

*First Rough Draft
Technical Sub-Committee
12 May 1993*

THE INDEPENDENT ELECTION COMMISSION ACT

To provide for the establishment of an Independent Election Commission to assume responsibility for the conduct, supervision, monitoring and evaluation of national elections to be conducted in order to facilitate the election of a democratic Parliament to function as such in terms of an Interim Constitution; and to provide generally for the necessary powers, functions, duties and responsibilities of the Commission, and matters connected with the elections.

CHAPTER ONE

INTERPRETATION AND APPLICATION OF THE ACT

1. **Definitions** : In this Act, unless the context indicates otherwise :
 - 1.1 **"Accredited International Organisations"** means the United Nations, the European Economic Community, the British Commonwealth, the Organisation of African Unity and any other international organisation so designated by the Commission.
 - 1.2 **"Chief Executive Officer"** means a person appointed to this office by the Commission.
 - 1.3 **"CODESA"** means Conference for a Democratic South Africa.

- 1.4 "The Commission" means the Independent Election Commission constituted in terms of this Act.
- 1.5 "The Council" means the Transitional Executive Council to be established in consequence of special legislation enacted in implementation of decisions and agreements reached by the Forum. Negotiating Process.
- 1.6 "Eligible Voters" means all South African citizens of 18 years and more, including citizens of the so-called TBVC States, with the exception only of such persons as may be disqualified from voting by reason of criminality, mental disorder or other provisions of this Act and of the Regulations.
- 1.7 "The Forum" means the Multi-Party Negotiating Process constituted in order to resume the constitutional negotiations commenced at CODESA.
- 1.8 "The New Parliament" means the Parliament to be elected as a result of the Transitional Elections, to function as the sovereign legislature in terms of an interim Constitution and to draft and enact a new Constitution for the Republic.
- 1.9 "Political Office" means any appointment or position, whether involving remuneration or not, in the service of a political party or organisation within the Republic.
- 1.10 "The Regulations" means the Regulations promulgated in terms of this Act.
- 1.11 "The Republic" means the Republic of South Africa, including the TBVC States.

1.12 **"The TBVC States"** means those areas which formerly constituted a part of the Republic and are presently governed in terms of Constitutional legislation establishing Transkei, Bophuthatswana, Venda and Ciskei respectively.

1.13 **"The Transitional Elections"** means the first elections to be conducted for a new Parliament to function in terms of an interim Constitution established by legislation, pursuant to agreements reached in the Forum.

1.14 **"This Act"** includes the Regulations prescribed thereunder.

2. **Application of this Act** : The provisions of this Act shall apply in respect of the Transitional Elections.

3. **Binding on the State** : This Act and the Regulations to be promulgated thereunder shall be binding upon the State, and to the extent that its provisions may in any way conflict with the inherent powers of the State or the provisions of any other Statute, it shall supersede and override such conflicting provisions.

CHAPTER 2

ESTABLISHMENT OF COMMISSION

4. **Establishment of Commission** : There is hereby established a body to be known as "THE INDEPENDENT ELECTION COMMISSION", which shall be a juristic person.

5. **Objects of Commission** : The objects of the Commission shall be to conduct a free and fair democratic electoral process for the new Parliament, and to assume plenary executive powers in respect of the Transitional Elections, including responsibility for registration of voters and political parties; supervision of the electoral process; monitoring and evaluation of the process; determining the results thereof; and adjudicating any procedures or substantive issues which may arise during the course of the Transitional Elections.

6. **Independence of the Commission** : The Commission shall function as an institution independent and separate from the State, the Government, the Council, or any subordinate Ministry, sub-council, department or organ thereof; provided that the Commission shall be obliged to furnish to the Council, to the Forum and to Parliament periodic written reports concerning its acts and decisions, including the conduct, outcome and evaluation of the Transitional Elections.

7. **Composition of the Commission** :
 - 7.1 The Commission shall comprise not less than seven (7) nor more

than eleven (11), members appointed by the State President upon the advice of the Forum, who shall be respected and suitably qualified persons representing a broad cross-section of the population, and who are themselves eligible voters; on condition that the composition of the Commission may also include not more than persons seconded for this purpose by Accredited International Organisations and/or foreign Governments, and approved for appointment by the Forum.

- 7.2 It shall be a fundamental precondition to the appointment and eligibility of every member of the Commission :
- 7.2.1 That they shall serve in their individual personal capacities (notwithstanding their party affiliation, secondment or nomination) and that voting and decisions shall be undertaken in absolute good faith, and without fear, favour, bias or prejudice.
- 7.2.2 That prior to assuming their appointment, they shall relinquish any former Political Office which may have been previously held, and shall not during their term of office accept appointment to any such office, whether remunerated or otherwise, nor in any other manner serve or assist any of the participating political parties or any other organisations involved in the Transitional Elections.
- 7.2.3 That they shall be ineligible as members of the Council and as candidates in the Transitional Elections, nor shall they be available for nomination or co-option to either body.
- 7.2.4 That they shall not by membership, association, conduct or otherwise, place their perceived independence in jeopardy or in any other manner damage the credibility and integrity of the Commission.

- 7.3 The State President, acting on the advice of the Forum, shall designate one (1) member of the Commission as Chairperson and another member as Vice-Chairperson. In the absence of both the designated Chairperson and Vice-Chairperson, the remaining members of the Commission shall nominate one of their number as acting Chairperson.
- 7.4 In the event of a vacancy arising on the Commission for any reason, the State President may either allow the appointment of such member to lapse (subject to the existence of the minimum number of members stipulated above) or, on the advice of the Forum, the State President may effect a substituted appointment of some other suitably qualified person who fulfils the same or similar criteria as the person ceasing to hold office, provided that the substituted appointee/s shall be approved by the Forum or the Council, as the case may be.
- 7.5 Nothing hereinbefore stipulated shall preclude the State President from effecting further appointments of members to the Commission from time to time, within the numerical limits stated in 7.1, with a view to ensuring its efficacy and demonstrating its broad-based impartiality, on condition that any such further appointments shall likewise be approved by the Forum or the Council, as the case may be.
8. **Term of the Commission :** The Commission shall commence upon a date to be fixed by the State President by proclamation in the Gazette, which shall be a date determined in consultation with the Forum, and it shall continue until it has completed its mandate to the satisfaction of the Council, whereupon it shall be dissolved upon a date to be notified in the Gazette. Nothing herein contained shall preclude the State President, in consultation with the Council or the New Parliament, from extending the term of office of the Commission for such

additional period as may be necessary to determine and adjudicate any remaining issues which may have arisen during the course of the Transitional Elections.

9. Termination of Appointment :

9.1 Notwithstanding the provisions of clauses 7 and 8, the appointment of a member of the Commission may be terminated :

9.1.1 at the instance of the member concerned, by resignation in writing delivered to the State President;

9.1.2 at the instance of the State President, for good and sufficient reason, subject to the concurrence of the Council;

9.2 Such good and sufficient reason shall be deemed to exist in the event of:

9.2.1 continued ill health;

9.2.2 serious misconduct;

9.2.3 unfitness or incapacity for office;

9.2.4 a material breach of the preconditions and qualifications indicated in 7.2 above;

9.2.5 the withdrawal of the nomination or co-option of the Accredited International Organisation or foreign Government concerned; or

9.2.6 any other reason which the Council may consider appropriate.

9.3 No appeal or review shall lie in respect of any decision by the State President in consultation with the Council to terminate the appointment of any member of the Commission.

9.4 Any vacancy arising in consequence of the provisions of this section shall be dealt with in accordance with the discretion conferred in terms of clause 7.4.

10. **Conditions of appointment :** Members of the Commission shall serve on a full-time basis, and shall receive such remuneration, allowances and privileges as may be determined by the Council, with the concurrence of the Minister of Finance.

11. **Procedural matters :**

11.1 The Commission may determine its own procedures, and shall hold meetings at such intervals as circumstances may dictate. Meetings may be convened at the instance of the Chairperson or Vice-Chairperson, or at any time at the instance of any two (2) other members of the Commission.

11.2 The quorum for any meeting of the Commission shall be five (5) members.

11.3 All decisions of the Commission shall be taken by simple majority. In the event of an equality of votes, the Chairperson (or in his/her absence, the Vice-Chairperson or acting Chairperson) shall have a casting vote.

11.4 The Commission may appoint such sub-committees, whether as standing sub-committees or otherwise, as it may consider necessary for the effective execution of its functions.

- 11.5 Any such sub-committee may include persons who are not members of the Commission, but the Chairperson of any such sub-committee shall be a member of the Commission.
- 11.6 Any member of a sub-committee who is not in the full-time employment of the State shall receive such remuneration (and allowances, if any) as the Commission may determine with the concurrence of the Minister of Finance.

12. Accountability and Finance :

- 12.1 The Commission shall determine and submit to the Council for its approval, Estimates of its anticipated expenditure in carrying out its duties and functions in terms of this Act, covering such periods as may be appropriate and subject to review and amendment as may be necessary from time to time.
- 12.2 Upon approval by the Council of such Estimates, the necessary funds shall be made available by the State.
- 12.3 The Chief Executive Officer of the Commission shall serve as "Accounting Officer" and shall bear the responsibility envisaged by such office in terms of the Statutes.
- 12.4 The Accounting Officer shall ensure that the Commission keeps full and proper records of all its expenditures and of all assets, liabilities and financial transactions in the format required by the Auditor-General, and shall generally take steps to ensure that all reasonable management measures are taken so that assets, services and resources are obtained, safeguarded and utilised in the most economic, efficient and effective manner, and that the requirements of the Auditor-General are duly satisfied.

12.5 The Estimates and accounts of the Commission shall be subject to audit by the Auditor-General who shall report thereon to the Council from time to time, as it may require.

13. **Guarantee by State** : The State guarantees, where required, all commitments and liabilities of the Commission.

14. **Administration** : The Commission shall have power to do all such things as may be necessary in order to fulfil its mandate, and without limitation thereto, may :

14.1 Appoint staff, fix remuneration and determine such emoluments and benefits as it may deem reasonable and appropriate.

14.2 Purchase, hire or otherwise acquire movable or immovable property which it deems necessary for the performance of its functions.

14.3 Enter into agreements with any person, including the State, for the performance on its behalf of any specific act or function or the rendering of any specific service.

14.4 Insure itself and its members, staff, visitors and the public against loss, damage, risk or liability which may be suffered or incurred.

14.5 With the approval of the Minister of Finance, incur overdrafts, borrow or otherwise obtain money for the purposes contemplated by this Act.

14.6 Accept grants, and procure advances for such purposes, to such extent and under such conditions as the Council in consultation with the Minister of State Expenditure may determine.

- 14.7 To open and operate bank accounts with the Reserve Bank or any other registered financial institution.
- 14.8 In general, to perform such acts as may be necessary or expedient for the performance of its functions.

15. Powers, duties and functions of the Commission :

- 15.1 The Commission shall be charged with the sole and ultimate responsibility for the organisation, conduct and supervision of the Transitional Elections, and shall be vested with all such powers, discretions and authorities as may be necessary to enable it effectively to undertake such responsibility.
- 15.2 Upon completion of the Transitional Elections, the Commission shall have the further responsibility of determining whether, and if so then to what extent, such elections have been free and fair. In effecting its determination, the Commission may accept or reject the result of the poll, or it may accept such result in part only, and subject to such qualifications as it may deem appropriate.

In the event of the Commission qualifying its determination, it shall be required to state its opinion regarding the materiality of the irregularities or deficiencies, and to recommend whether, and if so then in what manner, such deficiencies can be addressed.

The Council shall note the Commission's determination, and may adopt such actions in consequence thereof, whether in conformity with the Commission's recommendations or otherwise, as it may deem appropriate.

Notwithstanding the foregoing, the Transitional Elections shall not be set aside by reason of any untoward occurrence, mistake, or non-compliance with the provisions of the Act, if it appears to the Council upon advice by the Commission, that the elections were conducted substantially in accordance with the principles laid down and that such mistake or non-compliance did not materially affect the outcome thereof.

15.3 In implementation of its mandate, the Commission shall *inter alia* have the following functional responsibilities:

15.3.1 The Administration and conduct of the Transitional Elections :

Including, but without limitation thereto :

1. The education of the voter public concerning democratic principles and values; and specifically with regard to the electoral process; through political campaigning; voting procedures and other relevant matters; distribution and publication of literature and by means of programmes conducted through radio, television, print media and by other means.
2. Procedures for determining the eligibility and identification of voters in accordance with the principles established by the Forum.
3. The preparation of voters' lists and the determination of polling districts and of electoral divisions, if applicable.
4. The registration of political parties and the preconditions and formalities applicable to such registration.
5. The formulation of a Code of Conduct to which all parties shall be required to subscribe concerning peaceful electioneering, democratic tolerance and the acceptance of the results determined in free and fair elections, including provisions for appropriate penalties for violations of such Code of Conduct.

6. The election and appointment of returning officers, polling and counting officers and other necessary electoral personnel.
7. The identification of polling stations and the determination of times and places for voting.
8. The conditions and formalities applicable to Special Votes.
9. The form and content of ballot papers.
10. Arrangements for ensuring the secrecy and security of the ballot and the protection of ballot papers.
11. Arrangements for the counting of votes and the determination of results.
12. Conditions upon which ballot papers may be rejected.
13. The determination of legitimate electioneering expenses and the source and application of political campaign funds.
14. The promulgation of appropriate regulations governing political advertising to be determined in consultation with the Independent Media Commission.
15. The nature of corrupt and unlawful election practices, and the stipulation of penalties, and consequences thereof.
16. The application by reference and notice of any of the provisions of the Electoral Act No. 45 of 1979, as amended, or any other legislation which may have reference to the Transitional Elections and the electoral process.

15.3.2 The monitoring and evaluation of the election process and the final certification thereof :

Including, but without limitation thereto :

1. The appointment of local and international observers, scrutineers and support staff.
2. The establishment of investigative facilities and review procedures.
3. The establishment of required administrative structures on a country-wide basis to observe, monitor and verify the process of the elections, before, during and after polling.
4. Steps to prevent the intimidation of voters or political parties.
5. The investigation and prosecution of any corrupt and illegal practices.

15.3.3 The adjudication and determination of issues arising during the course of the electoral process :

In respect of which the Commission shall be empowered :

1. To serve as the final arbiter of claims and disputes which may be submitted by individuals, political parties, organisations, administrations, governments and by the Council itself, concerning any matter affecting the campaign, conduct and outcome of the Transitional Elections.
2. To establish and determine the powers and procedures of appropriate special tribunals for the speedy investigation of complaints concerning alleged electoral irregularities, the refusal of access to venues and meetings, the impeding of access to voters, and intimidation or other breaches of the Code of Conduct to be subscribed by all Political Parties.

Save as may be expressly stated in the Regulations establishing special electoral tribunals, the Commission shall not have power to hear criminal offences, which shall be brought in the Courts in terms of the law.

16. Functional Sub-structures :

16.1 In order to carry out its various functions and responsibilities, the Commission shall be empowered to establish the necessary functional sub-structures and to regulate their powers, duties and responsibilities, as it may deem appropriate in order to ensure a free and fair election.

16.2 Such functional sub-structures shall include :

16.2.1 An Election Administration Directorate :

To undertake the responsibilities itemised in 15.3.1.

16.2.2 An Election Monitoring Directorate :

To undertake the responsibilities itemised in 15.3.2.

16.2.3 An Election Adjudication Directorate :

To undertake the responsibilities itemised in 15.3.3.

16.3 Each such Directorate shall be accountable and subject to the overall management and control of the Commission, which notwithstanding such delegation, shall retain the power to issue final directives and to rescind or vary and amend the decisions taken by such functional sub-structures.

16.4 Provision may be made within all or any of such functional sub-structures for the co-option and assistance of international experts and other suitably qualified persons who may be nominated for this purpose by one or more of the Accredited International Organisations.

- 16.5 The Commission shall be empowered to make regulations providing for such matters as are contemplated and generally for the purpose of better carrying out the objects and purposes of this Act. Such regulations may prescribe penalties for the contravention or failure to comply therewith. The Commission may likewise prescribe the form and content of any document which may be used in carrying out the provisions of this Act.
17. **The Council as successor to the Forum :** In this Act where any discretion or power is conferred upon the Forum, such power or discretion shall be assumed and exercisable by the Council from the date of its appointment in terms of the relevant Statute.
18. **Delegation :** The Commission may delegate any power conferred upon it in terms of this Act to any person or other body, or authorise such person or other body, including the State, to perform any duties assigned to the Commission hereunder.
19. **Jurisdiction :** There shall be no appeal from any decision by the Commission but its proceedings shall be subject to review to any Provincial Division of the Supreme Court, and (with the leave of such Division) an appeal shall lie to the Appellate Division in respect of any decision in such review proceedings.

CHAPTER 3

MISCELLANEOUS

20. Offences relating to voting procedures, polling stations and voting equipment :

20.1 Any person who :

20.1.1 forges or counterfeits or fraudulently destroys any ballot paper or a mark, stamp or note on any ballot paper; or

20.1.2 deliberately without due authority supplies any ballot paper to any person; or

20.1.3 fraudulently places into any ballot box any paper other than a ballot paper handed to him in terms of this Act; or

20.1.4 fraudulently takes out of any polling station any ballot paper; or

20.1.5 deliberately without due authority destroys, opens, uses or otherwise interferes with any ballot box, voting compartments, instrument, form, document or other equipment used or intended for use at any polling station;

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000,00 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

20.2 In any indictment, summons or charge for an offence in relation to ballot papers, ballot boxes or voting equipment in the Transitional Elections the

property in such papers, boxes or equipment may be stated to be vested in the Commission.

21. Personation : Any person who :

21.1 during the Transitional Elections applies for a ballot paper in the name of some other person, whether living or dead, or of a fictitious person, or who gives a vote in the name of any such person; or

21.2 having previously voted, again votes or applies for a further ballot paper;

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000,00 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

22. Undue influence and bribery : Any person who, directly or indirectly, by himself or by any other person :

22.1 makes use or threatens to make use of any violence, force or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, upon or against, or does or threatens to do anything to the disadvantage of, any person in order to induce or compel any person to vote or to refrain from voting in the Transitional Elections or on account of any person having voted or refrained from voting in the Transitional Elections; or

22.2 by any such means as aforesaid or any fraudulent device or contrivance induces, compels or prevails upon any voter to vote or to give or refrain from giving a particular vote in the Transitional Elections, or impedes or prevents the free exercise of the franchise by any voter in the Transitional Elections; or

22.3 gives, lends or procures, or agrees to give, lend or procure, or offers or promises, any money or other reward to or for any voter or any other person, in order to induce such voter or any other voter to vote or to give or to refrain from giving a particular vote in the Transitional Elections; or

22.4 receives or contracts for any money or other reward for himself or for any other person, on account of voting, giving or agreeing to give, or refraining or agreeing to refrain from giving, a particular vote in the Transitional Elections;

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000,00 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

23. Obstructing proceedings and officers : Any person who wilfully obstructs or disturbs any proceedings under this Act at a polling station or wilfully obstructs or interferes with any officer or other person appointed by or under this Act in the exercise of his powers or the performance of his duties in terms of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000,00 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

24. Infringement of Security :

24.1 Every officer or other person appointed by or under this Act in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at that polling station, and shall not communicate, except for some purpose authorised by law, to any person any information likely to threaten the secrecy of the voting.

- 24.2 Subject to the provisions of this Act, no person shall interfere with or attempt to interfere with a voter when giving his vote, or otherwise attempt to obtain at a polling station information as to how any voter at that polling station is about to vote or has voted, or communicate at any time to any person any information obtained at a polling station as to how any voter at such polling station is about to vote or has voted, or as to the number, if any, on the ballot paper handed to any voter at such polling station.
- 24.3 No voter shall directly or indirectly induce any voter to display his ballot paper, after he has given his vote, in such a manner as to make known to any person how the voter has voted.
- 24.4 No person shall place upon any ballot paper any mark or writing whereby a voter who gives his vote on that ballot paper may be identified.
- 24.5 Every person in attendance at the determination of the result of the Transitional Elections shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at such determination, or communicate any information obtained at such determination as to, the manner in which any particular voter has given his vote.
- 24.6 Subject to the provisions of this Act, no person shall attempt to ascertain, or directly or indirectly assist in ascertaining, how any voter has given his vote.
- 24.7 Any person who, in the exercise of his powers or the performance of his duties in terms of this Act, has obtained knowledge as to the vote which any voter has given, shall not disclose such knowledge except in reply to a question lawfully put to him in the course of proceedings in any court.

24.8 No person shall, except upon the order of any court or as authorised by this Act, break the seal of, or open, any packet sealed in terms of this Act.

24.9 Any person who contravenes, or fails to comply with, any provision of this section, shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000,00 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

25. Prohibition of opinion polls during the Transitional Elections :

25.1 No person shall, in respect of the Transitional Elections, conduct an opinion poll in respect of the support enjoyed by the Political Parties or candidates, or publish the results of such an opinion poll conducted prior to, on or subsequent to the date on which the Elections are held.

25.2 The provisions of clause 25.1 shall not prohibit the obtaining of opinions in the course of canvassing for votes for the advancement of a particular Political Party.

25.3 Any person who contravenes any provision of 25.1 shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000,00 or to imprisonment for a period not exceeding two years.

26. Voter not required in legal proceedings to disclose his vote : No person who voted in the Transitional Elections shall be required in any legal proceedings to state how he has voted.

27. **Exemption from duties, taxes and fees :** Notwithstanding anything to the contrary in any other law contained, no duty, tax or fees shall be payable by the Commission to the State in respect of anything done or any transaction under this Act or in respect of any document required in connection therewith.

28. **Short title :** This Act shall be called "The Independent Electoral Commission Act, 1993".