

## CHAPTER 7

### Preparations for the Elections

Few elections have been awaited with greater anticipation than that due to take place in South Africa in April 1994. The right of every South African to vote is a culmination of decades of bitter struggle within the country, and a concerted international campaign against apartheid.

In their October 1993 Cyprus Communiqué, Commonwealth Heads of Government 'recognised the historic significance of the April 1994 election' in South Africa. But they also 'recognised the difficulties in the way of a free and fair election in view of the prevailing circumstances in the country. They therefore agreed that a sizable international observer presence would be indispensable if confidence in the process was to be assured and the people of South Africa enabled to cast a valid ballot.'

The Heads of Government saw a Commonwealth Election Observer Group as an 'important component of a wider international presence', and agreed to set up a special voluntary Commonwealth fund to help meet the costs of this observer group.

The third phase of COMSA, which – as noted in Chapter 1 – included electoral expertise, took a close interest in the development of arrangements for the elections.

COMSA studied the electoral legislation as it evolved in the Negotiating Council of the multi-party negotiations. We met with members of the 'electoral' departments of the political parties; officials of the Department of Home Affairs which conducted the segregated elections of the past; and representatives of the other international observer groups and South African non-governmental organisations likely to be involved in monitoring the elections. We also attended a number of conferences on electoral matters such as that on polling and election campaigns organised in November by the Institute for Multi-party Democracy and other bodies.

In addition, COMSA had extensive contact with NGOs conducting educational programmes in democracy and voting, such as the Institute for Democratic Alternatives in South Africa (IDASA), the Matla Trust and the Independent Mediation Service of South Africa (IMSSA). A number of us attended voter education courses conducted by IMSSA.

From these contacts, we are of the view that apart from the basic issue of

free and unimpeded political campaigns, and reasonably peaceful electoral environment, the most important challenges in the conduct of South Africa's first democratic elections are likely to be ensuring:

- that all voters have the necessary documentation to enable them to vote;
- that voter education reaches all potential voters; and
- that all voters are safe to vote.

We elaborate on these issues in Chapter 9, summarising our main observations. In this chapter, we assess the legal provisions for the elections, and proposals for a National Peacekeeping Force to help keep the peace in the run-up to, and during, the elections.

### **Legislative Framework for the Elections**

Two major pieces of electoral legislation were negotiated at Kempton Park.

The Independent Electoral Commission (IEC) Act, passed by Parliament in September 1993, provides for a commission of seven to eleven South Africans and up to five international members who will serve in a non-voting capacity. The functions of the Commission include the organisation and conduct of the elections, the conduct of voter education and the certification of the election.

The Electoral Act, which was expected to be adopted by Parliament during its December sitting, sets out the details of the electoral system. The proposed system of proportional representation is contained in the Interim Constitution and the Electoral Act.

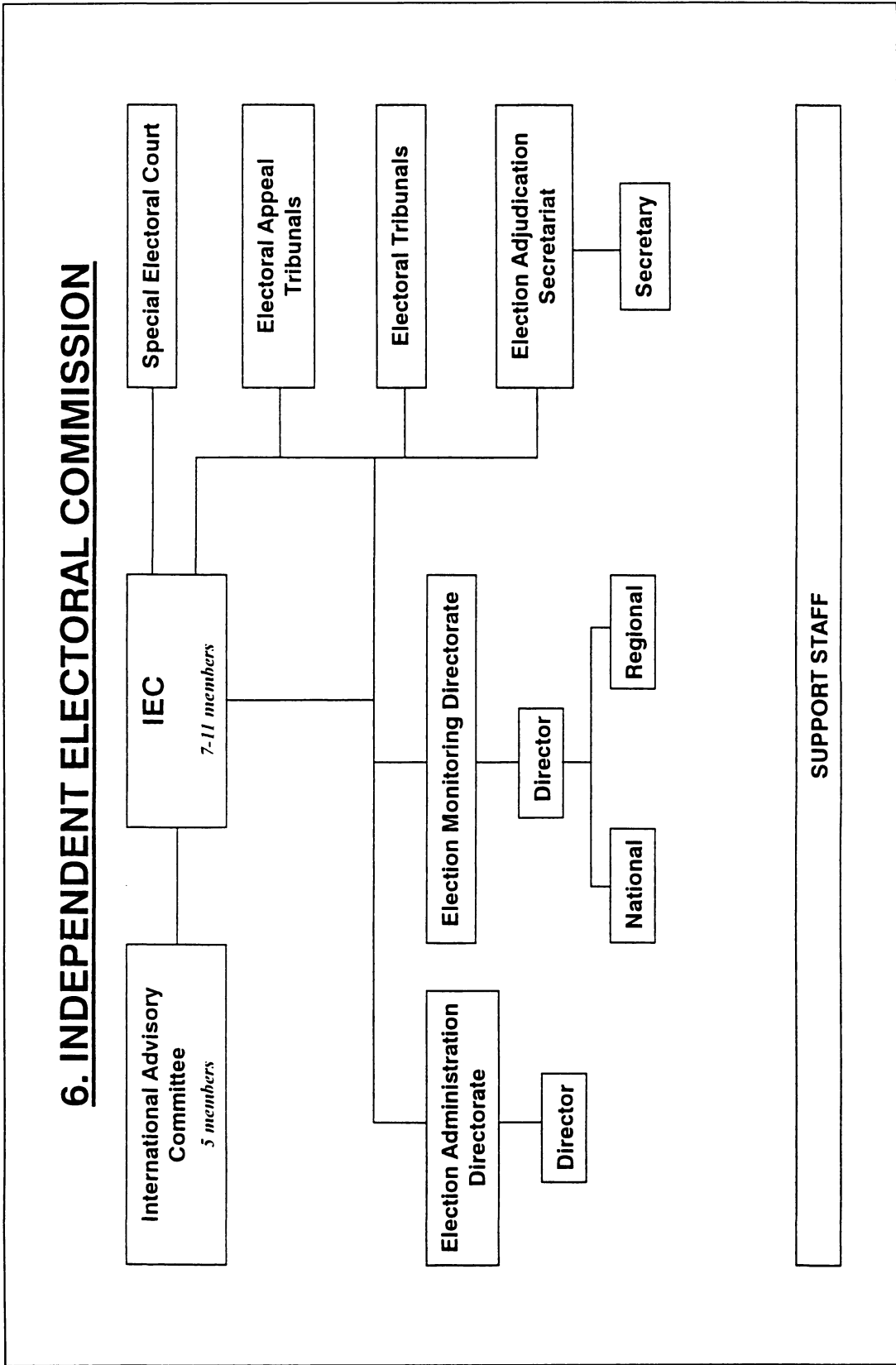
### **Proportional Representation**

The first non-racial elections will be conducted under a form of proportional representation which was judged by the negotiators to be the most appropriate electoral system to meet the needs of South Africa and its people. The system will provide for representation for all political parties in proportion to the number of votes they obtain. It is a key element of the inclusive structures which have been set up to inaugurate the new South Africa.

The electors will vote for political parties and the successful candidates will be taken from party lists which will be published in advance of voting day. Casual vacancies after the elections will be filled by taking the next available candidate from the list of the party concerned. If a member of parliament ceases to be a member of the party which endorsed him or her, a vacancy will arise automatically.

'List systems' of proportional representation similar to that proposed for South Africa commonly include a threshold proportion of the vote which political parties must attain before achieving any representation at all. However, in order to ensure that the elections are as inclusive as possible, no such threshold will apply in South Africa's first democratic elections.

Table 4



Source: Consultative Business Movement

Four hundred candidates will be elected to the National Assembly. Accordingly, a political party can be assured of representation in the National Assembly with as little as approximately 0.25 per cent of the national vote. Such a minimal requirement will ensure that a political party with even limited support will achieve representation in the National Assembly.

Two hundred of the seats in the National Assembly will be allocated to the provinces roughly according to population. The allocation will vary from about 43 in the PWV to about four in the Northern Cape. While not disturbing national proportionality, these seats will be filled from the provincial lists of the parties.

This system will mean that at least half of the members of the National Assembly retain a degree of responsiveness to the needs and desires of the provinces. Accordingly, the advantages of constituencies will be retained at least to some extent.

The decision in the last stages of the negotiations to adopt a single ballot system for both national and provincial elections, as opposed to a separate ballot for each, provoked contentious debate at Kempton Park. The objections of some of the parties, who argued that the provision amounted to a limitation on the freedom of choice of the voters, were overridden in the final hours of the negotiations. The issue continues to provoke debate and, in our view, the controversy is likely to persist.

### **Independent Electoral Commission (IEC)**

The IEC will comprise 7–11 South Africans appointed by the State President on the advice of the TEC.

In addition, there is provision in the IEC for up to five non-voting international members. There is also provision for an International Advisory Committee (IAC) of technical experts.

Like the South African members, the international officers will be appointed by the State President on the advice of the TEC. The size of the IEC is, by any standard, large. This may prove cumbersome, but we recognise that such numbers are probably necessary given the current political realities of South Africa.

The structure of the IEC is shown diagrammatically at Table 4. We welcome the fact that the monitoring function has been seen as important enough to justify a separate directorate. The monitoring directorate will appoint and co-ordinate election monitors, register and regulate the activities of observers and facilitate the role of international observers.

The IEC will establish Electoral Tribunals across the country. The Tribunals will investigate electoral infringements and irregularities, including possible breaches of the Electoral Code of Conduct. There will also be a number of Electoral Appeal Tribunals, each of which will be chaired by a judge of the Supreme Court.

A Special Electoral Court will be chaired by a judge of the Appellate Division of the Supreme Court. The other members of the Special Electoral Court will be two judges of the Supreme Court appointed by the Chief Justice and two other persons. The jurisdiction of the court will include interpretation of the electoral law and the hearing of appeals from the decisions of the Electoral Appeal Tribunals.

The Electoral Act provides for the establishment of party liaison committees at the national, provincial and local levels. The committees will comprise the national, regional and district election agents of registered political parties and will be chaired by representatives of the IEC.

The purpose of the committees is to liaise between the IEC and the parties especially on matters such as staffing, the location of voting and counting stations, and infringements of the Electoral Code of Conduct.

If the election is to run smoothly, a co-operative relationship between the IEC and the parties is essential. It seems to us that the party liaison committees are a mechanism which is likely to foster such a relationship.

The IEC will appoint provincial electoral officers, district electoral officers, presiding officers and voting officers for each voting station, and counting officers and enumerators for each counting station.

The national party liaison committee will be given two days to comment on all appointments. The IEC will consider such comments before finalising appointments. It is possible that the two-day period will be too short, given the number of appointments in question and the need for national party agents to consult widely before commenting on appointments.

The staffing of the IEC presents particular problems. On the one hand, compared with other nations in transition to democracy, South Africa is well endowed with human resources. On the other, constructing a staffing profile which will be acceptable to the range of political parties and reflect the composition of the population will be a particular challenge.

The difficulty arises from the history of job reservation under apartheid. Many of the staff of the existing Department of Home Affairs have experience in the conduct of past elections, albeit on a racial basis, and their skills and experience are factors to be considered. However, to achieve a balance which reflects the new South Africa, it seems to us that a significant number of IEC staff will need to be drawn from outside the existing bureaucracy.

It may not be possible to obtain all the necessary supplementary staff within South Africa. There may be a role for the international community, especially with regard to providing technical expertise.

For example, many Commonwealth countries have skills in the training of electoral officials. International organisations and individual foreign governments should be ready to respond to requests from the IEC. It is pleasing to note that all indications are that the international community is willing to help in this way.

## **Code of Conduct**

When a political party applies to the IEC for registration, it must affirm its commitment to the Electoral Code of Conduct. Lists of party candidates submitted to the IEC must be accompanied by declarations of commitment to the Code of Conduct.

The objectives of the Code are to promote the conduct of free and fair elections and to create a climate of political tolerance.

The Code:

- binds political parties, groups and individuals to respect the rights of others to express divergent political opinions, canvass support and campaign for election;
- commits signatories to: ensure that voters are not intimidated or coerced; repudiate bribery, the incitement of hatred and false allegations; comply with electoral processes and co-operate with the IEC;
- further commits signatories to avoid discrimination on the grounds of race, sex, ethnicity, class, gender and religion, and to promote the role of women in the electoral process;
- binds parties and candidates to accept the outcome of the elections and the IEC's certification of the results.

The Electoral Tribunals and the Electoral Appeal Tribunals can impose a wide range of sanctions for breaches of the Electoral Code of Conduct. These include formal warnings, fines, forfeiture of electoral deposits, withdrawal of access to the media, withdrawal of the right to campaign, removal of public funding and cancellation of the right to contest the elections.

The Electoral Code of Conduct is much more comprehensive than similar codes elsewhere. The range of sanctions should allow the IEC to make a considered response to breaches of electoral law and practice. However, a few points which we consider important are not included.

- There is no explicit injunction to maintain the integrity of ballot boxes and ballot papers.
- There is no requirement to take account of the special needs of the disabled.

## **Offences**

The Electoral Act sets out a range of offences relating especially to intimidation, undue influence, bribery, impersonation and interference with free canvassing and campaigning. Penalties include fines, imprisonment or both.

Once the date of the elections is gazetted, printed material such as pamphlets and posters must carry the name of the printer and publisher. There is a ban on demonstrations and marches within 48 hours of voting day and on public meetings of a political nature within 12 hours.

## **Public Funding**

There is provision for financial assistance to registered political parties for the conduct of election campaigns. Initial grants will be available if any independent opinion poll recognised by the IEC shows that a party concerned has at least two per cent support nationally or regionally.

Alternatively, a party can collect 10,000 signatures nationally and 1,000 in five regions. If a party only wishes to obtain funding for individual regions, the requirement is 3,000 signatures in the region(s) concerned. Further grants will be based on the results of the elections.

Fifty per cent of these grants will be distributed equally between the parties which obtain at least one seat in the national or provincial parliaments. The other 50 per cent of the funds will be distributed in proportion to the number of votes obtained by each party.

## **The Franchise**

Voters must be at least 18 years old. The following categories of persons will be entitled to vote:

- citizens and permanent residents of South Africa;
- children and spouses of citizens and former citizens of South Africa, provided that the persons concerned intend to reside permanently in the country.

There are a limited number of exclusions, notably the mentally ill, those dependent on drugs, and prisoners convicted of major offences. We commend the negotiating forum for its inclusive approach to the franchise.

## **Documentation Required to Vote**

In order to vote, the voter must bring a 'voter eligibility document' to the voting station. Voter eligibility documents are defined as identity documents, temporary identity certificates, reference books and temporary voters' cards. Temporary voters' cards will be issued if the IEC considers such action to be necessary.

It is not proposed to construct an electoral roll, but rather to rely on eligibility documents to establish the voter's identity, and to prevent impersonation and multiple voting by dipping each voter's finger in an invisible ink that can be identified at any polling station.

The construction of an electoral roll would be an extremely difficult and costly task, given the current situation in South Africa.

In certain areas, endemic unrest means that the preparation of such a roll would be almost impossible. Indeed, in some instances, the very attempt to enrol voters could well be an additional inducement to violence. In any case,

there is now insufficient time to construct a roll to meet the 27 April 1994 target date for the elections.

In our view the proposal to use eligibility documents and invisible ink is the only workable alternative. However, there is concern over the large number of potential voters – mainly rural women – who have no identity document of any kind. We have heard many sad stories of the difficulties that such people are experiencing in obtaining the necessary documentation. This is likely to be a major challenge for the IEC. We urge that no effort be spared in ensuring that voters have the necessary documentation to enable them to vote.

### **Election Timetable and the Registration of Parties**

The State President will determine the day(s) and hours of voting on the advice of the Transitional Executive Council. The decision must be gazetted at least 60 days before voting day. The Electoral Act provides that voting will take place on not more than two days, one of which will be a public holiday.

Two days would afford more opportunities for the electors to vote, but there are certain risks entailed in extending the voting beyond one day, including possible violence and a greater threat to the security of the ballot papers.

Political parties must apply to be registered to contest the election within ten days of the election day(s) being gazetted. Applications must include the proposed name of the party, the symbol of the party, a photograph of a party leader (if required), the names of the party election agents and, if applicable, the abbreviation of the party name.

The IEC may refuse registration if the proposed name of the party, the symbol or the abbreviation are likely to deceive or confuse the voters. Registration may also be refused if, in the IEC's opinion, it is likely to be an incitement to violence or hatred, or to cause serious offence to sections of the population.

Applications for registration must be accompanied by a deposit of R25,000 for the National Assembly and R5,000 for each provincial legislature which the party intends to contest. The deposit will be forfeited to the state if the party fails to win a seat in the election concerned. We note that the percentage of the vote required to avoid forfeiture will vary greatly from province to province.

### **Candidates**

Under the Interim Constitution, every South African citizen has the right to stand for the National Assembly with the following exceptions:

- prisoners serving a sentence of more than twelve months;
- unrehabilitated insolvents;
- those of unsound mind;



- holders of 'office of profit' under the Republic. (This, however, does not include those in receipt of a government pension, members of the security forces, Justices of the Peace, Ministers and members of Parliamentary committees.)

Registered parties must submit their lists of candidates to the IEC within 30 days of the gazetting of the election date. The IEC will publish the list within five days of the deadline. If the candidates die or nominations are withdrawn before voting day, the parties concerned will be able to nominate placements and revised lists will be published.

We note that, given the number of positions to be filled and the probable number of political parties, the lists of candidates will be lengthy. We suggest that the IEC give careful attention to the format for the publication of the lists. It should be possible for candidates of particular provinces to be readily identified. We also suggest that consideration be given to producing posters showing lists of candidates for display at voting stations.

### **Ballot Papers**

The ballot papers will include the names of the parties, their abbreviations, their symbols and the photograph of a leader of the party. There is provision for the production of ballot papers in several languages as determined by the IEC.

The inclusion of photographs on ballot papers can cause problems if there is a change of party leadership shortly before voting day. However, in an electorate such as South Africa's in which literacy levels are low, we consider that the advantages of including photographs clearly outweigh the disadvantages.

### **Voting**

The method of voting will be as follows:

- the voting officer will examine the voter's eligibility document and confirm the voter's identity;
- the voter's right hand will be checked to see whether it carries the identification mark which would indicate that he or she has already voted;
- the voter's right hand and identity document will be marked;
- the electoral officer will hand the voter a ballot paper, having placed the official mark on the reverse;
- the voter will take the ballot paper to a voting compartment and vote by placing a cross or other mark in the space next to the party of his or her choice;
- the voter will display the official mark to the voting officer and place the ballot paper in the ballot box.

All persons except electoral officers, party voting agents, monitors, observers, candidates and those actually voting will be excluded from voting stations.

The Presiding Officer may assist the illiterate, the blind and the incapacitated, providing that any marking of the ballot paper is witnessed by at least two party voting agents. The legislation also makes provision for interpreters.

Party agents may object to voters on the following grounds:

- the voter is not the person described in the eligibility document;
- the voter has already voted;
- the voter is not entitled to vote.

There has been considerable discussion of the need for 'tendered voting'; that is, the system by which voters whose eligibility is disputed at the voting station are able to place their ballot papers in envelopes containing the details of the dispute.

Tendered voting is a useful mechanism in that it helps to avoid confrontations in the voting station and allows disputes to be settled in a more considered atmosphere after the poll has closed.

The Goldstone Commission, in its report on preventing violence during the elections, advocated the use of tendered votes in a wide range of circumstances. The Negotiating Council considered a proposal for using the mechanism under narrower conditions, but in the end decided to reject the use of tendered votes altogether.

While we recognise that tendered votes could prolong the count, we note that the absence of any such provision is likely to increase the level of disputes in voting stations and could result in the disenfranchisement of voters.

Voters who, because of illness, disability or pregnancy, cannot attend a voting station on voting day will be entitled to a 'special vote' on the day before voting day at any location approved by a Presiding Officer. Electoral officials will also visit prisons, hospitals and nursing homes in order to collect special votes. The Electoral Act makes provision for mobile voting stations and voting stations abroad.

## **The Count**

Ballot papers will be counted in district centres which will be designated as 'counting stations'. Political parties will be advised of the time and place of each count. All persons except electoral officers, party voting agents, monitors, observers and candidates will be excluded from counting stations.

Ballot papers will be valid provided that there is a mark which clearly indicates the intention of the elector. Political parties may request the counting officers for a recount. If any such request is refused, there is provision for an appeal to the IEC.

The Electoral Act is somewhat unclear as to when the results by counting centre will be announced. The final results for all counting centres will not be known for some days. It is common practice elsewhere to announce provisional results as soon as they become available. In our view the general public's right to information is the overriding consideration. We suggest that provisional results by counting centre be announced as soon as they are available.

### **Certification**

Within ten days of voting day, the IEC is required to certify that the elections were substantially free and fair or, alternatively, to declare that it is unable to do so. A 75 per cent majority of IEC members present is required for the certification.

### **Security Arrangements for the Elections: The National Peacekeeping Force**

As part of its close interest in the preparations for the elections, COMSA followed the debate at Kempton Park on the creation of a National Peacekeeping Force (NPKF), now provided for under the TEC Sub-Council on Defence.

Members of the mission with police, military and political backgrounds participated in a number of seminars and workshops on this matter, organised by the Institute for Defence Policy and Project for the Study of Violence. We also had private meetings with Umkhonto we Sizwe (MK), the military wing of the ANC, and senior SAP and SADF officials on the proposed force.

The concept of an NPKF arose for two reasons:

- the apparent lack of confidence by many South Africans in the SAP and SADF; and
- the fact that there is unlikely to be an international peacekeeping force for the South African elections.

The NPKF is provided for under the TEC Sub-Council on Defence. Provisions include:

- All security forces and armed formations in the country – police and military – are invited to participate. (In effect there are 17 of these, including the SAP and SADF, the police and military forces of the 'homelands' and military wings of various political parties.)
- Although the NPKF is to have its own distinctive uniform and insignia, transport, accommodation, equipment and other logistic support are to be supplied by the SADF.
- The NPKF, which will report to the TEC, will be under the command of a sub-council comprising representatives of all the groups participating in the force.
- The international community is invited to assist in training the force.

### *Concerns*

- There is concern among some security experts over the shift in emphasis during the genesis of the idea, from a service organisation to a force trained along military lines.

At a recent seminar on the NPKF, which brought together the SADF, SAP, MK, international observers, and non-governmental organisations, concern was expressed that if the NPKF used guns as its first line of defence, it could soon become as discredited as the ISU.

- The limited time within which to mould the new force: With the TEC established in December, recruiting and interviewing for the NPKF is unlikely to start before the end of the year. If the force is to be deployed before elections in April 1994, training would be restricted to six weeks to two months. In our assessment, to mould these diverse forces, a longer training period would have been desirable.
- Size of the force: The size of the force is now expected to be 10,000 at the most (compared to the original proposal by the LHR of 30,000). Assuming three shifts a day, only some 3,000 of these troops would be on duty at any given time in the country. Even if these were concentrated in the most violent areas, they would still be a thin force on the ground. This means that there will still be a heavy reliance on the existing security forces.
- Relationship to existing security forces: The TEC gives the sub-council on defence powers to work out this relationship. It would clearly be necessary for it to have good relations with the existing forces.
- Composition: So far, the IFP, far-right and APLA forces have declined to join the NPKF, raising questions about the credibility of the force in areas where these groups have support.

### *External Assistance*

COMSA is well aware of all the concerns listed above. We are of the view, however, that in so far as a political decision has been taken to go ahead with the NPKF, our most constructive input would be to encourage whatever assistance the Commonwealth can offer.

We also agree with those who suggest that, in so far as South Africa is likely to continue to require a special public order force after the elections, the NPKF has a relevance beyond the immediate objective of ensuring a peaceful election.

COMSA thus urges governments and international organisations to be prepared to offer whatever training and other assistance might be required by the NPKF to ensure that it becomes a credible force for maintaining law and order, before, during and after elections.