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ACT

To provide for the election of persons to the office of President, as members of the National Assembly, the regional councils and local authority councils; the establishment of an electoral commission and its powers, duties and functions; the registration of voters and of political parties; the conduct of such elections; and to provide for matters incidental thereto.

(Signed by the President on 28 August 1992)

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ELECTORAL ACT, 1992

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

PART I INTRODUCTORY PROVISIONS

Definitions.

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

"applicant", in relation to the registration of voters, means a person who in terms of section 16(1) applies or applied for such registration, as the case may be;

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

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

(b) is entitled to vote at any election of any member of a local authority council;

means the separate application form to be used for an election referred to in paragraph (a) or (b), as the case may be, submitted and completed by such applicant in accordance with the provisions of section 16(2);

"authorization ballot paper" means a ballot paper referred to in paragraph (d) of section 80(2);

"authorization ballot paper envelope" means a blank envelope referred to in paragraph (d) of section 80(2);

"authorization envelope" means an envelope referred to in paragraph (c) of section 80(2) in which an envelope containing a marked authorization ballot paper is placed;

"Chief Justice" means the Chief Justice of the Supreme Court of Namibia;

"Commission" means the Electoral Commission established under section 3;

"constituency", in relation to any election of the President, members of the National Assembly or any member of a regional council, means a constituency referred to in section 4(2) of the Regional Councils Act, 1992, into which any region has been divided;

"counting agent" means a counting agent referred to in section 52(5);

"counting officer" means a counting officer referred to in section 51(1)(b);

"court" means the High Court of Namibia;

"Director" means the Director of Elections appointed under section 11(1)(b);

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

"election agent" means an election agent referred to in section 52(1);

"election application" means an application referred to in section 109;

"local authority area", in relation to any election of any member of a local authority council, means the area of a municipality, town or village of which the boundaries have been established under Article 137(4) of the Namibian Constitution or, thereafter by or under any provision of the Local Authorities Act, 1992;

"local authority council" means any municipal council, town council or village council established by or under the provisions of the Local Authorities Act, 1992;

"local authority voters' register" means the local authority voters' register referred to in section 26(1)(a)(ii) for a local authority area or ward, as the case may be;

"magistrate" includes an additional magistrate or acting magistrate;

in section 21(a)(ii) for a local authority area or ward, as the case may be;

“provisional national voters’ register” means the provisional national voters’ register referred to in section 21(a)(i) for a constituency or polling district, as the case may be;

“provisional voters’ register” means the provisional national voters register or the provisional local authority voters’ register, as the case may be;

“region” means any region referred to in section 2 of the Regional Councils Act, 1992;

“register” means register as a voter for an election in question, and “registration” has a corresponding meaning;

“regional council” means a regional council established under Part 1 of the Regional Councils Act, 1992;

“registration card” in so far as a provision in which it is used is applied in relation to any person who –

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

(b) is entitled and qualified to vote at any election of any member of a local authority council,

means the separate original registration form to be used at an election referred to in paragraph (a) or (b), as the case may be, completed in respect of and issued to such person in terms of section 20;

“registration form”, in relation to a registration card in question, means a form referred to in section 20(1)(a) and complying with the provisions of subsection (2) of this section;

“registration number”, in relation to a registration card in question, means the distinctive serial number appearing in accordance with the provisions of subsection (2) of this section on the registration form

“national voters’ register” means the national voters’ register referred to in section 26(1)(a)(i) for a constituency or a polling district, as the case may be;

“nomination day”, in relation to any election in question, means the day determined under section 50(1)(a);

“party list” –

(a) in relation to any election of members of the National Assembly, means a list of candidates submitted by a political party under section 59(1);

(b) in relation to any first elections of members of a local authority council referred to in section 6(1)(i) of the Local Authorities Act, 1992, means a list of candidates submitted by a political party under section 68(1)(a);

“political party” means a political party registered as such under the provisions of section 39 and, in relation to any election for a local authority council, includes an organization or association registered for that purpose in terms of section 42;

“polling district”, in relation to a constituency, means a polling district referred to in section 12;

“polling day”, in relation to any election in question, means any day determined under subsection (1)(b) of section 50 or deemed to be so determined under subsection (5) of that section for that election;

“polling officer” means a polling officer appointed for a polling station under section 51(1)(d);

“prescribed” means prescribed under this Act or any regulation made thereunder;

“presiding officer” means a presiding officer appointed under subsection (1)(c) of section 51 for a polling district or ward, or under subsection (2) of that section, for a polling station, as the case may be;

“provisional local authority voters’ register” means the provisional local authority voters’ register referred to

in question used for such registration card, and "number" has a corresponding meaning, as the case may be;

"registration officer" means a registration officer appointed under section 14(1)(b) for a polling district or ward, as the case may be;

"regulation" means any regulation made and in force under this Act;

"returning officer" means a returning officer appointed under section 51(1)(a) for a constituency, local authority area or ward, as the case may be;

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

"supervisor of registration" means a supervisor of registration appointed under section 14(1)(a) for a constituency or local authority area, as the case may be;

"this Act" includes the regulations made and in force under this Act;

"vote" means to vote or to record a vote for a political party or a candidate at an election, as the context may require;

"voter" –

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

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

and who is entitled or qualified to vote at that election, and "registered voter" has a corresponding meaning, as the case may be;

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

"ward", in relation to a local authority area, means a ward referred to in section 5 of the Local Authorities Act, 1992.

(2) For the purposes of the registration of voters under this Act, each registration form shall –

- (a) contain a distinctive serial number which may include a letter or letters of the alphabet;
- (b) consist of an original and duplicate.

Application of Act.

2. This Act shall apply in respect of elections of the President, members of the National Assembly, any member of any regional council and any local authority council and in respect of the registration of voters for such elections.

PART II ELECTORAL COMMISSION

Establishment of Electoral Commission.

3. There is hereby established a commission to be known as the Electoral Commission.

Duties and functions of Commission.

4. (1) Subject to the provisions of this Act, the Namibian Constitution or any other law, the Commission shall be the exclusive authority to direct, supervise and control in a fair and impartial manner any elections under this Act.

(2) Without derogating from the generality of the provisions of subsection (1), the Commission shall in particular –

- (a) supervise and control the registration of voters for the purposes of any election under this Act;
- (b) supervise the preparing, publication and maintenance of a national voters' register and local authority voters' register;
- (c) supervise and control the registration of political parties under this Act;
- (d) supervise, direct and control the conduct of elections under this Act;

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- (e) perform any other functions conferred upon it by or under the provisions of this Act or any other law or are necessary or expedient for purposes of achieving the objects of this Act.

5. The Commission shall consist of -

- (a) a judge or former judge of the Supreme Court or the High Court, who shall be the chairperson of the Commission; and
(b) four persons as the other members of the Commission,

appointed by the President, with the approval, by resolution, of the National Assembly.

6. The Commission may in its discretion establish one or more committees which shall consist of two or more members of the Commission nominated for such purpose by the Commission to advise it on any of its functions.

Committees of Commission.

7. (1) Subject to the provisions of section 8(2), a member of the Commission shall hold office, with effect from the date of the approval referred to in section 5, for a period not exceeding five years, but may be re-appointed in a like manner at the expiration of that period.

Term of office and conditions of service of members of Commission.

(2) A member of the Commission who is not employed in the public service on a full-time basis shall be paid such remuneration and allowances, if any, and in respect of any journey undertaken for purposes of the business of the Commission, such subsistence and travelling allowances as the President may from time to time determine.

(3) The remuneration and allowances determined under subsection (2), may differ according to the office held by the member of the Commission concerned or the functions performed by him or her.

8. (1) Notwithstanding the provisions of section 7(1), a member of the Commission shall vacate his or her office if -

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

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

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

- (d) such member is removed from office by reason of his or her misconduct by the President, with the approval, by resolution, of the National Assembly.

(2) Any casual vacancy on the Commission caused by the death or vacation of office by any member of the Commission shall, with due regard to the provisions of section 5, be filled for the unexpired portion of the period of office of the member of the Commission who has died or vacated his or her office, as the case may be.

Meetings of Commission and decisions.

9. (1) A meeting of the Commission shall be held at such time and place as may be determined by the chairperson of the Commission.

(2) The chairperson of the Commission shall on a reasoned request in writing of at least three members of the Commission convene a special meeting of the Commission.

(3) The majority of the members of the Commission shall form a quorum for a meeting of the Commission.

(4) The chairperson of the Commission shall preside at all meetings of the Commission at which he or she is present.

(5) When the chairperson of the Commission is absent from a meeting of the Commission the members of the Commission present shall elect a chairperson from among their number to act as chairperson at that meeting, and while he or she so acts he or she shall have all the powers and shall perform all the duties and functions of the chairperson.

(6) A decision of the majority of the members of the Commission present at any meeting of the Commission shall be a decision of the Commission: Provided that in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) No decision taken by the Commission or act performed under the authority of the Commission shall be invalid by reason only of a vacancy on the Commission, or by reason only of the fact that any person who is not entitled to sit as a member of the Commission sat as a member of the Commission when the decision was taken or act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the Commission who were present at the time and entitled to sit as such members.

(8) The Commission shall cause a record to be kept of the proceedings of the meetings of the Commission.

(9) The Commission may make rules in relation to the holding of, and procedure at, meetings of the Commission.

10. (1) The Commission shall, not later than 60 days after the end of June in every year, submit to the President and the Speaker of the National Assembly a report in respect of its activities performed during the preceding year or in respect of any other matter relating to elections under this Act which it deems necessary in the public interest to report thereon.

Reports by Commission.

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

11. (1) (a) There shall be a division in a ministry as defined in section 1 of the Public Service Act, 1980 (Act 2 of 1980), designated by the President, to be known as the Directorate of Elections which shall be responsible for the administrative and clerical work involved in the performance of the functions of the Commission.

Directorate of Elections.

(b) The head of the Directorate referred to in paragraph (a) shall be known as the Director of Elections appointed, subject to the laws governing the public service, by the President, who shall be the secretary of the Commission, and shall exercise and perform, subject to the direction and control of the Commission, the other powers,

duties and functions conferred or imposed upon him or her by or under the provisions of this Act.

(2) The Director shall be assisted by such other officers as may from time to time be designated by the Permanent Secretary of the ministry in question for such purpose who shall exercise or perform, subject to the direction and control of the Director, the powers, duties and functions conferred or imposed upon the Director by or under the provisions of this Act and such other functions as may be imposed upon any of them by the Director.

(3) The Commission may, in consultation with the Permanent Secretary of the ministry in question, obtain the services of any person, not being an officer referred to in subsection (2), for the purposes of the functions of the Commission on such conditions as may be determined by mutual agreement with such person.

Powers of Commission in relation to division of constituencies into polling districts.

12. (1) The Commission shall -

(a) divide, not later than two years after the date on which the first elections for members of regional councils have taken place after the commencement of this Act, the constituency of every region into polling districts and to determine the boundaries of each one of such polling districts;

(b) divide or re-divide, when a new region or region has been divided or re-divided into constituencies in terms of the provisions of section 5 of the Regional Councils Act, 1992, such constituency into polling districts and to determine or re-determine the boundaries of such polling districts.

(2) For purposes of the division or re-division of the constituency into polling districts in terms of subsection (1), the Commission shall divide or re-divide the constituency into not less than two polling districts as may be determined by the Commission.

(3) The Commission may in the exercise of its powers and the performance of its duties or functions under this section make such investigations and give a hearing to such persons as it may deem necessary in relation to any matter connected with such powers, duties and functions.

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(b) in the case of a person who is so entitled to vote and is qualified to vote in a local authority area at an election of any member of a local authority council by virtue of the provisions of Article 111(3) of the Namibian Constitution, in that area and, where such area is divided into wards, in the ward in which he or she is resident,

and such person is not subject to a disqualification mentioned in subsection (2) of this section.

(2) No person shall be entitled to be registered as a voter if –

(a) he or she is subject to an order of a court declaring him or her to be of unsound mind or mentally disordered or defective; or

(b) he or she is detained as a mentally ill person under the provisions of any law.

(3) For the purposes of the provisions of subsection (1) a person shall be regarded as being resident in the constituency, polling district or ward in question, if his or her home or the place where he or she normally lives and to which he or she returns regularly after any period of temporary absence, is within such constituency, polling district or ward.

14. (1) The Commission shall, for the purposes of the registration of voters, appoint –

(a) a person as supervisor of registration –

(i) in the case of the registration for any election referred to in paragraph (a) of section 13(1), for each constituency;

(ii) in the case of any registration for any election referred to in paragraph (b) of that section, for each local authority area,

who shall, subject to the direction and control of the Director, exercise and perform the powers, duties and functions conferred upon or assigned to him or her by this Act, as the case may be: Provided that the same person may be appointed

Appointment of supervisors of registration, registration of officers and assistants.

(4) After the Commission has, under this section, divided or re-divided the constituency into polling districts and determined or re-determined its boundaries, it shall cause –

(a) a map of the constituency in question on which the polling districts in question are shown to be laid for inspection for a period of 30 days at a place determined by it;

(b) a notice to be published in the *Gazette* and at least one newspaper in which all interested parties are called upon to submit to it any objections in writing against the proposed division or re-division within the said period of 30 days.

(5) The Commission may in its discretion consider any objections received against the proposed division or re-division, and shall thereafter finally determine or re-determine the division or re-division of the constituency into polling districts and its boundaries.

(6) The President shall make known by proclamation in the *Gazette* the names or numbers and the boundaries of the polling districts, as finally divided or re-divided into and determined or re-determined by the Commission, and thereafter the polling districts as specified or numbered and defined, shall be the polling districts of the constituency in question until a re-division or further re-division has taken place.

PART III REGISTRATION OF VOTERS

13. (1) Every person who is by virtue of the provisions of Article 17(2) of the Namibian Constitution entitled to vote, shall be entitled to be registered as a voter –

(a) in the case of a person who is so entitled to vote at an election of the President or of members of the National Assembly or of any member of a regional council, in the constituency in which he or she is resident or, where such constituency is divided into polling districts, in the polling district in which he or she is so resident;

Persons entitled to register as voter.

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supervisor of registration for a constituency referred to in subparagraph (i) and an area referred to in subparagraph (ii), as may be practicable under the circumstances;

(b) a registration officer -

- (i) in the case of the registration for any election referred to in paragraph (a)(i) of this subsection, for each polling district in that constituency;
- (ii) in the case of the registration for any election referred to in paragraph (a)(ii) of this subsection, for each ward in that area, who shall, subject to the direction and control of the supervisor of registration appointed for that constituency or area, as the case may be, perform the duties and functions assigned to him or her by this Act: Provided that the same person may be appointed registration officer for a polling district referred to in subparagraph (i) and a ward referred to in subparagraph (ii), as may be practicable under the circumstances.

(2) The Commission may appoint such other persons, as it deems fit, to assist a supervisor of registration or registration officer in the performance of his or her duties and functions, as the case may be.

(3) Notwithstanding the provisions of subsection (1)(b), for the first general registration of voters referred to in section 15(1), there shall be appointed for each constituency or local authority area, as the case may be, as many registration officers as may in the case of the constituency or local authority area in question be determined from time to time by the Commission or, to the extent authorized by it, by the Director.

(4) (a) Any person appointed under this section -

- (i) who is not in the full-time service of the State, shall be entitled to the remuneration determined by the Commission, in consultation with the Permanent Secretary of the ministry referred to in section 11;

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- (ii) may, under circumstances so determined be entitled to the allowance or allowances so determined.

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

(5) The Commission may delegate any power conferred upon it by subsection (1) or subsection (2) to the Director who may, to the extent determined by the Commission, authorize any supervisor of registration or registration officer concerned to exercise any power so delegated to him or her under paragraph (b) of the said subsection (1) or the said subsection (2), as the case may be.

(6) Each supervisor of registration, registration officer and his or her assistant shall, by virtue of his or her appointment under this Act and whether or not he or she is by or under the provisions of any other law a justice of the peace or a commissioner of oaths, be deemed to be, for the duration of such an appointment, a justice of the peace or a commissioner of oaths, as the case may be, for the purposes of the carrying out of the provisions of this Act.

(7) Any appointment made under this section may at any time be withdrawn by the authority who made the appointment in question.

(8) (a) A registration officer may, with the necessary staff, vehicles and equipment, enter upon any land for which he or she is appointed and on which there is or is suspected to be any person who is qualified for registration, for the purpose of registering any such person who may wish to apply for registration: Provided that a registration officer may not enter upon any land or enter any building or structure on such land without the permission of its owner or occupier, or of the person in control of such land between the hours 19h00 and 7h00.

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(b) The Director may by notice in writing to any person who employs or accommodates on any land any person who is or may be entitled to registration under this Act, or to the person in charge of any such persons employed or accommodated on such land, require that person to cause the persons so employed or accommodated to be assembled and to be present at a time specified in the notice, at a place on such land to be determined by that person and notified by him or her before a time and to a registration officer and in a manner so specified, to enable a registration officer to register any person so employed or accommodated, or any other person, who may be entitled to apply for such registration.

(c) A notice under paragraph (b) may be signed on behalf of the Director by a supervisor of registration for the constituency or local authority area in question, authorized by the Director to do so.

(9) The Commission shall as soon as is practicable after an appointment has been made under this section, give or cause to be given public notice of the name and official address of a person so appointed.

15. (1) For the purposes of any election under this Act, the first general registration of voters after the commencement of this Act shall take place during a period determined by the President by proclamation in the *Gazette*, and thereafter such general registration shall take place at intervals of not more than ten years during a period similarly determined by the President by proclamation in the *Gazette*: Provided that the President may from time to time, for the purposes provided in this Act, determine that a supplementary registration of voters shall take place during any period determined in a like manner by him or her in respect of Namibia or any part thereof.

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

16. (1) When for the purposes of the first or any subsequent general registration referred to in section 15, a period is determined under that section, every person who during that period is entitled or qualified to be registered as

General registration of voters.

Application for registration as voter.

a voter may, whether or not his or her name has previously been included in a voters' register in terms of this Act or any other law, apply –

(a) to any registration officer appointed for the constituency in question or, where a constituency is divided into polling districts, for the polling district in question;

(b) to any registration officer appointed for the local authority area in question or, where such an area is divided into wards, for the ward in question,

as the case may be, in the manner prescribed by this Act, to be registered as a voter –

(i) in the case of paragraph (a), for the elections referred to in paragraph (a) of section 13(1);

(ii) in the case of paragraph (b), for an election referred to in paragraph (b) of that section.

(2) Any person who may apply for registration in terms of subsection (1), shall, if he or she desires to apply –

(a) appear in person before the registration officer concerned;

(b) submit to such registration officer the prescribed application form duly completed by the applicant or by some person on his or her behalf;

(c) when required by such registration officer to do so, affirm on oath the declaration which appears on the application form and which is required to be made by the applicant;

(d) in the presence of such registration officer and in accordance with his or her instructions –

(i) sign the application form in question; or

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

(3) A registration officer shall not register any applicant as a voter under this Act, unless such applicant has, to the reasonable satisfaction of such registration officer –

(a) identified himself or herself;

(b) proved that –

(i) he or she has reached the age of 18 years; and

(ii) he or she is a Namibian citizen; and

(c) complied with any requirement or qualification in relation to any residence referred to in section 13,

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

(4) Without derogating from the generality of the provisions of subsection (3) of this section, an applicant shall be deemed to have complied with the provisions of that subsection, if he or she –

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

(i) any identity document containing a recent photograph of him or her issued under any law governing the identification of persons in Namibia or any such official document of identity issued by the government of any other country;

(ii) a driving licence or permit containing a recent photograph of him or her, whether issued in or outside Namibia; or

(iii) sworn statements made by two other persons having identified themselves to the registration officer concerned by producing any document referred to in subparagraph (i) or (ii) of this paragraph, in which proof of the identity of the first-mentioned person is furnished;

(b) in the case of paragraph (b)(i) of that subsection –

(i) submits to the registration officer concerned –

(aa) any official certified extract from any official birth register in Namibia or of any other country from which it appears that the applicant has reached the age of 18 years; or

(bb) a sworn statement made by either one of his or her natural parents declaring that he or she has reached the age of 18 years; or

(ii) has, in the absence of any documentary proof referred to in subparagraph (i) of this paragraph, in the opinion of the registration officer concerned, apparently reached the age of 18 years;

(c) in the case of paragraph (b)(ii) of that subsection, submits to the registration officer –

(i) a certificate of Namibian citizenship issued under any provision of the Namibian Citizenship Act, 1990 (Act 14 of 1990);

(ii) a Namibian passport, other than an official passport;

(iii) any official certified extract from any official birth register or any similar official document referred to in paragraph (b)(i) of this subsection, from which it appears that the applicant was born in Namibia; or

(iv) sworn statements made by two other persons declaring that –

(aa) the applicant is known to him or her; and

(bb) to the best of his or her knowledge, such applicant was born in Namibia and he or she is a Namibian citizen as

contemplated in Article 4(1) of the said Constitution; or

(cc) to the best of his or her knowledge, either one of such applicant's parents was born in Namibia and he or she is a Namibian citizen as contemplated in Article 4(2) of the said constitution; and

(v) for the purpose of subparagraph (iii) or (iv) of this paragraph, as the case may be, a sworn statement made by the applicant declaring that he or she has not voluntarily renounced his or her Namibian citizenship in accordance with the provisions of subsection (2) of section 8 of the Namibian Citizenship Act, 1990 (Act 14 of 1990), or having so renounced it, he or she remained a Namibian citizen in accordance with the provisions of subsection (5) of that section;

(d) in the case of paragraph (c) of that subsection, submits to the registration officer any document, statement, certificate or account as may be prescribed.

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

Rejection of incomplete application form.

17. A registration officer shall reject an application form if the applicant concerned fails to comply with any provision of section 16(2).

Refusal to register applicant.

18. (1) A registration officer shall, after considering an application duly made in terms of section 16, refuse to register the applicant for the election in respect of which he or she has so applied, if the registration officer is not reasonably satisfied that the applicant, on the strength of his or her application, is entitled or qualified to be so registered.

(2) If a registration officer refuses under subsection (1) to register an applicant, he or she shall —

(a) record the refusal and the reason for it, the date of the refusal and —

(i) in the case of an application to the registration officer referred to in paragraph (a) of section 16(1), the constituency or polling district, as the case may be, for which he or she has been appointed;

(ii) in the case of an application to the registration officer referred to in paragraph (b) of the said section 16(1), the local authority area or ward, as the case may be, for which he or she has been appointed,

on the application form in question, and sign the record;

(b) return the application form to the applicant concerned and inform him or her that he or she may, in accordance with the provisions of section 19, appeal against the refusal to the magistrate referred to in that section.

Appeal against refusal to register.

19. (1) Any person whose application for registration has been refused under section 18 and who desires to appeal against such refusal, may, on the day, at the time and place determined in terms of subsection (2) and of which he or she shall be notified in writing, appeal against such refusal to the magistrate designated for that purpose by the Permanent Secretary: Justice by notice in the *Gazette*, in respect of the constituency or local authority area, as the case may be, in which such person has applied for registration, in the manner prescribed by subsection (3).

(2) (a) The magistrate referred to in subsection (1), shall determine the day, which day shall not be later than 15 days after the date of the refusal, and the time and place for the hearing of an appeal referred to in that subsection.

(b) The provisions of paragraph (a) shall not prohibit the magistrate from hearing an appeal at any place or time determined by him or her and communicated to the person who wishes to appeal, or at any place where both the magistrate and that person are at any time.

- (3) On a day, at a time and place determined in accordance with the provisions of this section, the person who wishes to appeal (hereinafter called the appellant), shall –
- (a) appear in person before the magistrate concerned;
 - (b) submit his or her application returned to him or her in terms of section 18(2)(b), to such magistrate;
 - (c) state the grounds on which he or she appeals against the refusal of his or her application; and
 - (d) adduce such proof and make such statements he or she may wish to be considered in support of his or her appeal.
- (4) (a) Subject to the provisions of subsection (3), the hearing of the appeal may be conducted by the magistrate in such manner as in his or her opinion is best calculated to enable him or her to arrive at a just decision in the matter.
- (b) Without derogating from the generality of the provisions of paragraph (a), the magistrate may –
- (i) call any person who is present to appear before him or her and require or allow such person to give such oral evidence or produce such other proof as in the opinion of the magistrate may assist him or her in deciding the matter;
 - (ii) administer an oath or affirmation to any person appearing before him or her;
 - (iii) examine or allow the examination of any person so appearing;
 - (iv) postpone the hearing at any stage of the proceedings to a day determined by him or her.
- (5) The magistrate shall keep a record of the proceedings and such record shall be attached to and form part of the relevant application form.

- (6) Subject to the proviso to Article 12(1)(a) of the Namibian Constitution, the hearing of an appeal shall be open to the public.
 - (7) A magistrate may allow an appeal heard by him or her under this section, or may dismiss such appeal, and may also dismiss it if the appellant fails to appear before him or her any day determined for the hearing or further hearing under this section.
 - (8) The magistrate shall record his or her decision under subsection (7) on the relevant application form.
 - (9) If the magistrate dismisses the appeal, he or she shall keep the application in his or her office.
 - (10) If the magistrate allows the appeal, he or she shall forthwith refer the appellant to the registration officer concerned, and cause the application to be submitted to that registration officer.
20. (1) If the registration officer concerned does not under section 18 refuse to register an applicant, or if the applicant is a person referred to the registration officer concerned by the magistrate under section 19(10), the registration officer shall register, subject to the other provisions of this Part, the applicant in respect of the election for which he or she has so applied for registration as provided in section 16(1), by –

Registration of applicant.

- (a) completing the prescribed registration form in respect of the applicant concerned in accordance with the information contained in that application form;
- (b) requiring the applicant –
 - (i) to sign the form so completed in the space provided for that purpose; or
 - (ii) if the applicant cannot write his or her name, to place his or her finger print or, as the case may be, a mark placed by the applicant on the application form in accordance with the provisions of section 16(2)(d)(ii), on the registration form in the space provided for that purpose or in accordance with the

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a voters' list, in the manner so that the names of persons whose residential addresses are in the same constituency or local authority area, as the case may be, shall appear, together with their registration numbers, or, in the case of any constituency divided into polling districts or any local authority area divided into wards, in separate groups, in numerical order, of polling districts or wards, if numbered, and a separate voters' list shall be compiled for each such polling district or ward in respect of such constituency or local authority area, as the case may be;

(b) forward such voters' lists to the Director to be dealt with in accordance with the provisions of section 21.

21. Upon receipt of the voters' lists referred to in section 20(4), the Director shall —

Preparation and publication of provisional voter's registers.

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

(i) in respect of the voters' lists referred to in paragraph (a)(i) of that section, a provisional national voters' register; and

(ii) in respect of the voters' lists referred to in paragraph (a)(ii) of that section, a provisional local authority voters' register,

in a manner *mutatis mutandis* in accordance with the provisions of that section;

(b) publish separately by notice in the *Gazette* such provisional voters' registers, specifying the places and time at which copies are available and the period within which objections may be made in respect of the names of voters appearing on that registers.

22. (1) Any person whose name appears on the relevant provisional voters' register referred to in section 21, may, within the period referred to in paragraph (b) of that section, lodge an objection in writing to the inclusion of the name of any other person on that register with the magistrate referred to in section 19(1) designated for the constituency or local authority area, as the case may be, in respect of

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

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instructions of the registration officer concerned;

(c) if the applicant has complied with the provisions of paragraph (b), signing that form in the space provided for that purpose and recording the date of registration and the constituency and, where a constituency is divided into polling districts, the polling district in question or the local authority area and, where such area is divided into wards, the ward in question, as the case may be, in which such applicant is entitled or qualified in terms of the provisions of this Act to be so registered; and

(d) after so signing that form, issuing the original of that registration card to the applicant in respect of the election for which he or she has so applied.

(2) If the applicant is a person who has been referred to the registration officer concerned by the magistrate under section 19(10), the registration officer concerned shall comply with the provisions of subsection (1) of this section even if he or she is not the registration officer who has refused the application in the first place.

(3) The application and duplicate registration card of a voter shall, as soon as is practicable after his or her registration in terms of subsection (1) be forwarded by the registration officer concerned to the supervisor of registration appointed for the constituency or for the local authority area in question, as the case may be.

(4) As soon as is practicable after the close of the period determined for the registration of voters referred to in section 15, the supervisor of registration concerned shall —

(a) in the prescribed form compile from the records referred to in subsection (3), received from the registration officer concerned —

(i) for the constituency, or where such constituency is divided into polling districts, for a polling district in that constituency;

(ii) for a local authority area or where such area has been divided into wards, for a ward in that area,

which the name of such other person is so included, on the grounds that he or she –

- (a) is not entitled or qualified by or under the provisions of section 13 to be registered as a voter; or
- (b) is not complying with the requirements in relation to residence as contemplated in that section.

(2) When an objection is lodged under subsection (1) against any name of a person being included in the relevant provisional voters' register, the magistrate concerned shall, unless he or she is satisfied that the ground of the objection is not a ground on which the name could be excluded from that register, forthwith serve or cause to be served a notice on the person whose registration is objected to, informing him or her of the objection and the nature thereof, and that he or she may make representations to the magistrate concerned in regard thereto within a period of 15 days after the date of the notice.

(3) When an objection has been lodged under subsection (1), the magistrate shall, upon expiration of the period referred to in subsection (2), if that subsection applies, determine the objection.

(4) The magistrate may –

- (a) allow the objection and direct the Director to exclude the name of the person against whom the objection was made, from the relevant provisional voters' register; or
- (b) dismiss the objection.

(5) The magistrate shall notify in writing any person who under subsection (1) lodged an objection and under subsection (2) made representations in connection with such objection and the Director, of his or her decision regarding the objection.

(6) If an objection has been allowed under subsection (4) and a request for the submission of a statement of the case is not made under subsection (1) of section 23 within three days after the date on which the objection was allowed, or if so made, is refused in terms of paragraph (b)

of that subsection, the relevant registration card issued to the respondent shall cease to be valid, and whereupon the magistrate concerned shall forthwith transmit that registration card endorsed by him or her to the effect that it has ceased to be valid, to the Director.

(7) In subsection (1) and, in the case of subsection (2), in relation to the service of any notice referred to in that subsection, "magistrate" includes any member of a magistrate's staff authorized by him or her to act in his or her place.

23. (1) (a) The magistrate who under section 19(7) dismissed the appeal of an appellant or under section 22 allowed or dismissed an objection shall, at the request of the appellant, respondent or objector, as the case may be, made in writing, and subject to the provisions of paragraph (b), transmit a statement of the case to the registrar of the court for submission to a judge of that court in chambers.

Statement of case for decision by judge.

(b) The magistrate shall refuse a request made by the appellant, or if the respondent was present when the objection was allowed or the objector when the objection was dismissed, by the respondent or objector, as the case may be, unless it is received by the magistrate within three days after the date on which the appeal was dismissed or the objection was allowed or dismissed, as the case may be.

(2) The statement of the case shall include an indication of the magistrate's decision in the relevant appeal or objection, as the case may be, and shall be signed by the magistrate and by the appellant or the respondent or the objector, as the case may be.

(3) The judge to whom the statement of the case is submitted may, if the statement of the case appears to him or her to be defective, call for further information and may, in open court, confirm or set aside the decision of the magistrate.

(4) The said registrar shall forward two certified copies of the decision of the court to the magistrate who transmitted the statement of the case, and one copy to the Director.

(5) A decision of the court under subsection (3) setting aside the decision of the magistrate shall, for all purposes, where the magistrate had, by the decision so set aside, dismissed an appeal under section 19(7), be deemed to be a decision of the magistrate concerned allowing such appeal under that section.

24. (1) If an objection has been lodged in terms of section 22 against the inclusion of the name of a person on the relevant provisional voters' register, such person shall, unless the objection has been dismissed under that section, surrender his or her registration card to the magistrate to whom the objection was submitted or to any other magistrate or to any supervisor of registration or registration officer —

Cancellation of registration card invalidated by magistrate's allowing objection.

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

(b) if ordered to do so by the said magistrate.

(2) If such person fails to comply with an order made in terms of subsection (1)(b), the magistrate, any supervisor of registration, registration officer or police officer may without a warrant seize the registration card in question or cause it to be so seized.

(3) The magistrate, supervisor of registration, registration officer or police officer to whom the registration card is surrendered or who seizes it or causes it to be seized under this section shall forward the registration card without delay to the Director.

(4) The Director shall cancel every registration card which in terms of section 22 ceased to be valid if such registration card comes into his or her possession at any time, unless the magistrate's decision as a result of which such registration card ceased to be valid has been set aside under section 23.

(5) The provisions of this section shall apply *mutatis mutandis* in relation to any decision of a judge referred to in section 23 which is to the effect that the name of the person referred to in subsection (1) is to be removed from the relevant provisional voters' register as if it were a decision of the magistrate concerned in allowing the objection under section 22(4).

Replacement of registration card.

25. (1) The Director may, upon application by a person whose registration card has been lost, destroyed or has for any reason become illegible, issue to such person a duplicate registration card in the prescribed form, if he or she is reasonably satisfied —

(a) as to the identity of such person; and

(b) as to the facts and circumstances relating to its loss, destruction or its becoming illegible;

Provided that a duplicate registration card shall not be issued on any day determined as a polling day in respect of any election in question.

(2) If the application is made by reason of the illegibility of the registration card, the Director shall not consider it, unless the registration card is surrendered to him or her.

(3) If the Director decides to issue a duplicate registration card, he or she shall cancel any registration card surrendered to him or her in terms of subsection (2).

Preparation, certification and publication of voters' registers.

26. (1) As soon as practicable after the expiration of the period referred to in section 21(b) provided for the lodging of objections against the inclusion of the names of persons on the relevant provisional voters' register, the Director shall —

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

(i) in respect of any election referred to in paragraph (a) of section 13(1), a national voters' register; and

(ii) in respect of any election referred to in paragraph (b) of that section, a local authority voters' register,

in a manner *mutatis mutandis* in accordance with the provisions of section 21(a);

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

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(4) Upon the date of publication by the Commission of a notice referred to in paragraph (a) of subsection (3), every voters' list and every provisional voters' register shall cease to be of any force and effect, and thereupon the relevant voters' register shall be the voters' register for the respective constituencies or local authority areas or, where such constituencies or areas have been divided as contemplated in paragraph (b) of that subsection, for the respective polling districts or wards, as the case may be.

27. (1) The national voters' register and the local authority voters' register shall be kept for inspection by the public at the offices of the Commission.

Original voters' registers to be kept for inspection by public.

(2) Any person desiring to inspect or make copies or take extracts from any such register shall be entitled to do so during the normal office hours of the Commission.

28. (1) For the purposes of the inclusion in any voters' register under this Act of persons who qualify to be registered as voters and who have not or could not so have registered in the last general registration in respect of which that register was prepared, a supplementary registration may be determined in a manner contemplated in the proviso to subsection (1) of section 15, and thereupon the provisions of section 16 up to and including section 24 shall apply *mutatis mutandis* in relation to such registration, as if it were a general registration determined in respect of such persons.

Supplementary registration of voters.

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

29. When there has been a change in the place of residence or home, with reference to which a voter has been registered in any given constituency, local authority area, polling district or ward, as the case may be, and as a result thereof he or she is not entitled to the continuance of his or her registration in that constituency, local authority area, polling district or ward, as the case may be, such voter shall, for the purposes of section 32, as soon as is practicable after such a change notify the Director in respect thereof.

Removal of name from voters' registers due to change in residence.

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(2) If any appeal or objection has not been disposed of at the time of the certification referred to in subsection (1)(b) of this section, the Director shall, subject to the provisions of section 35(b) -

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

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

(3) The Director shall as soon as is practicable after the certification of the relevant voters' register forward a copy thereof to the Commission, whereupon the Commission shall -

(a) publish a notice in the *Gazette* to the effect that a relevant voters' register has been completed and certified, and specifying the places where copies thereof shall be kept for inspection by the public;

(b) cause to be transmitted to every registration officer -

(i) for a constituency or, where a constituency has been divided into polling districts, for a polling district, a copy of the relevant part of the national voters' register applicable to that constituency or polling district, as the case may be;

(ii) for a local authority area or, where such area has been divided into wards, for a ward, a copy of the relevant part of the local authority voters' register applicable to that area or ward, as the case may be,

to be kept in safe custody at any place in that constituency, polling district, area or ward as may be determined by the Commission.

Application for registration in another constituency, local authority area, polling district or ward.

30. (1) Every voter who, because of a change referred to in section 29, becomes entitled or qualified for registration in any other constituency, local authority area, polling district or ward, as the case may be, may at any time after he or she becomes so entitled or qualified, apply in the prescribed form to the Director for registration in that constituency, local authority area, polling district or ward.

(2) The provisions of sections 18(1) and 20(1) shall *mutatis mutandis* apply in respect of an application referred to in subsection (1).

Information on registered deaths to be furnished to Director.

31. Notwithstanding anything to the contrary contained in any law, any registrar of deaths or any other officer designated by him or her, shall not later than the fifteenth day of each month, transmit to the Director a return in which are furnished in respect of any person whose death during the preceding month was registered by or under any law governing the registration of deaths in Namibia, his or her last residential and postal address and such other particulars as may be determined by the Director after consultation with the said registrar or officer.

Amendment of voters' registers.

32. (1) The voters' registers prepared in terms of section 26 shall not be amended by the Director, except by –

- (a) adding the name, registration number and particulars of any person –
 - (i) whose inclusion in the relevant voters' register has been accepted by virtue of any supplementary registration at any time after the general registration in respect of which that register was prepared;
 - (ii) whose name was erroneously or contrary to the provisions of this Act omitted or removed from or refused to be included in the register in question; or
 - (iii) whose application for registration in terms of section 30 is accepted by the Director;
- (b) removing the name and particulars of any person –

- (i) who since his or her name was included in the register in question has died or has ceased to be entitled to registration as a voter in that

constituency, local authority area, polling district or ward, as the case may be; or

- (ii) whose name was erroneously or contrary to the provisions of this Act included in the register in question;

(c) transferring the name and particulars of any person whose name was erroneously or contrary to the provisions of this Act included in the register in question, under any particular constituency, local authority area, polling district or ward, to the appropriate constituency, local authority area, polling district or ward, as the case may be;

(d) correcting any error on the register in question in the name, registration number or particulars of a person, supplying any omission in such a name, number or particulars or recording any change in such name, number or particulars; or

(e) removing any superfluous entry in the register in question where the name of the same person appears more than once in that register; or

(f) preparing the register in question, where a constituency has been divided into polling districts in terms of section 12 or a local authority area has been divided into wards in terms of section 5 of the Local Authorities Act, 1992, in the manner referred to in section 26(1)(a), as the case may be.

(2) If under subsection (1) the Director removes from a register in question a name which is not the name of a fictitious or deceased person, he or she shall inform the person concerned by notice directed to the address of that person appearing in that register and state his or her reasons for such removal.

Return or surrender of registration cards.

33. When the name, registration number and particulars of any person –

- (a) are added to a relevant voters' register in terms of the provisions of paragraph (a)(ii) of section 32(1), the Director shall, if no registration card has been issued to such person, issue or cause to be issued a registration card to such person or, if a registration

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card has already been surrendered by such person, cause it to be returned to such person;

(b) are removed from a voters' register in question in terms of the provisions of paragraph (b) of that section, the Director shall request such person, if he or she is not a deceased person, by notice served upon such person, to surrender the registration card in question within a period determined by the Director and specified in such notice, to him or her or any supervisor of registration, registration officer or magistrate so specified;

(c) are transferred in terms of the provisions of paragraph (c) of that section, the Director shall request such person by notice served upon such person, to surrender his or her registration card within the period so determined by the Director and specified in such notice, to him or her, any supervisor of registration, registration officer or magistrate so specified, in order to correct or complete the particulars on such registration card in accordance with the provisions of that paragraph;

(d) are compiled for the purposes of preparing the register in question in a manner referred to in paragraph (f) of that section, the Director may by notice in the *Gazette* request persons affected thereby, to surrender their registration cards within a period specified in such notice and at such places and to such persons as may be so specified, in order to correct or complete any particulars on such registration card in accordance with the provisions of that section, or to issue a new registration card.

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

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

35. Notwithstanding anything to the contrary contained in this Part —

Closing of voters' registers.

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(a) from, and including the twentieth day after the date on which the proclamation referred to in section 50(1) in relation to an election referred to in that section is published in the *Gazette*, up to and including the second day following a polling day at such an election, no amendment whereby —

(i) the name and particulars of a person who has applied for registration in terms of section 30, is added; or

(ii) the name and particulars of a person referred to in section 29, is removed; and

(b) from the date on which the nomination of candidates shall be submitted in terms of the said section 50(1) up to and including the second day following a polling day of such election, no amendment of any nature, except the rectification of an error or omission as contemplated in section 36,

shall be effected in the voters' register in question.

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

Voters' registers not invalidated by reason of errors.

37. (1) If by reason of any new determination or division of constituencies, polling districts or wards in terms of this Act or any other law any portion of a constituency, polling district or ward as existing before the determination or division, is allocated to another constituency, polling district or ward, respectively, the Director shall prepare from the current voters' register in question which were prepared on the basis of the last previous determination or division, as amended from time to time in terms of the provisions of this Act, a voters' register of the altered constituencies, polling districts or wards, as the case may be.

Adjustment of voters' registration on alteration of constituencies, polling districts or wards.

(2) The relevant voters' register prepared under subsection (1) shall come into operation on the date on which the alteration of the constituencies, polling districts or wards, as the case may be, comes into operation at the next

general election in respect of which the current voters' register in question was prepared.

(3) The voters' register prepared on the basis of the last previous determination or division referred to in subsection (1), shall be retained and shall be the relevant voters' register to be used at any by-election in question until the alteration of the constituencies, polling districts or wards, as the case may be, comes into operation at the next general election in question.

Powers of Director to demand particulars.

38. The Director may by notice in writing at any time require any person, whether he or she is registered or not, to furnish, in the manner and within the period specified in the notice such particulars as the Director may demand in the notice and which are relevant to the registration or continued registration of such person or any other person.

PART IV REGISTRATION OF POLITICAL PARTIES

Registration as political party.

39. (1) The Commission shall on the written application in the prescribed form of a political party, direct the Director to register it as a political party, if –

(a) the Commission is satisfied –

- (i) that it is the principal object of that political party to participate in and promote elections under this Act, including –
 - (aa) the nomination of persons as candidates for any such elections in accordance with the provisions of this Act;
 - (bb) the canvassing for votes for a candidate at any such elections;
 - (cc) the devotion of any of its funds or any part thereof to the election expenses of any candidate or the funds of any other political party taking part in any such elections;

(ii) that any object of that political party is not prejudicial to the safety of the State, the public welfare or the peace and good order; and

(iii) that membership of that political party is not excluded or restricted on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status; and

(b) the application is accompanied by –

(i) the amount for registration as may be prescribed;

(ii) the constitution of that political party; and

(iii) a declaration signed by at least 500 members of the political party in question whose names appear on the national voters' register to the effect that these voters support the registration of that political party, and which shall comply with the provisions of subsection (4).

(2) For the purposes of the provisions of subsection (1)(b)(iii) of this section, if a political party applies for registration as a political party before the voters' registers, which are to be prepared under section 26 after the first general registration referred to in section 15, have come into operation, it shall be deemed to be sufficient compliance with the provisions of that subsection if the declaration referred to therein contains the registration numbers of, and has been signed by, at least 500 members to whom a registration card was issued in terms of section 20 for inclusion in the provisional national voters' register, for use in connection with the first election of members of regional councils after the commencement of this Act and by-elections for such councils to be held after that first election but prior to any general election under this Act.

(3) The application form referred to in subsection (1) shall, in addition to the other particulars, referred to in subsection (1), contain –

(a) the name of the political party;

- (b) the abbreviated name, of the political party which may, for the purposes of any election in terms of this Act appear on the ballot paper for that election if the political party desires an abbreviation of its name to so appear;
- (c) the full names and the signature of the person who for the purposes of this Act is the authorized representative of the political party;
- (d) a complete list of the names and addresses of its other office-bearers;
- (e) the business address and postal address in Namibia of the office which for the purposes of this Act is the office of the authorized representative of the political party;
- (f) the distinctive symbol of the political party which may appear on the ballot paper referred to in paragraph (b), if the political party desires such symbol to so appear.
- (4) The declaration referred to in subsection (1)(b)(iii) shall contain –
- (a) the full names and registration numbers of the persons who have signed the declaration; and
- (b) the names or numbers, as the case may be, of the regions and constituencies in respect of which such signatories are registered.
- (5) If a change occurs in relation to the name, abbreviated name, distinctive symbol, the authorized representative or the business or postal address of the office of the authorized representative of any political party, the political party concerned shall notify the Commission in writing of such change within 30 days after the date on which the change has occurred and, in the case of a change of the name or abbreviated name of the political party, transmit the political party's registration certificate together with such notification.
- (6) (a) After the Commission has directed the Director to register a political party in accordance with the provisions of subsection (1), the Director shall

issue to such political party a registration certificate in the prescribed form.

- (b) If, on the receipt of a notification of change contemplated in subsection (5), the Commission is satisfied that the said change will not result in the name or distinctive symbol or abbreviated name of a political party being changed into a name or abbreviated name or distinctive symbol on account whereof the registration of the political party, by virtue of the provisions of section 42, would have been prohibited or bring about any other circumstance on account of which the registration of the political party could originally have been refused, it shall direct the Director to effect the change in respect of the registration of the political party and –
- (i) in the case of a change of the name or abbreviated name of the political party, to issue an amended registration certificate to that political party; or
- (ii) in the case of any change other than that referred to in subparagraph (i), to issue to that political party a written confirmation that the change in respect of its registration has been effected.
- (7) Any person who makes a false statement or furnishes false particulars in an application in terms of this section for the registration of a political party as a political party, knowing such statement or particulars to be false, shall be guilty of an offence and on conviction be liable to the penalties prescribed by law for the crime of perjury.
40. The Commission shall not direct the Director to register a political party as a political party, if the name, abbreviated name or distinctive symbol of the political party –
- (a) is identical to the name, abbreviated name or distinctive symbol under which any other political party has already been registered as a political party, or so closely resembles it that voters may be misled or confused thereby; or

Prohibition of registration as political party in certain circumstances.

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(b) is indecent or obscene or offensive or harmful to public morals.

41. The Commission shall direct the Director to cancel the registration of a political party as a political party –

- (a) if it is notified in a letter signed by any authorized representative referred to in subsection (3)(c) of section 39, of the party in question of a resolution taken by that party in congress that that party has been dissolved or is going to be dissolved on a date which shall be specified in such letter, or
- (b) if it is proved to the satisfaction of the Commission that any political party has at any time after its registration failed to comply with any provision of subsection (1)(a) of that section or section 43 or the guidelines issued thereunder.

42. (1) The Commission shall on the written application in the prescribed form of any association or organization, incorporated or unincorporated, which does not comply with the provisions of subsection (1)(a)(i) of section 39 for registration as a political party, and which desires to participate in any election for members of a local authority council, register it for that purpose in respect of that council, if –

- (a) the Commission is satisfied that it complies *mutatis mutandis* with the provisions of subsections (1)(a)(ii) and (iii) and (3) of the said section 39 and section 40;
- (b) the application is accompanied by –
 - (i) the amount for registration as may be prescribed;
 - (ii) the constitution of that association or organization; and
 - (iii) a declaration signed by at least 250 members of the association or organization in question whose names appear on the local authority voters' register, in respect of the local authority area in question, to the effect that such voters support the registration of the

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association or organization for that purpose, and which shall comply *mutatis mutandis* with the provisions of subsection (4) of the said section 39 and, in relation to such voters, with the provisions of subsection (2) of that section in which last-mentioned case any reference in that subsection –

- (aa) to the provisional national voters' register or regional councils shall be deemed to be a reference to the provisional local authority voters' register or local authority councils, respectively; and
- (bb) to any by-elections shall be deemed to be deleted.

(2) For the purposes of this Part, the provisions of sections 39(5), (6) and (7), 41, 43, 44, 45 and 46 shall apply *mutatis mutandis* in relation to any association or organization registered as such in terms of this section.

43. (1) No political party shall conduct its political activities on the grounds of race, colour or ethnic origin.

(2) The Commission may by notice in the *Gazette*, and not inconsistent with the provisions of this Act or the Namibian Constitution, issue guidelines for the conduct of political activities by political parties in respect of any election under this Act.

44. A copy of each document which has been handed in at the Commission for the purposes of the registration of a political party, shall be kept at the office of the Commission for inspection by the public and any person wishing to inspect such document may do so during office hours without payment.

45. (1) Any political party which is aggrieved by a decision of the Commission in connection with its application for registration, or its cancellation under the provisions of section 41(b) as a political party, may within 30 days after the political party has been notified of the said decision, appeal against that decision by way of application on notice of motion to the court.

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Cancellation of registration as political party.

Registration of association or organisation for elections of local authority councils.

Conduct of political parties.

Inspection of documents.

Appeal against decision of Commission.

(2) The court shall enquire into and consider the matter and may confirm or set aside the decision of the Commission, and may make such order as to costs as it may deem fit.

(3) Any judgment given or order made by the court in terms of subsection (2), shall be subject to appeal to the Supreme Court of Namibia on the same conditions as if it were a judgment given or order made in a civil proceeding in the court.

Disclosure of foreign
financing of political
parties.

46. (1) No political party or other body or institution or any member of such party, body or institution and no other person shall from outside Namibia receive within Namibia, or bring or cause to be brought into Namibia, any money or anything which can be cashed or converted into money, which on the ground of a donation or on any other ground, is intended to be used, or in the discretion of such political party, body, institution, member or other person may be used, to further the interest of any political party or the candidature of himself or herself or any other person who has been nominated or may be nominated as a candidate for any election under this Act, or to canvass or combat any aim or principle of a political party, unless such money is disclosed to the public within such period after having received it and in such manner and subject to such conditions as may be prescribed.

(2) If any political party, body, institution, member or other person uses any money referred to in subsection (1) in contravention of the provisions of that subsection or fails to comply with any requirements or conditions in terms of that subsection, the provisions of section 41(b) shall *mutatis mutandis* apply in relation to the political party in question, unless it is proved to the satisfaction of the Commission that the money was so used by such body, institution, member or other person without the knowledge, sanction or connivance of that political party.

47. For the purposes of the first National Assembly referred to in Article 133 of the Namibian Constitution, the provisions of this Part shall not have any effect in relation to any political party in respect of which seats were allocated in that Assembly as applied by that Article.

Certain political parties
not affected by this Part
for purposes of first
National Assembly.

PART V CONDUCT OF ELECTIONS

Preliminary arrangements

Publication of proclama-
tions.

48. When by or under any provision of this Part any proclamation may be or is required to be published, it may be or it shall be required to be published in the *Gazette* by the President or any person filling the vacancy of the President under any provision of the Namibian Constitution.

General elections and by-
elections.

49. (1) A general election shall take place –

(a) for the election of the President –

(i) on a date not later than the date on which his or her term of office expires by effluxion of time as contemplated in Article 29(1)(a) of the Namibian Constitution; or

(ii) in the event of the dissolution of the National Assembly as contemplated in Article 29(1)(b) read with Article 57(2) of the said Constitution, on a date within the period required by the said Article 57(2) that a national election as contemplated in that Article shall take place;

(b) for the election of members of the National Assembly –

(i) on a date not later than the date on which its term expires by effluxion of time as contemplated in Article 50 of the Namibian Constitution; or

(ii) in the event of the dissolution of the National Assembly as contemplated in Article 57(2) read with the said Article 50 of the said Constitution, on a date within the period required by the said Article 57(2) that a national election as contemplated in that Article shall take place;

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(iii) in any local authority council and any vacancy which so occurred is, by virtue of the provisions of section 13(3) of the Local Authorities Act, 1992, required to be filled by election, a by-election shall take place in the ward in respect of which the vacancy in that council occurred, on a date determined in accordance with the provisions of that section.

(b) When any vacancy in the office of President has occurred, the Commission shall, upon being satisfied of the fact of such vacancy, forthwith give notice in the *Gazette* that a vacancy in the office of President has occurred, the date on which it occurred and the cause thereof.

(3) Any –

(a) first election of members of a local authority council for a local authority area established under section 3(1) of the Local Authorities Act, 1992;

(b) election of members of a local authority council dissolved in terms of the provisions of section 92(2)(a) of the said Local Authorities Act, 1992,

which is to take place before the date on which any general election of members of local authority councils is to be held as contemplated in section 8 of the said Local Authorities Act, 1992, shall, for all purposes, but without derogating from the provisions of that section, be deemed to be a general election for the local authority area in question on a date determined in accordance with the provisions of section 3(4)(d) or 92(2)(b) of the said Local Authorities Act, 1992, as the case may be, in respect of that area or, where that area has been divided into wards, in respect of every ward in that area.

50. (1) When a general election or by-election is to take place in accordance with the provisions of section 49, the President shall by proclamation in the *Gazette* make known –

(a) in the case of any such election –

(i) for the President or members of the National Assembly, in respect of Namibia;

Determination of days for submission of nominations of candidates and polling days for elections.

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(c) for the election of members of regional councils –

(i) in the case of an election for the first regional councils, on a date fixed in accordance with the provisions of Article 137(6) of the Namibian Constitution; or

(ii) in the case of any subsequent election for such members on a date determined in accordance with the provisions of section 7 of the Regional Councils Act, 1992;

(d) for the election of members of local authority councils –

(i) in the case of an election for the first local authority councils, on a date fixed in accordance with the provisions of Article 137(5) of the Namibian Constitution; or

(ii) in the case of any subsequent election for such members, on any date determined in accordance with the provisions of section 8(1) of the Local Authorities Act, 1992.

(2) (a) When a casual vacancy occurs –

(i) in the office of the President and any vacancy which so occurred is, by virtue of the provisions of Article 29(4) of the Namibian Constitution required to be filled by election, a by-election shall take place on a date determined within the period referred to in that Article;

(ii) in any regional council and any vacancy which so occurred is, by virtue of the provisions of section 10(3) of the Regional Councils Act, 1992, required to be filled by election, a by-election shall take place in the constituency in respect of which the vacancy in that council occurred, on a date determined in accordance with the provisions of that section within the period referred to in that section;

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(ii) for any member of any regional council, in respect of each constituency in which such an election is to take place;

(iii) for any member of any local authority council, in respect of the local authority area or, where such an area is divided into wards, for the ward in which such an election is to take place;

a date determined by him or her upon which the submission of nominations of candidates shall take place and the place at which it shall so take place;

(b) subject to the provisions of subsection (5), any day, determined by him or her upon which a poll shall be taken at such election, and stating the hours at which, subject to the provisions of section 77, the poll will commence and will close; and

(c) the name or office of the person appointed in terms of section 51 as returning officer at such election, and if the nomination of candidates shall be submitted under this Act to any person or body other than the returning officer so referred to, then also the name or office of that person or body, as the case may be.

(2) Any day determined under subsection (1)(a) shall be any day not less than 15 days and not more than 20 days after the day on which the proclamation referred to in subsection (1) is published in the *Gazette*.

(3) Any day determined under subsection (1)(b) shall be any day not less than 20 days and not more than 30 days after the nomination day.

(4) An election shall be deemed to commence on the day on which the proclamation referred to in subsection (1) is published in the *Gazette* in relation to that election.

(5) For the purposes of this Act, any day determined for any election referred to in section 49(1)(c) and (d), (2)(a)(ii) and (iii) and (3), as the case may be, shall be deemed to be the polling day determined for such an election under the provisions of subsection (1)(b) of this section.

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Appointment of returning officers and other election officers.

51. (1) The Commission shall appoint –

(a) in the case of any election –

(i) for the President or members of the National Assembly or any member of a regional council, for a constituency;

(ii) for any member of a local authority council, for a local authority area or, where such area is divided into wards, for a ward,

a returning officer who shall, subject to the direction and supervision of the Director, have such powers, duties and functions as may be conferred or imposed upon him or her by this Act;

(b) as counting officers such number of persons as it may deem necessary for the purpose of assisting any person who in terms of this Act is charged with the determination of the result of the poll in any such election;

(c) a presiding officer –

(i) for each polling district in a constituency; or

(ii) for each ward in a local authority area,

who shall be in control of a polling station in that polling district or ward, as the case may be;

(d) as many polling officers as may be necessary to facilitate the taking of the poll at that polling station:

Provided that the same person may be appointed returning officer for a constituency referred to in paragraph (a)(i) and an area or ward referred to in paragraph (a)(ii), as may be practicable under the circumstances.

(2) For the purposes of –

(a) any election of members of the first regional councils and first local authority councils by virtue of the provisions of Article 137(5) and (6) of the Namibian Constitution; and

(b) any by-election, in the case of a regional council, before the first general election following the election of members of the first regional councils referred to in paragraph (a) of this subsection;

(c) any election of members of a local authority council as contemplated in subsection (3) of section 49, before the first general election following the election of members of the first local authority councils referred to in paragraph (a) of this subsection,

any reference in paragraph (c) of subsection (1) of this section, to a polling district or a ward, as the case may be, shall be deemed to be a reference to any polling station in a constituency or local authority area, as the circumstances may require.

(3) (a) Any person appointed under subsection (1) shall be entitled to remuneration or allowances or both remuneration and allowances, under such circumstances or on such basis or in respect of such services rendered by him or her and at such tariffs, as may from time to time be determined by the Commission, in consultation with the Permanent Secretary of the ministry referred to in section 11.

(b) Different circumstances, bases, services or tariffs may be determined under paragraph (a) in respect of the different offices provided for in subsection (1), or in respect of persons appointed to such offices who are in the full-time service of the State and persons so appointed who are not in the full-time service of the State, or in respect of work done under different circumstances or in different areas.

(4) The Commission may delegate any power conferred upon it by subsection (1) to the Director who may, to the extent determined by the Commission, authorize any returning officer or presiding officer concerned to exercise any power so delegated to him or her under paragraph (b), (c) or (d) of that subsection, as the case may be.

(5) Any appointment made under subsection (1) may at any time be withdrawn by the authority who made the appointment in question.

(6) The Commission shall as soon as is practicable after an appointment has been made under the provisions of subsection (1), give or cause to be given public notice of the name and official address of a person so appointed.

52. (1) A political party or, in the case where the nomination of an independent candidate is permitted in terms of the provisions of this Act, such candidate, may appoint such number of persons as may be prescribed, as election agents for a polling station at an election in question and shall furnish, not later than seven days after the nomination day for that election, the returning officer concerned, in writing, of the name and address of such election agent and the polling station to which such election agent is appointed.

(2) As soon as is practicable after the expiration of the period referred to in subsection (1), the returning officer concerned shall give public notice of the name and address of every election agent furnished to him or her in terms of that subsection and the polling station in respect of which such election agent is appointed.

(3) An election agent for a polling station shall be entitled to attend at that polling station as the representative and observer of the political party or such candidate by whom he or she was appointed as such agent.

(4) (a) A political party or such candidate may at any time revoke the appointment of any election agent.

(b) When the appointment of an election agent has been revoked under the provisions of paragraph (a) or, if any election agent dies or becomes incapacitated, the political party or such candidate shall inform the returning officer concerned in writing of such revocation, death or incapacity, and such political party or candidate may appoint any other person as election agent in his or her place and shall forthwith notify in writing the returning officer concerned of the name and address of such person so appointed who shall, in so far as is practicable, give likewise public notice of such name and address of such election agent.

(5) A political party or such candidate shall be entitled to be represented at any place where the determination of the result of the poll for an election occurs, as hereinafter

Agents of political parties
and candidates.

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provided, by such number of persons as may be prescribed, appointed by such political party or candidate not later than seven days before the election in question, as counting agents.

(6) A political party or such candidate shall not later than three days before the election in question furnish the returning officer concerned in writing of the names and addresses of such counting agents who shall give public notice thereof in accordance with the provisions of subsection (2).

(7) When any officer is in terms of this Act required to seal any thing in an election, any election agent or counting agent who is entitled to be present, and is present, shall be entitled to place the seal of the political party or candidate which appointed him or her, on that thing, and before any thing which has been sealed may be opened, any such agent shall be entitled to inspect such seals.

Declaration of secrecy.

53. Every returning officer, presiding officer, polling officer or counting officer and every agent appointed under section 52, shall make in a form prescribed by the Director, and before assuming his or her duties or performing any function or attending at any polling station or, attending at the place where the result of an election is determined as hereinafter provided, a declaration of secrecy by affirmation or on an oath before a justice of the peace or a commissioner of oaths or, if he or she is not a returning officer, before a presiding officer who is hereby authorized to take any affirmation or administer any oath which is to be made under this Act.

Nomination of candidates for presidential elections

54. A person shall not be nominated as a candidate for any election to the office of President, unless he or she —

- (a) qualifies to be elected as President by virtue of the provisions of Article 28(3) of the Namibian Constitution;
- (b) is a registered voter under the provisions of this Act; and
- (c) is nominated, in a manner as hereinafter provided, either —

Requirements for nomination as candidate for presidential elections.

- (i) as a representative of a political party, by such political party; or
- (ii) as an independent candidate whose nomination is supported by at least 300 registered voters, from each of at least ten regions in Namibia.

Submission of nomination as candidate for presidential elections.

55. (1) Upon the nomination day and at the place and time determined in respect of the election in question, the Chief Justice shall hold a public sitting for the submission of nominations of candidates for that election: Provided that a nomination may be submitted to the Chief Justice at any time after the publication of the appropriate proclamation in terms of section 50(1)(a) and before the close of the sitting under section 56.

(2) No candidate for the election of President shall be regarded as having been duly nominated, unless —

- (a) his or her nomination is made in the prescribed form and —
 - (i) in the case of a candidate nominated by a political party, duly signed by the authorized representative of the political party mentioned in paragraph (c) of section 39(3) or any other office-bearer of such political party mentioned in paragraph (d) of that section authorized thereto in writing by the said authorized representative; or
 - (ii) in the case of an independent candidate, duly signed by any two persons whose names appear on the list referred to in paragraph (d)(ii) of this subsection; and
- (b) he or she consents to the nomination by any instrument in writing before the close of the sitting; and
- (c) in the case of a nomination by a political party, such nomination is accompanied by —
 - (i) a copy of the registration certificate of the political party in question issued under section 39(6), and certified as such by a

justice of the peace or a commissioner of oaths; and

- (ii) a receipt that an amount of R10 000 has been deposited with the State Revenue Fund, by or on behalf of the political party in question; or
- (d) in the case of a nomination as an independent candidate –
 - (i) such nomination is accompanied by a receipt that an amount of R5 000 has been deposited with the State Revenue Fund, by or on behalf of such candidate; and
 - (ii) there is submitted to the Chief Justice a list, not later than four o'clock in the afternoon of the second day before the nomination day, containing the names, registration numbers and residential addresses of, and signed by, the persons supporting the nomination of such candidate referred to in paragraph (c)(ii) of section 54, and none of whom has already signed in support of any other candidate in respect of the election in question.

- (3) (a) The amount deposited by or on behalf of a political party or candidate, as the case may be, shall be forfeited to the State if the candidate concerned recorded in the election less than ten per cent of the total number of votes cast for all the candidates at that election: Provided that no such forfeiture shall follow if at such election no candidate recorded the requisite majority of votes cast as contemplated in Article 28(2)(b) of the Namibian Constitution.

- (b) Subject to the provisions of paragraph (a) the amount deposited by or on behalf of a political party or candidate, as the case may be, shall, as soon as practicable after the poll in the election has been taken, be returned to the depositor.

- (c) If the nomination as candidate is rejected in terms of section 57(4) or withdrawn in accordance with the provisions of subsection (4) of this section, the amount deposited by or on behalf of the political party or the person nominated as candidate shall,

as soon as is practicable after the provisions of section 58(3) have been complied with, be returned to the depositor.

- (4) At any time before the close of the sitting determined for the submission of nominations under section 56 –

- (a) the nomination of a candidate may be withdrawn by the political party which submitted that nomination; or
- (b) the consent to nomination may be withdrawn by a candidate concerned,

by submitting to the Chief Justice any instrument in writing containing such withdrawal, and thereupon such nomination shall lapse.

56. A sitting for the submission of the nomination of candidates referred to in section 55(1), shall be from 9h00 until 11h00: Provided that if at such last-mentioned hour any person present is then ready to submit the nomination of a candidate or a person has so submitted the nomination but it has not been completed, the Chief Justice shall continue the sitting for such period as will enable such candidate to be duly nominated.

Duration of session on nomination day.

57. (1) If after examining every nomination as a candidate submitted in terms of section 55, the Chief Justice is satisfied that the provisions of section 54 have been complied with, he or she shall declare, as soon as is practicable after the close of the sitting, the candidate concerned to be duly nominated in terms of the provisions of this Act for that election, and thereupon the candidate concerned shall be notified by any instrument in writing of such declaration.

Declaration of candidates duly nominated for election as President.

- (2) As soon as is practicable after the declaration of candidates referred to in subsection (1), the Chief Justice shall notify the Commission by any instrument in writing of –

- (a) the full names, registration number and residential address of each candidate declared to be duly nominated; and
- (b) the name of the political party which has nominated the candidate, or an indication

“independent”, if a candidate has been so nominated.

(3) After receipt of a notification referred to in subsection (2), the Commission shall by notice in the *Gazette*, make known –

- (a) the full names, registration number and residential address of each candidate referred to in that subsection and the political party or indication “independent” so referred to;
- (b) any polling day of the election in question;
- (c) the prescribed hours for the commencement and close of the poll; and
- (d) the allocation of every polling station –

(i) in the case of any election for the President before any constituencies are divided into polling districts in terms of section 12, in a constituency; or

(ii) in the case of any other election for the President, in a polling district.

(4) When the Chief Justice rejects a nomination as a candidate for the election in question, he or she shall forthwith by any instrument in writing, notify the candidate of his or her rejection as a candidate and the grounds upon which the rejection have been made, and shall afford the political party or the persons by whom the nomination in question were submitted, an opportunity, at any time before the close of the sitting, to rectify the nomination or to nominate any other qualified person as candidate for that election.

Lack of nomination or death of candidate after nomination.

58. (1) If no candidate is declared duly nominated in terms of section 57, the Commission shall immediately terminate the election, and all proceedings relating to the said election shall be commenced afresh in the same manner as if a vacancy had occurred in the office of President.

(2) If a duly nominated candidate for the election of President dies before the poll for that election has commenced or while the poll for that election is taking place, the Commission shall immediately terminate the

election, and all proceedings relating to the said election shall be commenced afresh in the same manner as if a vacancy had occurred in the office of President: Provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.

Nomination of candidates for National Assembly elections

Submission of party lists.

59. (1) A political party shall take part in the election for members of the National Assembly by submitting to the Commission a list of candidates in writing at any time after the publication in the *Gazette* of the appropriate proclamation referred to in section 50(1)(a), but not later than 11h00 on the day determined in accordance with the provisions of that section, and which shall contain the names and residential addresses of at least 24 but not more than 72 candidates nominated with a view to the filling of any seats in the National Assembly to which that political party may become entitled in accordance with the provisions of Schedule 4 to the Namibian Constitution, and shall further comply with the provisions of subsections (2), (3), (4), (5) and (6) of this section.

(2) (a) The names on a list of candidates shall appear in such order as the registered party may determine with a view to the provisions of paragraph (4) of the said Schedule 4 to the Namibian Constitution.

(b) The registration number of each candidate shall be stated on the list after his or her name.

(3) A person shall not be nominated as a candidate on a list of candidates, unless he or she –

(a) qualifies to be elected as a member of the National Assembly by virtue of the provisions of the Article 46(1)(a) of the Namibian Constitution;

(b) is a registered voter under the provisions of this Act; and

(c) is a member of the political party submitting the list of candidates in question.

(4) A list of candidates shall be accompanied by –

(a) a declaration by the authorized representative of the political party referred to in section 39(3)(c), that each person whose name appears on the said list of candidates has consented to his or her nomination as a candidate of that political party and that every such person complies with the provisions of subsection (3) of this section; and

(b) a copy of the registration certificate of the political party in question issued under section 39(6), and certified as such by a justice of the peace or a commissioner of oaths.

(5) Any person whose name appears on more than one list of candidates shall be deemed not to be nominated as a candidate for any political party which submitted the list in question.

(6) A copy of each list of candidates shall be kept for inspection by the public at the offices of the Commission, and at such places in any constituency as the Commission may deem necessary.

60. (1) The Commission shall as soon as is practicable after the provisions of section 59 have been complied with, publish a notice in the *Gazette* –

Publication of party lists.

(a) stating, in alphabetical order, the names of all the political parties;

(b) setting out the list of candidates of each such political party for the election in question, as drawn up by the registered party in terms of the provisions of section 59 and declaring that the persons whose names appear on the list have been duly nominated as the candidates of the political party in question for that election.

(2) If –

(a) any person whose name appears on a list of candidates in a notice published in terms of subsection (1), dies or is found not to qualify in terms of the provisions of section 59(3) to be a member of the National Assembly; or

(b) the candidature of such person is withdrawn by him or her or by the political party which submitted

that list of candidates by submitting to the Commission in any instrument in writing such withdrawal,

at any time before any polling day in the election in question, the Commission shall amend such notice by further notice in the *Gazette* by the deletion from that list of the name and registration number of such person and by the addition or insertion, as may be required by the political party in question on that list of the name and registration number of any person who so qualifies and has been nominated in writing by the political party whose list of candidates it is and consented to his or her nomination in writing.

(3) A person whose name has in terms of a notice under subsection (2) –

(a) been deleted from the list of candidates of a political party, shall cease to be a candidate for that election;

(b) been added or inserted, as the case may be, to the list of candidates of a political party, shall thereby become a candidate for such political party for that election.

(4) Any reference in this Act to a notice published in terms of subsection (1), shall, in relation to such a notice which has been amended under subsection (2), be construed as a reference to such notice as so amended.

(5) A notice published under section (1) shall, on the mere production of a copy of the *Gazette* in which it is published, and in the absence of proof to the contrary, be conclusive evidence that the requirements of this Act relating to the submission of lists of candidates by political parties and to matters precedent or incidental thereto have been complied with in respect of any political party whose name is set out therein, and that any candidates on that list of candidates are the candidates nominated in respect of that political party, but subject to the provisions of paragraph (4) of Schedule 4 to the Namibian Constitution.

Nomination of candidates for regional council elections

Requirements for nomination as candidate for regional council elections.

61. (1) A person shall not be nominated as a candidate for election as a member of a regional council, unless he or she –

(a) qualifies to be a member of a regional council as contemplated in section 6 of the Regional Councils Act, 1992;

(b) is nominated, in a manner as hereinafter provided, either –

(i) as a member of a political party, by that political party; or

(ii) as an independent candidate whose nomination is supported by at least 100 registered voters in the constituency for which such nomination is intended.

(2) No person shall at a general election or, where more than one by-election for members of regional councils take place on the same day, be nominated as a candidate in more than one constituency.

(3) In the application of the provisions of subsection (1) in relation to any reference to a person who is a registered voter or is registered as a voter, as the case may be, it shall be deemed to be sufficient compliance with the provisions of that subsection if, for the purposes of the election of members of the first regional councils to be held after the commencement of this Act, the nomination or list referred to therein contains the registration number of, and has been signed by, such person to whom a registration card in terms of section 20 was issued for inclusion on the provisional national voters' register, for use in connection with those elections before the voters' registers, which are to be prepared under section 26 after the first general registration referred to in section 15, have come into operation.

Submission of nomination as candidate for regional council elections.

62. (1) Upon the nomination day and at the place and time determined in respect of any constituency, the returning officer for the constituency shall hold a public sitting for the submission of the nomination of candidates for that constituency. Provided that a nomination may be submitted to the returning officer at any time after the publication of

the appropriate proclamation in terms of section 50(1)(a) and before the close of the sitting under section 63.

(2) No candidate for an election as a member of a regional council shall be regarded as having been duly nominated, unless –

(a) his or her nomination is made in the prescribed form and –

(i) in the case of a candidate nominated by a political party, duly signed by the authorized representative of the political party mentioned in paragraph (c) of section 39(3) or any other office-bearer of such political party mentioned in paragraph (d) of that section authorized thereto in writing by the said authorized representative; or

(ii) in the case of an independent candidate, duly signed by any two persons whose names appear on the list referred to in paragraph (e) of this subsection; and

(b) he or she consents to the nomination by any instrument in writing before the close of the sitting; and

(c) such nomination is accompanied by a receipt that an amount of R1 000 has been deposited with the State Revenue Fund, by or on behalf of such political party or candidate; and

(d) in the case of a nomination by a political party, such nomination is accompanied by a copy of the registration certificate issued under section 39(6), and certified as such by a justice of the peace or a commissioner of oaths; or

(e) in the case of a nomination as an independent candidate, there is submitted a list to the returning officer concerned, not later than four o'clock in the afternoon of the second day before the nomination day, containing the names, registration numbers and residential addresses of, and signed by, the persons supporting the nomination of such candidate referred to in paragraph (b)(ii) of section 61(1), and none of whom has already signed in

support of any other candidate in respect of the election in question.

- (3) (a) The amount deposited by or on behalf of a political party or candidate, as the case may be, shall be forfeited to the state if the candidate concerned recorded in the constituency less than ten per cent of the total number of votes cast for all the candidates in that constituency.
- (b) Subject to the provisions of paragraph (a), the amount deposited by or on behalf of a political party or candidate, as the case may be, shall, as soon as is practicable after the poll in the constituency has been taken, be returned to the depositor.
- (c) If the nomination as candidate is rejected in terms of section 64(7) or withdrawn in accordance with the provisions of subsection (4) of this section or a candidate is declared duly elected in terms of the provisions of section 64(2), the amount deposited by or on behalf of the political party or the person nominated as candidate shall as soon as is practicable after the provisions of section 64(5) have been complied with, as the case may be, be returned to the depositor.

(4) At any time before the close of the sitting determined for the submission of nominations under section 63 —

- (a) the nomination of a candidate may be withdrawn by the political party which submitted that nomination; or
- (b) the consent to nomination may be withdrawn by the candidate concerned,

by submitting to the returning officer concerned any instrument in writing containing such withdrawal, and thereupon such nomination shall lapse.

63. A session for the submission of the nomination of candidates referred to in section 62(1), shall be from 9h00 until 11h00: Provided that if at such last-mentioned hour any person present is then ready to submit the nomination of a candidate or a person has so submitted the nomination but it

Duration of session on nomination day.

has not been completed, the returning officer for the constituency shall continue the sitting for such period as will enable such candidate to be duly nominated.

Declaration of candidates duly nominated for election as members of regional councils.

64. (1) If, after examining every nomination as a candidate submitted in terms of section 62 the returning officer for the constituency is satisfied that the provisions of section 61 have been complied with, he or she shall declare, as soon as is practicable after the close of the sitting, a candidate concerned to be duly nominated in terms of the provisions of this Act for that constituency, and thereupon the candidate concerned shall be notified by any instrument in writing of such declaration.

(2) (a) If at the close of the sitting for the submission of nominations only one person has been duly nominated in respect of a constituency, the returning officer shall forthwith declare him or her to be the duly elected member of the regional council for the constituency in question with effect, in the case of any general election, from any polling day determined in respect of the election in question, or, in the case of a by-election, from the date on which the declaration is made, as the case may be.

(b) The returning officer shall immediately, by any instrument in writing, notify the Commission of such declaration.

(3) If at the close of the sitting for the submission of nominations more than one person has been nominated in respect of a constituency, a poll shall take place in accordance with the provisions of this Act.

(4) When in respect of a constituency more than one person has been declared duly nominated as a candidate, the returning officer for that constituency shall notify the Commission by any instrument in writing of —

(a) the full names, registration number and residential address of each candidate declared to be duly nominated in respect of the constituency in question; and

(b) the name of the political party which has nominated the candidate, or an indication “independent” if a candidate has been so nominated.

(5) After receipt of a notification referred to in subsection (2)(b) or a notification referred to in subsection (4) in respect of a region, the Commission shall, as the case may be, by notice in the *Gazette*, make known –

- (a) the full names, registration number and residential address of each person who, under subsection (2)(a), has been declared as duly elected member of the regional council in question, and the name or number of the constituency in respect of which he or she has been so declared;
- (b) (i) the full names, registration number and residential address of each candidate referred to in the said subsection (4) and the political party or indication "independent" so referred to therein;
- (ii) the constituency in respect of which such candidates are nominated;
- (iii) any polling day for the election in question;
- (iv) the prescribed hours for the commencement and close of the poll; and
- (v) the allocation of every polling station in a constituency or, where a constituency is divided into polling districts in terms of section 12, in a polling district.

(6) The Commission shall also cause to be displayed the notification referred to in subsection (5) at such places in a constituency as it may deem necessary.

(7) When the returning officer for a constituency rejects a nomination as a candidate for the election of any member of a regional council, he or she shall forthwith by any instrument in writing notify the candidate of his or her rejection as a candidate and the grounds upon which the rejection have been made, and shall afford the political party or the persons by whom such nomination were submitted an opportunity, at any time before the close of the sitting, to rectify the nomination or, to duly nominate any other qualified person as candidate for that constituency.

65. (1) If any duly nominated candidate at an election for a member of a regional council in any constituency dies before the poll has commenced, the President shall, upon being satisfied of the fact of the death, withdraw so far as it concerns that constituency, the proclamation determining any polling day which in terms of the provisions of subsection (1)(c) or (2)(a)(ii) of section 49, as applied by the provisions of subsection (5) of section 50, has been published in the *Gazette*.

(2) If any duly nominated candidate at such election in any constituency dies while the poll in that constituency is taking place, the returning officer shall, upon being satisfied of the fact of the death, immediately terminate the polling and notify the Commission thereof.

(3) When an election in a constituency has been terminated as contemplated in subsections (1) and (2), all proceedings relating to the said election shall be commenced afresh in precisely the same manner as if a vacancy had occurred in respect of that constituency at the time of such termination: Provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.

66. (1) If after the close of a sitting in a constituency no candidate has been duly nominated, all proceedings relating to the election in question shall be commenced afresh in precisely the same manner as if a vacancy had occurred in respect of that constituency at the time of the close of that sitting.

Lack of nomination or de-registration of political party after nomination.

(2) If the registration of a political party in respect of which a candidate for election of a member of a regional council has been declared duly nominated in a constituency, is cancelled in terms of the provisions of section 41, before the poll has commenced or while the poll is taking place in that constituency, all proceedings relating to such election shall continue as if such candidate were nominated as an independent candidate.

Nomination of candidates for local authority council elections

67. (1) A person shall not be nominated as a candidate for election as a member of a local authority council, unless he or she –

Requirements for nomination as candidate for local authority council elections.

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(a) qualifies to be a member of that local authority council as contemplated in section 7 of the Local Authorities Act, 1992; and

(b) is nominated, in a manner as hereinafter provided –

(i) in the case of elections for members of local authority councils to be held on party lists, as a member of a political party, by that political party; or

(ii) in the case of any election for any member of a local authority council required to be held otherwise than on party lists as contemplated in section 8 of the said Local Authorities Act, 1992, either –

(aa) as a member of a political party, by that political party; or

(bb) as an independent candidate whose nomination is supported by at least 50 registered voters in the ward for which such nomination is intended.

(2) In the application of the provisions of paragraphs

(a) and (b)(i) of subsection (1) in relation to any reference to a person who is a registered voter or is registered as a voter, as the case may be, it shall be deemed to be sufficient compliance with the provisions of those paragraphs if, for the purposes of the elections on party lists referred to in the said paragraph (b)(i), the list referred to therein contains the registration number of, and has been signed by, such person to whom a registration card in terms of section 20 was issued for inclusion in the provisional local authority voters' register, for use in connection with those elections before the voters' registers, which are to be prepared under section 26 after the first general registration referred to in section 15, have come into operation.

(3) For the purposes of the elections referred to in paragraph (b)(ii) of subsection (1), no person shall, at any such general election or where more than one by-election for members of a local authority council take place on the same day, be nominated as a candidate in more than one ward.

Submission of nomination as candidate for local authority councils.

68. (1) For the purposes of –

(a) any election on party lists referred to in paragraph (b)(i) of section 67(1), a political party shall take part in the election for members of a local authority council by submitting to the returning officer for the local authority area in question, a list of candidates in writing at any time after the publication in the *Gazette* of the appropriate proclamation referred to in section 50(1)(a), but not later than 11h00 on the day determined in accordance with the provisions of that section, and which shall contain, subject to the provisions of paragraphs (a) and (b)(i) of the said section 67(1), the names and residential addresses of candidates, numbering not less than the number of members required to fill the seats in such council to which that political party may become entitled in accordance with the provisions of section 91(1)(i), and thereupon the provisions of subsections (2), (4), (5) and (6) of section 59 and section 60 shall apply *mutatis mutandis* in relation to any such candidate or such lists of candidates, as the case may be, as if it were an election for members of the National Assembly;

(b) any election referred to in paragraph (b)(ii) of the said section 67(1), the returning officer for the ward in respect of which the election is to take place, shall, upon the nomination day and at the place and time determined in respect of that ward, hold a public sitting for the submission of the nomination of candidates for that ward: Provided that a nomination may be submitted to the returning officer at any time after the publication of the appropriate proclamation in terms of section 50(1)(a) and before the close of the sitting under section 69.

(2) No candidate for an election referred to in paragraph (b) of subsection (1) of this section, shall be regarded as having been duly nominated, unless –

(a) his or her nomination is made in the prescribed form and –

(i) in the case of a candidate nominated by a political party, duly signed by the authorized

representative of the political party mentioned in paragraph (c) of section 39(3) or any other office-bearer of such political party mentioned in paragraph (d) of that section authorized thereto in writing by the said authorized representative; or

(ii) in the case of an independent candidate, duly signed by any two persons whose names appear on the list referred to in paragraph (e) of this subsection; and

(b) he or she consents to the nomination by any instrument in writing before the close of the sitting; and

(c) such nomination is accompanied by a receipt that an amount of R1 000 has been deposited with the State Revenue Fund, by or on behalf of such political party or candidate; and

(d) in the case of a nomination by a political party, such nomination is accompanied by a copy of the registration certificate issued under section 39(6), and certified as such by a justice of the peace or a commissioner of oaths; or

(e) in the case of a nomination as an independent candidate, there is submitted a list to the returning officer concerned not later than four o'clock in the afternoon of the second day before the nomination day, containing the names, registration numbers and residential addresses of, and signed by, the persons supporting the nomination of such candidate referred to in paragraph (b)(ii)(bb) of section 67(1), and none of whom has already signed in support of any other candidate in respect of the election in question.

(3) (a) The amount deposited by or on behalf of a political party or a candidate, as the case may be, shall be forfeited to the State if the candidate concerned recorded in the ward less than ten per cent of the total number of votes cast for all the candidates in that ward.

(b) Subject to the provisions of paragraph (a), the amount deposited by or on behalf of a political

party or a candidate, as the case may be, shall as soon as is practicable after the poll in the ward has been taken, be returned to the depositor.

(c) If the nomination as candidate is rejected in terms of section 70(7) or withdrawn in accordance with the provisions of subsection (4) of this section or a candidate is declared duly elected in terms of section 70(2), the amount deposited by or on behalf of the political party or the person nominated as candidate shall, as soon as is practicable after the provisions of section 70(5) have been complied with, as the case may be, be returned to the depositor.

(4) At any time before the close of the sitting determined for the submission of nominations for a ward under section 69 –

(a) the nomination of a candidate may be withdrawn by the political party which submitted that nomination; or

(b) the consent to nomination may be withdrawn by the candidate concerned,

by submitting to the returning officer concerned any instrument in writing containing such withdrawal, and thereupon such nomination shall lapse.

69. A session for the submission of the nomination of candidates for a ward referred to in section 68(1)(b), shall be from 9h00 until 11h00: Provided if at such last-mentioned hour any person present is then ready to submit the nomination of a candidate or a person has so submitted the nomination, but it has not been completed, the returning officer for the ward shall continue the sitting for such period as will enable such candidate to be duly nominated.

Duration of session on nomination day in case of wards.

70. (1) If after examining every nomination submitted in terms of paragraph (b) of section 68(1), the returning officer for the ward is satisfied that the provisions of paragraphs (a) and (b)(ii) of section 67(1) have been complied with, he or she shall declare, as soon as is practicable after the close of the sitting, a candidate concerned to be duly nominated in terms of the provisions of this Act for that ward, and thereupon the candidate concerned shall be notified by any instrument in writing of such declaration.

Declaration of candidates in wards duly nominated for election as members of local authority councils.

(2) (a) If at the close of the sitting for the submission of nominations only one person has been duly nominated in respect of a ward, the returning officer shall forthwith declare him or her to be the duly elected member of the local authority council for the ward in question with effect, in the case of a general election, from the polling day determined for the election in question or, in the case of a by-election, from the date on which the declaration is made, as the case may be.

(b) The returning officer shall immediately, by any instrument in writing, notify the Commission of such declaration.

(3) If at the close of the sitting for the submission of nominations more than one person has been nominated in respect of a ward, a poll shall take place in accordance with the provisions of this Act.

(4) When in respect of a ward more than one person has been declared duly nominated as a candidate, the returning officer for that ward shall notify the Commission by any instrument in writing of -

(a) the full names, registration number and residential address of each candidate declared to be duly nominated in respect of the ward in question; and

(b) the name of the political party which has nominated the candidate, or an indication "independent" if a candidate has been so nominated.

(5) After receipt of a notification referred to in subsection (2)(b) or a notification referred to in subsection (4) in respect of a local authority area, the Commission shall, as the case may be, by notice in the *Gazette*, make known -

(a) the full names, registration number and residential address of each person who, under subsection (2)(a), has been declared as duly elected member of the local authority council in question, and the name or number of the ward in respect of which he or she has been so declared;

(b) (i) the full names, registration number and residential address of each candidate referred to in the said subsection (4) and the political party or indication "independent" so referred to therein;

(ii) the ward in respect of which such candidates are nominated;

(iii) any polling day for the election in question;

(iv) the prescribed hours for the commencement and close of the poll; and

(v) the allocation of every polling station in a ward.

(6) The Commission shall also cause to be displayed the notification referred to in subsection (5) at such places in a ward as it may deem necessary.

(7) When the returning officer for a ward rejects a nomination as a candidate for the election of members of a local authority council he or she shall forthwith by any instrument in writing notify the candidate of his or her rejection as a candidate and the grounds upon which the rejection have been made, and shall afford the political party or the persons by whom the nomination in question were submitted an opportunity, at any time before the close of the sitting, to rectify the nomination or, to duly nominate any other qualified person as candidate for that ward.

Death of candidate after nomination in case of wards.

71. (1) If any duly nominated candidate at an election for a member of a local authority council in any ward dies before the poll has commenced, the President shall, upon being satisfied of the fact of the death, withdraw so far as it concerns that ward, the proclamation determining the polling day which in terms of the provisions of subsection (1)(d), (2)(a)(iii) or (3) of section 49, as applied by the provisions of subsection (5) of section 50, has been published in the *Gazette*.

(2) If any duly nominated candidate at such election in any ward dies while the poll in that ward is taking place, the returning officer shall, upon being satisfied of the fact of the death, immediately terminate the polling and notify the Commission thereof.

(3) When an election in a ward has been terminated as contemplated in subsections (1) and (2), all proceedings relating to the said election shall, unless otherwise provided in section 13(3) of the Local Authorities Act, 1992, be commenced afresh in precisely the same manner as if a vacancy had occurred in respect of that ward at the time of such termination: Provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.

72. (1) If after the close of a sitting in a ward, no candidate has been duly nominated, all proceedings relating to the election in question, shall, unless otherwise provided in section 13(3) of the Local Authorities Act, 1992, be commenced afresh in precisely the same manner as if a vacancy had occurred in respect of that ward at the time of the close of that sitting.

(2) If the registration of a political party in respect of which a candidate for the election of a member of a local authority council has been declared duly nominated in a ward, is cancelled in terms of the provisions of section 41, before the poll has commenced or while the poll is taking place in that ward, all proceedings relating to such election shall continue as if such candidate were nominated as an independent candidate.

General provisions relating to conduct of elections

73. (1) The Commission shall establish polling stations at convenient places within the constituency or local authority area, as the case may be, or, where such a constituency or area is divided into polling districts or wards, as the case may be, one polling station within each such polling district or ward: Provided that if the Commission is of opinion that the conduct of an election will be facilitated thereby, it may, after consultation with the Director, direct the Director or returning officer concerned to establish more than one polling station in the polling district or ward, as the case may be, for voters whose names appear on the relevant voters' register in respect of each such polling station, or to establish one polling station in respect of two or more polling districts or wards, or to change the allocation of a polling station.

(2) The allocation of a polling station shall be determined with due observance of –

- (a) the distribution of the inhabitants of Namibia;
- (b) the availability of suitable places for the establishing of polling stations;
- (c) access routes leading to such places;
- (d) traffic density at or in the vicinity of such places;
- (e) distances to be travelled to such places;
- (f) parking facilities;
- (g) the geography and topography of the area; and
- (h) any other relevant factor.

(3) The Commission may authorize the Director, to the extent determined by the Commission, to provide one or more mobile polling stations for the purpose of facilitating the taking of a poll in any election.

(4) A mobile polling station shall be under the general control of the returning officer designated by the Director and shall for the purposes of this Act, except subsection (2) of this section, be regarded as a polling station.

(5) The returning officer referred to in subsection (4), shall, in such manner as he or she thinks fit and in so far as it may be practicable to do so, make known the places to be visited by a mobile polling station during the polling period and the times at which it shall visit such places.

(6) The presiding officer in control of, any polling officer and agent for, a mobile polling station may enter upon any land with such mobile polling station and the necessary equipment for the purpose of taking a poll of registered voters on that land, or for the purposes of ascertaining whether there are any registered voters on that land.

(7) Additional polling stations may be established at any time after the commencement of the poll in any election and any election agent concerned shall be notified thereof as soon as is practicable.

Lack of nomination or de-registration of political party after nomination in case of wards.

Polling stations.

terms of section 78(1) to attend at the polling station, and as are present; and
(c) immediately thereafter close and seal all such ballot boxes in the prescribed manner.

(2) If for any reason it becomes necessary at any time during the polling period to use any additional ballot box at any polling station, such additional ballot box shall be made available for inspection, closed and sealed *mutatis mutandis* in accordance with the provisions of subsection (1) of this section, before being made available for the deposit of ballot papers.

(3) A ballot box closed and sealed, as aforesaid, may not be opened, and the seal shall not be broken, except under the circumstances contemplated in this Act.

(4) The presiding officer at a polling station shall at the closing of the poll on a polling day, close and seal the aperture in any ballot box at the polling station, in a manner as may be prescribed, and in the presence of such persons entitled in terms of section 78(1) to attend at the polling station, and as are present.

(5) All sealed ballot boxes used in or at a polling station shall be placed in a position where they can be seen at all times during polling hours at that polling station by the presiding officer or a polling officer designated by him or her.

(6) The presiding officer and a police officer shall be responsible for the safe-keeping of all ballot boxes used at his or her polling station until they are delivered in accordance with the provisions of this Act to the person responsible for the determination of the result of the election in question.

77. (1) The poll for any election shall commence at 07h00 and shall close at 21h00 on any polling day: Provided that —

(a) the presiding officer, before closing the poll on any polling day at the hour so prescribed shall permit every voter who at that hour is inside the room or other enclosure of the polling station, to record his or her vote;

Commencement and closing of poll at polling stations.

74. (1) For all elections the Director shall provide the returning officer concerned with polling compartments, ballot boxes, ballot papers, instruments for marking ballot papers with the official stamp, seals, copies of the relevant voters' register and such other requisites as may be required, and such returning officer shall do such other acts and make such arrangements to facilitate the taking of the poll as may be deemed advisable for effectually conducting the election.

(2) Every copy of the relevant voters' register provided in terms of subsection (1), shall be certified by or on behalf of the Director as a correct copy of the voters' register for the constituency or local authority area, as the case may be, or where such constituency or area is divided into polling districts or wards, as the case may be, for that polling district or ward.

(3) The returning officer may depute any person under his or her control to perform on his or her behalf any of the duties imposed upon him or her by this section in regard to the arrangements for the taking of the poll.

75. (1) The voting compartment in or at any polling station shall be arranged so as to permit a voter to mark his or her vote in secrecy and shall be in a position where a person can neither enter nor leave it without being seen by the presiding officer or a polling officer designated by him or her, and the presiding officer or such polling officer shall take care that no other person shall, except in accordance with the provisions of this Act, enter the voting compartment while a voter is in it for the purpose of recording his or her vote.

(2) For the purposes of this Act, the expression "voting compartment" shall include any place or surface in or at a polling station, that is screened off, to the satisfaction of the presiding officer, in such a manner that the voter may record his or her vote in secrecy.

76. (1) Not more than 30 minutes before the commencement of the poll on a polling day at any polling station, the presiding officer shall —

(a) satisfy himself or herself that all ballot boxes to be used at such polling station are empty;

(b) permit the inspection of the interior of all such empty ballot boxes by such persons entitled in

Provision of equipment.

Voting compartment.

Ballot box.

(b) the Commission may by notice in the *Gazette* alter at any time before the commencement of the poll in any election the polling hours on any polling day in that election in respect of any constituency, local authority area, polling district or ward, as the case may be.

78. (1) The presiding officer and other officers at a polling station shall keep order thereat, shall regulate the number of voters to be admitted at a time, and shall exclude all other persons except —

Powers of presiding officers at polling stations

- (a) a member of the Commission or the Director;
- (b) the returning officer for the constituency or local authority area in question;
- (c) in the case of any election for a member of a regional council or local authority council, the candidate in that election;
- (d) any election agent or counting agent entitled to attend at the polling station;
- (e) the polling officers or any police officer on duty; and
- (f) any other person authorized in writing by the Director.

(2) (a) The presiding officer may order any person, excluding the persons referred to in subsection (1) and any person recording his or her vote, to leave the polling station.

(b) Any person who fails to leave the polling station when so ordered in accordance with the provisions of paragraph (a), shall be guilty of an offence and may, by order of the presiding officer, be arrested without a warrant.

(3) The presiding officer, after consultation with the police officials on duty, may take any steps that he or she deems necessary for the protection of himself or herself and other officials or for stopping or preventing any violence or disturbance in or in the vicinity of the polling station.

(4) If, in the event of any public riot or violence or any other emergency situation, the taking of the poll at a polling station is interfered with to such an extent that the objects of this Act cannot be achieved, the presiding officer shall forthwith discontinue the taking of the poll, whereupon a poll shall be taken at the time, in such manner and in respect of such voters as may be directed by the returning officer concerned, after consultation with the Director.

(5) The powers conferred by this section shall not be exercised so as to prevent any voter who is entitled to vote, from having an opportunity to record his or her vote.

Voting at polling stations

Franchise.

79. (1) Every voter shall be entitled to vote at the election in respect of which he or she is registered subject to and upon compliance with the provisions of this Act.

(2) A registered voter shall be entitled to vote for —

- (a) in the case of any election on party lists in terms of this Act, one political party only;
- (b) in the case of any other election in terms of this Act, one candidate only.

Place of voting.

80. (1) Subject to the provisions of this section, no person shall record his or her vote elsewhere than at a polling station —

- (a) for the constituency or, where such constituency is divided into polling districts, at the polling station for that polling district, in respect of which he or she is registered;
- (b) for the local authority area or, where such area is divided into wards, at the polling station for that ward, in respect of which he or she is registered;

Provided that if more than one polling station in any polling district or ward, as the case may be, has been established under the proviso to section 73(1), the voter for whom any polling station has been established shall vote at that polling station only.

(2) (a) Any returning officer, presiding officer, polling officer, counting officer or police officer who is registered as a voter for an election and who by reason of his or her duties in respect of that election or any other election, will not be able to attend at a polling station –

(i) in the constituency or, where such constituency is divided into polling districts, in the polling district; or

(ii) in the local authority area or, where such area is divided into wards, in the ward,

in which he or she is registered, shall, subject to the provisions of paragraph (b), be permitted to record his or her vote by appearing in person before the returning officer for that constituency or area, as the case may be, in respect of which he or she is so registered, and before voting he or she produces and surrenders to the returning officer concerned a written authorization issued by the Director, stating that he or she is so permitted to vote, and thereupon that voter shall, subject to the same requirements and in the same manner as any other voter, be entitled to vote.

(b) An officer referred to in paragraph (a) shall be permitted to record his or her vote in accordance with the provisions of that paragraph at any time from 9h00 on the fifth day preceding the day of the election but not later than 19h00 on the second day preceding the said day of the election.

(c) A written authorization referred to in paragraph (a) shall be signed by the officer producing it and shall be placed in an envelope.

(d) The ballot paper marked by a voter who has signed the written authorization referred to in paragraph (c), shall not be placed in a ballot box, but shall in the presence of the returning officer concerned and without being unfolded, be placed by a voter in a blank envelope which he or she shall close and hand to that returning officer who shall place it in the authorization envelope, which he or she shall close and set aside in a separate packet.

Voting to be by secret ballot.

81. (1) The voting at any election in terms of this Act shall be by secret ballot.

(2) Every ballot paper shall contain –

(a) in the case of any election on party lists in terms of this Act, in alphabetical order, the names and, if any, the abbreviated names and distinctive symbols of the political parties taking part in the election; or

(b) in the case of any other election in terms of this Act, in alphabetical order, the names of all the duly nominated candidates at that election and the name and, if any, the abbreviated name and distinctive symbol of the political party which he or she represents or is a member of, as the case may be, or if he or she is not nominated by a political party, the word “independent”,

and shall be in such form and may contain such other particulars as may be prescribed.

Manner of voting at elections.

82. (1) The voting at any polling station shall be conducted substantially and as nearly as possible in accordance with the provisions of this section and sections 83 and 84.

(2) The presiding officer or a polling officer designated by him or her for that purpose, shall on polling day in the polling station mark every ballot paper in a ballot paper book on the back thereof with the official stamp before such ballot paper book is handed to a polling officer for the handing of ballot papers to voters who desire to vote at the election in question.

(3) No voter shall be permitted to vote in any election, unless he or she –

(a) produces his or her registration card for the election in question to the presiding officer or a polling officer; and

(b) produces to the presiding officer or a polling officer in proof of his or her identity –

(i) any document referred to in paragraph (a)(i) or (ii) of section 16(4); or

- (ii) if he or she is unable to produce any document referred to in subparagraph (i) of this paragraph, an affidavit in the prescribed form made before the presiding officer or a polling officer designated by the presiding officer for that purpose, by any other voter who is registered in the same constituency or local authority area, as the case may be, as that in which the first-mentioned voter is registered and who has identified himself or herself to the presiding officer or to such polling officer by producing any document referred to in that subparagraph, in which proof of the identity of the first-mentioned voter is furnished.

(4) The presiding officer or a polling officer shall ascertain –

- (a) by examining and by putting relevant questions relating to the particulars appearing on the registration card and identity document or statement, produced to him or her by the voter as contemplated in subsection (3) that –

(i) the voter is the person whose name appears on the registration card; and

(ii) the registration card –

(aa) is a registration card officially issued in terms of the provisions of Part III; and

(bb) has not been signed, imprinted, marked or endorsed in accordance with the provisions of subsection (5)(d), (6) or (7) of this section, as the case may be;

(b) in the manner prescribed in subsection (5) of this section and subject to the provisions of paragraph (c) of that subsection, that the voter has not already voted at the election in question; and

(c) by reference to the relevant voters' register –

(i) that the name on, number and other relevant particulars of, the relevant registration card

appear, subject to the provisions of section 80, on that voters' register; and

(ii) that such name, number and particulars have not been deleted in accordance with the provisions of subsection (9)(c) of this section, on that voters' register.

(5) (a) In this subsection and in subsection (8) "identification mark" shall mean the mark approved by the Director for the purpose of the identification of a voter who has voted at an election in question.

(b) The presiding officer or a polling officer shall require the voter, and the voter when so required, is obliged to cause his or her fingers to be examined by the presiding officer or such polling officer, and if upon examination no finger or fingers of the voter display the identification mark so approved and determined as contemplated in subsection (8), he or she shall be presumed not to have already voted at the election in question.

(c) If upon such examination, a finger or fingers of the voter display the identification mark, the presiding officer shall give to every election agent or counting agent who is present an opportunity to observe such identification mark, and shall not permit the voter to vote.

(d) If any person has in terms of paragraph (c) been prohibited from voting, the presiding officer shall endorse the relevant registration card produced by him or her to the effect that such person was so prohibited.

(e) The provisions of paragraph (b) of subsection (4) and of paragraph (b) of this subsection and of subsection (8) shall not apply in the case of a voter who suffers from a physical defect which, in the opinion of the presiding officer, makes the application of the said provisions impossible.

(6) Having ascertained in terms of subsection (4) –

(8) (a) When the provisions of subsection (7) have been complied with, the voter shall in the presence and in accordance with the instructions of the presiding officer or a polling officer place the identification mark on the finger or fingers of his or her left hand or of his or her right hand, as may be determined by the Director for the purposes of the election in question, or cause it to be placed thereon by the presiding officer or such polling officer, except as provided in subsection (5)(e).

(b) If a voter refuses that the prescribed identification mark be applied to his or her finger or fingers, he or she shall not be issued with a ballot paper and shall not be permitted to vote.

(9) When the voter has complied with the provisions of subsection (7), the presiding officer or a polling officer shall –

(a) enter the registration number of the voter on the counterfoil on the ballot paper book;

(b) tear out a ballot paper from the ballot paper book marked on the back with the official stamp;

(c) draw a line through the name of that voter on the certified copy of the relevant voters' register as evidence that he or she has received a ballot paper.

(10) When the voter has received the ballot paper, he or she shall –

(a) take it to the voting compartment provided for that purpose;

(b) indicate on the ballot paper –

(i) in the case of any election on party lists in terms of this Act, the political party for which he or she desires to vote by secretly placing a cross in the space opposite the entry on it of the name and, if any, the abbreviation and distinctive symbol of that political party; or

(ii) in the case of any other election in terms of this Act, the candidate for whom he or she desires to vote by secretly placing a cross in

(a) that the name on, number and other relevant particulars of, a registration card do not appear on the relevant voters' register; or

(b) that such name, number and particulars have been deleted on that register,

the presiding officer or a polling officer shall not permit the voter to vote, and shall endorse the registration card produced to him or her to the effect, that such person was so prohibited.

(7) (a) The matters referred to in subsection (4) having been ascertained, the voter shall, in the presence and in accordance with the instructions of the presiding officer or polling officer –

(i) if the registration card produced by him or her, as aforesaid, bears the signature of the person to whom it was issued, sign that registration card by placing such signature in the space on that card provided for the election in question; or

(ii) if the said registration card bears the imprint of any finger or fingers of the person to whom it was issued, place the imprint of the corresponding finger or fingers in that space; or

(iii) if the said registration card bears, instead of the signature or any finger print of the person to whom it was issued, any mark made by that person, place a similar mark in that space,

and return the registration card to the person concerned.

(b) If the Commission deems it expedient, it may direct any presiding officer or polling officer, to the extent determined by it, to dispense with the requirements of paragraph (a) and to endorse in the space referred to in that paragraph the registration card to the effect that the person has voted in the election in question.

the space opposite the name of that candidate;

- (c) fold the ballot paper in such manner that the official mark is visible and the names, of the political parties or candidates, as the case may be, and the cross made by him or her are not visible;
- (d) display the ballot paper in such manner that the presiding officer or a polling officer designated by him or her may recognize the official mark; and
- (e) drop the ballot paper into the ballot box placed in front of the presiding officer or such polling officer.

(11) The voting at a polling station shall not be interrupted by any defect occurring in any instrument used at such polling station for the purposes of subsection (5)(b), and the vote recorded by any voter shall not be invalid merely because the provisions of subsection (4)(b) were not complied with in his or her case because of such defect, whereupon the registration card shall be endorsed to that effect.

83. If a voter spoils any ballot paper inadvertently, he or she may return it to the polling officer concerned who, if satisfied of such inadvertence, shall –

- (a) give such voter another ballot paper;
- (b) retain the spoilt ballot paper which he or she shall immediately cancel and endorse with the word “spoilt”; and
- (c) forthwith record on the counterfoil of the spoilt ballot paper in the ballot paper book the fact that it has been cancelled in terms of paragraph (b).

84. (1) A presiding officer or polling officer shall not assist or instruct a voter in the manner of voting at a polling station, unless –

- (a) a voter who is incapacitated by blindness or other physical disability from voting in a manner prescribed by the other provisions of this Part, requests in person the presiding officer or polling officer, to so assist him or her in the manner

Spoilt ballot papers.

Assistance to voters.

directed by him or her to record his or her vote, but without interfering with the exercising of his or her franchise;

- (b) such assistance or instructions are to direct a voter to a polling compartment for the purposes of recording his or her vote or, to inform a voter in respect of the procedure which he or she may follow on entering the polling compartment, but without such presiding officer or polling officer interfering with the secrecy of his or her vote or with the exercising of his or her franchise;
- (c) a voter who is unable to read or to understand any written directions or instructions at a polling station, personally requests the presiding officer or polling officer to explain such directions or instructions to him or her, but without interfering with the exercising of his or her franchise.

(2) The presiding officer, on the request in person of any voter who is incapacitated by blindness or other physical cause from voting in the manner prescribed by the other provisions of this Part, who has not requested to have his or her vote recorded by the presiding officer in terms of subsection (1) and who is accompanied by any other person, shall, if he or she is satisfied that such person is any family relative or friend of such voter and has reached the age of 18 years, permit such voter to vote with the assistance of the person accompanying him or her, and upon such permission being granted anything which is by the provisions of this Part required to be done or by the said voter in connection with the recording of his or her vote may be done to or with the assistance of the person so accompanying him or her.

(3) Except as provided in this section, no person shall converse or in any other manner interfere with a voter at any time after he or she has been handed a ballot paper until he or she leaves the polling compartment.

Closing of poll, sealing of ballot boxes and packets and ballot paper accounts.

85. (1) Every presiding officer shall immediately after the close of the poll and in the presence of such of the persons entitled in terms of section 78(1) to attend at the polling station, as may be in attendance –

- (a) close and seal in the prescribed manner every ballot box entrusted to him or her;

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Determination of result of poll and announcement of result of election

Notice of place and time of determination of result of poll.

86. The Director shall inform –

- (a) in the case of an election on party lists in terms of this Act, every political party taking part in that election;
- (b) in the case of any other election in terms of this Act, every candidate taking part in that election,

of any place where the result of the poll or any part thereof will be determined and on the day upon which and the time at which such determination shall be commenced.

Verification of ballot paper accounts by returning officer and counting of votes at polling stations.

87. (1) Upon receipt by him or her of the ballot boxes and packets referred to in section 85, from a presiding officer, the returning officer shall take charge of them and when all the ballot boxes and packets have been received by him or her, he or she shall examine whether the seals of the ballot boxes and packets are in order and afford any counting agents and, in the case of an election other than an election on party lists in terms of this Act, any candidates who are present an opportunity to do the same, and shall thereafter open all the packets.

(2) The returning officer shall –

- (a) open the envelopes in his or her possession containing the authorization ballot paper envelopes and comparing the written authorization contained therein with the marked copies of the relevant voters' registers on which the fact of any person having received a ballot paper has been recorded by the presiding officer concerned and, if, on the aforesaid comparison, it appears that –
 - (i) the same person has also received a ballot paper at any polling station, he or she shall forthwith reject every vote appearing to have been given by such person, and having first sealed it in the prescribed manner, endorse thereon the word "rejected", or
 - (ii) the person has not received a ballot paper at any polling station, he or she shall open the

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(b) make up into separate packets, so sealed –

- (i) all unused ballot papers;
- (ii) all spoilt ballot papers;
- (iii) the counterfoils of used and spoilt ballot papers;
- (iv) the marked copies of the relevant voters' register;
- (v) the official stamp used at the polling station; and
- (vi) any such other equipment or documents as may be prescribed,

and shall deliver or caused to be delivered the ballot boxes and packets –

(aa) in the case of any presidential election or National Assembly election or regional council election, as the case may be, to the returning officer for the constituency for which that polling station has been established; or

(bb) in the case of any local authority council election, to the returning officer for the local authority area or, where such area is divided into wards, for the ward, for which that polling station has been established.

(2) If the geographical location of the polling station or any other circumstance occasions that the presiding officer can not deliver or cause to be delivered such ballot box and packets, he or she shall place such ballot box and packets in safe custody until he or she can deliver it or cause it to be delivered to the returning officer concerned.

(3) The ballot box and packets referred to in subsection (1) shall be accompanied by a return in which the presiding officer accounts for the number of ballot papers entrusted to him or her under the heads of ballot papers in the ballot box and unused and spoilt ballot papers.

authorization ballot paper envelope, take out the ballot paper contained in it, unfolded, and place the authorization ballot paper, unfolded, in the ballot box of the polling station of the polling district or ward in respect of which such person is registered, as the case may be, so that it is not possible to determine from which authorization envelope a particular ballot paper was taken;

(b) separately verify each presiding officer's ballot paper account referred to in section 85(3), by comparing it, with due regard to the marked copies of the relevant voters' register and the authorization ballot papers placed in a ballot box in question, with the number of ballot papers in each ballot box and the unused and spoilt ballot papers in his or her possession, and shall for that purpose open each such ballot box, and shall –

(i) ascertain that each ballot paper bears the official mark on the back thereof; and

(ii) count the ballot papers and votes –

(aa) in the case of an election on party lists in terms of this Act, recorded at the polling station in question, for each political party; or

(bb) in the case of any other election in terms of this Act, recorded at the polling station in question, for each candidate.

(3) (a) The returning officer shall reject and not count any ballot paper –

(i) which records votes to more than one political party or candidate, as the case may be;

(ii) which does not bear the official stamp referred to in subsection (2) of section 82 and in respect of which he or she has reasonable grounds to believe that it has not been officially issued to a voter in terms of subsection (9) of that section;

(iii) which is unmarked or on which it is impossible to determine with certainty for which political party or candidate, as the case may be, the ballot is recorded;

(iv) which contains any writing or mark revealing the identity of the voter.

(b) The returning officer shall not reject but shall count any ballot paper on which there is any writing or mark, by means of which a voter has clearly indicated his or her choice otherwise than by a cross on the ballot paper in question, and whether or not such writing or mark is recorded in the space provided for the marking of such ballot paper.

(4) The returning officer shall in the presence of any counting agent or candidate referred to in subsection (1), and is in attendance, endorse the word "rejected" on any ballot paper rejected in terms of any provision of subsection (3).

(5) A counting agent or candidate referred to in subsection (1), may request a returning officer to re-count the ballot papers and votes counted at a polling station until such time as he or she is satisfied of its accuracy. Provided that a returning officer may refuse to do so if he or she is of the opinion that such request is at any time unreasonable.

(6) The returning officer shall, after the examination, reseal each of the said ballot boxes and packets, and after the announcement of the result of the election as hereinafter provided, report to the Director the result of the verification referred to in subsection (2), and on request allow any agents or candidates, so referred to, to copy the report before it is dispatched.

Determination and announcement of result in presidential elections.

88. (1) When all the votes in respect of all polling stations in a constituency have so been counted in respect of any candidate in any election for the President and the number of votes recorded for any candidate has been determined in the constituency, the returning officer shall, whether or not the said ballot paper accounts are found to be in order, in accordance with the directions of the Commission transmit to the Chief Justice the number of votes recorded in that constituency for each such candidate, or, in the case of only one candidate, for that candidate, and

shall thereupon announce in the prescribed manner the number of votes so recorded for each candidate or that candidate, as the case may be.

(2) When the Chief Justice has received the number of votes so determined in all the constituencies and the number of votes recorded in respect of all the constituencies for each candidate or a candidate, as the case may be, has been determined by the Chief Justice he or she shall determine in the manner provided in Article 28(2)(b) of the Namibian Constitution, the candidate to be declared in terms of the provisions of subsection (3) of this section duly elected as President.

(3) As soon as is practicable after the provisions of subsection (2) of this section have been complied with, the Chief Justice shall thereupon announce in the prescribed manner the result of the election in question, by –

(a) making known the total number of votes counted in the election in question and, in respect of each candidate or a candidate, as the case may be, the number of votes recorded for him or her; and

(b) declaring –

(i) the candidate determined, as aforesaid, to be duly elected as President with effect from any day determined in respect of the election in question; or

(ii) if no candidate has received more than the votes required by him or her to be duly elected as President referred to in the said Article 28(2)(b) of the Namibian Constitution, that no candidate has been duly elected as President, but subject to the provisions of that Article.

(4) The Chief Justice shall as soon as is practicable after the provisions of subsection (3) of this section have been complied with, cause a written statement of the announcement made by him or her in terms of the provisions of that subsection, to be transmitted to the Commission.

(5) If no candidate is declared duly elected as President in terms of the provisions of paragraph (b)(iii) of

subsection (3) of this section, the provisions of this section shall apply *mutatis mutandis* in relation to the conducting of ballots until a result in the election is reached as contemplated in the said Article 28(2)(b) of the Namibian Constitution.

Determination and announcement of result in National Assembly elections.

89. (1) When all the votes in respect of all the polling stations in a constituency have so been counted in respect of any political party in an election for members of the National Assembly and the number of votes recorded for any political party have been determined in the constituency, the returning officer shall, whether or not the said ballot paper accounts are found to be in order, in accordance with the directions of the Commission transmit to the Director the number of votes recorded in that constituency for each such political party, and shall thereupon announce in the prescribed manner the number of votes so recorded for each political party in that constituency.

(2) When the Director has received the number of votes so determined in all the constituencies and the number of votes recorded in respect of all the constituencies for each political party has been determined by the Director, he or she shall determine in the manner provided in Schedule 4 to the Namibian Constitution the number of candidates of that political party to be declared in terms of the provisions of subsection (3) of this section duly elected as members of the National Assembly.

(3) As soon as is practicable after the provisions of subsection (2) of this section have been complied with, the Director shall thereupon announce in the prescribed manner the result of the election in question, by –

(a) making known the total number of votes counted and the appropriate quota determined in accordance with the provisions of paragraph (1) of the said Schedule 4 to the Namibian Constitution and, in respect of each political party, the number of votes recorded for it and the number of seats in the National Assembly, if any, determined in its case in accordance with the provisions of paragraph (2) of that Schedule to which that political party shall be entitled; and

(b) declaring –

(i) the candidates on the list of candidates of each political party in which case a number of seats has been determined, as aforesaid, but subject to the provisions of paragraph (4) of that Schedule; and

(ii) if the number of seats determined, as aforesaid, is more than the candidates available on the said list, a person who qualifies in terms of the provisions of section 59 to be a member of the National Assembly and has been nominated in writing in the prescribed manner for that purposes by the said political party and has in writing consented to his or her nomination,

to be duly elected as members of the National Assembly with effect from any day determined in respect of the election in question.

(4) If there appears on any list of candidates the name of a person who died or was found not to qualify in relation to the National Assembly on or before the date of the declaration contemplated in paragraph (b) of subsection (3) of this section, that name shall for the purposes of that paragraph be deemed not to appear on the list in question.

(5) The Director shall as soon as is practicable after the provisions of subsection (3) of this section have been complied with, cause a written statement of the announcement made by him or her in terms of the provisions of that subsection, to be transmitted to the Commission.

90. (1) When all the votes in respect of all polling stations in a constituency have so been counted in respect of any candidate in an election for any member of a regional council and the number of votes recorded for any candidate has been determined in the constituency, the returning officer shall determine in the manner provided in subarticles (2) and (3) of Article 106 of the Namibian Constitution, the candidate for that constituency to be declared in terms of the provisions of subsection (2) of this section duly elected as a member of the regional council in question.

(2) As soon as is practicable after the provisions of subsection (1) of this section have been complied with, the returning officer for the constituency in question shall

Determination and announcement of result in regional council elections.

thereupon announce in the prescribed manner the result of the election in question, by —

(a) making known the total number of votes counted in the constituency and, in respect of each candidate, the number of votes recorded for him or her; and

(b) declaring the candidate determined, as aforesaid, to be duly elected as a member of the regional council in question with effect from the day determined in respect of the election in question.

(3) The returning officer concerned shall as soon as is practicable after the provisions of subsection (2) of this section have been complied with, cause a written statement of the announcement made by him or her in terms of the provisions of that subsection to be transmitted to the Commission.

(4) If any candidates for election as a member of a regional council in any constituency have received an equal number of votes and the result of the election cannot by virtue thereof be determined, the returning officer for the constituency shall declare the election in question to be null and void, and in such event all proceedings relating to the election in that constituency shall be commenced afresh in precisely the same manner as if a vacancy in that regional council had occurred.

Determination and announcement of result in local authority council elections.

91. (1) When all the votes in respect of all the polling stations —

(a) in the case of any election on party lists referred to in paragraph (b)(i) of section 67(1), in a local authority area; or

(b) in the case of any other election referred to in paragraph (b)(ii) of that section, in a ward,

have so been counted and the number of votes recorded has been determined —

(i) in the case of paragraph (a), for each political party in that area, the returning officer concerned shall determine *mutatis mutandis* in the manner referred to in section 89(2) the number of candidates of that

political party to be declared in accordance with the provisions of subsection (2)(a) of this section duly elected as members of the local authority council in question, as if the election for members of that council were an election for members of the National Assembly; or

(ii) in the case of paragraph (b), for each candidate in that ward, the returning officer concerned shall declare in accordance with the provisions of subsection (2)(b) of this section, the candidate who has received the greater or the greatest number of votes in that ward to be duly elected a member of the council in question.

(2) As soon as is practicable after the provisions of subsection (1) of this section have been complied with in relation to –

(a) an election referred to in paragraph (a) of that subsection, the returning officer for the local authority area shall thereupon announce in the prescribed manner the result of the election in question, by –

(i) making known the total number of votes counted and the appropriate quota determined in accordance with the provisions of paragraph (i) of that subsection and, in respect of each political party, the number of votes recorded for it and the number of seats in the council in question, if any, determined in its case in accordance with the provisions of that paragraph; and

(ii) declaring –

(aa) the candidates on the list of candidates of each political party in which case a number of seats has been determined, as aforesaid, and who, from that list, have been nominated by that political party as members of the council in question to fill the said seats; and

(bb) if the number of seats determined, as aforesaid, is more than the candidates available on the said list, a person who

qualifies to be a member of the council in question and has been nominated in writing in the prescribed manner for that purpose by the said political party and has in writing consented to his or her nomination,

to be duly elected as members of the council in question with effect from any day determined in respect of the election in question;

(b) an election referred to in paragraph (b) of that subsection, the returning officer for the ward shall thereupon announce in the prescribed manner the result of the election in question, by –

(i) making known the total number of votes counted in that ward and, in respect of each candidate, the number of votes recorded for him or her; and

(ii) declaring the candidate, as aforesaid, to be duly elected as a member of the council for that ward with effect from any day determined in respect of the election in question.

(3) The returning officer concerned shall as soon as is practicable after the provisions of paragraph (a) or (b) of subsection (2) of this section have been complied with, as the case may be, cause a written statement of the announcement made by him or her in terms of the provisions of those paragraphs, as the case may be, to be transmitted to the Commission.

(4) If –

(a) there appears on any list of candidates referred to in paragraph (a) of subsection (2) of this section, the name of a person who died or was found not to qualify in relation to the council in question on or before the date of the declaration contemplated in paragraph (a)(ii) of that subsection, that name shall for the purposes of that paragraph be deemed not to appear on the list in question;

ballot papers received by him or her under the heads of ballot papers counted and rejected ballot papers.

(b) The returning officer shall if requested by any counting agent or candidate referred to in section 87(1), furnish a copy of the return referred to in subsection (1) of this section, to such agent or candidate.

(3) The Director shall be responsible for the safe-keeping of all the packets received in terms of this Part, and shall retain them until such time as the Commission directs otherwise.

(4) Subject to the provisions of subsection (5), no person shall open, or inspect the contents of the packets referred to in subsection (2), except by order of the court, which may be granted on the court being satisfied by evidence on oath that the inspection or production of any document contained in such packet is required for the purposes of instituting or maintaining a prosecution for an offence in relation to the election in question, and any such order may be made subject to such conditions as to persons and time, place and manner of inspection or production as that court may deem fit.

(5) The Director, or such other person as the Commission may determine, shall be entitled to open and inspect any packet containing the marked copies of the relevant voters' register used in the election in question in order to ascertain for the purposes of any provision of this Part that the name of any person appears on that register: Provided that such packet shall be closed and sealed after every such inspection.

Verification of elections
by Director.

94. (1) As soon as is practicable after the determination of the result in any election in terms of this Act, the Commission may direct the Director to verify or cause to be verified in accordance with the prescribed procedures any ballot paper accounts received in the election in question, and to report thereon to the Commission in the prescribed manner.

(2) For the purposes of the provisions of subsection (1), the Director may open any sealed packet received from a returning officer.

(b) any candidates for an election in terms of paragraph (b) of that subsection, in any ward have received an equal number of votes and the result of the election cannot by virtue thereof be determined, the returning officer for the ward shall declare the election in question to be null and void, and in such event all proceedings relating to the election in that ward shall be commenced afresh in precisely the same manner as if a vacancy in that council had occurred.

92. (1) The Commission shall cause a notice of any announcement made and transmitted to it in terms of section 88(4), 89(5), 90(3) or 91(3), as the case may be, and the particulars contained in that announcement, to be published in the *Gazette*, as soon as is practicable after having received it.

(2) A notice published in terms of subsection (1) shall on its mere production in any legal proceedings be *prima facie* evidence of the announcement to which it relates and the particulars thereof.

(3) The Commission may also cause to be published in any other manner, as it may deem necessary, any announcement referred to in subsection (1) and the particulars contained therein.

93. (1) The returning officer concerned, shall as soon as is practicable after the announcement of the result of any election, enclose in separate packets –

Sealing and safekeeping of
election material.

(a) all counted ballot papers;

(b) all rejected ballot papers; and

(c) all ballot paper accounts, received from any polling station for which he or she was the returning officer,

and shall seal such packets and cause them together with the packets referred to in section 85(1), to be delivered to the Director.

(2) (a) The packets referred to in subsection (1) shall be accompanied by a return in which the returning officer concerned accounts for the number of

disturbs, hinders or interferes with such registration; or

(c) with intent to defraud duplicates, copies, forges, falsifies or fabricates any registration form or registration card or any document purporting to be a registration form or a registration card, or utters or is in possession of any document so duplicated, copied, forged, falsified or fabricated; or

(d) not being an officer or a magistrate or other person acting within the course of his or her duties under or for the purposes of this Act, is in possession of a registration form or issues or purports to issue a registration card or destroys, mutilates or defaces any registration card or, except in accordance with the provisions of this Act, places any writing or mark on any registration card; or

(e) is found in possession of a registration card not issued to him or her, without being able to give a satisfactory explanation for his or her possession of it, or is found in possession of more than one registration card issued to him or her for the election in question; or

(f) being a registered voter in relation to an election in question, applies for registration as a voter for that election in terms of this Act or, after having ceased in terms of the provisions of this Act to be a registered voter, applies, as aforesaid, without being qualified for registration for that election or induces or procures any other person to so apply for registration or to register in fact as a voter knowing such other person or himself or herself not to be authorized in terms of this Act to be so registered; or

(g) obstructs, hinders or interferes with the Director, any registration officer, supervisor of registration, magistrate or other person in the performance of his or her duties or functions or the exercise of his or her powers under this Act; or

(h) without being authorized thereto removes any document from any place where it is kept in terms of any provision of this Act, or destroys, mutilates, defaces, places any writing or mark upon or

(3) The Commission may in the manner determined by the Commission, publish the report referred to in subsection (1), or any extracts therefrom, for the information of the public or for any other reason it deems necessary.

95. No election shall be set aside by the court by reason of any mistake or non-compliance with the provisions of this Part, if it appears to that court that the election in question was conducted in accordance with the principles laid down therein and that such mistake or non-compliance did not affect the result of that election.

Immaterial mistakes not to affect validity of elections.

PART VI OFFENCES AND PENALTIES

Registration of voters

96. (1) Any person who -

Offences in connection with registration of voters.

(a) whether himself or herself or through an intermediary and whether directly or indirectly, with intent to dissuade, discourage or prevent any other person from causing himself or herself to be registered as a voter, irrespective of whether such other person is qualified for such registration or is not so qualified, or with intent to obtain unlawfully the possession of a registration card issued to any other person -

(i) uses or threatens to use violence against the person or his or her next of kin or property of any person or his or her next of kin; or

(ii) does or omits to do, or threatens to do or omits to do anything, to the loss, detriment, disadvantage or prejudice of any person or his or her next of kin; or

(b) during the hours whereupon voters may be registered, does any canvassing of persons to register or erects any poster or structure or uses any form of loudspeaker, excluding for official purposes, or organizes any procession of or demonstration by persons or participates therein, within such a distance from any room, office or place where the registration of voters occurs that it

R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment;

- (b) in the case of any other offence, to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Nomination of candidates

Offences in connection with nomination of candidates.

97. Any person who —

- (a) with intent to defraud forges, falsifies or fabricates a nomination for any candidate in any election or utters or is in possession of any document so forged, falsified or fabricated;
- (b) wilfully defaces, destroys or mutilates a nomination for a candidate in any election;

- (c) with the intent to defraud makes any false statement or declaration in respect of the qualifications to be a candidate in any election in question;

- (d) on any day that a session in an election for the nomination of a candidate sits, uses any form of loudspeaker, excluding for official purposes, within such distance that it disturbs, hinders or interferes with the proceedings at that session, or wilfully obstructs or disturbs any proceedings thereat in any other manner whatsoever or obstructs or interferes with any person in the exercise of his or her powers or the performance of his or her duties and functions at such proceedings under this Act, or attending such proceedings,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

otherwise interferes with any document so kept in such place or any document, form, paper, instrument or other thing used for or required in connection with the carrying out of any such provision; or

- (i) without good cause fails to comply with a notice furnished to him or her under section 14(7)(b); or

- (j) in or for the purpose of any application made to a registration officer in terms of section 16 or 25 or any proceedings before a magistrate under section 19 or 22 makes a false statement knowing it to be false or not believing it to be true; or

- (k) when appearing before a magistrate under section 19 or under section 22, fails to answer fully and truthfully any question put to him or her or to produce any thing that he or she has with him or her: Provided that such person shall not be compelled to answer any question or produce any thing that he or she would not be compelled to answer or produce in any civil proceedings before a magistrate's court; or

- (l) obstructs, hinders or interferes with any person serving or attempting to serve a copy of a notice of objection in terms of this Act; or

- (m) fails to comply with the provisions of section 33; or

- (n) with the intent to defraud, makes a false entry of the particulars of any person in any voters' list or register or on any registration card; or

- (o) wilfully issues to any person a registration card knowing that such person does not qualify in terms of the provisions of this Act to be issued with a registration card,

shall be guilty of an offence.

- (2) Any person convicted of an offence in terms of subsection (1), shall be liable —

- (a) in the case of an offence in terms of paragraph (a), (b) or (c) of that subsection, to a fine not exceeding

and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at such determination, or communicate any information obtained at such determination as to the manner in which any particular person marked his or her ballot paper.

(b) No person present at the counting of votes shall communicate to any other person any information obtained at such counting about the political party or candidate in respect of which a vote has been recorded in any spoilt ballot paper.

(5) Except as provided in this Act, no person shall attempt to ascertain, or directly or indirectly assist in ascertaining, for which political party or candidate any voter has recorded his or her vote.

(6) Any person who, in the carrying out of his or her duties under this Act, has obtained any knowledge as to the political party or candidate for which any person has recorded his or her vote, shall not disclose such knowledge.

(7) No person shall, except upon the order of any court or as authorized by this Act, break the seal of a sealed packet or open such a packet.

(8) The provisions of this section shall not be construed as preventing any person from conducting any opinion poll in relation to the support enjoyed by the several political parties taking part in any election in question or by the policies which they advocate or by respective candidates at that election, or the publishing of the result of such an opinion poll so conducted.

(9) Any person who contravenes or fails to comply with any provision of this section, shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

Disurbance of proceedings and obstruction of officers.

101. Any person who -

(a) wilfully obstructs or disturbs any proceedings under this Act at a polling station or obstructs or interferes with the Director, returning officer, presiding officer, polling officer or counting officer in the exercise of his or her powers or the

Political parties

98. Any person who contravenes any provision of section 46(1) or fails to comply with any requirement or condition prescribed thereunder shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Offences in connection with foreign financing of political parties.

Voting procedures and polling stations

99. Any returning officer, presiding officer, polling officer or counting officer, who after having accepted an appointment as such, wilfully fails to perform any of the duties which he or she is required to perform in terms of the provisions of this Act or the directions issued under it by the Director or Commission, shall, without derogating from any other provision of this Act, be guilty of an offence and on conviction be liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Neglect of duty.

100. (1) Every officer or agent to the extent determined by this Act, present at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at that polling station, and shall not communicate, except for any purpose authorized by law, to any person any information likely to defeat the secrecy of the voting.

Infringement of secrecy.

(2) Except as provided in this Act, no person shall interfere with or attempt to interfere with a voter when marking his or her vote, or otherwise attempt to obtain at a polling station information as to the political party or candidate for which any voter at that polling station is about to vote or has voted, or communicate at any time to any person any information obtained at a polling station as to the political party or candidate for which any voter at such polling station is about to vote or has voted.

(3) No person shall, directly or indirectly, induce any voter to display his or her ballot paper, after he or she has marked it, in such a manner as to make known to any person the name of the political party or candidate for which the voter has marked his or her vote.

(4) (a) Every person present at the determination of the result of a poll in any election shall maintain,

performance of his or her duties and functions under this Act; or

- (b) on any polling day does any canvassing for votes or erects any poster or structure for such purposes, or uses any form of loudspeaker, excluding for official purposes, or organizes any procession of or demonstration by persons or participates therein, within a distance of 500 metres from any polling station,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

102. Any person who –

Offences in connection with voting, polling stations and equipment.

- (a) for the purpose to have a ballot paper issued to him or her knowingly produces to any presiding officer or polling officer a registration card issued to or in the name of some other person, living or dead, or a fictitious person, or a registration card which has been altered with intent to deceive, or any document purporting to be but not being a registration card; or

- (b) having previously voted at the election in question, produces to any presiding officer or polling officer, for the purpose to have a ballot paper issued to him or her, a registration card, whether issued to him or her or in the name of some other person, or any document purporting to be but not being a registration card; or

- (c) forges, counterfeits or fraudulently destroys any ballot paper or the official stamp on any ballot paper; or

- (d) without due authority supplies any ballot paper to any person; or

- (e) fraudulently places into any ballot box any paper other than a ballot paper issued to him or her in terms of this Act or into any authorization ballot paper envelope any paper other than a ballot paper so issued to him or her; or

- (f) fraudulently takes out of any polling station any ballot paper or authorization ballot paper envelope; or

- (g) without due authority destroys, takes, opens, uses or otherwise interferes with any ballot box, voting compartment, instrument, form, document or other equipment used or intended for use at any polling station; or

- (h) causes any disturbance at any polling station, or disobeys any lawful order given by the presiding officer at any polling station; or

- (i) without lawful authority destroys, mutilates, defaces or removes any notice exhibited under this Act,

shall be guilty of an offence and on conviction be liable –

- (i) in the case of an offence in terms of paragraph (a), (b) or (c), to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; and
- (ii) in any other case, to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Corrupt and illegal practices

Meaning of corrupt and illegal practices in Act.

103. For the purposes of this Act, “corrupt and illegal practices” shall mean any of the offences of undue influence, bribery, impersonation, corrupt procurement or withdrawal of candidature and treating as hereinafter dealt with in this Part.

Undue influence.

104. Any person who, directly or indirectly, by himself or herself or by any other person –

- (a) makes use or threatens to make use of any violence, force or restraint, or inflicts or threatens to inflict any bodily or psychological injury, damage, hazard or loss, upon or against, or does or threatens to do anything to the disadvantage of, any person in order to induce or compel any person to vote or to refrain from voting at any

election, or on account of any person having voted or refrained from voting at the election; or

- (b) by any such means as aforesaid or any fraudulent device or contrivance induces, compels or prevails upon any voter to vote or refrain from voting at any election in question or to vote in favour of a particular political party or candidate, or impedes, hinders or prevents the free exercise of the franchise by any voter at any election in question.

shall be guilty of an offence and on conviction be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

105. (1) Any person who, whether himself or herself or through an intermediary and whether directly or indirectly –

Bribery.

- (a) corruptly gives, lends or procures, or agrees to give, lend or procure, or offers, promises, or promises to procure, or promises to endeavour to procure, any money or any other thing, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person –

- (i) for the purpose of inducing such voter to record or abstain from recording his or her vote in any election; or

- (ii) on account of the fact that such voter has recorded or abstained from recording his or her vote in any election; or

- (b) makes any such gift, loan, offer or promise or effect for him or her any such procurement or enters into any such agreement to or for or with any other person for the purpose of inducing such person to vote for any particular political party or candidate; or

- (c) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures, or engages or promises or endeavours to procure the vote of any voter in the election; or

- (d) advances or pays, or causes to be advanced or paid, any money, to or for the use of, any other person with the intention that such money, or any part thereof, is to be expended on bribery in the election in question, or who knowingly pays, or causes to be paid, any money or any other person in discharge or repayment of any money which has in full or in part been expended in bribery in that election; or

- (e) before or during the election in question, receives or negotiates any payment or loan on his or her own behalf or any other person in consideration for his or her voting or his or her agreeing to vote in such election or his or her abstaining from voting, or his or her agreeing to abstain from voting, in such election; or

- (f) after the election has received any money on account of the fact that any other person –

- (i) has recorded his or her vote or has abstained from recording his or her vote in such election; or

- (ii) has induced any further person to record or to abstain from recording his or her vote in such election,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Nothing –

- (a) in subsection (1)(a) contained shall be construed as applying to any transportation rendered to any voter for the purpose of recording his or her vote;

- (b) in this section contained shall be construed as applying to any money paid or agreed to be paid for or on account of any election expenses *bona fide* and lawfully incurred.

Impersonation.

106. Any person who –

- (a) in an election in question applies for a ballot paper in the name of some other person living or dead or of a fictitious person and records a vote in the name of any such person; or
- (b) having voted once in an election in question, in such election votes again or applies again for a ballot paper; or
- (c) submits any affidavit or declaration required in terms of this Act containing any information or allegation which he or she knows to be false,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

107. Any person who –

Corrupt procurement or withdrawal of candidate.

- (a) corruptly induces or procures any other person to become a candidate or to withdraw as a candidate in any election in consideration of any payment or promise of any nature; or
- (b) becomes a candidate or withdraws as a candidate in such election as a result of inducement or procurement provided in paragraph (a); or
- (c) for the purpose of promoting or securing the election of another political party or candidate, before or during the election in question, publishes a false statement of the withdrawal of a political party or the death or withdrawal of a candidate from such election, knowing such statement to be false,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

108. Any person who –

Treating.

- (a) corruptly, whether himself or herself or through an intermediary, whether before or during or after an election in question and whether directly or indirectly, gives or provides, or pays in full or in

part the expense or giving or providing, any provisions to or for any other person –

- (i) for the purpose of corruptly influencing such other person or any further person to record or abstain from recording his or her vote in such election; or
- (ii) on account of the fact that such other person or any further person has recorded or has abstained from recording or is about to record or to abstain from recording his or her vote in such election; or
- (b) being a voter, corruptly accepts or takes any payment, food, drink, entertainment, lodging or provisions referred to in paragraph (a),

shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART VII ELECTION APPLICATIONS

Powers of High Court in relation to election applications.

109. An application complaining of an undue return or an undue election of any person to the office of President or as any member of the National Assembly or a regional council or local authority council by reason of want of qualification, disqualification, corrupt and illegal practice, irregularity or by reason of any other cause whatsoever, shall, subject to the provisions of this Part, be made to the court.

Presentation of election applications.

110. (1) An election application shall be represented within 30 days after the day on which the result of the election in question has been declared as provided in this Act.

(2) Presentation of the application shall be made by lodging it with the registrar of the court.

(3) (a) At the time of the presentation of the application or within five days thereafter, security

- (b) a political party which took part in the election in question by submitting any party list or which nominated a candidate at any other election in question;
- (c) any person claiming to have had a right to be elected at the election in question;
- (d) any person alleging himself or herself to have been a candidate at such election;
- (e) the Attorney-General if he or she deems it expedient in the public interest.
- (2) When an office or a seat is claimed for some person other than the applicant such person shall be a party to the application as co-applicant.

Service of applications.

113. Notice in writing of the presentation of an election application, accompanied by a copy of the application and a certificate of the registrar of the court stating that the amount determined by him or her as security has been paid or sufficient recognizance has been furnished in respect of that amount as contemplated in section 110(3), shall within ten days after the presentation of the application, be served in accordance with the rules of the court on a respondent.

Joinder of co-applicant.

114. Any person may after an application has been represented to the registrar of the court apply to that court to be joined as co-applicant in that application, and the court may, with due regard to the provisions of section 112(1), allow or refuse such application and make such order as to costs as it deems just and equitable.

Election applications to be in prescribed form.

115. An election application under this Part shall be in such form and shall contain such matters as may be prescribed by the rules of the court.

Trial of applications.

116. (1) The trial of every election application shall take place before one judge, unless the Judge President directs the trial to take place before two or more judges of the court.

(2) Notice of the time and place at which an election application will be heard shall be furnished by the registrar of the court to the parties concerned not less than ten days before the day on which the trial is to be commenced.

for the payment of all costs, charges and expenses that may become payable by the applicant –

- (i) to any person which may be summoned as a witness on his or her behalf; and
- (ii) to the person, or, in the case of an election on party lists, the political party whose election or return is complained of (hereinafter referred to as the respondent)

shall be furnished by or on behalf of the applicant.

(b) The security shall be for an amount determined by the registrar of the court and shall be furnished in money or by recognizance to the satisfaction of the said registrar.

(c) If the applicant complies with the provisions of paragraph (b), the application shall be deemed to be at issue, or, if there is no such compliance, no further proceedings shall be had on the application.

111. (1) The registrar of the court shall, as soon as is practicable, make out a list of election applications presented to the court and which are at issue, placing them in the order in which they were presented, and shall keep at his or her office a copy of such list open to inspection by the public and furnish the Commission with a copy thereof.

List of election applications.

(2) Subject to the provision of subsection (3), election applications shall be tried in the order in which they stand on such list, unless the court otherwise directs.

(3) When more than one application relating to the same election is presented, all such applications shall be put together in the list referred to in subsection (1), and shall be dealt with as one application, but such application shall stand on the said list in the place where the last of such applications would have stood if it had been the only application presented, unless the court otherwise directs.

112. (1) An election application may be presented by –

Persons who may present election applications.

(a) a voter registered for the election in question;

(8) When any allegation is made in an election application of any corrupt and illegal practice having been committed at the election to which the application refers, the court shall, in addition to the certificate aforesaid, at the same time and in the like manner report in writing –

- (a) whether any corrupt and illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any political party or candidate at that election or by or with the knowledge and consent of its or his or her agents, and the nature of such corrupt and illegal practice;
- (b) the names of all persons who have been proved at the trial to have been guilty of any corrupt and illegal practice;
- (c) whether corrupt and illegal practices have, or whether there is reason to believe that corrupt and illegal practices have, extensively prevailed at the election in question.

(9) The court may at the same time make a special report as to any matter, arising in the course of the trial, an account of which ought in its judgment, to be submitted to the Commission or National Assembly or the regional council or local authority council in question, as the case may be.

(10) A copy of every certificate and report made by the court under this section shall, as soon as is practicable, be presented by the Speaker to the National Assembly or by the said regional officer to the regional council in question, or by the said chief executive officer to the local authority council in question, as the case may be.

Transmission of statement and evidence to Prosecutor-General.

117. (1) If the court states in the report on the trial of an election application that any person has been guilty of a corrupt and illegal practice or that there is reason to believe that corrupt and illegal practices have extensively prevailed at the election to which the application refers, that statement with the evidence taken at the trial shall be transmitted by the registrar of the court to the Prosecutor-General, with a view to the institution of any prosecution in relation thereto.

(2) A copy of every such statement and evidence referred to in subsection (1) shall also be transmitted by the said registrar to the Commission.

(3) Any election application shall be heard in open court and shall be determined within 60 days from the date of the presentation of the application to the registrar of the court or within such longer period as special circumstances may require.

(4) No election referred to in section 109 shall be set aside by the court by reason of want of qualification, disqualification, corrupt and illegal practice, irregularity or by reason of any other cause if it appears to the court that any such want of qualification, disqualification, corrupt and illegal practice, irregularity or other cause did not affect the result of that election.

(5) At the conclusion of the trial of any election application, the court shall determine whether the respondent was duly elected or whether any, and if so, what person other than the respondent was or is entitled to be declared duly elected.

(6) If the court determines that the respondent was not duly elected, but that some other person was or is entitled to be declared duly elected, the respondent shall from the date of such determination be deemed to have vacated his or her office or seat, as the case may be, and the court shall forthwith certify as such its determination to the Commission and, in the case of the President or the National Assembly, to the Speaker of the National Assembly or, in the case of a regional council, to the regional officer of that council or, in the case of a local authority council, to the chief executive officer of that council, and the Commission shall thereupon, by notice in the *Gazette*, declare such other person duly elected from the date on which the respondent vacated his or her office or seat, as the case may be, and alter the announcement of the result of the election published in the *Gazette*, accordingly.

(7) If the court determines that a respondent was not duly elected, and that no other person was or is entitled to be declared duly elected, the office or seat of the respondent, as the case may be, shall be deemed vacant and the court shall certify as such its determination as provided in subsection (6), and the Commission shall, if satisfied that no appeal is being prosecuted against the determination of the court or that an appeal has failed, declare by notice in the *Gazette* that a vacancy has occurred, the cause of such vacancy and nature of such vacancy.

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Witnesses.

118. (1) A witness shall be summoned and sworn in the same manner as at a trial of an action before the court, and his or her evidence shall be subject to the same rules of admissibility and to the same privileges and, penalties under like circumstances in respect of the giving of false evidence, as he or she would be subject to if the evidence given by him or her at the trial of the election application had been given at the trial of an action before the court.

(2) On the trial of an election application the court may examine any witness or any person in court although such witness or person is not called or examined by any party to the application.

(3) After a witness has so been examined by the court, such witness may be cross-examined by or on behalf of the applicant and respondent or either one of them.

(4) The reasonable expenses incurred by any person appearing to give evidence at the trial of an election application, may be allowed to such person, according to the scale usually allowed to witnesses on trial by the court for civil actions, and such expenses shall be deemed to be costs in the application.

(5) On the trial of an election application complaining of an undue election or undue return and claiming the office or seat, as the case may be, for some other person, the respondent may give evidence to prove that the election of that other person was undue, in the same manner as if the respondent had presented an election application complaining of such election.

Withdrawal of applications.

119. (1) An election application shall not be withdrawn without the leave of the court, and then only after such notice has been given as the court may direct.

(2) If there is more than one applicant, no application to withdraw an election application shall be made without the consent of all the applicants.

(3) If an election application is withdrawn, the applicant shall be liable to pay the costs of the respondent.

120. (1) All costs, charges and expenses of and incidental to the presentation of an election application and the proceedings consequent thereon, shall be defrayed by the parties to the application in such manner, and in such

Costs.

Act No. 24, 1992

ELECTORAL ACT, 1992

proportions, as the court may determine, regard being had to the disallowance of any costs, charges or expenses which may, in the opinion of the court, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the applicant or the respondent, and to the discouragement of needless expense by throwing the burden of defraying it on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

(2) The costs may be taxed and recovered in the same manner as the costs of an ordinary action at law in the court.

PART VIII
MISCELLANEOUS AND GENERAL

Director to keep list of persons becoming incapable.

121. (1) The Director shall keep in respect of each constituency or local authority area or, where such constituency or area has been divided into polling districts or wards, as the case may be, each polling district or ward, a list of names, registration numbers and residential addresses, of all persons who in terms of this Act have become incapable of being registered or of remaining registered as voters or of voting at the election in question.

(2) The Director shall enter in the list opposite the name of each person the reason or cause for and the duration of the incapability.

Removal of incapacity proved by perjury.

122. (1) When any person, by reason of a conviction or a declaration by any court, has in terms of this Act become disqualified, and any witness who gave evidence against him or her at the proceedings culminating in that conviction or declaration, is convicted of perjury in respect of that evidence, that court may, upon the application of that person, if satisfied that the said conviction or declaration was based on perjured evidence, order that his or her disqualification shall from that time cease.

(2) The registrar or clerk of any court, as the case may be, shall as soon as is practicable give written notice to the Director of any cessation referred to in subsection (1), whereupon the Director shall remove such person's name and other particulars recorded therein from the list referred to in section 121 and record them in the relevant voters' register.

Voter not required in legal proceedings to disclose his or her vote.

123. No person who has voted at an election shall in any legal proceedings, be required to state for whom he or she has voted.

Evidence of election being held.

124. Upon any charge or an offence in terms of this Act alleged to have been committed at or in connection with an election, a certificate of the Director 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.

Publication and service of notices.

125. (1) A public notice required to be given in terms of this Act shall, except where it is expressly directed to be published in the *Gazette*, be sufficiently given if it is published in one newspaper circulating in the constituency or local authority area to which the notice refers, or if it is displayed in any place open to the public in that constituency or area which the Director may deem fit.

(2) Save as is otherwise specially provided in this Act, when any summons, notice or other document is required to be served on any person in terms of this Act, it may be served by delivering it to the person to whom it is addressed or by leaving it at his or her place of residence stated on the relevant voters' register as his or her place of residence or by sending it to him or her through the post by registered letter.

(3) In proving service by post, it shall be sufficient to prove that the letter containing the document was properly addressed, registered with the postal officials and posted, and, unless the contrary is proved, the service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Sundays and public holidays.

126. Whenever under this Act anything is required to be commenced, concluded or done on a particular date, and that date happens to fall upon a Sunday or a public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1991 (Act 26 of 1991), such thing shall be commenced, concluded or done on the first day following such Sunday or public holiday, which is not a Sunday or public holiday, as the case may be.

Exemption from stamp duty.

127. Notwithstanding anything to the contrary contained in any law relating to stamp duty, no stamp duty shall be charged on any affidavit, declaration or statement made in terms of the provisions of this Act.

Payments and expenditure under this Act.

128. (1) Subject to the provisions of subsection (2), any payment and any expenditure to be, or which may be, made or incurred under this Act, shall be defrayed out of funds appropriated by law for that purpose.

(2) The provisions of subsection (1) shall not apply in relation to any payment or expenditure to be, or which may be, made or incurred by a political party or candidate under this Act.

(3) The remuneration or allowances paid to any person in terms of the provisions of section 14(4) or 51(3) shall not be regarded as income for the purposes of any law imposing a tax on income.

Penalties not expressly provided.

129. Where no penalties are expressly provided for an offence against this Act or for a contravention of or failure to comply with any provisions thereof, the offender shall on conviction be liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Regulations and forms.

130. (1) Subject to the provisions of subsection (3), the Commission may make regulations in relation to any matter which, in terms of any provision of this Act, is required or permitted to be prescribed and, generally which it deems necessary or expedient to prescribe for the better carrying out of the objects and purposes of this Act.

(2) The regulations may prescribe penalties for the contravention thereof or failure to comply therewith, not exceeding a fine of R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) The Commission may also, where no forms are prescribed by this Act, prescribe the form of any document to be used in the carrying out of the provisions of this Act.

(4) Different regulations may be made under subsection (1) in respect of different regions, constituencies, local authority areas, polling districts or wards, or different elections under this Act or different political parties, as the circumstances may require.

(5) The Commission shall publish or cause to be published any regulation made under this section, in the *Gazette*.

SCHEDULE

LAWS REPEALED OR AMENDED (Section 132(1))

No. and year of law	Title of law	Extent of repeal
Proclamation 13 of 1924	Election of provisional kaptein for the Rehoboth Gebiet and condonation of irregularities, 1924	The whole
Act 23 of 1949	South West Africa Affairs Amendment Act, 1949	Section 34, in so far as it has not been repealed
Proclamation AG.1 of 1977	Rehoboth First elections Proclamation, 1977	The whole
Ordinance 3 of 1977	Referendum Ordinance, 1977	The whole
Proclamation AG.24 of 1978	Kavango Election Amendment Proclamation, 1978	The whole
Proclamation AG.37 of 1978	Registration of Voters (Constituent Assembly) Proclamation, 1978	The whole
Proclamation AG. 63 of 1978	Constituent Assembly and Election Proclamation, 1978	The whole
Proclamation AG.69 of 1978	Registration of Voters (Constituent Assembly) Amendment Proclamation, 1978	The whole
Proclamation AG.81 of 1978	Constituent Assembly and Election Amendment Proclamation, 1978	The whole
Proclamation AG. 85 of 1978	Second Constituent Assembly and Election Amendment Proclamation, 1978	The whole
Proclamation AG.5 of 1979	General Registration of Voters Postponement Proclamation, 1979	The whole
Proclamation AG.7 of 1979	General Election Postponement Proclamation, 1979	The whole

131. (1) Notwithstanding anything to the contrary contained in this Act or any other law, for the purposes of taking the registration of voters or submitting the nomination of candidates or conducting an election in a constituency in terms of the provisions of this Act, the President may, if he or she deems it necessary, designate by proclamation in the *Gazette* any other constituency in which such registration of voters shall be taken or such nomination of candidates shall be submitted or such election shall be conducted, and thereupon such registration, nomination or election shall be taken, submitted or conducted, as the case may be, in such other constituency in the same manner and subject to the same requirements as in such first-mentioned constituency.

(2) When in terms of the provisions of subsection (1) any other constituency has been designated for any purpose referred to in that subsection, any thing done in respect of a constituency in such other constituency in relation to such registration of voters or nomination of candidates or election, as the case may be, shall be deemed to have been done in such first-mentioned constituency.

132. (1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of that Schedule.

(2) Notwithstanding the repeal of the Registration of Voters (Constituent Assembly) Proclamation, 1989 (Proclamation AG. 19 of 1989), the Registration of Political Organizations (Constituent Assembly) Proclamation, 1989 (Proclamation AG. 43 of 1989), the Election (Constituent Assembly) Proclamation, 1989 (Proclamation AG. 49 of 1989), the Election (Constituent Assembly) Amendment Proclamation, 1989 (Proclamation AG. 59 of 1989), and the Constituent Assembly Proclamation, 1989 (Proclamation AG. 62 of 1989), by subsection (1) of this section, the provisions of those laws shall continue to be of force and effect in relation to the National Assembly until the first general election of members of the said National Assembly takes place after the commencement of this Act.

133. This Act shall be called the Electoral Act, 1992.

Designation of constituency for certain purposes.

Repeal of laws.

Short title.