



**Report  
of the  
Electoral Task Team**

**January 2003**

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OF THE  
ELECTORAL  
TASK TEAM**

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## CHAPTER ONE

### **Appointment, terms of reference, composition and programme of action of the Electoral Task Team**

#### **1.1 INTRODUCTION**

1.1.1 South Africa has been undergoing constitutional transformation since 1993, a process ushered in by the interim Constitution of the Republic of South Africa (Act 200 of 1993). This Constitution provided for the members of the National Assembly and the legislatures of the nine new provinces to be elected in 1994 by universal adult franchise in accordance with a system of proportional representation. With minor modifications (detailed in Annexure A to Schedule 6 of the Constitution), the 1994 electoral system was carried over to the 1999 national and provincial elections by means of items 6(3)(a) and 11(1)(a) of Schedule 6 of the Constitution.

1.1.2 The provisions of the final Constitution relating to an electoral system do not, however, extend beyond the 1999 elections. The Constitution requires that an electoral system be introduced through the enactment of national legislation. Thus there is at present no electoral system prescribed for the conduct of the national and provincial elections scheduled for the second or third quarter of 2004. This situation led Cabinet to establish an Electoral Task Team to draft legislation for an electoral system for the next national and provincial elections. In executing its mandate the Task Team would be guided *inter alia* by the relevant provisions of the Constitution.

#### **1.2 APPOINTMENT AND TERMS OF REFERENCE**

1.2.1 Cabinet resolved on 20 March 2002 that an Electoral Task Team (ETT) should be established to “draft the new electoral legislation required by the Constitution”. It should “formulate the parameters of new electoral legislation and draft it in order to prepare for the scheduled National and Provincial elections of 2004 or any earlier election, should the need arise” and include political parties in its consultations with stakeholders. Further, this Task Team was to be chaired by Dr F van Zyl Slabbert.

1.2.2 A letter from the Minister of Home Affairs dated 26 March 2002 informed Dr Slabbert of his appointment and expanded on the Task Team's terms of reference. The ETT would be required to:

- identify the controlling constitutional parameters
- identify the salient and relevant aspects of the South African context
- identify the list of options available within our context
- canvass the preferences and views of relevant role-players and stakeholders, with special regard to political parties, in respect of the list of identified options
- develop specific proposals identifying the preferable electoral system to be canvassed with the aforesaid role-players and stakeholders
- formulate a draft Bill for submission to the Minister of Home Affairs

### 1.3 COMPOSITION

1.3.1 Initial Cabinet approval was given to a Task Team consisting, in addition to the Chairperson, of a representative appointed by the Minister of Constitutional Development, a representative appointed by the Minister of Provincial Government, a representative appointed by the Chairperson of the Electoral Commission, two representatives appointed by the Minister of Home Affairs, and the Chief Director: Legal Services of the Department of Home Affairs. However, the Minister made it clear that the Chairperson was free to propose additional members to provide expertise and technical assistance and in the event six more appointments were made.

1.3.2 The members appointed to the ETT were:

- **Dr F van Zyl Slabbert** (Chairperson)
- **Raesibe Tladi**<sup>1</sup> (Director: Legal Services, Department of Justice and Constitutional Development: appointed by the Minister of Justice and Constitutional Development)
- **Zamindlela Titus** (Special Ministerial Adviser, Department of Provincial and Local Government: appointed by the Minister of Provincial and Local Government)
- **Adv Pansy Tlakula** (Chief Electoral Officer, Electoral Commission: appointed by the Chairperson of the Electoral Commission)

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<sup>1</sup> Ms Tladi resigned on 13 August 2002 and was not replaced.

- **S S van der Merwe** (Commissioner, Electoral Commission: appointed by the Minister of Home Affairs)
- **Norman du Plessis** (Deputy Chief Electoral Officer, Electoral Commission: appointed by the Minister of Home Affairs)
- **Adv Rufus Malatji** (Chief Director: Legal Services<sup>2</sup>, Department of Home Affairs)
- **Professor Jørgen Elklit** (Department of Political Science, University of Aarhus, Denmark: recommended by the Chairperson)
- **Professor Glenda Fick** (School of Law, University of the Witwatersrand: recommended by the Chairperson)
- **Nicholas Haysom** (Attorney in private practice: recommended by the Chairperson)
- **Dr Wilmot James** (Executive Director, Social Cohesion and Integration Research Programme, Human Sciences Research Council: recommended by the Chairperson)
- **Dren Nupen** (Director, Electoral Institute of Southern Africa: recommended by the Chairperson)
- **Tefo Raditapole** (Attorney in private practice: recommended by the Chairperson)

Jenny Nothard was appointed Secretary and Administrative Manager of the ETT.

## 1.4 LAUNCH

The ETT was formally launched by the Minister of Home Affairs in the auditorium of 120 Plein Street, Cape Town on 9 May 2002. On this occasion the Minister made it known that he hoped to receive the completed draft legislation by 11 November 2002.

## 1.5 MEETINGS

Broadly speaking, the ETT meetings were of three types: planning, engaging stakeholders and internal deliberations.

### 1.5.1 Planning

These meetings had to do with drawing up the ETT budget, planning fundraising, commissioning research and finalising a questionnaire, and making arrangements for

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<sup>2</sup> This was Adv Malatji's designation at the time of his appointment to the ETT; he is now Acting Deputy Director-General of the Department of Home Affairs.



a round-table conference. The ETT also decided that Professor Roger Southall (Executive Director, Democracy and Governance, Human Sciences Research Council) would convene and report on the research to be commissioned, a comprehensive survey of voters' involvement in, and understanding of, current politics and the electoral system. The survey was to be undertaken by four South African research survey companies (ACNielsen MRA, MarkData, Markinor and Research Surveys) and coordinated and analysed by the Human Sciences Research Council. It was agreed that their work would be completed by 23 August 2002, so that Professor Southall and Dr Robert Mattes (Associate Professor, Department of Political Studies and Director, Democracy in Africa Research Unit, University of Cape Town) could interpret the results and prepare them for presentation.

### **1.5.2 Engaging stakeholders**

The ETT decided that it should be as open, accessible and transparent as possible. Meetings were scheduled to engage interested bodies from civil society and media representatives (see paragraphs 1.5.2.4, 3.1, 3.2 and 3.4) and it was made clear that the ETT would welcome comment and analysis.

1.5.2.1 The most important injunction laid on the ETT, stressed repeatedly by the Minister of Home Affairs in the Chairperson's letter of appointment, was to engage political parties throughout its deliberations. They after all represent the voters. To this end, the ETT asked each party in Parliament to appoint a liaison person to facilitate communication with the ETT.

1.5.2.2 Introductory meetings were held with the political parties on 11, 12 and 25 June 2002. It was made clear that at that stage the ETT was not interested in a "final" position on an electoral system but simply wished to canvass views and familiarise parties with its approach and work process. The ETT also met with the Home Affairs Portfolio Committee at Parliament on 25 June 2002.

1.5.2.3 Furthermore, the ETT asked each party to send not more than three delegates (in addition to party representatives who would be participating in panel discussions) to a round-table conference to be held on 9-10 September 2002. At the end of the conference each party would receive the proceedings of the conference, the research

report and details of the options to which the ETT was giving serious attention. Finally, the ETT set aside the month of October to engage all parliamentary parties, once they had been given as much information by the ETT as possible, in discussions on their preferred electoral systems for South Africa.

1.5.2.4 On 25 June, 11 July and 22 July 2002, the ETT met with representatives of the media and relevant NGOs which had expressed an interest in engaging the ETT in discussions. These were the Centre for Policy Studies, the Helen Suzman Foundation, the Institute for Democracy in South Africa (Idasa) and the Steve Biko Foundation. Other NGOs, such as the Gender Advocacy Programme (Gap), made written submissions. The ETT also received a number of papers from academics and had the benefit of reports on conferences where electoral systems had been discussed.

The round-table conference held on 9-10 September 2002 is discussed in Chapter 2.

### **1.5.3 Internal deliberations**

As the work of the ETT progressed, time was set aside for internal deliberations. For example, Professor Glenda Fick of the School of Law at the University of the Witwatersrand presented a paper on the constitutional position and the terms of reference of the ETT, Dr Wilmot James of the Human Sciences Research Council presented a paper on core values that should guide deliberations on alternative electoral systems, Norman du Plessis of the Electoral Commission gave an overview of different electoral models and their practical applications and consequences in the South African context and the Chairperson put forward a proposal in the form of a discussion document on which each member was invited to comment. This formed the basis for discussion at a weekend retreat held in October 2002, when the ETT was to come up with its final recommendations for a preferred electoral system.

## **1.6 CONCLUSION**

From the outset the ETT operated under a severe time constraint. When it was appointed only two to two-and-a-half years remained before the 2004 national and provincial elections. Any electoral system that would require extensive redemarcation and voter education would simply be too impractical for consideration, no matter how suitable it might otherwise be in the South African situation. The ETT was aware of

the resulting tension. It had to do the best it could within the time available. In the event, it is satisfied with the results of its efforts.

## **CHAPTER TWO**

### **The round-table conference**

#### **2.1 INTRODUCTION**

A round-table conference took place at the Vineyard Hotel in Cape Town on 9-10 September 2002 and was formally opened with a keynote address by the Minister of Home Affairs. A central theme of the Minister's address was the issue of how an electoral system can contribute to political accountability in the sense of closer interaction between public representatives and voters. This was one of the issues that dominated debate throughout the conference.

#### **2.2 TOPICS OF DISCUSSION**

During the formal presentations and discussants' responses a number of key points emerged: first of all, the advantages of the current electoral system – fairness, inclusiveness and simplicity – that should not lightly be interfered with. Secondly, the need to introduce greater accountability into democratic politics and the role which electoral systems can play in this regard. Views on this ranged from there being no role for electoral systems in accountability, through electoral systems having some contribution to make, to electoral systems having an absolutely essential role. Proponents of the latter two views felt that some form of constituency system (over and above the current nine provinces each being a constituency) needed to be combined with a proportional representation system. Opponents, on the other hand, emphasised the danger of becoming so obsessed with electoral accountability as to undermine the obvious advantages of the current system.

A range of issues that could logically be linked to the problem of accountability, but bore no obvious relationship to electoral systems, was also raised. These included internal party discipline, the role of Parliament, party funding, rural/urban differences, the separation of powers and the relationship between party and support base. This highlighted the fact that an electoral system is only one component of the process of democratic consolidation, albeit an important one.

#### **2.3 RESEARCH REPORT**

The agenda of the conference included the results of the research that had been commissioned, which were presented by Professor Roger Southall and Dr Robert Mattes. The intention of the research was to establish to what extent voters identified

with and understood the current electoral system and to identify indicators of the need for adjustments or amendments.

Delegates were left in no doubt that there was a very high level of satisfaction with the current system. For example, 74% of voters were “satisfied with the way we elect our government”, 72% felt that the current system was “fair to all parties”, 81% that it ensured “we include many voices in Parliament”, 78% that it gave voters “a way to change the party in power” and 68% that it helped voters “hold the parties accountable for their actions”.

Not only was there a great extent of satisfaction with the inclusiveness and fairness of the current system, but results showed a high degree of political literacy and over 80% of the respondents declared a clear intention to vote in 2004. Whatever reservations voters may have had regarding parties, leaders and/or politicians, they displayed a marked commitment to the act of voting and its importance in the democratic process.

What is also clear is that a significant majority of voters wanted closer interaction with the politicians who represent them. Thus 71% said they wanted to vote for a candidate from the area where they lived, 64% that MPs should “live close to the people they represent” and 53% that party candidates should be chosen by party members rather than party leaders.

## **2.4 CONCLUSION**

The feedback the ETT received on the round-table conference indicated that it was successful and that participants found it worthwhile. A number of participants expressed the view that more such public debates were needed in South Africa.

## CHAPTER THREE

### Electoral Task Team interaction with stakeholders

#### 3.1 INTRODUCTION

On 11, 12, 25 and 26 June and 11 and 22 July 2002 the ETT held meetings with political parties, NGOs and academics.

#### 3.2 OVERVIEW OF INTERACTION WITH STAKEHOLDERS

3.2.1 A theme that was to repeat itself constantly throughout the ETT's activities was satisfaction with and the acceptability of the current system as far as fairness and inclusiveness are concerned. This was particularly so in the case of most of the political parties and slightly less so as far as representatives of the media and NGOs were concerned.

3.2.2 The same emphasis, however, was placed on the importance of accountability. What was apparent was that, whereas there was a high degree of consensus as to what principles such as fairness, legitimacy, inclusiveness, simplicity and representativeness meant, this did not apply to the principle of accountability. (An attempt is made to clarify this confusion in Chapter 4.) For many participants the principle of accountability related to the internal organisation of political parties, their relationships with their respective support bases, party funding, parliamentary discipline and so on. No doubt these and other issues play an important role in making a political system more democratically accountable, but none is directly related to the working of an electoral system. Many, if not all, of these factors relate to accountability between elections: what is known as "interim accountability". The ETT had repeatedly to stress the distinction between an electoral system that *produces* representatives, on the one hand, and the *subsequent behaviour* of such representatives as far as accountability is concerned, on the other. The point was emphasised that no electoral system can compel an elected representative to behave democratically, take care of a constituency or party responsibilities, or be a disciplined, dedicated member of Parliament. In so far as these issues may relate to accountability, additional measures, policies, rules or regulations are needed to operate alongside or parallel with an electoral system.

3.2.3 Nonetheless, some of the stakeholders involved refused to accept that an electoral system bears little relationship to the principle of accountability. For them it was inconceivable that an electoral system could make so slight a contribution to accountability.

3.2.4 The continual emphasis on interaction between representative and voter was taken very seriously by the ETT and Chapter 4 demonstrates how it grappled with this problem. The fact remains that many of the matters raised with the ETT did not fall within its terms of reference. Issues such as party funding, the internal democratic organisation of parties, a stronger monitoring role for Parliament and the possibility of a directly elected President were mentioned. They reflect a wider concern with problems related to accountability but fall outside the ETT's purview.

### **3.3 FINAL MEETINGS WITH POLITICAL PARTIES**

3.3.1 A final meeting with each political party took place on 11, 15, 16, 17 and 25 October 2002. The purpose of these meetings was to establish each party's preference for the most appropriate electoral system for South Africa. It is worth noting that the interaction between the ETT and all parties without exception was cordial and constructive.

3.3.2 Most parties made written representations which they elaborated on in discussions. All parties were in favour of some system of proportional representation. The governing party, the African National Congress, favoured the retention of the current system, as did the African Christian Democratic Party, the Afrikaner Eenheidsbeweging, the Freedom Front, the New National Party and the United Christian Democratic Party. On the other hand, the Democratic Party, the Federal Alliance, the Inkatha Freedom Party, the Pan Africanist Congress and the United Democratic Movement favoured a move towards a multi-member constituency system, while the Azanian People's Organisation favoured a "first-past-the-post" constituency system for 50% of National Assembly seats and proportional representation for the remaining 50%.

### **3.4 CONCLUSION**

In the short time available the ETT canvassed opinion as widely as possible, through commissioned research, conferencing and interaction with stakeholders and other interested parties. This was important in order for it to understand "the salient and

relevant aspects of the South African context” mentioned in its terms of reference. All these activities helped shape the ETT’s own final deliberations, the conclusions of which are presented in the following chapters.



## **CHAPTER FOUR**

### **Majority recommendations for a preferred electoral system for South Africa**

#### **4.1 INTRODUCTION**

4.1.1 When the time came to formulate its own recommendations, the ETT was confronted by the fact that two schools of thought had crystallised out of its own deliberations: one that the current system should be retained unchanged and the other that a larger measure of constituency representation should be built into the system. No unanimity or consensus could be reached on these two points of view.

4.1.2 It was consequently agreed that those to whom the ETT report is addressed should not be denied the benefits of either of these views and that each group should draft and sign its own set of recommendations. The majority recommendations are submitted in this chapter and the minority recommendations in Chapter 5.

4.1.3 The fact that there are majority and minority views should not create the impression that the ETT is deeply divided on every issue. There is considerable consensus and unity of purpose on these points:

4.1.3.1 The core values/principles should be reflected in the electoral system.

4.1.3.2 A preoccupation with accountability should not jeopardise the values of fairness, inclusiveness and simplicity.

4.1.3.3 The current electoral system should not be replaced or radically altered.

4.1.3.4 The current electoral system enjoys considerable support, has served South Africa well through two sets of national and provincial elections and has contributed greatly towards transitional stability.

4.1.4 The key question on which the ETT divided had more to do with the problem of risk than with matters of deep principle and substance. The question can be put in this way: Do the advantages of adjusting the current system outweigh the concomitant disadvantages? (Or do the advantages of not

changing the current system outweigh the concomitant disadvantages?) The majority thought it worthwhile to adjust the current system; the minority thought not.

## **4.2 THE CONTROLLING CONSTITUTIONAL PARAMETERS**

4.2.1 The ETT accepted at the outset that its brief was not to suggest amendments to the Constitution, but to propose an electoral system in terms of the relevant constitutional guidelines. Furthermore, this electoral system was to apply only to national and provincial elections and not to those for local government.

4.2.2 Several constitutional provisions are relevant:

4.2.2.1 Subsection 1(d) (in the Founding Provisions) states that South Africa as a “sovereign, democratic state” is founded *inter alia* on the values of “[u]niversal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness”.

4.2.2.2 Section 19 (in the Bill of Rights) states that every citizen is “free to make political choices” and that this includes the rights “to form a political party; to participate in the activities of, or recruit members for, a political party; and to campaign for a political party or cause”; furthermore, that “[e]very citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution” and “has the right to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and to stand for public office and, if elected, to hold office”.

4.2.2.3 Under the heading “National Assembly” (in Chapter 4: Parliament), subsection 46(1) stipulates that the National Assembly “consists of no fewer than 350 and no more than 400 women and men elected as members in terms of an electoral system that is prescribed by national legislation; based on a national common voters roll; provides for a minimum voting age of 18 years; and results, in general, in proportional representation”.

4.2.2.4 In addition, under the heading “National Council of Provinces” in the same chapter, sections 60, 61 and 62 provide for such a council and spell out its composition, allocation of delegates and membership.

4.2.2.5 As in the case of the National Assembly, subsection 105(1) (in Chapter 6: Provinces) specifies that a provincial legislature “consists of women and men elected as members in terms of an electoral system that is prescribed by national legislation; is based on the province’s segment of the national common voters roll; provides for a minimum voting age of 18 years; and [also] results, in general, in proportional representation”. Furthermore, subsection 105(2) states that a provincial legislature “consists of between 30 and 80 members” and that “[t]he number of members, which may differ among the provinces, must be determined in terms of a formula prescribed by national legislation”. Item 25 of Schedule 2 of the interim Constitution as amended and kept in force by items 6(3) and 11(1) of Schedule 6 of the Constitution defines a “region” as “the territorial area of a province” and defines a “regional list” as a party’s list of candidates (in preferential order) for an election of the National Assembly.

4.2.2.6 Another provision which has implications for an electoral system is contained in Annexure A to Schedule 6 (Transitional Arrangements) of the Constitution. This annexure contains amendments to Schedule 2 of the interim Constitution and inserts item 23A, which relates to what are known as “floor-crossing” or “anti-defection” provisions, under the heading “Additional grounds for loss of membership of legislatures”. Item 23A(1) states, “A person loses membership of a legislature to which this Schedule applies if that person ceases to be a member of the party which nominated that person as a member of the legislature.” However, item 23A(3) qualifies this: “An Act of Parliament may, within a reasonable period after the new Constitution took effect, be passed to amend this item” so as to permit floor crossing without loss of membership of a legislature.

Legislation was adopted during 2002 to do precisely that. Urgent proceedings in the Cape High Court by the United Democratic Movement to block the legislation ended in the Constitutional Court some months later. That Court found that a prohibition on floor crossing “is not an essential component of multi-party democracy, and cannot be implied as a necessary adjunct to a proportional representation system” and that legislation to permit floor crossing was not as such unconstitutional. The judgment expressed no view on

floor crossing vis-à-vis closed- and open-list proportional representation systems. The Court made plain that it could not rule on the appropriateness of the provisions but only on their constitutionality. The ETT has a different mandate, to propose the most desirable electoral system for South Africa, and has therefore itself investigated the question of floor crossing.

- 4.2.3 These constitutional parameters provide the broad framework in terms of which a future electoral system for South Africa will have to be considered and proposed. They also provided the framework in terms of which an electoral system was decided on for the 1999 national and provincial elections (the 1994 system with minor modifications). For convenience' sake, this electoral system will be referred to as "the current electoral system", although, technically speaking, it was decided in 1996 it would apply only until the 1999 elections, after which an electoral system would be decided on by Parliament. There is thus a legislative vacuum as far as a system for the election of national and provincial legislatures is concerned and it is the brief of the ETT to present a proposal to fill this vacuum, which will be handed to the Minister of Home Affairs to put before Cabinet.
- 4.2.4 It needs to be repeated that the ETT's terms of reference do not imply that the current electoral system has to be abandoned or replaced. In a speech launching the ETT on 9 May 2002, the Minister made it clear that the advantages or disadvantages of the current system had to be thoroughly investigated before – and if – it was to be amended or abandoned.
- 4.2.5 The obvious and immediate problem confronting the ETT was how to compare the relative merits of alternative electoral systems, which had to be done in terms of its letter of appointment. The second point of several in this letter expanding on the terms of reference states specifically that the ETT had to consider the most appropriate electoral system against the background of "the salient and relevant aspects of the South African context". It would serve little purpose to propose an elegant electoral model that was not appropriate to such "salient and relevant aspects". However, even if the ETT had reached consensus on these aspects (and consensus is unlikely where enquiry and debate are ongoing), it still would not have resolved the dilemma of what criteria to apply in deciding on the most appropriate electoral system. After sustained and vigorous debate, the ETT reached a high degree of agreement

as to what the core values/principles should be for judging the adequacy of alternative electoral systems. Once decided on, these were then elaborated at the round-table conference and were generally accepted by those present. They need to be briefly stated now before recommendations can be made on an electoral system.

### **4.3 CORE VALUES/PRINCIPLES FOR JUDGING AN ELECTORAL SYSTEM**

4.3.1 The ETT accepted *fairness, inclusiveness, simplicity* and *accountability* as core values. The majority view on these values can be stated briefly:

#### **4.3.2 Fairness**

4.3.2.1 Taking its cue from the Constitution, the majority felt not only that every eligible voter should have the opportunity to vote but that, as far as possible, all votes should be of equal value. This was the understanding of proportionality “in general”, where every vote has some relevance in the composition and membership of the national and provincial legislatures. Fairness also lies in the closeness of the relationship between votes cast and the composition of the body elected.

4.3.2.2 A common misconception which was cleared up in the process of interaction with interested parties was that proportionality cannot be associated with a constituency system. For many, a constituency system meant a “first-past-the-post” system and this was seen as undermining proportionality and fairness. When it became clear that a multi-member constituency system was in fact proportional and generally fair, there was a distinct shift in some parties’ attitudes towards the various electoral systems.

#### **4.3.3 Inclusiveness**

4.3.3.1 By this is meant that, given the demographic, ethnic, racial and religious diversity of the South African voting population, every attempt should be made to allow the widest possible degree of participation by various political preferences in the representative legislatures. An electoral system that inhibited inclusiveness could be a source of instability and conflict.

4.3.3.2 Almost without exception, political parties and other commentators commended the inclusiveness of the current system. The ETT agreed that no proposed electoral system should undermine inclusiveness. The ETT also argued that, with a view to the system's remaining as inclusive as possible, *no legal threshold for representation should be applied.*

#### **4.3.4 Simplicity**

4.3.4.1 Given the South African situation, a complex electoral system presupposing a high degree of literacy would violate the principles of fairness and inclusiveness. The system has to be accessible to practically every voter, easy to understand and easy to participate in. It is not simply the act of voting that is important; voters must also understand the results.

4.3.4.2 At the same time, the degree of political sophistication of the average South African voter should not be underestimated. Voters have become used to multi-balloting and to distinguishing between voting for individual candidates and for parties in municipal elections. The rate of spoilt ballots in modern South African elections is remarkably low in comparison with many other countries and has been below 2% in all elections from 1994 onwards. This applies not only to the national average; close analysis of the situation in all 15 000 voting districts shows no great variance. Whether a constituency ballot paper is used in addition to a national/provincial ballot paper is inconsequential in terms of simple voting procedures.

#### **4.3.5 Accountability**

4.3.5.1 No principle gave rise to more discussion and debate than this. Although it is common cause within the ETT that an electoral system may encourage, but cannot ensure, accountability, with very few exceptions a lack or perceived lack of accountability was identified as a problem in the current system. This factor was also emphasised by most media representatives whom the ETT subsequently met and also surfaced in many of the submissions by NGOs and other interested parties.

4.3.5.2 The results of the public opinion survey largely confirm the impressions gained from the initial discussions with political parties. In terms of percentages of respondents, 74% were satisfied with the fairness and equality of the present electoral system and 81% with its inclusiveness. In the matter of accountability, however, while 68% felt that the electoral system helped voters hold political parties accountable, only 60% felt that the system helped voters hold individual representatives accountable. This resulted in 71% feeling that candidates should come from the area they represent, which was seen as a means of improving their individual accountability. Lack of accountability and availability/responsiveness was thus also seen as the weak point of a system with which respondents were otherwise generally satisfied.

4.3.5.3 Throughout the many discussions the ETT had with stakeholders as well as debates at the round-table conference, it became clear that there was a host of aspects of democratic political life that revolved around the issue of accountability but were not related to, or consequent upon, a specific electoral system. Very often people associate issues of accountability with an electoral system, whereas no system can simply deliver accountability. Electoral systems of whatever variety can be abused by leaders, cliques, representatives and parties in an unimaginable number of ways. Redress for such behaviour cannot be sought in an electoral system. Certainly, collective accountability allows a party to be rewarded or punished by voters at election time, but this usually comes around only every four or five years. Some would argue that nothing more can be said about accountability in relation to an electoral system.

4.3.5.4 The question remains: Is there nothing else an electoral system can do to make a contribution to political accountability? In the interaction of the ETT with parliamentary parties, interested NGOs and media representatives, a recurring theme was that an electoral system could at least put a face to a party, somebody who has representative responsibility for a designated area, somebody who is identifiable and accessible in the period between elections. Collective accountability at periodic intervals was seen as insufficient. Some form of individual

accountability had to be provided by an electoral system. The majority saw this as a real challenge in proposing an electoral system.

4.3.6 A final word on core values: It should be obvious that each principle/value – fairness, inclusiveness, simplicity and accountability – could be presented separately with compelling intellectual and moral force. In this sense, each principle is a “good” value. What happens, however, when they are pursued concurrently in the development of an electoral system? They possess no inevitable fixed hierarchy of importance. We are not forced to choose between good and evil. We have to weigh up the relative importance of each in relation to the others in proposing an electoral system. The ETT has done this by taking into account “the salient and relevant aspects of the South African context” and thus gives primacy to fairness, inclusiveness and simplicity. It would be hard put to it to propose an electoral system that demonstrably gives primacy to accountability at the expense of these three factors. This is an extremely difficult choice to make and in no way shows contempt for the problem of accountability. It is, however, a choice the ETT has made.

#### **4.4 THE MAJORITY VIEW ON SINGLE-MEMBER CONSTITUENCIES WITH A COMPENSATORY CLOSED NATIONAL LIST**

4.4.1 The ETT considered some eleven different electoral systems. One enjoyed more attention than others before it too was found unacceptable: single-member constituencies with a compensatory closed national list. This calls for comment. Under such a system, the country would be divided into single-member constituencies which would each elect an MP on a “first-past-the-post” basis. This would lead to considerable disproportionality with the larger parties dominating the scene and the biggest of all probably winning more than 80% of constituency seats. In order to restore proportionality, a second ballot would determine overall party support and its result would determine the final composition of the National Assembly, with proportionality being restored by allocations from closed national lists.

4.4.2 Such a system would, generally speaking, align the electoral systems for all three spheres of government and could allow for independent candidates to participate in elections. It would also provide a sound basis for floor-crossing arrangements in the case of directly elected representatives and deal with the inadequacies of the present provincial electoral system as far as localised



representation is concerned. Regular, if costly, by-elections could also serve as a political barometer providing continuous evaluation of government.

- 4.4.3 For provincial elections there would, however, be 215 constituencies and not the 200 used for the national election. This would flow from the constitutional prescript on the minimum (30 seats) and maximum (80 seats) sizes of provincial legislatures. In four provinces, this would result in the constituency boundaries for national and provincial elections not corresponding with each other – in addition to not corresponding with municipal boundaries in any event, since single-member constituencies would all have to have about the same number of voters. The Constitution would consequently have to be amended to avoid the situation of many voters having to vote in two different constituencies (and thus at two different voting stations) on the same day, or else national and provincial elections would have to be conducted on separate days, which would greatly increase costs. This apart, the demarcation of constituencies will always be complex, time-consuming and costly and its results unavoidably controversial.
- 4.4.4 This system enjoyed considerable media and some party-political support at the outset. When parties stated their formal preferences at the end of the process, however, only one small party continued to regard this as an option. Proponents of this system principally support it because direct election has traditionally been regarded as providing the greatest degree of accountability. The distinction between collective and individual accountability is, however, blurred. The case of collective accountability is clear: the political party must account to the electorate for its performance as a party. The electoral fortunes of a party are thus mostly determined collectively.
- 4.4.5 When it comes to individual accountability, the matter is less clear. Candidates are elected in their own right, but that is mainly as a result of their association with a political party. It should be remembered that one can reject an individual candidate only by voting for a candidate from another political party, and that may just be asking too much of many voters, regardless of where they find themselves on the political spectrum. In reality, the opportunity to reject an individual candidate in an election seldom materialises.
- 4.4.6 The problems or disadvantages presented by a mixed proportional system with single-member constituencies are such that there would be more to lose

than to gain by it at the present time. The ETT thus did not see it as a viable option.

## **4.5 THE MAJORITY RECOMMENDATION**

### **4.5.1 Discussion**

4.5.1.1 A critical point of departure for the majority view is that the current electoral system is already a mixed proportional system where at least half the representatives are elected from nine regions (provinces) or constituencies, which are clearly defined geographic areas (see item 25 of Schedule 2 of the interim Constitution). The provinces are to all intents and purposes multi-member constituencies with representatives elected from separate regional lists and with a separate quota applying in each case. The remaining 200 representatives are allocated from compensatory national lists (with a quota which is different from any of those used to determine regional/ constituency representation) with a view to restoring overall proportionality. (A less favoured alternative would be to submit only regional or constituency lists [400 names] which would then also be used for top-up purposes in order to restore overall proportionality. This would not change the method of calculation for the allocation of seats.) The minority view is that provinces should not be treated as multi-member constituencies. This is a fundamental difference of opinion between the majority and the minority.

4.5.1.2 This point of departure is critical for the majority view because the principle of multi-member constituencies, which is already embedded in the current electoral system, can be used to expand the number of such constituencies in an evolving electoral system for the country. The majority proposes multi-member constituencies together electing 300 members of the National Assembly and a compensatory closed national list providing 100 members (giving a total of 400 members).

4.5.1.3 This proposal corresponds generically with the current system except in that the present nine multi-member constituencies (regions/provinces) would be expanded to some 69. *(In accordance with the relevant formula, there would be approximately 69 multi-member constituencies if the present distribution of population in municipalities*

*were taken into account. The final demarcation might result in one or two constituencies more or fewer. For the sake of simplicity, we shall simply refer to “the 69-constituency option”.)* The boundaries of constituencies would be those of district councils (with perhaps combinations or sub-divisions of district councils along local municipal boundaries) and metro councils (or subdivisions thereof) and the same outer boundaries would apply for national, provincial and obviously also municipal elections. No constituency boundary would transcend a provincial boundary and an electoral demarcation would thus not be required. There would merely have to be an adjustment to the number of representatives (according to the number of registered voters) to be elected in those cases where, owing to the constitutional prescript on the sizes of provincial legislatures, the number is not the same for the provincial election as for the national election.

4.5.1.4 The number of representatives to be elected in such a constituency would vary, depending on the number of voters, from three to seven for a national election, and 300 of the 400 members of the National Assembly would be elected from closed constituency lists in this way. It might be preferable to operate with both a constituency and a national ballot paper but, since lists would be closed, it would be possible to combine them and use one ballot paper only, as is the case under the current system. For the voter, regardless of the number of ballot papers, there would be no confusion concerning voting procedures or ballot papers. Voters have become familiar with multiple ballot papers in municipal elections and ballot papers would still bear the names of political parties, their emblems and their leaders' photographs.

4.5.1.5 Apart from the 300 constituency representatives, a further 100 representatives would be allocated from closed national lists in order to restore overall proportionality. The results in the constituency elections would already be largely proportional and, with current voting patterns as a guide, it is not expected that any deviation from overall proportionality would exceed the 4%-6% range. It would therefore be easy to restore overall proportionality.

4.5.1.6 What has been given here constitutes the technical outline for the suggested electoral system for South Africa. The question obviously has to be asked: In what significant way is it an improvement on the current system? To answer this question, we must return to the core values which should be used to judge the adequacy of an electoral system. It is common cause that fairness, inclusiveness and simplicity should not be jeopardised. The majority is of the opinion that its proposal complies with this injunction. It is also common cause that an electoral system cannot resolve the problem of political accountability. But can one electoral system make a greater contribution than another? The majority is persuaded that it can, and that its proposal makes significant progress towards this end.

4.5.1.7 A distinction can be, and often is, drawn between individual and collective accountability. It has already been pointed out that individual accountability in a "first-past-the-post" constituency system is more apparent than real. Collective accountability occurs at each general election when a party is subjected to the opinion of the electorate. Is it, however, in any way possible to complement collective accountability with some form of individual accountability? The only way to increase individual accountability significantly would be to create the possibility for a candidate to be rejected *without concomitant rejection of a party*. This could best be achieved by using open rather than closed party lists, with voters influencing the order of candidates. They would do this either by ranking candidates or by selecting a number of preferred candidates listed next to the emblems of their respective parties. Should the order of candidates, as decided by a party, be acceptable to a voter, however, then a mark need merely be made against the name of the party. Open lists would not only improve the accountability of individual candidates dramatically but would also substantially increase voter participation in the democratic process.

4.5.1.8 It should be obvious that the candidate lists of the present nine multi-member constituencies (provinces/regions) do not lend themselves to becoming open lists. Two hundred names appear on the nine different constituency (regional) lists and these are simply too many to be ranked by any electorate. The three to seven candidates in the

69 multi-member constituency option would offer a much better prospect of success.

4.5.1.9 In the short to medium term it will not be possible to have open lists in the proposed multi-member constituencies. Present literacy rates simply make this impractical. It is, however, particularly important to keep the possibility in mind with a view to later evolution. Even if closed candidate lists are used for the foreseeable future, the 69 multi-member constituency option is a much better prospect. Given that the lists will be short (three to seven names) and that candidates will have to campaign in their constituencies and represent them afterwards, there will clearly be a face to representation and a much closer link with the electorate than is presently the case. Putting a face to politicians seems to be the only way to increase accountability significantly at the present time. The current system makes no contribution to this.

4.5.1.10 Although it is common cause that the current system has considerable merit and the research and round-table discussions revealed a large measure of satisfaction with it, it is not flawless or incapable of improvement. If, for example, one looks at the present electoral systems in the three spheres of government, it is clear that a common approach was not followed in their institution. At the national and municipal levels, we have two-tier systems with both centralised and decentralised components. For the election of the National Assembly there are regional lists (decentralised/localised) as well as national lists (centralised for the country as a whole). For the election of municipal councils there are ward representatives (decentralised/localised) as well as proportional list representatives (centralised for the municipality as a whole).

4.5.1.11 The electoral system for provincial legislatures is, however, out of step. Here each province is regarded as a single entity and, contrary to the expectation of greater decentralisation in the second sphere of government, there is no decentralisation, with a single provincial list being used to elect representatives. It thus falls to political parties to ensure that all regions or sectors of society in a particular province – such as urban/rural communities with their

concomitant socio-economic disparities – are fairly represented in a provincial legislature. If inclusiveness is important in terms of accommodating most political groupings, then it is hard to understand why the division which exemplifies one of the country's fundamental problems, that between the economically advantaged and disadvantaged, is not dealt with at a fundamental level but is left to political parties to resolve internally. It is quite possible to deal with this matter in an electoral system which provides for localised representation. The majority proposal makes provision for this.

4.5.1.12 The majority view on floor crossing is uncomplicated. Floor crossing in itself is not necessarily undemocratic. The majority is, however, of the view that the basic principle should be that floor crossing, while it can be entirely appropriate in open list systems, is incompatible with closed list proportional representation. To the extent that a multi-member constituency system makes provision for a relatively small number of representatives of a constituency (as in the majority proposal where three to seven representatives would be elected) and they are known beforehand to voters, either through their names on a ballot paper or their photographs displayed during an election campaign, floor crossing could be considered, even in a closed list system. The guiding principle should be the degree of accessibility and responsiveness between voter and representative. There is a very real likelihood that floor crossing under the current system will distort proportionality as reflected in the previous election; it will also deprive parties of their right to replace defectors on their own party lists. In fact, it increases the distance between voter and representative. If the argument is that floor crossing is actually an interim manifestation of a shift in public opinion, then the best way to test this is by holding elections.

#### **4.5.2 Timeframe and manner of implementation of the majority proposal**

4.5.2.1 It is proposed that legislation be passed to establish multi-member constituencies which will elect 300 members of the National Assembly from closed constituency lists while 100 members will be designated from compensatory closed national lists to achieve overall proportionality. The legislation should provide criteria for

the demarcation of constituencies by the Municipal Demarcation Board (which is already performing functions other than those relating to municipal demarcation and which may require a name change) which will result in approximately 69 multi-member constituencies. The legislation will also provide for the submission of candidate lists and the introduction of constituency ballot papers in addition to a national ballot paper for the National Assembly and a provincial ballot paper for each provincial legislature. All other provisions in the legislation will, apart from some technical adjustments, correspond with the relevant provisions presently contained in Schedule 2 of the interim Constitution as amended by Annexure A to Schedule 6 of the Constitution.

4.5.2.2 Parliament cannot be expected to pass a new Electoral Systems Act much earlier than a year before the next national and provincial elections, which would leave very little time for political parties to adjust their processes for compiling candidate lists. While balloting and voter education should not present problems to the electorate, there will be little time to fully acquaint voters with the intentions and principles of the new system as part of a democracy education programme. *For the 2004 national and provincial elections, it is therefore proposed to retain the current situation of nine multi-member constituencies responsible for the election of 200 members of the National Assembly supplemented by an additional 200 members drawn from a national list.* It is, however, best to deal now with the question of an electoral system which will serve us beyond the next 18 months and to handle the immediate practical realities of the 2004 elections by means of transitional arrangements. To do otherwise would be to nullify the present effort and to start the debate afresh after the 2004 elections.

4.5.2.3 This timeframe and manner of implementation in no way represent a sudden break with the current electoral system. On the contrary, they encapsulate its central features in legislation and use them as the basis for a gradual and considered evolution towards a multi-

member constituency system. To the extent that an electoral system can make some contribution towards political accountability, this evolutionary process will assist in pursuing that objective. To insist that the current system not be explored for whatever contribution it can make toward accountability would be to abandon any possible relationship between accountability and an electoral system for the foreseeable future. The majority finds this unacceptable. This is particularly so since accountability and responsiveness feature in the founding provisions of the Constitution and can thus not be ignored.

### **4.5.3 Possible reservations/concerns about the majority view**

#### *4.5.3.1 The issue of treating provinces as multi-member constituencies*

The argument has been advanced that a province is an entity in the form of a state and was never intended to be seen as a constituency. Whatever the intention may have been is irrelevant in the light of the definition of a region in the Constitution and the number of representatives that each region may provide for the National Assembly. Logically there is no reason why a “form of state” cannot be seen as a constituency for electoral purposes. Defining a region as the “territorial area of a province” from which candidates are elected on a list for the National Assembly is about as close to a universal definition of an electoral constituency as one can imagine.

#### *4.5.3.2 The issue of simplicity*

4.5.3.2.1 Concern has been raised that the majority proposal is too complex and would prove too costly. The response is that voters have become used to multi-balloting and to distinguishing between voting for individual candidates and for parties in municipal elections. Given that candidate lists would continue to be closed lists, the ballot papers for the 69-constituency option would remain exactly as they were in 1994 and 1999 and would include party names, emblems and leaders' photographs. The majority does not accept that costs would increase to any significant degree under the suggested new system.



- 4.5.3.2.2 The next point that has been raised concerns the compilation of candidate lists by political parties. Under the current system each has to compile nine constituency/regional lists which together contain no more than 200 names as well as a national list containing no more than 200 names. This approach does permit a global perspective for parties in respect of the allocation of positions to women, for instance. While the same total number of candidates would have to be nominated under the 69-constituency option, this would obviously have to be done on 69 separate constituency lists (300 names) and a national list containing no more than 100 names. To achieve the same results as with the current system would require careful planning on the part of political parties but there is no inherent reason why the result could not be as successful.
- 4.5.3.2.3 As to electoral administration, more ballot papers would have to be printed if constituency ballot papers were to be introduced. This would not necessarily increase costs if the ballot papers were to be similar in quality to those used in municipal elections rather than the full-colour sort used up to now in national and provincial elections. The electronic systems used for candidate nominations, ballot paper generation and result calculations would obviously also have to be adapted. Only adjustments, and not complete redesigns, would be required and these should present no major problems and not be overly expensive.
- 4.5.3.2.4 An important element of candidate lists is gender representation. The introduction of a prescribed gender quota was considered but there was not unity on its practicality. There was also a strong view that 50% of candidates should be women. This is a view which Parliament will have to consider. The recommendation at this stage is that each party must seek to ensure that at least 33% of the candidates on both the party national list and the combined constituency lists are women and that male and female candidates be as evenly distributed as possible throughout the party national list. This should apply regardless of which electoral system may be decided upon. (This recommendation is an advance on the legislative recommendation for municipal

elections, whereby 50% of list candidates [=25% of all candidates] should be women.)

#### *4.5.3.3 The issue of stability*

The point has been made that the 69-constituency option will create instability. It is not at all clear why this should necessarily be the case, particularly as it is proposed that this option should be phased in over a period of five years.

#### *4.5.3.4 The issue of timing*

This is a variation on the “if it ain’t broke – don’t fix it” position. The majority felt, however, that the time is indeed right for considered and carefully planned change in order to improve an already very good system. There is at present a constitutional, legislative and political opportunity to introduce an evolutionary path of transformation in the electoral system, with great potential benefits in allowing South Africans in both urban and rural areas to feel much more closely involved in the democratic process. That opportunity will not easily come again. This is the considered assessment of the majority, taking into account the political readiness of the population as demonstrated in surveys and interaction with stakeholders. There is never a perfect time to do everything necessary, but certainly it is preferable to do the best one can without being forced by circumstances of crisis and pressure.

### **4.5.4 Other factors to be considered apart from the core values**

#### *4.5.4.1 Participatory democracy*

The current system does not lend itself to participation by the electorate in the selection of candidates. That is an inherent weakness in all systems using closed candidate lists, which include both the current system and (for the time being) the 69-constituency option. The difference is, however, that the current system does not lend itself to ever evolving into having open lists where the electorate may rank candidates according to preference, since the lists simply contain too many names for that to be practical. The 69-constituency option is, however, eminently suited to its candidate lists (three to seven names) becoming open lists when the time is ripe. In the meantime, the lists would be short enough, even though closed, for voters to get to know or identify the

candidates on the list for a particular constituency. This would contribute substantially towards participatory and representative democracy.

#### *4.5.4.2 Systemic synergy*

In view of the consequences at provincial level, it is significant that there are presently three different electoral systems for the three spheres of government. Each province is a single entity and that is problematic for local representation. The only way this can be addressed is to move to the 69-constituency option since that would introduce regional representation in provincial legislatures. It is important to note that constituency boundaries would not transcend provincial boundaries and that all constituencies would thus be contained within provinces. This would allow the same constituencies to be used for provincial elections as for national elections with only the number of representatives elected differing.

#### *4.5.4.3 The size of the National Assembly*

The Constitution provides for between 350 and 400 members of the National Assembly. In deciding on the number of seats, it should be borne in mind that the higher the number of representatives, the more likely it is that smaller parties will be represented. Given the emphasis on inclusiveness, a reduction in the number of seats is not proposed.

#### *4.5.4.4 Residential qualifications*

Imposing a residential qualification would be impractical and inhibit freedom to accommodate diversity (e.g. gender). The closer link between representatives and voters in the 69-constituency option, both before and after an election, should go some way towards resolving the issue.

### **4.5.5 Summary and conclusion**

4.5.5.1 The nub of the majority view is that it is worthwhile to make legislative provision for an electoral system that can evolve towards a larger multi-membership constituency system with a compensatory national list. In order to facilitate accessibility and responsiveness between voter and representative, multi-member constituencies with between three and seven representatives in the National Assembly are envisaged. This would require approximately 69 multi-member constituencies to provide 300 representatives for the National

Assembly with 100 representatives allocated from national lists to restore overall proportionality. Both the constituency and national lists will be closed.

4.5.5.2 It is further proposed that as a transitional arrangement the current nine multi-member constituency system, with provinces as constituencies, be retained for the 2004 elections to provide 200 representatives, and that these be supplemented with 200 representatives elected by proportional representation from a closed national list. This in effect corresponds with the current electoral system. After the 2004 elections the Municipal Demarcation Board would demarcate constituencies to increase the current nine to approximately 69 multi-member constituencies.

4.5.5.3 The majority on the ETT is confident that this proposal does not offend against the core values of fairness, inclusiveness and simplicity characteristic of the current system, but uses the electoral principles already contained in the current system to strike a balance between accountability and the other core values. To the extent that an electoral system can make some contribution towards political accountability, the majority is satisfied that the proposed electoral system will do so demonstrably and effectively.

4.5.5.4 If nothing else, this proposal, if accepted, will keep an essential debate alive on the ways and means by which political accountability can be strengthened in the South African democracy. That this is necessary and important was seen as common cause by all the parties, NGOs and media representatives with whom the ETT interacted.

***Members subscribing to the above views:***

**Dr F van Zyl Slabbert (Chairperson)**

**Nicholas Haysom**

**Norman du Plessis**

**Dr Wilmot James**

**Professor Jørgen Elklit**

**Adv Rufus Malatji**

**Professor Glenda Fick**

**Dren Nupen**



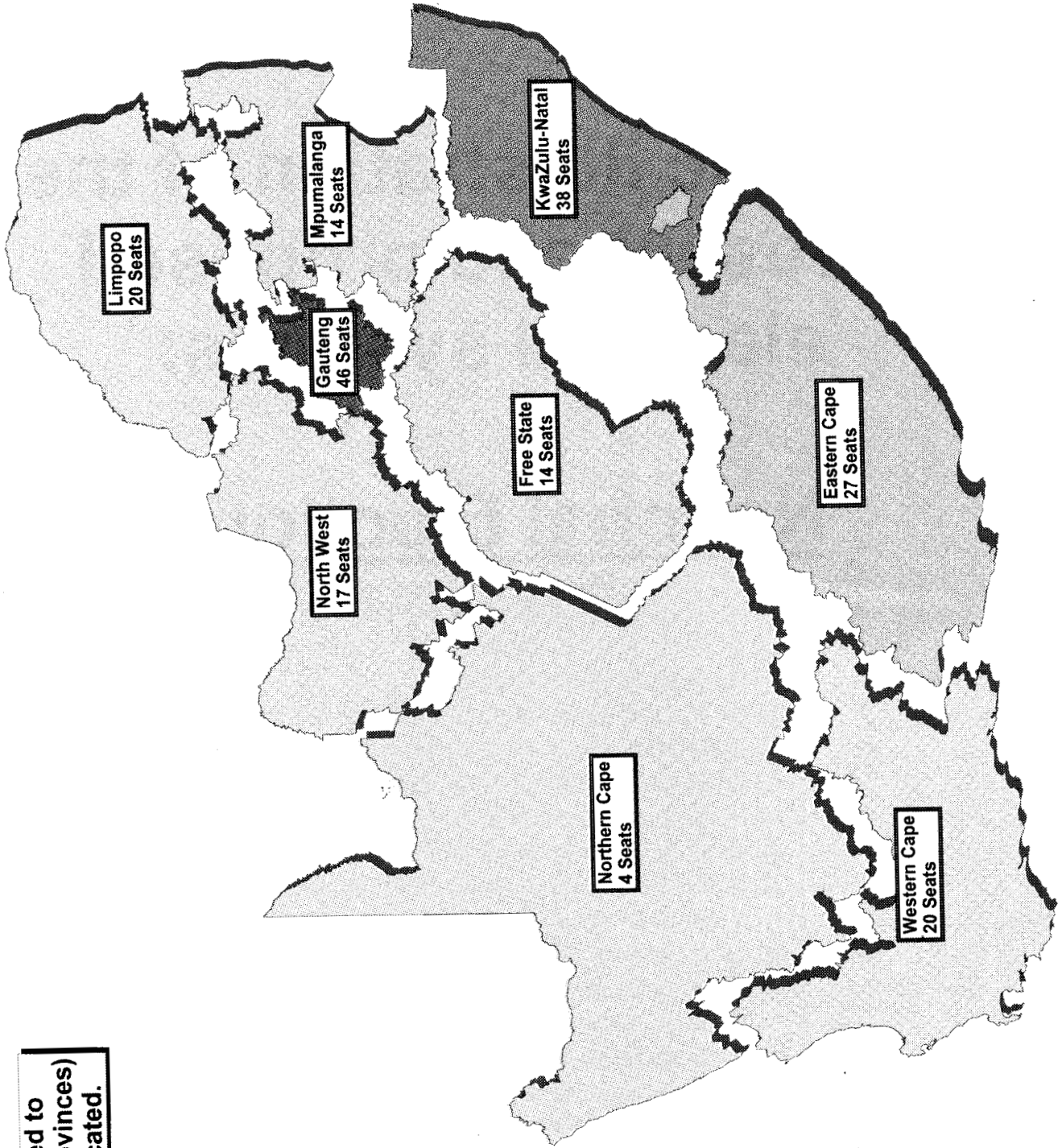
## ANNEXURE A TO CHAPTER 4

**Graphic illustration of the  
present and proposed  
electoral systems:**

**National Elections**

**PRESENT SYSTEM; NATIONAL ASSEMBLY:  
9 MULTI-MEMBER CONSTITUENCIES (200 SEATS) AND CLOSED NATIONAL LIST (200 SEATS)**

Seats are distributed to constituencies (provinces) as graphically indicated.



**PRESENT SYSTEM; NATIONAL ASSEMBLY: (1999 ACTUAL RESULT)**  
**9 MULTI-MEMBER CONSTITUENCIES (200 SEATS) AND CLOSED NATIONAL LIST (200 SEATS)**

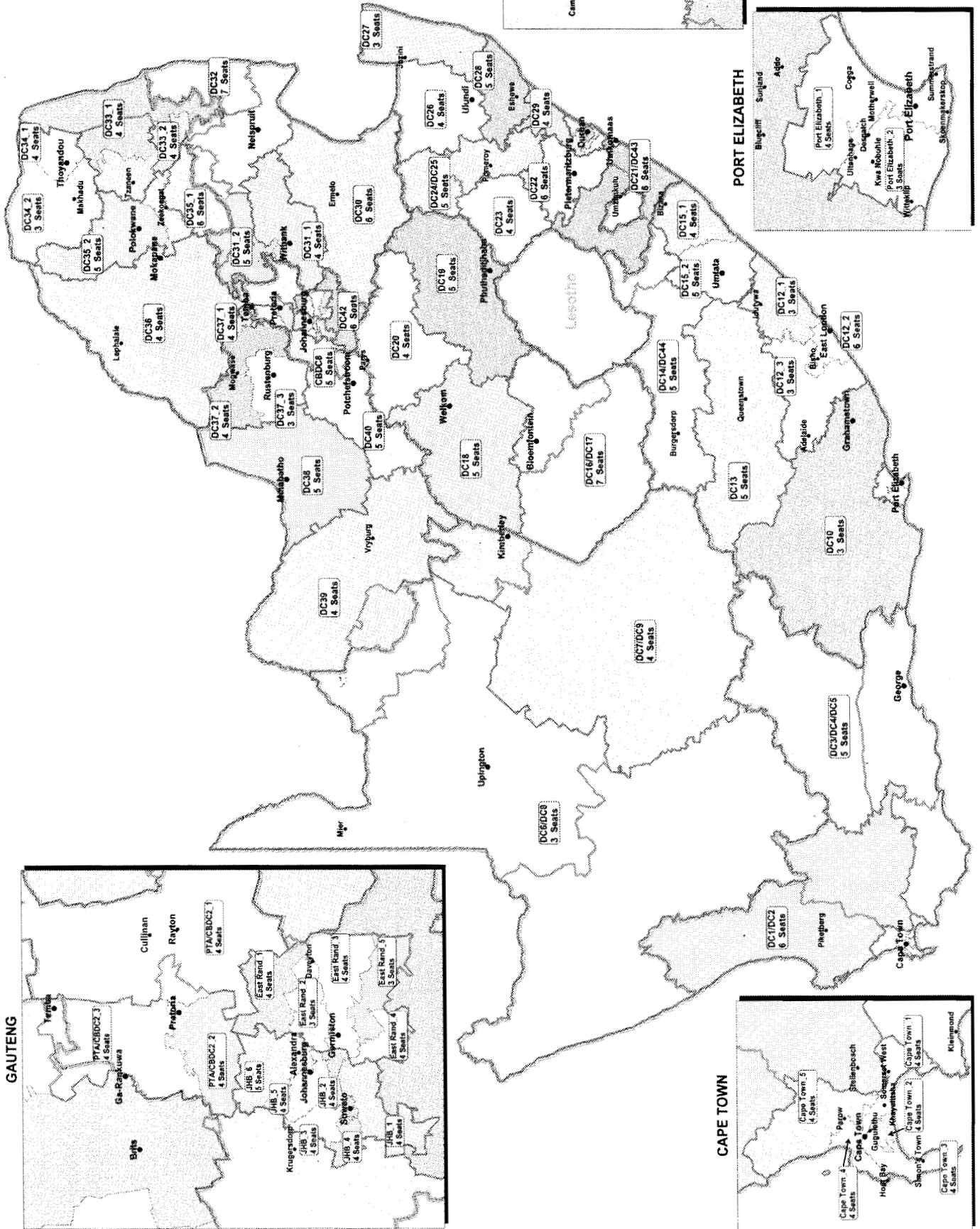
Party	Valid votes	% Valid votes	Regional seats (200)	National list seats (200)	Total seats (400)	% Overall seats	Variance
ACDP	228975	1.43%	3	3	6	1.50%	0.07%
ANC	10601330	66.35%	139	127	266	66.50%	0.15%
AEB	46292	0.29%	0	1	1	0.25%	-0.04%
AZAPO	27257	0.17%	0	1	1	0.25%	0.08%
DP	1527337	9.56%	20	18	38	9.50%	-0.06%
FA	86704	0.54%	0	2	2	0.50%	-0.04%
IFP	1371477	8.58%	18	16	34	8.50%	-0.08%
MF	48277	0.30%	1	0	1	0.25%	-0.05%
NNP	1098215	6.87%	13	15	28	7.00%	0.13%
PAC	113125	0.71%	0	3	3	0.75%	0.04%
GPGP	9193	0.06%	0	0	0	0.00%	-0.06%
SOPA	9062	0.06%	0	0	0	0.00%	-0.06%
UCDP	125280	0.78%	1	2	3	0.75%	-0.03%
UDM	546790	3.42%	5	9	14	3.50%	0.08%
VF/FF	127217	0.80%	0	3	3	0.75%	-0.05%
AITUP	10611	0.07%	0	0	0	0.00%	-0.07%
<b>TOTAL</b>	<b>15977142</b>	<b>100%</b>	<b>200</b>	<b>200</b>	<b>400</b>	<b>100%</b>	



# PROPOSED SYSTEM; NATIONAL ASSEMBLY: 69 MULTI-MEMBER CONSTITUENCIES (300 SEATS) AND CLOSED NATIONAL LIST (100 SEATS)

Only intended as an illustration of a possible multi-member constituency electoral system

Seats are distributed to constituencies as graphically indicated.



Registered voters: 18 119 439  
Quota: 60 399





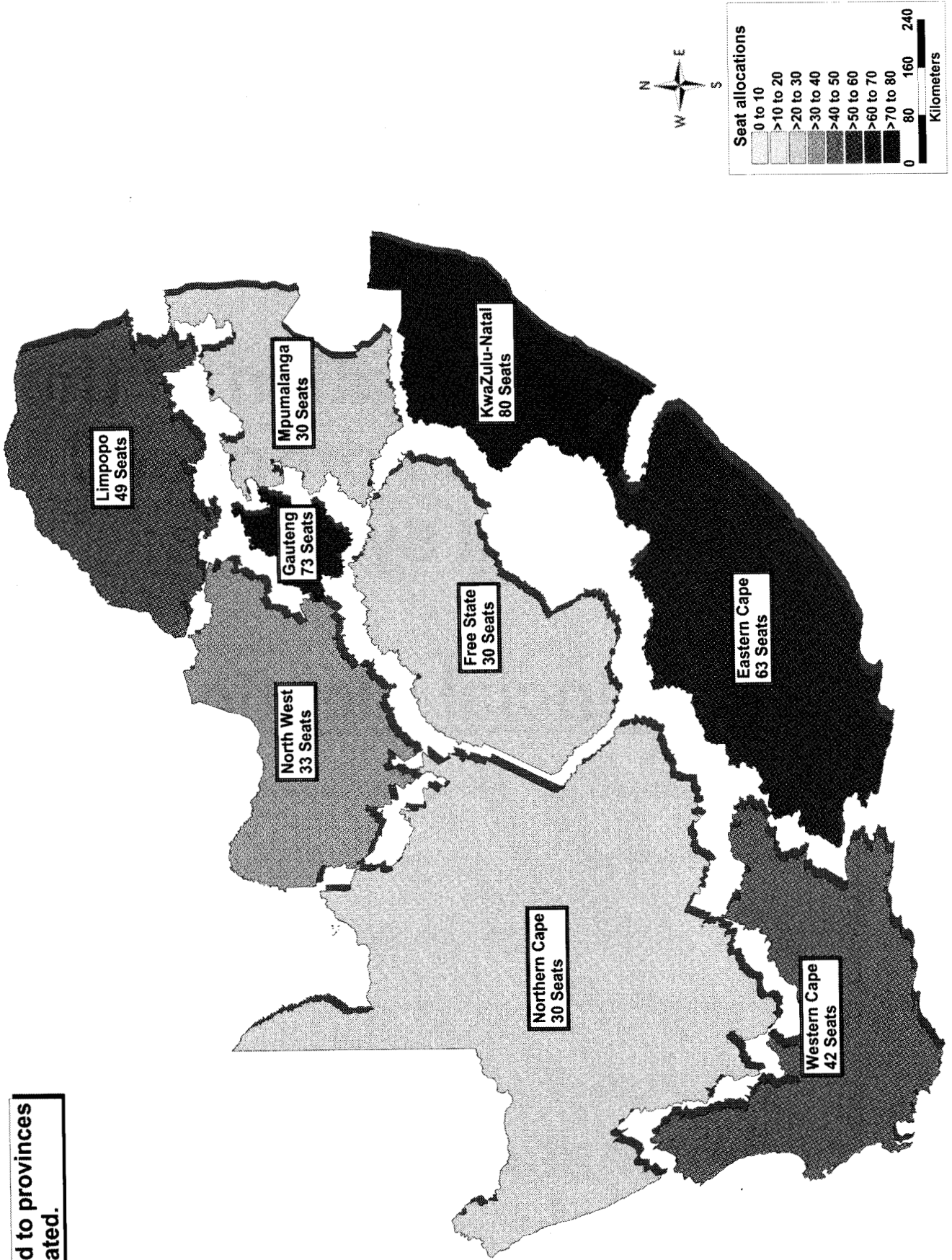
## **ANNEXURE B TO CHAPTER 4**

**Graphic illustration of the  
present and proposed  
electoral systems:**

**Provincial Elections**

# PRESENT SYSTEM; PROVINCIAL LEGISLATURES: CLOSED PROVINCIAL LISTS (430 SEATS)

Seats are distributed to provinces as graphically indicated.



**PRESENT SYSTEM; PROVINCIAL ASSEMBLY : (1999 ACTUAL RESULT)  
DETERMINATION OF SEATS FOR THE PROVINCIAL LEGISLATURES**

**PROVINCIAL - 430 SEATS**

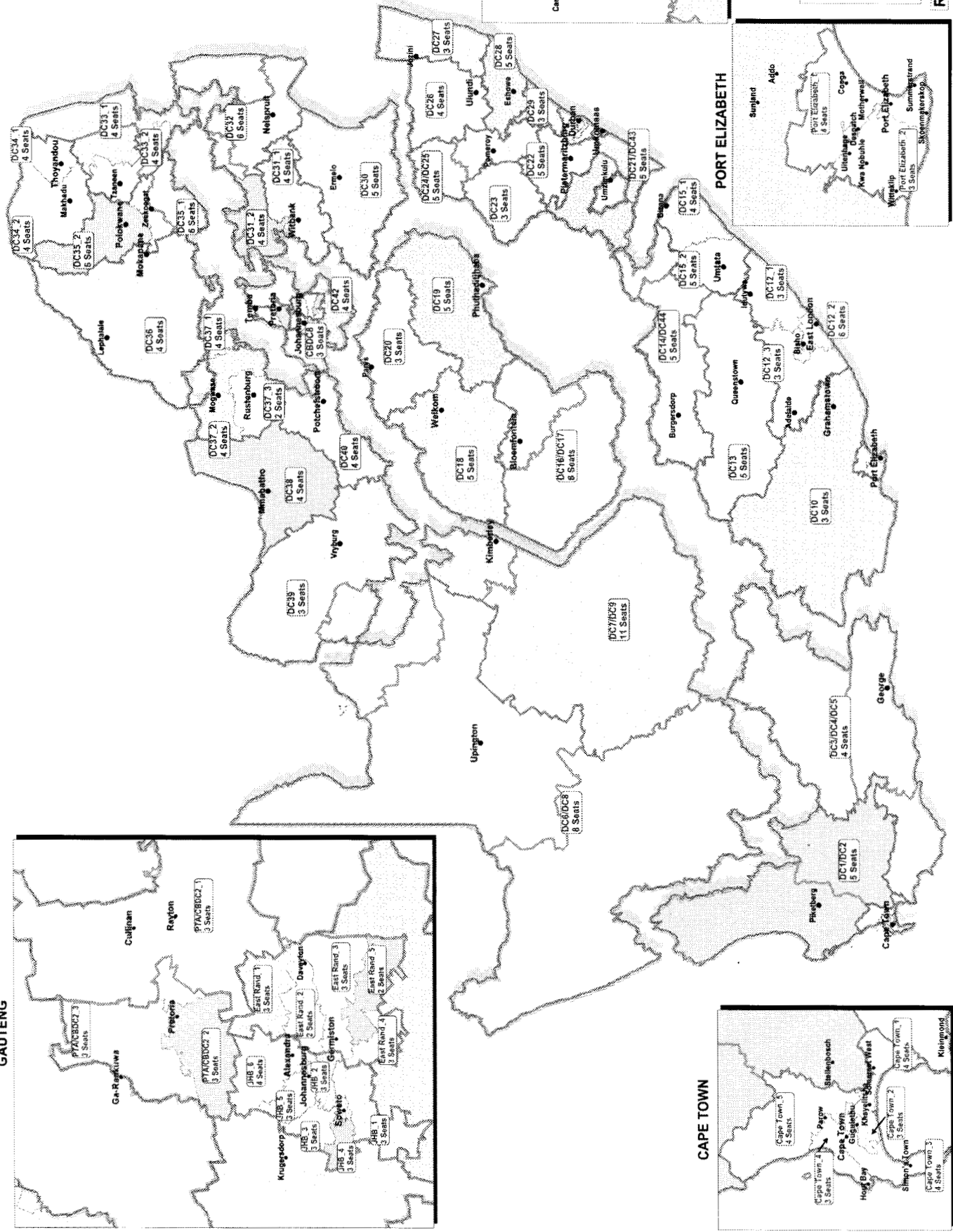
PARTY	EC SEAT ALLOCATION	FS SEAT ALLOCATION	GP SEAT ALLOCATION	KZN SEAT ALLOCATION	MP SEAT ALLOCATION	NC SEAT ALLOCATION	NP SEAT ALLOCATION	NW SEAT ALLOCATION	WC SEAT ALLOCATION
AZAPO	-	-	0	0	0	0	0	-	-
ACDP	0	0	1	1	0	0	1	0	1
AEB	0	0	0	0	0	0	0	0	0
AMP	-	-	-	-	-	-	-	-	0
ANC	47	25	50	32	26	20	44	27	18
DP	4	2	13	7	1	1	1	1	5
DPF	-	-	-	-	-	-	0	-	-
FA	0	0	1	0	0	0	0	0	0
GPGP	-	-	-	-	-	-	-	-	0
IFP	0	0	3	34	0	0	0	0	0
LP	-	-	0	-	-	-	-	-	-
MF	-	-	-	2	-	-	-	-	-
MUM	-	-	-	0	-	-	-	-	-
NACOPA	-	-	-	-	-	-	-	-	0
NNP	2	2	3	3	1	8	1	1	17
PAC	1	0	0	0	0	0	1	0	0
PLP	-	-	-	-	-	-	-	-	0
SOPA	-	0	0	0	-	-	-	-	-
SPP	-	-	-	-	0	-	-	-	-
UCDP	-	0	0	-	0	-	-	3	-
UDM	9	0	1	1	1	0	1	0	1
ULA	-	0	-	-	-	-	-	-	-
VFIFF	0	1	1	0	1	1	0	1	0
WIVL	-	-	-	-	-	-	-	-	0
XP	-	-	-	-	-	-	-	0	-
<b>TOTAL</b>	<b>63</b>	<b>30</b>	<b>73</b>	<b>80</b>	<b>30</b>	<b>30</b>	<b>49</b>	<b>33</b>	<b>42</b>

# PROPOSED SYSTEM; PROVINCIAL LEGISLATURES: 69 CONSTITUENCIES (278 SEATS) AND CLOSED PROVINCIAL LISTS (152 SEATS)

Only intended as an illustration of a possible multi-member constituency electoral system

Seats are distributed to constituencies as graphically indicated, and to provincial lists as indicated below:

EC - 22  
 FS - 11  
 GP - 25  
 KZ - 28  
 MP - 11  
 NC - 11  
 LP - 17  
 NW - 12  
 WC - 15  
**TOTAL - 152**

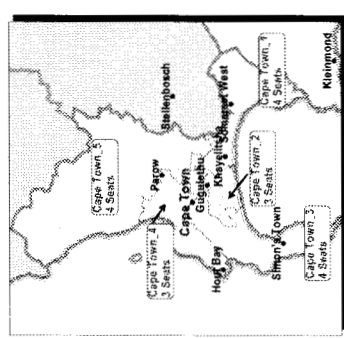
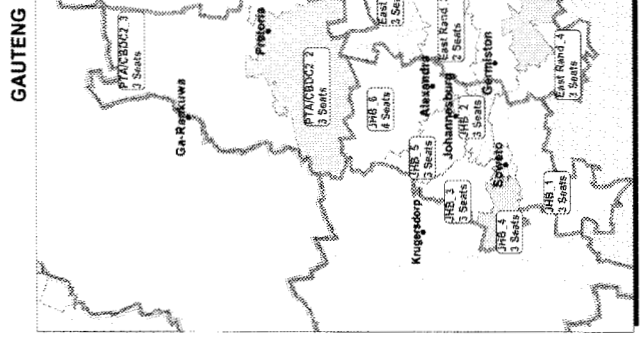


**LEGEND**

- Constituency boundary
- Provincial boundary
- District council boundary

0 80 160 240  
 Kilometers

Registered voters: 18 119 439







RESULTS OF THE 1999 PROVINCIAL ELECTIONS AS APPLIED TO THE PROPOSED PROVINCIAL ELECTORAL SYSTEM.

KZN		Total Seats	Quota	AZAPO Seats	AZAPO	ACDP Seats	ACDP	AEB Seats	AEB	ANC Seats	ANC	DP Seats	DP	FA Seats	FA	IFP Seats	IFP	MF Seats	MF	MUM Seats	MUM	NNP Seats	NNP	PAC Seats	PAC	SOPA Seats	SOPA	UDM Seats	UDM	VFFF Seats	VFFF
DC21/DC43		314328	5 62866	800	0	7094	0	1010	0	138892	2	17723	1	1262	1	128634	2	1697	0	341	0	7176	0	1253	0	557	0	5516	0	1273	0
DC22		306340	5 61269	603	0	5309	0	534	0	177953	3	33958	1	631	0	66304	1	2738	0	179	0	9207	0	703	0	328	0	5422	0	571	0
DC23		193504	3 64502	434	0	3796	0	761	0	71169	1	6610	0	966	0	97504	2	1369	0	230	0	6776	0	739	0	323	0	1914	0	713	0
DC24/DC25		259581	5 51919	474	0	4751	0	1011	0	70396	2	9456	0	1391	0	156494	3	2025	0	229	0	6716	0	799	0	280	0	2494	0	1075	0
DC26		231514	4 57879	126	0	1975	0	229	0	21530	0	2198	0	198843	4	131	0	136	0	170	0	1408	0	251	0	94	0	847	0	556	0
DC27		157260	3 52421	205	0	2111	0	204	0	21598	1	1141	0	1921	0	126994	2	144	0	170	0	1408	0	378	0	173	0	1367	0	356	0
DC28		271529	5 54306	280	0	4098	0	344	0	57590	1	7684	0	865	0	190906	4	389	0	200	0	5099	0	608	0	257	0	2404	0	625	0
DC29		179118	3 59707	714	0	2695	0	327	0	66055	1	5044	0	462	0	91775	2	1963	0	232	0	6963	0	420	0	267	0	1811	0	400	0
Durban 1		219228	4 54558	417	0	2959	0	341	0	132268	3	12678	0	357	0	53944	1	2781	0	110	0	5995	0	571	0	356	0	2150	0	301	0
Durban 2		209830	4 52458	338	0	4462	0	267	0	112454	2	27550	1	314	0	29844	0	1736	0	102	0	12920	0	489	0	176	0	2929	0	239	0
Durban 3		208277	4 52070	193	0	6809	0	208	0	73654	1	64516	1	349	0	22039	1	23515	1	103	0	12430	0	341	0	152	0	3647	0	321	0
Durban 4		212635	4 53159	310	0	2685	0	307	0	146910	3	15059	0	235	0	37792	1	2801	0	92	0	3251	0	687	0	257	0	2075	0	176	0
Durban 5		200933	3 66978	158	0	5004	0	259	0	73572	1	37634	1	384	0	36223	1	29472	0	137	0	15150	0	404	0	131	0	2007	0	196	0
TOTAL		2963087	52	5052	0	53738	0	5802	0	1167031	21	241730	5	9763	0	1241396	25	86761	1	2261	0	97083	0	7653	0	3451	0	34583	0	6803	0

MP		Total Seats	Quota	AZAPO Seats	AZAPO	ACDP Seats	ACDP	AEB Seats	AEB	ANC Seats	ANC	DP Seats	DP	FA Seats	FA	IFP Seats	IFP	MF Seats	MF	MUM Seats	MUM	NNP Seats	NNP	PAC Seats	PAC	SOPA Seats	SOPA	UDM Seats	UDM	VFFF Seats	VFFF
DC30		331236	5 66248	291	0	4348	0	1683	0	269923	4	15311	1	2091	0	11082	0	9229	0	2324	0	250	0	307	0	3682	0	10315	0	0	0
DC31.1		217515	4 54379	201	0	2249	0	1471	0	170985	3	21159	1	2437	0	2019	0	7821	0	1325	0	234	0	163	0	2429	0	8022	0	0	0
DC31.2		255684	4 63917	374	0	2046	0	656	0	233103	4	1640	0	653	0	1955	0	1651	0	1651	0	3675	0	1829	0	5767	0	1078	0	0	0
DC32		322961	6 53827	228	0	3951	0	711	0	282528	6	12310	0	3838	0	1564	0	8506	0	2004	0	159	0	253	0	4154	0	2755	0	0	0
TOTAL		1127376	19	1094	0	12594	0	4521	0	956539	17	50420	2	9019	0	15902	0	27911	0	7304	0	4318	0	2552	0	16032	0	19170	0	0	0

NC		Total Seats	Quota	AZAPO Seats	AZAPO	ACDP Seats	ACDP	AEB Seats	AEB	ANC Seats	ANC	DP Seats	DP	FA Seats	FA	IFP Seats	IFP	NNP Seats	NNP	PAC Seats	PAC	SPP Seats	SPP	UCDP Seats	UCDP	UDM Seats	UDM	VFFF Seats	VFFF
DC6/DC8		136387	8 16925	521	0	2192	0	836	0	81004	5	6019	1	676	0	451	0	39029	2	426	0	1394	0	2849	0	0	0	0	0
DC7/DC9		192387	11 17488	939	0	2812	0	885	0	128827	8	9613	1	1059	0	1277	0	40183	2	1732	0	1542	0	2597	0	0	0	0	0
TOTAL		327764	19	34413	0	5004	0	1722	0	210831	13	15632	2	1735	0	1778	0	79412	4	2158	0	2936	0	5446	0	0	0	0	0

NC		Total Seats	Quota	AZAPO Seats	AZAPO	ACDP Seats	ACDP	AEB Seats	AEB	ANC Seats	ANC	DP Seats	DP	FA Seats	FA	IFP Seats	IFP	NNP Seats	NNP	PAC Seats	PAC	SPP Seats	SPP	UCDP Seats	UCDP	UDM Seats	UDM	VFFF Seats	VFFF
Seat allocation		TOTAL	327764	19	34413	0	5004	0	1722	0	210831	13	15632	2	1735	0	1778	0	79412	4	2158	0	2936	0	5446	0	0	0	0
Constituency Seats		TOTAL	327764	19	34413	0	5004	0	1722	0	210831	13	15632	2	1735	0	1778	0	79412	4	2158	0	2936	0	5446	0	0	0	0
Proportional Seats		TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
TOTAL		TOTAL	327764	19	34413	0	5004	0	1722	0	210831	13	15632	2	1735	0	1778	0	79412	4	2158	0	2936	0	5446	0	0	0	0



## ANNEXURE C TO CHAPTER 4

### Legal framework as proposed by the majority

In terms of the majority view, the legislation will provide for:

1. 300 members of the National Assembly to be elected in multi-member constituencies from closed party lists
2. 100 members of the National Assembly to be allocated from closed party lists in order to restore overall proportionality
3. The demarcation of contiguous constituencies by the Municipal Demarcation Board in accordance with set criteria which *inter alia* include provisions whereby no provincial boundary will be transcended by a constituency boundary; and each district council area and each metropolitan council will be a constituency unless (a) it qualifies for fewer than three representatives, in which case it must be combined with an adjacent constituency in the same province; and (b) it qualifies for more than seven representatives, in which case it must be subdivided so that the local municipalities (or combinations thereof) within that district council become constituencies and, in the case of metropolitan council areas, so that the subdivision results in combinations of wards with each constituency preferably having four, but in any event not fewer than three and not more than five, representatives
4. A formula for the calculation of the number of representatives for each constituency
5. Provisions for the submission of candidate lists, including a recommendation that at least a third of all candidates should be women
6. Provisions regarding ballot papers
7. A formula for calculating the result of an election and the allocation of seats
8. Arrangements regarding incomplete candidate lists and forfeiture provisions
9. Provisions regarding the designation of representatives
10. Provisions regarding the supplementation of candidate lists

11. Provisions regarding the periodic review of candidate lists on a more frequent basis than is presently the case
12. Provisions regarding the publication of supplemented and reviewed candidate lists
13. Provisions regarding the filling of vacancies
14. Provisions regarding grounds for loss of membership of the National Assembly
15. Corresponding arrangements in respect of provincial legislatures
16. Transitional arrangements for the next national and provincial elections to provide for –
  - nine constituencies for the national election with each province being a constituency
  - 200 members to be elected from the nine constituencies and 200 to be allocated from national lists on the same basis as (previously) provided for in item 2 of Schedule 2 of the interim Constitution as amended
  - lists of candidates to be submitted on the same basis as (previously) provided for in items 3 and 4 of Schedule 2 of the interim Constitution as amended
  - all other provisions of the new Electoral Systems Act to apply in full for the 2004 elections
  - similar provisions to be made for provincial elections, with each province being a single constituency with the number of seats being determined and candidate lists being submitted on the same basis as (previously) provided for in items 10, 11 and 12 of Schedule 2 of the interim Constitution as amended, and all other provisions of the new Electoral Systems Act to apply in full

***Note: Most of these provisions form part of the present legal framework so details have been given only with regard to the new elements (as indicated in points 3, 5, 11 and 16). Some technical adjustments to the other provisions may be required in a final Bill but they will not be of a fundamental nature.***

## **ANNEXURE D TO CHAPTER 4**

# **DRAFT ELECTORAL SYSTEMS BILL**

**To regulate the composition of the National Assembly and provincial legislatures; to provide for transitional arrangements, and to provide for matters connected therewith.**

### **PREAMBLE**

WHEREAS items 6(3)(a) and 11(1)(a) of Schedule 6 of the Constitution of the Republic of South Africa provide that Schedule 2 of the interim Constitution as amended applies only to the first elections of the National Assembly and the provincial legislatures under the Constitution;

AND WHEREAS national legislation must provide for an electoral system for elections to be held in terms of the Constitution;

NOW THEREFORE BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

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#### **Definitions**

- 1. In this Act, unless the context otherwise indicates –

**“Commission”** means the Electoral Commission referred to in section 190 of the Constitution;

**“constituency”** means an area determined in terms of sections 7 and 19(a) and (b) of this Act;

**“constituency ballot paper”** means a ballot paper for the purpose of the election of members for a constituency in an election of the National Assembly or a provincial legislature referred to in sections 10(a) and 18(a);

**“constituency list”** means a list submitted by a party in respect of the election of members for a constituency in an election of the National Assembly or a provincial legislature referred to in sections 10(a) and 18(a);

**“Constitution”** means the Constitution of the Republic of South Africa, 1996;

**“district council area”** means the area comprised of a district council, as defined in the Municipal Structures Act, and which has been demarcated as such by the Municipal Demarcation Board as a municipality described in section 155(1) of the Constitution as a category C municipality;

**“Electoral Act”** means the Electoral Act, 1998 (Act No. 73 of 1998);

**“Electoral Commission Act”** means the Electoral Commission Act, 1996 (Act No. 51 of 1996);

**“local municipal council”** or **“municipal council”** means a municipal council referred to in section 18 of the Municipal Structures Act and which is described in section 155(1) of the Constitution as a category B municipality;

**“metropolitan council”** means a municipal council referred to in section 18 of the Municipal Structures Act and which is described in section 155(1) of the Constitution as a category A municipality;

**“metropolitan constituency”** means a constituency demarcated in terms of Chapter 4 of this Act;

**“municipality”**, as a geographical area, means an area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

**“Municipal Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**“Municipal Demarcation Board”** means the Board established in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

**“national ballot paper”** means a ballot paper for purposes of the election of members of the National Assembly referred to in section 10(b);

**“national list”** means a list of candidates submitted by a party for purposes of the election of members of the National Assembly referred to in section 10(b);

**“provincial ballot paper”** means a ballot paper for purposes of the election of members of a provincial legislature referred to in section 18(b);



**“provincial list”** means a list of candidates submitted by a party for purposes of the election of members of a provincial legislature referred to in section 18(b);

**“registered voter”** means a person whose name appears on the national common voters roll;

**“voters roll”** means the national common voters roll compiled and maintained in terms of the Electoral Act;

**“votes”** means valid votes cast in an election;

**“ward”** means a ward referred to in item 2 of Schedule 1 of the Municipal Structures Act.

## **CHAPTER 1 INTERPRETATION, APPLICATION AND ADMINISTRATION OF ACT**

### **Interpretation of this Act**

2. Any person interpreting or applying this Act must –
  - (a) do so in a manner that gives effect to the provisions of the Constitution; and
  - (b) take into account the provisions of the Electoral Commission Act, the Electoral Act and any other applicable legislation.

### **This Act to regulate elections of members of the National Assembly and the provincial legislatures**

3. This Act applies to all elections of members of the National Assembly and provincial legislatures held after the coming into operation of this Act.

### **Administration of this Act**

4. (1) This Act is administered by the Commission, but the provisions related to the demarcation of constituencies and the allocation of seats to constituencies in terms of this Act must be administered by the Municipal Demarcation Board.
- (2) The Commission and the Municipal Demarcation Board must administer this Act in a manner conducive to free and fair elections.

## **CHAPTER 2 NATIONAL AND PROVINCIAL ELECTIONS**

### **National common voters roll to apply to elections of National Assembly and provincial legislatures**

5. The national common voters roll compiled, maintained and certified in terms of the Electoral Act must be used for all elections of the National Assembly and provincial legislatures.

### **Proportional representation**

6. Elections of the National Assembly and provincial legislatures must result, in general, in proportional representation.

## **CHAPTER 3 DEMARCATION OF CONSTITUENCIES**

### **Constituencies**

7. (1) The whole of the territory of the Republic of South Africa must be demarcated into contiguous constituencies and such constituencies must be pre-determined for every election of the National Assembly and the provincial

legislatures at least two years prior to the expiry of the term of office of a legislature.

(2) The Municipal Demarcation Board must demarcate all constituencies for election of the National Assembly having regard to the following criteria –

- (a) no provincial boundary may be transcended in the demarcation of constituencies;
- (b) the area of each district council will be a constituency for the purposes of an election;
- (c) a district council area that crosses provincial boundaries must be divided so that each area situated in a particular province is a constituency;
- (d) to determine the number of representatives for a constituency, the total number of registered voters on the common voters roll must be divided by the number of seats referred to in section 10(a), and that calculation, plus one, disregarding fractions, determines the quota;
- (e) the total number of registered voters in a district council area must be divided by the quota determined in terms of paragraph (d);
- (f) where the result of the calculation referred to in paragraph (e) yields a surplus not absorbed by the number of seats reserved for constituencies, such surplus shall compete with other similar surpluses accruing to any other constituency, and any seat or seats not awarded in terms of paragraph (e) shall be awarded to the constituencies concerned in sequence of the highest surplus;
- (g) if the surplus referred to in paragraph (f) for two or more constituencies is equal, the seat must be awarded to the constituency that has the most registered voters;

- (h) if the allocation referred to in paragraph (f) results in fewer than three seats for a constituency, that constituency must be combined with an adjoining constituency within the same province and if necessary the procedures in this section shall *mutatis mutandis* be repeated until the constituency qualifies for at least three seats;
- (i) In a case where it is not possible to combine a constituency referred to in paragraph (c) with an adjoining constituency in the same province which is a district council area, that constituency may be combined with a metropolitan council area and may be part of a metropolitan constituency;
- (j) if the constituency referred to in paragraphs (h) or (i) is combined with one or more constituencies, such constituency may not result in the newly combined constituency having more than seven seats;
- (k) if a constituency referred to in paragraph (h) can be combined with more than one other constituency, the following factors must be taken into account –
  - (i) the need for cohesive, integrated and unfragmented areas;
  - (ii) topographical, environmental and physical characteristics of the area;
  - (iii) commercial and industrial linkages; and
  - (iv) patterns of human settlement and migration.
- (l) if a constituency has more than seven seats after the calculation referred to in paragraph (f), such constituency must be subdivided into two or more constituencies with each constituency qualifying for not fewer than three seats;
- (m) the subdivision of constituencies envisaged in paragraph (l) must be based on local council boundaries, and such subdivision may not result in any local municipal boundary

being transcended or any local municipal council area or part thereof within a district council area being allocated to a constituency in a different district council area; and

- (n) the subdivision of a constituency envisaged in paragraph (m) must seek to ensure that each of the subdivided constituencies has the same number of seats or the smallest possible variance in the number of seats allocated to the subdivided constituencies.

## **CHAPTER 4 METROPOLITAN CONSTITUENCIES**

### **Metropolitan constituencies**

- 8. (1) In the case of an area comprising a metropolitan council, each such metropolitan area must be divided into constituencies.
- (2) When a metropolitan area is divided into constituencies, ward boundaries must form the basis on which constituencies are divided.
- (3) Each metropolitan constituency should have four seats, determined in accordance with the procedures in sections 7(2)(d), (e), (f) and (g), but if that is not practicable, such constituency may not have more than five seats and not fewer than three seats.
- (4) When a metropolitan area is divided into constituencies, the following factors must be taken into account –
  - (a) the number of registered voters in each ward;
  - (b) topographical, environmental and physical characteristics of the area;
  - (c) density of the population; and

(d) the need to avoid as far as possible the fragmentation of communities.

(5) After constituencies have been demarcated in terms of Chapter 3 and this chapter, the procedures in sections 7(2)(d), (e), (f) and (g) shall *mutatis mutandis* be applied to reserve a final number of seats for each constituency.

(6) If the boundaries of a local council area, a district council area, a metropolitan council area or a ward are changed or redemarcated before an election, the boundary of a constituency affected by that change will by the mere fact also be considered to have changed and a redetermination must be made of the number of seats reserved for each constituency and the procedures in sections 7(2)(d), (e), (f) and (g) shall *mutatis mutandis* apply.

## **CHAPTER 5**

### **ELECTION OF THE NATIONAL ASSEMBLY**

#### **Election of National Assembly**

9. Parties registered in terms of the Electoral Commission Act and contesting an election of the National Assembly shall nominate candidates for such election on lists of candidates prepared in accordance with this chapter.

10. The seats in the National Assembly as determined in terms of Schedule 3 of the Electoral Act shall be filled as follows –

- (a) Three-quarters of the seats, disregarding fractions, from constituency lists submitted by the respective parties, with a fixed number of seats reserved for each constituency as determined by the Municipal Demarcation Board for the next election of the National Assembly, taking into account available data in respect of registered voters; and
- (b) The remainder of the seats from national lists submitted by the respective parties.

11. The lists of candidates submitted by a party shall –
- (a) in the case of a constituency list, contain names not exceeding in number the number of candidates to be elected in each constituency plus two additional candidates;
  - (b) in the case of a national list, contain names not exceeding in number the number of seats to be allocated from such national list, and
  - (c) denote such names in such fixed order of preference as the party may determine.

12. A party's lists of candidates shall consist of both a national list and a list for each constituency, with such number of names on each list as the party may determine subject to section 11.

13. The seats referred to in section 10(a) shall be allocated per constituency to the parties contesting an election, as follows –

- (a) A quota of votes per seat shall be determined in respect of each constituency by dividing the total number of votes cast on the ballot papers for that constituency by the number of seats reserved for such constituency under section 10(a);
- (b) The result plus one, disregarding fractions, shall be the quota of votes per seat in respect of a particular constituency;
- (c) The number of seats to be awarded for the purposes of paragraph (e) in respect of such constituency to a party shall, subject to paragraph (d), be determined by dividing the total number of votes cast in favour of such party on the constituency ballot paper for that constituency by the quota of votes per seat referred to in paragraph (b);
- (d) Where the result of the calculation referred to in paragraph (c) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the relevant

constituency, and any seat or seats in respect of that constituency not awarded in terms of paragraph (c) shall be awarded to the party or parties concerned in sequence of the highest surplus;

- (e) The aggregate of a party's awards in terms of paragraphs (c) and (d) in respect of a particular constituency shall indicate that party's provisional allocation of the seats reserved under section 10(a) for that constituency;
- (f) The aggregate of a party's provisional allocations for the various constituencies in terms of paragraph (e) shall indicate its provisional allocation of the seats referred to in section 10(a); and
- (g) If no recalculation of provisional allocations is required in terms of section 16 in respect of the seats referred to in section 10(a), the provisional allocation of such seats in terms of paragraphs (e) and (f) shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats, as adjusted in terms of section 16, shall become the final allocation of such seats to the various parties.

14. The seats referred to in section 10(b) shall be allocated to the parties contesting an election, as follows –

- (a) A quota of votes per seat shall be determined by dividing the total number of votes cast nationally on national ballot papers by the total number of seats in the National Assembly, and the result plus one, disregarding fractions, shall be the quota of votes per seat;
- (b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast nationally on national ballot papers in favour of such party by the quota of votes per seat determined in terms of paragraph (a);
- (c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party



concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus;

- (d) The aggregate of a party's awards in terms of paragraphs (b) and (c) shall be reduced by the number of seats provisionally allocated to it in terms of section 13(f) and the results shall indicate that party's provisional allocation of the seats referred to in section 10(b); and
  - (e) If no recalculation of provisional allocations is required in terms of sections 15 and 16 in respect of the seats referred to in section 10(b), the provisional allocation of such seats in terms of paragraph (d) shall become the final allocation of such seats to the various parties, and if such a recalculation is required, the provisional allocation of such seats, as adjusted in terms of sections 15 and 16, shall become the final allocation of such seats to the various parties.
15. (1) If a party gained no allocation of seats in terms of section 10(b), but the party gained a provisional seat in respect of the seats referred to in section 10(a), then the provisional allocation of seats in terms of section 10(a) will become the final allocation of seats for such party, and if a recalculation is required in terms of section 16, the adjusted allocation will become the final allocation.
- (2) If a seat is allocated to a party in terms of subsection (1), then the determination of seats in terms of section 10(b) will be recalculated as follows –
- (a) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally on national ballot papers, minus the votes cast for a party referred to in subsection (1), by the total number of seats in the National Assembly minus the seats awarded in terms of subsection (1), and the result plus one, disregarding fractions, shall be the quota of votes per seat;

- (b) The number of seats to be awarded to a party for the purposes of paragraph (d) must, subject to paragraph (c), be determined by dividing the total number of votes cast nationally on national ballot papers in favour of each party, excluding those awarded seats in terms of subsection (1), by the quota of votes per seat determined in terms of paragraph (a);
- (c) Where the result of the recalculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats not awarded in terms of paragraph (b) shall be awarded to the party or parties concerned in sequence of the highest surplus; and
- (d) The aggregate of a participating party's awards in terms of paragraphs (b) and (c) shall be reduced by the number of seats provisionally allocated to it in terms of section 13(f) and the results shall indicate that party's provisional allocation of the seats in terms of section 10(b).

(3) If no recalculation of provisional allocations is required in terms of section 16 in respect of the seats referred to in section 10(b), the provisional allocation of such seats in terms of paragraph (d) shall become the final allocation of such seats to the various parties, and if such a recalculation is required, the provisional allocation of such seats, as adjusted in terms of section 16, shall become the final allocation of such seats to the various parties.

(4) If a party forfeits a seat in terms of section 16(1) which was allocated to it in terms of section 15(1), then the seats provisionally allocated to other parties in terms of section 10(b) must be recalculated in terms of sections 16(2) and (3), taking such forfeiture into account.

16. (1) If a party has submitted a national or a constituency list containing fewer names than the number of its provisional allocation of seats which

would have been filled from such list in terms of section 17 had such provisional allocation been the final allocation, it shall forfeit a number of seats equal to the deficit.

(2) In the event of any forfeiture of seats in terms of subsection (1) affecting the provisional allocation of seats in respect of any particular constituency in terms of section 13(e), such allocation shall be recalculated as follows –

- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of section 13(e) for the constituency in question, minus the number of seats forfeited by it in respect of its list for such constituency, shall become its final allocation in respect of the seats reserved for such constituency in terms of section 10(a);
- (b) An amended quota of votes per seat shall be determined in respect of such constituency by dividing the total number of votes cast in the constituency, minus the number of votes cast in such constituency in favour of the party referred to in paragraph (a), by the number of seats reserved for such constituency under section 10(a), minus the number of seats finally allocated to the said party in terms of paragraph (a);
- (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such constituency for purposes of the said calculation;
- (d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such constituency to a party participating in the recalculation shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such constituency by the amended quota of votes per seat indicated by paragraph (c) for such constituency;

- (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation in respect of the said constituency, and any seat or seats in respect of such constituency not awarded in terms of paragraph (d) shall be awarded to the party or parties concerned in sequence of the highest surplus; and
  - (f) The aggregate of a party's awards in terms of paragraphs (d) and (e) in respect of such constituency shall, subject to subsection (4), indicate that party's final allocation of the seats reserved under section 10(a) for that constituency.
- (3) In the event of any forfeiture of seats in terms of subsection (1) affecting the provisional allocation of seats in terms of section 14(d), such allocation shall be recalculated as follows –
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of section 14(d), minus the number of such seats forfeited by it, shall become its final allocation of the seats referred to in section 10(b);
  - (b) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party referred to in paragraph (a), by the number of seats in the National Assembly, minus the number of seats finally allocated to the said party in terms of paragraph (a);
  - (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat for the purposes of the said recalculation;

- (d) The number of seats to be awarded for the purposes of paragraph (f) to a party participating in the recalculation shall, subject to paragraph (e), be determined by dividing the total number of votes cast nationally in favour of such party by the amended quota of votes per seat indicated by paragraph (c);
- (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus; and
- (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) shall be reduced by the number of seats finally allocated to it in terms of section 13(g), and the result shall, subject to subsection (4), indicate that party's final allocation of the seats referred to in section 10(b).

(4) In the event of a party being allocated an additional number of seats in terms of this section, and its list in question then does not contain the names of a sufficient number of candidates as set out in subsection (1), the procedure provided for in this section shall *mutatis mutandis* be repeated until all seats have been allocated.

17. (1) Where a party submitted both a national list and constituency lists, the seats finally allocated to it –
- (a) in terms of section 13(g), shall be filled from its constituency lists in accordance with its final allocation of seats in respect of the various constituencies; and
  - (b) in terms of section 14(e), shall be filled from its national list in accordance with its final allocation of seats in terms of that section.

- (2) A seat finally allocated to a party in respect of a constituency, shall, for the purposes of subsection (1)(a), be filled only from such party's list for that particular constituency.

## **CHAPTER 6**

### **ELECTION OF PROVINCIAL LEGISLATURES**

#### **Number of seats for election of provincial legislatures**

18. The seats for each provincial legislature as determined in terms of Schedule 3 of the Electoral Act will be filled as follows –

- (a) Two-thirds of the seats, disregarding fractions, from constituency lists submitted by the respective parties, with a fixed number of seats reserved for each constituency as determined by the Municipal Demarcation Board for the next election of a provincial legislature; and
- (b) The remainder of seats from provincial lists submitted by the respective parties.

#### **Demarcation of constituencies**

19. The following arrangements must apply in respect of constituencies for the election of provincial legislatures –

- (a) the same number of constituencies within a particular province as for the election of the National Assembly as determined in terms of Chapters 3 and 4;
- (b) the same constituency boundaries within a particular province as determined in terms of Chapters 3 and 4; and
- (c) the number of seats allocated to a constituency as determined in section 20.

20. The quota to determine the number of seats in each constituency within a province for purposes of an election of that provincial legislature must be determined by dividing the total number of registered voters in the province concerned with the number of seats referred to in section 18(a), and the result plus one, disregarding fractions, determines the quota.

21. (1) The number of seats in each constituency within a province for purposes of an election of that provincial legislature must be determined by dividing the total number of registered voters in a particular constituency with the quota determined in section 20.

(2) Where the result of the calculation in subsection (1) yields a surplus not absorbed by the number of seats reserved for constituencies, such surplus shall compete with other similar surpluses accruing to any other constituency, and any seat or seats not awarded in terms of subsection (1) shall be awarded to the constituencies concerned in sequence of the highest surplus, and such allocation will be the final allocation of seats to constituencies.

(3) If the surplus referred to in subsection (2) for two or more constituencies is equal, the seat must be awarded to the constituency that has the most registered voters.

22. If the calculation in section 21 results in a constituency receiving fewer than three seats or more than seven seats, that result must be the number of seats allocated to that constituency.

23. Parties registered in terms of the Electoral Commission Act and contesting an election of a provincial legislature shall nominate candidates for an election of a provincial legislature by submitting provincial lists and lists for each constituency.

24. The lists of candidates submitted by a party shall in the case of –

(a) a constituency list, contain the names of not more than the number of candidates to be elected in each constituency plus two candidates;  
and

- (b) a provincial list, the names of not more than the number of seats to be allocated from such provincial list.

25. The provisions of Chapter 5 of this Act, with the exclusion of sections 10 and 11, must *mutatis mutandis* apply to the election of provincial legislatures, and any reference in that chapter to national or nationally must be construed to be a reference to provincial or provincially, and any reference to a national list must be construed to be a reference to a provincial list.

## **CHAPTER 7 GENERAL PROVISIONS**

### **Ballot papers**

26. There shall be separate ballot papers for the election of members –
- (a) of each constituency for the election of the National Assembly;
  - (b) of each constituency for the election of a provincial legislature;
  - (c) for the overall composition of the National Assembly and this must be referred to as the national ballot paper; and
  - (d) for the overall composition of each of the provincial legislatures and this must be referred to as the provincial ballot paper.

### **Designation of representatives**

27. (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election results have been declared in terms of section 190 of the Constitution, the Commission shall, within two days after such declaration, designate from each list of candidates, published in terms of the Electoral Act, the representatives of each party elected in the legislatures.



(2) Following the designation in terms of subsection (1), if a candidate's name appears on more than one list for the National Assembly or on more than one list for a provincial legislature or on more than one list for a constituency or on lists for both the National Assembly and a provincial legislature (if elections of the National Assembly and a provincial legislature are held at the same time), and such candidate is due for designation as a representative in more than one case, the party which submitted such lists shall, within two days after the said designation, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate will serve, as the case may be, in which event the candidate's name shall be deleted from the other lists, and the next name that appears on such list shall move upwards on such list.

(3) The Commission shall forthwith publish the list of names of representatives in the legislature or legislatures.

### **Supplementation of lists of candidates**

28. No lists of candidates of a party for any legislature shall be supplemented prior to the designation of representatives in terms of section 27.

29. Lists of candidates may, after the designation of representatives in terms of section 27 has been concluded, be supplemented by the addition of an equal number of names at the end of the applicable lists, if –

- (a) a representative is elected as the President or to any other executive office as a result of which he or she resigns as a representative in a legislature;
- (b) a representative is appointed as a permanent delegate to the National Council of Provinces;
- (c) a name is deleted from a list in terms of section 27; or
- (d) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted.

30. Lists of candidates of a party referred to in section 29 may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of section 27 has been concluded, in order to fill casual vacancies: Provided that any such supplementation shall be made at the end of the list.

31. The number of names on lists of candidates as supplemented in terms of section 30 shall not exceed the difference between the number of seats in the National Assembly or a provincial legislature, as the case may be, and the number of representatives of a party in any such legislature.

#### **Review of lists of candidates by a party**

32. A party may review its undepleted lists, as supplemented in terms of sections 29, 30 and 31, within seven days after the expiry of the period referred to in section 30, and quarterly thereafter, until the date on which a party has to submit lists of candidates for an ensuing election, in the following manner-

- (a) all vacancies may be supplemented;
- (b) no more than 25 per cent of candidates may be replaced; and
- (c) the fixed order of lists may be changed.

#### **Publication of supplemented and reviewed lists of candidates**

33. Candidates' lists supplemented in terms of sections 29, 30 and 31 or reviewed in terms of section 32 shall be published by the Secretary to Parliament and the Secretaries of the provincial legislatures within 10 days after the receipt of such lists from the parties concerned.

#### **Vacancies**

34. (1) In the event of a vacancy in a legislature to which this chapter applies, the party which nominated the vacating member shall fill the vacancy by nominating a person –

- (a) whose name appears on the list of candidates from which the vacating member was originally nominated; and
  - (b) who is the next qualified and available person on the list.
- (2) A nomination to fill a vacancy shall be submitted to the Speaker in writing.
- (3) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of section 32(a), the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of sections 16.

#### **Additional grounds for loss of membership**

35. (1) A person loses membership of a legislature to which this chapter applies if that person ceases to be a member of the party which nominated that person as a member of the legislature, unless provided otherwise in the Constitution or an Act of Parliament.
- (2) Despite subsection (1), any existing political party may at any time change its name.

#### **Gender representation**

36. (1) Each party must seek to ensure that at least thirty-three per cent of the candidates nominated are women –
- (a) on the combined constituency lists for the election of the National Assembly;
  - (b) on the combined constituency lists for each provincial legislature;
  - (c) on the national list; and
  - (d) on each provincial list.

- (2) Each party must seek to ensure that women candidates are as evenly distributed as possible on a national list or a provincial list.

## **CHAPTER 8 TRANSITIONAL ARRANGEMENTS**

### **Suspensions**

37. The provisions of Chapters 3 and 4 as well as sections 10 and 27(1) of this Act are suspended in respect of the first election of the National Assembly after the coming into operation of this Act.

38. The provisions of Chapters 5 and 6 as well as section 27(2) of this Act are suspended in respect of the first election of a provincial legislature after the coming into operation of this Act.

39. The provisions of section 34 are suspended until the first election of the National Assembly and provincial legislatures after the coming into operation of this Act.

### **Election of the National Assembly**

40. For the first election after the coming into operation of this Act, there will for the National Assembly be nine constituencies and each constituency will consist of the territorial area of a province.

41. The seats in the National Assembly as determined in terms of Schedule 3 of the Electoral Act shall be filled as follows –

- (a) One half of the seats from constituency lists submitted by the respective parties, with a fixed number of seats reserved for each constituency as determined by the Commission for the next election of the Assembly, taking into account available data in respect of registered voters; and
- (b) The other half of the seats from national lists submitted by the parties.

42. One national ballot paper must be used in order to fill the seats referred to in sections 41(a) and (b) in the following way:

- (a) The number of seats to be awarded in terms of paragraph 41(a) in respect of each constituency to a party shall be determined by the number of votes cast in that constituency on the national ballot paper;
- (b) The number of seats to be awarded in terms of paragraph 41 (b) to a party shall be determined by the total number of votes cast in all constituencies on the national ballot paper; and
- (c) The procedures provided in sections 13, 14, 15 and 16 shall in all other respects *mutatis mutandis* apply to the allocation of seats in terms of sections 41(a) and 41(b).

#### **Election of provincial legislatures**

43. The number of seats in each provincial legislature shall be as determined in terms of Schedule 3 of the Electoral Act.

44. Parties registered in terms of national legislation and contesting an election of a provincial legislature shall nominate candidates for election to such provincial legislature on provincial lists prepared in accordance with this Schedule and national legislation.

45. Each party shall be entitled to submit only one list per province, which shall contain names not exceeding in number the number of seats determined under section 43 for the relevant provincial legislature and in such fixed order of preference as the party may determine.

46. The seats determined for a provincial legislature shall be allocated to parties contesting an election, as follows –

- (a) A quota of votes per seat shall be determined by dividing the total number of votes cast in the province concerned by the number of seats, plus one, determined for such province and the result plus one,

disregarding fractions, shall be the quota of votes per seat for such province;

- (b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast in the province in favour of such party by the quota of votes per seat determined in terms of paragraph (a);
  - (c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the province concerned, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus;
  - (d) The aggregate of a party's awards in terms of paragraphs (b) and (c) shall indicate that party's provisional allocation of seats in the provincial legislature in question; and
  - (e) If no recalculation of provisional allocations for a province concerned is required in terms of section 47, the provisional allocation of seats in respect of that province in terms of paragraph (d) shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats as adjusted in terms of section 47 shall become the final allocation of such seats to the various parties.
47. (1) If a party has submitted a provincial list containing fewer names than the number of seats provisionally allocated to it in terms of section 46(d), it shall forfeit a number of seats equal to the deficit.
- (2) In the event of any forfeiture of seats in terms of subsection (1), the allocation of seats in respect of the province concerned shall be recalculated as follows –

- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of section 46(d), minus the number of seats forfeited by it in respect of its list for such province, shall become its final allocation of seats in the provincial legislature concerned;
- (b) An amended quota of votes per seat shall be determined in respect of such province by dividing the total number of votes cast in the province, minus the number of votes cast in the province in favour of the party referred to in paragraph (a), by the number of seats, determined in terms of section 43 in respect of the province concerned, minus the number of seats finally allocated to the said party in terms of paragraph (a);
- (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such province for purposes of the said recalculation;
- (d) The number of seats to be awarded for the purposes of paragraph (f) shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such province by the amended quota of votes per seat indicated by paragraph (c) for such province;
- (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats in respect of such province not awarded in terms of paragraph (d) shall be awarded to the party or parties concerned in sequence of the highest surplus; and
- (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) in respect of such province shall, subject to subsection (3), indicate that party's final allocation of the seats determined under section 43 in respect of that province.

(3) In the event of a party being allocated an additional number of seats in terms of this section, and its list in question then not containing the names of a sufficient number of candidates as set out in subsection (1), the process provided for in this section shall *mutatis mutandis* be repeated until all seats have been allocated.

### **Vacancies**

48. Until the first elections for the National Assembly and provincial legislatures take place after the coming into operation of this Act, vacancies in the respective legislatures will be filled in terms of Schedule 2 of the interim Constitution as amended by items 6(3)(c) and 11(1)(c) of Schedule 6 of the Constitution.



## CHAPTER FIVE

### Minority recommendations for a preferred electoral system for South Africa

#### INTRODUCTION

5.1 The 1994 national and provincial elections were held under an electoral system prescribed by the 1993 Interim Constitution. In line with the new (1996) Constitution, the 1999 national and provincial elections were held under the same electoral system. Subsequent elections have to be held according to an electoral system prescribed in national legislation. The Electoral Task Team (ETT) was mandated to draft this legislation. Towards this end, we were required to: –

- consult with stakeholders, including political parties;
- draft a bill in accordance with public inputs, including, first of all, the input of political parties as the elected representatives of the people;
- identify the salient and relevant aspects of the South African context that pertain to the electoral system;
- note that the electoral system described in the bill need not be different from the existing one but that this will depend on the inputs received and the assessment of the overall interests of consolidation of democracy in our country; and
- note that its brief was not to change or amend the Constitution, but to propose, in the bill, a system within those guidelines of the Constitution relevant to an electoral system.

5.2 Two schools of thought emerged as our deliberations progressed. One was that the present system should be retained. The other was that a multi-member constituency system with overall proportionality being restored from national closed lists should be introduced. The latter proposal was at first based on over 40 such constituencies that would be demarcated on the basis of the existing district municipal boundaries. The supporters of this proposal saw it evolving into a fully integrated mixed constituency/national lists system

based on open constituency lists. The system would, according to the proposal, be implemented incrementally by some body other than Parliament, e.g. the Electoral Commission or the Parliamentary Constitutional Review Committee. Finally the majority proposal emerged as set out in Chapter 4. We do not agree with this proposal and propose the retention of the 1994/1999 electoral system (the present system).

### **The relevant constitutional provisions**

5.3 The ETT had to formulate its proposals within the current constitutional framework. The following provisions of the Constitution of the Republic of South Africa, 1996, are relevant:

- **Chapter 1 – Founding Provisions**

Section 1 (d) which states that South Africa is a sovereign, democratic state founded on a set of values that include the following: “*Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness*”.

- **Chapter 2 – Bill of Rights**

Section 19 which emphasizes that every citizen is free to make political choices which include the right to form a political party, to participate in the activities of, or recruit members for, a political party, and to campaign for a political party or cause. Furthermore, that every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution; to vote in elections for any legislative body established in terms of the Constitution and to do so in secret; as well as to stand for public office and, if elected, to hold public office.

- **Chapter 4 – Parliament**

Section 46(1) stipulates that the National Assembly consists of no fewer than 350 and no more than 400 women and men elected as members in terms of an electoral system that is prescribed by national legislation; is based on the national common voters roll; provides for a minimum voting age of 18 years; and results, in general, in proportional representation.

- **Chapter 6 – Provinces**

Section 105 specifies that a provincial legislature consists of women and men elected as members in terms of an electoral system that is prescribed by national legislation; is based on that province's segment of the national common voters roll; provides for a minimum voting age of 18 years; and results, in general, in proportional representation.

## **THE CONSULTATIVE PROCESS**

5.4 The consultative process followed by the ETT, is described elsewhere in this report. A summary of the spectrum of views expressed at the Round Table Conference appears in the annexures to this report. So does the survey report. The political parties represented in Parliament were individually consulted before, and again after, the Conference was held and the survey report had become available. The final positions adopted by the parties are as follows:

- Six parties with 307 representatives in the National Assembly wanted the present system to be retained.
- Three parties with 74 representatives in the National Assembly wanted some kind of multimember constituency system with overall proportionality being restored by way of national party lists.
- Two parties with 17 representatives in the National Assembly did not express firm preferences.
- One party with one representative in the National Assembly wanted single member constituencies with overall proportionality being restored by way of national party lists.
- One party with one member in the National Assembly did not respond to invitations to meet with the ETT or submit its views.

5.5 Amongst other things, our terms of reference require us to “... *draft a bill in accordance with public inputs, including first of all the input of political parties as the elected representatives of the people ...*”. It is clear that our report must take these views into account. By implication, there has to be adequate motivation for the task team to adopt an approach that is different from that of

the political parties and the public in general. This is especially so in view of the fact that the majority views, reflected below, are consistent with the consolidation of democracy.

- 5.6 The above numbers confirm that six political parties representing a large majority of voters in Parliament are in favour of retaining the present system. They are of the view that the system remains appropriate during this transitional period of our new democracy, being the period of reconciliation, nation building and the pursuit of peace. They conclude that it would be reasonable to review the system at a point where the country is more homogeneous. We are not convinced that the motivation for changing the current system advanced in Chapter 4, justifies a departure from it.
- 5.7 The carrying out of the survey referred to earlier, broadly meets our task of eliciting public inputs on the electoral model, as required by our terms of reference. The survey reflects that the majority of the public prefers the current system. They also express a desire for more contact with public representatives. The two reflections are not mutually exclusive. The latter indicates a need for more visibility and proximity by public representatives. This can be achieved effectively by other means rather than tinkering with the electoral model. These would include, amongst others, the strengthening of the constituency offices and improving the accessibility of MP's through the use of modern technology.

## **REASONS FOR OUR PROPOSAL**

- 5.8 Having considered a variety of electoral models and also having had the benefit of the papers and discussions of the Round Table Conference, the survey report, the historical background of the present system and particularly the views of the political parties, being the representatives of the people, we propose the retention of the present system, unchanged. The present system provides for 350 to 400 seats in the National Assembly to be filled in an election where voters vote for a party; the party is allocated a number of seats proportional to the percentage of the total number of votes attracted by the party; the seats are filled from nine regional lists of candidates, topped up, if necessary, from a national list of candidates. For provincial legislatures the current system is similar to the one for the National Assembly, except that there is only one list of candidates per party.

- 5.9 The present system was agreed upon in 1993 as the most appropriate one to take South Africa through the transition from an oppressive and divisive form of government into a true democracy. Representatives from the whole spectrum of South Africa's politically, socially, racially, ethnically and religiously divided society agreed on this system. They saw it as supporting reconciliation, nation building, the pursuit of peace and stability and the radical social and political reforms that had to be undertaken in the course of this process.
- 5.10 Again in 1996, the Constitutional Assembly confirmed the present system as the one that will take us forward on this road. The Constitutional Assembly did so after having embarked on perhaps one of the most transparent, consultative and publicly debated constitution-making processes the world has ever seen. The Constitutional Assembly itself could not have been more representative of all South Africa's varied groupings, having been elected under this very system that provided for the maximum possible inclusivity.
- 5.11 Parties in Parliament that represent 76,75% of voters told the ETT that reconciliation, nation building and the pursuit of peace and stability were still far from being achieved especially in respect of racial and ethnic divides as well as gender equality and equity. They say that the present electoral system will still be needed for the foreseeable future to support the attainment of these ideals.
- 5.12 The political parties confirmed that the current system, again given the South African context, facilitates the representation of women in our legislatures.
- 5.13 We took into account the degree of public acceptance that the present system enjoys and the protection it provides for small parties (or groupings), that are so necessary for stability, given our context.
- 5.14 The ETT identified four values or principles that an electoral system for South Africa should comply with. These do not constitute an exclusive list of values, but we agreed that they were core values/principles. The current system can be evaluated against them as follows:

- Fairness

Every eligible voter should not only have the opportunity to vote, but all votes, as far as possible, should be of equal value. Every vote should have some relevance in the composition of the National Assembly and provincial legislatures. The current system is fully proportional. It therefore represents the ultimate in fairness and thereby promotes the value of universal adult suffrage.

- Inclusivity

Particularly with regard to the “...*relevant and salient features of the South African context...*” in our terms of reference, inclusivity in our electoral system is of paramount importance. An electoral system that promotes exclusion, could be a source of political instability and conflict. Given the demographic, ethnic, racial and religious diversity of the South African society, our electoral system should allow the widest possible degree of participation of different political preferences in representative legislatures. The current system, where even the smallest party can gain representation if it musters enough votes for a single seat, provides the ultimate in inclusivity.

- Simplicity

An electoral system that is complex, given the South African context, would negatively impact on its fairness and inclusivity. The system has to be accessible and easy for voters to participate in. It should also be the same for political parties so as to enhance a multi-party system of democratic government. The present system is simple enough to meet these criteria.

- Accountability

How do those who give a mandate through the vote, call to account those who are supposed to perform in terms thereof? As far as an electoral system is concerned, the answer is: at the next election. At regular intervals the voters can either revoke or renew the mandate they gave to a political party or a candidate. At regular intervals the voters can decide who they want to represent them in the government of the country, or who they want to represent them in an opposition party. The certainty of regular elections also impacts on the behaviour of representatives between elections. They know

that how they act now, has an influence on whether they will again be nominated for, or elected at, the next election. It also impacts similarly on political parties.

- 5.15 All those with whom the ETT interacted, agreed that an electoral system cannot, itself, guarantee accountability between elections. During these periods, the responsibility rests mainly on political parties themselves. The ETT was given an insight into what parties are doing to enhance accountability, openness and responsiveness on the part of their members in Parliament between elections; and on how they plan to improve. The ETT was also told what Parliament itself is doing to encourage and assist members to regularly report back to voters. Practical proposals on this were introduced at the conference and in submissions made to the ETT. Our present electoral system also scores very high on accountability.
- 5.16 We also note that our Constitution contains no less than 42 provisions dealing with transparency and accountability on the part, not only of the legislators, but also of the three spheres of government.

#### **CRITIQUE OF PROPOSALS IN CHAPTER 4**

- 5.17 The obvious and overriding reasons why we cannot support the electoral system proposed in Chapter 4, are the following:-
- (a) The very strong case made out for the retention of the present system in submissions to the ETT and at the conference.
  - (b) Our own conviction that the retention of the present system is essential to support reconciliation, nation building, peace, stability and good governance.
  - (c) Nothing has been said on why the present system should not be retained. What are the evils that will befall our country if we do so?
- 5.18 As for the proposed system itself, and the motivation given for it in Chapter 4, we record the following comment:
- 5.18.1 Constituencies for a national legislature cannot rationally or logically be demarcated on the basis of existing local government boundaries. If Parliament decides that a constituency system should be introduced, the

whole of the country (or province) should, in a once-off exercise, be demarcated on the basis of criteria to identify the communality of national interests and the size of an area to form a constituency. The majority are proposing that the Municipal Demarcation Board should delimit constituencies for the National Assembly and for provincial legislatures. This highlights a dichotomy in their proposals.

5.18.2 The proposed system will negatively affect simplicity. Even the smallest party will have to submit 70 party lists if it wished to participate in a national election and twice that number if it also wants to participate in the nine provincial elections. For the five years between elections these lists will have to be maintained and regularly adjusted for the filling of vacancies. All the lists (and their accompanying documents like copies of ID's and acceptance forms signed by candidates) must be centrally lodged and checked in respect of numbers and eligibility of candidates. Parties will also centrally scrutinise lists and supporting documents of other parties and raise objections if they wish to do so. In the determination of the results votes will have to be counted in 69 "constituencies" (138 if one includes provincial constituencies) plus nationally and provincially. In the determination of the results a quota will have to be determined, a formula applied, seats allocated and candidates to fill those seats identified in each of them. The monitoring of this process by parties become infinitely more difficult, and this will impact negatively on the credibility of the elections and the acceptance of the results by parties. There are a whole range of other complications with voter education (eg explaining to voters which lists they are voting for at any particular voting station) not being the least of them. We obviously cannot agree with the majority's evaluation of the element of simplicity in paragraph 4.5.3.2 of Chapter 4.

5.18.3 The proposed system will thus make electoral administration and party participation in elections much more complicated without bringing the representational benefits of a properly demarcated and regulated constituency system where representatives are elected from the constituency for the constituency. All these disadvantages cannot be justified by the introduction of a system which is merely said to be "*a step in the right direction*".



- 5.18.4 In paragraph 4.5.3.2.1 of Chapter 4 it is also said that the majority “*does not accept that costs will increase to any significant degree under the suggested new system*”. An experienced professional in the management and costing of elections has estimated that the introduction of the proposed system will increase management costs by about R25 million per election. We do not regard this as insignificant. The costs for participating parties will obviously also increase considerably.
- 5.18.5 The proposed system will introduce distortions into the form of state that South Africa settled on in 1993 and 1996. In other words it will adversely impact on the status of provinces as they were conceived in 1993 and 1996.
- 5.18.6 The proposal confuses boundaries agreed upon for governmental purposes with boundaries meant for electoral / representational purposes.
- 5.18.7 The proposal does not enhance accountability between elections.
- 5.18.8 It will blur the distinction between the national/provincial/local issues that an election ought to focus on.
- 5.18.9 The proposal will water down the ability of parties to have more representative lists because of the constituency element. In other words parties will only be able to try to balance their representation from the narrower top-up list.
- 5.18.10.1 The proponents of the proposed multi-member constituency electoral model include, as one of the factors that support the model, the fact that smaller constituencies would not be a new phenomenon in South Africa. According to them the nine provinces are in fact large multi-member constituencies. Therefore, they argue, introducing smaller multi-member constituencies would not change the present system but would simply be an improvement on an existing system.
- 5.18.10.2 To the extent that this approach suggests that provinces were established for purposes of implementing the current electoral system, it is flawed. It is common cause that provinces reflect the

agreement on a form of state for South Africa. This was a culmination of compromises by political groupings that had views ranging from unitary, confederal to federalist systems of governance. Some sought to reduce the country into several smaller regions.

5.18.10.3 Also, technically and academically, provinces cannot be classified as multi-member constituencies merely because provincial lists are used in elections for the National Assembly. Had they been constituencies:

- A fixed number of members would have been elected from provincial lists; and they are not.
- Provincial voters would have voted for those members on a separate ballot paper; and they don't.
- Candidates would have been elected from the provinces to represent those provinces in the National Assembly; and they are not. Provinces are directly represented in Parliament in the National Council of Provinces.

5.18.10.4 Perhaps the majority's presentation of provinces as constituencies to a certain extent stems from a misunderstanding of how lists are compiled under the current system. They argued that under the current system, each party has to compile nine constituency / regional lists which together contain no more than 200 names, as well as a national list containing no more than 200 names. This is factually incorrect. Items 3 and 4 of schedule 2 of the 1993 Constitution (which regulates the current system) provides that a party must submit –

- (a) both a national list and a list for each region; or
- (b) a list for each region,

and that the total number of names on the lists should not be more than 400.

5.18.10.5 Parties are at liberty to submit only regional (provincial) lists. They do not have to submit a compensatory national list. If a party submits only regional lists all the seats it is voted are filled

from the regional lists. The majority's fundamental point of departure as set out in paragraph 4.5.1 of Chapter 4 is thus elementally flawed.

5.18.10.6 The truth is that provinces were not designed as multi-member constituencies, they are not multi-member constituencies and they were never presented to the electorate in that manner. We therefore do not agree that the introduction of smaller multi-member constituencies for the purpose of elections would not be a new phenomenon for our country. It will be.

5.18.10.7 As far as provincial legislatures are concerned, there is of course no question about the proposed system being a totally new one.

5.18.11 We do not believe that at this stage of our transition, South Africa should promote national political contestation on a regional basis. This would compromise nation building and racial and ethnic harmony. In any event Parliament deals with national issues and policies. Other matters are appropriately handled at provincial and local government level. Accordingly, there is no need to cater for regional interests specifically in the manner envisaged by the proposals in Chapter 4.

5.18.12 Some of the proponents of the system proposed in Chapter 4 are simply satisfied by the fact that it is "evolutionary". Others see an ideal system being one where the party lists are open and the electorate can decide which candidates on the lists should represent them. These suggest that by adopting legislation to implement the new system Parliament would allow itself space to evolve the system until an ideal one is achieved. We believe that Parliament as it is composed at any given time in the future, will be best able to decide if and when the present system should be replaced by another one, taking into account the status of transition in our country. There is therefore no need for Parliament to bind itself at this time as to how it should conduct itself in the future.

## **PROPOSED BILL**

5.19 A proposed draft bill reflecting our views appears in the annexure to this chapter. Its provisions are based on our conclusion that the present electoral

system should be retained in its entirety. Furthermore we recommend that the electoral system should be prescribed in the Constitution itself (as it now is) and not in an Act of Parliament and that the National Assembly should have 400 members. Purely technical improvements to the draft bill can be discussed later, when and if necessary.

## **CONCLUSION**

- 5.20 The present electoral system was introduced, primarily, to ensure the promotion of political diversity within our legislatures, and broad political representation. These are not short-term goals which can be attained overnight.
- 5.21 These goals are the cornerstone of our transition to a truly integrated, non-racial and peaceful society. The deracialisation of our political landscape, also, is still a critical challenge. We therefore must stick to the tried and tested electoral system. We cannot afford to experiment at this critical stage with a system whose form, worth and implications have not been thoroughly thought through, debated, evaluated and publicly interrogated.
- 5.22 We must also state that there is no ideal, universal electoral system. Every system has its advantages and disadvantages. In South Africa we have a system that our electorate has bought into, that cannot be improved on for fairness and inclusivity and which meets our current challenges as a country.
- 5.23 Finally, the proposals contained herein are in line with our terms of reference, particularly the one which urges us to “note that the electoral system described in the bill need not be different from the existing one but that this will depend on inputs received and the assessment of the overall interests of consolidation of democracy in our country”.

### ***Members subscribing to the above views:***

**Zam Titus**

**Tefo Raditapole**

**Pansy Tlakula**

**Fanie van der Merwe**

## ANNEXURE TO CHAPTER 5

### DRAFT BILL

To amend the Constitution of the Republic of South Africa, 1996, in order to provide for an electoral system for the National Assembly and for the provincial legislatures.

#### PREAMBLE

WHEREAS the first elections for the National Assembly and the provincial legislatures under the Constitution of the Republic of South Africa, 1996, were held in terms of transitional arrangements providing an electoral system for those elections only;

AND WHEREAS an electoral system must be provided for future elections for the National Assembly and the provincial legislatures,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa as follows :-

#### **Substitution of section 46 of Act 108 of 1996**

1. The following section is hereby substituted for section 46 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution) :

“46. [(1)] The National Assembly consists of [no fewer than 350 and no more than] 400 women and men elected as members in terms of [an] the electoral system set out in Schedule 8 and national electoral legislation that –

- (a) [is prescribed by national legislation;] is based on the national common voters roll; and
- (b) provides for a minimum voting age of 18 years.

[(c)

(d) results in general in proportional representation.

(2) An Act of Parliament must provide a formula for determining the number of members of the National Assembly.]”

#### **Amendment of section 47 of Act 108 of 1996**

2. Section 47 of the Constitution is hereby amended by the deletion of subsection (4) thereof :

[(4) Vacancies in the National Assembly must be filled in terms of national legislation.]

#### **Amendment of section 105 of Act 108 of 1996**

3. Section 105 of Act 108 of 1996 is hereby amended by the substitution of the following subsection for subsection (1) thereof :

“(1) A provincial legislature consists of women and men elected as members in terms of [an] the electoral system set out in Schedule 8 and national electoral legislation that –

(a) [is prescribed by national legislation;] is based on that province’s segment of the national common voters roll; and

(b) provides for a minimum voting age of 18 years [;and].

[(c)

(d) results in general in proportional representation.]”

#### **Amendment of section 106 of Act 108 of 1996**

4. Section 106 of the Constitution is hereby amended by the deletion of subsection (4) thereof :

[(4) Vacancies in a provincial legislature must be filled in terms of national legislation.]

**Insertion of Schedule 8 in Act 108 of 1996**

5. The following Schedule is hereby inserted into the Constitution :

**Schedule 8**

**ELECTORAL SYSTEM FOR NATIONAL ASSEMBLY AND PROVINCIAL LEGISLATURES**

**Election of National Assembly**

1. Parties registered in terms of national legislation and contesting an election of the National Assembly, shall nominate candidates for such election on lists of candidates prepared in accordance with this Schedule and national legislation.
2. The seats in the National Assembly shall be filled as follows:
  - (a) One half of the seats from regional lists submitted by the respective parties, with a fixed number of seats reserved for each region as determined by the Commission for every election of the Assembly, taking into account available scientifically based data in respect of voters, and representations by interested parties.
  - (b) The other half of the seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted.
3. The lists of candidates submitted by a party, shall in total contain the names of not more than a number of candidates equal to the number of seats in the National Assembly, and each such list shall denote such names in such fixed order of preference as the party may determine.
4. A Party's lists of candidates shall consist of –
  - (a) both a national list and a list for each region; or
  - (b) a list for each region,with such number of names on each list as the party may determine subject to item 3.
5. The seats referred to in item 2(a) shall be allocated per region to the parties contesting an election, as follows:

- (a) A quota of votes per seat shall be determined in respect of each region by dividing the total number of votes allocated per region to the parties contesting an election, as follows:
  - (b) The result plus one, disregarding fractions, shall be the quota of votes per seat in respect of a particular region.
  - (c) The number of seats to be awarded for the purposes of paragraph (e) in respect of such region to a party, shall, subject to paragraph (d), be determined by dividing the total number of votes cast in favour of such party in a region by the quota of votes per seat indicated by paragraph (b) for that region.
  - (d) Where the result of the calculation referred to in paragraph (c) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the relevant region, and any seat or seats in respect of that region not awarded in terms of paragraph (c), shall be awarded to the party or parties concerned in sequence of the highest surplus.
  - (e) The aggregate of a party's awards in terms of paragraphs (c) and (d) in respect of a particular region shall indicate that party's provisional allocation of the seats reserved under item 2 (a) for that region.
  - (f) The aggregate of a party's provisional allocations for the various regions in terms of paragraph (e), shall indicate its provisional allocation of the seats referred on in item 2 (a).
  - (g) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 (a), the provisional allocation of such seats in terms of paragraphs (e) and (f) shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats, as adjusted in terms of item 7, shall become the final allocation of such seats to the various parties.
6. The seats referred to in item 2 (b) shall be allocated to the parties contesting an election, as follows:
- (a) A quota of votes per seat shall be determined by dividing the total number of votes cast nationally by the number of seats in the National Assembly, plus one, and the result plus one, disregarding fractions, shall be the quota of votes per seat.



- (b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast nationally in favour of such party by the quota of votes per seat determined in terms of paragraph (a).
  - (c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats so awarded: Provided that subsequent awards of seats still remaining unawarded shall be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph (b) and this paragraph.
  - (d) The aggregate of a party's awards in terms of paragraphs (b) and (c) shall be reduced by the number of seats provisionally allocated to it in terms of item 5 (f) and the result shall indicate that party's provisional allocation of the seats referred to in item 2 (b).
  - (e) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 (b), the provisional allocation of such seats in terms of paragraph (d) shall become the final allocation of such seats to the various parties, and if such a recalculation is required, the provisional allocation of such seats, as adjusted in terms of item 7, shall become the final allocation of such seats to the various parties.
7. (1) If a party has submitted a national or a regional list containing fewer names than the number of its provisional allocation of seats which would have been filled from such list in terms of item 8 or 9 had such provisional allocation been the final allocation, it shall forfeit a number of seats equal to the deficit.
- (2) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in respect of any particular region in terms of item 5 (e), such allocation shall be recalculated as follows:
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 5 (e) for the region in question, minus the number of seats

- forfeited by it in respect of its list for such region, shall become its final allocation in respect of the seats reserved for such region in terms of item 2 (a).
- (b) An amended quota of votes per seat shall be determined in respect of such region by dividing the total number of votes cast in the region, minus the number of votes cast in such region in favour of the party referred to in paragraph (a), by the number of seats, plus one, reserved for such region under item 2 (a), minus the number of seats finally allocated to the said party in terms of paragraph (a).
  - (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such region for purposes of the said recalculation.
  - (d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such region to a party participating in the recalculation, shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such region by the amended quota of votes per seat indicated by paragraph (c) for such region.
  - (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation in respect of the said region, and any seat or seats in respect of such region not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus.
  - (f) The aggregate of a party's awards in terms of paragraphs (d) and (e) in respect of such region shall, subject to subitem (4), indicate that party's final allocation of the seats reserved under item 2 (a) for that region.
- (3) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in terms of item 6 (d), such allocation shall be recalculated as follows:
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of

- item 6 (d), minus the number of such seats forfeited by it, shall become its final allocation of the seats referred to in item 2 (b).
- (b) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party referred to in paragraph (a), by the number of seats in the Assembly, plus one, minus the number of seats finally allocated to the said party in terms of paragraph (a).
  - (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat for the purposes of the said recalculation.
  - (d) The number of seats to be awarded for the purposes of paragraph (f) to a party participating in the recalculation shall, subject to paragraph (e), be determined by dividing the total number of votes cast nationally in favour of such party by the amended quota of votes per seat indicated by paragraph (c).
  - (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats so awarded: Provided that subsequent awards of seats still remaining unawarded shall be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph (d) and this paragraph.
  - (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) shall be reduced by the number of seats finally allocated to it in terms of item 5 (g), and the result shall, subject to subitem (4), indicate that party's final allocation of the seats referred to in item 2 (b).
- (4) In the event of a party being allocated an additional number of seats in terms of this item, and its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1),

the procedure provided for in this item shall *mutatis mutandis* be repeated until all seats have been allocated.

8. (1) Where a party submitted both a national and regional lists, the seats finally allocated to it –
  - (a) in terms of item 5 (g) shall be filled from its regional lists in accordance with its final allocation of seats in respect of the various regions; and
  - (b) in terms of item 6 (e), shall be filled from its national list in accordance with its final allocation of seats in terms of that item.
- (2) A seat finally allocated to a party in respect of a region, shall, for the purposes of subitem (1)(a), be filled only from such party's list for that particular region.
9. (1) Where a party submitted regional lists only, the seats finally allocated to it –
  - (a) in terms of item 5 (g), shall be filled from such lists in accordance with its final allocation of seats in respect of the various regions; and
  - (b) in terms of item 6 (e), shall be filled from the said lists in the same proportions as the proportions in which the seats referred to in paragraph (a) are to be filled in respect of the various regions for which the party was finally allocated seats in terms of item 5 (g) : Provided that if a party was not allocated any seats in terms of item 5 (g), the seats allocated to it in terms of item 6 (e) shall be filled from its regional lists in proportion to the number of votes received by that party in each of the regions : Provided further that surplus fractions shall be awarded to regions in sequence of the highest surplus fractions.
- (2) A seat finally allocated to a party in respect of a region, shall, for the purposes of subitem (1) (a), be filled only from such party's list for that particular region.

### **Election of provincial legislatures**

10. The number of seats in each provincial legislature shall be as determined in terms of section 105.

11. Parties registered in terms of national legislation and contesting an election of a provincial legislature, shall nominate candidates for election to such provincial legislature on provincial lists prepared in accordance with this Schedule and national legislation.
12. Each party shall be entitled to submit only one list per province, which shall contain the names of not more than the number of seats determined under item 10 for the relevant provincial legislature and in such fixed order of preference as the party may determine.
13. The seats determined for a provincial legislature shall be allocated to parties contesting an election, as follows –
  - (a) A quota of votes per seat shall be determined by dividing the total number of votes cast in the province concerned by the number of seats, plus one, determined under item 10 for such province and the result plus one, disregarding fractions, shall be the quota of votes per seat for such province.
  - (b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast in the province in favour of such party by the quota of votes per seat determined in terms of paragraph (a).
  - (c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the province concerned, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus.
  - (d) The aggregate of a party's awards in terms of paragraphs (b) and (c), shall indicate that party's provisional allocation of seats in the provincial legislature in question.
  - (e) If no recalculation of provisional allocations for a province concerned is required in terms of item 14, the provisional allocation of seats in respect of that province in terms of paragraph (d), shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats as adjusted in terms of item 14 shall become the final allocation of such seats to the various parties.

14. (1) If a party has submitted a provincial list containing fewer names than the number of seats provisionally allocated to it in terms of item 13 (d), it shall forfeit a number of seats equal to the deficit.
- (2) In the event of any forfeiture of seats in terms of subitem (1), the allocation of seats in respect of the province concerned shall be recalculated as follows:
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 13 (d), minus the number of seats forfeited by it in respect of its list for such province, shall become its final allocation of seats in the provincial legislature concerned.
  - (b) An amended quota of votes per seat shall be determined in respect of such province by dividing the total number of votes cast in the province, minus the number of votes cast in the province in favour of the party referred to in paragraph (a), by the number of seats, plus one, determined in terms of item 10 in respect of the province concerned, minus the number of seats finally allocated to the said party in terms of paragraph (a).
  - (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such province for purposes of the said recalculation.
  - (d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such province to a party participating in the recalculation, shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such province by the amended quota of votes per seat indicated by paragraph (c) for such province.
  - (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats in respect of such province not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus.

- (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) in respect of such province shall, subject to subitem (3), indicate that party's final allocation of the seats determined under item 10 in respect of that province.
- (3) In the event of a party being allocated an additional number of seats in terms of this item, and its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1), the process provided for in this item shall *mutatis mutandis* be repeated until all seats have been allocated.

### **Ballot Papers**

- 15. There shall be separate ballot papers for the election of members of the National Assembly and of members of the provincial legislatures.

### **Designation of representatives**

- 16. (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election result has been declared in terms of section 190, the Commission shall, within two days after such declaration, designate from each list of candidates, published in terms of national legislation, the representatives of each party in the legislature.
- (2) Following the designation in terms of subitem (1), if a candidate's name appears on more than one list for the National Assembly or on lists for both the National Assembly and a provincial legislature (if an election of the Assembly and a provincial legislature is held at the same time), and such candidate is due for designation as a representative in more than one case, the party which submitted such lists shall, within two days after the said declaration, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate will serve, as the case may be, in which event the candidate's name shall be deleted from the other lists.
- (3) The Commission shall forthwith publish the list of names of representatives in the legislature or legislatures.

### **Supplementation of lists of candidates**

17. No lists of candidates of a party for any legislature shall be supplemented prior to the designation of representatives in terms of item 16, save where provided for by an Act of Parliament.
18. Lists of candidates may, after the designation of representatives in terms of item 16 has been concluded, be supplemented by the addition of an equal number of names at the end of the applicable list, if –
  - (a) a representative is elected as the President or to any other executive office as a result of which he or she resigns as a representative of a legislature;
  - (b) a representative is appointed as a permanent delegate to the National Council of Provinces;
  - (c) a name is deleted from a list in terms of item 16 (2); or
  - (d) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted.
19. Lists of candidates of a party referred to in item 16 (1) may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 16 has been concluded, in order to fill casual vacancies: Provided that any such supplementation shall be made at the end of the list.
20. The number of names on lists of candidates as supplemented in terms of item 18 shall not exceed the difference between the number of seats in the National Assembly or a provincial legislature, as the case may be, and the number of representatives of a party in any such legislature.

### **Review of lists of candidates by a party**

21. A party may review its undepleted lists as supplemented in terms of items 18, 19 and 20, within seven days after the expiry of the period referred to in item 19, and annually thereafter, until the date on which a party has to submit lists of candidates for an ensuing election, in the following manner:
  - (a) all vacancies may be supplemented;
  - (b) no more than 25 per cent of candidates may be replaced; and
  - (c) the fixed order of lists may be changed.

### **Publication of supplemented and reviewed lists of candidates**

22. Candidates' lists supplemented in terms of items 18 and 19 or reviewed in terms of item 21 shall be published by the Secretary to Parliament and the



Secretaries of the provincial legislatures within 10 days after the receipt of such lists from the parties concerned.

### **Vacancies**

23. (1) In the event of a vacancy in a legislature to which this Schedule applies, the party which nominated the vacating member shall fill the vacancy by nominating a person –
- (a) whose name appears on the list of candidates from which the vacating member was originally nominated; and
  - (b) who is the next qualified and available person on the list.
- (2) A nomination to fill a vacancy shall be submitted to the Speaker in writing.
- (3) If a party represented in a legislature dissolves or ceases to exist and members in question vacate their seats in consequence of item 24 (1), the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of item 7 or 14, as the case may be.

### **Additional ground for loss of membership of legislatures**

24. (1) A person loses membership of a legislature to which this Schedule applies if that person ceases to be a member of the party which nominated that person as a member of the legislature.
- (2) Despite subitem (1) any existing political party may at any time change its name.

### **Definitions**

25. In this Schedule –
- 'Commission' means the Electoral Commission referred to in Chapter 9;
  - 'national list' means a list of candidates prepared by a party for an election of the National Assembly to reflect that party's order of preference of candidates in respect of the allocation of seats on a national basis;
  - 'provincial list' means a list of candidates prepared by a party for an election of a provincial legislature;
  - 'region' means the territorial area of a province;
  - 'regional list' means a list of candidates in respect of a region prepared by a party for an election of the National Assembly to reflect that party's order of

preference of candidates in respect of the allocation of seats in respect of such region;

'votes' means –

- (a) where it occurs in items 5, 6, 7 and 9, votes cast in the election for the National Assembly;
- (b) where it occurs in items 13 and 14, votes cast in the election for the provincial legislature of a province concerned; and
- (c) where it occurs in item 16, votes cast in the election for the National Assembly and the provincial legislatures.”

### **Short Title**

6. This Act is called the Constitution of the Republic of South Africa First Amendment Act, 2003, and comes into operation on a date set by the President by proclamation.

*Note: The new Schedule 8 reflects the present electoral system as provided for in Schedule 2 of the previous Constitution by way of the transitional arrangements contained in items 6 and 11 of Schedule 6 of the 1996 Constitution. The amendments affected to Schedule 2 by the Loss or Retention of Membership of National and Provincial Legislatures Act, 2002 (Act 22 of 2002) have not been factored into the proposed new Schedule 8; nor has the Constitution of the Republic of South Africa Fourth Amendment Bill, published in Government Gazette No. 23941 of 11 October, 2002. If our proposed draft bill is eventually proceeded with, the proposed new Schedule will, of course, have to be drafted to reflect the situation as it exists at that time.*

## **CHAPTER SIX**

### **Concluding comments and acknowledgements**

- 6.1 The ETT concludes its report in the hope that it will serve a useful purpose for the lawmakers and stimulate an ongoing public debate about the adequacy of the electoral system in South Africa. Obviously the members of the Task Team remain available to assist in any discussions and inquiries on electoral matters.
- 6.2 The ETT was appointed at the beginning of May 2002 and from the outset had to work under a serious time constraint with the next national and provincial elections scheduled for September 2004 at the latest (and in fact likely to be held some months earlier). The ETT soon resigned itself to the fact that if any changes to the electoral system were to be proposed, it was unlikely that they could be properly managed and implemented for the 2004 elections. At the same time, it was clear that Cabinet wished to get the issue of the final electoral system off its agenda, and the Minister of Home Affairs suggested that the ETT try to finalise its report by November 2002. This gave the ETT some six months to carry out its mandate.
- 6.3 During this time the ETT met 21 times and held discussions with the parliamentary parties (on two occasions), with NGOs and with representatives of the media. In addition, it commissioned research in the form of a survey on voter attitudes and experiences with the current electoral system, and held a two-day round-table conference attended by political scientists and experts on electoral systems as well as representatives of Parliament and the provincial governments. The ETT is satisfied that it gathered and disseminated as much information as possible in the time available to assist it and any other interested parties in their deliberations on the most appropriate electoral system for South Africa. The ETT itself observed the impact of this information on changing attitudes of political parties in Parliament.
- 6.4 It is appropriate that the ETT register its gratitude towards individuals and organisations that assisted it in completing its task.

- The Konrad Adenauer Foundation funded in its entirety the two-day round-table conference attended by experts from overseas, elsewhere in Africa and South Africa itself. The conference would not have been the success it was without the Foundation's generous help.
- The embassies/high commissions of four countries (Denmark, Norway, Sweden and the United Kingdom [DFID]) provided generous donor assistance. This enabled the ETT to commission a comprehensive public opinion survey and meet other expenses. The ETT would have been severely constrained in the scope of its activities without this assistance.
- That portion of the ETT budget not covered by donor funding was met by the Department of Home Affairs. This included travel and accommodation expenses and salaries for ETT staff. A special debt of gratitude is owed to the Minister of Home Affairs, who showed a keen interest and involvement in the activities of the ETT. It was, for instance, remarkable for someone with his heavy commitments to spend two full days at the round-table conference, and his opening address showed a keen appreciation of the problems involved in exploring electoral systems. A word of gratitude is also extended to the Minister's senior aides, who were unfailingly courteous and helpful.
- The ETT was particularly fortunate in acquiring the services of Jenny Nothard as Secretary and Administrative Manager. Not only did she set up the offices of the ETT at Cartwright's Corner House in Cape Town, but with admirable efficiency arranged the meetings and prepared the necessary documentation for the ETT members.
- The ETT did not hold all its meetings in Cape Town. Sometimes it was more convenient to meet in Pretoria. Here hospitality was provided by the Electoral Commission in the form of boardrooms made available at Election House in Sunnyside, Pretoria. A special word of thanks is due to the Chairperson, Dr Brigalia Bam, and the Chief Electoral Officer, Adv Pansy Tlakula, for making these facilities available.

- A debt of gratitude is also owed to Professor Roger Southall of the Human Sciences Research Council for convening the research teams and to Dr Robert Mattes for preparing and presenting the research report with Professor Southall.

6.5 This then concludes the Report and activities of the Electoral Task Team.









