

**EMBARGOED**  
**UNTIL DELIVERY/TABLING**  
**IN NEGOTIATING COUNCIL MEETING**

**FOURTH REPORT TO THE NEGOTIATING COUNCIL  
BY THE TECHNICAL COMMITTEE ON THE  
INDEPENDENT ELECTORAL COMMISSION**

**11 JUNE 1993**

1. Since the lodgment of its Third Report (3 June 1993), the Technical Committee has received further written submissions from the undermentioned delegations, viz:

- \* Democratic Party
- \* Inkatha Freedom Party
- \* KwaZulu Government
- \* Labour Party
- \* National People's Party
- \* South African Government

and

- \* IDASA

These submissions relate predominantly to issues which have already been mentioned by the Technical Committee as matters upon which divergent opinions have been expressed by the negotiating parties. Nonetheless, it is apparent that a broad measure of agreement already exists with reference to the principle and perspectives reflected in the Committee's initial draft Bill, although there are a number of suggestions with regard to amendments and additions to the original text directed to achieving clarification or emphasis, which do not appear to raise significant new issues.

Increasingly, the parties have expressed themselves with regard to matters of procedure and detail affecting, for example, the appointment of senior electoral officials, the formulation of ballot papers, the location of polling stations, preferred terminology, the identification of voters, and the envisaged public voter education program.



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These proposals indicate the need for some fairly extensive editing of the present draft, but the Committee does not consider it appropriate to embark upon a major redrafting process, until such time as the Negotiating Council has had the opportunity, in plenary session, to debate and consider this matter in order to assist the Committee in formulating provisions that are likely to enjoy broad acceptance.

2. In its Third Report, the Technical Committee has drawn attention to the need to clarify the ambit of its brief, in view of a divergence of opinions which have been expressed with regard to the timing and responsibility for drafting of a new Electoral Act.

After some initial prevarication, there now appears to be a near consensus that this Technical Committee should itself proceed with the consideration of a new Electoral Act as an integral part of its brief. The South African Government through its Department of Home Affairs, has forwarded the Technical Committee its proposal for a new Electoral Bill to be enacted in substitution for the existing Electoral Act, No 45 of 1979. Accordingly, the Technical Committee now requests confirmation from the Negotiating Council that it is to undertake the drafting of a new Electoral Act, either as a self-standing piece of legislation, or as an integral part of the legislation establishing the Independent Electoral Commission.

3. The Technical Committee has been requested by one of the delegations to give further attention to a number of specific issues, viz:
  - 3.1 The independence of the Commission, and whether this could be achieved by "any other techniques".
  - 3.2 The Commission's jurisdiction in regulating and adjudicating matters involving other organs of State.
  - 3.3 The Courts' power to review the decisions and regulations of the Commission.
  - 3.4 The form of proportional representation to be adopted in the forthcoming elections.
4. The Technical Committee has itself identified the selection procedure of Commissioners as an important part of the process which may require further consideration by the Council. In particular, the Committee may suggest that the selection of Commissioners be referred in the first instance to a quasi-judicial body with a mandate to interview proposed appointees and make recommendations thereon to the Negotiating Council.

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5. In conclusion, the Technical Committee records its intention to effect a number of textual and editorial changes to the text of its initial draft Bill tabled in the Negotiating Council on 21 May 1993. As indicated above, there are a number of textual amendments which have been suggested in representations received from the negotiating parties, with which the Technical Committee is in agreement. However, before proceeding with the preparation of such redraft, the Technical Committee awaits the Council's consideration of its initial draft Bill, and requests confirmation that it is to proceed with the consideration of a new Electoral Bill, which would include some provisions presently located within the Technical Committee's initial draft Bill, but which might be more appropriately located within a new Electoral Act.

On the assumption that this proposal may be acceptable to the Negotiating Council, the Technical Committee requests specific guidance with regard to those matters already itemised in paragraphs 3.2 to 3.10 of its Third Report (3 June 1993). These paragraphs relate to a number of matters of principle which should preferably be clarified by the Negotiating Council before the Technical Committee proceeds to draft a new version of its proposed Act which is likely to receive broad acceptance.

Prof D Davis  
Mr S K Ndlovu  
Mr R B Rosenthal

In the absence of:

Dr F Ginwala  
Adv H R Laubscher



- 9.1.3.1 the State President;
- 9.1.3.2 the Council;
- 9.1.3.3 Parliament; or
- 9.1.3.4 any registered political party or any 100 eligible voters,  
provided that no such Application by such party or such  
voters, shall be heard save with leave of the Chief Justice,  
who shall first be required to certify as to the existence  
of probable cause.

9.2 In considering any such Application, the Appellate Division shall find that such good and sufficient reason exists for the termination of the appointment of a member of the Commission only in the event of:

- 9.2.1 serious misconduct bearing upon a member's fitness for office;
- 9.2.2 unfitness or incapacity for office, including continued ill health;
- 9.2.3 a material breach of the preconditions and qualifications referred to in 7.3 above;
- 9.2.4 any other substantial reason which the court considers inconsistent with a member's continuance in office.

9.3 Any vacancy arising in consequence of the provisions of this section shall be dealt with in accordance with the procedures envisaged by clause 7.5.

## **10. Conditions of appointment**

Members of the Commission shall serve on a full-time basis, and shall receive such



remuneration, allowances and privileges as may be determined by the Council, with the concurrence of the Minister of Finance.

### **CHAPTER THREE**

#### **RECONSTITUTION OF COMMISSION**

#### **11. Reconstitution of the Commission**

11.1 Notwithstanding the provisions of Section 8, the Commission may be reconstituted at any time if required, in order to undertake the same or similar functions and responsibilities in respect of future national elections, as it has undertaken in respect of the Transitional Elections, in the event that Parliament is dissolved and new elections called in terms of the Constitution.

11.2 The nomination and appointment of members to the reconstituted Commission (including if it is deemed appropriate, persons seconded by Accredited International Organisations and/or Foreign Governments) shall be effected by the State President upon the advice of Parliament, acting in terms of a Resolution passed by the same majority as may be required in order to effect an amendment to the Constitution. If such Resolution is not supported by the required majority in Parliament, the nomination and appointment of the members of the reconstituted Commission shall be effected by the State President acting on the advice of a majority decision of a full bench of the Appellate Division, comprising the Chief Justice and not less than six (6) other Appeal Court judges.<sup>20</sup>

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The Technical Committee's concern is that an expeditious procedure is necessary in the event that Parliament is unable to establish the required majority. Alternative possibilities might include a decision by the Chief Justice acting on his own, or a panel of judges comprising possibly the Chief Justice and the Judge President of each of the Provisional or Regional Divisions of the Supreme Court.

- 11.3 In the event of a vacancy arising on the reconstituted Commission, the provisions of Section 7.4 shall mutatis mutandis apply, but the reference to the Forum or the Council thereunder, shall be deemed to be a reference to the full bench of the Appellate Division constituted in the manner as aforesaid.

#### **CHAPTER 4**

#### **PROCEDURE AND ADMINISTRATION**

#### **12. Procedural Matters**

- 12.1 The Commission may determine its own procedures, and shall hold meetings at such intervals as circumstances may require. Meetings may be convened at the instance of the Chairperson or Vice-Chairperson, or at the instance of any two (2) other members of the Commission.
- 12.2 The quorum for any meeting of the Commission shall be seven (7) members, save in respect of the Commission's adjudication of the final result and acceptability of the Transitional Elections and any by-elections, in respect of which the necessary quorum shall include all members of the Commission.
- 12.3 Subject to the special quorum and majority requirements stipulated in respect of the Commission's adjudication of the result and acceptability of the Transitional Elections, all decisions of the Commission shall be by simple majority. In the event of an equality of votes, the Chairperson (or in his/her absence, the Vice-Chairperson, or acting Chairperson) shall have a casting vote.
- 12.4 The Commission may appoint such sub-committees, whether as standing sub-committees or otherwise, as it may consider necessary for the effective execution of its functions, provided that the Commission shall retain the power to rescind or vary and amend decisions taken by any such sub-



committee.

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

### **13. Accountability and Finance**

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

13.5 The Estimates and Accounts of the Commission shall be subject to audit by the Auditor-General who shall report thereon to the Council and to Parliament.

**14. Guarantee by State**

The State guarantees, where required, all commitments and liabilities of the Commission.

**15. Administration**

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

- 15.1 Appoint staff, fix remuneration and determine such emoluments and benefits as it may deem reasonable and appropriate.
- 15.2 Purchase, hire or otherwise acquire movable or immovable property necessary for the performance of its functions.
- 15.3 Enter into agreements with any person, including the State, for the performance on its behalf of any specific act or function or the rendering of any specific service.
- 15.4 Insure itself and its members, staff, visitors and the public against loss, damage, risk or liability which may be suffered or incurred.
- 15.5 Open and operate bank accounts with the Reserve Bank or any other registered financial institution.
- 15.6 In general, perform such acts as may be necessary or expedient for the achievement of its objects.



## **16. Powers, duties and functions of the Commission**

16.1 The Commission shall be charged with responsibility for the organisation, conduct and supervision of the Transitional Elections, and shall be vested with all such powers, discretions and authorities as may be necessary to enable it effectively to undertake such responsibility.

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

Such functional sub-structures shall include<sup>21</sup> :

16.2.1 An Election Administration Directorate, which shall have the responsibilities referred to in 17;

16.2.2 An Election Monitoring Directorate, which shall have the responsibilities referred to in 18;

16.2.3 An Election Adjudication Directorate, which shall have the responsibilities referred to in 19.

16.3 In establishing such functional sub-structures, the Commission shall be entitled to make provision for the co-option and assistance of legal experts and other suitably qualified persons including persons who may be nominated for this purpose by one or more of the Accredited International Organisations.

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<sup>21</sup>

The Democratic Party proposes a further structure responsible for the issuing of voter documentation.

- 16.4 Each such Directorate shall operate independently of the others, but shall be accountable and subject to the overall management and control of the Commission, which notwithstanding such delegation, shall retain the power to issue final directives and to rescind or vary and amend any decision taken by such functional sub-structures.

## **CHAPTER FIVE**

### **THE ELECTION ADMINISTRATION DIRECTORATE**

#### **17. Responsibilities of the Election Administration Directorate**

The Election Administration Directorate<sup>22</sup> constituted in terms of 16.2.1 shall have the following functional responsibilities, viz:-

- 17.1<sup>23</sup> The education of the voter public<sup>24</sup> concerning democratic principles and values, and the electoral process; including free and peaceful political campaigning; the secrecy of voting and other relevant matters, utilising such means and media as it may deem appropriate, including the distribution and publication of literature, advertisements, and otherwise through radio, television and public print media.

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<sup>22</sup> The South African Government proposes the appointment of a Chief Electoral Officer and Secretariat, charged with the administration and conduct of the elections. Alternatively, it proposes that the Commission itself should administer these matters through a sub-Council.

<sup>23</sup> The Democratic Party suggest that the first task of the Commission should be to draft a new Electoral Act, although it also urges that "most electoral rules should be determined in the Act".

<sup>24</sup> A submission from the Gender Advisory Committee recommends that special attention be given to encouraging the full participation of women in the elections.



- 17.2 Procedures for determining the eligibility<sup>25</sup> and identification<sup>26</sup> of voters<sup>27</sup>.
- 17.3 The determination of whether voter lists shall be prepared, and if so, the supervision of the process of preparing such lists; and determining polling districts and electoral divisions, as it may deem necessary.
- 17.4 The registration of political parties and candidates entitled to participate in the Transitional Elections and the preconditions and formalities<sup>28</sup> applicable to such registration.
- 17.5 Provision for the application, registration and approval of proposed names for Political Parties and their respective logos, symbols, and campaign colours.

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<sup>25</sup> The criteria for eligibility are substantive issues which need to be specified in the legislation. What is envisaged by this clause are merely procedural issues.

<sup>26</sup> The ANC's submission contains detailed suggestions concerning the important issue of how voters may be identified. (See paragraphs 4.4.6; 7 & 14 of their submission). If the Technical Committee is required to formulate proposals with respect to identification of voters, it will need to give that matter further consideration and if necessary obtain expert advice.

<sup>27</sup> The Democratic Party suggests that the Commission should also take a pro-active role in voter registration and the issuing of the necessary ID documentation, possible in conjunction with its own voter education programme.

<sup>28</sup> The issue of criteria and procedure for registration of Political Parties is an important matter. The ANC in its submission (clause 9) makes detailed suggestions with reference to the preconditions and formalities to be satisfied before registration of a Political Party may be granted. The Technical Committee has not had a sufficient opportunity to consider in detail the prerequisites that are appropriate. The Democratic Party has suggested a requirement of deposits, which would be forfeited, together with other financial electoral assistance, by any party which received less than one percent (1%) of the national vote.

- 17.6 The enforcement against all registered political parties, candidates and others, of the Electoral Code of Conduct set out in Schedule A<sup>29</sup>, to this Act, including the application of appropriate penalties for violations as prescribed therein. (Such penalties to include inter alia, at the discretion of the Commission, the suspension or forfeiture of rights to election privileges, such as access to television, radio and the rights to media advertising and such financial assistance as may be available to registered political parties and candidates).
- 17.7 The election and appointment of returning officers, polling and counting officers and other necessary electoral personnel, who may not be persons who hold or have held any Political Office during a period of three (3) years preceding the date of their appointment.<sup>30</sup>
- 17.8 The identification of polling stations and the determination of times<sup>31</sup>

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<sup>29</sup> The Technical Committee has received three suggested Codes from the SA Government, the ANC and the DP respectively, but has not yet had time to apply its mind adequately to the formulation of such Code. It does, however, support the proposition that the content of such Code and the penalties or consequences for infringements should be defined by the Statute.

An issue to be determined is whether the jurisdiction of the Commission and its Adjudication Tribunal should be limited to acts and omissions committed by Political Parties and Candidates, or whether it should also be in a position to take steps against other individuals and organisations who may have not themselves subscribed the Electoral Code of Conduct.

In the submission of the SA Government, a provision is proposed which would deem an offence committed by an official or representative of a Political Party to be the offence of that party unless the contrary is proved, and in appropriate circumstances the Political Party can be declared "unlawful" and precluded from participating in this and future elections for a period of up to five (5) years.

<sup>30</sup> In the ANC submission, it is suggested that membership of a Political Party should also be a disqualification.

<sup>31</sup> In the ANC's submission it is proposed that voting should take place over a period of three (3) days.



and places<sup>32</sup> for voting, including the stipulation of places where particular voters shall be permitted to cast their votes.

- 17.9 The conditions and formalities applicable to Special and Postal Votes.<sup>33</sup>
- 17.10 The form and content of ballot papers.<sup>34</sup>
- 17.11 Arrangements for ensuring the secrecy and security of the ballot and the protection of ballot papers and of voters.<sup>35</sup>
- 17.12 Arrangements for the counting of votes and the determination of results.
- 17.13 Circumstances in which ballot papers may be rejected.
- 17.14 The determination of legitimate electioneering expenses and the permitted source and application of political campaign funds.

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<sup>32</sup> In the ANC's submission (clause 13) it is suggested that a voter should be permitted to vote "in the region in which he or she resides or works". The Democratic Party suggests the opposite, namely, that forcing voters to vote within their areas of residence could create conditions susceptible to intimidation.

<sup>33</sup> Without repeating the provisions of the Electoral Act, it is assumed that the same or similar provisions shall be made applicable to this election.

<sup>34</sup> In the ANC's submission (clause 15) it is specified that the ballot form should be single-columned and in alphabetical order.

<sup>35</sup> The Democratic Party advocates an indelible mark on voters' hands to prevent repeated voting, and proposes various measures to be adopted at polling stations in order to prevent intimidation of voters.

- 17.15 The obligation to disclose as a matter of public record the receipt and the source of any contribution to election campaign expenses in excess of R1,000.00.<sup>36</sup>
- 17.16 The promulgation of appropriate regulations governing political advertising to be determined in consultation with the Independent Media Commission.<sup>37</sup>

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<sup>36</sup> In the ANC's submission it is proposed that this obligation should relate to contributions in excess of R10,000.00. The IFP/KwaZulu Government submission supports the principle of disclosure. The Democratic Party raises the possibility of placing limits on campaign funding "to keep the playing field level."

<sup>37</sup> The relative terrain and authority of this Commission in relation to matters falling within the jurisdiction of the proposed Media Commission needs to be clarified. One possibility would be that the decisions of the Media Commission with reference to matters involving issues arising from the election should be subject to appeal to this Commission.

The PAC has drawn attention to the inter-dependence of the Electoral Commission, the Media Commission and the Council.

The Democratic Party advocates equal air time on radio and TV for all participating political parties.



- 17.17 The application by reference and notice of any of the provisions of the Electoral Act No. 45 of 1979, as amended, or any other legislation which may have reference to the Transitional Elections and the electoral process.<sup>38</sup>

## **CHAPTER SIX**

### **ELECTION MONITORING DIRECTORATE**

#### **18. Responsibilities of the Election Monitoring Directorate**

The Election Monitoring Directorate<sup>39</sup> constituted in terms of 16.2.2 shall have the following functional responsibilities<sup>40</sup> viz:

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<sup>38</sup> An issue to be resolved is precisely the ambit of jurisdiction of the Election Commission with reference to other laws, and in particular the Electoral Act. In the ANC's submission (4.4.7) the Commission is to be given unqualified powers to amend by regulation any existing law which in its opinion restricts free political activity or access to voters. In the South African Government's submission [7(4)(a)] the Commission is to review existing electoral legislation and make recommendations with regard to the need for amendment.

The ANC's submission (4.4.9) also proposes that the Commission should have authority to give directions with reference to matters affecting the election to any government authority including the police and defence force.

The Democratic Party envisages that the Commission might utilise the services of Government Departments 'on an agency basis'. The Democratic Party also suggests a new Electoral Act to be drafted by the Commission.

<sup>39</sup> The South African Government proposes 'a Monitoring Committee' comprising three (3) expert and impartial persons.

<sup>40</sup> In the alternative proposal of the South African Government, it is suggested that the monitoring function be transferred to the National Peace Secretariat (clause 13). Whilst advocating an independent Monitoring Body, the Democratic Party suggests that functioning Peace Committees should also be used to 'ensure' and 'monitor' security.

- 18.1 The appointment of local and international observers, scrutineers and election support staff.
- 18.2 The establishment of investigative facilities and review procedures, which shall include the right to issue and execute search warrants, subpoenas, and to seize any items as evidence of alleged infringements of the Electoral Code of Conduct.
- 18.3 The establishment on a country-wide basis of facilities to observe, monitor and verify the process of the elections, before, during and after polling.
- 18.4 Recommendations for preventing the intimidation of voters, candidates and political parties.
- 18.5 The investigation and prosecution before the Commission, where appropriate, of any infringement of the Electoral Code of Conduct.
- 18.6 The issuance of Notices of Infringement and Warnings concerning alleged or threatened breaches of the Electoral Code of Conduct.

## **CHAPTER SEVEN**

### **THE ELECTION ADJUDICATION DIRECTORATE**

#### **19. Responsibilities of the Election Adjudication Directorate**

The Election Adjudication Directorate<sup>41</sup> constituted in terms of 16.2.3 shall have the following functional responsibilities viz:

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<sup>41</sup> The DP proposes that this Directorate should be chaired by a Judge. The SA Government suggests that it should comprise five (5) persons who have held judicial office or who have practised law or been academic lawyers for at least ten (10) years.



- 19.1 To serve as the final arbiter<sup>42</sup> of claims, issues and disputes (subject to a right of appeal to the Commission) as may be submitted concerning any matters affecting the campaign, conduct and results of the Transitional Elections; provided that the Directorate may decline to consider any such claims or disputes as may not have been formally notified to the Commission in the prescribed manner, within a period of 21 days of the alleged occurrence.
- 19.2 To establish and determine the powers and procedures of appropriate special tribunals for the speedy investigation and adjudication of complaints concerning alleged electoral irregularities, including any refusal or attempt to impede access to venues, voters, and political meetings, corrupt practices, intimidation or other breaches of the Electoral Code of Conduct; provided that an appeal shall lie to the Commission in respect of decisions made by any such special tribunals.

## **CHAPTER EIGHT**

### **ADJUDICATION OF ELECTION RESULTS**

#### **20. Adjudication of Election Results**

- 20.1 Upon completion of the ballot, the Commission shall be required within a period of 21 days to determine and certify the final results of the Transitional Elections, and to declare whether, and if so then to what extent, such elections have been conducted in a manner which has been substantially free and fair<sup>43</sup>. In effecting such determination, the

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<sup>42</sup> In the submission of the SA Government (clause 8) the right of the Courts to co-existent jurisdiction is reserved. This would appear to create the possibility of a conflict of authority.

<sup>43</sup> The Democratic Party suggests a dual certification process involving firstly the Commission (which in their proposal comprises only South African citizens) and secondly international monitors.

Commission may accept or reject the result of the poll as a whole, or it may accept such result in part and reject such result in part.

- 20.2 The acceptance and certification of the results of the elections, as substantially free and fair, shall not be of force and effect unless a majority of at least eight (8) members of the Commission shall have concurred in such finding.<sup>44</sup>
- 20.3 In the event of such results, or any part thereof, being not accepted and certified as aforesaid, the Commission shall determine and cause to be implemented such steps (including the organisation, conduct and supervision of new elections) as it may deem appropriate, in order to achieve a free and fair election.<sup>45</sup>
- 20.4 Notwithstanding the foregoing, the Transitional Elections shall not be set aside by reason of any untoward occurrence, mistake, or non-compliance with the provisions of the Act or the Electoral Code of Conduct, if it appears to the Commission, that the elections were conducted substantially in accordance with the prescribed principles, and that such mistake or non-compliance did not materially affect the outcome thereof.

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<sup>44</sup> In the submission, it is implicit that a simple majority of the members of the Commission would suffice.

<sup>45</sup> None of the submissions contains a very clear proposal regarding the consequences in the event of the election being not certified as free and fair.



**CHAPTER NINE**  
**MISCELLANEOUS PROVISIONS**

**21. Jurisdiction**

There shall be no appeal from any decision by the Commission but its proceedings shall be subject to review before any Provincial Division of the Supreme Court, or, with the leave of the Chief Justice, direct to the Appellate Division.<sup>46</sup>

**22. Successors to the Forum**

In this Act, where any rights or prerogatives are conferred upon the Forum, such rights or prerogatives shall be assumed by the Council from the date of its establishment in terms of the relevant Statute. Upon dissolution of the Council, such rights and prerogatives shall be assumed by Parliament.

**23. Delegation**

Save in respect of its duty to adjudicate the Election results in terms of 20, the Commission may delegate any power or duty conferred upon it in terms of this Act to any person or other body, or authorise such person or other body, including the State, to perform any duties assigned to it hereunder.

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In the ANC's submission, the Commission is to have 'exclusive jurisdiction' to apply and interpret this law. Its decisions are to be final.

**24. Offences relating to voting procedures, polling stations and voting equipment**

24.1 Any person who<sup>47</sup> :

- 24.1.1 forges or counterfeits or fraudulently destroys any ballot paper or a mark, stamp or note on any ballot paper; or
- 24.1.2 deliberately without due authority supplies any ballot paper to any person; or
- 24.1.3 fraudulently places into any ballot box any paper other than a ballot paper handed to him in terms of this Act; or
- 24.1.4 fraudulently takes out of any polling station any ballot paper; or
- 24.1.5 deliberately without due authority destroys, opens, uses or otherwise interferes with any ballot box, voting compartments, instrument, form, document or other equipment used or intended for use at any polling station;

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

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

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A few additional offences are envisaged in the South African Government's submission, including a statutory offence committed by 'any person who 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' ...



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

## **25. Personation**

Any person who :

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

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

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

## **26. Undue influence and bribery**

Any person who, directly or indirectly, by himself or by any other person :

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

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

Elections; or

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

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

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

## **27. Obstructing proceedings and officers**

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

## **28. Infringement of Security**

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



tion likely to threaten the secrecy of the voting.

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

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

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

## **29. Prohibition of opinion polls during the Transitional Elections**

29.1 No person shall, during a period of six (6) weeks<sup>48</sup> prior to the date of commencement of the Transitional Elections, conduct an opinion poll in respect of the support enjoyed by Political Parties or candidates, or by the policies they advocate, or publish the results of any such opinion poll conducted during such period.

29.2 The provisions of the preceding sub-section shall not prohibit the obtaining of opinions in the course of canvassing for votes on behalf of Political Parties or candidates or the publishing of the result of such obtaining of opinions.

29.3 Any person who contravenes any provision of 29.1 shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000,00 or to imprisonment for a period not exceeding three (3) years, or to both such

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In the ANC's submission it is proposed that this period should be two (2) weeks. (In the Electoral Act, the effective period is plus-minus six (6) weeks).

The Democratic Party also raises the possibility of regulations controlling mass rallies and marches during the last two weeks before the election.



fine and such imprisonment.

**30. Voter not required in legal proceedings to disclose vote**

No-one who voted in the Transitional Elections shall be required in any legal proceedings to state how they voted.

**31. Exemption from duties, taxes and fees**

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

**32. Regulations**

The Commission shall be empowered to make regulations providing for such matters as are specifically, or by necessary inference, contemplated, and generally for achieving the objects and purposes of this Act. Such regulations may prescribe penalties for the contravention or failure to comply therewith. The Commission may likewise prescribe the form and content of any document or form which may be required for the carrying out of the provisions of this Act.

**33. Application of the Act to a Referendum**

Upon the advice of the Forum, the Council or Parliament, the State President may by Proclamation in the Gazette declare that the provisions of this Act shall apply to the holding of a Referendum; and in such circumstances may require that the Commission utilise the powers and discretions conferred upon it hereunder, for the purpose of organising and conducting an appropriate Referendum, either nationally or within any particular region/s and on any specified issue/s.

**34. Short title**

This Act shall be called "The Independent Electoral Commission Act, 1993".