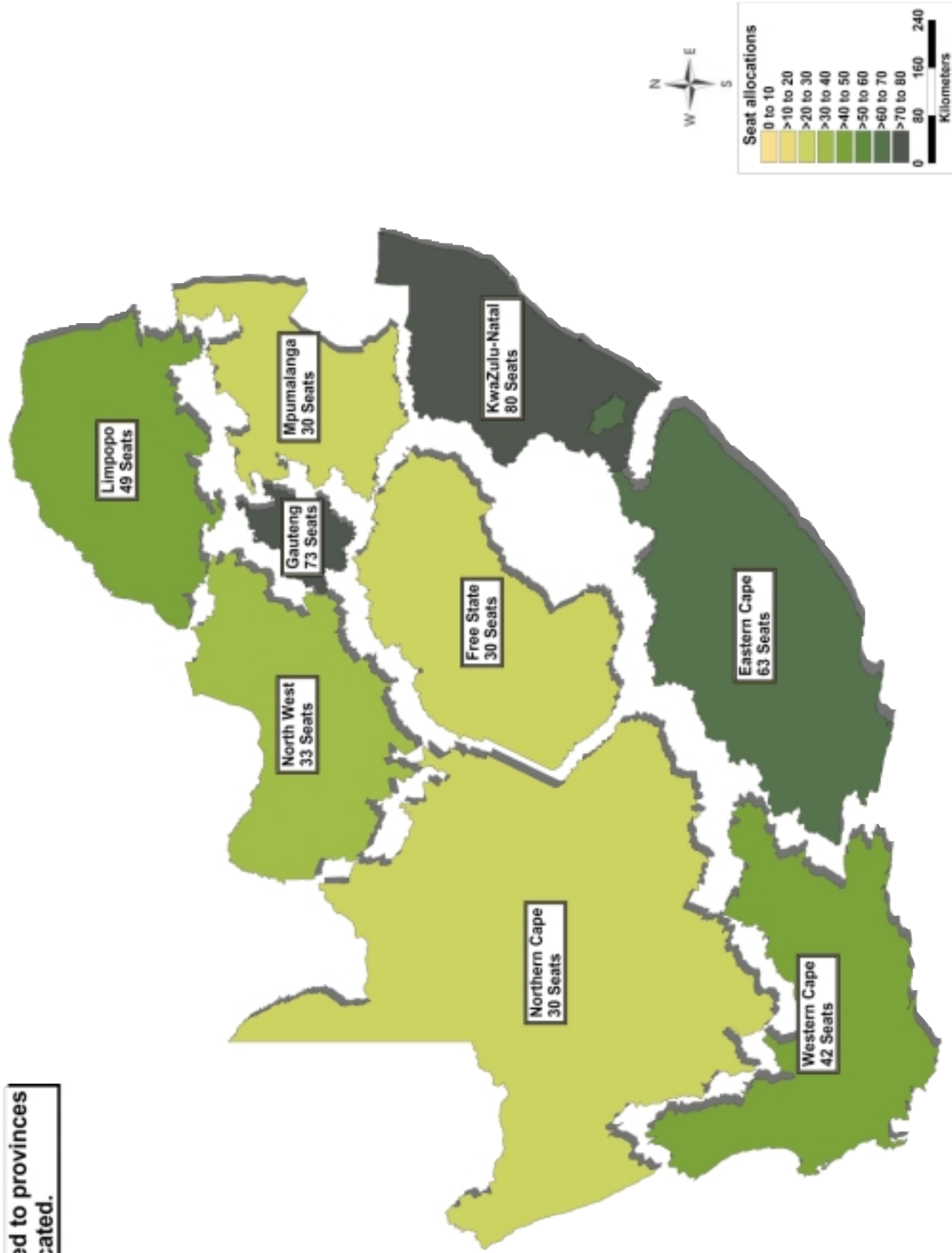


PRESENT SYSTEM; PROVINCIAL LEGISLATURES: CLOSED PROVINCIAL LISTS (430 SEATS)

Seats are distributed to provinces as graphically indicated.

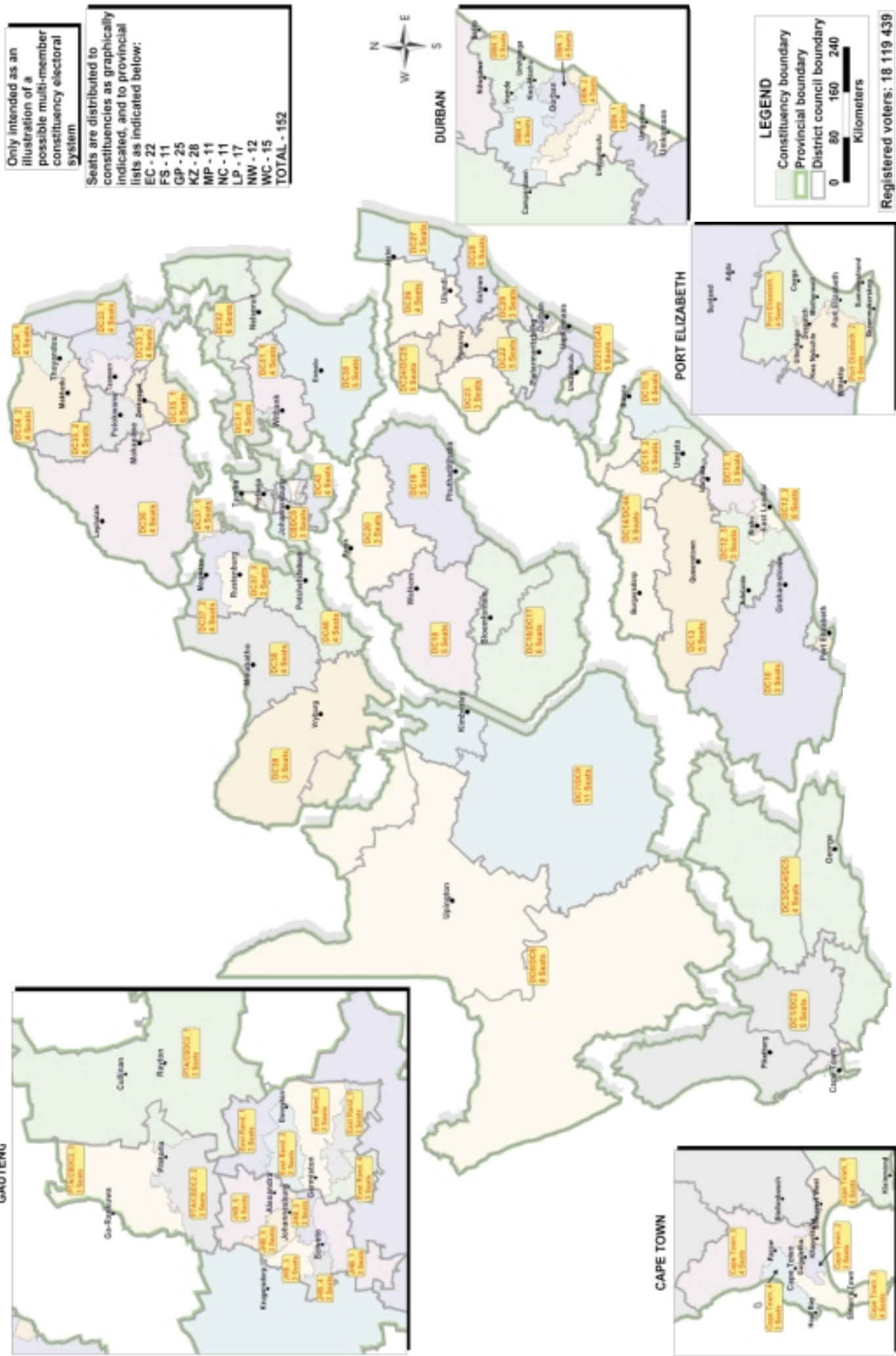


**PRESENT SYSTEM; PROVINCIAL ASSEMBLY : (1999 ACTUAL RESULT)
DETERMINATION OF SEATS FOR THE PROVINCIAL LEGISLATURES**

PROVINCIAL - 430 SEATS

PARTY	EC SEAT ALLOCATION	FS SEAT ALLOCATION	GP SEAT ALLOCATION	KZN SEAT ALLOCATION	MP SEAT ALLOCATION	NC SEAT ALLOCATION	NP SEAT ALLOCATION	NW SEAT ALLOCATION	WC SEAT ALLOCATION
AZAPO	-	-	0	0	0	0	0	-	-
ACDP	0	0	1	1	0	0	1	0	1
AEB	0	0	0	0	0	0	0	0	0
AMP	-	-	-	-	-	-	-	-	0
ANC	47	25	50	32	26	20	44	27	18
DP	4	2	13	7	1	1	1	1	5
DPF	-	-	-	-	-	-	0	-	-
FA	0	0	1	0	0	0	0	0	0
GPGP	-	-	-	-	-	-	-	-	0
IFP	0	0	3	34	0	0	0	0	0
LP	-	-	0	-	-	-	-	-	-
MF	-	-	-	2	-	-	-	-	-
MUM	-	-	-	0	-	-	-	-	-
NACOPA	-	-	-	-	-	-	-	-	0
NNP	2	2	3	3	1	8	1	1	17
PAC	1	0	0	0	0	0	1	0	0
PLP	-	-	-	-	-	-	-	-	0
SOPA	-	0	0	0	-	-	-	-	-
SPP	-	-	-	-	0	-	-	-	-
UCDP	-	0	0	-	0	-	-	3	-
UDM	9	0	1	1	1	0	1	0	1
ULA	-	0	-	-	-	-	-	-	-
VFIFF	0	1	1	0	1	1	0	1	0
WIVL	-	-	-	-	-	-	-	-	0
XP	-	-	-	-	-	-	-	0	-
TOTAL	63	30	73	80	30	30	49	33	42

PROPOSED SYSTEM; PROVINCIAL LEGISLATURES: 69 CONSTITUENCIES (278 SEATS) AND CLOSED PROVINCIAL LISTS (152 SEATS)



Only intended as an illustration of a possible multi-member constituency electoral system

Seats are distributed to constituencies as graphically indicated, and to provincial lists as indicated below:

EC - 22
FS - 11
GP - 25
KZ - 28
MP - 11
NC - 11
LP - 17
NW - 12
WC - 15
TOTAL - 152

ANNEXURE C TO CHAPTER 4

Legal framework as proposed by the majority

In terms of the majority view, the legislation will provide for:

1. 300 members of the National Assembly to be elected in multi-member constituencies from closed party lists
2. 100 members of the National Assembly to be allocated from closed party lists in order to restore overall proportionality
3. The demarcation of contiguous constituencies by the Municipal Demarcation Board in accordance with set criteria which *inter alia* include provisions whereby no provincial boundary will be transcended by a constituency boundary; and each district council area and each metropolitan council will be a constituency unless (a) it qualifies for fewer than three representatives, in which case it must be combined with an adjacent constituency in the same province; and (b) it qualifies for more than seven representatives, in which case it must be subdivided so that the local municipalities (or combinations thereof) within that district council become constituencies and, in the case of metropolitan council areas, so that the subdivision results in combinations of wards with each constituency preferably having four, but in any event not fewer than three and not more than five, representatives
4. A formula for the calculation of the number of representatives for each constituency
5. Provisions for the submission of candidate lists, including a recommendation that at least a third of all candidates should be women
6. Provisions regarding ballot papers
7. A formula for calculating the result of an election and the allocation of seats
8. Arrangements regarding incomplete candidate lists and forfeiture provisions
9. Provisions regarding the designation of representatives
10. Provisions regarding the supplementation of candidate lists

11. Provisions regarding the periodic review of candidate lists on a more frequent basis than is presently the case
12. Provisions regarding the publication of supplemented and reviewed candidate lists
13. Provisions regarding the filling of vacancies
14. Provisions regarding grounds for loss of membership of the National Assembly
15. Corresponding arrangements in respect of provincial legislatures
16. Transitional arrangements for the next national and provincial elections to provide for –
 - nine constituencies for the national election with each province being a constituency
 - 200 members to be elected from the nine constituencies and 200 to be allocated from national lists on the same basis as (previously) provided for in item 2 of Schedule 2 of the interim Constitution as amended
 - lists of candidates to be submitted on the same basis as (previously) provided for in items 3 and 4 of Schedule 2 of the interim Constitution as amended
 - all other provisions of the new Electoral Systems Act to apply in full for the 2004 elections
 - similar provisions to be made for provincial elections, with each province being a single constituency with the number of seats being determined and candidate lists being submitted on the same basis as (previously) provided for in items 10, 11 and 12 of Schedule 2 of the interim Constitution as amended, and all other provisions of the new Electoral Systems Act to apply in full

Note: Most of these provisions form part of the present legal framework so details have been given only with regard to the new elements (as indicated in points 3, 5, 11 and 16). Some technical adjustments to the other provisions may be required in a final Bill but they will not be of a fundamental nature.

ANNEXURE D TO CHAPTER 4

DRAFT ELECTORAL SYSTEMS BILL

To regulate the composition of the National Assembly and provincial legislatures; to provide for transitional arrangements, and to provide for matters connected therewith.

PREAMBLE

WHEREAS items 6(3)(a) and 11(1)(a) of Schedule 6 of the Constitution of the Republic of South Africa provide that Schedule 2 of the interim Constitution as amended applies only to the first elections of the National Assembly and the provincial legislatures under the Constitution;

AND WHEREAS national legislation must provide for an electoral system for elections to be held in terms of the Constitution;

NOW THEREFORE BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

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Definitions

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

“Commission” means the Electoral Commission referred to in section 190 of the Constitution;

“constituency” means an area determined in terms of sections 7 and 19(a) and (b) of this Act;

“constituency ballot paper” means a ballot paper for the purpose of the election of members for a constituency in an election of the National Assembly or a provincial legislature referred to in sections 10(a) and 18(a);

“constituency list” means a list submitted by a party in respect of the election of members for a constituency in an election of the National Assembly or a provincial legislature referred to in sections 10(a) and 18(a);

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“district council area” means the area comprised of a district council, as defined in the Municipal Structures Act, and which has been demarcated as such by the Municipal Demarcation Board as a municipality described in section 155(1) of the Constitution as a category C municipality;

“Electoral Act” means the Electoral Act, 1998 (Act No. 73 of 1998);

“Electoral Commission Act” means the Electoral Commission Act, 1996 (Act No. 51 of 1996);

“local municipal council” or **“municipal council”** means a municipal council referred to in section 18 of the Municipal Structures Act and which is described in section 155(1) of the Constitution as a category B municipality;

“metropolitan council” means a municipal council referred to in section 18 of the Municipal Structures Act and which is described in section 155(1) of the Constitution as a category A municipality;

“metropolitan constituency” means a constituency demarcated in terms of Chapter 4 of this Act;

“municipality”, as a geographical area, means an area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

“Municipal Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“Municipal Demarcation Board” means the Board established in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

“national ballot paper” means a ballot paper for purposes of the election of members of the National Assembly referred to in section 10(b);

“national list” means a list of candidates submitted by a party for purposes of the election of members of the National Assembly referred to in section 10(b);

“provincial ballot paper” means a ballot paper for purposes of the election of members of a provincial legislature referred to in section 18(b);

“provincial list” means a list of candidates submitted by a party for purposes of the election of members of a provincial legislature referred to in section 18(b);

“registered voter” means a person whose name appears on the national common voters roll;

“voters roll” means the national common voters roll compiled and maintained in terms of the Electoral Act;

“votes” means valid votes cast in an election;

“ward” means a ward referred to in item 2 of Schedule 1 of the Municipal Structures Act.

CHAPTER 1 INTERPRETATION, APPLICATION AND ADMINISTRATION OF ACT

Interpretation of this Act

2. Any person interpreting or applying this Act must –
 - (a) do so in a manner that gives effect to the provisions of the Constitution; and
 - (b) take into account the provisions of the Electoral Commission Act, the Electoral Act and any other applicable legislation.

This Act to regulate elections of members of the National Assembly and the provincial legislatures

3. This Act applies to all elections of members of the National Assembly and provincial legislatures held after the coming into operation of this Act.

Administration of this Act

4. (1) This Act is administered by the Commission, but the provisions related to the demarcation of constituencies and the allocation of seats to constituencies in terms of this Act must be administered by the Municipal Demarcation Board.
- (2) The Commission and the Municipal Demarcation Board must administer this Act in a manner conducive to free and fair elections.

CHAPTER 2 NATIONAL AND PROVINCIAL ELECTIONS

National common voters roll to apply to elections of National Assembly and provincial legislatures

5. The national common voters roll compiled, maintained and certified in terms of the Electoral Act must be used for all elections of the National Assembly and provincial legislatures.

Proportional representation

6. Elections of the National Assembly and provincial legislatures must result, in general, in proportional representation.

CHAPTER 3 DEMARCATIION OF CONSTITUENCIES

Constituencies

7. (1) The whole of the territory of the Republic of South Africa must be demarcated into contiguous constituencies and such constituencies must be pre-determined for every election of the National Assembly and the provincial

legislatures at least two years prior to the expiry of the term of office of a legislature.

(2) The Municipal Demarcation Board must demarcate all constituencies for election of the National Assembly having regard to the following criteria –

- (a) no provincial boundary may be transcended in the demarcation of constituencies;
- (b) the area of each district council will be a constituency for the purposes of an election;
- (c) a district council area that crosses provincial boundaries must be divided so that each area situated in a particular province is a constituency;
- (d) to determine the number of representatives for a constituency, the total number of registered voters on the common voters roll must be divided by the number of seats referred to in section 10(a), and that calculation, plus one, disregarding fractions, determines the quota;
- (e) the total number of registered voters in a district council area must be divided by the quota determined in terms of paragraph (d);
- (f) where the result of the calculation referred to in paragraph (e) yields a surplus not absorbed by the number of seats reserved for constituencies, such surplus shall compete with other similar surpluses accruing to any other constituency, and any seat or seats not awarded in terms of paragraph (e) shall be awarded to the constituencies concerned in sequence of the highest surplus;
- (g) if the surplus referred to in paragraph (f) for two or more constituencies is equal, the seat must be awarded to the constituency that has the most registered voters;

- (h) if the allocation referred to in paragraph (f) results in fewer than three seats for a constituency, that constituency must be combined with an adjoining constituency within the same province and if necessary the procedures in this section shall *mutatis mutandis* be repeated until the constituency qualifies for at least three seats;
- (i) In a case where it is not possible to combine a constituency referred to in paragraph (c) with an adjoining constituency in the same province which is a district council area, that constituency may be combined with a metropolitan council area and may be part of a metropolitan constituency;
- (j) if the constituency referred to in paragraphs (h) or (i) is combined with one or more constituencies, such constituency may not result in the newly combined constituency having more than seven seats;
- (k) if a constituency referred to in paragraph (h) can be combined with more than one other constituency, the following factors must be taken into account –
 - (i) the need for cohesive, integrated and unfragmented areas;
 - (ii) topographical, environmental and physical characteristics of the area;
 - (iii) commercial and industrial linkages; and
 - (iv) patterns of human settlement and migration.
- (l) if a constituency has more than seven seats after the calculation referred to in paragraph (f), such constituency must be subdivided into two or more constituencies with each constituency qualifying for not fewer than three seats;
- (m) the subdivision of constituencies envisaged in paragraph (l) must be based on local council boundaries, and such subdivision may not result in any local municipal boundary

being transcended or any local municipal council area or part thereof within a district council area being allocated to a constituency in a different district council area; and

- (n) the subdivision of a constituency envisaged in paragraph (m) must seek to ensure that each of the subdivided constituencies has the same number of seats or the smallest possible variance in the number of seats allocated to the subdivided constituencies.

CHAPTER 4 METROPOLITAN CONSTITUENCIES

Metropolitan constituencies

- 8. (1) In the case of an area comprising a metropolitan council, each such metropolitan area must be divided into constituencies.
- (2) When a metropolitan area is divided into constituencies, ward boundaries must form the basis on which constituencies are divided.
- (3) Each metropolitan constituency should have four seats, determined in accordance with the procedures in sections 7(2)(d), (e), (f) and (g), but if that is not practicable, such constituency may not have more than five seats and not fewer than three seats.
- (4) When a metropolitan area is divided into constituencies, the following factors must be taken into account –
 - (a) the number of registered voters in each ward;
 - (b) topographical, environmental and physical characteristics of the area;
 - (c) density of the population; and

(d) the need to avoid as far as possible the fragmentation of communities.

(5) After constituencies have been demarcated in terms of Chapter 3 and this chapter, the procedures in sections 7(2)(d), (e), (f) and (g) shall *mutatis mutandis* be applied to reserve a final number of seats for each constituency.

(6) If the boundaries of a local council area, a district council area, a metropolitan council area or a ward are changed or redemarcated before an election, the boundary of a constituency affected by that change will by the mere fact also be considered to have changed and a redetermination must be made of the number of seats reserved for each constituency and the procedures in sections 7(2)(d), (e), (f) and (g) shall *mutatis mutandis* apply.

CHAPTER 5

ELECTION OF THE NATIONAL ASSEMBLY

Election of National Assembly

9. Parties registered in terms of the Electoral Commission Act and contesting an election of the National Assembly shall nominate candidates for such election on lists of candidates prepared in accordance with this chapter.

10. The seats in the National Assembly as determined in terms of Schedule 3 of the Electoral Act shall be filled as follows –

- (a) Three-quarters of the seats, disregarding fractions, from constituency lists submitted by the respective parties, with a fixed number of seats reserved for each constituency as determined by the Municipal Demarcation Board for the next election of the National Assembly, taking into account available data in respect of registered voters; and
- (b) The remainder of the seats from national lists submitted by the respective parties.

11. The lists of candidates submitted by a party shall –
- (a) in the case of a constituency list, contain names not exceeding in number the number of candidates to be elected in each constituency plus two additional candidates;
 - (b) in the case of a national list, contain names not exceeding in number the number of seats to be allocated from such national list, and
 - (c) denote such names in such fixed order of preference as the party may determine.

12. A party's lists of candidates shall consist of both a national list and a list for each constituency, with such number of names on each list as the party may determine subject to section 11.

13. The seats referred to in section 10(a) shall be allocated per constituency to the parties contesting an election, as follows –

- (a) A quota of votes per seat shall be determined in respect of each constituency by dividing the total number of votes cast on the ballot papers for that constituency by the number of seats reserved for such constituency under section 10(a);
- (b) The result plus one, disregarding fractions, shall be the quota of votes per seat in respect of a particular constituency;
- (c) The number of seats to be awarded for the purposes of paragraph (e) in respect of such constituency to a party shall, subject to paragraph (d), be determined by dividing the total number of votes cast in favour of such party on the constituency ballot paper for that constituency by the quota of votes per seat referred to in paragraph (b);
- (d) Where the result of the calculation referred to in paragraph (c) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the relevant

constituency, and any seat or seats in respect of that constituency not awarded in terms of paragraph (c) shall be awarded to the party or parties concerned in sequence of the highest surplus;

- (e) The aggregate of a party's awards in terms of paragraphs (c) and (d) in respect of a particular constituency shall indicate that party's provisional allocation of the seats reserved under section 10(a) for that constituency;
- (f) The aggregate of a party's provisional allocations for the various constituencies in terms of paragraph (e) shall indicate its provisional allocation of the seats referred to in section 10(a); and
- (g) If no recalculation of provisional allocations is required in terms of section 16 in respect of the seats referred to in section 10(a), the provisional allocation of such seats in terms of paragraphs (e) and (f) shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats, as adjusted in terms of section 16, shall become the final allocation of such seats to the various parties.

14. The seats referred to in section 10(b) shall be allocated to the parties contesting an election, as follows –

- (a) A quota of votes per seat shall be determined by dividing the total number of votes cast nationally on national ballot papers by the total number of seats in the National Assembly, and the result plus one, disregarding fractions, shall be the quota of votes per seat;
- (b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast nationally on national ballot papers in favour of such party by the quota of votes per seat determined in terms of paragraph (a);
- (c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party

concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus;

- (d) The aggregate of a party's awards in terms of paragraphs (b) and (c) shall be reduced by the number of seats provisionally allocated to it in terms of section 13(f) and the results shall indicate that party's provisional allocation of the seats referred to in section 10(b); and
- (e) If no recalculation of provisional allocations is required in terms of sections 15 and 16 in respect of the seats referred to in section 10(b), the provisional allocation of such seats in terms of paragraph (d) shall become the final allocation of such seats to the various parties, and if such a recalculation is required, the provisional allocation of such seats, as adjusted in terms of sections 15 and 16, shall become the final allocation of such seats to the various parties.

15. (1) If a party gained no allocation of seats in terms of section 10(b), but the party gained a provisional seat in respect of the seats referred to in section 10(a), then the provisional allocation of seats in terms of section 10(a) will become the final allocation of seats for such party, and if a recalculation is required in terms of section 16, the adjusted allocation will become the final allocation.

(2) If a seat is allocated to a party in terms of subsection (1), then the determination of seats in terms of section 10(b) will be recalculated as follows –

- (a) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally on national ballot papers, minus the votes cast for a party referred to in subsection (1), by the total number of seats in the National Assembly minus the seats awarded in terms of subsection (1), and the result plus one, disregarding fractions, shall be the quota of votes per seat;

- (b) The number of seats to be awarded to a party for the purposes of paragraph (d) must, subject to paragraph (c), be determined by dividing the total number of votes cast nationally on national ballot papers in favour of each party, excluding those awarded seats in terms of subsection (1), by the quota of votes per seat determined in terms of paragraph (a);
- (c) Where the result of the recalculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats not awarded in terms of paragraph (b) shall be awarded to the party or parties concerned in sequence of the highest surplus; and
- (d) The aggregate of a participating party's awards in terms of paragraphs (b) and (c) shall be reduced by the number of seats provisionally allocated to it in terms of section 13(f) and the results shall indicate that party's provisional allocation of the seats in terms of section 10(b).

(3) If no recalculation of provisional allocations is required in terms of section 16 in respect of the seats referred to in section 10(b), the provisional allocation of such seats in terms of paragraph (d) shall become the final allocation of such seats to the various parties, and if such a recalculation is required, the provisional allocation of such seats, as adjusted in terms of section 16, shall become the final allocation of such seats to the various parties.

(4) If a party forfeits a seat in terms of section 16(1) which was allocated to it in terms of section 15(1), then the seats provisionally allocated to other parties in terms of section 10(b) must be recalculated in terms of sections 16(2) and (3), taking such forfeiture into account.

16. (1) If a party has submitted a national or a constituency list containing fewer names than the number of its provisional allocation of seats which

would have been filled from such list in terms of section 17 had such provisional allocation been the final allocation, it shall forfeit a number of seats equal to the deficit.

(2) In the event of any forfeiture of seats in terms of subsection (1) affecting the provisional allocation of seats in respect of any particular constituency in terms of section 13(e), such allocation shall be recalculated as follows –

- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of section 13(e) for the constituency in question, minus the number of seats forfeited by it in respect of its list for such constituency, shall become its final allocation in respect of the seats reserved for such constituency in terms of section 10(a);
- (b) An amended quota of votes per seat shall be determined in respect of such constituency by dividing the total number of votes cast in the constituency, minus the number of votes cast in such constituency in favour of the party referred to in paragraph (a), by the number of seats reserved for such constituency under section 10(a), minus the number of seats finally allocated to the said party in terms of paragraph (a);
- (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such constituency for purposes of the said calculation;
- (d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such constituency to a party participating in the recalculation shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such constituency by the amended quota of votes per seat indicated by paragraph (c) for such constituency;

- (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation in respect of the said constituency, and any seat or seats in respect of such constituency not awarded in terms of paragraph (d) shall be awarded to the party or parties concerned in sequence of the highest surplus; and
 - (f) The aggregate of a party's awards in terms of paragraphs (d) and (e) in respect of such constituency shall, subject to subsection (4), indicate that party's final allocation of the seats reserved under section 10(a) for that constituency.
- (3) In the event of any forfeiture of seats in terms of subsection (1) affecting the provisional allocation of seats in terms of section 14(d), such allocation shall be recalculated as follows –
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of section 14(d), minus the number of such seats forfeited by it, shall become its final allocation of the seats referred to in section 10(b);
 - (b) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party referred to in paragraph (a), by the number of seats in the National Assembly, minus the number of seats finally allocated to the said party in terms of paragraph (a);
 - (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat for the purposes of the said recalculation;

- (d) The number of seats to be awarded for the purposes of paragraph (f) to a party participating in the recalculation shall, subject to paragraph (e), be determined by dividing the total number of votes cast nationally in favour of such party by the amended quota of votes per seat indicated by paragraph (c);
- (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus; and
- (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) shall be reduced by the number of seats finally allocated to it in terms of section 13(g), and the result shall, subject to subsection (4), indicate that party's final allocation of the seats referred to in section 10(b).

(4) In the event of a party being allocated an additional number of seats in terms of this section, and its list in question then does not contain the names of a sufficient number of candidates as set out in subsection (1), the procedure provided for in this section shall *mutatis mutandis* be repeated until all seats have been allocated.

17. (1) Where a party submitted both a national list and constituency lists, the seats finally allocated to it –
- (a) in terms of section 13(g), shall be filled from its constituency lists in accordance with its final allocation of seats in respect of the various constituencies; and
 - (b) in terms of section 14(e), shall be filled from its national list in accordance with its final allocation of seats in terms of that section.

- (2) A seat finally allocated to a party in respect of a constituency, shall, for the purposes of subsection (1)(a), be filled only from such party's list for that particular constituency.

CHAPTER 6 ELECTION OF PROVINCIAL LEGISLATURES

Number of seats for election of provincial legislatures

18. The seats for each provincial legislature as determined in terms of Schedule 3 of the Electoral Act will be filled as follows –

- (a) Two-thirds of the seats, disregarding fractions, from constituency lists submitted by the respective parties, with a fixed number of seats reserved for each constituency as determined by the Municipal Demarcation Board for the next election of a provincial legislature; and
- (b) The remainder of seats from provincial lists submitted by the respective parties.

Demarcation of constituencies

19. The following arrangements must apply in respect of constituencies for the election of provincial legislatures –

- (a) the same number of constituencies within a particular province as for the election of the National Assembly as determined in terms of Chapters 3 and 4;
- (b) the same constituency boundaries within a particular province as determined in terms of Chapters 3 and 4; and
- (c) the number of seats allocated to a constituency as determined in section 20.

20. The quota to determine the number of seats in each constituency within a province for purposes of an election of that provincial legislature must be determined by dividing the total number of registered voters in the province concerned with the number of seats referred to in section 18(a), and the result plus one, disregarding fractions, determines the quota.

21. (1) The number of seats in each constituency within a province for purposes of an election of that provincial legislature must be determined by dividing the total number of registered voters in a particular constituency with the quota determined in section 20.

(2) Where the result of the calculation in subsection (1) yields a surplus not absorbed by the number of seats reserved for constituencies, such surplus shall compete with other similar surpluses accruing to any other constituency, and any seat or seats not awarded in terms of subsection (1) shall be awarded to the constituencies concerned in sequence of the highest surplus, and such allocation will be the final allocation of seats to constituencies.

(3) If the surplus referred to in subsection (2) for two or more constituencies is equal, the seat must be awarded to the constituency that has the most registered voters.

22. If the calculation in section 21 results in a constituency receiving fewer than three seats or more than seven seats, that result must be the number of seats allocated to that constituency.

23. Parties registered in terms of the Electoral Commission Act and contesting an election of a provincial legislature shall nominate candidates for an election of a provincial legislature by submitting provincial lists and lists for each constituency.

24. The lists of candidates submitted by a party shall in the case of –

(a) a constituency list, contain the names of not more than the number of candidates to be elected in each constituency plus two candidates;
and

- (b) a provincial list, the names of not more than the number of seats to be allocated from such provincial list.

25. The provisions of Chapter 5 of this Act, with the exclusion of sections 10 and 11, must *mutatis mutandis* apply to the election of provincial legislatures, and any reference in that chapter to national or nationally must be construed to be a reference to provincial or provincially, and any reference to a national list must be construed to be a reference to a provincial list.

CHAPTER 7 GENERAL PROVISIONS

Ballot papers

26. There shall be separate ballot papers for the election of members –
- (a) of each constituency for the election of the National Assembly;
 - (b) of each constituency for the election of a provincial legislature;
 - (c) for the overall composition of the National Assembly and this must be referred to as the national ballot paper; and
 - (d) for the overall composition of each of the provincial legislatures and this must be referred to as the provincial ballot paper.

Designation of representatives

27. (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election results have been declared in terms of section 190 of the Constitution, the Commission shall, within two days after such declaration, designate from each list of candidates, published in terms of the Electoral Act, the representatives of each party elected in the legislatures.

(2) Following the designation in terms of subsection (1), if a candidate's name appears on more than one list for the National Assembly or on more than one list for a provincial legislature or on more than one list for a constituency or on lists for both the National Assembly and a provincial legislature (if elections of the National Assembly and a provincial legislature are held at the same time), and such candidate is due for designation as a representative in more than one case, the party which submitted such lists shall, within two days after the said designation, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate will serve, as the case may be, in which event the candidate's name shall be deleted from the other lists, and the next name that appears on such list shall move upwards on such list.

(3) The Commission shall forthwith publish the list of names of representatives in the legislature or legislatures.

Supplementation of lists of candidates

28. No lists of candidates of a party for any legislature shall be supplemented prior to the designation of representatives in terms of section 27.

29. Lists of candidates may, after the designation of representatives in terms of section 27 has been concluded, be supplemented by the addition of an equal number of names at the end of the applicable lists, if –

- (a) a representative is elected as the President or to any other executive office as a result of which he or she resigns as a representative in a legislature;
- (b) a representative is appointed as a permanent delegate to the National Council of Provinces;
- (c) a name is deleted from a list in terms of section 27; or
- (d) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted.

30. Lists of candidates of a party referred to in section 29 may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of section 27 has been concluded, in order to fill casual vacancies: Provided that any such supplementation shall be made at the end of the list.

31. The number of names on lists of candidates as supplemented in terms of section 30 shall not exceed the difference between the number of seats in the National Assembly or a provincial legislature, as the case may be, and the number of representatives of a party in any such legislature.

Review of lists of candidates by a party

32. A party may review its undepleted lists, as supplemented in terms of sections 29, 30 and 31, within seven days after the expiry of the period referred to in section 30, and quarterly thereafter, until the date on which a party has to submit lists of candidates for an ensuing election, in the following manner-

- (a) all vacancies may be supplemented;
- (b) no more than 25 per cent of candidates may be replaced; and
- (c) the fixed order of lists may be changed.

Publication of supplemented and reviewed lists of candidates

33. Candidates' lists supplemented in terms of sections 29, 30 and 31 or reviewed in terms of section 32 shall be published by the Secretary to Parliament and the Secretaries of the provincial legislatures within 10 days after the receipt of such lists from the parties concerned.

Vacancies

34. (1) In the event of a vacancy in a legislature to which this chapter applies, the party which nominated the vacating member shall fill the vacancy by nominating a person –

- (a) whose name appears on the list of candidates from which the vacating member was originally nominated; and
 - (b) who is the next qualified and available person on the list.
- (2) A nomination to fill a vacancy shall be submitted to the Speaker in writing.
- (3) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of section 32(a), the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of sections 16.

Additional grounds for loss of membership

35. (1) A person loses membership of a legislature to which this chapter applies if that person ceases to be a member of the party which nominated that person as a member of the legislature, unless provided otherwise in the Constitution or an Act of Parliament.
- (2) Despite subsection (1), any existing political party may at any time change its name.

Gender representation

36. (1) Each party must seek to ensure that at least thirty-three per cent of the candidates nominated are women –
- (a) on the combined constituency lists for the election of the National Assembly;
 - (b) on the combined constituency lists for each provincial legislature;
 - (c) on the national list; and
 - (d) on each provincial list.

- (2) Each party must seek to ensure that women candidates are as evenly distributed as possible on a national list or a provincial list.

CHAPTER 8 TRANSITIONAL ARRANGEMENTS

Suspensions

37. The provisions of Chapters 3 and 4 as well as sections 10 and 27(1) of this Act are suspended in respect of the first election of the National Assembly after the coming into operation of this Act.

38. The provisions of Chapters 5 and 6 as well as section 27(2) of this Act are suspended in respect of the first election of a provincial legislature after the coming into operation of this Act.

39. The provisions of section 34 are suspended until the first election of the National Assembly and provincial legislatures after the coming into operation of this Act.

Election of the National Assembly

40. For the first election after the coming into operation of this Act, there will for the National Assembly be nine constituencies and each constituency will consist of the territorial area of a province.

41. The seats in the National Assembly as determined in terms of Schedule 3 of the Electoral Act shall be filled as follows –

- (a) One half of the seats from constituency lists submitted by the respective parties, with a fixed number of seats reserved for each constituency as determined by the Commission for the next election of the Assembly, taking into account available data in respect of registered voters; and
- (b) The other half of the seats from national lists submitted by the parties.

42. One national ballot paper must be used in order to fill the seats referred to in sections 41(a) and (b) in the following way:

- (a) The number of seats to be awarded in terms of paragraph 41(a) in respect of each constituency to a party shall be determined by the number of votes cast in that constituency on the national ballot paper;
- (b) The number of seats to be awarded in terms of paragraph 41 (b) to a party shall be determined by the total number of votes cast in all constituencies on the national ballot paper; and
- (c) The procedures provided in sections 13, 14, 15 and 16 shall in all other respects *mutatis mutandis* apply to the allocation of seats in terms of sections 41(a) and 41(b).

Election of provincial legislatures

43. The number of seats in each provincial legislature shall be as determined in terms of Schedule 3 of the Electoral Act.

44. Parties registered in terms of national legislation and contesting an election of a provincial legislature shall nominate candidates for election to such provincial legislature on provincial lists prepared in accordance with this Schedule and national legislation.

45. Each party shall be entitled to submit only one list per province, which shall contain names not exceeding in number the number of seats determined under section 43 for the relevant provincial legislature and in such fixed order of preference as the party may determine.

46. The seats determined for a provincial legislature shall be allocated to parties contesting an election, as follows –

- (a) A quota of votes per seat shall be determined by dividing the total number of votes cast in the province concerned by the number of seats, plus one, determined for such province and the result plus one,

disregarding fractions, shall be the quota of votes per seat for such province;

- (b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast in the province in favour of such party by the quota of votes per seat determined in terms of paragraph (a);
 - (c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the province concerned, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus;
 - (d) The aggregate of a party's awards in terms of paragraphs (b) and (c) shall indicate that party's provisional allocation of seats in the provincial legislature in question; and
 - (e) If no recalculation of provisional allocations for a province concerned is required in terms of section 47, the provisional allocation of seats in respect of that province in terms of paragraph (d) shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats as adjusted in terms of section 47 shall become the final allocation of such seats to the various parties.
47. (1) If a party has submitted a provincial list containing fewer names than the number of seats provisionally allocated to it in terms of section 46(d), it shall forfeit a number of seats equal to the deficit.
- (2) In the event of any forfeiture of seats in terms of subsection (1), the allocation of seats in respect of the province concerned shall be recalculated as follows –

- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of section 46(d), minus the number of seats forfeited by it in respect of its list for such province, shall become its final allocation of seats in the provincial legislature concerned;
- (b) An amended quota of votes per seat shall be determined in respect of such province by dividing the total number of votes cast in the province, minus the number of votes cast in the province in favour of the party referred to in paragraph (a), by the number of seats, determined in terms of section 43 in respect of the province concerned, minus the number of seats finally allocated to the said party in terms of paragraph (a);
- (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such province for purposes of the said recalculation;
- (d) The number of seats to be awarded for the purposes of paragraph (f) shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such province by the amended quota of votes per seat indicated by paragraph (c) for such province;
- (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats in respect of such province not awarded in terms of paragraph (d) shall be awarded to the party or parties concerned in sequence of the highest surplus; and
- (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) in respect of such province shall, subject to subsection (3), indicate that party's final allocation of the seats determined under section 43 in respect of that province.

(3) In the event of a party being allocated an additional number of seats in terms of this section, and its list in question then not containing the names of a sufficient number of candidates as set out in subsection (1), the process provided for in this section shall *mutatis mutandis* be repeated until all seats have been allocated.

Vacancies

48. Until the first elections for the National Assembly and provincial legislatures take place after the coming into operation of this Act, vacancies in the respective legislatures will be filled in terms of Schedule 2 of the interim Constitution as amended by items 6(3)(c) and 11(1)(c) of Schedule 6 of the Constitution.

CHAPTER FIVE

Minority recommendations for a preferred electoral system for South Africa

INTRODUCTION

5.1 The 1994 national and provincial elections were held under an electoral system prescribed by the 1993 Interim Constitution. In line with the new (1996) Constitution, the 1999 national and provincial elections were held under the same electoral system. Subsequent elections have to be held according to an electoral system prescribed in national legislation. The Electoral Task Team (ETT) was mandated to draft this legislation. Towards this end, we were required to: –

- consult with stakeholders, including political parties;
- draft a bill in accordance with public inputs, including, first of all, the input of political parties as the elected representatives of the people;
- identify the salient and relevant aspects of the South African context that pertain to the electoral system;
- note that the electoral system described in the bill need not be different from the existing one but that this will depend on the inputs received and the assessment of the overall interests of consolidation of democracy in our country; and
- note that its brief was not to change or amend the Constitution, but to propose, in the bill, a system within those guidelines of the Constitution relevant to an electoral system.

5.2 Two schools of thought emerged as our deliberations progressed. One was that the present system should be retained. The other was that a multi-member constituency system with overall proportionality being restored from national closed lists should be introduced. The latter proposal was at first based on over 40 such constituencies that would be demarcated on the basis of the existing district municipal boundaries. The supporters of this proposal saw it evolving into a fully integrated mixed constituency/national lists system

based on open constituency lists. The system would, according to the proposal, be implemented incrementally by some body other than Parliament, e.g. the Electoral Commission or the Parliamentary Constitutional Review Committee. Finally the majority proposal emerged as set out in Chapter 4. We do not agree with this proposal and propose the retention of the 1994/1999 electoral system (the present system).

The relevant constitutional provisions

5.3 The ETT had to formulate its proposals within the current constitutional framework. The following provisions of the Constitution of the Republic of South Africa, 1996, are relevant:

- **Chapter 1 – Founding Provisions**

Section 1 (d) which states that South Africa is a sovereign, democratic state founded on a set of values that include the following: “*Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness*”.

- **Chapter 2 – Bill of Rights**

Section 19 which emphasizes that every citizen is free to make political choices which include the right to form a political party, to participate in the activities of, or recruit members for, a political party, and to campaign for a political party or cause. Furthermore, that every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution; to vote in elections for any legislative body established in terms of the Constitution and to do so in secret; as well as to stand for public office and, if elected, to hold public office.

- **Chapter 4 – Parliament**

Section 46(1) stipulates that the National Assembly consists of no fewer than 350 and no more than 400 women and men elected as members in terms of an electoral system that is prescribed by national legislation; is based on the national common voters roll; provides for a minimum voting age of 18 years; and results, in general, in proportional representation.

- **Chapter 6 – Provinces**

Section 105 specifies that a provincial legislature consists of women and men elected as members in terms of an electoral system that is prescribed by national legislation; is based on that province's segment of the national common voters roll; provides for a minimum voting age of 18 years; and results, in general, in proportional representation.

THE CONSULTATIVE PROCESS

5.4 The consultative process followed by the ETT, is described elsewhere in this report. A summary of the spectrum of views expressed at the Round Table Conference appears in the annexures to this report. So does the survey report. The political parties represented in Parliament were individually consulted before, and again after, the Conference was held and the survey report had become available. The final positions adopted by the parties are as follows:

- Six parties with 307 representatives in the National Assembly wanted the present system to be retained.
- Three parties with 74 representatives in the National Assembly wanted some kind of multimember constituency system with overall proportionality being restored by way of national party lists.
- Two parties with 17 representatives in the National Assembly did not express firm preferences.
- One party with one representative in the National Assembly wanted single member constituencies with overall proportionality being restored by way of national party lists.
- One party with one member in the National Assembly did not respond to invitations to meet with the ETT or submit its views.

5.5 Amongst other things, our terms of reference require us to "... draft a bill in accordance with public inputs, including first of all the input of political parties as the elected representatives of the people ...". It is clear that our report must take these views into account. By implication, there has to be adequate motivation for the task team to adopt an approach that is different from that of

the political parties and the public in general. This is especially so in view of the fact that the majority views, reflected below, are consistent with the consolidation of democracy.

- 5.6 The above numbers confirm that six political parties representing a large majority of voters in Parliament are in favour of retaining the present system. They are of the view that the system remains appropriate during this transitional period of our new democracy, being the period of reconciliation, nation building and the pursuit of peace. They conclude that it would be reasonable to review the system at a point where the country is more homogeneous. We are not convinced that the motivation for changing the current system advanced in Chapter 4, justifies a departure from it.
- 5.7 The carrying out of the survey referred to earlier, broadly meets our task of eliciting public inputs on the electoral model, as required by our terms of reference. The survey reflects that the majority of the public prefers the current system. They also express a desire for more contact with public representatives. The two reflections are not mutually exclusive. The latter indicates a need for more visibility and proximity by public representatives. This can be achieved effectively by other means rather than tinkering with the electoral model. These would include, amongst others, the strengthening of the constituency offices and improving the accessibility of MP's through the use of modern technology.

REASONS FOR OUR PROPOSAL

- 5.8 Having considered a variety of electoral models and also having had the benefit of the papers and discussions of the Round Table Conference, the survey report, the historical background of the present system and particularly the views of the political parties, being the representatives of the people, we propose the retention of the present system, unchanged. The present system provides for 350 to 400 seats in the National Assembly to be filled in an election where voters vote for a party; the party is allocated a number of seats proportional to the percentage of the total number of votes attracted by the party; the seats are filled from nine regional lists of candidates, topped up, if necessary, from a national list of candidates. For provincial legislatures the current system is similar to the one for the National Assembly, except that there is only one list of candidates per party.

- 5.9 The present system was agreed upon in 1993 as the most appropriate one to take South Africa through the transition from an oppressive and divisive form of government into a true democracy. Representatives from the whole spectrum of South Africa's politically, socially, racially, ethnically and religiously divided society agreed on this system. They saw it as supporting reconciliation, nation building, the pursuit of peace and stability and the radical social and political reforms that had to be undertaken in the course of this process.
- 5.10 Again in 1996, the Constitutional Assembly confirmed the present system as the one that will take us forward on this road. The Constitutional Assembly did so after having embarked on perhaps one of the most transparent, consultative and publicly debated constitution-making processes the world has ever seen. The Constitutional Assembly itself could not have been more representative of all South Africa's varied groupings, having been elected under this very system that provided for the maximum possible inclusivity.
- 5.11 Parties in Parliament that represent 76,75% of voters told the ETT that reconciliation, nation building and the pursuit of peace and stability were still far from being achieved especially in respect of racial and ethnic divides as well as gender equality and equity. They say that the present electoral system will still be needed for the foreseeable future to support the attainment of these ideals.
- 5.12 The political parties confirmed that the current system, again given the South African context, facilitates the representation of women in our legislatures.
- 5.13 We took into account the degree of public acceptance that the present system enjoys and the protection it provides for small parties (or groupings), that are so necessary for stability, given our context.
- 5.14 The ETT identified four values or principles that an electoral system for South Africa should comply with. These do not constitute an exclusive list of values, but we agreed that they were core values/principles. The current system can be evaluated against them as follows:

- Fairness

Every eligible voter should not only have the opportunity to vote, but all votes, as far as possible, should be of equal value. Every vote should have some relevance in the composition of the National Assembly and provincial legislatures. The current system is fully proportional. It therefore represents the ultimate in fairness and thereby promotes the value of universal adult suffrage.

- Inclusivity

Particularly with regard to the “...*relevant and salient features of the South African context...*” in our terms of reference, inclusivity in our electoral system is of paramount importance. An electoral system that promotes exclusion, could be a source of political instability and conflict. Given the demographic, ethnic, racial and religious diversity of the South African society, our electoral system should allow the widest possible degree of participation of different political preferences in representative legislatures. The current system, where even the smallest party can gain representation if it musters enough votes for a single seat, provides the ultimate in inclusivity.

- Simplicity

An electoral system that is complex, given the South African context, would negatively impact on its fairness and inclusivity. The system has to be accessible and easy for voters to participate in. It should also be the same for political parties so as to enhance a multi-party system of democratic government. The present system is simple enough to meet these criteria.

- Accountability

How do those who give a mandate through the vote, call to account those who are supposed to perform in terms thereof? As far as an electoral system is concerned, the answer is: at the next election. At regular intervals the voters can either revoke or renew the mandate they gave to a political party or a candidate. At regular intervals the voters can decide who they want to represent them in the government of the country, or who they want to represent them in an opposition party. The certainty of regular elections also impacts on the behaviour of representatives between elections. They know

that how they act now, has an influence on whether they will again be nominated for, or elected at, the next election. It also impacts similarly on political parties.

- 5.15 All those with whom the ETT interacted, agreed that an electoral system cannot, itself, guarantee accountability between elections. During these periods, the responsibility rests mainly on political parties themselves. The ETT was given an insight into what parties are doing to enhance accountability, openness and responsiveness on the part of their members in Parliament between elections; and on how they plan to improve. The ETT was also told what Parliament itself is doing to encourage and assist members to regularly report back to voters. Practical proposals on this were introduced at the conference and in submissions made to the ETT. Our present electoral system also scores very high on accountability.
- 5.16 We also note that our Constitution contains no less than 42 provisions dealing with transparency and accountability on the part, not only of the legislators, but also of the three spheres of government.

CRITIQUE OF PROPOSALS IN CHAPTER 4

- 5.17 The obvious and overriding reasons why we cannot support the electoral system proposed in Chapter 4, are the following:-
- (a) The very strong case made out for the retention of the present system in submissions to the ETT and at the conference.
 - (b) Our own conviction that the retention of the present system is essential to support reconciliation, nation building, peace, stability and good governance.
 - (c) Nothing has been said on why the present system should not be retained. What are the evils that will befall our country if we do so?
- 5.18 As for the proposed system itself, and the motivation given for it in Chapter 4, we record the following comment:
- 5.18.1 Constituencies for a national legislature cannot rationally or logically be demarcated on the basis of existing local government boundaries. If Parliament decides that a constituency system should be introduced, the

whole of the country (or province) should, in a once-off exercise, be demarcated on the basis of criteria to identify the communality of national interests and the size of an area to form a constituency. The majority are proposing that the Municipal Demarcation Board should delimit constituencies for the National Assembly and for provincial legislatures. This highlights a dichotomy in their proposals.

5.18.2 The proposed system will negatively affect simplicity. Even the smallest party will have to submit 70 party lists if it wished to participate in a national election and twice that number if it also wants to participate in the nine provincial elections. For the five years between elections these lists will have to be maintained and regularly adjusted for the filling of vacancies. All the lists (and their accompanying documents like copies of ID's and acceptance forms signed by candidates) must be centrally lodged and checked in respect of numbers and eligibility of candidates. Parties will also centrally scrutinise lists and supporting documents of other parties and raise objections if they wish to do so. In the determination of the results votes will have to be counted in 69 "constituencies" (138 if one includes provincial constituencies) plus nationally and provincially. In the determination of the results a quota will have to be determined, a formula applied, seats allocated and candidates to fill those seats identified in each of them. The monitoring of this process by parties become infinitely more difficult, and this will impact negatively on the credibility of the elections and the acceptance of the results by parties. There are a whole range of other complications with voter education (eg explaining to voters which lists they are voting for at any particular voting station) not being the least of them. We obviously cannot agree with the majority's evaluation of the element of simplicity in paragraph 4.5.3.2 of Chapter 4.

5.18.3 The proposed system will thus make electoral administration and party participation in elections much more complicated without bringing the representational benefits of a properly demarcated and regulated constituency system where representatives are elected from the constituency for the constituency. All these disadvantages cannot be justified by the introduction of a system which is merely said to be "*a step in the right direction*".

- 5.18.4 In paragraph 4.5.3.2.1 of Chapter 4 it is also said that the majority “*does not accept that costs will increase to any significant degree under the suggested new system*”. An experienced professional in the management and costing of elections has estimated that the introduction of the proposed system will increase management costs by about R25 million per election. We do not regard this as insignificant. The costs for participating parties will obviously also increase considerably.
- 5.18.5 The proposed system will introduce distortions into the form of state that South Africa settled on in 1993 and 1996. In other words it will adversely impact on the status of provinces as they were conceived in 1993 and 1996.
- 5.18.6 The proposal confuses boundaries agreed upon for governmental purposes with boundaries meant for electoral / representational purposes.
- 5.18.7 The proposal does not enhance accountability between elections.
- 5.18.8 It will blur the distinction between the national/provincial/local issues that an election ought to focus on.
- 5.18.9 The proposal will water down the ability of parties to have more representative lists because of the constituency element. In other words parties will only be able to try to balance their representation from the narrower top-up list.
- 5.18.10.1 The proponents of the proposed multi-member constituency electoral model include, as one of the factors that support the model, the fact that smaller constituencies would not be a new phenomenon in South Africa. According to them the nine provinces are in fact large multi-member constituencies. Therefore, they argue, introducing smaller multi-member constituencies would not change the present system but would simply be an improvement on an existing system.
- 5.18.10.2 To the extent that this approach suggests that provinces were established for purposes of implementing the current electoral system, it is flawed. It is common cause that provinces reflect the

agreement on a form of state for South Africa. This was a culmination of compromises by political groupings that had views ranging from unitary, confederal to federalist systems of governance. Some sought to reduce the country into several smaller regions.

5.18.10.3 Also, technically and academically, provinces cannot be classified as multi-member constituencies merely because provincial lists are used in elections for the National Assembly. Had they been constituencies:

- A fixed number of members would have been elected from provincial lists; and they are not.
- Provincial voters would have voted for those members on a separate ballot paper; and they don't.
- Candidates would have been elected from the provinces to represent those provinces in the National Assembly; and they are not. Provinces are directly represented in Parliament in the National Council of Provinces.

5.18.10.4 Perhaps the majority's presentation of provinces as constituencies to a certain extent stems from a misunderstanding of how lists are compiled under the current system. They argued that under the current system, each party has to compile nine constituency / regional lists which together contain no more than 200 names, as well as a national list containing no more than 200 names. This is factually incorrect. Items 3 and 4 of schedule 2 of the 1993 Constitution (which regulates the current system) provides that a party must submit –

- (a) both a national list and a list for each region; or
- (b) a list for each region,

and that the total number of names on the lists should not be more than 400.

5.18.10.5 Parties are at liberty to submit only regional (provincial) lists. They do not have to submit a compensatory national list. If a party submits only regional lists all the seats it is voted are filled

from the regional lists. The majority's fundamental point of departure as set out in paragraph 4.5.1 of Chapter 4 is thus elementally flawed.

5.18.10.6 The truth is that provinces were not designed as multi-member constituencies, they are not multi-member constituencies and they were never presented to the electorate in that manner. We therefore do not agree that the introduction of smaller multi-member constituencies for the purpose of elections would not be a new phenomenon for our country. It will be.

5.18.10.7 As far as provincial legislatures are concerned, there is of course no question about the proposed system being a totally new one.

5.18.11 We do not believe that at this stage of our transition, South Africa should promote national political contestation on a regional basis. This would compromise nation building and racial and ethnic harmony. In any event Parliament deals with national issues and policies. Other matters are appropriately handled at provincial and local government level. Accordingly, there is no need to cater for regional interests specifically in the manner envisaged by the proposals in Chapter 4.

5.18.12 Some of the proponents of the system proposed in Chapter 4 are simply satisfied by the fact that it is "evolutionary". Others see an ideal system being one where the party lists are open and the electorate can decide which candidates on the lists should represent them. These suggest that by adopting legislation to implement the new system Parliament would allow itself space to evolve the system until an ideal one is achieved. We believe that Parliament as it is composed at any given time in the future, will be best able to decide if and when the present system should be replaced by another one, taking into account the status of transition in our country. There is therefore no need for Parliament to bind itself at this time as to how it should conduct itself in the future.

PROPOSED BILL

5.19 A proposed draft bill reflecting our views appears in the annexure to this chapter. Its provisions are based on our conclusion that the present electoral

system should be retained in its entirety. Furthermore we recommend that the electoral system should be prescribed in the Constitution itself (as it now is) and not in an Act of Parliament and that the National Assembly should have 400 members. Purely technical improvements to the draft bill can be discussed later, when and if necessary.

CONCLUSION

- 5.20 The present electoral system was introduced, primarily, to ensure the promotion of political diversity within our legislatures, and broad political representation. These are not short-term goals which can be attained overnight.
- 5.21 These goals are the cornerstone of our transition to a truly integrated, non-racial and peaceful society. The deracialisation of our political landscape, also, is still a critical challenge. We therefore must stick to the tried and tested electoral system. We cannot afford to experiment at this critical stage with a system whose form, worth and implications have not been thoroughly thought through, debated, evaluated and publicly interrogated.
- 5.22 We must also state that there is no ideal, universal electoral system. Every system has its advantages and disadvantages. In South Africa we have a system that our electorate has bought into, that cannot be improved on for fairness and inclusivity and which meets our current challenges as a country.
- 5.23 Finally, the proposals contained herein are in line with our terms of reference, particularly the one which urges us to “note that the electoral system described in the bill need not be different from the existing one but that this will depend on inputs received and the assessment of the overall interests of consolidation of democracy in our country”.

Members subscribing to the above views:

Zam Titus

Tefo Raditapole

Pansy Tlakula

Fanie van der Merwe

ANNEXURE TO CHAPTER 5

DRAFT BILL

To amend the Constitution of the Republic of South Africa, 1996, in order to provide for an electoral system for the National Assembly and for the provincial legislatures.

PREAMBLE

WHEREAS the first elections for the National Assembly and the provincial legislatures under the Constitution of the Republic of South Africa, 1996, were held in terms of transitional arrangements providing an electoral system for those elections only;

AND WHEREAS an electoral system must be provided for future elections for the National Assembly and the provincial legislatures,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa as follows :-

Substitution of section 46 of Act 108 of 1996

1. The following section is hereby substituted for section 46 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution) :

“46. [(1)] The National Assembly consists of [no fewer than 350 and no more than] 400 women and men elected as members in terms of [an] the electoral system set out in Schedule 8 and national electoral legislation that –

- (a) [is prescribed by national legislation;] is based on the national common voters roll; and
- (b) provides for a minimum voting age of 18 years.

[(c)

(d) results in general in proportional representation.

(2) An Act of Parliament must provide a formula for determining the number of members of the National Assembly.]”

Amendment of section 47 of Act 108 of 1996

2. Section 47 of the Constitution is hereby amended by the deletion of subsection (4) thereof :

[(4) Vacancies in the National Assembly must be filled in terms of national legislation.]

Amendment of section 105 of Act 108 of 1996

3. Section 105 of Act 108 of 1996 is hereby amended by the substitution of the following subsection for subsection (1) thereof :

“(1) A provincial legislature consists of women and men elected as members in terms of [an] the electoral system set out in Schedule 8 and national electoral legislation that –

(a) [is prescribed by national legislation;] is based on that province’s segment of the national common voters roll; and

(b) provides for a minimum voting age of 18 years [;and].

[(c)

(d) results in general in proportional representation.]”

Amendment of section 106 of Act 108 of 1996

4. Section 106 of the Constitution is hereby amended by the deletion of subsection (4) thereof :

[(4) Vacancies in a provincial legislature must be filled in terms of national legislation.]

Insertion of Schedule 8 in Act 108 of 1996

5. The following Schedule is hereby inserted into the Constitution :

Schedule 8

ELECTORAL SYSTEM FOR NATIONAL ASSEMBLY AND PROVINCIAL LEGISLATURES

Election of National Assembly

1. Parties registered in terms of national legislation and contesting an election of the National Assembly, shall nominate candidates for such election on lists of candidates prepared in accordance with this Schedule and national legislation.
2. The seats in the National Assembly shall be filled as follows:
 - (a) One half of the seats from regional lists submitted by the respective parties, with a fixed number of seats reserved for each region as determined by the Commission for every election of the Assembly, taking into account available scientifically based data in respect of voters, and representations by interested parties.
 - (b) The other half of the seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted.
3. The lists of candidates submitted by a party, shall in total contain the names of not more than a number of candidates equal to the number of seats in the National Assembly, and each such list shall denote such names in such fixed order of preference as the party may determine.
4. A Party's lists of candidates shall consist of –
 - (a) both a national list and a list for each region; or
 - (b) a list for each region,with such number of names on each list as the party may determine subject to item 3.
5. The seats referred to in item 2(a) shall be allocated per region to the parties contesting an election, as follows:

- (a) A quota of votes per seat shall be determined in respect of each region by dividing the total number of votes allocated per region to the parties contesting an election, as follows:
 - (b) The result plus one, disregarding fractions, shall be the quota of votes per seat in respect of a particular region.
 - (c) The number of seats to be awarded for the purposes of paragraph (e) in respect of such region to a party, shall, subject to paragraph (d), be determined by dividing the total number of votes cast in favour of such party in a region by the quota of votes per seat indicated by paragraph (b) for that region.
 - (d) Where the result of the calculation referred to in paragraph (c) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the relevant region, and any seat or seats in respect of that region not awarded in terms of paragraph (c), shall be awarded to the party or parties concerned in sequence of the highest surplus.
 - (e) The aggregate of a party's awards in terms of paragraphs (c) and (d) in respect of a particular region shall indicate that party's provisional allocation of the seats reserved under item 2 (a) for that region.
 - (f) The aggregate of a party's provisional allocations for the various regions in terms of paragraph (e), shall indicate its provisional allocation of the seats referred on in item 2 (a).
 - (g) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 (a), the provisional allocation of such seats in terms of paragraphs (e) and (f) shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats, as adjusted in terms of item 7, shall become the final allocation of such seats to the various parties.
6. The seats referred to in item 2 (b) shall be allocated to the parties contesting an election, as follows:
- (a) A quota of votes per seat shall be determined by dividing the total number of votes cast nationally by the number of seats in the National Assembly, plus one, and the result plus one, disregarding fractions, shall be the quota of votes per seat.

- (b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast nationally in favour of such party by the quota of votes per seat determined in terms of paragraph (a).
 - (c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats so awarded: Provided that subsequent awards of seats still remaining unawarded shall be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph (b) and this paragraph.
 - (d) The aggregate of a party's awards in terms of paragraphs (b) and (c) shall be reduced by the number of seats provisionally allocated to it in terms of item 5 (f) and the result shall indicate that party's provisional allocation of the seats referred to in item 2 (b).
 - (e) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 (b), the provisional allocation of such seats in terms of paragraph (d) shall become the final allocation of such seats to the various parties, and if such a recalculation is required, the provisional allocation of such seats, as adjusted in terms of item 7, shall become the final allocation of such seats to the various parties.
7. (1) If a party has submitted a national or a regional list containing fewer names than the number of its provisional allocation of seats which would have been filled from such list in terms of item 8 or 9 had such provisional allocation been the final allocation, it shall forfeit a number of seats equal to the deficit.
- (2) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in respect of any particular region in terms of item 5 (e), such allocation shall be recalculated as follows:
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 5 (e) for the region in question, minus the number of seats

- forfeited by it in respect of its list for such region, shall become its final allocation in respect of the seats reserved for such region in terms of item 2 (a).
- (b) An amended quota of votes per seat shall be determined in respect of such region by dividing the total number of votes cast in the region, minus the number of votes cast in such region in favour of the party referred to in paragraph (a), by the number of seats, plus one, reserved for such region under item 2 (a), minus the number of seats finally allocated to the said party in terms of paragraph (a).
 - (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such region for purposes of the said recalculation.
 - (d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such region to a party participating in the recalculation, shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such region by the amended quota of votes per seat indicated by paragraph (c) for such region.
 - (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation in respect of the said region, and any seat or seats in respect of such region not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus.
 - (f) The aggregate of a party's awards in terms of paragraphs (d) and (e) in respect of such region shall, subject to subitem (4), indicate that party's final allocation of the seats reserved under item 2 (a) for that region.
- (3) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in terms of item 6 (d), such allocation shall be recalculated as follows:
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of

- item 6 (d), minus the number of such seats forfeited by it, shall become its final allocation of the seats referred to in item 2 (b).
- (b) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party referred to in paragraph (a), by the number of seats in the Assembly, plus one, minus the number of seats finally allocated to the said party in terms of paragraph (a).
 - (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat for the purposes of the said recalculation.
 - (d) The number of seats to be awarded for the purposes of paragraph (f) to a party participating in the recalculation shall, subject to paragraph (e), be determined by dividing the total number of votes cast nationally in favour of such party by the amended quota of votes per seat indicated by paragraph (c).
 - (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats so awarded: Provided that subsequent awards of seats still remaining unawarded shall be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph (d) and this paragraph.
 - (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) shall be reduced by the number of seats finally allocated to it in terms of item 5 (g), and the result shall, subject to subitem (4), indicate that party's final allocation of the seats referred to in item 2 (b).
- (4) In the event of a party being allocated an additional number of seats in terms of this item, and its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1),

the procedure provided for in this item shall *mutatis mutandis* be repeated until all seats have been allocated.

8. (1) Where a party submitted both a national and regional lists, the seats finally allocated to it –
 - (a) in terms of item 5 (g) shall be filled from its regional lists in accordance with its final allocation of seats in respect of the various regions; and
 - (b) in terms of item 6 (e), shall be filled from its national list in accordance with its final allocation of seats in terms of that item.
- (2) A seat finally allocated to a party in respect of a region, shall, for the purposes of subitem (1)(a), be filled only from such party's list for that particular region.
9. (1) Where a party submitted regional lists only, the seats finally allocated to it –
 - (a) in terms of item 5 (g), shall be filled from such lists in accordance with its final allocation of seats in respect of the various regions; and
 - (b) in terms of item 6 (e), shall be filled from the said lists in the same proportions as the proportions in which the seats referred to in paragraph (a) are to be filled in respect of the various regions for which the party was finally allocated seats in terms of item 5 (g) : Provided that if a party was not allocated any seats in terms of item 5 (g), the seats allocated to it in terms of item 6 (e) shall be filled from its regional lists in proportion to the number of votes received by that party in each of the regions : Provided further that surplus fractions shall be awarded to regions in sequence of the highest surplus fractions.
- (2) A seat finally allocated to a party in respect of a region, shall, for the purposes of subitem (1) (a), be filled only from such party's list for that particular region.

Election of provincial legislatures

10. The number of seats in each provincial legislature shall be as determined in terms of section 105.

11. Parties registered in terms of national legislation and contesting an election of a provincial legislature, shall nominate candidates for election to such provincial legislature on provincial lists prepared in accordance with this Schedule and national legislation.
12. Each party shall be entitled to submit only one list per province, which shall contain the names of not more than the number of seats determined under item 10 for the relevant provincial legislature and in such fixed order of preference as the party may determine.
13. The seats determined for a provincial legislature shall be allocated to parties contesting an election, as follows –
 - (a) A quota of votes per seat shall be determined by dividing the total number of votes cast in the province concerned by the number of seats, plus one, determined under item 10 for such province and the result plus one, disregarding fractions, shall be the quota of votes per seat for such province.
 - (b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast in the province in favour of such party by the quota of votes per seat determined in terms of paragraph (a).
 - (c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the province concerned, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus.
 - (d) The aggregate of a party's awards in terms of paragraphs (b) and (c), shall indicate that party's provisional allocation of seats in the provincial legislature in question.
 - (e) If no recalculation of provisional allocations for a province concerned is required in terms of item 14, the provisional allocation of seats in respect of that province in terms of paragraph (d), shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats as adjusted in terms of item 14 shall become the final allocation of such seats to the various parties.

14. (1) If a party has submitted a provincial list containing fewer names than the number of seats provisionally allocated to it in terms of item 13 (d), it shall forfeit a number of seats equal to the deficit.
- (2) In the event of any forfeiture of seats in terms of subitem (1), the allocation of seats in respect of the province concerned shall be recalculated as follows:
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 13 (d), minus the number of seats forfeited by it in respect of its list for such province, shall become its final allocation of seats in the provincial legislature concerned.
 - (b) An amended quota of votes per seat shall be determined in respect of such province by dividing the total number of votes cast in the province, minus the number of votes cast in the province in favour of the party referred to in paragraph (a), by the number of seats, plus one, determined in terms of item 10 in respect of the province concerned, minus the number of seats finally allocated to the said party in terms of paragraph (a).
 - (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such province for purposes of the said recalculation.
 - (d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such province to a party participating in the recalculation, shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such province by the amended quota of votes per seat indicated by paragraph (c) for such province.
 - (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats in respect of such province not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus.

- (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) in respect of such province shall, subject to subitem (3), indicate that party's final allocation of the seats determined under item 10 in respect of that province.
- (3) In the event of a party being allocated an additional number of seats in terms of this item, and its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1), the process provided for in this item shall *mutatis mutandis* be repeated until all seats have been allocated.

Ballot Papers

- 15. There shall be separate ballot papers for the election of members of the National Assembly and of members of the provincial legislatures.

Designation of representatives

- 16. (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election result has been declared in terms of section 190, the Commission shall, within two days after such declaration, designate from each list of candidates, published in terms of national legislation, the representatives of each party in the legislature.
- (2) Following the designation in terms of subitem (1), if a candidate's name appears on more than one list for the National Assembly or on lists for both the National Assembly and a provincial legislature (if an election of the Assembly and a provincial legislature is held at the same time), and such candidate is due for designation as a representative in more than one case, the party which submitted such lists shall, within two days after the said declaration, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate will serve, as the case may be, in which event the candidate's name shall be deleted from the other lists.
- (3) The Commission shall forthwith publish the list of names of representatives in the legislature or legislatures.

Supplementation of lists of candidates

17. No lists of candidates of a party for any legislature shall be supplemented prior to the designation of representatives in terms of item 16, save where provided for by an Act of Parliament.
18. Lists of candidates may, after the designation of representatives in terms of item 16 has been concluded, be supplemented by the addition of an equal number of names at the end of the applicable list, if –
 - (a) a representative is elected as the President or to any other executive office as a result of which he or she resigns as a representative of a legislature;
 - (b) a representative is appointed as a permanent delegate to the National Council of Provinces;
 - (c) a name is deleted from a list in terms of item 16 (2); or
 - (d) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted.
19. Lists of candidates of a party referred to in item 16 (1) may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 16 has been concluded, in order to fill casual vacancies: Provided that any such supplementation shall be made at the end of the list.
20. The number of names on lists of candidates as supplemented in terms of item 18 shall not exceed the difference between the number of seats in the National Assembly or a provincial legislature, as the case may be, and the number of representatives of a party in any such legislature.

Review of lists of candidates by a party

21. A party may review its undepleted lists as supplemented in terms of items 18, 19 and 20, within seven days after the expiry of the period referred to in item 19, and annually thereafter, until the date on which a party has to submit lists of candidates for an ensuing election, in the following manner:
 - (a) all vacancies may be supplemented;
 - (b) no more than 25 per cent of candidates may be replaced; and
 - (c) the fixed order of lists may be changed.

Publication of supplemented and reviewed lists of candidates

22. Candidates' lists supplemented in terms of items 18 and 19 or reviewed in terms of item 21 shall be published by the Secretary to Parliament and the

Secretaries of the provincial legislatures within 10 days after the receipt of such lists from the parties concerned.

Vacancies

23. (1) In the event of a vacancy in a legislature to which this Schedule applies, the party which nominated the vacating member shall fill the vacancy by nominating a person –
- (a) whose name appears on the list of candidates from which the vacating member was originally nominated; and
 - (b) who is the next qualified and available person on the list.
- (2) A nomination to fill a vacancy shall be submitted to the Speaker in writing.
- (3) If a party represented in a legislature dissolves or ceases to exist and members in question vacate their seats in consequence of item 24 (1), the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of item 7 or 14, as the case may be.

Additional ground for loss of membership of legislatures

24. (1) A person loses membership of a legislature to which this Schedule applies if that person ceases to be a member of the party which nominated that person as a member of the legislature.
- (2) Despite subitem (1) any existing political party may at any time change its name.

Definitions

25. In this Schedule –
- 'Commission' means the Electoral Commission referred to in Chapter 9;
 - 'national list' means a list of candidates prepared by a party for an election of the National Assembly to reflect that party's order of preference of candidates in respect of the allocation of seats on a national basis;
 - 'provincial list' means a list of candidates prepared by a party for an election of a provincial legislature;
 - 'region' means the territorial area of a province;
 - 'regional list' means a list of candidates in respect of a region prepared by a party for an election of the National Assembly to reflect that party's order of

preference of candidates in respect of the allocation of seats in respect of such region;

'votes' means –

- (a) where it occurs in items 5, 6, 7 and 9, votes cast in the election for the National Assembly;
- (b) where it occurs in items 13 and 14, votes cast in the election for the provincial legislature of a province concerned; and
- (c) where it occurs in item 16, votes cast in the election for the National Assembly and the provincial legislatures.”

Short Title

6. This Act is called the Constitution of the Republic of South Africa First Amendment Act, 2003, and comes into operation on a date set by the President by proclamation.

Note: The new Schedule 8 reflects the present electoral system as provided for in Schedule 2 of the previous Constitution by way of the transitional arrangements contained in items 6 and 11 of Schedule 6 of the 1996 Constitution. The amendments affected to Schedule 2 by the Loss or Retention of Membership of National and Provincial Legislatures Act, 2002 (Act 22 of 2002) have not been factored into the proposed new Schedule 8; nor has the Constitution of the Republic of South Africa Fourth Amendment Bill, published in Government Gazette No. 23941 of 11 October, 2002. If our proposed draft bill is eventually proceeded with, the proposed new Schedule will, of course, have to be drafted to reflect the situation as it exists at that time.

CHAPTER SIX

Concluding comments and acknowledgements

- 6.1 The ETT concludes its report in the hope that it will serve a useful purpose for the lawmakers and stimulate an ongoing public debate about the adequacy of the electoral system in South Africa. Obviously the members of the Task Team remain available to assist in any discussions and inquiries on electoral matters.
- 6.2 The ETT was appointed at the beginning of May 2002 and from the outset had to work under a serious time constraint with the next national and provincial elections scheduled for September 2004 at the latest (and in fact likely to be held some months earlier). The ETT soon resigned itself to the fact that if any changes to the electoral system were to be proposed, it was unlikely that they could be properly managed and implemented for the 2004 elections. At the same time, it was clear that Cabinet wished to get the issue of the final electoral system off its agenda, and the Minister of Home Affairs suggested that the ETT try to finalise its report by November 2002. This gave the ETT some six months to carry out its mandate.
- 6.3 During this time the ETT met 21 times and held discussions with the parliamentary parties (on two occasions), with NGOs and with representatives of the media. In addition, it commissioned research in the form of a survey on voter attitudes and experiences with the current electoral system, and held a two-day round-table conference attended by political scientists and experts on electoral systems as well as representatives of Parliament and the provincial governments. The ETT is satisfied that it gathered and disseminated as much information as possible in the time available to assist it and any other interested parties in their deliberations on the most appropriate electoral system for South Africa. The ETT itself observed the impact of this information on changing attitudes of political parties in Parliament.
- 6.4 It is appropriate that the ETT register its gratitude towards individuals and organisations that assisted it in completing its task.

- The Konrad Adenauer Foundation funded in its entirety the two-day round-table conference attended by experts from overseas, elsewhere in Africa and South Africa itself. The conference would not have been the success it was without the Foundation's generous help.
- The embassies/high commissions of four countries (Denmark, Norway, Sweden and the United Kingdom [DFID]) provided generous donor assistance. This enabled the ETT to commission a comprehensive public opinion survey and meet other expenses. The ETT would have been severely constrained in the scope of its activities without this assistance.
- That portion of the ETT budget not covered by donor funding was met by the Department of Home Affairs. This included travel and accommodation expenses and salaries for ETT staff. A special debt of gratitude is owed to the Minister of Home Affairs, who showed a keen interest and involvement in the activities of the ETT. It was, for instance, remarkable for someone with his heavy commitments to spend two full days at the round-table conference, and his opening address showed a keen appreciation of the problems involved in exploring electoral systems. A word of gratitude is also extended to the Minister's senior aides, who were unfailingly courteous and helpful.
- The ETT was particularly fortunate in acquiring the services of Jenny Nothard as Secretary and Administrative Manager. Not only did she set up the offices of the ETT at Cartwright's Corner House in Cape Town, but with admirable efficiency arranged the meetings and prepared the necessary documentation for the ETT members.
- The ETT did not hold all its meetings in Cape Town. Sometimes it was more convenient to meet in Pretoria. Here hospitality was provided by the Electoral Commission in the form of boardrooms made available at Election House in Sunnyside, Pretoria. A special word of thanks is due to the Chairperson, Dr Brigalia Bam, and the Chief Electoral Officer, Adv Pansy Tlakula, for making these facilities available.

- A debt of gratitude is also owed to Professor Roger Southall of the Human Sciences Research Council for convening the research teams and to Dr Robert Mattes for preparing and presenting the research report with Professor Southall.

6.5 This then concludes the Report and activities of the Electoral Task Team.

