

REPORT OF AD HOC COMMITTEE ON THE INDEPENDENT ELECTORAL COMMISSION ACT

11 AUGUST 1993

1. Appointment

The MPNP Planning Committee decided to appoint an Ad Hoc Committee on the Independent Electoral Commission Act on 21 July 1993 consisting of K M Andrew (Convenor), B Desai, P Maduna, S G Mothibe and D Schutte.

2. Terms of Reference

The Ad Hoc Committee was requested to consider and report on:

- 2.1 Letters from the Technical Committee or the IEC dated 14 July 1993 addressed to Dr T Eloff and dated 21 July 1993 addressed to the Planning Committee.
- 2.2 Sections 7, 16, 17, 18.3 and 21 of the Second Draft of the Independent Electoral Commission Act dated 14 July 1993.
- 2.3 The need for an Electoral Act.

3. Meetings

The Ad Hoc Committee met on a number of occasions during the period 21 July 1993 and 11 August 1993.

4. Electoral Act

There is a close relationship between the IEC Act and an Electoral Act. The Committee recommends that the request to the IEC Technical Committee to draft an Electoral Act be confirmed. In addition to parties at the Negotiating Council, other interested persons and organisations should be invited to make representations.

5. Section 7 of the Act

5.1 Sub-Section 7.1

The priority should be to focus on the 7 to 11 South African members to be appointed. The decisions as to when and under what circumstances persons drawn from the International Community may be appointed and their status do not have to be made at this stage. If and when such persons from the International Community are appointed, the issue as to whether they should be appointed as individuals or as International Community nominees needs further consideration.

The nature and extent of the involvement of the International Community in the structures and work of the Independent Electoral Commission and its Directorates is a

complex issue. Decisions made in this regard may be premature or unworkable unless the attitude of the International Community has been ascertained in advance.

It is therefore recommended that the Planning Committee and/or this Ad Hoc Committee and/or the IEC Technical Committee hold discussions with representatives of the United Nations, the Organisation for African Unity, the European Community and the Commonwealth to ascertain under what conditions and to what extent they are willing and able to become involved.

After this information has been obtained, discussions should be held leading to decisions as to the provisions that should be made in the IEC Bill in respect of the involvement of the International Community.

Subject to the outcome of the discussions with the International Community as recommended above, the Committee is of the provisional opinion that nominees of the International Community may well be a more appropriate method of International involvement than selecting individuals as suggested in Sub-Section 7.1.

5.2 Sub-Section 7.2.2

The Committee could not agree on what changes if any should be made to 7.2.2. Two variations were suggested in respect of the first two lines:

One proposal was that Sub-Section 7.2.2 should commence as follows:

That they shall be available to serve in a full-time capacity, to the exclusion of any other employment or occupation ...

The other proposal was that the first sentence of Sub-Section 7.2.2 should be amended by deleting the opening words: 'That they shall serve in a full-time capacity, to the exclusion of any other employment or occupation, and'. The paragraph would then begin with the words: 'That they shall not during the term of office ...'

5.3 Sub-Section 7.4A

Persons in judicial office and those employed by universities as academics should not be disqualified from serving on the Independent Electoral Commission, nor should they be banned from subsequent appointments to such positions as currently provided for in Sub-Section 7.4.1.

6. Section 16 of the Act

The following amendments should be made to Section 16:

6.1 Replace Sub-Section 16.1 with the following:

"Objects of the Commission

The objects of the Commission shall be -

- (a) to organize and supervise free and fair elections as may from time to time be conducted in the Republic or any part thereof in terms of the Constitution and in accordance with the Electoral Act and the provisions of this Act;
- (b) to supervise and co-ordinate the directorates entrusted with the conducting, monitoring and adjudication of such elections, throughout the duration of its term;
- (c) to promote conditions conducive to free and fair elections:
- (d) to educate the voter public regarding -
 - (i) democratic principles and
 - (ii) the electoral process and mechanisms;
 - (iii) the right to free political canvassing and campaigning;
 - (iv) secrecy of voting and other relevant matters,

by means of literature and the use of other media as it may deem appropriate, including distribution and publication of suitable literature, advertisements, and dissemination through radio, television and the public print media; having due regard to the variety of languages spoken throughout the Republic;

- (e) to certify the election, after the conclusion of the process, as having been free and fair, or not”.

6.2 Replace Sub-Section 16.2.1 with the following:

“An Election Administration Directorate which shall consist of a Chief Electoral Officer, two deputies and such other officials as the Commission may deem fit, to conduct the election in terms of the provisions of the Electoral Act”.

6.3 After Sub-Section 16.2.3 to insert:

"The members of each of the directorates referred to in Sub-Section 16.2 shall be appointed by the Commission after it has invited and considered written submissions from members of the Transitional Executive Council'.

6.4 Replace Sub-Section 16.4 with the following:

"Each such Directorate shall operate independently of the others and the Commission., provided that they shall all be accountable and provide regular progress reports to the Commission”.

Explanatory Note : In terms of the appeals provisions, the Commission would retain certain powers to issue directives and to review, rescind and vary some of the decisions taken by the Directorates or their functional sub-structures.

7. Section 17 of the Act

Section 17 should be replaced by the following:

"17. Responsibilities of the Election Administration Directorate

The Election Administration Directorate shall carry out the responsibilities allotted to it by the Electoral Act as well as those responsibilities allocated to it by the Commission'.

8. Sub-Section 18.3 of the Act

Sub-Section 18.3 should be replaced by the following:

18.3 The investigation and institution of proceedings before the Adjudication Directorate, the courts, and any such electoral tribunals as may be established, in order to deal with alleged infringements of the said Code of Conduct or of the Electoral Act'.

9. Section 21 of the Act and other matters relating to the resolution of disputes

- 9.1 Jurisdiction: After discussion it was proposed that consideration be given to the establishment of an independent Appeals Tribunal, made up of legally qualified persons who would act as an 'Appeal Court' in respect of certain disputes relating to the IEC, as well as disputes arising from the TEC.

In respect of IEC matters the Electoral Appeals Tribunal would be empowered to appoint, on an ad hoc basis, persons at regional or local level to address regional or local disputes. This may well be facilitated by panels nominated by local legal bodies such as Bar Councils or Law Societies from which members may be drawn from time to time to hear and adjudicate upon disputes.

The IEC itself would have an Adjudication Directorate with branches throughout the country that will hear disputes, mediate and resolve them where possible. The Adjudication Directorate's decision in certain instances would be final, but appeals to either the IEC itself and/or the Electoral Appeals Tribunal would be permitted in respect of others.

Jurisdiction of each of these bodies (ie the Adjudication Directorate, IEC and Electoral Appeals Tribunal) needs to be defined, but this should await further development of the Electoral Act and Code of Conduct.

The Adjudication Directorate, where unable to resolve a dispute, would refer such dispute to the IEC and/or the Electoral Appeals Tribunal.

It was agreed that appeals on certain decisions of the IEC (still to be detailed and finalised) would be possible, and that these appeals would be addressed to the Tribunal.

It was suggested that among the highly qualified persons making up the Electoral Appeals Tribunal, a number of judges be included. There shall be no appeal from any decision of the Electoral Appeals Tribunal.

9.2 The membership of the Electoral Appeals Tribunal should consist of -

- (a) a chairperson, who shall be a judge of the Appellate Division of the Supreme Court; and
- (b) four other members, one member who shall be a judge of the Supreme Court, two members who shall be persons fit to be members of the tribunal through experience as an advocate or attorney or as a lecturer in law at any university, for a period not less than 5 years, and one other suitable person who may or may not be legally qualified and experienced;

appointed by the Chief Justice.

(The Committee was undecided as to whether all The members should be legally qualified or whether one person not so qualified should be eligible for appointment.)

9.3 The Electoral Appeals Tribunal should prescribe the manner in which appeals may be lodged at the tribunal.

9.4 Any finding of the Electoral Appeals Tribunal should be binding and should not be subject to appeal or review by any Court of Law.