

**REPORT OF THE AFRICAN UNION OBSERVER  
TEAM ON THE NATIONAL AND  
PROVINCIAL ELECTIONS  
IN THE REPUBLIC OF SOUTH AFRICA,  
HELD ON 14 APRIL 2004**

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## **I. INTRODUCTION**

In consideration of the principles and objectives of the African Union enshrined in the Constitutive Act of the Union, particularly in its Articles 3 and 4 and on the basis **inter-alia** of the:

- The Algiers Decision of July 1999 and the Lome Declaration of July 2000 on the Framework for an OAU Response to Unconstitutional Changes of Government, which laid down a set of common values and principles for democratic governance;
- The CSSDCA Solemn Declaration of Lome, adopted in July 2000, which underpins the OAU's Agenda for promoting democracy and democratic institutions in Africa;
- The African Charter on Human and Peoples' Rights, adopted in June 1981 which recognized the right of every citizen to participate freely in the government of his/her country whether directly or through democratically elected representatives;
- The African Charter for Popular Participation in Development, adopted in July 1990, which emphasized the need to involve the people of Africa in the spheres of economic and political governance; and also

2. Cognisant of the fact that each Member State has the sovereign right to choose its political system in accordance with the will of its people and in conformity with the Constitutive Act of the Union and the universally accepted principles of democracy, the Organization has continued to play an ever-growing role in the observation/monitoring of elections in the Continent.

3. Therefore, in pursuance of the foregoing principles and objectives and the Declaration on the Principles governing Democratic Elections in Africa, the African Union accepted the invitation of the Government of the Republic of South Africa, to observe the National and Provincial Elections, held on 14 April 2004, under the auspices of the Independent Electoral Commission of South Africa (IEC), an independent body entrusted with the organization and conduct of the elections.

4. The African Union Observer Team, led by Amb. Judith Sefi ATTAH, former Director General of the Ministry of Foreign Affairs of the Federal Republic of Nigeria and Representative to UNESCO and former Minister of Women's Affairs was composed as follows:

- Mr. Higiros Prosper
- Mr. Loumouvi Fombo
- Mrs. Efigenia Mariquinas Dos Santos Lima Clemente
- Mr. C. N. Fernandes do Reis
- Mr. Emanuel T. Nandolo
- Mr. Kibreab Habte Michael
- Mr. Said Usuf
- Mr. David Adeenze-Kangah
- Mr. Abdoul R. Kouroma,
- Ms. Susan Sikaneta
- Mr. Mulualet Teferedegn
- Ms Kebebouch Tessema

5. The Advance Team composed of Mr Abdoul R. Kouroma, Coordinator, Ms Susan Sikaneta, Executive Secretary, AU Southern Africa Office in Malawi, Mr Mulualet Teferedegn, Finance Officer and Ms Kebebouch Tessema, Secretary arrived in Pretoria on 1 April 2004. However, the Core Group including the Team Leader, arrived in the country on 08 April 2004.

## **II. TERMS OF REFERENCE OF THE TEAM**

6. The objective of the observation of the elections by the Team is to ascertain the fairness, freeness and transparency of the elections and render credibility to the eventual results of the elections to both the national and international community.

7. The Team also had as its scope of observation and obligation, the following guiding precepts and principles:

- a) Observing and verifying the impartiality and legality of decisions taken by the Independent Electoral Commission and its officers;
- b) Ascertaining people's awareness of the election processes viz the participation of the people and the ease of advocacy with which candidates for election access the public;
- c) Observing and verifying the voting process as provided for by the law, i.e.
  - ❖ Opening of the polls
  - ❖ Voting materials – quantities, timeliness
  - ❖ Procedures conducive to the polling atmosphere
  - ❖ Efficiency of the polling officials
  - ❖ Casting of the votes
  - ❖ Counting/tallying/verification of the votes
  - ❖ Transmission and declaration of the results
- d) The observers shall be obliged:
  - ❖ To respect and abide by the constitution and laws of the Republic of South Africa
  - ❖ To exercise their role with impartiality, independence and objectivity
  - ❖ Not to allow their personal opinions, likes and dislikes to influence their work
  - ❖ Not to directly or indirectly propagate or identify themselves with any candidate or party
  - ❖ Not to display or wear any partisan symbols, colours or banners
  - ❖ To carry identification prescribed by the Independent Electoral Commission at all times and identify themselves to any authority upon request
  - ❖ Not to accept any gifts or favours, or promise of gift or favour that might influence them in their official work
  - ❖ To refrain from interfering by action, comment or otherwise and in bad faith with the polling exercise and/or the duties of the elections officials, but to cooperate with them
  - ❖ To note and report any irregularities observed in the elections process to the IEC or to competent officials of the Commission,

who will examine the activities reported as irregular and take corrective measures, as appropriate

- e) However, observers are free:
- ❖ To request for and obtain information on activities related to registration of voters and the polling
  - ❖ To submit to the Commission, in writing, complaints and appeals about irregularities in the electoral processes
  - ❖ To gain access to the Polling Stations, Counting/Results Centres and to occupy the nearest seats or positions to the polling officials so as to be able to observe and monitor all the operations relating to the casting of the votes and/or voting process
  - ❖ To inspect and verify the ballot boxes and any other item(s) or material to be used in the polling exercise, before the casting of the votes

### **III. COUNTRY PROFILE**

#### **Provinces: General**

8. The largest provincial population is in KwaZulu-Natal, with 9.4 million counted in the 2001 census but the most densely populated province is Gauteng, with some 8.8 million people occupying just 1.4% of the country's land area.

9. The most sparsely populated, with less than a million people, is the dry Northern Cape, by far the biggest in terms of area as it occupies nearly 30% of the country.

10. Perhaps surprisingly in a country with comparatively few major urban centres and a great deal of wide open space, slightly more than 50% of the population live in urban areas. This is not only because of the number of rural people who have moved to towns to find work, but also because much of the wide open space is arid and therefore sparsely populated.

11. The most rural area is Limpopo Province. Gauteng, with both Johannesburg and Pretoria within its boundaries, is almost entirely urban. Other areas of high urban concentration are around Cape Town, Durban, Port Elizabeth/East London and, in the interior, Bloemfontein.

12. The languages most frequently spoken depends on the part of the country. Taken as a whole, English, together with Setswana, is the fifth most spoken home language (8.2%), after IsiZulu (23.8%), IsiXhosa (17.6%-, Afrikaans (13.3%) and Sepedi (9.4%).

13. IsiXhosa is spoken by more than 80% of South Africans in the Eastern Cape, and almost 80% in KwaZulu-Natal speak IsiZulu. The latter is also the most frequently spoken home language in Gauteng, but at a much smaller percentage. In Cape Town and its surroundings, Afrikaans is widely spoken.

### **West and South: the Cape provinces**

#### **Western Cape**

14. If three pyramids are the symbol of Africa's far north, then a flat-topped mountain is the symbol of its far south. Inner Cape Town nestles in the curve of Table Mountain at the start of the hook-shaped Cape Peninsula, which ends in the needle-point cliffs of Cape Point.

15. The erroneous belief that this is the meeting point of the Indian and Atlantic Oceans persists. This is actually further south at Cape Agulhas, but certainly the waters of the eastern bay of the peninsula are warmer than the Benguela-chilled western waters.

16. The Peninsula, world-renowned for its beauty and home to the major urban concentration, is in the province's far south-west but may reasonably be regarded as its heart. At a total area of 129 370 square kilometres, this is the country's fourth-largest province but is dealt with here in third place for the convenience of keeping the three Cape provinces together. It is slightly smaller than the Free State although each occupies about 10.6% of South Africa's land area.

17. Like the Eastern Cape, the Western Cape is topographically and climatically varied. It has a temperate southern coastline fringed with mountains; here the typical vegetation, especially in the western section, is the famed fynbos. To the north it stretches deep into the Karoo plateau; its western coast is extremely dry.

18. The winter rainfall of the peninsula and its mountainous neighbouring inland areas provide ideal conditions for the cultivation of grapes, with

numerous vineyards producing excellent wines. Other fruit and vegetables are also grown here, and north and east of Cape Town, wheat is an important crop. The southern coastal area is also fertile; fishing is the most important industry along the west coast. Sheep farming is the mainstay of the Karoo, and other forms of husbandry take place in the better watered parts of the province. While various industries are active, particularly in the Cape of Good Hope area, tourism is extremely important economically.

19. The southern coastline's major centres include Mossel Bay, George and Knysna, all of which benefit from the tourist attraction of a beautiful coastal strip that includes a lake area. This southern coast has year-round rainfall.

### **Eastern Cape**

20. Situated in the south-eastern section of the country, the Eastern Cape is endowed with great natural beauty, particularly in the rugged, rocky cliffs and dense green bush of the stretch known as the Wilde Coast. The Indian Ocean here is temperate. To the north-west the province borders on KwaZulu-Natal and meets the southern tip of the Drakensberg range; further south, mountains and hills predominate, the northern section in the dry Karoo being flatter. The long curve of coastline, large area (at nearly 170 000 square kilometres covering 13.9% of the country) and the considerable east-west and north-south distances it covers provides the province with extremely varied vegetation.

21. Situated on Algoa Bay is Port Elizabeth, the largest city. The capital is Bisho and other important towns include the port of East London and, inland, Umtata, Uitenhage and Grahamstown. The main industrial centres are Port Elizabeth, East London and Uitenhage, the latter known for its automotive manufacturing industry. There is much fertile land and agriculture is important. Fruit, especially pineapples, for a significant crop; coffee and tea are also cultivated. Maize and sorghum are grown and cattle farming is of particular significance as a subsistence activity; sheep farming predominates in the Karoo.

22. There is excellent potential for forestry – the coastal areas receive good summer rainfall and have a moderate climate, becoming more sub-tropical to the north-west. The Tsitsikamma National Park on the southern border is home to dense indigenous forest.

## **Northern Cape**

23. Covering 29,7% of the country with an area of more than 360 000 square kilometres, this north-western province suffers from a paucity of rain but has a wealth of minerals. Its capital is Kimberley which is also the diamond capital of South Africa. Alluvial diamonds are found on the opposite, western, side of the province, washed down by the Orange River which runs through the northern section and forms the boundary with Namibia. Other minerals found here are iron, copper, asbestos, manganese, fluorspar, semi-precious stones and marble. Another notable wealth is that of the spring flower explosion in the Namakaroo biome, transforming the dry land and sparse scrub of the rest of the year into a festival of colour that attracts visitors from around the world. Tourists are also attracted to another of nature's wonders, the Augrabies Falls, whose 19 separate falls cascade over a granite plateau, dropping a total of 191m; a pool 43m deep has been gouged out by the force of the water. The falls are on the Orange within the Augrabies Falls National Park.

24. The Kalahari Gemsbok National Park is part of the continent's first transfrontier game park, combined with the Gemsbok National park in Botswana to form the Kgalagadi Transfrontier Park. The Orange River provides a sizeable strip of fertile soil, noted for its vineyards. Wheat and groundnuts are among the crops of the north-western section of the province. Another important economic activity is sheep farming, particularly karakul, centred on the major town of Upington. The marine industry is under development in an area that has suffered from a lack of development in the past with the consequent impoverishment of its people. Climatically, the Northern Province is characterised by very hot summers and very cold winters.

## **North and North-West South Africa**

### **Limpopo**

25. Limpopo province occupies 10.2% of the country's land. Its northern border is the Limpopo River, its northern neighbour Zimbabwe. Mountain ranges include the northern Drakensberg to the west, the Soutpansberg in the north and the Waterberg towards the east. The province is rich in Bushveld and includes the northern part of the Kruger National Park, which itself borders on Mozambique. It has variable summer rainfall. The far west, bordering on Botswana, is the driest area.



26. The province's centrally situated capital is Polokwane (previously Pietersburg), which is both on the Maputo Corridor route and a direct link with the Mozambique port – and on the N1 from Johannesburg to the Zimbabwe border at Beit Bridge. Part of the Great North Road, the N1 also conveniently connects the towns of Warmbaths, Nylstroom, Potgietersrus and, virtually on the border, Messina. Other significant towns are Phalaborwa, Thabazimbi and Tsaneen. Phalaborwa, on the Kruger Park border, has the world's largest open-cast copper mine; Thabazimbi is an important iron mining centre. Other minerals include asbestos, coal, platinum, chrome, vanadium, nickel, titanium, diamonds, phosphates and gold.

27. It is a major producer of vegetables, and the subtropical climate enjoyed by much of the province gives rise to the cultivation of tea, coffee and fruit, especially tropical fruit. Forestry makes a major contribution to the economy, as do sunflower, cotton, maize and groundnut crops, and cattle ranching.

### **North West**

28. Also bordering on Botswana and the Kalahari desert is the province of North West, with 9.5% of South Africa's land area. Its summer rainfall is low on this border and increases towards the Witwatersrand/Gauteng area in the east, so that this part of the province is mostly typical Highveld grassland. Important topographical features include the Vaal River, which forms the south-eastern boundary, the 125km ridge of the Magaliesberg, and the extinct volcano that is home to the Pilanesberg National Park. Caves in the Sterkfontein area comprise a World Heritage Site known as the Cradle of Humankind because of the wealth and significance of the hominid remains found there.

29. Its capital, Mafikeng, is near the Botswana border and forms a single urban area with its neighbouring town, Mmabatho. Potchefstroom and Kleerksdorp are the biggest cities in the province; other main towns are Brits and Rustenburg. Mafikeng/Mmabatho, which sits on a north-south line that more or less bisects the province, is the most westerly of these towns. The dry western half of the province, sandwiched between Botswana and the Northern Cape, is sparsely populated.

30. Mining is responsible for more than a third of the province's GDP: 94% of South Africa's platinum than any other single area in the world. It produces 25% of the country's gold. Granite, marble fluorspar and diamonds are also mined. The province provides about a third of the country's maize. Other

important agricultural products are sunflower oil, fruits, tobacco, cotton and beef.

### **Eastern South Africa**

#### **KwaZulu-Natal**

31. One of the greenest and best-watered areas of the country is KwaZulu-Natal which accordingly, although it has only 7.6% of the area, is the second most populous province. Lying in a broad strip with the Indian Ocean as its western border, it borders on Swaziland and Mozambique to the north. Its western border is marked by the dramatic Drakensberg mountain range which has several peaks well over 3 000m, and its topography combines mountainous area, rugged green hills and deepcut valleys. Between the mountains and the humid, subtropical coastline is savannah grassland, but there are also areas of indigenous forest here and along the coast. The largest of its many rivers is the Thukela. It is a summer rainfall area, with a climate that ranges from extremely hot along the coast in summer, to heavy snow on the mountains in winter. The Midlands are drier than the coast and can be very cold in winter.

32. KwaZulu-Natal has two capitals: the more southern Pietermaritzburg (the province's second-largest city) and Ulundi, the traditional capital, in the north; (the two capitals a reflection of the province's coalition government). Both are inland. The largest city is Durban. South Africa's two biggest harbours are situated in Durban and Richard's Bay - the latter a comparatively small town, its harbour specialising in bulk exports, especially coal which is mined in the interior. Heavy minerals are mined at Richard's Bay. Durban is the busiest port in Sub-Saharan Africa. Other major towns are Ladysmith, Newcastle and Estcourt.

33. A world-renowned feature of the northern coastline is the St Lucia Estuary: the Greater St Lucia Wetlands Park is a World Heritage Site (as is the uKhahlamba Drakensberg Park). There are several game parks in KwaZulu-Natal. The fertility of the soil and comparatively good rainfall more than 1000mm a year – make agriculture central to the economy. Sugar cane and tropical fruit are major products of the coastal belt. Dairy, stock and vegetable farming are important inland. Other land uses include forestry and tea plantations.

## **Central Africa**

### **Free State**

34. The Free State – covering an area of 129 480 square kilometres – is situated in the centre of the country, bordered north and south by the Vaal and Orange Rivers and on the west by Lesotho. Except for the lovely mountainous Eastern Highlands areas, its landscape is flat, a mixture of grazing land and extensive fields. Maize, sunflowers, soya, sorghum and wheat are cultivated, with cherries and asparagus in the Ficksburg area in the east.

35. The capital is Bloemfontain, an important education and judicial centre which, as the country's most central city, is the meeting place of major north-south routes, including the N1 from Johannesburg to Cape Town, which slices diagonally through the centre of the Free State. Welkom is the mining hub of the province. The extensive Free State gold fields comprise the southern part of the same reef that is mined on the Witwatersrand. Coal is also mined. Other important towns include Virginia, Kroonstad, Parys and Bethlehem. The summer rainfall is sparse, especially in the west and south. The province has hot summers and cold winters.

## **Northeastern South Africa**

### **Gauteng**

36. Situated in the heart of the Highveld, Gauteng is the smallest province in South Africa at only 1.4% of the land area, but it is highly urbanised and has the second-largest population (after KwaZulu-Natal). Its southern border is the Vaal River which separates it from the Free State, and it also borders (clockwise) on North West, Limpopo Province and Mpumalanga. It is not only the major urban centre of the northern part of the country but the economic powerhouse of the entire country.

37. Its capital and largest city is Johannesburg, with virtually continuous urban east and extensions through many towns including Roodepoort and Krugersdorp on the west and Germiston, Springs, Boksburg and Benoni on the east, a result of development along the immensely rich gold-bearing reef of the Witwatersrand. This reef also yields uranium.

38. Pretoria is 50km to the north of Johannesburg and the important industrial and coal-mining towns of Vereeniging and Vanderbilipark about the same distance to the south, on the Vaal. In spite of its dense urbanisation and large industrial and business sectors, Gauteng has significant agricultural land providing fruit, vegetables, dairy products and meat to the cities as well as areas where maize, groundnuts, sunflowers, cotton and sorghum are grown. Like the rest of the interior this is summer rainfall area. Summers are hot and winters frosty.

39. The Witwatersrand ridge forms the watershed for the Vaal and Limpopo rivers, but Gauteng has no major rivers other than the Vaal. Although the province has important wetlands, drought is not uncommon and it depends on the Vaal Dam for reliable water supplies.

### **Mpumalanga**

40. Mpumalanga lies in the east of South Africa, north of KwaZulu-Natal and bordering Swaziland and Mozambique. It occupies 6.5% of the country's land. Mainly grassland, it is also blessed with the spectacular northern Drakensberg Escarpment to the northeast, and includes a subtropical Lowveld/Bushveld area to the east of that. Along the eastern border, it borders the southern half of the Kruger National Park. The largest freshwater lake in South Africa, Lake Chrissie, is in Mpumalanga, but a larger expanse of water is the Loskop Dam, near the Limpopo Province border.

41. The capital, Nelspruit, is situated in the heart of the Lowveld citrus areas; the province's second most important town is Witbank, the coal-mining centre – the town of Secuda is the site of one of the country's two petroleum-from-coal refineries (the other being Sasolburg in the Free State). Ermelo is a major wool centre. The climatic contrasts between the drier Highveld region, with its cold winters, and the hot, humid Lowveld allows for a variety of agriculture activities. Crops include maize, wheat, sugar, citrus, vegetables, subtropical fruits, oil seeds, tobacco and cotton. Forestry, especially around Sabie in the far north of the province, is extensive.

## IV. LEGISLATIVE FRAMEWORK

### **The Constitution and the Legal Framework**

42. The Constitution of the Republic of South Africa, Act 108 of 1996 allows for the establishment of state institutions whose main object is to strengthen democracy in the country. Six such institutions have been established, amongst them the Independent Electoral Commission (IEC). These institutions are independent and subject only to the Constitution and the law, and must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice. Section 181 of the Constitution clearly states the importance of these institutions by stipulating that:

“Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure their independence, impartiality, dignity and effectiveness...” This section goes on to assign accountability of these institutions only to the National Assembly.

43. The mandate of the Electoral Commission according to the Constitution is as follows:

- manage elections of national, provincial and municipal legislative bodies in accordance with national legislation,
- ensure that these elections are free and fair,
- and declare the results of these elections within a period that must be prescribed by national legislation and that is as short as reasonably possible.

44. The management of national, provincial and municipal legislative bodies is regulated by the Electoral Act (Act 73 of 1998). On the other hand, the establishment of the Electoral Commission is regulated by the Electoral Commission Act (Act No.51 of 1996). The term of office for Commissioners is seven years. There are currently five Commissioners and are as follows:

- Dr B. Bam – Chairperson
- Prof. H. Vilakazi – Deputy Chairperson
- Ms TN Mpumlwana – Commissioner
- Mr SS van der Merwe – Commissioner
- Judge I Hussain - Commissioner

45. The Commission Act requires the Commission to appoint a Chief Electoral Officer to head the administration of the Commission. Advocate Tlakula was appointed in February 2002 as Head of the administration. The commission also has an office in each of the nine provinces in the country. A provincial electoral officer heads such an office.

### **The Electoral System of South Africa**

46. There are various types of electoral systems that are practiced internationally. South Africa practices a proportional representation system. In this system, the whole country is divided into nine constituencies of variable size, corresponding to the nine provinces of the country. Parties decide whether to participate in the national, provincial or both elections. Each voter has one vote for the National Assembly and one vote for the provincial legislature. The total number of seats for each party is calculated proportionally on the basis of the votes cast for each party in the country as a whole.

### **Parliament**

47. The Parliament of the Republic South Africa is established in accordance with Chapter 4 of the Constitution. The Parliament consists of two houses:

- the National Assembly
- the National Council of Provinces

### **National Assembly**

48. The National Assembly consists of 350 to 400 seats. Anyone who is eligible to vote for the National Assembly could be elected to be a member of the Assembly. However, anyone who is in the employ of the State other than the President and the Deputy-President, Ministers and Deputy Ministers will have to relinquish their employment in order to take up their seat in the National Assembly. There are other limits which are explained under section 47 (I) of the Constitution.

49. The National Assembly is elected for a term of five years. When the term of the National Assembly expires, the President must call and set dates for an election, which must be held within 90 days of the date the Assembly was dissolved or its term expired. If the result of an election of the National

Assembly is not declared within 7 days after the elections, or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election. The election must be held within 90 days of the expiry of that period or of the date on which the election was set aside. The first sitting of the National Assembly must be within 14 days after the results have been declared.

### **The National Council of Provinces**

50. The National Council of Provinces (NCOP) is composed of a single delegation from each province consisting of 10 delegates who are as follows:

- the premier of a province or a person delegated by him
- 3 other special delegates
- 6 permanent delegates from the represented political parties as determined by the provincial legislature.

A person appointed as a permanent delegate to the NCOP ceases to be a member of the provincial legislature.

### **Registration of Voters**

51. In accordance with the Electoral Act (73 of 1998), the Chief Electoral Officer must compile and maintain a national common voters' roll. Any South Africa citizen in possession of an identity document may apply for registration as a voter in the voting district in which that person ordinarily resides.

52. The Act also required the Commission to conduct a general registration of voters and may prescribe cut off dates in respect of the general registration of voters and the compilation of the voters' roll. For these elections, the voters' roll closed on 11 February 2004 after the President had proclaimed the election date. The voters' roll was certified by the Chief Electoral Officer on 20 February 2004; there are 20 674 926 eligible voters in the voters' roll. The table below gives an overview of the voters' roll by provinces since 1994:

<b>PROVINCE</b>	<b>1994 VOTED</b>	<b>1999 REGISTERED</b>	<b>1999 VOTED</b>	<b>2004-04-15 REGISTERED</b>	<b>% increase over 1999</b>
Eastern Cape	2 857 710	2 454 543	2 177 266	2 849 486	16.09
Free State	1 368 251	1 225 730	1 090 908	1 321 195	7.79
Gauteng	4 208 301	5 154 087	3 662 790	4 650 594	11.95
KwaZulu-Natal	3 750 606	3 443 978	2 963 358	3 819 964	10.91
Mpumalanga	1 309 993	1 277 783	1 129 536	1 442 472	12.89
Northern Cape	404 579	377 173	327 772	433 591	14.96
Limpopo	1 919 790	1 847 766	1 658 694	2 187 912	18.41
North West	1 588 255	1 527 672	1 305 441	1 749 529	14.52

### **Conflict Resolution Mechanisms**

53. In every election there are unique situations mainly between political parties, of conflict that might give rise to tensions between parties. If the party liaison committees are unable to resolve these problems, they may be referred to the conflict resolution panellists. These may result from a number of factors such as:

- political intimidation
- interference with posters of other parties
- prevention of free political campaigning, etc

54. Consequently, the Commission has put in place mechanisms to resolve these conflicts before they progress further and adversely affect the electoral process. The Commission has entered into an agreement with the Electoral Institute of Southern Africa (EISA) to select, train, administer and deploy provincial panellists responsible for strategic intervention in electoral conflict for the 2004 elections.



## **The Electoral Court**

55. In any situation of conflict, the Electoral Court has final jurisdiction in respect of all electoral disputes and complaints about infringements of the Code of Conduct and no decision or order of the Court is subject to appeal or review. Where the Court has found that a person or a registered party has contravened a provision of the Electoral Act, it may in the interest of free and fair election impose an appropriate penalty or sanction on that person or party as indicated under Chapter 7, Part 2 of the Act.

## **Media**

56. The media, both electronic and print plays a very important role in elections in South Africa. The Independent Communications Authority of South Africa (ICASA) regulates radio and television broadcasts and it plays an importance in ensuring fair and equitable provision of adequate coverage during elections. In the event that a dispute between a political party and a broadcaster over an election broadcast not being solve, the matter is referred to the Broadcasting Monitoring and Complaints Committee (BMCC). There are regulations in place relating to party broadcasts, political advertisements and the equitable treatment of political parties by broadcasting licensees in respect of the 2004 elections. The regulations include a formula used to allocate time in respect of election broadcasts and a list of radio stations nationally and by province. The print media in South Africa is independent and self-regulatory. The press ombudsman deals with complaints on articles published by newspapers.

## **Security**

57. Safety and security during the election process is aimed at creating and maintaining a condition of internal stability within the country that is conducive to the delivery and management of free and fair elections in which every voter is able to record his or her informed choice.

58. Due to the magnitude of the management of elections from a safety and security perspective joint coordinated planning and execution is done through public and private partnerships, which, typically, in an election security cycle involves the active participation of he following role-players:

- ❑ South African Police Services (SAPS),
- ❑ South African National Defence Force (SANDF)
- ❑ The intelligence Community of South Africa
- ❑ Private Security Companies

59. Some of the key electoral processes that would typically require protection and security measures in order to promote the integrity of an election would be inter alia:

- ❖ Voters,
- ❖ Voting stations,
- ❖ Storage facilities and warehouses,
- ❖ Electoral Commission head office, provincial and municipal offices,
- ❖ Logistical and distribution networks,
- ❖ Results Centres,
- ❖ Information Protection that includes Information Technology and other information repositories,
- ❖ IEC personnel and assets.

### **Special Votes**

60. Section 33 of the Electoral Act provides for special votes for persons who cannot get to the voting stations on voting day as a result of:

- Physical infirmity, disability and pregnancy;
- Absence on Government service abroad;
- Being an election official on election day;
- Being a member of the security services performing election duty
- South Africans temporarily abroad.

61. Physically infirm, disabled and pregnant voters applied for a special vote either at the Municipal Electoral Officer before 8 April 2004 or at the Office of the Presiding Officer on 12 April 2004 in the voting district in which they are registered. These people were visited by IEC officials at the place they indicated on the application form on 12 and 13 April 2004.

62. Election officials and security force members applied and cast their vote at the Office of the Presiding Officer of their voting district on 12 and 13 April 2004. Persons who are absent on government service abroad as well as South Africans who are temporarily absent from the Republic, (and who notified the Chief Electoral Officer by 26 February 2004) applied and voted at foreign missions on 7 April 2004. Already 647 eligible voters notified the Chief Electoral Officer of their intention to cast special votes.

63. With respect to those eligible voters whose names do not appear on the certified segment of the voters' roll for a voting district and who applied for registration as a voter before the date the election was proclaimed may, in terms of section 24A of the Act submit to the presiding officer for that voting station a sworn affidavit and identity document. The sworn statement should contain:

- full name
- identity document
- date of birth
- finger print
- address where he/she ordinarily resides
- declaration that he/she applied for registration as a voter in the prescribed manner and period
- a declaration that he/she is a South African resident, 18 years and above and is not qualified to vote

## **V. POLITICAL PARTIES**

64. There are 132 registered political parties in the country. However, only 37 of these parties registered to contest the National and Provincial elections; These parties could be divided as follows:

- 11 parties contested the elections nationally and provincially;
- 3 parties contested the elections nationally only;
- 7 parties contested the elections nationally and in one or more provinces; and
- 16 parties contested the elections in one or more provinces only.

The list of parties contesting the elections at national, provincial or both levels are as follows:

### **PARTIES CONTESTING NATIONAL ASSEMBLY AND COUNTRYSIDE**

<b>No.</b>	<b>Party</b>	<b>Abbr</b>	<b>Election Contested</b>	<b>Party Leader</b>
1	African Christian Democratic Party	ACDP	NA & 9 Provinces	B Harbour
2	African National Congress	ANC	NA & 9 Provinces	B Hofmeyr
3	Azanian People's Organisation	AZAPO	NA & 9 Provinces	MC Kokoditsoa
4	Demokratiese Alliansie/Democratic Alliance	DA	NA & 9 Provinces	M Moriarty
5	Independent Democrats	ID	NA & 9 Provinces	A Harding
6	New National Party	NNP	NA & 9 Provinces	D Swanepeol
7	Pan Africanist Congress (PAC) of Azania	PAC	NA & 9 Provinces	M Malatsi
8	United Christian Democratic Party	UDCP	NA & 9 Provinces	M Matladi
9	United Democratic Movement	UDM	NA & 9 Provinces	M Diko
10	Vryheidsfront Plus	VF Plus	NA & 9 Provinces	P Uys
<b>Parties Contesting National Assembly (only)</b>				
11	Keep it Straight and Simple	KISS	National Assembly	E Emary
12	Employment Movement for South Africa	EMSA	National Assembly	MD Reitz
13	The Organization Party	TOP	National Assembly	BG Wood
14	United Front	UF	National Assembly	M Luthuli
<b>Parties Contesting National Assembly + Plus Province</b>				
15	Christian Democratic Party	CDP	NA, EC, Gauteng, KwaZulu-Natal & Mpumalanga	R du Plooy/K Botha
16	Inkatha Freedom Party	IFP	NA, EC, FS, GP, KZN, MP, NC, NW & WC	A Mncwango
17	Minority Front	MF	NA & KwaZulu-Natal	A Rajbansie
18	Nasionale Aksie	NA	NA, EC, FS, GP, Limpopo, North West, Western Cape	JF Jonker
19	New Labour Party	No abbr	NA & Western Cape	P Marais/Du Sart
20	Peace and Justice Congress	PJC	NA Gauteng & Western Cape	M R Khan
21	Socialist Party of Azania	SOPA	NA, Eastern Cape, Gauteng, KwaZulu-Natal & Mpumalanga	LT Mabasa

No.	Party	Abbr	Election Contested	Party Leader
<b>Parties Contesting Selected Provinces</b>				
22	Africa Muslim Party	AMP	Provincial Western Cape	W. Hussiem
23	Alliance for Democracy and Prosperity	ADP	Provincial-Limpopo	N Ramodike
24	Black People's Convention	BPC	Provincial-Gauteng	M Mahlathi
25	Cape People's Congress	CPC	Provincial-Northern Cape & Western Cape	J Perrang
26	Dikwankwetla Party of South Africa	DPSA	Provincial-Free State	MP Lebesa
27	Economic Freedom Movement	EFM	Provincial-Gauteng	Ms Mokoena
28	Independent African Mouvement	IAM	Provincial-KwaZulu-Natal	T Millin
29	Izwi Lethu Party	ILP	Provincial-KwaZulu-Natal	MG Cele
30	Moderate Independent Party	MIP	Provincial-Western Cape	MJ Taylor
31	Peace and Development Party	PDP	Provincial-KwaZulu-Natal and Western Cape	JH Slabbert
32	Pro-Death Penalty Party	No abbr	Provincial-Gauteng	P du Toit
33	Royal Loyal Pogress	RLP	Provincial-KwaZulu-Natal	SM Sibiya
34	Sindawonye Progressive Party	SPP	Provincial-Mpumalanga	RQ Mtsweni
35	Universal Party	UP	Provincial-Western Cape	MT Fienies
36	The Green Party of South Africa	GPGP	Provincial-Western Cape	J Sole
37	Ximoko Party	XP	Provincial-Limpopo	AM Mabunda

65. Political parties are subject to a code. The Electoral Code of Conduct applies to all parties contesting the elections, as well as to party agents, their supporters and representatives. There is also behaviour or actions that are prohibited during an election. Such behaviour or action is considered a criminal offence and a charge could be laid at the local police station. Prohibited conduct applies to every person including voters, political parties and their supporters, observers, security staff and IEC staff members, including voting officers.

66. There are approximately 17 000 voting stations across the country. In 1999 there were 15 000 voting station. The 17 000 voting stations represents a 12% increase from 1999. Of these stations just above 750 are mobile stations.

### **Political Party Agents**

67. According to the Electoral Act (Act No.73 of 1998), every registered party contesting an election may appoint:

- two party agents for each voting station,
- and four party agents for each venue where votes are counted and where the determination and declaration of final results of election takes place.

68. A party agent must be a South African citizen and may not be a candidate in an election. Party agents may observe voting station and the counting of votes. The absence of party agents from a place where electoral proceedings are being conducted does not invalidate those proceedings.

## **VI. PRE-ELECTION ACTIVITIES**

69. The AU Observer Team convened in Pretoria. First to arrive was the Advance Team of four AU Officials on 1<sup>st</sup> April. The observers arrived on different dates from 7<sup>th</sup> to 12<sup>th</sup> April. Out of the nineteen (19) observers expected, only nine (9) arrived.

70. The Observer Team on 9<sup>th</sup> April, 2004 attended the briefing for international and local observers organised by the Independent Electoral Commission. The IEC informed the observers that for the 2004 elections they had demarcated 16,966 voting districts, each with a voting station. It had also compiled a voter's roll of 20.6 million registered voters out of an eligible population of 27 million. There were more female registered voters than male. The IEC indicated that those who had not registered as voters were most likely located in the rural areas where there was a high degree of illiteracy. The youth were also included in this group, given the worldwide phenomenon of the young generation generally not showing interest in elections. Special efforts had however been made to reach out to universities to get them registered.

71. In their brief, the IEC explained also that the law had been amended to the effect that all South African prisoners of 18 years and over could register as voters. Before this only prisoners convicted with the option of a fine were by law allowed to vote. The IEC had therefore registered for the 2004 elections 27,000 out of the 183,000 prisoners. The voter's roll closed on 11<sup>th</sup> February 2004. The briefing also covered the legal and institutional framework for the IEC which is addressed under Section IV of this report, and the Commission's readiness to conduct the elections.

72. During this briefing session, the AU Observer Team had the opportunity to interact and exchange views and experiences on a number of issues with other international and local observers. This was done in the spirit of the AU Election Monitoring Guidelines on Cooperation with other observers.

73. On the 10<sup>th</sup> April, the AU Observer Team held a consultative meeting with the SADC Parliamentary Forum. The Team was privileged to obtain an informed assessment of the socio-political situation in the country since the Forum had 57 observers already deployed in all the 9 provinces and who were sending daily reports. One of the pre-election concerns for the SADC

Parliamentary Forum was the gap between eligible voters and those who had actually registered. The impact of HIV/AIDS could have affected the level of participation in terms of registration of voters: The SADC Parliamentary Forum shared with the AU Observer Team literature on election observations done in SADC member countries in previous years.

### **The deployment of members of the AU Observer Team**

74. The members of the AU Observer Team were deployed on Sunday, 11<sup>th</sup> April, 2004 to four (4) Provincial constituencies of the Republic of South Africa. These were EASTERN CAPE, covering East London, Bisho, King Williamstown, Grahamstown, Port Alfred and Umtata; GAUTENG, covering the Pretoria and Johannesburg areas; KWAZULU-NATAL, covering Durban, Ulundi, Greytown and Pietermaritzburg and WESTERN CAPE, covering Cape Town and Stellenbosch.

75. The four groups held discussions in their respective provinces with Independent Electoral Commission officials, Political Party Leaders and activists, police and security personnel and the general public. The groups were able to observe and assess the general atmosphere prevailing in their respective provinces.

### **Pre-elections observations**

76. Although the Team was not privileged to witness the active public campaigns and rallies, it was able to make observations on the nature of the election campaigns by studying posters mounted at various places. These were found to be straight forward and addressed issues such as unemployment, poverty etc.

77. Media coverage throughout the country was effective in informing, disseminating and educating the public about the elections and the different views presented by the Political Parties. There were no special arrangements for party coverage in the print or electronic media. Each Party was free to advertise in the media as long as the adverts complied with the Advertising Standards Authority.



78. The pre-election campaigns were on the whole done peacefully. Political Parties concentrated more on selling their manifestos and distributing propaganda leaflets. But perhaps a more significant approach was the door-to-door campaigns which the Parties employed. These were seen to be more effective and gave a personal touch to wooing voter support.

79. In terms of encouraging women to take part, most of the political parties included women on their party lists for national elections.

80. The Team noted that although South Africa has 132 registered political parties only 37 participated in all, in the 2004 elections.

### **Security Situation**

81. The South Africa Government put up the biggest security operation ever for the elections. Generally throughout the country, no national security threat to the elections had come to light although some hot spot areas had been identified. A threat analysis had showed there was no real threat to the elections. A joint venture between the IEC and the police had put in place adequate measures to ensure order, safety and security. The Police had briefing sessions with the IEC party liaison committee where clear messages were given about the security arrangements and the fact that the police were not going to tolerate anyone or any party involved in any kind of disturbance. These consultations were extremely helpful and facilitated the peaceful atmosphere that prevailed.

82. The pre-election scenario was also characterized by minor complaints from political parties to the IEC. These included allegations of defacing of campaign posters, double booking of venues for rallies, mounting of posters on public buildings and reports of minor skirmishes here and there which were all attended to and resolved by the IEC in one way or the other. There were however some media reports of violence in exceptional areas where some people lost lives. It was not clear whether these were politically motivated or not. The cases were still being investigated in order to establish the truth.

## **VII. OBSERVATION OF THE ELECTIONS**

83. It was observed that most polling stations were located in public buildings such as schools, church halls, town halls and in some places tents. There was, however a scenario where a polling station was located in a non neutral place. The group felt that this could lead to intimidation of voters, and such locations should be avoided in the future. Polling stations were clearly identified by name, number, directional marking and IEC insignia

84. Election officials were easily identifiable by the IEC T-shirts they wore with clear “2004 Elections” marked on them. Most of them demonstrated capacity for the task before them, except, in a few polling stations, the team observed that some of them were inexperienced.

85. The AU Observer Team noted with interest the Special Voting arrangement for persons with disability, elderly persons, security officers etc, on the 12<sup>th</sup> and 13<sup>th</sup> April, 2004. The team recognized that this is good practice to be emulated by other countries. The Team however observed that the response was generally very low, probably due to the fact that this was the first time and feels that in future elections should be properly publicised.

86. On the 14<sup>th</sup>, it was observed that some polling stations had emptied the contents of the special votes box into the general polling day box, while others did not. In the team’s considered view there seemed to be some inconsistency in this practice since ordinarily ballot boxes are to be checked in order to ascertain whether they are empty or not at the beginning of the voting. This matter should be addressed by the IEC.

87. In most of the polling stations, the voting process was adequately followed. The queues were well managed and accreditation of voters was properly done. In some polling stations however, officials were visibly overwhelmed by the sheer numbers of voters. Voting materials were generally sufficient except in a few polling stations where they were delivered late.

88. The team noted that voting continued till late into the night and expressed concern that in several voting stations, provision had not been made for security lighting outside and sufficient lighting inside. Some

polling stations, especially those in rural areas had to use candles and paraffin lamps and this delayed the voting process and affected the counting. The team is hopeful that the IEC is aware of this and will address it.

89. The team observed that electoral complaints brought to the attention of the IEC were promptly addressed. In one particular case, a mayor who came to the polling station wearing party T-shirt was asked to leave by the Presiding Officer.

90. The secrecy of the ballot was generally ensured, but in cases where voters needed help the secrecy of their vote was compromised, as party agents were able to see the voter's choice. In almost all these cases such voters did not come with a companion to assist them in accordance with the regulations, probably because voters were not informed of this particular aspect.

91. There was no uniformity across the board in the application of the polling process with respect to the placing of ballot papers in the ballot boxes. Some polling stations had the voters placing both ballot papers in one ballot box, whereas others had two ballot boxes, one for the national and the other for the provincial vote. The first arrangement affected the counting, as the process of separating the ballot papers was lengthy.

92. The team observed with concern the practice of the ballot box attendants assisting voters to fold their ballot papers; during the process they inevitably saw the choices the voters made. This eventually affects the secrecy of the vote. There was also the possibility for the ballot box attendants to tamper with the ballot box, especially when it became dark and other officials were tired and less observant.

93. All polling stations opened on time and the opening and closing of the voting stations were properly followed in most cases.

94. The seating arrangement of party agents, local and international observers were adequate and facilitated observations at close range.

### **Heading and counting**

95. The procedure for the counting of votes was well articulated in the pamphlets prepared by the IEC and executed to the letter. The counting was done step by step in accordance with the written guidelines and instructions and in a transparent manner. By and large, although a bit slow in some polling stations, the counting was accurately done.

### **III. ANNOUNCEMENT OF THE RESULTS**

96. Results from all the polling stations were filled by the presiding election officers. Each party agent present at the counting of votes was made to sign on the results slip. It was not obvious in the requirements of the guidelines that copies of the result slip posted at the polling station for voters to see and the other copy be forwarded to the Result Centre.

97. The signed result slips were put inside envelopes and sealed. The election results were then transferred to the Provincial Result Centre where they were audited and sent by SMS window system II to the National Results Centre.

98. The National and Provincial Results were officially announced at the press conference at Tshwabac, IEC Results Centre on Saturday 17<sup>th</sup> April, 2004 and officially handed to the President of the Republic of South Africa, His Excellency Mr. Thabo Mbeki; within a record three days from the end of the election date, as against six (6) days in 1999.

99. The results of the National and Provincial elections as announced by the IEC were as follows:

### NATIONAL SEAT ALLOCATIONS

NAME OF PARTY	NUMBER OF SEATS
UCDP	3
UDM	9
VF+	4
ACDP	6
ANC	279
ASAPO	2
DA	50
ID	7
IFP	28
MF	2
NNP	7
PAC	3
<b>TOTAL</b>	<b>400</b>

### PROVINCIAL SEAT ALLOCATIONS

PROVINCE	PARTY	SEAT ALLOCATIONS
<b>EASTERN CAPE</b>		
	ANC	51
	UDM	6
	DA	5
	PAC	1
<b>TOTAL</b>		<b>63</b>
<b>FREE STATE</b>		
	ANC	25
	DA	3
	VF+	1
	ACDP	1
<b>TOTAL</b>		<b>30</b>
<b>GAUTENG</b>		
	ANC	51
	DA	15
	VF+	1
	ACDP	1
	ID	1
	IFP	2
	UDM	1

PROVINCE	PARTY	SEAT ALLOCATIONS
	PAC	1
<b>TOTAL</b>		<b>73</b>
<b>KWAZULU NATAL</b>		
	ANC	38
	IFP	30
	DA	7
	ACDP	2
	MF	2
	UDM	1
<b>TOTAL</b>		<b>80</b>
<b>LIMPOPO</b>		
	ANC	45
	DA	2
	UDM	1
	ACDP	1
<b>TOTAL</b>		<b>49</b>
<b>MPUMALANGA</b>		
	ANC	13
	DA	1
<b>TOTAL</b>		<b>14</b>
<b>NORTHERN CAPE</b>		
	ANC	21
	DA	3
	ID	2
	NNP	2
	VF+	1
	ACDP	1
<b>TOTAL</b>		<b>30</b>
<b>NORTH WEST</b>		
	ANC	27
	UCDP	3
	DA	2
	VF+	1
<b>TOTAL</b>		<b>33</b>
<b>WESTERN CAPE</b>		
	ANC	19
	DA	12
	ACDP	2
	UDM	1
	ID	3
	NNP	5
<b>TOTAL</b>		<b>42</b>

#### IV. CONCLUSIONS

100. It is the considered view of the AU Observer Team, that the National and Provincial elections of 14<sup>th</sup> April, 2004 were organized and conducted fairly and in a professional and transparent manner. The people of South Africa were offered the opportunity to express their choices freely. In doing so, the people demonstrated the highest degree of patience, enthusiasm and tolerance. The team noted with satisfaction the responsible and mature manner the political parties contested the elections and accepted the results.

101. The team however, observed a few shortcomings. Some of the contesting political parties could not provide agents for most of the voting stations probably, due to resource constraints. The transparency of the elections, or their credibility, is critically ensured when contesting political parties have effective presence during the voting process at all voting locations. Another shortcoming was that some voting stations, even in the predominantly urban Gauteng provincial area had to resort to using wax candles and paraffin lamps when night fell.

102. The team also noted that the provisions of Sections 24A and 24B of the Electoral Act 73 of 1998 are well intended to allow voters who find themselves outside their voting districts or in prison to exercise their civil right. Section 24B is probably an example for many a country on the continent to emulate in their drive towards upholding human rights. However, a critical look at the operational arrangements need to be taken to forestall any abuses. There were instances on election day where a good number of the voter turn-out, at some stations voted by virtue of Section 24A. On the other hand, some prisoners could not benefit from Section 24B because their Identity Documents were in their homes or permanent residences in far away locations from the prison area.

103. On the technical side the team came across some voting officials who performed below expectation, such as not being able to properly put the seals on a ballot box and some difficulties in following the operational guidelines.

104. The secrecy of the ballot was compromised by the large number of party agents and polling officials called upon, when assistance was being given to a voter who required help to mark the ballot paper; and the role of the ballot box attendant in helping the voter to fold the ballot paper.

105. Notwithstanding the few concerns mentioned herein, the team believes that overall, the 14<sup>th</sup> April 2004 elections were a benchmark for Election Management Bodies and peoples of the African continent to strive to attain.

## **RECOMMENDATIONS**

106. Arising from the observations noted above, the AU Observer Team wishes to make suggestions to the relevant institutions which in the Team's considered view, will enhance and improve the conduct and performance of the electoral process in the future.

107. The Team therefore recommends that:

- The fora created by the IEC political party liaison committees for political parties to interact with the IEC, and among themselves, be strengthened and decentralised to the lowest level of civil society.
- For the National and Provincial elections conducted on the same day separate ballot boxes be used for each election. The ballot paper and box should have the same colour for each election in order to assist illiterate voters and for ease of identification.
- The IEC undertakes sustained but intensive voter education drive, especially in the rural areas in order to achieve an almost 100% voter registration from the current 20.4 million voters out of a registrable population of 27 million.
- The IEC considers an appropriate minimum threshold number of voters per voting station. This means increasing the number of voting stations nationwide in accordance with population density. Furthermore, by so doing it will be possible to significantly reduce the voting hours and avoid voting late into the night.
- The role of the ballot box attendant be reviewed to secure the integrity and secrecy of the vote. The regulation requiring a voter who needs assistance to come to the station with a companion be strictly enforced to avoid the current practice of voting officials and party agents crowding together to assist.



No.	NAME	SIGNATURE
1	<b>Amb. Judith Sefi Attah</b> Former Director General of the Ministry of Foreign Affairs of the Republic of Nigeria, Representative to UNESCO and former Minister of Women's Affairs, <b>Team Leader</b>	
2	<b>Mr. David Adeenze-Kangah</b> Deputy Chairman Electoral Commission of Ghana	
3	<b>Mr. Higiros Prosper</b> Pan-African parliamentarian of Rwanda	
4	<b>Mr. Loumonvi Fombo</b> Pan-African Parliamentarian of Togo	
5	<b>Mrs Efigenia Mariquinhas Dos Santos Lima Clemente</b> Pan-African Parliamentarian of Angola	
6	<b>Mr. C.H. Fernandes do Reis</b> Electoral Commission of Cape Verde	
7	<b>Mr. Emanuel Nandolo</b> Civil Society of Malawi	
8	<b>Mr. Kebreab Habte Michael</b> Civil Society of Eritrea	
9	<b>Mr. Said Usuf</b> Electoral Commission of The Gambia	
10	<b>Ms Susan Sikaneta</b> Executive Secretary, AU Southern Africa Regional Office Malawi	

## **ANNEXES**

- List of members of the AU Observer Team to the National and Provincial Elections in the Republic of South Africa
- Arrival Statement
- Final Statement
- Detailed Results sheets of the National and Provincial Elections
- Statement of the President of South Africa, Thabo Mbeki, on receipt of the Final Results of the 2004 Elections: IEC results Centre, Tshwane, 17 April 2004