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19 November 1993

LIST OF DOCUMENTATION FROM THE MULTI-PARTY TALKS AT THE WORLD TRADE CENTRE 1993

INDEPENDENT ELECTORAL COMMISSION (IEC)

	<u>Date</u>
✓ First Interim report of the Technical Committee on the IEC	13 May 1993
✓ Second report of the Technical Committee on the IEC to the Negotiating Council, including the <u>FIRST</u> draft of the IEC Act	21 May 1993
✓ Third report to the Negotiating Council by the Technical Committee on the IEC	3 June 1993
✓ <u>SECOND</u> Draft of the IEC Bill	14 July 1993
✓ <u>THIRD</u> Draft of the IEC Bill, including a general explanatory note	17 August 1993
✓ <u>FOURTH</u> Draft of the IEC Bill	25 August 1993
✓ <u>FIFTH</u> Draft of the IEC Bill, including an explanatory memorandum	30 August 1993
✓ <u>SIXTH</u> and <u>FINAL</u> Draft of the IEC Bill	31 August 1993
✓ <u>Independent Electoral Commission Bill</u> B151-93, B151A-93 and B151B-93 as tabled in Parliament	
✓ <u>Independent Electoral Commission Act</u> 150 of 1993 as passed by Parliament	



JC217689

EMBARGOED
UNTIL TABLING IN THE NEGOTIATING COUNCIL
ON FRIDAY 15 OCTOBER 1993

SECOND VERSION
OF THE DRAFT ELECTORAL BILL
BY THE
TECHNICAL COMMITTEE ON THE ELECTORAL BILL

15 October 1993

EXPLANATORY MEMORANDUM

SECOND VERSION

DRAFT ELECTORAL BILL

15 OCTOBER 1993

1. This draft has attempted to accommodate the comments, suggestions and criticisms which were levelled against the first draft by members of the Negotiating Council on 5 October 1993. In addition to a large number of textual changes, certain substantive changes of principle have been made to the draft bill, affecting:
 - 1.1 entitlement to vote;
 - 1.2 procedures for registration of parties;
 - 1.3 foreign voting;
 - 1.4 special votes.
2. Pursuant to the instruction from the Negotiating Council to recommend criteria for eligibility, the Committee has re-drafted Clause 16 to include as eligible voters the following:
 - 2.1 South African citizens.
 - 2.2 TBVC citizens. ("The Republic" has been defined in the draft Bill to encompass the borders of South Africa as at 1910).
 - 2.3 Persons born in South Africa, who are now and have been ordinarily resident in South Africa for at least the past 12 months.
 - 2.4 Persons born to a South African parent with the further requirement that such persons must have been likewise ordinarily resident in South Africa for at least the past 12 months.
 - 2.5 Marriage to a South African citizen.
 - 2.6 Persons ordinarily resident in South Africa for the past 5 years.
3. In making this recommendation, the Committee has attempted to ensure that the election will be as inclusive as possible. It has had regard to the requirements for citizenship as set out in the Citizenship Act of 1949. For example:

3.1 Birth in South Africa gives rise to citizenship.

3.2 A person born outside South Africa on or after September 1949 can become a citizen by descent if his or her father was at the time of his or her birth a South African citizen (or if a certificate of resumption of citizenship has been issued to his or her parent/s and he or she has entered the country for permanent residence, or if he or she has been adopted by a citizen provided his or her birth is properly registered.

3.3 The Minister of Home Affairs can grant a certificate of naturalisation to persons falling within specific categories of which one of the requirements is that the person has been ordinarily resident in the Republic for at least 1 year immediately preceding his or her application, and that he or she has, in addition, been resident in the Republic for a further period of not less than 4 years during the 8 years preceding the application.

Given the wide range of circumstances in which citizenship could have been lost (see section 15 of the Citizenship Act), it is likely that there are many people who fall within the requirements for citizenship in terms of the Citizenship Act, but who are not presently South African citizens. The Committee has made its recommendations with due regard to these requirements.

4. One member of the Committee suggested that the IEC be given a discretion to extend the category of eligible voters to include persons not resident in South Africa; that is, persons who would otherwise qualify but who fail to meet the suggested criterion of residency. However, a majority of the Committee felt that this would err on the side of being too inclusive.
5. As a result of this recommendation, a number of consequential amendments to the Bill are necessary. "Acceptable identity document" has been altered to "voter eligibility document" and the definition of "Republic" now makes clear the applicable documents issued by TBVC Governments are also acceptable.
6. Notwithstanding criticism expressed of the clause empowering the IEC to issue voter's cards, the Committee considers that this provision is necessary, particularly in the light of the extended criteria for voter eligibility. Whilst not eligible for an "identity document" or "temporary identity document", the extended range of eligible voters will require acceptable identification, and this can only be achieved by means of a voter's card. Section 4 of the Identification Act 72/86 does not extend to all the proposed categories, hence a temporary ID cannot be issued to all eligible voters as proposed. The clause also makes clear that voter's cards will include a photograph of the bearer.

7. The Committee considered the debate on the eligibility of prisoners to vote. A separate memorandum will be tabled in which comparative experience of other countries is described. One member of the Committee, however, feels that there should be a further restriction on the eligibility of prisoners to vote, and has recommended the insertion of the following provision:

"No person shall be entitled to vote in an election, if that person is detained in prison, in accordance with a sentence imposed pursuant to a conviction by a court of law in respect of any offence mentioned in Schedule 1 of the Criminal Procedure Act 51/77 or any other applicable law, as the case may be, provided that any person who commits an offence with a political motive shall not be disqualified by reason of the provisions of this paragraph."

The balance of the Committee holds the view that prisoners should be entitled to vote, on the premise that they should only be denied those rights which are necessary for their incarceration - of which the right to vote is not one.

8. The Committee also reviewed its recommendations in so far as persons not entitled to vote are concerned. The Committee draws attention to the fact that the three disqualified categories referred to are all derived from express prohibitions contained in the present Electoral Act 45/79. Section 4 thereof provides that no person shall be entitled to be registered, or to the continuance of his or her registration, or vote in any division, if he or she is subject to an order of a court declaring him or her to be of unsound mind or mentally disordered or defective, or detained as a mentally ill patient under the Mental Health Act 1973, or in the case of independent states under any law applicable in that state.
9. In the light of the debate in the Negotiating Council, the Committee reconsidered the requirements for party registration for purposes of elections. Attention is drawn to the fact that the previous clause (16(2)) which provided for a registration fee of R10,000, has been deleted. Furthermore, the requirements for deposits for contesting the election of the National Assembly and SPR's have also been reduced. The procedures for objection to such party registration have been streamlined, and as a result Chapter IV of the draft Bill is considerably altered. It is now proposed that there be only one opportunity for third parties to raise objections to the registration of a party. Provisions have also been made for the registration of alliances of parties, as proposed in the Council.
10. The Committee has adopted a restrictive approach to special votes. Provisions have been made for special votes for disabled persons and pregnant women. It is also provided that only a presiding officer or a voting officer can attest the special vote. The Committee has also altered the provision regarding foreign voting stations. The Commission is mandated to establish voting stations outside the Republic. It may be that not all such foreign voting stations will be at South African missions. Attention has been drawn to the position of Muslims on Haj, which might necessitate a foreign

voting station in Saudi Arabia where there is no South African mission. The clause has also been altered to enable any eligible voter to be permitted to record his or her vote at a foreign voting station.

The provision dealing with tendered ballots has also been reviewed in the light of submissions made by the Government, but the Committee has not deemed it appropriate to make substantive changes to its earlier proposals in this regard.

11. The Committee is still giving consideration to a number of issues on which no decision has yet been reached, but has decided not to delay the submission of this new draft. In particular, the Committee is considering:

- 11.1 whether a voter shall be entitled to vote at any voting station in the Republic;
- 11.2 whether the election should be for a period of one or more than one day; and
- 11.3 whether provision should be made for public funding of election campaigns.

12. The Committee found that there were three options in so far as the situs for voting was concerned, namely:

- 12.1 The option reflected in clause 30 of the first draft namely that a voter shall be entitled to vote at any voting station; and for purposes of the election for any "other legislature", such vote shall be counted where it is has been cast.
- 12.2 The option that voters should be afforded a choice, such that in the event that a person votes outside the region where he or she is ordinarily resident, such voter can request a special ballot paper for voting in which it shall be recorded that he or she is voting in the region of his or her ordinary residence.
- 12.3 The option that voter's cards are issued to all eligible voters (including those with other identity documents) and that the voter's card specify the ordinary residence or applicable region of the voter concerned.

The majority of the Committee favours option 12.2. Option 12.1 was the subject of much dissatisfaction in the Council. It is possible that option 12.3 can be implemented. For example, in Canada and Cambodia the Committee has been advised that voter's cards were issued to all voters in a relatively short period of time. However, the Committee is in no position to assess whether this is feasible in South Africa nor whether it is financially viable. Thus, whilst option 12.2 is susceptible to possible abuse, the majority of the Committee considered that it would be possible to restrict such abuse by including as an offence, the calling by any party/organisation for voters to vote in a particular region without regard to their ordinary residence. Nonetheless it must be conceded that giving voters an option in this manner could result in substantial distortions. Guidance from Council is sought in this regard.

13. The Committee considered the question of the number of voting days. It considered the recommendations of the Goldstone Commission that the election should take place over one day only. The Committee wishes to consult with the Department of Home Affairs regarding the number of voting stations in order to ascertain whether it would be possible for voters to have easy access to voting stations. Such an analysis will assist the Committee in making a firm recommendation. Other questions flow therefrom, all of which the Committee needs to consider before making a recommendation. These include the implications for an increased number of voters descending on a voting station; the consequent need for more election officials and more accessories, such as ultra violet lamps; the danger of a shortage of ballot papers at a particular voting station which could be rectified on a second day of voting etc.
14. The Committee has received a detailed submission from the Democratic Party regarding state funding of the election campaigns of registered parties. However, it awaits further submissions before making recommendations for Council's consideration.
15. Attention is also drawn to a number of important changes in the detail of the Second Draft. Although in the Council to reconcile the definition of "non-governmental military force" as contained in clause 1 of the First Draft, with the definition of "armed force" as contained in the TEC Act, the Committee has been obliged to adopt the definition in order to extend the definition to include non-participants in the TEC.
16. The Act has been amended to include the establishment of a formal liaison committee between the IEC and registered parties. Thus chief election agents of the various parties will meet on this committee, which will allow for close co-operation between the parties and the IEC, in so far as the running of the election is concerned. Provision has also been made for members of the liaison committee to object to the appointments of electoral staff, although the Commission's decision will be final and not subject to appeal or review. The Committee has amended the section dealing with the submission of lists of candidates to the Chief Director to allow for more names to be included on the list than are represented by available seats. The Committee has recommended that the names of candidates may appear on both a national and a regional list, but cannot appear on the list of more than one registered party.
17. The qualifications for a person to be a candidate have been redrafted to accord with the requirements envisaged by the draft Constitution.
18. The Committee recommends that the identification mark be administered by means of invisible ink. However, the Committee is presently researching whether suitable ink will be available, and the resultant logistic requirements; for example ultra violet sensors to identify the (invisible) mark.

19. The Committee has amended the section dealing with safekeeping of election material in the light of criticisms expressed of the previous draft. The newly elected Government rather than the IEC shall be responsible for the expeditious disposal of election material.
20. The Committee has included a provision dealing with the establishment and enforcement of an Electoral Code of Conduct. A draft Code is included with this submission, although it must be recorded that this is an early draft which represents only the framework of the Committee's thinking. The Committee intends to give further consideration to the terms of the draft, and may submit a re-draft with its next report. There is a view in the Committee that the Code should be formulated as a popular document rather than one which is couched in legalistic terms. This issue also needs to be resolved.
21. The Committee will give further attention to the drafting of a specimen ballot paper, and to the content of Chapter IX dealing with the system of proportional representation, and the conduct of regional elections. These are matters which will be considered jointly between this Committee and the Committee dealing with Constitutional Issues.

B I L L

To regulate elections for the National Assembly and any other legislature to be elected in terms of the Constitution of the Republic of South Africa Act, 1993; and to provide for matters in connection therewith.

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

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CHAPTER I

Interpretation and Application of Act

Definitions

1. In this Act any expression defined in the Independent Electoral Commission Act, 1993, and used in this Act shall have the meaning so defined and, unless the context otherwise indicates -

"armed force" means any armed force not established by or under any law and which is under the authority and control of, or associated with and promotes the objectives of, any party;

"Administration Directorate" means the Election Administration Directorate established by section 19 of the Commission Act;

"Appeal Tribunal" means an Electoral Appeal Tribunal established in terms of section 30 of the Commission Act;

"ballot box" means any ballot box referred to in section 29;

"ballot paper" means any ballot paper referred to in section 30;

"candidate" means any person whose name appears on a list of nominations by any registered party to be a member of the National Assembly or any other legislature in terms of the Constitution and this Act;

"Chief Director" means the Chief Director: Administration appointed to that office by the Commission in terms of section 20(1) of the Commission Act;

"Chief Director: Monitoring" means the person appointed to that office by the Commission in terms of section 23(1) of the Commission Act;

"chief election agent" means any chief election agent appointed in terms of section 14(1)(a);

"Commission" means the Independent Electoral Commission established by section 4(1) of the Commission Act;

"Commission Act" means the Independent Electoral Commission Act, 1993;

"Constitution" means the Constitution of the Republic of South Africa Act, 1993;

"counting officer" means any counting officer appointed in terms of section 8(1)(b)(iii);

"counting station" means any place determined by the Chief Director in terms of section 43 where the counting of votes is to take place;

"deputy director" means any deputy director appointed in terms of section 20(1) of the Commission Act;

"directorate" means the Administration or Monitoring Directorate;

"district election agent" means any district election agent appointed in terms of section 14(1)(c);

"district electoral officer" means any district electoral officer appointed in terms of section 8(1)(b)(i);

"election" means any election conducted in terms of the Electoral Act for the National Assembly or any other legislature;

"election agent" means any election agent appointed in terms of section 14(1) or (3)(c);

"election material" means any ballot papers, counterfoils, envelopes, statements and other documentation used in connection with the voting in an election;

"Electoral Code of Conduct" means the Electoral Code of Conduct contained in Schedule 1;

"electoral district" means a portion of the territory of a region as determined by the Commission;

"electoral officer" means any deputy director, any regional or district electoral officer or deputy, any counting officer or any voting officer;

"Electoral Tribunal" means an Electoral Tribunal established in terms of section 28 of the Commission Act;

"foreign voting station" means any foreign voting station established in terms of section 26;

"identification mark" means the mark approved by the Commission for the purpose of the identification of a voter who has voted in the election in terms of section 36(4);

"interim party liaison committee" means the interim party liaison committee referred to in section 6;

"international observer" means any person appointed as a representative of the United Nations, the Organization of African Unity, the European Community, the Commonwealth and any other inter-governmental organization or foreign government accredited for that purpose by the Subcouncil on Foreign Affairs of the Transitional Council in consultation with the Department of Foreign Affairs in order to observe and report on the electoral process;

"monitor" means any person appointed as such in terms of section 24(1)(a) of the Commission Act;

"Monitoring Directorate" means the Election Monitoring Directorate established by section 22 of the Commission Act;

"National Assembly" means the National Assembly which together with the Senate shall constitute the Constitutional Assembly as contemplated in the Constitution;

"observer" means any observer registered with the Monitoring Directorate in terms of section 24(1)(b) of the Commission Act;

"official mark" means the mark determined by the Chief Director, for the purpose of the identification of a ballot paper having been officially issued in terms of section 36(6)(a) or 42(4)(a);

"other legislature" means any legislature contemplated in the Constitution, excluding the National Assembly and Senate;

"Parliament" means Parliament as contemplated in the Constitution;

"party" means any registered party, and any party, organization or movement of a political nature which publicly supports or opposes the policies, candidates or cause of any registered party, or which propagates non-participation in any election or the non-acceptance of the results certified by the Commission;

"party liaison committee" means the party liaison committee referred to in section 5;

"party voting agent" means any party voting agent appointed in terms of section 14(5);

"prescribe" means prescribe by regulation under this Act or the Commission Act;

"presiding officer" means any presiding officer appointed in terms of section 8(1)(b)(ii);

"qualified person" means any person qualified in terms of the Constitution to serve as a member of the National Assembly or other legislature;

"region" means any portion of the territory of the Republic determined as such in terms of the Constitution;

"regional election agent" means any regional election agent appointed in terms of section 14(1)(b);

"regional electoral officer" means any regional electoral officer appointed in terms of section 8(1)(a);

"regional party liaison committee" means any regional party liaison committee established in terms of section 7;

"registered party" means any party registered in terms of Chapter IV;

"regulations" means the regulations made under section 58;

"Republic" means the Republic of South Africa, including any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei;

"Secretariat" means the Election Adjudication Secretariat established by section 25 of the Commission Act;

"Secretary" means the person appointed to that office by the Commission in terms of Section 26(1) of the Commission Act;

"Senate" means the Senate as contemplated in the Constitution;

"special voter" means any voter entitled in terms of section 41 to record his or her vote as a special voter;

"State" means the Republic;

"tendered ballot paper" means any tendered ballot paper referred to in section 39;

"this Act" includes the regulations;

"Transitional Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993;

"voter" means any eligible voter as contemplated in the Constitution and this Act;

"voter's card" means any voter's card issued in terms of section 18;

"voter's eligibility document" means a valid passport, an identity document or a temporary identity certificate of the Republic or a voter's card or a reference book issued in terms of the repealed Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952 (Act No. 67 of 1952);

"voting compartment" means any voting compartment referred to in section 28;

"voting day" means the voting day or days fixed in terms of section 22(1);

"voting materials" means voting compartments, ballot boxes, ballot papers, instruments, seals and other requisites for the purposes of conducting an election;

"voting officer" means any voting officer appointed in terms of section 8(1)(c); and

"voting station" means any voting station referred to in section 25.

Application of Act

2. The provisions of this Act shall apply in respect of elections held in terms of the Constitution for the National Assembly or any other legislature.

Act binding on State and State President

3. (1) This Act shall bind the State.

(2) This Act shall bind the State President in so far as he or she shall be obliged to act in accordance with the advice of the Transitional Council wherever so provided for in this Act.

CHAPTER II

Administration

Administration of Act

4. The provisions of this Act shall be administered by the Commission which in such administration shall endeavour to create an environment which generates confidence in the electoral process and the secrecy of the ballot.

Party liaison committee

5. (1) Upon publication of the notice contemplated in section 21, there shall be established a party liaison committee, the main function of which shall be to act as instrument for liaison between the Commission and the registered parties.

(2) The party liaison committee shall -

- (a) consist of the chief election agents of all the registered parties;
- (b) designate a chairperson from its number whenever necessary;
- (c) determine its own procedures to be followed at its meetings, including a quorum for a meeting and a decision.

Interim party liaison committee

6. (1) Pending the appointment of the party liaison committee there shall be established an interim party liaison committee consisting of such representatives of parties as may be appointed for that purpose by the Transitional Council.

(2) The provisions of section 5(2)(b) and (c), shall mutatis mutandis apply to the interim liaison committee.

Regional and local party liaison committees

7. (1) The Commission may establish regional and local party liaison committees.

(2) The provisions of section 5(2)(a) and (b), shall mutatis mutandis apply to any such regional and local party liaison committee.

Appointment and control of electoral officers and staff

8. (1) Subject to sections 15 and 20 of the Commission Act, the Chief Director shall, in respect of any election called in terms of the Constitution, in consultation with the Commission, appoint -

- (a) a regional electoral officer and one or more deputies in respect of each region;
- (b) (i) a district electoral officer and one or more deputies in respect of each district;
(ii) a presiding officer in respect of each voting station; and
(iii) one or more counting officers in respect of each counting station, or subject to such consultation, authorize any such appointment by any regional electoral officer; and
- (c) one or more voting officers in respect of each voting station as he or she may consider necessary for the effective administration of the election, or subject to such consultation, authorize any such appointment by any regional or district electoral officer.

(2) Subject to section 15 of the Commission Act, the Chief Director, any regional and district electoral officer and any counting officer may, if authorized thereto by the Chief Director, appoint other staff as may be necessary for the effective administration of the election.

(3) All electoral officers, and staff appointed in terms of this section, shall be under the control and carry out the instructions of the Chief Director.

(4) In the appointment of staff in terms of this section an endeavour shall be made to appoint a broad cross-section of the population, including women.

(5) In effecting any appointment in terms of subsection (1), the Commission shall invite and, where given within 48 hours after submission to the party liaison or interim party liaison committee, as the case may be, of a proposal regarding any such appointment, consider, but shall not be bound by, the advice of any such committee.

(6) No appointment made in terms of subsections (1) or (8) or removal from office in terms of subsection (7) shall be subject to appeal or review.

(7) Notwithstanding anything to the contrary contained in this Act or any other law any presiding, voting or counting officer may be removed from office by the Chief Director or his or her delegate on account of misconduct or inability to perform the duties of his or her office efficiently, or by reason of his or her absence without the prior permission of the Chief Director or his or her delegate, or by his or her incompetence or for displaying bias.

(8) In the event of a removal from office contemplated in subsection (7) or in the event of the death of any officer contemplated therein, the Chief Director or his or her delegate may appoint a person in the place of such officer.

Powers, duties and functions of regional electoral officers

9. (1) The regional electoral officer shall, subject to the control of the Chief Director, assume responsibility for the administration, organization, supervision and conduct of the election in the region in respect of which he or she is appointed.

(2) The regional electoral officer shall have such other powers, duties and functions as may be prescribed.

Powers, duties and functions of district electoral officers

10. (1) The district electoral officer shall, subject to the control of the regional electoral officer, have such powers as may be delegated to him or her by the Chief Director under section 21(4) of the Commission Act in respect of the administration, organization, supervision and conduct of the election in the district in respect of which he or she is appointed.

(2) The district electoral officer shall have such other powers, duties and functions as may be prescribed.

Powers, duties and functions of presiding officers at voting stations

11. (1) The presiding officer at a voting station shall have power to -

- (a) take such steps as may be necessary for the orderly conduct of the voting, including regulating the number of voters to be admitted at a time; and
- (b) exclude all other persons except -
 - (i) members and representatives of the Commission;
 - (ii) the Chief Director and any electoral officer concerned;
 - (iii) any party voting agent entitled in terms of section 14(5) to be present at a voting station;
 - (iv) any other person authorized by the Commission to be present as a monitor or observer; and
 - (v) any such interpreters, translators and staff as the presiding officer may allow.

(2) The presiding officer may, if he or she deems it necessary for the effective administration of the election, order any person, subject to subsection (1) and excluding any person recording his or her vote, to leave the voting station.

(3) The presiding officer shall take all reasonable steps for the protection of persons and property, at the voting station, and for preventing any violence or disturbance in or in the vicinity of the voting station.

(4) The powers conferred by this section shall not be so exercised as to prevent any person who is entitled to vote, from having an opportunity to record his or her vote.

(5) The presiding officer shall have such other powers, duties and functions as may be prescribed.

Powers, duties and functions of voting officers at voting stations

12. (1) Voting officers at a voting station shall assist the presiding officer in the exercise of the powers and the performance of the duties and functions of the presiding officer in terms of this Act and carry out his or her lawful instructions.

(2) The voting officer shall have such other powers, duties and functions as may be prescribed.

Powers, duties and functions of counting officers

13. (1) The counting officer shall, subject to the control of the regional electoral officer, have such powers as may be delegated to him or her by the Chief Director under section 21(4) of the Commission Act in respect of the administration, organization and conduct of the counting of the votes in the area concerned.

(2) The counting officer shall have such other powers, duties and functions as may be prescribed.

Appointment and powers, duties and functions of agents of registered parties

14. (1) Upon registration in terms of section 20 the party concerned shall by written notice to the Chief Director -

- (a) if the party is contesting the election for the National Assembly, appoint a chief election agent and a deputy and appoint a regional election agent in respect of each region, and shall furnish the names and business addresses of such election agents;
- (b) if the party is not contesting the election for the National Assembly, appoint a regional election agent and a deputy in respect of each region in which it is contesting the election, and furnish the names and business addresses of such election agents; and
- (c) when so required by the Commission, appoint a district election agent in respect of any district within 10 days after notification of such requirement and furnish the name and business address of such election agent.

(2) The chief election agent or the regional election agent shall represent the registered party at meetings of the party liaison or regional party liaison committee, as the case may be, and all other fora which the Commission, a Chief Director of a directorate or the regional electoral officer in its, his or her discretion may constitute in respect of an election.

(3) (a) A registered party which has appointed an election agent may at any time revoke such appointment.

(b) When a registered party revokes an appointment in terms of paragraph (a) or if any election agent resigns, becomes incapacitated or dies, the registered party shall forthwith inform the Chief Director or the regional electoral officer concerned in writing of such revocation, resignation, incapacity or death.

(c) A registered party shall as soon as practicable but within five days fill any vacancy occurring in terms of paragraph (a) or (b) by appointing any other person as election agent and, shall forthwith notify the Chief Director or the regional electoral officer concerned in writing of the name and address of the person so appointed: Provided that in the case of a chief election agent, such appointment shall be made within 48 hours of the vacancy having occurred.

(4) A record of all appointments and information noted in terms of this section shall be kept as a matter of public record by the Chief Director and the regional electoral officer concerned for public scrutiny and a copy of each such notice shall be submitted to each presiding officer in the district concerned.

(5) A regional election agent shall appoint, in the manner prescribed the prescribed number of party voting agents for the purposes of monitoring voting at a voting station and counting of votes.

(6) No person shall be appointed as election or party voting agent unless he or she is a person entitled to vote in terms of section 16.

Declaration of secrecy

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

CHAPTER III

Franchise

Persons entitled to vote

16. Any person of the age of 18 years or above who -
- (a) is a citizen of the Republic;
 - (b) was born in the Republic, and who will have been ordinarily resident in the Republic for a period of at least one year prior to the first voting day;
 - (c) was born to parents who are, or were up to their deaths, citizens of the Republic, and who will have been ordinarily resident in the Republic for a period of at least one year prior to the first voting day; or
 - (d) is married to a citizen of the Republic, or was so married up to the death of the spouse, and who will have been ordinarily resident in the Republic for a period of at least 5 years prior to the first voting day,
- shall, in accordance with and subject to the provisions of this Act, be entitled to vote at an election.

Persons not entitled to vote

17. Notwithstanding the provisions of section 16, no person shall be entitled to vote in an election, if that person is -

- (a) subject to an order of court declaring him or her to be of unsound mind or mentally disordered or affected;
- (b) detained as a mentally ill patient under the Mental Health Act, 1973 (Act No. 18 of 1973), or any other applicable law, as the case may be;
- (c) detained under the Prevention and Treatment of Drug Dependency Act, 1992 (Act No. 20 of 1992), or any other applicable law, as the case may be; or
- (d) detained in prison in accordance with a sentence imposed in terms of a conviction by a court of law in respect of any offence mentioned in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977): Provided that any person so detained in respect of any such offence committed with a political motive shall not be disqualified from voting by reason of the provisions of this paragraph.

Voters' cards

18. (1) The Commission shall in the prescribed manner issue voters' cards on application in the prescribed manner received at least 14 days prior to the first voting day, or such lesser period as the Commission may determine, which cards shall constitute adequate proof of the holder's entitlement to vote.

(2) A voter's card shall contain a photograph with a recognizable image of the holder.

(3) Entitlement for voters' cards shall be in accordance with the grounds of eligibility to vote in terms of section 16.

CHAPTER IV

Registration of Parties

Registration for purposes of election

19. No party shall be entitled to contest an election unless such party is registered as a participant in the election in accordance with, and subject to, the provisions of this Chapter.

Application for registration for purposes of election

20. (1) An application for the registration of a party as a participant in the election shall be submitted in the prescribed form to the Chief Director not later than 10 days after the proclamation in the Gazette of the election in terms of section 22.

(2) The application referred to in subsection (1) shall -

- (a) if the party wishes to contest the election for the National Assembly, be accompanied by a deposit of R25 000 or, in lieu thereof, a list compiled in the prescribed manner containing the signatures of at least 5 000 voters;
- (b) if the party wishes to contest the election for any other legislature, be accompanied by a deposit of R5 000 or, in lieu thereof, a list compiled in the prescribed manner containing the signatures of at least 1 000 voters ordinarily resident in the region concerned, in respect of each such election it wishes to contest.

(3) The application form shall inter alia make provision for the following:

- (a) The name of the party, consisting of not more than 60 letters, which in terms of the provisions of section 30 is required to appear on the ballot paper;
- (b) the distinguishing mark or symbol and designated colours of the party;
- (c) a photograph of the leader of the party;
- (d) the abbreviation, if any, of the name of the party, consisting of not more than 8 letters;
- (e) the business address of the party;
- (f) the constitution of the party; and
- (g) the names, addresses and telephonic or other means of contact of the chief election agent and the regional election agents of the party and their respective deputies.

(4) In respect of any number of parties wishing to participate in the election in an alliance, an application referred to in subsection (1) shall be submitted within the time and in the manner determined in subsections (1), (2) and (3), and the provisions of this Act shall mutatis mutandis apply in respect of such alliance as if it constituted a single party: Provided that a copy of the constitution of each such party shall be submitted together with any such agreement as may define the relationship between them.

(5) No party shall be registered as a participant in the election unless a declaration in the form prescribed by the Chief Director has been signed on behalf of such party by the duly authorized representative of the party in terms of which the party commits and subjects itself, its office bearers, party officials and listed candidates to the Electoral Code of Conduct.

(6) The Commission shall, on the day after the period referred to in subsection (1), cause to be published in a special or ordinary Gazette a complete list of applications referred to in that subsection in which objections are invited by interested parties, and containing the address at which a copy of the original application and supporting documents shall be available for public inspection.

(7) A copy of each document submitted to the Chief Director for the purposes of the registration of a party as a participant in the election shall be kept at the address referred to in subsection (6) for perusal by the public, and anyone who desires to inspect such a document, may do so free of charge during office hours.

(8) The Chief Director shall, upon payment of the prescribed fees, provide a copy of any document referred to in subsection (7) to any person applying therefor.

(9) (a) The Commission may disallow a proposed name, abbreviated name, distinguishing mark, symbol or colours of a party in the event that it -

- (i) contains a portrayal of any arms, ammunition, uniform or other object normally used in or associated with military operations, whether in time of war or peace;
- (ii) resembles the proposed name, abbreviated name, distinguishing mark, symbol or colours, as the case may be, of any other party to such extent that in the opinion of the Commission, it may deceive or confuse; or
- (iii) contains anything which portrays the propagation of or incitement to violence or which might cause serious offence to any section of the population on the grounds of race, sex, ethnic origin, colour, sexual orientation, age, disability, religion, conscience, creed, culture or language.

(b) If the Commission is of the opinion that the name, abbreviated name, distinguishing mark, symbol or colours referred to in subsection (3) of a party corresponds with, or substantially resembles, the name, abbreviated name, distinguishing mark, symbol or colours, as the case may be, of another party, it -

- (i) shall take into account the fact that the party which is associated with the name, the distinguishing mark or symbol, colours or abbreviated name, as the case may be, for the longest time, should prima facie be entitled thereto;
- (ii) may, for the purposes of subparagraph (i) -
 - (aa) grant the party concerned an opportunity to deliver such proof, including oral evidence or sworn statements by any person which in the opinion of the Commission, could be of assistance in the expeditious determination of the matter; and
 - (bb) administer an oath or affirmation to any person appearing to testify before it.

(10) Any objection against the registration of a party as a participant in the election, together with the reasons therefor, shall be lodged in writing with the Chief Director within 10 days after the date of the publishing of the notice referred to in subsection (6).

(11) If the Commission is of the opinion, taking into account any objections received, that any application submitted in terms of subsection (1) complies with the provisions of this section, it shall register that party as a participant in the election and issue to it a registration certificate in the prescribed form.

(12) If the Commission is of the opinion that any application submitted in terms of subsection (1) does not comply with the provisions of this Act, it shall afford the party an opportunity to rectify such application, but shall make its final determination not later than 28 days after the date of the proclamation in the Gazette in terms of section 22.

(13) The Commission shall at the request of any authorized person who is investigating an alleged offence or any other matter in terms of this Act or the Commission Act, furnish such person with a certified copy of any registration certificate or written confirmation of the registration referred to in subsection (11), which shall for all purposes serve as prima facie proof of such registration.

Notice of registration in Gazette

21. The Chief Director shall on the day following the date upon which a party is registered, cause to be published in a special or ordinary Gazette a notice containing -

- (a) the full name and business address of the party;
- (b) the distinguishing mark or symbol and designated colours of the party;
- (c) the abbreviation, if any, of the name of the party; and
- (d) the address at which a copy of the original application and supporting documents shall be available for public inspection and lodging of written objections, if any, in terms of section 20(6).

CHAPTER V

Announcement of Election and Submission of Lists of Candidates

Determination of voting day and hours of voting

22. (1) The State President shall, upon the advice of the Transitional Council, by proclamation in the Gazette determine the voting day or days of an election as well as the hours during which the voting shall take place.

(2) Any election shall, for the purposes of this Act and any other law, be deemed to have commenced on the day on which such proclamation is published in the Gazette.

Submission of lists of candidates to Chief Director

23. (1) A registered party shall submit in the prescribed form, to the Chief Director, the required lists of candidates for the National Assembly and each of the other legislatures in which such party wishes to be represented, within 14 days after the date of publication of the proclamation referred to in section 22(1).

(2) The names on such list of candidates shall appear in such order as the party may determine with a view to the allocation of representatives in that order in terms of the Constitution, subject to the provisions of section 24(1)(b).

(3) Each list of candidates shall be accompanied by a declaration signed by the duly authorized office bearer of the registered party that each person whose name appears on the list has accepted his or her nomination as a candidate of the registered party submitting that list and that he or she is a qualified person together with the signed acceptance of such nomination by the candidate and a declaration that he or she commits and subjects himself or herself to the Electoral Code of Conduct.

(4) No documents shall be received as aforesaid after 16:30 on the last day of the twenty one day period referred to in subsection (1).

(5) The name of a candidate -

(a) shall not appear on a list of candidates of more than one party; and

(b) may appear on a list of candidates in respect of the National Assembly and one other legislature.

(6) If a candidate's name appears on more lists of candidates than is provided for in this section in respect of which he or she has signed an acceptance of nomination, the Chief Director shall delete the name of the candidate from all the lists on which such candidate's name appears.

(7) The registration of any party in terms of section 20 and the right to participate in the election shall lapse automatically if such party fails to submit a list of candidates in terms of the provisions of this section.

Publication of lists of candidates

24. (1) The Chief Director shall within five days after the provisions of section 23 have been complied with publish a notice in the Gazette in respect of the National Assembly and each of the other legislatures setting out -

(a) in alphabetical order the names of all the registered parties; and

(b) each list of candidates of each such registered party in the order of their nomination, compiled by the registered party in terms of section 23,

and declaring that the persons whose names appear on the lists have been nominated as the candidates of the party concerned for the election and that such candidates have accepted their nominations of candidature.

(2) (a) If any person whose name appears on a list of candidates in the notice published in terms of subsection (1)(b) is disqualified or incapacitated, withdraws his or her candidature or dies before voting day, the Chief Director shall amend such notice by a further notice in the Gazette by deletion from that list of the name of such person, and by the addition at any place on the list of the name of a qualified person who has been nominated in writing by the registered party concerned and who has accepted his or her nomination in terms of section 23(3).

(b) The Chief Director may publish a notice referred to in paragraph (a) in any other medium in addition to the Gazette.