

**NATIONAL PARTY PRELIMINARY SUBMISSION**  
**THEME COMMITTEE 6**  
**SUBTHEME COMMITTEE 6.1: ELECTION COMMISSION**

**A. INTRODUCTION**

The principle of regular, free and fair elections is fundamental to a future democratic system in South Africa. This is confirmed by Constitutional Principle VIII which provides for "representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation". It is therefore imperative that the administration of elections be conducted with the necessary impartiality and efficiency so as to ensure a credible, transparent and, ultimately, legitimate election process. Without legitimate elections democracy itself is in jeopardy. In developing democracies, in particular, the legitimacy of the system itself depends *inter alia* on the extent to which the electorate accepts the validity of the elections. The mechanism to which this responsibility is assigned is therefore of vital importance. The National Party hereby submits its general views on this matter. If necessary, a further, detailed submission may be made at a later stage.

**B. POINTS OF DEPARTURE**

The primary objective of any election process is to arrive by legal means at an accurate, reliable and legitimate reflection of the will of the people with regard to the election of their representatives in government. In accordance with this objective, the National Party believes that **impartiality** and **efficiency** are the two most important criteria with which the administration of elections must comply. All the other criteria mentioned, for example, by Mr Peter Harris in his presentation to the Sub-theme Committee, such as independence, professionalism, transparency, impartial and speedy adjudication and stability, relate to those two basic requirements. By **impartiality** we mean that the election process must be conducted without political bias, it must be free from direction of any outsider, political party or any other person with a direct interest in the election, and it must be protected against interference or manipulation of any kind. It goes without saying that the

**efficiency** with which the election process is conducted is crucial not only for its smooth and expeditious finalisation, but also for its credibility and legitimacy. Inefficiency tends to create suspicion against the impartiality of the process.

In practice, impartiality and efficiency may sometimes appear to be in conflict. An impartial electoral agency may lack the know-how or manpower to ensure efficiency, or an efficient agency may lack the independence to be accepted as being sufficiently impartial. In this submission, the National Party endeavours to put forward a proposal that can bridge these apparently conflicting points of departure and can ensure an impartial and efficient election process.

### **C. THE STATE v AN INDEPENDENT BODY**

The basic question of which body should administer elections in order to ensure the necessary impartiality and efficiency is sometimes presented as a simple choice between the state apparatus and an independent body. In other words, either the state, through its department responsible for elections, conducts the process, which may affect its impartiality, or an independent body is created to take up the responsibility, which may affect the efficiency with which the process is conducted. We believe this is an over-simplification and that it is indeed possible to reconcile these apparently conflicting options.

### **D. AN ELECTORAL COMMISSION**

**1. The National Party believes that a permanent independent electoral commission** should be in charge of future elections at all levels. Such a commission must manage every election in accordance with the principle of regular, free and fair elections and with the purpose of ensuring that the result provides an accurate, reliable and legitimate reflection of the will of the people in the election of their representatives.

**2.** The commission must be independent and impartial and must be able to perform its functions without bias or interference of any kind. The National Party believes that this can be

ensured, *inter alia*, firstly only **if the basic principles governing the composition, powers and functioning of the commission are included and entrenched in the constitution**. Provisions analogous to those on the Public Protector and Auditor-General should be considered in this regard. Secondly the commission must be directly responsible to Parliament and must submit annual reports to Parliament on its activities and findings. A special parliamentary committee should be established to evaluate the work of the commission.

3. In order to ensure the efficiency of the election process, the National Party believes that **the expertise and experience that have been acquired over the years in the Department of Home Affairs be utilised** in the administration of future elections. South Africa can ill afford it financially and politically to simply allow that know-how to go to waste. For this reason, we propose as follows:

(a) The electoral commission contemplated above must appoint a chief electoral officer, as well as permanent and professional officials, to take responsibility for the actual conduct of elections. The commission should recruit experienced officials from the Department of Home Affairs. Furthermore, other officials operating at local level should also be involved in the actual conduct of elections at grass-roots level. For practical purposes, regional offices should be established in the various provinces.

(b) It is incumbent upon the electoral commission to **control and monitor** the election process and the administration of the election by the chief electoral officer. This is the position in countries such as Australia, India and Canada.

(c) The conduct of the commission and the chief electoral officer and all officials must at all times be in accordance with the principles of **independence, transparency, accountability, professionalism, efficiency and impartiality**. For this purpose, all officials involved should undergo training on a continuous basis. The chief electoral officer is accountable to both the commission and parliament.

4. With regard to the **adjudication of electoral disputes**, we believe that the function of the electoral commission is to control and monitor the election process and not to act as referee. Control and adjudication cannot be the responsibility of the same body. Special provision for the expeditious and impartial adjudication of disputes is therefore required. That could take the form either of referring disputes to the Supreme Court to be adjudicated on a priority basis or, in view of the specialised and urgent nature of electoral disputes, to a special electoral court.

## **E. CONCLUSION**

The National Party believes that the above proposal can reconcile and give effect to the criteria of impartiality and efficiency, can bring together the need for an independent electoral agency and the utilisation of existing expertise and experience, and can facilitate the objective of regular, free and fair elections. If we succeed in ensuring that future elections be conducted according to the principles of justice, fairness and transparency, democracy itself will be served.

1 JUNE 1995

### **ADDENDUM TO THE NATIONAL PARTY SUBMISSION**

#### **INDEPENDENT ELECTORAL COMMISSION**

- (1) There shall be an autonomous and accountable Electoral Commission -
  - a) to be responsible, whether directly or indirectly, for the administering, organising, supervision and conducting of free and fair elections at all levels of government;
  - b) the establishment of which, and its powers, functions and duties to be prescribed by an Act of Parliament, subject to the provisions of subsection (2).
- (2) Such Commission shall -

consist of at least seven members who are suited to serve on the Commission by virtue of their

- a) professionalism, qualifications, expertise and experience; and
- b) commitment to fairness, accountability and credible electoral processes; and
- c) be chaired by a judge of the Supreme Court.

(3) The President shall whenever it becomes necessary appoint as members of the Commission persons -

- a) nominated by a joint committee of the Houses of Parliament, composed of one member of each party represented in Parliament and willing to participate in the committee; and
- b) approved by the National Assembly and the Senate by resolution adopted, without debate, by a majority of at least 75% of the members present and voting at a joint meeting:

Provided that if any nomination is not approved as required in paragraph (b) , the joint committee shall nominate another person.

(4) The Commission shall be supported by an Elections Directorate consisting of staff to be appointed, as determined by law, with due regard to their qualifications, expertise and experience in the conducting of elections.