

**ANALYSIS OF THE POLICY AND PROCESS OF  
VOTER REGISTRATION IN SOUTH AFRICA IN THE  
1999 GENERAL ELECTIONS**

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## **DECLARATION**

I, the undersigned, hereby declare that the work contained in this thesis is my own original work and that I have not previously submitted it in its entirety or in part at any university for a degree.

**Signature**

**Date**

## **ABSTRACT**

The democratic order is still in its early evolutionary stages in South Africa. Although the success of the 1994 democratic elections kindled hope for a promising future, democracy needs to be safeguarded if it is to develop in South Africa.

Safeguarding a democracy requires a constant scrutiny of governing policies and procedures to ensure that they remain conducive to its positive development. Of fundamental importance to the transmission of democracy is an electoral system and its policies. Any election-governing policy that reduces public confidence in the electoral system is not conducive to the development of a democracy. This study analyses the policy of voter registration as it directly impacts on the format of an election. Since this policy is being applied for the first time in the short history legitimate democratic elections in South Africa, the study looks beyond the noble objectives as given by the policymakers. The IEC and the Government argue that the policy is aimed at improving the legitimacy of the electoral system by eliminating the ID related forms of electoral fraud. The significance of the study lies in its critical analysis of the actual policymaking process of this legislation, as well as its implementation. In order to assess the democratic legitimacy of the policymaking stage, the study takes a closer look at the roles of all the stakeholders in the policymaking process. Further, the study describes the constitutional controversies of the provisions of the policy, as well as its actual registration process.

The understanding behind the latter description is that a policy is of no use if it cannot be implemented. In short, by describing, explaining and analysing the policy from its historical, legislative, and implementation phases, the study gives an insight into how this new policy relates to the development of the South African democracy.

Although this study found no conclusive evidence of the negative impact of the policy on the outcome of the election, the nature of debates, the practical difficulties of implementation by the IEC, as well as the Court debates have all raised new questions that could require further analysis.

## OPSOMMING

Die demokratiese bewind in Suid-Afrika is tans nog in die vroeë stadia van ontwikkeling. Hoewel die sukses van die demokratiese verkiesings in 1994 die vertroue in die moontlikheid van 'n belowende toekoms laat styg het, moet voortdurend gewaak word teen afbreek van die demokrasie in Suid-Afrika, en ruimte gemaak word vir die verdere ontwikkeling daarvan.

Die beveiliging van 'n demokrasie verg aanhoudende noukeurige beskouing van die regering se beleid, en die uitvoer daarvan, om te verseker dat dit die positiewe ontwikkeling van die demokrasie bevorder.

Die verkiesingstelsel en beleid is van fundamentele belang vir die vestiging van demokrasie. 'n Beleid wat die algemene vertroue in die verkiesingstelsel benadeel, sal nie die ontwikkeling van enige demokrasie bevorder nie. Hierdie studie ontleed die direkte invloed van die kieserregistrasie-beleid op die formaat van die 1999 verkiesing.

Aangesien hierdie beleid vir die eerste keer in die kort geskiedenis van Suid-Afrikaanse verkiesings toegepas word, kyk die studie verder as die edele doel beoog deur die skeppers van die beleid. Die OVK en die Regering beweer dat die beleid gerig is daarop om die regverdigheid van die verkiesingstelsel te verbeter deur die uitskakeling van ID-verbonde verkiesingsbedrog.

Die studie is veral belangrik in die kritiese ontleding van die skeppingsproses van die beleid self, sowel as die implementering daarvan. Om die demokratiese regverdigheid van die skeppingsstadium van die beleid te kan beoordeel, val die soeklig veral op die rol van alle deelnemers aan hierdie proses. Die grondwetlike probleme met dele van die beleid sowel as die registrasieproses word beskryf.

Hierdie beskrywing word gedoen vanuit die oogpunt dat 'n beleid geen doel kan dien tensy dit geïmplementeer kan word nie. Kortliks, deur die beleid te beskryf, te verduidelik en te ontleed in sy historiese, wetgewende en implementeringsfases, gee die studie 'n insig in die verhouding van hierdie nuwe beleid tot die ontwikkeling van die Suid-Afrikaanse demokrasie.

Hoewel geen afdoende bewyse van 'n negatiewe invloed van die beleid op die uitkoms van die verkiesing deur hierdie studie bewys is nie, is sake wat verdere ontleding kan vergoep in verband met die aard van die besprekings om die beleid, die praktiese moeilikhede van implementering deur die OVK, asook die besprekings in die hof.

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**CHAPTER 1****INTRODUCTION****1. INTRODUCTORY REMARKS**

The success of the 1994 general elections marked the birth of a legitimate multiparty democracy in South Africa. The majority of South Africans as well as the rest of the democratic world regarded this first democratic election as a major success in that it brought an end to four decades of undemocratic rule, and heralded a new democratic order in the country. Whether this new order can be regarded as a success depends on its sustainability in the long run, considering the record of unstable and conflict-dominated governmental changes in Africa as well as in other third world countries. Sustainability of this order, as most conflicts surrounding governmental transitions in Africa and Latin America would indicate, will require a sound electoral system (Chloe & Darnolf, 1999:2-6). A sound electoral system is characterised by, among other things, an election management body whose chief function is to conduct legitimate elections (Chloe & Darnolf, 1999:5); legitimate in so far as they are being conducted freely and fairly, by an impartial election management body (Chloe & Darnolf, 1999:12-14; Pastor, 1999). The Independent Electoral Commission (IEC) in South Africa is one example of an election management body; other examples are discussed under the *Rationale section* below.

The breakdown of a political order as a result of questionable electoral processes in most African States suggests that there is a need for caution when making electoral policies.<sup>1</sup> A greater part of this caution, according to this statistic, should require the continuous existence of a credible and effective management of an electoral process if democracy is to be consolidated (Pastor, 1999:5) in South Africa. Particularly, as Pastor (1999) argues that no democracy is perfect, special safeguarding mechanisms against electoral fraud in young democracies should be encouraged. A formulation of legislative policies and procedures to minimise, if not eliminate, chances of electoral fraud could be one mechanism required to strengthen a democracy. In addition, such policies should not be impossible to implement if they are to enhance the credibility of an electoral system (Pastor, 1999).

In trying to understand the legitimacy of an election in a democracy, it has become necessary to introduce the notion of election management bodies, whose main function is to plan, manage

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<sup>1</sup> In as much as Ghana and Nigeria returned to democratic rule in 1979, democracy was shortlived as ethnicity and economic mismanagement, among other things, led to the return of military governments in the late 1980's (Breytenbach, 1996). The failure of election recognition and the return to civil war in Algeria, as well as the

and to promote legitimate elections (Chloe & Darnolf, 1999; Pastor, 1999). This function in itself, involves a series of other dimensions such as the management of voter registration, registration of political parties, managing balloting, counting of votes, and dealing with electoral disputes, to mention a few (Chloe & Darnolf, 1999:13; Electoral Act no 150 of 1993). Central to this study is the function of the planning and management of the process of voter registration. The significance of this function is that it determines the access of a citizen to the voting practice (Pastor, 1999). Chloe and Darnolf (1999:13) argue that: *"If any electors are excluded from or not registered for any reason, however deliberately or unintentionally, the election result may not be considered legitimate because such systems lack the principle of the elector's civil and political rights to participate in the election and express their opinion"*. According to Chloe and Darnolf (1999:13), an election management body should be impartial and independent of the government or any political interference if it is to make free, fair and effective decisions.

Although the 1994 elections in South Africa were declared as free and fair, several political parties suspected that democratic principles had not been strictly adhered to (IEC Election Report, 1994). Complaints by political parties included allegations of non-citizens having voted as well as certain persons having voted more than once. Furthermore, allegations were made that certain political parties had transported their supporters from other electoral districts to vote in districts where the party enjoyed less support (IEC Election Report, 1994). Despite a lack of conclusive evidence for these allegations, the Government and the Electoral Commission considered that the electoral system of the time did possess the potential for such abuse and needed updating (*interview*: Russon, 14 July 1999). Lack of a voters' roll during the 1994 elections was identified by the IEC and the Government as the main factor that could have made it possible for any of the above-mentioned electoral abuses to have taken place, if they had, in fact, occurred (*interview*: Russon, 14 July 1999). To prevent such possibilities in future, the Government and the Electoral Commission decided to update the electoral policies and procedures. A major legislative update to the electoral process was the passing of Electoral Act no 73 of 1998 that provided for the registration of voters for the 1999 general election. In contrast to the 1994 election, the new Electoral Act requires that voters be registered on the voters' roll in order to be eligible to vote. In terms of this Act, the Electoral Commission requires that voters should be in possession of a single form of identification, a green barcoded ID document, in order to register for voting (IEC Election Report, 1994: 64-71).

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ethnic conflicts and the genocide in Rwanda are just a few examples of inadequate electoral processes (Hampson, 1997; Kaufmann, 1996).

The requirements of barcoded identity documents resulted in serious disagreements among political parties on the one hand, and the government and the IEC on the other, during the pre-1999 election period. On separate occasions, both the New National Party and the Democratic Party disputed the decision for barcoded ID's in the Constitutional Court. The parties questioned the constitutionality of the decision insofar as it deprives certain people of the right to vote. The decision for this policy raised further questions concerning to whose advantage and to whose disadvantage it was made, and what political implications were involved. The reasons for, and the process and implementation of the policy of voter registration, as well as responses to the requirement of barcoded identity documents are focused on in this study.

## **2. RESEARCH QUESTION**

The aim of this study is to explore the policy of voter registration in South Africa for the 1999 general elections, with special reference to the reasons for its formulation, how it was made, what it entails, and how it is implemented. The part of the question "what it entails" attempts to find answers to the following questions:

- Why voter registration in South Africa in the 1999 general elections, i.e. the influencing factors?
- How was the policy of voter registration made?
- What are the goals and objectives of the policy of voter registration?
- What led to the decision that only barcoded identity documents are acceptable for voter registration?
- Who was included and excluded in the decision-making process?
- Who are the stakeholders?
- When was the decision made, when and how is the policy being implemented (Time frame of decision-making and implementation)?
- What are the challenges and difficulties of the registration process?
- How many potential voters, how many have applied, registered and how many voters were rejected?
- What are the implications for the adoption of the policy of voter registration on the future electoral processes, political participation and the consolidation of democracy in South Africa?

### **3. AIM OF STUDY**

The aim of this study is to describe the policy and process of voter registration as it took place for the first time in South Africa during the second general election of 1999.

### **4. RATIONALE**

Voter registration means that only the people who are registered on the voters' roll would be allowed to cast a vote on polling day. To be on the voters' roll requires potential voters to be registered as voters. The process of voter registration sets out criteria for eligibility to register as voters. This implies that South Africans who do not meet the criteria for voter registration are automatically excluded from registering and voting.

Threats to the survival of new institutions such as the young democracy of South Africa are often high in the early stages (Converse, in Pridham, 1990:11; Pastor, 1999:5). In fact, Pastor (1999) argues that democracy often falters in developing countries with weak states and bureaucratic incapacity accompanied by suspect electoral institutions. Where questionable electoral systems exist, one political party often interprets electoral irregularities as intended to harm its prospects, which leads to the decline of confidence in the actual electoral process. On the contrary, stronger states and civil societies should be capable of forging electoral structures conducive to the growth of a democracy (Pastor, 1999). According to the proponents of the theory of democratic consolidation, weak states and weak civil societies are the primary threats as well as necessary conditions for the failure of the consolidation of democracy (Liebenberg, 1990:45). Characteristics of weak states, according to Liebenberg (1990), and Pastor (1999) include high rates of civil disobedience and crime. Essential requirements for a consolidation of democracy, in contrast, include effective institutions for public participation and political contestation, for the rule of law, and for public accountability (Breytenbach, 1996:2), all of which would most probably indicate the existence of a stronger civil society. A favourable environment for the consolidation of democracy, adds Breytenbach, includes socio-economic conditions<sup>2</sup> such as: higher per capita incomes, growing economies, the prevalence of larger middle and working classes, and viable civil societies. With South Africa's growing reputation of high crime rates, and a growing rate of allegations of corruption in the civil service, the question remains as to whether the South African State is not weakening, and if so, to what extent and what the implications for the consolidation of its democracy are.

The danger for weak states that are democratising in the later part of the twentieth century, or in what Huntington (1991) calls "*The Third Wave*" of democracy, is that they are more prone to breaking down than advanced democracies situated in strong states. The return to authoritarian rule by Nigeria in 1984, and the Sudan in 1989 are two examples of such a breakdown in democratisation (Huntington, 1991:208).

In contrast to a strong civil society, a weak civil society has elements of diffuse and divided social, centrist impositions and élite politics (Liebenberg, 1990; Sartori, 1987). The legacy of apartheid that still manifests itself in the form of economic inequalities, a divided politics in terms of race, class and tribal or clan associations further highlights the presence of a weak civil society in South Africa as described by Liebenberg (1990).

Another set of threats to the development of democracy, which could be the symptoms of the existence of a weak civil society is an increasing culture of electoral fraud, the absence of free, fair and effective, as well as impartial, electoral procedures (Chloe & Darnolf, 1999; Pastor, 1999). A politically impartial election management body is required if these threats are to be minimised, and the legitimacy of an electoral system enhanced (IEC Act no 150 of 1993).

The establishment of independent electoral commissions in Costa Rica and India after the Second World War, and the establishment of a Federal Election Commission in the USA in 1974, to mention a few, confirm the need for an independent management of elections (Chloe & Darnolf, 1999; Pastor, 1999). An electoral commission, according to Chloe and Darnolf (1999:5), is one of the least partial election management bodies. Depending on the form of democracy in a particular country, other election management bodies may include the government, or a state agency. Examples of election management systems that are either conducted by the government, government department or its agency can be found in Cyprus, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Luxembourg, Norway, Switzerland, and the United Kingdom (Chloe & Darnolf, 1999:3). Although Government dependent electoral management structures may work well in countries with homogenous political actors, and with already higher degrees of political stability, they remain risky for less stable democracies. The danger of these structures in developing democracies with divided polities such as that of South Africa is that they tend to lack independence of government influence and are least likely to be regarded as entirely impartial, hence putting at risk the legitimacy of an election (Chloe & Darnolf, 1999:8).

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<sup>2</sup> Also see Huntington (1991:315-6) for more discussion on the effect of socio-economic conditions on democratisation.



In pursuit of a legitimate electoral system in South Africa, the Independent Electoral Commission (IEC), whose function is to prepare and manage elections, was established in 1993 (IEC Act no 150 of 1993). Since its establishment has set out the electoral policies in South Africa, the policy of voter registration for the 1999 elections being one example of such a policy (Electoral Act no 73 of 1998).

The policy of voter registration has a direct relationship to the extent to which the South African citizen practises his or her basic democratic right to vote. The constitutionality and legitimacy of this policy is essential to the acceptability of the electoral end result. As much as constitutionality is significant, even more so is the success of the implementation of this policy since its failure may put at risk the acceptability of the poll should other parties feel aggrieved by certain procedures. However, when large numbers of South Africans participate fully in elections and register with the necessary forms of identification documents, the legitimacy of the electoral process may be enhanced as well as the well-being of the democracy as whole. Legitimacy in this context refers to the extent to which the political parties and the general public accept the electoral procedures under this policy, as impartial, reliable and binding (see Chloe & Darnolf, 1999:3-9 for an elaborate definition of *legitimacy*). Analysis of this policy therefore carries a high degree of political significance since its success or failure may determine the direction and the future of democracy in South Africa.

Since its inception in October 1998, the policy of voter registration in South Africa has been clouded by political and implementational difficulties. The constitutional controversy regarding this policy is that, whilst the constitution provides for a universal adult suffrage, the rules of the policy are exclusive in terms of the types of identity documents that people should possess in order to register for voting. The main provision of the policy is that people who cannot register will not practise their constitutional right to vote (Electoral Act no 73 of 1998). Electoral provisions require the possession of a barcoded identity document in order for a person to register to vote and this excludes people who do not possess this type of identity document. Further, even people who possess barcoded identity documents cannot vote if they have not managed to register and are likely to feel aggrieved constitutionally. As a result, this may have different implications for the electoral process.

It is from this point of view that this study sets out to describe this policy, as well as its actual implementation, so as to improve the understanding of the concept and process of voter registration, within the South African context.

## 5. METHODOLOGY

This is an exploratory and descriptive study (for the requirements of this type of study see Babbie, 1994; Nachmias *et al.*, 1987). This study is also inductive in that it does not set out to prove any theory or hypothesis, rather to describe the political, practical and structural trends of the policy and process of voter registration in an attempt to learn more about their role in the South African democracy.

### 5.1 Methodology

The actual methodological process is broken down into the following subheadings:

- *Units of Observation*

Units of observation include political and judicial documents such as the Constitution, the Electoral Act no 73 of 1998, the Policy documents and regular update publications of the Independent Electoral Commission (IEC), media, Governmental and Non-Government Organisational reports on voter registration.

- *Data Source*

The study makes a substantial use of primary and secondary data from the Independent Electoral Commission (IEC), Electoral Institute of South Africa (EISA), the Internet, and the media, structured and unstructured interviews as well as academic and other functional texts. The media material includes newspaper items, editorials, and other communication material produced in monthly magazines by the mass media and other non-governmental organisations. Most of the academic and legal data have been obtained from, among other sources, archival records of the Universities of Stellenbosch and Cape Town, Government offices and organisations such as the Human Science Research Council, the Internet, EISA and IDASA.

- *Data Processing and Analysis*

Since the data are qualitative, while the nature of the study is descriptive, the data are being used directly from their sources in the descriptive chapters. In line with the aim of the study, i.e. to analyse the policy and process of voter registration, chapters 2 and 3 focus on the policy making process while chapters 4 and 5 describe the implementation of the policy of voter registration from inception to completion. The data processing section therefore includes observations, analysis, comparisons and description of primary and secondary data. The final section, i.e. chapter 6, consists of the summary, conclusion, recommendations and bibliography.

## 5.2 Definition of Terms

This section sets out to define the key terms used in this study, in the following order:

### 5.2.1 Electoral system/s

The electoral system is the procedural, structural, theoretical and practical policy of voting which is adopted by the state in line with its political system in electing its political leaders and governing structures. This concept also refers to formal voting procedures as well as to the interpretation and distribution of votes among different politicians (Faure, 1999; Blais & Massicotte, in LeDuc *et al.*, 1996). Electoral systems can be divided into four categories, such as:

- (a) The Plurality-Majority Systems;
- (b) Semi-Proportional Systems;
- (c) The Proportional Representation (PR) Systems; and
- (d) Mixed Systems

(Faure, 1999: 1-6; Blais & Massicotte, in LeDuc *et al.*, 1996: 50-54; Reeve & Ware, 1992).<sup>3</sup>

There are various forms of a PR electoral system. Each form varies according to the method or formula that is being used to distribute votes. The two basic options are '*highest averages*' methods which use a divisor, and the '*largest-remainders methods*' (LR). The LR method uses quotas, i.e. the Hare quota formula as used in Columbia, Costa Rica and Madagascar, as well as the Droop quota formula as used in South Africa<sup>4</sup> (Blais & Massicotte, in LeDuc *et al.*, 1996:59). The South African electoral system is discussed in greater detail in Chapter 2.

### 5.2.2 General Elections

According to *The Oxford English Dictionary* an election refers to "the formal choosing of a person for an office, dignity or position of any kind, usually by the vote of a constituent body". In the context of democratic politics, a general election refers to the choosing of the political decision makers by the public through the voting process as determined by the political and

<sup>3</sup> Majority systems are found both in single-member district states such as Australia and France, and in multi-member constituency states as in the case of Mali. Examples of plurality systems can be found in single member constituency states such as Bangladesh, Canada, India, Malawi, Nepal, Pakistan, the Philippines, UK, USA, and Zambia; in multi-member constituency states such as Thailand, in a two-member district state such as Chile, and in a single- and multi-member constituency state such as South Korea. Mixed systems, i.e. different versions of a plurality plus PR combinations can be found in countries such as Bolivia, Ecuador, Germany, Italy, Japan, Mexico, New Zealand, Russia, Taiwan, and Venezuela. A combination of a Majority and a PR (corrective) may be found in Hungary. See Blais and Massicotte, in LeDuc *et al.* (1996:49-83); Reeve and Ware (1991), for an elaborated description of electoral systems.

<sup>4</sup> LR systems may use a single tier, two-tier (i.e. South Africa) or multi-tier distribution method, probably to reduce distortions resulting from the allocation of seats in the first tier (Blais & Massicotte, in LeDuc (1996:60).

electoral systems of a country (Reeve & Ware, 1992; Manin, 1997). In South Africa, the Electoral Act portrays this concept as the process by which the citizens vote to elect their political representatives to both the National Assembly and the NCOP, Provincial Legislatures, and Municipal Councils (The Electoral Act no 73 of 1998). This process, according to chapter 4, section 49 of the final Constitution (Act no 108, 1996) of the Republic of South Africa, takes place once in every five-year interval.

### **5.2.3 Identity Document**

An identity document refers to a green barcoded South African identity document issued after 1 July 1986, in terms of section 8 of the Identification Act (Act no 72 of 1986), or a temporary identity certificate issued in terms of the Identification Act (Act no 68 of 1997)<sup>5</sup>.

### **5.2.4 Voter Registration**

According to chapter 2 of the Electoral Act no 73 of 1998 voter registration is a process in which a citizen of South Africa who is above 18 years of age registers for inclusion into the voters' roll. The Act sets out criteria for voter registration. According to section 8(1) of the Electoral Act the chief electoral officer is required to scrutinise the application and enter the name of a person in the voters' roll when the officer is satisfied that such a person meets all the requirements of the Act to qualify as a legitimate voter.

### **5.2.5 Voting Districts**

This refers to the subdivisions of South Africa into 15 000 smaller, decentralised registration and voting districts. In preparation for registration and voting, the IEC made use of the Geographical Information System (GIS) to divide the country into these districts, and further, into 86 000 enumerator areas each containing between 120 and 150 voting households (Russon, *The State of the Voters' Roll*, IEC, 1999: 2; EISA, 1998(1):2).

### **5.2.6 The "Zip-Zip" Machines**

The Zip-Zip Machines refer to the electronic machines used for reading the barcodes on identity documents. They were used by the IEC both during voter registration and during the actual voting process (<http://www.icl.com/news/press/oct98/15oct.htm>).

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<sup>5</sup> Also see Chapter 1, section 1(xii) of the Electoral Act no 73 of 1998 for a definition of an identity document, within the voting context.

### 5.3 Abbreviations used:

<b>ACDP</b>	(African Christian Democratic Party)
<b>ANC</b>	(African National Congress)
<b>BCLR</b>	(Butterworths Constitutional Law reports)
<b>DP</b>	(Democratic Party)
<b>FA</b>	(Federal Alliance)
<b>HSRC</b>	(Human Sciences Research Council)
<b>ID</b>	(Identity Document)
<b>IFP</b>	(Inkatha Freedom Party)
<b>IEC</b>	(Independent Electoral Commission)
<b>NNP</b>	(New National Party)
<b>PEO</b>	(Provincial Electoral Officer)
<b>PR</b>	(Proportional Representation)
<b>SACP</b>	(South African Communist Party)
<b>TBVC STATES</b>	(Former Homelands of: <i>TRANSKEI, BOPHUTHATSWANA, VENDA, and CISKEL</i> ).

### 5.4 Chapter Summaries

#### *Chapter 1*

Chapter One introduces the study, providing the statement of the problem and the aim of the study, together with notes on the methodology.

#### *Chapter 2*

This chapter looks at the constitutional and the legislative background of the policy of voter registration from its inception until it became an actual policy. The section covers factors such as political party influences, public opinion, legislative developments, and political developments preceding the 1994 elections, during the 1994 elections and the results of the elections. The chapter can therefore be described as the literature review section, covering the historical background prior to 1994, the electoral system in South Africa, the 1994 elections as a background, and the electoral legislative modifications prior to the 1999 elections. The chapter further attempts to make a theoretical analysis of voter registration as well as to see if there are other countries that also register their voters.

#### *Chapter 3*

This chapter describes the decision for the policy and process of voter registration, and the use of barcoded identity documents in South Africa's 1999 general elections. The chapter further discusses the roles of the stakeholders such as the Government, the IEC, the individual citizen,

and the political parties in the policy process. Finally, the greater section of the chapter discusses the constitutional controversy surrounding the policy and the court cases.

#### ***Chapter 4***

This chapter describes the implementation process of the policy, with its provision for a barcoded identity document, from inception to completion. In addition, practical and political dynamics/implications as well as challenges are discussed. Finally, the chapter examines the actual data of the number of potential voters who are registered and unregistered.

#### ***Chapter 5***

The chapter describes the final round of voter registration.

#### ***Chapter 6***

The final chapter gives a summary analysis, recommendations, a conclusion of the study, and a bibliography.

### **5.5 Keywords**

Barcoded identity documents

Electoral system

General Election

Voter registration

Voters' Roll

### **5.6 Concluding remarks**

This chapter served to introduce the study. In so doing, the aim, research question, rationale, and methodology of the study have been described. In addition, keywords of the study have been outlined, together with summaries of the chapters. Further, this chapter attempts to define the terms, as well as the abbreviations used in the study. The following chapter continues the introduction by focusing on the description of the origins of the policy of voter registration. In this respect, reference to legislative and constitutional developments, as well as to the 1994 electoral process is made in the chapter.

**CHAPTER 2**

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***THE POLICY OF VOTER REGISTRATION IN SOUTH AFRICA:  
"DEVELOPMENTS TOWARDS THE POLICY"*****1. INTRODUCTION**

Proceeding from the previous chapter that served to introduce the study, this chapter attempts to describe the formulation stages of the policy of voter registration. Reference was made in the previous chapter to the complaints of different political parties regarding certain loopholes in the electoral policies and procedures that governed the 1994 elections. Although the evidence of allegations of electoral fraud could not be substantiated at the time, the nature of the allegations had suggested that the electoral policies and procedures needed to be updated if the legitimacy of South Africa's electoral system was to be enhanced. The electoral system allowed voters to use different types of identity documents for voting purposes in 1994. This arrangement left the electoral system extremely vulnerable to different forms of electoral fraud including votes by non-citizens, persons voting more than once, as well as the unrestrainable movement of voters between regions during elections (IEC Election Report, Oct 1994). To correct these discrepancies in the electoral system, the Independent Electoral Commission (IEC) and the South African Government decided to update the rules and regulations of elections prior to the 1999 elections. Chief of these new rules was the policy of voter registration and the provision that voters should be in possession of a barcoded identity document (Barcoded ID) in order to register and vote. This chapter covers the legislative background of this policy from its inception until it became the legislation.

**2. POLITICAL DEVELOPMENTS TOWARDS THE 1994 ELECTIONS**

The concept of democracy has been almost non-existent in the political history of South Africa prior to ex-State President F.W. De Klerk's speech on 2 February 1990. (For an overview of this period, see IEC Election Report, October 1994; Reynolds, 1994; Schlemmer, 1991 and 1994). In his speech, De Klerk announced the readiness of the National Party to negotiate the democratic settlement with the formerly banned political movements such as the ANC, PAC, SACP and others (IEC Election Report, Oct 1994). De Klerk proved his sincerity by releasing Nelson Mandela and other political prisoners during the same period. These developments were followed by a series of political, racial and ideological confrontations, negotiations and eventually, compromises, between the different political parties. Multi-party agreements were

made at CODESA 1, CODESA 2 and in Kempton Park to determine, among other things, a type of political and electoral system for a new democratic South Africa (IEC Election Report, Oct 1994; Schlemmer, 1991 and 1994). Among other things agreed upon by the political negotiators prior to the 1994 elections was the creation of a structure known as the Transitional Executive Council (TEC) that was to plan and prepare the way for democracy in South Africa. The Council was drawn from the ranks of the negotiating parties. The State President of the time, Mr. F.W. De Klerk, in collaboration with the TEC, passed the Independent Electoral Commission (IEC) Act no 150 of 1993 that gave birth to the Electoral Commission. In conjunction with section 76 of Electoral Act no 202 of 1993, the Act prescribes that the IEC should organize, administer, monitor and evaluate the electoral process in South Africa. The Act requires the IEC, in carrying out its tasks, to be both structurally and administratively apolitical. This political independence is crucial for the credibility of the functions of the Commission in the eyes of all political stakeholders. The independence of the IEC will be explored further in later chapters.

### **3. CONSTITUTIONAL DEVELOPMENTS PRIOR TO THE 1994 ELECTIONS**

Towards the end of 1993 the Interim Constitution (Act no 200 of 1993) was drafted and passed to provide for a political transition to democracy in South Africa (Faure, 1999; Schlemmer, 1991). This constitution divides South Africa into nine provinces with a National Parliament consisting of the National Assembly and the Senate.<sup>6</sup> In terms of section 6 of the Act (No 200 of 1993), provisions are made for a parliamentary system of government. Moreover, the National Assembly and the Provincial legislature are to be elected through universal adult suffrage. Under this arrangement the executive power is vested with the president who is elected by the National Assembly. Section 21(2) of the Interim Constitution, and section 19 (1), (2) and (3) of the final Constitution provide voting rights to all citizens. The Electoral Act no 202 of 1993 as promulgated in January 1994 sets out the basic rules for the National and Provincial elections.

### **4. THE ELECTORAL ACT NO 202 OF 1993**

The Electoral Act no 202 of 1993 gives detailed translations of the provisions of sections 21(2) and 33(1)(b)(aa), chapter 3, of the South Africa Constitution (Act no 200 of 1993).

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<sup>6</sup> The Senate was changed, in terms of chapter 4, section 60 of the New Constitution, Act no 108 of 1996, into the National Council of Provinces (NCOP).



#### **4.1 Eligibility to vote**

Section 15(1) of this Act provides for the enfranchisement of all persons over the age of 18 years who are ordinarily resident in South Africa. This section sets out the eligibility requirements for voting for these persons. Voters are eligible to vote only if they can produce a South African identity document or, according to section 17, a temporary voters' card which can be issued at the discretion of the commission assigned to administer the electoral process (IEC election report, May 1994:7-10).

#### **4.2 The Omissions of the Act**

The Electoral Act no 202 of 1993 was not perfect, and needed to be updated since it fell short in not providing for key factors such as the voters' roll which is discussed next.

- **Voters' Rolls**

Electoral Act no 202 of 1993 does not provide for the preparation and the use of voters' rolls in any election process. With the racial divisions and different identification methods prevalent in South Africa during the years of apartheid, it could have been difficult to make use of a voters' roll in the 1994 elections, even if provisions had existed (*Interview*: Russon, 1999). The reason is that a voters' roll requires a uniform identification system which was non-existent under the ethnically divided society of South Africa at that stage. This lack meant that different types of identity documents had to be acceptable for voting purposes during the 1994 elections in South Africa (*Interviews*: Lockey, 1999; Russon, 1999). The danger of this arrangement is that it left the electoral system more vulnerable to abuse in terms of identification. Without a voters' roll it became difficult for the IEC to verify genuine citizenship by the use of identification documents (*Interview*: Russon, 1999). The exclusion of the provision of a voters' roll requires an alternative method to safeguard against the possibility of each voter making multiple votes. What could be regarded as a major deficiency of this omission is that the Electoral Act of 1993 did not provide for any such alternative. Another consequence of the omission of the voters' roll is that it became difficult to distinguish between enfranchised and disenfranchised prisoners during the 1994 elections (IEC Election Report, May 1994:7-10).

To address the problem of those citizens who are not in possession of valid South African identity documents, section 17 of the Act allowed the IEC to use its discretion in issuing temporary voters' cards (The Electoral Act no 202 of 1993: sec 17). The Independent Electoral Commission however complained that the Act did not give practical provisions for dealing with the possibility of migrant workers from neighboring territories who might attempt to vote (The

IEC Election Report, May 1994:10). Instead, section 35 of the Act requires voters to produce identity documents and to have the voter's right hand marked with indelible ink as mechanisms to safeguard against multiple voting in the election. This process requires the use of ink detecting equipment as well as additional officers at each voting station, requiring more administration, resources and possibly, allowing greater chance for error.

To redress the shortcomings of the omission in the Electoral Act of 1993, Electoral Act no 73 of 1998 provides for a voters' roll to be used in 1999 as well as in future general elections. In South Africa the voters' roll refers to the national list of citizens who are registered as eligible voters in terms of the provisions of the Electoral Act of 1998. It is only through the process of voter registration that the name of a person is inserted on the voters' roll. The Electoral Act limits the right to vote in the general elections only to persons registered in the voters' roll (Electoral Act no 73 of 1998:14).

## 5. THE ELECTORAL SYSTEM

Prior to the 1994 elections, major South African political parties engaged in various democratic negotiations. The electoral system debates are one example of such negotiations. Prior to the adoption of the 1993 Interim Constitution, electoral categories of Plurality Majority Systems, Semi-Proportional Systems, and the Proportional Systems remained at the centre of the electoral systems debate. The adoption of the 1993 Interim Constitution reduced the alternatives in the debate to the category of a Proportional Representation, *largest remainder (LR)-Droop* formula type of electoral system in South Africa (Faure, 1999; Blais & Massicotte, in LeDuc *et al.*, 1996:49-83). As discussed in the definition section, the LR Droop formula of seats distribution requires the use of a quota that corresponds to the total number of votes, divided by the number of candidates to be elected plus one. In the second tier, remainder seats are awarded to parties with the largest surpluses of unused votes, proportionately (Blais & Massicotte, in LeDuc *et al.*, 1996:49-83; South African Government Gazette no 20201, 1999).

The Interim Constitution provides for a Proportional Representation form of Electoral System in South Africa (Faure, 1999). The Centre for Constitutional Analysis of the Human Sciences Research Council assessed the electoral systems of Brussels, Fiji, Germany, India, Mauritius and Singapore in 1991 (Faure, 1999; also see report of the President's Council Committee on Constitutional Affairs, 1992). In its findings the Centre recommended a Proportional Representation system as ideal for the political culture of South Africa (Faure, 1999:10). A lengthy process of negotiations between political parties to arrive at an agreement for a common

electoral system came soon after this findings. The result was the passing of the Interim Constitution (Act no 200 of 1993) as well as the Electoral Act (No 202 of 1993). The Proportional Representation system of South Africa provides for a Parliament with a National Assembly of 400 members and a Senate (which became the NCOP in 1996) made up of 90 members elected indirectly by political parties from nine provincial legislatures (Faure, 1999:10). The number of seats in parliament as well as in provincial legislatures is proportional to the percentage of votes for each party (Faure, 1999:10). The number of votes is crucial in determining the allocation of seats, both in the provincial and the national legislatures. As a result, the mechanism to control voter mobility between provinces is even more crucial for provincial legislatures (See Electoral Act no 73 of 1998 for an elaborate description of the process).

There are several reasons that led to the decision to adopt a Proportional Representation system in the Interim Constitution in 1993. In the same year in which the Centre for Constitutional Analysis (HSRC) recommended a PR system for South Africa, both the Democratic Party (DP) and the National Party (NP) indicated their support for certain types of proportional representation systems. In 1992 the ANC announced that its policy on electoral systems was that of "... the election of representatives by the system of proportional representation ... [t]he ANC favors a parliament consisting of the National Assembly and Senate. The National Assembly will be elected by a universal adult suffrage on a common voters' roll according to proportional representation ..." (Faure, 1999:4). In the same year, the now defunct President's Council Committee on Constitutional Affairs also recommended a proportional polling system for South Africa in the new Constitution in terms which are almost identical to the ANC proposals (Faure, 1999; Blais & Massicotte, in LeDuc *et al.*, 1996).

Nurmi (1987) stipulates that proportionality considerations pertain to both the allocation of seats to constituencies, and the allocation of seats to candidates within constituencies. In line with this understanding the 1993 Interim Constitution provides for a PR system in terms of the allocation of seats in the of national and provincial parliaments (Nurmi, 1987; for a practical example, see S.A. Government Gazette, no 20201, 1999).

## **5.1 The Constitution and Voting rights**

The Bill of Rights as set out in the final Constitution provides every citizen with the freedom to make political choices (SA Constitution Act no 108 of 1996, sec 19(1), (2) and (3)). According to section 19 of the Bill of Rights, every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution and is entitled to make the secret

vote of their choice. These provisions are in line with section 6 of the Interim Constitution Act no 200 of 1993 which affords a universal adult suffrage to all South African citizens (The IEC Election Report, April 1994:8).

According to the government structure and system, general elections in South Africa refer to the process in which the citizens vote to elect a political party of their choice to run the state and/or the country. The Constitution provides for general elections to be held once in an interval of five years (Constitution of the Republic of South Africa, Act no 108 of 1996, ch 4, sect 49(1)). In this process, voters are required to cast both the National and Provincial ballot in their vote. To this end, the Electoral Act of 1998 entitles the IEC to decide on the number and structure of ballot papers to be used in general elections (The Electoral Act no 73 of 1998, Sec 68).

## 5.2 The Constitution and the Electoral System

The Interim Constitution of 1993 provides for a Parliament with a National Assembly of 400 members directly elected on the basis of political party rankings (party lists), and a 90-member Senate which is indirectly elected on provincial legislatures. For the National Assembly, 200 members of parliament are elected using the national political party list. The other 200 members are elected on the basis of the regional party list with a fixed number of representatives for each province. In this respect, the guiding provision is that such legislatures should have a minimum number of 30 members (The Constitution of the Republic of South Africa Act no 200 of 1993; sections 40 and 127). As indicated in *Table 2.1* below, the number of seats in the provincial legislatures is not equal and is allocated in proportion to constituency sizes, and in accordance with party strengths in the provinces (Faure, 1999).

**Table 2.1: The Legislative system of South Africa**

<b>National Assembly</b>  350 to 400 seats	<b>Senate</b> ( <i>As per Interim Constitution</i> )  <b>National Council Of Provinces or NCOP</b> <i>(As per final Constitution)</i>
<b>Provincial Legislatures:</b>  <b>Minimum:</b> 30 members per Legislature, and <b>Maximum:</b> 80 members per legislature	90 seats (54 permanent and 36 floating)

Source: Faure M, 1999: 11; Final Constitution of RSA, ch 4; Electoral Act no 73 of 1998

There are very few changes in electoral provisions between the Interim Constitution, the final Constitution and the Electoral Act of 1998. The most noticeable change is the replacement of the Senate by the National Council of Provinces as at February 1997. The Electoral Act no 73 of 1998, in contrast, indicates a drop in the maximum number of members of provincial

legislatures from 86 to 80 which means that the 86 member Gauteng legislature should decrease by six members after the 1999 elections.<sup>7</sup> In addition, the Electoral Act no 73 of 1998 provides for the election of a National Assembly through the elections held according to the electoral system that is prescribed by legislation. This electoral system requires general elections to be based on the common voters' roll, on a minimum voting age of 18 years, and to result in a proportional representation (Electoral Act no 73 of 1998; Faure, 1999). Chapter 2 of the Electoral Act of 1998 provides that any South African citizen in possession of an identity document may register to vote. Thereafter, registered voters are inserted in the national voters' roll and are entitled to vote on polling day.

## 6. VOTER REGISTRATION - A THEORETICAL ANALYSIS

Section 6 of the Electoral Act no 73 of 1998 outlines that a person should be a South African citizen in possession of a valid identity document in order to register to vote. Section 6(2) of the same Act allows the use of a temporary identity certificate that may be prescribed by the Minister of Home Affairs for registration purposes. The Act further requires the applicant to register and to vote only in the district in which that person is ordinarily resident (The Electoral Act no 73 of 1998, sec 7(1)(b)). The Act prohibits the registration of any person who is not a citizen of South Africa. It further prohibits the registration of any person who is declared by the High Court as being of unsound mind, and a person who makes such an application in a fraudulent manner. The Act also prohibits the registration of a person who makes such an application outside the district in which that person is a resident (Electoral Act no 73 of 1998, sec 8).

Although voter registration is still a new concept in the South African general elections, the concept has been associated with some developed democracies such as the United States of America (USA) and Canada for a long time. According to Claggett, (1990:197),<sup>8</sup> in most jurisdictions in the United States, voter registration prior to elections is necessary in order for a

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<sup>7</sup> According to schedule 3, section 114 of the Electoral Act no 73 of 1998 this maximum corresponds with the quota formula of seat allocation required by the electoral system of South Africa, which should be uniform to all Provinces if the National Assembly and NCOP seats are to be kept within certain limits.

<sup>8</sup> Claggett indicates that there seems to be a difficulty in predicting voter turnout on the basis of voter registration. He argues that having a particular number of voters registered does not indicate that the same number would turn out to vote. In his survey study on registration validation among individuals in the USA, he also discovered that people tend to be dishonest about their registration status. Most people who were not registered indicated that they were registered. Some who were registered and wanted an excuse not to vote said that they were not registered (Claggett, 1990). Any amount of public dishonesty on electoral matters creates the potential for electoral fraud, hence the need for safeguard mechanisms.

citizen to cast a ballot. While the electoral commissions, with varying degrees of independence,<sup>9</sup> are responsible for the preparation of elections, including the registration of voters in countries such as Argentina, Brazil, Chile, and Uruguay, voter registration in the USA and the UK is administered and updated by Government departments (Chloe & Darnolf, 1999; Pastor, 1999). In fact, only 14% of the advanced democracies have Independent Electoral Commissions. This percentage is much higher in developing democracies, however. Elections in 70% of the Latin American countries are conducted by Independent Electoral Commissions, 54% of Asia and the Pacific, 50% of Sub-Saharan Africa,<sup>10</sup> and 71% of Eastern and Central Europe (Pastor, 1999:12).

In as much as voter registration helps to curb the casting of votes by illegitimate voters, it remains uncertain how it would affect the South African voter turnout. In March 1995 Briens conducted a study in Canada regarding the effect of voter registration on voter turnout in relation to residential mobility. In his findings he concluded that voter registration reduces voter turnout on mobile residents in Canada (Briens, 1996:215-225). Even in America, the element of social mobility tends to affect voter turnout rather negatively (Squire *et al.*, 1987). This trend may also be relevant for South Africa since voters are allowed to vote only in their own areas of residence. They may not vote somewhere else without making special arrangements, which may be burdensome and perhaps a disincentive for voting in certain instances. The same strictures may apply to residents who are abroad during the time of voter registration so that even when they arrive in the country on election day they may not be able to vote since their names may not be on the voters' roll. Unless the electoral provisions cater for mobile voters,<sup>11</sup> this could indicate a negative correlation between voter registration and residential mobility even in South Africa. Perhaps this study will shed some more light in this area.

## 7. CONCLUDING REMARKS

This chapter has taken the introduction of the policy of voter registration further by attempting to describe the constitutional and legislative background up to and after the first democratic elections of 1994. From this background it can be concluded that the South African electoral

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<sup>9</sup> According to Pastor (1999:15), "... *The absence of an independent electoral commission (EC) is likely to lead to 'flawed' elections, ... the EC must also be perceived as independent. The 1983 Nigerian elections failed because the opposition parties believed that the EC was controlled by the incumbent. The 1992 election in Angola failed for a similar reason.*"

<sup>10</sup> Including South Africa.

<sup>11</sup> Referring to citizens on mobile homes in Canada, who keep shifting areas of residence and hence, voting districts. The concept extends to travelling and other citizens who often change voting districts, who may need to keep registering in different voting districts in order to vote, according to Briens (1996). Also see Pecquet (1985) on the "*Effects of Voter Mobility on Agenda Setting*".

system prior to 1994 was designed under circumstances where universal adult suffrage was new to the country. In the same period South Africans were in possession of different forms of identification documents as a result of past political practices. Along with these conditions, there was no previous all-inclusive and democratic election from which lessons could be learnt. Due to these limitations in experience, the electoral system after the 1994 elections needed further development in order to minimise electoral fraud. It can be seen that the absence of a voters' roll in the Electoral Act of 1993 was one of the weaknesses of the electoral rules that governed the 1994 elections. This chapter has described constitutional amendments from the Interim Constitution of 1993 to the final Constitution of 1996. In addition, the new legislative provisions in the form of Electoral Act no 73 of 1998 have been described as they apply to the formulation of the Policy of Voter Registration in South Africa. To proceed, the following chapter describes the decision making process of the policy of voter registration and the provision of the use of a barcoded ID only for registration and voting purposes. In so doing, the chapter looks at the parliamentary debates leading to the Electoral Act as well as the actual provisions of the policy of voter registration.

**CHAPTER 3*****DECISION FOR VOTER REGISTRATION*****1. INTRODUCTION**

The previous chapter described the constitutional and legislative background to the policy of voter registration in South Africa. According to this background, the policy of voter registration does not signify a change, but an improvement of the already existing electoral system by new provisions designed to eliminate any possibility of electoral fraud (*Interview*: Lockey, 9 December 1999; The Electoral Steering Committee report, 1996). This chapter focuses on the policy-making process of the policy, and the decision to use barcoded identity documents as mentioned in the previous chapter. To this effect, this chapter will look at the questions of "*how, and why was the decision for the policy of voter registration made*", in much greater detail. In so doing, the following points will constitute the structure:

(1) *Why Voter Registration In South Africa*; (2) *Formulation of Electoral Act no 73 of 1998*; (3) *Parliamentary Debates*; (4) *Arguments Against The Legislation; Voter Registration & the Court Cases*; and (5) *Requirements & Procedures for Registration*.

**2. WHY VOTER REGISTRATION IN SOUTH AFRICA**

After different political parties had lodged allegations of electoral fraud with the IEC at the end of the 1994 elections (see the IEC election reports, 1994), the IEC and the government decided to update and enhance the electoral rules and regulations before the 1999 elections (*Interview*, Russon, 14 July 1999). The above allegations included complaints concerning: voting by non-citizens, and multiple voting. In addition, allegations were also made that voters were being transported by certain political parties to vote in regions in which they did not reside. Although these allegations could not be substantiated, the Commission and the Government realised that the electoral rules and procedures needed updating if electoral fraud was to be minimised in future elections (Electoral Steering Committee Report, 1996; Lodge *et al.*, in EISA, 1998(1)). As a result, the deputy president, Thabo Mbheki, in consultation with the ministers of Home Affairs, and of Provincial Affairs and Constitutional Development, initiated the establishment of the Electoral Steering Committee in 1996 to make recommendations for the updating of the electoral system (Electoral Steering Committee Report, 1996). The Steering Committee, comprising the IEC and the *Local Governments Electoral Task Group* (TEG), had to develop



electoral options to be evaluated by the Electoral Commission. The Steering Committee suggested:

- The delimitation of regions through the *Geographic Information Systems* (GIS);
- The introduction of a voters' roll and the registration of voters; and
- The formulation of a new Electoral Act to create uniformity for elections at all tiers, and to make provisions for the use of the voters' roll. The act had to be completed by June 1998 to allow time for the preparations for the 1999 elections (The Electoral Steering Committee report, 1996).<sup>12</sup>

In addition, having received public complaints regarding false claims on welfare services, allegedly even by non-citizens,<sup>13</sup> who used false documents to obtain pensions and other kinds of welfare grants, the ANC-led Government believed that a single and uniform means of identification for all citizens was necessary to eliminate ID related fraud. As a result, on 20 August 1998 the ANC announced that its National Executive had decided that only barcoded and temporary ID's could be used for general elections (Lodge, *et al.*, in EISA, 1998(1)). This decision by the ANC was strongly opposed by both the New National Party (NNP) and the Democratic Party (DP). The opposing argument was that South Africans without barcoded ID's would be disenfranchised (*Hansard* no 18, 1998:6574/5). In the same light, the IEC chief, Judge Kriegler indicated that it would be "*unrealistic and unfair to insist on the sole use of barcoded ID documents*"<sup>14</sup> (*The Star*, 21 August 1998). The issue of barcoded ID's became the point of contention in Parliamentary debates during September 1998 concerning the Electoral Bill.

### 3. FORMULATION OF THE ELECTORAL ACT NO. 73 OF 1998

As indicated in section 2 above, the Electoral Act (no 73 of 1998) owes its origin to the recommendations of the Electoral Steering Committee of 1996, the Electoral Bill (B90-96) of 1996, and the Aliens Control Amendment Act no 76 of 1995 (Electoral Steering Committee Report, 1996; *Interview*: Lockey, 9 December 1999). The Electoral Bill (B90-96) of 1996 was drafted and introduced by the Ministry of Home Affairs to the National Assembly to amend Electoral Act (no 202 of 1993), so as to accord with the new Constitution of 1996. The bill,

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<sup>12</sup> The report adds that: "... *Before then, an Electoral Amendment Bill (B90-96) should be a stopgap measure until the new Act could be established*". In fact, the Electoral Act no 73 of 1998 appears to be a replication of this bill. Both the bill (B90-96) and the Electoral Act of 1998, particularly the provisions for barcoded ID's, were largely informed by the provisions of the Aliens Control Act no 76 of 1995 which promulgated the stringent controls of immigration rules, permits, passports and identification documents (*Interview*: Lockey, 9 December 1999).

<sup>13</sup> See footnote 12 above.

<sup>14</sup> According to Russon (*Interview*: 14 July 1999) this was Kriegler's personal view, not the official stance of the IEC.

according to the Electoral Steering Committee Report (1996), was the foundation on which the Electoral Act had to be built prior to the 1999 elections. The Electoral Act no 202 of 1993 had passed through many consultation stages within policy making circles until it was replaced by Electoral Act no 73 of 1998 (*Interview: Lockey, 1999*). One of these stages includes the drafting, and later, the presentation of the Electoral Bill (B69-98) by the Minister of Home Affairs to the National Assembly on 13 July 1998. On 22 July 1998, the Bill was referred to the Home Affairs Portfolio Committee in order to invite public comment. At the same time this Committee conferred with the Portfolio Committee on Constitutional Affairs (Home Affairs Portfolio Committee minutes, 1996-1998). Since in the past this legislation had largely been handled by the Department of Home Affairs, the Department continued to keep encouraging the public to acquire barcoded ID's far in advance of elections, in case such documents should be required for voting purposes in the 1999 elections (*Interview: Lockey, 9 December 1999*).

The following section discusses the formulation of Electoral Act no 73 of 1998, starting from the Parliamentary debates on the Electoral Bill (B69-98) until the promulgation of the Act.

### **3.1 Parliamentary debates**

In a parliamentary debate on 17 September 1998, Desmond Lockey of the ANC indicated that the Electoral Bill (which became Electoral Act no 73 of 1998) was necessary to attain a legitimate election. According to Lockey, the bill was to provide for the use of a single form of identity document for all citizens. The Electoral Bill, according to Lockey, restricted the registration of voters to only those citizens in possession of barcoded ID's as required by the Identification Act of 1986. The Electoral Bill according to this view, was to make the elections more legitimate. In his argument, Lockey indicated that a legitimate election is "*An election with a Uniform and verifiable ID for all our citizens*" (*Hansard* no 18, 1998:6569). He argued that other types of identity documents were open to many types of fraud. Lockey indicated that: "*There are many duplicates of these other non-coded ID's in circulation. Some of these duplicates are not verifiable against the population register, and I refer here, in particular to the ID's that were issued in the former TBVC states. This poses a clear risk to the electoral process, because it can allow citizens to vote more than once in the election*" (*Hansard* no 18, 1998:6569).

In the same debate, Abrahams of the IFP indicated that the requirement of a barcoded identity document for purposes of voting was an important priority for his party with reference to the Bill. He added that the IFP supported this provision on the basis that it would maintain consistency and uniformity in the electoral process. He then urged all parties to encourage their

supporters who did not possess barcoded identity documents to apply for them so that they would be able to register for voting (*Hansard* no 18, 1998:6574/5).

In the same debate, Botha of the Freedom Front indicated support for the decision for barcoded identity documents as proposed by the Bill. He stated that: "... *we will support any measure which will bring law and order, discipline and First World standards back to South Africa. We will also support any attempt to eliminate crime, corruption, fraud and other irregularities*" (*Hansard* no 18, 1998: 6576). Botha added that South Africa could not afford the chaos of the 1994 election again. He argued that the Bill and its amendments were aimed at making the 1999 election a credible, fair and impartial election in which every citizen would and could cast his or her vote for the party of their choice. Botha indicated that the Freedom Front was not certain of the capacity of the Department of Home Affairs to issue the required number of barcoded identity documents within a limited space of time. Having been assured by the Director General of Home Affairs of the Department's capacity to issue the required number of ID's, Botha indicated that: "... *because we realise what role a barcoded identity document can play in the elimination of fraud, we support this provision and will take the Department's word for it at this stage that they will be able to meet the demand for the documents concerned*" (*Hansard* no 18, 1998: 6577).

De Lille of the Pan Africanist Congress also indicated support for the Bill by her party. She indicated that she had some knowledge of the offices of the Department of Home Affairs. De Lille indicated that, according to her observations of the operations in these offices, there was no doubt that the Department was more than capable of meeting the deadlines. De Lille urged other members of the House to make their own observations. She had found that there were already 32 850 barcoded ID documents that had not been collected by the public in the offices of the Department of Home Affairs. She argued that the Department should not be blamed if people were not making applications. She then mentioned that: "*We must really urge our members and our supporters to apply for new ID books. All political parties have the responsibility. What more can Home Affairs do? They cannot go and pull people from their homes and tell them to come and apply for an ID*" (De Lille, in *Hansard* no18, 1998: 6579). De Lille added that the Department of Home Affairs could only process ID's once people applied. In response, the NNP representative, Bester indicated that the NNP opposed the Bill on the basis that it disenfranchised those voters who were not in possession of the barcoded identity documents (*Hansard* no 18, 1998:6579).

Mr Green of the ACDP also welcomed and accepted the Bill as amended. The Electoral Bill was then agreed to, incorporating the decision for barcoded ID's, with the Democratic Party and the New National Party dissenting as will be discussed in greater detail below.

### 3.2 Arguments against the Electoral Bill

Although most parties accepted the Electoral Bill with its provisions for barcoded ID's, both the NNP and the DP remained opposed to the ID provision. In the parliamentary debate, Bester indicated that the NNP approved the Bill in so far as it improved existing legislation but opposed the requirement for barcoded ID's in terms of its limitation on voting. The NNP, according to Bester, opposed the requirement for barcoded ID's for the following reasons:

- (a) The provision disenfranchises the voters on the basis of not having a specific type of South African identity document.
- (b) That the Department of Home Affairs appeared not to have enough capacity to issue several millions of barcoded identity documents to the rest of the electorate within the limited space of time before the elections (*Hansard* no 18, 1998:6571/2). In response to this argument, Lekgoro of the ANC reminded the House that the Director General of the Department of Home Affairs had assured the Portfolio Committee of the Department's adequate capacity to timeously meet the demand for barcoded identity documents. According to Lekgoro, suspicion regarding the capacity of Home Affairs should fall away after this assurance. Lekgoro further argued that the use of barcoded identity documents was the only foolproof method that could be employed to ensure that only South African citizens whose particulars were captured in the population register could vote. He added that any other procedure would open the electoral process to fraud such as persons voting more than once, and non-citizens voting. Above all, other methods could contaminate the voters' roll (*Hansard* no 18, 1998:6572/3).
- (c) The NNP and the DP alleged that the ANC insisted on barcoded ID's because the majority of its supporters already had barcoded ID's while the majority of their supporters did not ([http://www.hsrc.ac.za/corporate/media/1999/mar02\\_3.html](http://www.hsrc.ac.za/corporate/media/1999/mar02_3.html)).<sup>15</sup> Both parties felt that the exclusion of voters would benefit the ANC at the expense of the NNP and the DP. The two parties regarded this possible exclusion as unconstitutional since it infringed on the individual political right to vote. In an attempt to protest against the Electoral Bill, the NNP and the DP threatened to take legal action against the IEC and the Government. The

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<sup>15</sup> The survey indicates 62% of the registered population as supporting the ANC, 8% supporting the NNP, 6% supporting the DP, 4% the IFP, 3% the UDM, and 1% each, for other parties.

arguments of each dissenting political party in the several court cases are discussed in section 4 below (*Sunday Times*, 6 December 1998).<sup>16</sup>

#### 4. VOTER REGISTRATION AND THE COURT CASES

As the Electoral Act was passed with the NNP and the DP dissenting, these parties decided to challenge the voter registration provision in the High Court, and eventually in the Constitutional Court. The court cases are discussed in this section.

##### 4.1 **The NNP of South Africa vs. Govt of the RSA & Others -1999(4) BCLR 457 (C), High Court, Cape of Good Hope Provincial Division, Case no 16880/98, Judgement Date: 26/02/1999.**

###### 4.1.1 *Introduction*

During January 1999 the NNP launched an application to the Cape of Good Hope Division of the High Court. The party was contesting the decision by the Government of the Republic of South Africa and the Independent Electoral Commission that the citizens of South Africa should have to possess the barcoded green identity document only in order to register for voting in the 1999 general elections.

###### 4.1.2 *The Parties to the Case*

- **Applicant:** The New National Party of South Africa
- **Respondents:** The Government of RSA as the first respondent; The Minister of Home Affairs, Ministry Head as a second respondent; The Minister of Finance and head of the Department of State Expenditure as a third respondent; Chairperson of the IEC as fourth respondent; and the Chief Electoral officer of the IEC as a fifth respondent.

###### 4.1.3 *Relief sought or required by the NNP*

- The NNP was seeking a Court order against the provisions of section 1(xii) of Electoral Act 73 of 1998. The contested section relates to the definition of an identity document when read with sections 6(2) and 38(2) of the same Act. This definition recognises only a green barcoded identity document for voter registration and voting purposes in South Africa. The NNP wanted the Court to order the provisions as unconstitutional and invalid since they excluded from voting eligible voters who were on the population register.

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<sup>16</sup> This argument was confirmed by one of the DP legal representatives to the court cases, Mrs Santosh Kalyan, when interviewed by the author in Parliament in September 1999.

- Further, the NNP was seeking a Court order against the conduct of the Ministers of Home Affairs and of Finance, as allegedly infringing upon the independence and impartiality of the IEC, to be declared as invalid and unconstitutional. The alleged conduct of the Ministers was as follows:
  - (a) Financial constraints placed by the Minister of Finance on the IEC;
  - (b) Thereby interfering with the powers of the IEC to carry out its duties and functions as described in sections 5 and 12 of the Electoral Commission Act and sections 4, 5 and 14 of the Electoral Act as well as sections 181 and 190 of the Constitution. These sections basically prescribe the main duties of the IEC to organise and administer the free and fair elections in an unbiased manner. The NNP felt that financial constraints limited the capacity of the IEC to carry out such duties;
  - (c) Withholding of barcoded identity documents issued by the Department of Home Affairs around the country, without delivering them to persons that applied for them, and without affording proper notices to such applicants.

The NNP wanted a Court order declaring the above-mentioned conduct as irregular. The Party gave as reason that the defendants failed to apply their minds properly when making their decisions. Alternatively, that the decisions were made arbitrarily or as a result of unwarranted adherence to rigid principles or in order to further an improper purpose. Possibly the defendants had misconceived the nature of their decision by taking into account irrelevant considerations or ignoring the relevant ones (NNP vs. Govt of SA and Others, Case no 16880/98, in 1999(4) BCLR 457(c)).

#### **4.1.4 Supporting Evidence**

To back its claims the NNP relied on a lengthy affidavit that had been filed by the previous chairperson of the IEC, Judge Kriegler, alleging the Government's invasion of the IEC's independence through financial constraints that had rendered the functioning of the IEC difficult. The affidavit indicated that the IEC had extensive constitutional powers relating to the very foundation of the state in terms of enabling the public to elect its representatives. Kriegler indicated that confidence in the electoral process was necessary if democracy and the new order were to succeed. For such success to materialise, Kriegler argued that the IEC should be seen to be politically, administratively and financially free from any interference (NNP vs. Govt of SA and Others, case no 6880/98, in 1999(4) BCLR 457(c):465). In this affidavit, Kriegler accepted that as the IEC was publicly funded it was accountable to Parliament. He added that the IEC was

also functionally dependent on the co-operation of both the executive and the legislative branches of the government. He argued however that the IEC could not perform its arbitral role unless it functioned manifestly free of Government control. The affidavit indicated that there had not been unstinting support from the Government in view of its perception of the IEC's status, role and function. Kriegler felt that although the President, Deputy President and the Ministers of Home Affairs and Finance did respect the independence of the IEC in their personal capacities, the Directors General of the latter departments were reducing the IEC to a line function of the Department of Home Affairs, through which the Department of State Expenditure would deal with the IEC indirectly only (Case no 16880/98 in 1999(4) BCLR 457(c):466).

The executive director of the federal council of the NNP, Schoeman, produced further evidence from a *Hansard* report, and a large number of media reports professing to reflect public disapproval of barcoded ID limitation. To prove the incapacity of the Department of Home Affairs, Schoeman's stronger evidence was the Human Science Research Council (HSRC)'s countrywide survey that had been requested by the IEC. The survey in question was dated 13 August 1998 and was entitled "*The Extent to which Eligible Voters are in possession of South African Identity documents*" (<http://www.hsrc.ac.za/socdyn/iec/cover.html>). The survey results revealed that one in ten eligible voters did not have any form of identification document during the time of the survey. More than two thirds of these people were first time voters between 17 and 21 years of age. The evidence indicated that only 86,2% of the public had the green barcoded ID document. A further 4,4% had green ID's without barcodes; 3,4% with green ID's of which the type was unknown to them; 4,7% had blue ID's; 0,7% of the respondents had an ID issued by one of the TBVC states.

According to the same data, less than one per cent of respondents had only a reference book or another form of ID. Further, between 4,7 and 5,3 million people did not have a green barcoded identity document during the time of the survey. To a greater extent, according to the survey, the absence of ID's was manifest among individuals living in rural areas, including the regions of Umtata, Pietersburg, Pretoria, Pietermaritzburg, East London/Bisho and Durban. The survey indicated that one in five people without barcoded ID's had applied for one. Of this number, 32% had been waiting for more than 12 weeks while 21% had been waiting for more than 20 weeks, which indicated a lack of capacity on the part of the department of Home Affairs to cope with the demand (<http://www.hsrc.ac.za/socdyn/iec/iec2execsumm.html>).

In response to the claim concerning the capacity of the Department of Home Affairs, Mokoena, the Director General of Home Affairs, denied that Home Affairs was incapable of delivering the ID's. He disagreed with the findings of the HSRC, indicating that even if the figures were acceptable, they could not be relied upon as they were constantly changing as more voters acquired the green barcoded ID's on an ongoing basis. Mokoena argued that although it usually took about two months for the Department to process an application, the Department had been able on some occasions to process 18 000 applications a day. He added that the number could be increased to 25 000 a day or even more should such a need arise. Mokoena indicated that the Department was processing about 12 000 applications a day, reflecting the number currently being received by the Department. He gave an assurance that, should there be a sudden influx of new applications, the Department could use a contingency plan including the use of other State departments such as the Defence Force, the police services and a wide pool of idle printing facilities in the former TBVC States. According to Mokoena, persons appearing on the population register, and who applied for a barcoded identity document, could be given a temporary identification certificate to enable them to register and to vote, pending the procession of applications (NNP vs. Govt of SA and Others, case no 16880/98, in BCLR 457(c), 1999(4)).

On the issue of identity documents not being received by applicants, Mokoena indicated that there had been problems with the postal communication. Documents had gone astray or fallen into the wrong hands. In most cases applicants changed their residential addresses without notifying the Department, or in most cases, they just failed to collect their identification documents when they had indicated their wish to do so. Regarding persons who had not yet applied, Mokoena felt that the responsibility rested with individuals who wished to exercise their voting right to apply in time for their ID's. On budgetary constraints, he indicated that the NNP had not challenged the relevant provisions of the Appropriation Act nor taken account of budgetary and fiscal discipline (NNP vs. Govt of SA and Others, case no 16880/98 in BCLR 457 (c), 1999(4)). On the same point Schoeman argued that the IEC had not been able to appoint new staff or to pay staff already appointed, for purposes of the registration of voters. Mr Schoeman further alleged that the Government, especially the office of the Deputy President Thabo Mbeki, had simply usurped the functions of the IEC. Mr Schoeman felt that this was synonymous with the take-over of the IEC functions by the ANC (NNP vs. Govt of SA and Others, case no 16880/98 in BCLR 457(c), 1999(4):463).



Taking into account the costs incurred during the 1994 election, Schoeman felt that the actual combined costs of the election could amount to R2,6 billion<sup>17</sup> while in contrast, the Department of State Expenditure had only allocated an amount of R713,5 million for voter registration during the period of the court case.

The NNP also made reference to an affidavit of the Premier of the Western Cape, G.N. Morkel, indicating that the Western Cape Provincial Government had offered an amount of R7,6 million as a contribution to the registration process in the province. The chairperson of the IEC had apparently welcomed the contribution whilst the Government had rejected it. As a result, Morkel's affidavit claimed that the Government was making it impossible for the IEC and its chairperson to carry out their functions (NNP vs. Govt of SA and Others, case no 16880/98 in BCLR 457(c), 1999(4)).

#### **4.1.5 The Court Ruling**

On 26 February 1999 the Cape High Court ruled against the NNP's application. Judge Van Zyl found the barcoded identity document to be of benefit to the electoral system as it would serve to eliminate irregularities (NNP vs. Govt of SA and others, case 16880/98 in BCLR 457(c), 1999(4)). On the question of new applications, the judge felt that there was no reason for certainty that a substantial number of eligible voters without barcoded ID's and who still had not applied were going to do so before a cut-off date. As the requirement for barcoded ID's had been published since October 1998, the judge was satisfied that potential voters (had) had more than enough time to apply for ID's. He further indicated that the Department of Home Affairs had recently made more effective arrangements to deliver documents and it was no longer the case that large numbers of documents were accumulating in its offices (NNP vs. Govt of SA and others, case 16880/98, in BCLR 457(c), 1999(4)).

On the independence of the IEC, the judge agreed that financial constraints did add pressure to the functioning of the IEC. The judge indicated however, that Judge Kriegler had given the assurance, on numerous occasions, that the independence of the IEC had not been affected and regarded the issue as now academic. Both Judge President King and Deputy Judge President Hlophe supported these arguments and the Court judged against the NNP. The NNP was not satisfied with the judgement, deeming it to be short-sighted regarding the constitutional voting right of all citizens (*Interview*: Gaum, 15 December 1999). As a result, the Party lodged an appeal with the Constitutional Court in Pretoria (NNP vs. Govt of SA and others, case 16880/98 in BCLR 457 (c), 1999(4)).

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<sup>17</sup> Without giving a breakdown of this figure, Schoeman indicated that electoral costs had increased since 1994

## **4.2 The New National Party of South Africa vs. Government of the RSA and Others, Constitutional Court, Judgement Date 13/04/1999, Case no CCT9/99, In 1999(5) BCLR 489(cc)**

The hearing of the NNP appeal in the Constitutional Court opened on 15 March 1999. The NNP presented the same argument as it had in the Cape High Court. Counsel Le Roux of the NNP explained to the judges that the HSRC survey was evidence that 10% of the eligible voters from the former TBVC states, who did not appear in the population register, also did not have identity documents. He added that a substantial backlog of unprocessed applications remained at the office of the Department of Home Affairs. Le Roux argued that the reduction of the IEC into a line function of the Department of Home Affairs effectively robbed the Commission of its Independence (*Business Day*, 16 March 1999; *The Citizen*, 17 March 1999).

In response, Advocate Semanya of the Department of Home Affairs argued that since no one who had applied for an ID had been denied, no rights had been infringed (*The Star*, 17 March 1999). The debate around the independence of the IEC continued for two days, after which, the Court still had to study all the documentation before it could arrive at a judgement. The Court only made the judgement on 13 April 1999 (NNP of SA vs. Govt of RSA and others, case no CCT9/99, in BCLR 489(cc), 1999(5), sections 25-27).

### **4.2.1 The Constitutional Court Judgement**

The Constitutional Court ruling was no different from that of the High Court. The former Court ruled that barcoded ID's had advantages over older documents for three reasons. Firstly, a barcoded ID identified the holder's details quickly. Secondly, the fact that barcoded ID holders had their fingerprints taken could help prevent electoral fraud. Thirdly, old ID's had been issued on a racial basis (NNP of SA vs. Govt of RSA and others, Case no CCT9/99, in BCLR 489(cc), 1999(5), sections 23-27; *Sowetan*, 14 April 1999). The Constitutional Court also made the following points in the judgement:

- **On the Capacity of the Department of Home Affairs**

On this issue, the Court indicated that the capacity or incapacity of the Department was only an issue of implementation and had no relevance to the constitutionality of the provision. In addition, the number of possible consequences of the statutory measure was limitless; it could include the unwillingness by some people to register at all, or even as the NNP argued, the inefficiency of the Department of Home Affairs. All these related to implementation rather than

to the consequences of the statutory provision itself. As the Court could not find any probability that potential voters who really wanted to register could not do so, the appeal in this issue was dismissed (NNP of SA vs. Govt of RSA & others, case no CCT9/99, in BCLR 489(cc), 1999(5) Section 44).

- **On Insufficient time to apply for ID's and to Register**

The majority of judges indicated some concern that the prescribing legislation had only been passed in October 1998. The judges felt however, that since the requirement for barcoded ID's had been publicised from April 1998 and by July 1998 about 80% of the population possessed barcoded identity documents, everyone who would have wanted a barcoded ID had had more than six months to apply for one. According to the judges, those who had wanted to exercise their right to vote had had sufficient time to apply for a new identity document and to register to vote. Further, Parliament was obliged to provide for a reasonable scheme capable of ensuring that all persons who wanted to vote, and had taken reasonable steps in pursuit of that right, were able to do so. According to the judges, Parliament had done this. The onus to prove otherwise rested with the applicant, who, according to the judges, had not managed to give such proof (NNP of SA vs. Govt of RSA & others, Case no CCT9/99, in BCLR 489(cc), 1999(5) Sections 39-42).

- **On the Independence of the IEC**

Regarding inadequate funding, said to be infringing on the independence and impartiality of the IEC, the claim of infringement was dismissed on the basis of previous evidence by Judge Kriegler that the Commission had agreed on this arrangement. The Judges added that, provided the IEC could exercise control over registrations, its independence was not being infringed. Judge Langa indicated that the legislation, in fact, had to be legislated by Parliament and not by the IEC. The fact that the provisions ultimately adopted ran against the recommendations of the Commission did not reduce the independence of the IEC. Judge Chaskelson expressed his interpretation of independence in this case as meaning the absence of a "Political Head" which was still the case with the IEC (NNP vs. Govt. of RSA and others, case no CCT9/99 in BCLR 489(cc), 1999(5)). The majority of judges indicated that while the relevant organs of the government might have misconstrued the true nature of their constitutional obligations, there was no evidence that their activities had infringed on the purpose and functions of the IEC (NNP vs. Govt of RSA and others, case no CCT9/99, in BCLR 489(cc), 1999(5) Sections G-H).

#### **4.2.2 Constitutional Court Judgement**

Based on the above arguments, the majority of judges concluded that the statutory provisions for barcoded identity documents were not unconstitutional and therefore dismissed the NNP's appeal. On passing the judgement, Judge Hlophe indicated that the Government was no angel in this case. The electoral legislation had been passed very late to give sufficient time for the IEC to prepare for the elections. Hlophe added that the government had not done its utmost to support the IEC, and as a result, the court would not rule for costs in its judgement. The only dissenting Judge to this ruling was Judge O'Regan. She argued in favour of the applicant on the basis that the State was obliged to pass legislation that served to enhance enfranchisement rather than disenfranchisement. Judge O'Regan added that it was unreasonable for Parliament to accept only barcoded ID's for voting while other forms of ID's continued to be valid for all other purposes. She further argued that, as a new form of identification document that would replace all other forms of documents in future, including the green barcoded ID's, was already in the formulation process, the provisions of the Electoral Act were unreasonable (NNP of SA vs. Govt of RSA and others, case no CCT9/99 in BCLR 489(cc), 1999(5) Sections 51-52). The NNP was still dissatisfied with the judgement. The Party believed that the individual constitutional right to vote should not be infringed under any circumstances, but having exhausted the channels at its immediate disposal, and in the interest of the progress of elections, the Party accepted the ruling of the Constitutional Court (*Interviews*: Gaum, 15 December 1999; Vorster, 23 November 1999).

#### **4.3 Democratic Party vs. Minister of Home Affairs and Another**

The New National Party (NNP) was not alone in dissenting to the Electoral Act and the provision for barcoded ID's. As the NNP received its unfavourable judgement against its applications in the Cape High Court, the DP went ahead with its application in the Transvaal Division of the High Court against the barcoded ID stipulation on 3 March 1999.

##### **4.3.1 The Arguments by the DP**

The DP and the NNP had similar arguments against the constitutionality of the decision for barcoded ID's by the government, both in the High Courts and in the Constitutional Court. In addition to the NNP's arguments, the lawyers of the DP were determined to challenge the validity of the evidence submitted in the NNP case by the Director General of Home Affairs that people could use temporary registration certificates for voting. The DP also argued that barcoded identity documents could not prevent fraud more successfully than other ID's could.

The main reason why the Democratic Party challenged the barcoded ID stipulation, according to its spokesperson on Court cases, Kalyan (*Interview*: 8 September 1999), was that the party would be disadvantaged by the stipulation. Kalyan explained that the majority of the population that was mobilised to obtain new ID's in preparation for the first democratic elections in 1994 represented people who had old passbooks or reference books or no ID's at all. This majority, a large proportion of whom were the followers of the ANC, were encouraged to apply for new ID's before the 1994 elections and were presently in possession of barcoded ID's. She added that the DP and NNP supporters had not bothered to apply for new barcoded ID's at that stage since they already possessed some form of what they considered to be adequate identification, which would be acceptable for voting in 1994. Kalyan further indicated that as a larger section of the latter parties' supporters did not have these documents, these parties would most likely be disadvantaged by the stipulation, to the advantage of the ANC. The parties felt that the playing ground was therefore not level and decided to challenge the decision in the High Court and the Constitutional Court. The case was postponed from 3 March until 12 March 1999 (*The Citizen*, 4 March 1999).

#### ***4.3.2 Judgement of the Transvaal High Court Division***

Due to the similarity of circumstances between the NNP and the DP, the Judgement of this Court was similar to that of the Cape High Court on the NNP case in February. As a result, the DP lodged an appeal with the Constitutional Court against this judgement (EISA, 1999(9):2).

#### **4.4 Democratic Party vs. Minister of Home Affairs and Another**

The case of the DP vs. the Minister of Home Affairs and Another is discussed in the following section.

##### ***4.4.1 The Judgement***

**The Constitutional Court** *Case no CCT11/99, Judgement Date: 13/04/1999, in 1999(6) BCLR 607(cc)*

The DP, like the NNP, appealed to the Constitutional Court against the decision of the Transvaal High Court. Due to the similarity of facts, arguments and circumstances, the hearing on these two cases was conducted in the same venue, on the same day and by the same panel of judges. The new issues raised in the DP case, which were not considered in the NNP case were:

- (a) The equality argument, and
- (b) The application for referral for evidence.

On the equality argument, the DP representative, Loxton, indicated that both the surveys of the HSRC and Opinion 1999 indicated that significant numbers of South Africans were without barcoded ID's. Loxton then argued that the challenged provisions constituted an indirect discrimination against discrete vulnerable groups on the grounds of race, age, residence, belief, conscience or political affiliation. This submission was based on the HSRC survey findings that a greater proportion of white potential voters, rural potential voters, and younger potential voters had no green barcoded identity documents (*Democratic Party vs. Minister of Home Affairs and Another*, case no CCT11/99, in BCLR 607(cc), 1999(6) sections 11-12).

Furthermore, Loxton argued that the discrimination was on one or more of the grounds contained in section 9(3) of the Constitution. This section prohibits the State from unfairly discriminating directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. In his judgement, Judge Goldstone pointed out that there was no evidence to indicate the actual impact of the Electoral Act on the said categories of people. Where such impact may be presumed, there was no further evidence that the Electoral Act, and no other factor, had caused such an impact nor how much of that impact. As a result it could not be established whether such unknown impact, if any, in fact constituted unfair discrimination. On section 12(a) the judge indicated that there was no evidence to suggest that the persons in the identified categories had registered in smaller numbers than other categories. From this analysis the judge dismissed the argument of the DP (*Democratic Party vs. Minister of Home Affairs and Another* case no CCT11/99, in BCLR 607(cc), 1999(6)).

On the referral for evidence, the DP argued that the Court had made a mistake in not referring the application for the hearing of oral evidence on the number of both registered and unregistered voters. This information, according to the DP representatives, was necessary for the evaluation of the capacity of the Department of Home Affairs. In its judgement the Court referred to the evidence given by the Director General of Home Affairs, Mokoena, in the NNP case. The Court found that there was no reason to doubt Mokoena's assurance of the capacity of the Department in issuing barcoded identity documents (*Democratic Party vs. Minister of Home Affairs and Another* case no CCT11/99, in 1999(6) BCLR 607(cc), sections 13 & 18). Judge Yacoob found that the provisions of the Electoral Act did not infringe on any rights. The onus to prove that certain rights had been infringed rested upon the Democratic Party, which had not succeeded in giving such proof in the opinion of the Court. Due to the concerns of the court regarding the lateness of the legislation, and that the government had not done its utmost to

support the functioning of the IEC, the Court dismissed the appeal without any ruling for costs (Democratic Party vs. Minister of Home Affairs and Another, Case no CCT11/99, in BCLR 607(cc), 1999(6), sections 18 & 19).

#### **4.5 The South African Prisoners' Union: August and Another vs. Electoral Commission and Others, Case no CCT8/99, Judgement date: 01/04/1999 in 1999(4) BCLR 363(cc)).**

Two prisoners, August and Another(name not specified), supported by the *Prisoners Union and the South African Prisoners Organisation for Human Rights* (Sapohr) applied to the High Court and the Constitutional Court regarding the disenfranchisement of prisoners. The cases are discussed in the following section.

##### **4.5.1 Introduction**

For a citizen to vote in the 1999 general elections he or she should be in possession of a green barcoded identity document, as well as fall within the legally enfranchised category of South African citizens. According to the IEC Chief Director of voter registrations, Russon, (Press statement, 7 March 1999), the Electoral Act no 73 of 1998 disqualifies convicted prisoners or those awaiting trial from voting. Other restricted categories include permanent residents who are not citizens; South Africans abroad on a permanent basis; and all citizens without barcoded identity documents.

Unlike the NNP and the DP, the Prisoners Union did not contest the barcoded identity document stipulation. Instead, it set out to challenge the disqualification of prisoners from voting. The prisoners regarded the disenfranchisement of themselves as unconstitutional and challenged it in the Transvaal Division of the High Court. The Union was approaching the Court in the hope that it would declare the stipulation of the disenfranchisement of prisoners as unconstitutional.

##### **4.5.2 Arguments by the Prisoners' Representatives<sup>18</sup>**

The applicants argued that the Interim Constitution provided for universal adult suffrage and did not expressly disqualify any prisoner/s. It did however, propose that the disqualification be prescribed by law. In the case of prisoners, section 16(d) of the Electoral Act of 1993 prohibited voting by people detained in prison after being convicted and sentenced without the option of a fine in respect of:

- (i) "... Murder, robbery with aggravating circumstances and rape; or

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<sup>18</sup> The applicants, August, a sentenced prisoner, and an unsentenced prisoner were represented by G.C.Marcus Sc, and J.Kentridge, as instructed by the Legal Resource Centre and supported by the Prisoners Union (Case no CCT8/99, in BCLR 363(CC), 1999(4)).

(ii) Any attempt to commit such an offence ..." (Section 16(d), Electoral Act no 202 of 1993).

The Act also referred to persons who are detained as a result of mental health problems.

According to the representatives of the Union, the Electoral Act of 1998 provides that any South African in possession of an identity document may apply for registration as a voter. As the Electoral Act does not include any other category of prisoners in a disenfranchised list, the Union argued that all prisoners outside the above-mentioned categories should be entitled to vote (Electoral Act no 73 of 1998 which became the Electoral Act no 73 of 1998 and was published in the Government Gazette no 19351 on 14 October 1998).

#### **4.5.3 Judgement of the High Court**

On 12 March 1999 the Transvaal Division of the High Court made its ruling on the case. Judge Els agreed that incarceration does not deprive prisoners of the right to vote but limits them since the Electoral Act provides that voters must register in districts in which they are ordinarily resident. He added that registering prisoners in each cell as a permanent address would be administratively difficult (Case no CCT8/99, in BCLR 363(cc), 1999(4); *Business Day*, 15 March 1999). The Court decided that the providing of voting facilities in prisons would pose insurmountable logistical, financial and administrative difficulties for the IEC. The Court dismissed the application (EISA, 1999(9):2). The prisoners' representatives (see footnote 18 above) were dissatisfied with the judgement of the High Court and lodged an appeal against it in the Constitutional Court.

#### **4.6 Constitutional Court: Case no: CCT8/99 in 1999(4) BCLR 363(cc), 01/04/99**

The following section discusses the ruling of the Constitutional Court on the Prisoners' Union Appeal case.

##### **4.6.1 The Ruling**

On 1 April 1999 the Constitutional Court made its judgement in favour of the Prisoners Union. The Court ruled that neither the Court itself nor the IEC but only Parliament itself had the right to disenfranchise prisoners (EISA, 1999(10): 1). The Court found that Parliament had not indicated such an intention anywhere in the 1996 Constitution (Case no CCT8/99, in BCLR 363(cc), 1999(4): 380). The Court also indicated that more than a third of persons in prisons were awaiting trial while many of them were incarcerated because they could not afford low amounts of bail or small fines and were thus not serious offenders. The Court therefore ordered the IEC to make all necessary arrangements to register all prisoners who were not excluded in



terms of section 8(2) of the Electoral Act,<sup>19</sup> and who had been prisoners between the registration periods of November 1998 and March 1999. As a result, the IEC had to register more than 146 000 prisoners<sup>20</sup> in a short space of time prior to the elections (*Die Burger*: 3 April 1999; *Sowetan*: 6 April 1999).

This ruling was not welcomed by the Freedom Front, and the Federal Alliance political parties. Federal Alliance leader, Luyt, was not satisfied with convicts enjoying and being entitled to the same rights and privileges as law-abiding citizens (*Die Burger*: 3 April 1999; *The Herald*, 5 April 1999). Luyt argued that if the law-abiding citizens were abroad during elections, the IEC, the Government and the citizens themselves should ensure that there the necessary logistics were in place to enable them to vote. Viljoen of the Freedom Front also expressed a similar disappointment with the ruling (*Die Burger*: 3 April 1999; *The Herald*, 5 April 1999). Both the DP and the NNP accused Mr Golden Miles Bhudu, the president of Sapohr, for using his position in the prisoners organisation to win the prisoners' votes for the UDM. The former two parties questioned the fairness of the judgement on the grounds that it enfranchised prisoners who have violated human rights but disenfranchised law-abiding citizens. (*Die Burger*: 3 April 1999; *Sowetan*: 6 April 1999). Bhudu of the UDM indicated support for the judgement on the basis of what he called: "... a mere recognition of, and respect for the supremacy of the Constitutional Court" (*Sowetan*: 6 April 1999).

## 5. SOUTH AFRICAN CITIZENS ABROAD

Chapter 2 of Electoral Act (no 73 of 1998) stipulates that registered citizens may vote only at stations where they have registered. As discussed in the following section, this provision had complicated implications for South Africans abroad (*Cape Argus*, 6 April, 1999; *Cape Times*, 12 April, 4 May 1999; *The Star*, 6 April 1999).

### 5.1 Disenfranchisement of South Africans abroad?

One of the objectives of the Electoral Amendment Bill (B90-96) of 1996, and the Electoral Act no 73 of 1998 was "... to amend the provisions regarding voting stations ... and repeal those regarding foreign voting stations" (Electoral Bill [B90-96] of 1996, sec 16; Electoral Steering Committee Report, 1996). This meant that, unlike the 1994 elections, voting would take place only in South Africa in the 1999 elections. As a result, the voting districts and registration

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<sup>19</sup> Section 8(2) prohibits the registration of who those have applied fraudulently, are not a South African citizen, have been declared by the High Court to be of unsound mind or detained for such a condition, or persons not ordinarily resident in the area for which they intend voting.

<sup>20</sup> IEC Press release by Mr Ray Russon, 7 March 1999, Pretoria, indicated 150 000 Prisoners.

stations in which citizens could register and vote were designated only in South Africa (*Interview: Gaum, 15 December 1999*). The implication was that South Africans in foreign countries, who wanted to register and vote had to travel back to South Africa to register, and also return to those voting districts to vote on election day (*Cape Times, 4 May 1999; Interview: Gaum, 15 December 1999*). This stipulation, and the absence of reasonable arrangements by the IEC to enable South African citizens abroad to register and vote made it impossible for them to do either (*Interviews: Gaum, 15 December 1999; Kalyan, 8 September 1999; and Vorster 23 November 1999; Cape Times, 12 April, 4 May 1999; The Star, 6 April 1999*). The DP, Federal Alliance, and the NNP felt that this disenfranchisement was both unfair to the voters, and unconstitutional. As a result, these parties met on numerous occasions in Pretoria to collaborate on challenging the IEC and the Government on this issue (*Interview: Gaum, 15 December 1999; The Star, 6 April 1999*).

Both the ACDP and the Freedom Front argued that it was unacceptable that convicted prisoners could vote while law-abiding citizens remain disenfranchised. On the other hand, the DP gave an ultimatum to the IEC to "permit the enfranchisement of South Africans abroad" or face court action (*Cape Argus, 6 April, 1999; Cape Times, 6 April 1999; The Star, 6 April 1999*). In addition, Tony Leon of the DP wrote to the Chairperson of the IEC requesting that South Africans who would be representing South Africa in sports activities outside the country on election day be allowed to vote in the same way as South African ambassadors and diplomats abroad (*Cape Times, 6 April, 1999*). The letter made special reference to the South African cricket team, and other sports people. In response, and to the delight of the DP and the United Cricket Board, on 12 April 1999 the IEC agreed that registered South Africans, including sports people travelling abroad could register in South Africa's 88 embassies in foreign countries (*Cape Argus, 15 April 1999; Cape Times, 15 April 1999*). To do so, registered voters had to obtain declaration certificates from the stations in which they were registered, and had to present these certificates at the various embassies in order to vote (*Cape Argus, 15 April 1999; Cape Times, 15 April, 1999, Sowetan, 20 April, 1999*). Voting in foreign embassies took place on 26 May 1999 (*Cape Times, 27 April, 1999; The Star, 28 April, 1999*). In addition, the IEC made provisions for registered voters who would be unable to be at their voting stations on 2 June to apply for a special voting status (*Sowetan, 20 May 1999; The Sunday Times, 23 May 1999*). Special voters were those who could not get to the voting stations on 2 June due to physical disability, pregnancy, and those voters in South Africa who wanted to vote away from their registration stations (*Sowetan, 20 May 1999*). Special voting took place on 31 May and 1 June 1999 (*Sowetan, 20 May 1999; The Sunday Times, 23 May 1999*).

While the DP was pleased with these arrangements by the IEC, the NNP and the Federal Alliance were far from being satisfied. The two parties wanted all South Africans, not just the registered ones, to be enfranchised (*Business Day*, 28 April 1999; *Sowetan*, 28 April 1999). The position these parties held was that the IEC, whose rules made it impossible for South Africans abroad to register, should have made reasonable arrangements for their registration and voting (*Interview*: Gaum, 15 December 1999). Both the FA and the NNP were dissatisfied with the developments by the IEC in this respect and decided to take a joint court action as discussed in the following section.

## **5.2 The New National Party of South Africa, (case no 10121/99), the Federal Alliance (case number 10508/99) vs. The Chairperson of the IEC (1<sup>st</sup> respondent), the Chief Electoral Officer of the IEC (2<sup>nd</sup> respondent), the Minister of Home Affairs (3<sup>rd</sup> respondent), and the Government of South Africa (4<sup>th</sup> respondent).**

On 22 April 1999 the Federal Alliance presented its application to the Pretoria High Court for an order that registered citizens be allowed to vote anywhere, irrespective of where they had registered. This application was held jointly with that of the NNP, which applied for a court order to allow South Africans abroad to register and vote on 2 June (*Business Day*, 22 April; 28 April, 1999). The following section covers the arguments of the two parties, as well as the court judgement.

### **▪ *The Arguments of the NNP***

The NNP was requesting the court to order the IEC and the Government to allow *all* South African citizens abroad to be given a reasonable opportunity to register and to vote (*Cape Argus*, 27 April, 1999; *Business Day*, 28 April, 1999). The NNP wanted all eligible South Africans who had been outside the country between 27 November 1998 and 7 March 1999, and who had failed to register to be given a reasonable opportunity to register, or alternatively, to be allowed a special voter status to vote abroad (*Business Day*, 28 April, 1999). The argument was that the Chairperson and the Chief Electoral Officer of the IEC were under a duty to facilitate the registration of eligible citizens by providing necessary facilities for that purpose (*Judgement document*, cases 10121/99 and 10508/99, 26 April 1999). In failing to do so, the two officers of the IEC had effectively disenfranchised those voters. In support of this argument, the NNP relied on the Constitutional Court judgement in the case of *August and Mabutho (Prisoners Organisation) vs. The IEC and Others*. In the latter case the Court concluded that the failure by the IEC to create conditions enabling prisoners to register and to vote, effectively disenfranchised all prisoners (*Judgement document*, cases 10121/99 and 10508/99, 26 April

1999). The NNP argued that the requirement for registration to take place within the Republic of South Africa was later relaxed to accommodate Government personnel. The implication was that whatever objections there might have been were nugatory since the structures were already in place to accommodate all South Africans abroad (*Judgement document*, cases 10121/99 and 10508/99, 26 April 1999). The NNP also required the respondents to pay the costs of the case.

▪ *The Argument of the Court*

On the first claim, the Court ruled that the ruling of the Constitutional Court on the prisoners' case indicated an *absolute denial* of the prisoners' right to vote, which was not the case in the present matter in question. In this case, argued the Court, failure to provide registration facilities beyond the Republic's borders did not constitute an *absolute denial* of the right to vote. At worst it could be argued that it constituted a relative or subjective difficulty or inconvenience, and never an absolute denial of access to registration facilities (*Judgement document*, cases 10121/99 and 10508/99, 26 April 1999). The judge added that the voters in this case were never prevented from returning to South Africa, but that they consciously decided not to return. There was no evidence to suggest that these votes were prevented from returning to South Africa, either by Government or by the operation of law. The applicant had failed to show in their affidavit that it was not reasonably possible for any of the persons to have returned to South Africa. In addition, the applicant had also failed to show that the effect of the regulations were such as to discriminate against people within, and those outside South Africa. The distinction, according to the judges, was volitional. There were those voters in the Republic of their own volition, and those outside the Republic of their own volition. It could not be argued that the Electoral Act and the Constitution could be interpreted as implying that anyone outside the Republic between certain dates was ineligible to vote (*Judgement document*, cases 10121/99 and 10508/99, 26 April 1999).

On the argument for a relaxation of the provision that registration should take place within the Republic of South Africa to accommodate Government personnel serving in foreign countries, the court ruled that the argument lost sight of the fact that this was, in actual fact, not a relaxation but merely an adaptation of the requirement to accommodate those serving in or at South African missions abroad which are regarded as South African territory (*Judgement document*, cases 10121/99 and 10508/99, 26 April 1999). According to the judges, it could not be argued that South Africans on foreign soil could have been accommodated by allowing registration to take place at various missions abroad since this presupposed that all these South Africans were within easy reach of an embassy or foreign mission. The argument further

presupposed that the number and distribution of South African voters abroad was known so that a viable system for their registration could be easily administered. The applicant, who could not even prove to the Court that these unknown people whom the applicant purported to represent were in fact unable to come to South Africa to register and vote, had failed to prove the validity of these presuppositions (*Judgement document*, cases 10121/99 and 10508/99, 26 April 1999).

▪ ***The Federal Alliance(FA) Arguments***

The Federal Alliance applied to the Court requesting it to order the IEC and the Government, as represented by the above-mentioned respondents, to allow registered voters to vote in any voting station, and not only at the one where they had registered (*Judgement document*, cases 10121/99 and 10508/99, 26 April 1999). The FA argued that the Government and the IEC (*respondents*) were obliged to make necessary arrangements to enable voters who would be absent from their voting districts to vote elsewhere. Furthermore, the FA argued that section 33(1)(a) was inconsistent with the Constitution and/or invalid insofar as it precluded persons who could not vote at their registration stations from applying for a special vote. The FA also argued that section 33(1)(b) of the Electoral Act was inconsistent with the constitution and/or invalid in that it empowered the IEC to prescribe other categories of persons who might apply for a special voting status. Lastly, the FA requested the Court to order the respondents to the case to pay the costs thereof (*Judgement document*, cases 10121/99 and 10508/99, 26 April 1999).

▪ ***The arguments of the Court***

Judge Daniels argued that, since the statutory obligation imposed upon voters was to vote in the voting districts in which they had registered, the applicants could not contend that the respondents were obliged to make arrangements for any registered voter to vote elsewhere. In addition, the Act provided for exceptions. Exceptions for special voting were provided for people who were physically infirm, disabled, pregnant, or absent from the Republic on Government service or members of the household of such a person. Judge Daniels added that the Act obliged the respondents to describe circumstances other than those mentioned, in which special votes might be applied for and allowed. He added that in the exercise of that discretion it could hardly be suggested that the Commission ought to have extended the right to all and sundry, irrespective of the reasons which would have rendered the principle or requirement for voting in a particular district nugatory, something which the Commission was not entitled to do. Judge Daniels indicated that the FA had not shown that the Commission's extension of exceptions had been decided upon arbitrarily or capriciously. Finally, the judge stated that it could not be shown that any voter who took reasonable steps in pursuit of his or her right to vote

had been discriminated against. Neither could it be shown that persons falling outside the categories of special voting status had been prevented from voting by the operation of law or Government intervention. Instead, added the judge, those who fell outside these categories and did not vote, did so voluntarily (*Judgement document*, cases 10121/99 and 10508/99, 26 April 1999). In view of these arguments, and those of the NNP, the judge made the following joint judgement:

Judge Daniels concluded that, neither the NNP nor the FA had made out a case for the relief claimed, and in the result both applications are dismissed without any order for costs.

### **5.3 Reaction of Political Parties**

The Federal Alliance indicated that it was both shocked and disappointed by the decision, which, according to the Party, would affect many people. The Party spokesperson, Bosman, indicated that the FA would not be taking the matter further (*Cape Argus*, 27 April 1999; *Business Day*, 28 April 1999). Swanepoel of the NNP indicated that the Party, which reserved the right to appeal, was not happy with the judgement and called upon the Government and the IEC to consider walking the extra mile to allow South Africans abroad to vote (*Cape Argus*, 27 April 1999; *Cape Times*, 27 April 1999). According to the NNP, this was one of the judgements whose correctness would always be questionable (*Interview*: Gaum, 15 December 1999). Lindiwe Sisulu of the ANC, and also the Deputy Minister of Home Affairs indicated that the issue was discussed in Parliament in the first place, and all parties including the NNP agreed to the principle. These Parties stood on the other side as though they had nothing to do with the law. Sisulu added that it was the responsibility of these two Parties, as it was theirs in the ANC, to explain to the people that, for reasons set out in this case, it could not be afforded to have people voting abroad (*Cape Argus*, 27 April 1999; *Business Day*, 28 April 1999). In addition, a legal advisor to the Deputy President, Thabo Mbeki, asked the Parties to stop using the court as a vote-catching forum and get on with the business of canvassing votes (*Cape Argus*, 27 April 1999). The IEC was relieved at the decision and indicated that it was now free to concentrate on its primary task of ensuring free and fair elections on 2 June 1999.

### **5.4 Petitions and protests by South African Citizens abroad**

Cries for the right of South African citizens in foreign countries to vote abroad were not limited only to the Federal Alliance and the New National Party only. As highlighted in the following section, several groups of South Africans abroad engaged into protest marches and the signing of petitions, protesting against what they regarded as an unfair denial of their constitutional right to vote (*Cape Times*, 26 April 1999).

In London, about 3 500 South Africans gathered outside the South African High Commission at Trafalgar Square to protest against the denial of their right to register and vote abroad. The representative of the protesters handed in three petitions, which came from the following groups:

- *The Vote South Africa Abroad*, with 4 167 signatures (whose petition read "Vote beloved Country");
- *Build South Africa Internet*, with about 5 000 signatures; and
- The last petition signed by the members of the crowd.

The petition requested the IEC to allow South African voters abroad to register and to vote in foreign countries (*Cape Argus*, 12 April 1999; *Cape Times*, 26 April 1999). In a separate incident, former political exiles and anti-apartheid campaigners in the United States indicated that more than 14 000 South Africans in the USA alone voted in the 1994 election (*Cape Argus*, 12 April 1999). The outraged protesters complained that the ruling constitutionally disenfranchised thousands of voters simply because of financial considerations involved in travel costs.

## **6. REQUIREMENTS AND PROCEDURES FOR VOTER REGISTRATION**

The following section discusses both the requirements and procedures for voter registration as provided by the Electoral Act no 73 of 1998. The Act delimits the conditions of registering and voting according the following categories:

### **6.1 Any South African Citizen of 18 years of age or older can register to vote.**

Section 19(2) and (3), chapter 2 of the South African Constitution, Act no 108 of 1996 provides the right to vote to every adult citizen. Electoral Act no 73 of 1998 interprets an adult citizen, for voting purposes, as a person of 18 years of age and above.

### **6.2 Citizens in possession of a Barcoded Identity Document.**

It became clear in a Parliamentary debate on barcoded ID's that there are several types of ID's in circulation in South Africa. Mr Lockey of the ANC indicated that there were many types of ID's which had been issued in the former homelands. Each homeland had its own type of ID document while the blacks in South Africa prior to 1986 were in possession of reference or passbooks, and other racial groups had their own forms of ID documents. As a result it was concluded that a single, uniform method of identification for all South Africans was necessary to

minimise fraud in future elections (*Hansard* no 18, 1998:6569). The HSRC survey data on the forms of ID's circulating in South Africa identified the following types:

(1) Green barcoded identity documents, (2) Green but not barcoded, (3) Blue ID's, (4) Reference book/Passbook, (5) Transkei ID, (6) Bophuthatswana ID, (7) Venda ID, (8) Ciskei ID, (9) Other, (10) no ID at all (<http://www.hsrc.ac.za/socdyn/iec/iec2ch2.html>).

In a united, non-racial and democratic South Africa, both Electoral Act no 73 of 1998 and the Identification Bill of 1997 provide for a green barcoded identity document as the only valid ID for voting purposes in South Africa. This document contains an identity number assigned to each and every citizen in terms of particulars registered in the population register. The document includes the date of birth, gender, surname, full forenames, a recent photograph, the citizenship details and other details as determined by the Minister of Home Affairs in any given case. The population register on the other hand, includes more details than the identity document (Identification Bill, B60-97, 1997:6). In addition to the above, the register includes the place and country of birth. If a person's country of birth is not South Africa, the date on which citizenship was obtained and the date of entry into the country, together with the name of the country of origin are included in the register. The register also includes the fingerprints, marital status, particulars pertaining to the travelling records, and other details as the Minister of Home Affairs may so determine to include (Identification Bill, B60-97, 1997:6).

### **6.3 People should only register and vote in their ordinary areas of residence.**

For registration and voting purposes, the nine Provinces of South Africa were further divided into 15 000 voting districts (Russon, *State of the Voters' Roll*, 1999). A person should register only in the district in which he or she intended to vote. Such a district was one in which a person normally lived. Voting districts were designed to cater for 1 200 voters in rural areas and 3 500 in urban areas (Russon, *State of the Voters' Roll*, 1999).<sup>21</sup>

### **6.4 Persons who have been detained under the Mental Health Act 1973 (Act no 18 of 1973) as well as persons who are declared by the High Court to be of unsound mind or mentally disordered may not register to vote (The Electoral Act no 73, ch 2).**

## **7. CONCLUDING REMARKS**

This chapter has described both the legislative and the constitutional process of the policy of voter registration. In so doing, the electoral provisions in the Interim Constitution, together with

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<sup>21</sup> Document by Judge Kriegler, 1 November 1998, EISA, pp1-5 indicates 1 500 voters in rural areas and 3 000 voters in urban areas.



electoral legislation prior to the 1994 elections have been analysed. In addition, since the Constitution and the electoral legislation are the building blocks of the electoral provisions in South Africa, this chapter has focused on amendments of the past electoral provisions, Constitutional provisions as well as the passing of new legislation. From this chapter it can be learnt that the chief amendment to the initial electoral provisions has been the passing of Electoral Act no 73 of 1998 with its green barcoded identity documents qualification. In addition, political considerations accompanied by legal disputes played a major role in the actual policy making process.

The policy making process is significant in that it determines the rules and procedures of the actual elections. According to this chapter, the rules and procedures in turn determine the legitimacy or illegitimacy of the actual elections. The usual aim of the electoral policies is to produce the rules and guidelines for the preparation and the running of the actual elections in order to secure a legitimate poll. As indicated in earlier chapters, the policy making process itself would be of little value if it did not lead to a policy that is both Constitutional, and that could be successfully implemented. The chapter has highlighted several factors upon which the successful implementation of the policy of voter registration would depend. Although not all the factors could be identified, the Parliamentary debates and Court cases indicated that the implementation of this policy depended, to a large extent, on the possession of a barcoded identity document by potential voters. Further, it depended on the capacity of the Department of Home Affairs to issue such documents to the applicants on time. The actual capacity of the IEC, both in terms of technology, personnel and finance, to mention a few, were all conditions for a successful implementation of the policy. In its attempt to analyse the actual implementation of the policy, the following chapter provides a detailed description of the practical conditions of implementation, from inception to the actual termination of the policy.

**CHAPTER 4*****IMPLEMENTATION OF THE POLICY OF VOTER REGISTRATION*****1. INTRODUCTION**

The preceding chapter dealt with the policy making process of voter registration. In the analysis of the court cases, it became clear that the constitutionality of the policy was significant for its legitimacy (Chloe & Darnolf, 1999; Pastor, 1999; Huntington, 1991). According to the same analysis, it became clear that legitimacy should be accompanied by the realistic implementation of the policy if its objectives were to be met. The implementation of this policy depends on several factors (Manin, 1997) which range from public political awareness, willingness to participate in electoral activities, the capacity of the implementing body to implement the policy, the time frame for such implementation to take place, as well as a series of other factors. In critically assessing this process, this chapter undertakes to describe the successes, challenges and difficulties of the overall implementation of the policy. In so doing, the chapter focuses on the practical capabilities, rules and procedures of implementation as employed by the IEC. Particular emphasis is placed on the financial, technological and personnel capacity of the IEC, as well as the political will of the voters and parties.

The structure of this chapter portrays the actual preparations for registration and the first round of registrations, according to the sequence of the concepts as employed by the IEC: *The Voting Districts*, *Personnel requirements*, *financial requirements*, and *The "Zip-Zip" Machines*.

**2. REGISTRATION PREPARATIONS****2.1 The Voting Districts**

Preparatory work for registration began in the first half of 1998 when the Geographical Information System (GIS) was used to divide the country into 15 000 voting districts (Russon, *The State of the Voters' Roll*, 1999:2). The GIS process employed satellite linked survey equipment and an electronic mapping system at a total cost of R60 million (EISA, 1998(1):8:2). The Departments of Central Statistics and of Land Affairs played a major role in mapping and dividing the country into 86 000 enumerator areas. Each of these areas contained between 120 and 150 households (EISA, 1998(1):2). In demarcating the voting districts as part of the preparation for the Voters' Roll, the IEC considered alleviating the problem of long queues as experienced during the 1994 elections by decreasing the size of the voting districts in rural areas to cater for 1 200 as opposed to 3 500 in urban areas (*Interview*: Russon, 14 July 1999). Long

queues were more evident in rural areas than in urban areas during the 1994 elections (Electoral Steering Committee Report, 1996; *interview*: Russon, 14 July 1999). The state of underdevelopment, poor transportation systems, shortage of electricity and the general inadequacy of infrastructure were the main causes of long queues in rural areas during the 1994 elections. (*Interview*: Russon, 14 July 1999).

## 2.2 The "Zip-zip" Code-Readers

In order to simplify and speed up the process of voter registration the IEC made provision for electronic barcode readers (<http://www.icl.com/news/press/oct98/15oct.htm>). To secure an appropriate supply of this technology the IEC opened a tender to different electronic supplying companies (*Interview*: Du Plooy, 13 July 1999). On 15 October 1998, ICL (South Africa) announced that it had signed a systems and services contract worth nine million British pounds with the IEC for the supply of 25 000 hand-held barcode scanners. According to ICL, the contract was secured after a four-way tender, based on ICL's strength in the training programme for IEC trainers. In addition, ICL won the tender due to its locally developed programmable barcode scanning unit (PBSU) and its ability to deliver all the required units by the end of October 1998 (<http://www.icl.com/news/press/oct98/15oct98.htm>). According to Du Plooy (*interview*: 13 July 1999), the tender contract between the IEC and ICL amounted to R112 million as compared to R90 million announced by ICL.

## 2.3 Staff Requirements

The following section discusses the issue of the staff required for voter registration, with accompanying budgetary constraints.

**Table 4.1: Voter Registration Personnel Required Per Province**

Province	Reg/Voting Stations	Required Personnel
Eastern Cape	2 466	12 330
Free State	1 233	6 165
Gauteng	1 881	9 405
KwaZulu-Natal	3 113	15 565
Mpumalanga	814	4 070
North West	1 261	6 305
Northern Cape	376	1 880
Northern Province	1 951	9 755
Western Cape	1 331	6 655
<b>Totals</b>	<b>14 426</b>	<b>72 130</b>

Source: (*Interview*: Russon, R.D., 14 July 1999)<sup>22</sup>

<sup>22</sup> Also see EISA Update 99 no 2, 27 March 1999:2.

The data in *Table 4.1* indicate that the actual number of voting stations required nationally was 14 426. This number is a little less than the 15 000 projected by the IEC at earlier stages. According to the Chief Electoral Officer of the IEC, Mchunu, registration stations in schools, churches and community halls would require over 70 000 officials country-wide (*The Citizen*, 12 November 1998). *Table 4.1* indicates that the IEC actually needed a total of 72 130 officials to work in its voter registration stations country-wide. These employees were to be trained by 800 IEC facilitators at each registration venue during the week preceding registration (EISA 1998(2):1). To put this plan into action the IEC had to rely on government approval of its election budget.

### **2.3.1 Budget Constraints**

The total Election budget amounted to R965 million and could not be approved by the government. Instead, R500 million was granted during July 1998, which frustrated and angered the IEC chairman, Judge Kriegler. From this frustration, Kriegler indicated to the media that "... if the IEC continued to be underfunded, he would resign" (*Business Day*, 13 July 1998). Judge Kriegler's dissatisfaction prompted the Government to grant another R100 million early in November 1998. According to Judge Kriegler, this was still inadequate and the IEC needed a further R230 million to prepare the new voters' roll. The Department of Finance indicated that no more funds would be available until the new financial year which began in April 1999 (*Mail & Guardian*, 6 November 1998).

### **2.3.2 The Civil Servants**

As a result of underfunding, the IEC could not employ the number of personnel it needed for voter registration. Instead, the government promised to make available its civil servants to assist in voter registration. Such civil servants included teachers and principals who expressed reservations about their availability as registration coincided with examination marking (*The Star*, 21 November 1998; *Interview*: Russon, 14 July 1999). The inability of the IEC to secure its own registration personnel on time could have been the reason for staff shortages at certain registration stations during the first round of voter registrations (*Interviews*: Du Plooy, 13 July 1999; Russon, 14 July 1999).

## **2.4 Voter Registration Timetable**

The IEC had originally planned to register voters over 16 days spread over 3 months. The budget constraints and personnel constraints compelled it to reduce this period to six days, namely, 27, 28 and 29 November and 3, 4 and 5 December 1998. The IEC announced on 24

November that it had divided the registration period between the northern and the southern provinces. The IEC planned to register potential voters only in the provinces of Gauteng, Northern Cape, North West, Mpumalanga, and Northern Province during the first three days (*Interview*: Russon, 14 July 1999). Registration in the Eastern Cape, Free State, Kwa-Zulu-Natal, and the Western Cape would take place from 3-5 December (EISA, 1998(2):2). Factors such as low registration turnout and the Court Case results (ch 3 section 4 of this study) further compelled the IEC to keep extending registration dates until March 1999. Hence the second and final rounds of registration during January, February and March 1999 (EISA, 1998(2)). The registration period is therefore divided into the first, second and third phases (*Interview*: Russon, 14 July 1999).

## **2.5 Safety and Security provisions for Registration**

To address the question of security, the Deputy President instructed the South African National Defence Force (SANDF) to provide forces to help with security during registration. As a result, the SANDF announced that over 8 200 troops were set to engage in the process in all provinces. A total of 2 324 military personnel was set to help in the Gauteng Province; 1 965 in Mpumalanga Province; 1 000 in the Northern Cape; and 2 911 in the Northern Province. Additional soldiers were to help the police with security at registration points during the registration period (EISA, 1998(3)).

## **2.6 Public Information**

In order to provide the necessary information on registration issues, the IEC made use of pamphlets to inform the public regarding the registration venues. It also opened an information telephone hotline from 25 November 1998, with 20 operators answering public queries. The inability of the operators to deal with specific queries about registration venues and telling callers to wait for a door-to-door pamphlet delivery campaign were some of the public complaints. Delays of up to 10 minutes were also reported on the first day of the hotline (*Business Day*, 25 November 1998; *The Star*, 25 November 1998).

The Provincial Electoral Officer (PEO) of Gauteng reported having received requests for postponement of registration from branches of certain political parties at Boksburg and Khayalami (*Business Day*, 25 November 1998). Opposition parties in Mpumalanga also made a similar request where the PEO promised that the incomplete distribution of information leading to such requests would be addressed before registration. The PEO of Gauteng, in contrast, indicated on 25 November that the door-to-door delivery of pamphlets was well advanced, mentioning that the western parts of Johannesburg had received pamphlets, and that smaller

municipalities like Cullinan had been completed (*Business Day*, 25 November 1998; *The Star*, 25 November 1998). Despite this promise, shortages of leaflets in the southern areas of Greater Johannesburg were reported. Residents in areas such as Randburg also complained of having received the wrong pamphlets whilst, to the credit of the project, no problems regarding pamphlet distribution were reported in the northern areas of Gauteng (*Business Day*, 25 November 1998; *The Star*, 25 November 1998). The IEC officials continued with awareness campaigns by touring villages and speaking in churches in most parts of the North West Province (*The Star*, 26 November 1998).

### **3. FIRST ROUND OF REGISTRATIONS**

#### **3.1 Introduction**

The first round of registration is divided into two phases. The first phase covers the registration of the five northern Provinces which were the first to register at the end of November 1998. The second phase represents the registration of the four southern Provinces that registered at the beginning of December of the same year. The following section gives a detailed description of this historical process in chronological order from the first day until the last day of the first round of registration.

#### **3.2 The five Northern Provinces**

Due to the shortage of registration personnel resulting from budget constraints, the IEC decided to divide the country into a northern and southern region, and to register the two regions in two phases during the first round of registration (*Interview*: Russon, 14 July 1999). Voter registration began on 27, 28 and 29 November 1998 in the five northern Provinces, namely, Gauteng, Mpumalanga, Northern Cape, Northern Province, and the North West. Several problems were reported on the first day of registration: confusion was evident in most of the Johannesburg areas as the people had received either wrong information or no information at all regarding the registration venues (*The Star*, 27 November 1998). According to this edition of *The Star*, most registration stations opened late while most voters had to be registered manually as the Zip-Zip Machines were malfunctioning in most Gauteng areas. The Provincial Electoral Officer of Gauteng also indicated that more than half of the 100 registration stations in Eastern Johannesburg failed to open due to the unavailability of the civil servants who were expected to operate them (*The Star*, 28 November 1998).

One of the significant registration problems on the first three days, according to the IEC Chairperson Judge Kriegler, was that large numbers of voters turned up at wrong registration

stations due to inadequate information about registration venues. Another problem was that many stations had to use manual registration methods due to complications with the Zip-zip machines while the staffing shortages did not make matters easier. Judge Kriegler indicated that the system had not worked in many areas. The IEC needed to improve communication with the civil servants whose morale was low due to lack of clarity on the conditions of their volunteer work, that is, the travel and subsistence allowances. In an interview with *The Star* newspaper, electoral officers cited poor training on the part of volunteer staff as the cause of most problems during voter registrations (*The Star*, 30 November 1998). As *Table 4.2* indicates below, out of 6 276 registration<sup>23</sup> stations in the first five Provinces, 720 registration stations could not open on 27 November 1998 due to staffing problems. On Sunday 29 November, the last day of registration, a further 129 voting stations could not open in these Provinces. According to *The Citizen* (28 November 1998), voter registration in Soweto had a slow start. Although some registration stations opened and functioned smoothly in Soweto, other stations had to turn registration candidates away as a result of shortages of registration equipment and materials. The same *Citizen* edition indicates that in Soweto, most problems were experienced in areas such as Dobsonville and Alexandra. Some people turned back as soon as they heard that equipment was not working in Jabulani (*The Citizen*, 28 November 1998).

Serious problems were experienced in the Lowveld region of Mpumalanga where most stations did not open at all. The electoral officers indicated that the main problem in the Areas of Piet Retief and Mogoba Districts was the failure by volunteer staff to arrive at the stations (*The Citizen*, 28 November 1998). In Kimberley and the lower Orange regions the Defence Force arrived late and there was no one to staff registration stations (*The Citizen*, 28 November 1998). The Chief Director of voter registration (*Interview*: Russon, 14 July 1999) indicated that a lack of adequate roads and electricity facilities, staff shortages and the remoteness and longer distances between centres were the main causes of problems in rural areas during the first round of registration. According to Russon, adequate or superior road infrastructure in urban areas made it easier to respond to calls of material shortages between different stations than in the rural areas. Russon stated that: "What we did was to store more materials in certain central places so that it would be easier to distribute such materials to nearer centres when there was a call. The remoteness and the inaccessible road system made it difficult, if not impossible, to do this in rural areas."

Although difficulties of non-arrival of staff, malfunctioning of the zip-zip machines and the lack of information regarding registration venues was experienced in areas such as Soshanguve and

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<sup>23</sup> IEC had previously given a figure of 6 283. See EISA Election update 99 no 3, 11 Dec 98:2.

Centurion, to a large extent voter registration in Pretoria and its surroundings went smoothly (*Pretoria News*, 27 November 1998). According to this edition, most registration points opened on time, the queues were not long and there were not too many problems in Mamelodi.

Proceedings started smoothly in the North West Township of Mabopane except that people were coming in more slowly than expected (*The Citizen*, 28 November 1998; *Pretoria News*, 27 November 1998). It is clear according to *The Citizen* (28 November 1998) that the smooth start was shortlived as a lack of stationery later caused delays, long queues and confusion in Mabopane and the surrounding villages. Insignificant problems regarding the use of the scanners in Atteridgeville were solved as soon as officials were shown how to operate them (*The Citizen*, 28 November 1998; *Sowetan*, 27 November 1998). The problems with the Zip-zip machines included the batteries running low or just not functioning at all (*The Citizen*, 28 November 1998; *Pretoria News*, 27 November 1998). *Table 4.2* indicates the number of registration stations per province that could not open in the northern Provinces during the registration weekend of 27-29 November 1998.

**Table 4.2: Registration Stations not Opening on 27-29 November 1998**

Provinces	Fri 27 November '98	Sunday 29 November '98
Gauteng	111	3
Mpumalanga	17	0
Northern Cape	49	0
Northern Province	78	6
North West	485	120
<b>Total</b>	<b>720</b>	<b>129</b>

Source: Business Day, 30 November 1998

According to *Table 4.2* the number is higher on the first day, i.e. 720 stations, and decreases to 129 on the final day, Sunday 29 November 1998. According to this table, it appears that the North West had more problems than the rest of the provinces. On both days it had the highest number of stations that could not open. Mpumalanga appears to have had the least problems, i.e. only 17 stations could not open on Friday 27 November, with all stations operating on Sunday 29 November 1998.

*The Citizen* (28 November 1998) regarded the first day as a "*SHAKY START TO REGISTRATION*", and the proceedings of the day at numerous stations were, according to the IEC's own admission, not perfect to say the least. The IEC spokesperson, Dlamini claimed that registrations went well overall, and that the IEC had proved its capability to do its job. He admitted, however, that the IEC's house-to-house pamphlet delivery had been a logistical



nightmare and the Commission should use more effective publicity methods in the next registration phase during 3-5 December 1998 (*Business Day*, 30 November 1998; *The Citizen*, 28 November 1998). These methods were to include the placing of pamphlets at bus stops, supermarkets, filling stations and railway stations. The Chairperson of the IEC, Judge Kriegler, and the Chief Electoral Officer, Mchunu, felt, in general, that registration went relatively well and that most problems were being ironed out for the next stage of registration (*Business Day*, 30 November 1998; *The Citizen*, 28 November 1998).

On Thursday 3 December 1998 the IEC announced that over 3,735 million people had been registered in the five Northern Provinces (EISA, 1998(3)). The IEC believed that as soon as the loading of data from manual registrations was complete, this figure would exceed 4 million. *Table 4.3* below indicates that out of the census voting population of 5 512 651 in Gauteng, only 2 101 758 or 38,1% were registered during this round of registration. Out of the census total of 1 685 324 voting population in Mpumalanga, only 679 508 or 40,3% had registered, with 39,7% in the Northern Cape, 36,4% in the North West and 39,9% in the Northern Province (see *Table 4.3* below).

To conclude the description of registration in the northern Provinces it would be interesting to consider the sentiments of the IEC Chairperson, Judge Kriegler, who considered that, given the budget and personnel constraints, registration went relatively well and had been educational for the next phase scheduled for 3-5 December 1998. What makes this sentiment more understandable is that this had been the country's first experience of voter registration for general elections. There had not been any local experience to learn from or to use for comparison.

### **3.3 The Four Southern Provinces**

Following the very first registrations in the northern Provinces during November, the first week of December marked the turn for the southern Provinces (*Interview: Russon*, 14 July 1999). Voter registration in the Free State, KwaZulu-Natal, Eastern Cape, and the Western Cape Provinces took off on 3 December 1998 (*Sowetan*, 4 December 1998; *The Sunday Times*, 6 December 1998). In the same way as in the Northern Provinces, registration in the Southern Provinces was dominated by a series of difficulties. Heavy rains, staff shortages and inaccessible roads, particularly in rural areas (*Sowetan*, 4 December 1998; *The Sunday Times*, 6 December 1998). A combination of these factors had complicated the registration process on Thursday 3 December 1998, resulting in about 900 registration stations failing to open in all four Provinces (*The Sunday Times*, 6 December 1998). According to the *Sowetan* (4 December

1998), there were further complaints by the public regarding the lack of information on registration points in these areas. This, according to the *Sowetan*, was due to an inadequate publicity drive by the IEC. In the next section, a description of the registration process per Province in the southern Provinces will be given.

#### 4. REGISTRATIONS IN KWAZULU-NATAL

The following section discusses registration in KwaZulu-Natal, over the first round of registration.

##### Registrations

*Table 4.1* above indicates that the province of KwaZulu-Natal (KZN) required a total of 15 565 personnel to register its 5 440 548 voting population (see *Table 4.3* below).

There were heavy rains on the first day of registration in the province. As a result, about 20% of registration stations could not open due to the non-arrival by the registration staff. The percentage of stations that opened in the rural areas varied between 40-90% while about 75% of the stations were fully operational in Durban (EISA, 1998(3)). About the progress of voter registration in KwaZulu-Natal, the following media reports are worth noting:

- ***The Daily News*, 3 December 1998, *It's a Jerky start, Scores of KwaZulu-Natal registration stations fail to open on time***

*"... Complaints from the public and party leaders about unmanned registration points and inaccurate lists poured into the Daily News today and teams of reporters in the field confirmed this dismal picture ... Heavy rains in most parts of KwaZulu-Natal also hampered the delivery of material to several rural stations in the province ... Roads have been washed out in some areas, making it difficult for our staff to access the stations."*

- ***The Citizen*, 4 December 1998, *Rain, logistics bog down registration***

*"... In KwaZulu-Natal Midlands it was pouring with rain and only a trickle of people arrived to register. Rain was also threatening on the KwaZulu-Natal South Coast and registration points there were quiet. In Durban the process was running smoothly ..."*

- ***The Sunday Tribune*, 6 December 1998, *Against all odds to do their duty***

*However, while the frail and elderly waited in long lines eager in some instances to thumbprint their signatures on the registration forms - thousands of potential voters among the aged, infirm and disabled this week were ignored when it was found that the*

*IEC had made no provision for their special needs during this round of voter registration. Director of the Council for the Aged in KwaZulu-Natal, Pat Naicker, said that the IEC had not made an effort to accommodate the needs of people with special needs, either at voter registration points or at their homes. The awareness of the voter registration process has been poor and thus the poor turnout ...*

- ***The Sunday Tribune***, 6 December 1998, **Against all odds to do their duty, Frustration on the South Coast**

*There was frustration, anger and confusion on the South Coast this week as many rural people waited in vain to register as voters. According to local councillors 40 of the 320 registration stations in the region did not open because officials did not arrive. In some instances headmasters were not informed that their schools had been chosen as registration centres and had left with the keys. ... In Bhobhoi, Murchison and Jesus Location people braved the rain on Thursday to put their names on the voters' roll only to find that there were no officials at the stations. They returned on Friday to find the same situation. Officials arrived only at 2pm to register the few that had waited ...*

#### **4.1 Evaluation by the IEC**

Judge Kriegler indicated on Friday 4 December that he was genuinely not disappointed with the way things had been going despite the opposition parties' cries over the disorganisation. Judge Kriegler claimed that registration had been hampered by faulty equipment, failure of stations to open, as well as heavy rains in KwaZulu-Natal and the Eastern Cape (*The Daily News*, 3 December 1998; *The Citizen*, 4 December 1998; *The Sunday Tribune*, 6 December 1998). Low turnout in these areas, according to Judge Kriegler, was the result of heavy rains. For this reason he announced that the registration due to end on Saturday 5 December, was being extended by the IEC to Sunday, 6 December 1998 (*The Citizen*, 4 December 1998; *The Sunday Times*, 6 December 1998).

By the end of the first round of registration the IEC had managed to register about 2 000 153 potential voters (or 36,8%) out of 5 440 548 voting population in the province (see *Table 4.3* below).

## **5. VOTER REGISTRATION IN THE EASTERN CAPE**

Most areas of the Eastern Cape were as badly affected by heavy rains as KwaZulu-Natal during the first two days of registration. The communication system in the Eastern Cape was severely disrupted by heavy rains as the telephone lines were down in this period. This resulted in many

stations in the Transkei and around Umtata not opening (EISA, 1998(3)). As *Table 4.3* below indicates, voter registration progress in the Eastern Cape turned out to be almost similar in number to that of KwaZulu-Natal. Only 1 351 688 out of the census population of 3 819 381 potential voters (or 35,4% of the voting population in the province) had turned out to register during the first round of registration.

Otherwise, reports on voter registration in the Eastern Cape for this period were very limited.

## 6. VOTER REGISTRATIONS IN THE FREE STATE PROVINCE

Heavy rains in the South-Eastern Free State also made it difficult for the staff and the public to access the stations. According to *The Star* (4 December 1998), about 20 registration stations in Bloemfontein, and some in Botshabelo, could not open. At the end of the first round of registration, the IEC indicated that it had registered a total of 722 765 voters (or 41,9% out of a 1 726 083 total voting population) in the province. Although the number is smaller than in the first two southern Provinces, it is much higher in percentage terms by comparison (see *Table 4.3* below).

## 7. VOTER REGISTRATION IN THE WESTERN CAPE

Voter registration in the Western Cape rural areas had a smooth start when compared to the Cape metropolitan area where staff shortages led to 27 registration stations not opening on the first day (EISA, 1998(3)). According to *Business Day* (8 December 1998), nearly a third of registration stations could not produce any registration figures. However, out of the census voting population of 2 776 110 in the Western Cape, about 807 029 people (or 29,1% of the census voting population (see *Table 4.3* below)) did register in the first round of registration.

Some media reports on the progress of voter registration in the Western Cape are as follows:

- ***Cape Argus***, 4 December 1998, **Voters trickle in to sign up for poll, Snags and gremlins hit IEC's three-day election drive**

*Serious problems encountered in all provinces included absence or shortages of electoral officials and the failure of "zip-zip" electronic scanners meant to issue barcoded receipts as proof of registration. In the Western Cape, two cars were stolen and four registration tents lost. Ten registration centres in Khayelitsha were closed, and other venues in the peninsula were plagued by staff shortages forcing the half-day closure of some of them. But for thousands of people the registration process was painless. Armed with their barcoded identity documents they went to their designated registration centres, confirmed*

*their addresses, filled in a form, had their receipts pasted into their ID books and were out again in minutes.*

- ***The Citizen*, 4 December 1998, Rain, logistics bog down registration**

*In the Western Cape voter registration was going well, although staff at some registration points arrived late, an official said. In Khayelitsha several registration stations did not open by 9:00 am and people who arrived to register went home. In some parts of the sprawling townships people were shunted from pillar to post as they turned up at wrong registration posts. At the Strand Municipality about 100 people queued to register shortly after 8am. In Mitchell's Plain on the Cape Flats all but one registration centre opened, while in Belhar equipment, maps and volunteers arrived late at most centres. Reports were received from Mowbray that people could not register because officials did not seem to know what to do ...*

## **7.1 Complaints on irregularities**

In the Western Cape opposition parties complained of irregularities in voter registration. They claimed that people with reference books without barcodes were registered at some stations. In response the IEC indicated that such people would not be accepted by IEC computers and therefore would not get onto the voters' roll (EISA, 1998(3)). Opposition parties also complained about people wearing the ANC insignia being present at registration stations. The ANC spokesperson indicated that it had used its own vehicles to take IEC officials and their equipment to Khayelitsha and indicated that the Electoral Act had not been contravened since no ANC office bearers had been sworn in to help voters to register (*The Sunday Independent*, 6 December 1998).

## 8. THE NATIONAL REGISTRATION TOTALS PER PROVINCE

The following table, *Table 4.3* portrays the provincial registration totals at the end of round one.

**Table 4.3: National Registration Progress-Voter Registration Round 1**

Province	Population – Census	Population – Actual	Number Registered	% Registered census
Eastern Cape	3 819 381	3 863 149	1 351 688	35,4
Free State	1 726 083	1 786 371	722 765	41,9
Gauteng	5 512 651	5 689 764	2 119 139	38,4
KwaZulu-Natal	5 440 548	5 494 445	2 000 153	36,8
Mpumalanga	1 685 324	1 738 960	679 508	40,3
Northern Cape	536 157	560 891	212 770	39,7
Northern Province	2 684 690	2 813 093	1 070 535	39,9
North West Province	2 174 896	2 213 080	791 056	36,4
Western Cape	2 776 110	2 800 464	807 029	29,1
<b>Total</b>	<b>26 355 840</b>	<b>26 960 217</b>	<b>9 754 643</b>	<b>37,0</b>

Source: IEC Progress Report, 20 January 1999, in EISA 1999(4):2

*Table 4.3* indicates the total population of 26 355 840 as per census statistics and the actual total of 26 960 217. According to section 1(xxv), chapter one of the Electoral Act (no 73 of 1998), the term 'voting population' refers to the citizens of South Africa who are 18 years of age and above during the election period. These citizens, according to the Act, should be in possession of valid identity documents and should be registered on the common voters' roll in order to vote. *Table 5.6* in chapter 5 gives a new total of the voting population, following the updating of the voters' roll.<sup>24</sup>

The above data in *Table 4.3* indicate that by the end of the first round of registration the IEC had managed to register a total of 9 754 643 voters, which amounts to 37,0% of the registered census population. Whether this could be regarded as a success or failure on the part of the IEC depends on the evaluation of the target the IEC had set itself for this period. In making such an evaluation it needs to be taken into account that the IEC had initially planned to register the whole country over 16 days and had had to reduce this period to 6 days as a result of budget constraints (*Interview: Russon, 14 July 1999*). These registrations had been aimed at registering the entire population, but could manage to register only 37,0% of the census population. *Table 4.4* indicates the registration statistics by age and gender.

<sup>24</sup> Also see footnote 26 below.

**Table 4.4: First Round of Registration by Age and Gender<sup>25</sup>**

Age Group	Male	Female	Total	Age Group %
16-18	7 798	7 810	15 608	0,9
18-20	98 948	101 889	200 837	11,6
20-30	993 864	1 206 564	2 200 428	28,6
30-40	987 296	1 289 371	2 276 667	38,4
40-50	861 051	1 040 055	1 901 106	48,2
50-60	587 014	738 864	1 325 878	54,8
60-70	364 786	618 236	983 022	57,6
70-80	210 460	348 897	559 357	62,9
>80	65 402	129 681	195 083	59,7
<b>Total</b>	<b>4 176 619</b>	<b>5 481 367</b>	<b>9 657 986</b>	

Source: IEC, 11 January 1999, In EISA Election Update No 4, p 3

*Table 4.4* indicates the lowest registration rate among the youngest age group. The data indicate that only 15 608 (or 0,9%) of the youth between the ages of 16 –18 years, made up of 7 798 males and 7 810 females, were registered in the first round of registration. Only 11,6% of the youth between the ages of 18-20 years were registered in the same period and 28,6% of the age group of 20-30 years. It is clear according to *Table 4.4* that the trend for registration tends to increase with an increase in age. The registration percentage is at its lowest point at 0,9% in the youngest age group of 16-18 years. The rate increases up to a maximum of 62,9% for the age group 70-80 years and starts declining to 59,7% for the age group above 80 years. Another noticeable trend is a continuous relatively better turnout of women compared to men in the first round of registration.

Attempts to explain the latter trend may point to the efforts of the NGO's such as the Women's Development Foundation and the Gender Advocacy Programme, whose efforts were directed at mobilising women politically. Another explanation, which might be controversial, is that as women still constitute a larger section of the unemployed population in South Africa, they might have had more time to register than men (*The Sunday Times*, 13 December 1998).

According to the age and gender turnout in this round it is clear that a substantial contribution to the low registration statistic was the lower rate of participation by the youth, especially the first-time voters. If it is a general trend that the younger generation tends to show lower rates of political participation, then it should make sense for any political activity like voter registration to focus its campaigns on this age group in future if political participation is to be improved.

<sup>25</sup> The total of 9 657 986 was later updated by the IEC on 20 January 1999 to 9 754 643, see table 4.3.

Although several factors were highlighted during the process of voter registration which may have contributed to low registration turnout, the political parties blamed the low turnout on the IEC's poor organisation and inadequate information rather than on disillusionment among voters (*The Star*, 8 December 1998; *The Sunday Times*, 6 December 1998). In addition to these accusations, the DP added that the lack of barcoded ID's among first-time voters was another factor (*The Star*, 8 December 1998). The NNP complained that November was a poor month for registration among students. In contrast, the ANC felt that young people did not have the patience to go from station to station to find out where the registration venues were (*Sowetan*, 8 December 1998; *The Sunday Times*, 6 December 1998). As a result of the lower turnout in the first round of registration, the IEC indicated that a second round of registration was to take place on 29-31 January 1999. A third round of registration was to be announced when the election date was known. To this effect, the Chief Electoral Officer of the IEC indicated in a press briefing on 8 January that the second round of registration would be more successful in terms of preparation (*The Star*, 9 January 1999). He added that the next round was not going to have the 'glitches' like the last time.

## **9. CONCLUDING REMARKS**

The first round of registration was the first of its kind in South Africa and unfolded in a rather thought-provoking manner in that, as an analysis of this round might have answered some questions, many questions still remain unanswered. Further, the nature of the problems, challenges and difficulties in this round of registration also raised a series of new questions.

The data in this chapter indicate that some of the problems during the registration period included the public not finding registration personnel in most registration stations. Secondly, the public, who were willing to register were not properly informed of the correct registration venues and found themselves at the wrong stations. If there had been any question regarding the willingness of the public to participate in their country's political affairs, this scenario is food for thought. The picture obtained from this scenario is that public political participation does not only depend on the will of the public to do so, but also on the extent to which the conditions are conducive for this practice to take place. In the case of South Africa's voter registration, such conditions would have included the availability of registration personnel. The list of conditions would include the presence of basic infrastructure such as reliable venues for registration and a usable road system, as well as the availability of general and necessary information, i.e. accurate information regarding the time and venues for registration. This list would include a voter



education programme, which has been lacking in this process (*The Sunday Times*, 6 December 1998; *The Citizen*, 7 December 1998).

Although the above data do not indicate that the requirement for a barcoded identity document had any special mention during this round of registration, the question remains to what extent this provision did affect the registration statistics. To answer this question the impact played by each factor that has been identified as a milestone during registrations needs to be calculated. With a variety of other factors involved during the registration period it remains difficult for the influence of the ID requirement to be measured. The question that still needs answering pertains to whether the statistics of the first round of registration could have been any different had the IEC had enough personnel, an elaborate voter education programme, and adequate information regarding registration venues, had all its registration stations opened, had there been no provision for barcoded identity documents, and had the weather been favourable in the southern regions. It is expected that the second round of registration, to be described in the next section, would, by comparison, give some answers to these questions, or to some of them. In its analysis of the final rounds of registration the following chapter will focus on these questions.

**CHAPTER 5*****THE FINAL ROUNDS OF REGISTRATION*****1. INTRODUCTION**

The preceding chapter discussed both the preparations as well as the first round of registration. It is clear from this analysis that the IEC had initially planned to register the whole country over a 16-day period. The data also indicate that the IEC had to reduce this period to 6 days as a result of budget constraints. Of interest to this observation is the question whether the IEC had believed that it could register the whole voting-age population over this short space of time, and whether this was a realistic expectation. To answer this question, the registration progress after 6 days indicates that only 37,0% of the voting population had been registered over this period. While this low percentage could be explained in terms of various factors outside the control of the IEC, there is no evidence from the account that in the preceding chapter the expectation was realistic.

One of the major difficulties experienced by the IEC during the first round of registrations was the staff shortage. As indicated in the preceding chapter, the plans by the IEC to train 72 000 people with the right kind of expertise were frustrated by financial constraints. With these constraints still in place before the second round of registration, the question arose as to how the IEC was addressing the problem in a way different from that of the first round of registration. On a positive note, reiterating Mchunu and Kriegler's sentiments that the first round provided educative experience for the next rounds, it would be appropriate to expect an improved second round. This chapter analyses the second as well as the final rounds of registration in terms of what was gained from earlier experience.

**2. PREPARATIONS FOR REGISTRATION-ROUND II**

The IEC began preparing for registration round two soon after the end of the first round, which ended on 6 December 1998. To do this it had to take stock of the practical factors that had had a negative impact on the first round of registrations. These factors ranged from the problems of malfunctioning scanners, staff shortages, poor advertising, and the non-opening of several stations. Another problem, according to the IEC Chief Electoral officer, Mchunu, was the turning away of voters from their nearest stations to other stations in certain centres during round one (*The Saturday Star*, 9 January 1999). According to Mchunu, this was caused by the tightness of the timetable. To address this problem the civil servants were asked to arrive as

early as Monday 25 January in preparation for registrations on 29-31 January 1999 (*The Saturday Star*, 9 January 1999; *Sowetan*, 12 January 1999). Mchunu indicated that further measures included the decentralisation of the registration administration which included the appointment of area managers with each manager being given the responsibility for 10-15 stations in rural areas and 20 stations in urban areas. Area managers were to ensure that their stations opened on time and were properly equipped (*Sowetan*, 12 January 1999).

To counter the youth apathy problem as witnessed during November and December 1998, the IEC planned a road show to take the IEC Chief Electoral Officer to tertiary institutions as part of a youth outreach programme (*The Star*, 25 January 1999). On the same note, the National Youth Commission embarked on a poster campaign to areas with low media penetration such as taxi ranks, as well as advertising through African-language radio (EISA, 1999(5):1).

Having completed its preparations the IEC indicated to the media on 11 January 1999 that it was better prepared for the second round of registration than it had been for the previous one (*Sowetan*, 12 January 1999).

### 3. REGISTRATIONS

Unlike the first round where registration was divided into two phases between the northern and southern Provinces, the second round began simultaneously in all nine Provinces on 29 January 1999. *Table 5.1* displays the progress in terms of the percentage change in registration statistics after the second round of registrations.

**Table 5.1: Voter Registration Progress Per Province after Round - II<sup>26</sup>**

Province	Voting-age Population by Census	Registered after Round – I	Registered after Round- II	% Registered Census	Percent Increase
Eastern Cape	3 819 381	1 351 688	1 999 952	52,4	17,0
Free State	1 726 083	722 765	1 001 443	58,0	16,1
Gauteng	5 512 651	2 119 139	3 462 205	62,8	24,4
KwaZulu-Natal	5 440 548	2 000 153	2 787 708	51,2	14,4
Mpumalanga	1 685 324	679 508	1 053 834	62,5	22,2
Northern Cape	536 157	212 770	309 218	57,7	22,7
Northern Province	2 684 690	1 070 535	1 589 998	59,2	18,0
North West	2 174 896	791 056	1 284 928	59,2	19,3
Western Cape	2 776 110	807 029	1 280 121	46,1	17,0
<b>Total</b>	<b>26 355 840</b>	<b>9 754 643</b>	<b>14 769 407</b>	<b>56,0</b>	<b>19,0</b>

<sup>26</sup> Table 4.10 indicates a new voting-age population of 22,8 million after the voters' roll was reconciled with the population register.

Source: IEC, 17 February 1999, In EISA 1999(4) & (7)

*Table 5.1* displays comparative statistics of registration progress between the first and second rounds of registration per Province. According to this data, a total of 9 754 643 potential voters (or 37% of the total of 26 355 840 voters) had been registered during the first round of registration. As *Table 5.1* indicates, this number increased by only 19,0% in the second round, to 14 769 407 (or 56% of the total voting population). While *Table 5.1* will be discussed further in the later parts of this chapter, the following section will discuss the actual registration process per Province over the second round of registration.

#### **4. THE EASTERN CAPE**

The following section describes the registration process in the Eastern Cape over the second round of registration.

##### **4.1 Background**

During the first round of registration there were about 3 819 381 potential voters in the Eastern Cape. Of this total, the IEC managed to register about 1 351 688 potential voters by the end of registration round 1 (*Table 5.1*). It could be argued that the target for the second round would be to come as close as possible to the voting population total. Once the preparations were complete the IEC officials remained positive of their readiness to do well (*Daily Dispatch*, 28 January 1999; *Eastern Province Herald*, 29 January 1999).

##### **4.2 The Registration Process**

During the early hours of the first day of registration, Friday 29 January, various reports indicated a slow start to registration, which speeded up again towards the afternoon of the second day, Saturday 30 January (*Daily Dispatch*, 30 January 1999). The registration staff comprising civil servants and the SANDF had been trained and the technical equipment was all in good order in all registration offices (about 2 573) around the province (EISA, 1999(6):7). By the end of the second round the IEC had registered about 648 264 voters, which is the difference between the number registered during round one, i.e. 1 351 688 and the total registered after round two, i.e. 1 999 952. To put it differently, the registration percentage increased by 17,0% from 35,4% to 52,4% in the Eastern Cape during the second round of registration (see *Table 5.1* above). As various observers and reporters expressed satisfaction at the end of the process during the night of 31 January that the registration had been done well, it became clear that the difficulties experienced during December 1998 in the Province had been successfully ironed out. EISA observers believed that this smooth running of registration may have been an outcome of

military efficiency, as most stations they visited, such as in the Albany area, were run by the SANDF (EISA, 1999(6):8). This evaluation by reporters and observers should be seen rather as relative in comparison to the first round of registration rather than as referring to the absolute absence of problems. The second round of registration did have its share of problems.<sup>27</sup>

### 4.3 Low Registration Turnout

Although large numbers of young people were seen at registration stations around the Ntabelanga district, many of them did not have identity documents and could not register. According to *The Representative* (5 February 1999) this could have been the reason why young people had not registered during the first phase. Many people in the districts of King Williams Town and Sterkspruit, including the youth, came in their numbers without either the identity document or temporary document (*Kei Mercury*, 4 February 1999; *The Representative*, 5 February 1999). While the IEC blamed low turnout in the region on the lack of correct identity documents, a co-ordinator of Grahamstown's voter education agency, Thembinkosi Lehloesa, felt that the IEC had not done a good job in its public awareness campaign (*The Sunday Independent*, 14 February 1999). The real issue according to Lehloesela was that the IEC had not told the people that they should bring their barcoded ID's.

Finally, the overall report of registration in the Eastern Cape indicated that these problems, in contrast to the first round, were more of an exception rather than the rule.

## 5. THE WESTERN CAPE

### 5.1 Background

In terms of the census statistics the Western Cape Province had a total voting-age population of 2 776 110 during the registration period. Of this number the IEC had managed to register 29,1%, translating into a total of 807 029 voters, during the first round of registrations (*Table 4.5*). This statistic was the lowest by comparison with any other province nationally. While the reasons behind the low turnout remained uncertain, speculations were made on possible factors such as apathy, disillusionment and protest, especially among the Coloured people in the Western Cape. The Coloured people are the largest population group, constituting about 56% of the population

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<sup>27</sup> The following problems were experienced during registration in the Eastern Cape Province: (1) Tornado Disaster at Mt Ayliff, (2) Incorrect ID's in Port St Johns, (3) Opening delays in Mdansane, (4) Taxi violence at Libode, (5) Political Parties in conflict-DP and UDM Border region accusing the ANC of threatening UDM members and of destroying DP posters. The ANC supporters were also alleged to have disrupted the registration of disabled people by an IEC official whom they accused of favouring UDM members. The ANC further alleged that the farmers in the Alexandria district were threatening their workers and preventing them from registering to vote (*Daily Dispatch*, 30 January 1999 & 4 February 1999; *Eastern Province Herald*, 4/5 Feb 1999).

in the Province (EISA, 1999(6):12). To test the political preferences of the group, Dr Steven Robins of the University of the Western Cape had conducted an opinion poll among the Coloured people of Worcester during the registration preparations (EISA, 1999(6):12-13). According to this poll the disillusionment and protest of some could have been a result of unfavourable perceptions by the group on the slow delivery of public services in traditionally Coloured areas by the government structures (Robins, in EISA 1999(6)). To counter this trend the IEC established a task team to work with religious groups of all faiths, youth organisations, the business sector, the Department of Education, political parties, the media and other governmental structures in popularising voter registration in the province (Robins, in EISA 1999(6)).

## 5.2 Registration

The low registration patterns that were manifested in the Western Cape in the first round of registration seem to have continued over the second round. By the end of registration on 31 January 1999 the IEC had managed to increase registrations by only a mere 17,0% above the original 29,1% from round one. As *Table 5.1* indicates, by the end of round two of registration only 46,1% of the voting population had been registered in Western Cape. Although registrations went considerably well in comparison to round one, the low registration turnout remained an unsolved problem as the Province continued with its lowest registration tradition by comparison to other provinces. Perhaps the uniqueness of the political climate in the Province played a major role in determining the public turnout during the whole registration progress.<sup>28</sup>

## 6. THE NORTH WEST PROVINCE

### 6.1 Background

The problems encountered in the first round included the malfunctioning of scanners, poor information to potential voters, staff shortages in certain areas as well as the failure to open on time, if at all, by certain registration stations (*The Star*, 27 November 1998; *The Sunday Times*, 29 November 1998). The overall problem that resulted from this scenario was an inadequate registration rate that led to the scheduling of the second round of registrations.

In an attempt to alleviate the low rate in the province, the IEC met with District Electoral Officers in areas that had not produced more than 50% registration rates during the first round.

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<sup>28</sup> Although the extent of problems seen in other provinces was less significant in the Western Cape (*Cape Argus*, 4 December 1998; *The Citizen*, 4 December 1998), the survey conducted in Worcester indicates that dissatisfaction with service delivery by Government structures could explain low registrations rates in predominantly Coloured areas in the Province (EISA(3), 1999).

The aim was to ascertain the reasons and possibly take corrective measures (Manson, in EISA 1999(7):19). This effort revealed that a less than 50% registration turnout had taken place only in the southern areas such as Klerksdorp and Potchefstroom, including large White-owned farms in the Province. There had hardly been such a problem in villages throughout the rest of the Province. According to Manson (in EISA1999 (7):18-19), the IEC further identified areas with less than 40% registration in the Province and conducted a door-to-door campaign to increase awareness of registration in such areas. Having identified the problem areas from the previous registration and having dealt with them, the IEC felt that its preparations had been an improvement on the first round and it was more than ready for the second round of registration (Manson, in EISA 1999(7):20).

## **6.2 The Registration process**

By the end of the second round a further 18,0% percent had been registered thus increasing the registrations to 1 589 998 (or 59,2% of the voting population in the Province) (see *Table 5.1*). Minor problems were reported in the North West.<sup>29</sup>

## **7. KwaZULU-NATAL**

### **7.1 Background**

In addition to staffing problems, poor advertisement of registration venues and the malfunctioning scanner machines, the first round of registrations in KwaZulu-Natal and the Eastern Cape had been further hampered by heavy rainfalls. As a result, the former Province could only register 36,8% of its voting population during the first round. This percentage translates to 2 000 153 out of the total voting population of 5 440 548 in the Province (see *Table 5.1*) which indicates that many voters had still not registered by the end of round one of registration. It was thus necessary to hold a second round of registration on 29-31 January 1999.

### **7.2 Preparations**

Among the political parties, the ANC indicated its concern about the low turnout in urban areas (EISA, 1999(7):22). The Party placed more emphasis on registration awareness programmes which included a visit by the ANC President to the Province, door-to-door canvassing, 'walkabouts', road shows, and meetings with teachers and student sectors. The IFP in contrast indicated that it had embarked on mass communication campaigns, making use of loud hailers to make announcements and encourage voter registrations in most rural areas (EISA, 1999(7):22).

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<sup>29</sup> The Provincial branch of the ANC raised the problem of the obstruction of the electoral process by certain farmers in Zeerust and Lehurutse in January (*The Mafikeng Mail*, 19 February 1999).

Other preparations included general strategies outlined by the IEC Head Office at the end of round one of registration. These ranged from the decentralisation of administrative powers, closer and stricter negotiations with civil servants to avail themselves and to arrive on time, as well as an increased awareness campaign on registration days and at venues in the Province (Jones *et al.*, in EISA 1999(6)).

### **7.3 The Registration Process**

At the end of registration the total of the registered voting population had only increased from 36,8% to 51,2%, which is a 14,4% increment (see *Table 5.1*). In general, registration can be said to have improved since the number of reported problems<sup>30</sup> was minimal during this round of registrations. Although the registration process was regarded as having improved, the low turnout remained a source for concern for both the IEC and the political parties and might have contributed to the IEC's thoughts for a third round of registration.

## **8. THE NORTHERN CAPE**

### **8.1 Background**

The Northern Cape had not been exempted from the countrywide problems of the first round of registration. Central to the problems was the high illiteracy rate, and ignorance and confusion in the rural areas (Robins, in EISA 1999(7):12). These difficulties, combined with staff shortages and poor advertisement by the IEC contributed to the low registration rate of 35,0% during the first round (see *Table 5.1*). Having learnt from the difficulties of round one, the IEC had to introduce several strategies to improve the registration rate in round two.

### **8.2 Preparations**

The Provincial Electoral Officer (PEO), Gugu Matlaopane, indicated that the major problem of low registration turnout in rural areas was caused largely by vast distances and poor communication in these areas (Robins, in EISA 1999(7):12-13). The PEO further identified rural illiteracy, lack of information, confusion and youth apathy as the other contributing factors. In preparation for the next round of registration the IEC engaged in a fact finding exercise to identify ways of overcoming these and other logistical problems (Robins, in EISA 1999(7):12-13). The IEC personnel of the Kimberley office, and the Home Affairs Officials spent two weeks travelling and gathering information for improving and facilitating registration processes

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<sup>30</sup> Registrations were brought forward in the Cool Air area to accommodate a Hindu festival on the 29-31 January, faction fights delayed registrations at Msinga district on 29 January, and the NNP complained of some registration staff wearing the ANC insignia at registration stations on the first day (Goodenough, C in EISA 1999(6)).



across the Northern Cape. The information gained enabled the IEC to plan for mobile voter stations to be used during elections (Robins, in EISA 1999(7):12-13).

In addition, the Northern Cape Youth Commission held meetings and distributed pamphlets at taxi ranks, railway stations and schools. Radio talk shows, door-to-door voter mobilisation, mass education workshops, street canvassing, media publicity and the provision of a toll free help line in Kimberley were among the voter-education outreach programmes planned by the IEC Northern Cape branch (Robins, in EISA 1999(7):12-13). To increase this effort, the IEC also provided assistance to the unemployed and those in old age homes and hospitals, with special emphasis on the disadvantaged areas. Further, the disabled and pregnant women could ask for home visits (Robins, in EISA 1999(7):12-13). The effectiveness of these campaigns could only be judged by the success of the actual registration process. Such success could clearly be measured in terms of the registration turnout as discussed in the following section below.

### 8.3 Registration

About 35% of the voting population of 536 157 in the Northern Cape had been registered in the first round of registration (see *Table 4.5*). The continued confusion and lack of adequate information for the public had complicated registration. Long distances, illiteracy and the lack of information had contributed greatly to this situation in the Province during the first round. Despite minor problems<sup>31</sup> during the second round of registration, another 22,7% of the population were registered, thus increasing the number of registered voters to a new total of 309 218 (or 57,7%) (see *Table 4.5* above). This success could possibly be attributed to the preparatory awareness campaign.

## 9. GAUTENG

### 9.1 Background

Gauteng is one of the five northern Provinces that provided the IEC with its first registration experience in the country. The most common problem throughout the Province was that of poor information and the shortage of registration personnel in most registration stations. As a result the IEC could register only 38,4% of the voting-age population during the first round of registrations (*Table 4.3*). The IEC indicated that it had learnt from these experiences and was working to improve them before the second round of registrations (*Business Day*, 8 &

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<sup>31</sup> The Provincial Electoral Officer complained of farmers not allowing workers time off, to register for voting. The officer also complained of the unrealistic stipulations by the IEC in terms of the size of voter districts in the case of rural areas as the conditions required most people to travel extremely long distances (EISA, 1999(7)).

11 December 1998). One item to be improved was the distribution of pamphlets to inform the public of registration venues. The mobilisation of the youth and first time voters was another area of focus (*Business Day*, 8 & 11 December 1998; *The Sunday Independent*, 6 December 1998).

## **9.2 The Registration Process**

While the second round in Gauteng opened at a sound rate in White suburban areas, registration in African townships was reported as progressing at a less than enthusiastic pace (*Sowetan*, 24 February 1999). Regarding this feature, the National Working Committee of the ANC had circulated a confidential memorandum indicating concern about the greater proportion of White voters who had registered in comparison to Black voters. The memorandum indicated that registration was even poorer within Coloured and Indian neighbourhoods (*Sowetan*, 24 February 1999). The memorandum expressed even greater concern for the continued low turnout rate by Black first time voters, the majority of whom did not possess identity documents.

By the end of the second round, the registration rate had increased by 24,4%, from 38,4% to 62,8% or a new total of 1 001 443 voters out of the total voting-age population of 5 512 651 in the Province (see *Table 5.1* above).

## **10. MPUMALANGA**

### **10.1 Background**

A substantial proportion of the areas of the Mpumalanga Province is rural. Rural areas, by virtue of their remoteness, low technological and infrastructural development, tend to have an additional set of difficulties compared to urban areas (*interview*: Russon, 14 July 1999). Russon indicated that the lack of electricity in schools, inaccessible roads and poor tele-communication systems had in a measure contributed to a lower registration rate in most rural areas during the first round of registration. Despite the Province being partly rural, it managed to attain the second highest registration in the first round, with a registration rate of 40,3% (see *Table 5.1* above). This relative success in the first round did not minimise the problems reported in Mpumalanga which indicated that the province was no exception to rural difficulties. Hopefully this rate could improve during the second round.

### **10.2 The Registration Process**

Registration was again successful in Mpumalanga, with a further 22,2% of voters being added to the registered population by the end of round two. This meant that the Province had registered a

total of 1 053 834 (or 62,5% of the total voting population of 1 685 324) by the end of round two (see *Table 5.1* above).

## **11. THE FREE STATE PROVINCE**

### **11.1 Background**

Although this Province had its share of the common problems as did the rest of the country during round one, heavy rainfalls in the eastern parts of the Province might have contributed to the low registration turnout in 1998 (*The Star*, 4 December 1998). With an improvement in weather and in the general working conditions in the second round, the IEC and the public had every right to hope for an improved registration rate, as discussed below.

### **11.2 The Registration Process**

By addressing the problems of the first round in its preparations for the second round, the IEC managed to assist in adding another 16,1% of voters to the voters' roll (see *Table 5.1* above). This addition extended the total of registered voters from 41,9% to 58,0% in the Province. Improved weather probably also assisted the higher registration rate. The rate could possibly be improved further, should a third round of registration take place.

## **12. THE NORTHERN PROVINCE**

### **12.1 Background**

This Province achieved a 39,9% registration of its 2 684 690 voting age population during the first round of registration. Problems similar to those in the North West and the Northern Cape had been experienced in the province during the first round, with the IEC taking national measures to address them, resulting in additional 18,0% registration in the second round of registration. As *table 5.1* indicate, a total of 59,9% of potential voters had been registered by the end of the second round in the province.

## **13. The Total Registration Process**

*Table 4.4* indicates a national total voting population of 26 355 840 as per census data which had to be registered during the voter registration period. A total of 9 754 643 or 37,0% of the national voting population was registered during the first round of registration. In attempting to improve this registration performance the IEC held a second round of registration from 29-31 January 1999. In its plans the IEC used several strategies to address the problems that had hampered the first round of registration. Data from the second round of registration indicate that the IEC was able to add only 19,0% of voters to the voters' roll (see *Table 5.1*). This translates

into 56% of the registered voting population by the end of January 1999. The inadequacy of this percentage is evident from the initial indication by the IEC that a minimum registration rate of 70% was required for the elections. The National Party and the DP had opposed this figure in favour of a higher registration percentage of 80% or more (*The Star*, 8 March 1999).

While this total was low enough to raise concern among different stakeholders, the question remained as to what the situation might have been, had there been no limitation in terms of identity documents. To give the public an additional opportunity to register, the IEC opened a third round of registration during the periods 5-6 March and 12-15 March 1999 as well as after the outcome of the court cases as discussed in the following section.

## 14. THE THIRD ROUND OF REGISTRATION

### 14.1 Background

The IEC had registered only 56,0% of the voting-age population during the first two rounds of registration (*Table 5.1*).<sup>32</sup> Because this percentage was low, the Commission had to find ways to encourage people to register. One of the ways was the strengthening of the efforts by the IEC and the Department of Home Affairs to encourage applications for the new barcoded identity document throughout the country. This was accompanied by an extension of the registration period to round three as will be discussed in the following section (Jones *et al.*, in EISA, 1999(8)).

## 15. PREPARATIONS

The following section discusses the forms of preparation that were conducted by the IEC, political parties, the Government and other non-Governmental organisations in an attempt to increase registration during the final stage.

### 15.1 The *Votani Mawethu*<sup>33</sup> Campaign

The third round began with an intensified countrywide campaign by the Department of Home Affairs to persuade the public to apply for barcoded identity documents. At the end of February 1999 the Deputy President, Thabo Mbeki, launched the *Votani Mawethu* Campaign, in which the towns on the East Rand were visited by officials of the Department of Home Affairs (*The Star*, 3 March 1999). The officials encouraged the people to collect their ID's at the Department's offices, while at the same time encouraging new applications for barcoded ID's (*The Star*, 1, 3;

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<sup>32</sup> Also see the section "*Updating the Voters' Roll*" later in this chapter for a further description of the voting population figures.

<sup>33</sup> A Xhosa phrase which urges "*our-people*" to **Vote**, *Votani* is to **Vote**, *Mawethu* means **Our People**.

and 5 March 1999). This campaign resulted in long queues of ID applications in Soweto, Randburg, Wynberg, and Gauteng Home Affairs Offices during 2 March 1999. To cope with the demand the Gauteng Home Affairs offices stayed open throughout the weekend (*The Star*, 3 and 5 March 1999)

## 15.2 Registration Campaign through Sport

To strengthen its voter registration campaign, the IEC extended its awareness campaigns to the soccer fans at an international soccer match between South Africa and Gabon, as well as at rugby matches in Pretoria on 27 February 1999 (Jones *et al.*, in EISA 1999(8):2). The campaign included the distribution of promotional material to the fans in and on their way to the stadiums. In addition, aerial awareness messages were flown around the stadiums. The teams were also asked to wear the IEC T-shirts in promotion of the registration campaign on the day (Jones *et al.*, in EISA 1999(8):2).

## 16. UPDATING A VOTERS' ROLL

In preparation for the third round of registration on 2 March 1999 the IEC began to check the existing names on the current voters' roll against the population register of the Department of Home Affairs. On 4 March 1999 the Officials of the IEC, Home Affairs, and Statistics South Africa met in Pretoria to discuss, correct and finalise the total of the voting-age population in South Africa. The findings indicated that the current voting-age population total of 26 355 840 (see *Table 4.3*) in the current census statistics was both too high and thus misleading. The excess numbers included, among others, many unauthorised voters such as under-aged citizens; 581 000 non-permanent residents; 150 000 convicts and prisoners awaiting trial; 97 000 South Africans living permanently abroad; and 1 358 000 South Africans without barcoded identity documents. The outcome of the meeting was the declaration by the IEC of a new official total of 22,8 million<sup>34</sup> potential voters in South Africa (Russon, *Media release*: 7 March 1999).

In addition, the IEC also removed approximately 120 000 people from the voters' roll for the following reasons:

- About 8 664 voters who had registered had been reported dead in the population register;
- About 86 384 voters had either an incorrect form of identification or were regarded by the population register as foreigners.
- Some people were discovered to be under age.

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<sup>34</sup> The latest "*Opinion '99*" data, according to Bob Mattes of Idasa, indicated a total voting-age population of 23,9 million of which only 79% had registered (*Business Day*, 10 June 1999).

Furthermore, registered voters could check their names on the interim voters' roll at various registration stations to allow any necessary corrections to be made in time (*The Star*, 3 March; Russon, *The State of the Voters' roll*, 31 April 1999). According to the *Sowetan* (8 March 1999) a significant number of people who checked their names at some stations in Soweto could not find their names on the voters' roll. The report indicated that about 50% of the people who checked their names at the same stations could not appear in the voters' roll. According to *The Star* (8 March 1999) NNP leaders in Pretoria had claimed that more than 40 000 registered people in the area were not recorded on the voters' roll in the first week of March. There were further indications that 13 NNP provincial and national leaders could not find their names on the voters' roll (*The Citizen*, 8 March 1999). While registered citizens continued to check their names on the voters' roll, a Home Affairs official, Hennie Meyer indicated on 7 March that applications for identity documents were still arriving at the Department's offices and were likely to continue until 7 p.m. on the same evening. This, according to Meyer, was an indication that more people were likely to apply for registration even after Sunday, the third and last day of registration (*The Citizen*, 8 March 1999).

## **17. THE REGISTRATION PROCESS ON 5, 6 AND 7 MARCH 1999**

According to the initial census statistics in *Table 4.3*, 56,0% of the voting population had been registered during the first two rounds of registration. The third round of registration began on 3 March 1999. By the end of the first day the IEC reported the registration of more than 400 000 applicants. Registration figures declined on the second day. The pace appears to have increased on the last day as the IEC indicated a total registration rate approaching 16 million or 70% at the close of registration on Sunday 7 March (Jones *et al.*, in EISA, 1999(8)).

As the registration rate approached 70% that had previously been reported as the IEC goal, the IEC Chief Electoral Officer, Mchunu, predicted that the IEC would soon close the voters' roll (*The Star*, 8 March 1999). The IEC announced in its press release on 11 March 1999 (in EISA, 1999(8)) that it had managed to register over 17,2 million (or 75,4% of eligible voters) to date and believed that the percentage would exceed 80% after the list had been completely updated.

In response to the IEC, the NNP leader, Van Schalkwyk, argued that additional time for registration was needed. He argued that the long queues in Mitchell's Plain confirmed that there were many applicants for identity documents who had spent the whole day(s) in queues and could not have had time to register during this time. This argument was supported by the AZAPO president, Mangena, who felt that many people had refrained from registering because they confused registration with the actual election, and because they were disillusioned with the

government (*Sowetan*, 8 March 1999). Groenewald of the Freedom Front complained that very few people had registered. He added that an IEC official who had earlier agreed to set up a registration station at the University of Potchefstroom during the second round had not done so, and had been unhelpful ever since. On a positive note, the PAC spokesperson in the North West pointed out that registration administration appeared to have improved drastically since the second round (EISA, 1999(6):15). Furthermore, the DP and the ANC were also pleased with the improvement in the registration administration in most provinces and were more concerned about attacking each other on the issue of racial discrepancies in respective party lists than reacting to the registration progress (EISA, 1999(7):20). In view of several considerations, the IEC Chairperson, Ms Bam announced on Thursday, 11 March that registrations were to continue from 9 am until 7 p.m. from Friday, 12 March until Monday, 15 March 1999 at existing registration stations. This was done in order to allow for late applications for temporary registration certificates in certain areas which ensure that further names were added to the voters' roll (Jones *et al.*, in EISA 1999(8)).

## **18. THE VOTERS' ROLL**

Registration was finally closed on the evening of Monday 15 March 1999 despite the NNP's request for the registration period to be extended (*The Citizen*, 16 March 1999; *The Star*, 23 March 1999). Due to time limitations the registrations could not be extended any longer as the voters' roll needed updating several weeks ahead of the elections (*Business Day*, 23 March 1999; *The Citizen*, 16 March 1999; *The Star*, 23 March 1999). The IEC had to prepare the final voters' roll by 12 April to allow for appeals and corrections ahead of the general election on 2 June 1999 (Jones *et al.*, in EISA 1999(8)).

The IEC could only finalise the voters' roll after the Constitutional Court had made its ruling on the court cases between itself and the Prisoners Union, the NNP and the DP on 1 April 1999. On this date the Constitutional Court ruled against the applications of the DP and NNP (see chapter 3). The Court ruled in favour of the application by the Prisoners Union that qualifying prisoners should be allowed to vote. This ruling meant that the IEC had to register approximately 146 000 prisoners before the election date (*August & Another vs. IEC and Others*, 1999(4) cct8/99:380).

### **18.1 Finalisation of the Voters' roll**

According to the press statement by the IEC Chief Director of Registration, Russon (7 March 1999), the cut-off date for registrations, i.e. 15 March, was only the first step or day one in the process of finalising the voters' roll. The transitional voters' roll had to be checked for 15 days or

until 30 March, after which refusals had to be announced and appeals received within a six day period, i.e. until day number 21 or 5 April. Decisions on appeals were also made during a six-day period, i.e. until day number 27 or 11 April. Following from this was the announcement of venues for the public inspection of the provisional voters' roll with the actual inspection lasting for a further seven days. Russon appealed to registered voters to continue checking their names against the voters' roll by calling the IEC centre on a toll free number or accessing the web site at [www.elections.org.za](http://www.elections.org.za). The IEC, according to the press statement, allowed another period of seven days to receive objections to the voters' roll with another seven days for amendments. The Final Voters' Roll was published on the 50<sup>th</sup> day of this process, i.e. 5 May 1999.

## 18.2 The Final Voters' Roll

The following section discusses the process of the finalisation of the voters' roll.

### 18.2.1 Registration of Prisoners

After the High Court had ruled against the total disenfranchisement of prisoners on 1 April 1999, the IEC began its preparations for visiting 146 000 (see *Table 5.2*) prisoners throughout South Africa. Registration took place on 16, 17 and 18 April with the IEC Officials visiting 236 prisons and every police station in the country where prisoners were being held. *Table 5.2* displays the national statistics of the registration of prisoners per province.

**Table 5.2: Prisoners Registered per Province**

Province	# Prisoners registered	Total # of Prisoners
Eastern Cape	3 274	
Free State	1 842	
Gauteng	4 437	
KwaZulu-Natal	3 079	
Mpumalanga	1 572	
North West	1 672	
Northern Province	482	
Northern Cape	1 110	
Western Cape	3 962	
<b>Total</b>	<b>21 430</b>	<b><u>146 000</u></b>

Source: State of the Voters' Roll, IEC, 31 April 1999

At the end of a three-day period of hard work the IEC reported that a substantial number of prisoners could not come forward to register. *Table 5.2* indicates that the IEC could only



register 21 430 out of a National total of 146 000 prisoners during this period (Russon, *The State of the Voters' Roll*, IEC, 30 April 1999).

### 18.2.2 De-registrations/Rejections

In comparing the voter's roll against the population register of the Department of Home Affairs, the IEC found that a total of 265 203 voters had registered illegitimately. These voters were therefore rejected and de-registered from the voters' roll. *Table 5.3* displays different reasons for the voters' roll rejections per province.

**Table 5.3: Voters' Roll Rejections As Per Population Register- Province by Reason**

Reason for Rejection →	Non-Citizens	Deceased	Under Age	Invalid ID's	Total
<b>Provinces</b>					
Eastern Cape	14 265	3 745	28 096	2	46 108
Free State	10 740	2 679	7 448	1	20 868
Gauteng	46 866	6 902	12 188	4	65 960
KwaZulu-Natal	11 968	7 161	17 754	5	36 888
Mpumalanga	12 618	2 365	7 243	0	22 226
Northern Cape	739	750	2 501	0	3 990
N/ Province	9 733	2 997	23 576	1	36 990
North West	8 334	2 997	8 084	0	19 415
Western Cape	5 962	2 044	5 582	4	13 592
<b>Total</b>	<b>121 225</b>	<b>31 489</b>	<b>112 472</b>	<b>17</b>	<b>265 203</b>

Source: State of the Voters' Roll, IEC, 31 April 1999

According to *Table 5.3* there were 121 225 people who had succeeded in registering as voters while they were not citizens of South Africa in terms of the population register. According to these data a further total of 31 489 people had registered from all nine provinces while holding a deceased status in the population register. Another 112 472 people who had registered were found to be under age in terms of the population register, while a small number of 17 people had registered with invalid identity documents. After rejections were complete the Provisional voters' roll was opened to the public for inspection, for lodging appeals and for raising objections. The following table, *Table 5.4* displays the number of appeals that were received and voters who were re-instated by the IEC in each province.

**Table 5.4: Appeals Re-Instated by the IEC (Per Province)**

Province	ID Related	Naturalised Citizens	Total
Eastern Cape	14 295	372	3 463
Free State	2 822	425	3 247
Gauteng	8 757	1 716	10 470
KwaZulu-Natal	6 540	465	7 005
Mpumalanga	1 516	435	1 951
Northern Cape	1 975	23	1 998
Northern Province	999	258	1 257
North West	1 815	494	2 309
Western Cape	6 646	436	7 082
<b>Total</b>	<b>34 158</b>	<b>4 624</b>	<b>38 782</b>

Source: State of the Voters' Roll, IEC, 31 April 1999

According to the IEC's *State of the Voters' Roll* document (31 April 1999), members of the public who had been rejected from the voters' roll or who were dissatisfied in any way with the information recorded on the voters' roll were given a week until 6 April to lodge their appeals. *Table 5.5* displays the total number of public objections to the voters' roll, as well as the accompanying reasons.

**Table 5.5: Public Objections to the Voters' Roll (Reasons by totals)**

Reason for Objection	Numbers objecting
Incorrect voter details	857
Against inclusion in Voters' Roll	86
Against Exclusion from the Voters Roll	3 225
Change of Names/Surname	289
Change of address	222
<b>Total</b>	<b>4 679</b>

Source: State of the Voters' Roll, IEC, 31 April 1999

According to *Table 5.5*, a total of 4 679 objections to the voters' roll was lodged by the public with the IEC in this period. The IEC indicated in its *State of the Voters' Roll* (31 April 1999) that it disapproved a sum of 1 475 objections in this total. Although this information may indicate that 3 204 objections were accepted by the IEC, this number should not be mistaken as reflecting an absolute increase or decrease of the voters' roll. Exercise of caution is necessary as most objections to the data were not aimed solely at inclusion in or exclusion from the voters' roll but at the amendment of details already existing in the voters' roll. It is evident from *Table 5.4* that most objections - including those by 857 people whose details had been recorded incorrectly, 289 who had changed names or surnames, and 222 people who had changed their

addresses - referred only to the change of details rather than to inclusion in or exclusion from the voters' roll. The data further indicate a sum of 86 people who objected to their inclusion in the roll whilst 3 225 objected to their exclusion from the voters' roll. This mixture of numbers and reasons for objections emphasises the need for caution in interpreting these data.

### ***18.2.3 Causes for Rejection, Objections and Appeals to the Voters' Roll***

Problems encountered by the IEC during the registration period, according to the *State of the Voters' Roll* (31 April 1999), include the following:

- Identity Documents

The malfunctioning of the barcode scanners during the first round of registration resulted in registrations being done manually in certain instances. Manual registration in turn led to errors in recording voters' ID numbers. The errors caused some ID numbers to be rejected by the system. On appeal these cases were upheld and reinstated by the IEC at a later stage. Moreover, some potential voters used incorrect identity documents in their registration applications that were erroneously accepted by the registration personnel. These applications were rejected by the system. As it appeared on appeal that the error lay with the IEC registration staff, applicants who had subsequently acquired correct ID's were upheld and re-instated.

- Deceased Persons

The IEC had received 31 489 applications for registration from people whose identification details had been recorded in the population register as being deceased. The IEC found this unacceptable de-registered them from the voters' roll. A substantial number of this section appealed and were able to present their fingerprints. Others who were still alive and did not appeal were de-registered and could not vote on 2 June 1999.

- On the problem of Citizenship:

According to the *State of the Voters' Roll* (31 April 1999), there was not much evidence of inaccuracy in the data on citizenship. The main problem experienced by the IEC was that of the citizens of the former TBVC states who still held ID books which designated them as non-South African citizens. In dealing with this problem the IEC concentrated on the place of birth rather than on the numeric sequence of ID numbers in registering voters. As a result, all applicants could be included in the voters' roll. By the end of registration the IEC had registered about 79,7% (or the total of 18 172 751 voters) for the 1999 general elections (Russon, *The State of the voters' roll*, 1999). *Table 5.6* displays the total data of voter registration by province at the end of the registration period.

**Table 5.6: Voter registration statistics per province<sup>35</sup>**

Province	Official Electorate	# Registered	# Rejected	% Registered
Eastern Cape	22.8 million	2 454 270	42 645	75,9
Free State		1 226 174	17 621	79,8
Gauteng		4 158 574	55 490	88,7
KwaZulu-Natal		3 443 978	29 883	73,4
Mpumalanga		1 273 103	20 275	82,3
Northern Cape		377 194	1 992	78,4
Northern Province		1 847 766	34 899	76,6
North West		1 527 672	17 106	80,6
Western Cape		1 864 020	6 510	80,4
<b>Total</b>	<b>22.8 million</b>	<b>18 172 751</b>	<b>226 421</b>	<b>79,7</b>

Source: State of the Voters roll, IEC 31 April 1999

Both *Tables 4.3* and *5.1* indicate that South Africa, in terms of the latest census statistics, had a total voting population of 26 355 840 during the voter registration period.

It is also evident from these two sets of data that the IEC had reconciled its records with the population register, and had made corrections as well as adjustments to this figure (See Section 15), leading to a new total of 22,8 million. Data on *Table 5.6* are based on a newly adjusted voting population total of 22,8 million (*State of the Voters Roll*, 31 April 1999). The data indicate that only 18 172 751 or 79,7% of the voting population had registered successfully, and were eligible to vote on election day. This figure co-incidentally corresponds with the "*Opinion '99*" research findings conducted five days before the elections, which indicated that 79% of potential voters had registered over the registration period (*Business Day*, 10 June 1999). According to the latest "*Opinion'99*" (June 1999) poll, discrepancies in registration levels between the race groups could perhaps be explained to a skew rate of possession of barcoded identity documents among different racial groups (*Business Day*, 10 June 1999). The poll shows a 92% barcoded ID possession (92%) among the Blacks, and a 79% among the Indians and Coloureds. With the majority of the Western Cape population being Coloured,<sup>36</sup> it is tempting to consider the barcoded ID issue as a partial explanation for a lower registration rate in that Province. By the same token, Gauteng and Mpumalanga should, and do, portray relatively high registration figures (*Table 5.6*). As discussed in earlier chapters, registration in KwaZulu-Natal, Eastern Cape and the Free State was severely disrupted by heavy rains during the first period of

<sup>35</sup> Based on a new voting population total of 22.8million as per the IEC's *State of the Voters' roll (1999)*.

<sup>36</sup> In addition, Dr Steven Robins' February opinion poll among the Worcester Coloured Community indicated further disillusionment on poor Government delivery, which could have caused protests in the form of non-political participation (EISA, 1999(6)).

registration. It remains questionable whether these provinces did in fact recover from their poor rate of registration.

## 19. CONCLUDING REMARKS

The data from this text indicate that the registration process suffered from a series of problems including the IEC's budget constraints, staff shortages, bad weather, court cases, youth apathy a generally low registration turnout. Having completed the registration process at the rate of 79,7% of 22,8 million voters, the IEC had to, understandably, be pleased at having exceeded its goal.<sup>37</sup> As much as this was an achievement under the given circumstances, it may be queried whether this percentage was high enough, bearing in mind that it is rare to secure a 100% voter registration in any election. Another question relates to whether the IEC could have done more than it did to secure a higher registration rate and whether such an expectation would have been realistic. It may also be asked whether this figure could have been different if the barcoded ID's had not been a limitation during voter registration. It is the aim of the next chapter to analyse the policy and entire registration process in a summary form, and to try to find explanatory answers regarding a series of questions that have been raised in this and the preceding chapters.

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<sup>37</sup> According to *The Star* (8 March 1999), Mchunu of the IEC indicated on 4 March 1999 that a registration rate of 70% was the minimum target of the Commission.

**CHAPTER 6**

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***SUMMARY, RECOMMENDATIONS, CONCLUSION*****1. SUMMARY**

The aim of this study has been to make an analytical description of the policy, as well as the process, of voter registration in South Africa for the 1999 elections. The significance of the study lies in the fact that voter registration is taking place for the first time in the short history of the country's democratic elections. As the process of voter registration is new in South Africa it is almost certain that practical experience is still lacking. In view of the limited information on the subject it was logical to conduct an exploratory study on this new phenomenon in South Africa. A thorough understanding of any new policy is vital for minimising any misinterpretations due to ignorance, and for facilitating a theoretical and political debate which can contribute to the improvement of the policy, should such a need arise. Understanding new phenomena is a complex process, which involves both questions and answers. There has been no exception in needing the question and answer dichotomy in an attempt to understand this policy. Chief to these questions is the need to know the necessity of this policy in South Africa. Another fundamental question refers to the policy making process, i.e. how the policy was made. In trying to explore the third question regarding the viability of this policy in South Africa, it became necessary for the implementation process to be studied as well.

In an attempt to explore the policy of voter registration, several questions were asked at the beginning of the study, including that of the actual description of the concept of voter registration. Chapter one describes the policy of voter registration in South Africa as a section of the legislative and statutory provisions of the elections which provides for voters to be registered on the voters' roll in order to qualify to vote. This policy requires all potential voters to possess a green South African barcoded identity document in order to register for voting. The policy and its provisions which constitute new limitations in the short voting history of democratic South Africa have raised several other questions such as the need for a thorough understanding as to why this policy has been necessary for South Africa for the 1999 elections, and why it was omitted in the 1994 elections. The data in chapter two suggest that the omission of this limitation in 1994 left the electoral process vulnerable to electoral fraud. The types of electoral fraud reported after the 1994 elections included incidents of multiple voting, voting by non-residents as well as an uncontrollable movement of the electorate between regions during the voting period. These loopholes were made possible by the existence of a variety of identity documents

held by the public and used for voting purposes. According to the ANC, the supply of multiple copies of some types of identity document remained highly possible and their validity difficult to verify, thus making the above types of alleged fraud possible. Although none of these allegations could be fully substantiated, the Government and the Electoral Commission decided to improve the rules in an attempt to eliminate the chances of it happening in future. To achieve this, Electoral Act no 73 of 1998 was passed replacing Electoral Act no 202 of 1993.

Since the preceding act could not provide for the use of the voters' roll, the new act included requirements for voters to be registered in the voters' roll in order to qualify for voting in South Africa. The policy of voter registration further requires the voters to be in possession of a green barcoded identity document in order to register for voting. In justifying the need for the policy, the policy makers argued that the use of a barcoded ID would ensure that entrance to the voters' roll is limited to legitimate voters only. It was further argued that this ID is easily verifiable as compared to other types of South African ID's since it is issued in terms of the records held in the population register.<sup>38</sup> The population register, according to the argument, consists of residential, citizenship, and other personal information necessary for distinguishing between enfranchised and disenfranchised persons. Moreover, the provision that voters should register only in areas where they intend to vote addresses the problem of voters transferring between regions during elections. Following this explanation is the description of the actual policy making process, i.e. the answer how was this policy made? Who were the participants in the policy making process, and how were the decisions taken?

### **1.1 The Policy Making Process**

An understanding of this process requires a description of whether the decision making process was inclusive of all stakeholders or was undertaken unilaterally by a certain political cabal, whether the policy does or does not contradict any constitutional provision, and whether it is viable for implementation in South Africa. The findings in Chapter 3 indicate that all political parties represented in Parliament participated in the debates on the Electoral Bill. Further, that all political parties, with the exception of the DP and the NNP, had accepted the Bill and its provisions, resulting in the Bill being passed on 17 September 1998 and becoming the Electoral Act no 73 of 1998. The debate around this Act was not procedurally different from any other law-making process and can be safely regarded as inclusive and legitimate. Although the law-making procedure could not be contested, the NNP and the DP remained dissatisfied with the

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<sup>38</sup> The DP official, Kalyan, opposes this argument, arguing that barcoded ID's are available even in the black market and are being sold to Nigerians and other illegal aliens who wish to obtain RSA citizenship (*Interview: Kalyan, 1999*).

constitutionality of the provision for barcoded ID's in the Act. As a result, they challenged this provision in the High Court. The NNP applied to the Cape Division of the High Court whilst the DP applied to the Transvaal Division January 1999 to lodge an appeal against the barcoded ID stipulation in the Electoral Act. Both parties were requesting the Court to declare the limitation of barcoded ID's as provided in section 1(xii) of the Electoral Act 73 of 1998, as unconstitutional. The complaint against the provision was that it disenfranchised the non-holders of barcoded identity documents. This disenfranchisement was alleged to be a contradiction of the constitutional right to a universal adult suffrage. Further, the parties were seeking a Court order against the conduct of the Ministers of Home Affairs, and of Finance, which the NNP to be infringing upon the independence and impartiality of the IEC, so that their conduct could be declared as invalid and unconstitutional. The alleged conduct of the Ministers was as follows:

1. Financial constraints placed by the Minister of Finance on the IEC;
2. Interfering with the powers of the IEC to carry out its duties and functions as described in sections 5 and 12 of the Electoral Commission Act, and sections 4, 5 and 14 of the Electoral Act, as well as sections 181 and 190 of the Constitution. These sections basically prescribe the main duties of the IEC to organise and administer the free and fair elections in an unbiased manner. The NNP felt that financial constraints limits the capacity of the IEC to carry out such duties;
3. Withholding of barcoded identity documents issued by the Department of Home Affairs around the country, without delivering them to persons who applied for them, without affording proper notices to such applicants. The Parties also argued that the Department of Home Affairs lacked the capacity to supply new documents according to increasing demand within a limited time frame.

When passing judgement, both the Cape and Transvaal Divisions of the High Court ruled against these applications. The majority of judges felt that the provision for barcoded ID's would benefit the electoral system by eliminating electoral fraud. The HSRC survey results used by the NNP as evidence for a low rate of possession of barcoded ID's was already outdated by the time the cases were heard. Allegations of a lack of capacity by the Department of Home Affairs, and of the infringement of the independence and impartiality of the IEC, were inadequately substantiated and were dismissed by the Court. The Parties were dissatisfied with the Judgement and lodged an appeal with the Constitutional Court. On 1 April 1999 the Constitutional Court also judged against these parties for similar reasons to those given by the High Court. In a separate case where the Prisoners' Union had challenged the disenfranchisement of its members,



the Constitutional Court judged in favour of the Union. The Court felt that a total disenfranchisement of prisoners was unconstitutional and ordered the IEC to register those prisoners who were not precluded by the Electoral Act from voting. As a result, the IEC was faced with the task of registering about 146 000 prisoners countrywide. The IEC later indicated that, after its efforts, only a small number of prisoners were prepared to come forward and be registered. As a result, only 21 430 prisoners were registered (*Table 5.2*).

## **1.2 The Implementation of policy**

As explained in chapter 3 sub-section 3, the prescribing Act to the policy and process of voter registration, Electoral Act (no 73 of 1998) owes its origin to the recommendations of the Electoral Steering Committee of 1996, as well as to the Electoral Amendment Bill (B90-96) of 1996. This Act was only passed on 14 October 1998, resulting in the IEC having little time to prepare for registrations, as Judge Langa of the Constitutional Court argued in a judgement during the barcoded ID court cases. For the implementation to take place the IEC needed to, and did prepare the following: The demarcation of voting districts, the zip-zip barcode reading machines, acquiring personnel, the registration time table, a public information strategy, and arrangements for safety and security during registration (see chapter 4). The actual implementation of the policy began with the opening of registration, a process which was divided into three rounds beginning on 27 November 1998 and ending with the final stage on 15 March 1999.

## **1.3 Registration Round-One**

As the data in chapter 2 indicate, the first registration ran over a six<sup>39</sup> day period divided into two phases, the first for the northern Provinces during 27-29 November, and the second for the four southern Provinces of KZN, Eastern Cape, Free State and the Western Cape during 3, 4, and 5 December 1998. Registration was dominated by problems of staff shortages, non opening of registration stations, poor or misinformation to the public regarding registration venues, heavy rainfall in the southern Provinces, as well as a registration apathy on the part of the youth. These difficulties were the major, although not sole reasons for the low registration turnout as only 37,0% of the voting population of 26 355 840 could be registered in this round. This low percentage resulted in the planning by the IEC of a second round of registration from 29-31 January 1999.

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<sup>39</sup> See registration time table in chapter 4 :49

## **1.4 Registration Round-Two**

Having learnt from the problems of the first round, the IEC tried to improve its information capabilities by advertising in taxi ranks, African-language radio stations, as well as holding road shows where senior IEC officials appeared and encouraged registration. This improved registration resulted in a further 19,0% of registered voters and this increased the national rate to 56,0% by the end of the second round of registration. This rate being lower than the IEC target of 80,0% the IEC was forced to plan a third round of registration, which took place during the first two weeks of March 1999.

## **1.5 Registration Round-Three**

The aim of the third round was to take registration beyond the 56,0% obtained at the end of the second round. This required preparations in the form of various public awareness campaigns by the IEC and the Government, including the following campaigns:

### **1.5.1 The Votani Mawethu Campaign**

In this campaign the Department of Home Affairs was engaged in a countrywide campaign to persuade the public to apply for barcoded ID's. This included visits to the East Rand Townships by officials of the Department of Home Affairs. It can be said that the campaign was a success since it resulted in long queues of ID applicants in most Home Affairs offices countrywide.

### **1.5.2 Campaign through Sport**

Registration campaigns were extended to an international soccer match between South Africa and Gabon, as well as to a rugby match in Pretoria on 27 February 1999. Pamphlets were distributed to the fans, teams displayed the IEC T-shirts and promotional messages were also flown at these events. The impact of these campaigns is however, because of their indirect nature, not measurable in tangible quantities.

## **1.6 The Voters' Roll**

In order to finalise the registration process the IEC decided to update the voters' roll by reconciling it with the population register. The roll was finalised in a meeting between the IEC, the Department of Home Affairs, and Statistics South Africa, which was held on 4 March 1999 in Pretoria. The outcome of the meeting was the reduction of the voting population from 26 355 840 (as per *Table 4.3*) to a revised total of 22,8 million, which was likely to increase the percentage of registered voters. The original total was misleading in that it included a significant

number of the non-voting population such as the under aged, prisoners, South Africans living abroad, South Africans without barcoded ID's, South Africans recorded as deceased in the population register, as well as non-permanent residents. The result of the revision was the removal of approximately 120 000 people from the voters' roll, after this revision, registered voters were allowed to check their names against the voters' roll, to raise objections and to apply for corrections.

### **1.7 The Final Registration**

The final round took place on 5, 6 and 7 March 1999. The process was reported to have progressed smoothly with the registration rate approaching 16 million (or 70% of the updated voting population) on the final day. This period was further extended to 12-15 March to allow for late applications.

### **1.8 Finalising the Voters' Roll**

In response to calls for further extensions of registration by Van Schalkwyk of the NNP, the IEC indicated that it needed to close registrations so that it could finalise the voters' roll by 12 April. This finalisation was necessary so that the IEC could in turn deal with appeals and corrections well ahead of the elections on 2 June 1999. Finalising the voters' roll depended largely on the outcome of cases being heard by the Constitutional Court which were finalised on 1 April. Although the Court ruled against the DP and the NNP, its judgement was in favour of the prisoners' Union, resulting in the IEC being ordered to register about 146 000 prisoners nationally, before the voters' roll could be finalised. The registration of prisoners took place on 16, 17 and 18 April 1999 over 236 prisons nation-wide. Due to low interest on the part of the prisoners, only 21 430 prisoners were registered out of a national total of 146 000 prisoners (see *Table 5.2*).

In finalising the roll, the IEC de-registered a total of 265 203 voters from the voters' roll (see *Table 5.3* for details). Of this total the IEC reinstated a total of 38 782 voters on receipt of their appeals (see *Table 5.4* for details). The final registration rate at the end of registration was 79,7% (see *Table 5.6* for details). It is well to bear in mind that these registrations were the first of their kind in the history of South Africa's elections, there was no past experience with which their progress could be compared. As a result, only a circumstantial evaluation is possible. In this respect, using the IEC target of 80% registration as a yardstick, given the nature of difficulties in the form of budgetary constraints, staff shortages, and court cases, it is understandable that the IEC considered this process as having been a resounding success.

## 2. CONCLUSION

The chief aim of this study has been the exploration of the reasons behind the decision for the policy of voter registration in South Africa during the 1999 General Election, as opposed to the omission of this policy in the first General Election of 1994. Attempts to address this question required a description of the political, Constitutional and legislative electoral developments towards this policy. In addition, an account had to be given of the 1994 Election which had excluded this policy; it was necessary to explore the possible reasons why such a policy had to be instated for the next elections of 1999. As the data in Chapter two indicate, the lack of a voters' roll in 1994 made the electoral process open to possibilities of electoral fraud such as multiple voting, as well as possible voting by non-citizens. Although allegations that were made of these instances in the 1994 elections could not be substantiated, the policy makers considered that the registration of voters would minimise, if not eliminate, these possibilities in future elections. As a result, the policy of voter registration was initiated. As stipulated in Electoral Act no 73 of 1998, the policy requires citizens to be registered on the voters' roll in order to qualify to vote in a General Election. In addition, a citizen should possess a South African barcoded identity document in order to be able to register to vote. The latter stipulation had given rise to a heated debate between the Government and the IEC on one hand, and the DP as well as the NNP on the other, with the latter parties pursuing their opposing to the provision as far as the Constitutional Court. This stipulation was opposed on the basis that it would deprive the non-holders of barcoded ID's of their constitutional right to vote. By implication, it was alleged that this provision would lead to a decreased voter turnout as a result of the exclusion of non-holders of this type of ID.

The argument that the absence of a voters' roll had made alleged cases of electoral fraud possible in 1994, and that the use of a voters' roll in 1999 could eliminate the opportunity for such fraud requires a thorough evaluation of the whole election process, an exercise beyond the scope of this essay. Although very few, if any, of the problems concerning electoral fraud from the 1994 Election were reported at the end of the 1999 Election, a comparative study of the 1994 and 1999 Elections is required in order to arrive at a definite conclusion. To this effect, this study could be a contributing base.

To the second set of arguments, firstly, that the provision of barcoded ID's is unconstitutional since it denies a constitutional voting right to non-holders of the document, the Constitutional Court ruled that the stipulation would only be unconstitutional if it prevents individuals from applying for ID's and also from registering to vote. In addition, that the stipulation would be

illegitimate if the Government had not made conditions to be conducive for voters to take reasonable steps to get registered and to vote. According to the Court, none of these requirements had been infringed by this stipulation nor by the Government. In fact, the Court found that many people who had wanted to register and to vote, who had taken reasonable steps to do so, had in fact been registered successfully. As a result, the provision could not be declared as unconstitutional. Instead, the Court felt that the use of a single form of identity document as set out in this stipulation would improve the legitimacy of an electoral system by minimising the chances of electoral fraud. In view of these arguments, until further research provides adequate evidence against these findings of the Court, there is no logical reason for not concluding that a barcoded ID stipulation is not unconstitutional.

In evaluating the argument that the provision, as it excludes non-holders of barcoded ID's from voting would lead to a lower registration turnout, comparisons between the total voting population and the total percentage of registered voters, and between the total voting population and the total percentage poll is necessary.

It is hard to find any supporting evidence for the above claim. Firstly, *Table 5.6* indicates an 80% registration rate despite the barcoded ID stipulation. Secondly, the data in *Table 5.3* indicate a less than significant percentage of identity documents related problems during registration. In addition this study has not found enough evidence in this study to suggest a negative correlation between the stipulation for barcoded ID's and the registration turnout. According to the following data on the election results (*Table 6.1*), it is even more difficult to find any evidence to support the argument of a negative causal relationship between the stipulation and the voter turnout. Where such a relationship is claimed, e.g. the low incidence of possession barcoded ID's by Coloured people in the Western Cape and the low registration rate in the Province as shown by "*Opinion'99*" conducted five days before the election, there is no conclusive evidence that barcoded ID's alone were the cause. If there was another factor, i.e. protest against poor delivery of service delivery by Government as indicated in the Worcester survey<sup>40</sup> of February 1999 (EISA, 1999(6):11-12), it cannot be proven to what extent each factor, and the other factor, in relation to the other factor had caused a low registration turnout.

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<sup>40</sup> Dr Steven Robins of the University of the Western Cape had conducted an opinion poll on political interest among the Coloured population in Worcester during February 1999. The findings indicated a decrease in political interest due to dissatisfaction with local Government service delivery. Protest against in political participation was predicted (EISA, 1999(6):11-12).

**Table 6.1: 1999 National Election Verified Result**

Total Voting Population	Registered population	Number of Ballots		%
22, 8 million	18 172 751 (80%)	Total spoilt ballots	→ 251 320	1, 55%
		Total Valid ballots	→ 15 977 142	87, 75%
<b>22,8 million</b>	<b>18 172 751 (80%)</b>	<b>Total Ballots</b>	<b>→ 16 228 462</b>	<b>89, 30%</b>

Source: RSA Government Gazette no 20201, 11 June 1999

In addition, were such a relationship between the policy and voter turnout to exist, it would more likely be evident in the case of registration turnout, or voter registration on voter turnout. The data in *Table 6.1* do give any indication to this effect in the 1999 General Elections in South Africa. In the case of the effect of voter registration on voter turnout, it would be illogical to make any conclusion based on the first experience of this process in the country, as very little research has been conducted in this specific subject in the country. Studies on similar subject have been conducted only in foreign countries where voter registration has been in operation for several decades. As alluded to in Chapter two, American studies have indicated that the registration of voters does tend to contribute to lower voter turnouts in the long run. What has just been experienced in South Africa in the recent General Election is the effect of youth apathy on registration. In fact, low registration turnout has been a concern in the United States of America for decades.

According to the National Municipal League in America, one of the major reasons for lower registration percentages is the fact that the registration burden rests on the citizens (Comment, 1984:104). The League recommends a voter registration model that will address this problem. In this model the states (or provinces in the South African context) should assume responsibility by conducting a statewide door-to-door canvass of all households. This should be done systematically, every one or two years, to register eligible voters and to remove the names of voters no longer residing at a registered address (Comment, 1984:104-5). The League believes that this method could increase the registration turnout among potential voters while continuously keeping the voters' roll up to date every time.

In the first voter registration in South Africa there were many factors which could have contributed to a low registration rate. As a result, it would not be easy to determine the extent each factor might have had on lower voter registration turnout, if 80% should be considered as low at all. Since voter registration took taking place for the first time in the 1999 General Election in South Africa, conclusions about the impact of the registration process on voter

turnout lack a local comparative aspect. In fact, at this stage such conclusions would be premature and speculative.

### **3. RECOMMENDATIONS**

It should be pointed out that this has been an exploratory study on the first experience of voter registration in South Africa. As a result, wild claims and conclusions have not been made. Obviously because of the limited availability of pertinent local publications or experiences on the subject.

In this study the problem of apathy by first time voters has become evident. Due to a large number of possible factors that could have led to this trend, including the requirement for specific ID's, lack of voter education, lack of political interest, it has not been possible to analyse this trend beyond the descriptive level. Although it is not suggested that apathy by first time voters resulted directly from voter registration, perhaps the policy makers should ask themselves if there are any lessons to be learnt from an electoral systems model such as that proposed by America's National Municipal League which could prevent a further decrease in registration turnout in future.

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