

### RESOLUTION 1

The Transitional Executive Council resolves to establish the Independent Electoral Commission and the Special Electoral Court as contemplated in sections 4(1) and 32(1) of the Independent Electoral Commission Act, 1993, as well as the Independent Media Commission as contemplated in section 2(1) of the Independent Media Commission Act, 1993, at its meeting on 9 December 1993.

Members of the Transitional Executive Council wishing to nominate any other persons on the said structures should submit their nominations to the staff of the Transitional Executive Council before 17:00 on 8 December 1993 at the former President's Council Building, Plein Street, CAPE TOWN.

The TEC will take note of and give consideration to nominations recorded by the Negotiating Council.

### RESOLUTION 2

The Transitional Executive Council resolves to establish the Sub-Councils contemplated in section 8(1) of the Transitional Executive Council Act, 1993, at its meeting on 9 December 1993. Members of the Transitional Executive Council wishing to nominate members for the Sub-Councils should submit their nominations to the staff of the Transitional Executive Council before 17:00 on 8 December 1993 at the former President's Council Building, Plein Street, CAPE TOWN.

### RESOLUTION 3

The Transitional Executive Council resolves to mandate:

- (a) the Executive Director to appoint personnel as contemplated in section 7(1)(d) and (e) of the Transitional Executive Council Act, 1993, in consultation with the Deputy Executive Director, which appointments should be ratified by the Management Committee; and
- (b) the Executive Director and the Deputy Executive Director to determine the conditions of service, remuneration, allowances and other benefits of such staff in consultation with the State President, which conditions should be ratified by the Management Committee.

**MEMORANDUM ON THE OBJECTS OF THE INDEPENDENT ELECTORAL COMMISSION  
AMENDMENT BILL, 1993**

Upon the finalization of the Constitution of the Republic of South Africa Bill, 1993, and the Electoral Bill, 1993, it became evident that certain consequential amendments will have to be effected to the Independent Electoral Commission Act, 1993 (Act No. 150 of 1993). This Bill envisages to do just that.



## GENERAL EXPLANATORY NOTE:

[            ] Words in bold type in square brackets indicate omissions from existing enactments.  
 \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

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## B I L L

To amend the Independent Electoral Commission Act, 1993, so as to replace three definitions, delete one and insert one; to make provision for certain consequential amendments as a result of the introduction of the Electoral Bill, 1993; to further regulate the establishment and constitution and powers, duties and functions of Electoral Tribunals and Electoral Appeal Tribunals; 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: -

## Amendment of section 1 of Act 150 of 1993

1. Section 1 of the Independent Electoral Commission Act, 1993 (hereinafter referred to as the principal Act), is hereby amended -

- (a) by the substitution for the definition of "Electoral Code of Conduct" of the following definition:

"'Electoral Code of Conduct' means the Electoral Code of Conduct [for Political Parties] contained in Schedule [1] 2 to the Electoral Act;"

- (b) by the substitution for the definition of "National Assembly" of the following definition:

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

- (c) by the deletion of the definition of "other legislature";

- (d) by the substitution for the definition of "party" of the following definition:

"'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];" and

- (e) by the insertion after the definition of "prescribe" of the following definition:

"'provincial legislature' means any legislature of a province as contemplated in the Constitution;"



that Directorate effectively to perform its functions in terms of this Act and the Electoral Act.".

**Amendment of section 24 of Act 150 of 1993**

5. Section 24 of the principal Act is hereby amended -  
 (a) by the substitution for paragraph (1) of subsection (1) of the following paragraph:

"(1) have such other powers, duties and functions as may be prescribed by this Act and the Electoral Act."; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) The Chief Director: Monitoring may delegate any power conferred upon him or her by or under this Act or the Electoral Act to any official of his or her directorate as he or she may consider necessary."

**Substitution of section 28 of Act 150 of 1993**

6. The following section is hereby substituted for section 28 of the principal Act:

**"Establishment and constitution of Electoral Tribunals**

28. (1) The Commission shall, subject to subsection (2), by regulation establish [such number of Electoral Tribunal with jurisdiction in respect of



prescribed geographic areas as it may consider] an Electoral Tribunal for each of such prescribed geographic areas as may in its discretion be necessary to adjudicate and decide [prescribed] on matters concerning alleged prescribed electoral irregularities, [and alleged] infringements of the Electoral Code of Conduct and contraventions of, or failures to comply with any provision of the Electoral Act.

(2) (a) [An] Every Electoral Tribunal shall [consist of one] be presided over by a person, who shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities and who shall be appointed, generally or in respect of a particular matter or period, to that office by the Commission.

(b) When circumstances may in any prescribed geographical area require more than one simultaneous sittings of the Electoral Tribunal established for such geographical area, two or more persons may, in terms of paragraph (a), be appointed in such area to preside over such Electoral Tribunal at such sittings.

(c) A person may in terms of paragraph (a) be appointed in respect of two or more Electoral Tribunals established in terms of subsection (1).

(3) (a) Any person appointed in terms of subsection (2) in respect of an Electoral Tribunal shall, before commencing with his or her functions for the first time, take an oath or make an affirmation subscribed by him or her in the form set out below:



I, AB, do hereby swear/solemnly and sincerely affirm that whenever I am called upon to perform the functions of presiding officer in an Electoral Tribunal, I will administer justice to all persons alike, without fear, favour or prejudice and, as circumstances of a particular matter may require, in accordance with the law and customs of the Republic of South Africa applying to the matter concerned:

(In the case of an oath)

So help me God,

(b) Any oath or affirmation referred to in paragraph (a) shall be taken by or made before any Commissioner of Oaths or Justice of the Peace referred to in the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), designated for that purpose by the Secretary."

#### Substitution of section 29 of Act 150 of 1993

7. The following section is hereby substituted for section 29 of the principal Act:

#### "Powers, duties and functions of Electoral Tribunals

29. (1) An Electoral Tribunal [hearing] -  
(a) adjudicating any matter [falling within its jurisdiction] referred to in section 28(1), shall enquire into the matter in the prescribed manner, consider it and make such finding or decision [or

give such order] as in its opinion is fair and just;

(b) finding that any party or person is committing, has committed or is likely to commit or to continue to commit any prescribed electoral irregularity or infringement of the Electoral Code of Conduct or contravening, has contravened or is failing to comply, has failed to comply or is likely to fail to comply, or to continue to comply, with any provisions of the Electoral Act, may make such order or impose any such penalty or sanction as may be prescribed by or under this Act, or, in relation to any infringement of the Electoral Code of Conduct, by the Electoral Act as it may consider appropriate in the circumstances.

(2) [An Electoral Tribunal finding any person or party guilty of contravening or failing to comply with any prescribed matter or any provision of the Electoral Code of Conduct, may impose any such penalty or sanction as may be prescribed in terms of this Act and the Electoral Act as it may consider appropriate in the circumstances.]

(3) [An Electoral Tribunal shall have such other powers, duties and functions as may be prescribed by this Act and the Electoral Act."]



Substitution of section 30 of Act 150 of 1993

8. The following section is hereby substituted for section 30 of the principal Act:

"Establishment and constitution of Electoral Appeal  
Tribunals

30. (1) The Commission shall, subject to subsection (2), by regulation establish [such number of Electoral Appeal Tribunals] an Electoral Appeal Tribunal for each of such prescribed geographic areas as may in its discretion be necessary -

- (a) to hear and determine appeals and to review decisions of [the] Electoral Tribunals;
- (b) to adjudicate and decide on any matter concerning any infringement of the Electoral Code of Conduct.

(2) An Electoral Appeal Tribunal shall consist of three persons appointed by the Commission, of whom -

- (a) the Chairperson shall be a judge of the Supreme Court;
- (b) one shall be an attorney, advocate or magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities;
- (c) one shall be a suitable person, who may or may not be legally qualified or experienced.

(3) A judge or person may in terms of subsection (2) be appointed in respect of two or more

Electoral Appeal Tribunals established in terms of subsection (1).

(4) (a) Any person other than a judge appointed in terms of subsection (2) in respect of an Electoral Appeal Tribunal shall, before commencing with his or her functions for the first time, take an oath or make an affirmation subscribed by him or her in the form set out below:

I, AB, do hereby swear/solemnly and sincerely affirm and declare that whenever I am called upon to perform the functions of a member of an Electoral Appeal Tribunal, I will administer justice to all persons alike without fear, favour or prejudice and, as circumstances of a particular matter may require, in accordance with the law and customs of the Republic of South Africa applying to the matter concerned:

(In the case of an oath)

So help me God.

(b) Any oath or affirmation referred to in paragraph (a) shall be taken by or made before the judge appointed in terms of paragraph (a) of subsection (2).

(5) An appeal to any Electoral Appeal Tribunal or to the Special Electoral Court against any order made or penalty or sanction imposed by an Electoral Tribunal or Electoral Appeal Tribunal, as the case may be, shall not have the effect of suspending any such order, penalty or sanction, unless the Electoral Appeal Tribunal or the



Special Electoral Court, as the case may be, determines otherwise upon an application after notice in writing to all other parties to the proceedings made to it at any time before such appeal is heard or a final judgement has been given thereon."

#### Amendment of section 31 of Act 150 of 1993

9. Section 31 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) An Electoral Appeal Tribunal shall have such other powers, duties and functions as may be prescribed by this Act and the Electoral Act."

#### Substitution of certain expressions in Act 150 of 1993

10. The principal Act is hereby amended by the substitution for the expressions "other legislature" and "other legislatures" wherever they may appear of the expressions "provincial legislature" and "provincial legislatures", respectively.

#### Short title and commencement

11. This Act shall be called the Independent Electoral Commission Amendment Act, 1993, and shall come into operation on a date fixed by the State President, on the advice of the

Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993), by proclamation in the *Gazette*.



## PRESS STATEMENT

The delegations of Traditional Leaders were accepted by the Multi-Party Negotiating Process to represent traditional leaders all over the four provinces of South Africa. We are surprised that the Traditional Leaders from Natal Province are not amongst the delegations involved in the process. Traditional leaders organised themselves into delegations from Cape Province, Orange Free State and Transvaal. We were accepted as such by all the parties in the negotiating process. Section 4(1) of the TEC Act expressly provides that "Each ... organisation which is or was at any time represented on the Negotiating Council ... shall be participant in the Council and shall be entitled to be represented by one member on the Council."

On Thursday last week, that is 2nd December 1993, we submitted our nominations and signed all the necessary documents to enable the State President to formally appoint and publish our names in the Government Gazette. We may add that this was in accordance with the Negotiating Council Resolution adopted last week.

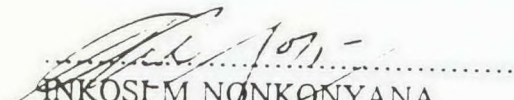
When we were due to take our seats with the other participants we were deeply perturbed to note that we were not amongst the delegates. Instead our status was degraded to that of an interested observer under a pretext that we are not organisations as envisaged in the Act.

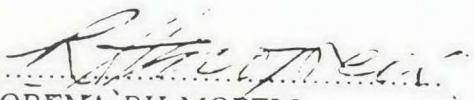
We are of the view that the State President in not publicizing our names did not act in accordance with the directions given to him by the Negotiating Council. We have therefore been sidelined and snubbed by this Act. We are also concerned that other negotiating partners have allowed him to undermine our delegations in this fashion.

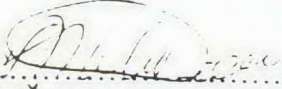
The TEC was therefore formally constituted today without the involvement of Traditional Leaders. We were therefore denied an opportunity to also lay a firm foundation for this very important constitutional forum in the history of our beloved country. The resolutions were therefore taken without us and we trust that those resolutions which may have an effect on us we will be given opportunity to reopen them when the Council meets on Thursday 9 December 1993. We are therefore of the view that the proceedings of today took place against the spirit of the TEC Act.

We therefore call upon all Traditional Leaders in South Africa to come together and form a united front with a view that their institution can not be undermined in future.

DATED IN CAPE TOWN ON THIS THE 7th DAY OF DECEMBER 1993.

  
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INKOSI M NONKONYANA  
CAPE TRADITIONAL LEADERS

  
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MOBERNA RH MOPELI  
OFS TRADITIONAL LEADERS

  
.....  
KGOSI LN MOKOENA  
TRANSVAAL TRADITIONAL LEADERS





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