

## ELECTORAL ACT

To provide for the arrangements relating to the administration and conducting of the first democratic and non-racial elections in the Republic; the voter eligibility of persons; the registration of political parties; the determination of the poll and the announcement of the result thereof; offences; and to provide for matters incidental thereto.

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;

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

"the Constitution" means the Constitution of the Republic, regardless of its duration, which shall be negotiated, drawn up and adopted at the multi-party negotiation process and under which the elections shall be held;

"district" means a portion, determined by the Election Commission, of the territory of a region;

"election(s)" means the first democratic and non-racial elections in the Republic for seats in Parliament/Constituent Assembly/SPR Governments, through a system of proportional representation.

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

"Electoral Commission" means the <sup>Independent</sup> Electoral Commission constituted in terms of the Independent Electoral Commission Act;

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

"identity document" means an identity document, a temporary identity document or voter card, 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;

"region" means a portion of the territory of South Africa determined by the Delimitation Commission in terms of the Constitution Act;

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

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

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

"voting station" means the voting station referred to in section 24.

**CHAPTER 2**  
**ADMINISTRATION**

**Application of Act**

2. This Act shall apply to the process of elections and shall be made applicable by the State President by Proclamation in the Gazette.

**Chief electoral officer**

3. The chief electoral officer shall be appointed by the Electoral Commission and shall perform such functions and duties as may be assigned to him by the said Electoral Commission under this Act.

**Electoral officer**

4. The Election Commission, after consultation with the chief electoral officer shall appoint an electoral officer in whatsoever geographical area the Commission, in its sole discretion, considers is necessary for the effective administration of the election.

**Powers and duties of electoral officers and returning officers**

5. Electoral officers and returning officers shall exercise the powers and perform the functions and duties as shall be assigned to them under this Act.

**Presiding officers, polling officers and counting officers**

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

**General directives**

7. Subject to the approval of the Commission, the chief electoral officer may issue directives concerning -

- (a) the general administrative arrangements to be made by the electoral officers and presiding officers in respect of the election;
- (b) the establishment of polling stations;
- (c) the safe-keeping of ballot papers during an election;
- (d) the sealing of ballot boxes and other election material by presiding officers;
- (e) the sealing and safe-keeping of counted ballot papers, counterfoils of ballot papers and other election material by electoral officers;
- (f) the way in which ballot papers shall be controlled during the counting thereof;
- (g) 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

**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 district and shall, in writing in not less than three days before the first polling day of the election concerned, advise the election officer of the district concerned 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, resigns or becomes incapacitated, the registered party shall inform the electoral officer concerned in writing of such revocation, death, resignation or incapacity. Provided that the registered party may fill the vacancy thus created by appointing any other person as election agent and, if so, 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 such number of voting agents and in such manner as the electoral officer may allow and prescribe for purposes of monitoring the voting at a voting station and to perform such functions as are assigned to voting agents under this Act.

#### **Declaration of secrecy**

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

#### **Conditions of appointment and substitution of officers and personnel**

11. The Chief Electoral Officer shall, subject to the approval of the Electoral Commission, issue directives regarding the conditions of appointment of any class of officers and personnel to be appointed under this Chapter, including the circumstances under, and the manner in, which such officers and personnel may be substituted.

## 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), a prescribed temporary identity document or prescribed voter card, 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 voting day of the election concerned imprisoned after having been convicted of an offence by a court of law;
  - (b) is not in possession of an identity document, a prescribed temporary identity document or prescribed a voter card (the issue as to whether there should be identification at the voting stations so that b is deleted is left for Committee discussion); or
  - (c) commits an offence referred to in sections 47, 48, 49 of this Act in relation to the election concerned.

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<sup>1</sup>

We need to discuss the question of entitlement to vote. It might be that this has to be determined by the Constitutional Committee but we have postponed our decision in relation thereto pending this Act and I leave it open for further discussion.

## CHAPTER 4

## REGISTRATION OF POLITICAL PARTIES

**Registration of political party**

14. No party, organization, association or institution shall be entitled to contest the elections unless such party, organisation, association or institution is duly registered as a political party in accordance with, and subject to, the provisions of section 15.

**Application for registration**

15. (1) An application for the registration of a political party shall in the prescribed form be submitted to the Chief Electoral Officer within 30 days after the promulgation in the Government Gazette of the date of an election in terms of section 20 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 -

- (a) 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;
- (b) the distinguishing mark or symbol of the political party;
- (c) a photograph of the leader of the political party;
- (d) the abbreviation of the name of the political party, if any, consisting of not more than 5 letters;
- (e) the deed of foundation of the party, if any; and
- (f) 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 commits and subjects 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, upon such new registration -

- (a) the registration, if any, shall lapse of any one or more of the political parties so amalgamated, which was previously effected in terms of this section;
  - (b) the registration fees paid in respect of any such previous registration shall not be refundable;
  - (c) no registration fee as required by subsection (2) shall be payable in respect of the subsequent registration;
- and
- (d) 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 war or of peace;
- (ii) not resemble the distinguishing mark or symbol, as the case may be, of any other political party to such extent that it may, in the opinion of the Electoral Commission, mislead or confuse a registered voter;

or

- (iii) in the opinion of the Electoral Commission be obscene, offensive or blasphemous;
- (b) The provisions of subsection 5(a)(ii) shall apply *mutatis mutandis* in respect of an abbreviated name referred to in subsection (3)(c).
- (c) If the Electoral Commission is of the opinion that the distinguishing mark or symbol referred to in subsection (3)(b) or the abbreviated name referred to in subsection (3)(c) of a political party corresponds with, or substantially resembles, the distinguishing mark or symbol, or abbreviated name, as the case may be, of another political party, it -
  - (i) shall take into account the fact that the political party which is traditionally associated with the distinguishing mark or symbol, or abbreviated name, as the case may be, should *prima facie* be entitled to it;
  - (ii) may, for the purposes of subparagraph (i) -
    - (aa) grant the political party concerned an opportunity to deliver such proof, including oral evidence and/or sworn statements by any person, which, in the opinion of the chief electoral officer, could be of assistance in the expeditious conclusion of the matter; and
    - (bb) administer an oath or affirmation to any person appearing to testify 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 submit each application submitted to him to the Electoral Commission so that it may determine whether it complies with the provisions of the section and if it finds that any application does not comply with such it shall return it to the political party with a written indication of the reasons for its 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 in the first place, until such time as it has been resubmitted.

(8) If the Electoral Commission is of the opinion that the application of a political party submitted complies with the provisions of the section it shall instruct the chief electoral officer to 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 not exceeding R..... or to imprisonment for a period not exceeding ..... 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 -

(a) the full name and business address of that political party;  
and

(b) the official address, if not the same as the business address referred in paragraph (i), at which the original application and supporting documents will be available for public inspection and lodging of written objections, if any, in terms of section 17.

**Political Parties to submit lists of candidates after registration as political parties**

17. (1) No political party which intends to participate in a particular election shall be entitled to submit a list of its candidates in terms of section 21, unless the registration of such party as a political party in terms of this Chapter has been finalized.

(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**

18. (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 inspect 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**

19. (1) The State President, upon advice from the Negotiating Forum or its successor, shall by proclamation in the Gazette determine the voting days of an election as well as the hours in which the voting 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.

**Submission of lists of candidates to chief electoral officer**

20. (1) A political party may participate in the election for seats in Parliament/Constituent Assembly and/or SPR Governments by submitting, on the prescribed form, to the chief electoral officer a list of candidates for each of the legislative bodies in which such party wishes to be represented, not later than 35 days after the date of publication of the Proclamation referred to in section 20(1), together with a deposit of R50000,00 for representation in Parliament/Constituent Assembly and R20000,00 for representation in each SPR Government.

(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 list has accepted his nomination as a candidate of the party submitting the list and that he, in terms of the Constitution, is a qualified person to serve as a member of Parliament/Constituent Assembly or SPR Governments.

(5) No documents shall be received as aforesaid after 11h00 on the date referred to in subsection (1).

(6) A list shall not contain more names of prospective representatives than the total number of respective seats available for election for Parliament/Constituent Assembly or SPR Governments.

(7) The 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 appears on both lists as contemplated in subsection (7), and is, theoretically, 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/Constituent Assembly or SPR Government, as the case may be, in which of the bodies the representative shall serve.

(9) If a candidate's name appears on the list of more than one political party, the chief electoral officer shall request such candidate in writing to indicate the political party he wishes to represent. Provided that 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**

21. (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, and that they have accepted their nominations of candidature as such.

(2) If any person whose name appears on a list of candidates in a notice published in terms of subsection (1), dies, is disqualified, or withdraws his candidature before the election, the chief electoral officer may amend such notice by a 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

**Voting stations**

22. (1) For the purpose of conveniently taking a poll in any district, there shall be as many voting 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) There shall be no voting station located at a military base, a police station or at the headquarters of any tribal authority.

(3) An area within the radius of not less than 300 metres around the voting station shall be deemed as being part of the voting station, unless practical circumstances necessitate a lesser area.

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

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

(6) A mobile voting 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 voting station in that district.

(7) The electoral officer may, as he deems fit and practicable, make known the places and times at which a mobile voting station shall visit during the voting period.

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

**Supplying of election material and equipment**

23. (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**

24. (1) The Electoral Commission, after consultation with the chief electoral officer, shall determine the nature and style of the voting compartment which it deems suitable to enable a voter to mark his or her vote in secrecy.

(2) For the purposes of this Act the expression "voting compartment" shall include any part of a voting 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**

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

(a) satisfy himself that all ballot boxes to be used at such voting

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 voting 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 voting period to make use of an additional ballot box at any voting station, such additional ballot box shall be made available for inspection, closed and sealed *mutatis mutandis* in accordance with the provisions of subsection (1), before being made available for the depositing of ballot papers.

(3) 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 voting station shall -

- (a) at the closing of the poll on each voting day, close and seal all ballot boxes used at the voting 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 voting day.

(5) All sealed ballot boxes used in or at a voting station shall be placed in a position where they can be seen at all times during voting hours at that voting 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 voting 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 voting station who wishes to attach his seal to the ballot box.

#### **Ballot paper**

26. (1) Every ballot paper shall be in the form set out in Schedule 2, and there shall be printed on every ballot paper in the manner prescribed by the Electoral Commission, 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, the abbreviation of the name of that party together with a photograph of the leader of such party.

(2) The ballot paper shall be in such languages as the Electoral Commission, in its discretion, shall determine.

#### **Commencement and closing of poll at polling stations**

27. 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 is taking place, to record his vote.

#### **Powers of presiding officers at voting stations**

28. (1) The presiding officer and other officers at a voting 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 voting officers and any polling agent entitled in terms of section 9 to attend at a voting 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 or a voting officer designated by him may, on good cause, order any person, excluding the persons referred to in subsection (1) and any person recording his vote, to leave the voting station.
- (b) Any person who fails to leave the voting 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 may, after consultation with the police officials or responsible officers appointed by the Transitional Executive Council on duty, if any, take any steps that he deems necessary for the protection of himself, other officials or property, or for stopping or preventing any violence or disturbance in or in the vicinity of the voting 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**

29. 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**

30. A voter shall be entitled to record one vote for one registered party only at each election for the Parliament/Constituent Assembly and/or SPR Government.

**Voting to be in secret**

31. (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 not exceeding ..... or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

**Identification**

32. No voter shall be permitted to vote unless he or she has produced to the presiding officer or voting officer an identity document or prescribed voter's card.

**Manner of voting**

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

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

(a) by examining the identity document or voter's card 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 voting officer shall require the voter, and the voter when so required, shall allow his fingers and his identity document to be examined by the presiding officer or such voting officer, and if upon examination none 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 an opportunity to every polling agent who is present to observe such identification mark, and shall thereupon 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 voting 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 voting officer, except as provided in subsection (3)(d).

(5) (a) 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 by the presiding officer or a voting officer designated by him to leave the voting station forthwith.

(b) The provisions of section 29(2) shall apply *mutatis mutandis* in respect of a person who has been ordered to leave the voting station in terms of paragraph (a) of this subsection.

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

- (a) tear out a ballot paper from the ballot paper book and mark that ballot paper on the back with the official mark;
- (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) display the ballot paper at the ballot box in such manner that the presiding officer or a voting officer designated by him may recognize the official mark; and
- (d) 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 does something wrong thereon by mistake which could lead to the rejection of such ballot paper, he shall return it to the presiding officer, and the presiding officer shall, if he is convinced that indeed it happened inadvertently, give the voter another ballot paper, whereupon the spoiled ballot paper shall immediately be cancelled and kept separately.

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

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

(2) At request in person by a voter who is incapacitated by blindness or other physical disability from voting in the manner prescribed by the other provisions of this Act, who did not apply that his vote be marked by the presiding officer or polling officer in terms of subsection (1) and who is

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<sup>2</sup> This is a fairly detailed section. It might well be that we should allow the Electoral Commission in its sole discretion to decide this matter.



accompanied by another person, the presiding officer or polling officer shall, if he is convinced that that person is himself 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**

35. 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 any of the following grounds -

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

#### **Tendered ballot papers**

36. (1) A voter shall be required

- (a) to record a tendered ballot if he or she cannot produce an identity document or a voter's registration card;
- (b) Any presiding officer or voting officer is satisfied taking into account any objection made by any agent that
  - (i) that the registration card or identity document produced by the voter has not been officially issued under this Act or any other applicable Act; or
  - (ii) the voter is not the person whose name appears on the registration card or identity document produced by the voter.

(2) A voter required to recall a tendered ballot shall vote in the same manner and subject to the same requirements as any other voter except that

(a) the presiding officer or voting officer shall make a record in the approved form of the voter's particulars on which record the voter shall place his or her signature or prescribed mark;

(b) the ballot paper (hereinafter referred to as a "tendered ballot paper") shall be sealed in a plain envelope;

(c) that envelope shall be placed in an envelope marked "tendered ballot paper envelope" (hereinafter referred to as the "tendered ballot paper envelope") on which the presiding officer or voting officer shall write the name of the region for which the voter claims to be registered; and

(d) the tendered ballot paper envelope shall be handed to the presiding officer or voting officer who shall

- (i) place it in a tendered ballot record;
- (ii) seal the envelope; and
- (iii) place the envelope in the ballot box.

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

37. (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 regional 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 or her.

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

38. The regional electoral officer shall determine the place, day and time where the result of the poll shall be determined, and shall forthwith notify every election agent in writing of such determination.

CHAPTER 8  
ALLOCATION OF SEATS TO REGIONS<sup>3</sup>

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<sup>3</sup>

In some electoral acts if there is a regional component in the determination of the number of seats in the constituent assembly to be filled in each province special provisions have to be made therein. I have not drafted these because I do not know if this will not form part of the constitution. I will just leave it therefore as a chapter heading.

## CHAPTER 8

DETERMINATION OF RESULT OF THE POLL AND  
ANNOUNCEMENT OF RESULT OF THE ELECTION 4

39. The chief electoral officer, upon advice by the Electoral Commission, shall inform each registered political party of any place (including the places in all the regions) where the result of the poll or any part thereof will be determined and a day upon which and the time upon which the determination is to be commenced.

**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 immediately in the prescribed manner.

**Counting of votes**

41. (1) After the provisions of section 39 and 40 have been complied with the regional electoral officer shall

(a) sort the ballot papers with regard to the provisions of subsection 3 and 4 on the basis of the registered political parties in respect of individual votes recorded; and

(b) count the votes recorded in respect of each registered political party.

(2) When, in terms of subsection 1, all the votes in respect of all the voting stations in the region have been counted and the number of votes recorded for a registered political party has been determined in the region concerned, the regional electoral officer shall, as soon as practicable, and in accordance with instructions of the chief electoral officer, inform the chief electoral officer of the number of votes so determined to have been recorded in that region for each registered political party.

(3) The regional electoral officer shall reject and not count any ballot paper

(a) which records votes for more than one registered party; or  
 (b) in respect of which he or she has reasonable grounds to believe that it has not been officially issued to a voter in terms of section 34;  
 (c) which is unmarked or on which it is impossible to determine with certainty for which registered political party the ballot is cast; or  
 (d) which contains a mark or statement made by the voter which tends to identify the voter.

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

(5) The rejection or acceptance of any ballot paper by the regional electoral officer for the provisions of this article shall be subject to appeal to the chief electoral officer and to final appeal to the Electoral Commission.

(6) The regional electoral officer shall endorse the word "rejected" on any ballot paper rejected in terms of subsection 5.

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

- (a) all counted ballot papers;
- (b) all rejected ballot papers; and
- (c) unused or spoilt ballot papers with their counterfoils

and shall seal such packets and cause them to be delivered to the chief electoral officer.

(8) On receipt of the packets referred to in subsection 7 the chief electoral officer shall take charge of them, examine whether the seal is in order and give any agents of registered political parties who are present an opportunity to do the same and shall thereafter open all the packets.

(9) The chief electoral officer shall verify each presiding officer's tendered ballot paper account by comparing it with the contents of the packets.

(10) When the preceding provisions of this section have been complied with the chief electoral officer shall cause the tendered ballot paper envelopes to be replaced in the packet from which they were taken and shall close and seal the packet.

#### **Examination of tendered ballot records accompanying tendered ballot papers**

42. (1) As soon as practicable after the provisions of section 41 have been complied with the chief electoral officer shall open the packets and remove from each tendered ballot paper envelope the tendered ballot record and the envelope referred to in section 36 and shall cause the tendered ballot record to be examined and to be compared with the register of voters or any extract of that register prepared for that purpose.

(2) The ballot paper to which the tendered ballot record relates shall be rejected and not counted if, upon such comparison

(a) it is found that

- (i) the voter's registration has been cancelled; or
- (ii) no record of the voter's registration can be traced; or
- (ii) the chief electoral officer is satisfied that the registration card produced by the voter at the voting station was not a registered card officially issued under this Act; or

(b) the person named in the tendered ballot record is not the person to whom the tendered ballot was issued.

(3) In deciding any questions that arises in the application of the exercise of this discretion vested in them and in such a manner that in as far as possible, no vote shall be rejected merely because a person who holds or at any time held any appointment or designation under this Act failed to perform or properly perform any duty or function which he or she was required to perform in terms of any provision of this Act and for that purpose the chief electoral officer may take into consideration any information or any circumstances which in his or her opinion is relevant to the decision of the question.

(4) Every envelope referred to in section 36 containing a ballot paper which is not rejected in terms of this section shall be placed in the ballot box.

(5) All tendered ballot records accompanying those envelopes referred to in subsection 4 shall be removed.

(6) The ballot box referred to in subsection 4 shall be sealed and kept in a safe place until it is opened in terms of this Act.

43. (1) When the provisions of the preceding sections have been complied with in respect of all the tendered ballots recorded by voter's registered for

a particular region, the chief electoral officer shall

(a) remove from the ballot boxes all envelopes containing ballot papers not rejected in terms of the preceding provisions of this Act which were recorded by voters registered for the province;

(b) open each such envelope and take out the ballot paper contained in it;

(c) remove and destroy all the envelopes so opened;

(d) sort the ballot papers, with regard to the provisions of subsection (3) in terms of section 41 the number of votes recorded in respect of each political party in the region.

(2) The chief electoral officer shall reject and not count any tendered ballot papers

(a) which record votes for more than one registered political party;

or

(b) in respect of which he or she has reasonable grounds to believe that it has not been officially issued to a voter;

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

(d) which contains a mark or statement made by the voter which tends to identify the voter.

(3) The chief 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 or her choice or otherwise by a cross on the ballot paper concerned.

(4) The rejection or acceptance of any ballot paper by the chief electoral officer in terms of subsections 2 or 3 shall be subject to appeal to the Electoral Commission.

44. At any time prior to the announcement of the result of the election in a region in terms of section 45 the chief electoral officer may upon instruction from the Electoral Commission direct a recount of any ballot papers cast by registered voters for the region.

**Determination of number of candidates of registered political parties to be declared duly elected<sup>4</sup>**

#### **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 at least one representative in each 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 or other disposal.

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<sup>4</sup> I have assumed in my draft that the results will be counted regionally. Thereafter provision will have to be made for the regional results to be sent to the chief electoral officer who, on the advice and under the supervision of the Commission, will have to provide for the national counting. Provision would then also have to be made for the determination of the candidates. This will depend upon the system of proportional representation. Once we have determined that then this section can be drafted in its entirety, as can the further section about announcement of result of elections.

## CHAPTER 9

## OFFENCES

**Compulsion or 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 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 an offence.

(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 contravening subsection (1) of this section.

(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 contravening subsection (1) of this section.

**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 <sup>for a</sup> ~~during the~~ period <sup>of 3</sup> ~~from~~ <sup>the date referred to in section 21(1) up to and including polling day</sup> ~~conduct~~ <sup>publish</sup> in any division an opinion poll in respect of the support enjoyed by <sup>the</sup> ~~several~~ political parties taking part in that election, or by the policies which they advocate, or by the respective candidates at that election, or <sup>publish</sup> the result of such an opinion poll conducted prior to, on or subsequent to the said date. <sup>days prior to</sup>

(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 3  
(Section 61)

## REPEAL OF LAWS

Schedule 1

Code of Conduct for Political Parties

Schedule 2

Ballot Paper

Schedule 3

Repealed Laws