Republic of Namibia
Annotated Statutes

Electoral Act 5 of 2014

(GG 5583)
brought into force, *with the exception of section 97(3) and (4),*
on 17 October 2014 by GN 208/2014 (GG 5593);
section 97(3) and (4) were brought into force on 21 March 2020
by GN 85/2020 (GG 7149)

ACT

To provide for the establishment and constitution of the Electoral Commission of Namibia and its powers and functions; to provide for the registration of voters, nomination of candidates, conduct of the election of persons to the office of President, conduct of the election of members of the National Assembly, conduct of the election of members of regional councils and local authority councils; to provide for the holding of referenda; to provide for the registration and deregistration of political parties and the funding of political parties and organizations; to provide for the establishment of electoral tribunals and the Electoral Court and their powers and functions; and to provide for incidental matters.

(Signed by the President on 19 September 2014)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

[The statement above normally appears below the ARRANGEMENT OF SECTIONS, but it appears above the ARRANGEMENT OF SECTIONS in the Government Gazette publishing this Act.]

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CHAPTER 1
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Definitions and interpretation

1. (1) In this Act, unless the context otherwise indicates -

"auditor" means a person registered as an auditor under section 23(2) of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951);

"accredited observer" means a person who has been accredited as such as contemplated in section 55(2) or 56;

"applicant", in relation to -

(a) the registration of voters, means a person who in terms of section 26(1), 38(1) or 39(1) applies or applied for registration;

(b) the registration of a political party, means -

(i) the person who on behalf of the political party or organisation applies or applied for the registration; or

(ii) the political party or organisation;

"application", in so far as a provision in which it is used, is applied in relation to any applicant who -

(a) is entitled to vote -

(i) in any election of the President, members of the National Assembly and any member of a regional council;

(ii) in any election of members of a local authority council; or

(iii) in a referendum,

means the application form to be used in respect of the elections referred to in paragraphs (1) and (ii), and the referendum referred to in paragraph (iii), completed in respect of the applicant in accordance with section 26(2), 38(1) or 39(2);

(b) applied for registration as a political party or an organisation, means the application form concerned to be used;

"authorisation ballot paper" means a ballot paper referred to in section 98(5)(a);

"authorisation ballot paper envelope" means a blank envelope referred to in section 98(5)(c);

"authorisation envelope" means an envelope referred to in section 98(4)(b) in which a written authorisation referred to in subsection (2) of that section is placed;

"authorised representative" means, in relation to -

(a) a political party, the person referred to in section 136(2)(e)(iii);

(b) an organisation, the person referred to in section 148(2)(e)(iii);

"ballot box" means the storage instrument provided to a presiding officer for the taking of a poll and for storing used and unused ballots;

"banking institution" means a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);

"Bill of Fundamental Voters' Rights and Duties" means the Bill of Fundamental Voters' Rights and Duties contained in Schedule 2;

"by-election" means an election through which a vacancy is filled as contemplated in section 63(2);

"candidate" means a person whose name appears on the list of nominations approved and published by the Commission in relation to Presidential, National Assembly, regional council or local authority council elections in terms of this Act;

"cast" means -

(a) to deposit a ballot paper into a designated ballot box; or

(b) to record a vote utilising a voting machine;

"Chief Electoral Officer" means the Chief Electoral and Referenda Officer appointed in terms of section 17(1);

"chief regional officer" means a chief regional officer of elections referred to in section 19;

"Commission" means the Electoral Commission of Namibia contemplated in section 2(1);

"committee" means a committee established by the Commission as contemplated in section 13;

"completed", "complete" and "completing" where they occur in the definitions of "application" and "voter registration card" and in sections 26(2), 28(1) and 30(1)(a) and (b)(1) must be so construed as to include any form or method to capture onto an electronic,

digital or any similar voter registration system any information required by this Act or to capture the signature of any applicant in electronic, digital or any similar form, as the case may be;

"constituency", in relation to any election of any member of a regional council means a constituency referred to in section 4(2) of the Regional Councils Act, into which any region has been divided;

"continuous registration" means the process of registration of voters in accordance with section 39;

"counting agent" means a counting agent referred to in section 67(1);

"counting officer" means a counting officer referred to in section 65(1)(b);

"days" for purpose of this Act -

(a) means, for the purposes of the performance of any function in terms of this Act, days as defined under section 4 of the Interpretation of Laws Proclamation, 1920 (Proclamation No. 37 of 1920);

(b) where any days are stipulated in relation to any election application, must be construed in terms of the particular rules of the Court before which the application is brought,

and "day" has a corresponding meaning;

"director" means a director appointed in terms of section 18(1)(a);

"Directorate" means the Directorate of Elections and Referenda contemplated in section 16(1);

"election" means an election of the President, members of the National Assembly, any member of a regional council or a local authority council conducted under this Act, as the context may require;

"election agent" means an election agent referred to in section 66(1);

"election application" means either -

(a) in relation to a pre-election matter, a complaint regarding any conduct in contravention of this Act; or

(b) in relation to a post-election matter, a complaint regarding any conduct in contravention of this Act,

and which is not construed as an application in terms of civil proceedings before a court;

"Electoral Court" means the Electoral Court established by section 167;

"electoral observer mission" means an observer mission referred to in section 55(1)(b) (ii);

"electoral tribunal" means an electoral tribunal established under section 162(1);

"general election" means a general election contemplated in section 63(1);

"geographical area" means a geographical area contemplated in section 162(1);

"high party political profile" means, in relation to a person, a person who is identified as having strong party political influence, whether or not the person occupies an office in a political party or an organisation;

"local authority council" means a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

"local authority area", in relation to any election of any member of a local authority council, means a local authority area as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

"local authority voters' register" means the local authority voters' register referred to in section 36(1)(a)(ii) for a local authority area;

"magistrate" means a magistrate as defined in section 1 of the Magistrates Act, 2003 (Act No. 3 of 2003);

"national voters' register" means the national voters' register referred to in section 36(1) (a)(1) for a constituency;

"nomination day", in relation to any election concerned, means the day determined under section 64(1)(a);

"Occurrence Book" means an Occurrence Book contemplated in section 204;

"official mark" means the official mark referred to in section 100(2);

"party list" -

(a) in relation to any election of members of the National Assembly, means a list of candidates contemplated in Article 49 of the Namibian Constitution and submitted by a political party under section 77(1);

(b) in relation to any election of members of a local authority council required to be held on party lists under the Local Authorities Act, 1992, means a list of candidates submitted by a political party or organisation under section 86(1);

"polling booth", includes any place or surface in or at a polling station that is screened off in a way that voters may record their votes in secrecy;

"polling day", in relation to -

(a) any election concerned, means any day determined under section 64(1)(b) or deemed to be so determined under subsection (6) thereof for voting;

(b) any referendum concerned, means any day determined under section 119(5) for voting;

"polling officer" means a polling officer appointed for a polling station under section 65(1)(d);

"polling station" means a polling station established under section 89, and includes a mobile polling station if the context so requires;

"post-election" means the period during and after polling day;

"pre-election" means the period prior to polling day;

"prescribe" means prescribe by regulation;

"presiding officer" means a presiding officer appointed under section 65(1)(c);

"provisional local authority voters' register" means the provisional local authority voters' register referred to in section 31(a)(ii) for a local authority area;

"provisional national voters' register" means the provisional national voters' register referred to in section 31(a)(1) for a constituency;

"provisional voters' register" means the provisional national voters register or the provisional local authority voters' register;

"Public Service Act" means the Public Service Act, 1995 (Act No. 13 of 1995);

"Public Service Commission" means the Public Service Commission established by section 2(1) of the Public Service Commission Act, 1990 (Act No. 2 of 1990);

"referendum" means a referendum held pursuant to a proclamation issued under section 119;

"referendum question" means a question specified in a proclamation under section 119 to be submitted to voters to express an opinion;

"referendum result" means the declared outcome of a referendum published under section 13(2);

"region" means any region referred to in section 2 of the Regional Councils Act;

"regional council" means a regional council as defined in section 1 of the Regional Councils Act;

"Regional Councils Act" means the Regional Councils Act, 1992 (Act No. 22 of 1992);

"regional governor" means a regional governor appointed under Article 110(A) of the Namibian Constitution and referred to in section 2(1) of the Special Advisors and Regional Governors Appointment Act, 1990 (Act No. 6 of 1990);

"register" means -

(a) to register as a voter for an election or for a referendum; or

(b) to register as a political party or an organisation for purposes of this Act; or

(c) a register referred to in section 137(5) or 149(5),

and "registration" has a corresponding meaning;

"registered organisation" means an organisation registered under section 149, and includes an association registered as such;

"registered political party" means a political party registered as such under section 137;

"registration officer" means a registration officer appointed under section 24(1)(b);

"represented political party" means a political party that is represented in Parliament;

"regulation" means a regulation made or deemed to have been made under this Act;

"repealed Act" means the Electoral Act, 1992 (Act No. 24 of 1992) repealed by section 207;

"returning officer" means a returning officer appointed under section 65(1)(a);

"Secretary of the National Assembly" means the person appointed or designated as such as contemplated in Article 52(1) of the Namibian Constitution;

"Selection Committee" means the Selection Committee established by section 5(1);

"sign" and "signing" where they occur in sections 26(2)(d)(1) and (ii) and 30(1)(b)(1) and (c) must be so construed as to include any form or method to capture onto an electronic, digital or any similar voter registration system any information required by this Act or to capture the signature of any applicant in electronic, digital or any similar form, as the case may be;

"staff member" means any staff member as defined in section 1 of the Public Service Act, and where it refers to any staff member of the Directorate, includes the Chief Electoral Officer, a director, a chief regional officer and the other staff members or temporary staff members appointed as contemplated in section 18(1)(a);

"State Revenue Fund" means the State Revenue Fund referred to in Article 125(1) of the Namibian Constitution;

"supervisor of registration" means a supervisor of registration appointed under section 24(1)(a);

"symbol", includes an insignia, a marking or a motto;

"temporary registration point" means a temporary registration point referred to in section 23;

"tendered vote" means a vote referred to in section 98(6);

"this Act", includes any regulation;

"vote" means to cast or to record a vote -

(a) for a political party, organisation or a candidate in an election, as the context may require; or

(b) in favour of or against a referendum question,

and "voting" has a corresponding meaning;

"voter" -

(a) in relation to any election of the President, members of the National Assembly or any member of a regional council, means a person whose name is included in the national voters' register;

(b) in relation to any election of members of a local authority council, means a person whose name is included in the local authority voters' register; or

(c) in relation to a referendum, means a person whose name is included in the national voters' register,

and who is entitled and qualified to vote in the election or referendum concerned, and "registered voter" has a corresponding meaning;

"voter's register" means the national voters' register or the local authority voters' register, as the case may be;

"voter registration card" in so far as a provision in which it is used is applied in relation to any person who -

(a) is entitled and qualified to vote in any election of the President, members of the National Assembly and any member of a regional council;

(b) is entitled and qualified to vote in any election of members of a local authority council; or

(c) is entitled and qualified to vote in a referendum,

means the original voter registration card to be used in an election referred to in paragraph (a) or (b) or a referendum referred to in paragraph (c), completed in respect of and issued to the person in terms of section 30 and complying with subsection (2), and a "duplicate voter registration card" has a corresponding meaning;

"voter registration number", in relation to a voter registration card concerned, means the distinctive serial number appearing in accordance with subsection (2) on the voter registration card, and "number" has a corresponding meaning; and

"voting machine" means any machine or apparatus, whether operated electronically, digitally or in any similar manner or otherwise, used for the giving and recording of votes.

(2) A person interpreting or applying this Act must -

(a) do so in a manner that gives effect to the rights, freedoms and responsibilities contained in the Namibian Constitution; and

(b) take into account the Bill of Fundamental Voters' Rights and Duties and any other appropriate law.

(3) For the purposes of any election or appointment into office which requires the making of an oath or affirmation and despite the date of election or appointment the assumption of office and performance of functions by the elected or appointed person is only upon the swearing in of such person.

CHAPTER 2
ELECTORAL COMMISSION OF NAMIBIA

Continued existence of Electoral Commission

2. (1) The Electoral Commission established by section 3 of the repealed Act, continues to exist as the Electoral Commission of Namibia, the shortened form of which is the "ECN", and which may be used as an alternative to the name Electoral Commission of Namibia.

(2) Subject to this Act, the members of the Electoral Commission referred to in subsection (1), who are in office at the date of commencement of this Act are deemed to have been appointed in terms of this Act and must continue to be in office until their terms of office expire.

(3) The Commission must report to the National Assembly as contemplated in this Act.

(4) The Commission is a juristic person which is capable, in its own name, of suing and of being sued and, subject to this Act, of exercising powers and performing all the acts that a juristic person may lawfully perform.

(5) The Commission is not subject to the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006).

[Act 2 of 2006 was re-named as the "Public Enterprises Governance Act" by Act 8 of 2015. It has been replaced by the Public Enterprises Governance Act 1 of 2019.]

Objectives of Commission

3. The objectives of the Commission are to organise, direct, supervise, manage and control the conduct of elections and referenda in a free, fair, independent, credible, transparent and impartial manner as well as to strengthen constitutional democracy and to promote democratic electoral and referenda processes.

Powers and functions of Commission

4. (1) Subject to the Namibian Constitution and this Act, and in particular with due regard to Schedule 2 and any other law, the Commission -

(a) is the exclusive authority to direct, supervise, manage and control in a fair and impartial manner and without fear, favour or prejudice any elections and referenda under this Act; and

(b) must exercise and perform its powers and functions, subject to section 2(3), independent of any direction or interference by any other authority or any person.

(2) Without derogating from the generality of subsection (1), the Commission has further powers and functions to -

(a) supervise, direct and control the registration of voters for the purposes of any election or referendum referred to in subsection (1);

(b) supervise the preparation, publication and maintenance of a national voters' register and local authority voters' register;

(c) supervise, direct and control the registration of political parties and organisations;

(d) supervise, direct and control the conduct of elections and referenda referred to in subsection (1);

(e) supervise, direct, control and promote voter and civic education in respect of elections and referenda, including the cooperation with educational or other bodies or institutions with a view to the provision of instruction to or the training of persons in electoral and related matters;

(f) supervise, direct and control electoral observers;

(g) establish and maintain liaison and cooperation with political parties, the media and the public;

(h) undertake and promote research into electoral matters;

(i) develop and promote the development of electoral expertise and technology in all spheres of government;

(j) promote knowledge of sound and democratic electoral processes;

(k) issue and enforce any code of conduct provided for in this Act;

(l) supervise and control the disclosure and dissemination of information regarding electoral matters and establish and maintain the necessary facilities for collecting and disseminating the information;

(m) secure in the electoral and referenda processes the representation of the diverse social and cultural groups in Namibia and seek their cooperation;

(n) create its own organisational structure, to allow its leadership to take full control of all its operations to strengthen areas where operational effectiveness is lacking; and

(o) exercise and perform any other powers and functions conferred and imposed upon it by or under this Act or any other law or which are necessary or expedient for purposes of achieving the objects of this Act or any other law.

Establishment, constitution and meetings of Selection Committee

5. (1) There is established a Selection Committee consisting of -

(a) the Chairperson of the Public Service Commission, who is the Chairperson of the Selection Committee;

(b) the Chairperson of the Council of the Law Society of Namibia referred to in section 45 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995), who is the deputy Chairperson of the Selection Committee;

(c) the Chairman of the Public Accountants' and Auditors' Board referred to in section 6 of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951);

(d) the Registrar of the High Court of Namibia; and

(e) the Director of the Namibia Qualifications Authority appointed in terms of the Namibia Qualifications Authority Act, 1996 (Act No. 29 of 1996).

(2) Subject to subsections (3) and (4), if the Chairperson of the Public Service Commission, the Chairperson of the Council of the Law Society, the Chairman of the Public Accountants' and Auditors' Board, the Registrar of the High Court of Namibia, or the Director of the Namibia Qualifications Authority, is unable to attend a meeting of the Selection Committee, either -

(a) a member of the Public Service Commission designated by the Commission, the Vice-Chairperson of the Council of the Law Society, the Vice-Chairman of the

Public Accountants' and Auditors' Board, the Assistant Registrar of the High Court of Namibia designated by the Registrar, or the Deputy Director of the Namibia Qualifications Authority; or

(b) a person appointed to act as such in the absence of such person,

must attend the meeting of the Selection Committee in the place of the member who is unable to attend the meeting concerned.

(3) All five members of the Selection Committee constitute a quorum for the purposes of any meeting of the Committee.

(4) The Chairperson of the Selection Committee must table, for approval by the Committee, the rules and procedures to be followed at meetings of the Committee.

(5) Despite the fact that the Secretary of the National Assembly is not a member of the Selection Committee, he or she must act as the secretary at meetings of the Committee, but has no right to vote.

Constitution of Commission and appointment of members of Commission

6. (1) Subject to section 2(1) and (2) and this section, the Commission consists of five members appointed by the President with the approval of the National Assembly upon nomination by the President.

(2) At least two members of the Commission must be women.

(3) At least four months prior to the date on which the terms of office of the members of the Commission expire, the Chief Electoral Officer must inform the Secretary of the National Assembly to invite by notice in the *Gazette* and in at least two daily newspapers circulating throughout Namibia any person who complies with the qualifications of and criteria for appointment as a member of the Commission, to apply in writing for appointment as a member of the Commission.

(4) A notice referred to in subsection (3) may be in the form determined by the Secretary of the National Assembly and must stipulate -

(a) the form of an application for the appointment, which form must, amongst other things, provide for the furnishing of information relating to -

(i) the citizenship of the applicant;

(ii) the academic qualifications obtained by the applicant;

(iii) the age of the applicant;

(iv) whether the applicant has a criminal record;

(v) whether the applicant is an unrehabilitated insolvent;

(vi) whether the applicant is of unsound mind or mentally disordered or defective and has been so declared by a competent court;

(vii) whether the applicant is permanently employed by the State;

(viii) whether the applicant is a member of the National Assembly, National Council, a regional council or a local authority council; or

(ix) whether the applicant is an office-bearer of a political party, an active politician or has a high party political profile;

(b) the place where or the person to whom an application for the appointment must be submitted;

(c) the closing date for the submission of an application for the appointment, which date may not be longer than 14 days after the date of publication of the notice concerned;

(d) the requirement that at least two members of the Commission must be women;

(e) the qualifications of and criteria for appointment as a member of the Commission; and

(f) the other particulars or documents, as the Secretary of the National Assembly may determine, which must accompany an application for the appointment.

(5) The Secretary of the National Assembly must convene a meeting of the Selection Committee to be held on or at the date, time, and venue as the Secretary may determine, which meeting must be held not later than seven days after the closing date for the submission of applications determined under subsection (4)(c).

(6) At the meeting convened in terms of subsection (5) the Selection Committee must -

(a) scrutinise the applications submitted under subsection (3); and

(b) from the applications referred to in paragraph (a), but subject to the further provisions of this section, select not less than 10 and not more than 20 applicants to be interviewed by the Selection Committee at the meeting to be convened in terms of subsection (10).

(7) Only persons who comply with the qualifications and other criteria referred to in section 7 may be selected by the Selection Committee in terms of subsection (6)(b).

(8) If less than 10 applications are received by the Selection Committee, and the Secretary of the National Assembly is of the opinion that not sufficient applications have been received to comply with the requirement that at least two members of the Commission must be women, the Secretary must -

[The term "not sufficient" should be "insufficient".]

(a) with the necessary changes, in accordance with subsection (3), repeat the invitation for applications for appointment as members of the Commission to be submitted within a period of seven days from the date of the publication of the invitation; and

(b) after having secured sufficient applications, with the necessary changes, and in accordance with subsection (5), convene a meeting of the Selection Committee.

(9) Despite subsection (6)(b), if after the invitation for applications referred to in subsection (8) -

(a) less than 10 applications are received; or

[The word "less" should be "fewer" to be grammatically correct.]

(b) sufficient number of applications required to comply with the women requirement referred to in subsection (4)(d) has not been secured,

[The article "a" should appear before the word "sufficient".]

the Secretary of the National Assembly must convene a meeting of the Selection Committee in accordance with subsection (5).

(10) The Secretary of the National Assembly must by notice in the *Gazette* convene a meeting of the Selection Committee, which meeting must take place not less than 20 days and not more than 30 days after the closing date for the submission of applications determined under subsection (4)(c), for the purpose of selecting suitable candidates from amongst the applicants selected in terms of subsection (6)(b) to be interviewed by the Selection Committee for appointment as members of the Commission.

(11) The notice published in terms of subsection (10) must contain -

(a) the names, sex and dates of birth of the applicants referred to in subsection (6)(b) to be interviewed by the Selection Committee; and

(b) the date, time and venue as the Secretary of the National Assembly may determine for the meeting of the Selection Committee.

(12) The meeting of the Selection Committee convened in terms of subsection (10) is open to the public and the media.

(13) The Selection Committee must -

(a) at the meeting convened in terms of subsection (10), interview the applicants referred to in subsection (11);

(b) when interviewing the applicants, act in accordance with the principles of transparency and openness; and

(c) make its recommendations in terms of subsection (16) with due regard to -

(i) suitability, qualifications and experience of an applicant;

(ii) the qualifications of and criteria for appointment as a member of the Commission; and

(iii) the objections, if any, lodged in terms of subsection (14).

(14) A registered voter -

(a) may, at any time before the commencement of the meeting of the Selection Committee convened in terms of subsection (10), in writing lodge with the secretary of the Selection Committee an objection against the appointment of any person as a member of the Commission; and

(b) must, if so directed by the Selection Committee in writing, appear before the Selection Committee, where the voter is, in the manner determined by the Chairperson of the Selection Committee, subject to questioning by the members of the Selection Committee and by the person against whose appointment he or she objected.

(15) An applicant referred to in subsection (6)(b) who -

(a) fails to attend the meeting convened in terms of subsection (10); or

(b) at the meeting, fails to truthfully reply to any reasonable question put to him or her by the Selection Committee or by any other person entitled to examine the person at the meeting,

is disqualified from being recommended in terms of subsection (16) as an applicant suitable for appointment as a member of the Commission.

(16) The Selection Committee must, within 10 days after the closing of the meeting convened in terms of subsection (10), in writing recommend to the President -

(a) not less than eight suitable applicants; or

(b) if subsection (9) has been applied, any eight or less than eight but sufficient number of suitable applicants,

to be considered for appointment as members of the Commission under subsection (1).

(17) The President must, within seven days after the date on which the recommendations have been submitted to him or her under subsection (16) -

(a) nominate five applicants for approval by the National Assembly as Chairperson of the Commission and members of the Commission; and

(b) indicate the respective terms of office of the members concerned as contemplated in section 10.

(18) If the National Assembly is not in session when the nominations are to be submitted to it, the President must, by proclamation, direct the National Assembly to sit for a special session as contemplated in Article 62(1)(c) of the Namibian Constitution.

(19) In the event of an approval by the National Assembly of the nomination for approval as contemplated in subsection (17), the Speaker must, within three days of such approval notify the President in writing of the approval of the nomination for appointment.

(20) In the event the National Assembly disapproved the nomination for appointment -

(a) as Chairperson of the Commission; or

(c) as member of the Commission,

[There is no subparagraph (b) in the *Government Gazette*.]

as contemplated in subsection (17), the Speaker must within three days notify the President in writing of the disapproval, and the President may -

(i) nominate another applicant as Chairperson or member of the Commission from the names recommended to the President; or

(ii) request for a recommendation of one or more names from the Selection Committee for his or her consideration for nomination to the National Assembly,

until the President secured the approval of the National Assembly.

[The verb "secured" should be "secures" to fit the meaning of the provision.]

(21) The President must, within 30 days of receipt of the notice of approval of the National Assembly under subsection (19), announce by proclamation the appointment of the members of the Commission.

(22) In the event that there exists a vacancy on the Commission and the process of appointing one or more Commissioners is required, this section applies with the necessary changes, and the Selection Committee is entitled to determine the number of suitable candidates for recommendation to the President.

(23) If -

(a) the Secretary of the National Assembly, for any reason, fails to comply with subsection (3) or (5);

(b) the Selection Committee, for any reason, fails to comply with subsection (16); or

(c) for any reason, any of the meetings convened in terms of subsection (5) or (10), does not take place or is not finalised,

the President may, on the recommendation of the Standing Committee on Privileges of the National Assembly, appoint the members of the Commission as contemplated in subsection (1).

Qualifications of and criteria for appointment as member of Commission

7. (1) Subject to subsection (2), a person is not qualified for appointment as member of the Commission -

(a) unless he or she is -

(i) a Namibian citizen;

(ii) in possession of at least a three year tertiary qualification or a level seven Namibia Qualifications Authority qualification; and

(iii) at least 21 years of age, but the Chairperson of the Commission must be at least 35 years of age;

(b) if he or she is -

(i) a person contemplated in Article 47(1)(a), (b), (c), (d) and (f) of the Namibian Constitution; or

(ii) an office-bearer of a political party, an active politician or has a high party political profile.

(2) The Selection Committee, in respect of an applicant for appointment as a member of the Commission, must have regard to -

(a) the standing of the applicant in society;

(b) the legal knowledge and experience of the applicant;

(c) the knowledge of the applicant in electoral matters;

(d) the standard of professionalism of the applicant;

(e) the management capacity of the applicant; and

(f) the integrity, political impartiality and mediation capacity of the applicant.

(3) A person who is permanently employed by the Public Service or any other institution and who has been appointed as Chairperson of the Commission is deemed to have resigned from the Public Service or such institution with effect from the date on which the person is so appointed.

(4) A person who in terms of this section is disqualified for appointment as member of the Commission and who, while he or she is so disqualified and knowing or having reasonable grounds for knowing that he or she is so disqualified, sits as a member of the Commission, is liable to a penalty of N$500 for each day on which he or she so sits, which may be recovered by the Commission by action in any competent court for the benefit of the funds of the Commission.

Conduct of members of Commission and disclosure of interest

8. (1) The Chairperson of the Commission must serve as such to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office, unless specifically authorised thereto in writing by the President.

(2) A member of the Commission must serve impartially and independently and exercise his or her powers and carry out and perform his or her functions without fear, favour or prejudice.

(3) A member of the Commission may not -

(a) by his or her membership, association, statement, conduct or in any other manner place in jeopardy his or her actual or perceived independence, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission;

(b) participate in any investigation or decision concerning a matter in respect of which the member has a financial or other personal interest;

(c) make private use of or profit from any confidential information obtained in the exercise of his or her powers or the performance of his or her functions as a member;

(d) whether directly or indirectly, in any manner give support to, or oppose, any party or candidate participating in an election, or any of the issues in contention between parties or candidates;

(e) divulge any information referred to in paragraph (d) to any third party, save in the course and scope of his or her official functions; or

(f) during his or her term of office be eligible for appointment or nomination to any political office.

(4) A member of the Commission must in writing disclose to the Speaker of the National Assembly any direct or indirect financial interest which the member himself or herself, his or her spouse, partner or family member has or acquires in any business carried on in Namibia or elsewhere or in any body corporate carrying on any business in Namibia or elsewhere.

(5) If at any stage during the course of proceedings before the Commission it appears that any member thereof has or may have an interest in any matter which is before the Commission for discussion and determination which may cause a conflict of interest to arise on the part of the member -

(a) the member concerned must forthwith and fully disclose the nature of his or her interest to the Commission;

(b) the member concerned must withdraw from any further discussion or determination by the Commission of that matter and leave the meeting so as to enable the remaining members to discuss the matter and determine whether the member concerned is precluded from participating in the meeting by reason of a conflict of interests; and

(c) the disclosure and the decision taken by the remaining members regarding the determination are recorded in the minutes of the meeting.

(6) If any member of the Commission -

(a) fails to disclose any interest as required by subsection (5); and

(b) contrary to subsection (5)(a) or (b), is present at a meeting of the Commission, or in any matter whatsoever, participates in the proceedings of the Commission in relation to the matter,

the member commits an offence and the proceedings may be reviewed and varied or set aside by the Commission.

Oath and affirmation of office by members of Commission

9. (1) Before formally assuming office, a Commissioner must make the following oath or affirmation which is administered by the Judge President of the High Court:

Oath/Affirmation of Commissioners

"I, ... do hereby swear/solemnly affirm that I will: diligently exercise and perform the powers and functions conferred and imposed upon me as a Commissioner of the Electoral Commission of Namibia;

meticulously direct, supervise, manage and control in a free, fair, credible, and impartial manner, without fear, favour or prejudice, any elections and referenda; and to the best of my ability, defend and uphold the rights of all persons to vote and to participate in political activities as guaranteed by the Namibian Constitution.

So help me God/I so affirm.".

Term of office of members of Commission

10. (1) Subject to this section and section 11(2), a member of the Commission holds office, with effect from the date of his or her appointment under section 6, for a period not exceeding five years.

(2) A member of the Commission may apply for and is eligible for reappointment as contemplated in section 6, but a member may not be appointed for more than two terms of office.

(3) Despite subsection (1) -

(a) two members of the first Commission appointed after the commencement of this Act, but after the expiry of the term of the existing members, must serve a term of office of two years and six months; and

(b) the other two members and the Chairperson of the first Commission appointed as contemplated in paragraph (1) must serve a term of 5 years.

(4) Subject to the approval of the National Assembly, the President must, when he or she appoints the members of the first Commission after the commencement of this Act and other members of the Commission thereafter as contemplated in section 6(1), determine the term of office of the member concerned.

(5) The Chairperson of the Commission is appointed in a full-time capacity and the other members of the Commission are appointed in a part-time capacity.

Vacation of office of members of Commission and filling of vacancies

11. (1) Despite section 10(1), a member of the Commission must vacate his or her office if the member -

(a) in writing under his or her hand addressed and delivered to the President resigns from his or her office as a member of the Commission;

(b) is convicted of an offence and sentenced to imprisonment without the option of a fine;

(c) is by reason of his or her physical or mental illness or for any other reason incapable of acting as member of the Commission;

(d) is removed from office by the President as contemplated in subsection (4);

(e) has been absent from three consecutive meetings of the Commission without leave of the Commission; or

(f) is subject to disqualification as stated in section 7.

(2) Any casual vacancy on the Commission caused by the death or vacation of office by any member of the Commission must, with due regard to section 6, be filled for the unexpired portion of the period of office of the member of the Commission who has died or vacated his or her office.

(3) The Chief Electoral Officer must within 14 days after the occurring of a vacancy referred to in subsection (2) inform the Secretary of the National Assembly to invite applications as contemplated in section 6(2).

(4) Subject to subsection (5), the President may remove a member of the Commission with the approval of the National Assembly on the grounds that the member is guilty of neglect of duty or misconduct.

(5) If the question of alleged neglect of duty or misconduct that warrants a removal from office as contemplated in subsection (4) ought to be investigated, the President must direct the Selection Committee to investigate such allegation and give the member an opportunity to be heard and present his or her case, and if after due deliberation the Committee is satisfied that the member is guilty of such neglect or misconduct -

(a) the Committee must recommend to the President that the member be removed from office; and

(b) if the President agrees with the recommendation, the President, with the approval of the National Assembly, must remove the member from office under subsection (4).

Meetings of Commission and decisions

12. (1) Meetings of the Commission are held at the dates, times and places as the Chairperson of the Commission may determine.

(2) The Chairperson of the Commission -

(a) may at any time convene a special meeting of the Commission;

(b) must convene a special meeting of the Commission if requested in writing by at least three members of the Commission.

(3) The Chairperson of the Commission presides at all meetings of the Commission.

(4) If the Chairperson of the Commission is absent from a meeting of the Commission, the members of the Commission present must elect a member from among their number to act as Chairperson at that meeting, and the member who so acts has all the powers and must perform all functions of the Chairperson.

(5) At a meeting of the Commission -

(a) the majority of the members of the Commission constitutes a quorum;

(b) all questions are decided by a majority of votes of the members present and voting; and

(c) the member presiding, in the event of any equality of votes, has a casting vote in addition to his or her deliberative vote.

(6) No decision taken by the Commission or act performed under the authority of the Commission is invalid by reason only of -

(a) a vacancy on the Commission; or

(b) the fact that any person who is not entitled to sit as a member of the Commission sat as a member of the Commission when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the requisite majority of the members of the Commission who were present at the time and entitled to sit as members.

(7) The Commission -

(a) must cause a record to be kept of the proceedings at meetings of the Commission;

(b) may make rules in relation to the holding of, and procedure at, meetings of the Commission;

(c) may invite any person who has expert knowledge of a matter before the Commission for determination, to attend a meeting of the Commission and to take part in discussions in relation to that matter, but the person has no vote.

(8) Despite the fact that the Chief Electoral Officer is not a member of the Commission, he or she must at meetings of the Commission act as the secretary thereof, but does not have a vote.

Committees

13. (1) The Commission may -

(a) from time to time establish such committees as it may consider necessary to investigate and report to it on a matter which is within the purview of the Commission in terms of this Act; and

(b) appoint the persons, including -

(i) persons other than members of the Commission, as it may consider fit to be members of a committee established under paragraph (a);

(ii) the Chairperson of the committee.

(2) A majority of the members of a committee established under subsection (1)(a) constitute a quorum at a meeting thereof.

(3) A committee established under subsection (1)(a) must meet as frequently as its activities demands.

(4) The Commission may at any time dissolve or reconstitute a committee established under this section.

(5) The Commission is not divested or relieved of a power or function which it has delegated or assigned to a committee.

(6) A decision by a committee in the exercise of a power delegated to it is subject to approval by the Commission, and the Commission may at any time vary or set aside the decision.

(7) The Chairperson of the Commission and the Chief Electoral Officer may attend any meeting of a committee and may take part in the proceedings thereof, but they do not have the right to vote.

(8) A decision of a majority of the members of a committee present at a meeting thereof is the decision of the committee and in the event of an equality of votes the person presiding has a casting vote in addition to his or her deliberative vote.

(9) The Chairperson of a committee may -

(a) convene a meeting of a committee;

(b) determine the procedure at meetings of committees.

(10) Members of a committee who are not members of the Commission hold office for the period determined by the Commission at the time of appointment of the members concerned.

(11) Any casual vacancy on a committee caused by the death or vacation of office by any member of the committee other than a member of the Commission must be filled by the Commission for the unexpired portion of the period of office of the member who has died or vacated his or her office, as the case may be.

(12) The Commission may determine the remuneration, allowances and privileges of members of a Committee contemplated in subsection (1)(b)(1).

Conduct of members of committees and disclosure of interest

14. (1) A member of a committee may not -

(a) engage in an activity that may undermine the integrity of the committee;

(b) participate in any investigation or decision concerning a matter in respect of which the member has a financial or other personal interest; or

(c) use any confidential information obtained in the performance of his or her functions as a member to obtain, directly or indirectly, a financial or other advantage for himself or herself or any other person.

(2) A member of a committee who is not a member of the Commission must in writing disclose to the Chairperson of the committee any direct or indirect financial interest which the member has or acquires in any business carried on in Namibia or elsewhere or in any body corporate carrying on any business in Namibia or elsewhere.

(3) A member of a committee who has or acquires any financial or other personal interest, either directly or indirectly, in any matter which is before the committee for discussion and determination must -

(a) immediately and fully disclose the interest to the committee; and

(b) withdraw from any further discussion or determination by the committee of that matter.

Reports by Commission and furnishing of information and particulars

15. (1) Not later than 60 days after the end of June in every year, the Commission must submit to the Speaker of the National Assembly a report in respect of its activities and the activities of committees performed during the preceding year or in respect of any other matter relating to elections and referenda under this Act which it thinks necessary in the public interest to report thereon.

(2) The Speaker of the National Assembly must table within 14 days as from the date on which the report referred to in subsection (1) has been submitted to him or her, the report in the National Assembly or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session, for consideration by the National Assembly.

(3) The Speaker of the National Assembly must as soon as possible after the National Assembly has approved the report as contemplated in subsection (2), submit the approved report to the President for noting.

(4) The Commission must furnish the Speaker of the National Assembly and the President with the particulars and information as the Speaker or the President from time to time in writing require in connection with the activities of the Commission.

Continued existence of Directorate of Elections

16. (1) The Directorate of Elections established by section 11 of the repealed Act, as a component of the Commission continues to exist as the Directorate of Elections and Referenda.

(2) The Directorate must report to the Commission.

Appointment of Chief Electoral and Referenda Officer

17. (1) Subject to subsection (2), the Commission must appoint, subject to the Public Service Act, as the Chief Electoral and Referenda Officer a fit and proper person who complies with the qualifications and criteria referred to in subsection (3), which Chief Electoral Officer is -

(a) the executive officer of the Commission; and

(b) designated as the Permanent Secretary of the Commission as contemplated in Schedule 3 to that Act.

(2) Subject to this Act, the Director appointed in terms of section 11(2) of the repealed Act, continues as Chief Electoral Officer and must exercise, carry out and perform the powers and functions of the Chief Electoral Officer until his or her term of office in terms of the repealed Act, expires.

(3) The Commission must determine the qualifications and other criteria which a person must comply with in order to qualify for selection by the Commission in terms of subsection (7)(b).

(4) At least six months prior to the expiration of office of the Chief Electoral Officer, the Director responsible for staff matters in the Directorate must notify the Chairperson of the Commission to invite by notice in at least two daily newspapers circulating throughout Namibia any person who complies with the qualifications of and criteria for appointment as Chief Electoral Officer, to apply in writing for the appointment.

(5) A notice referred to in subsection (4) may be in the form determined by the Chairperson of the Commission and must stipulate -

(a) the form of an application for the appointment, which form must amongst others provide for the furnishing of information relating to -

(i) the citizenship of the applicant;

(ii) the academic qualifications obtained by the applicant;

(iii) the age of the applicant;

(iv) whether the applicant has a criminal record;

(v) whether the applicant is an unrehabilitated insolvent;

(vi) whether the applicant is of unsound mind or mentally disordered or defective and has been so declared by a competent court;

(vii) whether the applicant is a remunerated member of the public service of Namibia;

(viii) whether the applicant is a member of the National Assembly, National Council, a regional council or a local authority council; or

(ix) whether the applicant is an office-bearer of a political party, an active politician or has a high party political profile;

(b) the place where or the person to whom an application for the appointment must be submitted;

(c) the closing date for the submission of an application for the appointment, which date may not be longer than 14 days after the date of publication of the notice concerned;

(d) the qualifications of and criteria for appointment as Chief Electoral Officer; and

(e) the other particulars or documents, as the Chairperson may determine, which must accompany an application for the appointment.

(6) The Chairperson of the Commission must convene a meeting of the Commission to be held on or at the date, time, and venue as the Chairperson may determine, which meeting must be held not later than seven days after the closing date for the submission of applications determined under subsection (5)(c).

(7) At the meeting convened in terms of subsection (4) the Commission must -

(a) scrutinise the applications referred to therein; and

(b) from the applications referred to in paragraph (a), but subject to the further provisions of this section, select five applicants to be interviewed by the Commission at the meeting to be convened in terms of subsection (9).

(8) The Commission may select in terms of subsection (7)(b) only applicants who comply with the qualifications and other criteria referred to in subsection (3).

(9) The Chairperson of the Commission must by notice in at least two daily newspapers circulating throughout Namibia convene a meeting of the Commission, which meeting must -

(a) take place not less than 20 days and not more than 30 days after the closing date for the submission of applications determined under subsection (3)(c); and

(b) select suitable candidates from amongst the applicants selected in terms of subsection (5)(c) to be interviewed by the Commission for appointment as Chief Electoral Officer.

(10) The notice published in terms of subsection (9) must contain -

(a) the names, sex and dates of birth of the applicants referred to in subsection (7)(b) to be interviewed by the Commission; and

(b) the date, time and venue for the meeting concerned.

(11) The meeting of the Commission convened in terms of subsection (9) is open to the public and the media.

(12) The Commission must -

(a) at the meeting convened in terms of subsection (9) interview the applicants referred to in subsection (10);

(b) when interviewing the applicants, act in accordance with the principles of transparency and openness; and

(c) make its decisions in terms of subsection (15) with due regard to -

(i) suitability, qualifications and experience of the applicant;

(ii) the qualifications of and criteria for appointment as Chief Electoral Officer; and

(iii) the objections, if any, lodged in terms of subsection (13).

(13) A registered voter -

(a) may, at any time before the commencement of the meeting of the Commission convened in terms of subsection (9), in writing lodge with the Chairperson of the Commission an objection against the appointment of any person as Chief Electoral Officer; and

(b) must, if so directed by the Commission in writing, appear before the Commission, where the voter must, in the manner determined by the Chairperson of the Commission, be subject to questioning by the members of the Commission and by the person against whose appointment he or she objected.

(14) An applicant referred to in subsection (7)(b) who -

(a) fails to attend the meeting convened in terms of subsection (9); or

(b) at the meeting fails to truthfully reply to any reasonable question put to him or her by the Commission or by any other person entitled to examine the person at the meeting,

is disqualified from being appointed in terms of subsection (15) as Chief Electoral Officer.

(15) The Commission must, not later than 30 days before the term of office of the Chief Electoral Officer referred to in subsection (2) expires, appoint one of the applicants as Chief Electoral Officer to assume office after the term of office of the existing Chief Electoral Officer has expired.

(16) The Chairperson of the Commission must within seven days after the appointment of the Chief Electoral Officer as contemplated in subsection (15) notify, in writing, the National Assembly and the President of the appointment of the Chief Electoral Officer.

(17) The Chairperson of the Commission must as soon as possible after the appointment of the Chief Electoral Officer announce in the *Gazette* the name and period of appointment of the Chief Electoral Officer.

(18) The Chief Electoral Officer -

(a) holds office for a term of five years and is eligible for reappointment at the end of the term, but must apply for reappointment as contemplated in this section;

(b) is responsible for the carrying out of the resolutions of the Commission and manages the affairs of the Commission and the Directorate subject to the control and directions of the Commission.

(19) If -

(a) the Chief Electoral Officer is for any reason absent or unable to exercise his or her powers or to perform his or her functions; or

(b) a vacancy occurs in the office of Chief Electoral Officer,

the Commission may designate a director to act as Chief Electoral Officer until -

(i) the Chief Electoral Officer resumes his or her powers and functions; or

(ii) the Chief Electoral Officer is appointed in terms of subsection (1),

and the director who so acts has all the powers and must perform all the functions of the Chief Electoral Officer.

(20) For purposes of section 27 of the Public Service Act, a reference in section 27(1) and (4) thereof to "the Minister of the permanent secretary concerned" is construed as a reference to "the Electoral Commission of Namibia" and any reference to the "Secretary to Cabinet" and the "Prime Minister" is not relevant for the purposes of any disciplinary action processes relating to the Chief Electoral Officer.

Appointment of directors and other staff members

18. (1) The Commission must -

(a) appoint, subject to the Public Service Act, as directors, such number of persons as it considers necessary and who are fit and proper persons and who comply with the qualifications and criteria referred to in subsection (2); and

(b) assign each director to a committee or committees.

(2) The Commission must determine the qualifications and other criteria which a person must comply with in order to qualify for selection by the Commission in terms of subsection (6)(b).

(3) As soon as possible after the commencement of this Act, the Chief Electoral Officer must invite by notice in at least two daily newspapers circulating throughout Namibia any person who complies with the qualifications of and criteria for appointment as director to apply in writing for the appointment.

(4) A notice referred to in subsection (3) may be in the form determined by the Chief Electoral Officer and must stipulate -

(a) the form of an application for the appointment, which form must amongst others provide for the furnishing of information relating to -

(i) the citizenship of the applicant;

(ii) the academic qualifications obtained by the applicant;

(iii) the age of the applicant;

(iv) whether the applicant has a criminal record;

(v) whether the applicant is an unrehabilitated insolvent;

(vi) whether the applicant is of unsound mind or mentally disordered or defective and has been so declared by a competent court;

(vii) whether the applicant is a remunerated member of the public service of Namibia;

(viii) whether the applicant is a member of the National Assembly, National Council, a regional council or a local authority council; or

(ix) whether the applicant is an office-bearer of a political party, an active politician or has a high party political profile;

(b) the place where or the person to whom an application for the appointment must be submitted;

(c) the closing date for the submission of an application for the appointment, which date may not be longer than 14 days after the date of publication of the notice concerned;

(d) the qualifications of and criteria for appointment as director; and

(e) the other particulars or documents, as the Chief Electoral Officer may determine, which must accompany an application for the appointment.

(5) The Chief Electoral Officer must convene a meeting of the Commission to be held on or at the date, time, and venue as the Chief Electoral Officer may determine, which meeting must be held not later than 7 days after the closing date for the submission of applications determined under subsection (4)(c).

(6) At the meeting convened in terms of subsection (5) the Commission must -

(a) scrutinise the applications referred to therein; and

(b) from the applications referred to in paragraph (a), but subject to the further provisions of this section, select five applicants to be interviewed by the Commission at the meeting to be convened in terms of subsection (8).

(7) The Commission may select in terms of subsection (6)(b) only applicants who comply with the qualifications and other criteria referred to in subsection (2).

(8) The Chief Electoral Officer must by notice in at least two daily newspapers circulating throughout Namibia convene a meeting of the Commission, which meeting must -

(a) take place not less than 20 days and not more than 30 days after the closing date for the submission of applications determined under subsection (4)(c); and

(b) select suitable candidates from amongst the applicants selected in terms of subsection (6)(b) to be interviewed by the Commission for appointment as director.

(9) The notice published in terms of subsection (8) must contain -

(a) the names, sex and dates of birth of the applicants referred to in subsection (6)(b) to be interviewed by the Commission; and

(b) the date, time and venue for the meeting concerned.

(10) The meeting of the Commission convened in terms of subsection (8) is open to the public and the media.

(11) The Commission must -

(a) at the meeting convened in terms of subsection (8) interview the applicants referred to in subsection (9);

(b) when interviewing the applicants, act in accordance with the principles of transparency and openness; and

(c) make its decisions in terms of subsection (14) with due regard to -

(i) suitability, qualifications and experience of the applicant;

(ii) the qualifications of and criteria for appointment as director; and

(iii) the objections, if any, lodged in terms of subsection (12).

(12) Any applicant referred to in subsection (6)(b) who -

(a) fails to attend the meeting convened in terms of subsection (8); or

(b) at the meeting fails to truthfully reply to any reasonable question put to him or her by the Commission or by any other person entitled to examine the person at the meeting, is disqualified from being appointed in terms of subsection (14) as director.

[This provision is reproduced as it appears in the *Government Gazette*. However, the phrase "is disqualified from being appointed in terms of subsection (14) as director" must be applicable to both subparagraphs (a) and (b) in order for the sentence to make sense. It should therefore appear as follows:

"(12) Any applicant referred to in subsection (6)(b) who -

(a) fails to attend the meeting convened in terms of subsection (8); or

(b) at the meeting fails to truthfully reply to any reasonable question put to him or her by the Commission or by any other person entitled to examine the person at the meeting,

is disqualified from being appointed in terms of subsection (14) as director."**]**

(13) The Commission may appoint applicants who comply with this section as directors.

(14) The Chairperson of the Commission must within seven days after the appointment of the directors as contemplated in subsection (13) notify in writing the National Assembly and the President of the appointment of the directors.

(15) The Chief Electoral Officer must as soon as possible after the appointment of a director -

(a) announce by notice in the *Gazette* the name and period of appointment of the director;

(b) inform all the registered political parties and registered organisations thereof; and

(c) inform registered voters, in such manner as he or she considers appropriate.

(16) A director -

(a) holds office for a term of five years and is eligible for reappointment at the end of the term, but must apply for reappointment as contemplated in this section; and

(b) is responsible for the carrying out of the resolutions of the committee to which he or she is assigned and manages the affairs of the Commission, the Directorate and the committee concerned subject to the control and directions of the Commission and the Chief Electoral Officer.

(17) The Commission may -

(a) appoint, subject to subsection (19) and the Public Service Act, the other permanent and temporary staff members of the Directorate as the Commission considers necessary to assist the Commission in the exercise and performance of its powers and functions under this Act, whether by employment, secondment, appointment on contract or otherwise;

(b) obtain, for the purpose of the functions of the Directorate, the services of any person other than a staff member referred to in paragraph (a), on such conditions as may be determined by agreement with the person.

(18) Staff members appointed to the Directorate in terms of section 11(12) of the repealed Act, immediately before the date of commencement of this Act are deemed to be staff members appointed under subsection (17)(a) and continue as staff members of the Directorate.

(19) The conditions of service of staff members referred to in subsection (18) as of the date of commencement of this Act may not be less favourable than the conditions of service which applied to them immediately before the date of commencement of this Act.

Establishment of regional offices and constituency offices

19. (1) The Commission must establish for every region a permanent regional office to be headed by a chief regional officer appointed by the Commission.

(2) A chief regional officer must in the exercise of his or her powers and the performance of his or her functions be assisted by permanent and temporary staff referred to in section 18(17).

(3) A chief regional officer -

(a) is, in addition to the powers and functions conferred or imposed upon him or her by this Act or any other law or any power or any function delegated or assigned to him or her by the Commission or the Chief Electoral Officer, in charge of the region in respect of which he or she has been appointed and must supervise and coordinate -

(i) the registration of voters in respect of, and the voting at, any election in a region concerned; and

(ii) the exercising and performance of the powers and functions of supervisors of registration, registration officers, assistants to supervisors of registration and registration officers and returning officers in a region concerned; and

(b) must report to the Chief Electoral Officer in this regard.

(4) The Commission may establish in respect of constituencies temporary or permanent offices as the Commission thinks necessary.

(5) A -

(a) temporary or permanent office referred to in subsection (4) is headed by the staff member as the Commission may determine;

(b) staff member referred to in paragraph (a) must in the exercise of his or her powers and the performance of his or her functions be assisted by such staff members as the Commission may determine.

Payment of remuneration, other benefits and expenses and conditions of service

20. (1) The Directorate must, out of monies appropriated by Parliament for that purpose -

(a) pay to the Chairperson of the Commission -

(i) the remuneration, allowances and benefits of a Judge of the High Court of Namibia;

(ii) in respect of any journey undertaken for purposes of the business of the Commission, the subsistence and travelling allowances;

as the National Assembly may from time to time determine;

(b) pay to the other members of the Commission -

(i) the remuneration and allowances, if any; and

(ii) in respect of any journey undertaken for purposes of the business of the Commission, the subsistence and travelling allowances,

as the National Assembly may from time to time determine;

(c) remunerate or reimburse members of the Selection Committee in respect of functions performed or expenses incurred by the members;

(d) pay to the Chief Electoral Officer, the directors and other staff members of the Directorate -

(i) the remuneration and allowances and other benefits, as applicable; and

(ii) in respect of any journey undertaken for purposes of the business of the Commission, the subsistence and travelling allowances,

as the Commission may from time to time determine;

(e) pay any other expenses incurred by the Directorate in respect of any power or function exercised or performed under this Act and approved by the Commission.

(2) Any remuneration and allowance, condition of service or other benefits determined under subsection (1) may differ according to the office held by the member concerned or the powers and functions exercised or performed by the member.

CHAPTER 3
ELECTIONS AND REFERENDA

PART 1
APPLICATION OF THIS CHAPTER

Application of this Chapter

21. This Chapter applies in respect of -

(a) elections of the President, members of the National Assembly, any member of any regional council and members of any local authority council and in respect of the registration of voters for such elections; and

(b) any referendum contemplated in section 119 and in respect of the registration of voters for the referendum, if any.

PART 2
REGISTRATION OF VOTERS

Persons entitled to register as voters

22. (1) Subject to subsection (2), every person who by virtue of Article 17(2) of the Namibian Constitution is entitled to be registered as a voter -

(a) in the case of an election of the President, or of members of the National Assembly, at any registration point;

(b) in the case of an election of any member of a regional council, at any registration point in the constituency in which he or she is resident;

(c) in the case of an election of any member of a local authority council, at any registration point in the local authority area in which the person is resident, but subject to Article 111(3) of the Namibian Constitution; and

(d) in the case of any referendum to be held under this Act or the Namibian Constitution, at any registration point.

(2) A person is not entitled to be registered as a voter if the person -

(a) is not a Namibian citizen;

(b) has not attained the age of 18 years;

(c) is of unsound mind or mentally disordered or defective and has been so declared by a competent court; or

(d) is detained as a mentally ill person under any law.

(3) Subject to section 40, for the purposes of subsection (1)(b) and (c) the constituency in which a voter is registered is the constituency in which the voter votes.

(4) Nothing in this Act prohibits any person convicted under any law to correctional facility for any period of time, whether such period of imprisonment has been served or is being served, from registering as a voter in any presidential elections, National Assembly elections or referenda.

Registration of persons temporarily outside Namibia

23. In order to enable persons temporarily outside Namibia to be registered as voters and to take part in an election of the President or of members of the National Assembly, as contemplated in section 22(1)(a), the Commission may establish temporary registration points outside Namibia at any Namibian diplomatic mission, or where possible, at the other convenient places as may be determined by the Commission in consultation with the Minister responsible for foreign affairs.

Appointment of supervisor of registration, registration officers and assistants

24. (1) For the purposes of the registration of voters in respect of the elections referred to in section 22(1), in respect of each registration point, constituency or temporary

registration point and the local authority area or part thereof (if any) situated within the boundaries of the constituency, the Commission must, subject to subsection (2), appoint -

(a) a person to act as supervisor of registration for that registration point, constituency or temporary registration point concerned, and to exercise and perform, subject to the direction and control of the Chief Electoral Officer, the powers and functions conferred upon and imposed on the person by or under this Act; and

(b) one or more persons to act as registration officers for that registration point, constituency or temporary registration point concerned, and to exercise and perform, subject to the direction and control of the supervisor of registration concerned, the powers and functions conferred and imposed on the person by or under this Act.

(2) If more than one local authority area or part thereof is situated within the boundaries of a constituency, the Commission must appoint, in respect of that constituency, and for that constituency and each such local authority area or part thereof, the persons referred to in subsection (1)(a) and (b), to so act.

(3) The Commission may appoint such other persons as it thinks fit to assist a supervisor of registration or registration officer in the performance of his or her functions.

(4) Any person appointed under this section -

(a) who is not in the full-time service of the State is entitled to the remuneration determined by the Commission;

(b) may be paid such allowances as the Commission may determine.

(5) Different tariffs for remuneration and allowances may be determined under subsection (4) in respect of the different offices provided for therein, or in respect of persons appointed to the offices who are in the full-time service of the State and persons so appointed who are not in the full-time service of the State under different circumstances or in different areas.

(6) The Commission may in writing delegate any power conferred upon it by subsection (1) or subsection (3) to the Chief Electoral Officer who may, to the extent determined by the Commission, authorise any supervisor of registration or registration officer concerned to exercise any power so delegated to him or her under subsection (1)(b) or (3).

(7) By virtue of his or her appointment under this Act, and despite anything to the contrary in any other law, whether or not he or she is by or under any other law a justice of the peace or a commissioner of oaths, each supervisor of registration, registration officer and his or her assistant is deemed to be for the duration of the appointment, a justice of the peace or a commissioner of oaths, for the purposes of carrying out this Act.

(8) Any appointment made under this section may at any time be withdrawn by the authority that made the appointment concerned.

(9) With the necessary staff, vehicles and equipment, but subject to subsection (10), a registration officer may enter upon any land in the area for which he or she is appointed and on which there is or is suspected to be any person who is qualified for registration, for the purpose of registering any such person who may wish to apply for registration.

(10) A registration officer may not enter upon any land or enter any building or structure on the land as contemplated in subsection (9) without the permission of its owner or occupier, or of the person in control of the land.

(11) In order to register any person as a voter, the Chief Electoral Officer may require by notice in writing -

(a) to any person who employs or accommodates on any land any person who is or may be entitled to registration under this Act; or

(b) to the person in charge of any person employed or accommodated on the land and who is or may be entitled to registration under this Act,

the first-mentioned person referred to in paragraphs (a) and (b), to cause the persons so employed or accommodated to -

(i) be assembled; and

(ii) to be present at a time specified in the notice, at a place on the land to be determined by the first-mentioned person.

(12) The first-mentioned person referred to in subsection (11) must notify the registration officer specified in the notice referred to in that subsection before a time and in a manner so specified, of the place on the land where the persons employed or accommodated will assemble.

(13) A notice referred to in subsection (11) may be signed on behalf of the Chief Electoral Officer by a supervisor of registration concerned authorised by the Chief Electoral Officer to do so.

(14) The Commission must as soon as is practicable after an appointment has been made under this section, give public notice of the name and official address of the person so appointed.

(15) A supervisor of registration, registration officer and assistant to a supervisor of registration or a registration officer must with regard to the exercising and performance of his or her powers and functions report to the chief regional officer concerned.

General registration of voters

25. (1) For the purposes of any election under this Act, the first general registration of voters after the commencement of this Act must take place not later than 10 years after the last general registration of voters in terms of the repealed Act, during a period determined by the President by proclamation in the *Gazette*, and thereafter the general registration must take place at such intervals of not more than 10 years during a period similarly determined by the President by proclamation in the *Gazette.*

(2) For the purposes provided in this Act, the President may from time to time by proclamation in the *Gazette* determine that a supplementary registration of voters must take place during any period specified in the proclamation in respect of Namibia or any part thereof.

(3) The President may by proclamation in the *Gazette* alter any period determined under subsection (1) or (2) in respect of Namibia or any part thereof.

(4) Despite anything to the contrary contained in this Act, the Commission may undertake any general registration of voters contemplated in this section by way of an electronic, digital or any similar voter registration system or any other voter registration system in the manner determined by the Commission, including -

(a) the manner of capturing information onto the system and the storing of information in the system;

(b) the printing of voter registration cards; and

(c) the safe custody of information stored in the system.

Application for registration as voter

26. (1) If for the purposes of any voter registration a period is determined, any person who during the period is entitled or qualified to be registered as a voter must, if the person desires to be registered as a voter -

(a) for the elections referred to in section 22(1)(a) only, apply to any registration officer appointed at any registration point, to be so registered;

(b) for an election referred to in section 22(1)(b) only, apply to a registration officer appointed for the regional council for the constituency in which the person is resident, to be so registered; and

(c) for an election referred to in section 22(1)(c) only, apply to a registration officer appointed for the local authority area in which the person is resident, to be so registered,

and the person must so apply, irrespective of whether or not his or her name has previously been included in a voters' register in terms of this Act or any other law.

(2) Any person who applies for registration in terms of subsection (1) must -

(a) appear in person before the registration officer concerned or any other officer designated by the registration officer to have his or her photograph taken;

(b) furnish the registration officer with the information necessary to complete the prescribed application form;

(c) affirm, or on oath confirm, the declaration which appears on the application form and which is required to be made by the applicant; and

(d) in the presence of the registration officer and in accordance with the written instructions of the supervisor of registration -

(i) sign the application form concerned; or

(ii) if the applicant cannot, for any reason whatsoever, write or sign his or her name, place on the application form any finger print or mark as the registration officer may require.

(3) A registration officer may not register any applicant as a voter under this Act, unless the applicant has submitted to the registration officer in the manner provided for in subsection (4), proof -

(a) of his or her identification;

(b) that he or she has attained the age of 18 years;

(c) that he or she is a Namibian citizen; and

(d) that he or she complies with any requirement or qualification in relation to any residence referred to in section 22,

and the registration officer may require the applicant to furnish such explanation, information or further particulars as may be necessary to establish the correctness of the particulars entered or to be entered on the relevant application form.

(4) Without derogating from the generality of subsection (3), an applicant is deemed to have complied with that subsection, if the applicant -

(a) in the case of paragraph (a) of that subsection, identifies himself or herself by means of -

(i) an identity document containing a photograph of him or her issued or deemed to be issued in terms of the Identification Act, 1996 (Act No. 21 of 1996);

(ii) a valid ordinary Namibian passport;

(iii) a valid driving licence or permit containing a photograph of him or her, issued in Namibia, accompanied by an official certified extract from any official birth register from which it appears that the applicant was born in Namibia or is a Namibian citizen; or

(iv) statements under oath or affirmation made by two other registered voters having identified themselves to the registration officer concerned by producing any document referred to in subparagraph (i), (ii) or (iii), in which proof of the identity of the applicant is furnished;

(b) in the case of paragraph (b) of that subsection, submits to the registration officer concerned any document referred to in paragraph (a)(i) or (ii) or any official certified extract from any official birth register in Namibia or of any other country from which it is evident that the applicant has reached the age of 18 years;

(c) in the case of paragraph (c) of that subsection, submits to the registration officer -

(i) a certificate of Namibian citizenship issued under the Namibian Citizenship Act, 1990 (Act No. 14 of 1990);

(ii) a valid ordinary Namibian passport;

(iii) any official certified extract from any official birth register or any other official document referred to in paragraph (b)(i), from which it appears that the applicant was born in Namibia or that the applicant is a Namibian citizen; and

[The cross-reference to paragraph (b)(i) is in error as no such paragraph exists. This may have been intended to refer to paragraph (a)(i) of this subsection.]

(iv) for the purpose of subparagraph (iii), a statement under oath or affirmation made by the applicant declaring that he or she has not voluntarily renounced his or her Namibian citizenship in accordance with subsection (2) of section 8 of the Namibian Citizenship Act, 1990, or having so renounced it, he or she remained a Namibian citizen in accordance with subsection (5) of that section;

(d) in the case of paragraph (d) of that subsection, submits to the registration officer -

(i) any document, statement, certificate or account as may be prescribed, which includes any document, statement, certificate or account as prescribed under Schedule 3; or

(ii) a statement under oath or affirmation made by the applicant himself or herself, stating that he or she resides at the place of residence mentioned in the application form concerned.

(5) Subsection (4) is not construed so as to prevent the registration officer concerned from requiring an applicant to furnish in relation to the matters referred to in that subsection, such explanation, information or further particulars as may be necessary to establish the correctness of the particulars contained in any certificate, statement or other document so referred to.

(6) Despite anything to the contrary in this Act or any other law, a police officer who is of the opinion that there exists at a registration point a situation which threatens the -

(a) preservation of the internal security of Namibia;

(b) maintenance of law and order;

(c) investigation of any offence or alleged offence;

(d) prevention of crime; or

(e) protection of life and property,

may close down, after consultation with the registration officer concerned, the registration point until the threat no longer exists.

Rejection of incomplete application form

27. A registration officer must reject an application form if the applicant concerned fails to comply with section 26(2).

Refusal to register applicant

28. (1) After having completed the prescribed application form in accordance with the information furnished by an applicant in terms of section 26, a registration officer must refuse to register the applicant for any of the elections in respect of which the applicant has applied in terms of that section, but has failed to comply with the requirements set out in that section.

(2) A registration officer who refuses to register an applicant must -

(a) record the refusal on the application form and complete the prescribed refusal form;

(b) furnish the applicant concerned with the application form accompanied by the refusal form; and

(c) inform the applicant that he or she may, in accordance with section 29, appeal against the refusal to an electoral tribunal contemplated in section 29(1)(a) or (b).

(3) At every registration point a registration officer must in the prescribed form -

(a) in addition to the refusal form referred to in sub-regulation (2), record all prescribed particulars of applicants whose application for registration as a voter has been refused and the reasons therefore; and

(b) compile at the end of every day a list of all applicants whose application for registration as a voter have been refused.

Appeal against refusal to register applicant

29. (1) A person whose application for registration has been refused under section 28 and who desires to appeal against the refusal, may, on the day, at the time and the place determined in terms of subsection (2) and of which he or she must be notified in writing, appeal against the refusal -

(a) to the electoral tribunal concerned in respect of the constituency or local authority area in respect of which the person has applied for registration; or

(b) in the case of a person who has applied for registration at a registration point at any Namibian foreign mission, to the electoral tribunal concerned, by submission of his or her appeal to a staff member, other than the registration officer, appointed by the Commission by notice in the *Gazette*, on the recommendation of the Minister responsible for foreign affairs,

in the manner prescribed by subsection (5).

(2) If the refusal contemplated in section 28 relates to the applicants application for registration in respect of both a constituency and a local authority area, the person may so appeal against the refusal to the electoral tribunal in respect of both the constituency and local authority area.

[An apostrophe should appear in the word “applicants” in the phrase which should read “the applicant’s application”.]

(3) The electoral tribunal referred to in subsection (1) must determine the day, which day may not be later than 7 days after the date of the refusal, and the time and place for the hearing of an appeal referred to therein according to the rules and procedures of the electoral tribunal, but the rules and procedures of the electoral tribunal may provide for an extended period for appeals for refusal that emanate from registration periods outside Namibia.

(4) Subsection (3) does not prohibit the electoral tribunal from hearing an appeal at any place or time determined by it and communicated to the person who wishes to appeal, or at any place where both the electoral tribunal and that person are at any time.

(5) On a day, at a time and place determined in accordance with this section, the person who wishes to appeal (hereinafter called the appellant), must -

(a) appear in person before the electoral tribunal concerned;

(b) submit the forms referred to in section 28(2)(b), to the electoral tribunal;

(c) state the grounds on which he or she appeals against the refusal of his or her application; and

(d) adduce such proof and make such statements he or she may wish to be considered in support of his or her appeal.

(6) Subject to subsection (5), the hearing of the appeal may be conducted by the electoral tribunal in such manner as in its opinion is best calculated to enable it to arrive at a just decision in the matter.

(7) Without derogating from the generality of subsection (6), the electoral tribunal may -

(a) call any person who is present to appear before him or her and require or allow the person to give such oral evidence or produce such other proof as in the opinion of the electoral tribunal may assist it in deciding the matter;

(b) administer an oath or affirmation to any person appearing before it;

(c) examine or allow the examination of any person so appearing;

(d) postpone the hearing at any stage of the proceedings to a day determined by it, but which may not be more than five court days after the date on which the hearing was postponed.

(8) An electoral tribunal must keep a record of the proceedings and the record must be attached to and form part of the relevant application form.

(9) Subject to the proviso to Article 12(1)(a) of the Namibian Constitution, the hearing of an appeal must be open to the public.

(10) An electoral tribunal may -

(a) allow an appeal heard by it under this section; or

(b) dismiss the appeal, and may also dismiss it if the appellant fails to appear before it on any day determined for the hearing or further hearing under this section.

(11) An electoral tribunal must record its decision under subsection (10) on the relevant refusal form.

(12) If an electoral tribunal dismisses the appeal, it must keep the application and refusal forms in its custody.

(13) If an electoral tribunal allows the appeal, it must forthwith refer the appellant to the chief regional officer concerned, and cause the application and refusal forms to be submitted to such chief regional officer.

(14) Any appeal against any determination or decision of an electoral tribunal must be heard by the Electoral Court in accordance with the Rules of the Electoral Court and tribunals.

Registration of applicant

30. (1) If the registration officer is of the opinion that an applicant qualifies to be registered as such, or if the applicant is a person referred to the registration officer concerned by the electoral tribunal under section 29(13), the registration officer must register, subject to the other provisions of this Chapter, the applicant in respect of the election for which he or she has so applied for registration as provided in section 26(1), by -

(a) duly completing, in accordance with the information contained in the application form;

(b) requiring the applicant -

(i) to sign the voter registration card so completed in the space provided for that purpose;

(ii) if the applicant cannot write his or her name, to place his or her finger print where possible or, as the case may be, a mark placed by the applicant on the application form in accordance with section 26(2)(d)(ii), on the registration form in the space provided for that purpose or in accordance with the instructions of the registration officer concerned;

(iii) in the case of a registration by electronic or digital means, to submit to the taking of a digital image;

(iv) in the case of a registration by electronic or digital means, to submit to the taking of digital fingerprints where possible;

(c) after paragraphs (a) and (b) have been complied with, signing and issuing, in the manner determined by the Chief Electoral Officer, the voter registration card to the applicant.

(2) If the applicant is a person who has been referred to the chief regional officer concerned by the electoral tribunal under section 29(13), the chief regional officer concerned must comply with subsection (1) even if he or she is not the chief regional officer who has refused the application in the first instance.

(3) The chief regional officer concerned must as soon as is practicable after the registration of an applicant in terms of subsection (1) forward the application concerned to the supervisor of registration concerned.

(4) As soon as is practicable after the close of the period determined for the registration of voters referred to in section 25, the supervisor of registration concerned must -

(a) in the prescribed form compile, from the applications received in terms of subsection (3) from a registration officer or officers, a voters' list containing -

(i) the names, residential addresses, digital details as captured and voters' registration numbers of all persons registered as voters;

(ii) in the case of an election referred to in section 22(1)(a), the names, residential addresses and voters' registration numbers of all persons registered at registration points as voters in respect of the election concerned;

(iii) in the case of elections referred to in section 22(1)(b) and (c), the constituency or local authority area in respect of which those persons were registered; and

(iv) in the case of any referendum referred to in section 22(1)(d), the names, residential addresses and voters' registration numbers of all persons registered at registration points as voters in respect of the referendum;

(b) forward the voters' lists to the Chief Electoral Officer to be dealt with in accordance with section 31; and

(c) forward the separate prescribed form and the list referred to in section 28(3)(a) and (b) respectively to the Chief Electoral Officer, who must aggregate all the numbers of applicants for registration as voters whose applications have been refused.

Preparation and publication of provisional voters' registers

31. (1) Upon receipt of the voters' lists referred to in section 30(4), the Chief Electoral Officer must -

(a) in the prescribed form, cause to be prepared -

(i) in respect of the voters registered in respect of an election referred to in section 22(1)(a) at any registration point and the voters registered in respect of a constituency, a provisional national voters' register; and

(ii) in respect of the voters registered in respect of a local authority area, a provisional local authority voters' register; and

containing -

(aa) the names, residential addresses and voters' registration numbers of all persons registered as voters;

(bb) in the case of an election referred to in section 22(1)(a), the names, residential addresses and voters' registration numbers of all persons registered at registration points as voters in respect of the election concerned; and

(cc) the constituency or local authority area in respect of which voters were registered, and the total number of registered voters in respect of the constituency or local authority area concerned, as the case may be;

(b) publish, at least 90 days before the polling day in the case of Presidential and National Assembly elections or at least 30 days before the before the polling day in the case of Regional Council and Local Authority elections, a notice in the *Gazette* specifying -

[The phrase "before the" is repeated in the *Government Gazette*, as reproduced above.]

(i) the places at and times during which copies of the provisional registers are available for inspection by the public; and

(ii) the period, which period may not be later than 14 days after the publication of the notice, within which objections may be made in respect of the names of voters appearing on any such register;

(c) avail, upon request, free of charge -

(i) to every registered political party a copy of the provisional national voters' register and provisional local authority voters' register;

(ii) to every registered organisation a copy of the part of the provisional local authority voters' register which relates to the local authority area in respect whereof the organisation intends to participate in any election for members of a local authority council.

(2) A provisional national voters' register referred to in subsection (1)(a)(i) must also contain the names, residential addresses and voters' registration numbers of all Namibian eligible voters in countries other than Namibia, including a total number of all the registered voters.

Objections against name of person included in provisional voter's register

32. (1) A -

(a) person whose name appears on a relevant provisional voters' register referred to in section 31;

(b) registered political party; or

(c) registered political organisation

may lodge, within the period referred to in paragraph (b)(ii) of that section, with the electoral tribunal referred to in section 29(1), an objection in writing to the inclusion of the name of any other person on that register on the grounds that the other person -

(i) is not entitled or qualified by or under section 22 to be registered as a voter; or

(ii) is not complying with the requirements in relation to residence as contemplated in that section.

(2) If the person referred to in subsection (1)(a) is outside Namibia the objection concerned must be submitted to the appointed staff member contemplated in section 29(1)(b).

(3) If an objection is lodged under subsection (1) against any name of a person being included in a relevant provisional voter' register, the electoral tribunal concerned must -

(a) if it is satisfied that the ground of the objection is not a ground on which the name could be excluded from the register, dismiss the objection;

(b) if it is satisfied that the ground of the objection is a ground on which the name could be excluded from the register, forthwith serve or cause to be served a notice on the person whose registration is objected to, informing the person -

(i) of the objection and the nature thereof; and

(ii) that the person may make representations to the electoral tribunal concerned in regard thereto within a period of 15 days after the date of the notice; and

(c) upon expiration of the period referred to in paragraph (b), determine the objection.

(4) An electoral tribunal may -

(a) allow the objection and direct the Chief Electoral Officer to exclude the name of the person against whom the objection was made, from the relevant provisional voters' register; or

(b) dismiss the objection.

(5) The electoral tribunal concerned must notify in writing its decision regarding the objection to -

(a) any person or registered political party who under subsection (1) lodged an objection and under subsection (3)(b)(ii) made representations in connection with the objection; and

(b) the Chief Electoral Officer.

(6) If an objection has been allowed under subsection (4) and a request for the submission of a statement of the case -

(a) is not made under section 33(1) within three days after the date on which the objection was allowed; or

(b) if so made, is refused in terms of subsection (2) of that section,

the relevant voter registration card issued to the respondent ceases to be valid, whereupon the electoral tribunal concerned must forthwith inform the Chief Electoral Officer accordingly and transmit the voter registration card to the Chief Electoral Officer for cancellation.

(7) In subsection (1) and, in the case of subsection (3), in relation to the service of any notice referred to therein, "electoral tribunal" includes any member of the designated magistrate's court staff authorised by the Magistrates Commission to act as presiding officers.

(8) A -

(a) person whose name appears on a relevant provisional voters' register referred to in section 31; or

(b) registered political party or registered organisation,

may lodge, within the period referred to in paragraph (b)(ii) of that section, with the electoral tribunal referred to in section 29(1), an objection in writing relating to -

(i) the spelling of any name or the incorrectness of any other data which appears on a relevant provisional voters' register concerned; or

(ii) the registration of a person as a voter which appear more than once.

Statement of case for decision by Electoral Court

33. (1) An electoral tribunal which -

(a) under section 29(10) dismissed the appeal of an appellant; or

(b) under section 32(4) allowed or dismissed an objection,

must, at the written request of the appellant, respondent or objector, transmit within seven days after its decision, and subject to subsection (2), a statement of the case to the clerk of the Electoral Court.

(2) The electoral tribunal referred to in subsection (1) must refuse a request made by -

(a) the appellant; or

(b) if the respondent was present when the objection was allowed or the objector when the objection was dismissed, by the respondent or objector,

unless it is received by the Electoral Court within three days after the date on which the appeal was dismissed or the objection was allowed or dismissed.

(3) The statement of the case must -

(a) include an indication of the electoral tribunal's decision in the relevant appeal or objection; and

(b) be signed by the presiding officer concerned and by the appellant, the respondent or the objector.

(4) The Electoral Court may -

(a) request, if the statement of the case appears to be defective, further information;

(b) confirm, amend or set aside in open court the decision of the electoral tribunal concerned.

(5) The clerk of the Electoral Court must transmit two certified copies of its decision to the electoral tribunal which transmitted the statement of the case and the Chief Electoral Officer.

(6) A decision of the Electoral Court under subsection (4) setting aside the decision of the electoral tribunal concerned is for all purposes where the Tribunal had, by the decision so set aside, dismissed an appeal under section 29(10), deemed to be a decision of the Tribunal allowing the appeal under that section.

Cancellation of voter registration card invalidated by electoral tribunal allowing objection

34. (1) If an objection has been lodged in terms of section 32 against the inclusion of the name of a person on the relevant provisional voters' register, the person must surrender, unless the objection has been dismissed under that section, his or her voter registration card to the electoral tribunal to whom the objection was submitted or to any supervisor of registration or registration officer -

(a) if at any time it comes to the person's knowledge that the objection has been allowed under that section; or

(b) if ordered to do so by the electoral tribunal, supervisor of registration or registration officer concerned.

(2) If the person referred to in subsection (1) fails to comply with an order made in terms of paragraph (b) thereof, the electoral tribunal, any supervisor of registration, registration officer or police officer may without a warrant seize the voter registration card concerned or cause it to be so seized.

(3) The electoral tribunal, supervisor of registration, registration officer or police officer to whom the voter registration card is surrendered or who seizes it or causes it to be seized under this section must forward the voter registration card without delay to the Chief Electoral Officer.

(4) If a voter registration card which in terms of section 32 ceased to be valid, comes into the possession of the Chief Electoral Officer at any time, the Chief Electoral Officer must cancel the voter registration card, unless the electoral tribunal's decision as a result of which the voter registration card ceased to be valid, has been set aside under section 33.

(5) This section applies with the necessary changes in relation to any decision of the Electoral Court referred to in section 33 which has the effect that the name of the person referred to in subsection (1) must be removed from the relevant provisional voters' register, as if it were a decision of the electoral tribunal concerned in allowing the objection under section 32(3).

Replacement of voter registration card

35. (1) Upon application by a person whose voter registration card has been lost, destroyed, has for any reason become illegible or contains a defect or error, a chief regional officer may issue to the person a duplicate voter registration card in the prescribed form if the chief regional officer is reasonably satisfied as to -

(a) the identity of the person;

(b) the facts and circumstances relating to the loss, destruction or becoming illegible of the voter registration card; and

(c) the defect or error,

but a duplicate voter registration card may not be issued on any day determined as a polling day in respect of any election concerned.

(2) If an application referred to in subsection (1) is made by reason of the illegibility of the voter registration card, a chief regional officer may not consider the application, unless the illegible voter registration card is surrendered to him or her.

(3) A chief regional officer who decides to issue a duplicate voter registration card must cancel any voter registration card surrendered in terms of subsection (2).

(4) A chief regional officer may in writing delegate his or her power to issue duplicate voter registration cards under subsection (1) to any staff member or temporary staff member, but a chief regional officer is not divested of any power so delegated.

Preparation, certification and publication of voters' registers

36. (1) As soon as practicable after the expiration of the period referred to in section 31(b)(ii) provided for the lodging of objections against the inclusion of the names of persons on a relevant provisional voters' register, the Chief Electoral Officer must -

(a) in the prescribed form cause, with due regard to any voter registration card which has ceased to be valid, to be prepared -

(i) in respect of the voters registered in respect of an election referred to in section 22(1)(a) at any registration point and the voters registered in respect of a constituency, a national voters' register; and

(ii) in respect of the voters registered in respect of a local authority area, a local authority voters' register,

containing -

(aa) the names, residential addresses, digital details captured and voters' registration numbers of all persons registered as voters;

(bb) in the case of an election referred to in section 22(1)(a), the names, residential addresses and voters' registration numbers of all persons registered at registration points as voters in respect of the election concerned; and

(cc) the constituency or local authority area in respect of which voters were registered, and the total number of registered voters in respect of the constituency or local authority area concerned, as the case may be;

(b) certify the relevant voters' register referred to in paragraph (a) of this subsection in the prescribed manner.

(2) A national voters' register referred to in subsection (1)(a)(i) must also contain the names, residential addresses and voters' registration numbers of all Namibian eligible voters in countries other than Namibia, including a total number of all the registered voters.

(3) If any appeal or objection has not been disposed of at the time of the certification referred to in subsection (1)(b), the Chief Electoral Officer must -

(a) in the case of the appeal, upon notification in writing that the appeal has been allowed, include the name of the applicant in the relevant voters' register;

(b) in the case of the objection, endorse the register to the effect that an objection to the inclusion of the name of the person concerned has been lodged, and upon notification in writing that the objection was allowed, remove the name of the person from the register.

(4) The Chief Electoral Officer must as soon as is practicable after the certification of a relevant voters' register forward a copy thereof to the Commission, whereupon the Commission must -

(a) publish a notice in the *Gazette* -

(i) stating that a relevant voters' register has been completed and certified by the Commission; and

(ii) specifying the places where copies thereof are kept for inspection by the public;

(b) cause to be transmitted to every chief regional officer and supervisor for registration points abroad for -

(i) a constituency, a copy of the part of the national voters' register that relate to the constituency;

(ii) both a constituency and a local authority area or part thereof, a copy of the part of the national voters' register and of the local authority voters' register that respectively relate to the constituency and the local authority area; or

(iii) a registration point at Foreign Missions, a copy of the part of the national voters' register that relate to the temporary registration point.

(5) Upon the date of publication by the Commission of a notice referred to in subsection (4)(a), every voters' list and every provisional voters' register ceases to be of any force and effect, and thereupon the relevant voters' register is the voters' register for the respective registration points, constituencies or local authority areas.

(6) Upon the publication of the notice contemplated in subsection (4)(a), the Chief Electoral Officer must avail free of charge every political party with a copy of every voters' register referred to therein.

(7) Subject to section 43(1), the names of voters remain included in a voters' register for a minimum period of five years.

(8) A chief regional officer must in respect of his or her region upon application, in a manner determined by the Commission, and against payment of the prescribed fee, make available hard copies of voters' registers to contestants, political parties, organisations, associations, independent candidates, the general public, the media, accredited observers and other stakeholders.

Voters' registers to be kept for inspection by public

37. (1) Every voters' register is kept for inspection by the public at the offices of the Commission.

(2) Any person desiring to inspect any voters' register is entitled to do so during the office hours of the Commission.

(3) The Chief Electoral Officer must -

(a) provide, or cause to be provided, at the offices of the Commission and its regional offices, against payment of the prescribed fees, easy access to voters' registers in print and electronic, digital or any similar format;

(b) at the request of any member of the public provide to the member an electronic, digital or any similar copy of a voters' register,

but the Commission may impose reasonable restrictions regarding the manner of access to a voters' register.

Supplementary registration of voters

38. (1) The President, upon the recommendation of the Commission, may determine that a supplementary registration of voters must take place as contemplated in section 25(2) for the purposes of the inclusion in any voters' register under this Act of persons who qualify to be registered as voters and who have not or could not so have registered in the last general registration in respect of which that register was prepared.

(2) If a supplementary registration has been determined as contemplated in subsection (1), section 26 up to and including section 34 apply with the necessary changes in relation to the supplementary registration, as if it were a general registration determined in respect of the persons.

(3) Persons who are entitled and qualified to be registered as voters in respect of any new local authority area established after the last general registration of voters in respect of which a relevant voters' register was prepared as referred to in subsection (1), are deemed, for the purposes of subsections (1) and (2), to be persons who, for the purposes of the inclusion in that voters' register, have not or could not so have registered in that last general registration as contemplated in subsection (1).

(4) Despite anything to the contrary in this Act, the Commission may undertake any supplementary registration of voters contemplated in this section by way of an electronic, digital or any similar voter registration system or any other voter registration system in the manner determined by the Commission, including -

(a) the manner of capturing information onto the system and the storing of information in the system;

(b) the printing of voter registration cards; and

(c) the safe custody of information stored in the system.

Continuous registration of voters

39. (1) For the purposes of the inclusion in any voters' register of persons who are qualified for registration as voters but are not so registered, any such person may apply for his or her registration within Namibia, if not during any subsequent general registration or supplementary registration, at any other time, except during a period of suspension contemplated in subsection (4).

(2) Sections 26, 27, 28, 29, 30 (but subject to subsection (3)), 31 (except paragraph (b) thereof), 32, 33 and 34 apply with the necessary changes in relation to applications referred to in subsection (1) as they apply to applications for registration made during a general registration of voters.

(3) In the application of section 30(4), as applied by subsection (2), a voters' list as contemplated in that section must be compiled, subject to subsection (6) (a), by a chief regional officer for each month and be forwarded to the Chief Electoral Officer not later than the fifteenth day of the following month.

(4) The continuous registration of voters is suspended -

(a) in respect of a general registration of voters determined to take place under section 34(1), from the date of publication in the *Gazette* of the proclamation under that section, until the expiry of a period of 30 days from the date of publication in the *Gazette* of the notice contemplated in section 36(3)(a) in

relation to the general registration, and is so suspended for the whole of Namibia; and

(b) during any election in terms of section 63(1) or any by-election in terms of section 63(2), from the date that the proclamation under section 64(1) in relation to the election or by-election is published in the *Gazette*, up to and including the sixtieth day after the close of the poll in the election or by-election, whichever is applicable, and is so suspended -

(i) in the case of an election in terms of section 63(1), for the whole of Namibia; and

(ii) in the case of a by-election in terms of section 63(2), for every constituency in respect of which the by-election is held.

(5) The Commission may from time to time suspend, in respect of any constituency or for the whole of Namibia, the continuous registration of voters for as long as it may think necessary.

(6) Subject to subsection (7)(b), the Chief Electoral Officer must keep every provisional voters' register prepared in accordance with section 31 from the monthly voters' list contemplated in subsection (3), available for inspection by the public -

(a) at his or her office; and

(b) if the Commission so determines, at the other place or places as must be specified by the Chief Electoral Officer by notice in the *Gazette*,

during the first seven working days of the second month following on the month in respect of which the provisional voters' register was prepared.

(7) If a suspension of the continuous registration occurs by virtue of subsection (4) -

(a) every supervisor of registration concerned must, despite subsection (3), immediately upon the commencement of the period of suspension compile and forward to the Chief Electoral Officer the voters' list for the portion of the month preceding the date of the commencement and, unless it has already been forwarded to the Chief Electoral Officer, also the voters' list for the preceding month as required by subsection (3);

(b) the Chief Electoral Officer must keep every provisional voters' register prepared in accordance with section 31 from the voters lists referred to in paragraph (a), available for inspection by the public -

(i) at his or her office; and

(ii) if applicable, at the place or places as may have been specified in a notice referred to in subsection (6)(b),

for a period of 7 days commencing on the first working day following on the expiry of the period of 14 days from the date on which the suspension of the continuous registration commenced.

(8) The period of 7 days during which a provisional voters' register is available for inspection in accordance with subsection (6) or (7)(b), is for the purposes of section 32(1) the period within which an objection may be lodged under that section.

(9) Despite anything to the contrary contained in this Act, the Commission may undertake any continuous registration of voters contemplated in this section by way of an electronic, digital or any similar voter registration system or any other voter registration system in the manner determined by the Commission, including -

(a) the manner of capturing information onto the system and the storing of information in the system;

(b) the printing of voter registration cards; and

(c) the safe custody of information stored in the system.

Notification of change in place of residence

40. A voter who -

(a) has been registered in respect of a particular constituency or local authority area; and

(b) has moved to another constituency or local authority area,

must notify in writing, for the purposes of section 43, the Chief Electoral Officer thereof as soon as is practicable after the move.

Application for registration in another constituency or local authority area

41. (1) A voter referred to in section 40 who becomes entitled or qualified to be registered as a voter in respect of any other constituency or local authority area -

(a) must apply, subject to subsection (2), to the registration officer concerned in the form determined by the Chief Electoral Officer, to be so registered;

(b) must when so applying, surrender to the registration officer the voter registration card previously issued to the voter in terms of section 30(1).

(2) An application for registration in terms of subsection (1) may not be made during a period contemplated in section 39(4).

(3) Sections 28(1) and 30(1) apply with the necessary changes in respect of an application referred to in subsection (1).

Information on registered deaths to be furnished to Chief Electoral Officer

42. (1) Despite anything to the contrary contained in any law, any registrar of birth and deaths must transmit, not later than the fifteenth day of each month, to the Chief Electoral Officer a return containing the particulars referred to in subsection (2).

(2) A return referred to in subsection (1) must contain in respect of any person older than 18 years whose death during the preceding month was registered by or under any law governing the registration of deaths in Namibia -

(a) the last residential and postal address of the person; and

(b) the other particulars which the Chief Electoral Officer, after consultation with the registrar referred to in subsection (1), may determine.

(3) For the purposes of this section, a "registrar of births and deaths" -

(a) means a registrar of births and deaths defined in section 1 of the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963); and

(b) includes an assistant registrar of births and deaths defined in that section and any staff member or member of the Namibian Police Force designated by the registrar concerned to perform the functions imposed upon the registrar by that section.

Amendment of voters' registers

43. (1) The voters' registers prepared in terms of section 36 may only be amended by the Chief Electoral Officer to -

(a) add the name, voter registration number and other particulars of any person -

(i) whose inclusion in the relevant voters' register has subsequently been accepted by virtue of any supplementary registration or in accordance with the process of continuous registration;

(ii) whose name was erroneously or contrary to this Act omitted or removed from or refused to be included in the register concerned; or

(iii) whose application for registration in terms of section 41 is accepted by the Chief Electoral Officer;

(b) remove the name and particulars of any deceased voter or any person -

(i) who since his or her name was included in the register concerned has become deceased;

(ii) whose name was erroneously or contrary to this Act included in the register concerned; or

(iii) whose name was in terms of paragraph (a)(iii) added under another constituency or local authority area in the register concerned;

(c) transfer the name and other particulars of any person whose name was erroneously or contrary to this Act included in the register concerned, under any particular constituency, local authority area, to the appropriate constituency or local authority area, as the case may be;

(d) correct any error on the register concerned in the name, voter registration number or other particulars of a person, supplying any omission in the name, number or particulars or recording any change in the name, number or particulars; or

(e) remove any superfluous entry in the register concerned if the name of the same person appears more than once in the register.

(2) If the Chief Electoral Officer removes under subsection (1) from a register concerned a name which is not the name of a fictitious or deceased person, the Chief Electoral Officer must -

(a) inform the person concerned by notice directed to the address of the person appearing in the register; and

(b) state the reason for the removal.

(3) The Chief Electoral Officer must publish, when determined by the Commission, a notice in the *Gazette* and in at least two daily newspapers circulating throughout Namibia which contains the names of the persons -

(a) who have been added to a voters' register in terms of section 43(1)(a);

(b) who have been removed from a voters' register in terms of section 43(1)(b);

(c) who have been transferred to a voters' register in terms of section 43(1) (c);

(d) in respect of which an error has been corrected in terms of section 43(1) (d); and

(e) in respect of which any superfluous entry has been removed in terms of section 43(1)(e).

(4) A voters' register which has been amended in terms of subsection (1) must be used in any by-election concerned until a new voters' register has been prepared in terms of section 36.

Return or surrender of voter registration cards

44. If the name, voter registration number and other particulars of any person -

(a) are added to a relevant voters' register in terms of section 43(1)(a)(ii), the Chief Electoral Officer must -

(i) if no voter registration card has been issued to the person, issue or cause to be issued a voter registration card to the person; or

(ii) if a voter registration card has already been surrendered by the person, cause it to be returned to the person;

(b) are removed from a voters' register concerned in terms of section 43(1) (b), the Chief Electoral Officer must request the person, if the person is not a deceased person, by notice served upon him or her, to surrender the voter registration card concerned within a period determined by the Chief Electoral Officer and specified in the notice, to the Chief Electoral Officer or to any supervisor of registration, registration officer or staff member so specified;

(c) are transferred in terms of section 43(1)(c), the Chief Electoral Officer must request the person by notice served upon the person, to surrender his or her voter registration card within the period so determined by the Chief Electoral Officer and specified in the notice, to the Chief Electoral Officer or to any supervisor of registration, registration officer or staff member so specified, in order to be issued with a new voter registration card containing the correct and complete particulars of the person.

Voter to establish that his or her name has been included in voters' registers

45. It is at all times the duty of any person who is qualified to be registered as a voter and who has applied for registration, to ascertain whether his or her name has been included in a voters' register, and if it is not the case, to take the necessary steps to have it so included in accordance with this Act.

Voters' registers not invalidated by reason of errors

46. If through accident, inadvertence or oversight anything required by law to be done in the preparation of any voters' register is erroneously done or omitted to be done, the voters' register concerned is not invalidated thereby and the Chief Electoral Officer may at any time take or cause to be taken the steps as are necessary to rectify the error or omission.

Adjustment of voters' register on alteration of constituencies

47. (1) If by reason of any new determination or division of constituencies in terms of this Act or any other law any portion of a constituency as existing before the determination or division is allocated to another constituency, the Chief Electoral Officer must prepare, from the current voters' register concerned which was prepared on the basis of the last previous determination or division, as amended from time to time in terms of this Act, a voters' register on the altered constituencies.

(2) A relevant voters' register prepared under subsection (1) comes into operation on the date on which the alteration of the constituencies comes into operation at the next general election in respect of which the current voters' register concerned was prepared.

(3) A voters' register prepared on the basis of the last previous determination or division referred to in subsection (1) must be retained and is the relevant voters' register to be used in any by-election concerned until the alteration of the constituencies comes into operation at the next general election concerned.

(4) The Chief Electoral Officer must publish, as soon as possible after the preparation of a voters' register under subsection (1), a notice in the *Gazette* and in at least two daily newspapers circulating throughout Namibia that the voters' register has been prepared.

Powers of Chief Electoral Officer to demand particulars

48. The Chief Electoral Officer may require at any time by notice in writing any person, whether the person is registered or not as a voter, to furnish, in the manner and within the period specified in the notice, the particulars as the Chief Electoral Officer -

(a) may demand in the notice; and

(b) which are relevant to the registration or continued registration of the person or any other person.

PART 3
VOTER AND CIVIC EDUCATION

Voter and civic education

49. (1) The Commission must, when supervising, directing, controlling and promoting voter and civic education -

(a) pursue the objective to make the meaning and purpose of elections well understood by the electorate;

(b) create public awareness on elections, democracy building and political tolerance;

(c) develop, revise and update voter and civic education materials on a continuous basis;

(d) establish regional advisory committees and voter and civic education offices to decentralise the distribution of voter and civic education materials and to increase local participation;

(e) design a multi-media campaign strategy that identifies information channels;

(f) encourage civic organisations, the media and political parties to support the voter and civic education program of the Commission;

(g) monitor and conduct formative evaluation research to determine the impact of the voter and civic education;

(h) ensure that voter and civic education particularly addresses the young population; and

(i) cooperate with the -

(i) Ministry responsible for education regarding the development of a syllabus for learners which includes material relating to voter and civic education; and

(ii) Ministry responsible for information regarding involvement in voter and civic education.

(2) When conducting voter and civic education the Commission must take into account the Bill of Fundamental Voters' Rights and Duties.

Establishment of division of voter and civic education

50. The Commission must -

(a) establish a permanent division of voter and civic education in the Directorate and enhance the activities of the division;

(b) appoint electoral education and information staff members in each region and locate them in the office of the chief regional officer concerned; and

(c) duly train the electoral education and information staff members in relation to their tasks in order to enable them to not only conduct voter and civic education, but also to spread voter and civic education to the grass-roots level.

Accreditation of persons providing voter and civic education

51. (1) Subject to section 54, any natural or juristic person, other than a registered political party or registered organisation, may apply to the Commission in the prescribed manner for accreditation to provide voter and civic education to the general public for or in respect of any election or referendum.

(2) The Commission may require further information in support of an application referred to in subsection (1).

(3) After considering -

(a) an application referred to in subsection (1);

(b) any further information provided by the applicant under subsection (2); and

(c) whether -

(i) the services provided by the applicant meets the standards of the Commission;

(ii) the applicant is able to conduct its activities effectively;

(iii) the applicant or the persons appointed by the applicant to provide voter and civic education -

(aa) can do so in a manner that is impartial and independent of any registered political party or registered organisation or candidate contesting the election;

(bb) is or are competent to do so; and

(cc) will subscribe to the Code of Conduct referred to in section 52; and

(iv) the accreditation of the applicant will promote voter and civic education and conditions conducive to free and fair elections and referenda,

the Commission may direct the Chief Electoral Officer to accredit an applicant to provide voter and civic education for or in respect of the election or referendum, and determine the conditions of accreditation.

(4) If the Commission decides not to accredit an applicant, the Chief Electoral Officer must advise the unsuccessful applicant in writing of its decision.

(5) If the Commission decides to accredit the applicant, the Chief Electoral Officer must -

(a) enter the name of the applicant in the register of persons accredited to provide voter and civic education for or in respect of elections or referenda;

(b) issue a certificate of accreditation in the name of the applicant stating -

(i) the period within which the applicant may provide the voter and civic education; and

(ii) the conditions of accreditation;

(c) keep two copies of the certificate at the head office of the Commission; and

(d) send the certificate to the applicant.

(6) Any person may inspect the register and copies of the certificates of persons accredited to provide voter and civic education for or in respect of any election or referendum.

(7) The Chief Electoral Officer must provide a certified copy of, or extract from, the register or a certificate referred to in subsection (6) to any person who has paid the prescribed fee.

(8) The Commission must prescribe guidelines for the purposes of voter and civic education, and approve all material developed for the purposes of conducting voter and civic education prior to such materials being disseminated accordingly.

Code of Conduct Governing Persons Accredited to Provide Voter and Civic Education

52. In order to promote voter and civic education, the Commission must issue within three months after the commencement of this Act, by notice in the *Gazette*, a Code of Conduct Governing Persons Accredited to Provide Voter and Civic Education for or in respect of elections or referenda.

Contravention of or failure to comply with conditions of accreditation or Code of Conduct Governing Persons Accredited to Provide Voter and Civic Education

53. If a person accredited to provide voter and civic education for or in respect of an election or a referendum contravenes or fails to comply with the conditions of the accreditation or the Code of Conduct referred to in section 52, the Commission may cancel, after having given the person an opportunity to be heard, the accreditation concerned or suspend the accreditation until the conditions are met.

Voter and civic education by registered political parties and registered organisations

54. A registered political party or registered organisation may provide voter and civic education to its members, supporters and sympathisers in respect of any election or referendum, but is not subject to any condition or Code of Conduct referred to in section 52.

PART 4
OBSERVERS

Invitation of observers and electoral observer mission by Commission

55. (1) The Commission -

(a) may out of its own motion invite organisations, institutions and persons to observe any election or referendum;

(b) from the date on which Namibia becomes bound by the African Charter on Democracy, Elections and Governance, must notify in writing the Minister responsible for foreign affairs that the Minister must as contemplated in Article 19(1) of that Charter -

(i) inform the Commission of the African Union of scheduled elections or referenda in Namibia; and

(ii) invite that Commission to send an electoral observer mission to the election or referendum concerned.

(2) An observer of an invited organisation, institution, juristic person and an electoral observer mission referred to in subsection (1) must be accredited by the Commission and has the same powers and functions as an accredited observer.

Accreditation of observers

56. (1) Any person may apply in the prescribed manner to the Commission for accreditation to observe an election or referendum.

(2) The Commission may require further information in support of an application referred to in subsection (1).

(3) After considering an application referred to in subsection (1) and any further information provided by the applicant under subsection (2) and whether -

(a) the accreditation of the applicant will promote conditions conducive to free and fair elections or referenda; and

(b) the persons appointed by the applicant -

(i) can observe that election or referendum impartially and independently of any registered party or candidate contesting that election;

(ii) will be competent and professional in observing that election or referendum; and

(iii) will subscribe to a Code of Conduct referred to in section 57,

the Commission may direct the Chief Electoral Officer to accredit an applicant to observe an election or referendum, and determine the conditions of accreditation.

(4) If the Commission decides not to accredit an applicant, the Chief Electoral Officer must advise the unsuccessful applicant in writing of its decision.

(5) If the Commission decides to accredit the applicant, the Chief Electoral Officer must -

(a) enter the applicant's name in the register of persons accredited as observers;

(b) issue a certificate of accreditation in the applicant's name, stating -

(i) the period within which the applicant may observe the election or referendum; and

(ii) conditions of accreditation; and

(c) keep two copies of the certificate at the head office of the Commission; and

(d) send the certificate to the applicant.

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

(7) The Chief Electoral Officer must provide a certified copy of, or extract from, the register or a certificate to any person who has paid the prescribed fee.

Code of Conduct Governing Accreditation to Observe Election and Persons Accredited as Observers

57. In order to promote conditions conducive to free and fair elections or referenda, the Commission must issue within three months after the commencement of this Act, by notice in the *Gazette*, a Code of Conduct Governing Accreditation to Observe Election and Persons Accredited as Observers.

Powers and functions of accredited observers

58. (1) A person appointed by an accredited observer and an observer of an invited organisation, institution, juristic person and an electoral observer mission referred to in section 55(1) may observe, in relation to the election or referendum for which the observer is accredited, matters relating to -

(a) voting and voting materials;

(b) the counting of votes;

(c) the determination of the result of a poll and the announcement of the results of an election or referendum; and

(d) if the person or observer so wishes, all stages of the electoral process, such as -

(i) the registration of voters;

(ii) the preparations for elections and referenda;

(iii) the training of staff members or temporary staff members, persons referred to in section 18(17)(b) or 24(3) as electoral and referenda officials; and

(iv) compliance with the Code of Conduct Governing Accreditation to Observe Election and Persons Accredited as Observers.

(2) Whilst observing an election or a referendum, a person appointed by an accredited observer and an observer of an invited organisation, institution, juristic person and an electoral observer mission referred to in section 55(1) must wear the prescribed identification indicating that the person and observer is representing an accredited observer.

[The phrase "person and observer" should be "person or observer" to suit the verb "is".]

(3) A person appointed by an accredited observer and an observer of an invited organisation, institution, person and an electoral observer mission referred to in section 55(1) must comply with any order issued by -

(a) a returning officer, presiding officer, polling officer or counting officer; or

(b) a member of the Namibian Police Force acting on the instructions of a returning officer, presiding officer, polling officer or counting officer.

Contravention of or failure to comply with conditions of accreditation or Code of Conduct Governing Accreditation to Observe Elections and Persons Accredited as Observers

59. If a person accredited as an observer contravenes or fails to comply with the conditions of the accreditation or the Code of Conduct Governing Accreditation to Observe

Elections and Persons Accredited as Observers, the Commission may cancel, after having given that person an opportunity to be heard, the accreditation concerned or suspend the accreditation until the conditions are met.

Behaviour rules for observers

60. (1) Any observer, electoral observer mission invited or an observer accredited by the Commission must -

(a) abide by the Namibian Constitution and other Namibian laws;

(b) respect the cultures and traditions of Namibia;

(c) declare any conflict of interest prior to taking part in the mission;

(d) remain strictly impartial and unbiased;

(e) refrain from actions that could lead to the perception of sympathy for a particular candidate or political party;

(f) refrain from wearing any party symbols or colours;

(g) support the enhancement of and respect the basic social, political, legal and other human rights in Namibia;

(h) inform the Commission of any observed irregularities or malpractices in the electoral process;

(i) refrain from making public statements relating to election results until after the election referendum; and

(j) sign the Code of Conduct Governing Accreditation to Observe Election and Persons Accredited as Observers.

(2) The Observer Mission of the African Union is exempted from complying with subsection (1)(j).

Training of observers

61. The Commission -

(a) may offer training courses for observers; and

(b) may compile in conjunction with the Namibia Institute for Public Administration and Management a training manual and training material in that regard.

Report by observer

62. (1) An observer must submit, within one month after the results of the election or referendum concerned has been officially made known, an observation report to the Chairperson of the Commission.

(2) The Commission may -

(a) study a report referred to in subsection (1) and discuss same with the Directorate in detail and, if necessary, with the observer concerned; and

(b) thoroughly consider critical remarks and suggestions of improvement relating to an election concerned.

PART 5
CONDUCT OF ELECTIONS

Subpart 1
Preliminary arrangements

General elections and by-elections

63. (1) A general election must take place -

(a) for the election of the President -

(i) on a date not earlier than five months and not later than three months prior to the date on which the term of office of the President expires as contemplated in Article 29(1)(a) of the Namibian Constitution; or

(ii) in the event of the dissolution of the National Assembly as contemplated in Article 29(1)(b) read with Article 57(2) of the Namibian Constitution, on a date within the period required by Article 57(2) that a national election as contemplated in that Article must take place;

(b) for the election of members of the National Assembly -

(i) on a date not earlier than five months and not later than three months prior to the date on which the term of office of members expires by effluxion of time as contemplated in Article 50 of the Namibian Constitution; or

(ii) in the event of the dissolution of the National Assembly as contemplated in Article 57(2) read with Article 50 of the Namibian Constitution, on a date within the period required by Article 57(2) of the Namibian Constitution must take place;

(c) subject to section 80(7), for the election of members of regional councils, on a date determined in accordance with section 7 of the Regional Councils Act; or

(d) subject to section 88, for the election of members of local authority councils, on a date determined in accordance with section 8 of the Local Authorities Act, 1992 (Act No. 23 of 1992).

(2) If a casual vacancy occurs -

(a) in the office of the President and any vacancy which so occurred is, by virtue of Article 29(4) of the Namibian Constitution required to be filled by election, a by-election must take place on a date determined within the period referred to in that Article;

(b) in any regional council and any vacancy which so occurred is, by virtue of section 10(3) of the Regional Councils Act, required to be filled by election, a by-election must take place in the constituency in respect of which the vacancy in that

council occurred, on a date determined in accordance with that section within the period referred to in that section.

(3) If a vacancy as contemplated under Article 29(4)(b) of the Namibian Constitution occurs, the Attorney-General, must within 14 days, notify in writing the Chairperson of the Commission, and the Commission must forthwith give notice in the *Gazette* that -

(a) a vacancy in the office of President has occurred; and

(b) the date on which it occurred.

(4) Subject to section 88, any -

(a) first election of members of a local authority council for a local authority area established under section 3(1) of the Local Authorities Act, 1992;

(b) election of members of a local authority council dissolved in terms of section 92(2) of that Act,

which is to take place before the date on which any general election of members of local authority councils is to be held as contemplated in section 8 of that Act, is deemed for all purposes, but without derogating from that section, to be a general election for the local authority area concerned on a date determined in accordance with section 3(4)(a) or 92(4) of that Act, in respect of that area.

Determination of days for submission of nominations of candidates and polling days for elections

64. (1) If a general election or by-election is to take place in accordance with section 63, the President must by proclamation in the *Gazette* make known -

(a) in the case of any such election -

(i) for the President or members of the National Assembly, in respect of Namibia;

(ii) for any member of any regional council, in respect of each constituency in respect of which the election is to take place;

(iii) for members of any local authority council, in respect of the local authority area in respect of which the election is to take place,

a date determined by the President, upon recommendation by the Commission, upon which the submission of nominations of candidates must take place and the place at which it must so take place;

(b) subject to subsections (2) and (6), the day determined by the President, upon recommendation by the Commission, upon which a poll must be taken in the election; and

(c) the -

(i) name or office of the person appointed in terms of section 65 as returning officer in the election; and

(ii) if the nomination of candidates must be submitted under this Act to any person or body other than the returning officer so referred to, then also the name or office of that person or body, as the case may be.

(2) Despite anything to the contrary in this Act, an election for the President or for members of the National Assembly taking place at polling stations -

(a) outside of Namibia must be held 14 days;

(b) in the instance of persons who are on board any vessel within the waters of the territorial sea of Namibia, the contiguous zone of Namibia and the exclusive economic zone of Namibia, as defined in sections 2, 3A and 4, respectively, of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990), must be held at a harbour town within Namibia during a period determined by the Commission by notice in the *Gazette*, which period may not be longer than 30 days and not shorter than 14 days, and

(c) in the instance of persons who are members of the police force, defence force and correctional services and who are required to be on duty within or outside Namibia, must be held during a period determined by the Commission with concurrence of the Security Commission,

before the polling day determined therefore in terms of subsection (1)(b) upon which a poll must be taken in respect of the election at polling stations inside Namibia, but for purposes of section 89(7), reference to "polling period" means the period determined by the Commission in paragraph (b).

(3) Any day determined under -

(a) subsection (1)(a) must be a day not less than 15 days and not more than 20 days after the day on which the proclamation referred to in subsection (1) is published in the *Gazette*;

(b) subsection (1)(b) must be a day not less than 40 days and not more than 45 days after the nomination day.

(4) An election is deemed to commence on the day stipulated in the proclamation referred to in subsection (1) which is published in the *Gazette* in relation to the election.

(5) For the purposes of this Act, any day determined for any election referred to in section 63(1)(c) and (d), (2)(b) and (4), as the case may be, is deemed to be the polling day determined for the election under subsection (1)(b).

(6) Any day determined under subsection (1)(b) for an election of the President or members of the National Assembly is a public holiday.

Appointment of returning officers and other election officers

65. (1) The Commission must appoint, subject to subsection (9) -

(a) in the case of any election -

(i) for the President or members of the National Assembly, for each constituency and for the polling stations outside Namibia jointly;

(ii) for any member of a regional council, for a constituency;

(iii) for members of a local authority council, for a local authority area,

a returning officer who has, subject to the direction and supervision of the Chief Electoral Officer, the powers and functions as may be conferred or imposed on him or her by or under this Act, and such additional returning officers or assistant returning officers for a constituency or a local authority area as the Commission may determine;

(b) as counting officers the number of persons as it may deem necessary for the purpose of assisting any person who in terms of this Act is charged with the counting of votes at a polling station;

(c) a presiding officer for each polling station who is in control thereof;

(d) as many polling officers as may be necessary to facilitate the taking of the poll at a polling station,

but the same person may be appointed returning officer for a constituency and a local authority area referred to in paragraph (a).

(2) The Commission must ensure that the various officers appointed under subsection (1) -

(a) are well trained and have passed the numeracy, literacy and eligibility tests determined by the Commission; and

(b) in the case of returning officers and presiding officers, have demonstrated their knowledge, expertise, management, administrative, communication and mediating abilities and skills during previous elections.

(3) Any person appointed under subsection (1) is entitled to remuneration or allowances or both remuneration and allowances -

(a) under the circumstances;

(b) on the basis;

(c) in respect of the services rendered by him or her;

(d) at the tariffs,

as may from time to time be determined by the Commission, with the concurrence of the Minister responsible for finance.

(4) Different circumstances, basis, services or tariffs may be determined under subsection (3) -

(a) in respect of the different offices provided for in subsection (1);

(b) in respect of persons appointed to the offices who are in the full-time service of the State and persons so appointed who are not in the full-time service of the State; or

(c) in respect of work done under different circumstances or in different areas.

(5) The Commission may delegate any power conferred upon it by subsection (1) to the Chief Electoral Officer who may, to the extent determined by the Commission, authorise any returning officer or presiding officer concerned to exercise any power so delegated to him or her under paragraph (b), (c) or (d) of that subsection.

(6) The authority who made any appointment under subsection (1) may at any time withdraw the appointment concerned.

(7) The Commission must as soon as is practicable after an appointment has been made under subsection (1) give or cause to be given public notice of the name and official address of a person so appointed.

(8) Every returning officer, presiding officer or polling officer is competent, by virtue of his or her appointment under subsection (1), to administer an oath or affirmation of any other person for the purposes of this Act.

(9) An office-bearer of a political party may not be appointed as a returning officer, a counting officer, a presiding officer or a polling officer under subsection (1).

Election agents of registered political parties and registered organisations and candidates

66. (1) A -

(a) registered political party or registered organisation; or

(b) in the case where the nomination of an independent candidate is permitted in terms of this Act, the candidate,

may appoint, subject to subsection (2), the number of persons as may be prescribed as election agents for a polling station in the election concerned.

(2) A person may not be appointed or act as an election agent if the person -

(a) is a candidate for the election concerned;

(b) has not attained the age of 18 years; or

(c) is not a Namibian citizen.

(3) A registered political party or a registered organisation or a candidate who has appointed an election agent as contemplated in subsection (1) must furnish, not later than 15 days after the nomination day for the election, or the later day as the Chief Electoral Officer in a particular case may allow, the chief regional officer concerned in writing of -

(a) the name and address of the election agent; and

(b) the polling station to which the election agent is appointed.

(4) As soon as is practicable after the expiration of the period referred to in subsection (3), the chief regional officer concerned must give public notice of -

(a) the name and address of every election agent furnished to him or her in terms of that subsection; and

(b) the polling station in respect of which the election agent is appointed.

(5) An election agent for a polling station is entitled to attend at the polling station as the representative and observer of the registered political party or registered organisation or the candidate by whom he or she was appointed as election agent.

(6) A registered political party or registered organisation or a candidate may at any time revoke the appointment of any election agent.

(7) If the appointment of an election agent has been revoked under subsection (6) or, if any election agent dies or becomes incapacitated, the registered political party or registered organisation or the candidate -

(a) must inform the chief regional officer concerned in writing of the revocation, death or incapacity;

(b) may, subject to subsection (2), appoint any other person as election agent in his or her place; and

(c) must forthwith notify in writing the chief regional officer concerned of the name and address of the person so appointed.

(8) The chief regional officer referred to in subsection (7)(c) must give, in so far as is practicable, likewise public notice of the name and address of the election agent notified to him or her.

(9) If any officer is in terms of this Act required to seal anything in an election, any election agent who is entitled to be present and is present, is entitled to place the seal of the registered political party or registered organisation or candidate which appointed him or her, on that thing, and before anything which has been sealed may be opened, any such agent is entitled to inspect the seals.

(10) An election agent is entitled to -

(a) observe the printing of ballot papers, whether inside or outside Namibia;

(b) ascertain the number of ballot papers printed and received;

(c) accompany any election material to polling stations;

(d) observe the opening and sealing of ballot boxes or voting machines;

(e) accompany mobile polling teams to their destinations;

(f) observe that correct procedures are followed during the voting and counting process in elections; and

(g) report any irregularities observed to the presiding officer or the returning officer concerned.

(11) Despite subsection (7) and prior to the determination of the result of the poll for an election, an election agent may notify in writing the chief regional officer concerned of -

(a) the name and address of a person who will act as alternative election agent in the place of the first-mentioned election agent; and

(b) the polling station to which the alternative election agent is appointed.

Counting agents of registered political parties and registered organisations and candidates

67. (1) A registered political party or registered organisation or candidate referred to in section 66(1) may appoint, subject to subsection (2), and not later than seven days before the election concerned, the number of persons as may be prescribed as counting agents.

(2) A person may not be appointed or act as a counting agent if the person -

(a) is a candidate for the election concerned;

(b) has not attained the age of 18 years; or

(c) is not a Namibian citizen.

(3) A registered political party or registered organisation or a candidate who has appointed a counting agent as contemplated in subsection (1) must furnish, not later than 3 days before the election concerned -

(a) the chief regional officer concerned; and

(b) in the case of the determination of the result of the poll in accordance with section 107, the Chief Electoral Officer,

in writing of the names and addresses of the counting agents.

(4) As soon as is practicable after the expiration of the period referred to in subsection (3), the chief regional officer concerned must give public notice of the name and address of every counting agent furnished to him or her in terms of that subsection.

(5) A counting agent is entitled to represent the registered political party or registered organisation or candidate who has appointed him or her, at any place where the determination of the result of the poll for the election occurs, as hereinafter provided.

(6) A registered political party or registered organisation or a candidate may at any time revoke the appointment of any counting agent.

(7) If the appointment of a counting agent has been revoked under subsection (6) or, if any counting agent dies or becomes incapacitated, the political party or the candidate -

(a) must inform the chief regional officer concerned in writing of the revocation, death or incapacity;

(b) may appoint any other person as counting agent in his or her place; and

(c) must forthwith notify in writing the chief regional officer concerned of the name and address of the person so appointed.

(8) The chief regional officer referred to in subsection (7)(c) must give, in so far as is practicable, public notice of the name and address of the counting agent notified to him or her.

(9) If any officer is in terms of this Act required to seal anything in an election, any counting agent who is entitled to be present and is present, is entitled to place the seal of the registered political party or registered organisation or candidate which appointed him or her, on that thing, and before anything which has been sealed may be opened, any such agent is entitled to inspect the seals.

(10) Despite subsection (7) and prior to the determination of the result of the poll for an election, an authorised representative of a political party or organisation may notify in writing the chief regional officer concerned of the name and address of a person who will act as alternative counting agent in the place of the first-mentioned counting agent.

Code of Conduct for Election Agents and Counting Agents and other behaviour rules for election agents and counting agents

68. (1) The Commission must issue within three months after the commencement of this Act, by notice in the *Gazette* a Code of Conduct for Election Agents and Counting Agents.

(2) An election agent or a counting agent -

(a) must abide by the Namibian Constitution and other Namibian laws;

(b) must contribute to the legitimisation of the electoral process and its outcome;

(c) must sign at each polling station and collation centre in the presence of the presiding officer or the returning officer concerned the Code of Conduct for Election Agents and Counting Agents and abide thereby;

(d) may not leave a polling station until all votes have been counted and they have signed the result sheet before the results are announced; and

(e) may accompany, at the cost of the registered political party or registered organisation or candidate concerned, the presiding officer and the ballot boxes and voting machines, if any, to the collation centre and may only be relieved of their duty once they have signed the relevant result sheet.

Training of election agents and counting agents

69. The Commission -

(a) must offer training courses for election agents and counting agents; and

(b) may for the purposes of training observers compile training manuals and training materials using the services of credible training institutions or individuals with expertise in the area for which the manuals and materials are to be compiled.

Report by chief regional officer on performance of election agents and counting agents

70. A chief regional officer must after every election process has come to an end submit to the Chief Electoral Officer a report in writing on the performance of election agents and counting agents as supplied by the presiding officers and the returning officers concerned.

Oath or affirmation of secrecy

71. (1) A chief regional officer, returning officer, presiding officer, counting officer, polling officer, staff member or temporary staff member appointed to the Directorate, persons referred to in section 18(17)(b) or 24(3), election agent, counting agent and a person appointed by an accredited observer must before performing any function or attending at any polling station or the place where the result of an election is determined as hereinafter provided, sign, in a form determined by the Chief Electoral Officer, an oath or affirmation of secrecy.

(2) A candidate for any election must sign the oath or affirmation of secrecy referred to in subsection (1) before attending a place where the result of the election is determined.

(3) Nothing in this section may be construed as prohibiting the persons referred to in subsection (1) or (2) from reporting fraudulent or any other illegal activities.

Subpart 2
Nomination of candidates for presidential elections

Requirements for nomination as candidate for presidential elections

72. A person may only be nominated as a candidate for an election to the office of President if the person -

(a) qualifies to be elected as President by virtue of Article 28(3) of the Namibian Constitution;

(b) is a registered voter under this Act; and

(c) is nominated, in a manner as hereinafter provided, either -

(i) as a representative of a registered political party, by the political party; or

(ii) as an independent candidate whose nomination is supported by at least 500 registered voters per region.

Submission of nomination as candidate for presidential elections

73. (1) A nomination of a candidate for election as President may be submitted to the Chairperson of the Commission at any time after the publication of the appropriate proclamation in terms of section 64(1)(a)(1) but before the close of the sitting for the submission of the nomination of candidates referred to in section 74.

(2) Upon the nomination day and at the place determined in respect of the election concerned, the Chairperson of the Commission must in accordance with section 74 hold a public sitting for the submission of nominations of candidates for presidential elections.

(3) During the proceedings referred to in subsection (2) the Chairperson of the Commission must provide the candidate for election as President with the form referred to in subsection (2).

(4) A candidate for the election of President is regarded as having been duly nominated if -

(a) in the case of a candidate nominated -

(i) by a political party for election as President, his or her nomination is made in the prescribed form by a registered political party, duly signed by the person

who is the authorised representative of the political party or any other office-bearer of the political party authorised thereto in writing by the authorised representative and stamped with the seal of the political party;

(ii) as an independent candidate for election as President, his or her nomination is made in the prescribed form duly signed by any two persons whose names appear on the list referred to in paragraph (d)(ii); and

(iii) for election as President his or her nomination is accompanied by a photo of the candidate in the form and of the colours as may be acceptable to the Chairperson of the Commission, but subject to any requirements laid down by the Commission;

(b) the candidate consents to the nomination by any instrument in writing before the close of the sitting; and

(c) in the case of a nomination by a political party, the nomination is accompanied by -

(i) a copy of the registration certificate of the political party concerned and certified as such by a justice of the peace or a commissioner of oaths; and

(ii) a receipt that an amount of N$20 000 has been deposited with the State Revenue Fund by or on behalf of the political party concerned; or

(d) in the case of a nomination as an independent candidate -

(i) the nomination is accompanied by a receipt that an amount of N$10 000 has been deposited with the State Revenue Fund by or on behalf of the candidate; and

(ii) there is submitted to the Chairperson of the Commission, not later than four o'clock in the afternoon of the second day before the nomination day, a list containing the names, voters' registration numbers and residential addresses of, and signed by, the persons supporting the nomination of the candidate referred to in section 72(c)(ii), none of whom has already signed in support of any other candidate in respect of the election concerned.

(5) The amount deposited by or on behalf of a registered political party or candidate is forfeited to the State in the case of a candidate who has not received the requisite majority of votes cast as contemplated in Article 28(2)(b) of the Namibian Constitution, but no forfeiture follows, if in the election no candidate has received the requisite majority of votes concerned.

(6) Subject to subsection (5), the amount deposited by or on behalf of a registered political party or candidate must as soon as practicable after the poll in the election has been taken, be returned to the depositor.

(7) If the nomination as candidate is -

(a) rejected in terms of section 75(3); or

(b) withdrawn in accordance with subsection (8),

the amount deposited by or on behalf of the registered political party or the person nominated as candidate must as soon as is practicable after section 75(2) has been complied with, be returned to the depositor.

(8) At any time before the close of the sitting referred to in section 74 -

(a) the nomination of a candidate may be withdrawn by the registered political party which submitted the nomination; or

(b) the consent to nomination may be withdrawn by a candidate concerned,

by submitting to the Chairperson of the Commission any instrument in writing containing the withdrawal, and thereupon the nomination lapses.

(9) The Chairperson of the Commission must -

(a) consider any nomination received before the sitting referred to in section 74 in order to determine whether the nomination complies with this section; and

(b) notify in writing the candidate concerned accordingly.

(10) Section 75(3) applies with the necessary changes in the case of a nomination referred to in subsection (9) which does not comply with this section.

Duration of session on nomination day and consideration of nominations

74. (1) A sitting for the submission of the nomination of candidates referred to in section 73(2), endures from 9h00 until 11h00, but if at the last-mentioned hour any person present is then ready to submit the nomination of a candidate or a person has so submitted the nomination, but it has not been completed, the Chairperson of the Commission must continue the sitting to enable the candidate to be duly nominated.

(2) The Chairperson of the Commission must -

(a) consider any nomination received before the close of the sitting in order to determine whether the nomination complies with section 73; and

(b) notify in writing the candidate concerned accordingly.

(3) Section 75(3) applies with the necessary changes in the case of a nomination referred to in subsection (2) which does not comply with section 73.

Declaration of candidates duly nominated for election as President

75. (1) If the Chairperson of the Commission is satisfied that section 73 has been complied with in respect of a nomination, the Chairperson must -

(a) declare as soon as is practicable after the close of the sitting, the candidate concerned to be duly nominated for the election of the President; and

(b) thereupon notify in writing the candidate concerned by any instrument in writing of the declaration.

(2) As soon as is practicable after the close of the sitting in terms of section 74, the Chairperson of the Commission must by notice in the *Gazette* make known -

(a) the full names, voter registration number and residential address of each duly nominated candidate and the registered political party by whom he or she was nominated, or the indication "independent" if a candidate has been so nominated;

(b) any polling day of the election concerned; and

(c) the location of every polling station in a constituency.

(3) If the Chairperson of the Commission rejects a nomination of a candidate submitted in terms of section 73, the Chairperson must -

(a) forthwith by any instrument notify in writing the candidate of the rejection and the grounds upon which the rejection has been made; and

(b) afford the registered political party or the persons by whom the nomination were submitted an opportunity, at any time before the close of the sitting or for a period not exceeding one day, to rectify the nomination or to nominate any other qualified person as candidate for the election.

[The verb "were" should be "was" to be grammatically correct ("…nomination was…"**).]**

Lack of nomination or death of candidate after nomination

76. If -

(a) no candidate is declared duly nominated in terms of section 75, the Commission must immediately terminate the election concerned and all proceedings relating to the nomination of candidates for the election must commence afresh in the same manner as if a vacancy had occurred in the office of President;

(b) a duly nominated candidate for the election of President dies or becomes incapacitated -

(i) before the poll for the election has commenced; or

(ii) while the poll for the election is taking place,

the Commission must immediately terminate the election, and all proceedings relating to the nomination of candidates for the election concerned must commence afresh in the same manner as if a vacancy had occurred in the office of President, but no fresh nomination is necessary in the case of a candidate who was duly nominated at the time when the election was so terminated;

(c) the registration of a political party in respect of which a candidate for the election of President has been declared duly nominated is cancelled and the political party is deregistered in terms of this Act before the poll has commenced or while the poll is taking place, all proceedings relating to the election must continue as if the candidate were nominated as an independent candidate.

Subpart 3
Nomination of candidates for National Assembly elections

Submission of party lists

77. (1) A registered political party that intends to take part in the election for members of the National Assembly must submit to the Commission a list of candidates in writing at any time after the publication in the *Gazette* of the appropriate proclamation referred to in section 64(1)(a), but not later than 11h00 on the day determined in accordance with that section.

(2) A list referred to in subsection (1) must -

(a) contain the names, indicate the sex and residential addresses of at least 32 but not more than 96 candidates nominated with a view to the filling of any seats in the National Assembly to which the registered political party may become entitled in accordance with Schedule 4 to the Namibian Constitution; and

(b) further comply with subsections (3), (4), (5), (6) and (7).

(3) The -

(a) names on a list of candidates must appear in the order as the registered political party may determine with a view to paragraph (4) of Schedule 4 to the Namibian Constitution; and

(b) voter registration number of each candidate must be stated on the list after his or her name.

(4) A person may only be nominated as a candidate on a list of candidates if the person -

(a) qualifies to be elected as a member of the National Assembly by virtue of Article 46(1)(a) of the Namibian Constitution;

(b) is a registered voter; and

(c) is a member of the registered political party submitting the list of candidates concerned.

(5) A list of candidates must be accompanied by -

(a) a declaration with the seal of the registered political party thereon by the person who is the authorised representative of the political party concerned that each person whose name appears on the list of candidates concerned has consented to the nomination as a candidate of the political party and that every such person complies with subsection (4);

(b) a copy of the registration certificate of the political party concerned and certified as such by a justice of the peace or a commissioner of oaths; and

(c) a photo of the head of the political party concerned, in the form and of the colours as may be acceptable to the Commission.

(6) Any person whose name appears on more than one list of candidates is deemed not to be nominated as a candidate for any of the registered political parties which submitted the list concerned.

(7) A copy of each list of candidates must be kept for inspection by the public at the offices of the Commission, and at the places in any region and any constituency as the Commission may think necessary.

Publication of party lists

78. (1) The Commission must as soon as is practicable after section 77 has been complied with, publish a notice in the *Gazette* -

(a) stating, in alphabetical order the names of all the registered political parties;

(b) setting out the list of candidates of each political party concerned for the election concerned, as drawn up by the registered party in terms of section 77; and

(c) declaring that the persons whose names appear on the list have been duly nominated as the candidates of the political party concerned for the election.

(2) If -

(a) any person whose name appears on a list of candidates in a notice published in terms of subsection (1) dies or becomes incapacitated or is found not to qualify in terms of section 77(4) to be a member of the National Assembly;

(b) the candidature of the person is withdrawn by him or her or by the registered political party which submitted the list of candidates, by submitting to the Commission in any instrument in writing the withdrawal; or

(c) the registration of a political party which has submitted a list of candidates for the election of members of the National Assembly is cancelled and the political party is deregistered in terms of this Act,

at any time before any polling day in the election concerned, the Commission must amend the notice as contemplated in subsection (3).

(3) A notice referred to in subsection (1) must be amended by a further notice in the *Gazette* by -

(a) the deletion from the list of the name and voter registration number of the person contemplated in subsection (2)(a) and (b); and

(b) the addition or insertion, as may be required by the registered political party concerned, on the list of the name and voter registration number of any person who -

(i) so qualifies;

(ii) has been nominated in writing by the political party whose list of candidates it is; and

(iii) consented to the nomination in writing;

(c) deleting -

(i) the name of the political party referred to in paragraph (c) of subsection (2);

(ii) the list contemplated in paragraph (b) of subsection (1) in respect of the political party referred to in subparagraph (1); and

(iii) the declaration contemplated in paragraph (c) of subsection (1) in respect of the political party referred to in subparagraph (1).

(4) A person whose name has, in terms of a notice under subsection (3) -

(a) been deleted from the list of candidates of a registered political party, ceases to be a candidate for the election;

(b) been added or inserted to the list of candidates of a registered political party, thereby becomes a candidate for the political party for the election.

(5) Any reference in this Act to a notice published in terms of subsection (1) is construed, in relation to a notice which has been amended under subsection (3), as a reference to the notice as so amended.

(6) A notice published under subsection (1) is, on the mere production of a copy of the *Gazette* in which it is published, and in the absence of proof to the contrary, conclusive evidence that -

(a) the requirements of this Act relating to the submission of lists of candidates by registered political parties and to matters precedent or incidental thereto have been complied with in respect of any registered political party whose name is set out therein; and

(b) any candidates on the list of candidates are the candidates nominated in respect of the political party, but subject to paragraph (4) of Schedule 4 to the Namibian Constitution.

Subpart 4
Nomination of candidates for regional council elections

Requirements for nomination as candidate for regional council elections

79. (1) A person may only be nominated as a candidate for election as a member of a regional council if the person -

(a) qualifies to be a member of a regional council as contemplated in section 6 of the Regional Councils Act;

(b) is nominated, in a manner as hereinafter provided, either -

(i) as a member of a registered political party, by the political party; or

(ii) as an independent candidate whose nomination is supported by at least 150 registered voters in the constituency for which the nomination is intended.

(2) A person may not at a general election or, if more than one by-election for members of regional councils take place on the same day, be nominated as a candidate in more than one constituency.

Submission of nomination as candidate for regional council elections

80. (1) A nomination as candidate for a regional council election may be submitted to the returning officer for a constituency at any time after the publication of the appropriate proclamation in terms of section 64(1)(a)(ii) but before the close of the sitting under section 81.

(2) Upon the nomination day and at the place and time determined in respect of any constituency, the returning officer concerned must in accordance with section 81 hold a public sitting for the submission of the nomination of candidates for a regional council election for that constituency.

(3) A candidate for an election as a member of a regional council is regarded as having been duly nominated if -

(a) his or her nomination is made in the prescribed form and -

(i) in the case of a candidate nominated by a registered political party, duly signed by the person who is the authorised representative of the political party or any other office-bearer of the political party authorised thereto in writing by the authorised representative and stamped with the seal of the political party; or

(ii) in the case of an independent candidate, duly signed by any two persons whose names appear on the list referred to in paragraph (e) of this subsection; and

(iii) is accompanied by a photo of the candidate, in the form and of the colours as my be acceptable to the returning officer, but subject to any requirements laid down by the Commission;

[The word "may" in the phrase "as may be acceptable" is misspelt in the *Government Gazette*, as reproduced above.]

(b) the candidate consents to the nomination by any instrument in writing before the close of the sitting; and

(c) the nomination is accompanied by a receipt that an amount of N$ 2500 has been deposited with the State Revenue Fund by or on behalf of the registered political party or candidate; and

(d) in the case of a nomination by a registered political party, the nomination is accompanied by a copy of the registration certificate of the political party concerned and certified as such by a justice of the peace or a commissioner of oaths; or

(e) in the case of a nomination as an independent candidate, there is submitted to the returning officer concerned, not later than four o'clock in the afternoon of the second day before the nomination day, a list containing the names, voter registration numbers and residential addresses of, and signed by, the persons supporting the nomination of the candidate referred to in section 79(1)(b)(ii), none of whom has already signed in support of any other candidate in respect of the election concerned.

(4) The amount deposited by or on behalf of a registered political party or candidate is not refundable.

(5) Subject to subsection (4), the amount deposited by or on behalf of a registered political party or candidate must as soon as is practicable after the poll in the constituency has been taken, be returned to the depositor.

(6) If -

(a) the nomination as candidate is -

(i) rejected in terms of section 82(7); or

(ii) withdrawn in accordance with subsection (7); or

(b) a candidate is declared duly elected in terms of section 82(2),

the amount deposited by or on behalf of the registered political party or the person nominated as candidate must as soon as is practicable after section 82(5) has been complied with, be returned to the depositor.

(7) At any time before the close of the sitting referred to in section 81 -

(a) the nomination of a candidate may be withdrawn by the registered political party which submitted the nomination; or

(b) the consent to nomination may be withdrawn by a candidate concerned,

by submitting to the returning officer concerned any instrument in writing containing the withdrawal, and thereupon the nomination lapses.

(8) A returning officer concerned must -

(a) consider any nomination received before the sitting referred to in section 81 in order to determine whether the nomination complies with this section; and

(b) notify in writing the candidate concerned accordingly.

(9) Section 82(7) applies with the necessary changes in the case of a nomination referred to in subsection (8) which does not comply with this section.

Duration of session on nomination day and consideration of nominations

81. (1) A session for the submission of the nomination of candidates referred to in section 80(1) endures from 9h00 until 11h00, but if at the last-mentioned hour any person present is then ready to submit the nomination of a candidate or a person has so submitted the nomination but it has not been completed, the returning officer for the constituency must continue the sitting to enable the candidate to be duly nominated.

(2) The returning officer concerned must -

(a) consider any nomination received before the close of the sitting in order to determine whether the nomination complies with section 80; and

(b) notify in writing the candidate concerned accordingly.

(3) Section 82(7) applies with the necessary changes in the case of a nomination referred to in subsection (2) which does not comply with section 80.

Declaration of candidates duly nominated for election as members of regional councils

82. (1) If, after examining every nomination as a candidate submitted in terms of section 80, the returning officer for the constituency is satisfied that that section has been complied with, the returning officer must -

(a) declare, as soon as is practicable after the close of the sitting, a candidate concerned to be duly nominated in terms of this Act for the constituency; and

(b) thereupon notify the candidate concerned by any instrument in writing of the declaration.

(2) If at the close of the sitting for the submission of nominations only one person has been duly nominated in respect of a constituency, the returning officer must forthwith declare the person concerned to be the duly elected member of the regional council for the constituency concerned with effect -

(a) in the case of any general election, from any polling day determined in respect of the election concerned; or

(b) in the case of a by-election, from the date on which the declaration is made.

(3) The returning officer must immediately by any instrument in writing notify the Commission of any declaration as duly elected member referred to in subsection (2).

(4) If at the close of the sitting for the submission of nominations more than one person has been declared duly nominated as a candidate in respect of a constituency -

(a) a poll must take place in accordance with this Act; and

(b) the returning officer for the constituency must notify the Commission by any instrument in writing of -

(i) the full names, voter registration number and residential address of each candidate declared to be duly nominated in respect of the constituency concerned; and

(ii) the name of the registered political party which has nominated the candidate, or an indication "independent" if a candidate has been so nominated.

(5) After receipt of a notification referred to in subsection (3) or a notification referred to in subsection (4) in respect of a region, the Commission must by notice in the *Gazette* make known -

(a) the -

(i) full names, sex, voter registration number and residential address of each person who, under subsection (2), has been declared as duly elected member of the regional council concerned; and

(ii) the name or number of the constituency in respect of which the person has been so declared;

(b) the -

(i) full names, sex, voter registration number and residential address of each candidate referred to in subsection (4) and the registered political party or indication "independent" so referred to therein;

(ii) the constituency in respect of which the candidates are nominated;

(iii) the polling day for the election concerned; and

(iv) the location of every polling station in a constituency.

(6) The Commission must also cause to be displayed the notification referred to in subsection (5) at the places in a region and in a constituency as it may think necessary.

(7) If the returning officer for a constituency rejects a nomination as a candidate for the election of any member of a regional council, the returning officer must -

(a) forthwith by any instrument in writing notify the candidate of the rejection and the grounds upon which the rejection has been made; and

(b) afford the registered political party or the persons by whom the nomination were submitted an opportunity, at any time before the close of the sitting, to rectify the nomination or to duly nominate any other qualified person as candidate for the constituency.

[The verb "were" should be "was" to be grammatically correct ("…nomination was…"**).]**

Death or incapacitation of candidate for regional council elections after nomination

83. (1) If any duly nominated candidate in an election for a member of a regional council in any constituency dies or becomes incapacitated -

(a) before the poll for the election has commenced, the President must, upon being satisfied of the fact of the death or incapacitation, withdraw so far as it concerns the constituency, the proclamation determining any polling day which in terms of section 63(1)(c) or (2)(b), as applied by section 64(5), has been published in the *Gazette*;

(b) while the poll for the election in the constituency is taking place, the returning officer must immediately terminate the polling, upon being satisfied of the fact of the death or incapacitation, and notify in writing the Commission thereof.

(2) In a situation contemplated in subsection (1) all proceedings relating to the nomination of candidates for the election concerned must commence afresh in the same manner as if a vacancy had occurred in respect of the constituency at the time of the termination, but no fresh nomination is necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.

Lack of nomination or cancellation of registration of political party after nomination

84. (1) If after the close of a sitting for the nomination of a candidate for a regional council election in a constituency no candidate has been declared duly nominated, all proceedings relating to the election concerned must commence afresh in the same manner as if a vacancy had occurred in respect of the constituency at the time of the close of the sitting.

(2) If the registration of a political party in respect of which a candidate for election of a member of a regional council has been declared duly nominated in a constituency is cancelled and the political party is deregistered in terms of this Act before the poll has commenced or while the poll is taking place in the constituency, all proceedings relating to the election must continue as if the candidate were nominated as an independent candidate.

Subpart 5
Nomination of candidates for local authority council elections

Requirements for nomination as candidate for local authority council elections

85. A person may only be nominated by a registered political party or a registered organisation as a candidate on a list of candidates for a local authority council election if the person -

(a) qualifies to be a member of the local authority council as contemplated in section 7 of the Local Authorities Act, 1992; and

(b) is a member of that political party or organisation.

Submission of political party and organisation lists

86. (1) A registered political party or a registered organisation which takes part in an election for members of a local authority council must submit to the returning officer for the local authority area concerned a list containing the name and sex of candidates in writing at any time after the publication in the *Gazette* of the appropriate proclamation referred to in section 64(1)(a)(iii), but not later than 11h00 on the day determined in accordance with that section.

(2) A list of candidates referred to in subsection (1) must contain, subject to this section and section 85, the names, voters' registration numbers and residential addresses of candidates, numbering not less than the number of members required to fill the seats in the local authority council concerned to which the registered political party or registered organisation may become entitled to in accordance with section 112(1), and five names, voters' registration numbers and residential addresses in addition thereto.

(3) The -

(a) names on a list of candidates must appear in the order as the registered political party or registered organisation may determine;

(b) voter registration number of each candidate must be stated on the list after his or her name.

(4) A list of candidates must be accompanied by -

(a) a declaration with the seal of the registered political party or registered organisation thereon by the person who is the authorised representative of the political party or organisation concerned that each person whose name appears on the list of candidates concerned has consented to the nomination as a candidate of the political party or organisation and that every such person complies with section 85;

(b) a copy of the registration certificate of the registered political party or registered organisation concerned and certified as such by a justice of the peace or a commissioner of oaths; and

(c) a photo of the head of the registered political party or registered organisation concerned, in the form and of the colours as may be acceptable to the Commission.

(5) Any person whose name appears on more than one list of candidates is deemed not to be nominated as a candidate for any registered political party or registered organisation which submitted the list concerned.

(6) A copy of each list of candidates must be kept for inspection by the public against payment of the prescribed fee at the offices of the Commission and at the places within the local authority area concerned as the Commission may think necessary.

(7) A returning officer concerned must -

(a) consider any list received in order to determine whether the nomination complies with section 85 and this section;

(b) notify in writing the registered political party or registered organisation or the candidate concerned accordingly; and

(c) afford the registered political party or registered organisation or the candidate an opportunity to rectify the nomination or to duly nominate any other qualified person as candidate for the election concerned.

Publication of political party and organisation lists

87. (1) The Commission must as soon as is practicable after section 86 has been complied with, publish a notice in the *Gazette* -

(a) stating, in alphabetical order the names of all the registered political parties or registered organisations;

(b) setting out the list containing the name and sex of candidates of each registered political party or registered organisation concerned for the election concerned, as drawn up by the registered party in terms of section 86; and

(c) declaring that the persons whose names appear on the list have been duly nominated as the candidates of the registered political party or registered organisation concerned for the election.

(2) If -

(a) any person whose name appears on a list of candidates in a notice published in terms of subsection (1) dies or becomes incapacitated or is found not to qualify in terms of section 85 to be a member of a local authority council;

(b) the candidature of the person is withdrawn by him or her or by the registered political party or registered organisation which submitted the list of candidates, by submitting to the Commission in any instrument in writing the withdrawal; or

(c) the registration of a political party or organisation which has submitted a list of candidates for the election of members of a local authority council is cancelled and the political party is deregistered in terms of this Act,

at any time before any polling day in the election concerned, the Commission must amend the notice as contemplated in subsection (3).

(3) A notice referred to in subsection (1) must be amended by a further notice in the *Gazette* by -

(a) the deletion from the list of the name and voter registration number of the person contemplated in (2)(a) and (b);

(b) the addition or insertion, as may be required by the registered political party or registered organisation concerned, on the list of the name and voter registration number of, firstly any person from the five names contemplated in section 86(2) who -

(i) so qualifies;

(ii) has been nominated in writing by the registered political party or registered organisation whose list of candidates it is; and

(iii) has consented to the nomination in writing; and

(c) deleting -

(i) the name of the political party or organisation referred to in paragraph (c) of subsection (2);

(ii) the list contemplated in paragraph (b) of subsection (1) in respect of the political party or organisation referred to in subparagraph (1); and

(iii) the declaration contemplated in paragraph (c) of subsection (1) in respect of the political party or organisation referred to in subparagraph (1).

(4) A person whose name, in terms of a notice under subsection (3) -

(a) has been deleted from the list of candidates of a registered political party or registered organisation, ceases to be a candidate for the election;

(b) has been added or inserted to the list of candidates of a registered political party or registered organisation, thereby becomes a candidate for the political party or organisation for the election.

(5) Any reference in this Act to a notice published in terms of subsection (1) is construed, in relation to a notice which has been amended under subsection (3), as a reference to the notice as so amended.

(6) A notice published under subsection (1) is, on the mere production of a copy of the *Gazette* in which it is published, and in the absence of proof to the contrary, conclusive evidence that -

(a) the requirements of this Act relating to the submission of lists of candidates by registered political parties and registered organisations and to matters precedent or incidental thereto have been complied with in respect of any political party or organisation whose name is set out therein; and

(b) that any candidates on the list of candidates are the candidates nominated in respect of the registered political party or registered organisation.

Candidate duly nominated to be declared duly elected in certain circumstances

88. (1) If only one registered political party or registered organisation has submitted a list of candidates in an election for members of a local authority council as contemplated in section 86(1), and the persons whose names appear on the list have been declared duly nominated as the candidates of the political party or registered organisation concerned, the returning officer for the local authority area concerned must forthwith declare the persons whose names appear on the list to be the duly elected members of the local authority council concerned with effect from any polling day determined in respect of the election concerned.

(2) The returning officer referred to in subsection (1) must immediately, by any instrument in writing, notify the Commission of the declaration of the persons concerned to be the duly elected members of the local authority council concerned.

(3) After receipt of a notification referred to in subsection (2) the Commission must by notice in the *Gazette* make known the full names, voter registration number and residential address of each person who under subsection (1) has been declared as a duly elected member of the local authority council concerned.

Subpart 6
General provisions relating to conduct of elections

Polling stations

89. (1) The Commission must for the purpose of facilitating the taking of a poll in any election, establish one or more polling stations at convenient places for -

(a) a constituency or a local authority area; or

(b) both a constituency and a local authority area or part thereof situated within the boundaries of the constituency.

(2) The allocation of polling stations must be determined with due regard to -

(a) the distribution of registered voters in Namibia;

(b) the availability of suitable places for the establishing of polling stations;

(c) access routes leading to the places;

(d) traffic density at or in the vicinity of the places;

(e) distances to be travelled to the places, including the walking distance a voter is expected to cover to reach the nearest polling station;

(f) the geography and topography of the area;

(g) accessibility for people with disabilities; and

(h) any other relevant factor.

(3) In order to enable voters outside Namibia to record their votes in an election for the President or members of the National Assembly, the Commission may establish polling stations outside Namibia at any Namibian diplomatic mission or at the other convenient places as may be determined by the Commission after consultation with the Minister responsible for foreign affairs.

(4) As soon as practicable after the establishment of polling stations as contemplated in subsections (1) and (3), the Chief Electoral Officer must make known by notice in the *Gazette* the location of every polling station.

(5) The Commission may authorise the Chief Electoral Officer, to the extent determined by the Commission, to provide one or more mobile polling stations for the purpose of facilitating the taking of a poll in any election.

(6) A mobile polling station is under the general control of the returning officer designated by the Chief Electoral Officer and is for the purposes of this Act regarded as a polling station.

(7) The returning officer referred to in subsection (6) must in the manner as he or she thinks fit and in so far as it may be practicable to do so, make known -

(a) the places to be visited by a mobile polling station during the polling period; and

(b) the times at which it will visit the places.

(8) The presiding officer in control of any polling officer and agent for a mobile polling station may enter upon any land with the mobile polling station and the necessary equipment for the purpose of -

(a) taking a poll of registered voters on the land; or

(b) ascertaining whether there are any registered voters on the land.

(9) The Commission -

(a) may establish additional polling stations before the commencement of any poll in any election, and subsection (4) then applies;

(b) may establish additional polling stations at any time after the commencement of the poll in any election; and

(c) must notify in writing every registered political party or registered organisation concerned and, if applicable, every independent candidate, thereof as soon as is practicable.

(10) In order to speed up the voting process, the presiding officer at each polling station must subdivide the voters' register concerned into alphabetic streams.

(11) Subject to subsection (13), no electronic, digital or similar communication device, recording device and any other device capable of capturing, storing and communicating visuals, audio, text and other data, except electronic, digital or similar election equipment using by the Directorate, may be taken into a polling station by any person, except a police officer, a presiding officer, the Chief Electoral Officer and members of the Commission.

(12) Subject to subsection (13), a police officer in charge of a polling station who finds inside the polling station any device referred to in subsection (11) on any other person than a police officer, a presiding officer, the Chief Electoral Officer or any member of the Commission may not allow the other person to remain in the polling station, except if the person has removed the device concerned.

(13) For the purpose of any election or referendum the Commission may prescribe instances to authorise permission of the devices referred to in subsection (11) into a polling station.

(14) For purposes of this section, the Commission is, on an urgent basis, entitled to petition the Electoral Court for an order authorising the entry upon the land or premises of any owner who unreasonably refuses or hinders entry thereupon by a polling officer and agent.

Provision of equipment

90. (1) For the purposes of any election the Chief Electoral Officer must provide every returning officer with -

(a) polling booths, ballot boxes, ballot papers, instruments for stamping ballot papers with the official mark, a sealed envelope containing an imprint of the official mark, seals, the necessary electronic, digital or similar voting equipment if voting is to take place in respect of the constituency, region or local authority area concerned by way of voting machines and any other requisites as may be considered necessary;

(b) an Occurrence Book; and

(c) a list of unrecovered voter registration cards of persons whose names -

(i) were included in the provisional voters' register concerned, but not in the subsequent voters' register concerned;

(ii) were removed from the voters' register in terms of section 43(1) (b)(i) or (ii),

and a returning officer must do such acts and make such arrangements to facilitate the taking of the poll as may be deemed advisable for effectually conducting the election.

(2) For the purposes of any election the Chief Electoral Officer must provide every registered political party or registered organisation taking part in the election with -

(a) a list containing the numbers allotted to the ballot boxes;

(b) a list containing the serial numbers of the ballot papers, and

(c) a list containing the serial numbers of the seals of the voting machines and the identification numbers of the voting machines,

to be used at each polling station.

(3) A returning officer may depute any person under his or her control to perform on behalf of the returning officer any of the functions imposed upon the returning officer by this section in regard to the arrangements for the taking of the poll.

Polling booths

91. (1) The polling booths in or at a polling station must -

(a) be arranged in a manner which ensures that voters can record their votes in secrecy;

(b) be accessible for people with disabilities; and

(c) be so positioned that a person can neither enter nor leave it without being observed.

(2) The presiding officer and a polling officer must take care that, except in accordance with this Act, no other person enters a polling booth while a voter is in it for the purpose of recording his or her vote.

Ballot boxes

92. (1) Before the commencement of the poll on a polling day at any polling station, the presiding officer must -

(a) satisfy himself or herself that all ballot boxes to be used at the polling station are empty;

(b) permit the inspection of the interior of all the empty ballot boxes by the persons entitled in terms of section 94(1) to attend at the polling station, and who are so present; and

(c) immediately thereafter close and seal all the ballot boxes in the prescribed manner.

(2) In the presence of the persons entitled in terms of section 94(1) to be in attendance at a polling station and who are present, and in the prescribed manner, the presiding officer at a mobile polling station referred to in section 89(5) must -

(a) close and seal the aperture in any ballot box in use at the mobile polling station before the mobile polling station leaves any venue for a new venue; and

(b) reopen the aperture in the ballot box at the new venue.

(3) A presiding officer referred to in subsections (1) and (2) must -

(a) afford election agents of registered political parties, registered organisations or independent candidates to -

(i) add their own seals to ballot boxes as contemplated in subsection (1)(c) and subsection (2)(a); and

(ii) record the numbers of the seals concerned; and

(b) submit the numbers of the seals referred to in paragraph (a)(ii) to the returning officer concerned to be distributed to the authorised representatives of the registered political parties or registered organisations in the region and to the presiding officer at polling stations in the region; and

(4) If for any reason it becomes necessary at any time during the polling period to use any additional ballot box at any polling station or mobile polling station, the presiding officer concerned must, as contemplated in subsections (1) and (2) -

(a) make the additional ballot box available for inspection; and

(b) close and seal the ballot box or the aperture of the ballot box, as the case may be,

before being made available for the deposit of ballot papers.

(5) A ballot box closed and sealed as aforesaid may not be opened and the seal may not be broken, except under the circumstances contemplated in this Act.

(6) If a ballot box is during any polling day and to the satisfaction of the presiding officer at a polling station, filled with ballot papers, the presiding officer must close and seal in the presence of the persons entitled in terms of section 94(1) to be in attendance at the polling station and who are so present, and in the prescribed manner, the aperture in the ballot box.

(7) At the closing of the poll on a polling day the presiding officer at a polling station must close and seal the aperture in any ballot box in use at that point in time at the polling station, in the presence of persons entitled in terms of section 94(1) to attend at the polling station and who are so are present, and in the prescribed manner.

(8) All sealed ballot boxes used in or at a polling station must be placed in a position where they can be seen at all times during polling hours at the polling station by the presiding officer or a polling officer designated by him or her.

(9) The presiding officer assisted by the police officer in charge of the polling station is responsible for the safe-keeping of all ballot boxes and voting machines used at the polling station concerned until the ballot boxes and voting machines are delivered in accordance with this Act to the person responsible for the determination of the result of the election concerned.

(10) This section applies with the necessary amendments in respect of elections involving the use of voting machines.

Commencement and closing of poll at polling stations

93. (1) Subject to subsections (2) and (3), the poll for any election -

(a) at polling stations in Namibia, commences at 07h00 and closes at 21h00 on any polling day; and

(b) at polling stations outside Namibia, commences and closes on the polling day referred to in the proviso to section 98(6), at the times as the Commission may determine in respect of each polling station concerned.

(2) The Commission may alter, by notice published in the *Gazette* at any time before the commencement of the poll, the polling hours referred to in subsection (1)(a) in relation to any polling station in Namibia in respect of any polling day of an election.

(3) Despite subsection (1) a presiding officer must permit every voter who at the time of the closing of the poll is in attendance to vote, to record his or her vote.

Powers of presiding officers and other officers at polling stations

94. (1) The presiding officer and other officers at a polling station, assisted by police officers, must -

(a) keep order thereat;

(b) regulate the number of voters to be admitted at a time; and

(c) exclude all other persons except -

(i) a member of the Commission;

(ii) the Chief Electoral Officer;

(iii) a director;

(iv) a chief regional officer;

(v) the returning officer concerned;

(vi) any counting officer concerned;

(vii) any election agent or counting agent entitled to attend at the polling station;

(viii) any person appointed by an accredited observer;

(ix) the polling officers or any police officer on duty; and

(x) any other person authorised in writing by the Chief Electoral Officer.

(2) A presiding officer may order any person, excluding the persons referred to in subsection (1) and any person recording his or her vote, to leave the polling station.

(3) Any person who fails to leave the polling station when so ordered in accordance with subsection (2) commits an offence and may by order of the presiding officer be arrested without a warrant.

(4) A presiding officer, after consultation with the police officers on duty, may take any steps that the presiding officer thinks necessary for -

(a) the protection of himself or herself and all other persons present in a polling station; or

(b) stopping or preventing any violence or disturbance in or in the vicinity of the polling station.

(5) Despite anything to the contrary in this Act or any other law, a presiding officer who is of the opinion that there exists at a polling station a situation which threatens the -

(a) preservation of the internal security of Namibia;

(b) maintenance of law and order;

(c) investigation of any offence or alleged offence;

(d) prevention of crime;

(e) protection of life and property; or

(f) taking of the poll thereat to the extent that the objects of this Act cannot be achieved,

he or she must forthwith discontinue the taking of the poll and close down the polling station, whereupon a poll must be taken -

(i) at the time;

(ii) in the manner; and

(iii) in respect of the voters,

as may be directed by the returning officer concerned, after consultation with the Chief Electoral Officer.

(6) The powers conferred by this section may not be exercised so as to prevent any voter who is entitled to vote, from having an opportunity to record his or her vote.

Subpart 7
Voting at polling stations

Franchise

95. Subject to and upon compliance with this Act, a voter -

(a) is entitled to vote -

(i) in the election in respect of which he or she is registered; and

(ii) for -

(aa) in the case of any election on party lists in terms of this Act, one political party only;

(bb) in the case of any other election in terms of this Act, one candidate only; and

(b) must comply with the Bill of Fundamental Voters' Rights and Duties.

Enabling of voters to vote in election

96. A person who -

(a) employs, or accommodates on land or at sea, any voter; or

(b) is in charge of any voter,

must afford the voter the opportunity to vote and take timeous deliberate steps to ensure that the voter, if such voter so wishes, exercises his or her right to vote in any election in respect of which the voter is registered.

Voting machines in elections

97. (1) Before the commencement of the poll on a polling day at any polling station, the presiding officer must -

(a) satisfy himself or herself that all voting machines to be used at the polling station are cleared of any votes;

(b) permit the inspection of the voting machines by the persons entitled in terms of section 94(1) to attend at the polling station, and who are so present; and

(c) immediately thereafter close and seal all the voting machines in the prescribed manner.

(2) Despite anything to the contrary contained in this Act or any other law, the Commission may adopt voting by way of voting machines in the manner as may be prescribed, including -

(a) the manner of registering and recording of votes by way of voting machines;

(b) the procedure relating to voting to be followed at polling stations where voting machines are used;

(c) the procedure as to counting of votes recorded by way of voting machines; and

(d) the safe custody of voting machines,

in respect of any constituency, region or local authority area as the Commission, having regard to the circumstances of each case, may specify by notice in the *Gazette*.

(3) The use of voting machines referred to in subsection (2) is subject to the simultaneous utilisation of a verifiable paper trail for every vote cast by a voter, and any vote cast is verified by a count of the paper trail.

(4) In the event that the results of the voting machines and the results of the paper trail do not accord, the paper trail results are accepted as the election outcome for the polling station or voting thread concerned.

Place of voting

98. (1) Subject to this section, a person may only record his or her vote at a polling station established for the constituency or local authority area in respect of which the person is registered.

(2) If, in an election for a member of a regional council or for members of a local authority council, a voter -

(a) is employed as a returning officer, presiding officer, polling officer, counting officer, police officer in the election;

(b) is, by reason of the employment, unable to attend on any polling day at a polling station at which the voter is in accordance with subsection (1) or (7) required to record his or her vote; and

(c) produces to the returning officer for the constituency or local authority area a written authorisation issued by the Chief Electoral Officer stating that the voter concerned is by reason of the employment permitted to record his or her vote in terms of this subsection and subsections (3), (4) and (5),

the returning officer for the constituency or local authority in respect of which the voter is registered must allow, at the request of the voter made at any time during the period referred to in subsection (3), the voter to record his or her vote, subject to subsections (4) and (5), in accordance with section 100.

(3) A voter referred to in subsection (2) is permitted to record his or her vote in accordance with that subsection at any time from 09h00 on a special voting day determined under this Act, but not later than 19h00 on the second day preceding the day of the election.

(4) A voter who has produced to the returning officer a written authorisation as contemplated in subsection (2)(c) must -

(a) sign the written authorisation produced by him or her; and

(b) surrender the signed written authorisation to the returning officer concerned, who must place it in an envelope called the "authorisation envelope".

(5) A voter who has signed the written authorisation referred to in subsection (4)(a) may not place the ballot paper marked by him or her in a ballot box, but must -

(a) place the ballot paper in the presence of the returning officer concerned and without being unfolded, in a blank envelope;

(b) close the blank envelope; and

(c) hand the blank envelope to the returning officer, who must -

(i) place it in an envelope called the "authorisation ballot paper envelope";

(ii) close the authorisation ballot paper envelope and set it aside in a separate packet; and

(iii) place the packet in the designated ballot box.

(6) If, in an election for the President or members of the National Assembly a voter is by reason of absence unable to attend on any polling day at a polling station within the constituency where such voter is registered and in accordance with subsection (1) is required to record his or her vote, the presiding officer of any other polling station, whether in or outside Namibia, must, at the request of the voter, permit the voter to record his or her vote by way of a tendered vote at the polling station during the polling hours applicable to the polling station by virtue of section 93, but such tendered vote must be included in the return of the polling station at which the voter voted.

(7) If both the elections referred to in section 101(1)(c) and (d) are conducted simultaneously as contemplated in that section, and the voter desires to record a vote in respect of -

(a) an election for a member of a regional council only, the voter must record the vote at any polling station established for the constituency in respect of which the voter is registered;

(b) an election for members of a local authority only, or for that election and an election referred to in paragraph (a), the voter must record the vote at the polling station established for both the constituency and local authority area in respect of which the voter is registered.

Voting to be by secret ballot

99. (1) Voting in any election in terms of this Act is by secret ballot.

(2) Every ballot paper, including a ballot paper used in respect of a voting machine, are in the form as prescribed and must contain -

(a) in the case of an election on party lists -

(i) the names, in alphabetical order, of the registered political parties or registered organisations taking part in the election;

(ii) the abbreviated name, if any, of each such political party or organisation;

(iii) the distinctive symbol, if any, of each such political party or organisation; and

(iv) the photo of the head of each such political party or organisation submitted in accordance with section 77(5); or

(b) in the case of an election otherwise than on party lists -

(i) the surnames, in alphabetical order, of all the duly nominated candidates in the election and the other names or initials of the candidates as the Commission may determine;

(ii) the name and, if any, the abbreviated name and distinctive symbol of the registered political party or registered organisation by whom each candidate was nominated, or, if a candidate was not nominated by a registered political party or registered organisation, the word "independent"; and

(iii) a photo of each candidate; and

(c) the other particulars as may be prescribed.

Manner of voting in elections

100. (1) The voting at any polling station is conducted substantially and as nearly as possible in accordance with this section and sections 102 and 103.

(2) The presiding officer or a polling officer designated by the presiding officer for that purpose, must stamp on polling day in the polling station on the back of every ballot paper in a ballot paper book, except in the case of a voting machine, the official mark before the ballot paper book is handed to a polling officer for the issuance of ballot papers to voters in the election concerned.

(3) A voter may only vote in an election if the voter produces his or her voter registration card for the election concerned to the presiding officer or a polling officer.

(4) The presiding officer or a polling officer must ascertain -

(a) by examining and by asking relevant questions relating to the particulars appearing on the voter registration card produced in terms of subsection (3) that -

(i) the voter is the person whose name, photograph and other particulars appears on the voter registration card; and

(ii) the voter registration card is a voter registration card officially issued to the voter in terms of Chapter 3;

(b) in the manner prescribed in subsections (6) and (7) and subject to subsection (8), that the voter has not already voted in the election concerned; and

(c) by reference to the list of unrecovered voter registration cards referred to in section 90(1)(c), whether the name of the voter, voter registration number or other particulars which appear on the voter registration card produced by the voter appear on the list.

(5) In subsections (7), (8), (12) and (13) "identification mark" means the mark approved by the Chief Electoral Officer for the purpose of the identification of a voter who has voted in an election concerned.

(6) The presiding officer or a polling officer must require the voter, and the voter when so required, is obliged to cause his or her fingers to be examined by the presiding officer or the polling officer.

(7) If upon an examination referred to in subsection (6) -

(a) no finger or fingers of the voter display the identification mark so approved and determined as contemplated in subsections (12) and (13), the voter is presumed not to have already voted in the election concerned;

(b) a finger or fingers of the voter display the identification mark, the presiding officer must -

(i) give to every election agent who is present an opportunity to observe the identification mark; and

(ii) may not permit the voter to vote.

(8) If any person has in terms of subsection (7)(b) been prohibited from voting, the presiding officer must endorse the relevant voters' register to the effect that the person was so prohibited.

(9) Subsection (4)(b) and subsections (6), (7)(a), (12) and (13) do not apply in the case of a voter who suffers from a physical defect which, in the opinion of the presiding officer, makes the application of the provisions concerned impossible.

(10) If, in accordance with subsection 4(c), the presiding officer or polling officer establishes that the name, voter registration number and other particulars which appear on the voter registration card produced by a voter, appear on the list referred to in that subsection, the presiding officer or polling officer -

[The reference to "subsection 4(c)" should be "subsection (4)(c)", with brackets.]

(a) may not permit the voter to vote by virtue of the voter registration card; and

(b) must seize the card and report the seizure to the police officer in charge of the polling station.

(11) After having complied with subsection (4), the presiding officer or polling officer must return the voter registration card to the voter concerned.

(12) If subsection (11) has been complied with, the voter must in the presence and in accordance with the instructions of the presiding officer or a polling officer -

(a) place the identification mark on the finger or fingers of his or her left hand or of his or her right hand, as may be determined by the Chief Electoral Officer for the purposes of the election concerned; or

(b) cause it to be placed thereon by the presiding officer or the polling officer,

except as provided in subsection (9).

(13) If a voter refuses that the prescribed identification mark be applied to his or her finger or fingers -

(a) the voter may not be issued with a ballot paper;

(b) the voter is not permitted to vote, either by way of a ballot paper or by way of a voting machine;

(c) the presiding officer or polling officer must -

(i) record in the Occurrence Book at the polling station the fact that the voter refuses that the prescribed identification mark be applied to his or her finger or fingers; and

(ii) request the police officer in charge of the polling station or any other police officer on duty at the polling station to remove the voter concerned from the polling station.

(14) If the voter has complied with subsections (12) and (13), the presiding officer or polling officer must -

(a) in the case of voting by way of a ballot paper, enter the voter registration number of the voter in the ballot paper book on the counterfoil of a ballot paper which bears on the back thereof the official mark, and detach the ballot paper from its counterfoil and deliver it to the voter; or

(b) in the case of voting by way of a voting machine, enter the voter registration number of the voter in a voting machine book, as determined by the Commission.

(15) Upon receiving the ballot paper, or if the voter is voting by way of a voting machine, the voter must -

(a) enter a polling booth provided at the polling station;

(b) secretly record -

(i) in the case of voting by way of a ballot paper, his or her vote on the ballot paper by marking -

(aa) in the case of an election on party lists, the ballot paper with a mark in or next to the space opposite the name of the political party or organisation for which he or she desires to vote; or

(bb) in the case of an election otherwise than on party lists, the ballot paper with a mark in or next to the space opposite the name of the candidate for whom he or she desires to vote;

(ii) in the case of voting by way of a voting machine, his or her vote on the voting machine by selecting -

(aa) in the case of an election on party lists, in or next to the space opposite the name of the political party or organisation for which he or she desires to vote; or

(bb) in the case of an election otherwise than on party lists, in or next to the space opposite the name of the candidate for whom he or she desires to vote;

(c) while still in the polling booth, fold the ballot paper in a way that -

(i) the official mark is visible; and

(ii) the names of the political parties or candidates and the mark signifying his or her vote are not visible;

(d) leave the polling booth and display the ballot paper to the presiding officer or polling officer in a way that the official mark can be seen; and

(e) in the presence of the presiding officer or polling officer, drop, the ballot paper in the ballot box for ordinary ballot papers.

[The comma after the word "drop" is superfluous.]

(16) The -

(a) voting at a polling station may not be interrupted by any defect occurring in any instrument used at the polling station for the purposes of subsections (6) and (7); and

(b) vote recorded by any voter is not invalid merely because subsection (4)(b) was not complied with in the case of the voter because of the defect contemplated in paragraph (a),

whereupon the relevant voters' register is endorsed to that effect.

(17) The Commission must at every polling station, in the prescribed manner and form, keep a list of voters who voted or participated in an election or referendum at a constituency, but who are not registered at the constituency at which they voted or participated.

Voting process in elections held simultaneously

101. (1) If any election of -

(a) the President;

(b) members of the National Assembly;

(c) any member of a regional council; or

(d) members of a local authority council,

has under section 64(1) been determined to take place on the same polling day, the voting process at polling stations must be conducted jointly for all these elections.

(2) Despite anything to the contrary in this Act, if a registered political party or a registered organisation has, in respect of -

(a) the elections referred to in subsection (1)(a) and (b), nominated a candidate for election as President as well as candidates for election as members of the National Assembly; or

(b) the elections referred to in subsection (1)(c) and (d), nominated a candidate for election as member of a regional council as well as candidates for election as members of a local authority council,

the political party or organisation is entitled to appoint as election agents for a polling station the number of persons as is prescribed in respect of any one of the elections.

(3) If a voting process is conducted as contemplated in subsection (1), any voter who attends a polling station for the purpose of recording his or her vote must -

(a) on the same occasion record his or her vote in respect of all the elections in which he or she desires to vote, and may not be allowed to record any vote at any other polling station on any subsequent occasion; and

(b) irrespective as to whether the voter desires to record a vote in respect of all the elections concerned, be required to subject himself or herself to identification with the identification mark contemplated in section 100(5) as that voter would have been required to do had the voting process been conducted in respect of one of the elections only.

Spoilt ballot papers

102. (1) If a voter spoils any ballot paper inadvertently the voter may return it to the polling officer concerned.

(2) If the polling officer referred to in subsection (1) is satisfied of the inadvertence he or she must -

(a) give the voter another ballot paper;

(b) retain the spoilt ballot paper;

(c) immediately cancel the spoilt ballot paper and endorse it with the word “spoilt”; and

(d) forthwith record on the counterfoil of the spoilt ballot paper in the ballot paper book the fact that it has been cancelled in terms of paragraph (c).

Assistance to voters

103. (1) A presiding officer or polling officer may assist or instruct a voter in the manner of voting at a polling station if -

(a) a voter who is incapacitated by blindness or other physical disability from voting in a manner prescribed by the other provisions of this Chapter, requests in person the presiding officer or polling officer to so assist the voter in the manner directed by the voter to record the vote of the voter, but without interfering with the exercising of the franchise of the voter;

(b) the assistance or instructions are to -

(i) direct a voter to a polling booth for the purposes of recording the vote of the voter; or

(ii) inform a voter in respect of the procedure which the voter may follow on entering the polling booth,

but without the presiding officer or polling officer interfering with the secrecy of the vote of the voter or with the exercising of the franchise of the voter; or

(c) a voter who is unable to read or to understand any written directions or instructions at a polling station, personally requests the presiding officer or polling officer to explain the directions or instructions to the voter, but without interfering with the exercising of the franchise of the voter.

(2) A voter -

(a) who is incapacitated by blindness or other physical cause from voting in the manner prescribed by the other provisions of this Chapter;

(b) who has not requested to have his or her vote recorded by the presiding officer in terms of subsection (1); and

(c) who is accompanied by any other person,

may request the presiding officer to assist the voter in the presence of the person accompanying the voter and to vote on behalf of the voter in the presence of the person accompanying the voter.

(3) A presiding officer referred to in subsection (2) who is satisfied that the person accompanying the voter concerned is -

(a) entrusted by the voter; and

(b) has reached the age of 18 years,

must permit the voter to vote with the assistance of the person accompanying him or her.

(4) Upon the permission referred to in subsection (3) being granted, anything which is by this Chapter required to be done to or by the voter in connection with the recording of the vote of the voter may be done to or with the assistance of the person so accompanying the voter.

(5) Except as provided in this section, a person may not converse or in any other manner interfere with a voter at any time after the voter has been handed a ballot paper or entered a polling booth in order to vote by voting machine until the voter leaves the polling booth.

Closing of poll in election at polling stations in or outside Namibia and sealing of ballot boxes and voting machines

104. A presiding officer at a polling station in or outside Namibia must immediately after the close of the poll in an election and in the presence of the persons entitled in terms of section 94(1) to attend at the polling station, as may be in attendance -

(a) take charge of all the ballot boxes and voting machines at the polling station; and

(b) seal the ballot boxes and voting machines concerned,

in order to be counted as contemplated in section 105.

Counting of votes and sealing of packets and ballot boxes, counted results of poll in case of voting machines and ballot paper accounts

[The heading of section 105 in the ARRANGEMENT OF SECTIONS is
"Counting of votes and sealing of packets and ballot boxes, counted results of poll in case of voting machines, **packets** and ballot paper accounts"**]**

105. (1) A presiding officer at a polling station in or outside Namibia must immediately after the close of the polling station as contemplated in section 104 and in the presence of the persons entitled in terms of section 94(1) to attend at the polling station, as may be in attendance -

(a) open all the ballot boxes for ballot papers and remove therefrom the ordinary ballot papers;

(b) open all the authorisation ballot paper envelopes contemplated in section 98(5) and remove therefrom the ballot papers concerned;

(c) record the seal numbers of the ballot boxes referred to in paragraphs (a), (b) and (c); and

(d) obtain all the results of the poll concerned from any voting machine, if any.

(2) After ascertaining that, in the case of ballot papers, each ballot paper bears the official mark on the back thereof, the presiding officer must count, assisted by the counting officers concerned -

(a) the votes recorded on the ballot papers referred to in subsection (1)(a), (b) and (c) separately; and

(b) in the case of voting by a voting machine, the result of the poll -

(i) in the case of an election on party lists, for each political party or organisation; or

(ii) in the case of an election otherwise than on party lists, for each candidate.

(3) Subject to subsection (4), the presiding officer must reject and may not count any ballot paper -

(a) which records votes to more than one political party, organisation or candidate;

(b) which does not bear the official mark and in respect of which the presiding officer has reasonable grounds to believe that it has not been officially issued to a voter in terms of subsection (14) of section 100; or

(c) which is unmarked or on which it is impossible to determine with certainty for which political party, organisation or candidate, as the case may be, the ballot is recorded.

(4) The presiding officer may not reject, but must count any ballot paper on which there is any clear writing or mark by way of which a voter has indicated his or her choice.

(5) The presiding officer must in the presence of any of the persons referred to in subsection (1) endorse the word "rejected" on any ballot paper rejected in terms of subsection (3).

(6) A counting agent -

(a) may request a presiding officer to re-count the ballot papers and votes counted at a polling station, but a presiding officer may refuse to do so if he or she is of the opinion that the request is at any time unreasonable;

(b) may be present during any recount of votes.

(7) If a presiding officer refuses to re-count the ballot papers and votes counted at a polling station as contemplated in subsection (6), the presiding officer must record in the Occurrence Book at the polling station the fact that he or she refuses to re-count the ballot papers and votes concerned.

(8) When the counting of votes have been completed the presiding officer must -

[The verb "have" should be "has" to be grammatically correct.]

(a) cause the counting agents present to record their presence in the prescribed form and manner as proof of presence during the counting of votes;

(b) announce in the prescribed manner the return of the count;

(c) inform the returning officer thereof; and

(d) post a copy of the results at the polling station concerned,

but in the case of a mobile polling station the results of all the polling stations for that mobile polling station must be posted at the closing of the poll where the votes are counted.

(9) The presiding officer must immediately after the announcement of the result as contemplated in subsection (8), make up into separate packets, so sealed -

(a) all ballot boxes containing the counted ordinary ballot papers in respect of every political party, organisation or candidate;

(b) all counted results of the poll in the case of voting machines in respect of every political party, organisation or candidate;

(c) all ballot boxes containing the counted tendered vote ballot papers in respect of every political party, organisation or candidate;

(d) all authorisation ballot paper envelopes containing the ballot papers which were removed therefrom;

(e) all unused ballot papers;

(f) all cancelled spoilt ballot papers as contemplated in section 102;

(g) all rejected ballot papers as contemplated in subsection (3);

(h) all ballot papers in respect of which the presiding officer cannot determine the choice of a voter as contemplated in subsection (4);

(i) the counterfoils of -

(i) used ballot papers;

(ii) all cancelled spoilt ballot papers as contemplated in section 102; and

(iii) all rejected ballot papers as contemplated in subsection (3);

(j) all voter registration cards seized in terms of section 100(10);

(k) the stamp for the official mark used at the polling station;

(l) any Occurrence Book used at the polling station;

(m) any other equipment or documents as may be prescribed; and

(n) the result of the count of the ballot papers and the return of the poll in the case of voting machines,

and must deliver or cause to be delivered to the returning officer concerned the sealed packets, as well as the empty ballot boxes and voting machines concerned.

(10) If the geographical location of the polling station or any other circumstance occasions that the presiding officer cannot deliver or cause to be delivered the sealed packets, ballot boxes and voting machines referred to in subsection (9), the presiding officer must place the sealed packets, ballot boxes and voting machines in safe custody until he or she can deliver it or cause it to be delivered to the returning officer concerned.

(11) The sealed packets, ballot boxes and voting machines referred to in subsection (9) must be accompanied by returns in which the presiding officer accounts for the number of ballot papers and voting machines entrusted to him or her under the heads of -

(a) ballot papers counted as contemplated in subsection (9)(a), (c) and (d);

(b) unused ballot papers;

(c) spoilt and rejected ballot papers and the counterfoils thereof as contemplated in subsection (9)(f), (g), (h) and (1); and

(d) results of the poll counted as contemplated in subsection (9)(b).

(12) If, in the case of an election of members of the National Assembly or of members of a local authority council two or more political parties or organisations have received -

(a) after the counting of votes as contemplated in subsection (2); or

(b) after a re-counting of votes as contemplated in subsection (6),

an equal number of surplus votes and the result of the election cannot by virtue thereof be determined -

(i) the Chairperson of the Commission, in the case of an election of members of the National Assembly, must determine the result in accordance with the formula prescribed by Schedule 4 of the Namibian Constitution;

(ii) in the case of an election of members of a local authority council –

(aa) a fresh ballot contested by only the tied political parties must be conducted; or

(bb) the result of the election cannot by virtue of reasons other than subparagraph (aa) be determined, the returning officer concerned must by lot determine the election.

Subpart 8
Determination of result of poll and announcement of result of election

Verification of outcome of voting at polling stations

106. For the purposes of elections conducted under this Act, "verification" means -

(a) the aggregation of returns from various polling stations without recounting and recalculating the contents of the sealed packets contemplated in section 105(9); and

(b) the examination of the returns under section 108 (2)(b) by way of collating the compiled totals of the ballot papers, unused ballot papers, spoilt and rejected ballot papers, counterfoils, and the result of the poll obtained from voting machines and assembling such in proper numerical sequence.

Absence of counting agents during verification of election

107. During any process of a recount, recalculation, and resubmission to the returning officer the counting agents of the political parties, organisation and candidates are entitled to be in attendance and to exercise and perform their powers and functions as contemplated in section 105, but no recounting, recalculation and resubmission of votes are invalidated by the absence of the counting agents.

Verification of ballot paper and voting machine accounts at collation centre

108. (1) Upon receipt by a returning officer concerned of the sealed ballot boxes, sealed voting machines and sealed packets referred to in section 105 from a presiding officer, the returning officer must -

(a) take charge of them;

(b) when all the ballot boxes, voting machines and packets have been received by him or her, examine whether the seals of the ballot boxes, voting machines and packets are in order;

(c) afford any counting agent and, in the case of an election other than an election on party lists in terms of this Act, any candidate who is present an opportunity to do the same examination referred to in paragraph (b); and

(d) thereafter open all the ballot boxes, voting machines and packets as contemplated in subsection (2).

(2) In the presence of election agents and counting agents the returning officer must -

(a) open all the sealed packets referred to in section 105(9) relating to a particular polling station received from the presiding officer;

(b) verify the correctness of the return furnished by the presiding officer concerned in terms of section 105(11);

(c) after the verification, if it is found to be correct, -

(i) collate and prepare a report on all the results of the election concerned;

(ii) allow any counting agent or candidate to make a copy of the report;

(iii) announce, in the prescribed manner, the results of regional council or local authority elections;

(iv) cause the report to be delivered or transmitted to the Chief Electoral Officer; and

(v) seal the ballot boxes, voting machines and packets referred to in subsection (1) and cause them to be delivered to the Chief Electoral Officer.

(3) If the return referred to in subsection (2)(b) is found to be incorrect, the returning officer must make all the -

(a) counted, unused, spoilt and rejected ordinary ballot papers and the counterfoils in respect thereof;

(b) counted returns of the poll in the case of voting machines;

(c) counted, spoilt and rejected tendered vote ballot papers and the counterfoils in respect thereof;

(d) counted, spoilt and rejected ballot papers in the authorisation ballot paper envelopes and the counterfoils in respect thereof; and

(e) ballot boxes concerned,

referred to in section 105(9), up into separate sealed packets and must remit or cause to be remitted the sealed packets back to the presiding officer concerned for a recount, a recalculation and resubmission to the returning officer, in which case subsection (2)(a), (b) and (c) again applies.

(4) The Chief Electoral Officer must as soon as practicable deliver or transmit or cause to be delivered or transmitted to the Commission the verified report in terms of subsection (2)(c)(iii).

Determination and announcement of result in Presidential elections

109. (1) When in an election for the President the counting of votes in accordance with sections 105 and 108 has been completed, a returning officer, after having completed the process referred to in section 108(2), must announce in the prescribed manner the result of the count and inform the Chief Electoral Officer thereof.

(2) When the Chief Electoral Officer has received all the results in accordance with subsection (1) and he or she has established the number of votes recorded for -

(a) each candidate; or

(b) where only one candidate was nominated for election as President, for the candidate,

the Chief Electoral Officer must communicate such results to the Commission, and the Commission must determine in accordance with Article 28(2)(b) of the Namibian Constitution the candidate to be declared duly elected as President.

(3) Upon determining the result of the election in accordance with subsection (2) the Chairperson of the Commission must announce in the prescribed manner the result, by -

(a) making known the total number of votes counted in the election and, in respect of -

(i) each candidate; or

(ii) the candidate, where only one candidate was nominated for election as President,

the number of votes recorded for the candidate; and

(b) declaring -

(i) the candidate determined in accordance with subsection (2) duly elected as President with effect from the date as determined in accordance with the relevant provisions of the Namibian Constitution; or

(ii) if no candidate has received the requisite number of votes referred to in Article 28(2)(b) of the Namibian Constitution, that no candidate has been duly elected as President.

(4) If no candidate has received the requisite number of votes referred to in Article 28(2)(b) of the Namibian Constitution and a ballot is to be conducted under Article 28(2)(b) of the Namibian Constitution, the ballot must be conducted in accordance with this Act within

60 days, but the conducting of the ballot, in each case, only applies in respect of the two candidates who have received the most votes.

Determination and announcement of result in National Assembly elections

110. (1) When in an election for members of the National Assembly the counting of votes in accordance with sections 105 and 108 has been completed, a returning officer must announce in the prescribed manner, whether or not the return referred to in section 105(11) was found to be correct, the result of the count and inform the Chief Electoral Officer thereof.

(2) The Chief Electoral Officer must in accordance with the results received from returning officers in terms of subsection (1) determine preliminarily in the manner provided in Schedule 4 to the Namibian Constitution the number of candidates of each political party to be declared duly elected as members of the National Assembly.

(3) Upon determining the result of the election in accordance with subsection (2), the Chief Electoral Officer must communicate such to the Commission, and the Chairperson of the Commission must announce in the prescribed manner the result, by -

(a) making known -

(i) the total votes cast;

(ii) the total number of votes counted;

(iii) the appropriate quota determined in accordance with Schedule 4 to the Namibian Constitution; and

(iv) in respect of each political party -

(aa) the number of votes recorded for it; and

(bb) the number of seats in the National Assembly, if any, determined in its case in accordance with Schedule 4 of the Namibian Constitution to which the political party is entitled; and

(b) declaring -

(i) the candidates on the list of candidates of each political party in which case a number of seats has been determined, as aforesaid, but subject to Schedule 4 of the Namibian Constitution; and

(ii) if the number of seats determined, as aforesaid, is more than the candidates available on the list concerned, a person who qualifies in terms of section 77 to be a member of the National Assembly and has been nominated in writing in the prescribed manner for the purpose by the political party concerned and has in writing consented to his or her nomination,

to be duly elected as members of the National Assembly with effect from the date as determined in accordance with the relevant provisions of the Namibian Constitution.

(4) If there appears on any list of candidates the name of a person who -

(a) has died or became incapacitated;

(b) was found not to qualify in relation to the National Assembly; or

(c) has been expelled from the political party by whom he or she has been nominated,

on or before the date of the declaration referred to in subsection (4)(b), the name is for the purposes of the declaration deemed not to appear on the list concerned.

Determination and announcement of result in regional council elections

111. (1) When -

(a) all the votes in respect of all the polling stations in a constituency have been counted in respect of any candidate in an election for any member of a regional council; and

(b) the number of votes recorded for any candidate has been determined in the constituency,

in accordance with sections 105 and 108, the returning officer must preliminarily determine in the manner provided in Article 106(2) and (3) of the Namibian Constitution, the candidate for the constituency to be declared in terms of subsection (2) duly elected as a member of the regional council concerned.

(2) As soon as is practicable after subsection (1) has been complied with, the returning officer for the constituency concerned must inform the Chief Electoral Officer thereof, who must -

(a) ensure that the determination made under subsection (1) is correct; and

(b) thereupon inform the Chairperson of the Commission to make a final determination and announce in the prescribed manner the result of the election concerned, by -

(i) making known -

(aa) the total number of votes counted in the constituency; and

(bb) in respect of each candidate, the number of votes recorded for the candidate; and

(ii) declaring the candidate determined, as aforesaid, to be duly elected as a member of the regional council concerned with effect from the day determined in respect of the election concerned.

(3) If -

(a) any candidates for an election as a member of a regional council in any constituency have received an equal number of votes, and the election cannot by virtue thereof be determined, a fresh ballot contested by only the tied candidates must be conducted within 60 days; or

(b) the result of the election cannot by virtue of reasons other than paragraph (a) be determined, the returning officer for the constituency must declare the election concerned to be null and void, and in that event all proceedings

relating to the election in the constituency must commence afresh in precisely the same manner as if a vacancy in the regional council had occurred.

(4) If -

(a) any duly nominated candidate in an election for a member of a regional council in any constituency dies or becomes incapacitated after the closing of the polls and before the result of the election is announced as contemplated in subsection (2)(b), and the deceased is the candidate who has received the most votes; or

(b) a candidate declared duly elected in terms of subsection (2)(b)(ii) as a member of a regional council in any constituency dies or becomes incapacitated before he or she assumes office as member of the regional council concerned,

all proceedings relating to the nomination of candidates for the election concerned must commence afresh in the same manner as if a vacancy in the regional council had occurred, but no fresh nomination is necessary in the case of a candidate who was duly nominated at the time when the candidate concerned referred to in paragraph (a) or (b) has died or became incapacitated.

Determination and announcement of result in local authority council elections

112. (1) When in an election for members of a local authority council -

(a) all the votes have been counted; and

(b) the number of votes recorded for each political party or organisation taking part in the election has been determined,

in accordance with sections 105 and 108, the returning officer concerned must determine, with the necessary changes, in the manner referred to in section 110(2), the number of candidates of a political party or organisation that is in terms of subsection (2) to be declared duly elected as members of the local authority council concerned, as if the election for members of the local authority council were an election for members of the National Assembly.

(2) As soon as is practicable after the result of a local authority council election has been determined as contemplated in subsection (1), the returning officer concerned must announce in the prescribed manner the result, by -

(a) making known -

(i) the total number of votes cast;

(ii) the total number of votes counted;

(iii) the appropriate quota determined in accordance with that subsection; and

(iv) in respect of each political party or organisation –

(aa) the number of votes recorded for it; and

(bb) the number of seats in the council concerned, if any, to which a political party or organisation is entitled; and

(b) declaring -

(i) those candidates who appear on the list of candidates of each political party or organisation -

(aa) in respect of which a number of seats has been determined; and

(bb) who have been nominated from the list by the political party,

as members of the council concerned to fill the seats; and

(ii) if the number of seats determined in respect of a political party or organisation is more than the candidates available on the list of candidates of the political party or organisation, a person who -

(aa) qualifies to be a member of the council concerned;

(bb) has been nominated in the prescribed manner in writing for the purpose by the political party or organisation; and

(cc) has in writing consented to his or her nomination,

to be duly elected as members of the local authority council concerned with effect from any day determined in respect of the election concerned.

(3) The returning officer concerned must cause, as soon as practicable after subsection (2) has been complied with, a written statement of the announcement made by him or her in terms of that subsection, to be transmitted to the Commission.

(4) If there appears on any list of candidates referred to in subsection (2) the name of a person who -

(a) has died or became incapacitated;

[The word verb "became" should be "become" to be grammatically correct.]

(b) was found not to qualify in relation to the council concerned; or

(c) has been expelled from the political party or organisation by whom he or she has been nominated,

on or before the date of the declaration contemplated in that subsection, the name is for the purposes of the declaration deemed not to appear on the list concerned.

Publication of result of elections

113. (1) As soon as practicable after having received the results of any election, the Chairperson of the Commission must cause -

(a) a notice of any announcement made and transmitted to the Commission in terms of section 105(9), 108(3)(c), 109(3), 110(3), 111(3) or 112(3); and

(b) the particulars contained in the announcement, to be published in the *Gazette*.

(2) A notice published in terms of subsection (1) is on its mere production in any legal proceedings *prima facie* evidence of the announcement to which it relates and the particulars thereof.

(3) The Commission may also cause to be published in any other manner it thinks fit, any announcement referred to in subsection (1) and the particulars contained therein.

Safekeeping of election materials

114. (1) The Chief Electoral Officer is responsible for the safekeeping of all the electorals material received in terms of this Chapter and must retain them until such time as the Commission directs otherwise.

[The plural word "electorals" should be the singular word "electoral".]

(2) No person may open or inspect the contents of the electoral material referred to in subsection (1), except by order of the Electoral Court.

(3) The Electoral Court may grant an order referred to in subsection (2) if it is satisfied by evidence on oath that -

(a) the inspection or production of any document contained in the packet is required for the purposes of an election application; or

(b) for the purposes of instituting or maintaining a prosecution for an offence in relation to the election concerned,

and the order may be made subject to the conditions as to persons and time, place and manner of inspection or production as the Court may think fit.

(4) Any person who is not satisfied with an order of the Electoral Court referred to in subsection (3) may appeal against that order to the Supreme Court.

(5) If the Electoral Court has ordered a recount of any election, generally or specifically, the Court may direct the manner, conditions, persons, time and place for the recount of ballot papers as the Court may think fit.

Immaterial mistakes not to affect validity of elections

115. No election may be set aside by any competent Court by reason of any mistake or non-compliance with this Part, if it appears to the Court that the election in question was conducted in accordance with the principles laid down therein and that the mistake or non-compliance did not affect the result of the election.

Assessment of electoral process

116. (1) The Commission must -

(a) immediately after the results of any election has been published as contemplated in section 113(1), conduct or cause to be conducted a performance assessment in respect of the electoral process concerned; and

(b) within one month thereafter publish or cause to be published a post-election report in respect of the election concerned.

(2) The performance assessment and post-election report referred to in subsection (1) must deal with -

(a) provisions relating to constitutional and electoral issues;

(b) systems and logistics, including infrastructure;

(c) the training of staff members or temporary staff members, persons referred to in section 18(17)(b) or 24(3) as electoral officials and their performance;

(d) voter and civic education;

(e) the voting process and analysis of results;

(f) possible recommendations of amendments to any electoral legislation; and

(g) any other matter which the Commission may think fit.

(3) The Chairperson of the Commission must within 6 months after an election submit to the National Assembly a copy of the post-election report referred to in subsection (1)(b).

(4) The Speaker of the National Assembly must cause that the National Assembly considers the report referred to in subsection (1)(b), and distribute such report to the President, the Chief Justice, the Chairperson of the Electoral Court, the Chairperson of the Magistrates Commission and the Chairperson of the Law Reform and Development Commission.

(5) The Speaker of the National Assembly must make the report refferred to in subscection (4) available for public inspection.

[The words "referred" and "subsection" are misspelt in the *Government Gazette*, as reproduced above.]

PART 6
HOLDING OF REFERENDA

Subpart 1
Commission and staff Members to conduct referenda

Commission to direct, supervise and conduct referendum

117. The Commission must exercise general direction and supervision over the conduct of a referendum and for exercising the powers and performing the functions conferred on or imposed on the Commission by or under this Act.

Chief Electoral Officer, directors, chief regional officers, returning officers, other election officers and staff members to exercise powers and perform functions relating to referendum and oath or affirmation of secrecy

118. (1) The Chief Electoral Officer, directors, chief regional officers, returning officers, presiding officers, counting officers, polling officers, staff members or temporary staff

members appointed to the Directorate and persons referred to in section 18(17)(b) or 24(3) may exercise the powers and must perform the functions for the purpose of a referendum as contemplated in this Act.

(2) Every chief regional officer, returning officer, presiding officer, counting officer, polling officer, staff member or temporary staff member appointed to the Directorate or person referred to in section 18(17)(b) or 24(3), must before performing any function or attending at any polling station or the place where the result of a referendum is determined as hereinafter provided, sign, in a form determined by the Chief Electoral Officer, an oath or affirmation of secrecy.

Subpart 2
Proclamation of referendum and general provisions relating to conduct of referendum

Proclamation of referendum

119. (1) If the President considers it in the public interest to obtain by means of a referendum the opinion of voters -

(a) in accordance with Article 132(3) of the Namibian Constitution, on a bill proposing to repeal or amend any provision of the Namibian Constitution which, having secured a majority of two-thirds of all the members of the National Assembly, failed to secure a majority of two-thirds of all the members of the National Council;

(b) on a bill proposing -

(i) to repeal or amend any other existing law; or

(ii) a new law; or

(c) on any other matter determined by the President,

the President may direct by proclamation that a referendum be held on any question specified in the proclamation in relation to a matter referred to in paragraph (a), (b) or (c).

(2) If the President receives a communication from the Speaker of the National Assembly -

(a) advising that the National Assembly has passed a resolution under Article 63(2)(g) of the Namibian Constitution initiating, approving or deciding to hold a referendum on a matter of national concern; and

(b) stating the question to be submitted to voters in accordance with the resolution,

the President must direct by proclamation that a referendum be held on the question to be specified in the proclamation.

(3) A proclamation under subsection (1) or (2) may specify more than one referendum question.

(4) A referendum question must be so framed that each voter may express an opinion on the question by making a mark after or next to the word “YES” or “NO” on the ballot paper.

(5) A proclamation under subsection (1) or (2) must specify -

(a) that the referendum must be held in Namibia, or in a part of Namibia specified in the proclamation, on a single day and, subject to this Act, during the hours so specified; and

(b) who is entitled, in accordance with this Act, to vote in the referendum.

Referendum to be conducted at any polling station and persons entitled to vote in referendum

120. Subject to section 119(5)(a), every registered voter is entitled to vote in a referendum at any polling station.

Replacement of voter registration card for purpose of voting in referendum

121. Section 35 applies with the necessary changes to a registered voter whose voter registration card is lost, destroyed or has become illegible and who wants to vote in a referendum.

Polling stations, provision of equipment, polling booths, ballot boxes, commencement and closing of poll at polling stations and powers of presiding officers and other officers at polling stations in respect of referendum

122. Sections 89(1), excluding the reference in subsection (1) thereof to a local authority area, (2), (3), (4), (5), (6), (7), (8) and (9)(a) and (b), 90(1) and (3), 91, 92(1), (2), (4), (5), (6), (7), (8) and (9), 93 and 94(1)(a), (b), (c)(i), (ii), (iii), (v), (vi), (viii), (ix) and (x), (2), (3), (4), (5) and (6) apply with the necessary changes in respect of -

(a) the establishment of polling stations;

(b) the provision of equipment;

(c) polling booths;

(d) ballot boxes and voting machines;

(e) the commencement and closing of the poll at polling stations, and

(f) the powers of presiding officers and other officers at polling stations,

in respect of a referendum.

Subpart 3
Voting in referendum, counting of votes and declaration of referendum result

Enabling of voters to vote in referendum and use of voting machines in referendum

123. Sections 96 and 97 apply with the necessary changes in respect of a referendum.

Place of voting, voting to be by secret ballot, manner of voting, spoilt ballot papers and assistance to voters in respect of referendum

124. Sections 98(1), but excluding the reference to a local authority area, 99(1), 100(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14)(a) and (b), (15)(a), (b),

subject thereto that the voter must record his or her vote by marking "YES" or "NO", (c), (d), (e)(i) and (16), 102 and 103 apply with the necessary changes in respect of -

(a) the place of voting;

(b) voting to be by secret ballot;

(c) the manner of voting;

(d) spoilt ballot papers; and

(e) assistance to voters,

in respect of a referendum.

Closing of poll in referendum at polling stations and sealing of ballot boxes and voting machines

125. A presiding officer at a polling station must immediately after the close of the poll in a referendum and in the presence of the persons entitled in terms of section 94(1) to attend at the polling station, as may be in attendance -

(a) take charge of all the ballot boxes and voting machines at the polling station; and

(b) seal the ballot boxes and voting machines concerned;

in order to be counted as contemplated in section 126.

Counting of votes and sealing of packets and ballot boxes, counted results of poll in case of voting machines and ballot paper accounts

126. (1) A presiding officer at a polling station must immediately after the close of the polling station as contemplated in section 125 and in the presence of the persons entitled in terms of section 94(1) to attend at the polling station, excluding an election agent, as may be in attendance -

(a) open all the ballot boxes and remove therefrom the ballot papers; and

(b) obtain all the results of the poll concerned from any voting machine, if any.

(2) After ascertaining that, in the case of ballot papers, each ballot paper bears the official mark on the back thereof, the presiding officer must count, assisted by the counting officers concerned -

(a) the votes recorded on the ballot papers; and

(b) in the case of voting by a voting machine, the result of the poll,

by -

(i) opening each ballot box;

(ii) removing from each ballot box the folded ballot papers, and counting and recording the number thereof;

(iii) combining the ballot papers removed from one ballot box with those removed from at least one other ballot box;

(iv) arranging the "YES" votes, the "NO" votes and the rejected ballot papers separately with their front sides facing upwards; and

(v) counting the number of "YES" votes, the number of "NO" votes and the number of rejected ballot papers.

(3) Subject to subsection (4), the presiding officer must reject and may not count any ballot paper -

(a) which records more than one answer to the referendum question;

(b) which does not bear the official mark;

(c) which is unmarked or on which it is impossible to determine with certainty in respect of which referendum question the ballot is recorded.

(4) The presiding officer may not reject, but must count any ballot paper on which there is any clear writing or mark by way of which a voter has indicated his or her choice.

(5) The presiding officer must in the presence of any of the persons referred to in subsection (1) endorse the word "rejected" on any ballot paper rejected in terms of subsection (3).

(6) Upon completion of the counting of votes, the presiding officer may cause the votes to be re-counted on his own accord or if so requested by the persons entitled to be present in terms of section 94(1), before announcing the result.

(7) When the counting of votes have been completed, the presiding officer must -

[The verb "have" should be "has" to be grammatically correct.]

(a) announce in the prescribed manner the result of the count;

(b) inform the returning officer thereof; and

(c) post a copy of the results at the polling station concerned,

but in the case of a mobile polling station the results of all the polling stations for that mobile polling station must be posted at the closing of the poll where the votes are counted.

(8) The presiding officer must immediately after the announcement of the result as contemplated in subsection (7), make up into separate packets, so sealed -

(a) all ballot boxes containing the counted ballot papers in respect of every referendum question;

(b) all counted results of the poll in the case of voting machines in respect of every referendum question;

(c) all unused ballot papers;

(d) all cancelled spoilt ballot papers as contemplated in section 102;

(e) all rejected ballot papers as contemplated in subsection (3);

(f) all ballot papers in respect of which the presiding officer cannot determine the choice of a voter as contemplated in subsection (4);

(g) the counterfoils of -

(i) used ballot papers;

(ii) all cancelled spoilt ballot papers as contemplated in section 102;

(iii) all rejected ballot papers as contemplated in subsection (3);

(h) all voter registration cards seized in terms of section 100(10);

(i) the stamp for the official mark used at the polling station;

(j) any other equipment or documents as may be prescribed;

(k) the result of the count of the ballot papers and the result of the poll in the case of voting machines; and

(1) any Occurrence Book used at the polling station,

and must deliver or cause to be delivered to the returning officer concerned the sealed packets, as well as the empty ballot boxes and voting machines concerned.

(9) If the geographical location of the polling station or any other circumstance occasions that the presiding officer cannot deliver or cause to be delivered the sealed packets, ballot boxes and voting machines referred to in subsection (8), the presiding officer must place the sealed packets, ballot boxes and voting machines in safe custody until he or she can deliver them or cause them to be delivered to the returning officer concerned.

(10) The sealed packets, ballot boxes and voting machines referred to in subsection (8) must be accompanied by returns in which the presiding officer accounts for the number of ballot papers and voting machines entrusted to him or her under the heads of -

(a) ballot papers counted as contemplated in subsection (8)(a);

(b) unused ballot papers;

(c) spoilt and rejected ballot papers and the counterfoils thereof as contemplated in subsection (8)(d), (e) and (f); and

(d) results of the poll counted as contemplated in subsection (8)(b).

Application of verification to referenda

127. Sections 106 and 108 apply with the necessary changes in respect of the verification of ballot paper and voting machine accounts by a returning officer in a referendum.

Absence of counting agents during verification of referendum

128. During any process of a recount recalculation, and resubmission to the returning officer the counting agents of the political parties, organisation and candidates are entitled to

be in attendance and to exercise their powers and functions as contemplated in section 126, but no recounting, recalculation and resubmission of votes are invalidated by the absence of the counting agents.

Determination and announcement of referendum results

129. (1) In a referendum the Chief Electoral Officer must announce in the prescribed manner -

(a) when the counting of votes in accordance with section 126 has been completed; and

(b) whether or not the return referred to in section 126 was found to be correct,

the result of the count.

(2) The Chief Electoral Officer must submit to the Chairperson of the Commission by -

(a) a return of the total number of votes cast and total number of votes counted; and

(b) a declaration certifying which of the "YES" votes or the "NO" votes have won.

(3) The Chairperson of the Commission must cause, as soon as is practicable after subsection (2) has been complied with, a written statement of the announcement made in terms of subsection (1), together with the return and declaration referred to in subsection (2), to be transmitted to the Commission.

Publication of referendum results

130. (1) As soon as practicable after having received the result of the referendum, the Commission must cause -

(a) a notice of any announcement made in terms of section 129(1) and transmitted to it in terms of section 129(2); and

(b) the particulars contained in the announcement,

to be published in the *Gazette*.

(2) A notice published in terms of subsection (1) is on its mere production in any legal proceedings *prima facie* evidence of the announcement to which it relates and the particulars thereof.

(3) The Commission may also cause to be published in any other manner it thinks fit, any announcement referred to in subsection (1) and the particulars contained therein.

Sealing and safekeeping of referendum materials

131. (1) A returning officer concerned must -

(a) enclose in separate packets, as soon as is practicable after the announcement of the result of any referendum -

(i) all counted ballot papers;

(ii) all cancelled spoilt ballot papers as contemplated by the application of section 124(1) and all rejected ballot papers as contemplated in subsection (3) of section 126; and

(iii) all ballot paper accounts, received from any polling station for which he or she was the returning officer;

(b) seal the packets referred to in paragraph (a); and

(c) cause those packets, together with -

(i) the other packets referred to in section 126; and

(ii) the return in which the returning officer concerned accounts for the number of ballot papers received under the heads of ballot papers counted and spoilt and rejected ballot papers,

to be delivered to the Chief Electoral Officer.

[The indentation of the concluding phrase of paragraph (c) is incorrect in the *Government Gazette* and has been corrected here.]

(2) The Chief Electoral Officer is responsible for the safekeeping of all the packets received in terms of this Chapter and must retain them until such time as the Commission directs otherwise.

(3) A person may not open or inspect the contents of the packets referred to in subsection (1)(c), except by order of the Electoral Court.

(4) The Electoral Court may grant an order referred to in subsection (3) if the Court is satisfied by evidence on oath that -

(a) the inspection or production of any document contained in the packet is required for the purposes of a referendum application; or

(b) for the purposes of instituting or maintaining a prosecution for an offence in relation to the referendum concerned,

and the order may be made subject to the conditions as to persons and time, place and manner of inspection or production as the Electoral Court may think fit.

(5) Any person who is not satisfied with an order of the Electoral Court referred to in subsection (4) may appeal against that order to the Supreme Court.

Verification of referendum result by Chief Electoral Officer

132. (1) As soon as is practicable after the determination of the result in any referendum in terms of this Act, the Commission may direct the Chief Electoral Officer to -

(a) verify or cause to be verified in accordance with the prescribed procedures, any ballot paper accounts received in the referendum concerned; and

(b) to report thereon to the Commission in the prescribed manner.

(2) For the purposes of subsection (1) the Chief Electoral Officer may open any sealed packet received from a returning officer.

(3) The Commission may in the manner determined by it, publish -

(a) the report referred to in subsection (1); or

(b) any extracts therefrom,

for the information of the public or for any other reason it thinks necessary.

Assessment of referendum process

133. (1) The Commission must -

(a) immediately after the results of any referendum has been published as contemplated in section 130(1), conduct or cause to be conducted a performance assessment in respect of the referendum process concerned; and

(b) within 30 days thereafter publish or cause to be published a post referendum report in respect of the referendum concerned.

(2) The performance assessment and post referendum report referred to in subsection (1) must deal with -

(a) provisions relating to constitutional and referendum issues;

(b) systems and logistics (including infrastructure);

(c) the training of staff members or temporary staff members, persons referred to in section 18(17)(b) or 24(3) as referendum officials and their performance;

(d) voter and civic education;

(e) the voting process and analysis of results;

(f) possible amendments to any referendum legislation; and

(g) any other matter which the Commission may deem fit.

(3) The Chairperson of the Commission must within 6 months after an election submit to the National Assembly a copy of the post-referendum report referred to in subsection (1)(b).

(4) The Speaker of the National Assembly must cause that the National Assembly considers the report referred to in subsection (1)(b), and distribute such report to the President, the Chief Justice, the Chairperson of the Electoral Court, the Chairperson of the Magistrates Commission and the Chairperson of the Law Reform and Development Commission.

(5) Speaker of the National Assembly must make the report referred to in subsection (4) available for public inspection.

Immaterial mistakes not to affect validity of referendum

134. No referendum may be set aside by any competent Court by reason of any mistake or non-compliance with this Part, if it appears to the Court that the referendum in question was conducted in accordance with the principles laid down therein and that the mistake or non-compliance did not affect the result of the referendum.

CHAPTER 4
ESTABLISHMENT, REGISTRATION, AND DEREGISTRATION OF POLITICAL PARTIES AND ORGANISATIONS, AND FUNDING OF POLITICAL PARTIES

PART 1
ESTABLISHMENT AND REGISTRATION OF POLITICAL PARTIES AND ORGANISATIONS

Establishment of political parties and organisations

135. (1) Subject to this Act, every citizen of Namibia has a right to establish and to join a political party or an organisation of his or her choice.

(2) The -

(a) principal object of a political party referred to in subsection (1) must be to participate in and promote elections under this Act, including -

(i) the nomination of persons as candidates for elections in accordance with this Act;

(ii) the canvassing for votes for a candidate at an election;

(iii) the devotion of any of its funds or any part thereof to the election expenses of any candidate taking part in an election;

(b) objects of a political party or organisation contemplated in subsection (1) -

(i) may not be prejudicial to the security of the State, sovereignty and integrity, the public safety, welfare or the peace and good order;

(ii) may not be contrary to the laws of Namibia;

(iii) may not exclude or restrict membership of the political party on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status;

(iv) may not use or include words, slogans or symbols which could give rise to division on any basis specified in subparagraph (iii);

(v) may not provide for discriminatory practices contrary to the Namibian Constitution or any other law;

(vi) may not accept or advocate the use of force or violence as a means of attaining its political objectives;

(vii) may not advocate or aim to carry on its political activities exclusively in one part of Namibia;

(viii) may not advocate or aim to carry on its political activities on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status;

(ix) must provide for regular, periodic and open election of its office bearers.

(3) A person who is not a Namibian citizen may not be appointed to and may not accept appointment as an elected office-bearer of a political party or an organisation.

Application for registration as political party

136. (1) A political party intending to take part in elections in Namibia must in the prescribed application form and in the prescribed manner apply to the Commission for registration in accordance with this Act.

(2) An application referred to in subsection (1) must be accompanied by -

(a) written proof of the principal objects and other objects of the applicant contemplated in section 135(2)(a) and (b);

(b) the prescribed fee for registration;

(c) a copy of the draft constitution of the applicant;

(d) a declaration signed by at least 3500 persons, distributed evenly from a minimum of seven of the regions in Namibia, whose names appear on the national voters' register to the effect that the persons support the registration of the political party, and the declaration must contain -

(i) the full names and voter registration numbers of the persons who have signed the declaration; and

(ii) the names and numbers of the regions and constituencies in respect of which the signatories are registered; and

(e) in addition to the other particulars referred to in paragraphs (a), (b), (c) and (d), the following particulars on the application form -

(i) the name of the political party;

(ii) an abbreviation of its name to appear on the ballot paper for an election concerned, the abbreviated name of the political party;

(iii) the full names and the signature of the person who for the purposes of this Act is the proposed authorised representative of the political party;

(iv) a complete list of the names and addresses of its other proposed office-bearers;

(v) the proposed business address and postal address in Namibia of the proposed office which for the purposes of this Act is the office of the proposed authorised representative of the political party; and

(vi) the political party symbol to appear on the ballot paper referred to in subparagraph (ii), the distinctive symbol of the political party.

(3) The Commission must on receipt of an application referred to in subsection (1) consider the application, and may -

(a) request an applicant referred to in subsection (2) to submit further particulars or information or to furnish an explanation in respect of any question asked by the Commission; and

(b) make enquiries or cause independent enquiries to be made so as to ascertain the truth or correctness of particulars submitted with the application.

(4) If -

(a) after the receipt of further particulars or information or an explanation referred to in subsection (3)(a);

(b) upon enquiries made under subsection (3)(b),

the Commission is of the opinion that the particulars, information or explanation concerned is not sufficient or is false or inaccurate, the Commission must within 14 days give notice of its opinion in writing and require the applicant -

(i) to show cause why the application may not be refused; and

(ii) to furnish its answer in writing within 14 days of receipt of the notice.

(5) The Commission must determine any matter to which subsection (4) applies within -

(a) 14 days of receipt of the answer referred to in that subsection; or

(b) if no answer is furnished, within 14 days after the expiry of the period given for furnishing an answer thereunder.

(6) If the Commission determines under subsection (5) that any of the particulars submitted with the application do not comply with subsection (2), the Commission must allow 14 days for compliance.

(7) Prior to the registration of a political party the Chief Electoral Officer must announce by notice in the *Gazette* the proposed -

(a) name of the political party applying for registration in terms of subsection (1), including the abbreviated name of the party referred to in subsection (2)(e)(ii);

(b) particulars set out in subsections (2)(e)(iv) and (v) and (2)(d)(1); and

(c) distinctive symbol of the political party referred to in subsection (2)(e)(vi).

(8) A registered political party may lodge within 30 days from the date of publication of the notice referred to in subsection (7) an objection to the Commission to any particular contained in the notice for the reason that the proposed -

(a) name of the political party applying for registration or its abbreviated name is being used by a registered political party or is so similar to the symbol of a registered political party that it may cause confusion to voters; or

(b) symbol referred to in subsection (2)(e)(vi) is a symbol being used by a registered political party or is so similar to the symbol of a registered political party that it may cause confusion to voters.

(9) A registered political party or any other person may lodge within 30 days from the date of publication of the notice referred to in subsection (7) an objection to the Commission to any name published as the name of a person who signed the declaration referred to in subsection (2)(d), for the reason that -

(a) the name of the person does not appear on the national voter's register; or

(b) the name of the person appears on the declaration without the person having signed the declaration or having knowledge of the declaration and that his or her name and signature were fraudulently obtained and put on the declaration.

(10) When an objection is lodged under subsection (8) or (9), the Commission must -

(a) make within 14 days of receipt of the objection a determination thereon; and

(b) serve or cause to be served, as soon as reasonably possible, a notice of the determination upon the political party applying for registration and against whom an objection has been lodged, as well as the registered political party or the other person who lodged the objection.

(11) The Commission may either -

(a) allow the objection, and allow the political party applying for registration to rectify, within 30 days of receipt of the determination, the particular against which an objection has been lodged; or

(b) dismiss the objection.

(12) An applicant who is not satisfied with -

(a) the determination made under subsection (10) may appeal against the determination to the Electoral Court; or

(b) the decision of the Electoral Court referred to in paragraph (a) may appeal against the decision to the Supreme Court.

Registration of political party and effect of registration

137. (1) The Commission must direct the Chief Electoral Officer to register the applicant as a political party if the Commission is satisfied that -

(a) the applicant complies with section 135(2)(a) and (b); and

(b) the application complies with section 136(2),

but the Commission may not so direct the Chief Electoral Officer if the name, abbreviated name or distinctive symbol of the applicant -

(i) is identical to the name, abbreviated name or distinctive symbol under which any other political party has already been registered as a political party, or in the opinion

of the Commission, so closely resembles the name, abbreviated name or distinctive symbol of another political party that voters may be misled or confused thereby; or

(ii) is indecent, obscene, offensive or harmful to public morals.

(2) The Commission must refuse an application for registration if the Commission is satisfied that -

(a) the applicant does not comply with section 135(2)(a) and (b); and

(b) the application does not comply with section 136(2).

(3) Upon receipt of the direction of the Commission under subsection (1), the Chief Electoral Officer must register the political party and issue to it a registration certificate in the prescribed form.

(4) An applicant who is not satisfied with -

(a) the refusal of an application as contemplated in subsection (2) may appeal against the refusal to the Electoral Court;

(b) the decision of the Electoral Court on an appeal referred to in paragraph (a) may appeal against that decision to the Supreme Court.

(5) The Chief Electoral Officer must -

(a) maintain a register of registered political parties; and

(b) enter into the register the -

(i) name of every registered political party;

(ii) name and telephone number or cellular number of the authorised representative of the political party;

(iii) physical and postal address of the political party; and

(iv) telephone number, fax number and e-mail address of the political party.

(6) Any political party duly registered in terms of this Act must include on its official correspondence, documentation and other prescribed material the words "a political party duly registered in terms of the electoral laws of the Republic of Namibia".

(7) Any person suing or litigating in a matter involving a political party must serve the relevant documentation upon the authorised representative or a person nominated by the political party for such purposes.

Change in particulars of registered political party

138. (1) If a registered political party intends to change -

(a) its constitution;

(b) its name;

(c) its abbreviated name;

(d) its distinctive symbol;

(e) its authorised representative; or

(f) the business or postal address of the office of the authorised representative,

the political party must -

(i) notify in writing the Commission of the intended change; and

(ii) in the case of a change of -

(aa) the name or abbreviated name of the political party, transmit the registration certificate of the political party together with the notification;

(bb) the constitution of the political party, transmit a copy of the proposed constitution together with the notification.

(2) The Chief Electoral Officer must -

(a) publish or cause to be published by notice in the *Gazette* the intended changed name, abbreviated name or distinctive symbol referred to in subsection (1); and

(b) call upon registered political parties to make objections, if any, thereto in accordance with subsection (3).

(3) A registered political party may lodge within 30 days from the date of publication of the notice referred to in subsection (2)(a) an objection to the Commission to any particular contained therein for reason that -

(a) the intended changed name or abbreviated name is being used by a registered political party or is so similar to the symbol of a registered political party that it may cause confusion to voters;

(b) the intended changed distinctive symbol is a symbol being used by a registered political party or is so similar to the symbol of a registered political party that it may cause confusion to voters.

(4) When an objection is lodged under subsection (3), the Commission must -

(a) make within 14 days of receipt of the objection a determination thereon; and

(b) serve or cause to be served, as soon as reasonably possible, a notice of the determination upon the registered political party whose particulars have changed and against whom an objection has been lodged, as well as the registered political party who lodged the objection.

(5) The Commission may either -

(a) allow for the objection and allow the political party whose particulars are to be changed, to rectify, within 60 days of receipt of the determination, the particular against which an objection has been lodged; or

(b) dismiss the objection.

(6) An applicant or an objector who is not satisfied with -

(a) the determination made under subsection (5) may appeal against the determination to the Electoral Court; and

(b) the decision of the Electoral Court on an appeal referred to in paragraph (a) may appeal against that decision to the Supreme Court.

(7) If -

(a) an objection has been dismissed as contemplated in subsection (5)(b); or

(b) the outcome of an appeal referred to in subsection (6) has the effect that the intended amendments must be allowed,

the Commission must direct the Chief Electoral Officer to effect the change in respect of the registration of the political party and -

(i) in the case of a change of the name or abbreviated name of the political party, to issue an amended registration certificate to the political party; or

(ii) in the case of any change other than that referred to in paragraph (a), to issue to the political party a written confirmation that the change in respect of its registration has been effected.

Declaration of assets and liabilities

139. (1) A registered political party must submit -

(a) within 60 days after the expiry of the first year after the issue to it of a registration certificate under section 137(3), or the longer period as the Commission may allow; and

(b) thereafter annually and 21 days after official opening of the National Assembly,

to the Commission a declaration of assets and liabilities in the prescribed form.

(2) A declaration referred to in subsection (1) must -

(a) state the sources of funds and other assets of the registered political party; and

(b) be issued by the authorised representative thereof.

(3) The Commission must within 30 days after receipt of the declaration referred to in subsection (1) publish or cause to be published in the *Gazette* a notice to the effect -

(a) that the declaration has been received; and

(b) that it lies open for inspection at the offices of the Commission against payment of the prescribed fee.

(4) If a registered political party contravenes or fails to comply with this section within 21 days after notice from the Commission to do so, the Commission may cancel the registration of the political party as contemplated in section 152.

Records and audit of registered political parties

140. (1) Despite section 158, every registered political party must maintain at its head office an accurate and permanently maintained record consisting of -

(a) any contribution, donation or pledge of contributions or donations, whether in cash or in kind made to the political party;

(b) a statement of its accounts, showing the sources of its funds and the name of every person who has contributed to the funds, including -

(i) contributions by persons who are not citizens of Namibia;

(ii) membership dues paid;

(iii) donations in cash or in kind; and

(iv) all the financial transactions of the political party which are conducted through, by or with the head or national office of the political party;

(c) any property that belongs to the political party and the time and mode of acquisition of the property; and

(d) the other particulars as the Commission may reasonable require with respect to the foregoing.

(2) The records maintained under subsection (1) are accessible to any member of the registered political party in accordance with the rules and procedures as may be determined by the authorised body of the registered political party.

(3) A registered political party must cause its financial accounts to be audited once per year, but not later than six months after the end of its financial year, by an auditor.

(4) A registered political party must -

(a) lodge with the Commission a copy of the audited accounts referred to in subsection (3) within six months from the end of its financial year; and

(b) publish or cause an abridged version of the accounts to be published in at least two daily newspapers circulating throughout Namibia.

(5) Upon payment of the prescribed fee a person is entitled to inspect or to be provided with copies of the audited accounts of a registered political party lodged with the Commission under subsection (4).

(6) If a registered political party does not lodge its audited accounts with the Commission and publish or cause to publish the abridged version thereof under subsection (4), the Commission may -

(a) cause the accounts concerned to be audited by an auditor appointed by the Commission;

(b) require the political party to lodge with the Commission the audited accounts on a date and a time specified by the Commission; and

(c) publish or cause to be published the abridged version of the accounts in at least two daily newspapers circulating throughout Namibia.

(7) A registered political party is responsible for the payment of any costs relating to the auditing and publishing of any accounts referred to in subsection (6).

Disclosure of foreign and domestic financing of political parties, organisations or other persons

141. (1) Any -

(a) registered political party or registered organisation;

(b) member of a registered party or registered organisation; or

(c) other person,

may receive within Namibia, or bring or cause to be brought into Namibia, any money or anything which can be cashed or converted into money, from any foreign person or foreign institution which is within or outside Namibia or represented locally in Namibia, which on the ground of a donation or on any other ground, is intended to be used, or in the discretion of the political party, organisation, member or other person may be used, to -

(i) further the interest of any political party or organisation or the candidature of himself or herself or any other person who has been nominated or may be nominated as a candidate for any election under this Act; or

(ii) to canvass or combat any aim or principle of a political party or organisation,

but any such donation is disclosed in the prescribed manner and the total donation amount that the registered political party, registered organisation, member or person can receive may not exceed a prescribed amount in a financial year.

(2) The -

(a) registered political parties, registered organisations, member or other persons referred to in subsection (1)(a), (b) and (c) who have received more than a prescribed amount in a financial year from Namibian persons or institutions; and

(b) Namibian persons or institutions who have donated more than prescribed amount in any financial year to any registered political party, registered organisation, member, other person referred to in subsection (1)(a), (b) and (c),

must disclose to the public within the prescribed period and in the prescribed manner and subject to the prescribed conditions the donations concerned.

(3) A Namibian person or institution may not donate more than prescribed amount in any financial year to a registered political party, registered organisation, member or other person referred to in subsection (1)(a), (b) and (c).

(4) For purposes of section 140 and this section, a donation does not include any dividends received by a registered political party, registered organisation, member thereof or other person from a juristic person to which the party, organisation, member or person is a direct or indirect shareholder.

(5) Once every year, the political parties, organisations, members and persons referred to in subsection (1) must in the prescribed manner submit to the Commission details regarding all donations received by such entities or persons.

Obligations of registered political party to provide information to Commission

142. (1) The Commission may in writing request an office-bearer of a registered political party to furnish for inspection by the Commission -

(a) records required to be maintained under section 140; or

(b) the other information as is reasonably required to enable the Commission to ensure that this Act is complied with.

(2) A registered political party or office-bearer concerned must comply with a request made under subsection (1).

Merger of registered political parties

143. If two or more registered political parties merge as one party -

(a) the registration of each party existing immediately before the effective date of the merger lapses; and

(b) the new party is required to be registered for the purposes of this Act.

Alliance of registered political parties

144. (1) If two or more registered political parties form an alliance of their parties -

(a) each party remains as a separate registered political party for the purposes of this Act;

(b) each party must furnish the Commission within the period determined by the Commission, with a copy of the agreement of alliance;

(c) each candidate must in any election concerned be personally identified on the ballot paper by the symbol of his or her political party accompanied by a remark or symbol the Commission may thinks necessary to identify the candidate as belonging to an alliance of political parties; and

[The verb "thinks" should be "think" to be grammatically correct.]

(d) fees payable under this Act or any regulations made under this Act by or in respect of a candidate for elections must be paid separately by or for each candidate standing for the elections in the name of his or her own party, despite the alliance.

(2) Upon receipt by the Commission of the copy of the agreement of alliance referred to in subsection (1)(b) the Commission must establish that the agreement addresses all relevant legal and political issues that may arise, which includes -

(a) addressing the designation of official opposition to the satisfaction of the Commission; and

(b) addressing the payments to be made in respect of funding of represented political parties by the State in terms of this Act during the period of the alliance.

(3) The Commission may prescribe additional requirements for the purposes of compliance with subsections (1) and (2).

(4) An "alliance", for purposes of this section, means the advancement of common political goals with the intention of securing common political interests between two or more parties, and such alliance is reduced into a written agreement of alliance.

(5) A political party involved in an alliance and who terminates or abandons the alliance must within 14 days of such termination or abandonment, notify the Commission.

Code of Conduct for Political Parties

145. The Commission must by notice in the *Gazette* issue a Code of Conduct for Political Parties.

Code of Conduct for Organisations

146. The Commission must by notice in the *Gazette* issue a Code of Conduct for Organisations.

Inspection of documents

147. A copy of each document which has been handed in at the Commission for the purposes of the registration of a political party must be kept at the office of the Commission for inspection by the public and any person wishing to inspect the document may do so during office hours without payment.

Application for registration of organisation for elections of local authority councils

148. (1) An association or organisation, incorporated or unincorporated, which complies with section 135(2)(a) for registration as a political party, that desires to participate in any election for members of a local authority council, must in the prescribed application form and in the prescribed manner, apply to the Commission for registration as an organisation for that purpose in respect of such council.

(2) An application referred to in subsection (1) is accompanied by -

(a) written proof of the objects of the applicant contemplated in section 135(3);

(b) the prescribed fee for registration;

(c) a copy of the constitution of the applicant;

(d) a declaration signed by at least 250 members of the association or organisation concerned whose names appear on the local authority voters' register, in

respect of the local authority area in question, to the effect that these voters support the registration of the association or organisation as an organisation for that purposes, and the declaration must contain -

[The word "purposes" should be "purpose".]

(i) the full names and voter registration numbers of the persons who have signed the declaration; and

(ii) the names or numbers, as the case may be, of the regions and constituencies in respect of which the signatories are registered; and

(e) in addition to the other particulars referred to in paragraphs (a), (b), (c) and (d), the following particulars on the application form -

(i) the name of the association or organisation;

(ii) if the association or organisation desires an abbreviation of its name to appear on the ballot paper for an election concerned, the abbreviated name of the association or organisation;

(iii) the full names and the signature of the person who for the purposes of this Act is the proposed authorised representative of the association or organisation;

(iv) a complete list of the names and addresses of its other proposed office-bearers;

(v) the proposed business address and postal address in Namibia of the proposed office which for the purposes of this Act is the office of the proposed authorised representative of the association or organisation;

(vi) if the association or organisation desires its symbol to appear on the ballot paper referred to in subparagraph (ii), the distinctive symbol of the association or organisation.

(3) The Commission must on receipt of an application referred to in subsection (1) consider the application (1) and may -

(a) request an applicant referred to in subsection (2) to submit further particulars or information or to furnish an explanation in respect of any question asked by the Commission; and

(b) make enquiries or cause independent enquiries to be made so as to ascertain the truth or correctness of particulars submitted with the application.

(4) If -

(a) after the receipt of further particulars or information or an explanation referred to in subsection (3)(a); and

(b) upon enquiries made under subsection (3)(b),

the Commission is of the opinion that the particulars, information or explanation concerned is not sufficient or is false or inaccurate -

(i) the Commission must within 14 days give notice of its opinion in writing and require the applicant to show cause why the application must not be refused; and

(ii) the applicant must furnish its answer in writing within 14 days after receipt of the notice referred to in subparagraph (ii).

(5) The Commission must determine any matter to which subsection (4) applies within -

(a) 14 days receipt of the answer referred to therein; or

[Some text appears to be missing before the word "receipt". Paragraph (a) may have been intended to read as follows: "14 days **of** receipt of the answer referred to therein; or**".]**

(b) if no answer is furnished, within 14 days after the expiry of the period given for furnishing an answer thereunder.

(6) If the Commission determines under subsection (5) that any of the particulars submitted with the application do not comply with section 135(3) and subsection (2), the Commission must allow 14 days for compliance.

(7) Prior to the registration of an association or organisation the Chief Electoral Officer must announce by notice in the *Gazette* -

(a) the name of the association or organisation applying for registration in terms of subsection (1), including the abbreviation name of the association or organisation referred to in subsection (2)(e)(ii);

[The phrase "abbreviation name" should be "abbreviated name".]

(b) the particulars set out in subsections (2)(e)(iv) and (v) and (2)(d)(1); and

(c) the distinctive symbol of the association or organisation referred to in subsection (2)(e)(vi).

(8) A registered association or organisation may lodge within 30 days from the date of publication of the notice referred to in subsection (7) an objection to the Commission to any particular contained therein for reason that -

(a) the name of the association or organisation applying for registration or its abbreviated name is being used by a registered association or organisation or is so similar to the symbol of a registered association or organisation that it may cause confusion to voters;

(b) the symbol referred to in subsection (2)(e)(vi) is a symbol being used by a registered association or organisation or is so similar to the symbol of a registered association or organisation that it may cause confusion to voters.

(9) A registered association or organisation or any other person may lodge within 30 days from the date of publication of the notice referred to in subsection (7) an objection to the Commission to any name published as a member who signed the declaration referred to in subsection (2)(d), for reason that the name of the member does not appear on the local authority voters' register.

(10) When an objection is lodged under subsection (8) or (9), the Commission must -

(a) make within 14 days of receipt of the objection a determination thereon; and

(b) serve or cause to be served, as soon as reasonably possible, a notice of the determination upon the association or organisation applying for registration and against whom an objection has been lodged, as well as the registered association or organisation or the other person who lodged the objection.

(11) The Commission may either -

(a) allow the objection, and allow the association or organisation applying for registration to rectify, within 60 days of receipt of the determination, the particular against which an objection has been lodged; or

(b) dismiss the objection.

(12) An applicant who is not satisfied with -

(a) the determination made under subsection (10) may appeal against the determination to the Electoral Court;

(b) a decision of the Electoral Court referred to in paragraph (a) may appeal against that decision to the Supreme Court.

Registration of organisation and effect of registration

149. (1) The Commission must direct the Chief Electoral Officer to register the applicant as an organisation if the Commission is satisfied that -

(a) the applicant complies with section 135(3); and

(b) the application complies with section 148(2),

but the Commission may not so direct the Chief Electoral Officer if the name, abbreviated name or distinctive symbol of the applicant -

(i) is identical to the name, abbreviated name or distinctive symbol under which any other association or organisation has already been registered as an organisation, or so closely resembles it that voters may be misled or confused thereby; or

(ii) is indecent, obscene, offensive or harmful to public morals.

(2) The Commission must refuse an application for registration if the Commission is satisfied that -

(a) the applicant does not comply with section 135(3); or

(b) the application does not comply with section 148(2).

(3) Upon receipt of the direction of the Commission under subsection (1), the Chief Electoral Officer must register the organisation and issue to it a registration certificate in the prescribed form.

(4) An applicant who is not satisfied with -

(a) the refusal of an application as contemplated in subsection (2) may appeal against the refusal to the Electoral Court;

(b) the decision of the Electoral Court on an appeal referred to in paragraph (a) may appeal against that decision to the Supreme Court.

(5) The Chief Electoral Officer must -

(a) maintain a register of registered organisations; and

(b) enter into the register -

(i) the name of every registered organisation;

(ii) the name and telephone number or cellular number of the authorised representative of the organisation;

(iii) the physical and postal address of the organisation; and

(iv) the telephone number, fax number and e-mail address of the organisation.

(6) An organisation duly registered in terms of this Act must include on its official correspondence, documentation and other prescribed material the words "an organisation duly registered in terms of the electoral laws of the Republic of Namibia".

(7) A person suing or litigating in a matter involving an organisation must serve the relevant documentation upon the authorised representative or a person nominated by the organisation for such purposes.

Change in particulars of registered organisation

150. (1) If a registered organisation intends to change -

(a) its constitution;

(b) its name;

(c) its abbreviated name;

(d) its distinctive symbol;

(e) its authorised representative; or

(f) the business or postal address of the office of the authorised representative,

the organisation must -

(i) notify the Commission in writing of the intended change; and

(ii) in the case of a change of -

(aa) the name or abbreviated name of the organisation, transmit the registration certificate of the organisation together with the notification;

(bb) the constitution of the organisation, transmit a copy of the proposed constitution together with the notification.

(2) The Chief Electoral Officer must -

(a) publish or cause to be published by notice in the *Gazette* the intended changed name, abbreviated name and distinctive symbol referred to in subsection (1); and

(b) call upon registered organisations to make objections, if any, thereto in accordance with subsection (3).

(3) A registered political party or organisation may lodge within 30 days from the date of publication of the notice referred to in subsection (2)(a) an objection to the Commission to any particular contained therein for the reason that -

(a) the intended changed name or abbreviated name is being used by a registered political party or organisation or is so similar to the name or abbreviated name of a political party or registered organisation that it may cause confusion to voters;

(b) the intended changed distinctive symbol is a symbol being used by a registered political party or organisation or is so similar to the symbol of a registered political party or organisation that it may cause confusion to voters.

(4) When an objection is lodged under subsection (3), the Commission must -

(a) within 14 days of receipt of the objection, make a determination thereon; and

(b) serve or cause to be served, as soon as reasonably possible, a notice of the determination upon the registered organisation whose particulars have changed and against whom an objection has been lodged, as well as the registered political party or organisation which lodged the objection.

(5) The Commission may either -

(a) allow for the objection, and allow the organisation whose particulars are to be changed, to rectify the particular against which an objection has been lodged, within 30 days of receipt of the determination; or

(b) dismiss the objection.

(6) An applicant or an objector who is not satisfied with -

(a) the determination made under subsection (5) may appeal against the determination to the Electoral Court; and

(b) the decision of the Electoral Court on an appeal referred to in paragraph (a) may appeal against that decision to the Supreme Court.

(7) If -

(a) an objection has been dismissed as contemplated in subsection (5)(b); or

(b) the outcome of an appeal referred to in subsection has the effect that the intended amendments must be allowed,

the Commission must direct the Chief Electoral Officer to effect the change in respect of the registration of the organisation and -

(i) in the case of a change of the name or abbreviated name of the organisation, to issue an amended registration certificate to the organisation; or

(ii) in the case of any change other than that referred to in paragraph (a), to issue to the organisation a written confirmation that the change in respect of its registration has been effected.

Application of certain provisions to registered organisations

151. (1) Subject to subsection (2), sections 139, 140, 142, 143, 144, 145 and 147 apply with the necessary changes to registered organisations.

(2) For the purposes of subsection (1) -

(a) any reference to the Speaker of the National Assembly in section 144(2) must for the purposes of registered organisations be construed as a reference to the regional governor of the particular region for the local authority area concerned, which the registered organisation seeks to contest as a party to an agreement of alliance;

(b) subject to the powers of the Commission, nothing contained in section 144 precludes the conclusion of agreements of alliance between registered political parties and registered organisations.

PART 2
CANCELLATION OF REGISTRATION AND DEREGISTRATION OF POLITICAL PARTIES AND ORGANISATIONS

Cancellation of registration of registered political party or registered organisation

152. If -

(a) the authorised representative of a registered political party or a registered organisation in a letter addressed to the Chief Electoral Officer notifies the Commission of a resolution taken by an organ of the political party or organisation having the power to do so that the party or organisation has been dissolved or is going to be dissolved on a date which is specified in the letter;

(b) in the opinion of the Commission any -

(i) registered political party has at any time after its registration failed to participate in and promote elections as contemplated in section 135(2)(a); or

(ii) any registered political party or registered organisation no longer functions or no longer intends to be registered as a political party or an organisation or to take part in elections;

(c) a registered political party or a registered organisation or any office-bearer or member thereof contravenes or fails to comply with the Code of Conduct for Political Parties or Code of Conduct for Organisations;

(d) a registered political party or a registered organisation contravenes section 141, as applied by section 151, or fails to comply with any requirements or conditions in terms thereof, unless it is proved to the satisfaction of the Commission that the contravention by the registered political party or registered organisation was committed by a member or other person without the knowledge, sanction or connivance of the registered political party or registered organisation;

(e) a registered political party, a registered organisation or any office-bearer or member of a registered political party or a registered organisation conducts its or his or her political activities -

(i) in a manner prejudicial to the State safety, public interest, public morality, public welfare or the peace and good order;

(ii) contrary to the laws of Namibia;

(iii) so as to exclude or restrict membership of the political party or the organisation on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status;

(iv) so as to use or include words, slogans or symbols which could give rise to division on any basis specified in subparagraph (iii);

(v) so as to provide for discriminatory practices contrary to the Namibian Constitution or any other law;

(vi) so as to accept or advocate the use of force or violence as a means of attaining its political objectives;

(vii) exclusively in one part of Namibia;

(viii) on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status;

(ix) so as not to provide for regular, periodic and open election of its office bearers; or

(x) so as to appoint persons who are not citizens of Namibia as office-bearers of the political party or an organisation; or

(f) a registered political party or a registered organisation or any office-bearer or member of a registered political party or a registered organisation persists in the opinion of the Commission to contravene this Act,

the Commission may cancel the registration of the political party or organisation, after having given the political party, organisation or authorised representative an opportunity to be heard in the cases of paragraphs (b), (c), (d), (e) and (f).

Deregistration of registered political party or registered organisation and removal of name from register

153. (1) If the Commission has cancelled the registration of a registered political party or a registered organisation as contemplated in section 152, the -

(a) Chief Electoral Officer must deregister the political party or organisation, by -

(i) directing a letter to the political party or organisation, to return its registration certificate to the Chief Electoral Officer; and

(ii) removing or deleting the name and other particulars of the political party or organisation concerned from the register concerned;

(b) Chairperson of the Commission must in the case of the deregistration of a political party or organisation which is represented in the National Assembly notify -

(i) the Speaker of the National Assembly; and

(ii) the regional governor of the particular region for the local authority area in which the political party or organisation is represented,

of the deregistration of the political party or organisation.

(2) The Chief Electoral Officer must publish within 7 days after the notification referred to in subsection (1)(b) the deregistration of a political party or organisation in at least two daily newspapers circulating throughout Namibia.

PART 3
FUNDING OF POLITICAL PARTIES

Funding of political parties

154. (1) In this Part "political party" means a political party represented in Parliament.

(2) The National Assembly must fund political parties with monies appropriated by Parliament for that purpose.

Formula for funding of political parties

155. For the purposes of the allocations of funds to political parties as contemplated under section 154, the funds are allocated in accordance with a formula -

(a) determined by the Minister responsible for finance, with the approval of the National Assembly; and

(b) based on the principle of proportional representation as contained in Article 49 of the Namibian Constitution.

Payment of allocated funds to political parties

156. (1) The Secretary of the National Assembly must, upon the confirmation -

(a) by the Treasury of the availability of the funds; and

(b) by the Chairperson of the Commission that there is no any impediment disallowing the funding of a given political party,

[The phrase "no any impedient disallowing the funding of a given political party**" is an obvious error. It may have been intended to read "no** impediment to the funding of a given political party**".]**

notify the Speaker of the National Assembly in the prescribed manner and under the direction of the Speaker cause to be paid to the political party concerned the allocated funds in accordance with section 155.

(2) Funds to be paid to a political party under subsection (1) are deposited in a separate banking account opened by the political party concerned with a banking institution in Namibia.

Utilisation of funds allocated to political parties

157. (1) Funds allocated to a political party may not be used -

(a) directly or indirectly for the purposes of paying any remuneration, fee, reward, perquisite or other benefit to any person -

(i) representing the political party in Parliament, any regional council or local authority council; or

(ii) who holds any other office of profit at any institution;

(b) with a view to financing or contributing to any matter, cause, event or occasion, whether directly or indirectly, in contravention of any code of ethics binding on the members of Parliament or regional councils or local authority councils;

(c) directly or indirectly for the purpose of establishing any business or acquiring or maintaining any right or financial interest whatsoever in any business, or in any immovable property, except if the right or interest in the immovable property is to be used by the party solely for party-political purposes;

(d) for any other purpose that is incompatible with a political party's functioning in a modern democracy, as may be prescribed; and

(e) for any act which is contrary to the Namibian Constitution or any other law.

(2) Within 21 days after the date on which a political party has so ceased to qualify for allocation of funds, it must repay the unspent balance, as at that date, of all monies that had been allocated to it in terms of this section.

Political parties to account for funds

158. (1) A political party to which funds are allocated must -

(a) keep, with a banking institution in Namibia, a separate banking account into which all monies so allocated to the political party are deposited; and

(b) appoint an office-bearer of that political party as its accounting officer with regard to all monies from time to time allocated to the political party.

(2) The responsibility of the accounting officer referred to in subsection (1) is to account for the monies allocated to the political party concerned, and includes -

(a) in addition to any other functions imposed by this Act, the duty to ensure that the political party complies with the requirements of this Act, and

(b) in particular, to ensure that those monies are not paid out for a purpose not authorised by this Act.

(3) The accounting officer referred to in subsection (1) must keep in the prescribed manner for each financial year of the represented political party for which monies have been allocated, separate books and records of account in respect of those monies and all transactions involving those monies.

(4) Within two months after the end of a financial year of the political party for which monies have been allocated, the accounting officer concerned must prepare a statement showing -

(a) all amounts received by the political party during the financial year;

(b) the application of those monies; and

(c) the purpose for which the various amounts have been applied,

after which the accounting officer must have that statement and those books and records of account audited by an auditor.

(5) An auditor who has performed an audit contemplated in subsection (4) must in the auditor's report express an opinion as to whether or not the allocated monies were spent for purposes authorised by this Act.

(6) The accounting officer of a represented political party must -

(a) submit the auditor's report and audited statements concerned to the Commission within three months after the end of the financial year of the political party; and

(b) publish or cause an abridged version of the accounts to be published in at least two daily newspapers circulating throughout Namibia within 7 days of submission to the Commission.

(7) Despite subsection (5), the Auditor-General may at any time audit any represented political party books and records of account and financial statements relating to monies allocated and direct, comment or query thereupon.

(8) Subject to subsection (9), the Commission -

(a) may order that the allocation of monies to a represented political party be suspended, if it is satisfied on reasonable grounds that the political party has failed to comply with any requirement of this Act; and

(b) must terminate the suspension if it is satisfied, in the light of the political party's subsequent conduct or explanation, that the suspension is no longer justified.

(9) The suspension of the allocations to a political party may be ordered under subsection (8) only if the Commission -

(a) by written notice has informed the political party of the proposed suspension and of the reasons therefore; and

(b) has called on the political party to furnish reasons, within the period specified in the notice, which period may not be shorter than 14 days as from the date of the notice, why its allocation of monies should not be suspended.

Recovery of monies irregularly spent by political parties

159. (1) If any monies allocated to a political party in terms of section 157 have been spent in contravention of the requirements of this Act, the political party concerned is liable to repay the National Assembly or the National Council the monies that were irregularly spent, subject to interest as may be determined in terms of section 2 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

(2) Any monies repaid in terms of subsection (1) must be credited to the State Revenue Fund.

(3) Secretary of the National Assembly or of the National Council must recover the monies irregularly spent, and may do so by -

(a) instituting a civil claim in respect of the amount irregularly spent, against the represented political party concerned; or

(b) setting off the amount irregularly spent against any allocation that may be or may become payable to the political party.

(4) The political party concerned is liable for the costs of recovering of monies irregularly spent.

Secretary to report to National Assembly on allocated funds

160. Within three months after the end of the financial year, the Secretary of the National Assembly must submit all received audited statements of political parties allocated funds during the past financial year to the National Assembly for discussion.

[There should be an apostrophe after the phrase "political parties": "political parties' allocated funds".]

Surplus monies as at end of financial year

161. (1) Any unspent monies as at the end of the financial year of a political party in the separate banking account kept by the political party in terms of section 158(1)(a) must be shown in the political party's books and records of account concerned as a credit balance carried forward to the next financial year, but -

(a) the monies that may so be carried forward may be limited to an amount representing a percentage determined by the Minister responsible for finance, with the approval of the National Assembly, of the allocations that had been made for the financial year; and

(b) monies so carried forward to the next financial year may not be taken into account in determining any allocation to be made to the political party concerned during the financial year.

(2) If -

(a) the National Assembly is dissolved in terms of the Namibian Constitution; or

(b) all the members of the National Council have vacated their seats as members under Article 70(2) of the Namibian Constitution,

every political party that is represented in the National Assembly or National Council must -

(i) close its books and records of accounts kept in terms of section 158 not later than 21 days before the date set for the election of either the National Assembly or National Council;

(ii) within 14 days thereafter submit an audited statement in respect of those books and records of account to the Secretary of the National Assembly,

and in the case where the National Assembly is dissolved, the incoming National Assembly must consider such audited statement in respect of those books and records of account.

(3) Subject to subsection (1)(a), and not later than the day immediately before the date set for the election concerned, the political party must repay to the State Revenue Fund the unspent balances, as at the date when its books and records of account are so closed, of all the monies that had been allocated to it in terms of section 157.

(4) Political parties which do not succeed in being represented in the National Assembly or National Council after the conduct of elections, and which have not spent the allocated funds beyond the prescribed percentage under subsection (1)(a) are not obliged to repay the monies to the State Revenue Fund.

(5) Despite subsection (3), and with the concurrence of the Secretary of the National Assembly, political parties may retain the funds contemplated in subsection (3) which may be subtracted from the allocation of the political party in the succeeding financial year.

CHAPTER 5
ELECTORAL CHALLENGES

PART 1
ELECTORAL TRIBUNALS

Establishment and constitution of electoral tribunals

162. (1) The Magistrates Commission, after consultation with the Commission, must by notice in the *Gazette* designate a regional court magistrate as an electoral tribunal, for the geographical area as the Magistrates Commission may determine, to adjudicate and decide, subject to this Act, upon matters before it arising before polling day, including -

(a) the inclusion or non-inclusion of any name or names in a provisional voters register;

(b) any conduct attributable to a registered political party or registered organisation or office-bearer of a registered political party or registered organisation;

(c) any conduct attributable to a registration officer or any other election official;

(d) matters concerning any election application or any other alleged prescribed electoral irregularity; and

(e) matters referred to in sections 33(1), (3), (4), (5) and (6), and 34(5).

(2) All matters arising before polling day in an election or referendum are adjudicated upon by an electoral tribunal and all appeals thereto are addressed to the Electoral Court in accordance with the Rules of the Electoral Court and electoral tribunals, but the Electoral Court must dispense with all such appeals before polling day.

(3) If circumstances in any geographical area referred to in subsection (1) require more than one presiding officer for the electoral tribunal designated for the geographical area, two or more magistrates or retired magistrates may be appointed as presiding officers to the geographical area to preside over the electoral tribunal concerned.

(4) A magistrate or retired magistrate appointed in terms of subsection (3) in respect of an electoral tribunal must before commencing with his or her functions for the first time, take an oath or make an affirmation subscribed by him or her in the form set out below:

"*I, ……do hereby swear/solemnly and sincerely affirm that whenever I am called upon to perform the functions of presiding officer in an electoral tribunal, I will administer the powers vested in the electoral tribunal justice to all persons alike, without fear, favour or prejudice and, as circumstances of a particular matter may require, in accordance with the laws of the Republic of Namibia applying to the matter concerned:*
So help me God/I so affirm."

(5) An oath or affirmation referred to in subsection (5) is taken by or made before the Chairperson of the Magistrates Commission or a member of the Magistrates Commission designated by the Chairperson.

Exercising and performing of powers and functions of electoral tribunals and additional powers and functions

163. (1) An electoral tribunal -

(a) adjudicating any matter referred to in section 162(1) must enquire into the matter in the prescribed manner, consider it and make the finding or decision as in its opinion is fair and just;

(b) in making a finding or decision in respect of any matter referred to in paragraph (a), may, if applicable, order or impose any penalty or sanction as may be prescribed, as it may consider appropriate in the circumstances.

(2) An electoral tribunal has the other powers and functions as may be conferred upon or imposed on it by any other law or as may be prescribed.

Procedure at electoral tribunals

164. (1) The presiding officer at a hearing of an electoral tribunal must conduct the proceedings in the manner as the presiding officer considers most suitable to the clarification of the issues concerned and generally to the just handling of the proceedings.

(2) Subject to section 206(2)(j), a presiding officer -

(a) must seek, insofar as he or she thinks it appropriate, to avoid strict formality in the proceedings; and

(b) is not strictly bound by any law relating to the admissibility of evidence, unless otherwise prescribed.

(3) Despite anything to the contrary in any other law, a party to proceedings before an electoral tribunal may appear in person or be represented by his or her own legal practitioner or by any office-bearer of a registered political party or a registered organisation.

Timeframe for delivery of decisions by electoral tribunals

165. (1) Subject to subsection (2), the presiding officer at a hearing of an electoral tribunal must give a written or oral decision and reasons for the decision at the conclusion of the hearing, or as soon as possible after the conclusion of the hearing, having due regard to the complexity of the matter, but not later than five days from the date of conclusion of the hearing.

(2) The presiding officer at an electoral tribunal must conclusively determine all pre-election matters before the tribunal before the polling day concerned.

(3) Subject to subsection (2), the presiding officer at a hearing seeking urgent relief which must be heard on an urgent basis, must give a written or an oral decision and reasons for the decision at the conclusion of the hearing, or as soon as possible after conclusion of the hearing, having due regard to the complexity of the matter, but not later than 48 hours from the conclusion of the hearing.

Costs relating to proceedings before electoral tribunals

166. Despite anything to the contrary in any other law, in any proceedings before an electoral tribunal, the tribunal may not make an order for costs against a party, unless the party has acted in a frivolous or vexatious manner by instituting, proceeding with or defending the proceedings.

PART 2
ELECTORAL COURT

Establishment and constitution of Electoral Court

167. (1) There is established an Electoral Court which is a division of the High Court of Namibia.

(2) Subject to this Act, the Electoral Court has, in the exercising of its powers and the performance of its functions, all the powers of the High Court conferred by Articles 78(4) and 80 of the Namibian Constitution and the High Court Act, 1990 (Act No. 16 of 1990).

(3) Subject to subsection (4), the Electoral Court consists of the Judge-President of the High Court and two other Judges of the High Court assigned by the Judge-President.

(4) The Judge-President is the Chairperson of the Electoral Court and if the Judge-President cannot act as Chairperson the Acting Judge-President of the High Court is the Chairperson of the Electoral Court.

(5) The Judge-President must designate the staff members as may be required for the administration of justice or the execution of the powers and authority of the Electoral Court.

Powers and functions of Electoral Court

168. (1) The Electoral Court has the power to -

(a) hear and determine appeals against decisions of electoral tribunals;

(b) review decisions of electoral tribunals;

(c) adjudicate and decide any matter concerning any contravention of this Act;

(d) subject to subsection (2), hear and determine appeals against decisions of the Commission;

(e) review any decision of the Commission relating to any electoral issues; and

(f) hear and determine any matter which relates to the interpretation of any law relating to electoral issues referred to it by the Commission.

(2) The Electoral Court has the power to hear and determine an appeal against any decision of the Electoral Commission only insofar as the decision relates to the interpretation of any law or any other matter for which an appeal is provided for in this Act.

(3) An appeal referred to in subsection (2) may be heard only with the prior leave of the Chairperson of the Electoral Court granted on application within the period and in the manner provided by the rules of the Court.

(4) An appeal referred to in subsection (2) must be heard, considered and summarily determined upon written submissions submitted within three days after leave to appeal was granted in terms of subsection (3).

(5) The Electoral Court has the other powers and functions as may be conferred upon or imposed on it by any other law or as may be prescribed.

Procedure at Electoral Court

169. (1) Subject to section 168, the Chairperson of the Electoral Court must at a hearing of the Electoral Court conduct the proceedings in the manner as he or she considers most suitable to the clarification of the issues before the Court and generally to the just handling of the proceedings.

(2) Subject to section 206(2)(j), the Chairperson of the Electoral Court must seek, insofar as he or she thinks it appropriate, to avoid formality in the proceedings.

(3) Despite anything to the contrary in any other law, a party to proceedings before the Electoral Court may appear in person or be represented by his or her own legal practitioner or by any office-bearer of a registered political party or a registered organisation.

(4) An applicant must, at the time of the presentation of an application before the Electoral Court, furnish security for the payment of all costs, charges and expenses that may become payable by the applicant before the Electoral Court -

(a) to any person which may be summoned as a witness on his or her behalf; and

(b) to the person or, in the case of an election on party lists, the political party or organisation whose election or return is complained of.

(5) The security referred to in subsection (4) must -

(a) be for an amount determined by the Electoral Court; and

(b) be furnished in monetary form to the satisfaction of the Chairperson of the Electoral Court.

(6) An applicant who is unable to furnish security in monetary form may apply to the Chairperson of the Electoral Court in order to provide security in any other form acceptable to the Court which may be applied to secure payment.

(7) If an applicant -

(a) complies with subsections (4) and (5) the application concerned may be enrolled; or

(b) does not comply with subsection (4) or (5) the application concerned may not be enrolled.

(8) Despite anything to the contrary in section 171, the Electoral Court may make an order in execution of security furnished in terms of subsection (4).

Timeframe for delivery of decisions by Electoral Court

170. (1) Subject to subsection (2), the Electoral Court at a hearing must give a written or oral decision and reasons for the decision at the conclusion of the hearing, or as soon as possible after the conclusion of the hearing, having due regard for the complexity of the matter.

(2) The Electoral Court must conclusively determine all post-election matters seven days before the swearing in of the office-bearer concerned.

(3) Subject to subsection (2), if the Electoral Court presides over a hearing seeking urgent relief which must be heard on an urgent basis, it must give a written or an oral decision and reasons for the decision at the conclusion of the hearing, or as soon as possible after conclusion of the hearing, having due regard to the complexity of the matter, but not later than 72 hours from the conclusion of the hearing.

Costs relating to electoral proceedings before Electoral Court

171. Despite anything to the contrary in any other law, in any proceedings before the Electoral Court, the Court may not make an order of costs against a party unless the party has acted in a frivolous or vexatious manner by instituting, proceeding with or defending any proceedings.

Presidential electoral challenges

172. (1) In any election of the President any challenge relating to the return or outcome of the election, including any request to review electoral materials in respect of the election for the purposes of bringing a challenge, the challenge or request is directed to and adjudicated by the Supreme Court of Namibia as a Court of first instance and final recourse as contemplated in Article 79(2) of the Namibian Constitution, read with section 15 of the Supreme Court Act, 1990 (Act No. 15 of 1990).

(2) Any proceedings referred to in subsection (1) is heard on an urgent basis and the Supreme Court must give a written or an oral decision and reasons for the decision at the conclusion of the hearing, or as soon as possible after conclusion of the hearing, having due regard to the complexity of the matter, but not later than 14 days from the conclusion of the hearing.

(3) Subject to subsection (4), the Chief Justice must make rules as contemplated in section 37 of the Supreme Court Act, 1990 (Act No. 15 of 1990), regulating challenges referred to in subsection (1).

(4) Until such time as rules referred to in subsection (3) have been made the rules of court made under section 37 of the Supreme Court Act, 1990, apply with the necessary changes in respect of challenges referred to in subsection (1).

CHAPTER 6
OFFENCES AND PENALTIES

Offences in connection with proceedings, disturbance or obstruction of persons and improper influence of persons

173. A person who -

(a) wilfully interrupts the proceedings at any meeting or hearing of the Commission, the Selection Committee, any committee of the Commission, the Directorate, an electoral tribunal or the Electoral Court, or misbehaves in any other manner in the place where the meeting or hearing is held;

(b) wilfully disturbs or obstructs the Commission or any member thereof, the Selection Committee or any member thereof, any committee of the Commission or any member thereof, the Directorate, an electoral tribunal or the Electoral Court or any member thereof or staff member or temporary staff member or person referred to in section 18(17)(b) or 24(3) in the performance of any of its or his or her functions, or

(c) does anything calculated improperly to influence the Commission or any member thereof, the Selection Committee or any member thereof, any committee of the Commission or any member thereof, the Directorate, an electoral tribunal or the Electoral Court or any member thereof or staff member or temporary staff member or person referred to in section 18(17)(b) or 24(3) in respect of any matter being or to be considered by it or him or her in connection with any decision or order,

commits an offence and is liable -

(i) on a first conviction to a fine not exceeding N$25 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment;

(ii) on a second or subsequent conviction to a fine not exceeding N$50 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Offences in connection with registration of voters

174. (1) A person who -

(a) whether himself or herself or through an intermediary and whether directly or indirectly, with intent to dissuade, discourage or prevent any person from causing another person to be registered as a voter, irrespective of whether the other person is qualified for the registration or is not so qualified, or with intent to obtain unlawfully the possession of a voter registration card issued to any other person -

(i) uses or threatens to use violence against the person or his or her next of kin or property of any person or his or her next of kin; or

(ii) does or omits to do, or threatens to do or omits to do anything, to the loss, detriment, disadvantage or prejudice of any person or his or her next of kin;

(b) during the hours whereupon voters may be registered -

(i) does any canvassing of persons to register or not to register or erects any poster or structure or uses any form of loudspeaker, excluding for official purposes; or

(ii) organises any procession of or demonstration by persons or participates therein,

within such a distance from any room, office or place where the registration of voters occurs that it disturbs, hinders or interferes with the registration;

(c) with intent to defraud -

(i) duplicates, copies, forges, falsifies or fabricates any voter registration card or any document purporting to be a voter registration card;

(ii) utters or is in possession of any document so duplicated, copied, forged, falsified or fabricated; or

(iii) tampers with any registration equipment;

(d) not being a returning officer, a presiding officer, a counting officer, a polling officer, a staff member or other person acting within the course of his or her functions under or for the purposes of this Act -

(i) issues or purports to issue a voter registration card;

(ii) destroys, mutilates or defaces any voter registration card; or

(iii) except in accordance with this Act, places any writing or mark on any voter registration card;

(e) is -

(i) found in possession of a voter registration card not issued to him or her, without being able to give a satisfactory explanation for his or her possession of it; or

(ii) found in possession of more than one voter registration card issued to him or her for the election or referendum concerned without being able to give a satisfactory explanation for his or her possession of such;

(f) being a registered voter in relation to an election or referendum concerned, applies for registration as a voter for the election or referendum in terms of this Act;

(g) after having ceased in terms of this Act to be a registered voter -

(i) applies for registration as a voter for the election or referendum, without being qualified for registration for the election or referendum; or

(ii) induces or procures any other person to so apply for registration or to register in fact as a voter,

knowing himself or herself or the other person is not authorised in terms of this Act to be so registered;

(h) obstructs, hinders or interferes with the Chief Electoral Officer, a director, a chief regional officer, any registration officer, supervisor of registration, member of an electoral tribunal or other person in the performance of his or her functions or the exercise of his or her powers under this Act;

(i) without being authorised thereto -

(i) removes any document from any place where it is kept in terms of this Act; or

(ii) destroys, mutilates, defaces, places any writing or mark upon or otherwise interferes with any document so kept in the place or any document, form, paper, instrument or other thing used for or required in connection with the carrying out of this Act;

(j) without good cause fails to comply with a notice furnished to him or her under section 24(11);

(k) in or for the purpose of -

(i) any application made to a registration officer in terms of section 26 or 35;

(ii) any proceedings before an electoral tribunal under section 29 or 32,

makes a false statement knowing it to be false or not believing it to be true;

(l) when appearing before an electoral tribunal under section 29 or under section 32, fails to answer fully and truthfully any question put to him or her or to produce anything that he or she has with him or her, but the person is not compelled to answer any question or produce anything that he or she is not compelled to answer or produce in any civil proceedings before a magistrate's court;

(m) obstructs, hinders or interferes with any person serving or attempting to serve a copy of a notice of objection in terms of this Act;

(n) fails to comply with section 44;

(o) with the intent to defraud, makes a false entry of the particulars of any person in any voters' list or register or on any voter registration card; or

(p) wilfully issues to any person a voter registration card knowing that the person does not qualify in terms of this Act to be issued with a voter registration card;

commits an offence.

(2) Any person convicted of an offence in terms of subsection (1) is liable -

(a) on a first conviction in terms of paragraph (a), (b), (c) or (k) thereof, to a fine not exceeding N$20 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;

(b) on a first conviction in the case of any other offence, to a fine not exceeding N$5 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment;

(c) on a second or subsequent conviction referred to in -

(i) paragraph (a), to a fine not exceeding N$40 000 or to imprisonment for a period not exceeding eight years, or to both such fine and such imprisonment;

(ii) paragraph (b), to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Offences in connection with nomination of candidates

175. (1) A person who -

(a) with intent to defraud -

(i) forges, falsifies or fabricates a nomination for any candidate in any election; or

(ii) utters or is in possession of any document so forged, falsified or fabricated;

(b) wilfully defaces, destroys or mutilates a nomination for a candidate in any election;

(c) with the intent to defraud makes any false statement or declaration in respect of the qualifications to be a candidate in any election concerned;

(d) on any day that a session in an election for the nomination of a candidate sits -

(i) uses any form of loudspeaker, excluding for official purposes, within a distance that it disturbs, hinders or interferes with the proceedings at the session;

(ii) wilfully obstructs or disturbs any proceedings thereat in any other manner whatsoever; or

(iii) obstructs or interferes with any person in the exercise of his or her powers or the performance of his or her functions at the proceedings under this Act, or attending the proceedings,

commits an offence.

(2) A person convicted of an offence under subsection (1) is liable -

(a) on a first conviction to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$20 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment.

Neglect of duty with regard to election or referendum

176. (1) A returning officer, presiding officer, polling officer, counting officer or staff member or other person appointed to perform any function in respect of an election or a referendum who, after having accepted an appointment as such, wilfully fails to perform any of the functions which he or she is required to perform in terms of this Act or the directions issued thereunder by the Chief Electoral Officer or the Commission, commits an offence, without derogating from this Act, and is liable -

(a) on a first conviction to a fine not exceeding N$2 500 or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$5 000 or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

(2) Any person convicted in terms of subsection (1) is not eligible to be appointed in any capacity referred to in subsection (1) in any election or referendum, and if the person is convicted during an election or referendum, the person ceases to hold office immediately.

Infringement of secrecy

177. (1) A staff member or temporary staff member or person referred to in section 18(17)(b) or 24(3), agent or person accredited as an observer present at a polling station -

(a) must maintain to the extent determined by this Act and aid in maintaining, the secrecy of the voting at the polling station; and

(b) may not communicate, except for any purpose authorised by law, to any person any information likely to defeat the secrecy of the voting.

(2) Except as provided in this Act, a person may not -

(a) interfere with or attempt to interfere with a voter when marking his or her vote,

(b) otherwise attempt to obtain at a polling station information as to -

(i) the political party, organisation or candidate for which any voter at the polling station is about to vote or has voted; or

(ii) in a referendum, the answer for which any voter at the polling station is about to vote or has voted; or

(c) communicate at any time to any person any information obtained at a polling station as to -

(i) the political party, organisation or candidate for which any voter at the polling station is about to vote or has voted; or

(ii) in a referendum, the answer for which any voter at the polling station is about to vote or has voted.

(3) A person may not induce directly or indirectly any voter to display the ballot paper of the voter, after the voter has marked it, in a manner as to make known to any person -

(a) the name of the political party, organisation or candidate for which the voter has marked his or her vote; or

(b) in a referendum, the answer for which any voter at the polling station has marked his or her vote.

(4) A person present at the determination of the result of a poll in any election or referendum -

(a) must maintain, and aid in maintaining, the secrecy of the voting; and

(b) may not attempt to ascertain at the determination, or communicate any information obtained at the determination as to the manner in which any particular person marked his or her ballot paper.

(5) A person present at the counting of votes may not communicate to any other person any information obtained at the counting about -

(a) the political party, organisation or candidate in respect of which a vote has been recorded in any spoilt or rejected ballot paper; or

(b) in a referendum, the answer in respect of which a vote has been recorded in any spoilt or rejected ballot paper.

(6) Except as provided in this Act, a person may not attempt to ascertain, or directly or indirectly assist in ascertaining, for which -

(a) political party, organisation or candidate any voter has recorded his or her vote; or

(b) in a referendum, answer any voter has recorded his or her vote.

(7) A person who has obtained, in the performance of his or her functions under this Act, any knowledge as to -

(a) the political party, organisation or candidate for which any person has recorded his or her vote;

(b) in a referendum, the answer for which any person has recorded his or her vote,

may not disclose such knowledge.

(8) Except upon the order of any court or as authorised by this Act, a person may not break the seal of a sealed packet or open such packet.

(9) This section is not construed as preventing any person from conducting any opinion poll in relation to -

(a) the support enjoyed by the several political parties or organisations taking part in any election concerned or by the policies which they advocate or by respective candidates in the election;

(b) the view of any voter relating to the answer of any referendum question; or

(c) the publishing of the result of an opinion poll so conducted.

(10) Any person who contravenes or fails to comply with this section commits an offence and is liable -

(a) on a first conviction to a fine not exceeding N$25 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$50 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

(11) A staff member or temporary staff member or person referred to in section 18(17)(b) or 24(3), agent or person accredited as an observer present at a polling station convicted in terms of subsection (10) is not eligible to be appointed in any such capacity in any election or referendum, and if the staff member, temporary staff member, agent or person is convicted during an election or referendum, the person ceases to hold office immediately.

Disturbance of proceedings and obstruction of persons

178. (1) A person who -

(a) wilfully -

(i) obstructs or disturbs any proceedings under this Act at a polling station; or

(ii) obstructs or interferes with the Chief Electoral Officer, a director, a chief regional officer, a returning officer, presiding officer, polling officer, counting officer or staff member or other person appointed to perform any function in respect of an election or a referendum in the exercise of his or her powers or the performance of his or her and functions under this Act; or

(b) on any polling day -

(i) does any canvassing for votes or erects any poster or structure for that purposes;

(ii) uses any form of loud speaker, excluding for official purposes;

(iii) organises any procession of or demonstration by persons or participates therein,

within a distance of 500 metres from any polling station,

commits an offence.

(2) A person convicted of an offence under subsection (1) is liable -

(a) on a first conviction to a fine not exceeding N$5 000 or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment; or

(b) on a second or subsequent conviction to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Offences in connection with voting, polling stations and equipment

179. (1) A person who -

(a) for the purpose to have a ballot paper issued to him or her or to enable him or her to vote by way of a voting machine, knowingly produces to any presiding officer or polling officer -

(i) a voter registration card issued to or in the name of some other person; living or dead, or a fictitious person;

(ii) a voter registration card which has been altered with intent to deceive; or

(iii) any document purporting to be but not being a voter registration card;

(b) having previously voted in the election or referendum concerned, produces to any presiding officer or polling officer -

(i) a voter registration card, whether issued to him or her or in the name of some other person; or

(ii) any document purporting to be but not being a voter registration card,

for the purpose of a ballot paper issued to him or her or to enable him or her to vote by way of a voting machine;

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

(d) without due authority supplies any ballot paper to any person;

(e) fraudulently places into any ballot box any paper other than a ballot paper issued to him or her in terms of this Act or into any authorisation ballot paper envelope any paper other than a ballot paper so issued to him or her;

(f) fraudulently or without due authority takes out of any polling station any ballot paper or authorisation ballot paper envelope or any voting machine;

(g) without due authority destroys, takes, opens, uses or otherwise interferes with any ballot box, polling booth, instrument, form, document, voting machine or other equipment used or intended for use at any polling station;

(h) causes any disturbance at any polling station;

(i) disobeys any lawful order given by the presiding officer at any polling station;

(j) without lawful authority destroys, mutilates, defaces or removes any notice exhibited under this Act;

(k) contravenes or fails to comply with section 96;

(l) while voting in the polling booth, takes a photograph or records a video of him or herself, or the mark made on his or her or any other person’s ballot paper or voting machine, or

(m) wilfully damages any voting machine, Occurrence Book or any other equipment,

commits an offence.

(2) A person convicted of an offence in terms of subsection (1) is liable -

(a) on a first conviction in terms of paragraph (a), (b) or (c) thereof, to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;

(b) on a first conviction in the case of any other offence, to a fine not exceeding N$5 000 or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment;

(c) on a second or subsequent conviction referred to in -

(i) paragraph (a), to a fine not exceeding N$20 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;

(ii) paragraph (b), to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Undue influence

180. (1) A person who, directly or indirectly, by himself or herself or by any other person -

(a) makes use or threatens to make use of any violence, force or restraint against;

(b) inflicts or threatens to inflict any bodily or psychological injury, damage, hazard or loss, upon or against; or

(c) does or threatens to do anything to the disadvantage of,

any person in order to induce or compel any person to vote or to refrain from voting in any election or referendum, or on account of any person having voted or refrained from voting in the election or referendum commits an offence.

(2) A person who, directly or indirectly, by himself or herself or by any other person by any means contemplated in subsection (1) or any fraudulent device or contrivance induces, compels or prevails upon any voter to -

(a) vote or refrain from voting in any election or referendum concerned;

(b) vote in favour of a particular political party, organisation or candidate;

(c) vote in favour of a particular answer in a referendum; or

(d) impede, hinder or prevent the free exercise of the franchise by any voter in any election or referendum concerned,

commits an offence.

(3) A person who is convicted of an offence under subsection (1) or (2) is liable -

(a) on a first conviction to a fine not exceeding N$25 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$50 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Bribery

181. (1) A person who, whether himself or herself or through an intermediary and whether directly or indirectly -

(a) corruptly gives, lends or procures, or agrees to give, lend or procure, or offers, promises, or promises to procure, or promises to endeavour to procure, any money or any other thing, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person -

(i) for the purpose of inducing the voter to record or abstain from recording his or her vote in any election or referendum; or

(ii) on account of the fact that the voter has recorded or abstained from recording his or her vote in any election or referendum;

(b) makes any gift, loan, offer or promise or effect for the voter, any person on behalf of the voter or any other person any such procurement or enters into any such agreement to or for or with any other person for the purpose of inducing such person to vote for any particular political party, organisation or candidate or for a particular answer in a referendum;

(c) upon or in consequence of any gift, loan offer, promise, procurement or agreement, procures or engages or promises or endeavours to procure the vote of any voter in the election or referendum;

(d) corruptly advances or pays, or causes to be advanced or paid, any money, to or for the use of, any other person with the intention that the money, or any part thereof, is to be expended on bribery in the election or referendum concerned, or who knowingly pays, or causes to be paid, any money or any other person in discharge or repayment of any money which has in full or in part been expended in bribery in the election or referendum;

(e) before or during the election or referendum concerned, receives or negotiates any payment or loan on his or her own behalf or any other person in consideration for his or her voting or his or her agreeing to vote in the election or referendum or his or her abstaining from voting, or his or her agreeing to abstain from voting in the election or referendum; or

(f) after the election or referendum has received any money on account of the fact that any other person -

(i) has recorded his or her vote or has abstained from recording his or her vote in the election or referendum; or

(ii) has induced any further person to record or to abstain from recording his or her vote in the election or referendum,

commits an offence.

(2) A person convicted of an offence under subsection (1) is liable -

(a) on a first conviction to a fine not exceeding N$50 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding 20 years, or to both such fine and such imprisonment.

(3) Nothing contained -

(a) in subsection (1)(a) is construed as applying to any transportation rendered in good faith to any voter for the purpose of recording his or her vote;

(b) in this section is construed as applying to any money paid or agreed to be paid for or on account of any election expenses in good faith and lawfully incurred.

Impersonation

182. (1) A person who -

(a) in an election or referendum concerned applies for a ballot paper in the name of some other person living or dead or of a fictitious person and attempts to record or records a vote in the name of the person;

(b) having voted once in an election or referendum concerned, in the election or referendum votes again or applies again for a ballot paper or attempts again to vote by way of a voting machine;

(c) submits any affidavit or declaration required in terms of this Act containing any information or allegation which the person knows to be false; or

(d) impersonates -

(i) a representative or candidate of a registered political party or registered organisation;

(ii) a candidate in an election;

(iii) a member of the Commission;

(iv) a member of the Selection Committee;

(v) a member of a committee of the Commission;

(vi) the Chief Electoral Officer;

(vii) a director;

(viii) a chief regional officer;

(ix) any other staff member or other person appointed by the Commission;

(x) a person accredited to provide voter and civic education;

(xi) a person accredited as an observer;

(xii) a judge of the Electoral Court; or

(xiii) a presiding officer of an electoral tribunal,

commits an offence.

(2) A person convicted of an offence under subsection (1) is liable -

(a) on a first conviction to a fine not exceeding N$15 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$30 000 or to imprisonment for a period not exceeding six years, or to both such fine and such imprisonment.

Corrupt procurement or withdrawal of candidate

183. (1) A person who -

(a) corruptly induces or procures any other person to become a candidate or to withdraw as a candidate in any election in consideration of any payment or promise of any nature;

(b) becomes a candidate or withdraws as a candidate in the election as a result of inducement or procurement provided in paragraph (a); or

(b) for the purpose of promoting or securing the election of another political party or organisation or candidate, before or during the election concerned, publishes -

[There are two paragraphs lettered "(b)" in the *Government Gazette*, as reproduced above.]

(i) a false statement of the withdrawal of a political party or organisation; or

(ii) the death or withdrawal of a candidate from the election,

knowing the statement to be false,

commits an offence.

(2) A person convicted of an offence under subsection (1) is liable -

(a) on a first conviction to a fine not exceeding N$50 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding 20 years, or to both such fine and such imprisonment.

Treating

184. (1) A person who -

(a) corruptly, whether himself or herself or through an intermediary, whether before or during or after an election or referendum concerned and whether directly or indirectly, gives or provides, or pays in full or in part the expense or giving or providing, any provisions to or for any other person -

(i) for the purpose of corruptly influencing the other person or any further person to record or abstain from recording his or her vote in the election or referendum; or

(ii) on account of the fact that the other person or any further person has recorded or has abstained from recording or is about to record or to abstain from recording his or her vote in the election or referendum; or

(b) being a voter, corruptly accepts or takes any payment, food, drink, entertainment, lodging or provisions referred to in paragraph (a),

commits an offence.

(2) A person convicted of an offence under subsection (1) is liable -

(a) on a first conviction to a fine not exceeding N$20 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$40 000 or to imprisonment for a period not exceeding eight years, or to both such fine and such imprisonment.

Obstruction of voter

185. A person who in an election or in a referendum obstructs a voter either at a polling station or on his or her way thereto from recording his or her vote commits an offence and is liable -

(a) on a first conviction to a fine not exceeding N$5 000 or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Unlawful conduct at public meeting

186. A person who at a public meeting held in connection with a forthcoming election or referendum 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, commits an offence and is on conviction liable -

(a) on a first conviction to a fine not exceeding N$15 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$30 000 or to imprisonment for a period not exceeding six years, or to both such fine and such imprisonment.

Offences in respect of printed and published material

187. (1) Every bill, placard, poster, pamphlet, circular or other printed matter, whether published electronically or not, having reference to an election or referendum must bear on the face of it or in its content, in addition to the name of the political party, organisation or candidate approving such, the name and address of the printer and of the publisher thereof.

(2) A person who prints, publishes or posts, or causes to be printed, published or posted any matter referred to in subsection (1) which does not bear on the face of it the name and address of the printer and publisher and the name of the political party, organisation or candidate endorsing such, commits an offence and is liable -

(a) on a first conviction to a fine not exceeding N$25 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$50 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

(3) The proprietor or publisher of a printed or electronic publication must cause the words "advertisement" and "endorsed by (the name of the political party, organisation or candidate endorsing the advertisement)" to be printed as a headline to any article or paragraph appearing in a printed or electronic publication containing election or referendum publicity matter, the insertion of which is or is to be paid for.

(4) A proprietor or publisher who fails to comply with subsection (3) commits an offence and is liable to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

(5) For the purposes of subsection (3), "election or referendum publicity matter" includes any matter which, on the face of it, is intended or calculated to affect the result of an election or a referendum.

Offences relating to political parties and organisations

188. (1) A -

(a) political party or an organisation which appoints a person who is not a citizen of Namibia as an office-bearer thereof;

(b) person who is not a citizen of Namibia who accepts appointment as an office-bearer of a political party or an organisation;

(c) person who makes a false statement or furnishes false particulars in an application for the registration of a political party or an organisation, knowing the statement or particulars to be false;

(d) registered political party or registered organisation which changes -

(i) its constitution;

(ii) its name;

(iii) its abbreviated name;

(iv) its distinctive symbol;

(v) its authorised representative; or

(vi) the business or postal address of the office of the authorised representative,

in contravention of section 138(1) or 150(1);

(e) registered political party or registered organisation which contravenes or fails to comply with section 140(1), (2), (3), (4), (5) or (7);

(f) registered political party or registered organisation or person that contravenes section 141(1) or fails to comply with any requirement or condition prescribed thereunder;

(g) registered political party or a person that -

(i) refuses or fails to comply with a request under section 142; or

(ii) under that section furnishes false information knowing it to be false;

(h) registered organisation or a person that -

(i) refuses or fails to comply with a request under section 142, read with section 151; or

(ii) under section 142, read with section 151, furnishes false information knowing it to be false;

(i) registered political party or a registered organisation or member thereof who contravenes or fails to comply with a Code of Conduct for Political Parties and Organisations;

(j) represented political party or represented organisation or accounting officer thereof who uses funds allocated to the party in contravention of section 157(6);

(k) represented political party or represented organisation or accounting officer thereof who contravenes or fails to comply with section 158(1), (3), (4) and (6);

(l) represented political party or represented organisation or accounting officer thereof who does not repay any money contemplated in section 159(1); or

(m) represented political party or represented organisation or accounting officer thereof who contravenes or fails to comply with section 161(1),

commits an offence.

(2) A person convicted of an offence under subsection (1) is liable in the case of -

(a) paragraph (a) -

(i) on a first conviction to a fine not exceeding N$50 000;

(i) on a second or subsequent conviction to a fine not exceeding N$100 000;

[The subparagraphs in paragraph (a) are both labelled "(i)" in the *Government Gazette*.]

(b) paragraph (b) -

(i) on a first conviction to a fine not exceeding N$50 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment;

(ii) on a second or subsequent conviction to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding 20 years, or to both such fine and such imprisonment;

(c) paragraph (c) -

(i) on a first conviction to a fine not exceeding N$15 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment;

(ii) on a second or subsequent conviction to a fine not exceeding N$30 000 or to imprisonment for a period not exceeding six years, or to both such fine and such imprisonment;

(d) paragraph (d) -

(i) on a first conviction to a fine not exceeding N$100 000;

(ii) on a second or subsequent conviction to a fine not exceeding N$200 000;

(e) paragraph (e) -

(i) on a first conviction to a fine not exceeding N$10 000;

(ii) on a second or subsequent conviction to a fine not exceeding N$20 000;

(f) paragraph (f) -

(i) on a first conviction to a fine not exceeding N$15 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment;

(ii) on a second or subsequent conviction to a fine not exceeding N$30 000 or to imprisonment for a period not exceeding six years, or to both such fine and such imprisonment;

(g) paragraph (g) -

(i) in the case of a registered political party or a registered organisation -

(aa) on a first conviction to a fine not exceeding N$10 000;

(bb) on a second or subsequent conviction to a fine not exceeding N$20 000; or

(ii) in the case of a person other than a registered political party or a registered organisation -

(aa) on a first conviction to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;

(bb) on a second or subsequent conviction to a fine not exceeding N$20 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;

(h) paragraph (h) -

(i) in the case of a registered political party or a registered organisation -

(aa) on a first conviction to a fine not exceeding N$15 000;

(bb) on a second or subsequent conviction to a fine not exceeding N$30 000;

(ii) in the case of a member of a registered political party or a registered organisation -

(aa) on a first conviction to a fine not exceeding N$5000 or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment;

(bb) on a second or subsequent conviction to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;

(i) paragraph (i) -

(i) in the case of a political party or an organisation -

(aa) on a first conviction to a fine not exceeding N$10 000;

(bb) on a second or subsequent conviction to a fine not exceeding N$20 000;

(ii) in the case of an accounting officer of a registered political party or a registered organisation -

(aa) on a first conviction to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;

(bb) on a second or subsequent conviction to a fine not exceeding N$20 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;

(j) paragraph (j) -

(i) in the case of a political party or an organisation -

(aa) on a first conviction to a fine not exceeding N$10 000;

(bb) on a second or subsequent conviction to a fine not exceeding N$20 000;

(ii) in the case of an accounting officer of a registered political party or a registered organisation -

(aa) on a first conviction to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;

(bb) on a second or subsequent conviction to a fine not exceeding N$20 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;

(k) paragraph (k) -

(i) in the case of a political party or an organisation -

(aa) on a first conviction to a fine not exceeding N$10 000;

(bb) on a second or subsequent conviction to a fine not exceeding N$20 000;

(ii) in the case of an accounting officer of a registered political party or a registered organisation -

(aa) on a first conviction to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;

(bb) on a second or subsequent conviction to a fine not exceeding N$20 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment; or

(l) paragraph (1) or (m) -

(i) in the case of a political party or an organisation -

(aa) on a first conviction to a fine not exceeding N$10 000;

(bb) on a second or subsequent conviction to a fine not exceeding N$20 000;

(ii) in the case of an accounting officer of a registered political party or a registered organisation -

(aa) a first conviction to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;

(bb) on a second or subsequent conviction to a fine not exceeding N$20 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment.

Offences relating to electoral challenges

189. A person who contravenes or fails to comply with an order of an electoral tribunal or the Electoral Court commits an offence and is liable to the penalties which may by law be imposed for contempt of court.

Offences relating to false statements or furnishing of false information under sections 6, 7 and 8(4) and (5)

190. A person who under sections 6, 7 or 8(4) or (5) makes a false statement or furnishes false information knowing it to be false or not believing it to be true commits an offence and is liable -

(a) on a first conviction to a fine not exceeding N$20 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;

(b) on a second or subsequent conviction to a fine not exceeding N$40 000 or to imprisonment for a period not exceeding eight years, or to both such fine and such imprisonment.

Penalties not expressly provided

191. If no penalties are expressly provided for an offence under this Act or for a contravention of or failure to comply with this Act, the offender is on conviction liable -

(a) on a first conviction to fine not exceeding N$2 500 or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment; or

(b) on a second or subsequent conviction to fine not exceeding N$5 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

CHAPTER 7
GENERAL PROVISIONS

Appeal against decisions of Commission

192. Subject to section 168(2) and (3), a person who is not satisfied with a decision of the Commission relating to an electoral issue may appeal against that decision to the Electoral Court.

Chief Electoral Officer to keep list of persons becoming incapable of being registered as voters

193. The Chief Electoral Officer must -

(a) upon being notified by the relevant ministry or institution concerned, keep, in respect of each constituency or local authority area, a list of names, voters' registration numbers and residential addresses of all persons who in terms of this Act have become incapable of being registered or of remaining registered as voters or of voting in the election or referendum concerned; and

(b) enter in the list opposite the name of each person the reason or cause for and the duration of the incapability.

Removal of incapacity proved by perjury

194. (1) If any witness who gave evidence at the proceedings culminating in the conviction or declaration of a person by the Electoral Court to be disqualified in terms of this Act, is convicted of perjury in respect of the evidence, the Court may, upon the application of the person, if satisfied that the conviction or declaration was based on perjured evidence, order that the disqualification of the person ceases from that time.

(2) The registrar of the Electoral Court must as soon as is practicable give written notice to the Chief Electoral Officer of any cessation referred to in subsection (1).

(3) The Chief Electoral Officer must upon receipt of a notice referred to in subsection (2) -

(a) remove the name of the person and other particulars recorded therein from the list referred to in section 194; and

(b) record the name and other particulars concerned in the relevant register of voters.

Voter not required in legal proceedings to disclose his or her vote

195. A person who has voted in an election or in a referendum may not in any legal proceedings be required to state for whom or in favour of which answer in a referendum he or she has voted.

Evidence of election or referendum being held

196. Upon any charge or an offence in terms of this Act alleged to have been committed in or in connection with an election or a referendum, a certificate of the Chief Electoral Officer stating that the election or referendum referred to therein was being or had been held, is sufficient evidence of the fact that the election or referendum was being or had been held.

Publication and service of notices

197. (1) Except if it is expressly directed to be published in the *Gazette* or otherwise, a public notice required to be given in terms of this Act is sufficiently given if it -

(a) is published in at least one newspaper circulating in the constituency or local authority area to which the notice refers; and

(b) is displayed in any place open to the public in the constituency or area which the Chief Electoral Officer may think fit or, if the Commission so determines, at the offices of the Chief Electoral Officer.

(2) Except as is otherwise specifically provided in this Act, if any summons, notice or other document is required to be served on any person in terms of this Act, it may be served by -

(a) delivering it to the person to whom it is addressed; or

(b) by leaving it at the place of residence of the person stated on the relevant register of voters as the place of residence of the person.

Exemption from stamp duty

198. Despite anything to the contrary in any other law, no stamp duty may be charged on any affidavit, declaration or statement made in terms of this Act.

Payments and expenditure under this Act

199. (1) Subject to subsection (2), any payment and any expenditure to be, or which may be, made or incurred under this Act, is defrayed out of funds appropriated by Parliament for that purpose.

(2) Subsection (1) does not apply in relation to any payment or expenditure to be, or which may be, made or incurred by a registered political party, registered organisation or candidate under this Act.

(3) The remuneration or allowances paid to any person in terms of section 24(4) and (5) or 65(3) and (4) is not regarded as income for the purposes of any law imposing a tax on income.

Validation of certain documents

200. No misnomer or any inaccurate description of a person or place in any register, notice or other document required for the purpose of this Act affects the full operation of the document with respect to the person or place in any case if the description of the person or place is such as to be commonly understood.

Designation of constituency for certain purposes

201. (1) For the purposes of -

(a) undertaking the registration of voters;

(b) submitting the nominations of candidates; or

(c) conducting an election or referendum,

in a constituency in terms of this Act, and despite anything to the contrary in this Act or any other law, the President may, if he or she thinks it necessary, by proclamation, designate any other constituency in which the -

(i) registration of voters must be taken;

(ii) nomination of candidate must be submitted; or

(iii) election or referendum must be conducted,

and thereupon the registration, nomination or election must be taken, submitted or conducted in the designated constituency in the same manner and subject to the same requirements as in the first-mentioned constituency.

(2) If the President has in terms of subsection (1) designated any other constituency for any purpose referred to therein, anything done in respect of a constituency in the designated constituency in relation to the registration of voters, the nomination of candidates or the conducting of the election or referendum, is deemed to have been done in the constituency for which that constituency has been designated.

Delegation of powers and assignment of functions

202. (1) The Chairperson of the Commission may in writing and on such conditions as he or she may determine -

(a) delegate any power conferred upon him or her by this Act to a committee, the Chief Electoral Officer or any other staff member in the Directorate; and

(b) assign any function imposed upon him or her by this Act, except a function referred in section 109(3), 110(3) or 113(1), to a committee, the Chief Electoral Officer or any other staff member in the Directorate.

(2) The Chief Electoral Officer may in writing and on such conditions as he or she may determine -

(a) delegate any power conferred upon him or her by this Act to any staff member in the Directorate; and

(b) assign any function or duty imposed upon him or her this Act to any staff member in the Directorate.

(3) The Chairperson of the Commission or the Chief Electoral Officer -

(a) is not divested or relieved of any power delegated or any function or duty assigned under subsection (1) or (2);

(b) may vary or set aside any decision made under the power so delegated or perform or carry out any function or duty so assigned; and

(c) at any time withdraw the delegation of any power or the assignment of any function.

(4) If a decision varied or set aside under subsection (3)(b) relates to any person, that person may, within 14 days after the variation or setting aside of the decision, make written representation to the Chairperson of the Commission or the Chief Electoral Officer, regarding the variation or setting aside.

Limitation of liability

203. The Commission or any member thereof, the Selection Committee or any member thereof, any committee of the Commission or any member thereof, the Directorate, an electoral tribunal or the Electoral Court or any member thereof or staff member or temporary staff member or person referred to in section 18(17)(b) or 24(3) is not liable in respect of -

(a) anything done or omitted to be done in good faith in the exercise of a power or the performance of a function under this Act; or

(b) anything that may result from anything done or omitted to be done under paragraph (a),

unless such a thing is done or omitted to be done due to the gross negligence of the Commission, the Committee, Directorate, the tribunal, Electoral Court, such member or such person.

Occurrence Book

204. (1) An Occurrence Book is to be kept at every registration point, polling station, and collation centre in which all complaints, events in which a person is dissatisfied and incidents are recorded and signed by any person present as a witness, but any event or complaint that is not recorded and signed for in the Occurrence Book is deemed not to have occurred, and the burden of proof lays with the person alleging the occurrence of the incident or complaint.

(2) A chief regional officer, returning officer, presiding officer, counting officer, polling officer, police officer, staff member or temporary staff member appointed to the Directorate, persons referred to in section 18(17)(b) or 24(3), election agent, counting agent, a person appointed by an accredited observer or every candidate for an election may enter into an Occurrence Book any complaint, incident, fraudulent, irregular or illegal activity.

(3) A supervisor of registration, presiding officer, or returning officer may not deny any person referred to in subsection (2) permission to record any complaint, incident, fraudulent, irregular or illegal activity.

Regulations

205. (1) Subject to subsection (5), the Commission may make regulations relating to -

(a) the forms, records and registers to be used for purposes of this Act;

(b) the form and distinctive features of voter registration cards;

(c) the -

(i) establishment of polling stations in constituencies;

(ii) the minimum size of polling stations and the equipment and facilities to be provided at polling stations;

(iii) subject to this Act, the persons who may be admitted to polling stations;

(iv) the taking of photos and the carrying and use of cell phones inside polling stations;

(d) the format of an Occurrence Book and the particulars to be entered therein;

(e) the registration of voters and voting outside Namibia;

(f) the equitable access to State-owned digital and print media by political parties and organisations for election purposes;

(g) any matter required or permitted to be prescribed under this Act; and

(h) any ancillary or incidental administrative or procedural matter that is necessary to be prescribed for the proper implementation or administration of this Act or in order to achieve the objects of this Act.

(2) The regulations may prescribe penalties for the contravention thereof or failure to comply therewith not exceeding a fine of N$5 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

(3) Different regulations may be made in respect of different -

(a) regions, constituencies or local authority areas;

(b) different elections or referenda under this Act;

(c) different political parties or organisations,

as the circumstances may require.

(4) Regulations which affect State expenditure are made in consultation with the Minister responsible for finance.

Rules of Electoral Court and electoral tribunals

206. (1) The Chairperson of the Electoral Court must make, after consultation with the Magistrates Commission, the rules of the Electoral Court and electoral tribunals.

(2) The rules referred to in subsection (1) must prescribe -

(a) the conduct of the proceedings of the Electoral Court and electoral tribunals;

(b) the manner of recording or noting of evidence or proceedings or the disposal thereof;

(c) the appointment and functions of sworn interpreters;

(d) orders, penalties and sanctions which may be given or imposed by the Electoral Court or electoral tribunal, and the execution thereof;

(e) the manner in which a person, political party, organisation or candidate may be summoned to appear in an Electoral Court or electoral tribunal to face a charge of contravening or failing to comply with any regulation, and the manner in which one or more persons may be selected to represent the political party, organisation or candidate in the Court or tribunal;

(f) the procedures for investigating alleged infringements or electoral offences or matters justiciable in terms of this Act in order to bring the investigations to an expeditious conclusion;

(g) fees and costs and the recovery thereof in respect of legal proceedings in terms of this Act;

(h) representation or absence thereof in respect of legal proceedings in terms of this Act;

(i) the practice and procedure to be followed by the Electoral Court and the electoral tribunals in the conduct of the proceedings in order to bring the proceedings to an expeditious conclusion, due regard being had to fairness and justice;

(j) the manner, including the degree of flexibility in the admissibility of evidence, in which any matter to be heard and determined by the Electoral Court or an electoral tribunal must be brought and continued before it with the view to effecting a speedy, fair and equitable disposal of any such matter;

(k) the tariff of fees charged by legal representatives;

(l) with the concurrence of the Minister responsible for finance, the fees payable in respect of the service or execution of any process of the Electoral Court or an electoral tribunal and the tariff of costs and expenses which may be allowed in respect of the service or execution;

(m) the taxation of bills of costs;

(n) the hours during which the office of the registrar of the Electoral Court or the clerk of electoral tribunal are open for the transaction of business;

(o) the form and the manner in which an appeal from a decision of an electoral tribunal to the Electoral Court must be noted;

(p) the form and the manner in which appeals from registration points within and outside Namibia are to be dealt with; and

(q) generally, any matter which may be necessary or expedient to prescribe in order to ensure the proper dispatch and conduct of the proceedings of the Electoral Court or an electoral tribunal.

(3) Nothing contained in subsection (2) precludes the Electoral Court or an electoral tribunal from dealing with any matter before it, in such manner and on such principles so as to do substantial justice and to perform its functions most efficiently.

(4) Until such time as the rules referred to in subsection (2) are made -

(a) in the case of the Electoral Court, the rules of court made under section 39 of the High Court Act, 1990 (Act No. 16 of 1990);

(b) in the case of the electoral tribunals, the rules of court made in terms of section 25 of the Magistrate's Courts Act, 1944 (Act No. 32 of 1944),

apply with the necessary changes in relation to the Electoral Court or an electoral tribunal as if the Electoral Court were the High Court of Namibia and an electoral tribunal were a regional magistrate's court.

Repeal and amendment of laws

207. The laws specified in Schedule 1 are repealed or amended to the extent set out in the third column of that Schedule.

Saving provisions

208. Despite section 207 -

(a) any political party or organization or association registered in terms of any law referred to in Schedule 1, except in so far as may be otherwise required by this Act, is deemed to have been registered under the corresponding provision of this Act;

(b) any notice, regulation, authorisation, order or certificate issued, made or granted or any other thing done in terms of any law referred to in Schedule 1, except in so far as may be otherwise required by this Act, is deemed to have been issued, made, granted or done under the corresponding provision of this Act.

Short title and commencement

209. (1) This Act is called the Electoral Act, 2014, and comes into operation on a date determined by the Minister responsible for regional and local governments by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

SCHEDULE 1

LAWS REPEALED AND AMENDED
(Section 207)

No and year of law	Title of law	Extent of repeal or amendment
Act 24 of 1992	Electoral Act, 1992	The repeal of the whole
Act 23 of 1994	Electoral Amendment Act, 1994	The repeal of the whole
Act 13 of 1995	Public Service Act, 1995	**1.** The amendment of Schedule 3 to that Act - (a) by the substitution for the words "Electoral Commission" of the words "Electoral Commission of Namibia"; (b) the substitution for the words "Director of Elections" in the second column of that Schedule of the words "Chief Electoral Officer".
Act 3 of 1997	Local Authorities Amendment Act, 1997	The repeal of section 3
Act 30 of 1998	Electoral Amendment Act, 1998	The repeal of the whole
Act. 11 of 1999	Electoral Amendment Act, 1999	The repeal of the whole
Act 19 of 1999	Electoral Amendment Act, 1999	The repeal of the whole
Act 20 of 2002	Electoral Amendment Act, 2002	The repeal of the whole
Act 7 of 2003	Electoral Amendment Act, 2003	The repeal of the whole
Act 4 of 2006	Electoral Amendment Act, 2006	The repeal of the whole
Act 7 of 2009	Electoral Amendment Act, 2009	The repeal of the whole
Act 11 of 2010	Electoral Amendment Act, 2010	The repeal of the whole
Act 8 of 2012	Electoral Amendment Act, 2012	The repeal of the whole
Act 9 of 2013	Electoral Amendment Act, 2013	The repeal of the whole

SCHEDULE 2

BILL OF FUNDAMENTAL VOTERS' RIGHTS AND DUTIES
(Sections 1(3)(b), 49(2) and 95(b))

1. The Commission and any other person must respect, protect and uphold the rights and duties contained in this Schedule.

2. Every Namibian voter has the right to -

2.1 a free, fair and credible voting process and to have non-discriminatory and equal access to the electoral system.

2.2 receive and cast a ballot paper that -

(a) is valid and written or displayed (considering the use of electronic voting machines) in a form and manner that allows the clear identification of candidates, political parties or organisations (some people may choose to cast their votes in either the presidential or national assembly elections); and

(b) accurately records the voter's preference in the selection of candidates, political parties and organisations or a referendum question.

2.3 have questions concerning voting procedures explained (including consideration of blind and deaf voters), and to have an explanation of the procedures written and posted in a clearly visible place at the polling station.

2.4 vote without being intimidated, threatened, coerced or unduly influenced by election officials or any other third party.

2.5 vote on election day and if the voter is waiting in line at a polling station, to vote, as far as possible, (before the designated closing time) of the polling station, provided that the voter has not already cast a vote in the election.

2.6 return a spoiled ballot paper and to receive another ballot paper in its stead.

2.7 request for and receive assistance of an individual of his or her choice, who is a Namibian citizen eligible to vote and a registered voter, in voting, if necessary.

2.8 a polling booth constructed in a manner possible for physically disabled voters to cast a vote.

2.9 in the case of ballot papers, a sample ballot paper, which is accurate and informative, and in the case of electronic voting, to explanation on the use of the equipment for voting during election training.

2.10 lodge, subject to this Act, in accordance with relevant procedures, complaints and challenges about the general conduct of elections and the election process and to have the complaints and challenges, so lodged, resolved by a relevant authority, a competent court or tribunal fairly, efficiently and timeously.

3. Every Namibian voter has the duty to -

3.1 respect the political will and decision of other voters and refrain from coercing or offering any monetary or other kinds of inducements to other voters so as to influence their vote in whatever manner.

3.2 not to interfere unjustifiably or in bad faith with the functions of election officials.

3.3 refrain from dressing in any political party colours and regalia within five hundred meters of polling stations or other electoral centres.

3.4 refrain from the abuse of alcohol and not to attend to voting whilst under the influence of alcohol or other stupefying drugs, which may impair the ability to act with a sense of responsibility and dignity.

3.5 ensure that peace and order prevail at all times during elections and to refrain from instigating, participating and involving in any conduct which may result in causing any infringement upon any other voter's right to participate in elections without fear.

4. These rights and duties apply with the necessary changes to referenda.

SCHEDULE 3

REGISTRATION AS A VOTER
(Section 26(4)(d)(i))

PART A

REGISTRATION OF PERSONS SERVING AS MEMBERS OF NAMIBIAN DEFENCE FORCE, NAMIBIAN POLICE FORCE AND NAMIBIAN CORRECTIONAL SERVICE AS VOTERS

1. For the purposes of the general registration of voters to be conducted under this Act, the documents, statements, certificates or accounts prescribed under this Part, are acceptable for the registration of members of the Namibian Defence Force, Namibian Police Force and Namibian Correctional Services, in the case of an election of members of a local authority council, in respect of the local authority area in which the member is resident, proving compliance with the requirement of residence as stipulated in section 22.

2. A registration officer must accept as proof of residence in a particular local authority area, the following documents, statements, certificates or accounts when produced by members of the Namibian Defence Force, Namibian Police Force and Namibian Correctional Services:

2.1. Proof of membership of the Namibian Defence Force, Namibian Police Force or Namibian Correctional Service; and

2.2. An affidavit deposed by the commanding officer of a particular battalion, regiment, unit, correctional facility, station or other designation stating that a particular member is stationed at a particular facility or residence situate in a particular constituency or local authority area, such affidavit must -

(a) particularly contain (either within or as an annex thereto) the names, force membership number and national identification numbers of the members resident at that particular facility or residence;

(b) further indicate that the facility or residence concerned is either owned or designated for the purposes of dwellings of or leased by the Namibian Defence Force, Namibian Police Force or Namibian Correctional Service.

2.3. Either one of the following:

2.3.1. Accounts payable by the member of the Namibian Defence Force, Namibian Police Force or Namibian Correctional Service to such force or service or to the State (Government Office/Ministry/Agency); or Any other document accompanying an affidavit by any competent official of any institution affiliated to the Namibian Defence Force, Namibian Police Force or Namibian Correctional Service; or

2.3.2. Any other document accompanying an affidavit by any competent official of any institution affiliated to the Namibian Defence Force, Namibian Police Force or Namibian Correctional Service.

PART B

REGISTRATION OF PERSONS AT SCHOOLS AND HIGHER EDUCATION INSTITUTIONS AS VOTERS

1. For the purposes of the general registration of voters to be conducted under this Act, the documents, statements, certificates or accounts prescribed under this Part, are acceptable for the registration of persons at registered at a School or Higher Education Institution registered in Namibia, in the case of an election of members of a local authority council, in respect of the local authority area in which he or she is resident, proving compliance with the requirement of residence as stipulated in section 22.

2. In addition to the statutory requirements relating to the qualifications for registration of a voter, a registration officer must accept as proof of residence in a particular local authority area, produces an official statement or document attesting to the registration of a particular person as being registered at a School or Higher Education Institution registered in Namibia within a particular local authority area.

3. The provisions of paragraphs 1 and 2 may not be construed restrictively and a registration officer must where necessary require an applicant to furnish in addition to the official statement or document, such explanation, information or further particulars as may be necessary to establish the correctness of the particulars contained in any official statement or document so produced.

PART C

REGISTRATION OF PERSONS WITHOUT PROOF OF RESIDENCE IN LOCAL AUTHORITY AREA AS VOTERS

1. For the purposes of the general registration of voters to be conducted under this Act, the document prescribed under this Part are acceptable for the registration of applicants who reside in a particular local authority area and are unable to prove such residence by way of production of a local authority account or municipal bill or lease agreement upon which it can be proved that such person is indeed resident in such local authority area, proving compliance with the requirement of residence as stipulated in section 22.

2. In addition to the statutory requirements relating to the qualifications for registration of a voter, a registration officer must accept as proof of residence in a particular local authority area, a sworn statement deposed by such applicant in the presence of a commissioner of oath or justice of the peace so designated in terms of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963).

3. The provisions of clause 1 and 2 may not be construed restrictively and a registration officer must where necessary require an applicant to furnish in addition to the official statement or document, such explanation, information or further particulars as may be necessary to establish the correctness of the particulars contained in any official statement or document so produced.