

1993-05-12

The Head: Administration
Multi Party Negotiating Process
World Trade Centre
KEMPTON PARK
1620

Dear Dr Eloff

GOVERNMENT'S SUBMISSIONS: TECHNICAL COMMITTEE ON ELECTIONS

Enclosed please find the Government's submissions in the form of a draft Bill, titled "Promotion of Democracy Bill" for the attention of the above-mentioned Technical Committee.

Yours sincerely



D P A SCHUTTE
MINISTER OF HOME AFFAIRS

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

13 May 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: INDEPENT
ELECTORAL COMMISSION**

1. Attached is a submission by the South African Government entitled ***REPUBLIC OF SOUTH AFRICA: PROMOTION OF DEMOCRACY BILL.***
2. Kindly transmit the document for immediate attention to the Technical Committee.

Yours sincerely


GOVERNMENT OFFICE: WORLD TRADE CENTRE

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B I L L

to, for the promotion of the Democratic processes in the Republic, provide for the establishment of an Electoral Commission; and for matters incidental thereto.

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

Definitions

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

"code of conduct" means the code of conduct for Political Parties and Organisations as formulated by the Commission under section 7(4)(c);

"Commission" means an Electoral Commission referred to in section 2;

"Council" means a Transitional Executive Council established in terms of the Preparatory Structures Act, 1993;

"election" means an election of the member or members of a board, body or institution of any authority whereby voters on a national, regional or other basis has the right to vote in terms of an applicable Act;

"Minister" means the Minister who from time to time has been entrusted with the administration of this Act;

"political party" means a party registered in terms of an Act of Parliament to participate in an election.

CHAPTER 1

CODE OF CONDUCT FOR POLITICAL PARTIES AND ORGANISATIONS

2. (1) A code of conduct, as set out in the Schedule hereto, is hereby instituted for all political parties and organisations in the Republic.

(2) Every political party and organisation, irrespective whether registered to participate in an election in terms of an Act of Parliament or not, is bound by the provisions of the code of conduct, and in the event where it is proved that the provisions of the code of conduct have been transgressed by an official or representative of a said party or organisation, it shall be deemed that that party or organisation has committed the transgression itself, unless it is proved that the official or representative has acted in conflict with expressed instructions or directions of the party or organisation.

(3) An official or representative of a political party or organisation transgressing a provision of the code of conduct, shall be guilty of an offence and shall be liable on conviction to a penalty or imprisonment of a maximum period of 25 years, or to both such penalty and such imprisonment, and the court may, in the event of the guilty act being imputable in terms of subsection (2) to a political party or organisation, declare such party or organisation unlawful if the act relates to manslaughter or violent action of an aggravating nature.

(4) The registration of a political party registered to participate in an election in terms of an Act of Parliament shall lapse at its being declared unlawful in terms of subsection (3) and such a political party or organisation thus declared unlawful, shall not field a candidate for an election for a period of 5 years, unless the Electoral Commission directs otherwise.

CHAPTER 2

ELECTORAL COMMISSION

Establishment of Electoral Commission

3. With a view to holding free and fair elections, the monitoring of election activities and the settlement of electoral disputes and also other disputes referred to the Commission by the Council, Government, administration, monitoring committee or a party to the Council, an independent body known as the Electoral Commission is hereby established.

Constitution of Commission

4. (1) The Commission shall consist of a maximum of eleven persons who -
- (a) possess expertise, experience and impartiality to perform the functions, powers and duties of the Commission; and
 - (b) are appointed by the State President from the names submitted to the State President by the Council.
- (2) No person shall be appointed to serve on the Commission unless that person is a citizen of the Republic of South Africa.

Chairman of Commission

5. A member of the Commission shall serve as chairman at every meeting on a rotational basis in alphabetical order according to the surnames of the members.

Term of office, removal of members of Commission and filling of vacancies

6. (1) Subject to the provisions of subsection (2), the term of office of a member of the Commission shall be 5 years.

(2) A complaint against a member of the Commission appointed in terms of section 3, on account of obvious unfair or partial behaviour, shall be instituted at the Board and the Board shall investigate the complaint and submit a recommendation to the State President.

(3) After considering the recommendation referred to in subsection (2) and after hearing any representations which the member concerned may submit to the State President, the State President may remove the member from the office of member of the Commission.

(4) Any vacancy in the Commission which occurs for any reason whatsoever, shall, after consultation with the Council, be filled by the State President by the appointment of another person for the unexpired part of the term of office of the member in respect of whom the vacancy occurred.

Powers, functions and duties of Commission

7. (1) The Commission shall function and perform its powers, functions and duties in a manner which the Commission itself considers as effective in realising the aims of this Act or any other relevant act.

(2) The Commission shall supervise and co-ordinate the election structures referred to in Chapters 3, 4 and 5 of this Act.

(3) The Commission shall at any time take or recommend the necessary steps in order to promote a free and fair election.

(4)(a) The Commission shall on a continual basis consider the provisions of an electoral act and regulations made under such an electoral act, and also any instructions in connection with the holding of elections, and may at any time make recommendations with regard to the formulation, addition to, amendment or deletion of the said provisions and instructions.

(b) With a view to hold and promote free and fair elections, the Commission shall ensure that the Act, regulations and instructions referred to in paragraph (a) contain provisions relating to the -

- (i) identification of voters;
- (ii) procedures regarding the registration of political parties;
- (iii) compilation and publishing of candidate lists;
- (iv) secrecy of votes and voting procedures;
- (v) preventing of malpractices and election fraud;
- (vi) safeguarding of polling stations, ballot boxes and ballot papers;
- (vii) accommodating of illiterate and physically handicapped voters;
- (viii) determining of the result of the election;
- (ix) attendance of agents of political parties, monitors and observers at polling stations and counting venues;
- (x) regulating of campaign funds, election expenses and advertisements;
- (xi) prevention of intimidation;
- (xii) powers of electoral and presiding officers; and
- (xiii) other matters to achieve the above- mentioned purposes.

(c) The Commission shall formulate a code of conduct for political parties and organisations in order to provide for directives according to which parties shall function, describe offences which parties could commit in the execution of their powers, consequences which could result from such offences, and the powers of the court in connection with judgements and penalties which may be imposed for such offences.

(5) The Commission shall take the necessary steps to supply voters with training and instructions in connection with elections and shall monitor such training and instructions if it be supplied by a political party or political interest group, and take correctional steps when necessary.

(6) During the course of an election the Commission may, and after the conclusion of an election the Commission shall, pronounce itself regarding the fact whether the election was free and fair and whether, in the Commission's judgement, factors are or were present or not that have or had a material influence on the running and result of the election.

(7)(a) The Commission may of its own accord, take notice of any circumstances or events that may obstruct the conducting of a free and fair election, lodge an investigation, make a finding and take or recommend the necessary action.

(b) The Commission is for this purpose empowered to settle any question in connection with the holding of a free and fair election which is referred to it, and make its decision as to the correct procedure which shall be followed in the case in question known in public.

(8) The Commission may at any time approach any person for the rendering of expert advice on any matter.

(9) The Commission may in its discretion refer any matter involving unlawful practices to the attorney-general who has jurisdiction, with a view to instituting any prosecution which should be instituted under the circumstances.

Adjudication by court of law

8. The activities of the Commission, or the adjudicating tribunal referred to in section 14, do not detract from the right of any person to institute legal proceedings for the adjudication by a competent court of law.

CHAPTER 3

ADMINISTRATION OF ELECTIONS

Chief electoral officer

9. (1) There shall be a chief electoral officer, who is assisted by two deputy chief electoral officers, charged with the administration and conducting of elections.

(2) The chief electoral officer and the two deputy chief electoral officers shall be appointed by the Commission from persons who possess expertise and experience, and are conversant with the conducting of elections.

Functions of chief electoral officer and deputy chief electoral officers

10. (1) The chief electoral officer and deputy chief electoral officers perform the powers, duties and functions which are assigned to them in this Act and in an electoral act.

(2) The functions of the said officers include the -

- (a) obtaining of funds for the holding of elections;
- (b) proper identification of voters;
- (c) recruitment and appointment of sufficient and suitable personnel for the effective conducting of an election;
- (d) registration of political parties and their emblems;
- (e) registration of candidate lists;
- (f) composition of a ballot paper;
- (g) identification of suitable venues for polling stations and the furnishing of sufficient equipment and stock for such polling stations;
- (h) safeguarding of ballot boxes and ballot papers;
- (i) fixing of suitable venues for the counting of votes; and
- (j) determining of the result of the election.

Secretariat to chief electoral officer

11. (1) The chief electoral officer shall, after consultation with the Commission, appoint persons as a secretariat in order to perform the administrative work connected to the administration and conducting of an election.

(2) The chief electoral officer shall supply accommodation and equipment needed by the secretariat for the performing of activities.

(3) The chief electoral officer shall arrange for the obtaining of funds for the paying of persons and execution of powers referred to in this section.

ALTERNATIVE PROPOSAL

If a sub-council for Elections is to be established, this Chapter will have to be adjusted in order to make provision that the administration of the Election, and the administrator fall under that sub-council, and not the Election Commission as proposed in this Chapter.

CHAPTER 4

MONITORING COMMITTEE

Monitoring Committee

12. (1) There shall be a monitoring committee charged with the monitoring of the conducting and course of elections.

(2) The monitoring committee shall be appointed by the Commission and shall consist of three persons who possess expertise and impartiality to perform the functions of a monitoring committee.

(3) One of the members referred to in subsection (2) shall be appointed by the Commission as chairman of the committee.

(4) The provisions of section 6 shall apply mutatis mutandis to members of the committee: Provided that the removal of a member and the filling of a vacancy shall be done by the Commission.

Functions of monitoring committee

13. (1) The monitoring committee shall perform the powers, duties and functions which are assigned to the committee in this Act and in an electoral act.

(2) The monitoring committee shall monitor all activities, actions and duties in connection with an election in order to determine if that election is in every aspect conducted freely and fairly, and is responsible for the -

- (a) accreditation of internal and external observers of the election;
- (b) co-ordinating of all internal monitors;
- (c) appointment of own monitors where necessary; and
- (d) accepting of monitors of organisations insisting on monitoring.

ALTERNATIVE PROPOSAL

As proposed in paragraph 4 of the "Government's Amendment to Proposal One: Independent Election Commission" it should be considered to transfer the functions of the monitoring committee as proposed in this Chapter, to the National Peace Secretariat referred to in the Internal Peace Institutions Act, No. 135 of 1992.

CHAPTER 5

ADJUDICATING TRIBUNAL

Adjudicating tribunal

14. (1) There shall be an adjudicating tribunal charged with the adjudicating of election disputes.

(2) The adjudicating tribunal shall be appointed by the Commission and shall consist of five persons who hold a judicial office or who have 10 years experience as practising advocate or attorney, or lecturing in law at an university.

(3) The provisions of section 6 shall apply mutatis mutandis to members of the tribunal: Provided that the removal of a member and the filling of a vacancy shall be done by the electoral commission.

Chairman of adjudicating tribunal

15. The Commission shall appoint one of the members of the adjudicating tribunal as chairman.

Functions of adjudicating tribunal

16. (1) The adjudicating tribunal shall perform the powers, duties and functions which are assigned to the tribunal in this Act and an electoral act and shall strive to settle election disputes in an independent and impartial manner and pass a decision thereon according to the provisions of the Electoral Act, code of conduct and any other law and prescriptions in connection with elections.

(2) The adjudicating tribunal is empowered to settle any question in connection with the holding of a free and fair election which is referred to it, and to make its decision as to the correct procedure which should be followed in the case in question known in public.

(3) Election disputes shall be settled speedily and effectively.

(4) The adjudicating tribunal may create a panel of persons with expertise and experience to settle election disputes.

(5) The adjudicating tribunal may of its own accord, take notice of any circumstances or events that may obstruct the conducting of a free and fair election, lodge an investigation, make a finding and take or recommend the necessary action.

(6) For the purposes of settling any difference or dispute, or for an investigation referred to in subsection (5), the adjudicating tribunal may, if necessary -

- (i) summons a witness and administer the oath in the same manner as at a trial in an action before the court;
- (ii) question any witness and any person present;

- (iii) investigate or cause to be investigated any matter which may have a bearing on the difference, dispute, circumstance or event; or
- (iv) direct any person to furnish the adjudicating tribunal with information of a material interest.

CHAPTER 6

GENERAL

Offences and penalties

17. Any person who -

- (a) offends a member of the Commission, the chief electoral officer or his secretariat or any person charged with the administration of an election, the monitoring committee, the adjudicating tribunal or any person connected therewith in respect of the conducting of his business or obstructs, impedes or handicaps such a member or person in the conducting of his business;
- (b) falsely claims to be a member of the institutions mentioned in paragraph (a) or connected thereto;
- (c) obstructs, impedes or handicaps the institutions referred to in paragraph (a) in the conducting of their business, or commits or cause an act to be committed so as to prevent the said institutions to conduct their business;
- (d) presents false or unfounded information to the Commission or adjudicating tribunal so as to cause an investigation be lodged or to obstruct, impede or handicap such an investigation and which may be prejudicial to any other person or political party or political interest group;
- (e) refuses or fails to comply with a provision of section 7(6),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding ten years.

Remuneration and allowances

18. (1)(a) A member of the Commission or any of the bodies referred to in Chapters 3, 4 and 5 of the Act who is not in full-time employment of the State, shall be entitled to such remuneration and allowances, including reimbursement in respect of travelling and subsistence expenses incurred by him in the performance of his functions in terms of this Act, as the Minister with the concurrence of the Minister of State Expenditure may determine.

- (b) Any member of a panel referred to in section 16(4) of the Act who is not in the full-time employment of the State shall be entitled to such reimbursement in respect of travelling and subsistence expenses incurred by him in the performance of his functions in terms of this Act as the Minister with the concurrence of the Minister of State Expenditure may determine.

(2) Persons whose services had been used by the Commission in terms of section 7(8) and who are not in the full-time employment of the State shall be entitled to such remuneration and allowances, including reimbursement in respect of travelling and subsistence expenses incurred by him in the rendering of his services, as the Minister with the concurrence of the Minister of State Expenditure may determine.

Finances of the Commission

19. (1) The funds of the Commission shall consist of money received by the Commission from any source.

(2) The Commission shall utilize the money referred to in subsection (1) to defray any expenses in connection with the performance of its functions, and may utilize that money to purchase or otherwise acquire movable property.

(3) All moneys received by the Commission in terms of subsection (1) shall be paid into an account opened by it with a bank registered in terms of the Banking Act, 1990 (Act No. 94 of 1990).

(4) The financial year of the Commission shall terminate on 31 March of each year.

(5) The Commission shall cause proper records of all its financial transactions, assets and liabilities to be kept.

(6) The books of account, accounting statements and annual financial statements of the Commission shall be audited by the Auditor-General.

(7) The Commission shall furnish the Minister with such information as he may call for from time to time in connection with the activities and financial position of the Commission and shall as soon as practicable after the end of each financial year submit to the Minister an annual report on the Commission's affairs and functions in respect of that financial year, which shall, inter alia, include an audited balance sheet and income statement.

(8) The Minister shall lay the said report upon the Table in Parliament within 14 days after it has been received by him, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

Short title and commencement

20. This Act shall be called Promotion of Democracy Bill, 1993, and shall commence on a date proclaimed by the State President in the Government Gazette.

SCHEDULE

CODE OF CONDUCT FOR POLITICAL PARTIES AND ORGANISATIONS

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.
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.

REPUBLIC OF SOUTH AFRICA

PROMOTION OF DEMOCRACY BILL

(As introduced)

(Minister of Home Affairs)

[B...-93(GA)]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP BEVORDERING VAN DEMOKRASIE

(Soos ingedien)

(Minister van Binnelandse Sake)

[W...-93(AS)]

Om ter bevordering van die Demokratiese prosesse in die Republiek voorsiening te maak vir die instelling van 'n Verkiesingskommissie; e aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika soos volg:-

Woordomskrywing

1. In hierdie Wet, tensy ui' die samehang anders blyk, beteken -
"gedragskode" die gedragskode vir Politieke Partye en Organisasies, soos geformuleer deur die Kommissie kragtens artikel 7(4)(c);
"Kommissie" 'n Verkiesingskommissie bedoel in artikel 2;
"Minister" die Minister aan wie die administrasie van hierdie Wet van tyd tot tyd opgedra word;
"politieke party" 'n party wat ingevolge 'n Wet van die Parlement geregistreer is om aan 'n verkiesing deel te neem;
"Raad" 'n Uitvoerende Oorgangsraad ingestel ingevolge die Wet op Voorbereidende Strukture, 1993;
"verkiesing" 'n verkiesing van die lid of lede van 'n raad, liggaam of instelling van enige owerheid waarby kiesers op 'n nasionale-, streek of ander grondslag ingevolge 'n toepaslike Wet geregtig is om te stem.

HOOFSTUK 1

Gedragkode vir Politieke Partye en Organisasies

2. (1) Daar word hierby 'n gedragkode, soos uiteengesit in die Bylae, vir alle politieke partye en organisasies in die Republiek ingestel.

(2) Elke politieke party en organisasie, ongeag of hy ingevolge 'n Wet van die Parlement geregistreer is om aan 'n verkiesing deel te neem of nie; is gebonde aan die bepalings van die gedragkode, en in die geval waar dit bewys word dat die bepalings van die gedragkode deur 'n beampste of verteenwoordiger van 'n bedoelde party of organisasie oortree is, word dit geag dat daardie party of organisasie self die oortreding gepleeg het, tensy bewys word dat die beampste of verteenwoordiger in stryd met uitdruklike voorskrifte of opdragte van die party of organisasie gehandel het.

(3) 'n Beampste of verteenwoordiger van 'n politieke party of organisasie wat 'n bepaling van die gedragkode oortree het, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf van 'n tydperk van hoogstens 25 jaar of met sowel sodanige boete as sodanige gevangenisstraf, en kan die hof, in die geval waar die skuldige handeling 'n politieke party of organisasie kragtens subartikel (2) toegereken kan word, so 'n party of organisasie onwettig verklaar indien die handeling betrekking het op doodslag of gewelddadige optrede van 'n verswarende aard.

(4) Die registrasie van 'n politieke party wat ingevolge 'n Wet van die Parlement geregistreer is om aan 'n verkiesing deel te neem, verval by sy onwettigverklaring kragtens subartikel (3) en kan so 'n politieke party of 'n organisasie wat aldus onwettig verklaar is geen kandidaat vir 'n verkiesing vir 'n tydperk van 5 jaar stel nie, tensy die Verkiesingskommissie anders gelas.

HOOFSTUK 2

VERKIESINGSKOMMISSIE

Instelling van Verkiesingskommissie

3. Met die oog op die hou van vry en regverdige verkiesings, die monitering van verkiesingsaktiwiteite en die beslegting van verkiesingsgeskille, asook ander geskille wat deur die Raad, Regering, administrasie, moniteringskomitee of 'n party tot die Raad na die Kommissie verwys word, word 'n onafhanklike liggaam bekend as die Verkiesingskommissie hierby ingestel.

Samestelling van Kommissie

4. (1) Die Kommissie bestaan uit hoogstens elf persone wat -
- (a) oor kundigheid, ervaring en onpartydigheid beskik om die funksies, bevoegdhede en pligte van die Kommissie te verrig; en
 - (b) deur die Staatspresident aangestel word uit die name wat deur die Raad aan die Staatspresident voorgelê word.
- (2) Geen persoon word aangestel om in die Kommissie te dien nie tensy daardie persoon 'n burger is van die Republiek van Suid-Afrika.

Voorsitter van Kommissie

5. 'n Lid van die Kommissie dien by elke vergadering van die Kommissie, op 'n roterende basis in alfabetiese volgorde volgens die vanne van die lede, as voorsitter van die Kommissie.

Ampstermyn, ontheffing van lede van Kommissie en aanvulling van vakatures

6. (1) Die ampstermyn van 'n lid van die Kommissie is, behoudens die bepalings van subartikel (2), 5 jaar.

(2) 'n Klag teen 'n lid van die Kommissie wat ingevolge artikel 3 aangestel is, weens klaarblyklike onbillike of partydige optrede, moet by die Raad aanhangig gemaak word en moet die Raad die klag ondersoek en 'n aanbeveling aan die Staatspresident voorlê.

(3) Na oorweging van die aanbeveling in subartikel (2) bedoel en na aanhoor van enige verdoë wat die betrokke lid aan die Staatspresident mag voorlê, kan die Staatspresident die lid uit die amp van lid van die Kommissie onthef.

(4) Enige vakature in die Kommissie wat ontstaan om watter rede ookal, word deur die Staatspresident na oorlegpleging met die Raad aangevul deur die aanstelling van 'n ander persoon vir die onverstreke gedeelte van die ampstermyn van die lid ten opsigte van wie die vakature ontstaan het.

Bevoegdhede, funksies en pligte van Kommissie

7. (1) Die Kommissie funksioneer en voer sy bevoegdhede, funksies en pligte uit op 'n wyse wat die Kommissie self as doeltreffend ter verwesentliking van die doelstellings van hierdie Wet of enige ander toepaslike wet ag.

(2) Die Kommissie hou tressig oor, en koördineer die verkiesingstrukture bedoel in Hoofstukke 3, 4 en 5 van hierdie Wet.

(3) Die Kommissie moet te eniger tyd die nodige stappe neem of aanbeveel ten einde 'n vry en regverdige verkiesing te bevorder.

(4)(a) Die Kommissie oorweeg op 'n deurlopende basis die bepalings van 'n kieswet en regulasies kragtens so 'n kieswet uitgevaardig, asook enige voorskrifte in verband met die hou van verkiesings, en kan te eniger tyd aanbevelings maak met betrekking tot die formulering, aanvulling, wysiging of skraping van die bedoelde bepalings en voorskrifte.

(b) Met die oog op die hou en bevordering van vry en regverdige verkiesings, sien die Kommissie toe dat die Wet, regulasies en voorskrifte in paragraaf (a) bedoel, bepalings bevat betreffende die -

- (i) identifisering van kiesers;
- (ii) prosedures in verband met die registrasie van politieke partye;
- (iii) opstel en publisering van kandidaatlyste;
- (iv) geheimhouding van stemme en stemprosedures;
- (v) voorkoming van wanpraktyke en stembedrog;
- (vi) beveiliging van stemburo's, stembusse en stembriewe;
- (vii) akkommodering van ongeletterde en gestremde kiesers;
- (viii) bepaling van die uitslag van die verkiesing;
- (ix) bywoning van agente van politieke partye, moniteerders en waarnemers by stemburo's en tellokale;
- (x) regulering van veldtogfondse, verkiesings- uitgawes en advertensies;
- (xi) voorkoming van intimidasie;
- (xii) bevoegdhede van kies- en voorsittende beamptes; en
- (xiii) ander aangeleenthede om die bovermelde oogmerke te verwesenlik.

(c) Die Kommissie formuleer 'n gedragskode vir politieke partye en organisasies ten einde voorsiening te maak vir riglyne waarvolgens partye moet funksioneer, oortredings te beskryf wat partye in die uitoefening van hulle bevoegdhede kan pleeg, gevolge wat sodanige oortredings kan inhou, en die hof se bevoegdhede in verband met uitsprake en strawwe wat vir sodanige oortredings opgelê kan word.

(5) Die Kommissie doen stappe om opleiding en voorligting in verband met verkiesings aan kiesers te voorsien en moniteer sodanige opleiding en voorligting indien dit deur 'n politieke party of politieke belangegroep voorsien word, en neem regstellende stappe wanneer nodig.

(6) Gedurende die verloop van 'n verkiesing kan 'n Kommissie, en na afloop van 'n verkiesing, moet die Kommissie hom uitspreek betreffende die feit of die verkiesing vry en regverdig was en of daar, na die Kommissie se oordeel, faktore aanwesig of afwesig is of was wat 'n wesenlike invloed op die bedryf en uitslag van die verkiesing het of gehad het.

(7)(a) Die Kommissie kan uit eie beweging kennis neem van enige omstandigheid of gebeurde wat die voer van 'n vrye en regverdige verkiesing belemmer, ondersoek instel, 'n bevinding maak en die nodige stappe neem of aanbeveel.

(b) Die Kommissie is vir hierdie doel bevoeg om enige vraag in verband met die hou van 'n vrye en regverdige verkiesing wat na die Kommissie verwys word te besleg, en 'n beslissing oor die korrekte prosedure wat in die onderhawige geval gevolg behoort te word in die openbaar bekend te maak.

(8) Die Kommissie kan te eniger tyd enige persoon nader om die Kommissie oor enige aangeleentheid van deskundige advies te bedien.

(9) Die Kommissie kan na goeë dunnke enige aangeleentheid waarby onwettige bedrywighede aanwesig is, verwys na die prokureur-generaal wat regsbevoegdheid het, met die oog op die instelling van enige vervolging wat onder die omstandighede ingestel behoort te word.

Beregting deur geregshof

8. Die werksaamhede van die Kommissie, of die beregtingstribunaal bedoel in artikel 14, ontnem nie die reg van enige persoon om 'n aangeleentheid vir beregting deur 'n bevoegde geregshof aanhangig te maak nie.

HOOFSTUK 3

ADMINISTRASIE VAN VERKIESINGS

Hoofverkiesingsbeampte

9. (1) Daar is 'n hoofverkiesingsbeampte, wat bygestaan word deur twee adjunk-hoofverkiesingsbeamptes, belas met die administrasie en bedryf van verkiesings.

(2) Die hoofverkiesingsbeampte en die twee adjunk-hoof-verkiesings-beamptes word deur die Kommissie aangestel uit persone wat oor kundigheid en ervaring beskik, en onderleg is in die bedryf van verkiesings.

Funksies van hoofverkiesingsbeampte en adjunk-hoofverkiesingsbeamptes

10. (1) Die hoofverkiesingsbeampte en adjunk-hoofverkiesingsbeamptes verrig die bevoegdhede, pligte en funksies wat in hierdie Wet en in 'n kieswet aan hulle opgedra word.

(2) Die funksies van die bedoelde beamptes behels die -

- (a) verkryging van fondse vir die hou van verkiesings;
- (b) behoorlike identifisering van kiesers;
- (c) werwing en aanstelling van voldoende en geskikte personeel vir die effektiewe voer van 'n verkiesing;
- (d) registrasie van politieke partye en hul embleme;
- (e) registrasie van kandidaatlyste;
- (f) samestelling van 'n stembrief;
- (g) identifisering van geskikte plekke vir stemburo's en die verskaffing van voldoende toerusting en voorraad vir sodanige stemburo's;
- (h) beveiliging van stembusse en stembriewe;
- (i) bepaling van geskikte plekke vir die tel van stemme; en
- (j) bepaling van die uitslag van die verkiesing.

Sekretariaat van hoofverkiesingsbeampte

11. (1) Die hoofverkiesingsbeampte wys, na oorlegpleging met die Kommissie, persone aan as 'n sekretariaat ten einde die administratiewe werk verbonde aan die administrasie en bedryf van 'n verkiesing te verrig.

(2) Die hoofverkiesingsbeampte voorsien akkommodasie en toerusting wat deur die sekretariaat benodig word by die verrigting van werksaamhede.

(3) Die hoofverkiesingsbeampte reël vir die verkryging van fondse vir die besoldiging van persone en uitvoering van bevoegdhede in hierdie artikel bedoel.

ALTERNATIEWE VOORSTEL

Indien 'n subraad vir verkiesings ingestel sou word sal hierdie Hoofstuk aangepas moet word om voorsiening te maak dat die administrasie van die verkiesing, asook die administrator daarvan onder daardie subraad ressorteer, en nie onder die Verkiesingskommissie soos in hierdie Hoofstuk voorgestel nie.

HOOFSTUK 4

MONITERINGSKOMITEE

Moniteringskomitee

12. (1) Daar is 'n moniteringskomitee belas met die monitering van die bedryf en verloop van verkiesings.

(2) Die moniteringskomitee word aangestel deur die Kommissie en bestaan uit drie lede wat oor kundigheid en onpartydigheid beskik om die funksies van 'n moniteringskomitee te verrig.

(3) Een van die lede bedoel in subartikel (2) word deur die kommissie as voorsitter van die komitee aangewys.

(4) Die bepalings van artikel 6 is mutatis mutandis van toepassing op die lede van die komitee: Met dien verstande dat die ontslag van 'n lid en die vulling van 'n vakature deur die kommissie gedoen word.

Funksies van moniteringskomitee

13. (1) Die moniteringskomitee verrig die bevoegdhede, pligte en funksies wat in hierdie Wet en in 'n kieswet aan die komitee opgedra word.

(2) Die moniteringskomitee moniteer alle bedrywighede, aksies en werksaamhede in verband met 'n verkiesing ten einde te bepaal of daardie verkiesing in alle opsigte vry en regverdig bedryf word, en is verantwoordelik vir die -

- (a) akkreditasie van binnelandse en buitelandse waarnemers van die verkiesing;
- (b) koördinerings van alle binnelandse moniteerders;
- (c) aanstelling van eie moniteerders waar nodig; en
- (d) aanvaarding van moniteerders van organisasies wat op monitering aandring.

ALTERNATIEWE VOORSTEL

Soos voorgestel in paragraaf 4 van die "Government's Amendment to Proposal One: Independent Election Commission" moet dit oorweeg word om die funksies van die moniteringskomitee soos in hierdie Hoofstuk voorgestel, oor te dra aan die Nasionale Vredessekretariaat, soos bedoel in die Wet op Binnelandse Vredesinstellings No. 135 van 1992.

HOOFSTUK 5

BEREGTINGSTRIBUNAAL

Beregtingstribunaal

14. (1) Daar is 'n beregtingstribunaal belas met die beslegting van verkiesingsgeskille.

(2) Die beregtingstribunaal word aangestel deur die Kommissie en bestaan uit vyf persone wat 'n regterlike amp beklee of wat 10 jaar ondervinding opgedoen het as praktiserende advokaat of prokureur of dosent in regsgeleerdheid aan 'n universiteit.

(3) Die bepalings van artikel 6 is mutatis mutandis van toepassing op die lede van die tribunaal: Met dien verstande dat die ontslag van 'n lid en die vulling van 'n vakature deur die verkiesingskommissie gedoen word.

Voorsitter van beregtingstribunaal

15. Die Kommissie wys een van die lede van die beregtingstribunaal as voorsitter aan.

Funksies van beregtingstribunaal

16. (1) Die beregtingstribunaal verrig die bevoegdhede, pligte en funksies wat in hierdie Wet en 'n kieswet aan die tribunaal opgedra word en beywer hom om onafhanklik en onbevooroordeeld verkiesingsgeskille te besleg en uitspraak daaroor te lewer ooreenkomstig die bepalings van die Kieswet, gedragskode of enige ander wet en voorskrifte in verband met verkiesings.

(2) Die beregtingstribunaal is bevoeg om enige vraag in verband met die hou van 'n vrye en regverdige verkiesing wat na die beregtingstribunaal verwys word te besleg, en sy beslissing oor die korrekte prosedure wat in die onderhawige geval gevolg behoort te word in die openbaar bekend te maak.

(3) Verkiesingsgeskille word spoedig en doeltreffend besleg.

(4) Die beregtingstribunaal kan 'n paneel van persone met kundigheid en ervaring daarstel om verkiesingsgeskille te besleg.

(5) Die beregtingstribunaal kan uit eie beweging kennis neem van enige omstandigheid of gebeurde wat die voer van 'n vrye en regverdige verkiesing belemmer, ondersoek instel, 'n bevinding maak en die nodige stappe neem of aanbeveel.

(6) Vir doeleindes van die beslegting van enige geskil of dispuut, of vir 'n ondersoek bedoel in subartikel (5), kan die beregtingstribunaal, indien nodig -

- (i) 'n getuie dagvaar en onder eed stel op dieselfde wyse as by 'n verhoor van 'n aksie voor die hof;
- (ii) enige getuie en enige persoon wat aanwesig is ondervra;

- (iii) ondersoek instel of laat instel na enige aangeleentheid wat betrekking kan hê op die geskil, dispuut, omstandigheid of gebeurde; of
- (iv) iemand aansê om inligting van wesenlike belang aan die beregtingstribunaal te verstrek.

HOOFSTUK 6

ALGEMEEN

Misdrywe en strawwe

17. Iemand wat -

- (a) 'n lid van die Kommissie, die hoofverkiesingsbeampte of sy sekretariaat of iemand met die administrasie van 'n verkiesing belas, die moniteringskomitee, die beregtingstribunaal of iemand daaraan verbonde beledig in verband met die verrigting van sy werksaamhede of so 'n lid of persoon dwarsboom, hinder of belemmer by die verrigting van sy werksaamhede;
 - (b) valslik voorgee dat hy 'n lid van die instellings in paragraaf (a) genoem is of daaraan verbonde is;
 - (c) die instellings in paragraaf (a) genoem dwarsboom, hinder of belemmer in die verrigting van hulle werksaamhede, of enige handeling verrig of laat verrig ten einde die bedoelde instellings te verhinder om hulle werksaamhede te kan verrig;
 - (d) valse of ongegronde inligting aan die Kommissie of die beregtingstribunaal voorlê ten einde 'n ondersoek ingestel te kry of so 'n ondersoek te dwarsboom, hinder of te belemmer, en wat tot nadeel van 'n ander persoon of politieke party of politieke belangegroep kan strek;
 - (e) weier of versuim om aan 'n bepaling van artikel 7(6) te voldoen,
- is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens tien jaar.

Besoldiging en toelaes

18. (1) (a) 'n Lid van die Kommissie of enige van die liggame bedoel in Hoofstukke 3, 4 en 5 van die Wet wat nie heeltyds in diens van die Staat is nie, is geregtig op die besoldiging en toelaes wat die Minister met die instemming van die Minister van Staatsbesteding bepaal, met inbegrip van vergoeding ten opsigte van reis- en verblyfoste deur hom by die verrigting van sy werksaamhede ingevolge hierdie Wet aangegaan.

- (b) 'n Lid van 'n paneel bedoel in artikel 16(4) van die Wet wat nie in die heeltydse diens van die Staat is nie, is geregtig op sodanige vergoeding ten opsigte van reis- en verblyfoste deur hom by die verrigting van sy werksaamhede ingevolge hierdie Wet aangegaan as wat die Minister met die instemming van die Minister van Staatsbesteding bepaal.

(2) Persone van wie se dienste ingevolge artikel 7(8) deur die Kommissie gebruik gemaak word en wat nie in die heeltydse diens van die Staat is nie, is geregtig op die besoldiging en toelaes wat die Minister met die instemming van die Minister van Staatsbesteding bepaal, met inbegrip van vergoeding ten opsigte van reis- en verblyfoste deur hom by die lewering van sy dienste aangegaan.

Finansies van Sekretariaat

19. (1) Die fondse van die Kommissie bestaan uit geld wat die Kommissie uit enige bron ontvang.

(2) Die Kommissie moet die geld bedoel in subartikel (1) aanwend om enige uitgawes in verband met die verrigting van sy werksaamhede te bestry, en kan daardie geld aanwend om roerende goed te koop of andersins te verkry.

(3) Alle gelde wat deur die Kommissie ingevolge subartikel (1) ontvang word, word in 'n rekening gestort wat geopen is by 'n bank wat ingevolge die Bankwet, 1990 (Wet No. 94 van 1990), geregistreer is.

(4) Die boekjaar van die Kommissie eindig op 31 Maart van elke jaar.

(5) Die Kommissie moet van al sy geldelike transaksies, bates en laste behoorlik boek laat hou.

(6) Die rekeningboeke, rekeningstate en finansiële jaarstate van die Kommissie word deur die Ouditeur-generaal geouditeer.

(7) Die Kommissie moet aan die Minister die inligting verstrek wat hy van tyd tot tyd in verband met die bedrywighede en geldelike stand van die Kommissie aanvra, en moet so gou doenlik na die einde van elke boekjaar 'n jaarverslag oor die Kommissie se sake en werksaamhede ten opsigte van daardie boekjaar aan die Minister voorlê, wat onder meer 'n geouditeerde balansstaat en inkomstestaat insluit.

(8) Die Minister lê bedoelde verslag binne 14 dae nadat hy dit ontvang het in die Parlement ter Tafel indien die Parlement dan in gewone sessie is, of, indien die Parlement nie aldan in gewone sessie is nie, binne 14 dae na die aanvang van sy eersvolgende gewone sessie.

Kort titel en inwerkingstelling

20. Hierdie Wet heet die Wet op Bevordering van Demokrasie, 1993, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die Staatskoerant bepaal.

BYLAE

GEDRAGSKODE VIR POLITIEKE PARTYE EN ORGANISASIES

1. Alle politieke partye en organisasies moet aktief bydra tot die skep van 'n klimaat van demokratiese verdraagsaamheid deur -
 - (a) in die openbaar en herhaardelik politieke geweld te veroordeel en deur by hulle ondersteuners 'n begrip vir die belangrikheid van demokratiese pluralisme en 'n kultuur van politieke verdraagsaamheid aan te moedig; en
 - (b) om positief op te tree, ook teenoor alle openbare owerhede, insluitend plaaslike en tradisionele owerhede, om die reg van alle politieke partye en organisasies op redelike vrye toegang tot hulle lede, ondersteuners en ander persone in plattelandse en stedelike gebiede te ondersteun, ongeag daarvan of hulle op openbare of privaat eiendom gehuisves word.
2. Geen politieke party of organisasie of enige amptenaar of verteenwoordiger van enige sodanige party mag -
 - (a) enige ander persoon doodmaak, beseer, geweld aandoen, intimideer of dreig ten aansien van daardie persoon se politieke oortuiging, woorde, geskrifte of dade nie;
 - (b) enige simbool of ander materiaal van enige ander politieke party of organisasie verwyder, ontsier, vernietig, naskryf of op enige wyse wanvoorstel nie;
 - (c) enige ander persoon of groep wat na of van enige byeenkoms vir politieke doeleindes reis, of wat beoog om so 'n samekoms by te woon, lastig val, verhinder of dreig nie;
 - (d) met geweld of dreiging van geweld poog om enige persoon te dwing om by enige party of organisasie aan te sluit, 'n vergadering by te woon, 'n bydrae te maak, uit enige pos of amp te bedank, 'n geleentheid of handelsaktiwiteit te boikot, sy of haar arbeid te weerhou of te versuim om 'n wettige verpligting na te kom nie; of
 - (e) enige amptenaar of verteenwoordiger van enige ander politieke party of organisasie se boodskap om enige groep mense te bereik of toe te spreek, verhinder of daarmee inmeng nie.
3. Alle politieke partye en organisasies moet die verpligting om hulle te weerhou van die aanhitsing van geweld of haat, respekteer en daaraan uitvoering gee. In die nastreef daarvan mag geen taal wat daarop gemik is om geweld of haat aan te hits, of wat dit waarskynlik kan aanhits, insluitend taal wat op 'n politieke party of persoonlikheid gemik is, en geen opsetlike valse aantygings, by enige politieke vergadering gebruik word nie, en voorts mag geen pamflette, plakkate of ander geskrewe materiaal wat sodanige taal bevat, saamgestel of versprei word nie, hetsy in die naam van enige party of anoniem.
4. Alle politieke partye en organisasies moet -
 - (a) verseker dat die gepaste owerhede behoorlik ingelig word ten aansien van die datum, plek, duur en, waar van toepassing, die roete van elke openbare vergadering, saamtrek, optog of ander gebeurtenis wat deur die party of organisasie gereël word;

- (b) plaaslike gevoelens en voorsienbare gevolge, asook enige ander vergaderings wat reeds vir dieselfde datum en naby die beplande geleentheid gereël mag wees, in ag neem, met dien verstande dat dit nie afbreuk doen aan die reg van enige politieke party of organisasie om sy politieke standpunte vryelik te stel nie; en
 - (c) dadelik en te alle tye doeltreffende kommunikasiëkanale tussen mekaar op nasionale, streek- en plaaslike vlak vestig en onderhou, deur te verseker dat korrekte name, adresse en kontaknommers van sleutelleiers op elke vlak uitgeruil word en deur op elke plek skakelpersone aan te stel om enige probleme wat mag ontstaan, te hanteer.
5. Alle politieke partye en organisasies moet volle bystand en samewerking aan die polisie verleen met die ondersoek van en die inhegtenis neem van betrokke individue.