

MEMORANDUM ON SECTION 15A OF THE ELECTORAL COMMISSION ACT 51 OF 1996

The objective of this memo is to test whether section 15A of the Electoral Commission Act 51 of 1996 (the Act) allows for the registration of an organisation or movement to participate in municipal elections, without being registered as a traditional political party with political party structures. The goal is to use this mechanism to allow for independent candidates to stand for election in various wards, whilst also registering as a conglomerate of independent candidates to gain the benefit of the PR vote.

As a point of departure, the Act defines a party as “any registered party and includes any *organisation or movement* of a political nature which publicly supports or opposes the policy, candidates or cause of any registered party, or which propagates non-participation in any election”. It is apparent from the definition that the Act envisages parties to be broader than our traditional understanding of political parties and that this is intended to cast a wider net to organisations and movements.

Chapter 4 of the Act deals with the registration of parties. Whilst the Act defines a registered party as a party registered in terms of section 15, the Act actually provides for two types of registrations via section 15 and section 15A, with a key distinction. Section 15A is designed specifically for the registration of parties solely for municipal elections, where section 15 is for the general registration of parties. A party registered under section 15A is registered for a particular municipality or municipalities, only participate in elections for councils for those municipalities.

A party registered under section 15A is precluded from the registration prescripts of subsections (1), (2), (3) and (4) of section 15. What is curious is that section 15(3) is omitted from application to section 15A by 15A(4), yet section 15A(2) is materially the same as section 15(3). None the less, according to the Regulations, the constitution of a party, contemplated in sections 15(3)(d) and 15A(2)(d) of the Act, *should, as far as possible*, also contain (a) The executive structure of the party; (b) The election procedure for the executive of the party; (c) The decision making process and functions of the office bearers within the party; (d) The minimum requirements for membership of the party; (e) The internal disciplinary procedures of the party; and (f) The requirements for audited financial statements. These are all structures that resemble a political party; however the wording of the Regulation suggests that these items are prescribed in so far as they accord with and are applicable to the type of movement

registered under section 15A. These are not definitive nor prescriptive. Therefore, the constitution of a movement registered under section 15A, can exclude the above structures.

This understanding of the Act indicates to us that a group of people stand as independent ward councillors, and also form part of an organisation under section 15A that allows them to band together for the purpose of benefiting from the PR vote, without registering as a political party and losing their independence.