

**INDEPENDENT ELECTORAL
COMMISSION**

TECHNICAL COMMITTEE
ON THE INDEPENDENT ELECTORAL COMMISSION (IEC)
Present status of Committee's brief

1. Executive Summary

- 1.1 The Terms of Reference of the Technical Committee required that a legislative framework be prepared as the basis for discussion by the Negotiating Council/Forum in order to establish an Independent Electoral Commission in terms of certain principles and guidelines which was set out in its written brief.
- 1.2 In terms of its mandate, the Technical Committee has prepared and tabled an initial draft of the Independent Electoral Commission Act which provides for the establishment of the Commission which shall assume responsibility for the conduct, supervision, monitoring and evaluation of elections to be held for a parliament/constituent assembly (and SPR governments if applicable), and to provide generally for the necessary powers, functions, duties and procedures of the Commission.
- 1.3 The Technical Committee's first draft of the act was tabled in the Negotiating Council on the 21st May 1993, and accepted in principle by the Council at its meeting on the 22nd June 1993, and interested parties were requested to prepare written submissions regarding the Technical Committee's first draft act for the further consideration of the Committee. Thus far, 33 written submissions have been received by the Technical Committee from the following parties: (Pick up names from earlier reports)
- 1.4 The Technical Committee in its third report (3 June 1993) drew attention to the close interdependence of its draft act, and the existing Electoral Act, and it indicated the need for a substantial revision of the Electoral Act which presently assumes voter registration, constituency based representation, and a racially based franchise. At its meeting on 22 June 1993, the Negotiating Council instructed this Technical Committee to include within the ambit??? of its brief, a review of the present Electoral Act with a view to drafting a new act and/or suggesting appropriate amendments.
- 1.5 On the 28th June the Negotiating Council conducted its initial debate with reference to the detailed provisions of the proposed Independent Electoral Commission Act, and it proposed a number of amendments for the further consideration of the Technical Committee.
- 1.6 Accordingly the Technical Committee is now engaged as a matter of urgency with the undermentioned tasks

- :1 The preparation of a second draft of the Independent Electoral Commission Act, with due cognisance to the debate which has taken place in the Negotiating Council and the various written submissions which have been received from interested parties; Such act to incorporate an Electoral Code of Conduct which is to be prescribed by statute and enforced by the Commission upon political parties, candidates and other affected instances.
- :2 The preparation of a new Electoral Act (and or the preparation of an amending act) to make provision for the envisaged electoral process and the transitional arrangements which are presently under negotiation.

2. Aspects of Reports Agreed Upon in the Negotiating Council

The Negotiating Council has accepted the Committee's draft bill in principle, subject to further consideration of issues which have been raised both in the debate and in the written submissions.

However it is apparent that substantial agreement already exists with reference to the following:

- 2.1. The need for an Independent Electoral Commission and the broad terms of its mandate
- 2.2. The composition, appointment and term of office of the Commission
- 2.3. The administrative structure of the commission, and its division into three functional directorates, viz:
 - 2.3.1. An Election Administration Directorate,
 - 2.3.2. An Election Monitoring Directorate,
 - 2.3.3. An Election Adjudication Directorate.
- 2.4. The broad application of electoral legislation to the envisaged first election, and to a referendum which may be considered necessary in relation to the constitutional process.

3. Outstanding Issues

Apart from the detailed drafting of the provisions of the proposed Act, a number of substantive issues remain to be negotiated and agreed including the following:

- 3.1. Various constitutional issues, with which this legislation will have to be harmonized. These include:
 - 3.1.1. The status of the SPRs
 - 3.1.2. The role (if any) of regional lists and

- regional elections
- 3.1.3. The principle of reincorporation of the TVBC and self-governing states
- 3.2. Criteria for determining the eligibility of voters, candidates, and political parties participating in the first elections.
- 3.3. The precise ambit of the commission's powers, vis-a-vis other departments of state, and in particular with reference to the police and defence forces.
- 3.4. The circumstances in which the appointment of a commissioner may be terminated, and the role of the Appellate division in this process, and generally with reference to its power of review.
- 3.5. The terms of an Electoral Code of Conduct to be promulgated in terms of the Act.
- 3.6. The obligation to disclose the source of campaign funding and regulations concerning permissible election expenditure.
- 3.7. Criteria for determining whether the first election may be considered as having been free and fair, and the consequences in the event that the Commission certifies otherwise, either generally or in relation to a specific area/s.

These issues will require further proposals to be formulated by the Technical Committee, and this will in due course necessitate a resumed debate in the Negotiating Council with a view to arriving at substantial consensus.

4. Aspects of the Independent Electoral Commission Technical Commission which relate to substantive issues in the reports of other Technical Committees:

In reports of the other technical committees, there are a number of references to the role of the Independent Electoral Commission and attention has been directed to the need to consider overlapping issues and the interdependence and interaction of the related legislation. Issues which require a joint consideration by the elected Technical Committees include the following:

4.1. The Committee on Constitutional Issues

A number of issues have been indicated above, including those affecting the mandate and identity of the constitution-making body, the status of SPR's; the form of proportional representation; the role of regional and national lists in a future election; and the issues affecting voter eligibility and related matters.

4.2. The Committee on Discriminatory Legislation

The identification of legislation which requires to be

repealed and/or amended as impeding free political activity during an election, and the contents of the proposed electoral code and broad principles to be applied by the Commission in the conduct of the election.

- 4.3. The Committee on the Transitional Executive Council
The final jurisdiction of the Independent Electoral Commission, and the inter-relationship of the Commission to the Transitional Executive Council, including a proposal of the Technical Committee that there be no right of repeal or review from decisions of the IEC.

- 4.4. The Committee on the Independent Media Commission and Independent Telecommunications Authority
There is a need to clearly demarcate the jurisdiction of the regulating authorities in relation to the co-existent and overriding powers of the Independent Electoral Commission.

- 4.5. The Committee on Violence
Proposals emanating from this Committee with regard to the need to develop compulsory sanctions for dealing with parties/administrations/organisations which transgress the electoral code but refuse to sign the Peace Accord; and a further proposal regarding an independent peace-keeping force with multi-party composition to be established and placed "under the control of the Independent Electoral Commission or under multi-party executive control."

- 4.6. Committee on Fundamental Rights during the Transition
Provisions which may be necessary to ensure that the decisions of the Independent Electoral Commission are not susceptible to litigation during the period of transition in a manner which might jeopardise the electoral process.

5. Work Progress

The Technical Committee appreciates the extreme urgency of its undertaking the tasks with which it has been entrusted, and is committed to delivering the required documentation within the ensuring weeks. However, it must be appreciated that the finalisation of this draft legislation may be responsive to decisions which are taken with regard to other related matters in the Negotiating Council, and accordingly progress of the work of the various Committees is substantially interdependent.

TECHNICAL COMMITTEE ON INDEPENDENT ELECTORAL COMMISSION

FIRST INTERIM REPORT - 13 MAY 1993

1.

1. Initial Discussions
2. Preparation of Rough Draft
3. Proposed Statute
4. Drafting Process
5. Submissions Received
6. Comparative Legislation/Laws
7. Review of Submissions and Comparative Legislation/Laws

SECOND REPORT and EXECUTIVE SUMMARY - 21 MAY 1993

2.

1. List of Documentation
2. First Draft - The Independent Electoral Commission Act:
 - * Chapter One - Interpretation and Application of the Act
 - * Chapter Two - Establishment of Commission
 - * Chapter Three - Reconstitution of Commission
 - * Chapter Four - Procedure and Administration
 - * Chapter Five - The Election Administration Directorate
 - * Chapter Six - Election Monitoring Directorate
 - * Chapter Seven - The Election Adjudication Directorate
 - * Chapter Eight - Adjudication of Election Results
 - * Chapter Nine - Miscellaneous Provisions

THIRD REPORT - 3 JUNE 1993

44.

1. Introduction
2. Submissions
3. Matters requiring the consideration of the Negotiating Council:
 - 3.1 Ambit of Committee's Brief
 - 3.2 Composition of the Commission
 - 3.3 Voter Eligibility
 - 3.4 Disqualification of Commissioners
 - 3.5 Certification of Results
 - 3.6 Jurisdiction
 - 3.7 Financial Constraints
 - 3.8 Campaign Funding/Expenditure
 - 3.9 Role of the Appellate Division
 - 3.10 Rural Women Constituency

FOURTH REPORT - 11 JUNE 1993

49.

1. Further Submissions Received
2. Request for Brief to Draft New Electoral Act
3. Specific Issues
4. Selection Procedure of Commissioners
5. Conclusion

TECHNICAL COMMITTEE
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1. Executive Summary

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- 1.3 The Technical Committee's first draft of the Act was tabled in the Negotiating Council on the 21st May 1993, and accepted in principle by the Council at its meeting on the 22nd June 1993, and interested parties were requested to prepare written submissions regarding the Technical Committee's first draft Act for the further consideration of the Committee. Thus far, 33 written submissions have been received by the Technical Committee from the following parties: (Pick up names from earlier reports)
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- 1.5 On the 28th June the Negotiating Council conducted its initial debate with reference to the detailed provisions of the proposed Independent Electoral Commission Act, and it proposed a number of amendments for the further consideration of the Technical Committee.

1.6 Accordingly the Technical Committee is now engaged as a matter of urgency with the undermentioned tasks:

1.6.1 The preparation of a second draft of the Independent Electoral Commission Act, with due cognisance to the debate which has taken place in the Negotiating Council and the various written submissions which have been received from interested parties; such Act to incorporate an Electoral Code of Conduct which is to be prescribed by statute and enforced by the Commission upon political parties, candidates and other affected instances.

1.6.2 The preparation of a new Electoral Act (and or the preparation of an amended Act) to make provision for the envisaged electoral process and the transitional arrangements which are presently under negotiation.

2. Agreed principles

The Negotiating Council has accepted the Committee's draft Bill in principle, subject to further consideration of issues which have been raised both in the debate and in the written submissions. However it is apparent that substantial agreement already exists with reference to the following:

2.1 The need for an Independent Electoral Commission and the broad terms of its mandate

2.2 The composition, appointment and term of office of the Commission

2.3 The administrative structure of the Commission, and its division into three functional directorates, namely,

* an Election Administration Directorate,

* an Election Monitoring Directorate,

* an Election Adjudication Directorate.

4. The broad application of electoral legislation to the envisaged first election, and to any Referenda which may be considered necessary in relation to the constitutional process.

3. Outstanding Issues

Apart from the detailed drafting of the provisions of the proposed Act, a number of substantive issues remain to be negotiated and agreed including the following:

- 3.1 Various constitutional issues, with which this legislation will have to be harmonized, including in particular the status of SPR's, the role (if any) of regional lists and regional elections, and the principle of reincorporation of the TBVC and self-governing states.
- 3.2 Criteria for determining the eligibility of voters, candidates, and political parties participating in the first elections.
- 3.3 The precise ambit of the Commission's powers, vis-a-vis other departments of state, and in particular with reference to the police and defence forces.
- 3.4 The circumstances in which the appointment of a commissioner may be terminated, and the role of the Appellate division in this process, and generally with reference to its power of review.
- 3.5 The terms of an Electoral Code of Conduct to be promulgated in terms of the Act.
- 3.6 The obligation to disclose the source of campaign funding and regulations concerning permissible election expenditure.
- 3.7 Criteria for determining whether the first election may be considered as having been free and fair, and the consequences in the event that the Commission certifies otherwise, either generally or in relation to a specific area/s.

These issues will require further proposals to be formulated by the Technical Committee, and this will in due course necessitate a resumed debate in the Negotiating Council with a review to arriving at substantial consensus.

4. Reports of other Technical Committees

In reports of the other technical committees, there are a number of references to the role of the Independent Electoral Commission and attention has been directed to the need to consider overlapping issues and the interdependence and interaction of the related legislation. Issues which require a joint consideration by the elected Technical Committees include the following:

- 4.1 The Committee on Constitutional Issues
A number of issues have been indicated above, including those affecting the mandate and identity of the constitution-making body, the status of SPR's; the form of proportional representation; the role of regional and national lists in a future election; and the issues affecting voter eligibility and related matters.

4.2 The Committee on Discriminatory Legislation

The identification of legislation which requires to be repealed and/or amended as impeding free political activity during an election, and the contents of the proposed electoral code and broad principles to be applied by the Commission in the conduct of the election.

4.3 The Committee on the Transitional Executive Council

The final jurisdiction of the Independent Electoral Commission, and the inter-relationship of the Commission to the Transitional Executive Council, including a proposal of the Technical Committee that there be no right of repeal or review from decisions of the IEC.

4.4 The Committee on the Independent Media Commission and Independent Telecommunications Authority

There is a need to clearly demarcate the jurisdiction of the regulating authorities in relation to the co-existent and overriding powers of the Independent Electoral Commission.

4.5 The Committee on Violence

Proposals emanating from this Committee with regard to the need to develop compulsory sanctions for dealing with parties/administrations/organisations which transgress the electoral code but refuse to sign the Peace Accord; and a further proposal regarding an independent peace-keeping force with multi-party composition to be established and placed "under the control of the Independent Electoral Commission or under multi-party executive control."

4.6 Committee on Fundamental Rights during the Transition

Provisions which may be necessary to ensure that the decisions of the Independent Electoral Commission are not susceptible to litigation during the period of transition in a manner which might jeopardise the electoral process.

8. Work Progress

The Technical Committee appreciates the extreme urgency of its undertaking the tasks with which it has been entrusted, and is committed to delivering the required documentation within the ensuring weeks. However, it must be appreciated that the finalisation of this draft legislation may be responsive to decisions which are taken with regard to other related matters in the Negotiating Council, and accordingly progress of the work of the various Committees is substantially interdependent.