

Report

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**EMBARGOED  
UNTIL TABLING IN THE NEGOTIATING COUNCIL  
ON FRIDAY 15 OCTOBER 1993**

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**SECOND VERSION  
OF THE DRAFT ELECTORAL BILL  
BY THE  
TECHNICAL COMMITTEE ON THE ELECTORAL BILL**

**15 October 1993**

# **EXPLANATORY MEMORANDUM**

## **SECOND VERSION**

### **DRAFT ELECTORAL BILL**

**15 OCTOBER 1993**

1. This draft has attempted to accommodate the comments, suggestions and criticisms which were levelled against the first draft by members of the Negotiating Council on 5 October 1993. In addition to a large number of textual changes, certain substantive changes of principle have been made to the draft bill, affecting:
  - 1.1 entitlement to vote;
  - 1.2 procedures for registration of parties;
  - 1.3 foreign voting;
  - 1.4 special votes.
2. Pursuant to the instruction from the Negotiating Council to recommend criteria for eligibility, the Committee has re-drafted Clause 16 to include as eligible voters the following:
  - 2.1 South African citizens.
  - 2.2 TBVC citizens. ("The Republic" has been defined in the draft Bill to encompass the borders of South Africa as at 1910).
  - 2.3 Persons born in South Africa, who are now and have been ordinarily resident in South Africa for at least the past 12 months.
  - 2.4 Persons born to a South African parent with the further requirement that such persons must have been likewise ordinarily resident in South Africa for at least the past 12 months.
  - 2.5 Marriage to a South African citizen.
  - 2.6 Persons ordinarily resident in South Africa for the past 5 years.
3. In making this recommendation, the Committee has attempted to ensure that the election will be as inclusive as possible. It has had regard to the requirements for citizenship as set out in the Citizenship Act of 1949. For example:



- 3.1 Birth in South Africa gives rise to citizenship.
- 3.2 A person born outside South Africa on or after September 1949 can become a citizen by descent if his or her father was at the time of his or her birth a South African citizen (or if a certificate of resumption of citizenship has been issued to his or her parent/s and he or she has entered the country for permanent residence, or if he or she has been adopted by a citizen provided his or her birth is properly registered.
- 3.3 The Minister of Home Affairs can grant a certificate of naturalisation to persons falling within specific categories of which one of the requirements is that the person has been ordinarily resident in the Republic for at least 1 year immediately preceding his or her application, and that he or she has, in addition, been resident in the Republic for a further period of not less than 4 years during the 8 years preceding the application.

Given the wide range of circumstances in which citizenship could have been lost (see section 15 of the Citizenship Act), it is likely that there are many people who fall within the requirements for citizenship in terms of the Citizenship Act, but who are not presently South African citizens. The Committee has made its recommendations with due regard to these requirements.

4. One member of the Committee suggested that the IEC be given a discretion to extend the category of eligible voters to include persons not resident in South Africa; that is, persons who would otherwise qualify but who fail to meet the suggested criterion of residency. However, a majority of the Committee felt that this would err on the side of being too inclusive.
5. As a result of this recommendation, a number of consequential amendments to the Bill are necessary. "Acceptable identity document" has been altered to "voter eligibility document" and the definition of "Republic" now makes clear the applicable documents issued by TBVC Governments are also acceptable.
6. Notwithstanding criticism expressed of the clause empowering the IEC to issue voter's cards, the Committee considers that this provision is necessary, particularly in the light of the extended criteria for voter eligibility. Whilst not eligible for an "identity document" or "temporary identity document", the extended range of eligible voters will require acceptable identification, and this can only be achieved by means of a voter's card. Section 4 of the Identification Act 72/86 does not extend to all the proposed categories, hence a temporary ID cannot be issued to all eligible voters as proposed. The clause also makes clear that voter's cards will include a photograph of the bearer.



7. The Committee considered the debate on the eligibility of prisoners to vote. A separate memorandum will be tabled in which comparative experience of other countries is described. One member of the Committee, however, feels that there should be a further restriction on the eligibility of prisoners to vote, and has recommended the insertion of the following provision:

"No person shall be entitled to vote in an election, if that person is detained in prison, in accordance with a sentence imposed pursuant to a conviction by a court of law in respect of any offence mentioned in Schedule 1 of the Criminal Procedure Act 51/77 or any other applicable law, as the case may be, provided that any person who commits an offence with a political motive shall not be disqualified by reason of the provisions of this paragraph."

The balance of the Committee holds the view that prisoners should be entitled to vote, on the premise that they should only be denied those rights which are necessary for their incarceration - of which the right to vote is not one.

8. The Committee also reviewed its recommendations in so far as persons not entitled to vote are concerned. The Committee draws attention to the fact that the three disqualified categories referred to are all derived from express prohibitions contained in the present Electoral Act 45/79. Section 4 thereof provides that no person shall be entitled to be registered, or to the continuance of his or her registration, or vote in any division, if he or she is subject to an order of a court declaring him or her to be of unsound mind or mentally disordered or defective, or detained as a mentally ill patient under the Mental Health Act 1973, or in the case of independent states under any law applicable in that state.
9. In the light of the debate in the Negotiating Council, the Committee reconsidered the requirements for party registration for purposes of elections. Attention is drawn to the fact that the previous clause (16(2)) which provided for a registration fee of R10,000, has been deleted. Furthermore, the requirements for deposits for contesting the election of the National Assembly and SPR's have also been reduced. The procedures for objection to such party registration have been streamlined, and as a result Chapter IV of the draft Bill is considerably altered. It is now proposed that there be only one opportunity for third parties to raise objections to the registration of a party. Provisions have also been made for the registration of alliances of parties, as proposed in the Council.
10. The Committee has adopted a restrictive approach to special votes. Provisions have been made for special votes for disabled persons and pregnant women. It is also provided that only a presiding officer or a voting officer can attest the special vote. The Committee has also altered the provision regarding foreign voting stations. The Commission is mandated to establish voting stations outside the Republic. It may be that not all such foreign voting stations will be at South African missions. Attention has been drawn to the position of Muslims on Haj, which might necessitate a foreign



voting station in Saudi Arabia where there is no South African mission. The clause has also been altered to enable any eligible voter to be permitted to record his or her vote at a foreign voting station.

The provision dealing with tendered ballots has also been reviewed in the light of submissions made by the Government, but the Committee has not deemed it appropriate to make substantive changes to its earlier proposals in this regard.

11. The Committee is still giving consideration to a number of issues on which no decision has yet been reached, but has decided not to delay the submission of this new draft. In particular, the Committee is considering:
  - 11.1 whether a voter shall be entitled to vote at any voting station in the Republic;
  - 11.2 whether the election should be for a period of one or more than one day; and
  - 11.3 whether provision should be made for public funding of election campaigns.
12. The Committee found that there were three options in so far as the situs for voting was concerned, namely:
  - 12.1 The option reflected in clause 30 of the first draft namely that a voter shall be entitled to vote at any voting station; and for purposes of the election for any "other legislature", such vote shall be counted where it is has been cast.
  - 12.2 The option that voters should be afforded a choice, such that in the event that a person votes outside the region where he or she is ordinarily resident, such voter can request a special ballot paper for voting in which it shall be recorded that he or she is voting in the region of his or her ordinary residence.
  - 12.3 The option that voter's cards are issued to all eligible voters (including those with other identity documents) and that the voter's card specify the ordinary residence or applicable region of the voter concerned.

The majority of the Committee favours option 12.2. Option 12.1 was the subject of much dissatisfaction in the Council. It is possible that option 12.3 can be implemented. For example, in Canada and Cambodia the Committee has been advised that voter's cards were issued to all voters in a relatively short period of time. However, the Committee is in no position to assess whether this is feasible in South Africa nor whether it is financially viable. Thus, whilst option 12.2 is susceptible to possible abuse, the majority of the Committee considered that it would be possible to restrict such abuse by including as an offence, the calling by any party/organisation for voters to vote in a particular region without regard to their ordinary residence. Nonetheless it must be conceded that giving voters an option in this manner could result in substantial distortions. Guidance from Council is sought in this regard.



13. The Committee considered the question of the number of voting days. It considered the recommendations of the Goldstone Commission that the election should take place over one day only. The Committee wishes to consult with the Department of Home Affairs regarding the number of voting stations in order to ascertain whether it would be possible for voters to have easy access to voting stations. Such an analysis will assist the Committee in making a firm recommendation. Other questions flow therefrom, all of which the Committee needs to consider before making a recommendation. These include the implications for an increased number of voters descending on a voting station; the consequent need for more election officials and more accessories, such as ultra violet lamps; the danger of a shortage of ballot papers at a particular voting station which could be rectified on a second day of voting etc.
14. The Committee has received a detailed submission from the Democratic Party regarding state funding of the election campaigns of registered parties. However, it awaits further submissions before making recommendations for Council's consideration.
15. Attention is also drawn to a number of important changes in the detail of the Second Draft. Although in the Council to reconcile the definition of "non-governmental military force" as contained in clause 1 of the First Draft, with the definition of "armed force" as contained in the TEC Act, the Committee has been obliged to adopt the definition in order to extend the definition to include non-participants in the TEC.
16. The Act has been amended to include the establishment of a formal liaison committee between the IEC and registered parties. Thus chief election agents of the various parties will meet on this committee, which will allow for close co-operation between the parties and the IEC, in so far as the running of the election is concerned. Provision has also been made for members of the liaison committee to object to the appointments of electoral staff, although the Commission's decision will be final and not subject to appeal or review. The Committee has amended the section dealing with the submission of lists of candidates to the Chief Director to allow for more names to be included on the list than are represented by available seats. The Committee has recommended that the names of candidates may appear on both a national and a regional list, but cannot appear on the list of more than one registered party.
17. The qualifications for a person to be a candidate have been redrafted to accord with the requirements envisaged by the draft Constitution.
18. The Committee recommends that the identification mark be administered by means of invisible ink. However, the Committee is presently researching whether suitable ink will be available, and the resultant logistic requirements; for example ultra violet sensors to identify the (invisible) mark.



19. The Committee has amended the section dealing with safekeeping of election material in the light of criticisms expressed of the previous draft. The newly elected Government rather than the IEC shall be responsible for the expeditious disposal of election material.
20. The Committee has included a provision dealing with the establishment and enforcement of an Electoral Code of Conduct. A draft Code is included with this submission, although it must be recorded that this is an early draft which represents only the framework of the Committee's thinking. The Committee intends to give further consideration to the terms of the draft, and may submit a re-draft with its next report. There is a view in the Committee that the Code should be formulated as a popular document rather than one which is couched in legalistic terms. This issue also needs to be resolved.
21. The Committee will give further attention to the drafting of a specimen ballot paper, and to the content of Chapter IX dealing with the system of proportional representation, and the conduct of regional elections. These are matters which will be considered jointly between this Committee and the Committee dealing with Constitutional Issues.



## **B I L L**

**To regulate elections for the National Assembly and any other legislature to be elected in terms of the Constitution of the Republic of South Africa Act, 1993; 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**

#### **Interpretation and Application of Act**

- 1. Definitions**
- 2. Application of Act**
- 3. Act binding on State and State President**

#### **CHAPTER II**

#### **Administration**

- 4. Administration of Act**
- 5. Party liaison committee**
- 6. Interim party liaison committee**
- 7. Regional and local party liaison committees**
- 8. Appointment and control of electoral officers and staff**
- 9. Powers, duties and functions of regional electoral officers**
- 10. Powers, duties and functions of district electoral officers**
- 11. Powers, duties and functions of presiding officers at voting stations**



12. Powers, duties and functions of voting officers at voting stations
13. Powers, duties and functions of counting officers
14. Appointment and powers, duties and functions of agents of registered parties
15. Declaration of secrecy

### **CHAPTER III**

#### **Franchise**

16. Persons entitled to vote
17. Persons not entitled to vote
18. Voters' cards

### **CHAPTER IV**

#### **Registration of Parties**

19. Registration for purposes of election
20. Application for registration for purposes of election
21. Notice of registration in Gazette

### **CHAPTER V**

#### **Announcement of Election and Submission of Lists of Candidates**

22. Determination of voting day and hours of voting
23. Submission of lists of candidates to Chief Director
24. Publication of lists of candidates



**CHAPTER VI**  
**Preparation for Voting**

- 25. Voting stations**
- 26. Foreign voting stations**
- 27. Supplying of voting materials**
- 28. Voting compartment and ballot box**
- 29. Ballot box**
- 30. Ballot paper**
- 31. Commencement and closing of vote at voting stations**

**CHAPTER VII**  
**Voting at Voting Stations**

- 32. Place of voting**
- 33. Number of votes per voter**
- 34. Voting to be in secret**
- 35. Identification**
- 36. Manner of voting**
- 37. Voters who cannot read or who are incapacitated by blindness or other physical disability from voting**
- 38. Objection to voting**
- 39. Tendered ballot papers**
- 40. Sealing of ballot boxes and other election material by presiding officer**
- 41. Special voters**
- 42. Procedure of voting by special voters**



**CHAPTER VIII**  
**Determination of Results of Poll**

- 43. Notice of place and time of counting of votes
- 44. Verification of ballot paper count by counting officer
- 45. Counting of votes
- 46. Alleged irregularities or inaccuracies, and challenges of tally
- 47. Determination of materiality of tendered ballot papers
- 48. Verification of material tendered ballot papers
- 49. Counting of tendered ballot papers

**CHAPTER IX**  
**Announcement of Result of Election and**  
**Determination of Number of Candidates of Registered Parties Duly Elected**

- 50. Note

**CHAPTER X**  
**General provisions**

- 51. Forfeiture of deposit paid by registered party
- 52. Safe-keeping of election material
- 53. Electoral Code of Conduct
- 54. Bills, placards, etc., to bear publisher's name
- 55. Prohibition on publication of opinion polls
- 56. Prohibition on political activities during 48 hours prior to voting day
- 57. Offences and penalties
- 58. Regulations
- 59. Repeal of laws
- 60. Short title and commencement



## CHAPTER I

### Interpretation and Application of Act

#### Definitions

1. In this Act any expression defined in the Independent Electoral Commission Act, 1993, and used in this Act shall have the meaning so defined and, unless the context otherwise indicates -

**"armed force"** means any armed force not established by or under any law and which is under the authority and control of, or associated with and promotes the objectives of, any party;

**"Administration Directorate"** means the Election Administration Directorate established by section 19 of the Commission Act;

**"Appeal Tribunal"** means an Electoral Appeal Tribunal established in terms of section 30 of the Commission Act;

**"ballot box"** means any ballot box referred to in section 29;

**"ballot paper"** means any ballot paper referred to in section 30;

**"candidate"** means any person whose name appears on a list of nominations by any registered party to be a member of the National Assembly or any other legislature in terms of the Constitution and this Act;

**"Chief Director"** means the Chief Director: Administration appointed to that office by the Commission in terms of section 20(1) of the Commission Act;

**"Chief Director: Monitoring"** means the person appointed to that office by the Commission in terms of section 23(1) of the Commission Act;

**"chief election agent"** means any chief election agent appointed in terms of section 14(1)(a);

**"Commission"** means the Independent Electoral Commission established by section 4(1) of the Commission Act;

**"Commission Act"** means the Independent Electoral Commission Act, 1993;

**"Constitution"** means the Constitution of the Republic of South Africa Act, 1993;

**"counting officer"** means any counting officer appointed in terms of section 8(1)(b)(iii);

**"counting station"** means any place determined by the Chief Director in terms of section 43 where the counting of votes is to take place;

**"deputy director"** means any deputy director appointed in terms of section 20(1) of the Commission Act;

**"directorate"** means the Administration or Monitoring Directorate;

**"district election agent"** means any district election agent appointed in terms of section 14(1)(c);

**"district electoral officer"** means any district electoral officer appointed in terms of section 8(1)(b)(i);

**"election"** means any election conducted in terms of the Electoral Act for the National Assembly or any other legislature;

**"election agent"** means any election agent appointed in terms of section 14(1) or (3)(c);



**"election material"** means any ballot papers, counterfoils, envelopes, statements and other documentation used in connection with the voting in an election;

***"Electoral Code of Conduct"*** means the Electoral Code of Conduct contained in Schedule 1;

**"electoral district"** means a portion of the territory of a region as determined by the Commission;

**"electoral officer"** means any deputy director, any regional or district electoral officer or deputy, any counting officer or any voting officer;

***"Electoral Tribunal"*** means an Electoral Tribunal established in terms of section 28 of the Commission Act;

**"foreign voting station"** means any foreign voting station established in terms of section 26;

**"identification mark"** means the mark approved by the Commission for the purpose of the identification of a voter who has voted in the election in terms of section 36(4);

***"interim party liaison committee"*** means the interim party liaison committee referred to in section 6;

***"international observer"*** means any person appointed as a representative of the United Nations, the Organization of African Unity, the European Community, the Commonwealth and 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;

**"monitor"** means any person appointed as such in terms of section 24(1)(a) of the Commission Act;

***"Monitoring Directorate"*** means the Election Monitoring Directorate established by section 22 of the Commission Act;

***"National Assembly"*** means the National Assembly which together with the Senate shall constitute the Constitutional Assembly as contemplated in the Constitution;

***"observer"*** means any observer registered with the Monitoring Directorate in terms of section 24(1)(b) of the Commission Act;

**"official mark"** means the mark determined by the Chief Director, for the purpose of the identification of a ballot paper having been officially issued in terms of section 36(6)(a) or 42(4)(a);

***"other legislature"*** means any legislature contemplated in the Constitution, excluding the National Assembly and Senate;

***"Parliament"*** means Parliament as contemplated in the Constitution;

***"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;

**"party liaison committee"** means the party liaison committee referred to in section 5;

**"party voting agent"** means any party voting agent appointed in terms of section 14(5);

**"prescribe"** means prescribe by regulation under this Act or the Commission Act;

**"presiding officer"** means any presiding officer appointed in terms of section 8(1)(b)(ii);

**"qualified person"** means any person qualified in terms of the Constitution to serve as a member of the National Assembly or other legislature;



**"region"** means any portion of the territory of the Republic determined as such in terms of the Constitution;

**"regional election agent"** means any regional election agent appointed in terms of section 14(1)(b);

**"regional electoral officer"** means any regional electoral officer appointed in terms of section 8(1)(a);

**"regional party liaison committee"** means any regional party liaison committee established in terms of section 7;

**"registered party"** means any party registered in terms of Chapter IV;

**"regulations"** means the regulations made under section 58;

**"Republic"** means the Republic of South Africa, including any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei;

**"Secretariat"** means the Election Adjudication Secretariat established by section 25 of the Commission Act;

**"Secretary"** means the person appointed to that office by the Commission in terms of Section 26(1) of the Commission Act;

**"Senate"** means the Senate as contemplated in the Constitution;

**"special voter"** means any voter entitled in terms of section 41 to record his or her vote as a special voter;

**"State"** means the Republic;

**"tendered ballot paper"** means any tendered ballot paper referred to in section 39;

**"this Act"** includes the regulations;

**"Transitional Council"** means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993;

**"voter"** means any eligible voter as contemplated in the Constitution and this Act;

**"voter's card"** means any voter's card issued in terms of section 18;

**"voter's eligibility document"** means a valid passport, an identity document or a temporary identity certificate of the Republic or a voter's card or a reference book issued in terms of the repealed Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952 (Act No. 67 of 1952);

**"voting compartment"** means any voting compartment referred to in section 28;

**"voting day"** means the voting day or days fixed in terms of section 22(1);

**"voting materials"** means voting compartments, ballot boxes, ballot papers, instruments, seals and other requisites for the purposes of conducting an election;

**"voting officer"** means any voting officer appointed in terms of section 8(1)(c); and

**"voting station"** means any voting station referred to in section 25.

## **Application of Act**

2. The provisions of this Act shall apply in respect of elections held in terms of the Constitution for the National Assembly or any other legislature.



## **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 to act in accordance with the advice of the Transitional Council wherever so provided for in this Act.

## **CHAPTER II**

### **Administration**

#### **Administration of Act**

4. The provisions of this Act shall be administered by the Commission which in such administration shall endeavour to create an environment which generates confidence in the electoral process and the secrecy of the ballot.

#### **Party liaison committee**

5. (1) Upon publication of the notice contemplated in section 21, there shall be established a party liaison committee, the main function of which shall be to act as instrument for liaison between the Commission and the registered parties.

(2) The party liaison committee shall -

- (a) consist of the chief election agents of all the registered parties;
- (b) designate a chairperson from its number whenever necessary;
- (c) determine its own procedures to be followed at its meetings, including a quorum for a meeting and a decision.

#### **Interim party liaison committee**

6. (1) Pending the appointment of the party liaison committee there shall be established an interim party liaison committee consisting of such representatives of parties as may be appointed for that purpose by the Transitional Council.

(2) The provisions of section 5(2)(b) and (c), shall mutatis mutandis apply to the interim liaison committee.

#### **Regional and local party liaison committees**

7. (1) The Commission may establish regional and local party liaison committees.

(2) The provisions of section 5(2)(a) and (b), shall mutatis mutandis apply to any such regional and local party liaison committee.



## **Appointment and control of electoral officers and staff**

8. (1) Subject to sections 15 and 20 of the Commission Act, the Chief Director shall, in respect of any election called in terms of the Constitution, in consultation with the Commission, appoint -

- (a) a regional electoral officer and one or more deputies in respect of each region;
- (b)
  - (i) a district electoral officer and one or more deputies in respect of each district;
  - (ii) a presiding officer in respect of each voting station; and
  - (iii) one or more counting officers in respect of each counting station, orsubject to such consultation, authorize any such appointment by any regional electoral officer; and
- (c) one or more voting officers in respect of each voting station as he or she may consider necessary for the effective administration of the election, or subject to such consultation, authorize any such appointment by any regional or district electoral officer.

(2) Subject to section 15 of the Commission Act, the Chief Director, any regional and district electoral officer and any counting officer may, if authorized thereto by the Chief Director, appoint other staff as may be necessary for the effective administration of the election.

(3) All electoral officers, and staff appointed in terms of this section, shall be under the control and carry out the instructions of the Chief Director.

(4) In the appointment of staff in terms of this section an endeavour shall be made to appoint a broad cross-section of the population, including women.

(5) In effecting any appointment in terms of subsection (1), the Commission shall invite and, where given within 48 hours after submission to the party liaison or interim party liaison committee, as the case may be, of a proposal regarding any such appointment, consider, but shall not be bound by, the advice of any such committee.

(6) No appointment made in terms of subsections (1) or (8) or removal from office in terms of subsection (7) shall be subject to appeal or review.

(7) Notwithstanding anything to the contrary contained in this Act or any other law any presiding, voting or counting officer may be removed from office by the Chief Director or his or her delegate on account of misconduct or inability to perform the duties of his or her office efficiently, or by reason of his or her absence without the prior permission of the Chief Director or his or her delegate, or by his or her incompetence or for displaying bias.

(8) In the event of a removal from office contemplated in subsection (7) or in the event of the death of any officer contemplated therein, the Chief Director or his or her delegate may appoint a person in the place of such officer.

## **Powers, duties and functions of regional electoral officers**

9. (1) The regional electoral officer shall, subject to the control of the Chief Director, assume responsibility for the administration, organization, supervision and conduct of the election in the region in respect of which he or she is appointed.

(2) The regional electoral officer shall have such other powers, duties and functions as may be prescribed.



### **Powers, duties and functions of district electoral officers**

10. (1) The district electoral officer shall, subject to the control of the regional electoral officer, have such powers as may be delegated to him or her by the Chief Director under section 21(4) of the Commission Act in respect of the administration, organization, supervision and conduct of the election in the district in respect of which he or she is appointed.

(2) The district electoral officer shall have such other powers, duties and functions as may be prescribed.

### **Powers, duties and functions of presiding officers at voting stations**

11. (1) The presiding officer at a voting station shall have power to -
- (a) take such steps as may be necessary for the orderly conduct of the voting, including regulating the number of voters to be admitted at a time; and
  - (b) exclude all other persons except -
    - (i) members and representatives of the Commission;
    - (ii) the Chief Director and any electoral officer concerned;
    - (iii) any party voting agent entitled in terms of section 14(5) to be present at a voting station;
    - (iv) any other person authorized by the Commission to be present as a monitor or observer; and
    - (v) any such interpreters, translators and staff as the presiding officer may allow.
- (2) The presiding officer may, if he or she deems it necessary for the effective administration of the election, order any person, subject to subsection (1) and excluding any person recording his or her vote, to leave the voting station.
- (3) The presiding officer shall take all reasonable steps for the protection of persons and property, at the voting station, and for preventing any violence or disturbance in or in the vicinity of the voting station.
- (4) The powers conferred by this section shall not be so exercised as to prevent any person who is entitled to vote, from having an opportunity to record his or her vote.
- (5) The presiding officer shall have such other powers, duties and functions as may be prescribed.

### **Powers, duties and functions of voting officers at voting stations**

12. (1) Voting officers at a voting station shall assist the presiding officer in the exercise of the powers and the performance of the duties and functions of the presiding officer in terms of this Act and carry out his or her lawful instructions.

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



### **Powers, duties and functions of counting officers**

13. (1) The counting officer shall, subject to the control of the regional electoral officer, have such powers as may be delegated to him or her by the Chief Director under section 21(4) of the Commission Act in respect of the administration, organization and conduct of the counting of the votes in the area concerned.

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

### **Appointment and powers, duties and functions of agents of registered parties**

14. (1) Upon registration in terms of section 20 the party concerned shall by written notice to the Chief Director -

- (a) if the party is contesting the election for the National Assembly, appoint a chief election agent and a deputy and appoint a regional election agent in respect of each region, and shall furnish the names and business addresses of such election agents;
- (b) if the party is not contesting the election for the National Assembly, appoint a regional election agent and a deputy in respect of each region in which it is contesting the election, and furnish the names and business addresses of such election agents; and
- (c) when so required by the Commission, appoint a district election agent in respect of any district within 10 days after notification of such requirement and furnish the name and business address of such election agent.

(2) The chief election agent or the regional election agent shall represent the registered party at meetings of the party liaison or regional party liaison committee, as the case may be, and all other fora which the Commission, a Chief Director of a directorate or the regional electoral officer in its, his or her discretion may constitute in respect of an election.

(3) (a) A registered party which has appointed an election agent may at any time revoke such appointment.

(b) When a registered party revokes an appointment in terms of paragraph (a) or if any election agent resigns, becomes incapacitated or dies, the registered party shall forthwith inform the Chief Director or the regional electoral officer concerned in writing of such revocation, resignation, incapacity or death.

(c) A registered party shall as soon as practicable but within five days fill any vacancy occurring in terms of paragraph (a) or (b) by appointing any other person as election agent and, shall forthwith notify the Chief Director or the regional electoral officer concerned in writing of the name and address of the person so appointed: Provided that in the case of a chief election agent, such appointment shall be made within 48 hours of the vacancy having occurred.

(4) A record of all appointments and information noted in terms of this section shall be kept as a matter of public record by the Chief Director and the regional electoral officer concerned for public scrutiny and a copy of each such notice shall be submitted to each presiding officer in the district concerned.



(5) A regional election agent shall appoint, in the manner prescribed the prescribed number of party voting agents for the purposes of monitoring voting at a voting station and counting of votes.

(6) No person shall be appointed as election or party voting agent unless he or she is a person entitled to vote in terms of section 16.

### **Declaration of secrecy**

15. Before assuming or performing any of the duties or functions assigned to him or her by or under this Act, every officer or agent referred to in this Chapter shall make a declaration of secrecy, under oath or affirmation, in the prescribed form.

## **CHAPTER III**

### **Franchise**

#### **Persons entitled to vote**

16. Any person of the age of 18 years or above who -
- (a) is a citizen of the Republic;
  - (b) was born in the Republic, and who will have been ordinarily resident in the Republic for a period of at least one year prior to the first voting day;
  - (c) was born to parents who are, or were up to their deaths, citizens of the Republic, and who will have been ordinarily resident in the Republic for a period of at least one year prior to the first voting day; or
  - (d) is married to a citizen of the Republic, or was so married up to the death of the spouse, and who will have been ordinarily resident in the Republic for a period of at least 5 years prior to the first voting day,
- shall, in accordance with and subject to the provisions of this Act, be entitled to vote at an election.

#### **Persons not entitled to vote**

17. Notwithstanding the provisions of section 16, no person shall be entitled to vote in an election, if that person is -

- (a) subject to an order of court declaring him or her to be of unsound mind or mentally disordered or affected;
- (b) detained as a mentally ill patient under the Mental Health Act, 1973 (Act No. 18 of 1973), or any other applicable law, as the case may be;
- (c) detained under the Prevention and Treatment of Drug Dependency Act, 1992 (Act No. 20 of 1992), or any other applicable law, as the case may be; or
- (d) detained in prison in accordance with a sentence imposed in terms of a conviction by a court of law in respect of any offence mentioned in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977): Provided that any person so detained in respect of any such offence committed with a political motive shall not be disqualified from voting by reason of the provisions of this paragraph.



## **Voters' cards**

18. (1) The Commission shall in the prescribed manner issue voters' cards on application in the prescribed manner received at least 14 days prior to the first voting day, or such lesser period as the Commission may determine, which cards shall constitute adequate proof of the holder's entitlement to vote.

(2) A voter's card shall contain a photograph with a recognizable image of the holder.

(3) Entitlement for voters' cards shall be in accordance with the grounds of eligibility to vote in terms of section 16.

## **CHAPTER IV**

### **Registration of Parties**

#### **Registration for purposes of election**

19. No party shall be entitled to contest an election unless such party is registered as a participant in the election in accordance with, and subject to, the provisions of this Chapter.

#### **Application for registration for purposes of election**

20. (1) An application for the registration of a party as a participant in the election shall be submitted in the prescribed form to the Chief Director not later than 10 days after the proclamation in the Gazette of the election in terms of section 22.

(2) The application referred to in subsection (1) shall -

- (a) if the party wishes to contest the election for the National Assembly, be accompanied by a deposit of R25 000 or, in lieu thereof, a list compiled in the prescribed manner containing the signatures of at least 5 000 voters;
- (b) if the party wishes to contest the election for any other legislature, be accompanied by a deposit of R5 000 or, in lieu thereof, a list compiled in the prescribed manner containing the signatures of at least 1 000 voters ordinarily resident in the region concerned, in respect of each such election it wishes to contest.

(3) The application form shall inter alia make provision for the following:

- (a) The name of the party, consisting of not more than 60 letters, which in terms of the provisions of section 30 is required to appear on the ballot paper;
- (b) the distinguishing mark or symbol and designated colours of the party;
- (c) a photograph of the leader of the party;
- (d) the abbreviation, if any, of the name of the party, consisting of not more than 8 letters;
- (e) the business address of the party;
- (f) the constitution of the party; and
- (g) the names, addresses and telephonic or other means of contact of the chief election agent and the regional election agents of the party and their respective deputies.



(4) In respect of any number of parties wishing to participate in the election in an alliance, an application referred to in subsection (1) shall be submitted within the time and in the manner determined in subsections (1), (2) and (3), and the provisions of this Act shall mutatis mutandis apply in respect of such alliance as if it constituted a single party: Provided that a copy of the constitution of each such party shall be submitted together with any such agreement as may define the relationship between them.

(5) No party shall be registered as a participant in the election unless a declaration in the form prescribed by the Chief Director has been signed on behalf of such party by the duly authorized representative of the party in terms of which the party commits and subjects itself, its office bearers, party officials and listed candidates to the Electoral Code of Conduct.

(6) The Commission shall, on the day after the period referred to in subsection (1), cause to be published in a special or ordinary Gazette a complete list of applications referred to in that subsection in which objections are invited by interested parties, and containing the address at which a copy of the original application and supporting documents shall be available for public inspection.

(7) A copy of each document submitted to the Chief Director for the purposes of the registration of a party as a participant in the election shall be kept at the address referred to in subsection (6) for perusal by the public, and anyone who desires to inspect such a document, may do so free of charge during office hours.

(8) The Chief Director shall, upon payment of the prescribed fees, provide a copy of any document referred to in subsection (7) to any person applying therefor.

(9) (a) The Commission may disallow a proposed name, abbreviated name, distinguishing mark, symbol or colours of a party in the event that it -

- (i) contains a portrayal of any arms, ammunition, uniform or other object normally used in or associated with military operations, whether in time of war or peace;
- (ii) resembles the proposed name, abbreviated name, distinguishing mark, symbol or colours, as the case may be, of any other party to such extent that in the opinion of the Commission, it may deceive or confuse; or
- (iii) contains anything which portrays the propagation of or incitement to violence or which might cause serious offence to any section of the population on the grounds of race, sex, ethnic origin, colour, sexual orientation, age, disability, religion, conscience, creed, culture or language.

(b) If the Commission is of the opinion that the name, abbreviated name, distinguishing mark, symbol or colours referred to in subsection (3) of a party corresponds with, or substantially resembles, the name, abbreviated name, distinguishing mark, symbol or colours, as the case may be, of another party, it -

- (i) shall take into account the fact that the party which is associated with the name, the distinguishing mark or symbol, colours or abbreviated name, as the case may be, for the longest time, should prima facie be entitled thereto;
- (ii) may, for the purposes of subparagraph (i) -
  - (aa) grant the party concerned an opportunity to deliver such proof, including oral evidence or sworn statements by any person which in the opinion of the Commission, could be of assistance in the expeditious determination of the matter; and
  - (bb) administer an oath or affirmation to any person appearing to testify before it.



(10) Any objection against the registration of a party as a participant in the election, together with the reasons therefor, shall be lodged in writing with the Chief Director within 10 days after the date of the publishing of the notice referred to in subsection (6).

(11) If the Commission is of the opinion, taking into account any objections received, that any application submitted in terms of subsection (1) complies with the provisions of this section, it shall register that party as a participant in the election and issue to it a registration certificate in the prescribed form.

(12) If the Commission is of the opinion that any application submitted in terms of subsection (1) does not comply with the provisions of this Act, it shall afford the party an opportunity to rectify such application, but shall make its final determination not later than 28 days after the date of the proclamation in the Gazette in terms of section 22.

(13) The Commission shall at the request of any authorized person who is investigating an alleged offence or any other matter in terms of this Act or the Commission Act, furnish such person with a certified copy of any registration certificate or written confirmation of the registration referred to in subsection (11), which shall for all purposes serve as prima facie proof of such registration.

#### **Notice of registration in Gazette**

21. The Chief Director shall on the day following the date upon which a party is registered, cause to be published in a special or ordinary Gazette a notice containing -

- (a) the full name and business address of the party;
- (b) the distinguishing mark or symbol and designated colours of the party;
- (c) the abbreviation, if any, of the name of the party; and
- (d) the address at which a copy of the original application and supporting documents shall be available for public inspection and lodging of written objections, if any, in terms of section 20(6).

### **CHAPTER V**

#### **Announcement of Election and Submission of Lists of Candidates**

##### **Determination of voting day and hours of voting**

22. (1) The State President shall, upon the advice of the Transitional Council, by proclamation in the Gazette determine the voting day or days of an election as well as the hours during which the voting shall take place.

(2) Any election shall, for the purposes of this Act and any other law, be deemed to have commenced on the day on which such proclamation is published in the Gazette.

##### **Submission of lists of candidates to Chief Director**

23. (1) A registered party shall submit in the prescribed form, to the Chief Director, the required lists of candidates for the National Assembly and each of the other legislatures in which such party wishes to be represented, within 14 days after the date of publication of the proclamation referred to in section 22(1).



(2) The names on such list of candidates shall appear in such order as the party may determine with a view to the allocation of representatives in that order in terms of the Constitution, subject to the provisions of section 24(1)(b).

(3) Each list of candidates shall be accompanied by a declaration signed by the duly authorized office bearer of the registered party that each person whose name appears on the list has accepted his or her nomination as a candidate of the registered party submitting that list and that he or she is a qualified person together with the signed acceptance of such nomination by the candidate and a declaration that he or she commits and subjects himself or herself to the Electoral Code of Conduct.

(4) No documents shall be received as aforesaid after 16:30 on the last day of the twenty one day period referred to in subsection (1).

(5) The name of a candidate -  
(a) shall not appear on a list of candidates of more than one party; and  
(b) may appear on a list of candidates in respect of the National Assembly and one other legislature.

(6) If a candidate's name appears on more lists of candidates than is provided for in this section in respect of which he or she has signed an acceptance of nomination, the Chief Director shall delete the name of the candidate from all the lists on which such candidate's name appears.

(7) The registration of any party in terms of section 20 and the right to participate in the election shall lapse automatically if such party fails to submit a list of candidates in terms of the provisions of this section.

#### **Publication of lists of candidates**

24. (1) The Chief Director shall within five days after the provisions of section 23 have been complied with publish a notice in the Gazette in respect of the National Assembly and each of the other legislatures setting out -

(a) in alphabetical order the names of all the registered parties; and  
(b) each list of candidates of each such registered party in the order of their nomination, compiled by the registered party in terms of section 23,  
and declaring that the persons whose names appear on the lists have been nominated as the candidates of the party concerned for the election and that such candidates have accepted their nominations of candidature.

(2) (a) If any person whose name appears on a list of candidates in the notice published in terms of subsection (1)(b) is disqualified or incapacitated, withdraws his or her candidature or dies before voting day, the Chief Director shall amend such notice by a further notice in the Gazette by deletion from that list of the name of such person, and by the addition at any place on the list of the name of a qualified person who has been nominated in writing by the registered party concerned and who has accepted his or her nomination in terms of section 23(3).

(b) The Chief Director may publish a notice referred to in paragraph (a) in any other medium in addition to the Gazette.



(3) A person whose name has in terms of a notice under subsection (2) been deleted from the list of candidates of a registered party shall cease to be eligible as a candidate for the election.

(4) Any reference in this Act to a notice published in terms of subsection (1)(b) shall, in relation to such a notice which has been amended under subsection (2) be construed as a reference to such notice as so amended.

## **CHAPTER VI**

### **Preparation for Voting**

#### **Voting stations**

25. (1) Each regional electoral officer shall under the authority of the Chief Director determine the number and locations of voting stations in the region concerned.

(2) No voting station shall be located at any premises ordinarily occupied by or under the control of any defence or police force or of a non-governmental military force, save where the Commission in its discretion, considers such premises to be a necessary location for the purposes of conducting a free and fair election.

(3) An area within a radius of 300 metres around any voting station shall be deemed to be part of the voting station, unless in the opinion of the district electoral or presiding officer practical circumstances necessitate a greater or lesser area for a particular election purpose.

(4) The Chief Director shall, at least 45 days before voting day, publish in the Gazette a list of the locations of all voting stations determined in terms of subsection (1).

(5) The district electoral officer, acting on the authorization of the regional electoral officer, may provide one or more mobile voting stations in any district for the purpose of taking a vote.

(6) A mobile voting station shall be under the general control of the district electoral officer and shall, for the purposes of this Act, be deemed to be a voting station in that district.

(7) The district electoral officer may, as he or she may consider necessary and practicable, make known the locations and estimated times at which a mobile voting station shall function during voting day.

(8) The presiding officer of a mobile voting station, any other electoral officer and any voting or election agent may enter upon any land or building with such mobile voting station for the purpose of voting.

#### **Foreign voting stations**

26. (1) The Commission shall establish one or more voting stations outside the Republic as it may deem appropriate in order to facilitate voting by voters who are temporarily outside the Republic.



(2) Any person who exercises a right to vote at any foreign voting station, shall be required to make a sworn declaration or affirmation at the time of voting as to the region within which such person is ordinarily resident in the Republic, which shall be the region within which his or her vote shall be counted in the election.

### **Supplying of voting materials**

27. (1) The Chief Director shall in respect of each voting day supply such voting materials to a regional electoral officer and the presiding officer of any foreign voting station as may be necessary for the proper conduct of the election in the region concerned.

(2) Each district electoral officer shall be responsible for obtaining voting materials from the regional electoral officer, and supplying to the presiding officers for the voting stations in his or her district, a sufficient quantity of such materials to ensure the proper conduct of the election.

### **Voting compartment and ballot box**

28. The Commission shall determine the nature and style of the voting compartments and ballot boxes which it deems suitable for the proper conduct of the election.

### **Ballot box**

29. (1) Not more than one hour before the commencement of the voting on the first voting day at a voting station, the presiding officer shall -

- (a) satisfy himself or herself that all ballot boxes to be used on that day at such voting station are empty;
- (b) permit the inspection of all such empty ballot boxes by party voting agents, monitors and international observers as are permitted by the Commission in respect of any voting station; and
- (c) immediately thereafter close and seal all such ballot boxes in accordance with the instructions issued by the Chief Director.

(2) If any additional ballot box is used at any voting station, such additional ballot box shall be made available for inspection, closed and sealed mutatis mutandis in accordance with the provisions of subsection (1), before being made available for the depositing of ballot papers.

(3) The presiding officer at a voting station shall in the presence of the party voting agents, monitors and international observers referred to in subsection (1)(b) at the closing of the vote on each voting day, close and seal the openings of the ballot boxes in accordance with instructions issued by the Chief Director.

(4) A ballot box closed and sealed as aforesaid may not be opened, and the seal shall not be broken, except under the circumstances contemplated in section 44.

(5) The provisions of subsection (1) shall apply mutatis mutandis at the commencement of each other voting day.

(6) A presiding officer shall be responsible for the safe-keeping of all ballot boxes used at the voting station concerned until they are delivered to the district electoral officer and any person provided for in terms of section 40(1).



(7) For the purposes of this section "seal" means the seal of the presiding officer and any voting agent entitled to be in the voting station who wishes to attach his or her seal to the ballot box.

### **Ballot paper**

30. (1) Every ballot paper shall be in the prescribed form, and there shall be printed on every ballot paper in the manner prescribed the names of all the registered parties participating in the election and the distinguishing mark or symbol, the abbreviated name, and if deemed appropriate by the Commission the colours and a photograph of the leader of such party: Provided that the ballot paper shall be prefolded in such a manner that the official mark appears on the outside of the ballot paper and the cross or mark referred to in section 36(7)(b) or writing referred to in section 45(4) or 49(2) appears on the inside of such ballot paper.

(2) The order of the parties as they appear on the ballot paper shall be determined by lot in the prescribed manner.

(3) A serial number shall be printed on the counterfoil of each ballot and tendered ballot paper.

### **Commencement and closing of vote at voting stations**

31. The vote shall commence and close on the hours determined in terms of section 22(1) in respect of each voting day: Provided that the presiding officer shall permit every voter who at the closing hour is inside that area of the voting station determined for this purpose by the presiding officer, to record his or her vote.

## **CHAPTER VII**

### **Voting at Voting Stations**

#### **Place of voting**

32. Subject to the provisions of sections 26 and 58(1)(a), a voter shall be entitled to vote at any voting station and for the purposes of an election for any other legislature such vote shall be counted where it has been recorded.

#### **Number of votes per voter**

33. A voter shall be entitled to record one vote only in the election for the National Assembly and one further vote in the election for any one other legislature.

#### **Voting to be in secret**

34. A voter shall record his or her vote in secret, and no person may in any way interfere with a voter in connection with the recording of his or her vote.



## Identification

35. Subject to section 39(1), no voter shall be permitted to vote unless he or she has presented to the presiding or voting officer a voter eligibility document.

## Manner of voting

36. (1) The voting at any voting station shall be conducted in accordance with the provisions in this Chapter.

(2) The presiding or voting officer shall ascertain -

- (a) by examining the voter's eligibility document that the voter is the person described therein; and
- (b) in the manner prescribed in subsection (3) and subject to the provisions of paragraph (c) of that subsection, that the voter has not already voted at the election.

(3) (a) Unless a voter satisfies a presiding officer that he or she does not bear an identification mark, he or she shall not be given a ballot paper.

(b) Each voting agent shall have a right to examine the identification mark of a voter.

(c) The provisions of paragraph (b) of subsection (2) and of paragraph (b) of this subsection and of subsection (4) shall not apply in the case of a voter who suffers from a physical defect which, in the opinion of the presiding officer, makes the application of the said provisions impractical, in respect of whom the Commission shall promulgate regulations prescribing alternative arrangements.

(4) Where the provisions of subsection (3)(a) have been complied with the voter shall in the presence of the presiding officer or a voting officer -

- (a) be marked by means of the identification mark on the right hand; or
- (b) where that is impractical or there is an objection thereto, be marked in accordance with the instructions of the presiding officer.

(5) If a voter refuses to have the identification mark administered to him or her in accordance with subsection (4), he or she shall not be issued with a ballot paper and shall be ordered by the presiding officer to leave the voting station forthwith.

(6) When the provisions of subsection (4) have been complied with, the presiding officer or a voting officer shall -

- (a) tear out a ballot paper from the ballot paper book and mark that ballot paper on the back with the official mark; and
- (b) hand that ballot paper to the voter.

(7) When the voter has received the ballot paper, he or she shall -

- (a) take it to the voting compartment;
- (b) indicate the party for which he or she desires to vote by placing a cross or any other mark which denotes a clear choice for a particular party;
- (c) display the ballot paper at the ballot box in such manner that the presiding officer or a voting officer designated by him or her may recognize the official mark; and
- (d) place the ballot paper in the ballot box.

(8) In the event that a voter -

- (a) spoils any ballot paper inadvertently; or



(b) records a vote by mistake for a party which is not of his or her choice, he or she shall return it to the presiding officer, who shall, if he or she is satisfied that the circumstances described in paragraph (a) or (b) have occurred, provide the voter with another ballot paper and cancel the spoilt ballot paper which shall be kept separately.

### **Voters who cannot read or who are incapacitated by blindness or other physical disability from voting**

37. (1) At the request in person by a voter who is incapacitated by blindness or other physical disability from voting in the manner prescribed by the other provisions of this Act, the presiding officer may permit such voter to vote with the assistance of a voting officer, or, if the presiding officer considers it appropriate, of any person chosen by the voter, and upon such permission being granted, anything to be done in terms of this Act by the voter in connection with his or her vote, may be done with the assistance of such voting officer or person.

(2) At the request in person by a voter who cannot read or who is incapacitated by blindness or other physical disability from voting in the manner prescribed by the other provisions of this Act, the presiding officer or a voting officer shall immediately, in the presence of at least two agents of different registered parties, mark the vote of that voter on the ballot paper as requested by the voter, and place the ballot paper in the ballot box.

(3) (a) Subject to paragraph (b), the presiding officer shall use his best endeavours to provide a voter who requires assistance in translation with an interpreter.

(b) A voter may be permitted to make use of his or her own interpreter.

(4) The secrecy of the voting as contemplated in section 34 shall mutatis mutandis be preserved in the application of the provisions of this section.

### **Objection to voting**

38. (1) Any election or voting agent present at a voting station may object to any voter on any of the following grounds:

- (a) That the voter is not the person described in the acceptable identity document which he or she has submitted;
- (b) that the voter has already voted in the election; or
- (c) that the voter is not entitled to vote.

(2) Upon an objection having been lodged in terms of subsection (1) the presiding officer shall deal with the objection in terms of section 39.

### **Tendered ballot papers**

39. (1) In the event that a person claims to be entitled to vote but -

- (a) cannot produce an acceptable identity document; or
- (b) if the presiding officer is satisfied that there are prima facie grounds for an objection in terms of section 38,

the presiding officer shall require the voter to record a tendered ballot.

(2) The presiding officer shall not permit a tendered ballot to be recorded if the person does not challenge the objection lodged in terms of section 38.



(3) The presiding or voting officer shall record on the prescribed form the voter's particulars and the voter shall place his or her signature or prescribed mark thereon.

(4) The ballot paper (hereinafter referred to as a "tendered ballot paper") shall be sealed in a plain envelope by the voter.

(5) The plain envelope referred to in subsection (4) shall be placed in an envelope marked "tendered ballot paper envelope" by the presiding officer (hereinafter referred to as the "tendered ballot paper envelope") on which the presiding or voting officer shall write the particulars of the voting station.

(6) The presiding or voting officer shall -

- (a) place the tendered ballot paper in a tendered ballot paper envelope;
- (b) seal the envelope; and
- (c) keep separate the tendered ballot paper envelopes and place them in a ballot box for tendered ballot papers.

### **Sealing of ballot boxes and other election material by presiding officer**

40. (1) Immediately after the close of the poll on each voting day, the presiding officer shall, in the presence of such election or voting agents as may be in attendance, make up into separate packets, sealed with his own seal and the seal of any voting agent who wishes to attach his or her seal to it -

- (a) each ballot box entrusted to him or her, unopened;
- (b) the unused ballot papers;
- (c) the tendered ballot paper envelopes;
- (d) the spoilt ballot papers; and
- (e) the counterfoils of used and spoilt ballot papers,

and shall in accordance with the instructions of the Commission mark each sealed packet and deliver the sealed packets to the district electoral officer for the district concerned without delay, or cause them to be so delivered, in accordance with the instructions of the regional electoral officer.

(2) The packets shall be accompanied by a statement in a form prescribed by the Chief Director in which the presiding officer accounts for -

- (a) the number of ballot papers and tendered ballot papers entrusted to him or her;
- (b) the number of ballot papers and tendered ballot papers issued; and
- (c) the number of ballot papers and tendered ballot papers not issued.

(3) The district electoral officer shall seal all the packets received from the presiding officers concerned with his or her own seal.

(4) The district electoral officer shall furnish to the regional electoral officer a statement in the prescribed form in accordance with the instructions of the Commission in which he or she accounts for the number of ballot papers and tendered ballot papers entrusted to him or her.

(5) The district electoral officer shall ensure the safe-keeping of all the packets referred to in this section received by him or her in accordance with the instructions of the Commission.



## Special voters

41. (1) A voter who because of his or her illness or physical infirmity or physical disability or advanced age or, in the case of a female, her pregnancy, will not be able to attend a voting station at any time during the voting hours on voting day, shall be entitled, subject to the provisions of subsection (2), to record his or her vote as a special voter as provided in section 42.

(2) A presiding officer shall at all times on the day before the election during his ordinary office hours, and as needed until 21:00 on the said day take the necessary steps to enable special voters to record their votes at the place where the office of the presiding officer is situated during ordinary office hours.

(3) A presiding officer may -

- (a) at the request of a special voter who in his or her opinion is unable to attend at the place contemplated in subsection (2), call upon that voter at any time on the day and during the hours referred to in the said subsection (2) at any address in order to enable that voter to record his or her vote as a special voter;
- (b) at any time on the day and during the hours referred to in paragraph (a) visit any place in order to enable any special voter at that place to record his or her vote, provided prior notice of such presiding officer's intention to visit that place for such purpose and of the address at which and the date on which and the time when he or she will be present thereat, has been given to every regional election agent in the region in which that place is situated.

(4) A place where special voters may record their votes under this section shall, for purposes of this Act, be deemed to be a voting station.

(5) The Chief Director shall as soon as possible publish a notice in the Gazette indicating the places, except the places referred to in subsection (3), where voters referred to in paragraph (a) of subsection (1) may record their votes.

## Procedure of voting by special voters

42. (1) A voter referred to in section 41 shall, when he or she intends to record his or her vote, by means of a sworn or affirmed affidavit convince the presiding officer that he or she -

- (i) will not be able to attend a voting station at any time during voting hours on voting day; and
- (ii) is entitled to record his or her vote as a special voter as provided in section 41,

and shall at the same time submit his or her voter's eligibility document.

(2) When a voter has complied with the provisions of subsection (1), the presiding officer shall, in accordance with the instructions of the Chief Director, examine the voter's eligibility document of the voter in order to satisfy himself or herself that according to that document, that voter is entitled to vote.

(3) In order to determine whether a person has previously voted in the election, the presiding officer shall examine the right hand of that person in order to determine whether the identification mark has been placed thereon.



- (4) When the presiding officer has satisfied himself or herself that the voter is entitled to vote and that he or she has not voted in the election previously he or she shall -
- (a) tear from the ballot paper book a ballot paper, mark it on the back with the official mark and hand the ballot paper to the special voter concerned, together with a ballot paper envelope and covering envelope; and
  - (b) mark the voter by means of the identification mark on the right hand; or
  - (c) where that is impractical or there is an objection thereto, mark the voter in accordance with the instructions of the Chief Director.

(5) When the special voter who wishes to vote has received the ballot paper, he or she shall -

- (a) take it to the voting compartment;
- (b) mark it in secret in accordance with his or her choice;
- (c) fold the ballot paper so that the official stamp is visible and the manner in which he or she has marked his or her ballot paper is not visible;
- (d) place the marked ballot paper in the ballot paper envelope, close the ballot paper envelope and thereafter place it in the covering envelope; and
- (e) hand the covering envelope to the presiding officer.

(6) The presiding officer shall take the covering envelope in his custody and, if he is not the district electoral officer, shall forthwith transmit the covering envelope to the district electoral officer for the district in which the special voter recorded his or her vote.

## **CHAPTER VIII**

### **Determination of Results of Poll**

#### **Notice of place and time of counting of votes**

43. The Chief Director shall, upon the advice of the Commission, inform each party of the place where (including the places in all the regions) and the day and time upon which the counting of votes is to be commenced.

#### **Verification of ballot paper count by counting officer**

44. (1) After the provisions of section 40 have been complied with, the counting officer in the presence of the district electoral officer concerned shall examine whether the seals of the packets referred to in section 40 are intact and give the district electoral officer concerned and any agents of registered parties who are present and such monitors and international observers as may be permitted by the Commission to be present an opportunity to do the same, and shall thereafter open all the packets.

(2) The counting officer shall separately verify each presiding officer's ballot paper account referred to in section 40(2) by comparing it with the contents of the packets received from a voting station concerned, and shall for that purpose open all the ballot boxes from that voting station and cause the ballot papers contained in them to be counted.



(3) If there appears to be any irregularity in respect of the seals or any discrepancy in the verification of the ballot paper account referred to in subsection (2), the Chief Director shall be informed immediately in the prescribed manner, and the counting officer shall deal with the matter in accordance with the instructions of the Chief Director.

### **Counting of votes**

45. (1) After the provisions of sections 40 and 44 have been complied with, the counting officer shall forthwith cause -

- (a) the ballot papers, excluding the tendered ballot papers, to be sorted with regard to the provisions of subsections (3) and (4) on the basis of the registered parties in respect of individual votes recorded; and
- (b) the votes recorded to be counted in respect of each registered party.

(2) The counting officer shall, as soon as practicable, after all the votes in respect of the voting stations in the region have been counted and the number of votes recorded for each registered party have been determined in the region concerned, inform the Chief Director in the prescribed manner of the number of votes so determined to have been recorded in that region for each registered party.

(3) The counting officer shall reject and not count any ballot paper -

- (a) which records votes for more than one registered party;
- (b) in respect of which he or she has reasonable grounds to believe that it has not been officially issued to a voter in terms of section 36;
- (c) which is unmarked or on which it is impossible to determine with certainty for which registered party the ballot is recorded; or
- (d) which contains a mark or statement made by the voter which tends to identify the voter.

(4) The counting officer shall not reject and shall cause to be counted any ballot paper on which there is a mark or writing by means of which a voter has clearly indicated his or her choice otherwise than by a cross on the ballot paper concerned.

(5) In the event that the acceptance or rejection of a ballot paper by the counting officer, as the case may be, is disputed by any voting agent, the counting officer shall endorse thereon the word "disputed" and shall reflect such ballot paper on a form and in a manner prescribed, and shall keep separately the accepted and rejected ballot papers disputed.

(6) The counting officer shall endorse the word "rejected" on any ballot paper rejected in terms of subsection (3).

(7) When the counting officer has complied with the provisions of this section he or she shall, as soon as practicable, enclose in separate packets -

- (a) all counted ballot papers;
  - (b) all rejected ballot papers;
  - (c) all disputed rejected ballot papers;
  - (d) all disputed accepted ballot papers;
  - (e) all unused or spoilt ballot papers with their counterfoils;
  - (f) all tendered ballot papers; and
  - (g) all counterfoils of ballot papers and tendered ballot papers issued,
- and shall seal such packets and cause them to be delivered to the Chief Director.



(8) On receipt of the packets referred to in subsection (7) the Chief Director shall take charge of them, examine whether the seals are intact and give any agents of registered parties who are present an opportunity to do the same.

### **Alleged irregularities or inaccuracies, and challenges of tally**

46. (1) Before the determination of the result at any counting station a party voting agent shall have the right to bring to the attention of the counting officer any alleged irregularity or inaccuracy and the counting officer shall record such allegation in the prescribed manner, determine such measures as he or she may consider necessary in order to deal therewith, and report such allegation and determination to the Commission: Provided that such right shall lapse after 48 hours of the close of the poll.

(2) Upon completion of the counting process the counting officer shall forthwith advise the voting agents of the tally whereupon any such agent shall have the right to challenge the tally determined.

(3) If no such challenge is made, all party voting agents present at the counting station shall be required to sign the tally and it shall be deemed to be accepted by all registered parties concerned and shall not be subject to appeal.

(4) If such a challenge is duly made the registered party concerned shall state in writing the grounds for such appeal, and the counting officer shall make a determination as to whether a recount is to be ordered.

(5) Upon refusal by the counting officer of an application for a recount, any registered party shall be entitled to lodge an appeal to the Commission, which shall make such order thereon as it may consider appropriate, which order shall be final.

### **Determination of materiality of tendered ballot papers**

47. (1) Each counting officer shall submit to the Commission a statement of the number of tendered ballot papers issued.

(2) The Commission shall determine whether the number of tendered ballot papers issued could have a material effect on the result of the election.

(3) If the Commission determines that such tendered ballot papers issued could have a material effect on the election for the National Assembly or any other legislature, it shall determine such procedures for the verification and counting of such of the tendered ballot papers as it may consider material to the election for the National Assembly or other legislature, as the case may be.

### **Verification of material tendered ballot papers**

48. (1) Upon instructions by the Commission the counting or regional electoral officer shall open the packets of tendered ballot papers which the Commission determined to be material in terms of section 43.

(2) The counting officer shall determine the admissibility of a tendered ballot paper in accordance with the prescribed procedures.



(3) After verifying the admissibility of each material tendered ballot paper in terms of subsection (2), the counting officer shall remove from the tendered ballot paper envelopes the sealed unmarked envelopes containing admissible tendered ballot papers and place them in the ballot box.

### **Counting of tendered ballot papers**

49. (1) After the provisions of sections 47 and 48 have been complied with in respect of all tendered ballots recorded, the counting officer shall -

- (a) remove from the sealed ballot boxes all envelopes containing tendered ballot papers not rejected in terms of section 48 which were recorded by voters;
- (b) open each such envelope and take out the ballot paper contained therein;
- (c) remove and destroy all the envelopes so opened;
- (d) sort the ballot papers with regard to the provisions of section 44(3) on the basis of the registered parties in respect of which the votes are recorded;
- (e) count the votes recorded in respect of each registered party; and
- (f) determine on the basis of that count the number of votes recorded in respect of each registered party in each region.

(2) The counting officer shall not reject, but shall count, any ballot paper on which there is a mark or writing by means of which a voter has clearly indicated his or her choice otherwise than by a cross on the ballot paper concerned.

(3) The procedures in respect of the counting of tendered ballot papers and any appeal in respect thereof shall be mutatis mutandis as provided in sections 45 and 46.

## **CHAPTER IX**

### **Announcement of Result of Election and Determination of Number of Candidates of Registered Parties Duly Elected**

50. Note: The Electoral Act must provide for a particular formula in terms of which the Commission can announce the duly elected candidates. At present there is a suggested formula provided for in the Constitution Bill (Schedule 5 thereof) but as this has not yet been settled this Chapter of the Act has not been drafted pending greater certainty in respect of the system of proportional representation to be provided in the Constitution. The procedures for regional elections to be conducted on the same day will likewise be inserted upon determination of the formula provided in the Constitution Bill.

## **CHAPTER X**

### **General Provisions**

#### **Forfeiture of deposit paid by registered party**

51. The deposit paid in terms of section 20(2) shall be forfeited to the State by any registered party in respect of each election which it contested if it was unsuccessful in obtaining sufficient support for the allocation of at least one representative in such election.



## **Safe-keeping of election material**

52. The Chief Director shall be responsible for the safe-keeping of all election material and shall retain those packets until such time as the central Government elected in the election is in place and orders their destruction or other disposal.

## **Electoral Code of Conduct**

53. (1) An Electoral Code of Conduct (hereinafter in this section and in Schedule 1 referred to as the Code) is hereby established, as contained in Schedule 1, in order to promote and facilitate the achieving of the objects therein stated.

(2) The Code shall be binding upon all registered parties, and upon all other parties, organizations or movements of a political nature and other persons which publicly support or oppose the policies, candidates or cause of any registered party, or which propagate non-participation in the election.

(3) The Commission or the Chief Director: Monitoring, on the instructions of the Commission, shall convene the party liaison committee and such other fora as the Commission may deem necessary in order to facilitate communication with and between registered parties, to promote the negotiated resolution of issues and disputes arising in the course of the election, and generally to obviate infringements and facilitate implementation of the Code by all parties.

(4) The Code shall be administered by the Chief Director: Monitoring, in conjunction with the Election Adjudication Secretariat, under the supervision of the Commission, which shall cause alleged infringements to be investigated and referred where necessary for adjudication by the Electoral Tribunals and Electoral Appeal Tribunals which shall be empowered to impose any such penalty or sanction as may be prescribed or provided for in the Code.

## **Bills, placards, etc., to bear publisher's name**

54. (1) Every bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof.

(2) No person shall print, publish or post or cause to be printed published or posted any such printed matter which fails to bear upon the face thereof, the name and address of the printer and publisher.

(3) The proprietor and publisher of every newspaper shall cause the word "advertisement" to be printed as a headline to each article or paragraph in his or her newspaper, which originated from a registered party or its agents or supporters, the insertion of which is, or is to be, paid for, or for which any reward or compensation, or promise of reward or compensation is to be made.

(4) The articles or paragraphs referred to in subsection (3) shall include all such text as may prima facie appear to be intended or calculated to affect the result of an election, and shall include any paid advertisement or report of the speech of a listed candidate, if the insertion thereof is, or is to be, paid for.



(5) Every report, letter, article, bill, placard, poster, pamphlet, circular, cartoon or other printed matter (hereinafter in this subsection called a "newspaper article") which, on the face of it, is intended or calculated to affect the result of an election, is inserted in any newspaper or otherwise produced and is published in the Republic on or after the date of commencement of an election, shall bear at the foot thereof the full name and address of that person by whom such newspaper article was written or produced: Provided that -

- (a) any such newspaper article which is inserted in any newspaper as aforesaid and which has been altered materially by the editor of such newspaper, may also be signed by the editor;
- (b) in the case of a report of a public meeting which is written jointly by two or more persons, it shall be sufficient for the purposes of this subsection if the report as a whole bears the full names and addresses of the persons by whom it was written; and
- (c) in the case of headlines to any newspaper article which is inserted in any newspaper as aforesaid, and bills, placards or posters having reference thereto, and which are issued in the ordinary practice of a newspaper, it shall be sufficient for the purposes of this subsection if the full names and addresses of the persons by whom such headlines, bills, placards or posters were written, and a statement that such headlines, bills, placards or posters were written by such persons, are published in the issue of the newspaper in which such newspaper article is inserted.

(6) Subject to the provisions of paragraph (c) of the proviso to subsection (5), no person shall print or publish any newspaper or other printed matter in which is inserted or produced any newspaper article which fails to comply with the provisions of subsection (5).

#### **Prohibition on publication of opinion polls**

55. (1) No person shall, during the period of 21 days prior to the first voting day, publish the results of any opinion poll purporting to reflect the level of support enjoyed by registered parties, listed candidates, or the policies they advocate, until after the election results have been certified by the Commission in terms of the Commission Act.

(2) The provisions of subsection (1) shall not prohibit the conduct of opinion polls, or the obtaining of opinions in the course of canvassing for votes on behalf of registered parties, or candidates, or the publishing of the results so obtained after the election results have been certified by the Commission in terms of the Commission Act.

#### **Prohibition on political activities during 48 hours prior to voting day**

56. No person shall, during the period of 48 hours prior to the first voting day, engage in any political activity.



## Offences and penalties

57. (1) Any person who in the course of any election -
- (a) directly or indirectly, uses or procures the use of, or attempts or threatens to use or procure the use of, any force, violence, sexual harassment, or psychological pressure, or inflicts or causes to be inflicted or threatens any injury, damage, loss or disadvantage, to or upon any other person or property -
    - (i) with intent thereby, to induce or influence any person, to vote or refrain from voting, either at all, or for any particular registered party, or in any other manner; or
    - (ii) on account of such other person having voted, attempted to vote or having refrained from voting as aforesaid;
  - (b) votes, or attempts to vote, or induces, influences or procures, or attempts to induce, influence or procure any other person to vote in any election, in the knowledge that such person, or such other person, is not eligible to vote in that election;
  - (c) directly or indirectly -
    - (i) impedes or prevents, or attempts or threatens to impede or prevent, the free and voluntary exercise of a vote by any voter;
    - (ii) commits or attempts to commit any act which is calculated or intended to defeat the free choice of any voter in any election;
    - (iii) knowingly makes or publishes any false statement of fact in relation to a registered party, or the personal character or conduct of a candidate; or
    - (iv) impedes or prevents, or attempts or threatens to impede or prevent, the right of representatives of any registered party to gain access to voters and particular areas for the purpose of conducting political canvassing and for soliciting membership and support;
    - (v) in any unlawful manner, influences or attempts to influence the result of any election;
  - (d) directly or indirectly -
    - (i) receives or contracts for any money, benefit, loan, consideration or other advantage, for himself or herself or for any other person in order that he or she or such other person votes or agrees to vote, or refrains or agrees to refrain from voting, either at all or for any particular registered party or in any other manner;
    - (ii) after such election, receives any payment, loan, benefit or other consideration or advantage, for himself or herself, or for any other person, on account of having induced or influenced, or attempted to induce or influence, any voter to vote or refrain from voting as aforesaid;
    - (iii) gives, lends or procures, or agrees, offers, promises or attempts to give, lend or procure, or causes to be given, lent or procured, any payment, loan, benefit or other consideration or advantage, to or for any voter, or to or for any other person, in order to induce or influence any voter to vote or refrain from voting as aforesaid;
    - (iv) on account of any voter having voted or refrained from voting, gives, lends or procures, or agrees, offers, promises or attempts to give, lend or procure, or causes to be given, lent or procured, any payment, loan, benefit or other



- valuable consideration or advantage, to or for any voter, or to or for any other person;
- (v) votes or refrains from voting, in consequence of his or her acceptance of any payment, loan, benefit or other consideration or advantage, or the promise thereof;
  - (e) at any election, applies for a ballot paper in the name of some other person, whether living, dead or fictitious;
  - (f) save as is provided in section 37 records a vote in the name of any other person;
  - (g) having voted once at any election for the National Assembly, or any other legislature, again votes or attempts to vote or applies for a ballot paper in respect of the same election for the National Assembly or such other legislature, as the case may be;
  - (h) directly or indirectly, uses or procures the use of, or attempts or threatens to use or procure the use of any force, violence, sexual harassment or psychological pressure, or inflicts or causes to be inflicted or threatens any injury, damage, loss or disadvantage to or upon any other person or property -
    - (i) with intent thereby to induce or influence any person to attend or participate in, or to refrain from attending or participating in any political meeting, march, demonstration, or other event of a political nature, or in some other manner lending support to any registered party or listed candidate;
    - (ii) on account of such person having attended or participated in, or having refrained from attending or participating in any such political meeting, march, demonstration, or other event or from lending support as aforesaid;
  - (i) directly or indirectly, compels or induces any voter who has already voted to display the ballot paper on which he or she has marked his or her vote, in such a manner as to make known to such, or any other, person the name of the registered party for which the voter has so marked his or her vote;
  - (j) obtains any information relating to voting at any voting station, or counting of votes at any counting station, and discloses such information to any other person, if such disclosure defeats or is calculated to defeat the secrecy of the ballot or the vote count;
  - (k) except as authorized by or under this Act or by the Commission breaks the seal of, or opens any packet, envelope or ballot box sealed in terms of this Act;
  - (l) for the purpose of invalidating or affecting the result of any election, removes, destroys, conceals, or mutilates, or attempts to remove, destroy, conceal or mutilate, or assists the removal, destruction, concealment or mutilation of, any election or voting material;
  - (m) without lawful authority, prints manufactures or supplies, or attempts to print, manufacture or supply, or causes to be printed, manufactured or supplied, any election or voting material;
  - (n) contravenes or fails to comply with any provision of section 54, 55 or 56;
  - (o) creates a material disturbance or disruption at any public meeting, with the intention of preventing any registered party, candidate or representative of any registered party from instructing or addressing supporters, or from canvassing support, or from engaging in voter education;



- (p) directly or indirectly, by the use or threat of any force, violence, sexual harassment or psychological pressure, or in any other unlawful manner prevents or attempts to prevent the conduct of a political meeting, march, demonstration or other event of a political nature;
  - (q) being an officer or agent referred to in Chapter 2, after having accepted his or her position as such, wilfully refuses or fails to perform any of the duties or functions assigned to him or her by or under this Act, the Commission Act, or the regulations prescribed thereunder;
  - (r) makes a false statement or furnishes false particulars in an application form referred to in section 20(1), knowing such statement or particulars to be false or without reasonable grounds for believing the same to be true;
  - (s) refuses or fails to leave a voting station when so ordered in terms of section 11(2) or 36(5);
  - (t) interferes with a voter as contemplated in section 34; or
  - (u) refuses or wilfully fails to give effect to any direction, instruction or order lawfully issued by or on behalf of the Commission, the Chief Director or any electoral officer,
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

(2) In any indictment, summons or charge sheet for any offence in relation to voting or election material referred to in paragraph (l) of subsection (1), the property in such voting or election material, as well as the property in the counterfoils thereof, if any, may be stated to be vested in the district or regional electoral officer, counting officer, or Chief Director, or the Commission, as the case may be, in such election.

(3) The establishment of evidence that a greater or lesser number of ballot papers has been found in a ballot box or has been returned as having been received at a voting station, than the number of voters who voted at that voting station, shall be prima facie proof that the presiding officer of such voting station is guilty of a contravention of subsection (1) of this section.

## Regulations

58. (1) The Commission shall make regulations regarding -

- (a) voting stations and procedures of voting by sentenced prisoners subject to section 17(d);
- (b) the manner in which the voting shall be conducted and the procedures regulating the implementation of the provisions of this Act, including the counting of votes, at any foreign voting station;
- (c) the procedures regulating the implementation of the provisions of this Act, including the counting of votes, in respect of votes recorded by special voters;
- (d) any matter required or permitted to be prescribed in terms of this Act; and
- (e) 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.



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

### **Repeal of laws**

59. The laws specified in Schedule 2 are hereby repealed to the extent set out in the third column of that Schedule.

### **Short title and commencement**

60. This Act shall be called the Electoral Act, 1993, and shall come into operation on a date fixed by the State President, on the advice of the Transitional Council, by proclamation in the Gazette.



## **FIRST ROUGH DRAFT**

### **SCHEDULE 1**

**(Section 53)**

## **ELECTORAL CODE OF CONDUCT**

### **1. Object**

The object of the Code is:

- 1.1** to promote and facilitate the conduct of free and fair elections; and
- 1.2** to create a climate of democratic tolerance in which legitimate political activity may take place without fear, coercion, intimidation or reprisals.

### **2. The Code**

All parties, organizations, movements and persons who are bound by the Code in terms of Section 53(2) shall, throughout the election period:

- 2.1** Promote democratic values, including the right to express divergent political opinions; to debate and contest the policies and programmes of other parties, to canvass freely for membership and support from voters; to hold electoral meetings; to attend meetings convened by other parties; to distribute electoral literature and campaign materials; to publish political notices and advertisements; to erect banners, placards and posters; and generally to promote an electoral campaign by all legitimate means.
- 2.2** Refrain from conduct which would constitute an offence in terms of this Act or the Commission Act, and take all such steps as may be reasonably necessary to ensure similar compliance by its nominated candidates, office bearers, members and supporters.
- 2.3** Facilitate the full participation of women in political meetings, party structures and electoral activities.
- 2.4** Implement the orders and directions of the Commission, and accept its' final determination and certification of the election results determined in accordance with the Commission Act.
- 2.5** Render full co-operation and assistance to the Commission, and facilitate its conduct of elections; provide it promptly upon request with all such information as it may reasonably require for the carrying out of its duties; facilitate the right of access of the Commission's monitors and other



representatives to political meetings and other electoral activities; and take all such steps as may be reasonably necessary to ensure their safety and security during the implementation of their official duties.

- 2.6 Give full co-operation and extend all necessary assistance to investigators appointed by the Monitoring Directorate, to facilitate the investigation and determination of issues or allegations arising from alleged infringements of this Code.
- 2.7 Facilitate the right of all political parties, their candidates, officials and members to have full and unrestricted access to potential voters for the purpose of canvassing membership and support, and not prevent, or attempt to prevent, the conduct of legitimate electoral meetings, rallies, marches or demonstrations and not plagiarise, disfigure or destroy the political or campaign materials of other parties.
- 2.8 Ensure that no weapons of any kind including firearms and so-called traditional weapons, are brought to or displayed at any political meeting or carried in the course of any march, demonstration or other political event.
- 2.9 Refrain from any attempt to exploit or abuse any position of power, privilege or responsibility, whether economic, parental, patriarchal or otherwise, to compel any person contrary to his or her wishes, to vote or not to vote either at all, or in any particular manner, or to participate or not to participate in any political activity, otherwise than in accordance with such person's free choice; and not employ any illegal means to solicit membership or support, including any offer of inducement or reward, or the use or threat of force or sexual harassment.
- 2.10 Refrain from offering any inducement or reward in consideration of a person either joining or not joining a particular party; attending or not attending any particular meeting, march, demonstration or other political event; voting or not voting either at all or in any particular manner, or standing or not standing as a candidate, or withdrawing a person's nominated candidature.
- 2.11 Refrain from incitement to violence or hatred, and avoid causing offence or engendering conflict or feelings of hostility by the use of language calculated or likely to incite such feelings.
- 2.12 Ensure that no false allegations are knowingly or negligently propagated or used at political meetings, or in any campaign literature or otherwise; and that no electoral literature, pamphlets, newsletters, posters or other written material used in support of any political party contains untrue, defamatory or inflammatory language.



- 2.13** Co-operate with other parties to avoid the holding of rallies, meetings, marches or demonstrations close to events being organised by other parties at the same time and place; and which are likely to give rise to conflict, tension and fear; and generally ensure that party officials are instructed to co-operate and negotiate with other parties in good faith to avoid any such untoward occurrence.
- 2.14** Affirm and reassure voters with regard to the integrity and secrecy of the ballot, and not publish or permit propaganda to be disseminated which undermines confidence in the electoral process, or places the secrecy or security of the ballot in issue.

Without derogating from the generality of the foregoing, registered parties and their nominated candidates shall be further bound by this Code to:

- 2.1.1** Publicly and unequivocally condemn political intolerance, threats, intimidation and violence, and to take such steps as may be necessary to discipline and effectively restrain their office bearers, candidates, members or supporters from infringing this Code.
- 2.1.2** Ensure the appointment, and substitution when necessary, throughout the election period, of duly authorized representatives to serve as election or party voting agents, and ensure their attendance and participation at all meetings and fora convened by or on behalf of the Commission, on a national, regional or local basis, to act as conduits for official information, to assist in the resolution of disputes, and generally to facilitate the efficient conduct of the election.
- 2.1.3** Establish and maintain effective lines of communication with the Commission and its structures, at national, regional and district level, and ensure the reciprocal exchange of names, addresses and contact telephone/fax numbers with other registered parties, to facilitate the speedy resolution of issues which may arise during the course of the election campaign.
- 2.1.4** Take all such further steps as may be reasonably necessary to ensure due compliance with the provisions of this Code by their members, office bearers, candidates and supporters.

### **3. Sanctions and penalties**

Any party, organization, movement or person who may be found guilty of having contravened or failed to comply with the provisions of this Code, shall be subject to such penalty or sanction as may be deemed appropriate by the Electoral Tribunal or Electoral Appeal Tribunal concerned, which may impose any one or more of the



following penalties and sanctions as it may deem appropriate, viz:

- 3.1 A formal written warning with or without a suspended penalty or sanction.
- 3.2 A fine not exceeding R
- 3.3 The forfeiture of the whole or any portion of the deposit paid in terms of section 20 in respect of a party's registration and/or its participation in any election.
- 3.4 The temporary suspension, or the permanent withdrawal, of a right to use and access media time, including television rights, and broadcasting services as may be permitted for electoral purposes by the Independent Broadcasting Authority established in terms of the Independent Broadcasting Authority Act, 1993.
- 3.5 The withdrawal of the right of a party to nominate party voting agents to be present at any voting station or at any place of counting of the ballot, or other venue under the control of the Commission.
- 3.6 The prohibition of any specific public meeting, demonstration or march, or any category of public meeting, demonstration or march; the prohibition of the right of any party to canvass for voters in any particular area or at any particular time; the prohibition of the right of a party to erect placards or to distribute its campaign literature within any particular area and for any particular time.
- 3.7 The withdrawal of the right to benefit from and receive public funding as may be made available by the State in terms of Section --- of this Act; and/or the requirement that any such benefit or amount as may have previously been made available shall be repaid either in whole or in part, and within such period as may be stipulated.
- 3.8 Such other order or direction involving the forfeiture of electoral rights and privileges as the Electoral Tribunal or Electoral Appeal Tribunal, as the case may be, may deem appropriate.
- 3.9 A declaration as to the ineligibility of any candidate to be nominated on a party list.
- 3.10 The deletion of the name of any candidate from the list of candidates of a registered party.
- 3.11 The cancellation of the registration of a party to participate in the election, and the forfeiture of its right to contest the election.