

CO-OPERATIE FOR RESEARCH & EDUCATION

Braamfontein

3 June 1996

Enclosed please find representations to the Constitutional Court by the Co-operative for Research and Education on issues related to the establishment of the Electoral Commission.

We will be available to provide oral evidence should the Court so require.

PHIROSHAW CAMAY

REPRESENTATIONS TO THE CONSTITUTIONAL COURT BY CO-OPERATIVE FOR RESEARCH AND EDUCATION

INTRODUCTION

The Co-operative for Research and Education is a Section 21 not-for profit organisation established in 1990 to provide research, education and training to disadvantaged communities. CORE has monitored political economic and elections issues over this period. In 1993 CORE began to provide an election information service and provided assistance in 1994 to the election efforts under the Independent Electoral Commission. The work of the IEC was reviewed through an independent evaluation conducted by CORE and published in 1995 entitled The People Shall Govern. Given the work undertaken by CORE on behalf of the National Peace Accord and the experiences gained during the election. CORE also published the Manual for Civil Society Election Monitors. In 1995 CORE published an Election Management Manual for election officials providing a ready reference for all the tasks and duties which needed to be addressed to conduct peaceful, free and fair elections.

It is against this experience that the following representations are made.

INDEPENDENT ELECTORAL COMMISSION

The Constitution correctly sets out the aims of the Commission to strengthen constitutional democracy.

However, section 193 of the Constitution describes how the commission will be established through recommendations of the National Assembly:

Proportionally represented members of all parties in the Assembly will make recommendations which will be approved by a resolution of the majority of the members of the Assembly. The President of South Africa is then required to appoint the members.

The process of nomination and approval is patently political and only allows those parties represented in the National Assembly to exercise a say. Parties outside the National Assembly

operating at a provisional or local level do not have any right. The process does not take into account any increase or decrease in political power of elected parties.

In effect the majority party in the National Assembly will at all times have the final say . Through the appointment of Electoral Commissioners favourably inclined to the majority party, it can ensure rules and regulations including registration and demarcation processes favourable to such a party. The Commissioners are also dependent on the favours of the majority party for re-appointment or removal from office which can decide on the "Misconduct, incapacity or incompetence" in terms of section 194.

It is commonly accepted that Commissioners as well as the Commission is independent and impartial at all times. This is a commonly accepted thesis amongst international experts and institutions who observe and monitor democratic elections.

The experience of 1994 national elections and the experience in 1995/96 of the Election Task Group clearly demonstrate that Commissioners are often called upon to make unpopular decisions often of far reaching consequences in regard to the conduct of the elections.

This unique responsibility of ensuring democratic practice and equality in the elections cannot be compromised. Popular democracy demands and as the constitution correctly notes in Chapter 2 of the Bill of Rights Section 9(2) that:

- Equality includes the full and equal enjoyment of all rights and freedoms, and
- 19(2) Every citizen has the right to free, fair and regular elections for any legislative body.

Again international practice aspires to ensuring that all voters have the:

- (a) equal right to register to vote
- (b) equal right to exercise their vote
- (c) and in addition that their vote has equal weight as against any other vote cast.

CONTENTION

Our contention therefore is that the appointment, removal and dismissal of the Electoral Commissioners is unconstitutional and fails to comply with the Constitutional Principles, the Bill of Rights and the conditions necessary for building and entrenching a free, independent Election Commission necessary for a democratic society.