

**ELECTORAL ACT  
NO. 202 OF 1993**

[ASSENTED TO 12 JANUARY, 1994]  
[DATE OF COMMENCEMENT: 14 JANUARY, 1994]  
(Unless otherwise indicated)  
(Afrikaans text signed by the State President)

**ACT**

**To regulate the election for the National Assembly and all provincial legislatures to be elected in terms of the Constitution of the Republic of South Africa, 1993; and to provide for matters in connection therewith.**

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## **CHAPTER I INTERPRETATION AND APPLICATION OF ACT**

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

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

**"Appeal Tribunal"** means an Electoral Appeal Tribunal established in terms of section 30 (1) of the Commission Act;

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

**"ballot box"** means any ballot box referred to in section 27;

**"ballot paper"** means any ballot paper referred to in section 29;

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

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

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

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

**"Commission Act"** means the Independent Electoral Commission Act, 1993 (Act No. 150 of 1993);

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

**"controlled area"** means any controlled area contemplated in section 24 (1) (c) or 42 (1) (c);

**"counting centre"** means any counting centre contemplated in section 42 (1) (a);

**"counting officer"** means any counting officer appointed in terms of section 7 (1) (b) (iii);

**"counting station"** means any place determined by the Commission in terms of section 41 where the counting of votes is to take place;

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

**"directorate"** means the Administration Directorate or the Monitoring Directorate;

**"district electoral officer"** means any district electoral officer appointed in terms of section 7 (1) (b) (i), and includes any deputy appointed in terms of that section designated by the former;

**"election"** means any election conducted in terms of this Act for the National Assembly or any provincial legislature;

**"election centre"** means any election centre contemplated in section 24 (1) (a);

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

**"election period"** means the period between the commencement and ending of the election contemplated in section 21 (2);

**"Electoral Code of Conduct"** means the Electoral Code of Conduct contained in Schedule 2;

**"electoral district"** means any electoral district demarcated by the Commission by regulation;

**"electoral officer"** means any deputy director, any provincial or district electoral officer or his or her deputy, any presiding or voting officer or any counting officer or enumerator;

**"Electoral Tribunal"** means an Electoral Tribunal established in terms of section 28 (1) of the Commission Act;

**"enumerator"** means any enumerator appointed in terms of section 7 (1) (d);

**"foreign voting station"** means any foreign voting station established in terms of section 25;

**"identification mark"** means the mark approved by the Commission for the purpose of the identification of a voter in terms of section 35 (4) (a) (i) before voting in the election;

**"inner perimeter"** means any inner perimeter contemplated in section 24 (1) (b) or 42 (1) (b);

**"interim party liaison committee"** means the interim party liaison committee established in terms of section 5 (1) (a);

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



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

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

**"National Assembly"** means the National Assembly as contemplated in the Constitution;

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

**"official mark"** means the mark determined by the Chief Director for the purpose of the identification of a ballot paper as having been officially issued in terms of section 35 (6) (a) or 40 (3);

**"ordinarily resident"**, in relation to any person, means the home or place where he or she normally lives and to which he or she returns regularly after any period of temporary absence;

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

**"party election agent"** means any party election agent appointed in terms of section 13 (1) or (3) (c);

**"party election district agent"** means any party election district agent appointed in terms of section 13 (1) (c);

**"party election national agent"** means any party election national agent appointed in terms of section 13 (1) (a), and includes any deputy appointed in terms of that section designated by the former;

**"party election provincial agent"** means any party election provincial agent appointed in terms of section 13 (1) (a) or (b);

**"party liaison national committee"** means the party liaison national committee established in terms of section 5 (3) (a);

**"party liaison provincial committee"** means any party liaison provincial committee established in terms of section 5 (3) (b);

**"party voting agent"** means any party voting agent appointed in terms of section 13 (5);

**"prescribe"** means prescribe by regulation in terms of this Act or under the Commission Act;

**"presiding officer"** means any presiding officer or deputy presiding officer appointed in terms of section 7 (1) (b) (ii);

[Definition of "presiding officer" substituted by Proclamation No. 69 of 1994.]

**"province"** means any province of the Republic determined as such by or under the Constitution;

**"provincial electoral officer"** means any provincial electoral officer appointed in terms of section 7 (1) (a), and includes any deputy appointed in terms of that section designated by the former;

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

**"provisionally defined area"** means any area referred to in Part 2 of Schedule 1 to the Constitution;

**"qualified person"** means any person qualified in terms of the Constitution to serve as a member of the National Assembly or a provincial legislature, as the case may be;

**"registered party"** means any party registered in terms of Chapter IV as a participant in the election;

**"regulations"** means the regulations made in terms of section 76;

**"Republic"** means the Republic of South Africa contemplated in section 1 of the Constitution;

[Definition of "Republic" substituted by s. 1 ( f ) of Act No. 20 of 1997.]

**"security force"** means the National Peacekeeping Force referred to in section 16 (10) of the Transitional Executive Council Act, 1993 (Act No.

151 of 1993), and any defence or police force in the Republic established by or under any law;

[Definition of "security force" inserted by Proclamation No. 69 of 1994.]

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

**"Special Electoral Court"** means the Special Electoral Court established by section 32 (1) of the Commission Act;

**"special vote"** means any special vote contemplated in sections 39 and 40;

**"special voter"** means any voter entitled in terms of sections 39 and 40 to cast his or her vote as a special voter;

**"State"** means the Republic;

**"temporary voter's card"** means any temporary voter's card issued in terms of section 17;

**"this Act"** includes the regulations;

**"Transitional Council"** means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993);

**"Tribunal"** means an Electoral or Appeal Tribunal;

**"voter"** means any eligible voter as contemplated in sections 15 and 16;

**"voter's eligibility document"** means --  
an identity document or a temporary identity certificate issued in terms of the Identification Act, 1986 (Act No. 72 of 1986), or any other applicable law of the Republic, as the case may be;  
a temporary voter's card;

(bA) a valid travel document issued in terms of any law of any of the Republics of Transkei, Bophuthatswana, Venda and Ciskei;

[Para. (bA) inserted by Proclamation No. 73 of 1994.]

a reference book issued in terms of the repealed Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952 (Act No. 67 of 1952); or

an identity document referred to in section 13 of the Population Registration Act, 1950 (Act No. 30 of 1950); and

for the purpose of voting at any foreign voting station, also a valid South African passport;

**"voting compartment"** means any voting compartment referred to in section 27;

**"voting day or days"** or **"voting period"** means the voting day or days or period determined in terms of section 21;

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

**"voting officer"** means any voting officer appointed in terms of section 7 (1) (c);

**"voting station"** means any place determined by the Chief Director in terms of section 24 (2) where voting is to take place.

**2. Application of Act.** -- The provisions of this Act and any amendment thereof shall apply --

(a) in respect of the elections held in terms of the Constitution for the National Assembly and all provincial legislatures; and

(b) in the Republic as a whole, to the exclusion of and in substitution for any other electoral law in force in any part of the national territory immediately prior to the commencement of section 2 of the Electoral Amendment Act, 1996.

[S. 2 substituted by s. 2 of Act No. 20 of 1997.]

**3. Act binding on State and State President.** -- (1) This Act shall bind the State.

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

## **CHAPTER II**

## **ADMINISTRATION**

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

**5. Party liaison committees.** -- (1) The Transitional Council shall --

(a) as soon as practicable establish an interim party liaison committee, which shall continue until the party liaison national committee has been established in terms of subsection (3) (a); and

(b) appoint a chairperson for such committee, who may or may not be a person contemplated in subsection (2), and who shall determine the procedures to be followed at the meetings thereof: Provided that if a person contemplated in subsection (2) is so appointed as chairperson, the party represented by such person on such committee may designate another representative in his or her place.

(2) The interim party liaison committee shall consist of such representatives of parties as may be appointed for that purpose by the Transitional Council.

(3) Upon the publication of the first notice contemplated in section 20 the Commission shall --

(a) establish a party liaison national committee consisting of all party election national agents or other authorized representatives of all registered parties participating in the election whether in respect of the National Assembly or any provincial legislature; and

(b) establish party liaison provincial and local committees consisting of all party election provincial and district agents concerned, as the case may be, of all registered parties participating in the election whether in respect of the National Assembly or any provincial legislature.

[Sub-s. (3) amended by s. 1 (a) of Act No. 1 of 1994.]

(4) The Commission shall appoint --

(a) a chairperson for each of the committees contemplated in subsection (3), who shall determine the procedures to be followed at the meetings thereof; and

(b) a representative of the Commission to serve on any such committee.

(5) Notwithstanding the provisions of subsection (3) the Commission may require any registered party which is unrepresented on any party liaison provincial or local committee to appoint a representative to attend the meetings of such committee and to serve thereon.

(6) Every party --

(a) which was registered late; or

(b) the registration of which was amended,

as contemplated in the proviso to section 19 (1) shall likewise be represented on the applicable party liaison committees contemplated in this section.

[Sub-s. (6) added by s. 1 (b) of Act No. 1 of 1994.]

**6. Functions of party liaison committees.** -- The functions of any party liaison committee contemplated in section 5 shall be --

(a) to establish liaison between the Commission and the parties represented thereon and between such parties regarding election matters, including --

(i) the administration of the electoral arrangements in general;

(ii) staffing;

(iii) the number and location of voting and counting stations;

(iv) the demarcation of electoral districts; and

(v) the number and location of foreign voting stations; and

(b) to be a forum in which the parties represented on any such committee may --

(i) discuss matters of concern with a view to obviating the incidence of infringements of the Electoral Code of Conduct and, if possible,

resolving the same without the necessity for formal complaint and investigation procedures; and

(ii) consult regarding the need for and formulation of regulations governing matters in connection with the election.

**7. Appointment of and control over electoral officers and staff.**

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

(a) a provincial electoral officer and one or more deputies in respect of each province;

(b) (i) a district electoral officer and one or more deputies in respect of each electoral district;

(ii) a presiding officer and one or more deputies in respect of each voting station; and

[Sub-para. (ii) substituted by Proclamation No. 69 of 1994.]

(iii) a counting officer in respect of each counting station,

or, subject to such consultation, authorize any such appointment by any provincial electoral officer;

(c) one or more voting officers in respect of each voting station as he or she may consider necessary for the effective administration of the election, or, subject to such consultation, authorize any such appointment by any provincial or district electoral officer; and

(d) one or more enumerators in respect of each counting station as he or she may consider necessary for the effective administration of the counting of votes, or, subject to such consultation, authorize any such appointment by any provincial or district electoral officer.

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

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

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

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

(6) No appointment made in terms of subsection (1) or (9) or removal from office in terms of subsection (7) shall be subject to appeal or review.

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

(8) Subject to subsection (6), in the event of a removal from office under subsection (7), compensation shall be the only remedy available.

(9) Subject to subsection (5), in the event of the death of any officer contemplated in subsection (1), any removal from office contemplated in subsection (7) or the ceasing to hold office by any such officer for any other reason, the Chief Director or the provincial or district electoral officer, as the case may be, may appoint a person in the place of such officer.

## **8. Powers, duties and functions of provincial electoral officers.**

-- (1) Subject to the control of the Chief Director, the provincial electoral officer shall assume responsibility for the administration, organization, supervision and conduct of the election for both the



National Assembly and the provincial legislature in the province in respect of which he or she has been appointed.

(2) In addition to the powers, duties and functions conferred or imposed by the other provisions of this Act, the provincial electoral officer shall have such other powers, duties and functions as may be prescribed.

**9. Powers, duties and functions of district electoral officers. --**

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

(2) In addition to the powers, duties and functions conferred or imposed by the other provisions of this Act, the district electoral officer shall have such other powers, duties and functions as may be prescribed.

**10. Powers, duties and functions of presiding officers during voting. --** (1) The presiding officer at a voting station shall have power to --

(a) take such steps as may be necessary for the orderly conduct of the voting, including the regulating of the number of voters to be admitted at a time to the election centre and the inner perimeter; and

(b) exclude from the election centre and the inner perimeter all persons except --

(i) members and representatives of the Commission and employees of the Commission in the course of their official duties;

(ii) the Chief Director and any electoral officer concerned;

(iii) any party voting agent entitled in terms of section 13 (5) to be present at a voting station;

(iv) any other person authorized by the Commission to be present as a monitor or international or other observer;

(v) any such prescribed number of candidates as the presiding officer may allow;

(vi) any interpreters and any such staff and other persons as may be necessarily admitted by the presiding officer; and

(vii) any person casting his or her vote.

(2) Subject to subsection (1) (b), no person shall enter or remain in an election centre or inner perimeter without the permission of the presiding officer.

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

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

(5) In addition to the powers, duties and functions conferred or imposed by the other provisions of this Act, the presiding officer shall have such other powers, duties and functions as may be prescribed.

**11. Powers, duties and functions of voting officers at voting stations.** -- (1) Voting officers shall assist the presiding officer in the exercise of the powers and the performance of the duties and functions of the presiding officer under or in terms of this Act and carry out his or her lawful instructions.

(2) In addition to the powers, duties and functions conferred or imposed by the other provisions of this Act, the voting officer shall have such other powers, duties and functions as may be prescribed.

**12. Powers, duties and functions of counting officers and enumerators.** -- (1) The counting officer at a counting station shall have power to --

(a) take such steps as may be necessary for the orderly conduct of the counting of the votes; and

(b) exclude from the counting centre all persons except --

(i) members and representatives of the Commission and employees of the Commission in the course of their official duties;

(ii) the Chief Director and any electoral officer concerned;

(iii) any party voting agent entitled in terms of section 13 (5) to be present at a counting station;

(iv) any other person authorized by the Commission to be present as a monitor or international or other observer;

(v) any such prescribed number of candidates as the counting officer may allow; and

(vi) any such staff and other persons as may necessarily be admitted by the counting officer.

(2) The counting officer shall take all reasonable steps for the protection of persons and property and for preventing any violence or disturbance in or in the vicinity of the counting station.

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

(4) In addition to the powers, duties and functions conferred or imposed by the other provisions of this Act, the counting officer shall have such other powers, duties and functions as may be prescribed.

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

**13. Appointment and powers, duties and functions of party election and voting agents.** -- (1) Upon registration in terms of section 19 the registered party concerned shall by written notice to the Chief Director --

(a) if such party is contesting the election for the National Assembly, appoint a party election national agent and his or her deputy and a party election provincial agent in respect of each province, and shall furnish the names and business addresses of such party election agents;

(b) if such party is contesting the election for any provincial legislature only, appoint a party election provincial agent and his or her deputy in respect of each province in respect of which it is contesting the election, and furnish the names and business addresses of such party election agents; and

(c) when so required by the Commission, appoint a party election district agent in respect of any electoral district within 10 days after notification of such requirement and furnish the name and business address of such party election district agent.

(2) The party election national agent or other authorized representative or party election provincial agent shall attend and represent the registered party concerned at meetings of the party liaison national or provincial committee, as the case may be, and every other forum which the Commission, a Chief Director of a directorate or the provincial electoral officer in its, his or her discretion may convene in respect of the election.

[Sub-s. (2) amended by s. 2 (b) of Act No. 1 of 1994.]

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

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

(c) A registered party shall as soon as practicable but not later than five days after the occurrence of any vacancy in terms of paragraph (a) or (b), fill such vacancy by appointing any other person as party election agent and shall forthwith notify the Chief Director or the provincial electoral officer concerned in writing of the name and business address of the person so appointed: Provided that in the case of a party election national agent, such appointment shall be made within 48 hours of the vacancy having occurred.

(4) A record of all appointments and information noted in terms of this section shall be kept by the Chief Director and the provincial electoral officer concerned for public inspection and a copy of each such notice

shall be submitted to each presiding officer in the electoral district concerned.

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

(6) No person shall be appointed as party election or voting agent unless he or she is a person entitled to vote in terms of sections 15 and 16.

**14. Declaration of secrecy.** -- Before assuming or performing any of the duties or functions assigned to him or her by or under this Act, any officer or agent referred to in this Chapter shall make a declaration of secrecy, under oath or affirmation, in the prescribed form and in accordance with the prescribed procedure.

### **CHAPTER III FRANCHISE**

**15. Persons entitled to vote.** -- (1) Any person of the age of 18 years or older who is a citizen of or permanently resident in the Republic and who is in possession of a voter's eligibility document shall, in accordance with and subject to the provisions of this Act, be entitled to vote at the election.

(2) For the purposes of this section a person shall be permanently resident in the Republic if he or she --

(a) holds a permit for permanent residence in the Republic in terms of section 25 of the Aliens Control Act, 1991 (Act No. 96 of 1991); or

(b) has been exempted from the requirement of holding a permit for permanent residence in terms of section 28 (2) of the Aliens Control Act, 1991.

(3) For the purposes of this section a person shall be deemed to be permanently resident in the Republic if such person --

(a) is a former South African citizen, and, notwithstanding any requirement for the exercise of a discretion by the Minister of Home Affairs in terms of section 25bis of the South African Citizenship Act,

1949 (Act No. 44 of 1949), qualifies for the restoration of South African citizenship in terms of the said Act;

(b) was born to or is a spouse of a South African citizen or former South African citizen and has entered the Republic with the intention of residing permanently therein;

(c) establishes, to the satisfaction of the Commission, in the prescribed manner that he or she --

(i) entered the Republic on or before 13 June 1986;

[Sub-para. (i) amended by Proclamation No. 73 of 1994.]

(ii) has been ordinarily resident in the Republic since the date of his or her entry into the Republic; and

(iii) is not a prohibited person in terms of the Aliens Control Act, 1991; or

(d) is a child of a person who satisfies the criteria referred to in paragraph (c) and who establishes, to the satisfaction of the Commission, in the prescribed manner that he or she was born in the Republic and has been ordinarily resident therein since the date of his or her birth.

(4) Any person who satisfies the criteria referred to in paragraph (a), (b), (c) or (d) of subsection (3) shall be deemed to fulfil the requirements of section 4 of the Identification Act, 1986 (Act No. 72 of 1986), for the purposes of obtaining an identity document in terms of section 8 or a temporary identity certificate in terms of section 9 of the said Act or a temporary voter's card.

**16. Persons not entitled to vote.** -- Notwithstanding the provisions of section 15, no person shall be entitled to vote in the election if that person is --

(a) subject to an order of court declaring him or her to be of unsound mind or mentally disordered or affected;

(b) detained as a mentally ill patient under the Mental Health Act, 1973 (Act No. 18 of 1973), or any other applicable law of the Republic, as the case may be;

(c) detained under the Prevention and Treatment of Drug Dependency Act, 1992 (Act No. 20 of 1992), or any other applicable law of the Republic, as the case may be; or

(d) detained in a prison after being convicted and sentenced without the option of a fine in respect of any of the following offences irrespective of any other sentence in respect of any offence not mentioned hereunder which is served concurrently with the first-mentioned sentence:

(i) Murder, robbery with aggravating circumstances and rape; or

(ii) any attempt to commit any offence referred to in subparagraph (i).

[Para. (d) substituted by Proclamation No. 85 of 1994.]

**17. Temporary voters' cards.** -- (1) If the Commission considers the issuing of temporary voters' cards necessary for the purposes of the election, the Commission may --

(a) upon receipt of an application in the prescribed manner, including --

(i) the information therein being given under oath or affirmation; and

(ii) the taking of a set of fingerprints of the applicant; and

(b) upon verification to the satisfaction of the Commission of the information furnished in the application with --

(i) the source information at the disposal of the Department of Home Affairs; and

(ii) such other information as may be furnished by any person, institution or organization at the request of the Commission,

issue to such applicant who qualifies, a temporary voter's card as provided for in this section.

(2) Unless the Commission decides otherwise, the Director-General: Home Affairs may issue temporary voters' cards mutatis mutandis in accordance with the provisions of this section under the supervision of the Commission.

(3) A temporary voter's card shall be in the prescribed form and shall contain the following particulars in respect of the applicant to whom it is issued:

(a) The identity number referred to in section 5 of the Identification Act, 1986 (Act No. 72 of 1986), or, if such number has not yet been allocated, the date of birth or the age;

(b) the full name; and

(c) a passport size photograph with a recognizable image.

(4) An applicant shall qualify for the issuing of a temporary voter's card only if he or she is entitled to vote in terms of sections 15 and 16, but does not possess any other valid voter's eligibility document identifying him or her as such.

#### **CHAPTER IV REGISTRATION OF PARTICIPATING PARTIES**

**18. Registration for purposes of election.** -- (1) No party shall be entitled to contest the election unless such party is registered as a participant in the election in accordance with, and subject to, the provisions of this Chapter.

(2) The registration of any party in terms of this Chapter shall remain of effect until the proclamation in the Gazette of the next election or the dissolution of the party or the adoption of a new constitutional text in terms of section 73 of the Constitution, whichever may occur first.

**19. Application for registration for purposes of election.** -- (1) An application for the registration of a party as a participant in the election shall be submitted in the prescribed form to the Chief Director not later than 10 days after the proclamation of the election in terms of section 21: Provided that in respect of the first election for the National Assembly and provincial legislatures to be held after the commencement of this Act, an application for late registration or amendment of registration may be so submitted not later than 30 days after such proclamation.

[Sub-s. (1) amended by s. 3 (a) of Act No. 1 of 1994.]

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



(a) if the party wishes to contest the election for the National Assembly, be accompanied by a deposit of R25 000;

(b) if the party wishes to contest the election for any provincial legislature, be accompanied by a deposit of R5 000 in respect of each such election it wishes to contest.

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

(a) The name of the party, consisting of not more than 60 letters, which in terms of the provisions of section 29 is required to appear on the ballot paper;

(b) the distinguishing mark or symbol of the party in colour;

(c) such photographs as may be prescribed for the purposes of the ballot paper;

(d) the abbreviation, if any, of the name of the party, consisting of not more than 8 letters;

(e) the business address of the party;

( f ) the constitution of the party;

(g) the names and addresses of --

(i) the national leader or leaders;

(ii) the regional leaders, if any;

(iii) the members constituting the national executive body; and

(iv) the members of the regional executive bodies, if any,

of the party; and

(h) the names, addresses and telephonic or other means of contact of the party election national agent and the party election provincial agents and their respective deputies.

(4) No party shall be registered as a participant in the election unless a declaration in the form prescribed by the Chief Director has been

signed on behalf of such party by the duly authorized representative of the party in terms of which the party commits and subjects itself and its office-bearers, officials and candidates (including the office-bearers and officials of parties which are constituent members of a group of parties jointly functioning as a single party for the purposes of the election) to the Electoral Code of Conduct.

(5) The Commission shall --

(a) within three days after the 10 day period referred to in subsection (1) has expired; and

(b) within one day after the 30 day period referred to in the proviso to subsection (1) has expired,

cause to be published in the Gazette a notice containing a complete list of applications received in terms of that subsection or proviso, as the case may be, and inviting objections thereto by interested parties, together with the address at which copies of the original applications and supporting documents shall be available for public inspection.

[Sub-s. (5) substituted by s. 3 (b) of Act No. 1 of 1994.]

(6) A copy of each document submitted to the Chief Director for the purposes of the registration of a party as a participant in the election shall be kept at the address referred to in subsection (5) for inspection by the public, and anyone who desires to inspect such a document, may do so free of charge during office hours.

(7) The Chief Director shall, upon payment of the prescribed fees, provide a copy of any document referred to in subsection (6) to any person applying therefor.

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

(i) resembles the proposed name, abbreviated name, distinguishing mark or symbol, as the case may be, of any other party to such extent that it may, in the opinion of the Commission, deceive or confuse; or

(ii) contains anything which in the opinion of the Commission portrays the propagation of or incitement to violence or hatred or which may cause serious offence to any section of the population on the grounds

of race, sex, ethnic origin, colour, sexual orientation, age, disability, religion, conscience, creed, culture or language.

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

(i) shall take into account the fact that the party which is associated with the name, abbreviated name, distinguishing mark or symbol, as the case may be, for the longest period, should prima facie be entitled thereto;

(ii) may, for the purposes of subparagraph (i) --

(aa) afford the party concerned an opportunity to deliver such proof, including oral evidence or sworn or affirmed statements by any person which, in the opinion of the Commission, could be of assistance in the expeditious determination of the matter; and

(bb) administer an oath or affirmation to any person appearing to testify before it.

(9) Any objection against the registration of a party as a participant in the election, together with the reasons therefor, shall be lodged in writing with the Chief Director --

(a) within 10 days after the date of the publishing of the list referred to in subsection (5) (a); or

(b) within two days after the date of the publishing of the list referred to in subsection (5) (b).

[Sub-s. (9) substituted by s. 3 (c) of Act No. 1 of 1994.]

(10) If the Commission is of the opinion, taking into account any objections received, that any application submitted in terms of subsection (1) --

(a) complies with the provisions of this section, it shall register that party as a participant in the election and issue to it a registration certificate in the prescribed form; or

(b) does not comply with the provisions of this Act, it shall afford the party an opportunity to rectify such application, but shall make its final determination not later than 28 days after the date of the proclamation of the election in terms of section 21 (1) or, in respect of a late registration or amendment of registration contemplated in the proviso to subsection (1), not later than 34 days after such date.

[Para. (b) substituted by s. 3 (d) of Act No. 1 of 1994.]

(11) The Commission shall at the request of any authorized person who is investigating any alleged offence or any other matter in terms of this Act or the Commission Act, furnish such person with a certified copy of any registration certificate or written confirmation of the registration referred to in subsection (10) (a), which shall for all purposes serve as prima facie proof of such registration.

(12) Any amendment of registration contemplated in the proviso to subsection (1) shall only be allowed in relation to the National Assembly or the provincial legislature or legislatures in respect of which the election is being contested.

[Sub-s. (12) added by s. 3 (e) of Act No. 1 of 1994.]

**20. Notice of registration in Gazette.** -- The Chief Director shall within three days after the expiry of the 28 or 34 day period referred to in section 19 (10) (b), as the case may be, cause to be published in the Gazette a notice containing --

- (a) the full name and business address of the registered party;
- (b) the distinguishing mark or symbol of the registered party;
- (c) the abbreviated name, if any, of the registered party; and
- (d) the address at which a copy of the original application and supporting documents shall be available for public inspection.

[S. 20 amended by s. 4 of Act No. 1 of 1994.]

## **CHAPTER V PROCLAMATION OF ELECTION AND SUBMISSION OF LISTS OF CANDIDATES**

**21. Determination of voting days and hours of voting.** -- (1) Subject to subsection (3), the State President shall, upon the advice of the Transitional Council, by proclamation in the Gazette determine the voting period of the election as well as the hours during which the voting shall take place: Provided that the first voting day shall be at least 60 days but not later than 90 days after the date of such proclamation.

(2) The election shall, for the purposes of this Act and any other law, be deemed to have commenced on the date of the proclamation of the election in terms of subsection (1) and to have ended on the date of the certification of the results of the election or the declaration that it was unable so to certify by the Commission in terms of section 18 of the Commission Act.

(3) The voting period shall consist of one day for special votes followed by not more than two days for general voting, one of which shall be a public holiday.

(4) Notwithstanding the provisions of subsections (1) and (3) and of Proclamation 17 of 1994, the voting period for general voting for the areas known as Ciskei, Gazankulu, Lebowa, KwaZulu, Transkei and Venda, as they existed on 26 April 1994, shall be from 27 April 1994 until 29 April 1994: Provided that votes cast on 29 April 1994 shall be kept and counted separately.

[Sub-s. (4) added by Proclamation No. 91 of 1994.]

**22. Determination of certain seats and submission of lists of candidates to Chief Director.** -- (1) The Commission shall as soon as practicable, with due regard to the proposed determinations of seats contemplated in items 2 (a) and 10 of Schedule 2 to the Constitution and the criteria mentioned therein, determine a fixed number of seats -

(a) for each province in respect of the National Assembly; and

(b) for each provincial legislature,

and cause such determination to be published in the Gazette forthwith.

(2) A registered party shall submit in the prescribed form to the Chief Director the lists of candidates in respect of the National Assembly and each of the provincial legislatures in which such party wishes to be

represented as contemplated in Schedule 2 to the Constitution, within 37 days after the date of the proclamation of the election in terms of section 21 (1): Provided that a registered party may adjust any such list or lists of candidates within 51 days after the date of such proclamation.

[Sub-s. (2) substituted by s. 5 (a) of Act No. 1 of 1994 and by Proclamation No. 45 of 1994 and amended by Proclamation No. 69 of 1994.]

(3) Subject to section 23 (2), the names on the lists of candidates referred to in subsection (2) shall appear in such fixed order of preference as the registered party may determine with a view to the designation of representatives in that order in terms of item 16 of Schedule 2 to the Constitution.

(4) A list or lists of candidates submitted by a registered party for election --

(a) to the National Assembly, shall together contain the names of not more than 400 candidates; and

(b) to any provincial legislature, shall contain the names of not more than the number of seats being contested.

(5) (a) Each list of candidates shall be accompanied by a declaration in the prescribed form signed by the duly authorized office-bearer of the registered party concerned that each person whose name appears on the list is a qualified person and, if any such candidate is --

(i) not a member of such registered party; or

(ii) in addition to being a member of such registered party, also a member of any other party,

the name of the party, if any, of which such candidate is a member, or, as the case may be, also a member.

(b) Each registered party shall submit to the Chief Director within 72 days after the date of the proclamation of the election, in respect of each candidate appearing on its lists, a signed acceptance of such nomination for candidacy and a declaration that he or she commits and subjects himself or herself to the Electoral Code of Conduct.

[Sub-s. (5) substituted by Proclamation No. 69 of 1994.]

(6) No documents contemplated in subsections (2) and (5) (a) shall be received after 16:30 on the last day of the 37 or 51 day period referred to in subsection (2).

[Sub-s. (6) substituted by s. 5 (b) of Act No. 1 of 1994 and by Proclamation No. 45 of 1994 and amended by Proclamation No. 69 of 1994.]

(7) The name of a candidate --

(a) shall not appear on a list of candidates of more than one registered party in respect of a particular legislature; and

(b) may appear on lists of candidates in respect of the National Assembly and one provincial legislature.

(8) If a candidate's name appears on more lists of candidates than is provided for in subsection (7) (a) and that candidate has signed acceptances of nomination in respect of such lists of candidates, the Chief Director shall, in consultation with the registered parties concerned, delete the name of the candidate from all the lists on which it appears.

(9) The registration of any party in terms of section 19 and consequently its right to participate in the election shall lapse automatically if it fails to submit a list of candidates in accordance with the provisions of this section.

(10) For the purposes of this Act, and notwithstanding anything to the contrary in any law contained --

(a) any person employed or serving in --

(i) any civil service, excluding a member of any police force, defence force or prison service or any judicial officer, public prosecutor in any superior or lower court, state attorney, family advocate or any other officer whose services are essential for the functioning of the courts; or

(ii) any pre-primary, primary, secondary or tertiary educational institution; or

(iii) any hospital or other medical or health institution,

shall not be disqualified from being nominated by a registered party on a list of candidates if that person has taken leave of absence (whether paid or unpaid) from the date on which he or she has been so nominated until and including the date of the publication of the lists of names of representatives in all legislatures in terms of item 16 (3) of Schedule 2 to the Constitution; or

(b) any other person who holds an office of profit under the Republic, shall not be disqualified from being nominated by a registered party on a list of candidates.

[Sub-s. (10) substituted by s. 5 (c) of Act No. 1 of 1994.]

**23. Publication of lists of candidates.** -- (1) The Chief Director shall within five days after the 51 day period referred to in section 22 (2), cause to be published in the Gazette a notice in respect of the National Assembly and each of the provincial legislatures setting out --

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

(b) each list of candidates of each such registered party in the order of their nomination, compiled by the registered party in terms of section 22, and declaring that the persons whose names appear on the lists have been nominated as the candidates of the registered party concerned for the election and that such candidates have accepted their nominations.

[Sub-s. (1) amended by s. 6 of Act No. 1 of 1994 and by Proclamations Nos. 45 and 69 of 1994.]

(2) If any person whose name appears on a list of candidates in the notice published in terms of subsection (1) (b) is disqualified or incapacitated, withdraws his or her candidature or dies before the first voting day, the Chief Director shall amend such notice by a further notice in the Gazette by deletion from that list of the name of such person, and by the addition at any place on the list of the name of a qualified person who has been nominated in writing by the registered party concerned and who has accepted his or her nomination in accordance with section 22 (5).

(3) A notice contemplated in subsections (1) and (2) shall also be published in such other public media as the Chief Director may consider necessary to ensure the widest possible publicity.



(4) A person whose name has in terms of a notice contemplated in subsection (2) been deleted from the lists of candidates of a registered party shall cease to be eligible as a candidate for the election in respect of the legislature for which he or she had initially been a candidate.

(5) Any reference in this Act to a notice published in terms of subsection (1) (b) shall, in relation to such a notice which has been amended under subsection (2), be construed as a reference to such notice as so amended.

## **CHAPTER VI PREPARATION FOR VOTING**

**24. Voting stations.** -- (1) A voting station shall comprise --

(a) an election centre, representing that area of the voting station consisting of an area bounded by a circumference with a radius of 100 metres, or such lesser area as practical circumstances may necessitate, so designated by the provincial electoral officer within which a voter shall be allowed to cast his or her vote;

(b) an inner perimeter, representing that area of the voting station consisting of an area around the election centre bounded by a circumference with a radius of 600 metres, or such lesser area as practical circumstances may necessitate, so designated by the provincial electoral officer --

(i) within which persons shall be allowed for the purposes of voting;

(ii) within which all political activity other than voting shall be prohibited;

(iii) from which persons other than those provided for in section 10 (1) and (2) shall be excluded; and

(c) a controlled area, representing that area of the voting station consisting of an area around the election centre bounded by a circumference with a radius of 1 100 metres, or such lesser area as practical circumstances may necessitate, so designated by the provincial electoral officer in respect of which a presiding officer may exercise such powers of control as may be prescribed.

(2) (a) The Chief Director shall under the authority of the Commission and with the assistance of the provincial electoral officer concerned determine the number and locations of voting stations in the province concerned.

(b) In the application of paragraph (a) due regard shall be had to the requirement to have separate counts of votes in respect of provincial legislatures and provisionally defined areas.

(3) No voting station shall be located at any premises ordinarily occupied by or under the control of any defence or police or armed force, or any political organization, save where the Commission may consider such premises to be a necessary location for the purposes of conducting a free and fair election.

(4) The Chief Director shall, at least 30 days before the first voting day, cause to be published in the Gazette and in any other public media as he or she may consider necessary to ensure the widest possible publicity a list of the locations of all voting stations determined in terms of subsection (2), and shall from time to time so determine and, if possible, cause to be published such additional and alternative locations of voting stations as may be necessary.

[Sub-s. (4) amended by Proclamation No. 45 of 1994.]

(5) If the Commission considers that there cannot be a free and fair election in the area in which any voting station is located due to intimidation or violence or that free and safe access by the candidates, election agents or office-bearers of any registered party or any electoral officer to such area is impeded by reason thereof, the Commission may --

(a) before the commencement of the voting period, relocate any such voting station;

(b) after the commencement of the voting period, close any such voting station; or

(c) either before or after the commencement of the voting period, vary the hours of voting on any voting day at any such voting station.

[Para. (c) added by Proclamation No. 73 of 1994.]

(6) The district electoral officer, acting on the authorization of the provincial electoral officer, may provide one or more mobile voting stations in any electoral district for the purposes of voting.

(7) A mobile voting station shall be under the supervision of the district electoral officer and shall, for the purposes of this Act, be deemed to be a voting station in the electoral district concerned.

(8) The district electoral officer shall in the prescribed manner make known the locations and estimated times at which a mobile voting station shall function during voting day.

(9) The presiding officer of a mobile voting station, any other electoral officer and any prescribed number of party voting agents may enter upon any land or building with such mobile voting station for the purposes of voting.

**25. Foreign voting stations.** -- (1) The Commission shall --

(a) establish such number of foreign voting stations outside the Republic at such locations, including South African diplomatic missions, as it may consider appropriate in order to facilitate the casting of votes by voters who are outside the Republic during the voting period;

(b) designate a presiding officer, a monitor and such other persons as it may consider necessary in respect of each foreign voting station; and

(c) make provision for the appointment of one or more international observers in respect of each foreign voting station.

(2) Any registered party may designate such number of party voting agents as may be prescribed to monitor voting at each foreign voting station.

(3) . . . . .

[Sub-s. (3) deleted by Proclamation No. 69 of 1994.]

(4) The voting at any foreign voting station shall be conducted mutatis mutandis in accordance with the provisions of this Act in respect of voting stations, save as otherwise provided by this Act.

(5) The sealed ballot box shall be returned to the Republic and delivered into safekeeping in the prescribed manner.

(6) The powers, duties and functions conferred or imposed on any electoral officer by or under this Act shall in respect of a foreign voting station be exercised or performed by the Chief Director or any person designated by him or her, save as otherwise provided by this Act or the Commission.

(7) Unless the Commission otherwise directs, all votes cast at foreign voting stations shall be counted at one counting station in the Republic.

(8) (a) Before the votes cast at foreign voting stations are counted, the ballot papers concerned shall be sorted according to the provinces in respect of which the votes were cast in accordance with subsection (3).

(b) The provisions of sections 44, 45, 46 and 47 shall mutatis mutandis apply to the counting of votes referred to in paragraph (a), and in such application of section 44 (2), the Chief Director shall be informed in the prescribed manner of the number of votes to have been cast in favour of each registered party in respect of each province concerned.

**26. Supplying of voting materials.** -- (1) The Chief Director shall in respect of each voting day supply such voting materials to a provincial electoral officer and the presiding officer of any foreign voting station as may be necessary for the proper conduct of the election in the province and at the foreign voting station concerned.

(2) Each district electoral officer shall be responsible for obtaining voting materials from the provincial electoral officer, and supplying to the presiding officers of the voting stations in his or her electoral district, a sufficient quantity of such materials to ensure the proper conduct of the election.

**27. Voting compartment and ballot box.** -- (1) The Commission shall determine the nature and style of the voting compartments and ballot boxes which it may consider suitable for the proper conduct of the election.

(2) Separate ballot boxes shall be provided in respect of the elections for the National Assembly and provincial legislatures.

[Sub-s. (2) added by s. 7 of Act No. 1 of 1994.]

**28. Ballot box.** -- (1) Not more than one hour before the commencement of the voting on each voting day at a voting station, the presiding officer shall --

(a) satisfy himself or herself that all ballot boxes to be used on that day at such voting station are empty;

(b) permit the inspection of all such empty ballot boxes by party voting agents, monitors and such international and other observers as are permitted by the Commission in respect of any voting station;

(c) immediately thereafter close and seal all such ballot boxes in accordance with the instructions issued by the Chief Director; and

(d) allow any such party voting agent and, in the discretion of the Commission, any international and other observer as may wish to do so, to attach his or her seal to the ballot box.

(2) If any additional ballot box is used at any voting station, such additional ballot box shall be made available for inspection, closed and sealed *mutatis mutandis* in accordance with the provisions of subsection (1), before being made available for the depositing of ballot papers.

(3) The presiding officer at a voting station shall in the presence of the party voting agents, monitors and international and other observers referred to in subsection (1) (b), at the closing of the voting on each voting day close and seal the openings of the ballot boxes in accordance with the instructions issued by the Chief Director.

(4) A ballot box closed and sealed as contemplated in subsection (3) may not be opened, and the seal shall not be broken, except under the circumstances contemplated in section 43.

(5) A presiding officer shall be responsible for the safe-keeping of all ballot boxes used at the voting station concerned in the prescribed manner until they are delivered to the counting officer concerned.

[Sub-s. (5) substituted by Proclamation No. 69 of 1994.]

**29. Ballot paper.** -- (1) (a) Subject to section 32, every ballot paper shall be substantially in the form prescribed by Schedule 1, save that the Commission may determine whether the printing thereon shall be in a vertical or horizontal form.

(b) There shall be printed on every ballot paper in the manner determined by the Commission the names of all the registered parties participating in the election concerned, the distinguishing mark or symbol in colour, the abbreviated name and a photograph of the leader of each such party or such other candidate as the party may determine, which, in the discretion of the Commission, may be in colour.

(c) The ballot papers shall be in the languages determined by the Commission and shall make provision for the official mark to be placed on the back of the ballot paper as provided in section 35 (6) (a) (i) and the cross or mark referred to in section 35 (6) (b) (ii) or writing referred to in section 44 (4) to appear on the front of the ballot paper.

[Sub-s. (1) substituted by s. 8 of Act No. 1 of 1994.]

(2) The order of the registered parties as they appear on the ballot paper shall be alphabetical, save that the commencing letter of the alphabet shall be determined by lot.

(3) The manner in which the serial number shall be printed on the counterfoils of the ballot papers and on the ballot paper books shall be determined by the Commission.

**30. Commencement and closing of voting at voting stations. --** The voting shall commence and close on the hours determined in terms of section 21 (1) in respect of each voting day: Provided that the presiding officer shall permit every voter who at the closing hour has presented himself or herself in the prescribed manner to vote, to cast a vote.

## **CHAPTER VII VOTING AT VOTING STATIONS**

**31. Place of voting. --** (1) Subject to the provisions of subsection (2) and sections 25 and 39 (7), a voter shall be entitled to vote at any voting station, and such vote shall be counted in respect of the province where it has been cast.

(2) The Commission may determine procedures for voting by the members of the security force, which may include procedures allowing such members who are deployed away from their places of ordinary residence to vote for the provincial legislature of the province in which they are ordinarily resident.

[S. 31 substituted by Proclamation No. 69 of 1994.]

**32. Number of ballot papers.** -- A voter shall be issued with one ballot paper in respect of the National Assembly and one ballot paper in respect of the provincial legislature concerned: Provided that a voter shall not be issued with two ballot papers simultaneously.

[S. 32 substituted by s. 9 of Act No. 1 of 1994.]

**33. Voting in secret.** -- A voter shall cast his or her vote in secret, and no person shall in any way interfere with a voter in connection with the casting of his or her vote.

**34. Identification.** -- No voter shall be permitted to vote unless he or she has presented to the presiding or voting officer his or her voter's eligibility document.

**35. Manner of voting.** -- (1) The voting at any election centre shall be conducted in accordance with the provisions of this Chapter.

(2) The presiding or voting officer shall ascertain voter eligibility --

(a) by examining the voter's eligibility document to establish whether the voter is the person described therein, for which purpose such officer shall be entitled to disregard any error which he or she may consider to be obvious; and

[Para. (a) substituted by Proclamation No. 69 of 1994.]

(b) in the manner provided in subsection (3) and, subject to the provisions of paragraph (c) of that subsection, by establishing that the voter has not already voted at the election.

(3) (a) A voter shall not be given a ballot paper if he or she bears the identification mark or his or her voter's eligibility document bears the mark contemplated in subsection (4) (b).

(b) Each party voting agent shall have the right to observe the procedure of establishing whether a voter bears the identification mark.

[Para. (b) substituted by Proclamation No. 69 of 1994.]

(c) The provisions of subsections (2) (b) and (4) (a) (i) shall not apply in the case of a voter who suffers from a physical defect which, in the opinion of the presiding officer, makes the application of the said provisions impractical.

(4) Where the provisions of subsection (3) (a) have been complied with --

(a) the voter shall in the presence of the presiding officer or a voting officer --

(i) be marked by means of the identification mark on the right hand; or

(ii) where that is impracticable, be marked in the prescribed manner; and

(b) the voter's eligibility document shall be marked in the prescribed manner, unless such document is a temporary voter's card in which case such document shall be retained by the presiding officer in the prescribed manner.

[Para. (b) substituted by Proclamation No. 69 of 1994.]

(5) Subject to subsection (4) (a) (ii), a voter who refuses --

(a) to have the identification mark administered to him or her in accordance with subsection (4) (a) (i); or

(b) to have his or her voter's eligibility document marked in the prescribed manner,

shall not be issued with a ballot paper and shall be ordered by the presiding officer to leave the election centre and inner perimeter forthwith.

(6) (a) When the provisions of subsection (4) have been complied with, the presiding officer or a voting officer shall --

(i) tear out a ballot paper from the ballot paper book in respect of the election for the National Assembly and another voting officer shall mark that ballot paper on the back with the official mark; and

(ii) hand that ballot paper to the voter.



(b) When the voter has received the ballot paper, he or she shall --

(i) take it to the voting compartment;

(ii) indicate the registered party for which he or she wishes to vote by placing a cross or any other mark which denotes a clear choice for a particular registered party on the ballot paper;

[Sub-para. (ii) substituted by Proclamation No. 69 of 1994.]

(iii) display the ballot paper at the ballot box concerned in such a manner that the presiding officer or a voting officer designated by him or her may recognize the official mark; and

(iv) place the ballot paper in the ballot box concerned.

[Sub-s. (6) substituted by s. 10 of Act No. 1 of 1994.]

(7) When the provisions of subsection (6) have been complied with, the issuing and the marking of the ballot paper in respect of the election for the provincial legislature concerned shall be done in the prescribed manner.

[Sub-s. (7) substituted by s. 10 of Act No. 1 of 1994.]

(8) In the event that a voter --

(a) spoils any ballot paper inadvertently; or

(b) casts a vote by mistake for a party which is not of his or her choice,

he or she shall return it to the presiding officer, who shall, if he or she is satisfied that the circumstances described in paragraph (a) or (b) have occurred, provide the voter with another ballot paper and cancel the discarded ballot paper, which shall be kept separately.

(9) The Commission shall make such provision to assist voters with official interpreters as it may consider practicable: Provided that if no such official interpreter is available, a voter shall be permitted to make use of his or her own interpreter.

36. Voters who cannot read or who are incapacitated by blindness or other physical disability from voting. -- (1) Subject to the provisions of section 35, the presiding officer, on the application in person of any

voter who is unable to read or who is incapacitated by blindness or other physical disability from voting in the manner prescribed by the other provisions of this Act, shall then and there, before a person serving as a monitor, observer or international observer, or if such a person is not present in the election centre, before any voting officer, mark the vote of that voter on the ballot paper in the manner directed by the voter, and place the ballot paper in the ballot box.

[Sub-s. (1) amended by s. 11 of Act No. 1 of 1994 and by Proclamation No. 45 of 1994 and substituted by Proclamation No. 69 of 1994.]

(2) Subject to the provisions of section 35, the presiding officer, on the application in person of any voter who is incapacitated by blindness or other physical disability from voting in the manner prescribed by the other provisions of this Act, who has not applied to have his or her vote marked by the presiding officer in terms of subsection (1), and who is accompanied by another person, shall, if such presiding officer is satisfied that such person has attained the age of 18 years, permit such voter to vote with the assistance of the person accompanying him or her, and upon such permission being granted, anything which is by this Act required to be done to or by the said voter in connection with the casting of his or her vote may be done to or with the assistance of the person accompanying him or her.

(3) (a) A voter who is incapacitated by blindness may apply to the Commission for the issue to him or her of a special ballot paper in which the text is printed in braille: Provided that the Commission shall not be obliged to accede to such request in the event that it considers it impracticable: Provided further that the Commission may prescribe such other matters as it may consider relevant in respect of voting by blind persons.

(b) Any vote contemplated in paragraph (a) shall be deemed to be a special vote which shall be cast on the day prescribed by section 39 and otherwise in accordance with the provisions of section 40.

(4) The secrecy of the voting as contemplated in section 33 shall mutatis mutandis be preserved in the application of this section.

**37. Objection to voting.** -- (1) Any party election or voting agent present at a voting station may object to any voter on any of the following grounds:

(a) That the voter is not the person described in the voter's eligibility document which he or she has submitted;

(b) that the voter has already voted in the election; or

(c) that the voter is not entitled to vote.

(2) Upon an objection having been lodged under subsection (1) the presiding officer shall deal with the objection in the prescribed manner.

(3) The decision of the presiding officer shall not be subject to any appeal or review: Provided that such decision shall not preclude any interested party from lodging a formal objection in terms of section 46.

[Sub-s. (3) added by Proclamation No. 69 of 1994.]

**38. Sealing of ballot boxes and other election material by presiding officer.** -- (1) Immediately after the closing of the voting on each voting day, the presiding officer shall, in the presence of such party voting agents as may be in attendance, make up into separate packets, sealed with his or her own seal and the seal of any party voting agent and, in the discretion of the Commission, any international and other observer who wishes to attach his or her seal to it --

(a) each ballot box entrusted to him or her, unopened;

(b) the unused ballot papers;

(c) the ballot papers discarded in terms of section 35 (8) (a) and (b); and

(d) the counterfoils of used and the said discarded ballot papers,

and shall in accordance with the instructions of the Commission mark and deliver into safe-keeping each sealed packet.

[Sub-s. (1) amended by Proclamation No. 69 of 1994.]

(2) The packets shall, in respect of both the elections for the National Assembly and the provincial legislature concerned, be accompanied by a statement in the form prescribed in which the presiding officer accounts for --

(a) the number of ballot papers entrusted to him or her;

(b) the number of ballot papers issued; and

(c) the number of ballot papers not issued.

[Sub-s. (2) amended by s. 12 of Act No. 1 of 1994.]

(3) . . . . .

[Sub-s. (3) deleted by Proclamation No. 69 of 1994.]

(4) . . . . .

[Sub-s. (4) deleted by Proclamation No. 69 of 1994.]

(5) . . . . .

[Sub-s. (5) deleted by Proclamation No. 69 of 1994.]

**39. Special voters.** -- (1) A voter who because of his or her illness or physical infirmity or physical disability or pregnancy will not be able to attend a voting station at any time during the voting hours on any day for general voting, shall be entitled, subject to subsection (2), to cast a special vote as provided in section 40.

(2) A presiding officer shall at all times on the day before the first day for general voting, during the hours determined in terms of section 21 (1) on the said day, take the necessary steps to enable special voters to cast their votes at the place where the office of the presiding officer is situated.

(3) A presiding officer --

(a) may at the request of a special voter who in his or her opinion is unable to attend at the place contemplated in subsection (2), call upon that voter at any time on the day and during the hours referred to in that subsection at any address in order to enable that voter to cast his or her vote as a special voter; and

(b) shall, at some time on the day and during the hours referred to in subsection (2), visit all registered hospitals and old age homes in the electoral district concerned in order to enable any special voter at such places to record his or her special vote: Provided that prior notice of such presiding officer's intention to visit such places for such purpose

and of the address at which and the date on which and the time when he or she will be present thereat, has been given to every party election district agent in the electoral district in which such place is situated.

(4) Any party voting agent shall upon request be entitled to information in regard to special voters and upon such request be entitled to be present during the casting of special votes.

(5) A place where special voters may cast their special votes under this section shall, for the purposes of this Act, be deemed to be a voting station.

(6) The Chief Director shall as soon as practicable cause a notice to be published in the Gazette indicating the places, except the places referred to in subsection (3), where voters referred to in subsection (1) may cast their votes.

(7) (a) Any convicted prisoner or person awaiting trial being detained who is not excluded from voting in terms of section 16 (d) may only vote by special vote under this section: Provided that such a vote shall be taken --

(i) at the prison or place where he or she is detained; and

(ii) on the date determined for the casting of special votes.

(b) No personal party political canvassing shall be allowed in respect of persons referred to in paragraph (a).

(8) If the Commission has determined procedures for voting by members of the security force as contemplated in section 31 (2), such voting shall take place on the date determined for the casting of special votes.

[Sub-s. (8) added by Proclamation No. 69 of 1994.]

(9) The Commission may determine procedures for voting by special vote --

(a) by members of the Commission and staff of the Commission or portions thereon; and

(b) by members of the staff or any hospital or old age home referred to in subsection (3) (b) or a prison or place referred to in subsection (7) (a) (i).

[Sub-s. (9) added by Proclamation No. 73 of 1994.]

**40. Procedure for casting special votes.** -- (1) A special voter shall, when he or she intends to cast his or her special vote, convince the presiding officer that he or she --

(a) will not be able to attend a voting station at any time during voting hours on any day for general voting; and

(b) is entitled to cast his or her vote as a special voter as provided in section 39,

and shall at the same time submit his or her voter's eligibility document.

[Sub-s. (1) amended by Proclamation No. 69 of 1994.]

(2) The provisions of section 35 (2) to (5), inclusive, shall mutatis mutandis apply to a special voter casting his or her special vote.

(3) (a) When the presiding officer has satisfied himself or herself that the voter is entitled to vote and that he or she has not voted in the election previously, he or she shall tear from the ballot paper book in respect of the election for the National Assembly a ballot paper, mark it on the back with the official mark and hand the ballot paper to the special voter concerned.

[Para. (a) substituted by Proclamation No. 69 of 1994.]

(b) When the special voter who wishes to vote has received the ballot paper, he or she shall --

(i) mark it in secret in accordance with his or her choice;

(ii) fold the ballot paper so that the official mark is visible and the manner in which he or she has marked his or her ballot paper is not visible;

(iii) place the marked ballot paper in the ballot box.

[Sub-para. (iii) substituted by Proclamation No. 69 of 1994.]

(iv) . . . . .

[Sub-s. (3) substituted by s. 13 of Act No. 1 of 1994. Sub-para. (iv) deleted by Proclamation No. 69 of 1994.]

(4) When the provisions of subsection (3) have been complied with, the issuing and the marking of the ballot paper in respect of the election for the provincial legislature concerned shall be done in the prescribed manner.

[Sub-s. (4) substituted by s. 13 of Act No. 1 of 1994.]

(5) The presiding officer shall handle the sealed ballot boxes in the prescribed manner after the closing hour for special votes.

[Sub-s. (5) substituted by s. 13 of Act No. 1 of 1994 and by Proclamation No. 69 of 1994.]

(6) The provisions of section 36 shall apply mutatis mutandis to special voters who cannot read or are incapacitated by blindness or other physical disability.

## **CHAPTER VIII PREPARATION FOR COUNTING, AND COUNTING OF VOTES**

**41. Notice of place and time of counting of votes.** -- (1) The Commission shall determine the places where and the date on and time at which the counting of votes is to be commenced and inform the party liaison national committee accordingly not later than seven days before the first voting day: Provided that the Commission may alter such determination or date of notification, in which event it shall notify all the registered parties accordingly whenever it may consider it appropriate.

(2) In the application of subsection (1) due regard shall be had to the requirement to have separate counts of votes in respect of provincial legislatures and provisionally defined areas.

**42. Counting stations.** -- (1) A counting station shall comprise --

(a) a counting centre, representing that area of the counting station consisting of an area bounded by a circumference with a radius of 100

metres, or such lesser area as practical circumstances may necessitate, so designated by the provincial electoral officer, within which the counting of the votes cast at the election shall take place;

(b) an inner perimeter, representing that area of the counting station consisting of an area around the counting centre bounded by a circumference with a radius of 600 metres, or such lesser area as practical circumstances may necessitate, so designated by the provincial electoral officer, in respect of which access and other permitted activities may be prescribed; and

(c) a controlled area, representing that area of the counting station consisting of an area around the counting centre bounded by a circumference with a radius of 1 100 metres, or such lesser area as practical circumstances may necessitate, so designated by the provincial electoral officer, in respect of which access and other permitted activities may be prescribed.

(2) No counting station shall be located at any premises ordinarily occupied by or under the control of any defence or police or armed force, or any political organization, save where the Commission may consider such premises to be a necessary location for the purposes of conducting a free and fair election.

**43. Verification of ballot paper statement by counting officer. -**

- (1) After the provisions of section 38 have been complied with, the counting officer or his or her delegate in the presence of the district electoral officer concerned shall examine whether the seals of the packets referred to in section 38 are intact and afford the district electoral officer concerned and any party voting agents who are present and such monitors and international and other observers as may be permitted by the Commission to be present, an opportunity to do likewise and shall thereafter open all the packets.

[Sub-s. (1) amended by Proclamation No. 69 of 1994.]

(2) The counting officer or his or her delegate shall separately verify each presiding officer's ballot paper statement in respect of both the elections for the National Assembly and the provincial legislature concerned referred to in section 38 (2) by comparing it with the contents of the packets received from a voting station concerned, and shall for that purpose open all the ballot boxes from that voting station and cause the ballot papers contained therein to be counted.



[Sub-s. (2) substituted by s. 13 of Act No. 1 of 1994 and amended by Proclamation No. 69 of 1994.]

(3) The counting officer or enumerator shall examine each ballot paper to ascertain whether it bears the official mark.

(4) If there appears to be any --

(a) irregularity in respect of the seals;

(b) discrepancy in the verification of the ballot paper statement referred to in subsection (2); or

(c) ballot paper which does not bear the official mark,

the matter shall be recorded, the Chief Director shall be informed forthwith and the counting officer shall deal with the matter in the prescribed manner.

**44. Counting of votes.** -- (1) After the provisions of sections 38 and 43 have been complied with, the counting officer shall in respect of both the elections for the National Assembly and the provincial legislature concerned, forthwith cause --

(a) the ballot papers to be sorted with due regard to the provisions of subsections (3) and (4) on the basis of the individual votes cast for each registered party; and

(b) the votes cast to be counted in respect of each registered party.

[Sub-s. (1) amended by s. 15 (a) of Act No. 1 of 1994.]

(2) The counting officer shall, as soon as practicable, after all the votes at such counting station have been counted and the number of votes in favour of each registered party has been determined, inform the Chief Director in the prescribed manner of the number of votes so determined to have been cast in favour of each registered party in respect of both the elections for the National Assembly and the provincial legislature concerned.

[Sub-s. (2) substituted by s. 15 (b) of Act No. 1 of 1994.]

(3) The counting officer shall reject and not count any ballot paper --

- (a) on which is cast votes for more than one registered party;
- (b) in respect of which he or she has reasonable grounds to believe that it has not been officially issued to a voter in terms of this Act;
- (c) which is unmarked or on which it is impossible to determine with certainty in favour of which registered party the vote is cast; or
- (d) which does not bear the official mark on the back thereof.

(4) Subject to subsection (3), the counting officer shall not reject and shall cause to be counted any ballot paper on which there is a mark or writing by means of which a voter has clearly indicated his or her choice otherwise than by a cross on the ballot paper concerned.

(5) In the event that the acceptance or rejection of a ballot paper by the counting officer, as the case may be, is disputed by any party voting agent, the counting officer shall endorse thereon the word "disputed" and shall reflect such ballot paper on a form and in a manner prescribed, and shall keep separately the accepted and rejected ballot papers disputed.

(6) The counting officer shall endorse the word "rejected" on any ballot paper rejected in terms of subsection (3).

(7) When the counting officer has complied with the provisions of this section and section 45 he or she shall, in respect of both the elections for the National Assembly and the provincial legislature concerned, as soon as practicable, enclose in separate packets --

- (a) all counted ballot papers;
- (b) all rejected ballot papers;
- (c) all disputed ballot papers rejected;
- (d) all disputed ballot papers accepted;
- (e) all unused ballot papers with their counterfoils;
- ( f ) all ballot papers discarded in terms of section 35 (8) (a) and (b);  
and
- (g) all counterfoils of ballot papers issued,

and shall seal such packets and cause them to be delivered to the Chief Director in the prescribed manner.

[Sub-s. (7) amended by s. 15 (c) of Act No. 1 of 1994.]

(8) On receipt of the packets referred to in subsection (7) the Chief Director shall take charge of them, cause to be examined whether the seals are intact and afford any party voting agent and, in the discretion of the Commission, any international and other observers who are present an opportunity to do likewise.

**45. Alleged irregularities or inaccuracies, and challenges of tally.** -- (1) (a) Before the determination of the result at any counting station a party voting agent shall have the right to bring to the attention of the counting officer forthwith any alleged irregularity or inaccuracy, and the counting officer shall record such allegation in the prescribed manner, determine such measures as he or she may consider necessary in order to deal therewith, and report such allegation and determination to the Chief Director in the prescribed manner.

(b) A determination of the counting officer made in terms of paragraph (a) shall not be subject to any appeal or review: Provided that such determination shall not preclude any interested party from lodging a formal objection in terms of section 46.

[Para. (b) added by Proclamation No. 69 of 1994.]

(2) Upon the completion of the counting process the counting officer shall forthwith advise the voting agents of the tally, whereupon any such agent shall have the right to challenge the tally determined.

(3) If no challenge is made forthwith, all party voting agents present at the counting station shall be required to sign the tally indicating that no irregularity was identified during the counting process, and the tally shall be deemed to be accepted by all registered parties concerned and shall not be subject to appeal: Provided that such acceptance shall not preclude any interested party from lodging a formal objection in terms of section 46.

(4) If a challenge is duly made, the registered party concerned shall state the grounds for such challenge, and the counting officer shall make a determination as to whether a recount is to be ordered.

(5) Upon refusal by the counting officer of a recount, any registered party shall be entitled to lodge an appeal to the Commission, which shall make such order thereon as it may consider appropriate, which order shall not be subject to appeal.

**46. Formal objections.** -- (1) Any interested party shall have the right to object in the prescribed manner within 48 hours after the closing of the voting to any aspect of the election which is relevant to the certification of the results thereof, save for such aspects as are provided for in section 45.

(2) The Commission shall investigate any objection referred to in subsection (1) and shall make a final determination thereon, which shall not be subject to appeal.

47. Powers of Commission in event of serious voting irregularity. --

(1) In the event of the Commission making a determination that a serious irregularity has occurred in the voting at any voting station, whether in consequence of any allegation or challenge made in terms of section 45 or objection made in terms of section 46, or as a result of any other reason, including --

(a) the cause for the closure of a voting station under section 24 (5);  
or

(b) violence, intimidation, fraud or any other irregularity of a material nature in the voting process,

the Commission may on good cause shown make such order in respect of the counting of votes as it may consider appropriate in the circumstances, including an order declaring --

(i) that the votes cast at a particular voting station shall not count in whole or in part; or

(ii) that any such deduction as it may determine shall be effected in whole or in part to the votes counted in favour of any registered party or parties concerned in respect of any particular voting station.

(2) Any order made by the Commission under subsection (1) shall not be subject to appeal or review.

## **CHAPTER IX**

**ANNOUNCEMENT OF RESULTS OF ELECTION, DETERMINATION OF NUMBER OF CANDIDATES OF REGISTERED PARTIES DULY ELECTED AND SUPPLEMENTATION OF LISTS OF CANDIDATES, SUBJECT TO SCHEDULE 2 TO CONSTITUTION**

**48. . . . .**

[S. 48 repealed by s. 16 of Act No. 1 of 1994.]

**49. Determination of results of election for National Assembly.**

-- (1) After 48 hours of the closing of the voting and after all alleged irregularities, challenges or objections, if any, have been dealt with in accordance with sections 45, 46 and 47, the Commission shall add the tallies of votes cast in each province in favour of the respective registered parties contesting the election for the National Assembly.

[Sub-s. (1) substituted by s. 17 of Act No. 1 of 1994.]

(2) The number of seats to be awarded to a registered party in respect of the election for the National Assembly, shall be determined by the Commission in accordance with items 5 to 9, inclusive, read with item 25 of Schedule 2 to the Constitution.

**50. Determination of results of election for provincial legislatures.**

-- (1) After the provisions of section 49 have been complied with, the Commission shall add the tallies of votes cast in respect of each province in favour of the respective registered parties contesting the election for the provincial legislature concerned.

[Sub-s. (1) substituted by s. 18 of Act No. 1 of 1994.]

(2) The number of seats to be awarded to a registered party in respect of the election for any provincial legislature, shall be determined by the Commission in accordance with items 13 and 14 read with item 25 of Schedule 2 to the Constitution.

**51. Designation of representatives.**

-- After the counting of votes has been concluded, the number of seats to which each registered party is entitled has been determined and the election has been certified by the Commission as having been substantially free and fair, the Commission shall designate the representatives of each registered party in each legislature in accordance with item 16 of Schedule 2 to the Constitution.

**52. Supplementation of lists of candidates.** -- Items 17, 18, 19 and 20 of Schedule 2 to the Constitution shall apply to the supplementation of the lists of candidates of a registered party.

**53. Review of lists of candidates by registered party.** -- Item 21 of Schedule 2 to the Constitution shall apply to the review of the lists of candidates by a registered party.

**54. Vacancies.** -- Item 23 of Schedule 2 to the Constitution shall apply in the event of a vacancy occurring in the representation of a registered party in any legislature.

## **CHAPTER X OFFENCES AND PENALTIES**

**55. Undue influence.** -- (1) Any person who, directly or indirectly, uses or procures the use of, or threatens to use or procure the use of, any force, violence or sexual harassment, or inflicts or threatens to inflict any injury, damage, loss or disadvantage to or upon any other person or property --

(a) with intent thereby to compel, induce or influence any person --

(i) to vote or refrain from voting, either at all, or for any particular registered party, or in any other manner; or

(ii) to attend or participate in, or to refrain from attending or participating in, any political meeting, march, demonstration, or other event of a political nature, or in some other manner lending support to or for any registered party or any candidate; or

(b) on account of any person having --

(i) voted, attempted to vote or having refrained from voting, either at all, or for any particular registered party, or in any other manner; or

(ii) attended or participated in, or having refrained from attending or participating in, any such political meeting, march, demonstration, or other event of a political nature, or from lending support as aforesaid,

shall be guilty of an offence.

(2) Any person who induces, influences or procures any other person to vote in the election, in the knowledge that such other person is not entitled to vote in the election concerned, shall be guilty of an offence.

(3) Any person who, directly or indirectly, by duress or intimidation --

(a) impedes or prevents or threatens to impede or prevent the free exercise of the franchise by any voter; or

(b) in any manner influences the result of any election,

shall be guilty of an offence.

(4) Any person who, directly or indirectly, by duress, intimidation or otherwise, compels or induces any voter who has already voted at the election --

(a) to inform such or any other person of the name of the registered party for which the voter has voted; or

(b) to display the ballot paper on which such voter has marked his or her vote, in such a manner as to make known to such or any other person the name of the registered party for which the voter has voted,

shall be guilty of an offence.

**56. Bribery.** -- (1) Any person who, directly or indirectly --

(a) accepts or contracts for any valuable consideration, for himself or herself or for any other person, in order that he or she or such other person votes or agrees to vote, or refrains or agrees to refrain from voting, either at all or for any particular registered party or in any other manner; or

(b) after the election, accepts any valuable consideration, for himself or herself, or for any other person, on account of having induced or influenced any person to vote or refrain from voting as aforesaid;

(c) gives, lends or procures, or agrees, offers or promises to give, lend or procure, any valuable consideration to or for any voter, or to or for any other person, in order to induce or influence any person --

(i) to vote or refrain from voting, either at all or for any particular registered party or in any other manner; or

(ii) to attend or participate in, or refrain from attending or participating in, any political meeting, march, demonstration, or other event of a political nature, or in some other manner lending support to or for any registered party or candidate; or

(d) on account of any person having voted or refrained from voting, either at all or for any particular registered party or in any other manner, gives, lends or procures, or agrees, offers or promises to give, lend or procure, any valuable consideration to or for any other voter, or to or for any other person,

shall be guilty of an offence.

(2) Any person who, in consequence of his or her acceptance of any valuable consideration, votes or refrains from voting, either at all or for any particular registered party or in any other manner, shall be guilty of an offence.

**57. Personation.** -- Any person who, at the election --

(a) applies for a ballot paper in the name of any other person, whether living, dead or fictitious;

(b) applies for a temporary voter's card in the name of any other person, whether living, dead or fictitious;

(c) save as provided in section 36, casts a vote in the name of any other person;

(d) having voted in the manner provided in this Act, again votes or applies for a ballot paper in the same election; or

(e) votes in the knowledge that he or she is not entitled to vote in the election concerned,

shall be guilty of an offence.

**58. Infringement of voting secrecy.** -- Any person who --

(a) obtains any information relating to voting at any voting station, or counting of votes at any counting station, and, save as permitted by or under this Act or any other law, discloses such information to any other person;



(b) save as authorized by or under this Act or the Commission Act, opens or breaks the seal of any packet, envelope or ballot box sealed in terms of this Act; or

(c) interferes with a voter in contravention of section 33,

shall be guilty of an offence.

**59. Prohibition on interference with voting materials and election material.** -- Any person who removes, destroys, conceals or mutilates or assists the removal, destruction, concealment or mutilation of any voting materials or election material, save on the authority of the Commission or under the provisions of this Act, shall be guilty of an offence.

**60. Prohibition on unauthorized printing, manufacture and supply of voting materials and election material.** -- Any person who, directly or indirectly, prints, manufactures or supplies or procures the printing, manufacture or supply of any voting materials or election material in connection with the election, save on the authority of the Commission, shall be guilty of an offence.

**61. Prohibition on interference with free political canvassing and campaigning.** -- Any person who --

(a) directly or indirectly, by the use or threat of force, violence, sexual harassment or otherwise, prevents the conduct of any political meeting, march, demonstration or other event of a political nature, or any other person from attending or participating therein;

(b) creates a material disruption with the intention of preventing a registered party from holding a public political meeting;

(c) impedes or prevents or threatens to impede or prevent the right of any representative of any registered party to gain access, in the manner and during the hours prescribed, to voters in any particular area, whether public or private, for the purposes of conducting political canvassing and campaigning, and of soliciting membership and support; or

(d) impedes or prevents or threatens to impede or prevent any member of the Commission, any representative of the Commission or any other person or organization engaged in voter education to gain

access, in the manner and during the hours prescribed, to voters in any particular area, whether public or private, for the purposes of conducting voter education,

shall be guilty of an offence.

**62. Prohibition on non-compliance with lawful directions, instructions and orders, and obstruction of electoral officers and party election or voting agents.** -- Any person who --

(a) refuses or fails to give effect to any direction, instruction or order lawfully issued by or on behalf of the Commission, the Chief Director or any electoral officer;

(b) refuses or fails to leave an election or counting centre or inner perimeter when so ordered in terms of section 10 (1) (b), 12 (1) (b) or 35 (5);

(c) enters or remains in an election centre or inner perimeter in contravention of section 10 (2); or

(d) obstructs or hinders any electoral officer or party election or voting agent in the execution of his or her lawful duties,

shall be guilty of an offence.

**63. Prohibition on making intentional false statements or publishing false information.** -- Any person who --

(a) makes a false statement or furnishes false particulars in any statement which is required in terms of this Act in the knowledge of such statement or particulars being false or without reasonable grounds for believing the same to be true; or

(b) publishes, repeats or disseminates in any manner whatsoever false information with the intention of --

(i) disrupting or preventing the election;

(ii) creating hostility or fear in order to influence the process or outcome of the election; or

(iii) otherwise influencing the process or outcome of the election,

shall be guilty of an offence.

**64. Miscellaneous offences.** -- Any person who contravenes or fails to comply with any provision of section 71, 72 or 73, shall be guilty of an offence.

**65. Penalties.** -- Any person convicted of any of the offences referred to in this Chapter shall, if convicted of a contravention of any provision of --

(a) section 55 (1), (3) or (4) or 57, 60, 61 (a) or 63 (b), be liable to a fine not exceeding R100 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment;

(b) section 56, be liable to a fine not exceeding R80 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;

(c) section 55 (2), 58, 59 or 61 (b), (c) or (d), be liable to a fine not exceeding R60 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment;

(d) section 62 (d) or 63 (a), be liable to a fine not exceeding R40 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or

(e) section 62 (a), (b) or (c) or 64, be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

## **CHAPTER XI GENERAL PROVISIONS**

**66. Ownership of voting materials and election material.** -- In any indictment, summons or charge sheet for any offence in relation to any voting materials or election material, the property in such voting materials or election material, as well as the property in the counterfoils thereof, if any, may be stated to be vested in the Commission or the Chief Director or any other electoral officer, as the case may be, in respect of such election.

**67. Forfeiture of deposit paid by registered party.** -- (1) The deposit paid in terms of section 19 (2) shall be forfeited to the State by any registered party in respect of each election which it contested if it

was unsuccessful in obtaining sufficient support for the allocation of at least one representative in such election.

(2) Save as is in this section and section 69 (2) (a) (iii) expressly provided, the sum deposited in terms of section 19 (2) shall be refunded to the depositor.

**68. Destruction of election material.** -- The Commission shall be responsible for the destruction of all election material, which shall be effected as soon as possible after 30 days of the date of the certification of the results of the election or the declaration that it was unable so to certify by the Commission in terms of section 18 of the Commission Act, save where the Special Electoral Court determines, on application by any interested party, that any part of such material may be relevant to a justiciable dispute relating to the election: Provided that in the latter case such destruction shall commence as soon as possible after the final determination of such dispute.

**69. Electoral Code of Conduct and implementation thereof.** -- (1) The Electoral Code of Conduct (hereinafter in this section and in section 70 referred to as "the Code") set out in Schedule 2 --

(a) shall be subscribed to by --

(i) every party registered in terms of section 19; and

(ii) every candidate nominated in terms of section 22,

as a condition of their respective rights to be so registered or nominated; and

(b) shall, in so far as it is applicable, be binding on any party or on the leader or any office-bearer, member or supporter of such party or candidate.

(2) Subject to section 70, any party referred to in subsection (1) which, or the leader or any office-bearer, member or supporter of such party or candidate so referred to who, infringes any provision of the Code shall, upon a finding that any such provision has been so infringed, be liable --

(a) in the case of any party which has infringed the provisions of the Code, to one or more of the following penalties or sanctions, of which any or all may be suspended on specified conditions:

- (i) A formal warning;
- (ii) a fine not exceeding R100 000;
- (iii) the forfeiture of any deposit paid by such party in terms of section 19 or any part thereof;
- (iv) an order prohibiting such party, whether permanently or for a specified period, from utilizing any media time, including any such television or broadcasting services as have been or may be made available to such party for electoral purposes by the Independent Media Commission established by section 2 of the Independent Media Commission Act, 1993 (Act No. 148 of 1993);
- (v) an order prohibiting such party --
  - (aa) from holding particular public meetings, demonstrations or marches, or any kind of such meetings, demonstrations or marches;
  - (bb) from entering any specified electoral district or area for purposes of canvassing for membership, or for any other electoral purpose;
  - (cc) from erecting placards or banners, or from publishing and distributing campaign literature;
  - (dd) from publishing or distributing campaign literature and electoral advertising,  
or limiting such party's rights to do so;
- (vi) an order prohibiting such party from receiving, whether wholly or partly, State or foreign funding contemplated in section 74, including an order requiring the repayment, within a specified period, of any such funding or any part of such funding already received;
- (b) in the case of a party which has infringed the provisions of the Code --
  - (i) by any act or omission involving violence or intimidation or a gross or systematic violation of the rights of any registered party, candidate or voter, an order cancelling the registration of a party in terms of section 19, and consequently its right to participate in the election concerned;

(ii) by any fraudulent act by virtue of which votes have been obtained, an order reducing the number of votes counted in favour of that party by a specified number of votes;

(iii) by any act by virtue of which free and safe access by any other registered party has been prevented, an order excluding such party from any voting station situated in the area where such other registered party has been prevented free and safe access;

(c) in the case of the leader or any office-bearer, member or supporter of such party or of any candidate --

(i) who has infringed the provisions of the Code, to one or more of the penalties or sanctions referred to in paragraph (a) (i), (ii) or (iii);

(ii) who has infringed the provisions of the Code by any act or omission involving violence or intimidation or a gross or systematic violation of the rights of any registered party, candidate or voter, an order disqualifying, in the case of a person who is a candidate, such person from being a candidate or deleting the name of such candidate from the list or lists of candidates concerned.

**70. Institution of proceedings by Chief Director: Monitoring in Electoral or Appeal Tribunal.** -- (1) The Chief Director: Monitoring may, either on his or her own motion or in consequence of any report made to him or her at any time, institute proceedings in --

(a) in the case of an alleged infringement of the Code which in his or her opinion is of such a serious nature that it may be subject to a penalty or sanction referred to in paragraph (a) (iv), (v) or (vi), (b) or (c) (ii) of subsection (2) of section 69, the Appeal Tribunal in whose area of jurisdiction such infringement has allegedly been committed;

(b) in the case of any other alleged infringement of the Code or any alleged prescribed electoral irregularity or contravention of, or failure to comply with, any provision of this Act, the Electoral Tribunal in whose area of jurisdiction such infringement, irregularity, contravention or failure has allegedly occurred.

(2) An Electoral Tribunal adjudicating an alleged infringement of the Code in terms of subsection (1) (b) may only impose a penalty or sanction contemplated in section 69 (2) (a) (i), (ii) or (iii): Provided that such Tribunal may in the prescribed manner refer a matter which

in its opinion may warrant a penalty or sanction in excess of its jurisdiction, to an Appeal Tribunal for consideration and a recommendation of the appropriate penalty or sanction to be imposed by the Commission.

(3) An Appeal Tribunal adjudicating an alleged infringement of the Code in terms of subsection (1) (a) or (2) may only impose a penalty or sanction contemplated in section 69 (2) (a) (i), (ii) or (iii) in respect thereof, or recommend to the Commission in the prescribed manner the imposition of any other penalty or sanction contemplated in section 69 (2).

(4) (a) Upon the recommendation of the Appeal Tribunal in accordance with subsection (3), the Commission may impose the recommended penalty or sanction or impose any other penalty or sanction contemplated in section 69 (2) which it may consider appropriate.

(b) There shall be no appeal from an order of the Commission imposing a penalty or sanction under paragraph (a), save for a power of review of such order, which shall lie with the Special Electoral Court.

(5) In making its decision regarding appropriate penalties or sanctions, the relevant Tribunal or the Commission, as the case may be, shall have regard to any other legal consequence that may result from civil or criminal proceedings instituted by reason of the same occurrence.

**71. Bills, placards, etc., to bear publisher's name.** -- During the election period --

(a) every bill, placard, poster, pamphlet, circular or other printed matter having reference to the election shall bear upon the face thereof the name and address of the printer and publisher thereof;

(b) no person shall print, publish or post or cause to be printed, published or posted or in any other manner disseminate any such printed matter which fails to bear upon the face thereof the name and address of the printer and publisher;

(c) the proprietor and publisher of every newspaper shall cause the word "advertisement" to be printed as a headline to each article or paragraph in his or her newspaper which originated from a registered party or its agents or supporters, the insertion of which is, or is to be,

paid for, or for which any reward or compensation, or promise of reward or compensation, is or is to be made;

(d) the articles or paragraphs referred to in paragraph (c) shall include all such text as may prima facie appear to be intended or calculated to affect the result of the election, and shall include any paid advertisement or report of the speech of a candidate, if the insertion thereof is, or is to be, paid for;

(e) every report, letter, article, bill, placard, poster, pamphlet, circular, cartoon or other printed matter (hereinafter in this section referred to as an "election article") which, prima facie, is intended or calculated to affect the result of the election, is inserted in any newspaper or otherwise produced and is published in the Republic, shall bear at the foot thereof the full name and address of the person or persons by whom such election article was written or produced: Provided that --

(i) any such election article which is inserted in any newspaper as aforesaid and which has been altered materially by the editor of such newspaper, shall also bear the full name of the editor;

(ii) in the case of any such election article which is written jointly by two or more persons, it shall be sufficient for the purposes of this paragraph if the report as a whole bears the full names and addresses of the persons by whom it was written; and

(iii) in the case of headlines to any election article which is inserted in any newspaper as aforesaid, and of bills, placards or posters having reference thereto and which are issued in the ordinary practice of a newspaper, it shall be sufficient for the purposes of this paragraph if the full names and addresses of the persons by whom such headlines, bills, placards and posters were written, are published in the issue of the newspaper in which such election article is inserted; and

( f ) subject to the provisions of subparagraph (iii) of the proviso to paragraph (e), no person shall print or publish any newspaper or other printed matter in which is inserted or produced any election article which fails to comply with the provisions of paragraph (e).

**72. Prohibition on publication of opinion polls.** -- (1) No person shall during the period commencing 21 days prior to the voting period until the end of the election period publish in the electronic or printed media the results of any opinion poll purporting to reflect the level of



support enjoyed by registered parties or candidates or the policies they advocate.

(2) The provisions of subsection (1) shall not prohibit the conduct of opinion polls by registered parties for the purposes of their election campaign, the obtaining of opinions in the course of canvassing for votes on behalf of such registered parties or candidates or the publishing in the electronic or printed media of the results so obtained after the election period.

**73. Prohibition on certain political activities during certain period prior to and during voting period.** -- No person shall --

(a) during the period 48 hours prior to until the end of the voting period hold or take part in any public demonstration or march; or

(b) during the period 12 hours prior to until the end of the voting period hold or take part in any public meeting or rally of a political nature.

**74. State Electoral Fund.** -- (1) There is hereby established a fund to be known as the "State Electoral Fund", which shall be under the administration of the Commission and which shall comply with the following requirements:

(a) The capital of the said Fund shall be constituted by --

(i) money appropriated by Parliament for that purpose, the amount of which is to be determined by the Transitional Council in consultation with the Minister of State Expenditure; and

(ii) such further amounts, if any, as may be contributed by donors, including foreign governments, inter-governmental and non-governmental organizations.

(b) The object of the said Fund shall be to provide registered parties with financial assistance for the purposes of conducting their electoral campaigns: Provided that no such assistance shall be utilized for the purposes of entertainment or for the purchasing of any immovable property.

(c) The Chief Executive Officer of the Commission shall be the accounting officer charged with the responsibility of accounting for all money received by the said Fund and the utilization thereof.

(d) The said accounting officer shall cause such records of account to be kept as are necessary to present fairly the state of affairs of the said Fund and to explain the transactions and financial position thereof.

(e) The Auditor-General shall audit the books of account, accounting statements and annual financial statements of the said Fund.

( f ) Subject to the provisions of the Exchequer Act, 1975 (Act No. 66 of 1975), the Commission may invest any unexpended portion of the money in the said Fund.

(g) The Commission may utilize the interest on investments referred to in paragraph ( f ) in pursuance of the object mentioned in paragraph (b).

(h) If a person who is or was in the employment of the Commission caused the said Fund any loss or damage, the said accounting officer shall determine the amount of such loss or damage and order the recovery thereof in accordance mutatis mutandis with section 34 of the Exchequer Act, 1975.

(i) In the event of the Commission or the said Fund being dissolved all remaining assets of the said Fund shall be utilized in accordance with the recommendation of the Commission for the purposes of the encouragement and promotion of democratic values.

(2) The Commission shall at regular intervals report to the Transitional Council on all income and expenditure in respect of the State Electoral Fund.

(3) The Commission shall make the following forms of financial assistance available to any registered party which qualifies therefor:

(a) An initial grant payable to all registered parties on an equal basis and without discrimination, on the basis provided in subsection (4); and

(b) a grant payable to such registered parties after the results of the election have been determined, on the basis provided in subsection (5).

(4) (a) The initial grant referred to in subsection (3) (a) shall only be payable to a registered party if an independent opinion poll recognized and accepted by the Commission for that purpose shows that such a

party has in respect of an application for financial assistance to contest the election --

(i) for the National Assembly or the National Assembly and any provincial legislature or legislatures, the potential support of at least two per cent of the voters for the National Assembly; or

(ii) for any provincial legislature or legislatures, the potential support of at least two per cent of the voters for the legislature or legislatures concerned.

[Para. (a) substituted by s. 19 (a) of Act No. 1 of 1994.]

(b) The requirements for the acceptance of an opinion poll contemplated in paragraph (a), shall be prescribed by the Commission: Provided that no such poll may have been conducted earlier than six months before the final date on which parties have to submit their lists of candidates in terms of section 22: Provided further that the Commission may have an opinion poll conducted for the purposes of this section.

(c) (i) A party may, when applying for registration as a participant in the election in terms of section 19, furnish the prescribed information in respect of the opinion poll on which that party intends to base its application for a grant.

(ii) The Commission shall not later than seven days after the application has been submitted to it notify the party concerned whether the poll is accepted by the Commission or not.

(d) If the opinion poll referred to in paragraph (c) is rejected by the Commission, or if a registered party so decides of its own accord, such a party may prove its potential support by voters by submitting a list containing --

(i) 10 000 signatures of voters, of which at least 1 000 signatures shall be by voters from each of at least five provinces, if that party applies for a grant to contest the election for the National Assembly; or

(ii) 3 000 signatures by voters from each such province in respect of which such party applies for a grant with a view to contesting the election in such province or provinces.

(e) (i) Subject to subparagraph (ii), the procedures for the collection of signatures referred to in paragraph (d) and the circumstances under which a party may be disqualified from receiving a grant, shall be prescribed by the Commission.

(ii) A voter --

(aa) may only sign the support list of one party;

(bb) may sign both the lists referred to in paragraph (d) of a party;

(cc) shall state his full names, home address and identity number on the list or lists; and

(dd) shall, if he or she cannot sign or write his or her name, place his or her mark on the said list or lists, which mark shall be witnessed by a voter by placing his or her signature next to that mark.

( f ) (i) The initial grant referred to in subsection (3) (a) shall be payable from the money referred to in subsection (1) (a): Provided that only 50 per cent of that money shall be utilized for that purpose.

(ii) A registered party which is contesting the election for any provincial legislature or legislatures may, notwithstanding the provisions of subparagraph (i), receive one quarter of the amount of the grant payable to a registered party contesting the election for the National Assembly in respect of each provincial legislature being contested, which grant shall be in addition to any grant which may be payable to such party for contesting the election for the National Assembly.

[Para. ( f ) substituted by s. 19 (b) of Act No. 1 of 1994.]

(g) A registered party making use of the method provided for in paragraph (d) in its application, may only receive 50 per cent of the amount of a grant payable to a registered party referred to in paragraph (a) of this subsection.

(h) No party shall be allowed to apply for assistance under this subsection unless it has submitted the list or lists of candidates referred to in section 22, and no registered party shall be eligible for a grant if its qualifying application has not been received by the Commission before the expiry of the period of 51 days referred to in section 22 (2).

[Para. (h) substituted by s. 19 (c) of Act No. 1 of 1994 and amended by Proclamations Nos. 45 and 69 of 1994.]

(5) The grant referred to in subsection (3) (b) shall be payable from the remainder of the said Fund referred to in subsection (1) (a) in the following manner:

(a) 50 per cent shall be distributed equally among those registered parties which in terms of the total number of votes cast, are entitled to at least one seat in the National Assembly or any provincial legislature: Provided that a party which contested the election for one provincial legislature only, may only receive one quarter of the amount of the grant payable to a party which contested the election for the National Assembly; and

(b) the other 50 per cent shall be payable to each such registered party proportional to the number of votes cast nationally and provincially in favour of such party.

(6) With a view to ensuring that the object as set out in subsection (1) (b) is pursued by registered parties, it shall be a precondition for the payment of the grants that --

(a) registered parties which are recipients of the grants shall be obliged to deposit such funds in an account specially opened for that purpose, and to keep separate books, accounts, financial statements and vouchers of all financial assistance received and so deposited and expenditure incurred from that account;

(b) the Commission shall prescribe a requirement for audit in respect of the said account, and may further require that the books, accounts, financial statements and vouchers relating to that account be submitted for scrutiny and audit by the Auditor-General, who shall have full and unrestricted access to such documentation as may be considered relevant by him or her.

**75. Application of Act in event of conflict with other laws. --**

This Act, including the regulations and the orders, directions and decisions of the Commission in terms thereof, shall prevail in the event of any conflict with the provisions of any other law, including statute law, common law, subordinate legislation and customary or indigenous law, in so far as the conduct and supervision of the election within the Republic are concerned.

**75A. Special provisions relating to the Inkatha Freedom Party.**

-- (1) Notwithstanding anything to the contrary in this Act contained, the Inkatha Freedom Party (hereinafter in this section referred to as "the Party"), if it wishes to contest the first elections for the National Assembly and provincial legislatures to be held after the commencement of this Act, shall apply for registration and submit its lists of candidates in accordance with this section by no later than 17:00 on 21 April 1994.

(2) (a) The Party shall submit its application for registration to the Chief Director *mutatis mutandis* in accordance with subsections (2), (3) and (4) of section 19.

(b) The Commission shall upon receipt of the application for registration, register the Party as a participant in the election and issue to it a registration certificate in the prescribed form, if the Commission is satisfied that the application complies with the provisions of subsections (2), (3) and (4) of section 19 in so far as those provisions are not inconsistent with the provisions of this section.

(c) The provisions of subsections (6), (7), (8), (11) and (12) of section 19 shall apply *mutatis mutandis* in respect of the registration referred to in this section.

(3) (a) The Party shall simultaneously with its application submit to the Chief Director its lists of candidates in the manner *mutatis mutandis* provided for in subsections (2), (3), (4) and (5) (a) of section 22.

(b) The provisions of subsections (7), (8) and (10) of section 22 shall *mutatis mutandis* apply to the lists of candidates submitted by the Party in terms of this section.

(4) (a) The Commission shall as soon as possible after the Party has been registered in terms of this section, in the manner it deems fit, make publicly known the particulars referred to in section 20.

(b) The lists of candidates submitted in terms of subsection (3) (a) shall within one day after the date on which the Party has been registered in terms of subsection (2) (b) be published in the Gazette in the manner *mutatis mutandis* provided for in section 23 and the provisions of subsections (2), (3), (4) and (5) of that section shall *mutatis mutandis* apply in respect of a list of candidates published in terms of this section.

(5) (a) Notwithstanding the provisions of section 29, but subject to paragraph (b), an adhesive ballot sticker displaying the particulars contemplated in section 29 (1) (b) of the Party shall be affixed to the bottom of every ballot paper for every election in respect of which the Party has submitted lists of candidates, below the last party listed on the ballot paper.

(b) Paragraph (a) shall not apply to ballot papers issued at any foreign voting station, but a voter at a foreign voting station wishing to vote for the Party may do so by clearly indicating in writing his or her choice in favour of the Party on the ballot paper, and such a vote shall in the application of section 44 be counted as a vote for the Party.

(c) The adhesive ballot sticker shall be affixed to the ballot paper in the election centre by a person designated by the presiding officer prior to the issuing of such ballot paper to any voter, and not in the presence of any voter.

(d) If --

(i) subject to paragraph (b), no adhesive ballot sticker has been affixed to any ballot paper as contemplated in paragraph (a); or

(ii) the adhesive ballot sticker has been so affixed to any ballot paper that it obscures in any manner any particulars contemplated in section 29 (1) (b) of any party,

the ballot paper shall in the application of section 44 be rejected.

(6) Notwithstanding the provisions of section 74 (4) (h), the Party shall be entitled to receive assistance in terms of section 74 if its qualifying application is received by the Commission before 12:00 on 23 April 1994 and if its lists of candidates have been submitted in accordance with subsection (3).

[S. 75A inserted by Proclamation No. 73 of 1994.]

**76. Regulations.** -- (1) The Commission shall make regulations regarding --

(a) voting and counting stations, including access and activities permitted in --

(i) an election or counting centre;

[Sub-para. (i) substituted by s. 20 of Act No. 1 of 1994.]

(ii) an inner perimeter; and

(iii) a controlled area,

which regulations may differ according to the part of the voting or counting station involved;

(b) foreign voting stations, including --

(i) the hours during and day or days during the voting period on which votes may be cast;

(ii) the procedures regulating the casting of votes;

(iii) the issuing of a ballot paper envelope to a voter on which the name of the province referred to in section 25 (3) shall be indicated; and

(iv) the counting of votes cast;

in respect of foreign voting stations;

(c) special votes and voters, including the counting of votes cast by special voters;

(d) voting stations for and the procedures regulating the casting of votes by prisoners and persons awaiting trial being detained, and who are not excluded from voting in terms of section 16 (d), and the counting of such votes;

(e) the manner in which and conditions under which the canvassing of votes of persons referred to in paragraph (d) by registered parties may be permitted;

( f ) State and foreign funding of registered parties as contemplated in section 74;

(g) the application mutatis mutandis of the provisions of section 71 to the electronic media, including any television or radio broadcasting service;



(h) the safe-keeping and transportation of voting materials and election material, including --

(i) security during the production of voting materials;

(ii) safe-keeping of voting materials after printing or manufacturing and during distribution thereof to voting stations;

(iii) distribution of voting materials prior to and during the voting period;

(iv) safe-keeping of voting materials after distribution to voting stations;

(v) safe-keeping during the course of the voting period, including the safekeeping of election material pending the counting of votes;

(vi) safe-keeping of voting materials and election material after the voting period, including the transportation to counting stations and the provision of security during the counting period;

(vii) security of voting stations and staff employed therein;

(viii) security of voting materials and election material at foreign voting stations; and

(ix) security of voting materials and election material in respect of special votes and special voters;

(i) the rights and duties of party voting and election agents;

( j) the demarcation of the Republic in electoral districts for the purposes of the election with due regard to the requirement to have separate counts of votes in respect of provincial legislatures and provisionally defined areas;

(k) the procedures to be followed and manner in which a voter shall be marked if the provisions of section 35 (4) (a) (ii) apply;

(l) the procedures to be followed and manner in which a voter's eligibility document shall be marked in terms of section 35 (4) (b);

(m) voting and counting of votes in respect of provisionally defined areas, including, subject to the Constitution --

(i) the counting procedure in order to have separate counts of votes in respect of provincial legislatures and provisionally defined areas;

(ii) the manner in which the votes cast within each such provisionally defined area may be required to be deducted from the votes cast for the legislature of the province in which such area is situated and may require to be added to the votes cast for the legislature of the province in which such area may be incorporated;

(iii) if necessary, the manner in which the seats and representatives for each provisionally defined area shall be determined; and

(iv) such matters as may be necessary to implement the provisions of the Constitution in respect of any provisionally defined area;

(n) any matter required or permitted to be prescribed in terms of this Act; and

(o) generally, all matters which in its opinion are necessary or expedient to be prescribed to achieve the objects of this Act.

(2) A regulation in terms of subsection (1) may prescribe penalties for any contravention of the provisions thereof, or any failure to comply therewith, of a fine not exceeding R40 000 or imprisonment for a period not exceeding two years.

(3) Regulations in terms of subsection (1) affecting State expenditure shall be made only after consultation with the Minister of State Expenditure.

(4) The Commission shall make such provision as it may consider necessary in order to ensure the widest possible publicity of the regulations.

(5) Notwithstanding any provision contained in this Act requiring forms to be prescribed by regulation, the Commission may deviate from such requirement where it deems it necessary or expedient.

[Sub-s. (5) added by Proclamation No. 69 of 1994.]

**77. Repeal or amendment of laws, and savings.** -- (1) The laws specified in Schedule 3 are hereby repealed or amended to the extent set out in the third column thereof.

(2) Notwithstanding the repeal of the Filling of Casual Vacancies in Parliament Act, 1992 (Act No. 148 of 1992), by subsection (1), the said Act shall, for the purposes of the filling of casual vacancies in Parliament, be applicable as if it had not been so repealed until the first National Assembly has been validly constituted in terms of the Constitution.

78. Short title and commencement. -- This Act shall be called the Electoral Act, 1993, and shall come into operation on a date fixed by the State President, on the advice of the Transitional Council, by proclamation in the Gazette.

### **Schedule 1**

MAKE YOUR MARK NEXT TO THE PARTY YOU CHOOSE

(Section 29)

*Party name Party symbol Party acronym Photo of leader(s)*

OPQ Party

RST Party

UVW Party

XYZ Party

ABC Party

DEF Party

GHI Party

JKL Party

MNO Party

PQR Party

STU Party

### **Schedule 2**

ELECTORAL CODE OF CONDUCT

(Sections 69 and 70)

1. The object of this Code shall be to promote conditions conducive to the conduct of a free and fair election, and a climate of democratic tolerance, in which political activity may take place without fear of coercion, intimidation or reprisals.

2. All registered parties and other persons bound by this Code shall endeavour to promote its object in order to enable free political campaigning and open public debate to take place in all parts of the Republic throughout the election period.

3. Registered parties and candidates further commit themselves --

- (a) to give wide publicity to this Code;
- (b) to promote voter education campaigns;
- (c) to condemn violence and intimidation;
- (d) to instruct their candidates, office-bearers, members and supporters accordingly; and
- (e) generally, to affirm the rights of all participants in the election --
- (i) to express divergent political opinions;
- (ii) to debate and contest the policies and programmes of other parties;
- (iii) to canvass freely for membership and support from voters;
- (iv) to hold public meetings;
- (v) to attend public meetings convened by others;
- (vi) to distribute electoral literature and campaign materials;
- (vii) to publish and distribute notices and advertisements;
- (viii) to erect banners, placards and posters; and
- (ix) to promote free electoral campaigns by all lawful means.

4. All those bound by this Code in terms of subsection 69 (1) (b), shall throughout the election period give effect to the following undertakings and stipulations:

- (a) To publicly and repeatedly condemn violence and intimidation, and to avoid the use of language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of political advantage, or for any other reason;
- (b) to refrain from any action involving violence or intimidation;
- (c) to ensure that no arms or weapons of any kind are carried or displayed at political meetings or in the course of any march, demonstration or other event of a political nature;

(d) to refrain from publishing or repeating false, defamatory or inflammatory allegations concerning any person or party in connection with the election;

(e) to co-operate and liaise in good faith with other parties to avoid, in so far as possible, arrangements involving public meetings, demonstrations, rallies or marches taking place at the same time and venue as similar political events organized by other parties;

( f ) to do nothing to impede the democratic right of any party, through its candidates, canvassers and representatives, to have reasonable access to voters for the purposes of conducting voter education, fund raising, canvassing membership and soliciting support;

(g) to avoid plagiarizing the symbols, colours or acronyms of other parties; and to discourage and, if possible, prevent the removal, disfigurement or destruction of political campaign materials of any party;

(h) to refrain from offering any inducement or reward to any person in consideration of such person either joining or not joining any party; attending or not attending any political event; voting or not voting (either at all, or in any particular manner); or accepting, refusing or withdrawing such person's nomination as a candidate in the election;

(i) to refrain from any attempt to abuse a position of power, privilege or influence, including parental, patriarchal or traditional authority, for political purposes, including any offer of reward or threat of penalty;

( j ) to avoid any discrimination based on race, sex, ethnicity, class, gender or religion, in connection with the election and political activity;

(k) in relation to the role of women --

(i) to facilitate full participation by women in political activities on the basis of equality;

(ii) to ensure free access by women to all public political meetings, facilities and venues;

(iii) to respect the right of women to communicate freely with political parties and organizations; and

(iv) generally, to refrain from forcing women to adopt a particular political position or to engage in, or to refrain from engaging in, any political activity otherwise than in accordance with their free choice;

(l) in relation to the Commission --

(i) to acknowledge its authority in the conduct of the election;

(ii) to ensure the attendance and participation of representatives at meetings of any party liaison committee and other forums convened by or on behalf of the Commission;

(iii) to implement its orders and directions;

(iv) to facilitate its right of access through official monitors or other representatives to all public political meetings or other electoral activities;

(v) to co-operate in the official investigation of issues and allegations arising during the election period; and

(vi) to take all reasonable steps to ensure the safety of monitors and other representatives of the Commission from exposure to insult, hazard or threat in the course of their official duties;

(m) to reassure voters with regard to the impartiality of the Commission, the secrecy and integrity of the ballot, and furthermore, that no one will know how any other person has voted;

(n) to take reasonable steps to discipline and restrain their party office-bearers, employees, candidates, members and supporters from --

(i) infringing this Code;

(ii) committing any offence in terms of this Act or any other law;

(iii) committing any prescribed electoral irregularity; and

(iv) contravening or failing to comply with any provision of this Act;

(o) to establish and maintain effective lines of communication with the Commission, and with other registered parties, at national, provincial and local level, including the exchange of names, addresses and

contact telephone and facsimile numbers of party election agents and of other relevant officebearers and representatives; and

(p) to accept the final outcome of the election, and the Commission's declaration and certification of the results thereof.

### **Schedule 3**

#### **LAWS REPEALED OR AMENDED**

(Section 77)

*No. and year of law Title Extent of repeal*

Act No. 45 of 1979 Electoral Act, 1979 Repeal of the whole.

Act No. 89 of 1980 Electoral Amendment Act, 1980 Repeal of the whole.

Act No. 35 of 1981 Electoral Amendment Act, 1981 Repeal of the whole.

Act No. 104 of 1982 Elections Amendment Act, 1982 Repeal of so much as has not been repealed.

Act No. 41 of 1983 Electoral Amendment Act, 1983 Repeal of the whole.

Act No. 103 of 1984 Population Registration and Elections Amendment Act, 1984 Repeal of so much as has not been repealed.

Act No. 36 of 1985 Electoral and Related Affairs Amendment Act, 1985 Repeal of section 1.

Act No. 92 of 1989 Elections and Identification Amendment Act, 1989 Repeal of sections 1 to 115, inclusive.

Act No. 112 of 1990 Application of Certain Laws to Namibia Abolition Act, 1990 Repeal of the amendment of the Electoral Act, 1979 (Act No. 45 of 1979), in the Schedule to the Act.

Act No. 129 of 1992 Electoral Amendment Act, 1992 Repeal of the whole.

Act No. 148 of 1992 Filling of Casual Vacancies in Parliament Act, 1992 Repeal of the whole.

Act No. 150 of 1993 Independent Electoral Commission Act, 1993 Amendment of section 1 by the substitution for the definition of "international observer" of the following definition: " 'international observer' means any person appointed as a representative of the United Nations, the Organization of African Unity, the European Community, the Commonwealth or any other organization or foreign government accredited for that purpose by the Subcouncil on Foreign Affairs of the Transitional Council in consultation with the Department of Foreign Affairs, in order to observe and report on the electoral process;".