

Mott 91-145-1-16

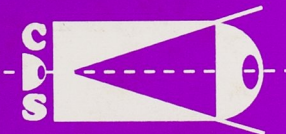
CDS Occasional Paper Series

A Comparative Survey and Lessons for South Africa

Sandile Nogxina and Vusi Pikoli

Towards Democratic Elections in South Africa

Penuell Maduna



Centre for Development Studies
University of the Western Cape
ISBN: 1-86808-134-6

A Comparative Survey and Lessons for South Africa

Sandile Nogxina and Vusi Pikoli

Towards Democratic Elections in South Africa

Penuell Maduna

CDS Occasional Paper Series

A Comparative Survey and Lessons for South Africa

by Sandile Nogxina and Vusi Pikoli

Mr Nogxina is a CDS researcher seconded to the ANC Constitutional Committee.

Mr Pikoli is a researcher for the ANC Constitutional Committee.

Towards Democratic Elections in South Africa

by Penuell Maduna

Mr Maduna is a member of the ANC Constitutional Committee.

ISBN: 1-86808-134-6

Published and Layout by the:

Centre for Development Studies

University of the Western Cape

Private Bag X17

BELLVILLE

7535

South Africa

Tel: (021) 959-2151

Fax: (021) 959-2317

© Centre for Development Studies

Permission must be obtained from the CDS for the reproduction of this document or any part thereof.

Any part of this document may be reproduced for educational and non-profitable purposes, provided that the source is clearly acknowledged.

The views expressed in this publication do not necessarily reflect the official policy of the CDS, or any of their associates.

First Edition

Typeset in Times New Roman 12 point

Printed by Esquire Press, phone (021) 637-1260/1

This publication is obtainable from the CDS at the above address.

FOREWORD

By: Zola Skweyiya

Concomitant with the emergence and development of the colonial state in Africa - i.e. post nineteenth century colonial occupation - notions of Western liberal democracy were introduced and imposed on African society.

These notions of liberal democracy as they applied in the metropole however, were tailored to accommodate the authoritarian rule of the colonial state. In the process the indigenous inhabitants were systematically divorced from the main source of subsistence land, while human and other basic rights were just as systematically abrogated.

It is against this background that the struggle against colonialism and other forms of oppression throughout the world, took shape. Under-pinning this struggle was the right to self determination. Self determination as understood by the colonial occupiers were only wrapped in the rhetoric and constitutional trappings of democratic government. The form and substance of self determination and eventually independence, did not naturally produce the desired result of sustainable democratic government.

Almost 30 years after independence we have witnessed the beginnings of a transition to democracy in Africa - a context in which the will of the people, the right to determine their choice of government - is expressed through free and fair elections. In some cases, such as Zimbabwe and most recently Namibia, this has not occurred without sustained struggle.

Today, a process of historic change is taking shape in South Africa, driven by the hope and vision of democratic elections which will usher in, for the first time truly democratic government. It is however also important to realise that transitional elections - as will be the case here - have unique attributes which distinguish them from elections conducted under "normal" political conditions. It is equally important to note that elections themselves should not be seen as a repository of democracy. Elections could also be manipulated in order to thwart democracy, thereby denying the majority their aspiration for true freedom.

Whether democratic government can be achieved through elections depends on multifarious factors. These range from the general political environment obtaining in the country before, during and after such elections, the choice of an electoral system and the laws governing the process of elections. The nature and content of electoral laws, for example is crucial. The institution of elections is governed by these, as are voting procedure, registration, and the translation of votes into seats.

The papers presented here are designed to provide an overview of the salient aspects of transitional politics and the manner in which they impact upon the legal regime regulating the electoral process. The paper (*Part 1*) by Nogxina and Pikoli draws on the experience of Namibia and Zimbabwe in a comparative study to understand their respective implications for South Africa. Pennell Maduna on the other hand (*Part 2*) focusses directly on South Africa against

the background of the Record of Understanding adopted by the ANC and the government in September 1992.

Electoral laws have been cast in absolute terms by the use of hypothetical examples of how they might function in abstract. All the laws, electoral laws not excepted, do not operate in abstract but in concrete historical contexts. The same laws can produce different results where social and political conditions vary. In the final analysis, it is the conditions that obtain in this country, which will define the content of our electoral regime.

The papers represent an effort to put forward practical legal and constitutional instruments for the constitutional engineers who will be dealing directly with the necessary changes which ought to take place. They are not intended to provide all the answers nor do they portend to cover all the issues relevant to shaping a new electoral regime. They serve to explore some of the factors which should be considered.

Dr Skweyiya is the Chairperson of the Constitutional Committee of the African National Congress.

I

A COMPARATIVE SURVEY & LESSONS FOR SOUTH AFRICA

By: Sandile Nogxina and Vusi Pikoli

INTRODUCTION

“any law has some consequences, whether good or ill, for all of the groups which enter the sphere of life to which it applies.”

[Rae: 1967:4]

Almost all societies which have undergone transitional processes have employed elections as the main vehicle of bringing about a new social order. This has, to a large extent, been influenced by the widely held belief that legitimacy of governance is underpinned by the manner in which those who govern entered the corridors of power in the first place. Where such power was assumed against the will of the people, it is likely to be exercised in an authoritarian fashion and consequently devoid of any semblance of legitimacy. It is in cognisance of this truism that the Universal Declaration of Human Rights adopted by the United Nations in 1948 provides:-

“The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

[article 21].

The Congress of the People similarly recognised the will of the people as the cornerstone of government legitimacy at its adoption of the Freedom Charter in 1955.

According to the Freedom Charter's preamble:-

“...no government can justly claim authority unless it is based on the will of the people”

Indeed, elections as an expression of the will of the people, have, throughout history, been the bedrock of democratic rule and the source of legitimacy for the exercise of power. However, the will of the people should not only be given expression in the number of votes **during** elections, but should always guide and inform the manner in which authority is exercised. It must always define the contours of governance in order to imbue the latter with sustained legitimacy, which is necessary for its effectiveness.

It is noteworthy that elections *per se* do not necessarily bring about democracy and therefore legitimacy of authority. This can be attributed to the multiplicity of functions which elections perform. These are dictated by the political landscape in which elections take place.

In varying political systems, elections have conceptually assumed distinct forms. This is illustrated by the fact that in some countries, elections are conducted within the framework of a one party system whilst in others, voters can choose from among several political parties. That elections have taken place in countries where democracy is unknown testifies to the fact that elections can be used as a technique of forming administrative bodies or of giving power or authority to some political institution. In this case elections may be lacking any substance of democracy. This means therefore that elections cannot only be employed as a vehicle to usher in democracy, but as an instrument to defeat the very essence of democracy. The South African political system under apartheid is a good illustration of employment of the electoral process to deny democracy to the majority.

The political and cultural ethos of the society within which elections are conducted will therefore determine the stance which elections will assume in relation to democracy i.e. whether they will promote or negate it.

The present process of negotiations in South Africa is likely to culminate in elections, a midwife in the birth of a new democratic, non-racial and non-sexist South Africa. These will not be the first elections to be conducted on South African soil, others have in the past been conducted to preserve the undemocratic minority white rule. The envisaged elections become very important in that they are aimed at bringing about a new political order in our country. The role that the impending elections are to play demand that they should be free and fair.

According to Nohlen, the notion of elections in its proper sense implies competitiveness as well as freedom of choice [Nohlen:1984:10].

These two elements, essential to the definition of the concept of elections that Nohlen alludes to, however; should exist in a political climate characterised by its compatibility with fairness.

CONCEPTUALISING ELECTORAL LAWS

The complexity characterising elections as an institution has led to the multiplicity of laws which regulate the conduct of those who participate in the electoral process. The diversity of capacities which various participants assume, and the resultant web of relationships among them are accordingly the main determinant of the multi-purpose nature of these laws. There are several discernable classes of election laws; those that determine suffrage and eligibility, those that regulate the election process, those that govern the process whereby electoral preferences are articulated as votes and by which these votes are translated into distributions of governmental seats, laws that regulate the delimitation of boundaries etc.

[Rae:1967:14].

The interdependent nature in which these various classes of laws operate has led to their being viewed as an organic whole: the *electoral laws*. It is this total pattern of electoral laws obtaining for a country's general elections that form and shape the matrix in which a network of relationships between the various participants in the electoral process takes place. The characteristic feature of these relationships is competitiveness and accordingly, electoral laws should not only serve to ensure the harmonious co-existence of such relationships but should also function to create a general political environment commensurate with the principles of fairness and freeness.

This in turn attaches a great deal of importance to electoral laws as they in the final analysis, determine the authors of other laws. It is for this reason that in transitional arrangements electoral laws

become an issue of contestation among the political participants, as in this situation, elections will determine not only the authors of ordinary laws of the land but the country's constitution, the fundamental law of the land. This importance however, does not attach only to electoral laws, but to all laws germane to elections and the general political organisation of the country.

Transitional arrangements are always characterised by an unlevel political field which the demands of fairness would require to be made even. The political landscape, with its historical social and cultural features, has a great impact on the functions the elections are required to perform. It is normally laws outside the definitional purview of electoral laws that constitute the cornerstone of the uneven political stadium.

An overview of the evolution of franchise in South Africa will show how the interaction of electoral laws and the constitutional law has given substance to the apartheid policy.

According to Lijphart, the well established body of knowledge reveals, *inter alia*, that the electoral laws are the most easily manipulated element of a political system and therefore a powerful tool for constitutional engineering. (Lijphart: 1990:2). Similarly, in transitional arrangements electoral laws can therefore be employed for the attainment of the democratic transformation of society.

TRANSITION TO DEMOCRACY & ELECTORAL LAWS

The uniqueness of the political situation during transitions necessitates the adoption of new "rules of the game" which are different from those that operate during periods of normal politics. Terry Karl describes transitions as follows:

"The absence of predictable rules of the game is key in a transition. Indeed, the dynamics of a transition that marks it as such, is bargaining between competing actors to begin slowly to establish a new pattern of rules of the game..."

[Karl:1991:33].

However, transitions do not take place in a political void, but within a particular political terrain which is formed by the historical evolution of a particular country's polity. Some groups involved in the bargaining process, may have more power and resources than the others, due to their historical positions. Indeed, transitions are embarked upon with a view to establishing a new order that will redress these historical imbalances.

Because these bargains occur in institutional spaces and settings shaped and formed by the past, mechanisms are needed to negate the possibility of the unfair effect this may have on the other participants. In other words a climate conducive to fair and free elections should be created. This is, indeed, in line with the international recognised principle that free political participation is an essential element of transition to democracy.

All political parties, have of necessity, to participate in the elections on an equal footing and on the basis of equality with all the other participants.

Elections should therefore be preceded by the leveling of the playing field and the removal of all obstacles that are likely to militate against free and fair political activity.

For electoral laws to function as a midwife in the birth of a new democratic order it is imperative that they should emanate from a body that enjoys legitimacy among the people, be administered by a neutral body and should prevail on a political milieu consonant with the objective of bringing about democracy.

1.

CLIMATE CONDUCTIVE TO FAIR AND FREE ELECTIONS

Political ground, in societies seeking to root democracy for the first time, is prepared, most significantly, by the creation of a political climate conducive to fair and free elections. This mainly entails the removal of all impediments, legal or otherwise, which are likely to inhibit free political activity and the fair conduct of elections. The specificity of each country's historical and political evolution define the nature and form these impediments assume. Similarly, the various mechanisms adopted for the creation of conditions favourable to the establishment of a democratic order will be dictated upon by the nature of the obstacles sought to be removed. It is for this reason that we would like to make a comparative survey of the transitional arrangements in our neighbouring Zimbabwe and Namibia with a view to

identifying issues of similarity and the possible lessons for our transition.

1.1 THE ZIMBABWEAN EXPERIENCE

In Zimbabwe there was a wide divergence of views on modalities to create the conditions in which free and fair elections could be held. The Muzorewa administration, on the one hand, was of the view that they had been elected to govern Rhodesia and most of their members had nothing to do with the unilateral declaration of independence. They argued that the elections had given them a mandate to govern and therefore should continue to do so even during the interim period.

On the other hand, the Patriotic Front called for the establishment of a power-sharing transitional arrangement and the restructuring of security forces and police as a prelude to elections. It was against this background that the British government decided to be directly involved with a view to creating conditions for elections that would be acceptable to all sides.

Pursuant to an agreement of Commonwealth heads reached at Lusaka, a governor was appointed to administer Zimbabwe during the transitional period.

On the assumption of duty by Lord Soames, among the first things that he did was the proclamation of the Amnesty Ordinance of 1979 which had the effect of absolving from criminal liability all those who had committed offenses under the aegis of the struggle.

For election purposes, the Governor made some modifications and adaptations to the existing Electoral Act of 1979 consonant

with the objective of conducting fair and free elections. Most of the amendments to Zimbabwean laws generally were germane to the election process. The 1979 Electoral Act under which the first Zimbabwean elections were conducted was broadly based on its British counterpart, but modified to accommodate the proportional representation in respect of the elections on a common voters roll. Up to date, elections in Zimbabwe have been conducted under the 1979 Act albeit with rather frequent amendments which are occasioned by the flexible nature of the process whereby changes can be effected to the law i.e through the ordinary legislative process. Its predecessor in the Rhodesian government constitution could only be amended by means of a special majority which was required for constitutional amendments. Frequent amendments to the Electoral Act reflect the impact of transition on the constitutional regime of the country. This in turn militates against the institutional stability of the country.

1.2 THE NAMIBIAN CASE

Resolution 435 formed the legal foundation on which the transitional process in Namibia was based. At the centre of Resolution 435 was the creation of a political climate conducive to the holding of free and fair elections which would usher democracy into the Namibian society. Towards this end, Resolution 435 laid down certain prerequisites which were consonant with this purpose in the context of Namibia. These, among other things, included universal suffrage, guarantees of freedom of speech, assembly and press etc.

According to the Settlement Plan, the UN Special Representative would at each stage, satisfy himself as to the fairness and

2.

LESSONS FOR SOUTH AFRICA.

2.1 *IMPACT OF ELECTORAL LAWS UNDER APARTHEID*

appropriateness of all measures affecting the political process at all levels of administration before such measures took effect. The administration of elections was essentially in the hands of the Administrator-general but subject to the approval of the United Nations. The UN's veto power was established as a control mechanism to ensure that the transitional process would proceed in accordance with internationally recognised standards. Since the elections were at the heart of the transitional process, the legal framework within which the elections were to be held became the subject of a protracted negotiation process which was further compounded by the Administrator-General's continued objection to the Special Representative's proposals on the election related legislation.

The Settlement Plan, with a view to creating an environment for free and fair elections, called for the repeal of all discriminatory or restrictive laws which militate against the holding of free and fair elections. Legislation was passed granting amnesty to all those who had returned from exile provided they had come through the six designated entry points. A plethora of legislative pieces relating to internal security were amended or repealed. Above all a proclamation was passed which gave all the interested parties the right to petition the Administrator-General for repeal or amendment of laws that were believed to inhibit the conduct of fair and free elections.

The characteristic feature of all hitherto South African constitutions is the exclusion of the African majority from the electoral processes.

It is the constitution that should lay a genuine foundation for true freedom and democracy. This it can do by providing a basis for the country's electoral law which will regulate the choice of the electoral system and the actual procedure. It is therefore the constitution that gives people the right to vote and to stand for elections, irrespective of religion, race, education, sex or wealth.

The South African constitution with regard to elections contains few provisions, albeit fundamental in their impact on the whole process. The elections are largely regulated by ordinary laws which give effect to these few constitutional provisions pertaining to elections. It is the constitutional provisions that define the categories of the population who are eligible to vote thus disenfranchising the great majority of the South African society.

Like in all colonial situations, South Africans were socialised in the obtaining colonial governance system, the British system. The constitution and a plethora of other laws served to restrict franchise by excluding the majority of the South African population. This was, indeed, a paradoxical step in view of the fact that in most Western political systems, those who wield power have sought to broaden the spectrum of their support base by

enfranchising strata and groups which hitherto were denied this right (Boulle:1984:79).

South African election laws therefore have had not only the effect of regulating the electoral process but also the political consequences of restricting the process of democracy to the minority of the South African population on the basis of colour.

The Nationalist Party has since its ascension to power in 1948, manipulated the laws to ensure and guarantee their hold on power. This has been illustrated by the patterns that voting has taken since 1948. The ultimate result of the operation of election laws in the hands of the Nationalist Party has been the defeat of the very essence of fairness and democracy. The electoral system brought about a loading of votes in favour of rural constituencies. This strongly favoured the conservative rural white population which formed the bedrock of the NP support.

The current electoral situation in South Africa is regulated by the Electoral Act 45 of 1979 as amended. There has been a series of amendments to laws germane to elections, most significantly since 1948. These changes have been designed to adapt the electoral system with the frequently changing face of apartheid. The electoral system however, which is compounded of electoral laws, remained handicapped and thus incapable of delivering democracy.

The myriad of electoral laws that have been passed in South Africa have functioned to serve two purposes viz; to give effect to the constitutional provisions that exclude the black majority from the electoral process and to regulate the electoral process only among the whites. Constitutional politics have thus been dichotomised within a single constitutional

system. Electoral laws extend democracy and ensure participation among the white group of the population whilst Blacks are systematically excluded.

With the coming into effect of the 1983 constitution Act, Coloured and Indian adults who are South African citizens and not subject to disqualifications stated in section 4(1) and (2) became eligible to vote. Persons who have been convicted of offences such as treason, murder and a plethora of offenses under the Internal security Act are absolutely disqualified. This disqualification does not only apply to people convicted of the said offences within the borders of this country as defined by the present constitution, but also to the nominally independent Bantustans.

The employment of the criteria of colour and specific kind of offenses as the basis for voter eligibility places South African Electoral law in a unique position. These disqualifications according to Basson, are to ensure that:-

“ to a considerable extent the voters corps comprises a group of people who are not criminally inclined, who are financially sound, who are mentally fit, and who are devoid of the possible ineptitude of youth “

[Basson: 1984:154].

Other categories of persons who, according to the Electoral Act, are disqualified are the insolvent, those certified insane, or have been committed to a reformatory or rehabilitation centre. Also persons who are not in possession of identification documents are disqualified only as voters insofar as they cannot register as voters in terms of section 2 of Act 45 of 1979.

With a view to bringing into existence a legal framework within which transition to democracy in South Africa can take place the current constitution should be amended and a number of laws repealed.

2.2 REMOVAL OF LEGAL IMPEDIMENTS LIKELY TO MILITATE AGAINST FREE AND FAIR ELECTIONS.

It appears that all the participants at CODESA have recognised the need for the creation of a climate for free political participation as one of the prerequisites for democratic elections. CODESA as a phase in the transitional process, has as its avowed purpose setting in motion a process that will enable all political parties to put their case to the electorate on an equal footing and under peaceful and fair conditions. Towards this end a paraphernalia of discriminatory and restrictive legislation, flowing from the tri-cameral nature of current South African constitution should, as of necessity be repealed as they will inhibit free political activity.

Security laws have, in South Africa throughout its history under apartheid, been employed by the government to criminalise political activity and should therefore be repealed. A plethora of apartheid laws, generally create a political system that can be characterised as heavily afflicted by a profound malaise predicated upon the crisis of legitimacy that bedevils the existing constitution.

The first step, therefore, towards the creation of a legal framework within which fair and free elections will be conducted, must entail the amendment of the present South African constitution in order to ensure that participation in elections is not restricted to particular racial groups. All

parties should be given a fair opportunity to present to the electorate their vision of a new political order.

Another obstacle to the process of fair and free elections is the system of homelands and its effect of denationalisation of the majority of African people. As part of creating a climate conducive for free and fair elections TBVC territories have to be reincorporated and South African citizenship should be restored to all those who live within these homelands. The current South African constitution should accordingly be amended to include in the definition of RSA the TBVC states.

Employees must also be protected against victimisation by their employees at the workplace on account of political affiliation, political involvement or campaigning at the workplace, more especially, farmworkers and domestic servants. Legislative protection to workers should be granted by extending the scope of the prohibition of victimisation on account of trade union involvement, to cover a situation where such victimisation is designed to persuade employees not to participate in political activities.

Employees must also be accorded meaningful freedom of association and expression and this can only take place if political organisations have free and equal access to all work places.

At face value there is nothing discriminatory or restrictive on the operation of trespass laws during the election period, but these laws could easily be applied in a restrictive or discriminatory fashion to political canvassing on farms, factories, schools etc. These laws should therefore be amended to ensure that they cannot be employed by farmers and factory owners to prevent political parties

from reaching political voters on the farms and in the factories.

2.3 MASS MEDIA AND ELECTORAL CAMPAIGNS

Electoral choices are invariably influenced by multi-farious factors, the most important of which is the bombardment of the electorate by the mass media. More often than not voters switch their party allegiance as a result of this determinant factor. Opinions about the personality of individuals contesting elections are formed by the general public on the basis of information published by the mass media. It is therefore for this reason that mass media should, during the various stages of the electoral process, more particularly the campaigning stage, be legislatively regulated to ensure that this powerful vehicle for information dissemination is not used in a biased fashion by those who control it.

The various laws pertaining to the mass media should as of necessity be repealed in such a way that conditions for the fair conduct of elections are created.

It will therefore be necessary to amend or repeal the existing Radio Act and Broadcasting Act substantially in order to ensure more balanced broadcasting during the election period. Particularly, the amendment should bring about a situation where all unaligned political parties or alliance qualified to participate in the election must have equal access to free time on all radio and television stations during the election period.

Where a political party is a member of an alliance, time should be allocated alliance as a group rather than individual distribution of differing viewpoints. These broadcasts must as of necessity be fairly

allocated and free from state control. All unaligned political parties or alliances must be offered an equal opportunity to purchase radio and television advertising time on all stations at a fixed cost which will be equal to all. These advertisements, should also be free from editorial control by SABC or anyone else.

All this should apply equally to the homelands' Radio and Broadcasting stations. During transition in Zimbabwe the Lancaster agreement as a measure of levelling the playing ground, provided for the parties to have "a free and unfettered access to the public media". Each of these political parties was offered an equal amount of free time on radio and television. Each party was allowed a free six minute "START OF CAMPAIGN" broadcasting near the end of the campaign period. On the eve of the election each party was allowed a two minute BROADCAST "EVE OF POLL" broadcast on all channels.

Furthermore, each party was free to purchase time for radio and television advertisements up to a fixed maximum over the period of the campaign with strictly equal time appointment. Where a party failed to purchase its full allocation, such time was not offered to anyone else see [South Rhodesia elections - February 1980, report of the Commonwealth observer group on elections leading to Independent Zimbabwe: Page 45-50]

In Namibia, SWAPO, called upon all the political parties to consult on election coverage and formed a standing consultative committee. The television station subsequently came up to write a schedule for the broadcast of each party's electoral message. Five minutes of air time was given to two parties per night during the last six weeks before elections were

held. Each party was further allotted news coverage of its rallies, press conferences and media releases on a rotating alphabetical basis.

Notwithstanding this apparently fair system for the covering of political events, there was evidence of extreme selectivity and deliberate one-sidedness in SWABC's news coverage of the electoral process. This was revealed by the Namibian Peace Plan 435, which monitored radio and television broadcast over a four month period. According to this study SWABC's selectivity:

“ in the choice of content in editing and compiling of news” was aimed at supporting the current status quo.

[NDI :1980: 53-54]

An explanation for this state of affairs can be situated in the fact that SWABC's was a parastatal company which was not value neutral. The responsibility for the control of the broadcasting process after the resignation of the SWABC management board which was actuated by a vitriolic criticism leveled against SWABC was left to the station managers who were still loyal to the corporation.

The Namibian situation wisens us to the fact that it is not enough merely to change laws and hope that only the content of the new law will create the climate of fairness. The change of law must be accompanied by a change in the administrative structures that are charged with the responsibility of enforcing such laws. In Kandetu's words:

“ It is one thing to draw up a document or promulgate law. the more crucial task is to make the document workable and the law enforceable.”

[Kandetu: 1991: 37]

It is for this reason that concomitant with the promulgation of new laws designed to pave the way to democracy there should also be a creation of independent bodies which should act to oversee the effective implementation of these laws. In the case of mass media such a body should among other things ensure that reporting is not partial in favour of some political parties during the period of elections.

Money is one of the determinants influencing electoral choices. It has been referred to as

“ life blood of electoral politics, helping to determine the availability of manpower, organisation, mobility and media visibility.”

[Ncube and Parker:1989: 110]

The use of public funds to finance publications that advocate a particular political participant's point of view should be legislatively prohibited.

3.

ELECTORAL COMMISSION AND ADMINISTRATION OF ELECTIONS

This section will look at the salient and likely tasks of bodies charged with the administration of the electoral process.

The basic tasks that these bodies perform are normally the operation of the registration (both of parties and voters) and voting systems. However, it is imperative that the administrative system should function fairly and impartially in order to enjoy the confidence of the general public.

In normal political situations the State bears the responsibility of ensuring that various administrative institutions and

procedures necessary for the efficient conduct of elections are in place. A deep seated tension can be discerned between the necessity to take the necessary administrative steps and decisions without being improperly influenced by petty political considerations on the one hand, and the fact that the government, as an administrative organ of the state is not politically value-neutral.

There is evidence in South African election history that these administrative powers have been abused for petty political purposes. The case in point is the manner in which the delimitation of boundaries has been drawn so as to afford undue advantage to the Nationalist Party.

According to the provisions of the 1979 Electoral Act, the Minister of Home Affairs is charged with the responsibility of carrying the Act into effect. A political leader is answerable for all matters pertaining to his department. All the other election officials are accountable to him through a chain of command which goes down to the lowest ranking official. The responsibility and control of elections is therefore that of the government department.

To avoid abuse of power for political purposes, an independent body, the Electoral Commission should be created and charged with the responsibility of carrying into effect the electoral law.

For the Election Commission to be sensitive and responsive to the social handicaps, needs and cultures of various groupings it must draw its membership from all the political parties. This will also ensure the balance of views within the commission and the resultant avoidance of dominance by one groups over the others.

The body should be a multi-party one and should include people from outside the public service and officials of independent status. The composition of such a multi-party Commission will have the value of balanced decisions in more contentious and complex political matters relating to the issue of elections.

At the core of the Electoral commission's responsibility is the negotiation and the adoption of an Electoral law. From this, such legal matters as the establishment of registration and voting procedures should flow. The Electoral Commission should also be responsible for the actual running of elections and keeping an oversight over the relevant law and administrative arrangements. Disputes arising from the process of elections should be referred to the commission for resolution.

CHOICE OF AN ELECTORAL SYSTEM

Lijphart maintains that it is vital for peaceful resolution in plural societies that all be allowed to be represented by their own parties if they so wish. The proportional representation allows in such societies the representation of the segments without a need for a prior determination of which groups qualify as the constituent segments.

Proportional representation systems permits minority representation but also allows the segments to define themselves. In Lijphart's words:

"This is especially important in plural societies, such as South Africa in which is very little agreement on the identity of any of the segments that comprise the plural society and indeed on the question of whether the society is really segmented at all."

[Lijphart: 1990:10]

With the adoption of proportional representation in South Africa, the definition of political segments, will not be imposed by law as it has always been under the various apartheid laws, but will be left to the electoral process.

Criteria for assessment of electoral systems must not derive from rigidly fixed paradigms which strike a harmonious chord with political reality only under certain social conditions. They must be directed towards desired objectives. It is in realisation of this truth that the ANC constitutional committee has proposed proportional representation system both at national and regional level in South Africa. To match this system with the social reality

in South Africa, characterised among other things, by the high rate of illiteracy and the absence of the culture of voting among the Black population, it has been proposed that the voter will cast one vote which will count for both national and regional. The combination of the national and the regional lists will serve to reduce the gap between the voter and the candidate - which is the major criticism levelled at it. It is argued that under a majority/plurality system the member of Parliament's attachment to his constituency is enhanced, thus bringing the relationship between the voter and his representative closer. As a result of this the candidate is said to enjoy some form of independence from his party. On the contrary the party list system is linked to the election of "personal" lists drawn up by political parties, a fact which makes candidates to be more dependent on the parties and more susceptible to their political influence at the expense of his/her constituency. In as much as we argue that one electoral formula may bring about a smaller degree of the candidate's proximity to the electorate, we however, contend that this result cannot exclusively be ascribed to the electoral formula. Some other factors and more particularly, the internal structure of the political parties, play a significant role in bringing about certain political consequences. It is possible that political parties at national level chose candidates for the local constituencies under the majority/plurality system.

Where political parties have an appropriate organisational structure and in turn, allocate competence to choose candidates to their local branches, even under a party list system proximity between the candidate and electorate can be maintained. The selection of candidates does not, in this case lie entirely in the hands of the party bureaucrats.

The ANC's proposed single vote system with the effect of counting for two party lists will reduce the complexity that always goes along with the multiple vote system. This will be of great advantage to the masses of our people whom apartheid has trapped in the quagmire of illiteracy.

The history of the independent countries evinces a trend marked by endeavours to transplant historically evolved electoral systems from one country to another. The British electoral system which developed through centuries of that country's history, provides us with a clear example of this case. Most countries which were under British rule inherited the plurality system after their independence together with the Westminster model of parliamentary government.

South Africa having had some constitutional attachment to Britain, was no exception, although it adjusted this system in order to fit the apartheid rule. It has been observed, however, that the socio-economic conditions do not always coincide; one country is socially more homogenous than another with the result that the impact of electoral systems will be quite different.

Decisions on the choice of an electoral system are to a large extent influenced by the country's socio-political structure. Countries with a socially heterogeneous structure as a result of ethnical, religious and linguistic divisions are more inclined to favour proportional representation because these societies do not have the necessary preconditions for the successful application of the plurality system.

It must, however, not be taken as a rule of thumb that if some preconditions associated with one particular electoral system exists there will always be the same

political consequences. The existence of a complex set of relationships between various factors constituting each country's socio-political milieu militates against this.

1.

THE TWIN LIST SYSTEM AND REGIONAL REPRESENTATION

The sensitivity to local and regional interests and awareness of the need to enhance the accountability of the decision-making bodies underpins the proposal made by the ANC's constitutional committee for a single vote which will count towards both the national and regional lists of parties. Furthermore, this system will serve to reduce confusion that the two lists system is likely to engender. Parties will then be allocated seats to the Constituent Assembly in proportion to their share of votes. In order to forestall the possibility of the constitution-making body being inundated by a plethora of fringe political parties on legal thresholds should be fixed at 3% of the total number of votes.

The adoption of a two list system will necessarily call for the compilation of regional voters rolls. These should reflect the names of all South African citizens above the age of 18 years residing within the geographical area of each region. No person's name should appear on more than one voter's roll. A common voters' register reflective of all South African citizens who are eligible to vote should be compiled on the basis of regional voters registers.

2.

SUFFRAGE AND REGISTRATION REQUIREMENTS

In view of the crucial importance of the organisation of elections in transitional arrangements it is indeed also of vital importance that each constituent element of the electoral process should be commensurate with the objective of bringing about free and fair elections. Although the ultimate results of elections do not pivot around a singular element, but on their combined effects, individual elements do indeed exercise different influences on the outcome of an election. The decisive point is located in the amenability of the effects of individual elements to be manipulated for the purpose of giving unfair advantage to some political parties at the expense of the others. Registration of voters, as one of the important elements of an electoral process is not immune from being manipulated specifically for the purpose of excluding some potential voters from the election process with a view to denying some political parties their electoral support base. It is for this reason that the question of voter registration ranks among the politically most controversial issues in the formulation of electoral law during transitional elections. The government of the day has undue advantage over the other participants deriving from its control of the administrative machinery and access to information like census data which is crucial for the purpose of voter registration. In such a situation it could be expected that the government will try to maximise the registration of those who are likely to vote for it and minimise the registration of those likely to vote for the liberation movement. In the final analysis the voter register may only reflect a partial

listing of qualified potential voters. With the information pertaining to the population records, being the monopoly of the governmental organs, it may be difficult to counteract the disfranchisement of some South African potential voters by non-registration.

Actuated by the fear of disenfranchisement of some Zimbabweans through the process of voter registration, the Zimbabweans dispensed with registration of voters in their transitional elections. This, however, was only in respect of the African voters as for whites, coloureds and Asians the so-called white roll was prepared for the twenty constituencies that were reserved for them. All that was needed on the voting day was the proof of the voters eligibility to vote. In Namibia the question of whether registration of voters would be required for the transitional elections was not decided until a few weeks before the date on which the transitional process was due to begin. Although disadvantaged by time constraints (registration had to be done within 3 months) and lack of authentic population statistics (1981 census was spurious due to lack of co-operation on the part of black Namibians and inaccessibility of war zones) SWAPO agreed to the compilation of a voters register. During that period SWAPO believed that South Africa was inundating Namibia with "supporters" who would vote against SWAPO composed of UNITA in the North and the white South Africans. It was for this reason that SWAPO agreed to voter registration.

With the independence of Zimbabwe South Africa began to be a "safe haven" for the notorious security units which have been employed to repress the progress of political organisation throughout South Africa. One has in mind such groups as the notorious Selous Scouts of the South

regime, Koevoet of Namibia and Battalion 32 from Angola. Under no circumstances should these groups of people be allowed to register as voters notwithstanding their period of stay in this country. It is the process of voter registration that will enable us to identify non-citizens and all those that are for some reason or another, not eligible to vote. In order to counteract the dangers that are inherent in the voter registration process during transition it will be of vital importance that the present regime does not retain the monopoly of the administrative machinery.

In the South African situation, the Electoral Commission will be the most appropriate body to direct, supervise and control the process of voter registration. All matters pertaining to voter registration ranging from the manner of ascertaining the eligibility of applicants for registration to determining appeals, objections and other claims relating to the process of voter registration should be the responsibility of this body.

For the purpose of registration, the acceptable proof of eligibility should not be confined to an identity document as envisaged in the Identification Act, of 1986. Most of our people are presently not in possession of such documents due to several reasons one of which is the Bantustanisation system which has engendered a multiplicity of identity documents which do not fall within the purview of the definition of identity documents as contemplated by the Electoral Act. Any method that can prove one's eligibility to vote should be acceptable. Such documents as birth certificates, school certificates baptismal certificates, etc should suffice. In the absence of any such document identification of the applicant by at least two already registered voters who are

prepared to swear to his or her eligibility should suffice.

Once the applicant has satisfied the registering official of his or her eligibility the latter should complete the voting card in triplicate. One copy should be issued out to the applicant, the second one should be sent to the applicant's region and the last one to the central registering office where a national register is compiled by the Electoral Commission. The registers both national and regional, should be made available for public scrutiny to enable those who have objections to the registration of some people to challenge it.

4.

REGISTRATION OF POLITICAL PARTIES

The universal Declaration of Human Rights guarantees the right to form political parties in terms of the provision for the freedom of association. Different countries however, have different laws regulating political parties and formal rules for their registration.

With regard to the question of registration of political parties the election laws adopt normally one of the two basic approaches viz; the imposition of stringent requirements on political parties seeking registration and the minimalist approach. The former approach is attributed to the need to limit the number of political parties taking part in the electoral process and has the effect of denying the electorate a wide range of political parties to choose from.

On the other hand the minimalist approach is predicated upon the philosophy that it should be left to the electorate to decide

by means of elections those parties that deserve recognition. As such no stringent requirements are demanded as a prerequisite for their registration. This approach encourages the emergence of splinter parties with the resultant complication of the election process.

The history of each country has to a large extent influenced the adoption of one approach rather than the other. The experience of the German people under Nazism and those of Portugal under Facism was behind the prohibition of political parties that promote these systems.

According to the Electoral Act currently governing elections in South Africa imposes some requirements that a political party should meet before the Electoral Officer may register it as such. The Act demands that a party with no representative in the legislature should submit an application accompanied by a deed of foundation which has been adopted at a meeting of, and signed by at least 500 registered voters. In addition, the applicant political party is required to pay a prescribed amount. Above all, the Electoral Officer will only register such a political party if he/she is satisfied that its object is to promote the election of its members to the legislature. [sec 36 -37]

The examination of these provisions reveals a series of stringent requirements which in the final analysis have a restrictive effect on the right of people to form political parties. This, may, indeed be actuated by the need to forestall the burgeoning of marginal parties. This however, constitutes a restriction on the universally recognised freedom of association.

Non-racialism is one of the beacons guiding our advance to a democratic South Africa and the main thrust of our struggle has been to purge the South African society of the scourge of racism. It therefore becomes imperative that all possible measures should be taken to ensure that the cancer of racism will never stalk our society again.

In as much as there will be a need to constitutionally uphold freedom of association, the experience of South Africans under apartheid rule necessitates that laws in a democratic South Africa should be employed as instruments to fight racism. The new electoral law should of necessity proscribe political parties which promote racial, ethnic or gender discrimination.

In the light of this, it is hereby recommended that for the transitional elections in South Africa a minimalist approach towards the question of registration of political parties should be adopted. The registration process should mainly be aimed at promoting the ideals of non-racialism and non-sexism and sound inter-party relations.

BIBLIOGRAPHY

1. **BASSON A DION (1984)**
"Representation in South African constitutional law" in The South African Journal, vol 101, Part 1 February 1984. Juta and Company LTD, Cape Town.
2. **BOULLE L. J. (1984)**
"South Africa and the Consociational Option" Juta and company, LTD Cape Town.
3. **KANDETU V. (1991)**
"Socio Economic Justice and the Bill of rights" in "A bill of Rights for a Democraric south Africa", The Centre for Development Studies, University of the Western Cape.
4. **KARL TERRY (1991)**
"A Research Perspective" in "The Transition to Democracy" National Research Council, National Academy Press, Washington, DC 1991
5. **COMMONWEALTH OBSERVER GROUP**
6. **NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (1990)**
"Nation Building: The UN and Namibia", Washington.
7. **LIJPHART AREND, (1990)**
Electoral Systems, Party systems and conflict management in segmented societies" in Robert A, Shrire, (1990) "Critical Choices for South Africa" (ed). Oxford University Press, Cape Town.
8. **NCUBE M. AND PARKER C. (1990)**
"Comparative electoral systems and Political consequences: Options for Namibia" United Nations Institute for Namibia, Lusaka.
9. **NOHLEN DIETER, (1984)**
"Elections and Electoral Sytems", Translated from the German by Derek routler, Friedrich Ebert Stiftung, Bonn, Germany.
10. **RAE DOUGLAS in (1967)**
"The political consequences of electoral laws", New Haven and London Yale University Press.

PEOPLE INTERVIEWED :

1. Kandetu Bob - Permanent Secretary, Department of Information, Namibia - In Windhoek in April, 1992.
2. Katjavivi - chancellor- designate, University of Namibia in Windhoek in April, 1992.
3. Makamure Kempton - Dean of the Faculty of Law, University of Zimbabwe in Harare in May, 1992.
4. Matjila - MP, DTA Namibia in Windhoek in April, 1992
5. Mhlaba Luke - Senior Lecturer In Public Law, University of Zimbabwe in Harare in May, 1992
6. Advocate Rukoro - Deputy Minister of Justice, Namibia in windhoek in April, 1992.
7. Prof.Totemeyer - University of Namibia

II

TOWARDS DEMOCRATIC ELECTIONS IN SOUTH AFRICA

By: Penuell Maduna

INTRODUCTION

This discussion paper was prepared on the assumption that, in the light of the Record of Understanding of the 26 September 1992, democratic and non-racial elections towards a Constituent Assembly cum interim Parliament will soon be held in South Africa. The basic thrust of it is directed towards three issues that are pertinent to the question of elections, namely:

1. *The Authority which will conduct the elections;*
2. *The Electoral System to be followed;*
3. *Technical issues such as:*
 - (a) *voter eligibility;*
 - (b) *voter registration;*
 - (c) *voter identification;*
 - (d) *party registration; and*
 - (e) *logistics.*

It is further assumed that the necessary constitutional and legislative changes shall have been effected to facilitate such elections.

⁰ The question of the role of the international community with regard to the elections is, however, not discussed.

THE APPROPRIATE AUTHORITY TO CONDUCT ELECTIONS

The ANC Policy Conference, held in May 1992, adopted a policy that "All elections at a central, regional and local level shall be conducted by an independent electoral commission, which shall enjoy freedom from governmental and political control."¹

In this regard, it is also important to recall the CODESA Working Group Three Report to CODESA TWO. In that Report, it was stated that:

"There shall be an Independent Election Commission to be given the responsibility for the holding of

⁰ For instance, Section 52 of the **Republic of South Africa Constitution Act, 110 of 1983** (read with Section 3 of the **Electoral Act, 45 of 1979**), which restricts the franchise on the basis of race, has to go, as envisaged in our **Transition to Democracy Act**.

¹ See *Ready To Govern: ANC Policy Guidelines For A Democratic South Africa* (1992) at 5.

free and fair elections. The Commission will be independent of the TEC and will consist of respected and suitably qualified persons drawn from a broad cross-section of the population, who will be appointed by the State President on the recommendations of CODESA."

*"The composition, powers (which shall include the power to resolve disputes as contemplated in paragraphs 27, 28 and 33 hereof) and functions of the Commission shall be enacted in legislation to be agreed to by CODESA."*²

This obviously introduces a new element in this regard: Currently, elections are conducted under the auspices of the Department of Home Affairs. For instance, the Director-General of Home Affairs (or any officer acting in his stead) is the Chief Electoral Officer,³ and, as such, exercises powers and performs the functions assigned to him under the **Electoral Act**.⁴ The powers include dividing the Republic of South Africa into electoral regions and districts and designating in respect of each area an electoral officer generally responsible for conducting elections in such area.⁵ In terms of the **Electoral Act** the

² See Paragraphs 30.1 and 30.2 of the CODESA Working Group Three Report.

³ See Section 5(1)(a) of the Electoral Act, 45 of 1979.

⁴ See Section 5(1)(b) of the Act.

⁵ See Section 5(2)(a) of the **Electoral Act**. It is to be noted that in terms of Section 5(2)(d) of the Act, "Whenever an electoral officer is absent or unable to perform his functions as electoral officer, or whenever the designation of an electoral officer is pending, the chief electoral officer may designate any officer serving in the Department of Home Affairs to act in the area or areas concerned as electoral officer during such electoral

Chief Electoral Officer prepares lists of persons entitled to be registered as voters in each area.⁶

The proposed Independent Electoral Commission should take over all the powers, perform all the functions, and assume all the responsibilities of the Chief Electoral Officer and officers assisting him in the conduct of the elections if we are to have free, fair and democratic elections. In other words, the Independent Electoral Commission should be independent of both the TEC and the Pretoria regime.⁷ The ANC should, in keeping with its policy, ensure that the Department of Home Affairs is divested of all the powers relevant to the conduct of elections. We will have to ensure, in other words, that our Independent Electoral Commission is not similar to the one the United States has for instance.⁸

officer's absence or incapacity or until an electoral officer is designated."

⁶ See Sections 6(1) and 7(1) of the **Electoral Act**. Note that in terms of Section 14 of the Act, the voters' lists are amended from time to time by electoral officers designated by the Chief Electoral Officer.

⁷ According to the N D I Report on the October 1991 National Elections in Zambia at 31, "Under the Zambian Constitution, an autonomous Electoral Commission was responsible for conducting elections. The President appointed members of the Electoral Commission ... Subordinate to the Electoral Commission was an election directorate, a body of civil servants responsible for carrying out the Commission's decisions and for implementing Commission regulations."

⁸ The U S Federal Election Commission, an independent agency established under Section 309 of the **Federal Election Campaign Act** of 1971, exercises exclusive jurisdiction in the administration and civil enforcement of laws regulating the acquisition and expenditure of campaign funds to ensure compliance by participants

The ANC will have to decide whether or not the State President's power to appoint a delimitation commission which divides South Africa into electoral divisions,⁹ should be transferred to the proposed Independent Electoral Commission. In Zambia the three-member delimitation was headed by the Chairman of the Electoral Commission.¹⁰

THE ELECTORAL SYSTEM

In the current constitutional order the electoral system used is the one loosely referred to as the first-past-the-post system, also known as the winner-takes-all system. It requires only simple pluralities of the total votes cast, and the candidate who gets the most votes wins the election.

The ANC is opposed to this system. The ANC Policy Conference adopted as its policy that the election of representatives shall be "by the system of proportional representation. People will vote for party lists and parties will then get a share of representatives in proportion to their share of the total vote. An appropriate threshold will be fixed, below which a party will not be allocated seats."¹¹

in the Federal election campaign process. Its chief mission is to provide public disclosure of campaign finance activities and effect voluntary compliance by providing the public with information on the laws and regulations concerning campaign finance.

⁹ See Section 48(1) of the **Republic of South Africa Constitution Act** (read with Sections 50 and 51 of the Constitution Act).

¹⁰ See the **N D I Report on the October 1991 National Elections in Zambia** at 32.

¹¹ See *Ready to Govern: ANC Policy Guidelines for a Democratic South Africa* at 5.

It is also to be noted that at CODESA there seemed to be sufficient consensus that the new constitutional order will need a different electoral system; the Steering Committee of CODESA Working Group Two submitted a proposal in terms of which it was agreed that "The interim constitution shall provide for ... elections for the national assembly on the basis of proportional representation, half the seats being allocated through national lists and half being allocated through regional lists."¹²

What remains to be done in this regard is to reach agreement with regard to two critical issues, namely (a) the threshold below which a party shall not be allocated seats in the Constituent Assembly cum national assembly, and (b) the question of electoral regions to facilitate the drawing of regional party lists, among other things.

(a) The Threshold

The ANC has to begin an internal discussion with regard to this question. Such a discussion will have to be informed by numerous factors, *inter alia*, the interests of the ANC and the entire Revolutionary Alliance, the relations the ANC has with the broader democratic forces, the interests of the Patriotic Front, as well as the political balance of forces within the South African political spectrum.

(b) Electoral Regions

The ANC Policy Conference adopted the following policy in this regard:

¹² See Paragraph 4.6 in Working Group 2 Steering Committee Proposal on CMB dated 27/4/92.

“In order to ensure that regional and local interests are represented and to enhance the accountability of the national assembly, we propose that there be a single vote which will count towards both the national and regional lists of parties.”¹³

It is important to point out that electoral regions are not synonymous with political and administrative jurisdictions below the national tier of government. Unlike the latter, the electoral regions question could eventually be grappled with by a delimitation commission, a subject alluded to above. Be that as it may, the ANC will have to begin to develop its own perspective in this regard.

Besides, when we resume bilateral and multi-lateral discussions, this issue may turn out to be tied up with the question of representation in the Upper House.

TECHNICAL QUESTIONS

(a) Voter Eligibility

The ANC policy in this regard is that “All South African citizens above the age of eighteen (18) will be entitled to vote. Such votes will be exercised by all voters within the 1910 boundaries of South Africa.”¹⁴

¹³ See Ready to Govern: ANC Policy Guidelines for a Democratic South Africa at 5. See also Paragraph 4.6 in Working Group 2 Steering Committee Proposal on CMB dated 27/4/92.

¹⁴ See Ready To Govern: ANC Policy Guidelines for a Democratic South Africa at 5. The issue of the voting age is currently governed by Section 52(b) of the Republic of

Two questions immediately arise, namely the issue of citizenship and the question of voters within the TBVC territories.

(i) South African Citizenship

The concept of “South African citizenship”, besides the issue of race, confines the franchise to those people who acquired South African citizenship in terms of the **South African Citizenship Act**.¹⁵ Since South African Citizenship can be acquired only by birth, descent, registration and naturalization, and not by marriage, the ANC should strive to obviate the trap of excluding spouses of South African citizens, eg spouses of returning exiles, as well as those South Africans who have only the status of permanent residents, most of whom may turn out to be blacks who were denied South African citizenship by the powers that be.

A related problem is the question of those South African citizens who are living in foreign countries but who have retained South African citizenship. We have to decide whether or not such people ought to be allowed to participate in the elections. Currently only those South African citizens who cannot participate directly in an election either because they will be absent from their areas when an election is held or because they are out of the country on government service are allowed to vote in absentia by post or as special voters.

(ii) Voters Within the TBVC Territories

The issue of voters within the TBVC territories is addressed in the **Report of Working Group 4 to CODESA 2**¹⁶ as:

South Africa Constitution Act 110 of 1983, where it is provided that the voter must be over the age of eighteen.

¹⁵ Act 44 of 1949.

¹⁶ See Paragraphs 3.1.3 and 3.1.4 of the

“The people of the TBVC states shall take part fully in the process of constitution-making and transitional arrangements. Their participation will be arranged in such a way that their votes in a national election shall signify support for or rejection of re-incorporation. The results of such an election shall constitute a sufficient test of the will of the people.”

“South African citizenship will be restored to the citizens of all TBVC states who would have been South African citizens but for the constitutional independence of the TBVC states, immediately after the testing of the will as envisaged in paragraph 3.1.3 above.”

However, it should be noted that the Bophuthatswana government reserved its position in relation to these two paragraphs.¹⁷ It is in the interests of the process of negotiations that the ANC should raise this issue and its implications in bilateral discussions with the Pretoria regime as well as in multi-lateral negotiations.

(b) Voter Registration

Under current legislation,¹⁸ voters are required to register as such. The ANC has to decide whether or not voters should be registered so that we have a voters' roll. If the ANC opts for registration of voters, a period has to be defined during which all eligible South African voters should present themselves for this.

Report.

¹⁷ See Paragraph 3.1.5 (read with Paragraph 3.2.1) of the Report.

¹⁸ See Sections 5 to 32 of the **Electoral Act** 45 of 1979.

In Zimbabwe the African voters were not required to register. Those entitled to vote simply presented themselves at polling stations on election day and had merely to satisfy the election officers that they were eligible to vote.

In Namibia, however, SWAPO had agreed to prior registration of voters. The common voters' roll had to be compiled between July and September 1989.

In South Africa, there are already separate voters' rolls for Whites, Coloureds and Indians. Only the indigenous Africans are not on any voters' register. If we are to opt for registration, this situation has to be rectified. If we prefer not to go for the registration of voters, we need to prepare a cogent and convincing argument as those parties which have been participating in the elections all along may insist on registration of voters.

Many countries where the proportional representation electoral system is used have voters' rolls. Besides, if we are to have regional representation in the constituent assembly cum interim national assembly, we cannot avoid registration. Otherwise, how do we know who votes in what electoral region when the elections take place?

One major disadvantage of registration in the case of South Africa is that the country is vast and that therefore it would take long to register every eligible voter. Some of the rural areas may be inaccessible. It is said that the process would delay the elections as it would take long to register voters in our situation. By the time of the elections it may turn out that many eligible voters are excluded because their names will not be on the voters' roll.

It is also said that the voters' roll will restrict people in terms of where they can vote; it is said that people ought to be able to present themselves at any polling stations and identify themselves positively and be allowed to vote. But with advanced computer technology that South Africa is endowed with, it should be possible to allow people to vote anywhere and have their votes remitted to their electoral regions.

The major advantage with registration is that the campaign for registration will enable us to reach all communities and sections of our society and explain to them our positions. The campaign can also be combined with a process of voter education particularly as the majority in our country will be voting for the first time in their lives. It will also enable us to weed out all non-South Africans whose "votes" the regime and other parties may otherwise use in an attempt to rig the elections in their favour. A voters' roll will enable our membership to challenge the registration of unqualified persons.

Registration would be a primary responsibility of the proposed Independent Electoral Commission. Appropriate legislation and procedures would have to be worked out to facilitate this process. The law and procedures would have to promote simplicity, convenience and uniformity. Complex and burdensome voter registration procedures could be a discouraging obstacle in a country such as ours where the level of illiteracy is very high. Obstacles to voter registration often include restricted hours of registration, complicated identification requirements, notarization of registration forms and early registration deadlines far in advance of election day.

Some of the simple and efficacious methods of registration are the following:

(1) Mail-in Registration:- This method, also known as postcard registration, entails mailing a pre-addressed and postage-paid registration form to the nearest election office. This is the cheapest method of registration, where an eligible voter fills in the personal details and mails the postcard.

(2) Same-day Registration:- This method, also known as election-day registration, enables eligible voters to register and vote on the same day as elections, often at the same time and place. This eliminates the need for registration deadlines that complicate the process. To avoid fraud and corruption at the point of registration, those who use this method may be required to produce adequate proof of identity, often in the form of identity documents and/or affidavits which can be checked or processed on the spot. Any challenged same-day registered votes may be set aside for further investigation and verification.

(3) Agency-based Registration:- This authorizes state agencies such as motor-vehicle registration authorities, public libraries, tax offices, welfare offices, unemployment offices, public health centres and post offices to register citizens receiving services from them. Selected civil servants are charged with the task of registering voters and remitting the registration forms to electoral officers as part of their routine work.

(4) Volunteers and Assistants:- This method entails recruitment of volunteers to assist in registering voters. Linked to this could be voter registration canvassing on a door-to-door basis to determine registration status and register new voters.

All these methods could be combined to ensure maximum results.

(c) Voter Identification

The basic means of voter identification will be the identity document, which, by definition, should include identity documents issued by the TBVC administrations. Voter registration cards issued under the auspices of the Independent Electoral Commission too could be used.

However, it may be advantageous to allow eligible voters to use any document to establish their identity. Such documents could include (but should not be confined to) passports, travel documents and drivers' licenses. If initial evidence of eligibility to vote is inadequate, the voter should be allowed to produce further and better proof. Affidavits in support of their claims to eligibility to vote should also be allowed. We should be prepared to consider even allowing witnesses to come forward and vouch for people whose identity is being questioned or has to be established satisfactorily.

To avoid fraud and corruption, stiff penalties should be prescribed for offences related to the elections.

(d) Registration of Parties

Under current legislation,¹⁹ parties seeking to contest an election are required to register. Section 36 of the **Electoral Act** is of particular note. It prescribes the formalities a party seeking registration has to comply with.

¹⁹ The registration of political parties is governed by Sections 35 to 40 of the **Electoral Act**.

Should the ANC decide that registration of political parties is to be allowed, it should ensure that the powers of the Director-General of the Department of Home Affairs in this regard are taken over by the proposed Independent Electoral Commission.

Registration will help to streamline the preparations for the elections. It will exclude all political pranks as only those parties that are certain to win the requisite number of votes in order to gain the minimum number of seats would register as such and pay whatever amount the Independent Electoral Commission may prescribe²⁰ for registration of parties.

(e) Logistics and Personnel

Currently, elections are basically conducted by the Department of Home Affairs. Their equipment and personnel are used for the purpose. While it may be advisable to follow suit, the ANC will have to ensure that the Independent Electoral Commission has at its disposal the necessary wherewithal and that all personnel become the responsibility of the Commission for the duration of the entire election period. The Commission should also enjoy the liberty of getting its own personnel so that the process is not placed at the mercy of the civil service which may find it convenient to use the elections to promote certain partisan interests.

²⁰ Currently the amount payable for registration as a political party is, in terms of Section 37 of the **Electoral Act**, R500,00. It is noted that in respect of each constituency where an election is contested, each party fielding a candidate pays the sum of R500,00 in terms of Section 42(1) of the Act; such amount is forfeited in terms of Section 42(2) if the candidate is not successful.

Notes



A series of horizontal lines for writing, starting from the top of the page and extending to the bottom. The lines are evenly spaced and cover most of the page's width.

Notes



A series of horizontal lines for writing, starting from the top of the page and extending to the bottom. The lines are evenly spaced and cover the majority of the page's width.

