

THE ELECTORAL ACT

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GOVERNMENT OF ZAMBIA

ACT

No. 12 of 2006

Date of Assent: 12th May, 2006

An Act to provide for a comprehensive process for elections to the office of President and to the National Assembly; to empower the Electoral Commission of Zambia in matters relating to elections and enable the Commission to make regulations providing for the registration of voters and for the manner of conducting elections; to provide for offences and penalties in connection with elections; to provide for the appointment of conflict management officers; to provide for election petitions and the hearing and determination of applications relating to elections to Parliament; to repeal and replace the Electoral Act, 1991; and to provide for matters connected with or incidental to the foregoing.

[19th May, 2006

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Electoral Act, 2006, and shall come into operation on such date as the President may, by statutory instrument, appoint.

Short title and commencement

2. (1) In this Act unless the context otherwise requires—

Interpretation

“ballot box” means a box prescribed by the Commission for the purpose of an election;

“ballot paper” means the document prescribed by the Commission in respect of an election;

“ballot paper account” means a document prescribed by the Commission for purposes of recording the ballot papers issued to a returning officer and completed by a presiding officer at the close of a poll;

“by-election” means an election held in accordance with section *one hundred and eight*;

“candidate” means any person nominated as a candidate for an election;

- “code” means a code issued by the Commission under section *one hundred and nine* and includes the Electoral Code of Conduct;
- Cap. 1 “Commission” means the Electoral Commission of Zambia established under the Constitution;
- “conflict management officer” means an officer appointed as such under section *one hundred and eleven*;
- “constituency” means any of the constituencies into which Zambia is divided under the Constitution;
- Cap. 1 “Constitution” means the Constitution set out in the Schedule to the Constitution of Zambia Act;
- “counting assistant” means a person appointed as a counting assistant by the Commission;
- “corrupt practice” means any offence against this Act which is declared under this Act to be a corrupt practice;
- “costs” includes charges and expenses;
- “direct elections” means an election to the office of President, or an election for a member of the National Assembly;
- “Director of Elections” means the person appointed Director of Elections by the Commission;
- “election” means a direct election and cognate expressions shall be construed accordingly;
- “election agent” means an agent of a candidate for the purpose of that election who has been specified by the candidate in that candidate’s nomination paper;
- “election officer” means a person appointed by the Commission to be—
- (a) a registration officer
 - (b) an assistant registration officer;
 - (c) an electoral officer;
 - (d) a returning officer;
 - (e) a presiding officer;
 - (f) a polling assistant; or
 - (g) a counting assistant;
- and includes any person appointed to assist an election officer or the Director of Elections where functions are conferred on the Director of Elections under this Act, in respect of any election;

- “election petition” means an election petition referred to in section *ninety-four*;
- “election timetable” means a timetable for an election published by the Commission under section *twenty-six*;
- “Electoral Code of Conduct” means the Electoral Code of Conduct prescribed by the Commission under section *one hundred and nine*;
- “high judicial office” has the meaning assigned to it in the Constitution; Cap. 1
- “illegal practice” means any offence against this Act which is declared under this Act to be an illegal practice;
- “member” means an elected member of the National Assembly;
- “national registration card” means a national registration card issued under and in terms of the National Registration Act; Cap. 126
- “national registration number” means the serial number inserted on a national registration card issued under the National Registration Act; Cap. 126
- “nomination day” means the day appointed by the Commission as the day on which candidates file their nomination papers with the Commission;
- “nomination office” means a place prescribed by the Commission as a nominating office;
- “nomination paper” means a document prescribed by the Commission for the purpose of a candidate registering their intention to contest an election under this Act;
- “officer” means an officer appointed by the Commission under section *three* and who has been issued with a certificate under that section;
- “petitioner” means, in relation to an election petition, any person referred to in section *ninety-five* who signs and presents an election petition under section *ninety-six* and includes any person substituted for a petitioner under section *one hundred and one* or section *one hundred and two*;
- “political party” means an organisation registered under the Societies Act the objects of which include any political activity or the sponsoring of candidates for election to the office of President or as a member of the National Assembly; Cap. 119
- “polling agent” means an agent appointed by a candidate in respect of each polling station;
- “polling assistant” means a person appointed polling assistant by the Commission;

“polling day” means—

(a) in relation to a general election, a day appointed by the President for the taking of the poll in a general election;

(b) in relation to a by-election, a day appointed by the Commission for the taking of the poll in a by-election;

“polling district” means a polling district established by the Commission as a polling district under section *thirty-eight*;

“polling station” means a place established as a polling station by the Commission under section *forty*;

“prescribed” means prescribed by the Commission by statutory instrument;

“presiding officer” means a person appointed as presiding officer by the Commission;

“registered” means registered in a register of voters under this Act and “registration” shall be construed accordingly;

“register of voters” means a register of voters for any constituency, or part of a constituency, prepared and maintained under this Act;

“registered voter” means a person who has been registered as a voter under section *eight*;

“registration officer” means a person appointed registration officer by the Commission;

“Registrar” means the Registrar of the High Court and includes Deputy Registrar, District Registrar, and Assistant Registrar;

“respondent” has the meaning assigned to it in subsection (4) of section *ninety-six*;

Cap. 1

“Returning Officer” in relation to the election of a President, means the Returning Officer specified in the Constitution;

“voter” means a person who is entitled to vote at the relevant election;

“voters card” means a voter’s registration card prescribed and issued by the Commission; and

“voters roll” means a register of voters.

(2) For the purposes of this Act, the expression “election expenses” means expenses incurred, whether before, during or after an election, on account of, or in respect of, the conduct or management of such election by, or on behalf of, a candidate:

Provided that the following expenses shall not be deemed to be election expenses—

- (a) any moneys expended or expenses incurred by any association or group of persons or by any person in the general interests of a political party or organisation or its candidates generally, not being moneys expended or expenses incurred directly in the particular interests of any particular candidate or expenditure incurred by a political party with the consent of a candidate and apportioned to such candidate under this Act;
- (b) any moneys expended or expenses incurred by any political party or organisation in the printing, publication or distribution of the official symbol of that political party or organisation; or
- (c) any election fee.

(3) For the avoidance of doubt, every person interpreting this Act and any regulations made under it shall—

- (a) do so in a manner that gives effect to the guarantees and responsibilities contained in the Constitution;
- (b) take into account any appropriate code.

3. (1) This Act shall be administered and enforced by the Commission;

Provided that in the exercise of its functions under the Constitution and this Act, the Commission shall not be subject to the direction or control of any other person or authority.

(2) In order to ensure compliance with the provisions of this Act the Commission shall appoint such number of officers as it may consider necessary.

(3) Every officer shall be provided with a certificate of appointment which shall be *prima-facie* evidence of the officer's appointment as such.

(4) An officer shall, on demand by a person affected by the exercise of the powers of the officer under this Act, produce for inspection the certificate referred to in subsection (3).

(5) The Anti-Corruption Commission shall investigate and prosecute any corrupt practice committed under this Act in accordance with the Anti-Corruption Commission Act.

(6) The Zambia Police Force shall enforce law and order at a polling station and undertake any criminal proceedings, subject to subsection (2), in respect of any offence committed by any person in contravention of this Act or any regulations issued under this Act.

Cap. 1

Administration,
enforcement
and
prosecution

Act No. 42
of 1996

PART II

REGISTRATION OF VOTERS AND VOTERS ROLL

- Voter's roll
4. (1) The Commission shall compile and maintain a voters roll in the manner and style prescribed by the Commission.
- (2) The Commission shall compile, maintain and update on a continuing basis, a register of voters, which shall include the names of all persons entitled to vote in any election under this Act, local government election under the Local Government Elections Act or referendum under the Referendum Act:
- Cap 282
Cap 14
- Provided that the register of voters shall not preclude any person from voting in a referendum under Article 79 (3) of the Constitution.
- (3) The Commission may suspend the registration of voters whenever an election is due.
- (4) Where the Commission prescribes the polling day for a by-election, the Commission shall immediately suspend the registration of voters in the district in which the by-election is to take place.
- Qualification for registration as voter
5. Subject to the provisions of section *seven*, every person shall be qualified for registration as a voter in direct elections who—
- (a) is a citizen of Zambia;
- (b) has attained the age of eighteen years; and
- (c) is in possession of a national registration card.
- Application for registration as voter
6. A person applying for registration as a voter—
- (a) shall do so in the manner prescribed by the Commission; and
- (b) may register in any constituency of the person's choice: Provided that the person shall not register in more than one constituency.
- Disqualification from registration as voter
7. (1) No person shall be qualified for registration as a voter, and no person shall be registered as a voter, who—
- (a) is under a declaration of allegiance to some country other than Zambia;
- (b) is not a citizen of Zambia;
- (c) has applied for registration fraudulently or otherwise than in the prescribed manner;
- (d) under any law in force in Zambia, is adjudged or otherwise declared to be of unsound mind, or is detained under the Criminal Procedure Code during the pleasure of the President;
- (e) is disqualified from voting under section *nineteen*;
- (f) is under sentence of death imposed by any court in Zambia, or a sentence of imprisonment imposed by such a court or substituted by any competent authority for some other sentence imposed by such a court; or
- (g) is not in possession of a national registration card.
- Cap. 88

(2) In this section, the reference to a sentence of imprisonment shall be construed as not including a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment imposed in default of payment of a fine.

8. (1) A person qualified for registration under section *five* and not disqualified for registration under section *seven*, shall be registered as a voter in the register of voters for any constituency of the person's choice, as may be prescribed.

Registration
in voters
register for
constituency

(2) A person's name shall not be entered in the voters register for more than once in any constituency.

(3) A person's who has been registered in the register of voters shall be issued with a voter's card.

(4) A voter's card shall contain—

(a) the individual's—

- (i) full names;
- (ii) residential address;
- (iii) sex;
- (iv) date of birth;
- (v) portrait; and

(b) such other information as the Commission may prescribe.

9. (1) A registered voter or person who has applied for registration as a voter and whose name or ordinary place of residence has changed, shall apply, in the prescribed manner, to have that change recorded in the voters' roll or in that person's application, except that a person need not apply when a change of name is due to change in marital status.

Application
to change
registration
details

(2) If satisfied that a person's application complies with this Act, the election officer shall, subject to the provisions of subsection *four* record the change in the voters' roll.

10. (1) An election officer shall—

- (a) change the registration details of a voter if the election officer is satisfied that the details of that voter as reflected in the voters' roll are incorrect or have changed;
- (b) deregister a voter, if the election officer is satisfied that the voter does not qualify, or no longer qualifies, for registration;
- (c) add the name and other prescribed particulars of a voter resulting from a new registration; or
- (d) delete the name of any person who is deceased.

Amendments
to voters'
roll

(2) The election officer shall record in the voters' roll or on a person's application any change in polling districts for which a person is registered as a voter or has applied for registration, if that person's place of ordinary residence after a change in the boundaries of the polling district falls in another polling district.

Notification
by election
officer

11. (1) An election officer shall notify, in the prescribed manner, a person—

- (a) whose application under section *six* for registration as a voter has been refused;
- (b) whose application under section *nine* to have a change of name or ordinary place of residence recorded, has been refused;
- (c) who has been deregistered as a voter under section *ten*; or
- (d) whose registration details have been changed under section *ten*.

(2) The notification given under subsection (1), shall give reasons for the refusal or action taken.

Appeal
against
decision of
election
officer

12. (1) A person referred to in section *eleven* who feels aggrieved by a decision or action taken by an election officer under section *seven* or *ten* may appeal to the Commission against the decision or action taken, in the prescribed manner.

(2) The Commission, in the prescribed manner, shall consider and decide the appeal and notify the appellant and election officer of its decision.

General
registration
of voters

13. (1) The Commission shall, for the compilation of the voters' roll specified in section *four*, conduct a general registration of voters.

(2) The Commission may prescribe cut-off dates in respect of the general registration of voters and the compilation of the voters' roll, including the date by which -

- (a) any person who wants to be included in the voters' roll shall have applied for registration as a voter under section *six* or for the change of registration details under section *nine*;
- (b) an election officer shall notify a person under section *eleven*;
- (c) an appellant may appeal in terms of section *twelve*;
- (d) the Commission shall consider and decide the appeal and notify the appellant and the election officer of the decision;
- (e) the election officer shall give notice of the periods during which, and the venue where, a provisionally compiled voters' roll shall be available for inspection;

- (f) any objections under section *fourteen* in respect of a provisionally compiled voters' roll shall be made;
- (g) the Commission shall decide an objection made under section *fourteen* and notify the objector and the election officer and a person other than the objector whose name or registration details are involved; and
- (h) an election officer shall complete the compilation of the voters' roll and publish it.

14. (1) Any person may object to the Commission, in the prescribed manner, to any segment of the voters' roll or a provisionally compiled voters' roll to—

Objections
to voters' roll

- (a) the exclusion of any person's name from that segment;
- (b) the inclusion of any person's name in that segment; or
- (c) the correctness of any person's registration details in that segment.

(2) A person who objects to the exclusion or inclusion of the name of another person, or to the correctness of that person's registration details, shall serve notice of the objection on that person.

(3) The Commission shall decide an objection, except for an objection in relation to a provisionally compiled voters' roll, not later than fourteen days after the objection was made and notify the following persons of the decision:

- (a) the person who made the objection;
- (b) the election officer; and
- (c) in the case of an objection against the exclusion or inclusion of the name, or the correctness of the registration details, of a person other than the objector, that other person.

(4) An election officer shall give effect to a decision of the Commission, under subsection (3), within three days.

15. (1) A copy of the voters' roll as it exists at any time shall be available for inspection during office hours at the Commission's head office; and the provincial and district segments of the voters' roll shall be available for inspection at the times and venues mentioned in a notice published by the Director of Elections in the *Gazette*.

Publication
and copies
of voters'
roll

(2) An election officer shall provide a certified copy of, or extract from, a segment of the voters' roll as it exists at that time, to any person who has paid the prescribed fee.

Provided that—

(i) subject to sub-paragraph (ii), the contents of the documents referred to in this section shall be accepted *prima facie*, by the Returning Officer, as complying with the law as to qualification for election as President;

(ii) notwithstanding sub-paragraph (i), if the Returning Officer is satisfied that clause (5) (a) or (c) of Article 34 or clause (2) of Article 35 of the Constitution has not been complied with, the Returning Officer shall immediately reject the nomination of the candidate.

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(2) The nomination paper shall be signed by not less than two hundred registered voters:

Provided that no registered voter shall, for the purposes of this subsection, support more than one presidential candidate.

(3) Any question, by any person, which may arise

as to whether any provision of the Constitution or any law relating to nomination or election of President has been complied with shall be referred, by such person to the full bench of the Supreme Court within fourteen days of the person elected as President being sworn in, in accordance with clause 9 of Article 34 of the Constitution.

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(4) A person who swears or affirms falsely under this section shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term of seven years without the option of a fine.

22. In addition to the persons disqualified by the Constitution—

(a) an election officer shall not be qualified for election as a member of the National Assembly; and

(b) any person who is convicted of any corrupt practice or illegal practice or who is reported guilty of any corrupt practice or illegal practice by the High Court upon the trial of an election petition under this Act shall not be qualified for election as a member of the National Assembly for a period of five years from the date of the conviction or of the report, as the case may be.

Additional
disqualification
for election
to National
Assembly
Cap. 1

23. The election fee for candidates for election to the National Assembly shall be such fee as may be prescribed.

Election fee

24. (1) The Commission shall allow a person to apply for a special vote if that person cannot vote at a polling station in the polling district in which the person is registered as a voter, due to that person's—

Special vote

- (a) physical infirmity or disability or pregnancy; or
- (b) absence from that polling district while serving as an officer or monitor in the election concerned, or while on duty as a member of the security services in connection with the election.

(2) The Commission may declare and prescribe circumstances in, and conditions under, which a person who is unavoidably and unforeseeably unable to vote in the polling district in which that person is registered as a voter may apply to vote elsewhere.

(3) The Commission shall prescribe—

- (a) the procedure for applying for special votes; and
- (b) the procedure, consistent in principle with Part VI, for the casting and counting of special votes.

PART IV

DISSOLUTION OF PARLIAMENT, ELECTION ACTIVITIES AND MATERIALS

Proclamation
of dissolution
of Parliament

Cap. 1

25. (1) Subject to subsection (2), whenever the President proclaims the dissolution of Parliament in accordance with the Constitution, the President shall, by statutory instrument prescribe the date of the polling day for a general election.

(2) The President, when determining the polling day under subsection (1), shall not set a date later than ninety days from the date of the dissolution of Parliament.

Election
timetable

26. (1) The Commission shall, immediately after the polling day is prescribed under section *thirty-five*—

- (a) compile an election timetable for each election to provide for the following:
 - (i) the date and method for the submission of nominations;
 - (ii) the date and method for the acceptance of nominations;
 - (iii) the closing date of the registration of voters;

- (iv) the dates for verification of the provisional voters registers;
- (v) the opening and closing dates of the electoral campaign;
- (vi) the date of the election and voting hours for the election;
- (vii) any cut-off time for any act to be performed; and
- (viii) any other relevant information; and

(b) publish the election timetable in the *Gazette*.

(2) The Commission may amend the election timetable by notice in the *Gazette*—

- (a) if it considers it necessary for a free and fair election; or
- (b) if the polling day is postponed under section *twenty-nine*.

27. (1) Every public officer and public entity shall give and be seen to give equal treatment to all candidates to enable each candidate to conduct that candidate's campaign freely.

Electoral
campaign

(2) Every candidate and political party shall have the right to have the substance of the candidate's or political party's campaign propaganda reported in all public media in a fair and balanced manner.

(3) The Commission shall prescribe a code of conduct to be complied with by every political party and candidate during an election campaign.

(4) A candidate or political party may, during an electoral campaign, publish campaign materials of such a nature and in such a manner as may be prescribed by the Commission.

(5) For the purposes of this section "campaign propaganda" means any activity, statement or any other form of expression aimed at promoting particular political ideas, policies and strategies for purposes of obtaining votes for any candidate or political party contesting an election.

28. The Commission may postpone the polling day for an election, provided the Commission is satisfied that—

General
postponement
of election

- (a) the postponement is necessary for ensuring a free and fair election; and
- (b) the polling day for the election shall still fall within the period as required by the Constitution.

- Postponement of voting at polling station
- 29.** (1) If it is not reasonably possible to conduct a free and fair election at a polling station on a prescribed polling day, the Commission may, at any time before voting at the polling station has commenced, postpone voting at that polling station.
- (2) A postponement under subsection (1) shall be—
- (a) effected in the prescribed manner;
 - (b) to a day that would still fall within the period referred to in paragraph (b) of section *twenty-eight*; and
 - (c) publicised in the media so as to ensure wide publicity of the postponement of the polling day at the polling station.
- Re-voting at polling station
- 30.** (1) If ballot papers used in an election at a polling station are lost, destroyed or unlawfully removed before the votes cast at the polling station have been determined and announced, the Commission shall allow a re-vote at that polling station.
- (2) A re-vote at a polling station shall be—
- (a) conducted on a date that would still fall within the period referred to in paragraph (b) of section *twenty-eight*;
 - (b) publicised in the media so as to ensure wide publicity of the date determined for the re-vote; and
 - (c) conducted in accordance with a procedure prescribed by the Commission which is consistent with the principles provided for in Part VI.
- Voters' roll for election
- 31.** (1) The voters' roll, or the segments of the voters' roll, that shall be used for an election shall be such as exist on the day the election is set.
- (2) The Director of Elections, by not later than the relevant date stated in the election time-table, shall certify the voters' roll or the segments of the voters' roll to be used in that election and publish it by making it available for inspection at the following venues:
- (a) at the Commission's head office, being the segments for all voting districts in which the election shall take place;
 - (b) in each Province, at the office of the Commission's provincial representative, being the segments for all voting districts in the Province in which the election shall take place; and
 - (c) at the office of each local authority, being the segments for all voting districts in that locality in which the election shall take place.

- 32.** The Commission shall prescribe the date, and time and place for submission and acceptance of nominations in an election and the manner and procedures for such nomination. Nomination date
- 33.** (1) Every person who desires to be candidate for election in any constituency shall lodge with the returning officer for that constituency that person's nomination paper in the manner and form prescribed. Nomination for election
- (2) A nomination submitted under subsection (1), may be withdrawn at any time, before the expiry of the period appointed for lodging nomination papers in respect of the constituency concerned, if the candidate delivers to the election officer a written notice to that effect.
- 34.** (1) In an election, a person shall only lodge nomination papers in one constituency. Nomination in one constituency
- (2) Where, upon the expiry of the period for lodging nomination papers in any constituency, a person is found to have lodged, and not withdrawn, nomination papers in more than one constituency, then every one of those nominations shall be invalid.
- 35.** (1) Every candidate contesting an election may appoint— Appointment of election agents and polling agents
- (a) two polling agents for each polling station; and
- (b) two election agents for each venue where the proceedings provided for in Part VI take place.
- (2) An election or polling agent—
- (a) shall be a Zambian citizen; and
- (b) shall not be a candidate in an election.
- (3) The appointment and revocation of appointment of a person as an election or polling agent shall be effected in the manner prescribed.
- 36.** (1) An election or polling agent may observe the proceedings during— Powers and duties of election or polling agents
- (a) voting;
- (b) the counting of votes; and
- (c) the determination and declaration of the result of an election.
- (2) The absence of an election or polling agent from a place where any electoral proceeding is being conducted shall not invalidate those proceedings.
- (3) Whilst present at any polling station, or venue where the proceedings provided under this section take place, an election or polling agent shall—

- (a) wear the prescribed identification indicating -
 - (i) that the person is an election or polling agent; and
 - (ii) the candidate represented by that election or polling agent; and
- (b) comply with any order issued by—
 - (i) an election officer; or
 - (ii) a police officer acting on the instructions of an election officer.

Establishment of polling districts

- 37.** (1) The Commission shall—
- (a) establish polling districts for the whole of the territory of the Republic;
 - (b) determine the boundaries of each polling district in accordance with the criteria provided in section *thirty-eight*; and
 - (c) keep a map of each district.

(2) The polling districts for an election shall be those polling districts which on the date on which an election is called are within the area in which the election is called.

Criteria for determining polling district boundaries

- 38.** The Commission shall determine the boundaries of a polling district by taking into account any factor within the proposed polling districts that could affect the free, fair and orderly conduct of elections, including—
- (a) the availability of a suitable venue for a polling station;
 - (b) the number and distribution of eligible voters;
 - (c) the accessibility of a polling station to voters given—
 - (i) the radius of the proposed polling district;
 - (ii) the availability of transport;
 - (iii) telecommunications facilities; and
 - (iv) any geographical or physical feature that may impede access to the polling station; and
 - (d) district and provincial boundaries.

Inspection and copies of maps of polling districts

39. (1) As soon as practicable after section *thirty-seven* has been complied with, the Director of Elections shall give notice that copies of the map of each polling district are available for inspection.

- (2) The notice shall be—
- (a) published in the *Government Gazette*; and
 - (b) publicised in the media so as to ensure wide publicity of the maps.

(3) The notice shall state, and the Director of Elections shall ensure, that copies of—

- (a) the maps are available for inspection at the Commission's head office; and
- (b) the maps of the voting districts within a district are available for inspection at the office of the person administering the district.

(4) Any person may inspect a copy of a map provided for in subsection (1).

(5) The Director of Elections shall provide a certified copy of a map of a polling district to any person who has paid the prescribed fee.

40. (1) The Commission shall establish, for an election, a polling station in each polling district, as it may prescribe.

Establishment
of polling
stations

(2) When determining the location of a polling station, the Commission may take into account any factor that could affect the free, fair and orderly conduct of elections, including—

- (a) the number and distribution of eligible voters in those polling districts;
- (b) the availability of suitable venues for polling stations;
- (c) the distance to be travelled to reach those venues;
- (d) access routes to those venues;
- (e) the availability of transport to those venues;
- (f) traffic density at or near those venues;
- (g) parking facilities at or near those venues;
- (h) telecommunications facilities at those venues;
- (i) general facilities at those venues;
- (j) the safety and convenience of voters;
- (k) any geographical or physical feature that may impede access to or at those venues; and
- (l) the ease with which those venues can be secured.

(3) Before determining the location of a polling station, the Commission may consult on the proposed location of that voting station with the local authority for the area within which that polling station shall fall.

(4) By not later than the relevant date stated in the election timetable, the Director of Elections shall give notice that copies of a list containing the address of each polling station shall be available for inspection.

- (5) Section *forty* shall apply, with the necessary modifications, to the inspection and taking of copies of the list specified under subsection (4).
- Relocation of polling station in emergencies **41.** (1) Notwithstanding section *forty*, the Commission may relocate a polling station if it is of the view that it is necessary to do so for the conduct of a free and fair election.
- (2) The election officer shall take all reasonable steps to publicise the relocation of a polling station among voters in the voting district concerned.
- Ballot paper **42.** Subject to the other provisions of this Act and section *forty-three*, the Commission shall prescribe the form and design of a ballot paper and the manner in which ballot papers issued shall be accounted for in a ballot paper account.
- Design of ballot paper **43.** (1) Notwithstanding section *fifty-two*, a ballot paper shall be designed in a way that shall prevent fraudulent voting.
- (2) The counterfoil of a ballot paper shall be marked with the voters' national registration card number or may be marked with the voter's card number.
- (3) A ballot paper shall include—
- (a) a portrait of the candidate nominated for elections to the office of President, as a Member of Parliament; and
 - (b) the symbol of a political party registered with the Commission under which a candidate shall stand for elections and where the candidate is an independent candidate, the symbol the Commission shall allocate to the independent candidate.
- (4) A ballot paper shall be colour coded so as to differentiate the ballot paper for use in a Presidential or National Assembly election.
- Ballot boxes **44.** (1) The Commission shall use transparent ballot boxes in an election which shall be capable of being securely closed.
- (2) The Commission shall prescribe the manner in which ballot boxes shall be—
- (a) numbered and labelled; and
 - (b) closed, secured, opened, sealed and unsealed.
- Voting compartments **45.** (1) Subject to subsection (2), the Commission shall prescribe the design and material of voting compartments to be used in an election.
- (2) A voting compartment shall, while screening a voter from observation by other persons when marking a ballot paper, be designed and placed in such a manner as to ensure that a clear view of the voters' back can be observed from the outside.

46. (1) The Commission shall supply, before voting opens at a polling station, the presiding officer responsible for that polling station with all the voting materials necessary for the election at that station including—

Voting materials

- (a) ballot papers;
- (b) ballot boxes;
- (c) voting compartments;
- (d) a certified voters' roll for the polling district concerned; and
- (e) a document to be signed by the presiding officer detailing the voting materials entrusted to that presiding officer.

(2) A presiding officer shall be responsible for the safe-keeping of all the voting materials supplied to that officer.

PART V

ELECTION OFFICERS

47. As soon as practicable, after prescribing a date for an election, the Commission shall appoint a presiding officer for each voting station at which that election is to be conducted.

Appointment of presiding officer

48. (1) A presiding officer shall co-ordinate and supervise the voting at a polling station so as to ensure that the election at the polling station is free and fair.

Powers and duties of presiding officer

(2) The presiding officer—

- (a) shall exercise the powers and perform the duties assigned to a presiding officer by or under this Act;
- (b) shall take all reasonable steps to ensure orderly conduct at a polling station; and
- (c) may order a Police Officer to assist in ensuring orderly conduct at that polling station and that Officer shall comply with the order.

(3) The presiding officer may exclude from the area within the boundary of a polling station any person other than—

- (a) a member, employee or officer of the Commission;
- (b) an election or polling agent who is entitled under this Act to be present at a polling station;
- (c) a candidate in that election;
- (d) a person appointed as an accredited observer or monitor;
- (e) a voter present for the purpose of casting a vote; and

(f) any person or category of persons authorised by the Commission to be present at the polling station.

(4) Notwithstanding subsection (3), the presiding officer may order any person, referred to in paragraphs (b) to (f) of subsection (3), to leave the area within the boundary of the polling station if that person's conduct is not conducive to a free and fair election at that polling station and shall give that person reasons for making the order.

(5) If a person refuses to comply with an order under subsection (4), the presiding officer may direct a police officer to forcibly remove that person, and that officer shall comply with that order.

Appointment
of polling
assistants

49. As soon as practicable after a date for an election has been prescribed, the Commission shall appoint for each polling station as many polling assistants as it considers necessary to conduct a free and fair election.

Powers and
duties of
polling
assistant

50. A polling assistant—

(a) shall assist the presiding officer in the exercise of the presiding officer's powers and the performance of the presiding officer's duties; and

(b) shall exercise the powers and perform the duties assigned to a polling assistant by or under this Act.

Appointment
of counting
assistant

51. (1) As soon as practicable, after prescribing a date of an election, the Commission shall appoint a counting assistant for each polling station or venue at which the counting of votes is to be conducted.

(2) Notwithstanding subsection (1), the Commission may appoint the presiding officer or a polling assistant, for a polling station, as the counting assistant for that polling station for that venue.

Powers and
duties of
counting
assistant

52. (1) A counting assistant for a polling station or venue for the counting of votes shall co-ordinate and supervise the counting of votes and determine the result of the election at the polling station or venue.

(2) The powers and duties of a counting assistant shall be as specified for a presiding officer under subsection (2) to (5) of section *forty-eight*, with the necessary modifications.

Appointment
of additional
persons

53. The Commission may appoint as many additional persons as election officers as may be necessary to enable the Commission

to exercise its powers and perform its duties effectively during an election.

54. (1) A person appointed by the Commission under section *fifty-three* shall exercise any power and perform any duty assigned to an election officer by or under this Act.

Powers and duties of additional persons

55. (1) A person may not be appointed as an election officer or remain in that office, if that person—

General provisions concerning appointment of election officer

- (a) is a candidate contesting that election;
- (b) is an election or polling agent in that election;
- (c) holds political office in a registered party; or
- (d) was convicted of an offence or reported guilty of any corrupt practice or illegal practice, under this Act, within a period of five years preceding that election.

(2) An election officer shall exercise the powers and perform the duties assigned to that officer subject the direction, control and discipline of the Commission.

(3) The Commission shall determine, in writing, the terms and conditions of appointment of an election officer including—

- (a) any additional powers and duties assigned to that officer subject to this Act; and
- (b) any remuneration payable to that officer.

(4) The assignment of a power of duty to an election officer shall not prevent the Director of Elections from exercising that power of performing that duty.

(5) A person may not be appointed as an election officer unless that person has signed a prescribed undertaking which shall include an undertaking to be bound by—

- (a) the Electoral Code of Conduct; and
- (b) a declaration of secrecy.

(6) An election officer shall be impartial and exercise the powers and perform the duties, stipulated by or under this Act, independently and without fear, favour or prejudice.

(7) An election officer may not, whether directly or indirectly, in any manner, give support to any of the issues in contention between parties or candidates.

(8) An election officer may not place in jeopardy that officer's independence or harm the credibility, impartiality, independence or integrity of the Commission, by any membership, association, statement or conduct.

(9) An election officer shall not be liable for any loss suffered by a person as a result of an act performed or omitted in good faith

in the exercise of a power or the performance of a duty under this Act.

(10) An election officer may be dismissed by the Commission on account of—

- (a) misconduct, incompetence or incapacity;
- (b) absence from duty without leave of the Director of Elections;
- (c) bias;
- (d) a material contravention of this section;
- (e) a material contravention of the declaration of secrecy; or
- (f) any other consideration related to a free and fair election.

(11) No appeal may be brought against a decision by the Commission to appoint a person as an election officer or to dismiss an election officer.

PART V

POLLING DAY ACTIVITIES

Election
officers at
polling
stations

56. On polling day each polling station shall be staffed by the—

- (a) presiding officer appointed for that polling station;
- (b) polling assistants appointed for that polling station; and
- (c) counting assistant appointed for that polling station.

Hours of
voting

57. (1) By not later than the relevant date stated in the election timetable, the Commission shall prescribe the voting hours for an election.

(2) If it is necessary to ensure a free and fair election, the Commission may prescribe different voting hours for different polling stations.

(3) The Commission shall publish the prescribed voting hours in the media so as to ensure wide publicity of those hours.

(4) A polling station shall—

- (a) open for voting at the prescribed time and;
- (b) subject to paragraph (b) of subsection (7), remain open for voting until the prescribed time, or such later time as the Commission may determine under paragraph (a) of subsection (7).

(5) No person may be admitted to a polling station for the purpose of voting after the polling station has closed for voting.

(6) Voting at a polling station shall continue until every voter has voted who—

- (a) is entitled to vote at that polling station; and

- (b) had reported for voting at that polling station at the time prescribed for that polling station to close for voting.
- (7) To ensure a free and fair election, the Commission—
- (a) on the voting day, may extend voting hours at a polling station until as late as midnight on that voting day; or
- (b) may temporarily close a polling station for part of a polling day if it is temporarily impossible to conduct a free and fair election at that voting station:
- provided that the time lost under paragraph (b) shall be compensated.
- (8) The Government shall declare a polling day a national holiday during a general election.
- 58.** The presiding officer shall, immediately before opening a voting station for voting—
- (a) show all accredited observers, monitors, election and polling agents, present, that each ballot box to be used at that voting station is empty; and
- (b) in the presence of the accredited observers, monitors, election and polling agents, close and secure the ballot boxes in the prescribed manner.
- 59.** (1) Subject to section *twenty-four*, a voter may only vote at the polling station in the polling district for which that voter is registered.
- (2) A voter is entitled to vote at a polling station—
- (a) on production of that voter's national registration card and voter's card to the presiding officer or other election officer at the polling station; and
- (b) if that voter's name is in the certified segment of the voter's roll for the polling district concerned.
- (3) When a voter produces a national registration card to the presiding officer or other election officer as required by subsection (2), the presiding officer or election officer shall examine the identity document and determine whether—
- (a) the voter is the person described in that national registration card;
- (b) the voter's name is in the certified segment of the voter's roll for the polling district concerned; and
- (c) the voter has not already voted in the election.
- (4) For the purposes of paragraph (c) of subsection (3) the presiding officer or other election officer may require that the voter's fingerprints be taken.
- (5) If the presiding officer or other election officer is satisfied in respect of all the matters referred to in subsection (3), that officer shall—

Initial
proceduresVoting
procedure

- (a) record that the voter is regarded to have voted in the election;
- (b) mark the hand of the voter in the prescribed manner;
- (c) mark the back of a ballot paper for that election; and
- (d) hand the ballot paper to the voter.

(6) Once the voter has received a ballot paper marked under paragraph (c) of subsection (5) the voter shall—

- (a) enter an empty voting compartment;
- (b) mark the ballot paper in a way that indicates the candidate the voter wishes to vote for;
- (c) fold the ballot paper to conceal the voter's vote;
- (d) take the ballot paper to a ballot box for the election and show it to the presiding officer or another election officer in a way that, that officer can see the mark made under paragraph (c) of subsection (5);
- (e) place the ballot paper in the ballot; and
- (f) without delay leave the voting station.

Assistance
to certain
voters

60. (1) The presiding officer or another election officer, at the request of a voter who is unable to read, shall assist that voter in voting in the presence of—

- (a) a person appointed by or as an accredited observer or monitor, if available; or
- (b) two election agents of different candidates, if available; or

(2) A person may assist a voter in voting if—

- (a) the voter requires assistance due to a physical disability;
- (b) the voter has requested to be assisted by that person; and
- (c) the presiding officer is satisfied that, that person has attained the age of 18 years.

(3) The secrecy of voting as stipulated in the Constitution shall be preserved in the application of this section.

(4) A presiding officer shall record in a copy of the voter's roll, by means of a mark placed next to the name of the voter concerned, that the presiding officer or another person has assisted the voter as provided under this section and give the reasons for doing so.

- 61.** (1) If a voter accidentally marks a ballot paper in a way that does not indicate for whom the voter wishes to vote and the ballot has not yet been placed in the ballot box—
- (a) the voter may return that ballot paper to the presiding officer or a polling assistant;
 - (b) that election officer shall deal with the ballot paper in accordance with subsection (2), and shall give the voter a new ballot paper in accordance with this section; and
 - (c) the voter may vote in accordance with subsection (6) of section *fifty-nine*.
- (2) Upon receiving a ballot paper from a voter under subsection (1), the presiding officer or a polling assistant shall mark “cancelled” on the back of the ballot paper and file it separately to be dealt with in accordance with section *sixty-four*.
- 62.** (1) At any time before a voter has been handed a ballot paper, an election agent may object to that voter being entitled to vote or to vote at the voting station concerned.
- (2) An election agent, or the voter concerned, may object if the voter is refused a ballot paper.
- (3) An election agent, or a voter, may object to any other conduct, of an election officer, or any other person present at a voting station.
- (4) An objection under subsection (1), (2) or (3) shall be made to the presiding officer in the prescribed manner.
- (5) The presiding officer, in the prescribed manner, shall decide the objection and notify the objector and any other parties involved in the objection of the decision.
- (6) An appeal against the decision of the presiding officer may be made to a Returning Officer in the prescribed manner.
- (7) the presiding officer or Returning Officer shall keep a written record in the prescribed manner of each objection and decision made under this section.
- 63.** (1) As soon as a ballot box is full, the presiding officer, in the presence of an accredited observer, monitor, or polling agent present, shall seal the ballot box in the prescribed manner and allow those agents to affix their seals to the ballot box.
- (2) Immediately after the last vote has been cast, every remaining used ballot box shall be similarly dealt with.
- (3) A sealed ballot box shall remain—
- Issue of
New ballot
paper
- Objections
concerning
voting
- Sealing of
full ballot
boxes

- (a) sealed until opened for the counting of votes under section *sixty-seven*; and
- (b) in the polling station until the commencement of the counting of the votes there or, if the votes are not to be counted at that polling station, until removed for delivery under section *sixty-four*.

Completion
of ballot
paper account
and sealing of
voting
materials

64. (1) As soon as practicable after the close of a polling station for voting, the presiding officer, in the presence of any accredited observer, monitor election agents present, shall—

- (a) complete a ballot paper account reflecting the number of—
 - (i) ballot boxes entrusted to that presiding officer;
 - (ii) used ballot boxes;
 - (iii) unused ballot boxes;
 - (iv) ballot papers entrusted to that presiding officer;
 - (v) issued ballot papers;
 - (vi) unissued ballot papers; and
 - (vii) cancelled ballot papers;
- (b) seal each unused ballot box entrusted to that presiding officer;
- (c) seal in separate containers—
 - (i) the certified segment of the voters' roll for that polling district;
 - (ii) the unused ballot papers entrusted to that presiding officer;
 - (iii) the cancelled ballot papers; and
 - (iv) the written record, as required by paragraph (7) of section *sixty-two* of any objections concerning voting; and
- (d) allow those agents to affix their seals to the items mentioned in paragraphs (b) and (c).

(2) If the votes in an election are to be counted at the polling station at which those votes were cast and if the counting assistant for that polling station is a person other than the presiding officer for that polling station, the presiding officer shall deliver to the counting assistant for that polling station the items mentioned in subsection (1).

(3) If the votes in an election are not to be counted at the polling station at which those votes were cast, the presiding officer shall deliver the following to the counting assistant of a counting venue determined by the Commission under section *sixty-six*:

- (a) the ballot paper account mentioned in subsection (1);
- (b) the sealed, used ballot boxes;
- (c) the sealed, unused ballot boxes; and
- (d) the sealed containers mentioned in subsection (1) (c).

65. If more than one election is held at a polling station on the same day, the Commission shall prescribe voting procedures—

More than one election on same day

- (a) substantially in accordance with sections *fifty-six* to *sixty-four* for each of those elections;
- (b) in accordance with local Government Elections Act in the case of elections to elect a councillor

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66. (1) Votes shall be counted at the polling station at which those votes were cast, except when in the interest of ensuring a free and fair election, the Commission, after consultation with the contesting parties or their agents, determines that those votes be counted at another counting venue.

Place and time of counting of votes

(2) A counting assistant shall ensure that the procedures set out in this Part relating to the counting of votes commences as soon as practicable after the polling station is closed for voting and continue uninterrupted until they are completed.

(3) The procedures provided for in this Part relating to the counting of votes may be suspended only with the consent of the Commission and, if they are suspended, the counting assistant shall ensure the safe-keeping of all the voting materials entrusted to the counting assistant until the counting of votes has been completed.

67. (1) The counting assistant shall open all the sealed, used ballot boxes.

Counting of votes and determination of provisional results

- (2) The counting assistant shall—
 - (a) cause the ballot papers to be sorted on the basis of the ballot papers for each election if more than one election was held at a polling station on the same day;
 - (b) cause the ballot papers for each election to be sorted and compare them with the number of ballot papers issued in the prescribed manner;
 - (c) cause the votes cast in each election to be counted in the prescribed manner; and
 - (d) determine the result of each count at that polling station.
- (3) The counting assistant shall reject a ballot paper—
 - (a) that indicates the identity of the voter;
 - (b) on which a vote is cast for more than one candidate;
 - (c) that is unmarked;
 - (d) that is marked in such a way that it is not reasonably possible to determine the voter's choice;

- (e) that does not bear the mark required in terms of paragraph (c) of subsection (5) of section sixty-one; or
- (f) that is not an official ballot paper.

(4) The counting assistant shall mark “for rejection” on the back of each rejected ballot paper and file the rejected ballot paper separately.

(5) If a counting assistant’s acceptance or proposal to reject a ballot paper is disputed by an election agent, the counting assistant shall—

- (a) mark “disputed” on the back of that ballot paper;
- (b) file separately, but cause to be counted, the accepted ballot paper that is disputed; and
- (c) file separately the rejected ballot paper that is disputed.

Objections concerning sorting of ballot papers

68. (1) An election or polling agent may object to any alleged irregularity in the sorting of the ballot papers under section *sixty-seven*.

(2) An objection under subsection (1) shall be made to a counting assistant, in the prescribed manner, at any stage before the counting assistant has completed the ballot paper account.

(3) Section *sixty-two*, with the necessary modifications, shall apply to an objection under this section.

Objections concerning counting of votes and determination of provisional result

69. (1) An election or polling agent may object to an alleged inaccuracy in the counting of the votes or the determination of a result under section *sixty-seven*.

(2) An objection under subsection (1) shall be made to a counting assistant, in the prescribed manner, at any stage before the counting assistant has completed the ballot paper account.

(3) A counting assistant shall decide the objection in the prescribed manner, and decide whether to order a recount.

(4) A counting assistant shall notify the objector and any other party involved in the objection, of the decision made under subsection (3).

(5) If a counting assistant orders a recount, the counting assistant shall determine afresh the result.

(6) An appeal against the decision of a counting assistant may be made to the returning officer, in the prescribed manner.

(7) A counting assistant shall keep a written record, in the prescribed manner, of each objection under subsection (1) and each decision under this section.

70. (1) After determining the result at a polling station, a counting assistant shall complete a form, as may be prescribed, reflecting—

- (a) the number of ballot papers supplied to the polling station;
- (b) the result at the polling station;
- (c) the number of counted ballot papers that were not disputed;
- (d) the number of counted ballot papers that were disputed;
- (e) the number of rejected ballot papers that were not disputed;
- (f) the number of rejected ballot papers that were disputed;
- (g) the number of cancelled ballot papers; and
- (h) the number of unused ballot papers.

Procedure concerning provisional results and voting materials

(2) When a counting assistant has complied with subsection (1), the presiding officer shall announce the result of the count at the voting station to members of the public, the accredited observers, monitors, election and polling agents present at the polling station.

(3) When the presiding officer has complied with subsection (2), the presiding officer shall inform the Commission of the result of that count at the polling station.

(4) When the presiding officer has complied with subsection (3), the presiding officer shall—

- (a) seal in separate containers each of the items mentioned in subsection (1) and the written record of any objections in terms of section *sixty-nine*; and
- (b) deliver the form, completed in terms of subsection (1), and the sealed containers to an officer designated by the Director of Elections.

71. (1) After receipt of the items mentioned in section *seventy*, a counting assistant shall examine whether the seals are intact on those items.

Verification procedure for votes counted elsewhere

- (2) A counting assistant shall allow any accredited observer, monitor, election or polling agent present to examine whether the seals are intact.
- (3) A counting assistant shall, after examining the seals, open all the sealed ballot boxes and containers and shall verify the ballot paper account completed by the presiding officer by comparing it with—
 - (a) the number of used ballot boxes received;
 - (b) the number of unused ballot boxes received;

(c) the number of containers received; and

(d) the contents of those boxes and containers.

(4) A counting assistant shall deal with any irregularities and discrepancies in the prescribed manner.

(5) A counting assistant shall keep a written record, in the prescribed manner, of any irregularities and discrepancies and the manner in which those irregularities and discrepancies were dealt with.

Objections concerning verification procedure

72. (1) At any time before the counting of votes commences, an election or polling agent may object to any alleged irregularity or inaccuracy in the verification procedure performed by a counting assistant.

(2) An objection under subsection (1) shall be made to a counting assistant in the prescribed manner.

(3) Subsection (5) to (7) of *sixty-nine* with the necessary modifications, shall apply to an objection under this section.

Application of certain sections

73. Sections *sixty-seven* to *seventy*, with the necessary modifications, shall apply to the counting of votes and the determination of the result at a venue, other than a polling station, objections and procedures concerning results and voting materials.

Determination and declaration of final result of election

74. (1) The Commission shall determine and declare the result of an election by adding together the results received from all polling stations.

(2) The determination and declaration of the result of an election shall occur immediately after the close of polling.

(3) The Commission may determine and declare the result of an election without having received the results of all polling stations, if—

(a) to wait for the receipt of the result from every polling station would unduly and unreasonably delay the determination and declaration of the result of that election; and

(b) the outstanding results are not likely to materially influence the overall result of that election.

PART VI

OBSERVERS, MONITORS AND VOTER EDUCATION

Accreditation of observers and monitors

75. (1) Any juristic person may apply to the Commission, in the prescribed manner, for accreditation to observe or monitor an election.

(2) The Commission may require any information it may consider necessary in support of an application under subsection (1).

(3) The Commission may accredit an applicant, without the payment of any fee, to observe or monitor an election after considering the application, any other information provided by the applicant, and whether—

- (a) the accreditation of the applicant shall promote conditions conducive to a free and fair election; and
- (b) the persons appointed by the applicant shall—
 - (i) observe the election impartially and independently of any registered party or candidate contesting that election;
 - (ii) be competent and professional in observing the election; and
 - (iii) subscribe to a code governing observers and monitors issued by the Commission under this Act.

(4) If the Commission decides—

- (a) to accredit the applicant, the Commission shall—
 - (i) enter the applicant's name in the register of persons accredited as observers and monitors;
 - (ii) issue a certificate of accreditation in the applicant's name stating the period and other conditions of accreditation; and
 - (iii) send the certificate to the applicant; or
- (b) not to accredit the applicant, the Commission shall advise the unsuccessful applicant, in writing, of its decision.

(5) If a person accredited as an observer or monitor fails to comply, to a material extent, with the conditions of the accreditation, the Commission may cancel that accreditation and, in writing, notify the person concerned of the cancellation and state the reasons for such cancellation.

(6) Any person may inspect the register and copies of the certificates of persons accredited as observers and monitors.

(7) The register and copies of the certificate shall be kept at the Commission's head office.

(8) The Director of Elections shall provide a certified copy of, or extract from, that register or a certificate to any person who pays the prescribed fee.

(9) A person representing an accredited observer or monitor shall subscribe to a code of conduct as may be prescribed by the Commission and shall undertake to abide by the Electoral Code of Conduct.

(10) Any person, representing an accredited observer or monitor, who is found guilty of violating any election law shall be disqualified from observing or monitoring any election.

(11) A register of juristic persons and institutions accredited as observers or monitors and copies of the certificates of the observers and monitors shall be kept at the Commission's head office.

Cap. 119 (12) In this section "juristic person" includes an institution and organisation registered under the Societies Act.

Powers and duties of accredited observers and monitors

76. (1) An accredited observer or monitor may, in relation to an election for which that observer or monitor is accredited, observe the proceedings provided for in—

- (a) Part IV concerning voting and the counting of votes; and
- (b) Part VI concerning the determination and declaration of the election results.

(2) Whilst observing an election, a person appointed by an accredited observer or monitor shall wear the prescribed identification indicating that the person is representing an accredited observer or monitor.

(3) A person appointed by an accredited observer or monitor shall comply with any order issued by an election officer or a police officer acting on the instructions of an election officer.

Voter education

77. Notwithstanding section *seventy-eight*, the Commission shall provide voter education for an election.

Provision of voter education generally

78. (1) Any natural or juristic person may provide voter education for an election.

(2) Any natural or juristic person providing voter education shall do so in a manner—

- (a) that is impartial and independent of any registered party or candidate contesting an election; and
- (b) that shall promote conditions conducive to free and fair elections.

PART VII

CORRUPTION AND ILLEGAL PRACTICES AND ELECTION OFFENCES

79. (1) Any person who corruptly either directly or indirectly, Bribery
by oneself or any other person—

- (a) gives, lends, or procures, or offers, promises or agrees to give, lend or procure any money to or for any person to or for any person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting or who corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election;
- (b) gives, lends or procures, or offers, promises or agrees to give, lend, or procure, any money to or for any voter or to or for any other person on behalf of any voter or to or for any other person for acting or joining in any procession or demonstration before, during or after any election;
- (c) makes any gift, loan, offer, promise, procurement or agreement to or for any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election;
- (d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the return of any candidate at any election or the vote of any voter at any election;
- (e) advances or pays or causes to be advanced or paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election;
- (f) before or during any election, receives or contracts for any money or loan for oneself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election;
- (g) after any election, receives any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election; or

- (h) conveys or transfers or is concerned with the conveyance or transfer of any property, or pays or is concerned with the payment of any money, to any person for the purpose of enabling that person to be registered as a voter, thereby to influence that person's vote at any future election, or pays to or is concerned with the payment of any money on account of any voter for the purpose of inducing that person to vote or refrain from voting;

shall be guilty of the offence of bribery.

(2) Nothing in this Act shall be construed as applying to any money paid or agreed to be paid for, or on account of, any expenditure *bonafide* and lawfully incurred in respect of the conduct or management of an election.

Impersonation

80. Any person who—

- (a) at any election, applies for a ballot paper in the name of some other person, living or dead, or of a fictitious person;
- (b) having voted once at any election, applies again at the same election for a ballot paper;
- (c) votes at any election knowing that the person is not entitled to vote at that election or induces or procures any person to vote at any election knowing that person is not entitled to vote at that election;
- (d) applies to be registered as a voter in the name of any other person, whether living, dead or fictitious; or
- (e) impersonates—
- (i) a representative of a registered party;
 - (ii) a candidate in an election;
 - (iii) a member, employee or officer of the Commission; or
 - (iv) a person appointed by an accredited observer, or monitor;

shall be guilty of the offence of impersonation.

Treating

81. Any person who corruptly by oneself or by any person either before, during or after an election, directly or indirectly, gives or provides or pays, wholly or in part, the expenses of, any food, drink, entertainment, lodging or provisions to, or for, any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving that person's vote at an election shall be guilty of the offence of treating.

82. (1) No person shall directly or indirectly, by oneself or by any other person— Undue
influence

- (a) make use of or threaten to make use of any force, violence or restraint upon any other person;
- (b) inflict or threaten to inflict by oneself or by any other person, or by any supernatural or non-natural means, or pretended supernatural or non-natural means, any physical, psychological, mental or spiritual injury, damage, harm or loss upon or against any person; and
- (c) do or threaten to do anything to the disadvantage of any person;

in order to induce or compel any person—

- (i) to register or not to register as a voter;
- (ii) to vote or not to vote;
- (iii) to vote or not to vote for any registered party or candidate;
- (iv) to support or not to support any registered party or candidate; or
- (v) to attend and participate in, or not to attend and participate in, any political meeting, march, demonstration or other political event;
- (d) interfere with the independence or impartiality of the Commission, any member, employee or officer of the Commission;
- (e) prejudice any person because of any past, present or anticipated performance of a function under this Act;
- (f) advantage, or promise to advantage, a person in exchange for that person not performing a function under this Act; or
- (g) unlawfully prevent the holding of any political meeting, march, demonstration or other political event.

(2) Subject to the other provisions of this Act, no person shall prevent anyone from exercising a right conferred by this Act.

(3) No person, knowing that another person is not entitled to be registered as a voter, shall—

- (a) persuade that other person that that other person is entitled to be registered as a voter; or
- (b) represent to anyone else that that other person is entitled to be registered as a voter.

(4) No person, knowing that another person is not entitled to vote shall—

- (a) assist, compel or persuade that other person to vote; or
- (b) represent to anyone else that that other person is entitled to vote.

(5) Any person who contravenes any of the provisions of subsections (1) to (4) shall be guilty of the offence of undue influence.

(6) Any person who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the vote of any voter or thereby compels, induces or prevails upon any voter either to give or to refrain from giving the person’s vote at any election, shall be guilty of the offence of undue influence.

Illegal practice of publishing false statements in respect of candidates

83. (1) Any person who, before or during an election, publishes a false statement of the illness, death or withdrawal from election of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not believing it to be true, shall be guilty of an illegal practice.

(2) Any person who, before or during an election, publishes any false statement of fact in relation to the personal character or conduct of a candidate in that election, shall be guilty of an illegal practice, unless that person can show that that person had reasonable grounds for believing, and did believe, the statement to be true.

Illegal practices in respect of nomination of candidates

84. (1) Any person who forges or fraudulently destroys any written authority of a candidate or nomination paper, or delivers to a returning officer any written authority of a candidate or nomination paper knowing the same to be forged shall be guilty of an illegal practice.

(2) Any person who knowingly makes a false statement relating to that person’s nomination in that person’s nominating paper shall be guilty of an illegal practice.

Illegal practice in respect of public meetings

85. Any person who, at a lawful public meeting held in connection with the election of any person between the day of the publication of a notice appointing a nomination day and the day on which the result of the election is published, acts or incites others to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is called, shall be guilty of an illegal practice.

Illegal practices relating to the poll

86. (1) Any person who—

- (a) forges, counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;

- (b) without authority supplies any ballot paper to any person;
- (c) without authority puts into any ballot box any ballot paper which that person is not authorised by law to put in;
- (d) sells or offers to sell any ballot paper or voter's card to any person or purchases or offers to purchase any ballot paper or voter's card from any person;
- (e) not being a person entitled under this Act to be in possession of a ballot paper or voter's card, has any such ballot paper or voter's card in that persons' possession;
- (f) without authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use or intended to be used for the purpose of an election;
- (g) without authority prints or makes any ballot paper or what purports to be or is capable of being used as a ballot paper or any identity document at an election;
- (h) manufactures, constructs, has in that persons' possession, supplies, or uses for the purpose of an election, or causes to be manufactured constructed, supplied or used for the purposes of any election any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box in the course of polling at any polling station; or
- (i) at an election obstructs a voter either at the polling station or on that voter's way thereto or therefrom;

shall be guilty of an illegal practice.

(2) Any person who attempts to commit an illegal practice under subsection (1), shall be guilty of an illegal practice.

87. Any person who is found guilty of an illegal practice shall be liable on, conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Penalty for
illegal
practices

88. (1) Any person who—

Election
offences

- (a) within a period prescribed for the receipt of nominations, under this Act, loiters in any public place within four hundred metres from the entrance to a nomination office;
- (b) having been required to leave a nomination office, fails to leave such nomination office or the precincts thereof;
- (c) puts into any ballot box anything other than the ballot paper which that person is authorised by law to put therein;

- (d) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
- (e) on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station—
 - (i) canvasses for votes;
 - (ii) solicits the vote of any person;
 - (iii) induces any person not to vote; or
 - (iv) induces any person not to vote for a particular candidate;
- (f) on any polling day loiters in any public place within four hundred metres from the entrance to any polling station;
- (g) on any polling day exhibits in any public or private place within one hundred metres from the entrance to any polling station any notice or sign, other than an official notice or sign authorised by an election officer under this Act, relating to the election;
- (h) not being a presiding officer, an election officer, candidate, an election agent or a polling agent in the course of their functions within a polling station, makes any record showing that any particular person has voted in an election;
- (i) without lawful authority, destroys, mutilates, defaces or removes any notice which is exhibited in accordance with this Act or under any regulations issued under this Act, or any document made available for inspection under this Act and any such regulations;
- (j) wilfully obstructs or interferes with a returning officer, presiding officer, or election officer in the execution of their duties;
- (k) makes a false answer to any question put to that person by a presiding officer or an election officer under this Act;
- (l) has any communication with a voter while such voter is in the precincts of a polling station for the purpose of voting;
- (m) fails to comply with any requirement or direction to leave a polling station or the precincts thereof;
- (n) being a candidate uses a symbol in the course of an election other than the symbol registered with the Director of Elections in accordance with this Act and any regulations thereunder or, in the case of any other person, associate any candidate with, any symbol in the course of an election other than the candidates registered symbol;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(2) Any person who attempts to commit an offence against this section shall be liable to the punishment prescribed for that offence.

89. In a prosecution for an offence in relation to a nomination paper, ballot box or ballot paper, the property in such nomination paper, ballot box, as well as the property in the counterfoil of any ballot paper, shall be deemed to be vested in the returning officer at that election.

Property in
certain
election
material

90. (1) Every person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at such station and shall not communicate, except for some purpose authorised by law, to any person, any information as to the name or number on the register of voters of any voter who has or has not applied for a ballot paper or voted at such polling station, or as to the official mark or official seal at such polling station.

Secrecy and
penalty for
breach of
secrecy

(2) No person, except a presiding officer or polling assistant in exercise of their functions under this Act, shall obtain or attempt to obtain in a polling station information as to the candidate for whom any person in such polling station is about to vote for or has voted or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any person in such polling station is about to vote for or has voted, or as to the number on the ballot paper issued to any person at such polling station.

(3) Every person in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting and shall not ascertain at the counting the number on any ballot paper or communicate any information obtained at the counting as to the manner in which any vote is given by any particular ballot paper.

(4) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

91. Any election officer who wilfully fails to perform the functions of that office under this Act shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Offences by
election
officers

Offences by
printers and
publishers

92. (1) Every Bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and of the publisher, and any person who prints, publishes or posts, or causes to be printed, published or posted any such matter which fails to bear upon the face thereof such names and address shall be guilty of an offence.

(2) The proprietor and publisher of every newspaper shall cause the word “advertisement” to be printed as a headline to each article or paragraph appearing in that person’s newspaper containing electoral matter, the insertion of which is or is to be paid for, and any proprietor or publisher who fails to comply with this provision shall be guilty of an offence.

(3) For the purposes of this section—

(a) any process for producing copies of a document, other than by copying it by hand, shall be deemed to be printing, and the expression “printed” shall be construed accordingly; and

(b) “electoral matter” shall be deemed to include all matters which, on the face of them, are intended or calculated to affect the result of an election.

(4) Any person who is guilty of an offence against this section shall be liable on conviction, to a fine not exceeding fifty thousand penalty units.

PART VIII ELECTION PETITIONS

Avoidance
of elections

93. (1) No election of a candidate as a member of the National Assembly shall be questioned except by an election petition presented under this Part.

(2) The election of a candidate as a member of the National Assembly shall be void on any of the following grounds which is proved to the satisfaction of the High Court upon the trial of an election petition, that is to say—

(a) that by reason of any corrupt practice or illegal practice committed in connection with the election or by reason of other misconduct, the majority of voters in a constituency were or may have been prevented from electing the candidate in that constituency whom they preferred;

- (b) subject to the provisions of subsection (4), that there has been a non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the High Court that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election;
- (c) that any corrupt practice or illegal practice was committed in connection with the election by or with the knowledge and consent or approval of the candidate or of that candidate's election agent or polling agent; or
- (d) that the candidate was at the time of the election a person not qualified or a person disqualified for election.

(3) Notwithstanding the provisions of subsection (2), where, upon the trial of an election petition, the High Court finds that any corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of such election petition, and the High Court further finds that such candidate has proved that—

- (a) no corrupt practice or illegal practice was committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent;
- (b) such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and
- (c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent's;

the High Court shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void.

(4) No election shall be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such act or omission did not affect the result of that election.

94. An election petition may be presented to the High Court by one or more of the following persons—

- (a) a person who lawfully voted or had a right to vote at the election to which the election petition relates;

Presentation
of election
petition

- (b) a person claiming to have had a right to be nominated as a candidate or elected at the election to which the election petition relates;
- (c) a person claiming to have been a candidate at the election to which the election petition relates; and
- (d) the Attorney-General.

Relief which may be claimed in election petition

95. (1) Any of the following reliefs may be claimed in an election petition:

- (a) a declaration that the election was void; or
- (b) a declaration that any candidate was duly elected.

(2) In addition to the foregoing reliefs, a petitioner may apply to the High Court upon the trial of an election petition for a scrutiny to be carried out by the High Court in such manner as the Court may determine.

(3) On a scrutiny at the trial of an election petition, the following votes only shall be held invalid:

- (a) the vote of any person whose name was not on the register of voters assigned to the polling station at which the vote was cast or who was not authorised to vote at that polling station under this Act;
- (b) the vote of any person whose vote was procured by any corrupt practice or illegal practice;
- (c) the vote of any person who committed or procured the commission of impersonation at the election to which the election petition relates, contrary to the provisions of this Act;
- (d) the vote of any person proved to have voted more than once at the election to which the election petition relates; or
- (e) the vote of any person who was disqualified from voting at the election to which the election petition relates.

(4) In this section “scrutiny” means an enquiry as to the validity of the votes cast, and includes the determination of the number of valid votes cast for each candidate in the election in respect of which the application for a scrutiny is made.

Form and procedure for presentation of election petitions

96. (1) Every election petition shall be in such form contain such matters as may be prescribed by rules made by the Chief Justice.

(2) An election petition shall be presented to the High Court Principal Registry or District Registry by lodging it with the Registrar in accordance with this Act.

(3) Every election petition shall be signed by the petitioner or by all the petitioners if more than one, and shall be presented not later than thirty days after the date on which the result of the election to which it relates is duly declared.

(4) Notwithstanding the provisions of subsection (3), when the election of any person (hereinafter referred to as “the respondent” is questioned upon an allegation of a corrupt practice or an illegal practice, the election petition may be presented—

- (a) at any time before the expiry of twenty-one days after the day on which the returning officer receives the return of the election expenses of the respondent; or
- (b) if the election petition specifically alleges a payment of money or some other act to have been made or done since the day referred to in paragraph (a) by the respondent or the respondent’s election agent, or with the privity of the respondent or of the respondent’s election agent in pursuance or in furtherance of the corrupt practice or illegal practice alleged in the election, at any time within thirty days after the date of payment or other act.

(5) Where an election petition is presented under this section, the Registrar shall, in writing, inform the Speaker of the National Assembly and the Commission of such presentation.

97. (1) Subject to the provisions of subsection (2), the Registrar, shall make out a list of all election petitions presented under this Act, placing them on such list in the order in which they are presented, and the Registrar shall keep at the Registrar’s office a copy of the list which shall be open for inspection by any person making application for inspection thereof.

Duty of Registrar to make out list of election petitions

(2) Every election petition shall, unless the High Court orders otherwise, be tried in the order in which it stands on the list made out by the Registrar under subsection (1), but where more election petitions than one are presented in respect of the same election, the election petitions shall be bracketed together and shall be dealt with as one petition, standing, unless the High Court orders otherwise, in the list in the place where the last of the election petitions would have stood if it had been the only election petition presented in respect of that election.

98. (1) Subject to the other provisions of this Act, the Chief Justice may make rules regulating generally the practice and procedure of the High Court with respect to the presentation and trial of election petitions, including rules as to the time within which any requirement of the rules is to be complied with and as to the

Rules of practice and procedure, security for costs etc.

costs of and incidental to the presentation and trial of the election petitions and as to the fees to be charged in respect of proceedings therein, and generally as regard to any other matter relating thereto as the Chief Justice may consider necessary or desirable.

(2) After the presentation of an election petition, every petitioner to it shall give such security for costs, not exceeding in amount the sum of eight hundred fee units, as the High Court may order, and such security shall be given within the time and in the manner and form as the Chief Justice may prescribe by rules under this section or, in the absence of the rules, as the High Court may order.

(3) Where, after the presentation of an election petition, no security for costs is given as required by or under this section, no further proceedings shall be had on that election petition.

Withdrawal
of election
petition

99. (1) A petitioner shall not withdraw an election petition without the leave of the High Court.

(2) No application for leave to withdraw an election petition shall be made until notice of intention to withdraw the election petition has been given in such manner as the Chief Justice may prescribe.

(3) Where an election petition is presented by two or more petitioners, an application to withdraw the election petition shall not be made except with the consent of all the petitioners to it.

(4) The High Court may, upon an application for leave to withdraw an election petition, make such order as to costs as it may consider just.

Substitution
of new
petitioners

100. (1) Upon the hearing of an application under section *ninety-nine* for leave to withdraw an election petition, any person who might have been a petitioner in respect of the election to which that election petition relates may, notwithstanding the provisions of section *ninety-six*, apply to the High Court to be substituted for the petitioner so applying to withdraw, and the High Court may, if it grants leave to the petitioner to withdraw, order that person (hereinafter referred to as “the substituted petitioner” be substituted for the petitioner.

(2) Subject to the other provisions of this section, the substituted petitioner shall, as nearly as may be, stand in the same position, and be subject to the same liabilities, under this Act as the petitioner for whom a substitution was made (hereinafter referred to as “the original petitioner”).

(3) Where the High Court makes an order under subsection (1), it may direct that the security for costs given by the original petitioner shall remain as security for any costs caused thereafter by the substituted petitioner upon the trial of the election petition, and may direct that, to the extent of the amount of the security, the original petitioner shall be liable to pay the costs of the substituted petitioner.

(4) Unless the High Court gives directions as in subsection (3), subsections (1) and (2) of section *ninety-nine* shall apply to the substituted petitioner as they apply in relation to a petitioner presenting an election petition.

101. (1) If a sole petitioner or the survivor of several petitioners dies, then subject to the provisions of this section, no further proceedings shall be had upon the election petition.

Abatement
of election
petitions

(2) The death of a petitioner shall not affect that petitioner's liability for the payment of costs previously incurred.

(3) On the abatement of an election petition under subsection (1), any person who might have been a petitioner in respect of the election to which that election petition relates may, notwithstanding section *ninety-seven* apply to the High Court to be substituted as a petitioner in place of the deceased petitioner and the High Court may, if it thinks fit, order that such person be substituted accordingly.

(4) Where the High Court makes an order under this section for the substitution of a person in place of a deceased petitioner such person shall, as nearly as may be, stand in the same position, and be subject to the same liabilities, under this Act as the deceased petitioner would have been but for the death, and subsection (1) and (2) of section *ninety-nine* shall apply to the person as they apply in relation to a petitioner presenting an election petition.

102. (1) An election petition shall be tried and determined by the High Court in open court, within one hundred and eighty days of the presentation of the election petition as provided under section *ninety-seven*:

Trial of
election
petitions

Provided that where an election petition is not tried and determined within the period specified in this subsection due to a failure by the petitioner to actively prosecute the petition, the High Court shall dismiss the petition for want of prosecution.

(2) The High Court may adjourn the trial of an election petition from time to time and from place to place.

(3) Subject to the provisions of this Act, the High Court may in respect of the trial of an election petition, exercise such powers within its civil jurisdiction as it may deem appropriate.

(4) On the trial of an election petition, a verbatim record of all evidence given orally in the trial shall be taken and transcripts of the record shall, at the conclusion of the proceedings, be delivered to the Commission by the Registrar.

Provisions
as to
witnesses

103. (1) On the trial of an election petition, the High Court may—

- (a) order any person who appears to the High Court to have been concerned in the election to attend as a witness at the trial;
- (b) examine any witness or any person who is present at the trial although such witness or person is not called as a witness by any party to the proceedings:

Provided that after the examination by the High Court of a witness or person, the witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

(2) A person who is called as a witness at the trial of an election petition shall not be excused from answering any questions relating to any offence connected with an election on the ground that the answer thereto may tend to incriminate that person, or on the ground of the privilege:

Provided that—

- (a) a witness who answers to the satisfaction of the High Court every question which is required to be answered under this section, and the answers to which may tend to incriminate that witness, shall not be liable to prosecution for any offence committed by that witness in connection with the election and in respect of which that witness is so examined and the witness shall be entitled to receive a certificate of indemnity under the hand of the Registrar stating that the witness is freed and discharged from liability to prosecution for that offence;
- (b) an answer by a witness to a question before the High Court under this section shall not, except in the case of any criminal proceedings for giving false evidence in respect of the evidence, be admissible in any proceedings, civil or criminal, in evidence against that witness.

(3) Where a person has received a certificate of indemnity under subsection (2), and any legal proceedings are at any time brought against that person for any offence to which the certificate relates, the court having conduct of the case shall, on proof of the certificate of indemnity, stay the proceedings and may award to that person such costs as the court may have been put to in the proceedings.

(4) All reasonable expenses incurred by any person in attending at or appearing before the High Court to give evidence as a witness at the trial of an election petition shall be allowed to that person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

104. (1) At the conclusion of the trial of an election petition, the High Court shall determine whether the respondent, or any other, and which, person, was duly elected, or whether the election to which the election petition relates was void, and the Registrar shall as soon as may be, submit a copy of such determination to the Speaker of the National Assembly and to the Commission.

Conclusion
of trial of
election
petition

(2) Where the High Court determines under subsection (1), that the respondent was duly elected, the election shall be and remain valid.

(3) Where the High Court determines under subsection (1), that the respondent was not duly elected but that some other person was duly elected, that other person shall be deemed to have been elected accordingly.

(4) Where the High Court determines under subsection (1), that the respondent was not duly elected, and that no other person was duly elected, at the election concerned, the vacancy in the membership of the National Assembly in respect of which that election was held shall be deemed to continue until duly filled.

(5) Where a determination under subsection (1), alters the results of an election as previously declared, it shall be the duty of the Commission to publish the results as so altered in the *Gazette*.

(6) Where it appears to the High Court upon the trial of an election petition that any corrupt practice or illegal practice has been committed by any person in connection with the election to which the election petition relates, the High Court shall, at the conclusion of the proceedings, prepare a report stating—

- (a) the evidence given in the proceedings in respect of the corrupt practice or illegal practice;
- (b) the names and particulars of any person by whom the corrupt practice or illegal practice was, in the opinion of the Court, committed:

Provided that the Court shall not state the name of any person under this paragraph unless the person has been given an opportunity of appearing before the Court and of showing cause why that person's name should not be so stated.

(7) The Registrar shall deliver a copy of every report prepared by the High Court under subsection (6) to—

- (a) the Commission; and
- (b) the Director of Public Prosecutions.

(8) The Commission shall, as soon as it receives the report under subsection (7), instruct an officer to prosecute any person stated in the report.

Provisions
as to costs

105. (1) Subject to the provisions of this section, all costs, charges and expenses of, and incidental to, the presentation and trial of an election petition shall be borne in such manner and in such proportions as the High Court may order and in particular, any costs which in the opinion of the High Court have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.

(2) Where, on the trial of an election petition, the High Court determines that the respondent was not duly elected and is of the opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the election petition from all or a portion of the costs thereof, then—

- (a) if the Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function *bonafide* made by any election officer, it may, after sufficient notice to the Attorney-General to show cause to the contrary, make such order as to the payment by the State of the costs of the proceedings or a portion thereof, as it may deem proper;
- (b) if the Court finds that the election of the respondent was due to a mistake or improper performance, or failure of performance of any function *malafide* made by any election officer, it may, after sufficient notice to such officer to show cause to the contrary, make such order as to the payment by such election officer of the costs of the proceedings or a portion thereof, as it may consider proper.

(3) The High Court may, on application made by any person to whom any costs, charges or expenses are payable under this Act, order the same to be paid out of any deposit made to secure the same, or by any surety who gave a recognizance to secure the same:

Provided that notice of the application shall be given, in such manner as may be prescribed by rules of Court, to the party by or on whose behalf the deposit was made or for whom the surety gave a recognizance, requiring the party, or the surety and the party, as the case may be, to state, within the time and in the manner as may be so prescribed, whether that party resists the application.

(4) Where, on the trial of an election petition, any person appears to the High Court to have been guilty of any corrupt practice or illegal practice relating to the election which is the subject of the election petition, the Court may, after giving that person an opportunity of making a statement to show cause why the order should not be made, order the whole or a portion of the costs of, or incidental to, the trial of the election petition to be paid by that person to such person or persons as the Court may determine.

(5) Execution may be levied under any order for payment made by the High Court under this section in the same manner and to the same extent as execution may be levied under a judgement of the High Court for the payment of money.

(6) Money deposited as security shall, when no longer needed as security for costs, be returned to the person in whose name it is deposited or to any person entitled to receive the same by order of the High Court, which may be upon motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the High Court may require.

PART IX

OTHER QUESTIONS RELATING TO PARLIAMNET

- 106.** (1) Any question which may arise as to whether —
- (a) any person has been validly appointed as a nominated member of the National Assembly;
 - (b) the seat of an elected member or of a nominated member of the National Assembly, has become vacant, other than a question arising from the election of a candidate as a member of the National Assembly; or
 - (c) any person has been validly elected as Speaker or Deputy Speaker of the National Assembly or, having been so elected, has vacated the office of Speaker or Deputy Speaker; may be heard and determined by the High Court upon application made by—
 - (i) any person to whom the question relates;
 - (ii) in the cases referred to in paragraph (a) (b) or (c), any member of the National Assembly; or
 - (iii) the Attorney-General.

Application
to members
and officers
of
Parliament

(2) Any person who makes an application to the High Court under subsection (1), shall have the right to appear and be represented before the High Court.

(3) Subject to any rules of Court, the powers, practice and procedure of the High Court in respect of the trial of an election petition under Part VIII shall apply, with the necessary modifications, to the hearing and determination of such applications.

Effect of
determination
Cap. 1

107. Every determination of the High Court under this Part shall have effect, subject to the provisions of Article 71 of the Constitution, in accordance with the terms thereof.

PART X

ADDITIONAL POWERS OF COMMISSION AND MISCELLANEOUS PROVISIONS

By-elections

108. (1) Subject to other provisions of this Act, a by-election to fill a casual vacancy in the National Assembly shall be held on such date as the Commission may, by statutory order, prescribe, being a date not later than ninety days after the date when notification of the Vacancy was communicated by the Speaker and received by the Commission:

Provided that a poll shall not be taken in any by-election in respect of which only one candidate is validly nominated for election.

(2) Unless the commission otherwise, by statutory order, directs, a by-election to fill a casual vacancy in the National Assembly shall not be held in any constituency in which an ordinary election of a member of the National Assembly is or may be required to be held Part III.

(3) A statutory order under this section shall specify the day or days on which, and the hours within which, returning officers may receive nominations of candidates for election in any constituency to which such order relates.

Electoral
Code of
Conduct and
other codes

109. The Commission shall, in order to promote free, fair and orderly elections, issue by statutory instrument, an Electoral Code of Conduct and any other codes as it may consider necessary.

- (2) The Electoral Code of Conduct shall be subscribed to—
- (a) by every registered political party who intends to support any candidate for an election; and
 - (b) by every candidate before that candidate submits the nomination paper required under this Act.

(3) No person or registered party bound by a code shall contravene or fail to comply with a provision of that code.

110. (1) Whenever the Commission, the Director of Elections, an election officer or any person is required under this Act to decide an objection, dispute, complaint or an appeal, the Commission or that person may attempt to resolve the issue, that is the subject of the objection, dispute, complaint or appeal, through conciliation or mediation.

Powers to
decide
objections
and appeals

(2) The Commission shall prescribe the manner for handling any objection, dispute, complaint or appeal under this Act.

111. (1) The Commission shall, for purposes of resolving electoral disputes, constitute such number of conflict management committees as the Commission may determine.

Constitution
of conflict
management
committees

(2) A conflict management committee shall comprise, as members, such number of conflict management officers appointed by the Commission, as the Commission shall determine.

(3) The Chairperson of the Committee shall be appointed by the Commission and the Vice-Chairperson shall be elected by the members from amongst themselves.

(4) Subject to subsection (5) a member of a committee shall hold office for such period as the Commission shall determine.

(5) A member shall be paid such allowances as the Committee may, with the approval of the Commission, determine.

(6) The Committee shall meet for the transaction of business at such places and times as the Chairperson of the Committee may determine.

(7) The quorum at any meeting of the Committee shall be one-half of the members of the committee.

(8) There shall preside at any meeting of the Committee—

(a) the Chairperson;

(b) in the absence of the chairperson, the Vice-Chairperson;
or

(c) in the absence of both the Chairperson and the Vice-Chairperson, such member as the members present may elect from their number for the purposes of that meeting.

(9) The determination of any matter before the Committee shall be according to the votes of the majority of the members present and considering the matter.

(10) The Committee may invite any person whose presence in its opinion is desirable to attend and to participate in the deliberations of a meeting of the committee but such person shall have no vote.

(11) A committee shall cause minutes to be kept of the proceedings of every meeting of a committee.

(12) The Commission shall assign persons employed in the Commission to perform such secretarial and administrative functions in connection with a committee as may be necessary for the performance of its functions.

Assignment
of powers
and duties by
Commission

112. (1) The Commission may—

- (a) delegate any of the Commission's powers under this Act, excluding the powers to make any regulations, to prescribe anything under this Act or to make an appointment under this Act or any other law, to a member, employee or officer of the Commission; or
- (b) instruct a member, employee or officer of the Commission to perform any of the Commission's duties under this Act or any other law.

(2) A delegation or instruction made under subsection (1)—

- (a) shall be subject to any limitations and conditions the Commission may impose; and
- (b) does not prevent the Commission from exercising or performing the assigned power or duty.

Assignment
of powers
and duties
by Director
or Elections

113. (1) The Director of Elections may—

- (a) delegate any of the Director of Election's powers under this Act or any other law, to an employee or officer of the Commission; or
- (b) instruct an employee or officer of the Commission to perform any of the Director of Elections duties under this Act or any other law.

(2) Subsection (2) of section *one hundred and eleven*, with the necessary modification, shall apply to a delegation or instruction of the Director of Elections under subsection (1).

Printing,
manufacture,
use,
removal etc
of election
material

114. The Commission may authorise—

- (a) the printing, manufacture or supply of any voting or election material;
- (b) the use of the voters' roll or any voting or election material for a purpose other than an election purpose; or
- (c) the removal or destruction of any voting or election material.

- 115.** (1) The Commission shall own all voting and election materials used for, provided by it in, an election. Ownership of voting and election materials and disposal
- (2) Unless the High Court orders otherwise, the Commission may dispose of the voting and election materials used in a particular election six months after the date on which the final result of the election was declared, in the manner directed by the Commission.
- 116.** Any mistake in the certified segment of the voters' roll under this Act shall not invalidate that vote's roll. Effect of certain irregularities
- 117.** Where this Act requires that documents be publicised, or made available for inspection or copying, the Commission shall endeavour to also publicise or make available those documents by way of electronic technology. Inspection and copying of documents
- 118.** The Commission, a member, employee and officer of the Commission, election officer or a person with whom the Commission has contracted to work for the Commission shall not be liable for any loss suffered by any person as a result of any act performed or omitted to be done in good faith in the course of exercising a power or performing a duty assigned by or under this Act. Limitation of liability
- 119.** Whenever a person has become subject to any incapacity under this Act by reason of a conviction or by reason of any declaration or report of any court, and any witness who gave evidence against such person upon the proceeding for such conviction, declaration or report is convicted of perjury in respect of that evidence, such person may apply to the High Court which, if satisfied that the conviction, declaration or report, so far as it concerns that person, was based upon perjured evidence, may order that, that person's incapacity shall from that time cease, and the same shall cease accordingly. When incapacity may be removed
- 120.** No person who has voted at an election shall in any proceedings, whether brought under this Act or otherwise, be required, to state for whom the person voted for. No person required to state how person voted
- 121.** Upon any charge of a corrupt practice or an illegal practice, or any other offence against this Act, alleged to have been committed at or in connection with an election, the certificate of a returning officer that the election mentioned therein was being or had been held shall be sufficient evidence of the fact that such election was being or had been held. Evidence as to holding of election
- 122.** No misnomer or any inaccurate description of any person or place in any register, nomination paper, notice or other document required for the purposes of this Act shall affect the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood. Validation of certain documents

Powers of
officer

123. (1) An officer may, during the campaign period and on polling day, enter any area, place and premises in which the officer reasonably believes there is being, or had been carried on, an activity that is an offence under this Act, except that an officer shall not enter into a private dwelling without the consent of the occupant or the authority of a court warrant.

(2) An officer may request any information from any person who appears to have custody or control of any material or thing which the officer reasonably believes is being used, or was intended to be used or is likely to be used, to commit an offence under this Act.

(3) An officer may seize or detain any material or thing where the officer has reasonable ground to believe that the material or thing is being used, was intended to be used or is likely to be used, to commit an offence under this Act.

Obstruction
of officer

124. (1) A person shall be guilty of an offence if that person—
(a) wilfully delays or obstructs an officer in the carrying out of that officer's duties and powers under this Act; or
(b) assaults an officer in the lawful exercise of that officers' duties and power under this Act.

(2) Any person guilty of an offence under subsection (1), shall be liable, upon conviction, to a fine not exceeding seven thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

Power of
arrest

125. (1) A police officer may, without warrant, arrest any person and keep that person in custody where—

(a) he person is found committing an offence or is reasonably suspected of having committed an offence under this Act;
or

(b) upon being requested by the police officer, the person wilfully fails or refuses to furnish that person's name, address or other relevant information to the satisfaction of police officer; and

(c) the police officer, considers it necessary for a free and fair election; and has reasonable grounds to believed that unless arrested, the person shall—

(i) escape or cause unreasonable delay to or trouble during or for, the election;

(ii) interfere with witnesses; or

(iii) tamper with or destroy relevant evidence or material.

(2) Any person arrested under subsection (1), shall be taken before a court within forty-eight hours, and shall not be detained for longer than is reasonably necessary for the purpose.

- 126.** An officer shall not be liable in respect of any act done or omitted to be done in good faith, in the exercise of that officer's duties and powers under this Act or any other written law. Immunity of officer
- 127.** A person shall not be guilty of an offence under this Act, if that person proves to the satisfaction of the court that the act constituting the offence was done without that person's knowledge, consent or connivance or that the person tried to prevent the commission of the offence having regard to all the circumstances of the case. General defence
- 128.** Except where otherwise expressly provided in this Act, any person who is convicted of an offence under this Act shall be liable upon conviction— General penalty
- (a) for a first offence to a fine not exceeding twenty thousand penalty units or to a term of imprisonment not exceeding five years, or to both;
 - (b) for a second or subsequent offence to a fine not exceeding thirty thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.
- 129.** (1) Subject to the provisions of the Constitution and of this Act, the Commission may, by statutory instrument, make regulations providing for the registration of voters for the purposes of elections and for the procedure and manner of conducting elections; separate regulations may be made in respect of each category of elections. Regulatory powers of Commission
- (2) Without prejudice to the generality of subsection (1), the Commission may, by statutory instrument, make regulations providing for all or any of the following matters:
- (a) the registration of voters;
 - (b) the preparation of, and the form of, registers to be used in the registration of voters;
 - (c) the manner of ascertaining whether persons applying for registration as voters are qualified for registrations or for their inclusion in a register for a particular constituency;
 - (d) the making and determination of appeals, claims and objections with respect to the registration of voters;
 - (e) the correction, amendment and certification of registers of voters;
 - (f) the manner in which the name of any person may be deleted from a register of voters, the transfer of the names of persons from the register of voters of one polling district to that of another polling district and the restoration of the name of a registered voter;
 - (g) the manner and form for nomination of candidates for any election that a candidate at a direct election for the National Assembly is the authorised candidate of a political party;
 - (h) the making and determination of appeals against the rejection of nominations by a returning officer;

- (i) the publication of the names of candidates whose nominations are accepted;
- (j) the payment of election fees by candidates, and the circumstances in which such fees are to be returned.
- (k) the use of symbols at an election;
- (l) the manner and procedure of voting at an election;
- (m) the manner of ascertaining the identity of persons wishing to vote at elections and whether such persons are qualified to vote;
- (n) the administering of oaths or affirmations by election officers in respect of such matters as may be prescribed;
- (o) the procedure to be followed at the conclusion of a poll in an election;
- (p) for the purpose of declaring any candidate duly elected, the procedure to be followed where there is an equality of votes between candidates in an election for members of the National Assembly;
- (q) the procedure to be followed where only one person is duly nominated for election to the officer of President, or in a constituency for election to the National Assembly;
- (r) the declaration, notification and publication of the results of an election;
- (s) the custody and disposal of nomination papers, ballot papers, records, documents or other things relating to the registration of voters and the conduct of elections;
- (t) election expenses and the return of election expenses;
- (u) the notification and publication of any casual vacancy in the elected membership of the National Assembly and the fixing of a date of an election to fill such vacancy;
- (v) the forms and records to be used for any of the purposes of this Act; and
- (w) any matter to be prescribed by or under this Act.

(3) Before making any regulations which make any separate or distinct provision in respect of the functions of the Returning Officer for the election of a President, the Commission shall consult the Returning Officer.

(4) Regulations under this section may provide in respect of any contravention thereof that the offender shall be liable to a fine not exceeding five thousand penalty units or to a term of imprisonment not exceeding two years, or to both.

(5) No prosecution for an offence against this Act shall be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.

SCHEDULE

(Section 21)

OATH/AFFIRMATION OF ZAMBIAN CITIZENSHIP OF PRESIDENTIAL
CANDIDATE AND PRESIDENTIAL CANDIDATE'S PARENTS

1. I, (full names).....
of(residential address).....
of (postal address).....
and holder of National Registration Card No.....
being a candidate for election to the office of President of the Republic of
Zambia,
1. I was born on
Village/Township/Town
District.....Country.....
2. That I have attained the age of thirty-five years;
3. That I am a Zambian citizen;
4. That both my parents are Zambian citizens by birth/descent;*
That my father (full names).....
was born on.....
Village/Township/Town

District..... Country.....
and that my mother (full names).....
was born on.....
Village/Township/Town.....
District Country.....
5. That I am qualified to be elected as a member of the National Assembly;
6. That I have been domiciled in Zambia for a period of at least twenty years;
and
7. That I have not twice been elected as President.
The above information has come to my knowledge by
Date..... Signature.....

SWORN/AFFIRMED BY THE SAID:

At:

Thisday of20

BEFORE ME:

Notary Public

*Delete whichever is not applicable

(As amended by Act No. 23 of 1996)

