

**SOUTH AFRICAN GOVERNMENT OFFICE
- WORLD TRADE CENTRE -**

10 June 1993

Head of the Administration
Multi-Party Negotiating Process
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE
ATTENTION OF THE TECHNICAL COMMITTEE: INDEPENDENT
ELECTORAL COMMISSION**

1. Attached is a submission by the South African Government entitled ***ELECTORAL BILL***.
2. Kindly transmit the document for immediate attention to the Technical Committee.

Yours sincerely

GOVERNMENT OFFICE: WORLD TRADE CENTRE

DEK

ELECTORAL BILL (Attached)

1. Status of Bill

The attached Bill has been drafted by the Department of Home Affairs as a document to be negotiated at the Multi Party Forum.

2. Content

The Bill contains proposed measures regarding the arrangements concerning the administration of election matters; franchise of persons; the registration of political parties; the period within, the manner in which, the circumstances under which and the place where votes at an election may be cast; the determination of the poll and the announcement of the result thereof; the handling of ballot papers and other election material after the determination of the result of a vote; offences; and incidental matters.

3. Recommendation

It is recommended that this Bill be dealt with in conjunction with the "Independent Electoral Commission Bill" proposed by the Technical Committee on the Independent Election Commission of the Multi Party Forum and the Government's comments on that Bill, and that -

3.1 either two Bills dealing with the Independent Election Commission and the election procedures, separately; or

3.2 one Bill covering both aspects,

be introduced.

4. Constitutional matters

Clauses 12, 42 and 43 refer to matters to be dealt with in the constitution, and it is strongly recommended that the Technical Committee dealing with the constitution be instructed to take note of the proposals contained in those clauses.

CHIEF LEGAL OFFICER
DEPARTMENT OF HOME AFFAIRS
DATE: 1993-06-09

B I L L

To make provision for the arrangements concerning the administration of election matters; franchise of persons; the registration of political parties; the period within, the manner in which, the circumstances under which and the place where votes at an election may be cast; the determination of the poll and the announcement of the result thereof; the handling of ballot papers and other election material after the determination of the result of a vote; offences; and to provide for incidental matters.

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

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CHAPTER 1

INTERPRETATION

Definitions

1. In this Act, unless the context otherwise indicates -

"ballot box" means the ballot box referred to in section 26;

"ballot paper" means the ballot paper referred to in section 27, and also refers to a single ballot paper used to determine the poll in a multiple election;

"chief electoral officer" means the chief electoral officer referred to in section 3;

"election agent" means an election agent referred to in section 9(1);

"Electoral Commission" means the Electoral Commission instituted by an Act of Parliament;

"electoral officer" means an electoral officer referred to in section 4;

"identity document" means an identity document or a temporary identity document referred to in section 12;

"Minister" means the Minister who from time to time is designated to administer this Act;

"political party" means a political party referred to in section 15;

"polling agent" means a polling agent referred to in section 9(4);

"polling date" means the polling date or dates fixed in terms of section 20(1);

"polling station" means the polling station referred to in section 24;

"returning officer" means the returning officer referred to in section 5;

"tendered ballot paper" means the tendered ballot paper referred to in section 37(2);

"voting compartment" means the voting compartment referred to in section 25;

CHAPTER 2

ADMINISTRATION

Application of Act

*2. The provisions of this Act shall apply to the election of representatives of political parties in Parliament, as well as to each election on a national or regional basis on which the provisions of this Act has been made applicable by the State President by Proclamation in the *Gazette*.

*This clause will be reformulated as soon as clarity is reached on the interim constitution and precise format of the election to be held in terms thereof.

Chief electoral officer

3. The chief electoral officer, appointed by the Electoral Commission, shall perform the functions assigned to him by or under this Act: Provided that the functions in terms of this Chapter shall only be performed with the approval of the Electoral Commission.

Electoral officer

4. The chief electoral officer shall nominate an electoral officer for each magisterial district, or a combination thereof, or a subdivision of a magisterial district, where he deems such a combination or subdivision necessary for appointment by the Electoral Commission.

Powers and duties of electoral officers and returning officers

5. An electoral officer has the powers and shall perform the duties assigned to him by this Act.

Presiding officers, polling officers and counting officers

6. The chief electoral officer shall issue directives concerning the appointment of presiding officers, polling officers, and counting officers by the electoral officer.

General directives

7. The chief electoral officer may issue directives concerning -
- (a) the administrative arrangements in respect of an election to be made by the electoral officers and presiding officers;
 - (b) the establishment of polling stations;
 - (c) the establishment of polling stations abroad for the taking of absent votes from officials in Government Service stationed abroad, and the members of their households, including the manner in which such absent votes shall be taken and be dealt with;
 - (d) the safe-keeping of ballot papers during an election;
 - (e) the sealing of ballot boxes and other election material by presiding officers;
 - (f) the sealing and safe-keeping of counted ballot papers, counterfoils of ballot papers and other election material by electoral officers;
 - (g) the way in which ballot papers shall be controlled during the counting thereof;
 - (h) forms to be prescribed in terms of the provisions of this Act, as well as other forms necessary for the efficient execution of the provisions of this Act; and
 - (i) in general, for the better execution of the objects and purposes of this Act.

Delegations

8. (1) The chief electoral officer may delegate any power conferred on him by this Act, except a power referred to in this Chapter, to any officer referred to in section 4 or authorize any such officer to perform any duty assigned to the chief electoral officer by this Act.

(2) An electoral officer may, with the permission of the chief electoral officer, delegate certain functions assigned to him by or in terms of this Act or by the chief electoral officer, to any officer serving under his control.

Agents of political parties

9. (1) A registered party may appoint one election agent for a magisterial district or subdivision thereof, where applicable, and shall advise the electoral officer of the district concerned not later than 3 days before the first polling day of the election concerned, in writing of the name and address of any election agent so appointed.

(2) All advices received in terms of section (1) shall be kept on file by the electoral officer for public scrutiny and a copy of each such advice shall be submitted to every presiding officer in his district before polling day.

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

(b) When a registered party revokes the appointment of any election agent under paragraph (a) or if any election agent dies or becomes incapacitated, the registered party shall inform the electoral officer concerned in writing of such revocation, death or incapacity, and the registered party may appoint any other person as election agent in his place and shall forthwith notify in writing the electoral officer concerned of the name and address of the person so appointed.

(4) An election agent may appoint polling agents in the prescribed manner for purposes of monitoring the polling at a polling station and to perform such functions as assigned to such polling agents under this Act.

Declaration of secrecy

10. Every officer, agent, polling officer, counting officer referred to in this Chapter, shall make in a form prescribed by the chief electoral officer, and before assuming his duties or performing any function or attending at any polling station or, attending at the place where the result of the election is determined as hereinafter provided, a declaration of secrecy by affirmation or on an oath before a justice of the peace or a commissioner of oaths or if

he is not an electoral officer, before an electoral officer or presiding officer.

Conditions of appointment and substitution of officers and personnel

11. The Chief Electoral Officer shall issue directives regarding the conditions of appointment of any officer and personnel to be appointed under this chapter, as well as the circumstances under, and the manner in which such officers and personnel may be substituted by other officers and personnel.

CHAPTER 3

FRANCHISE

Persons entitled to vote

12. Any person who in terms of the Constitution is eligible to vote and who is the holder of either an identity document issued to him in terms of section 8 of the Identification Act, 1986 (Act No. 72 of 1986), or a prescribed temporary identity document, shall in compliance with and subject to the provisions of this Act be entitled to vote at the election.

Persons not entitled to vote

13. No person shall be entitled to vote at any election, if that person -

- (a) at all times on the polling day of the election concerned is detained in accordance with a sentence imposed or order granted under any Act;
- (b) has not been issued with an identity document; or
- (c) commits an offence referred to in section 47, 48 or 49 of this Act at that election.

CHAPTER 4

REGISTRATION OF POLITICAL PARTIES

Registration of political party

14. Any party, organization or association established with one of its primary objectives to promote the election of members of Parliament or a regional government of the Republic shall, subject to the provisions of section 15, register as a political party.

Application for registration

15. (1) An application for the registration of a political party shall be in the prescribed form and shall be submitted to the Chief Electoral Officer within 30 days after the commencement of this Act, if such a party is in existence on that date, or within 15 days after the date on which that party has been established if such establishment takes place after the date of commencement of this Act.

(2) The application referred to in subsection (1) shall be accompanied by a registration fee of R10 000.

(3) The following particulars shall, in addition to the particulars required in the application form, be submitted, namely -

- (i) the name of the political party, consisting of not more than 60 letters, which by virtue of the provisions of section 27 is required to appear on the ballot paper referred to in that section;
- (ii) the distinguishing mark or symbol of the political party, if any;
- (iii) the abbreviation of the name of the political party consisting of not more than 5 letters, if any;
- (iv) the deed of foundation of the party, if any; and
- (v) a declaration, in the prescribed form, signed by the leader of the party and at least 10 other executive members of the party, in which the party subject itself to the Code of Conduct contained in Schedule 1 of this Act.

(4) Two or more political parties which have mutually agreed thereto may be registered as one political party under a name likewise agreed to by those political parties and shall, when they have so come to an agreement, function as one political party for the purposes of this Act: Provided that -

- (i) the registration of any or more of the political parties so amalgamated previously effected in terms of this section, if any, shall lapse upon such new registration;
- (ii) the registration fees paid in respect of any such previous registration shall not be refundable;
- (iii) no registration fee as required by subsection (2) shall be payable in respect of the subsequent registration; and
- (iv) in case the amalgamated party intends to register under the registered name and other particulars of any one of the parties so amalgamated, the provisions of subsection (5)(c) shall not apply.

(5)(a) The proposed distinguishing mark or symbol of a political party shall -

- (i) not contain a depiction of a weapon, ammunition, uniform or other object normally used in military operations, actions or exercises, whether in time of peace or war;
 - (ii) not correspond to such an extent with the distinguishing mark or symbol, as the case may be, of another political party, that it may mislead or confuse a voter; or
 - (iii) not be *contra bonos mores*.
- (b) The provisions of subsection 5(a)(ii) shall apply mutatis mutandis in respect of an abbreviated name referred to in subsection (3)(ii).
- (c) If the chief electoral officer is of the opinion that a distinguishing mark or symbol or abbreviated name referred to in subsection (3)(i) or (ii) of a political party corresponds with a distinguishing mark or symbol of another political party, he -

- (i) shall take into account the fact that the political party which is traditionally associated with the distinguishing mark or symbol, should be entitled to it;
- (ii) may, for the purposes of subparagraph (i) -
 - (aa) grant the political party an opportunity to deliver such proof, with the inclusion of oral evidence by any person and sworn statements, which, in the judgment of the Chief Electoral Officer, may be of assistance in the expeditious conclusion of the matter; and
 - (bb) administer an oath or confirmation to any person appearing before him.
- (d) The provisions of subparagraph (c)(ii) shall not detract from any provision of this Act extending any power or imposing any duty which grants a political party a reasonable opportunity to rectify an irregularity.
- (6) The chief electoral officer shall examine all applications submitted to him to determine whether it complies with the provisions of this section, and, if he finds that an application does not comply as such, he shall return it to the political party with a written indication of the reasons for his finding.
- (7) Any application returned to a political party in terms of subsection (6), shall be regarded as not having been submitted to the chief electoral officer, until such time as it has been resubmitted.
- (8) If the chief electoral officer is of the opinion that the application of a political party submitted to him complies with the provisions of this section, he shall register that party and issue to that party a registration certificate in the prescribed form.
- (9) The chief electoral officer shall at the request of any person who is investigating an offence in terms of this Act, furnish such person with a certified copy of any registration certificate or written confirmation of the registration referred to in subsection (8).

(10) Any person who makes a false statement or furnishes false particulars in an application in terms of this section for the registration of a political party as a political party, knowing such statement or particulars to be false, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

Notice of registration in *Government Gazette*

16. The Chief Electoral Officer shall publish in the *Government Gazette* on the Friday of the week following on the week in which a political party was registered, a notice containing the full name and business address of that political party as well as the official address at which the original application and supporting documents will be available for public inspection and lodging of written objections, if any.

Objection against registration and adjudication by Electoral Commission

17. (1) Any objection against a registration of a political party shall be lodged within 7 days after the date of the publishing of the notice referred to in section 16 to the Chief Electoral Officer.

(2) The Chief Electoral Officer shall forthwith submit all objections received in terms of subsection (1) to the Electoral Commission for adjudication in terms of subsection (3) together with such comment which he deems appropriate.

(3) The Commission shall examine and consider each objection and may confirm or set aside the decision of the Chief Electoral Officer.

(4) In the event of a decision of the Chief Electoral Officer being set aside by the Electoral Commission, the political party shall -

(i) forthwith be notified in writing of the decision; and

(ii) be afforded a period of seven days to rectify its application to the satisfaction of the Electoral Commission.

(5) An application as rectified in terms of subsection (4) shall, for the purposes of this Act, be deemed to be the final registration particulars of the political party.

Registration of Political Parties intending to participate in a particular election to be finalized before date on which candidate lists must be submitted

18. (1) The registration of a political party who has not yet been registered in terms of this chapter but who intends to participate in a particular election shall be finalized before such party may submit a list of candidates in terms of section 24 of this Act.

(2) Subsection (1) shall also apply in respect of two or more registered political parties, who for the purposes of a particular election, agreed to participate in that election as one political party.

(3) The political parties referred to in subsection (2) shall register a name or abbreviated name and distinguishing mark or symbol under which they intend participating in the election in accordance with the provisions of section 15 prior to the date referred to in section 21(1), but excluding the fee referred to in section 15(2) and the provisions of section 15(5)(c).

Perusal of documents

19. (1) A copy of each document handed to the chief electoral officer for the purposes of the registration of a political party shall be kept at the official address referred to in section 16 for perusal by the public, and anyone who desires to see such a document, may do so free of charge during office hours.

(2) The chief electoral officer shall, upon payment of the prescribed fees, provide a copy of any document referred to in subsection (1) to any person applying therefor.

CHAPTER 5

ANNOUNCEMENT OF AN ELECTION AND
SUBMISSION OF LISTS OF CANDIDATES

Determination of polling day and the hours of polling

20. (1) The State President shall by proclamation in the *Gazette* determine the polling day or successive polling days of an election as well as the hours in which the polling will take place.

(2) Any election shall, for the purposes of this Act be deemed to have commenced on the day on which the proclamation was published in the *Gazette*.

List of candidates to be submitted to chief electoral officer

21. (1) A political party may participate in the election of the representatives of political parties in Parliament and the Regional Government by submitting to the chief electoral officer a list of candidates for each of the legislative bodies in which such party wishes to be represented, on the prescribed form at any time, but not later than 35 days after the date of the publishing of the proclamation referred to in section 20(1), together with a deposit of R75 000.

(2) The names on a list of candidates shall appear in such order as the party may determine with a view to the allocation of representatives in terms of the Constitution, subject to the provisions of section 22(2).

(3) The identity number of each candidate shall be stated on the list after his name.

(4) A list of candidates shall be accompanied by a declaration signed by the secretary of the political party that each person whose name appears on the said list of candidates has accepted his nomination as a candidate of the registered party submitting the list and that he, in terms of the Constitution, is a qualified person to serve as a member of Parliament or a Regional Government.

(5) No documents shall be received as aforesaid after 11:00 on the date referred to in subsection (1).

(6) A list shall not contain more names than the total number of representatives to be elected for the Parliament or the Regional Government, respectively: Provided that a list shall contain sufficient names for the allocation of representatives of that Party in accordance with the result of the poll and also for the filling of any casual vacancy during the first year calculated from the date of the election.

(7) A name of a candidate may appear on both lists referred to in subsection (1) of a party, but not necessarily in the same position on each list.

(8) If a candidate's name appear on both lists as contemplated in subsection (7), and he is due for allocation as a representative for both legislative bodies the political party concerned shall, after the provisions of section 43(1) have been complied with, indicate to the Secretary for Parliament in which of the bodies he shall serve.

(9) If a candidate's name appear on the list of more than one political party, the chief electoral officer shall request him in writing to indicate the political party he wishes to represent and if the candidate does not respond within 7 days after the date of the request, his name shall be deleted from all the lists on which his name appears.

Publication of lists of candidates

22. (1) The chief electoral officer shall within 5 days after the provisions of section 21 have been complied with, publish a notice in the *Gazette* -

- (a) stating, in alphabetical order, the names of all the parties;
- (b) setting out the list of candidates of each such registered party for the election, as compiled by the party in terms of section 21 and declaring that the persons whose names appear on the list have been nominated as the candidates of the party concerned for the election.

(2) If any person whose name appears on a list of candidates in a notice published in terms of subsection (1), dies or is found not be a qualified person, or withdraws his candidature before the election, the chief electoral officer may amend such notice by further notice in the *Gazette* by the deletion from that list of the name and identity number of such person,

and by the addition at the end of that list of the name and identity number of a qualified person who has been nominated in writing by the party concerned, and who has accepted his nomination in writing.

(3) A person whose name has in terms of a notice under subsection (2) -

- (a) been deleted from the list of candidates of a registered party for the election, shall cease to be a candidate for the election;
- (b) been added to the list of candidates of a registered party for the election, shall thereby become a candidate of such registered party for the election.

(4) Any reference in this Act to a notice published in terms of subsection (1), 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 6

PREPARATION FOR THE TAKING OF THE POLL

Polling stations

23. (1) For the purpose of conveniently taking a poll in any district there shall be as many polling stations at such places in the district concerned as may be determined by the electoral officer for that district under the authority of the chief electoral officer.

(2) An area all around the polling station of not less than 300 m, unless practical circumstances necessitate a lesser area, shall be deemed as being part of the polling station.

(3) The chief electoral officer shall at least 21 days before polling day publish a list of the locations of all polling stations determined in terms of subsection (1) in the *Government Gazette*.

(4) The electoral officer acting on the authorization of the chief electoral officer may provide one or more mobile polling stations in any district for the purpose of taking a poll.

(5) A mobile polling station shall be under the general control of the electoral officer for a district and shall for the purposes of this Act, be regarded as a polling station in that district.

(6) The electoral officer may, in such manner as he deems fit and in so far as it may be practicable to do so, make known the places to be visited by a mobile polling station during the polling period and the times at which it shall visit such places.

(7) The presiding officer in control of, and any polling officer and polling agent for, a mobile polling station may enter upon any land with such mobile polling station for the purpose of taking a poll.

Supplying of election material and equipment

24. (1) The chief electoral officer shall supply voting compartments, ballot boxes, ballot papers, instruments, seals and other requisites and shall take such action and make such arrangements as may be necessary for the proper

conducting of the election.

(2) Each electoral officer shall be responsible for obtaining from the chief electoral officer, and supplying to the presiding officers for the polling stations in his district, a sufficient quantity of the requisites referred to in subsection (1) to ensure the proper conducting of the election.

Voting compartment

25. (1) The voting compartment in or at any polling station shall be arranged so as to permit a voter to mark his vote in secrecy and shall be in such a position that a person can neither enter nor leave it without being seen by the presiding officer or a polling officer designated by him, and the presiding officer or such polling officer shall take care that no other person shall, except in accordance with the provisions of this Act, enter the voting compartment while a voter is occupying it for the purpose of recording his vote.

(2) For the purposes of this Act the expression "voting compartment" shall include any part of a polling station, which is screened off to the satisfaction of the presiding officer, in such a manner that the voter may record his vote in secret.

Ballot box

26. (1) At least one hour before the commencement of the poll on the first polling day at a polling station, the presiding officer shall -

- (a) satisfy himself that all ballot boxes to be used at such polling station are empty;
- (b) permit the inspection of the interior of all such empty ballot boxes by such persons entitled in terms of section 28(1) to attend at the polling station, who are present; and
- (c) immediately thereafter close and seal all such ballot boxes in accordance with the instructions issued by the chief electoral officer.

(2) If for any reason it becomes necessary during the polling period to make use of an additional ballot box at any polling 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) 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 this Act.

(4) The presiding officer at a polling station shall -

(a) at the closing of the poll on each polling day, close and seal all ballot boxes used at the polling station; and

(b) make use of a new ballot box in the manner prescribed in subsection (1) at the commencement of the poll on the following polling day.

(5) All sealed ballot boxes used in or at a polling station shall be placed in a position where they can be seen at all times during polling hours at that polling station by the presiding officer or a polling officer designated by him.

(6) The presiding officer shall be responsible for the safe-keeping of all ballot boxes used at his polling station until they are delivered to the electoral officer.

(7) For the purposes of this section "seal" means the seal of the presiding officer and any agent of a political party entitled to be in the polling station who wish to attach his seal to the ballot box.

Ballot paper

27. (1) Every ballot paper shall be in the form set out in Schedule 2, and there shall be printed on every ballot paper in alphabetical order, the names of all the political parties participating in the election and immediately next to the name of each party the distinguishing mark or symbol, if any, and the abbreviation of the name, if any, of that party.

(2) The ballot paper shall be in both official languages: Provided that the name of the political party may be in any one or both official languages, or any other language, or in such other language in combination with any or both official languages: And provided further that the total number of letters used in any or all such languages together shall not exceed 60 letters.

Commencement and closing of poll at polling stations

28. The poll shall commence and close on the hours determined in terms of section 20(1) of each polling day: Provided that the presiding officer shall permit every voter who at the closing hour is inside the enclosure in which the voting takes place, to record his vote.

Powers of presiding officers at polling stations

29. (1) The presiding officer and other officers at a polling station shall keep order, regulate the number of voters to be admitted at a time, and exclude all other persons except the chief electoral officer, the electoral officer for the district, the polling officers and any polling agent entitled in terms of section 9 to attend at a polling station, and any other person authorized by or on the authority of the chief electoral officer or the Electoral Commission as a monitor or observer.

(2)(a) The presiding officer may order any person, excluding the persons referred to in subsection (1) and any person recording his vote, to leave the polling station.

(b) Any person who fails to leave the polling station when so ordered in accordance with paragraph (a), shall be guilty of an offence and may, by order of the presiding officer, be arrested without a warrant.

(3) The presiding officer, after consultation with the police officials on duty (if any), may take any steps that he deems necessary for the protection of himself and other officials or for stopping or preventing any violence or disturbance in or in the vicinity of the polling station.

(4) The powers conferred by this section shall not be exercised so as to prevent any voter who is entitled to vote, from having an opportunity to record his vote.

CHAPTER 7

VOTING AT POLLING STATIONS

Place of voting

30. A person who is entitled to vote shall, if possible, record his vote in the district where his usual place of residence is situated.

Voter may only record one vote

31. A voter shall be entitled to record at an election one vote for one registered party only.

Voting to be in secret

32. (1) A voter shall record his vote in secret, and no person may in any way interfere with a voter in connection with the recording of his vote or in order to obtain knowledge thereof.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence, and liable on conviction to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and imprisonment.

Identification

33. No voter shall be permitted to vote, unless he has produced to the presiding officer or a polling officer as proof of his identity, his identity document.

Manner of voting

34. (1) The voting at any polling station shall be conducted in accordance with the provisions of this chapter.

(2) The presiding officer or polling officer shall ascertain -

(a) by examining the identity 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) In this subsection and in subsection (4) "identification mark" shall mean the mark approved by the chief electoral officer for the purpose of the identification of a voter who has voted at the election.
- (b) The presiding officer or a polling officer shall require the voter, and the voter when so required, is obliged to cause his fingers and his identity document to be examined by the presiding officer or such polling officer, and if upon examination no one of the fingers of the voter or his identity document displays the identification mark, he shall be presumed not to have already voted at the election.
- (c) If upon such examination, any of the fingers of the voter displays the identification mark, the presiding officer shall give to every polling agent who is present an opportunity to observe such identification mark, and shall not permit the voter to vote.
- (d) 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 impossible.
- (4) When the provisions of subsection (3) have been complied with, the voter shall in the presence and in accordance with the instructions of the presiding officer or a polling officer place the identification mark on the fingers of his left hand or in the absence of a left hand of his right hand or cause it to be placed thereon by the presiding officer or such polling officer, except as provided in subsection (3)(d).
- (5) If a voter refuses that the prescribed identification mark be applied to his fingers, he shall not be issued with a ballot paper and shall be ordered to leave the polling station.
- (6) When the voter has complied with the provisions of subsection (4), the presiding officer or a polling 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;
- (b) hand that ballot paper to the voter; and
- (c) mark his identity document with the prescribed mark.
- (7) When the voter has received the ballot paper, he shall -
 - (a) take it to the voting compartment;
 - (b) indicate the political party for which he desires to vote by placing a cross on the ballot paper opposite the name, of that party;
 - (c) fold the ballot paper in such manner that the official mark is visible and the cross made by him is not visible;
 - (d) display the ballot paper at the ballot box in such manner that the presiding officer or a polling officer designated by him may recognize the official mark; and
 - (e) drop the ballot paper into the ballot box.

(8) If a voter spoils any ballot paper inadvertently or votes for the wrong party by mistake or by mistake did something thereon which could lead to the rejection of such ballot paper, he may return it to the presiding officer, and if the presiding officer is convinced that it happened inadvertently, give him another ballot paper and he shall return the spoiled ballot paper, whereupon the spoiled ballot paper shall immediately be cancelled and the cancelled ballot paper kept separately.

Voters who cannot read or who are incapacitated by blindness or other physical cause from voting

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

(2) At request in person by a voter who is incapacitated by blindness or other physical cause from voting in the manner prescribed by the other provisions of this Act, who did not apply that his vote be marked by the presiding officer in terms of subsection (1) and who is accompanied by another person, the presiding officer shall, if he is convinced that that person is a qualified voter, grant permission to that voter to vote with the aid of the person who accompanies him, and after the said permission has been granted, anything which shall be done in terms of this Act to or by the voter in connection with his vote, shall be done to or with the aid of the person who accompanies him.

(3) The secrecy of the voting shall be preserved in the application of the provisions of this section.

Objection by polling agent

36. Any election or polling agent present at a polling station may, in the manner prescribed by, and in accordance with the instructions of the chief electoral officer, object to any voter who wishes to vote, on the ground thereof that -

- (a) he is not the person described in the identification document which was submitted;
- (b) he has already voted at the election; or
- (c) he is not qualified to vote.

Tendered ballot papers

37. (1) If a person applies for a ballot paper and the issuing of a ballot paper is for one or another reason in terms of the provisions of this Act not allowed, or refused, the presiding officer may, if he is convinced for any prescribed reason that the applicant has not acted *mala fide*, issue to him a tendered ballot paper with which shall be dealt with, subject to subsection (2), in the manner prescribed *mutatis mutandis* in section 34(7).

(2) A tendered ballot paper which shall substantially be in the form of a ballot paper, but clearly distinguishable from it, shall after it has been marked by the person to whom it was issued, be placed in the ballot box.

Sealing of ballot boxes and other election material by presiding officer

38. (1) Immediately after the close of the poll on the last polling day, the presiding officer shall, in the presence of election or polling agents as may be in attendance, make up into separate packets, sealed with his own seal -

- (a) each ballot box entrusted to him, unopened; and
- (b) the unused or spoiled ballot papers and the counterfoils of used or spoiled ballot papers,

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

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

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

(3) The electoral officer shall furnish to the chief electoral officer a statement in the prescribed form in which he accounts for the number of ballot papers and tendered ballot papers entrusted to him.

Determination of place and time for determining of result of poll and notice thereof

39. (1) The electoral officer shall, determine the place, day and time where the result of the poll, shall be determined.

(2) The electoral officer shall inform every election agent of the place where the result of the poll shall be determined as well as the day and time whereupon the determining shall commence.

CHAPTER 8

DETERMINATION OF RESULT OF THE POLL AND
ANNOUNCEMENT OF RESULT OF THE ELECTION

Verification of ballot paper count by electoral officer

40. (1) After the provisions of section 38(1) and (2) have been complied with, the electoral officer shall examine whether the seals of the packets referred to in section 38(1) are in order and give any agents of registered parties who are present an opportunity to do the same, and shall thereafter open all the packets.

(2) The electoral officer shall separately verify each presiding officer's ballot paper account referred to in section 38(2) by comparing it with the contents of the packets received from a polling station concerned, and shall for that purpose open all the ballot boxes from that polling station and cause the ballot papers contained in them to be counted.

(3) If there appears to be any discrepancy in the verification of the ballot paper account referred to in subsection (2), the chief electoral officer shall be informed accordingly in the prescribed manner.

Counting of votes

41. (1) After the provisions of section 40 have been complied with in respect of a particular polling station, the electoral officer shall in respect of the ballot papers from every polling station -

- (a) sort the ballot papers, with regard to the provisions of subsection (2), on the basis of the political parties in respect of which the votes were recorded; and
- (b) count the votes recorded in respect of each registered party.

(2) (a) The electoral officer shall not count any tendered ballot paper and shall reject and not count any ballot paper -

- (i) which records votes to more than one registered party; or

(ii) which does not bear the official mark and in respect of which he has, according to the report referred to in section 38(2), reasonable grounds to believe that it has not been officially issued to a voter in terms of section 34(6);

(iii) which is unmarked or on which it is impossible to determine with certainty for which registered party the ballot is cast; or

(iv) bears any sign or mark which identify the person who cast the vote.

(b) The electoral 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 choice otherwise than by a cross on the ballot paper concerned.

(3) The rejection or acceptance of any ballot paper by the electoral officer under the provisions of subsection (2), shall be final.

(4) The electoral officer shall endorse the word "rejected" on any ballot paper finally rejected in terms of this section.

(5) When the electoral officer has complied with the provisions of this section, he shall as soon as practicable enclose in separate packets -

- (a) all counted ballot papers;
- (b) all rejected ballot papers;
- (c) all tendered ballot papers; and
- (d) the unused or spoiled ballot papers and the counterfoils of used or spoiled ballot papers,

and shall seal such packets and deliver or cause them to be delivered to the place or places as directed by the Electoral Commission.

(6) When all the votes in respect of all the polling stations in the district have so been counted and the number of votes recorded for a political party has been determined in the district concerned, the electoral officer shall announce in public the number of votes so recorded for each political party and also the number of ballot papers spoiled, and shall as soon as practicable and in accordance with the instructions of the chief electoral

officer, inform the chief electoral officer of the number of votes recorded in that district for each political party.

Determination of number of candidates of political party to be declared duly elected

42. When all the votes have been counted and the number of votes recorded for a political party at the election has been determined, the chief electoral officer shall determine in the manner prescribed in the Constitution, the number of representatives which each political party will be entitled to in Parliament or in a regional government.

Announcement of result of election

43. (1) As soon as possible after the number of representatives for each political party have been determined the chief electoral officer shall announce the results in public in the prescribed manner and shall notify the Secretary for Parliament of the result of the poll in the prescribed manner and shall furnish him with the party lists referred to in section 21.

(2) The Secretary for Parliament shall upon receipt of the notification referred to in subsection (1) deal with the party lists in the manner prescribed in the Constitution.

Publication of result of election

44. The chief electoral officer shall cause the notice referred to in section 43, to be published in the *Government Gazette*.

Forfeiture of deposit paid by political party

45. The deposit paid in terms of section 21(1) shall be forfeited to the state if a political party was not successful in obtaining sufficient support for the allocation of one representative in the legislative body in respect of which it submitted a list of candidates in terms of the said section.

Safe-keeping of election material

46. The chief electoral officer shall be responsible for the safe-keeping of all electoral material referred to in section 41(5) and shall retain those packets until such time as the electoral commission orders its destruction.

CHAPTER 9

OFFENCES RELATING TO ELECTIONS

Undue influence

47. (1) Any person who directly or indirectly, by himself or by any other person, makes use or threatens to make use of any force, violence or restraint or inflicts or threatens to inflict any temporal or spiritual injury, damage, harm or loss upon or against, or does or threatens to do anything to the disadvantage of, any person -

(a) in order to induce or compel that person at an election -

(i) to vote or refrain from voting;

(ii) to vote or refrain from voting for a particular political party;

(iii) to make or refrain from making an application for a ballot paper;

(iv) to receive or refrain from receiving a ballot paper; or

(b) on account of that person having at an election -

(i) voted or refrained from voting;

(ii) voted or refrained from voting for a particular political party;

(iii) made or refrained from making an application for a ballot paper;

(iv) received or refrained from receiving a ballot paper,

shall be guilty of the offence of undue influence.

(2) Any person who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the franchise by any voter, or thereby compels, induces or prevails upon any voter either to give

or to refrain from giving his vote at any election, shall be guilty of the offence of undue influence.

(3) Any person who, within a polling station, attempts by threats, intimidation or otherwise to influence a voter to vote in favour of a particular political party, shall be guilty of the offence of undue influence.

Bribery

48. (1) Any person shall be guilty of the offence of bribery if he, directly or indirectly, by himself or by any other person -

- (a) gives, lends or procures, or agrees to give, lend or procure, or offers, promises or promises to procure, or to endeavour to procure, any money to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election;
- (b) gives, lends, or agrees to give or lend, or offers, or promises to procure or to endeavour to procure, any money to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, for acting or joining in any procession or demonstration before, during or after any election;
- (c) makes any such gift, loan, offer, promise, procurement or agreement to or for any person in order to induce such person to procure or to endeavour to procure the return of any political party at any election or the vote of any voter at any election;
- (d) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures, or engages, promises or endeavours to procure, the return of any political party at any election or the vote of any voter at any election;
- (e) advances or pays, or causes to be advanced or paid, any money to, or for the use of, any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election;

(f) before or during any election, receives or contracts for any money or loan for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election;

(g) after any election receives any money on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election; or

(2) Nothing in this section contained shall be construed as applying to any money paid, or agreed to be paid, for or on account of any election expenses *bona fide* and lawfully incurred.

Personation

49. Any person who -

(a) at any election applies for a ballot paper in the name of some other person, living or dead, or of a fictitious person, or who, except as provided in section 35, records a vote in the name of any such person; or

(b) having voted once at any election, applies again in any district at the same election for a ballot paper,

shall be guilty of the offence of personation.

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

50. (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 newspaper containing electoral matter the insertion of which is or is to be paid for or for which any reward or compensation or promise or reward or compensation is or is to be made.

(4) The words "electoral matter" used in subsection (3) include all matters which on the face of it are intended or calculated to affect the result of an election, and any report of the speech of a candidate if the insertion of the report 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 such election, shall bear at the foot thereof the full name and address of the 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 such 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).

Voting by person not entitled to vote and interference with voter

51. Any person who -

- (a) votes or induces or procures any person to vote at any election, knowing that he or that person is prohibited by law from voting at that election; or
- (b) at any election wilfully obstruct a voter, either at the polling station or on his way thereto or therefrom,

shall be guilty of an offence.

Interrupting or disturbing proceedings at elections

52. Any person who wilfully interrupts, obstructs or disturbs any proceedings taken under this Act shall be guilty of an offence.

Fraudulent ballot papers, etc

53. (1) Any person who -

- (a) forges or counterfeits or fraudulently destroys any ballot paper or the official mark on any ballot paper;
- (b) without due authority supplies any ballot paper to any person;
- (c) fraudulently puts into any ballot box any paper other than the ballot paper which he is authorized by law to put in;
- (d) fraudulently takes out of the polling station any ballot paper;
or
- (e) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purpose of the election,

shall be guilty of an offence.

(2) In any indictment, summons or charge for an offence in relation to ballot boxes, ballot papers and official marking instruments at an election, the property in such boxes, papers, and instruments, as well as the

property in the counterfoils, may be stated to be vested in the electoral officer at such election.

(3) If an electoral officer is so indicted or charged, such property may be stated to be vested in the Chief Electoral Officer.

(4) Proof that a greater number of ballot papers has been found in a ballot box or has been returned as having been received at a polling station, than the number of voters who voted at that polling station shall be *prima facie* evidence that the presiding officer of such polling station is guilty of the commission, or aiding and abetting the commission, of an offence under this section.

Infringement of secrecy

54. (1) Every officer and agent in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in that station, and shall not, at any time, communicate, except for some purpose authorized by law, to any person any information likely to defeat the secrecy of the voting.

(2) No person shall directly or indirectly induce any voter to display his ballot paper, after he has marked it, in such a manner as to make known to any person the name of the political party for whom the voter has so marked his vote.

(3) No person shall place upon any ballot paper any mark or writing whereby a person who gives his vote on that ballot paper may be identified.

(4) No person shall, except upon the order of a competent court or as authorized by this Act, break the seal of or open any such sealed packet as referred to in section 41 or 46.

(5) A person who contravenes any provisions of this section or fails to comply therewith, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

Neglect of duty by officers at election

55. An officer referred to in chapter 2 who, after he has accepted his position as such, wilfully neglects to fulfil any of the duties charged with

by this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

Prohibition of opinion polls during election

56. (1) No person shall in respect of an election during the period from the date referred to in section 21(1) up to and including polling day conduct in any division an opinion poll in respect of the support enjoyed by the several political parties taking part in that election, or by the policies which they advocate, or by the respective candidates at that election, or publish the result of such an opinion poll conducted prior to, on or subsequent to the said date.

(2) The provisions of subsection (1) shall not prohibit -

- (a) the publishing of the result of any previous election; or
- (b) the obtaining of individual opinions in the course of canvassing for votes on behalf of political parties.

(3) Any person who contravenes any provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Prohibition of use of distinguishing items of Political Parties

57. No person making use of or carrying any distinguishing item of any political party, shall be allowed to enter a polling station on polling day.

Penalties for offences where not expressly provided

58. (1) Any person guilty of an offence, shall be liable on conviction to a fine or to imprisonment for a period not exceeding ten years or to both such fine and imprisonment.

(2) A person convicted of an offence referred to in section 47, 48 or 49 may, in addition to any punishment provided for in this section, be declared by the court incapable during a period not exceeding five years from the date of his conviction -

- (a) of voting at any election, whether it be an election as defined by this Act or any election for any public office; or

- (b) of holding any public office or judicial office, and if he holds any such office, the court may declare that the office shall be vacated by him as from the said date.

CHAPTER 10

GENERAL

Sundays, public holidays and non-work days

59. Whenever under this Act anything is required to be commenced, concluded or done on a particular date (excluding the polling date or dates), and that date happens to fall upon a Sunday or a day declared by or under any law to be a public holiday or a day which is not a work day, such thing shall be commenced, concluded or done on the date immediately preceding such Sunday or public holiday or day which is not a workday or if the last-mentioned date is also a Sunday or public holiday or not a workday, then on the date immediately preceding such Sunday or public holiday or day and which is a work day.

Regulations and forms

60. Subject to the provisions of subsections (2) and (4) the Minister at the request of the electoral commission shall make regulations providing for such matters as are permitted to be prescribed in this Act.

Repeal of laws and savings

61. 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

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

SCHEDULE 1
(Section 15(3)(iii))

CODE OF CONDUCT FOR POLITICAL PARTIES

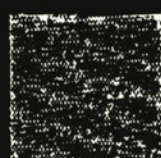
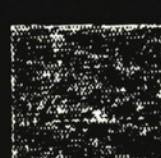
1. All political parties and organisations shall actively contribute to the creation of a climate of democratic tolerance by -
 - (a) publicly and repeatedly condemning political violence and encouraging among their followers an understanding of the importance of democratic pluralism and a culture of political tolerance; and
 - (b) acting positively, also vis-à-vis all public authorities including local and traditional authorities, to support the right of all political parties and organisations to have reasonable freedom of access to their members, supporters and other persons in rural and urban areas, whether they be housed on public or private property.
2. No political party or organisation or any official or representative of any such party, shall -
 - (a) kill, injure, apply violence to, intimidate or threaten any other person in connection with that person's political beliefs, words, writings or actions;
 - (b) remove, disfigure, destroy, plagiarise or otherwise misrepresent any symbol or other material of any other political party or organisation;
 - (c) interfere with, obstruct or threaten any other person or group travelling to or from or intending to attend, any gathering for political purposes;
 - (d) seek to compel, by force or threat of force, any person to join any party or organisation, attend any meeting, make any contribution, resign from any post or office, boycott any occasion or commercial activity or withhold his or her labour or fail to perform a lawful obligation; or

- (e) obstruct or interfere with any official or representative of any other political party or organisation's message to contact or address any group of people.
 - (f) in any manner attempt to procure any money for the purposes of running an election campaign unless that political party or organisations is in terms of section 15 of the Act registered as a political party and has submitted a list of candidates in terms of section 21 of the Act.
- 3. All political parties and organisations shall respect and give effect to the obligation to refrain from incitement to violence or hatred. In pursuit hereof no language calculated or likely to incite violence or hatred, including that directed against any political party or personality, nor any wilfully false allegation, shall be used at any political meeting, nor shall pamphlets, posters or other written material containing such language be prepared or circulated, either in the name of any party, or anonymously.
- 4. All political parties and organisations shall:
 - (a) ensure that the appropriate authorities are properly informed of the date, place, duration and, where applicable, routing of each public meeting, rally, march or other event organised by the party or organisation.
 - (b) take into account local sentiment and foreseeable consequences, as well as any other meetings already arranged on the same date in close proximity to the planned event, provided that this shall not detract from the right of any political party or organisation freely to propagate its political views; and
 - (c) immediately and at all times, establish and keep current effective lines of communication between one another at national, regional and local levels, by ensuring a reciprocal exchange of the correct names, addresses and contact numbers of key leaders at each level, and by appointing liaison personnel in each location to deal with any problems which may arise.
- 5. All political parties and organisations shall provide full assistance and co-operation to the police in the investigation of violence and the apprehension of individuals involved.

SCHEDULE 2

(Section 27)

BALLOT PAPER

AFRIKAANSE PARTY	AFP			
EENHEIDSPARTY/UNITY PARTY				
EOUAL PARTY	EP			
FUTURE PARTY/ MOKGATLHO WA KAMOSO				
MOKGATLHO WA LENANEO				
MOKGATLHO WA MATLHAGATLHAGA/ ACTIVE PARTY				
MOKGATLHO WA TOKOLOGO/ LIBERALE PARTY	LP			
NEW SOUTH AFRICAN PARTY/ NUWE SUID-AFRIKAANSE PARTY	NSAP			

Vote for one party only

Record your vote by a X in the square opposite the party for whom you wish to vote

Stem slegs vir een party

Stem deur 'n X te maak in die vierkant teenoor die party vir wie u wil stem

S C H E D U L E 3

(Section 61)

REPEAL OF LAWS