

ELECTIONS
ELECTORAL ACT 24 OF 1992

[ASSENTED TO 28 AUGUST 1992] [DATE OF COMMENCEMENT: 31 AUGUST 1992]

(Signed by the President)

as amended by

Electoral Amendment Act 23 of 1994
Local Authorities Amendment Act 3 of 1997
Electoral Amendment Act 30 of 1998
(as amended by the Electoral Amendment Act 11 of 1999)
Electoral Amendment Act 19 of 1999
Electoral Amendment Act 20 of 2002
Electoral Amendment Act 7 of 2003

NB. Section 15 of the Electoral Amendment Act 30 of 1998 provides that the word "officer", wherever it occurs in this Act and if it refers to a person employed by the Public Service in any capacity, shall be substituted by the expression "staff member". Please note that this amendment has not been made or annotated as it is not clear from the context whether the "officer" referred to in each instance is a member of the Public Service.

ACT

To provide for the election of persons to the office of President, as members of the National Assembly, 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.

ARRANGEMENT OF SECTIONS

PART I

INTRODUCTORY PROVISIONS

- 1 Definitions
- 2 Application of Act

PART II

ELECTORAL COMMISSION

- 3 Establishment of Electoral Commission
- 4 Duties and functions of Commission
- 5 Constitution of the Commission and establishment of the Selection Committee
- 6 Committees of Commission
- 7 Term of office and conditions of service of members of Commission
- 8 Vacation of office and filling of vacancies
- 9 Meetings of Commission and decisions
- 10 Reports by Commission
- 11 Establishment of Directorate of Elections and appointment of Director
- 12

PART III

REGISTRATION OF VOTERS

- 13 Persons entitled to register as voters
- 14 Appointment of supervisors of registration, registration officers and assistants
- 15 General registration of voters
- 16 Application for registration as voter
- 17 Rejection of incompleting application form
- 18 Refusal to register applicant
- 19 Appeal against refusal to register
- 20 Registration of applicant
- 21 Preparation and publication of provisional voters' registers
- 22 Objections against name of person included in provisional voters' register
- 23 Statement of case for decision by judge
- 24 Cancellation of voter registration card invalidated by magistrate's allowing objection

- 25 Replacement of voter registration card
- 26 Preparation, certification and publication of voters' registers
- 27 Original voters' registers to be kept for inspection by public
- 28 Supplementary registration of voters
- 28A Continuous registration of voters
- 29 Notification of change in place of residence
- 30 Application for registration in another constituency, local authority area, polling district or ward
- 31 Information on registered deaths to be furnished to Director
- 32 Amendment of voters' registers
- 33 Return or surrender of voter registration cards
- 34 Voter to establish that his or her name has been included in voters' registers
- 35
- 36 Voters' registers not invalidated by reason of errors
- 37 Adjustment of voters' registers on alteration of constituencies
- 38 Powers of Director to demand particulars

PART IV REGISTRATION OF POLITICAL PARTIES

- 39 Registration as political party
- 40 Prohibition of registration as political party in certain circumstances
- 41 Cancellation of registration of political party
- 42 Registration of association or organization for elections of local authority councils
- 43 Conduct of political parties
- 44 Inspection of documents
- 45 Appeal against decision of Commission
- 46 Disclosure of foreign financing of political parties
- 47 Certain political parties not affected by this Part for purposes of first National Assembly

PART V CONDUCT OF ELECTIONS *Preliminary arrangements*

- 48 Publication of proclamations
- 49 General elections and by-elections
- 50 Determination of days for submission of nominations of candidates and polling days for elections
- 51 Appointment of returning officers and other election officers
- 52 Agents of political parties and candidates
- 53 Declaration of secrecy

Nomination of candidates for presidential elections

- 54 Requirements for nomination as candidate for presidential elections
- 55 Submission of nomination as candidate for presidential elections
- 56 Duration of session on nomination day
- 57 Declaration of candidates duly nominated for election as President
- 58 Lack of nomination or death of candidate after nomination

Nomination of candidates for National Assembly elections

- 59 Submission of party lists
- 60 Publication of party lists

Nomination of candidates for regional council elections

- 61 Requirements for nomination as candidate for regional council elections
- 62 Submission of nomination as candidate for regional council elections
- 63 Duration of session on nomination day
- 64 Declaration of candidates duly nominated for election as members of regional councils
- 65 Death of candidate after nomination
- 66 Lack of nomination or de-registration of political party after nomination

Nomination of candidates for local authority council elections

- 67 Requirements for nomination as candidate for local authority council elections
- 68 Submission of party lists
- 69
- 70
- 71
- 72

General provisions relating to conduct of elections

- 73 Polling stations

- 74 Provision of equipment
- 75 Polling booths
- 76 Ballot box
- 77 Commencement and closing of poll at polling stations
- 78 Powers of presiding officers at polling stations

Voting at polling stations

- 79 Franchise
- 80 Place of voting
- 81 Voting to be by secret ballot
- 82 Manner of voting at elections
- 82A Voting process at elections held simultaneously
- 83 Spoilt ballot papers
- 84 Assistance to voters
- 85 Closing of poll, sealing of ballot boxes and packets and ballot paper accounts

Determination of result of poll and announcement of result of election

- 86 Notice of place and time of determination of result of poll
- 87 Verification of ballot paper accounts by returning officer and counting of votes recorded at polling stations
- 87A Verification and counting of tendered votes cast at polling stations outside Namibia
- 88 Determination and announcement of result in Presidential elections
- 89 Determination and announcement of result in National Assembly elections
- 90 Determination and announcement of result in regional council elections
- 91 Determination and announcement of result in local authority council elections
- 92 Publication of result of elections
- 93 Sealing and safe-keeping of election material
- 94 Verification of elections by Director
- 95 Immaterial mistakes not to affect validity of elections

PART VI

OFFENCES AND PENALTIES

Registration of voters

- 96 Offences in connection with registration of voters

Nomination of candidates

- 97 Offences in connection with nomination of candidates

Political parties

- 98 Offences in connection with foreign financing of political parties

Voting procedures and polling stations

- 99 Neglect of duty
- 100 Infringement of secrecy
- 101 Disturbance of proceedings and obstruction of officers
- 102 Offences in connection with voting, polling stations and equipment

Corrupt and illegal practices

- 103 Meaning of corrupt and illegal practices in Act
- 104 Undue influence
- 105 Bribery
- 106 Impersonation
- 107 Corrupt procurement or withdrawal of candidature
- 108 Treating

PART VII

ELECTION APPLICATIONS

- 109 Powers of High Court in relation to election applications
- 110 Presentation of election applications
- 111 List of election applications
- 112 Persons who may present election applications
- 113 Service of applications
- 114 Joinder of co-applicant
- 115 Election applications to be in prescribed form
- 116 Trial of applications
- 117 Transmission of statement and evidence to Prosecutor-General
- 118 Witnesses
- 119 Withdrawal of applications

120 Costs

PART VIII MISCELLANEOUS AND GENERAL

- 121 Director to keep list of persons becoming incapable
- 122 Removal of incapacity proved by perjury
- 123 Voter not required in legal proceedings to disclose his or her vote
- 124 Evidence of election being held
- 125 Publication and service of notices
- 126 Sundays and public holidays
- 127 Exemption from stamp duty
- 128 Payments and expenditure under this Act
- 129 Penalties not expressly provided
- 130 Regulations and forms
- 131 Designation of constituency for certain purposes
- 132 Repeal of laws
- 133 Short title

Schedule - Laws Repealed

PART I INTRODUCTORY PROVISIONS (ss 1-2)

1 Definitions

(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 members of a local authority council,

means the application form to be used in respect of the elections referred to in paragraph (a) and (b) , completed in respect of such applicant in accordance with the provisions of section 16(2);

[Definition of "application" substituted by sec 1 (a) (i) of Act 7 of 2003.]

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

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

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

"Chief Justice"

[Definition of "Chief Justice" deleted by sec 1 (a) of Act 23 of 1994.]

"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;

"continuous registration" means the process of registration of voters in accordance with section 28A;

[Definition of "continuous registration" inserted by sec 1 (b) of Act 23 of 1994.]

"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 in terms of section 11(2);

[Definition of "Director" substituted by sec 1 (a) of Act 30 of 1998.]

"Directorate of Elections" means the Directorate of Elections established by section 11(1);

[Definition of "Directorate of Elections" inserted by sec 1 (b) of Act 30 of 1998.]

"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 Authorities Act, 1992" means the Local Authorities Act, 1992 (Act 23 of 1992);

[Definition of "Local Authorities Act, 1992" inserted by sec 1 (c) of Act 23 of 1994.]

"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;

[Definition of "local authority voters' register" substituted by sec 1 (a) (ii) of Act 7 of 2003.]

"magistrate" includes an additional magistrate or acting magistrate;

"national voters' register" means the national voters' register referred to in section 26(1) (a) (i) for a constituency;

[Definition of "national voters' register" substituted by sec 1 (d) of Act 23 of 1994.]

"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 election of members of a local authority council required to be held on party lists under the Local Authorities Act, 1992, means a list of candidates submitted by a political party under section 68(1);

[Definition of "party list" substituted by sec 3 of Act 3 of 1997 and by sec 1 (a) (iii) of Act 7 of 2003.]

"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"

[Definition of "polling district" deleted by sec 1 (e) of Act 23 of 1994.]

"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;

[Definition of "presiding officer" substituted by sec 1 (f) of Act 23 of 1994.]

"provisional local authority voters' register" means the provisional local authority voters' register referred to in section 21 (a) (ii) for a local authority area;

[Definition of "provisional local authority voters' register" substituted by sec 1 (a) (iv) of Act 7 of 2003.]

"provisional national voters' register" means the provisional national voters' register referred to in section 21 (a) (i) for a constituency;

[Definition of "provisional national voters' register" substituted by sec 1 (g) of Act 23 of 1994.]

"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;

"Regional Councils Act, 1992" means the Regional Councils Act, 1992 (Act 22 of 1992);

[Definition of "Regional Councils Act, 1992" inserted by sec 1 (h) of Act 23 of 1994.]

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

- (a) is entitled 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 members of a local authority council,

means the original voter registration card 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 and complying with the provisions of subsection (2) of this section;
[Definition of "voter registration card", previously definition of "registration card", substituted by sec 1 (a) (v) of Act 7 of 2003.]

"registration form"

[Definition of "registration form" deleted by sec 1 (a) (vi) of Act 7 of 2003.]

"voter registration number" , in relation to a voter registration card in question, means the distinctive serial number appearing in accordance with the provisions of subsection (2) of this section on the voter registration card, and **"number"** has a corresponding meaning, as the case may be;

[Definition of "voter registration number", previously definition of "registration number", substituted by sec 1 (a) (vii) of Act 7 of 2003.]

"registration officer" means a registration officer appointed under section 14(1) (b) ;

[Definition of "registration officer" substituted by sec 1 (i) of Act 23 of 1994.]

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

"returning officer" means a returning officer appointed under section 51(1) (a) ;

[Definition of "returning officer" substituted by sec 1 (j) of Act 23 of 1994.]

"staff member" means a staff member as defined in section 1 of the Public Service Act, 1995 (Act 13 of 1995);

[Definition of "staff member" inserted by sec 1 (c) of Act 30 of 1998.]

"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) ;

[Definition of "supervisor of registration" substituted by sec 1 (a) (viii) of Act 7 of 2003.]

"tendered vote" means a vote referred to in section 80(3);

[Definition of "tender vote" inserted by sec 1 (k) of Act 23 of 1994.]

"tendered vote envelope" means an envelope referred to in paragraph (c) of section 82(9);

[Definition of "tendered vote envelope" inserted by sec 1 (k) of Act 23 of 1994.]

"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 members 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;

[Definition of "voter" substituted by sec 1 (a) (ix) of Act 7 of 2003.]

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

"ward"

[Definition of "ward" deleted by sec 1 (a) (x) of Act 7 of 2003.]

(2) For the purposes of the registration of voters under this Act, each voter registration card and application form shall-

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

[Subsec (2) substituted by sec 1 (b) of Act 7 of 2003.]

2 Application of Act

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.

[Sec 2 substituted by sec 2 of Act 7 of 2003.]

PART II

ELECTORAL COMMISSION (ss 3-12)

3 Establishment of Electoral Commission

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

[Sec 3 substituted by sec 2 of Act 30 of 1998.]

4 Duties and functions of Commission

(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;
- (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 Constitution of the Commission and establishment of the Selection Committee

(1) The Commission shall, subject to the further provisions of this section, consist of five members appointed by the President by Proclamation in the *Gazette* .

(2) The Director shall, in such form as he or she may determine, by notice in the *Gazette* and in not less than two daily newspapers circulating throughout Namibia, invite any person to in writing apply for appointment as a member of the Commission, and shall in such notice stipulate-

- (a) the form of an application for such appointment;
- (b) the place where or the person to whom an application for such appointment shall be submitted;
- (c) the closing date for the submission of an application for such appointment; and

- (d) such other particulars or documents, as the Director may determine, which shall accompany an application for such appointment.

(3) The Director shall convene a meeting of the Selection Committee to be held on or at such date, time and venue as the Director may determine, which meeting shall be held not later than 21 days after the closing date for the submission of applications determined under paragraph (c) of subsection (2).

- (4) At the meeting convened in terms of subsection (3), the Selection Committee shall-
- (a) scrutinise the applications referred to in that subsection; and
 - (b) from the applications referred to in paragraph (a) , but subject to the further provisions of this section, select not less than ten and not more than 20 applicants to be interviewed by the Selection Committee at the meeting to be convened in terms of subsection (9).

(5) The Committee of Privileges of the National Assembly established by section 7(1) (a) of the Powers, Privileges and Immunities of Parliament Act, 1996 (Act 17 of 1996), shall determine the qualifications and other criteria which a person shall comply with in order to qualify for selection by the Selection Committee in terms of subsection (4) (b) .

[Subsec (5) amended by sec 4 of Act 11 of 1999 (which amended Act 30 of 1998).]

(6) No person, excluding a person who complies with the qualifications and other criteria referred to in subsection (5), shall be selected by the Selection Committee in terms of subsection (4) (b) .

(7) If less than ten applications referred to in subsection (3) are received by the Selection Committee, the Director shall:

- (a) *mutatis mutandis* in accordance with subsection (2), invite any person to apply in writing for appointment as a member of the Commission; and
- (b) *mutatis mutandis* in accordance with subsection (3), convene a meeting of the Selection Committee.

(8) Subsection (4) shall *mutatis mutandis* apply to a meeting convened in terms of subsection (7) (b) .

(9) The Director shall by notice in the *Gazette* convene a meeting of the Selection Committee, which meeting shall take place not less than 60 days and not more than 90 days after the closing date for the submission of applications determined under subsection (2) (c) , for the purpose of selecting suitable candidates from amongst the applicants selected in terms of subsection (4) (b) to be interviewed by the Selection Committee for appointment as members of the Commission.

(10) The notice published in terms of subsection (9) shall contain the names and dates of birth of the applicants referred to in subsection (4) (b) to be interviewed by the Selection Committee.

(11) The meeting of the Selection Committee convened in terms of subsection (9) shall be held on or at such date, time and venue as the Director may determine and specify in the notice convening such meeting.

- (12) There is hereby established a Selection Committee which shall consist of-
- (a) one staff member of the Supreme Court or of the High Court of Namibia, nominated by the Chief Justice of the Supreme Court referred to in Article 79 of the Namibian Constitution, which staff member shall be the chairperson of the Selection Committee;

- (b) one legal practitioner admitted and authorised to practice under the Legal Practitioners Act, 1995 (Act 15 of 1995), and nominated by the Law Society of Namibia, which legal practitioner shall be the deputy chairperson of the Selection Committee; and
- (c) one person from the staff of the Ombudsman referred to in section 7(1) of the Ombudsman Act, 1990 (Act 7 of 1990), and nominated by the Ombudsman referred to in Article 89 of the Namibian Constitution,

appointed for a period of one year by notice in the *Gazette* by the Secretary of the National Assembly appointed or designated, as the case may be, in terms of Article 52(1) of the Namibian Constitution.

(13) An alternate member of the Selection Committee shall, *mutatis mutandis* in terms of subsection (12), be appointed in respect of every member of the Selection Committee appointed in terms of that subsection.

(14) An alternate member of the Selection Committee appointed in terms of subsection (13) shall, subject to subsection (25), in the absence of the member of the Selection Committee in respect of whom he or she was appointed as an alternate member, perform the functions of the member so absent.

- (15) The Director shall-
- (a) not be a member of the Selection Committee;
 - (b) at the meetings of the Selection Committee-
 - (i) act as the secretary of the Selection Committee; and
 - (ii) not have a vote.

(16) The three members of the Selection Committee shall, subject to subsection (25), for the purposes of any meeting thereof constitute a quorum and the procedures to be followed at such meeting shall be determined by the chairperson.

(17) The meeting of the Selection Committee convened in terms of subsection (9) shall be open to the public.

- (18) The Selection Committee shall at the meeting convened in terms of subsection (9) interview the applicants referred to in subsection (10), and shall in so doing act in accordance with the principles of transparency and openness, and shall make its recommendations in terms of subsection (21) with due regard to-
- (a) an applicant's suitability, qualifications and experience;
 - (b) the qualifications and criteria determined in terms of subsection (5); and
 - (c) the objections, if any, lodged in terms of subsection (19).

(19) Any registered voter may, at any time before the commencement of the meeting of the Selection Committee convened in terms of subsection (9), in writing lodge with the secretary of the Selection Committee an objection against the appointment of any person as a member of the Commission and shall, if so directed by the Selection Committee in writing, appear before the Selection Committee, where such registered voter shall, in the manner determined by the chairperson of the Selection Committee, be subject to questioning by the members of the Selection Committee and by the person against whose appointment he or she objected.

(20) Any applicant referred to in subsection (4) (b) who fails to attend the meeting convened in terms of subsection (9), or who at such meeting fails to truthfully reply to any reasonable question put to him or her by the Selection Committee or by any other person

entitled to examine such person at such meeting, shall be disqualified from being recommended in terms of subsection (21) as an applicant suitable for appointment as a member of the Commission.

(21) The Selection Committee shall, within a period of ten days after the commencement of the meeting convened in terms of subsection (9), in writing recommend to the President not less than eight suitable applicants to be considered for appointment under subsection (1) as members of the Commission.

(22) If the Director, for any reason, fails to comply with subsection (2) or (3) or (9), as the case may be, or if the Selection Committee, for any reason, fails to comply with subsection (21), or if, for any reason, any of the meetings convened in terms of subsection (3) or (9), as the case may be, does not take place or is not finalised, the President may, on the recommendation of the Committee of Privileges of the National Assembly established by section 7(1) (a) of the Powers, Privileges and Immunities of Parliament Act, 1996 (Act 17 of 1996), in terms of subsection (1) appoint the members of the Commission.

[Subsec (22) amended by sec 4 of Act 11 of 1999 (which amended Act 30 of 1998).]

(23) The Directorate of Elections may, out of moneys appropriated by Parliament for such purpose-

- (a) remunerate or reimburse members of the Selection Committee and of the Directorate of Elections, and persons referred to in section 11(12) or (13), in respect of duties performed or expenses incurred by such members or persons, as the case may be; or
- (b) pay any other expenses incurred by the Directorate of Elections in respect of any duty performed under this Act and approved by the Commission.

(24) Any person who wilfully interrupts the proceedings at any meeting of the Selection Committee, or who wilfully disturbs or obstructs the Selection Committee or any member thereof in the performance of any of its or his or her functions, as the case may be, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(25) For the purpose of this section, unless the context otherwise indicates-

- (a) 'Selection Committee' means the Selection Committee established and constituted by subsection (12);
- (b) in the absence of the chairperson of the Selection Committee, the deputy chairperson shall perform the functions of the chairperson; and
- (c) a reference to a member of the Selection Committee includes a reference to the alternate member appointed in terms of subsection (13) in respect of such member.

[Sec 5 substituted by sec 3(1) of Act 30 of 1998 (as amended by sec 1 (a) of Act 11 of 1999).]

(b)

(a)

(b)

Gazette

*

6 Committees of Commission

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.

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

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

[Subsec (1) substituted by sec 3A of Act 30 of 1998 (as inserted by sec 2 of Act 11 of 1999).]

(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 Vacation of office and filling of vacancies

(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.

9 Meetings of Commission and decisions

(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.

(3A) The Director shall-

- (a) not be a member of the Commission;
- (b) at any meeting of the Commission-
 - (i) act as the secretary of the Commission; and
 - (ii) not have a vote.

[Subsec (3A) inserted by sec 4 of Act 30 of 1998.]

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

(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.

(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 Establishment of Directorate of Elections and appointment of Director

(1) There is hereby established a Directorate of Elections as a division of the Commission.

(2) The President shall, on the recommendation of the Commission made in terms of the further provisions of this section, and subject to the Public Service Act, 1995 (Act 13 of 1995), by Proclamation appoint as the Director of Elections a fit and proper person who complies with the qualifications and criteria referred to in section 5(5), which Director shall-

- (a) be the executive officer of the Commission; and
- (b) be designated as the Permanent Secretary of the Commission as provided for in Schedule 3 to that Act.

(3) The Secretary of the National Assembly shall-

- (a) by notice in the *Gazette*, *mutatis mutandis* in accordance with section 5(2), invite any person to apply for appointment as the Director; and
- (b) *mutatis mutandis* in accordance with section 5(3), convene a meeting of the Commission to take place on or at such date, time and venue as the Secretary of the National Assembly determines.

- (4) At the meeting convened in terms of subsection (3) (b) , the Commission shall-
- (a) scrutinise the applications received by the Commission in reply to the invitation contemplated in subsection (3) (a) ; and
 - (b) from the applications referred to in paragraph (a) , subject to the further provisions of this section, select five applicants to be interviewed by the Commission at the meeting convened in terms of subsection (6).

(5) Subsections (5) and (6) of section 5 shall *mutatis mutandis* apply to the applicants referred to in subsection (4).

(6) The Secretary of the National Assembly shall by notice in the *Gazette* convene a meeting of the Commission, which meeting shall take place not less than 30 days and not more than 60 days after the closing date for the receipt of applications specified in the notice published in terms of subsection (3) (a) , for the purpose of selecting suitable candidates from among the applicants referred to in subsection (4) (b) to be interviewed by the Commission for appointment as the Director as contemplated in subsection (2).

(7) The notice referred to in subsection (6) shall contain the names and dates of birth of the five applicants referred to in subsection (4) (b) .

(8) The Secretary of the National Assembly shall act as the secretary at the meeting of the Commission convened in terms of subsection (3) (b) or (6), as the case may be.

(9) Subsections (17), (18), (19) and (20) of section 5 shall *mutatis mutandis* apply to a meeting of the Commission convened in terms of subsection (6).

(10) The Commission shall within a period of five days after the commencement of the meeting convened in terms of subsection (6), in writing recommend to the President not less than two suitable candidates to be considered for appointment as the Director in terms of subsection (2).

(11) If the Secretary of the National Assembly, for any reason, fails to comply with subsection (3) (a) or (b) , or with subsection (6), as the case may be, or if the Commission, for any reason, fails to comply with subsection (10), or if any of the meetings convened in terms of subsection (3) (b) or (6), does not take place or is not finalised, the President may, on the recommendation of the Committee of Privileges of the National Assembly established by section 7(1) (a) of the Powers, Privileges and Immunities of Parliament Act, 1996 (Act 17 of 1996), in terms of subsection (2) appoint any suitable person as the Director.

[Subsec (11) amended by sec 4 of Act 11 of 1999 (which amended Act 30 of 1998).]

(12) The Director shall in the performance of his or her functions under this Act be assisted by staff members of the Public Service appointed to the Directorate of Elections under the Public Service Act, 1995 (Act 13 of 1995).

(13) The Directorate of Elections may, for the purpose of the functions of the Directorate of Elections, obtain the services of any person other than a staff member referred to in subsection (12), on such conditions as may be determined by agreement with such person.

(14) For the purposes of this section, 'Secretary of the National Assembly' means the Secretary of the National Assembly appointed or designated, as the case may be, in terms of Article 52(1) of the Namibian Constitution.

(15) The Directorate of Elections shall report to the Commission.

[Sec 11 substituted by sec 5(1) of Act 30 of 1998 (as amended by sec 3 of Act 11 of 1999).]

*

12

[Sec 12 repealed by sec 2 of Act 23 of 1994.]

PART III

REGISTRATION OF VOTERS (ss 13-38)

13 Persons entitled to register as voters

- (1) Subject to subsection (2), every person who, by virtue of the provisions of Article 17(2) of the Namibian Constitution, is entitled to vote, shall be entitled to be registered as a voter-
- (a) in the case of an election of the President or of members of the National Assembly or of any member of a regional council, in respect of the constituency in which he or she is resident;
 - (b) in the case of an election of members of a local authority council, in respect of the local authority area in which he or she is resident, but subject to Article 111(3) of the Namibian Constitution.

(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) of this section and sections 16(1) and 80(4), a person shall be regarded as being resident in a constituency 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.

[Sec 13 amended by sec 3 of Act 23 of 1994 and substituted by sec 3 of Act 7 of 2003.]

14 Appointment of supervisors of registration, registration officers and assistants

- (1) The Commission shall appoint, for the purposes of the registration of voters in respect of the elections referred to in section 13(1), in respect of each constituency-
- (a) a person to act as supervisor of registration for that constituency and the local authority area or part thereof (if any) situated within the boundaries of that constituency, and to exercise and perform, subject to the direction and control of the Director, the powers, duties and functions conferred upon or assigned to him or her by this Act; and
 - (b) one or more persons to act as registration officers for that constituency and the local authority area or part thereof (if any) situated within the boundaries of that constituency, and to perform, subject to the direction and control of the supervisor of registration concerned, the duties and functions assigned to him or her by this Act,

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

[Subsec (1) substituted by sec 4 of Act 23 of 1994 and by sec 4 (a) of Act 7 of 2003.]

(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)

[Subsec (3) deleted by sec 4 (b) of Act 7 of 2003.]

- (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 Director;
[Subpara (i) substituted by sec 4 (c) of Act 7 of 2003.]
 - (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.

(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 the supervisor of registration concerned, authorised by the Director to do so.

[Para (c) substituted by sec 4 (d) of Act 7 of 2003.]

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

15 General registration of voters

(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.

(1A) Notwithstanding subsection (1), the second general registration of voters after the commencement of this Act shall take place during the period 1 July 2003 to 31 August 2003 in respect of Namibia.

[Subsec (1A) inserted by sec 1 of Act 20 of 2002.]

(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 Application for registration as voter

(1) When for the purposes of any general registration referred to in section 15, a period is determined under that section, any person who during that period is entitled or qualified to be registered as a voter shall, if he or she desires to be registered as a voter-

- (a) for the elections referred to in paragraph (a) of section 13(1) only, apply to any registration officer appointed in respect of the constituency in which he or she is resident, to be so registered;
- (b) for an election referred to in paragraph (b) of section 13(1) only, or for such election and the elections referred to in paragraph (a) of that section, apply to a registration officer appointed for both the constituency and local authority area in which that person is resident, to be so registered,

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

[Subsec (1) amended by sec 5 of Act 23 of 1994 and substituted by sec 5 (a) of Act 7 of 2003.]

(2) A person who applies for registration in terms of subsection (1), shall-

- (a) appear in person before the registration officer concerned or any other official designated by such registration officer to have his or her photograph taken;
- (b) furnish such registration officer with the information necessary to complete the prescribed application form;
- (c) when required by such registration officer to do so, affirm, or on oath confirm, the declaration which appears on the application form and which is required to be made by the applicant; and
- (d) in the presence of 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 fingerprint or mark as such registration officer may require, on that application form.

[Subsec (2) substituted by sec 5 (b) of Act 7 of 2003.]

(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;
 - (iA) a Namibian passport;
[Subpara (iA) inserted by sec 5 (c) of Act 7 of 2003.]
 - (ii) a driving licence or permit containing a recent photograph of him or her, whether issued in or outside Namibia; or
 - (iii) statements under oath or affirmation made by two other persons having identified themselves to the registration officer concerned by producing any document referred to in subparagraph (i), (iA) or (ii) of this paragraph, in which proof of the identity of the first-mentioned person is furnished;
[Subpara (iii) substituted by sec 5 (d) of Act 7 of 2003.]
- (b) in the case of paragraph (b) (i) of that subsection-
 - (i) submits to the registration officer concerned-
 - (aa) any document referred to in paragraph (a) (i) or (iA) of this subsection or any official certified extract from any official birth register in Namibia or any other country from which it appears that the applicant has reached the age of 18 years; or
 - (bb) a statement under oath or affirmation made by either one of his or her natural parents declaring that he or she has reached the age of 18 years; or
[Subpara (i) substituted by sec 5 (e) of Act 7 of 2003.]
 - (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 other official document referred to in paragraph (b) (i) (aa) of this subsection, from which it appears that the applicant was born in Namibia or that the applicant is a Namibian citizen; or
[Subpara (iii) substituted by sec 5 (f) of Act 7 of 2003.]
 - (iv) statements under oath or affirmation 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
[Subpara (iv) amended by sec 5 (g) of Act 7 of 2003.]
- (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.

17 Rejection of incompleeted application form

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

18 Refusal to register applicant

(1) A registration officer shall, after having completed the prescribed application form in accordance with the information furnished by the applicant in terms of section 16, refuse to register the applicant for any of the elections in respect of which the applicant has applied in terms of that section, 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 to register an applicant, he or she shall-

- (a) record the refusal on the application form and complete the prescribed refusal form; and
(b) furnish the applicant concerned with the application form accompanied by the refusal form 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.

[Sec 18 amended by sec 6 of Act 23 of 1994 and substituted by sec 6 of Act 7 of 2003.]

19 Appeal against refusal to register

(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 respect of which such person has applied for registration, in the manner prescribed by subsection (3), but where such refusal relates to that person's application for registration in respect of both a constituency and a local authority area, that person may so appeal against such refusal to the magistrate so designated in respect of both that constituency and local authority area.

[Subsec (1) substituted by sec 7 (a) of Act 7 of 2003.]

(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 the forms referred to in section 18(2) (b) , to such magistrate;
[Para (b) substituted by sec 7 (b) of Act 7 of 2003.]
- (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 refusal form.

[Subsec (8) substituted by sec 7 (c) of Act 7 of 2003.]

(9) If the magistrate dismisses the appeal, he or she shall keep the application and refusal forms in his or her office.

[Subsec (9) substituted by sec 7 (d) of Act 7 of 2003.]

(10) If the magistrate allows the appeal, he or she shall forthwith refer the appellant to the registration officer concerned, and cause the application and refusal forms to be submitted to that registration officer.

[Subsec (10) substituted by sec 7 (e) of Act 7 of 2003.]

20 Registration of applicant

(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-

- (a) duly completing, in accordance with the information contained in the application form, the voter registration card affixed to such application form;
- (b) requiring the applicant-
 - (i) to sign the voter registration card 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 fingerprint 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 voter registration card in the space provided for that purpose or in accordance with the instructions of the registration officer concerned;
- (c) after the provisions of paragraphs (a) and (b) have been complied with, signing and thereafter laminating, in the manner determined by the Director, the voter registration card; and
- (d) after so signing and laminating that voter registration card, issuing 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 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 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 concerned.

- (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 applications received in terms of subsection (3) from a registration officer or officers, a voters' list containing the names, residential addresses and voters' registration numbers of all persons registered as voters, and the constituency or local authority area in respect of which those persons were registered, but shall in the prescribed form compile, in respect of any of those voters who have complied with subsection (3) of section 16 in the manner provided for in subsection (4) (a) (iii) of that section, a separate voters' list;
 - (b) forward such voters' list to the Director to be dealt with in accordance with the provisions of section 21.

[Sec 20 amended by sec 7 of Act 23 of 1994 and by sec 6 of Act 30 of 1998 and substituted by sec 8 of Act 7 of 2003.]

21 Preparation and publication of provisional voters' registers

- Upon receipt of the voters' lists referred to in section 20(4), the Director shall-
- (a) in the prescribed form, cause to be prepared-
 - (i) in respect of the voters registered in respect of a constituency, a provisional national voters' register; and
 - (ii) in respect of the voters registered in respect of a local authority area, a provisional local authority voters' register,
 in a manner *mutatis mutandis* in accordance with the provisions of paragraph (a) of that section;

[Para (a) substituted by sec 9 (a) of Act 7 of 2003.]
 - (b) publish a notice in the *Gazette* specifying the places at, and time during, which copies of such provisional register shall be available for inspection by the public and the period within which objections may be made in respect of the names of voters appearing on any such register;

[Para (b) substituted by sec 8 (a) of Act 23 of 1994.]
 - (c) furnish, free of charge-
 - (i) to every political party registered in terms of section 39, a copy of such provisional national voters' register and provisional local authority voters' register;
 - (ii) to every association or organisation registered in terms of section 42 for the purpose of participating in any election for members of a local authority council, that part of such provisional local authority voters' register which relates to the local authority area in question;

[Para (c) added by sec 8 (b) of Act 23 of 1994.]

- (d) furnish every political party or association or organization referred to in paragraph (c) with copies of the voters' lists.

[Para (d) added by sec 7 of Act 30 of 1998 and substituted by sec 9 (b) of Act 7 of 2003.]

22 Objections against name of person included in provisional voters' register

(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 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 voter registration card issued to the respondent shall cease to be valid, and whereupon the magistrate concerned shall forthwith inform the Director accordingly and transmit that voter registration card to the Director for cancellation.

[Subsec (6) substituted by sec 10 of Act 7 of 2003.]

(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 Statement of case for decision by judge

(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.

(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 Cancellation of voter registration card invalidated by magistrate's allowing objection

(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 voter 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-

- (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.

[Subsec (1) amended by sec 38 (a) of Act 7 of 2003.]

(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 voter registration card in question or cause it to be so seized.

[Subsec (2) amended by sec 38 (a) of Act 7 of 2003.]

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

[Subsec (3) amended by sec 38 (a) of Act 7 of 2003.]

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

[Subsec (4) amended by sec 38 (a) of Act 7 of 2003.]

(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).

[Sec 24 amended by sec 38 (a) of Act 7 of 2003.]

25 Replacement of voter registration card

(1) The Director may, upon application by a person whose voter registration card has been lost, destroyed or has for any reason become illegible, issue to such person a duplicate voter 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 voter registration card shall not be issued on any day determined as a polling day in respect of any election in question.

[Subsec (1) amended by sec 38 (a) of Act 7 of 2003.]

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

[Subsec (2) amended by sec 38 (a) of Act 7 of 2003.]

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

[Subsec (3) amended by sec 38 (a) of Act 7 of 2003.]

(4) The Director may, at his or her discretion, in writing delegate his or her power to issue duplicate voter registration cards under subsection (1) to any staff member in the Directorate of Elections, but shall not be divested of any power so delegated.

[Subsec (4) added by sec 8 of Act 30 of 1998 and amended by sec 38 (a) of Act 7 of 2003.]

[Sec 25 amended by sec 38 (a) of Act 7 of 2003.]

26 Preparation, certification and publication of voters' registers

(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 voter 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) ;

Para (a) amended by sec 38 (a) of Act 7 of 2003.]

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

(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-

- (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.

[Subsec (2) amended by sec 9 (a) of Act 23 of 1994.]

- (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 supervisor of registration appointed for-
 - (i) a constituency, a copy of that part of the national voters' register that relate to that constituency; or
 - (ii) both a constituency and local authority area or part thereof, a copy of that part of the national voters' register and of the local authority voters' register that respectively relate to that constituency and that local authority area.

[Para (b) substituted by sec 9 (b) of Act 23 of 1994 and by sec 11 (a) of Act 7 of 2003.]

(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.

[Subsec (4) substituted by sec 9 (c) of Act 23 of 1994 and by sec 11 (b) of Act 7 of 2003.]

(5) The Director shall, upon the publication of the notice contemplated in subsection (3) (a) , provide every political party with a copy of the voters' register referred to in that subsection.

[Subsec (5) added by sec 9 of Act 30 of 1998 and substituted by sec 11 (c) of Act 7 of 2003.]

27 Original voters' register to be kept for inspection by public

(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.

(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 Supplementary registration of voters

(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.

(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 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.

[Subsec (2) substituted by sec 10 of Act 23 of 1994.]

28A Continuous registration of voters

(1) For the purposes of the inclusion in any voters' register of persons who are qualified for registration as voters but are not so registered, any such person may make application for his or her registration, if not during any subsequent general registration or supplementary

registration, at any other time, except during a period of suspension contemplated in subsection (4).

(2) The provisions of sections 16, 17, 18, 19, 20 (but subject to subsection (3) of this section), 21 (except paragraph (b) thereof), 22, 23 and 24 shall apply in relation to applications referred to in subsection (1) as they apply to applications for registration made during a general registration of voters.

(3) In the application of section 20(4), as applied by subsection (2), a voters' list as contemplated in that section shall, subject to subsection (6) (a), be compiled by the supervisor of registration for each month and be forwarded to the Director not later than the fifteenth day of the following month.

(4) The continuous registration of voters shall be suspended-

- (a) in respect of a general registration of voters determined to take place-
 - (i) under section 15(1), from the date of publication in the *Gazette* of the proclamation under that section;
 - (ii) under section 15(1A), from 1 July 2003,
until the expiry of a period of 30 days from the date of publication in the *Gazette* of the notice contemplated in section 26(3) (a) in relation to such general registration, and shall be so suspended for the whole of Namibia; and
- (b) during any election in terms of section 49(1) or any by-election in terms of section 49(2), from the date that the proclamation under section 50(1) in relation to such election or by-election is published in the *Gazette*, up to and including the sixtieth day after the close of the poll at such election or by-election, whichever is applicable, and shall be so suspended-
 - (i) in the case of an election in terms of section 49(1), for the whole of Namibia; and
 - (ii) in the case of a by-election in terms of section 49(2), for every constituency in respect of which the by-election is held.

[Para (a) substituted by sec 12 (a) of Act 7 of 2003.]

[Subpara (ii) substituted by sec 12 (b) of Act 7 of 2003.]

[Subsec (4) substituted by sec 1 of Act 19 of 1999.]

(5) Subject to subsection (6) (b), the Director shall keep every provisional voters' register prepared in accordance with section 21 from the monthly voters' list contemplated in subsection (3) of this section, available for inspection by the public at his or her office and, if the Commission so determines, at such other place or places as shall be specified by the Director by notice in the *Gazette*, during the first seven working days of the second month following on the month in respect of which such provisional voters' register was prepared.

(6) Where a suspension of the continuous registration occurs by virtue of the provisions of subsection (4)-

- (a) every supervisor of registration concerned shall, notwithstanding the provisions of subsection (3), immediately upon the commencement of that period of suspension compile and forward to the Director the voters' list for the portion of the month preceding the date of such commencement and, unless it has already been forwarded to the Director, also the voters' list for the preceding month as required by subsection (3);
- (b) the Director shall keep every provisional voters' register prepared in accordance with section 21 from the voters lists referred to in paragraph (a), available for inspection by the public at his or her office and, where applicable, at such place or places as may have been specified in a notice referred to in subsection (5), for a period of 7 days commencing on the first working day following on the expiry of the period of 14 days from the date on which such suspension of the continuous registration commenced.

(7) The period of 7 days during which a provisional voters' register is available for inspection in accordance with subsection(5) or (6) (b) , shall for the purposes of section 22(1) be the period within which an objection may be lodged under that section.

[Sec 28A inserted by sec 11 of Act 23 of 1994.]

29 Notification of change in place of residence

When there has been a change in the place of residence or home, with reference to a voter who has been registered in respect of a particular constituency or local authority area, and as a result thereof that voter is no longer entitled to the continuance of his or her registration in respect of that constituency or local authority area, the voter shall notify, for the purposes of section 32, as soon as is practicable after such a change, the Director thereof.

[Sec 29 substituted by sec 12 of Act 23 of 1994 and by sec 13 of Act 7 of 2003.]

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

(1) A voter who, because of a change in his or her place of residence or home, becomes entitled or qualified to be registered as a voter in respect of any other constituency or local authority area, may, subject to subsection (1A), apply to the registration officer concerned in the form determined by the Director to be so registered and shall when so applying surrender to that registration officer the voter registration card previously issued to that voter in terms of section 20(1).

[Subsec (1) substituted by sec 13 (a) of Act 23 of 1994 and by sec 14 of Act 7 of 2003.]

(1A) No application for registration in terms of subsection (1) shall be made during a period contemplated in section 28A(4).

[Subsec (1A) inserted by sec 13 (b) of Act 23 of 1994.]

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

31 Information on registered deaths to be furnished to Director

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.

32 Amendment of voters' registers

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

- (a) adding the name, voter registration number and other particulars of any person-
 - (i) whose inclusion in the relevant voters' register has subsequently been accepted by virtue of any supplementary registration or in accordance with the process of continuous registration;
[Subpara (i) substituted by sec 14 (a) of Act 23 of 1994.]
 - (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;
[Para (a) amended by sec 15 (a) of Act 7 of 2003.]
- (b) removing the name and particulars of any deceased voter or any person-
 - (i) who since his or her name was included in the register in question has ceased to be entitled to registration as a voter in respect of the particular constituency or local authority area under

which his or her name appears in the national voters' register or local authority voters' register;

[Subpara (i) substituted by sec 15 (b) of Act 7 of 2003.]

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

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

[Subpara (iii) substituted by sec 15 (c) of Act 7 of 2003.]

[Para (b) substituted by sec 14 (b) of Act 23 of 1994.]

- (c) transferring the name and other 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 or local authority area, to the appropriate constituency or local authority area;

[Para (c) substituted by sec 14 (c) of Act 23 of 1994 and by sec 15 (d) of Act 7 of 2003.]

- (d) correcting any error on the register in question in the name, voter registration number or other 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

[Para (d) substituted by sec 15 (e) of Act 7 of 2003.]

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

[Para (e) substituted by sec 15 (f) of Act 7 of 2003.]

- (f)

[Para (f) substituted by sec 14 (d) of Act 23 of 1994 and deleted by sec 15 (g) of Act 7 of 2003.]

(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.

33 Return or surrender of voter registration cards

When the name, voter registration number and other 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 voter registration card has been issued to such person, issue or cause to be issued a voter registration card to such person or, if a voter registration 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 voter 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 voter 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 be issued with a new voter registration card containing the correct and complete particulars of such person.

[Sec 33 substituted by sec 16 of Act 7 of 2003.]

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

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.

35

[Sec 35 repealed by sec 15 of Act 23 of 1994.]

36 Voters' registers not invalidated by reason of errors

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.

37 Adjustment of voters' registers on alteration of constituencies

(1) If by reason of any new determination or division of constituencies in terms of this Act or any other law any portion of a constituency as existing before the determination or division, is allocated to another constituency, the Director shall prepare from the current voters' register in question which was 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 on the altered constituencies.

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

[Sec 37 substituted by sec 16 of Act 23 of 1994 and by sec 17 of Act 7 of 2003.]

38 Powers of Director to demand particulars

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 (ss 39-47)

39 Registration as political party

(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 voters' registration numbers of, and has been signed by, at least 500 members to whom a voter 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.

[Subsec (2) amended by sec 38 (a) and (b) of Act 7 of 2003.]

(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 voters' registration numbers of the persons who have signed the declaration; and

[Para (a) amended by sec 38 (b) of Act 7 of 2003.]

- (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 Prohibition of registration as political party in certain circumstances

The Commission shall not direct the Director as 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
- (b) is indecent or obscene or offensive or harmful to public morals.

41 Cancellation of registration as political party

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 Registration of association or organization for elections of local authority councils

(1) The Commission shall on the written application in the prescribed form of any association or organisation, 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 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 a such in terms of this section.

43 Conduct of political parties

(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 Inspection of documents

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 Appeal against decision of Commission

(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.

(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 judgement 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 judgement given or order made in a civil proceeding in the court.

46 Disclosure of foreign financing of political parties

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

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.

PART V
CONDUCT OF ELECTIONS (ss 48-95)
Preliminary arrangements (ss 48-53)

48 Publication of proclamations

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.

49 General elections and by-elections

(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;
- (c) for the election of members of regional councils, on a date determined in accordance with the provisions of section 7 of the Regional Councils Act, 1992;
[Para (c) substituted by sec 18 (a) of Act 7 of 2003.]
- (d) for the election of members of local authority councils, on a date determined in accordance with the provisions of section 8 of the Local Authorities Act, 1992.
[Para (d) substituted by sec 18 (a) of Act 7 of 2003.]

(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.
- (iii)

[Subpara (iii) deleted by sec 18 (b) of Act 7 of 2003.]

(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) of the said Local Authorities Act, 1992,

[Para (b) substituted by sec 18 (c) of Act 7 of 2003.]

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(4A) or 92(4) of the said Local Authorities Act, 1992, as the case may be, in respect of that area.

[Subsec (3) amended by sec 18 (d) of Act 7 of 2003.]

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

(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;
 - (ii) for any member of any regional council in respect of each constituency in respect of which such an election is to take place;
- (iii) for members of any local authority council, in respect of the local authority area in respect of which such an election is to take place,

[Subpara (ii) substituted by sec 19 (a) of Act 7 of 2003.]

[Subpara (iii) substituted by sec 19 (a) of Act 7 of 2003.]

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

[Para (b) substituted by sec 17 (a) of Act 23 of 1994.]

- (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 a day not less than 30 days and not more than 40 days after the nomination day.

[Subsec (3) substituted by sec 17 (b) of Act 23 of 1994.]

(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 (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.

[Subsec (5) substituted by sec 19 (b) of Act 7 of 2003.]

51 Appointment of returning officers and other election officers

- (1) The Commission shall appoint-
- (a) in the case of any election-
 - (i) for the President or members of the National Assembly, for each constituency, and for the polling stations outside Namibia jointly;
[Subpara (i) substituted by sec 2 (a) of Act 19 of 1999.]
 - (ii) for any member of a regional council, for a constituency;
 - (iii) for members of a local authority council, for a local authority area,
[Subpara (iii) substituted by sec 20 (a) of Act 7 of 2003.]
- 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 on him or her by this Act;
[Para (a) substituted by sec 18 (a) of Act 23 of 1994.]
- (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 for each polling station who shall be in control thereof;
[Para (c) substituted by sec 18 (b) of Act 23 of 1994.]
 - (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 and a local authority area referred to in paragraph (a) .
[Subsec (1) amended by sec 18 (c) of Act 23 of 1994, by sec 2 (b) of Act 19 of 1999 and by sec 20 (b) of Act 7 of 2003.]

(2)

[Subsec (2) deleted by sec 18 (d) of Act 23 of 1994.]

(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 Director.
[Para (a) substituted by sec 20 (c) of Act 7 of 2003.]

(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, authorise any returning officer or presiding officer concerned to exercise any power so delegated to him or her under paragraph (b) , (c) or (d) of that subsection, 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.

(7) Every returning officer, presiding officer or polling officer shall, by virtue of his or her

appointment under subsection (1), be competent to take an oath or affirmation from any other person for the purposes of this Act.

[Subsec (7) added by sec 18 (e) of Act 23 of 1994.]

52 Agents of political parties and candidates

(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, subject to subsection (8), 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 15 days after the nomination day for that election, or such later day as the Director in a particular case may allow, 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.

[Subsec (1) substituted by sec 19 (a) of Act 23 of 1994.]

(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 provided, by such number of persons as may be prescribed, appointed, subject to subsection (8), by such political party or candidate not later than seven days before the election in question, as counting agents.

[Subsec (5) substituted by sec 19 (b) of Act 23 of 1994.]

(6) A political party or such candidate shall not later than three days before the election in question furnish the returning officer concerned and, in the case of the determination of the poll in accordance with section 87A, the Director, 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).

[Subsec (6) substituted by sec 19 (c) of Act 23 of 1994.]

(7) When any officer is in terms of this Act required to seal anything 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.

- (8) No person shall be appointed or act as an election agent or counting agent if he or she-
- (a) is a candidate for the election in question; or
 - (b) is not a Namibian citizen.

[Subsec (8) added by sec 19 (d) of Act 23 of 1994.]

53 Declaration of secrecy

(1) Every returning officer, presiding officer, polling officer or counting officer and every agent appointed under section 52, shall before assuming his or her duties or performing any function or attending at any polling station or the place where the result of an election is determined as hereinafter provided, make, in a form determined by the director a declaration of secrecy under oath or affirmation.

(2) Every candidate for any election shall make the declaration of secrecy contemplated in subsection (1) before attending a place where the result of such election is determined.

[Sec 53 substituted by sec 20 of Act 23 of 1994.]

Nomination of candidates for presidential elections (ss 54-58)

54 Requirements for nomination as candidate for presidential elections

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-
 - (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.

55 Submission of nomination as candidate for presidential elections

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

[Subsec (1) substituted by sec 21 (a) of Act 23 of 1994.]

(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
 - (iii) is accompanied by a photo of the candidate in such form and of such colours as may be acceptable to the Chairperson of the Commission, but subject to any requirements laid down by the Commission;

[Subpara (iii) added by sec 21 (b) of Act 23 of 1994.]

- (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 N\$10 000 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 Chairperson of the Commission a list, not later than four o' clock in the afternoon of the second day before the nomination day, containing the names, voters' 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.

[Subpara (ii) substituted by sec 21 (c) of Act 23 of 1994 and by sec 21 (a) of Act 7 of 2003.]

(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 percent 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 of a 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 57(3) have been complied with, be returned to the depositor.

[Para (c) substituted by sec 21 (b) of Act 7 of 2003.]

(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 Chairperson of the Commission any instrument in writing containing such withdrawal, and thereupon such nomination shall lapse.

[Subsec (4) substituted by sec 21 (d) of Act 23 of 1994.]

(5) If the office of the Chairperson of the Commission is vacant or the Chairperson is for any reason unable to perform the functions assigned to him or her by the preceding provisions of this section or section 56, 57 or 88, the members or remaining members of the Commission, as the case may be, shall elect from among their number any other member to act in the place of the Chairperson of the Commission, and who shall, while so acting, be competent to perform any of those functions.

[Subsec (5) added by sec 21 (e) of Act 23 of 1994.]

56 Duration of session on nomination day

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 Chairperson of the Commission shall continue the sitting for such period as will enable such candidate to be duly nominated.

[Sec 56 substituted by sec 22 of Act 23 of 1994.]

57 Declaration of candidates duly nominated for election as President

(1) If the Chairperson of the Commission is satisfied that the provisions of section 55 have been complied with in respect of a nomination, he or she shall declare, as soon as is practicable after the close of the sitting, the candidate concerned to be duly nominated for the election of the President, and shall thereupon notify the candidate concerned by any instrument in writing of such declaration.

[Subsec (1) substituted by sec 23 (a) of Act 23 of 1994.]

(2)

[Subsec (2) deleted by sec 23 (b) of Act 23 of 1994.]

(3) As soon as is practicable after the close of the sitting in terms of section 56, the Commission shall by notice in the *Gazette* make known-

- (a) the full names, voter registration number and residential address of each duly nominated candidate and the political party by whom he or she was nominated or the indication "independent" if a candidate has been so nominated;

[Para (a) amended by sec 38 (b) of Act 7 of 2003.]

- (b) any polling day of the election in question;
- (c) the location of every polling station in a constituency.

[Subsec (3) substituted by sec 23 (c) of Act 23 of 1994.]

(4) When the Chairperson of the Commission rejects a nomination of a candidate submitted in terms of section 55, 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 has 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.

[Subsec (4) substituted by sec 23 (d) of Act 23 of 1994.]

58 Lack of nomination or death of candidate after nomination

(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 (ss 59-60)

59 Submission of party lists

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

[Para (b) amended by sec 38 (b) of Act 7 of 2003.]

(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 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.
- (c) a photo of the head of the political party in question, in such form and of such colours as may be acceptable to the Commission.

[Para (c) added by sec 24 of Act 23 of 1994.]

(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 Publication of party lists

(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*-

- (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 voter 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 voter 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.

[Subsec (2) amended by sec 38 (b) of Act 7 of 2003.]

- (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 (ss 61-66)

61 Requirements for nomination as candidate for regional council elections

- (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 voter registration number of, and has been signed by, such person to whom a voter 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.

[Subsec (3) amended by sec 38 (a) and (b) of Act 7 of 2003.]

62 Submission of nomination as candidate for regional council elections

(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
 - (iii) is accompanied by a photo of the candidate, in such form and of such colours as may be acceptable to the returning officer, but subject to any requirements laid down by the Commission;
- [Subpara (iii) added by sec 25 of Act 23 of 1994.]
- (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 N\$100 has been deposited with the State Revenue Fund, by or on behalf of such political party or candidate; and
- Para (c) substituted by sec 10 of Act 30 of 1998.]
- (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, voters' 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.

[Para (e) amended by sec 38 (b) of Act 7 of 2003.]

(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 Duration of session on nomination day

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 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.

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

(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, voter registration number and residential address of each candidate declared to be duly nominated in respect of the constituency in question; and
[Para (a) amended by sec 38 (b) of Act 7 of 2003.]
- (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, voter 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;
[Para (a) amended by sec 38 (b) of Act 7 of 2003.]
- (b) (i) the full names, voter 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;
[Subpara (i) amended by sec 38 (b) of Act 7 of 2003.]
- (ii) the constituency in respect of which such candidates are nominated;
- (iii) any polling day for the election in question;
- (iv)
[Subpara (iv) deleted by sec 26 (a) of Act 23 of 1994.]
- (v) the location of every polling station in a constituency.
[Subpara (v) substituted by sec 26 (b) of Act 23 of 1994.]

(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 Death of candidate after nomination

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

(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.

(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 (ss 67-72)

67 Requirements for nomination as candidate for local authority council elections

A person shall not be nominated by a political party as a candidate on a list of candidates for a local authority council election, unless he or she-

- (a) qualifies to be a member of that local authority council as contemplated in section 7 of the Local Authority Act, 1992; and
- (b) is a member of that political party.

[Sec 67 substituted by sec 22 of Act 7 of 2003.]

68 Submission of party lists

(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.

(2) A list of candidates referred to in subsection (1) shall contain, subject to the provisions of this section and of section 67, the names, voters' registration numbers and residential addresses of candidates, numbering not less than the number of members required to fill the seats in the local authority council in question to which the political party may become entitled in accordance with the provisions of section 91(1).

(3) The provisions of section 59(2), (4), (5) and (6) and of section 60 shall apply *mutatis mutandis* in relation to such list of candidates as if the election in question were an election for members of the National Assembly.

[Sec 68 amended by sec 27 of Act 23 of 1994 and by sec 11 of Act 30 of 1998 and substituted by sec 23 of Act 7 of 2003.]

69

[Sec 69 repealed by sec 24 of Act 7 of 2003.]

70

[Sec 70 amended by sec 28 of Act 23 of 1994 and repealed by sec 25 of Act 7 of 2003.]

71

[Sec 71 repealed by sec 26 of Act 7 of 2003.]

72

[Sec 72 repealed by sec 27 of Act 7 of 2003.]

General provisions relating to conduct of elections (ss 73-78)

73 Polling stations

(1) The Commission shall for the purpose of facilitating the taking of a poll in any election, establish one or more polling stations at convenient places for a constituency or a local authority area, or for both a constituency and a local authority area or part thereof situated within the boundaries of that constituency.

[Subsec (1) substituted by sec 29 (a) of Act 23 of 1994 and by sec 28 of Act 7 of 2003.]

(2) The allocation of polling stations shall be determined with due observance of-

- (a) the distribution of voters in 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.

[Subsec (2) substituted by sec 29 (b) of Act 23 of 1994.]

(2A) In order to enable voters outside Namibia to record their votes by way of tendered votes at an election for the President or members of the National Assembly, the Commission may establish polling stations outside Namibia at any Namibian diplomatic mission or at such other convenient places as may be determined by the Commission after consultation with the Minister of Foreign Affairs.

[Subsec (2A) inserted by sec 29 (c) of Act 23 of 1994.]

(3) The Commission may authorise 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 every political party concerned and, where applicable, every independent candidate shall be notified thereof as soon as is practicable.

[Subsec (7) substituted by sec 29 (d) of Act 23 of 1994.]

74 Provision of equipment

- (1) For the purposes of any election the Director shall provide every returning officer with-
- (a) polling booths, ballot boxes, ballot papers, instruments for stamping ballot papers with the official mark, a sealed envelope containing an imprint of the official mark, seals and any other requisites as may be considered necessary; and

[Para (a) substituted by sec 12 (a) of Act 30 of 1998.]

- (b) a list of unrecovered voter registration cards of persons whose names-
 - (i) were included in the provisional voters' register but not in the subsequent voters' register;
 - (ii) were removed from the voters' register in terms of subparagraph (i) or (ii) of paragraph (b) of subsection (1) of section 32,

and a returning officer shall do such acts and make such arrangements to facilitate the taking of the poll as may be deemed advisable for effectually conducting the election.

[Para (b) amended by sec 38 (a) of Act 7 of 2003.]

[Subsec (1) substituted by sec 30 (a) of Act 23 of 1994.]

(2) For the purposes of any election, the director shall provide every political party taking part in such election with-

- (a) a list containing the numbers allotted to the ballot boxes; and
- (b) a list containing the serial numbers of the ballot papers,

to be used at each polling station.

[Subsec (2) deleted by sec 30 (b) of Act 23 of 1994 and inserted by sec 12 (b) of Act 30 of 1998.]

(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 Polling booths

(1) The polling booths in or at a polling station shall be arranged in such a way as to permit voters to record their votes in secrecy and shall be so positioned that a person can neither enter nor leave it without being observed.

(2) The presiding officer and a polling officer shall take care that, except in accordance with the provisions of this Act, no other person enters the polling booth while a voter is in it for the purpose of recording his or her vote.

(3) For the purposes of this Act, the expression "polling booth" includes any place or surface in or at a polling station that is screened off in such a way that voters may record their votes in secrecy.

[Sec 75 substituted by sec 31 of Act 23 of 1994.]

76 Ballot box

(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 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.

(1A) The presiding officer at a mobile polling station referred to in section 73(3) shall, in the presence of the persons entitled in terms of section 78(1) to be in attendance at the polling station, and who are so present, and in the prescribed manner-

- (a) before such mobile polling station leaves any venue for a new venue, close and seal the aperture in any ballot box in use at such mobile polling station; and
- (b) at the new venue, reopen the aperture in such ballot box.

[Subsec (1A) inserted by sec 13 (a) of Act 30 of 1998.]

(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.

(3A) When a ballot box is, during any polling day and to the satisfaction of the presiding officer at a polling station, filled with ballot papers, the presiding officer shall in the prescribed manner and in the presence of the persons who may, in terms of section 78(1), be in attendance at the polling station and as are so present, close and seal the aperture in such ballot box.

[Subsec (3A) inserted by sec 13 (b) of Act 30 of 1998.]

(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 in use at that point in time 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.

[Subsec (4) substituted by sec 13 (c) of Act 30 of 1998.]

(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 Commencement and closing of poll at polling stations

- (1) Subject to subsections (2) and (3), the poll for any election shall-
- (a) at polling stations in Namibia, commence at 07h00 and shall close at 21h00 on any polling day; and
 - (b) at polling stations outside Namibia, on the polling day referred to in the proviso to section 80(3), commence and close at the times as the Commission may determine in respect of each such polling station.

(2) The Commission may by notice published in the *Gazette* at any time before the commencement of the poll, alter the polling hours mentioned in paragraph (a) of subsection (1) in relation to any polling station in Namibia in respect of any polling day of an election.

(3) Notwithstanding the provisions of subsection (1), the presiding officer shall permit every voter who at the time of the closing of the poll is inside the room or other enclosure of the polling station to record his or her vote.

[Sec 77 substituted by sec 32 of Act 23 of 1994.]

78 Powers of presiding officers at polling stations

(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-

- (a) a member of the Commission or the Director;
- (b) the returning officer concerned;
[Para (b) substituted by sec 33 (a) of Act 23 of 1994.]
- (c)
[Para (c) deleted by sec 33 (b) of Act 23 of 1994.]
- (d) any election agent entitled to attend at the polling station;
[Para (d) substituted by sec 33 (c) of Act 23 of 1994.]
- (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 (ss 79-85)

79 Franchise

(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.

80 Place of voting

(1) Subject to the provisions of this section, no person shall record his or her vote at any place other than at a polling station established, as the case may be, for the constituency or local authority area in respect of which he or she is registered.

[Subsec (1) substituted by sec 34 (a) of Act 23 of 1994 and by sec 29 (a) of Act 7 of 2003.]

(2) (a) Where, at an election for a member of a regional council or for members of a local authority council, any voter who is employed as a returning officer, presiding officer, polling officer, counting officer or police officer at such election and, by reason of such employment, will be unable to attend on any polling day at a polling station at which he or she is in accordance with subsection (1) or (4) required to record his or her vote, the returning officer for the constituency or local authority area in respect of which such voter is registered, shall-

- (i) at the request of any such voter made at any time during the period mentioned in paragraph (b) ; and
- (ii) upon production and surrender by him or her to the returning officer of a written authorization issued by the Director stating that the voter concerned is by reason of such employment permitted to record his or her vote in terms of this subsection,

allow such voter to record his or her vote, subject to paragraphs (c) and (d) , in accordance with the provisions of section 82.

[Para (a) substituted by sec 34 (b) of Act 23 of 1994 and amended by sec 29 (b) of Act 7 of 2003.]

(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 authorisation 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.

(3) Where, at an election for the President or members of the National Assembly, any voter is by reason of absence unable to attend on any polling day at a polling station at which he or she is in accordance with subsection (1) required to record his or vote, the presiding officer of any other polling station, whether in or outside Namibia, shall, at the request of such voter, permit such voter to record his or her vote by way of a tendered vote at that polling station during the polling hours applicable to that polling station by virtue of the provisions of section 77: Provided that where at such an election the poll is been determined to take place over more than one day, a voter shall, at a polling station outside Namibia, be entitled to so record his or her vote only on the first day of the polling days so determined.

[Subsec (3) added by sec 34 (c) of Act 23 of 1994.]

(4) Where both the elections referred to in paragraph (b) of section 82A(1) are conducted simultaneously as contemplated in that section, a voter shall if he or she desires to record a vote in respect of-

- (a) an election for a member of a regional council only, record that vote at any polling station established for the constituency in respect of which or she is registered;
- (b) an election for members of a local authority council only, or for such election and the election referred to in paragraph (a) , record that vote at the polling station established for both the constituency and local authority area in respect of which he or she is registered.

[Subsec (4) added by sec 29 (c) of Act 7 of 2003.]

81 Voting to be by secret ballot

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

(2) Every ballot paper shall be in the form as prescribed and shall contain-

- (a) in the case of an election on party lists-
 - (i) the names, in alphabetical order, of the political parties taking part in the election;
 - (ii) the abbreviated name, if any, of each such political party;
 - (iii) the distinctive symbol, if any, of each such political party; and
 - (iv) the photo of the head of each such political party submitted in accordance with section 59(4); or
- (b) in the case of an election otherwise than on party lists-
 - (i) the surnames, in alphabetical order, of all the duly nominated candidates at that election and such other names or initials of such candidates as the Commission may determine;
 - (ii) the name and, if any, the abbreviated name and distinctive symbol of the political party by whom each such candidate was nominated or, if a candidate was not nominated by a political party, the word "independent"; and
 - (iii) a photo of each candidate; and
- (c) such other particulars as may be prescribed.

[Subsec (2) substituted by sec 35 of Act 23 of 1994.]

82 Manner of voting at elections

(1) The voting at any polling station shall at 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 stamp on the back of every ballot paper in a ballot paper book the official mark before such ballot paper book is handed to a polling officer for the issue of ballot papers to voters at the election in question.

[Subsec (2) substituted by sec 36 (a) of Act 23 of 1994.]

(3) No voter shall be permitted to vote in any election unless he or she produces his or her voter registration card for the election in question to the presiding officer or a polling officer.

[Subsec (3) amended by sec 36 (b) of Act 23 of 1994 and substituted by sec 30 (a) of Act 7 of 2003.]

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

- (a) by examining and by asking relevant questions relating to the particulars appearing on the voter registration card produced to him or her by a voter in terms of subsection (3) that-
- (i) the voter is the person whose name, photograph and other particulars appear on that voter registration card; and
- (ii) the voter registration card is a voter registration card officially issued to the voter in terms of the provisions of Part III;

[Para (a) amended by sec 36 (c) of Act 23 of 1994 and substituted by sec 30 (a) of Act 7 of 2003.]

- (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 list of unrecovered voter registration cards referred to in section 74(1) (b) , whether the name of the voter, voter registration number or other particulars which appear on the voter registration card produced by the voter appear on that list.

[Para (c) substituted by sec 36 (d) of Act 23 of 1994 and by sec 30 (c) of Act 7 of 2003.]

(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 who is present an opportunity to observe such identification mark, and shall not permit the voter to vote.

[Para (c) substituted by sec 36 (e) of Act 23 of 1994.]

(d) If any person has in terms of paragraph (c) been prohibited from voting, the presiding officer shall endorse the relevant voters' register to the effect that such person was so prohibited.

[Para (d) substituted by sec 30 (d) of Act 7 of 2003.]

(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) If, in accordance with the provisions of subsection (4) (c) , the presiding officer or polling officer establishes that the name, voter registration number and other particulars which appear on the voter registration card produced by a voter appear on the list referred to in that subsection, the presiding officer or polling officer shall not permit such voter to vote by virtue of that voter registration card, and shall seize such card.

[Subsec (6) substituted by sec 36 (f) of Act 23 of 1994 and by sec 30 (e) of Act 7 of 2003.]

(7) After having complied with the provisions of subsection (4), the presiding officer or polling officer shall return the voter registration card to the voter concerned.

[Subsec (7) amended by sec 36 (g) of Act 23 of 1994 and substituted by sec 30 (f) of Act 7 of 2003.]

(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 (8), the presiding officer or a polling officer shall-

- (a) enter the voter registration number of the voter in the ballot paper book on the counterfoil of a ballot paper which bears on the back thereof the official mark;

[Para (a) substituted by sec 30 (h) of Act 7 of 2003.]

- (b) detach such ballot paper from its counterfoil and deliver it to the voter; and
(c) if the voter has requested to record his or her vote by way of a tendered vote, deliver to such voter, together with the ballot paper, a tendered vote envelope on which the presiding officer or polling officer has endorsed the name of the constituency in respect of which the voter is registered.

[Subsec (9) substituted by sec 36 (h) of Act 23 of 1994 and amended by sec 30 (g) of Act 7 of 2003.]

(10) Upon receiving the ballot paper, the voter shall-

- (a) enter a polling booth provided at the polling station ;
(b) secretly record his or her vote on the ballot paper by marking-
(i) in the case of an election on party lists, the ballot paper with a cross in the space opposite the name of the political party for which he or she desires to vote; or
(ii) in the case of an election otherwise than on party lists, the ballot paper with a cross in the space opposite the name of the candidate for whom he or she desires to vote;
(c) while still in the polling booth, fold the ballot paper in such a way that the official mark is visible and the names of the political parties or candidates, as the case may be, and the mark signifying his or her vote are not visible;
(d) leave the polling booth and display the ballot paper to the presiding officer or a polling officer in such a way that the official mark can be seen and, in the case of a voter voting by way of a tendered vote, in the presence of the presiding officer or a polling officer, place the ballot paper in the tendered vote envelope and seal it; and
(e) in the presence of the presiding officer or a polling officer, drop, as the case may be-
(i) the ballot paper in the ballot box for ordinary votes;
(ii) the tendered vote envelope in the ballot box for tendered vote envelopes.

[Subsec (10) substituted by sec 36 (i) of Act 23 of 1994.]

(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 relevant voters' register shall be endorsed to that effect.

[Subsec (11) substituted by sec 30 (i) of Act 7 of 2003.]

82A Voting process at elections held simultaneously

- (1) Where under section 50(1)-
- (a) an election for the President and an election for members of the National Assembly; and/or
 - (b) an election for any member of a regional council and an election for members of a local authority council,

have been determined to take place on the same polling day, the voting process at polling stations shall be conducted jointly for both such elections.

- (2) Notwithstanding anything to the contrary contained in this Act where, a political party has, in respect of-
- (a) the elections referred to in subsection (1) (a) , nominated a candidate for election to the office of President as well as candidates for election as members of the National Assembly; or
 - (b) the elections referred to in subsection (1) (b) , nominated a candidate for election as a member of a regional council as well as candidates for election as members of a local authority council,

that political party shall be entitled to appoint as election agents for a polling station only such number of persons as is prescribed in respect of any one of such elections.

- (3) Where a voting process is conducted as contemplated in subsection (1), any voter who attends a polling station for the purpose of recording his or her vote, shall-
- (a) if he or she desires to record a vote in respect of both the elections referred to in paragraph (a) or (b) of that subsection, record such votes on the occasion of such attendance, and no voter shall, after such attendance, be allowed to record any vote at any polling station on any subsequent occasion; and
 - (b) irrespective as to whether he or she desires to record a vote in respect of both the elections referred to in paragraph (a) or (b) of that subsection, be required to subject himself or herself to identification with the identification mark contemplated in section 82(5) as that voter would have been required to do had the voting process been conducted in respect of one of the elections only.

[Sec 82A inserted by sec 37 of Act 23 of 1994 and substituted by sec 31 of Act 7 of 2003.]

83 Spoilt ballot papers

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 Assistance to voters

(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 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 booth 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 booth, 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;

[Para (b) substituted by sec 38 (a) of Act 23 of 1994.]

- (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 booth.

[Subsec (3) substituted by sec 38 (b) of Act 23 of 1994.]

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

(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;
- (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) all voter registration cards seized in terms of section 82(6);

[Subpara (iv) amended by sec 38 (a) of Act 7 of 2003.]

- (v) the stamp for the official mark 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 to the returning officer concerned such sealed ballot boxes and packets.

[Subsec (1) substituted sec 39 (a) of Act 23 of 1994.]

(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 sealed ballot boxes 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 boxes and unused and spoiled ballot papers.

[Subsec (3) substituted by sec 39 (b) of Act 23 of 1994.]

Determination of result of poll and announcement of result of election (ss 86-95)

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

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.

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

(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, other than the returning officer for polling stations outside Namibia, shall-

- (a) open the sealed ballot boxes relating to a particular polling station received from the presiding officer in terms of section 85 and verify the correctness of the return furnished by the presiding officer in terms of subsection (3) of that section;
- (b) after such verification-
 - (i) prepare a report on the result thereof;
 - (ii) allow any counting agent or candidate to make a copy of the report; and
 - (iii) cause the report to be delivered or transmitted to the Director;
- (c) open the packet referred to in section 80(2) (d) , remove from the authorization envelopes the ballot papers and mix them, still folded, with the other ordinary ballot papers;
- (d) after ascertaining that each ordinary ballot paper bears on the back thereof the official mark referred to in section 82(2), count the votes recorded on such ballot papers-
 - (i) in the case of an election on party lists, for each political party; or
 - (ii) in the case of an election otherwise than on party lists, for each candidate; and
- (e) once the counting of the ordinary ballot papers in terms of paragraph (d) has been completed-
 - (i) sort all the tendered vote envelopes according to the constituencies indicated thereon; and
 - (ii) remove the ballot papers from such envelopes and, in respect of each constituency, count the votes recorded on those ballot papers in the manner contemplated in paragraph (d) .

[Subsec (2) substituted by sec 40 (a) of Act 23 of 1994 and by sec 3 of Act 19 of 1999.]

(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)

[Subsec (6) deleted by sec 40 (b) of Act 23 of 1994.]

87A Verification and counting of tendered votes cast at polling stations outside Namibia

At the time and place notified under section 86 for the counting of votes cast by way of tendered votes at polling stations outside Namibia, and if the ballot boxes, packets and returns contemplated in section 85(3) have been received from all those polling stations, the returning officer appointed for such polling stations shall-

- (a) examine the seals of all ballot boxes and packets and afford counting agents and, in the case of an election for the President, also any candidates who are present an opportunity to do the same;
- (b) open each such sealed ballot box and verify the correctness of the return furnished by the presiding officer in terms of section 85(3);
- (c) after such verification-
 - (i) prepare a report on the result thereof;
 - (ii) allow any counting agent or candidate to make a copy of the report; and
 - (iii) cause the report to be delivered or transmitted to the Director;
- (d) remove from all the ballot boxes the tendered vote envelopes and sort them according to the constituencies indicated thereon;
- (e) remove from the tendered vote envelopes the ballot papers and, in respect of each constituency, count the votes recorded on those ballot papers in the manner contemplated in section 87(2) (d) , (3), (4) and (5).

[Sec 87A inserted by sec 41 of Act 23 of 1994 and substituted by sec 4 of Act 19 of 1999.]

88 Determination and announcement of result in Presidential elections

(1) At an election for the President a returning officer shall, when the counting of votes in accordance with section 87 or 87A has been completed, and whether or not the return referred to in section 85(3) was found to be correct, announce in the prescribed manner the result of such count and inform the Chairperson of the Commission thereof.

[Subsec (1) substituted by sec 42 (a) of Act 23 of 1994 and by sec 5 of Act 19 of 1999.]

(2) When the Chairperson of the Commission has received all the results in accordance with subsection (1), and he or she has established the number of votes recorded for each candidate or, where only one candidate was nominated for election as President, for such candidate, he or she shall determine in accordance with Article 28(2) (b) of the Namibian Constitution the candidate to be declared duly elected as President.

[Subsec (2) substituted by sec 42 (b) of Act 23 of 1994.]

(3) Upon determining the result of the election in accordance of subsection (2), the Chairperson of the Commission shall in the prescribed manner announce the result, by-

- (a) making known the total number of votes counted in the election and, in respect of each candidate or, where only one candidate was nominated for election as President, the number of votes recorded for him or her; and
- (b) declaring-

- (i) the candidate determined in accordance with subsection (2) duly elected as President with effect from such date as shall be determined in accordance with the relevant provisions of the Namibian Constitution; or
- (ii) if no candidate has received the requisite number of votes referred to in article 28(2) (b) of the Namibian Constitution, that no candidate has been duly elected as President.

[Subsec (3) substituted by sec 42 (c) of Act 23 of 1994.]

(4) The Chairperson of the Commission 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.

[Subsec (4) substituted by sec 42 (d) of Act 23 of 1994.]

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

89 Determination and announcement of result in National Assembly elections

(1) At an election for members of the National Assembly a returning officer shall, when the counting of votes in accordance with section 87 or 87A has been completed, and whether or not the return referred to in section 85(3) was found to be correct, announce in the prescribed manner the result of such count and inform the Director thereof.

[Subsec (1) substituted by sec 43 (a) of Act 23 of 1994 and by sec 6 of Act 19 of 1999.]

(2) The Director shall in accordance with the results received by him or her from returning officers in terms of subsection (1), determine in the manner provided in Schedule 4 to the Namibian Constitution the number of candidates of each political party to be declared duly elected as members of the National Assembly.

[Subsec (2) substituted by sec 43 (b) of Act 23 of 1994 and by sec 32 of Act 7 of 2003.]

(3) Upon determining the result of the election in accordance with subsection (2), the Director shall in the prescribed manner announce the result, by-

- (a) making known the total number of votes counted and the appropriate quota determined in accordance with the provisions of paragraph 1 of 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 purpose 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 such date as shall be determined in accordance with the relevant provisions of the Namibian Constitution.

[Subsec (3) substituted by sec 43 (c) of Act 23 of 1994.]

(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 Determination and announcement of result in regional council elections

(1) When all the votes in respect of all the 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 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.

91 Determination and announcement of result in local authority council elections

(1) When at an election for members of a local authority council all the votes have been counted and the number of votes recorded for each political party taking part in such election has been determined, the returning officer concerned shall determine *mutatis mutandis* in the manner referred to in section 89(2), the number of candidates of a political party that is in terms of subsection (2) of this section to be declared 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.

(2) As soon as is practicable after the result of a local authority council election has been determined as contemplated in subsection (1), the returning officer concerned shall in the prescribed manner announce that result, by-

- (a) making known the total number of votes counted and the appropriate quota determined in accordance with the provisions 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, to which a political party shall be entitled; and
- (b) declaring-

- (i) those candidates who appear on the list of candidates of each political party in respect of which a number of seats has been determined and who have been nominated from that list by that political party as members of the council in question to fill the seats; and
 - (ii) if the number of seats determined in respect of a political party is more than the candidates available on the list of candidates of that political party, a person who qualifies to be a member of the council in question and who has been nominated in the prescribed manner in writing for that purpose by the political party and who 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.

(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 there appears on any list of candidates referred to in 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 that subsection, that name shall for the purposes of that subsection be deemed not to appear on the list in question.

[Sec 91 substituted by sec 33 of Act 7 of 2003.]

92 Publication of result of elections

(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 Sealing and safe keeping of election material

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

- (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 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 safekeeping of all the packets received in terms of this Part, and shall retain them until such time as the Commission directs otherwise.

(4) 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 purpose of an election application, or 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.

[Subsec (4) substituted by sec 14 of Act 30 of 1998.]

(5)

[Subsec (5) deleted by sec 44 of Act 23 of 1994.]

94 Verification of elections by Director

(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.

(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 Immaterial mistakes not to affect validity of elections

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.

PART VI

OFFENCES AND PENALTIES (ss 96-108)

Registration of voters (s 96)

96 Offences in connection with registration of voters

- (1) Any person who-
- (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 voter registration card issued to any other person -
 - (i) uses or threatens to use violence against the person or his or her next of kin or property of any person or his or her next of kin; or
 - (ii) does or omits to do, or threatens to do or omits to do anything, to the loss, detriment, disadvantage or prejudice of any person or his or her next of kin; or

[Para (a) amended by sec 38 (a) of Act 7 of 2003.]

- (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 disturbs, hinders or interferes with such registration; or
- (c) with the intent to defraud duplicates, copies, forges, falsifies or fabricates any voter registration card or any document purporting to be a voter registration card, or utters or is in possession of any document so duplicated, copied, forged, falsified or fabricated; or
[Para (c) substituted by sec 34 (a) of Act 7 of 2003.]
- (d) not being an officer or magistrate or other person acting within the course of his or her duties under or for the purposes of this Act, issues or purports to issue a voter registration card or destroys, mutilates or defaces any voter registration card, or except in accordance with the provisions of this Act, places any writing or mark on any voter registration card; or
[Para (d) substituted by sec 34 (b) of Act 7 of 2003.]
- (e) is found in possession of a voter registration card not issued to him or her, without being able to give a satisfactory explanation for his or her possession of it, or is found in possession of more than one voter registration card issued to him or her for the election in question; or
[Para (e) substituted by sec 34 (c) of Act 7 of 2003.]
- (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 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(8) (b) ;
[Para (i) substituted by sec 34 (d) of Act 7 of 2003.]
- (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 voter registration card; or
Para (n) amended by sec 38 (a) of Act 7 of 2003.]
- (o) wilfully issues to any person a voter registration card knowing that such person does not qualify in terms of the provisions of this Act to be issued with a voter registration card,
[Para (o) substituted by sec 34 (e) of Act 7 of 2003.]

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 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 (s 97)

97 Offences in connection with nomination of candidates

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.

Political parties (s 98)

98 Offences in connection with foreign financing of political parties

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.

Voting procedures and polling stations (ss 99-102)

99 Neglect of duty

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.

100 Infringement of secrecy

(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.

(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, 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.

101 Disturbance of proceedings and obstruction of officers

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 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 loud speaker, 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 Offences in connection with voting, polling stations and equipment

Any person who-

- (a) for the purpose to have a ballot paper issued to him or her knowingly produces to any presiding officer or polling officer a voter registration card issued to or in the name of some other person, living or dead, or a fictitious person, or a voter registration card which has been altered with intent to deceive, or any document purporting to be but not being a voter registration card; or
[Para (a) amended by sec 38 (a) of Act 7 of 2003.]
- (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 voter 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 voter registration card; or
[Para (b) amended by sec 38 (a) of Act 7 of 2003.]
- (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 authorisation 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 authorisation ballot paper envelope; or
- (g) without due authority destroys, takes, opens, uses or otherwise interferes with any ballot box, polling booth, instrument, form, document or other equipment used or intended for use at any polling station; or
[Para (g) substituted by sec 45 of Act 23 of 1994.]
- (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 (ss 103-108)

103 Meaning of corrupt and illegal practices in Act

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.

104 Undue influence

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 Bribery

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

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

106 Impersonation

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 Corrupt procurement or withdrawal of candidate

Any person who-

- (a) corruptly induces or procures any other person to become a candidate or to withdraw as a candidate in any election in consideration of any payment or promise of any nature; 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 Treating

Any person who-

- (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 (ss 109-120)

109 Powers of High Court in relation to election applications

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.

110 Presentation of election applications

(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 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 List of election applications

(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.

(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 Persons who may present election applications

(1) An election application may be presented by-

- (a) a voter registered for the election in question;
- (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.

113 Service of applications

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.

114 Joinder of co-applicant

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.

115 Election applications to be in prescribed form

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.

116 Trial of applications

(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.

(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 chief 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 announcement of the result of the election published in the *Gazette*, accordingly.

[Subsec (6) substituted by sec 35 (a) of Act 7 of 2003.]

(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.

(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 judgement, 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 chief 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.

[Subsec (10) substituted by sec 35 (b) of Act 7 of 2003.]

117 Transmission of statement and evidence to Prosecutor-General

(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.

118 Witnesses

(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.

119 Withdrawal of applications

(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 Costs

(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 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 (ss 121-133)

121 Director to keep list of persons becoming incapable

(1) The Director shall keep in respect of each constituency or local authority area a list of names, voters' registration numbers and residential addresses of all persons who in terms of this Act have become incapable of being registered or of remaining registered as voters or of voting at the election in question.

[Subsec (1) substituted by sec 46 of Act 23 of 1994 and by sec 36 of Act 7 of 2003.]

(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.

122 Removal of in capacity proved by perjury

(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.

123 Voter not required in legal proceedings to disclose his or her vote

No person who has voted at an election shall in any legal proceedings, be required to state for whom he or she has voted.

124 Evidence of election being held

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.

125 Publication and service of notices

(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 or, if the Commission so determines, at the offices of the Director.

[Subsec (1) substituted by sec 47 of Act 23 of 1994.]

(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.

126 Saturdays, Sundays and public holidays

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 Saturday, 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 Saturday, Sunday or public holiday, which is not a Saturday, Sunday or public holiday, as the case may be: Provided that the provisions of this section shall not apply to any polling day which falls on a Saturday, Sunday or such a public holiday.

[Sec 126 substituted by sec 48 of Act 23 of 1994.]

127 Exemption from stamp duty

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.

128 Payments and expenditure under this Act

(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.

129 Penalties not expressly provided

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.

130 Regulations and forms

(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 or local authority areas, or different elections under this Act or different political parties, as the circumstances may require.

[Subsec (4) substituted by sec 49 of Act 23 of 1994 and by sec 37 of Act 7 of 2003.]

(5) The Commission shall publish or cause to be published any regulation made under this section, in the *Gazette*.

131 Designation of constituency of certain purposes

(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 nominations 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 Repeal of laws

(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 Short title

This Act shall be called the Electoral Act, 1992.

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 (Constituents 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
Proclamation AG. 20 of 1979	Rehoboth First Election of a Kaptein Proclamation, 1979	The whole
Proclamation AG. 1 of 1980	Elections for Owambo, Kavango, the Mbanderos and the Bushmen Postponement Proclamation, 1980	The whole
Proclamation AG. 2 of 1980	Rehoboth Self-government Proclamation, 1980	The whole
Proclamation AG. 22 of 1980	Voters' lists for Legislative Authorities Proclamation, 1980	The whole
Proclamation AG. 46 of 1980	Divisional Elections Proclamation, 1980	The whole
Proclamation AG. 54 of 1980	Party List Elections Proclamation, 1980	The whole
Proclamation AG. 57 of 1980	Party List Elections Amendment Proclamation, 1980	The whole
Proclamation AG. 63 of 1980	Voters' Lists for Legislative Authorities Amendment Proclamation, 1980	The whole
Proclamation AG. 24 of 1981	Party List Elections Amendment Proclamation, 1981	The whole
Proclamation AG. 21 of 1982	Postponement of Elections in Rehoboth Proclamation, 1982	The whole
Proclamation AG. 23 of 1982	Legislative Assembly of the Damaras Special General Election Proclamation, 1982	The whole
Proclamation AG. 13 of 1984	Filling of a Casual Vacancy in the Legislative Assembly of the Coloureds Proclamation, 1984	The whole
Proclamation AG. 31 of 1984	Postponement of Elections in Rehoboth Proclamation, 1984	The whole
Ordinance 4 of 1986 of the former Legislative Authority of the Whites	Electoral Ordinance, 1986	The whole
Act 5 of 1989	Party List Elections Amendment Act, 1989	The whole

Proclamation AG. 11 of 1989	Commission for the Prevention and Combating of Intimidation and Election Malpractices Proclamation, 1989	The whole
Proclamation AG. 19 of 1989	Registration of Voters (Constituent Assembly) Proclamation, 1989	The whole
Proclamation AG. 43 of 1989	Registration of Political Organizations (Constituent Assembly) Proclamation, 1989	The whole
Proclamation AG. 49 of 1989	Election (Constituent Assembly) Proclamation, 1989	The whole
Proclamation AG. 59 of 1989	Election (Constituent Assembly) Amendment Proclamation, 1989	The whole
Proclamation AG. 62 of 1989	Constituent Assembly Proclamation 1989	The whole