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Demokratiese Party
Democratic Party

SUBMISSION BY THE DEMOCRATIC PARTY
TO THE INDEPENDENT ELECTORAL COMMISSION

DEMOCRATIC PARTY VIEW ON A LEGISLATIVE FRAMEWORK FOR
THE INDEPENDENT ELECTION COMMISSION

2.1 Aims

The first task of the IEC should be the drafting of an Electoral Act for submission to the MPF or TEC. It is our view that most electoral rules should be determined in the Act and that only minor technical matters should be left to regulation by the IEC.

The duties of voter education and voter registration/ issuing of documents should be added to conducting, monitoring and adjudicating.

2.2 The IEC

2.2.1

2.2.2 The size of Electoral Commissions varies from 3 (Zambia) to 24 (Bulgaria). A 26 member IEC, with each MPF delegation nominating one non-partisan Commissioner from civil society would ensure a broad cross-section of the population and satisfy all contenders that a balance is maintained. Alternatively each MPF delegation should nominate Commissioners and a neutral selection body should select 7-11 commissioners as well as the chair and deputy chairpersons following the procedure adopted for the appointment of the SABC Board.

2.2.3

2.2.4 Delete (b). We support (c).

Persons seconded by the International Community should have a non-voting capacity and should ideally be ex commissioners of foreign IEC's with experience of transitional elections. The civil servant who ran the founding election in Chile was universally respected, and serves as an example of the kind of person who would be appropriate.

2.2.4.2

2.2.4.3 Appointees should not hold political office immediately before serving on the IEC.

2.2.4.4

2.2.4.5

2.2.5

2.3 Functioning of the IEC

2.3.1

2.3.2

2.3.3

2.4 Status of the IEC

2.4.1 The IEC should be independent of all government organisations but may use the services of any government department on an agency basis.

2.4.2

2.4.3

2.4.4

2.4.5

2.5 Accountability and Finance

Accountability is an inappropriate word. The IEC should operate on a separation of powers basis, like the judiciary, and should draw on the TEC or its sub-council for services in the same way the courts draw on the Department of Justice.

2.5.1

2.5.2

2.5.3

2.5.4

2.6 Powers, duties, and functions of the IEC

2.6.1 The IEC shall also assume the responsibility for the issuing of documentation rendering citizens eligible to vote to remove any doubts in this respect. This may take the form of monitoring the work of the Department of Home Affairs by training and deploying monitors (unemployed teachers, for example). In addition, the IEC could take a more pro-active role.

At present, the onus to acquire an ID rests with citizens. But some electoral laws make registration an active official responsibility.

In Angola, Electoral Registration Brigades were created by law to register all citizens. Brigade members were required to have literacy, training and knowledge of the language of each area.

An alternative with enormous potential is the creation of documentation centres, mobile or otherwise, where voter training takes place simultaneously. This could be achieved quite simply by screening videos while citizens queue, or more elaborately by providing ballot boxes and instruction.

The IEC must write regulations governing the issuing of ID's, or temporary government-issued voter-ID's including a photograph, where birth/baptism certificates are not available. The IEC documentation monitors must supervise the work of Home Affairs officials who may be set in conventional ways and may not be sufficiently sympathetic to the needs of new voters.

2.6.2 International monitors should supply a second certification.

2.6.3

2.6.3.1

2.6.3.2

2.6.3.3

2.7

Separate independent structures:

Issuing of documentation (2.6.1 above)

Conduct of elections (2.6.3.1)

Monitoring (2.6.3.2)

Adjudicating (2.6.3.3)

Add:

Security

The DP suggests the Peace Committees already functioning under the Peace Accord be used to ensure security and/or the monitoring of security.

Monitoring

An independent monitoring body should be established in each region under the chairpersonship of a judge, church leader or person of similar stature and independence.

The Zambian experience showed the value of monitoring by NGO's: the law society, churches, women and students acting together won the confidence of the population when the formally established monitoring agency lost that confidence. The NGOs' success is ascribed to the fact that they were broad-based organisations rather than individuals. To anticipate similar problems, the structure set up by the IEC may be required to draw in churches, women's organisations, etc from the start.

2.8 Regulations

IEC Regulations will be required in at least the following areas, unless they are incorporated in a special Electoral Act; or as clauses of the Act establishing the IEC:

- 2.8.1 Proof and procedures for issuing of ID/voter documents.
- 2.8.2 Equal air time on radio and TV whether in free advertising or editorial slots for all political parties meeting the criteria for participation in the election.
- 2.8.3 Criteria for registration of parties and participation.
- 2.8.4 Campaign funding: limits on expenditure to keep playing field level.
- 2.8.5 Declaration of foreign funding.
- 2.8.6 Admissibility of survey results and mass rallies and marches during the last fortnight before election.

2.9 Eligibility of voters

Only South African citizens should vote. It should be the function of the IEC monitors to resolve disputes as to whether a person qualifies for citizenship.

2.10 Registration of parties

The IEC should make regulations establishing requirements for the registration of the names and symbols of parties, including deposits, which should not be so high that they limit access but not so low that they do not discourage peripheral parties, on pain of losing their deposit if they receive less than 1% of the national vote, from using free air time, electoral services, etc.

2.11 Administering

2.11.1 See 2.9

2.11.2

2.11.3 See 2.10

2.11.4 See 2.8.4 and 2.8.5

2.11.5 See 2.8.2

2.11.6 The function of voter education is substantial and merits a separate structure under 2.7 as well as listing under Aims.

2.11.7 Machinery and staff should be decentralised to regions in view especially of the fact that some of the electoral lists will be regional.

2.11.8 The DP considers an indelible mark on voter's hands the only means of controlling voting frequency because it will be important not to force voters to vote in their areas of residence for fear of intimidation. The secrecy of the vote is the greatest safeguard against intimidation.

The supervision and sealing of ballot boxes, their transport under armed guard to counting centres and the actual counting should be as visible and transparent as possible. The media could play a useful role in this respect.

2.12 The election process

2.12.1 The use of "inside agents" or partisan monitors representing each party is probably the best insurance of vigilance.

2.12.2

2.12.3 To prevent intimidation regulations should be made, including:

- * A no-go area of a set radius around every polling station. Only electoral officials, monitors and voters to be allowed beyond the boundary. No party representatives except trained inside agents, no party decorations, posters or tables.
- * A security presence
- * Peace Committees on standby for resolution of incidents.

2.12.4

2.13 Adjudication (See Addendum A)

2.13.1 The IEC's Adjudication structure must have representatives in every sizeable town.

2.14 General

The IEC will need the power to make regulations on an ongoing basis. The basic question the Technical Committee must answer is whether most of the measures discussed above must be incorporated as law in the Bill establishing the IEC, whether the majority of electoral rules and arrangements can be left to regulation, or whether a separate Electoral Act is required to address not only the new Proportional Representation System but also matters like:

- * number of voting days
- * free air time for all parties
- * cessation of mass rallies and survey result publication 14 days before election.

We favour a separate Electoral Act and suggest the IEC should draft it.

SANCTIONS AGAINST POLITICAL PARTIES (ANNEXURE 'A')

1. The current debate surrounding possible sanctions against political parties is both complex and potentially divisive. Some argue that controls of any sort on political activity of any nature are anti-democratic and reflect a Euro-centric view of political morality; others argue that current levels of political intolerance make a mockery of the foundation of democracy, that is, the ability to make a free and informed choice about who one wishes to vote for.
2. There is validity in both views, and it is essential that any proposed sanctions against political parties take into account both the historical legacy of repression and the current experience of intolerance. In recommending steps to counteract violence and intimidation, the Commission should take these perceptions into account and should aim to lay the foundations of a politically tolerant society.
3. It flows from this that both the legal parameters that have informed previous electoral practice, as well as the experience born out of the 'struggle' for democratic rights will be inapplicable to the new politics. A whole new basis and a fresh social contract will have to be devised which is simultaneously equitable, transparent, democratic and appropriate to the new politics in South Africa. As is the case with other aspects of our future political system, this social contract will have to be negotiated and agreed to by parties contesting the election.
4. Our general view is that rights and obligations of political parties should be regulated by an Electoral Act, and restrictions on the activities of their members should be regulated in the main by a Bill of Rights. However, bearing in mind the absence of an agreed Act or of such a Bill of Rights at present and the absence of any caselaw flowing therefrom, it would seem both desirable and practical for parties to negotiate, agree and subscribe to a Code of Conduct for political parties. It is furthermore our view that such a code, once it has been agreed to, should carry legal sanction and should therefore be enacted by Parliament along with similar legislation resulting from the negotiation process.
5. It is clear that many malpractices which might be anticipated as part of an election campaign are offences either in terms of statute or in terms of the common law. What the Code of Conduct would seek to regulate is actions by parties as a whole, which have the effect, or could reasonably be anticipated to have the effect, of leading to the commission of offences, as well as to regulate the actions of members acting on behalf of a political organization. A draft Code of Conduct is appended hereto.

Sanctions against Political Parties (page 2)

6. It is proposed that only parties who have subscribed to the Code of Conduct will be allowed to contest the election and to have their name and/or emblem appear on the ballot paper(s).
7. Alleged infringements of the Code of Conduct should be adjudicated by a tribunal established by the Independent Electoral Commission and chaired by a judge.
8. The tribunal should hear complaints on alleged breaches of the Code of Conduct. Such complaints should be heard as expeditiously as possible (in view of the nature of an election campaign) and certainly no later than one week after the complaint was lodged.
9. In cases where members of one organization breached the code (the onus of supplying prima facie proof lying with the complainant), the tribunal should be competent to make a finding, and thereafter to order
 - (a) the organization to pay a fine up to a maximum of say R25 000; and
 - (b) the publication of the name of the organization, the nature of the breach of the code and the organization disadvantaged or wronged by the breach.
10. In addition, the tribunal may order that the organization pay compensation to individuals wronged by an action taken by members of that organization and/or to publish an apology.

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CODE OF CONDUCT FOR POLITICAL PARTIES AND ORGANIZATIONS

An essential part of democracy is freedom of political expression and organization. Everyone has the right to put forward their political principles and ideas, without threat or fear, to every other person, without exception. Freedom of political expression and organization also carry responsibilities, including the duty to accept every other person's freedom to do likewise.

The political parties and other organizations (including affiliates or election allies) (hereinafter referred to as "Parties") whose names are subscribed to this document agree as follows:

1. Intimidation, in any form, is unacceptable, and will be expressly forbidden by the parties in directives to their members and supporters.
2. Party leaders will instruct their members and supporters that no weapon of any kind, including any traditional weapon, may be brought to any political rally, meeting, march or other demonstration.
3. Parties will notify the appropriate authorities in advance of their planned meetings and other rallies.
4. All practical steps will be taken by parties to avoid holding public rallies, meetings, marches or demonstrations close to one another at the same time where there is any reasonable possibility of conflict arising. Party leaders undertake to cooperate in applying this principle in good faith and in a reasonable spirit should any coincidence of time or venue arise.
5. Speakers at political rallies will at all times avoid using language which threatens or incites violence in any form against any other person or group of persons. Parties will not issue pamphlets, newsletters or posters, whether officially or anonymously, which contain inflammatory language or material.
6. All parties will reject any forced recruitment or fundraising, and will so advise their members and supporters.

Code of Conduct for Political Parties and Organizations (page 2)

7. Party members and supporters will not disrupt other parties' rallies, meetings, marches or demonstrations.
8. Party members and supporters will not seek to obstruct other persons from attending the political events of other parties.
9. Party members and supporters will not plagiarize symbols of other parties, or steal, disfigure or destroy political material of other parties.
10. Party leaders will use their good offices to seek to ensure reasonable freedom of access by all political parties to all citizens wherever they may be. They will also seek, subject only to legal restrictions, to ensure that all persons wishing to participate in political activities have freedom to do so. This may, where necessary, take place outside working hours.
11. Parties will establish effective lines of communication to one another at national, regional and local levels, and will appoint liaison personnel who will deal with any problems that may arise.
12. Party leaders will issue directives to their members and supporters to observe this Code of Conduct and take all other necessary steps to ensure compliance.
13. Parties will make available to each other lists of all appropriate national, regional and local office bearers on an annual basis.

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