

KWAZULU GOVERNMENT

COMMENTS ON THE THIRD REPORT OF THE TECHNICAL COMMITTEE
ON THE INDEPENDENT ELECTORAL COMMISSION

JUNE 9, 1993

1. The KwaZulu Government thanks the Technical Committee for its Third Report. With reference to the issues raised in the Report, the KwaZulu Government wishes to clarify its understanding that the terms of reference of the work of the Committee do not include matters which are usually covered under the Electoral Law.
2. The KwaZulu Government's understanding of the present process of transformation is that the Electoral Law should be drafted at a later time by the Multi-Party Negotiation Process once agreement has been reached on the relevant constitutional principles. In fact, the Technical Committee on Constitutional Matters has already tabled constitutional principles which would affect the basic parameters of the Electoral Law. The Multi-Party Negotiation Process would most probably require the assistance of a Technical Committee for the purposes of drafting the Electoral Law.
3. A further distinction needs to be made between Electoral Law and Electoral Rules. It is the KwaZulu Government's understanding that it will be the jurisdiction of the Independent Electoral Commission to draft and adopt Electoral Rules. Electoral Rules can be defined as all provisions related to the actual conduction of political campaigns and to the holding of elections. Therefore in the KwaZulu Government view, the subject matter is also not within the terms of reference of the work of this Technical Committee.
4. As far as the composition of the Commission is concerned the KwaZulu Government welcomes the proposal that representatives of the major international organisations should participate in the work of the Commission and membership should be extended to them.
5. However, at this point the KwaZulu Government is inclined to believe that it would not be appropriate that representatives of international organisations be granted voting powers within the decision-making of the Commission. The KwaZulu Government believes that they should act in a consultative capacity only.
6. The KwaZulu Government believes that only South African citizens should be entitled to vote in the next elections.

Therefore, the KwaZulu Government is inclined to reject the inclusion of certain additional categories of persons such as those who are married to South African citizens, who have a South African parent or who have been continuously residing in South Africa for at least five years.

7. In most Western democracies only those who are citizens are entitled to vote. This is a necessary consequence of the relationship between the State and its citizens which includes both rights and duties. It would be difficult to conceptualise the right to vote outside the parameters of a citizenship relation and allow voting powers to those who have no duty of allegiance to the Republic of South Africa.
8. As far as the exclusion on grounds of criminality is concerned, the KwaZulu Government believes that this exclusion should be limited only to major felonies, to be specifically listed. The exclusion should be tied to conviction on the basis of a final sentence. The principle of presumption of innocence before final sentencing would exclude the inclusion in this exception of prisoners awaiting trial or of all prisoners irrespective of their prior convictions and offences.
9. This approach would allow individuals who receive indemnity to vote, provided that they receive indemnity prior to sentencing. It would exclude those who receive indemnity after sentencing. Therefore the Electoral Law might provide further exception for political crimes so as to allow individuals convicted of a specified range of political crimes to vote. This would avoid a blank and unqualified exception for all those who have been convicted of political crimes.
10. The KwaZulu Government is also concerned about the provisions related to the disqualification of Commissioners. Surely the provisions express a high moral imperative and are aimed at ensuring true independence and being above party positions of the Commission. However, as a practical matter this approach might penalise certain sectors of society or broadly speaking political segments.
11. The KwaZulu Government would ask the Technical Committee to determine whether the independence of the Commission could be achieved with other techniques and possibly submit to the Negotiation Council various alternatives in this regard.
12. As far as the certification of results is concerned, the KwaZulu Government believes that this matter needs greater analysis and detail. In most cases issues arise not in relation to the freedom and fairness of elections as a whole, but rather in relation to specific incidents, possibly the qualification of a limited number of elected

representatives. In many occurrences, the decision to call for a new election would be excessive.

13. The KwaZulu Government would like to receive further elucidations from the Technical Committee on its proposal to expand the jurisdiction of the Commission so as to have the power to regulate and adjudicate the content of other organs of the State.
14. The KwaZulu Government submits and maintains that the disclosure requirement should be maintained for all donations in excess of R1 000 and that no exceptions should be made for legitimate campaign expenditure which could become a major loophole to receive donations in direct payment of expenditure.
15. The KwaZulu Government also seeks greater clarity on the role and possibilities of judicial review of the decisions and the regulations adopted by the Commission.

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