Electoral Commission Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(3) Regulasies kragtens subartikel (1) wat Staatsuitgawes raak, word slegs uitgevaardig na oorlegpleging met die Minister van Staatsbesteding.

Kort titel en inwerkingtreding

42. Hierdie Wet heet die Wet op die Onafhanklike Verkiesingskommissie en
5 tree in werking op 'n datum wat die Staatspresident by proklamasie in die
Staatskoerant bepaal.

**MEMORANDUM ON THE OBJECTS OF THE INDEPENDENT
ELECTORAL COMMISSION BILL, 1993**

The Negotiating Council as part of the Multi-Party Negotiating Process has agreed to the contents of the above-mentioned Bill for the establishment of an Independent Electoral Commission to conduct, administer, organize and supervise the first elections for a democratically elected National Assembly and all other legislatures, excluding the Senate, contemplated in the so-called Interim Constitution Bill (which is being negotiated).

This Bill corresponds with a new Electoral Bill which is being negotiated and the said Interim Constitution Bill.

MEMORANDUM OOR DIE OOGMERKE VAN DIE WETSONTWERP OP DIE ONAFHANKLIKE VERKIESINGSKOMMISSIE, 1993

Die Onderhandelingsraad wat deel uitmaak van die Veelparty-onderhandelingsproses het ooreengekom oor die inhoud van bogenoemde Wetsontwerp vir die instelling van 'n Onafhanklike Verkiesingskommissie om die eerste verkiesings vir 'n demokraties verkose Nasionale Vergadering en alle ander wetgewende liggame, uitgesonderd die Senaat, beoog in die sogenaamde Ontwerp-oorgangsgrondwet (waaroor onderhandel word), te voer, te administreer, te organiseer en daarvoor toesig te hou.

Hierdie Wetsontwerp sluit aan by 'n nuwe Kieswetsontwerp waaroor ook onderhandel word en genoemde Ontwerp-oorgangsgrondwet.

MEMORANDUM OOR DIE DOELWERK VAN DIE VERENIGDE NEDERLANDSE VERBODINGSKOMMISSIE 1993

Die Oorlofskennis en wat deel uitmaak van die Verreyn-...
...ingstoesel...
...die...
...gewone...
...organiseer...
...toesig...
...toesig...
...toesig...

Hierdie...
...toesig...
...toesig...
...toesig...

