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## GENERAL NOTICE

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### NOTICE 933 OF 2003

#### DRAFT ELECTORAL SYSTEMS BILL, 2004

"The Minister of Home Affairs hereby publishes the draft Electoral Bill, 2004, which was suggested in the majority Report of the Electoral Task Team established by Cabinet and chaired by Dr F. van Zyl Slabbert which, pursuant to a Cabinet decision, is to be handled by the Parliament empowered through the 2004 elections. The draft Bill contains a new electoral system which Parliament may consider in respect of the 2009 elections and beyond.

The draft Bill is published in order to promote public awareness and debate on the matter and solicit comments. Comments will be collected care of the Minister of Home Affairs and will be submitted to the Electoral Task Team, if such Task Team is reconstituted to process such comments and promote further stages of the debate as solicited by Cabinet, and/or will be forwarded to the Portfolio Committee on Home Affairs after the 2004 elections or when such Bill is finally tabled in Parliament. Such comments may also lead to a reformulation of such Bill prior to its submission to Parliament after the 2004 elections, but no decision in this respect is expected to be made before such elections are held.

The period for public comment will end on 1st July 2004."

Comments to be directed to:

The Minister of Home Affairs  
Private Bag X114, Pretoria, 0001.

**DRAFT ELECTORAL SYSTEMS BILL, 2004****(To be introduced by the Minister of Home Affairs)****[B 2003]****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 under the Constitution;

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

**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 section 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 from 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 constituency 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 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 the 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 list 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 list 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 the 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 constituency;
  - (c) The number of seats to be awarded for the purpose 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 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 paragraph (a);
  - (c) Where the result of calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to party concerned, such surplus shall complete 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 section 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 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 seat 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 the 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 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 section (4), indicate that party's final allocation of 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 subsection 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 list, the seats finally allocated to it -
- (a) in terms of section 13(g), shall be filled from its constituency list 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 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 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 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 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 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 the 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 section 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 provincial list.

### **CHAPTER 8 TRANSITIONAL ARRANGEMENTS**

#### **Suspensions**

37. The provisions of Chapter 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 Chapter 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 must be used in order to fill the seats referred to in section 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 (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 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 paragraph (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 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 provinces concerned shall be recalculated as follows-
- (a) The party forfeiting seats shall be 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 calculation 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 party or parties in respect of the province concerned, 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;
- (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.
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