THE ELECTORAL PROCESS ACT, 2016

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SCHEDULE

GOVERNMENT OF ZAMBIA

ACT

No. 35 of 2016

Date of Assent: 6th June, 2016

An Act to provide for a comprehensive process for a general election; provide for the conduct of elections by the Electoral Commission of Zambia and empower the Commission to make regulations in matters relating to elections; provide for the registration of voters and the keeping of voters registers; prescribe the procedures for nominations for elections; provide for the role of presiding officers, election officers and conflict management officers; prescribe the procedure for voting during an election; provide for the accreditation and roles of observers and monitors; criminalise corrupt practices and other illegal practices related to elections and provide for penalties in connection with an election; provide for election petitions and the hearing and determination of applications relating to a general election; provide for voter education; prescribe the electoral code of conduct; repeal and replace the Electoral Act, 2006; and provide for matters connected with, or incidental to, the foregoing.

[7th June, 2016

ENACTED by the Parliament of Zambia. Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Electoral Process Act, 2016. Short title

2. In this Act, unless the context otherwise requires— Interpretation

"area" has the meaning assigned to it in section *two* of the Local Government Act; Cap. 281

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

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

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

Cap. 1 "by-election" has the meaning assigned to it in the Constitution;

"campaign material" means party or candidate manifestos, advertisements, billboards, posters, tshirts, cloth or other material depicting colours regarding symbols, and other designs of a party or pictural images of a candidate;

"campaign period" means a period of three months before the holding of an election;

"candidate" means a person contesting a presidential, parliamentary or local government election;

"caricature" means the exaggerated imitation of a cartoon, effigy, picture, drawing or sketch of a person or literary style for comic or satirical effect;

"casual vacancy" means a vacancy in the office of councillor as specified in the Local Government Act;

Cap. 281

"Chief Electoral Officer" has the meaning assigned to it in the Electoral Commission of Zambia Act, 2016;

Act No. 25 of 2016

"Code" means the Electoral Code of Conduct set out in the Schedule;

"Commission" means the Electoral Commission of Zambia established by the Constitution;

Cap. 1

"conflict management officer" means an officer appointed as a conflict management officer in accordance with section *one hundred* and *thirteen;*

"constituency" has the meaning assigned to it in the Constitution;

Cap. 1

"Constitutional Court" has the meaning assigned to it in the Constitution;

Cap. 1

"corrupt practice" means any conduct which is declared to be a corrupt practice in accordance with section *eighty-one;*

"costs"includes charges and expenses;

"council"has the meaning assigned to it in the Constitution;

Cap. 1

"council chairperson" has the meaning assigned to it in the Constitution; Cap. 1

"councillor" has the meaning assigned to it in the Constitution; Cap. 1

"designated person" means a person or officer appointed by the Chief Justice for the purpose of receiving election petitions filed before a tribunal and attending to such other matters regarding petitions before a tribunal as are assigned to the Registrar under this Act;

"election" has the meaning assigned to it in the Constitution; Cap. 1

"election agent" means a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate's nomination paper;

"election officer" means a person appointed by the Commission as—

(a) a registration officer;

(b) an assistant registration officer;

(c) a district electoral officer;

(d) a returning officer;

(e) a presiding officer;

(f) an assistant presiding officer; or

(g) a polling assistant;

and includes a person appointed to assist the Chief Electoral Officer in the performance of the functions of the Chief Electoral Officer as specified in this Act;

"election petition" means an election petition related to a presidential, parliamentary or local government election as specified in the Constitution; Cap. 1

"election timetable" means a timetable for an election published by the Commission in accordance with section *twenty-eight;*

"employee" has the meaning assigned to it in section *two* of the Local Government Act; Cap. 281

"general election" has the meaning assigned to it in the Constitution; Cap. 1

"illegal practice" means an offence which is declared under this Act to be an illegal practice;

"interim period" means the period commencing at the commencement of this Act and expiring on such date as the President may prescribe by statutory order;

"media" includes publicly or privately operated print and electronic media;

"Member of Parliament" has the meaning assigned to it in the Constitution; Cap. 1

"monitor"means a person accredited as such by the Commission;

"national registration card" means a national registration card issued under and in terms of the National Registration Act; Cap. 126

"national registration number"means the serial number inserted on a national registration card issued in accordance with the National Registration Act; Cap. 126

"nomination day" means the day appointed by the Commission as the day on which a candidate files that candidate's nomination paper with the Commission;

"nomination centre" means a place prescribed by the Commission as a nominating office;

"nomination paper" means a document prescribed by the Commission for the purpose of a candidate registering that candidate's intention to contest an election under this Act;

"observer" means a person accredited as such by the Commission;

"petitioner" in relation to an election petition, means a person who signs and presents an election petition under section *ninety-eight*, and includes a person substituted for a petitioner;

"political party" has the meaning assigned to it in the Constitution; Cap. 1

"polling agent" means an agent appointed by a candidate in respect of a polling station;

"polling assistant" means a person appointed as polling assistant by the Commission;

"polling day" means—

(a) in relation to a general election, the day specified in accordance with the Constitution for the taking of the poll in a general election; and Cap. 1

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

"polling district" means a district established by the Commission as a polling district under section *twenty-one;*

"polling station" means a place established as a polling station by the Commission under section *twenty-four;*

"public officer" has the meaning assigned to it in the Constitution; Cap. 1

"presidential election" has the meaning assigned to it in the Constitution; Cap. 1

"presiding officer" means a person appointed as a presiding officer by the Commission under section *thirty-seven;*

"Register of Voters" means the Register of Voters prepared and certified by the Commission under section *fourteen;*

"registration officer" means a person appointed as a registration officer by the Commission;

"Registrar" means the Chief Registrar of the High Court, and includes the Deputy Registrar, District Registrar and Assistant Registrar;

"respondent" means a person against whom an election petition is filed in accordance with section *ninety-eight;*

"Returning Officer" has the meaning assigned to it in the Constitution; Cap. 1

"returning officer" has the meaning assigned to it in the Constitution; Cap. 1

"traditional leader" means a paramount chief, senior chief, chief or village headman;

"tribunal" means a local government elections tribunal established in accordance with Article 159 of the Constitution; Cap. 1

"voter" means a person who is registered as a voter and whose name appears in the Register of Voters;

"voter's card" means a voter's card prescribed and issued by the Commission; and

"ward" means any of the divisions into which a council area is divided under section *twenty-five.*

Principles of electoral system and process

3. Subject to the Constitution, the principles applied in the electoral system and process shall ensure the following:

(a) equal and universal suffrage;

(b) no discrimination based on gender or disability when providing electoral services;

(c) transparent and credible electoral process;

(d) no special privileges accorded to a political party or social group, except for persons with special needs;

(e) no impediments to lawful inclusion in the electoral register;

(f) impartial voter-education programmes;

(g) access to polling stations for representatives of political parties, accredited local or international election monitors, observers and the media;

(h) secrecy of the vote;

(i) design of the ballot paper that promotes easy use;

(j) transparent and secure ballot boxes;

(k) impartial assistance to voters at the polling station;

(l) transparent, accurate and reliable vote counting procedure;

(m) proper management of invalid ballot papers;

(n) precautionary measures for transporting of election materials;

(o) impartial protection of polling stations;

(p) established procedures for lodging and dealing with complaints;

(q) impartial handling of election complaints;

(r) impartial delimitation of electoral boundaries; and

(s) timely resolution of electoral disputes.

Administration, enforcement and prosecution

Cap. 1

4. (1) This Act shall be administered and enforced by the Commission and the Commission shall not be subject to the direction or control of any person or authority in the exercise of its functions under the Constitution and this Act.

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

(3) An officer appointed pursuant to subsection (2) shall be provided with a letter of appointment which shall be *prima facie* evidence of that person's appointment.

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

(5) The Anti-Corruption Commission shall investigate and prosecute any corrupt practice committed under this Act in accordance with the Anti-Corruption Act, 2012.

Act No. 3 of 2012

(6) The Zambia Police Service shall enforce law and order at polling stations and undertake any criminal proceedings, subject to subsection (2), in respect of an offence committed by any person in contravention of this Act.

Delegation of powers and duties by Commission

5. (1) The Commission may—

(a) delegate any of its powers under this Act to a member, employee or officer of the Commission excluding the power to prescribe anything under this Act or make an appointment under this Act or any other written law; and

(b) instruct a member, employee or officer of the Commission to perform any of its duties under this Act or any other written law.

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

(a) shall be subject to any limitations and conditions that the Commission may impose; and

(b) does not prevent the Commission from exercising or performing the assigned power or duty.

(3) The Commission may, by statutory order, confer powers or impose duties on an officer or authority of the Government or council for the purpose of discharging its functions under this Act.

Delegation of powers and duties by Chief Electoral Officer

6. (1) The Chief Electoral Officer may—

(a) delegate any of the powers of the Chief Electoral Officer under this Act or any other law to an employee or officer of the Commission; or

(b) instruct an employee or officer of the Commission to perform any of the duties of the Chief Electoral Officer under this Act or any other written law.

(2) Subsection (2) of section *five* with the necessary modification, shall apply to a delegation or instruction of the Chief Electoral Officer under subsection (1).

PART II

Registration of Voters and Registers

Continuous voter registration

7. The Commission shall conduct a continuous registration of voters.

Qualification for registration as voter

8. (1) A person qualifies for registration as a voter if that person—

(a) is a citizen of Zambia;

(b) has attained the age of eighteen years; and

(c) is in possession of a national registration card.

(2) The Commission shall register a person as a voter as prescribed.

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

(4) A person shall not register as a voter in more than one constituency.

Disqualification from registration as voter

9. (1) The Commission shall not register a person as a voter if that person

(a) is not a citizen of Zambia;

(b) is not in possession of a national registration card;

(c) suffers from a mental disability which makes the person unable to exercise their right to vote;

Cap. 88

(d) is detained under the Criminal Procedure Code during the pleasure of the President;

(e) is disqualified from voting under section *forty-seven*;

(f) is under a sentence of death imposed by a competent court, or a sentence of imprisonment imposed by a court or substituted by a competent authority for some other sentence imposed by that court; or

(g) does not qualify to be registered as a voter as may be prescribed;

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

De-registration of voter

10. A registration officer shall de-register a voter if the registration officer is satisfied that the voter—

(a) does not qualify to be registered as a voter;

(b) no longer meets the qualifications for registration as specified in section *eight*;

(c) has been fraudulently registered; or

(d) obtained the registration through submission of false information or making of a misleading statement.

Notification by registration officer

11. (1) A registration officer shall notify a person—

(a) whose registration as a voter has been refused;

(b) whose application to have a change of name or ordinary place of residence recorded has been refused;

(c) who has been disqualified from registration as a voter under section *ten*; or

(d) whose registration details have been changed.

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

Suspension of registration of voters

12. (1) The Commission may suspend the registration of voters whenever an election is due for the purposes of the conduct of the election.

(2) The Commission shall, where it prescribes the polling day for a byelection, immediately suspend the registration of voters in the district in which the byelection is to take place until the byelection is concluded.

Provisional Register of Voters

13. (1) The Commission shall establish a Provisional Register of Voters as prescribed.

(2) The Provisional Register of Voters shall include the details of persons entitled to vote in an election or referendum under this Act or the Referendum Act. Cap. 14

Register of Voters

14. (1) The Commission shall compile and maintain the Register of Voters as prescribed.

(2) The Register of Voters shall include the details of persons entitled to vote in an election or referendum under this Act or the Referendum Act. Cap. 14

(3) The Register of Voters shall not preclude any person from voting in a referendum in accordance with the Constitution. Cap. 1

Application to change registration details

15. A voter whose name or ordinary place of residence has changed may apply, in the prescribed manner, to have that change recorded in the Register of Voters, except that a person shall not apply when a change of name is due to change in marital status.

Amendments to Register of Voters

16. (1) A registration officer shall—

(a) change the registration details of a voter if the registration officer is satisfied that the details of a voter as reflected in the Register of Voters are incorrect or have changed;

(b) add the name and other particulars of a voter resulting from a new registration, as prescribed; or

(c) delete the name of a voter who is deceased.

(2) A registration officer shall record, in the Register of Voters, a change in a polling district for which a person is registered as a voter if that person's place of ordinary residence after a change in the boundaries of the polling district falls in another polling district.

Objections concerning details in Provisional Register of Voters

17. (1) A person whose name appears in the Provisional Register of Voters may object to an error or omission regarding the person's details, in the prescribed manner, within ninety days' of the publication of the Provisional Register of Voters.

(2) A person may object to an error or omission to the exclusion or regarding the registration details of another person.

(3) A person who objects to another person's registration details shall serve notice of the objection on that person.

(4) The Commission shall consider an objection to the Provisional Register of Voters within fourteen days from the date the objection was made and shall notify the person who made the objection and the registration officer.

(5) A registration officer shall give effect to a decision of the Commission, made under this section, within three days of the decision.

Publication of Register of Voters

18. (1) A copy of the Register of Voters, as it exists at any time, shall be available for inspection during office hours at the Commission's head office.

(2) A person who requires a copy or extract of the Register of Voters may, upon payment of a prescribed fee, obtain the copy or extract which shall be certified by the Chief Electoral Officer.

(3) A document purporting to be a copy or extract of the Register of Voters, which is duly certified by the Chief Electoral Officer, shall be received in evidence in any legal proceedings as to the matters stated in the Register of Voters.

Inspection of Register of Voters before election

19. (1) The Register of Voters or the segments of the Register of Voters that shall be used for an election shall be the register certified for the purposes of that election.

(2) The Chief Electoral Officer shall certify the Register of Voters, or segments of the Register of Voters, and publish the Register of Voters or the segments of the Register of Voters and make the Register of Voters or the segments of the Register of Voters available for inspection at the following venues:

(a) at the Commission's head office;

(b) at the polling station in each polling district; and

(c) at the office of each council.

Cut-off dates for registration of voters and Register of Voters

20. (1) The Commission may prescribe cut-off dates with respect to the registration of voters and the compilation of the Register of Voters, including the date by which—

(a) a person may apply to be registered as a voter or change the person's registration details;

(b) a registration officer shall give notice of the venue and dates on which the Provisional Register of Voters may be inspected;

(c) the Commission shall consider an objection made under section *seventeen* and notify the objector and the registration officer and a person other than the objector whose name or registration details are involved; and

(d) a registration officer shall complete the compilation of the Register of Voters and publish it.

PART III
POLLING DISTRICTS AND BOUNDARIES

Establishment of polling districts

21. (1) The Commission shall—

(a) establish polling districts for the whole of the territory of the Republic;

(b) determine the boundaries of each polling district in accordance with the criteria provided in section *twenty-two*; and

(c) keep a map of each district.

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

Criteria for determining polling district boundaries

22. The Commission shall determine the boundaries of a polling district by taking into account any factor within the proposed polling districts that could affect the free, fair and orderly conduct of elections, including—

(a) the availability of a suitable venue for a polling station;

(b) the number and distribution of eligible voters;

(c) the accessibility of a polling station to voters given—

(i) the radius of the proposed polling district;

(ii) the availability of transport;

(iii) telecommunications facilities; and

(iv) any geographical or physical feature that may impede access to the polling station;

(d) district and provincial boundaries; and

(e) cultural diversity.

Inspection and copies of maps of polling district

23. (1) As soon as practicable after the polling districts have been established, the Chief Electoral Officer shall give notice that copies of the map of each polling district are available for inspection.

(2) The notice referred to in subsection (1) shall be published in the *Gazette* and publicised in the media so as to ensure wide publicity of the maps.

(3) The notice shall state, and the Chief Electoral Officer shall ensure, that copies of—

(a) the maps are available for inspection at the Commission's head office; and

(b) the maps of the polling districts are available for inspection at the office of the person administering the district.

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

(5) The Chief Electoral Officer shall provide a certified copy of a map of a polling district to any person who pays the prescribed fee for that purpose.

Establishment of polling station

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

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

(a) the number and distribution of eligible voters in the polling districts;

(b) the availability of suitable venues for polling stations;

(c) the distance to be travelled to reach the polling station;

(d) access routes to the polling station;

(e) the availability of transport to the polling station;

(f) traffic density at or near the polling station;

(g) telecommunications facilities at the polling station;

(h) general facilities at the polling station;

(i) the safety and convenience of voters;

(j) any geographical or physical feature that may impede access to or at the polling station; and

(k) the accessibility of the polling station.

(3) The Commission may, before determining the location of a polling station, consult on the proposed location of that polling station with the council for the area in which that polling station shall fall.

(4) The Chief Electoral Officer shall, not later than the date stated in the election timetable, publicise a list containing the addresses of the established polling stations available for inspection.

(5) Section *twenty-three* shall apply, with the necessary modifications, to the inspection and obtaining of copies of the established polling stations.

Division of area of councils into wards

25. (1) The Commission shall, after consultation with every council, by statutory order, divide the area of each council into wards, defining the boundaries of the wards by reference to polling districts, and assigning names to the wards and polling districts.

(2) The number of wards into which the area of a council is divided shall be equal to the number of elected councillors prescribed in respect of that council by the Minister under the Local Government Act.

Cap. 281

(3) The Commission shall exercise its powers under this section so that each ward comprises one or more complete polling districts.

(4) Whenever the Minister alters the area of a council or the number of councillors of a council, the Commission shall, after consultation with such council, by statutory order, make such alterations to the boundaries of the wards of such council or to the division of the area of such council into wards as may be necessary to give effect to the provisions of this section.

(5) Whenever the Commission is satisfied that there has been a material alteration in the number of registered voters in the area of a council or of any of the wards into which such area is divided, the Commission may, after consultation with the council concerned, exercise in respect of the area of that council or any part of the council the powers conferred by this section.

Election in newly created Council

26. (1) The Commission may, by statutory order, whenever—

(a) a new council is established; or

(b) an alteration is made in the division of the area of an existing council into wards or in the definition of the boundaries of any ward;

direct that an ordinary election of councillors in every ward or in any particular ward of that council shall be held on such date as may be appointed by the statutory order.

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

Relocation of polling station in emergencies

27. (1) Despite section *twenty*, the Commission may relocate a polling station if it is necessary to do so for the conduct of a free and fair election.

(2) The Chief Electoral Officer shall publicise the relocation of a polling station among voters in the polling district concerned.

PART IV

NOMINATIONS FOR ELECTIONS

Election timetable

28. (1) Subject to the Constitution, the Commission shall, before the polling day—

(a) compile an election timetable for each election to provide for the following:

(i) the closing date of the registration of voters;

(ii) the dates for inspection of the Provisional Register of Voters;

(iii) the date and method for the submission of nominations;

(iv) the date and method for the acceptance of nominations;

(v) the opening and closing dates of the campaign period;

(vi) the date of the election and voting hours for the election;

(vii) any cut-off time for any act to be performed; and

(viii) any other relevant information; and

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

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

(a) it considers it necessary for a free and fair election; or

(b) the polling day is postponed under section *fifty-six*.

(3) The campaign period shall commence and close on such date as the Commission may determine.

Electoral campaign

29. (1) A public officer and public entity shall give equal treatment to candidates.

(2) A candidate and political party has the right to have the content of the candidate's or political party's campaign message reported in public media in a fair and balanced manner.

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

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

Nomination of Presidential and Vice-Presidential candidates

30. (1) A candidate for election as President or Vice-President shall deliver to the Returning Officer—

(a) the candidate's nomination paper;

(b) the prescribed election fee, except that a candidate for election as a Vice-President shall not pay the prescribed fee;

(c) the prescribed statutory declaration of the candidate's assets and liabilities; and

(d) an affidavit attesting that the person is qualified for election as President or Vice-President, as the case may be.

(2) A person who swears or affirms falsely under this section commits an offence and is liable, upon conviction, to imprisonment for a term of seven years without the option of a fine.

(3) A candidate delivering a nomination paper, referred to in subsection (1), to the Returning Officer shall be supported by one hundred supporters from each Province who are registered voters in that Province.

Nomination for election in constituency

31. (1) A person who applies to be a candidate for election in any, constituency shall lodge with the returning officer for that constituency that person's nomination paper and an affidavit in the prescribed manner and form.

(2) A nomination submitted under subsection (1) may be withdrawn at any time, before the expiry of the period appointed for lodging nomination papers in respect of the constituency concerned, if the candidate delivers to the returning officer a written notice to that effect.

Conduct of local government elections

32. Subject to the other provisions of this Act, the Commission shall conduct local government elections.

Nomination of candidates in district or ward

33. (1) Subject to subsection (2), a candidate for election in a district or ward of a council shall be nominated by means of a nomination paper in such form as may be prescribed and such nomination paper shall be subscribed, in the presence of the returning officer for that council, by a proposer and a seconder and not less than seven other persons, each of whom shall be a voter registered in a polling district in such ward.

(2) A person appearing before a returning officer for the purpose of subscribing a nomination paper under subsection (1) shall produce a voter's card and a national registration card to the returning officer for inspection as proof of identity.

(3) A person qualifies to be a mayor or council chairperson if that person—

(a) possesses the same qualifications as those specified for a Member of Parliament in Article 70 of the Constitution; Cap. 1

(b) is not a Member of Parliament; and

(c) has a certificate of clearance showing the payment of council taxes, where applicable.

Restriction on nomination papers

34. (1) In an election, a person shall lodge nomination papers in only one constituency, district or ward.

(2) Where, upon the expiry of the period for lodging nomination papers in any constituency, district or ward a person is found to have lodged, and not withdrawn, nomination papers in more than one constituency, district or ward then every one of those nominations shall be invalid.

Appointment of election agents and polling agents

35. (1) A candidate may appoint—

(a) two polling agents for each polling station; and

(b) two election agents for each venue where counting of the votes will take place.

(2) An election or polling agent—

(a) shall be a Zambian citizen or resident permit holder; and

(b) shall not be a candidate in an election.

(3) The appointment and revocation of appointment of a person as an election or polling agent shall be effected in the prescribed manner.

Powers and duties of election or polling agents

36. (1) An election or polling agent may observe the proceedings during—

(a) voting;

(b) the counting of votes; and

(c) the announcement and declaration of the result of an election.

(2) The absence of an election or polling agent from a gazetted or prescribed place where an electoral proceeding is being conducted shall not invalidate those proceedings.

(3) An election or polling agent shall, while at a polling station or venue where the proceedings are taking place—

(a) wear the prescribed identification indicating—

(i) that the person is an election or polling agent; and

(ii) the candidate represented by that election or polling agent; and

(b) comply with any lawful order issued by—

(i) an election officer; or

(ii) a police officer acting on the instructions of an election officer.

PART V
ELECTION OFFICERS

Appointment of presiding officer

37. The Commission shall, after prescribing a date for an election, appoint a presiding officer for each polling station at which the election is conducted.

Powers and duties of presiding officer

38. (l) A presiding officer shall coordinate and supervise the voting at a polling station so as to ensure that the election at the polling station is free and fair.

(2) A presiding officer—

(a) shall exercise the powers and perform the duties assigned to a presiding officer by or under this Act;

(b) shall ensure orderly conduct at a polling station; and

(c) may order a police officer to assist in ensuring orderly conduct at that polling station and the police officer shall comply with the order.

(3) A presiding officer for a polling station or venue for the counting of votes shall coordinate and supervise the counting of votes and announcement of the result of the election at the polling station or venue.

(4) A presiding officer shall exclude from the area within the boundary of a polling station any person other than—

(a) a member, employee or officer of the Commission;

(b) an election or polling agent who is entitled under this Act to be present at a polling station;

(c) a candidate in that election;

(d) an accredited observer or monitor;

(e) a voter present for the purpose of casting a vote; and

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

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

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

Appointment of polling assistant

39. The Commission shall appoint for each polling station as many polling assistants as it considers necessary to conduct an election.

Powers and duties of polling assistant

40. A polling assistant shall—

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

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

Appointment of additional persons as election officers

41. (1) The Commission may appoint as many additional persons as election officers as may be necessary to enable the Commission to exercise its powers and perform its duties effectively during an election.

(2) A person appointed by the Commission under this section shall exercise any power and perform any duty assigned to an election officer by or under this Act.

(3) An appeal shall not be brought against a decision by the Commission to appoint a person as an election officer or to dismiss an election officer.

(4) Despite subsection (3), a person may object to the appointment of an election officer under this section if the person appointed is disqualified under section 42 (3).

General provisions concerning appointment of election officer

42. (1) The Commission shall determine, in writing, the terms and conditions of appointment of an election officer.

(2) The assignment of a power or duty to an election officer shall not prevent the Chief Electoral Officer from exercising that power or performing that duty.

(3) A person shall not be appointed as an election officer or remain in that office if that person—

(a) is a candidate contesting an election;

(b) is an election or polling agent in an election;

(c) holds political office in a registered party or is affiliated to a political party; or

(d) was convicted of an offence or reported of any corrupt practice or illegal practice, under this Act, within a period of five years preceding an election.

(4) A person shall not be appointed as an election officer unless that person signs a prescribed undertaking which shall include an undertaking to be bound by—

(a) the Code; and

(b) a declaration of secrecy.

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

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

(7) An appointment as an election officer does not constitute an employment relationship.

(8) The Commission may dismiss an election officer for—

(a) misconduct, incompetence or incapacity;

(b) absence from duty without leave of the Chief Electoral Officer;

(c) a material contravention of this section;

(e) a material contravention of the declaration of secrecy; or

(f) any other consideration related to a free and fair election.

Immunity of election officer

43. An election officer shall not be liable for any loss suffered by a person as a result of an act performed or omitted in good faith in the exercise of a power or the performance of a duty under this Act.

PART VI
VOTING

Qualifications for voting

44. A voter is entitled to vote at an election held in a district, constituency or ward.

Identification of voter

45. A voter shall produce identification documents to a presiding officer as may be prescribed.

One vote and secrecy

46. (1) A voter shall not be entitled to vote more than once in the same election.

(2) A poll shall be taken by means of a secret ballot in accordance with the Constitution, this Act and as may be prescribed.

Dis-qualification from voting

47. A person shall not be entitled to vote at an election if, at the date of the election, that person is in lawful custody or the person's freedom of movement is restricted under any written law.

Special vote

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

(a) physical infirmity or disability;

(b) pregnancy;

(c) absence from that polling district while serving as an election officer in the election concerned; or

(d) while on duty as a member of the security services in connection with the election.

(2) The Commission shall prescribe the procedure and conditions under which a voter who is unable to vote in the polling district in which that voter is registered may apply for a special vote.

Election officers at polling stations

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

(a) presiding officer appointed for that polling station;

(b) polling assistants appointed for that polling station; and

(c) other officers appointed by the Commission.

Hours of voting

50. (1) The Commission shall prescribe the voting hours for an election.

(2) The Commission may, where it is necessary to do so, prescribe different voting hours for different polling stations.

(3) The Commission shall publish the prescribed voting hours in the media.

(4) A polling station shall—

(a) open for voting at the prescribed time; and

(b) subject to subsection (7)*(b)*, remain open for voting until the prescribed time or such later time as the Commission may determine under subsection (7)*(a)*.

(5) A person shall not be admitted to a polling station for the purpose of voting after the polling station has closed for voting.

(6) Voting at a polling station shall continue until every voter who had reported at a polling station to vote at the time prescribed for voting hours has voted.

(7) The Commission—

(a) may extend voting hours at a polling station after the voting day or prescribed time; and

(b) may temporarily close a polling station for part of a polling day if it is temporarily impossible to conduct an election at that voting station.

Ballot paper

51. Subject to the other provisions of this Act and section *fifty-two*, the Commission shall prescribe the form and design of a ballot paper and the manner in which ballot papers issued shall be accounted for.

Design of ballot paper

52. (1) Despite section *fifty-one*, a ballot paper shall be designed in a way that prevents fraudulent voting.

(2) A ballot paper shall include—

(a) a portrait of the candidate nominated for elections to the office of President, Member of Parliament, mayor, council chairperson and councillor; and

(b) the symbol of a political party registered with the Commission under which a candidate shall stand for elections and where the candidate is an independent candidate, the symbol the Commission shall allocate to the independent candidate.

(3) A ballot paper shall be colour coded so as to differentiate the ballot paper for use in a presidential, parliamentary or local government elections.

Ballot boxes

53. (1) The Commission shall use in an election transparent ballot boxes capable of being securely closed.

(2) The Commission shall prescribe the manner in which ballot boxes shall be—

(a) numbered and labelled; and

(b) closed, secured, opened, sealed and unsealed.

Voting compartments

54. (1) Subject to subsection (2), the Commission shall prescribe the design and material of voting compartments to be used in an election.

(2) A voting compartment shall, while screening a voter from observation by other persons when marking a ballot paper, be designed and placed in such a manner as to ensure that a clear view of the voters' back can be observed from the outside.

Conduct of general election Cap. 1

55. A general election shall be held in accordance with the Constitution, this Act and as may be prescribed.

Postponement of voting at polling station

56. (1) If it is not possible to conduct a free and fair election at a polling station on a prescribed polling day, the Commission may, at any time before voting at the polling station has commenced, postpone voting at that polling station.

(2) A postponement under subsection (1) shall be—

(a) effected in the prescribed manner;

(b) to a day that would fall within the period referred to in section *twenty-eight;* and

(c) publicised in the media so as to ensure wide publicity of the postponement of the polling day at the polling station.

Postponement of by-election

57. The Commission may postpone the polling day of a by-election if it is satisfied that—

(a) the postponement is necessary for ensuring a free and fair election; and

(b) the polling day for the election shall fall within the period required by the Constitution.

Cap. 1

Voting materials

58. (1) The Commission shall supply, before voting opens at a polling station, the voting materials necessary for the election at that station including—

(a) ballot papers;

(b) ballot boxes;

(c) voting compartments;

(d) a certified register of voters for the polling district concerned; and

(e) a document to be signed by the presiding officer detailing the voting materials entrusted to that presiding officer.

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

Initial procedures

59. A presiding officer shall, immediately before opening a polling station for voting—

(a) show all accredited observers, monitors, election and polling agents present, that each ballot box to be used at that polling station is empty; and

(b) in the presence of the accredited observers, monitors, election and polling agents, close, seal and secure the ballot boxes in the prescribed manner.

Voting procedure

60. (1) Subject to section *forty-eight*, a voter shall only vote at the polling station in the polling district for which that voter is registered.

(2) A voter is entitled to vote at a polling station—

(a) on production of that voter's national registration card and voter's card to the presiding officer or election officer at the polling station; and

(b) if that voter's details are in the certified segment of the Register of Voters for the polling district concerned.

(3) When a voter produces a national registration card to the presiding officer or election officer as required by subsection (2), the presiding officer or election officer shall examine the identity document and determine whether—

(a) the voter is the person described in that national registration card;

(b) the voter's details are in the certified segment of the Register of Voters for the polling district concerned; and

(c) the voter has not already voted in the election.

(4) For the purposes of subsection (3) (c), the presiding officer or election officer shall examine the voter's hands to ensure that the voter does not possess the mark indicating that the voter has already voted.

(5) If the presiding officer or election officer is satisfied in respect of all the matters referred to in subsection (3), the presiding officer shall—

(a) record that the voter is treated as having voted in the election;

(b) mark the hand of the voter in the prescribed manner;

(c) mark the back of a ballot paper for that election; and

(d) hand the ballot paper to the voter.

(6) A voter shall, once the voter has received a ballot paper marked under subsection (5)(c) —

(a) enter an empty voting compartment;

(b) mark the ballot paper in a way that indicates the candidate the voter wishes to vote for;

(c) fold the ballot paper to conceal the voter's vote;

(d) cast the ballot paper in the ballot box; and

(f) without delay leave the voting station.

Assistance to voters with disabilities

61. (1) A person may assist a voter to vote where—

(a) the voter requires assistance due to a physical disability;

(b) the voter has requested to be assisted by that person; and

(c) the presiding officer is satisfied that the person assisting the voter has attained the age of eighteen years.

(2) In the absence of a person referred to in subsection (1), the presiding officer or another election officer, at the request of a voter who is unable to read, shall assist that voter to vote.

(3) Subject to subsection (2), the presiding officer or election officer shall assist voters in the presence of—

(a) a person appointed by the presiding officer or an accredited observer or monitor, if available; or

(b) two election agents of different candidates, if available.

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

(5) A person assisting another person under subsection (2) shall maintain the secrecy of the vote cast by the person being assisted.

Issuance of new ballot paper

62. (1) If a voter accidentally marks a ballot paper in a way that does not indicate for whom the voter wishes to vote and the ballot has not yet been placed in the ballot box—

(a) the voter may return that ballot paper to the presiding officer or a polling assistant;

(b) the presiding officer or polling assistant shall deal with the ballot paper in accordance with subsection (2), and shall give the voter a new ballot paper in accordance with this section; and

(c) the voter may vote in accordance with section *sixty.*

(2) Upon receiving a ballot paper from a voter under subsection (1), the presiding officer or a polling assistant shall mark "cancelled" on the back of the ballot paper and file it separately to be dealt with in accordance with section *sixty-three*.

Spoilt ballot papers

63. Where a voter inadvertently deals with a ballot paper in such manner that it cannot be used as a valid ballot paper, the voter shall deliver that ballot paper to the presiding officer and, if the presiding officer is satisfied that the ballot paper has been spoilt inadvertently, the presiding officer shall issue another ballot paper to the voter, and shall cancel the spoilt ballot paper and the counterfoil to which it relates.

Objections concerning voting

64. (1) A person may, at any time before a voter is handed a ballot paper, object to that voter being entitled to vote or to vote at the polling station concerned.

(2) A person may object to a voter's vote where the voter—

(a) has already voted;

(b) is not the owner of the voter's card;

(c) is not registered at the polling station;

(d) is not a citizen; or

(e) is disqualified from voting.

(3) An election agent or a voter may object to any conduct of an election officer or any other person present at a polling station.

(4) An objection under this section shall be made to the presiding officer in the prescribed manner.

(5) A presiding officer shall make a decision on the objection and notify the objector and any other parties involved in the objection of the presiding officer's decision in the prescribed manner.

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

(7) A presiding officer or returning officer shall keep a written record of each objection and decision made under this section in the prescribed manner .

Sealing of full ballot boxes

65. (1) As soon as a ballot box is full, a presiding officer, in the presence of an accredited observer, monitor or polling agent, shall seal the ballot box and allow the agents to affix their seals to the ballot box.

(2) Immediately after the last vote has been cast, every remaining used ballot box shall be similarly dealt with.

(3) A sealed ballot box shall remain—

(a) sealed until opened for the counting of votes; and

(b) in the polling station until the commencement of the counting of the votes.

Completion of ballot paper account form and sealing of voting materials

66. (1) A presiding officer shall, at the close of a polling station, in the presence of an accredited observer, monitor or election agent

(a) complete a ballot paper account form reflecting the number of—

(i) ballot boxes entrusted to that presiding officer;

(ii) used ballot boxes;

(iii) unused ballot boxes;

(iv) ballot papers entrusted to that presiding officer;

(v) issued ballot papers;

(vi) unissued ballot papers; and

(vii) cancelled ballot papers;

(b) seal each unused ballot box entrusted to that presiding officer; and

(c) seal in separate ballot boxes

(i) the certified segment of the Register of Voters for that polling district;

(ii) the unused ballot papers entrusted to that presiding officer;

(iii) the spoilt ballot papers; and

(iv) the written record of any objections concerning voting.

Place and time of counting of votes

67. (1) Votes shall be counted at the polling station at which those votes were cast.

(2) A presiding officer shall ensure that the procedures set out in this Part relating to the counting of votes commences immediately after the polling station is closed for voting and continue the counting of votes until completion.

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

Counting of votes and announcement of provisional results

68. (1) A presiding officer shall open the ballot boxes and—

(a) cause the ballot papers to be sorted on the basis of the ballot papers for each election, if more than one election was held at a polling station on the same day;

(b) cause the ballot papers for each election to be sorted and compare them with the number of ballot papers issued in the prescribed manner;

(c) cause the votes cast in each election to be counted in the prescribed manner; and

(d) announce and publish the result of each count at that polling station in both figures and words in the prescribed manner.

(2) A presiding officer shall reject a ballot paper—

(a) that indicates the identity of the voter;

(b) on which a vote is cast for more than one candidate;

(c) that is unmarked;

(d) that is marked in such a way that it is not reasonably possible to determine the voter's choice;

(e) that does not bear the official mark required in terms of section *sixty* (5) (c); or

(f) that is not an official ballot paper.

(3) The presiding officer shall mark A for rejection on the back of each rejected ballot paper and file the rejected ballot paper separately.

Objections concerning sorting of ballot papers

69. (1) An election or polling agent may object to any alleged irregularity in the sorting of the ballot papers.

(2) An objection under subsection (1) shall be made to a presiding officer, in the prescribed form, at any stage before the presiding officer has commenced the count.

(3) Section *sixty-four,* with the necessary modifications, applies to an objection under this section.

Objections concerning counting of votes and announcement of provisional result

70. (l) An election or polling agent may object to an alleged inaccuracy in the counting of the votes or the announcement of a result under section *seventy-one.*

(2) An objection under subsection (l) shall be made to a presiding officer, in the prescribed form, at any stage before the presiding officer has announced the result.

(3) A presiding officer shall determine the objection and decide whether to order a recount.

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

(5) If a presiding officer orders a recount, the presiding officer shall announce the result afresh.

(6) An appeal against the decision of a presiding officer may be made to the returning officer in the prescribed form.

(7) A presiding officer shall keep a written record, in the prescribed form, of each objection under subsection (l) and each decision under this section.

Procedure concerning provisional results and voting materials

71. (1) After announcing the result at a polling station, a presiding officer shall complete a form, as may be prescribed, reflecting—

(a) the number of ballot papers supplied to the polling station;

(b) the result at the polling station;

(c) the number of rejected ballot papers;

(d) the number of spoilt ballot papers; and

(e) the number of unused ballot papers.

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

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

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

(a) seal in separate ballot boxes each of the items mentioned in subsection (l) and the written record of any objections; and

(b) deliver the form, completed in terms of subsection (l), and the sealed ballot boxes to the returning officer.

Announcement and declaration of results by returning officer

72. (1) Upon receipt of the items mentioned in section *seventy-one*, a returning officer shall tally the results of the votes received from the polling station in the constituency, district and ward and shall—

(a) announce the results of the votes for the presidential and mayoral or council chairperson elections; and

(b) declare the results for the National Assembly and Ward election.

(2) The returning officer shall submit the results referred to in subsection (1) (a) and (b) to the Commission.

Announcement and declaration of results in Presidential election

73. (1) The Returning Officer shall tally, announce and declare the result of a presidential election as soon as they are received.

(2) The Returning Officer shall announce and declare the result of a presidential election without having received the results of all polling stations if—

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

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

Electronic transmission of results

74. The Commission may use electronic means to transmit results from polling stations.

Revoting at polling station

75. (1) If ballot papers used in an election at a polling station are lost, destroyed or unlawfully removed before the votes cast at the polling station have been counted and announced, the Commission shall allow a revote at that polling station.

(2) A revote at a polling station shall be—

(a) conducted on a date that would fall within the period referred to in section *twenty-eight;*

(b) publicised in the media so as to ensure wide publicity of the date determined for the revote; and

(c) conducted in accordance with a procedure prescribed by the Commission.

Correction of mistakes

76. The Commission may correct a mistake committed by an electoral officer in the tabulation of results within seven days after the declaration of the results.

PART VII
OBSERVERS, MONITORS AND VOTER EDUCATION

Accreditation of observers and monitors

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

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

(3) The Commission shall, where it decides to to accredit an applicant—

(a) issue the applicant with a certificate of accreditation in the applicant's name, stating the period and other conditions of accreditation; and

(b) enter the applicant's name in the register of persons accredited as observers and monitors.

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

(a) the accreditation of the applicant shall promote conditions conducive to a free and fair election; and

(b) the persons appointed by the applicant shall—

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

(ii) be competent and professional in observing the election; and

(iii) subscribe to a code governing observers and monitors issued by the Commission under this Act.

(5) The Commission shall, where it decides not to accredit the applicant, inform the applicant accordingly, in writing, and give the reasons for its decision.

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

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

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

(9) The Chief Elections Officer shall provide a certified copy of, or extract from, the register or a certificate to any person upon payment of the prescribed fee.

(10) A person representing an accredited observer or monitor shall abide by the Code.

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

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

(13) In this section "juristic person" includes an institution and organisation registered under the Non-Governmental Organisations Act, 2009.

Act No. 16 of 2009

Powers and duties of accredited observers and monitors

78. (1) An accredited observer or monitor may, in relation to an election for which that observer or monitor is accredited, observe the proceedings concerning voting, the counting of votes and the announcement and declaration of the election results.

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

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

Provision of voter education generally

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

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

(a) is impartial and independent of any registered party or candidate contesting an election; and

(b) shall promote conditions conducive to free and fair elections.

Voter education

80. Despite section *eight*, the Commission shall provide voter education for an election.

PART VIII
ELECTIONS OFFENCES

Bribery

81. (1) A person shall not, either directly or indirectly, by oneself or with any other person corruptly—

(a) give, lend, procure, offer, promise or agree to give, lend, procure or offer, any money to a voter or to any other person on behalf of a voter or for the benefit of a voter in order to induce that voter to vote or refrain from voting or corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election;

(b) give, lend or procure, offer, promise or agree to give, lend, procure, offer or promise, any money to a voter or for the benefit of a voter or to any other person or on behalf of that person on behalf of any voter or to or for any other person for acting or joining in any procession or demonstration before, during or after any election;

(c) make any gift, loan, offer, promise, procurement or agreement to or for the benefit of any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election;

(d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procure or engage, promise or endeavour to procure, the return of any candidate at any election or the vote of any voter at any election;

(e) advance or pay or cause to be advanced or paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or partially expended in bribery at any election;

(f) before or during any election, receive or contract for any money or loan for oneself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election;

(g) after any election, receive any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election; or

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

(2) A person who contravenes any provision of subsection (1) commits an offence.

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

Impersonation

82. (1) A person shall not—

(a) at any election, apply for a ballot paper in the name of some other person, living or dead, or of a fictitious person;

(b) having voted once at any election, apply again at the same election for a ballot paper;

(c) vote at any election knowing that the person is not entitled to vote at that election or induce or procure any person to vote at any election knowing that person is not entitled to vote at that election;

(d) apply to be registered as a voter in the name of any other person, whether living, dead or fictitious; or

(e) impersonate—

(i) a representative of a registered political party;

(ii) a candidate in an election;

(iii) a member, employee or officer of the Commission; or

(iv) a person appointed by an accredited observer, or monitor.

(2) A person who contravenes any provision of subsection (1) commits an offence.

Undue influence

83. (1) A person shall not directly or indirectly, by oneself or through any other person—

(a) make use of or threaten to make use of any force, violence or restraint upon any other person;

(b) inflict or threaten to inflict by oneself or by any other person, or by any supernatural or non-natural means,or pretended supernatural or non-natural means, any physical, psychological, mental or spiritual injury, damage, harm or loss upon or against any person;

(c) do or threaten to do anything to the disadvantage of any person in order to induce or compel any person—

(i) to register or not to register as a voter;

(ii) to vote or not to vote;

(iii) to vote or not to vote for any registered political party or candidate;

(iv) to support or not to support any political registered party or candidate; or

(v) to attend and participate in, or not to attend and participate in, any political meeting, march, demonstration or other political event;

(d) interfere with the independence or impartiality of the Commission, any member, employee or officer of the Commission;

(e) prejudice any person because of any past, present or anticipated performance of a function under this Act;

(f) advantage, or promise to advantage, a person in exchange for that person not performing a function under this Act; or

(g) unlawfully prevent the holding of any political meeting, march, demonstration or other political event.

(2) Subject to the other provisions of this Act, a person shall not prevent another person from exercising a right conferred by this Act.

(3) A person, knowing that another person is not entitled to be registered as a voter, shall not—

(a) persuade that other person that, that other person is entitled to be registered as a voter; or

(b) represent to anyone else that the person is entitled to be registered as a voter.

(4) A person, knowing that another person is not entitled to vote shall not—

(a) assist, compel or persuade that other person to vote; or

(b) represent to anyone else that the other person is entitled to vote.

(5) A person who contravenes any of the provisions of subsections (l) to (4) commits an offence.

(6) A person who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the vote of any voter or thereby compels, induces or prevails upon any voter either to give or to refrain from giving the person's vote at any election, commits an offence.

Illegal practice of publishing false statements in respect of candidates

84. (1) A person shall not, before or during an election, publish a false statement of the illness, death or withdrawal from election of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not believing it to be true.

(2) A person who, contravenes subsection (1) commits an illegal practice, unless that person had reasonable grounds for believing, and did believe, the statement to be true.

Illegal practice in respect of nomination of candidates

85. (1) A person shall not—

(a) forge or fraudulently destroy any written authority of a candidate or nomination paper; or

(b) deliver to a returning officer any written authority of a candidate or nomination paper or affidavit knowing the same to be forged.

(2) A person who knowingly makes a false statement relating to that person's nomination in that person's nomination paper or affidavit commits an offence.

Illegal practices in respect of public meetings

86. A person shall not, at a lawful public meeting held in connection with the election of any person between the day of the publication of a notice appointing a nomination day and the day on which the result of the election is published, act or incite others to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is called.

Illegal practices relating to the poll

87. (1) A person shall not—

(a) forge, counterfeit or fraudulently deface or fraudulently destroy any ballot paper or the official mark on any ballot paper;

(b) without authority supply any ballot paper to any person;

(c) without authority put into any ballot box any ballot paper which that person is not authorised by law to put in;

(d) sell or offer to sell any ballot paper or voter's card to any person or purchase or offer to purchase any ballot paper or voter's card from any person;

(e) not being a person entitled under this Act to be in possession of a ballot paper or voter's card, have any such ballot paper or voter's card in that person's possession;

(f) without authority destroy, take, open or otherwise interfere with any ballot box or packet of ballot papers in use or intended to be used for the purpose of an election;

(g) without authority print or make any ballot paper or what purports to be or is capable of being used as a ballot paper or any identity document at an election;

(h) manufacture, construct, have in that person's possession, supply, or use for the purpose of an election, or cause to be manufactured constructed, supplied or used for the purposes of any election any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box in the course of polling at any polling station; or

(i) at an election obstruct a voter either at the polling station or on that voter's way thereto or therefrom.

Penalty for illegal practices

88. A person who engages in an illegal practice commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Other election offences

89. (1) A person shall not—

(a) within a period prescribed for the receipt of nominations, under this Act, loiter in any public place within four hundred metres from the entrance to a nomination centre;

(b) having been required to leave a nomination office, fail to leave such nomination office or the precincts thereof;

(c) put into any ballot box anything other than the ballot paper which that person is authorised by law to put therein;

(d) without due authority take out of the polling station any ballot paper or be found in possession of any ballot paper outside a polling station;

(e) on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station

(i) canvass for votes;

(ii) solicit the vote of any person;

(iii) induce any person not to vote; or

(iv) induce any person not to vote for a particular candidate;

(f) on any polling day loiter in any public place within four hundred metres from the entrance to any polling station;

(g) on any polling day exhibit in any public or private place within one hundred metres from the entrance to any polling station any notice or sign, other than an official notice or sign authorised by an election officer under this Act, relating to the election;

(h) not being a presiding officer, an election officer, candidate, an election agent or a polling agent in the course of their functions within a polling station, make any record showing that any particular person has voted in an election;

(i) without lawful authority, destroy, mutilate, deface or remove any notice which is exhibited in accordance with this Act or under any regulations issued under this Act, or any document made available for inspection under this Act and any such regulations;

(j) wilfully obstruct or interfere with a returning officer, presiding officer, or election officer in the execution of their duties;

(k) make a false answer to any question put to that person by a presiding officer or an election officer under this Act;

(l) have any communication with a voter while such voter is in the precincts of a polling station for the purpose of voting;

(m) fail to comply with any requirement or direction to leave a polling station or the precincts thereof; or

(n) being a candidate use a symbol in the course of an election other than the symbol registered with the Chief Electoral Officer in accordance with this Act and any regulations thereunder or, in the case of any other person, associate any candidate with, any symbol in the course of an election other than the candidate's registered symbol.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Property in certain election material

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

Secrecy and penalty for breach of secrecy

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

(2) A person other than a presiding officer or polling assistant in exercise of the presiding officer or polling assistants' functions under this Act shall not, obtain or attempt to obtain in a polling station information as to the candidate for whom any person in such polling station is about to vote or has voted or communicate at any time, to any person, any information obtained in a polling station as to the candidate for whom any person in such polling station is about to vote or has voted, or as to the number on the ballot paper issued to any person at such polling station.

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

(4) A person who contravenes any of the provisions of this section commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Offences by election officers

92. An election officer who wilfully fails to perform the functions of that office under this Act commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Offences by printers and publishers

93. (1) A bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and of the publisher.

(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 upon the face thereof such name and address of the printer or publisher commits an offence.

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

(4) For the purposes of this section—

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

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

Obstruction of officer

94. (1) A person shall not—

(a) wilfully delay or obstruct an officer in the carrying out of that officer's duties and powers under this Act; or

(b) assault an officer in the lawful exercise of that officers duties and power under this Act.

(2) A person who contravenes a provision of subsection (1), commits an offence and is liable, upon conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

Attempts to commit offence

95. A person who attempts to commit an offence under this Part commits an offence and is liable upon conviction to the penalty specified for that offence.

PART IX
ELECTION PETITIONS

Application to members and officers of Parliament

96. (1) A question which may arise as to whether—

(a) a person has been validly appointed or nominated as a Member of Parliament;

(b) the seat of an elected or nominated Member of Parliament, mayor, council chairperson or councillor, has become vacant, other than a question arising from the election of a candidate as a Member of the Parliament; or

(c) a petition may be heard and determined by the High Court or tribunal upon application made by—

(i) any person to whom the question relates; or

(ii) the AttorneyGeneral;

may be determined by the High Court or a tribunal, as the case may be.

(2) A person who makes an application to the High Court or a tribunal under subsection (1), has the right to appear and be represented before the High Court or tribunal.

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

Avoidance of elections

97. (1) An election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall not be questioned except by an election petition presented under this Part.

(2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that—

(a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election—

(i) by a candidate; or

(ii) with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and

the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred;

(b) subject to the provisions of subsection (4), there has been non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the High Court or tribunal that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election; or

(c) the candidate was at the time of the election a person not qualified or a person disqualified for election.

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

(a) a corrupt practice or illegal practice was not committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent;

(b) such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and

(c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent;

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

(4) An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such act or omission did not affect the result of that election.

Presentation of election petition

98. An election petition may be presented to the High Court or a tribunal by one or more of the following persons:

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

(b) a person claiming to have had a right to be nominated as a candidate or elected at the election to which the election petition relates;

(c) a person claiming to have been a candidate at the election to which the election petition relates; and

(d) the AttorneyGeneral.

Relief which may be claimed in election petition

99. Any of the following reliefs may be claimed in an election petition:

(a) a declaration that the election was void; or

(b) a declaration that any candidate was duly elected.

Form and procedure for presentation of election petition

100. (1) An election petition shall be in such form as the Chief Justice may by rules prescribe.

(2) An election petition shall be presented—

(a) in the case of an election of a candidate as a Member of Parliament, to the Principal Registry or District Registry of the High Court by lodging it with the Registrar in accordance with this Act; or

(b) in the case of an election of a candidate as a mayor, council chairperson or councillor, to the appropriate tribunal by lodging it with the designated person.

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

(4) Where an election petition is presented under this section—

(a) in the case of an election petition presented in respect of an election of a candidate as a Member of Parliament, the Registrar shall, in writing, inform the Speaker of the National Assembly and the Commission of such presentation; and

(b) in the case of an election petition presented in respect of the election of a candidate as a mayor, council chairperson or councillor, the designated person shall, in writing, inform the Commission of the presentation.

Duty of Registrar and designated person to make out list of election petition

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

(2) An election petition shall, unless the High Court or a tribunal orders otherwise, be tried in the order in which it stands on the list made out by the Registrar or designated person under subsection (1), but where more election petitions than one are presented in respect of the same election, the election petitions shall be bracketed together and shall be dealt with as one petition, standing, unless the

High Court or a tribunal orders otherwise, in the list in the place where the last of the election petitions would have stood if it had been the only election petition presented in respect of that election.

Rules of practice and procedure, security for costs etc

102. (1) Subject to the other provisions of this Act, the Chief Justice may make rules regulating generally the practice and procedure of the High Court and tribunals with respect to the presentation and trial of election petitions, including rules as to the time within which any requirement of the rules is to be complied with and as to the costs of and incidental to the presentation and trial of the election petitions and as to the fees to be charged in respect of proceedings therein, and generally as regard to any other matter relating thereto as the Chief Justice may consider necessary or desirable.

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

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

Withdrawal of election petition

103. (1) A petitioner shall not withdraw an election petition without the leave of the High Court or a tribunal.

(2) An application for leave to withdraw an election petition shall not be made until notice of intention to withdraw the election petition has been given in such manner as the Chief Justice may prescribe.

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

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

Substitution of new petitioners

104. (1) Upon the hearing of an application under section *one hundred and three* for leave to withdraw an election petition, any person who might have been a petitioner in respect of the election to which that election petition relates may, despite the provisions of

section *one hundred*, apply to the High Court or tribunal to be substituted for the petitioner applying to withdraw, and the High Court or a tribunal may, if it grants leave to the petitioner to withdraw, order that person (hereinafter referred to as "the substituted petitioner") to be substituted for the petitioner.

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

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

(4) Unless the High Court or tribunal gives directions as in subsection (3), section *one hundred and three* (1) and (2) shall apply to the substituted petitioner as they apply in relation to a petitioner presenting an election petition.

Abatement of election petitions

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

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

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

(4) Where the High Court or a tribunal makes an order under this section for the substitution of a person in place of a deceased petitioner such person shall, as nearly as may be, stand in the same position, and be subject to the same liabilities, under this Act as the

deceased petitioner would have been but for the death, and section *one hundred and three* (1) and (2) shall apply to the person as they apply in relation to a petitioner presenting an election petition.

Trial of election petitions

106. (1) An election petition shall be tried and determined by the High Court or a tribunal in open court—

(a) in the case of the election of a candidate as a Mayor, council chairperson or Councillor, within thirty days from the date of filing an election petition; and

(b) in the case of the election of a candidate as a Member of Parliament, within ninety days from the date of filing an election petition.

(2) Where an election petition is not tried and determined within the period specified in subsection (1) due to a failure by the petitioner to actively prosecute the petition, the High Court or a tribunal shall dismiss the petition for want of prosecution.

(3) The High Court or a tribunal may adjourn the trial of an election petition from time to time and from place to place.

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

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

Witnesses

107. (1) On the trial of an election petition, the High Court or a tribunal may—

(a) order a person who appears to the High Court or a tribunal to have been concerned in the election to attend as a witness at the trial; and

(b) examine any witness or any person who is present at the trial although such witness or person is not called as a witness by any party to the proceedings, except that after the examination by the High Court or a tribunal of a witness or person, the witness or person may be cross examined by or on behalf of the petitioner or the respondent.

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

(3) Despite subsection (2), a witness who answers to the satisfaction of the High Court or a tribunal every question which is required to be answered under subsection (2), and the answers to which may tend to incriminate that witness, shall not be liable to prosecution for any offence committed by that witness in connection with the election and in respect of which that witness is examined and the witness shall be entitled to receive a certificate of indemnity under the hand of the Registrar or designated person as the case may be, stating that the witness is freed and discharged from liability to prosecution for that offence.

(4) Despite subsection (2), an answer by a witness to a question before the High Court or tribunal under subsection (2) shall not, except in the case of any criminal proceedings for giving false evidence in respect of the evidence, be admissible in any proceedings, civil or criminal, in evidence against that witness.

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

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

Conclusion of trial of election petition

108. (1) At the conclusion of the trial of an election petition, the High Court or a tribunal shall determine whether the respondent, or any other, and which, person, was duly elected, or whether the election to which the election petition relates was void, and the Registrar or designated person shall, as soon as is practicable, submit a copy of such determination to—

(a) in the case of an election petition in the High Court, the Speaker of the National Assembly and the Commission; and

(b) in the case of an election petition in a tribunal, the Commission.

(2) Where the High Court or a tribunal determines that the respondent was duly elected, the election shall be and remain valid.

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

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

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

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

(a) the evidence given in the proceedings in respect of the corrupt practice or illegal practice;

(b) the names and particulars of any person by whom the corrupt practice or illegal practice was, in the opinion of the High Court or a tribunal, committed;

(c) in the event that there is an appeal, the Constitutional Court shall prepare the report, except that the Court shall not state the name of any person under this paragraph unless the person has been given an opportunity of appearing before the Court and of showing cause why that person's name should not be so stated.

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

(a) the Commission; and

(b) the Director of Public Prosecutions.

(8) The Commission shall, as soon as it receives the report under subsection (7), recommend the prosecution of the person stated in the report by the Director of Public Prosecutions.

Costs

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

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

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

(b) if the High Court or a tribunal finds that the election of the respondent was due to a mistake or improper performance, or failure of performance of any function *mala fide* made by any election officer, it may, after sufficient notice to such officer to show cause to the contrary, make such order as to the payment by such election officer of the costs of the proceedings or a portion thereof, as it may consider proper.

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

(4) The notice of an application made pursuant to subsection (3) shall be given, in such manner as may be prescribed by rules of the High Court or a tribunal, to the party by or on whose behalf the deposit was made or for whom the surety gave a recognizance, requiring the party, or the surety and the party, as the case may be, to state, within the time and in the manner as prescribed, whether that party resists the application.

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

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

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

PART X

General Provisions

Code of Conduct

110. (1) The Commission shall enforce the Code of Conduct specified in the Schedule.

(2) The Commission may disqualify a political party or candidate in breach of the Code.

Appeal against decision of registration officer

111. (1) A person aggrieved by a decision or action taken by a registration officer may appeal to the Commission in the prescribed manner.

(2) The Commission shall notify the appellant of its decision within thirty days from the date of receipt of the appeal.

Powers to decide objections and appeals

112. (1) Whenever the Commission, is required under this Act to decide an objection, dispute, complaint or an appeal, the Commission may resolve the issue, that is the subject of the objection, dispute, complaint or appeal, through conciliation or mediation where applicable.

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

Constitution of conflict management committees

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

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

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

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

(5) A member shall be paid such allowances as the Emoluments Commission may, on the recommendation of the Commission, determine.

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

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

(8) There shall preside at any meeting of a committee—

(a) the Chairperson;

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

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

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

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

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

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

Printing, manufacture, use, removal etc., of election materials

114. The Commission may authorise—

(a) the printing, manufacture or supply of any voting or election material;

(b) the use of the register of voters or any voting or election material for a purpose other than an election purpose; or

(c) the removal or destruction of any voting or election material.

Ownership of voting and election material and disposal

115. (1) The Commission shall own all voting and election materials used for, or provided by it in, an election.

(2) Unless the Constitutional Court, the High Court or a tribunal orders otherwise, the Commission may dispose of the voting and election materials used in a particular election six months after the date on which the final result of the election was declared, in the manner directed by the Commission.

Effect of certain irregularities

116. A mistake in the certified segment of the register of voters under this Act shall not invalidate that register of voters.

Inspection and copying of documents

117. Where this Act requires that documents be publicised, or made available for inspection or copying, the Commission shall endeavour to also publicise or make available those documents in electronic form.

When incapacity may be removed

118. Whenever a person has become subject to any incapacity under this Act by reason of a conviction or by reason of any declaration or report of any court, and any witness who gave evidence against such person upon the proceeding for such conviction, declaration or report is convicted of perjury in respect of that evidence, such person may apply to the High Court or a tribunal which, if satisfied that the conviction, declaration or report, so far as it concerns that person, was based upon perjured evidence, may order that, that person's incapacity shall from that time cease, and the same shall cease accordingly.

Person not required to state how person voted

119. A person who has voted at an election shall not in any proceedings, whether brought under this Act or otherwise, be required, to state for whom the person voted.

Evidence as to holding of election

120. Upon any charge of a corrupt practice or an illegal practice, or any other offence against this Act, alleged to have been committed at or in connection with an election, the certificate of a returning officer that the election mentioned therein was being or had been held shall be sufficient evidence of the fact that such election was being or had been held.

Validation of certain documents

121. A misnomer or inaccurate description of a person or place in a register, nomination paper, notice or other document required for the purposes of this Act shall not affect the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

Powers of officer

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

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

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

Power of arrest

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

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

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

(c) the police officer has reasonable grounds to believe that unless arrested, the person shall—

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

(ii) interfere with witnesses; or

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

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

General penalty

124. A person who is convicted of an offence under this Act for which a penalty is not prescribed is liable, upon conviction—

(a) for a first offence, to a fine not exceeding five hundred thousand penalty units or to a term of imprisonment not exceeding five years, or to both;

(b) for a second or subsequent offence, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

Regulations

Cap. 1

125. (1) Subject to the provisions of the Constitution and this Act, the Commission may, by statutory instrument, make regulations providing for the registration of voters for the purposes of elections and for the procedure and manner of conducting elections.

(2) Without prejudice to the generality of subsection (1), the Commission may, by statutory instrument, make regulations providing for all or any of the following matters:

(a) the registration of voters;

(b) the preparation of, and the form of, registers to be used in the registration of voters;

(c) the manner of ascertaining whether persons applying for registration as voters are qualified for registrations or for their inclusion in a register for a particular constituency;

(d) the making and determination of appeals, claims and objections with respect to the registration of voters;

(e) voter education;

(f) the correction, amendment and certification of registers of voters;

(g) the manner in which the name of any person may be deleted from a register of voters, the transfer of the names of persons from the register of voters of one polling district to that of another polling district and the restoration of the name of a registered voter;

(h) the manner and form for nomination of candidates for any election that a candidate at a direct election for the National Assembly is the authorised candidate of a political party;

(i) the publication of the names of candidates whose nominations are accepted;

(j) the payment of election fees by candidates, and the circumstances in which such fees are to be returned.

(k) the use of symbols at an election;

(l) the manner and procedure of voting at an election;

(m) the manner of ascertaining the identity of persons wishing to vote at elections and whether such persons are qualified to vote;

(n) the administering of oaths by election officers in respect of such matters as may be prescribed;

(o) the procedure to be followed at the conclusion of a poll in an election;

(p) for the purpose of declaring any candidate duly elected, the procedure to be followed where there is an equality of votes between candidates in an election for members of the National Assembly or Council;

(q) the procedure to be followed where only one person is duly nominated for election to the office of President, in a constituency for election to the National Assembly or in an election to a Council;

(r) the declaration, notification and publication of the results of an election;

(s) the custody and disposal of nomination papers, ballot papers, records, documents or other things relating to the registration of voters and the conduct of elections;

(t) election expenses and the return of election expenses;

(u) the notification and publication of any casual vacancy in the elected membership of the National Assembly or a Council and the fixing of a date of an election to fill such vacancy;

(v) the forms and records to be used for any of the purposes of this Act;

(w) the delimitation of provinces, constituencies, wards and polling districts; and

(x) any matter to be prescribed by or under this Act.

(3) Separate regulations may be made in respect of each category of elections.

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

(5) A prosecution for an offence against this Act shall not be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.

Repeal of Act No.12 of 2006

126. The Electoral Act, 2006, is repealed.

SCHEDULE
(Section 107)

CODE OF CONDUCT

Enforcement of Code

1. (1) A person has, subject to paragraph (2), the right to—

(a) express political opinions;

(b) debate the policies and programmes of political parties;

(c) canvas freely for membership and support from voters;

(d) distribute election literature and campaign materials;

(e) publish and distribute notices and advertisements;

(f) erect banners, placards and posters;

(g) campaign freely;

(h) participate freely in partisan political activities; and

(i) seek the protection of the law from harm as a result of that person's political opinion or affiliation.

(2) A public officer shall not engage in any active partisan political activity referred to in subparagraph (1) whilst in the public service.

Promotion of free and fair elections

2. A person shall, during an election campaign or election, promote conditions conducive to the conduct of free and fair elections and be bound by this Code.

Duty of Commission

3. (1) The Commission shall, where reasonable and practicable to do so—

(a) meet political party representatives on a regular basis to discuss matters of concern related to on election campaign and election itself;

(b) ensure that political parties do not use State resources to campaign for the benefit of any political party or candidate;

(c) avail political parties with the election timetable and election notices in accordance with the Act;

(d) censure acts done by leaders of political parties, candidates, supporters, and Government and its organs, which are aimed at jeopardising elections or done in contravention of this Code;

(e) declare election results expeditiously from the close of the election day;

(f) ensure that a campaign rally or meeting which is legally organised by a political party is not disrupted or arbitrarily prohibited;

(g) ensure that an election officer, police officer, monitor, observer or media person is not victimised in the course of their election duties;

(h) ensure that police officers act professionally and impartially during the electoral process;

(i) ensure that traditional leaders do not exert undue influence on their subjects to support a particular political party or candidate;

(j) ensure that equal opportunity is given to all stakeholders, particularly political parties and independent candidates to participate in and conduct their political activities in accordance with the law; and

(k) condemn acts of media organisations and personnel aimed at victimisation, punishment or intimidation of media practitioners implementing any of the provisions of this Code.

(2) A member of the Commission may attend political rallies to monitor compliance with this Code.

Obligation of Political Party and candidate during election

4. (1) A political party and candidate shall—

(a) establish and maintain effective lines of communication with the Commission and with other registered political parties and candidates, at national, political and local level, including the provision of names and the contact details and addresses of or a candidate's party election agents and of other relevant office bearers and representatives;

(b) accept and respect decisions of the Commission in respect of election results announced by returning officers and the Commission in accordance with the law;

(c) issue directives to their members and supporters to observe this Code and take any necessary steps to ensure compliance;

(d) hold public meetings in compliance with the law;

(e) adhere to the election timetable issued by the Commission in conducting election campaigns in accordance with this Act;

(f) take appropriate measures to ensure environmental protection and cleanliness in the course of posting or distributing electoral campaign material;

(g) remove campaign materials within fourteen days of the declaration of election results;

(h) take necessary measures to ensure public safety in the course of posting or distributing electoral campaign material; and

(i) carry out campaign meetings and rallies peacefully.

(2) A member or supporter of a political party or a candidate shall not—

(a) use language which incites hatred or violence in any form against any person;

(b) issue any pamphlet, newsletter, poster or other propaganda which contains materials that incite people to violence or rebellion;

(c) deface, remove or destroy campaign materials of another political party or publications of the Commission;

(d) disrupt another political party's rally, meeting, march or demonstration or seek to obstruct another person from attending a political rally of another political party;

(e) continuously remain at a polling station during the campaign period or elections; and

(f) wear any campaign materials within four hundred metres of the polling station on the polling day.

(3) Without prejudice to any other written law, any person who contravenes subparagraph (2) commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment not exceeding one year, or to both.

Duty of election agent or polling agent during election

5. (1) An election agent or polling agent shall, subject to this Code, have the following duties during an election:

(a) observe the opening and closing of a polling station assigned to them on polling day;

(b) witness the voting process;

(c) witness the count of ballot papers for candidates;

(d) witness the announcement of results; and

(e) witness the declaration of results, where applicable.

(2) An election agent or polling agent shall counter sign the election results duly announced or declared by a presiding officer or returning officer, as the case may be, except that failure to countersign the election results by such election agent or polling agent shall not render the results invalid.

Duties of Zambia Police

6. The Zambia Police Service shall—

(a) enforce law and order at campaign meetings and processions in order to maintain peace and order;

(b) ensure that police officers do not abuse their authority or Government resources to campaign for the benefit of any political party or candidate;

(c) refrain from disrupting any campaign, rally or meeting which is legally convened by any political party; and

(d) ensure that police officers do not use their office to oppress any political party, candidate or supporter.

Duties of media

7. (1) Print and electronic media shall—

(a) provide fair and balanced reporting of the campaigns, policies, meetings, rallies and press conferences of all registered political parties and candidates during the campaign period;

(b) provide news of the electoral process up to the declaration of results;

(c) abide by regional codes of conduct in the coverage of elections provided that such guidelines are not in conflict with this Code;

(d) be bound by the provisions of this Code during elections; and

(e) in liaison with the Commission, recognise a representative media body authorised to receive complaints and provide advice regarding fair coverage of elections.

(2) A media organisation shall endeavour to—

(a) undertake capacity building of media personnel in their respective organisations;

(b) report election news in an accurate manner and not make any abusive editorial comment, incite violence or advocate hatred based on race, ethnicity, tribe, gender, sex, political or religious conviction; and

(c) identify any editorial comment it intends to make and separate it from the factual reporting of the news.

(3) The heads, senior management and staff of public and private media organisations shall not intimidate media practitioners and shall allow them to exercise professional judgment without undue influence.

(4) Public and private media personnel shall—

(a) conduct interviews with candidates with fairness both in the style of the interview and in the amount of the time given;

(b) refrain from broadcasting their own political opinions, commentary or assessment, and where they do so, clearly identify the opinion, commentary or assessment as their own and carefully balance it in order to avoid bias; and

(c) be duly accredited by the Commission to enter a nomination centre, polling centre or totalling centre.

Allocation of air time

8. (1) A public television, radio and electronic media shall allocate public air time equally to all political parties and candidates for their political broadcasts.

(2) The Commission shall prescribe the amount of air time in any given language on public television or radio to be allocated to a political party or candidate.

(3) On polling day, media shall not broadcast any campaign interviews for political parties or independent candidates or predict election results.

(4) Broadcasters shall inform the public on the source of any public opinion poll and shall indicate the margin of error.

Election results programme

9. (1) Media shall disclose accurate election results and provide updates on the progress of the vote counting process and shall not speculate election results but shall broadcast confirmed election results as they are announced and published by presiding officers.

(2) Television and radio stations shall—

(a) maintain full records of all radio and television news bulletins and recordings of all other programmes related to the election, including party political broadcasts and shall institute a close and meticulous monitoring system to ensure balance throughout the campaign and up to the close of poll; and

(b) provide the Commission, at any reasonable time, with such records, information and recordings as the Commission may require to fulfill its monitoring role.

(3) The Commission shall require newspapers to make available archived copies of newspapers for inspection in the event of a complaint.

(4) A candidate or political party who alleges that the candidate or political party has been unfairly treated or covered by any media organisation in the course of the election campaign, may lodge a complaint against the media organisation, in writing, to the Commission.

(5) Where a complaint made under subparagraph (4) requires any media organisation to rectify an error, the candidate or political party making the complaint shall send the complaint to that media organisation and a copy of the complaint to the Commission and the media organisation shall respond to the complaint.

(6) Where a right of reply, a retraction or the correction of a matter of significance is necessary, it shall be made in a like manner and with equal prominence as the original report or publication.

Monitors and observers

10. (1) A person shall not act as a monitor or observer, during an election campaign or election unless the person is duly accredited by the Commission.

(2) A monitor shall be nominated by the organisation to which the monitor belongs and shall undergo training and assessment by that organisation.

(3) A monitor or observer shall be provided with necessary identification by the Commission and the monitor's or observer's organisations.

(4) A monitor or observer shall discharge monitors or observer's functions in accordance with this Code and any other written law or such lawful directives as may be given by the Commission or any person acting on its behalf.

(5) A monitor or observer shall—

(a) bring to the attention of the presiding officer or returning officer or member of the Commission any observed electoral malpractice;

(b) be impartial in the conduct of the monitor's or observer's duty and shall, at no time, publicly indicate or express any bias or preference with reference to any political party or candidate;

(c) be in a sufficient number at each polling station and shall ensure that their presence is widely known and recognised by the electorate;

(d) not interfere with the duties of the election officials in any way and shall immediately report any violation to the proper authority;

(e) ensure that any material information or report which the monitor or observer receives or any event, occurrence or statement of which the monitor or observer has been notified or which indicates the commission of an offence or contravention of the Act or this Code are brought to the attention of the monitor's or observer's organisations, the police, the Commission, conflict management committees and other parties concerned;

(f) not by themselves or through the monitor's or observer's organisation, forecast, declare or disclose the result of any election before the declaration by the Commission;

(g) when so requested, immediately identify themselves to any election officer or police officer and shall, during the conduct of the monitor's or observer's activities, at all times carry, wear or otherwise prominently display the identification issued by the Commission;

(h) not display allegiance to any political party at any time and shall refrain from carrying, wearing and displaying electoral material or any article of clothing, colours, badges or other items denoting support for or opposition to any political party or candidates or any of the issues in contention in the elections;

(i) not be involved in corrupt practices or accept any favours, so as to make statements in favour of or against any candidate or political party; and

(j) not carry or display arms or other dangerous weapons during the conduct of the monitor's or observer's activities or while wearing the identification issued by the Commission.

(6) Monitors and observers and their sponsoring organisations shall, whenever requested by the Commission, attend such briefings, training workshops and other meetings convened in order to co ordinate their activities.

(7) After the declaration of results of the elections, monitors and observers shall hand over to the Commission any identification received from it.

(8) The Commission may revoke the accreditation of any monitor or observer who contravenes the provisions of this Code.

Powers of Commission

11. (1) The Commission may—

(a) reprimand a political party, candidate or stakeholder for any conduct in violation of this Code;

(b) report a breach of this Code to the Zambia Police Service, Anti-Corruption Commission and Drug Enforcement Commission or any other relevant law enforcement agency;

(c) revoke the accreditation of election agents, polling agents, monitors observers or the media where it is necessary in the interest of public safety and security to do so; and

(d) impose any administrative measures on any person, candidate or political party for persistent breach of this code.

(2) The Commission may where practicable to do so, summon any person contravening this Code and any voter, candidate or political party alleging a breach to appear before it.

Complaints

12. (1) The following persons may lodge a complaint to the Commission in relation to an election:

(a) a voter or candidate in a constituency where a breach of this Code has been committed; or

(b) from a political party participating in an election.

(2) Complaints arising during election campaigns and elections may be made to an election officer or to a conflict management committee at the place where the conduct complained against occurred.

(3) The Commission may refer and report any violation of the Code to the Zambia Police Service, AntiCorruption Commission or any other appropriate law enforcement agency for investigation and prosecution where appropriate.

Conflict management committee

13. (1) Conflict management committees established by the Commission pursuant to section *one hundred and eight* may resolve electoral disputes.

(2) The conflict management committees shall take into account the provisions of this Code in resolving electoral disputes.

(3) Conflict management committees shall mediate in electoral disputes and shall encourage amicable settlement of electoral disputes within twentyfour hours of receipt of a formal complaint.

Prohibition on coercion and intimidation

14. A person or a member of a law enforcement agency, civil society, a Church, faith-based organisation, traditional leader, political party or media shall not, by means of threats, violence or sanction, coerce or intimidate another person during campaigns, public debates or elections.

General offence

15. (1) A person shall not—

(a) cause violence or use any language or engage in any conduct which leads or is likely to lead to violence or intimidation during an election campaign or election;

(b) carry or display arms or weapons, traditional or otherwise, of any kind at a political meeting or in the course of any march, demonstration or other public gathering of a political nature;

(c) make false, defamatory or inflammatory allegations concerning any person or political party in connection with an election;

(d) arrange a public meeting, demonstration, rally or march at the same time and venue as another similar political event organised by another political party or candidate;

(e) prevent the reasonable access to voters of any candidate or political party in any manner for the purposes of conducting voter education, fund raising, canvassing membership or soliciting support;

(f) plagiarise the symbols, colours or acronyms of candidates or other political parties;

(g) deface, remove or destroy any political campaign materials of any person or political party or publications of the Commission;

(h) offer any inducement, reward or bribe to any person in consideration of such person—

(i) joining or not joining any political party;

(ii) attending or not attending any political event;

(iii) voting or not voting;

(iv) accepting, refusing or withdrawing that person's domination as a candidate in an election;

(v) surrendering that person's voter's card, or national registration card or both; or

(vi) offering to surrender a voter's card or national registration card, or both;

(i) abuse or attempt to abuse a position of power, privilege or influence, including parental, patriarchal or traditional authority for political purposes including any offer of a reward or for the issuance of a threat;

(j) propagate any opinion or action which is prejudicial to—

(i) the sovereignty, integrity or security of the country;

(ii) the maintenance of public order; or

(iii) the independence of any institution;

(k) use Government or parastatal transportation or facilities for campaign purposes, except that this paragraph shall not apply to the President and the Vice President in connection with their respective offices;

(l) use Government transportation or resources or facilities to transport voters to polling stations;

(m) discriminate against any person on grounds of race, ethnicity, class, disability, gender, sex, religion or in any other manner in connection with an election or political activity;

(n) carry any statue, caricature or anything which tends to ridicule, revile or scandalise any political party or its leader, a candidate or the Government, at any public political gathering, meeting or procession; and

(o) be in possession of a voter's card or national registration card belonging to another person during the campaign period.

(2) A person who contravenes subparagraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

General Penalty

16. A person who contravenes any provision of this Code for which no specific penalty is provided commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Revocation of SI No. 90 of 2006

17. The Electoral (Code of Conduct) Regulations, 2006, are revoked.