

MCHA01-68-4-3

1st DRAFT

7/4/93

***Volume II***  
***Consolidated Document***

***Draft Proposals***

***April 1993***

## VOLUME II OF CONSOLIDATED DOCUMENT

### DRAFT PROPOSALS RELATING TO THE INDEPENDENT ELECTION COMMISSION

#### 1. Aims

Proposals for the establishment of an Independent Election Commission (IEC), charged with the responsibility of conducting the elections, monitoring the election process and the elections, and to act as adjudicator and arbitrator on matters related thereto.

#### 2. The Independent Election Commission

2.1 The IEC shall be appointed by the State President upon the recommendation of the Multi-Party Forum.

2.2 The IEC shall consist of .... members.

2.3 The Chairperson and Deputy Chairperson/s of the IEC shall be appointed by the State President on the recommendation of the Multi-Party Forum.

2.4 In order to enable the IEC to act impartially and in a non-partisan way, the following conditions and criteria shall apply:

2.4.1 The IEC will consist of respected and suitably qualified persons, drawn from a broad cross-section of the population, all of whom shall be eligible voters.

2.4.2 Members of the IEC shall be appointed in their individual capacities and not as representatives of any political parties, organisations, administrations, governments and/or interest groups.

2.4.3 Appointees shall divest themselves of any political office while serving on the IEC.

2.4.4 No member of the IEC shall be an office-bearer or official of any political party/organisation or candidate in the election.

2.4.5 Members of the IEC shall not hold any other office which may give rise to a conflict of interest while serving on the IEC.

2.5 Vacancies in the IEC: Vacancies shall be filled by the State President, on the recommendation of the Multi-Party Forum (MPF) or Transitional Executive Council (TEC), whichever is appropriate at the time.

3. Functioning of the IEC

- 3.1 Members of the IEC shall serve on a full-time basis for the duration of the term of the IEC.
- 3.2 All decisions of the Commission shall be taken by means of a vote and a simple majority shall be sufficient to bind the Commission.
- 3.3 In the event of a deadlock, the Chairperson of the Commission shall have a casting vote.

4. Status of the IEC

- 4.1 The IEC shall be independent of all governmental organisations.
- 4.2 The composition, powers and functions of the IEC shall be enacted in legislation to be agreed to by the MPF.
- 4.3 The IEC shall be independent of the TEC.
- 4.4 In the event that the TEC decides to establish a Sub-council on Elections, such appointment will not interfere in any way with the independence or powers of the IEC.
- 4.5 The sole obligation of the IEC to any other organ of government shall be to supply written reports to the TEC, on its decisions in respect of the organisation and conduct of the elections.

5. Accountability and Finance

- 5.1 The IEC shall liaise with the TEC and the Independent Media Commission (IMC) on matters pertaining to the work of these bodies.
- 5.2 The IEC shall, from time to time, determine a budget to meet the reasonable costs of carrying out its powers, duties and functions in accordance with the enabling legislation.
- 5.3 The South African Government shall provide the funds necessary to cover the budget of the IEC.
- 5.4 A revenue account shall be established by the IEC, and all funds made over to it shall be payed into such account, and all expenses and disbursements incurred by it shall be payed out of such account.
- 5.5 The books and accounts of the IEC shall be subject to audit by the Auditor-General.

NB: There should be a provision concerning budgetary requirements, to cover the event of a dispute between the IEC and the South African Government. Could such a dispute be referred to the TEC? A way out of this problem may be to have the IEC prepare its budget, submit it to the TEC for approval. Once approved by the TEC, the South African Government shall be obliged to provide the necessary funds. This would eliminate dispute resolution mechanisms.

6. Powers, duties and functions of the IEC

6.1 The IEC shall have the sole and ultimate responsibility for the organisation, conduct and supervision of the election.

6.2 In announcing the results of the election, the IEC shall have the responsibility of certifying whether, and to what extent, the elections have been free and fair.

6.3 In particular the IEC shall:

6.3.1 Administer the conduct of the elections.

6.3.2 Monitor the election process and the elections in order to: (a) ensure that the process and the elections are free and fair, and (b) enable the IEC to eventually certify the results of the elections.

In the execution of this function, the IEC may make use of, and act in conjunction with, local and international observers.

6.3.3 Act as an adjudicator and arbitrator on matters related to the election process and the elections referred to it by political parties, organisations, the public at large and/or the TEC.

In the execution of this function, the IEC may involve international participation.

7. In order to discharge effectively and impartially the functions outlined in paragraph 6 above, the IEC shall supervise and establish separate and independent structures to execute each of the three tasks contained in paragraphs 6.3.1, 6.3.2 and 6.3.3 above. Each of these structures shall be accountable to, and co-ordinated by, the IEC.

8. The IEC shall be empowered to promulgate rules and regulations necessary for the discharge of its functions.

9. Eligibility of voters

All South African citizens 18 (eighteen) years and above. This will include citizens of the TBVC states.

NB: This will need further elaboration. Provision is also needed for disqualifications. Questions that arise are: citizens still in exile or resident abroad; persons of unsound mind; citizens who are under a declaration of allegiance to some country other than South Africa; etc.

10. Registration of political parties/organisations for purposes of elections

All parties intending to participate in the elections shall be required to register with the IEC.

NB: There is need for the MPF to agree upon measures to prevent abuse.

11. Administering the elections

The IEC shall be empowered, inter alia, to:

- 11.1 Make provision for the identification of eligible voters.
- 11.2 Determine whether any changes are necessary to citizenship laws.
- 11.3 Formulate a Code of Conduct for potential political parties and ensure that each party commits itself to peaceful electioneering and solemnly and publicly commits itself to such a Code of Conduct. Such a Code of Conduct should include suitable penalties for violations of the Code.
- 11.4 Receive and regulate the registration of parties that wish to participate in the elections.
- 11.5 Determine and supervise campaign funds and election expenditure.
- 11.6 Promulgate rules and regulations for political advertising.
- 11.7 Educate the public about the electoral process through voter education programmes using radio, television and other means.
- 11.8 Set up an appropriate machinery throughout the country and appoint appropriate staff for the purposes of fulfilling its functions.
- 11.9 Make provision for and ensure that no voter votes more than once, that ballot boxes are properly sealed, that counting of votes is conducted in a manner that ensures accuracy and reliability.

12. Monitoring the election process, in order to ensure that the elections are free and fair

The IEC shall be empowered, inter alia, to:

- 12.1 Set up the necessary structures, countrywide, to observe, monitor and verify the entire process of elections, before, during and after polling.
- 12.2 Make suitable provision for the international community organisations to participate in this process.
- 12.3 Take steps to prevent any intimidation.
- 12.4 Promulgate rules and regulations, in order to prevent corrupt and illegal practices, and other offences relating to the elections.

13 Adjudication & Arbitration

The IEC shall be empowered, inter alia, to:

- 13.1 Serve as a final arbiter of any claims or disputes submitted by persons, political parties, organisations, administrations, governments and the TEC.
- 13.2 Establish appropriate machinery throughout the country for the speedy investigation of complaints concerning electoral irregularities, refusal of access to venues or meetings, and access to voters, intimidation and breaches of a Code of Conduct for political parties.

14 General

The IEC shall be empowered to make such other arrangements as may be necessary for the proper exercise of its functions.

**VOLUME II OF CONSOLIDATED DOCUMENT**

**DRAFT PROPOSALS ON AMENDMENT AND/OR REPEAL OF LAWS  
MILITATING AGAINST FREE POLITICAL ACTIVITY, INCLUDING THE  
ELIMINATION OF ALL DISCRIMINATORY LEGISLATION**

1. A Technical Sub-Committee should be set up to draft legislation amending and/or repealing laws militating against free political activity, including the elimination of all discriminatory legislation, based on gender and/or race. Such draft Bills would also take into account laws in the TBVC states.
2. In the preparation of such drafts, this Sub-Committee shall be guided by the Report of Working Group 1 and the Report of the Gender Advisory Committee (GAC).
3. The Report containing the draft laws would be tabled for discussion at the Planning Committee, thereafter submitted to the Negotiating Council, and, finally, settled at the level of the Negotiating Forum.

## VOLUME II OF CONSOLIDATED DOCUMENT

### DRAFT PROPOSALS ON MATTERS RELATING TO STATE-CONTROLLED MEDIA

1. Two mechanisms are involved in this regard:

1.1 Independent Telecommunications Authority

1.2 Independent Media Commission

2. The Independent Telecommunications Authority (ITA)

2.1 **Aim**

The creation and establishment of an independent, neutral body to regulate the telecommunications sector, whose principle tasks are:

2.1.1 The regulation of the utilisation of the electromagnetic spectrum, including the allocation of licences and the determination of licence conditions, according to an agreed set of standards.

2.1.2 The appointment of a suitable structure to monitor the proper exercise of the licence conditions.

2.2 The Report of Working Group 1 on this matter is sufficiently detailed to enable a Technical Sub-Committee to prepare a draft in legislative form.

3. The Independent Media Commission (IMC)

3.1 **Aim**

The aim of an IMC is the levelling of the media playing fields in the period leading up to the elections, in respect of:

3.1.1 The monitoring of the electronic media, to ensure the impartiality, fairness and compliance with licensing conditions and fair access to such media.

3.1.2 The monitoring of governmental media, including those in the TBVC states, to ensure their neutrality and impartiality.

3.2 **Composition**

3.2.1 The IMC shall consist of ... members, appointed by the State President in consultation with the Multi-Party Forum (MPF) / Transitional



Executive Council (TEC), whichever is appropriate at the time.

3.2.2 The MPF/TEC shall decide on the mechanisms for the appointment of the IMC, including public nominations by political parties/organisations and interest groups, as well as a representative and transparent process.

**3.2.3 Criteria for appointment to the IMC**

3.2.3.1 Appointees shall be South Africans of merit and high standing.

3.2.3.2 They shall perform their duties in the public interest.

3.2.3.3 Appointees shall divest themselves of any political office while serving on the IMC.

3.2.3.4 Appointees shall not be office-bearers of any political party/organisation or have a vested interest in the media industry.

3.2.3.5 The IMC shall collectively reflect the cross-section of the South African population.

3.2.3.6 The IMC shall have within its ranks individuals with the necessary legal expertise.

**3.3 A member of the IMC:**

3.3.1 Shall hold office for such a term as designated for the IMC.

3.3.2 May vacate his/her office for reasons pertaining to the criteria mentioned in 3.2 above and/or accepted by the TEC.

3.3.3 May, in the case of 3.3.2 above, be replaced in accordance with the procedure for the nomination of the IMC in the first place.

**3.4 Chairperson**

The Chairperson of the IMC shall be appointed by the State President in consultation with the MPF/TEC, whichever is appropriate at the time.

**3.5 Powers, functions & duties**

3.5.1 In order to attain the objectives set out in paragraph 3.1 above, the IMC shall monitor:

3.5.1.1 The programme content of the electronic media for breaches of licensing conditions and the provisions of

any Code of Conduct. In this regard, it shall act in co-operation with any similar structure set up for the regulation of the telecommunications sector.

NB: It may be necessary to remove this task from the regulatory body for the telecommunications sector.

3.5.1.2 Governmental media, to ensure that they do not favour or prejudice any political party/organisation.

3.5.2 The IMC shall serve as adjudicator for the hearing of complaints against inaccuracies or partiality, or the denial of fair access on the part of the electronic media, and shall have the power to order the rectification of any offensive conduct.

3.5.3 The IMC shall oversee the transformation of broadcasting, including the integration of TBVC broadcasters into the new dispensation, and resolve any disputes that may arise, for instance: between the ITA and Board/s of broadcasters.

3.5.4 The IMC shall execute its functions in a manner which ensures the necessary effectiveness. It may:

3.5.4.1 Consult any person for the purposes of obtaining expert advice on any matter; and

3.5.4.2 Appoint sub-committees to perform such functions and duties as it may determine, from time to time.

### **3.6 Accountability, Finance & Referral**

3.6.1 The IMC shall operate as an independent body.

3.6.2 It shall liaise with the ITA, the Independent Election Commission (IEC) and the TEC on matters pertaining to the work of these bodies.

3.6.3 The IMC may, in its discretion, refer any matter involving transgression by a licensee of licensing conditions to the ITA, for such action as may be deemed necessary.

3.6.4 The IMC shall be afforded the necessary finance to carry out its functions, and, in this regard, it shall be accountable to the TEC.

### **3.7 Structure**

The IMC shall have a Secretariat and such infrastructure as it may deem necessary to carry out its functions.

### 3.8 Code of Conduct

- 3.8.1 The IMC shall carry out its functions and exercise its powers in accordance with a Code of Conduct for all licensed broadcasters, as well as one specifically applicable to the national service broadcaster (SABC and public broadcasters of the TBVC territories).
- 3.8.2 Such a Code of Conduct would form part of the licensing conditions of the ITA.
- 3.8.3 Matters which could be contained in any Code of Conduct will, inter alia, cover the following:
- 3.8.3.1 Public media should serve society as a whole and be independent of political parties.
  - 3.8.3.2 All parties shall be afforded fair and reasonable access to air their views, including such aspects as the right of reply, prime-time access, public withdrawals by offending parties, etc.
  - 3.8.3.3 Broadcasters must be impartial in dealing with news, commentary, interviews and current affairs programmes.
  - 3.8.3.4 Privacy of sources of media workers' information shall be protected.
  - 3.8.3.5 Programmes shall take into account cultural and language diversity within society.
  - 3.8.3.6 Broadcasters should promote peace, justice, democracy and freedom of thought, conscience and religion.

### 3.9 Print media

The IMC shall liaise with the Media Council on election matters pertaining to the print media.