

Zambia

## Local Government Elections Act, 1991 Chapter 282

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# Zambia

## Local Government Elections Act, 1991

### Chapter 282

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*[Act No. 21 of 1991; 26 of 1992; 18 of 1992; 31 of 1993; 13 of 1994; 14 of 1994]*

**An Act to provide for the conduct of local government elections; to establish the Local Government Electoral Commission and to specify the functions thereof; and to provide for matters incidental to or connected with the foregoing.**

### Part I – Preliminary

#### 1. Short title

- (1) This Act may be cited as the Local Government Elections Act.
- (2) Application

Subject to subsection (3), the provisions of this Act shall not apply in relation to any election held before the expiry of the interim period and the law in force immediately prior to the commencement of this Act relating to elections to a council shall continue to apply in relation to such elections until the expiry of the interim period.

- (3) Nothing in this section shall be construed as to prohibit the making of any statutory instrument under this Act during the interim period for the purpose of regulating the conduct of any election following the expiry of the interim period or providing for the division of the areas of councils into wards and prescribing the boundaries of such wards for the purpose of any election following the expiry of the interim period.

#### 2. Interpretation

- (1) In this Act, unless the context otherwise requires—

"**area**", in relation to a council, has the meaning assigned to it by section two of the Local Government Act;

"**by-election**" means an election held in accordance with section twelve;

"**candidate**" means any person nominated as a candidate for election as a councillor;

"**casual vacancy**" means a vacancy in the office of councillor occurring by virtue of section nineteen of the Local Government Act;

"**Commission**" means the Local Government Electoral Commission established under section three;

"**corrupt practice**" means any act punishable under section forty-one;

"**costs**" include charges and expenses;

"**council**" means a city council, municipal council, township council or district council established or deemed to be established under the Local Government Act;

"**councillor**" means a person elected under this Act to the office of councillor of a council;

"**Director of Elections**" means the person for the time being holding or acting in the public office of Director of Elections;

"**District Executive Secretary**" in relation to a council, has the meaning assigned to it by section two of the Local Government Act;

"**election**" means an election to the office of councillor of a council;

"**election officer**" has the meaning assigned to it in section six;

"**election petition**" means an election petition referred to in section eighteen;

"**employee**", in relation to a council, has the meaning assigned to it by section two of the Local Government Act;

"**illegal practice**" means any act which is an illegal practice under Part VI;

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

"**officer**", in relation to a council, has the meaning assigned to it by section two of the Local Government Act;

"**ordinary election**" means an election held in accordance with section ten;

"**petitioner**", in relation to an election petition means any person referred to in section nineteen who signs and presents such election petition under section twenty-one, and includes any person substituted for the petitioner under section twenty-five or twenty-six;

"**polling district**" means a polling district declared to be such under section seventeen of the Electoral Act;

"**register of voters**" means a register of voters prepared and in force under the Electoral Act;

"**registered**" means registered in a register of voters and "registration" shall be construed accordingly;

"**Registrar**" means the Registrar of the High Court;

"**respondent**" has the meaning assigned to it under section twenty-one;

"**returning officer**" means a person appointed as such under this Act;

"**voter**" means a person entitled to vote at an election under section fourteen;

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

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

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

- (iii) any moneys deposited by or on behalf of a candidate with an election officer under any provision of this Act relating to the nomination of candidates for election.

*[Cap. 281; Cap. 13]*

## **Part II – Local Government Electoral Commission**

### **3. Local Government Electoral Commission**

- (1) There is hereby established a Local Government Electoral Commission for the purpose of supervising the conduct of elections held under this Act.
- (2) The Commission shall consist of a Chairman and two other members who shall be appointed by the President.
- (3) A person shall not be qualified for appointment as Chairman of the Commission unless he holds or has held high judicial office.
- (4) A person shall not be qualified for appointment as a member of the Commission if he is a member of the National Assembly, or a councillor, or an officer or any employee of a council.
- (5) If the office of Chairman or if any other member of the Commission falls vacant or the holder of the office becomes unable for any reason to discharge his functions as a member of the Commission, the President may appoint another person qualified for appointment to be the Chairman or, a member of the Commission, as the case may be.
- (6) In the exercise of its functions under this Act, the Commission shall not be subject to the direction or control of any other person or authority.

### **4. Secretary to Commission**

The President shall appoint a Secretary to the Commission who shall discharge such functions as the Commission may direct.

### **5. Procedure of Commission**

- (1) The Commission may, by regulation regulate its own procedure and confer powers or impose duties on any officer or authority of the Government or of a council for the purpose of discharging its functions.
- (2) Any decision of the Commission shall require the support of the majority of its members.
- (3) Subject to subsection (2), the Commission may act notwithstanding the absence of any member or any vacancy in the office of any member.

### **6. Appointment of election officers**

- (1) The Commission may appoint such election officers as it may consider necessary for the purpose of any election and, subject to the other provisions of this section, any election officer may exercise such functions relating to an election as may be prescribed by the Commission.
- (2) In respect of any election, an election officer may, if so empowered by the Commission under regulations made under section eight, appoint any fit person to be an election officer and may in any case, subject to the general or special directions of the Commission, appoint any fit person to assist him in the exercise of his functions under this Act;

Provided that an election officer may at any time, in such manner as may be prescribed, revoke an appointment made by him under this subsection.

- (3) Every election officer shall, before exercising any of the functions of his office, take and subscribe such oath or make such affirmation in lieu of the Oath, as the Commission may prescribe.
- (4) The Commission may at any time revoke the appointment of an election officer.
- (5) Every election officer shall be paid such remuneration and allowances in respect of his duties as the Commission may determine.
- (6) In this section, "election officer" means a person appointed under this Act to be—
  - (a) a returning officer;
  - (b) a presiding officer;
  - (c) a polling assistant; or
  - (d) a counting assistant;

and includes any person appointed by an election officer under subsection (2); and where functions are conferred on the Director of Elections under this Act in respect of an election, includes the Director of Elections.

## **7. Conduct and expenses of Local Government elections**

- (1) The conduct of every election shall be subject to the direction and supervision of the Commission.
- (2) The costs of, and incidental to, the conduct of any election in any ward of a council shall be paid out of moneys appropriated by Parliament for the purpose:

Provided that, notwithstanding any such appropriation, such council shall pay into the general revenues of the Republic the amount of such costs, or such lesser amount as the Minister may prescribe, by statutory order, in respect of such council.
- (3) Where any question arises as to the amount of the costs referred to in subsection (2), a certificate under the hand of the Minister stating the amount of the costs shall be conclusive and shall not be questioned in any proceedings whatsoever.

## **8. Powers of Commission**

- (1) Subject to the other provisions of this Act, the Commission may, by statutory instrument, make regulations providing for the procedure and manner of conducting every election, and may, at any time, issue instructions to any election officer in connection with his functions under this Act and may require any election officer to furnish to the Commission such information and returns as it may consider necessary.
- (2) Without prejudice to the generality of subsection (1), the Commission may, by statutory instrument, make regulations providing for all or any of the following matters:
  - (i) the division of the area of councils into wards;
  - (ii) the establishment of polling stations in a ward;
  - (iii) the nomination of candidates for any election; and the withdrawal of nominations duly made;
  - (iv) the making and determination of appeals against the rejection of nominations by a returning officer;
  - (v) the publication of names of candidates whose nominations are accepted;
  - (vi) the payment of election fees by candidates;
  - (vii) the use, and the allocation of, symbols at an election;



- (viii) the appointment, and the duties of, election agents and polling agents;
  - (ix) the fixing of dates and times for the taking of polls;
  - (x) the equipment and facilities to be provided at polling stations;
  - (xi) the persons who may be admitted to polling stations;
  - (xii) the manner and procedure of voting at an election;
  - (xiii) the manner of ascertaining the identity of persons wishing to vote at elections and whether such persons are qualified to vote;
  - (xiv) the manner in which persons who are blind, or otherwise incapacitated, may vote;
  - (xv) voting by persons employed on election duties on the day of an election;
  - (xvi) the maintenance of secrecy at elections;
  - (xvii) the postponement of, the adjournment of, or an extension of, time for a poll in case of riot or open violence at an election;
  - (xviii) the administering of oaths or affirmations by election officers in respect of such matters as may be prescribed;
  - (xix) the procedure to be followed at the conclusion of a poll in an election;
  - (xx) the procedure for counting votes in an election, and the circumstances in which votes in an election may be rejected by a returning officer as invalid;
  - (xxi) for the purpose of declaring any candidate duly elected, the procedure to be followed where there is an equality of votes between candidates in an election;
  - (xxii) the procedure to be followed where only one person or where no person is duly nominated for election in a ward;
  - (xxiii) the declaration, notification and publication of the result of an election;
  - (xxiv) the custody and disposal of nomination papers, ballot papers, records, documents and other things relating to the conduct of elections;
  - (xxv) election expenses and returns relating to such expenses;
  - (xxvi) the notification and publication of any casual vacancy in the elected membership of a council;
  - (xxvii) the forms and records to be used for any of the purposes of this Act; and
  - (xxviii) any matter to be prescribed under this Act.
- (3) Regulations made under this section may provide in respect of any contravention of them that any such contravention shall be a corrupt practice or an illegal practice and that any offender shall be liable, on conviction, to a fine not exceeding eight hundred penalty units or to a term of imprisonment not exceeding two years, or to both.
- (4) No prosecution for an offence against this Act shall be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.
- (5) Subject to the provisions of subsection (4), a police officer may arrest without warrant any person reasonably suspected by the police officer of having committed or attempted to commit an offence against this Act.

*[As amended by Act [No. 13 of 1994](#)]*

### Part III – Delimitation of wards

#### 9. Division of area of councils into wards

- (1) Not later than six months after the appointment of the members of the Commission under section three, and whenever thereafter it is necessary to do so to give effect to the provisions of this section, the Commission shall, after consultation with every council, by statutory order, divide the area of each council into wards, defining the boundaries of the wards by reference to polling districts, and assigning names to the wards.
- (2) The number of wards into which the area of a council is divided shall be equal to the number of elected councillors prescribed in respect of that council by the Minister under the Local Government Act.
- (3) The Commission shall exercise its powers under this section that each ward comprises one or more complete polling districts.
- (4) Whenever the Minister alters the area of a council or the number of councillors of a council, the Commission shall after consultation with such council, by statutory order, make such alterations to the boundaries of the wards of such council or to the division of the area of such council into wards as may be necessary to give effect to the provisions of this section.
- (5) Whenever the Commission is satisfied that there has been a material alteration in the number of registered voters in the area of a council or of any of the wards into which such area is divided, the Commission may, after consultation with the council concerned, exercise in respect of the area of that council or any part of the council the powers conferred by this section.

### Part IV – Holding of elections

#### 10. Ordinary elections 1992

- (1) An ordinary election of councillors in every ward of every council throughout Zambia shall be held in 1992 and in every third year thereafter, on such date as the President shall, by statutory order, prescribe:

Provided that—

- (a) a poll shall not be taken in any ward in respect of which only one candidate is validly nominated for election; or
  - (b) where for any reason no candidate is elected at an election in any ward further elections shall be held in the ward until a candidate is duly elected.
- (2) Whenever—
    - (a) a new council is established; or
    - (b) an alteration is made in the division of the area of an existing council into wards or in the definition of the boundaries of any ward;

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

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

*[As amended by Act [No. 26 of 1991](#) and [No. 31 of 1993](#)]*

## 11. Nomination of candidates

- (1) Subject to subsection (2), every candidate for election in a ward of a council shall be nominated by means of a nomination paper in such form as may be prescribed, and such nomination paper shall be subscribed, in the presence of the returning officer for that council, by a proposer and a seconder and not less than seven other persons, each of whom shall be a voter registered in a polling district in such ward.
- (2) Any person presenting himself to a returning officer for the purpose of subscribing a nomination paper under subsection (1) shall identify himself by producing his voter's registration card and his national registration card to the returning officer for inspection.
- (3) In this section—

"national registration card" means a valid national registration card issued under the National Registration Act;

"Voter's registration card" means a valid voter's registration card issued under the Electoral Act.

*[Cap. 126; Cap. 13]*

## 12. By-elections

- (1) Subject to the other provisions of this section, a byelection to fill a casual vacancy in the office of a councillor shall be held on such date as the Commission may, by statutory order, prescribe, being a date not later than ninety days after the date when notification of the vacancy was received by the Commission.  
  
Provided that a poll shall not be taken in any by-election in respect of which only one candidate is validly nominated for election.
- (2) Unless the Commission otherwise, by statutory order, directs, a by-election to fill a casual vacancy in the office of a councillor shall not be held in any ward in which an ordinary election of councillors is or may be required to be held under section ten.
- (3) A statutory order this section shall specify the day or days on which, and the hours within which, returning officers may receive nominations of candidates for election in any ward to which such order relates.

## 13. Representation of wards and tenure of office

There shall be one councillor elected for each ward into which the area of a council is divided and, without prejudice to the Local Government Act, every councillor of a council shall hold office for the duration of the period expiring immediately before the result of the next ordinary election held in respect of that council or in respect of the ward for which he is elected councillor, as the case may be, is duly declared.

*[Cap. 285]*

## 14. Qualification for voting

- (1) Subject to the other provisions of this Act—
  - (a) every person who, at the time when any election is held in any ward under this Act, is registered in a register of voters relating to any polling district in that ward; or
  - (b) is any established resident of Zambia, who is a rate payer and has resided in the area of that council for a minimum period of three years; and who has attained the age of eighteen years.shall be entitled to vote at elections under this Act in the prescribed manner.

- (2) Every person shall, whenever he wishes to vote at an election under this Act, identify himself to an election officer in such manner as may be prescribed and no person shall be entitled to vote more than once at any such election.

*[As amended by Act [No. 18 of 1992](#)]*

### **15. Disqualification from voting**

No person shall be entitled to vote at an election under this Act who—

- (a) has been convicted of any corrupt practice or illegal practice within a period of five years preceding that election;
- (b) has been reported guilty of any corrupt practice or illegal practice by a court upon the trial of an election petition under this Act within a period of five years preceding that election; or
- (c) is in lawful custody at the date of that election.

### **16. Qualification of councillors**

Subject to the provisions of section seventeen, a person shall be qualified for election as a councillor of any council if, and shall not be qualified to be so elected unless—

- (a) he is a citizen of Zambia;
- (b) he has attained the age of twenty-one years; and
- (c) he is ordinarily resident in the area of that council

### **17. Disqualification of councillors**

- (1) A person shall not be qualified for election as a councillor if he—
- (a) is, under any law in force in Zambia, adjudged or declared to be of unsound mind;
  - (b) is under sentence of death imposed on him by any court in Zambia or a sentence of imprisonment has been imposed on him by that court or is substituted by a competent authority for some other sentence imposed on him by that court;
  - (c) is an undischarged bankrupt, adjudged or declared bankrupt under any law in force in Zambia, or has made a composition or arrangement with his creditors and has not paid his debts in full;
  - (d) is an officer or an employee of a council;
  - (e) has on the day, for nomination or of election to the council, not paid the rate, charge or tax due to the council or to any other Local Authority and has been notified; or
  - (f) is an election officer.
- (2) No person convicted of corrupt practices or illegal practices by a court of law after an election petition under this Act, shall be qualified to be nominated for election as a councillor for a period of five years from the date of that conviction.
- (3) In this section, the reference to a sentence or imprisonment includes a sentence or imprisonment which is suspended or a sentence of imprisonment imposed in default of payment of a fine.

*[As amended by Act [No. 18 of 1992](#)]*

## Part V – Election petitions

### 18. Avoidance of elections

- (1) No election of a candidate as a councillor shall be questioned except by an election petition presented under this Part.
- (2) The election of a candidate as a councillor shall be void on any of the following grounds if it is proved to the satisfaction of the court upon the trial of an election petition:
  - (a) that by reason of any corrupt practice committed in connection with the election or by reason of other misconduct, the majority of voters in a ward were or may have been prevented from electing the candidate in that ward whom they preferred;
  - (b) subject to subsection (4), that there has been a non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the court that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election;
  - (c) that any corrupt practice or illegal practice was committed in connection with the election by, or with the knowledge and consent or approval of, the candidate or his election agent or his polling agents; or
  - (d) that the candidate was at the time of his election a person not qualified or a person disqualified for election as a councillor.
- (3) Notwithstanding subsection, (2) where upon the trial of an election petition, the court finds that any corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of the election petition, and the court further finds that such candidate has proved that—
  - (a) no corrupt practice or illegal practice was committed by the candidate himself or by his election agent, or with the knowledge and consent or approval of the candidate or his election agent;
  - (b) the candidate and his election agent took all reasonable means for preventing the commission of corrupt practice or illegal practice at such election; and
  - (c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or his election agent;then, the court shall not, by reason only of such corrupt practice or illegal practice, declare that the election of such candidate was void.
- (4) No election shall be declared void by reason only of any act or omission by an election officer in breach of his official duty in connection with an election if it appears to the court that the election was so conducted as to be substantially in accordance with the Act, and that such act or omission did not affect the result of that election.

### 19. Who may present election petition

An election petition may be presented to the court by one or more of the following persons:

- (a) a person who lawfully voted or had a right to vote at the election to which the election petition relates;
- (b) a person claiming to have had a right to be nominated as a candidate or elected as councillor at the election to which the election petition relates; or
- (c) a person alleging himself to have been a candidate at the election to which the election petition relates; or

- (d) the Attorney-General.

## 20. Relief which may be claimed in election

- (1) Any of the following reliefs may be claimed in any petition:
  - (a) a declaration that the election was void; or
  - (b) a declaration that any candidate was duly elected.
- (2) In addition to the reliefs, specified in subsection (1), a petitioner may apply to the court, upon the trial of an election petition, for a scrutiny to be carried out by the court in such manner as the court may determine.
- (3) On a scrutiny at the trial of an election petition, the following votes only shall be held invalid:
  - (a) the vote of any person whose name was not on the register of voters assigned to the polling station at which the vote was cast or who was not authorised to vote at such polling station under this Act;
  - (b) the vote of any person whose vote was procured by any corrupt practice or illegal practice;
  - (c) the vote of any person who committed or procured the commission of personation at the election to which the election petition relates, contrary to this Act;
  - (d) the vote of any person proved to have voted more than once at the election to which the election petition relates; or
  - (e) the vote of any person who was disqualified from voting at the election to which the election petition relates.

- (4) In this section—

"scrutiny" means an inquiry as to the validity of the votes cast, including the determination of the number of valid votes cast, for each candidate in the election in respect of which the application for a scrutiny is made,

## 21. Form and procedure for presentation of election petitions

- (1) Every election petition shall be in such form and shall contain such matters as may be prescribed by rules made by the Chief Justice.
- (2) Presentation of an election petition to the court shall be made by lodging it with the Registrar in accordance with this Act.
- (3) Every election petition shall be signed by the petitioner, or by all the petitioners if more than one, and shall be presented not later than thirty days after the date on which the result of the election to which it relates is duly declared.
- (4) Notwithstanding subsection (3), when the election of a councillor (hereinafter referred to as "the respondent") is questioned upon an allegation of a corrupt practice or an illegal practice, the election petition may be presented—
  - (a) at any time before the expiry of twenty-one days after the day on which the returning officer receives the return of the election expenses of the respondent; or
  - (b) if the election petition specifically alleges a payment of money or some other act to have been made or done since the day referred to in paragraph (a) by the respondent or his election agent, or with the privity of the respondent or of his election agent in pursuance or in furtherance of the corrupt practice or illegal practice alleged in the election petition, at any time within thirty days after the date of such payment or other act.

- (5) Where an election petition is presented under this section, the Registrar shall in writing so inform the Commission and the principal officer of the council to which the petition relates.

## **22. Duty of Registrar to make out list of election petitions**

- (1) Subject to subsection (2), the Registrar shall make out a list of all election petitions presented under this Act, placing them on such list in the order in which they are presented and he shall keep at his office a copy of such list which shall be open for inspection by any person making application for inspection of it.
- (2) Every election petition shall, unless the court orders otherwise, be tried in the order in which it stands on the list made out by the Registrar under subsection (1), but where more election petitions than one are presented in respect of the same election, such election petitions shall be bracketed together and shall be dealt with as one petition, standing, unless the court orders otherwise, in such list in the place where the last of such election petitions would have stood if it had been the only election petition presented in respect of that election.

## **23. Rules of practice and procedure; security for costs**

- (1) Subject to this Act, the Chief Justice may make rules regulating generally the practice and procedure of the court with respect to the presentation and trial of election petitions, including rules as to the time within which any requirement of such rules is to be complied with, and as to the costs of and incidental to the presentation and trial of election petitions and as to the fees to be charged in respect of proceedings therein, and generally in regard to any other matter relating thereto as the Chief Justice may consider necessary or desirable.
- (2) After the presentation of an election petition, every petitioner to the petition shall deposit in the court, as security for costs, such sum being not less than one thousand kwacha as the court may order, and such security shall be given within such time and in such manner and form as the Chief Justice may prescribe by rules under this section, or, in the absence of such rules, as the court may order.
- (3) Where, after the presentation of an election petition, no security for costs is given as required by or under this section, such petition shall be dismissed by the court and shall be struck off the list made out under section twenty-two:

Provided that the court may, in respect of any election petition dismissed under this subsection, as aforesaid, make such order as to costs as it may consider just.

## **24. Withdrawal of election petitions**

- (1) A petitioner shall not withdraw an election petition without the leave of the court.
- (2) No application for leave to withdraw an election petition shall be made until notice of intention to withdraw such election petition has been given in such manner as the Chief Justice may prescribe by rules under section twenty-three.
- (3) Where an election petition is presented by two or more petitioners, an application to withdraw such election petition shall not be made except with the consent of all the petitioners to the petition.
- (4) The court may, upon an application for leave to withdraw an election petition, make such order as to costs as it may think just.

## **25. Substitution of new petitioners**

- (1) Upon the hearing of an application under subsection twenty-four for leave to withdraw an election petition, any person who might have been a petitioner in respect of the election to which that election petition relates may, notwithstanding section twenty-one, apply to the court to be substituted for the petitioner so applying to withdraw, and the court may, if it gives leave to

such petitioner to withdraw, order that such person (hereinafter referred to as "the substituted petitioner") be substituted for such petitioner.

- (2) Subject to the other provisions of this section, the substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities under this Act as the petitioner for who he is substituted (hereafter referred to as "the original petitioner").
- (3) Where the court makes an order under subsection (1) it may direct that the security for costs given by the original petitioner shall remain as security for any costs caused thereafter by the substituted petitioner upon the trial of the election petition, and may direct that, to the extent of the amount of such security, the original petitioner shall be liable to pay the costs of the substituted petitioner.
- (4) Unless the court gives directions as provided in sub-section (3), subsections (2) and (3) of section twenty-three shall apply to the substituted petitioner as they apply in relation to a petitioner presenting an election petition.

## **26. Abatement of election petitions**

- (1) If a sole petitioner or the survivor of several petitioners dies, then, subject to the other provisions of this section, no further proceedings shall be had on the election petition.
- (2) The death of a petitioner shall not affect his liability for the payment of costs previously incurred.
- (3) On the abatement of an election petition under sub-section (1), any person who might have been a petitioner in respect of the election to which that election petition relates may, notwithstanding section twenty-one apply to the court to be substituted as a petitioner in place of the deceased petitioner and the court may, if it thinks fit, order that such person be substituted accordingly.
- (4) Where the court makes an order under this section for the substitution of a person in place of a deceased petitioner such person shall, as nearly as may be, stand in the same position and be subject to the same liabilities under this Act as the deceased petitioner would have been but for his death, and subsections (2) and (3) of section twenty-three shall apply to such person as they apply in relation to a petitioner presenting an election petition.

## **27. Trial of election petitions**

- (1) Subject to the other provisions of this Act, every election petition presented under this Act shall be tried and determined by the court.
- (2) An election petition shall be tried in open court.
- (3) The court may adjourn the trial of an election petition from time to time and from place to place.
- (4) Subject to the other provisions of this Act, the court may, in respect of the trial of an election petition, exercise such powers within its civil jurisdiction as it may deem appropriate.
- (5) On the trial of an election petition, a record of all evidence given orally in such trial shall be taken, and this record shall, at the conclusion of the proceedings, be delivered to the Secretary of the Commission by the Registrar.

## **28. Provisions as to witnesses**

- (1) On the trial of an election petition, the court may—
  - (a) order any person who appears to the court to have been concerned in the election to attend as a witness at such trial;
  - (b) examine any witness or any person who is present at such trial although such witness or person is not called as a witness by any party to the proceedings:

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



- (2) A person who is called as a witness at the trial of an election petition shall not be excused from answering any question relating to any offence connected with an election on the ground that the answer thereto may tend to incriminate him, or on the ground of privilege:
- Provided that—
- (i) a witness who answers to the satisfaction of the court every question which he is required to answer under this section, and which answers may tend to incriminate him, shall not be liable to prosecution for any offence committed by him in connection with that election and in respect of which he is so examined, and such witness shall be entitled to receive a certificate of indemnity under the hand of the Registrar stating that he is freed and discharged from liability to prosecution for that offence;
  - (ii) an answer by a witness to a question before the court under this section shall not, except in the case of any criminal proceedings for giving false evidence in respect of such evidence, be admissible in any proceedings, civil or criminal, in evidence against him.
- (3) Where a person has received a certificate of indemnity under subsection (2), and any legal proceedings are at any time brought against him for any offence to which such certificate relates, the court having cognisance of the case shall, on proof of the certificate of indemnity, stay such proceedings and may award to that person such costs as he may have been put to in such proceedings.
- (4) All reasonable expenses incurred by any person in attending at or appearing before the court to give evidence as a witness at the trial of an election petition shall be allowed to such a person according to the scale of allowances and expenses appropriate in civil proceedings before the court.

## 29. Conclusion of trial of election petition

- (1) At the conclusion of the trial of an election petition, the court shall determine whether the respondent, any other and which person, was duly elected, or whether the election to which the election petition relates was void, and the Registrar shall, as soon as may be, submit a copy of such determination to the Commission and to the principal officer of the council to which the petition relates.
- (2) Where the court determines under subsection (1) that the respondent was duly elected, such election shall be and remain valid.
- (3) Where the court determines under subsection (1) that the respondent was not duly elected but that some other person was duly elected, such other person shall be deemed to have been elected accordingly.
- (4) Where the court determines under subsection (1) that the respondent was not duly elected, and that no other person was duly elected at the election concerned, the vacancy in the membership of the council in respect of which that election was held shall be deemed to continue until duly filled.
- (5) Where a determination under subsection (1) alters the result of an election as previously declared, it shall be the duty of the Commission to publish the result as so altered in the *Gazette*.
- (6) Where it appears to the court upon the trial of an election petition that any corrupt practice or illegal practice has been committed by any person in connection with the election to which such election petition relates, the court shall, at the conclusion of the proceedings, prepare a report stating—
  - (a) the evidence given in the proceedings in respect of such corrupt practice or illegal practice;

- (b) the names and particulars of any person by whom such corrupt practice or illegal practice was, in the opinion of the court, committed:

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

- (7) The Registrar shall deliver a copy of every report prepared by the court under subsection (6) to—
  - (a) the Commission; and
  - (b) the Director of Public Prosecutions.

### 30. Provisions as to costs

- (1) Subject to the other provisions of this section, all costs, charges and expenses of and incidental to the presentation and trial of an election petition shall be borne in such manner and in such proportions as the court may order, and in particular, any costs which in the opinion of the court have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.
- (2) Where, on the trial of an election petition, the court determines that the respondent was not duly elected and is of the opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the election petition from all or a portion of the costs thereof, then—
  - (a) if the court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function *bona fide* made by any election officer, it may, after sufficient notice to the Attorney-General to show cause to the contrary, make such order as to the payment by the State of the costs of the proceedings or a portion thereof, as it may consider proper;
  - (b) if the court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function *mala fide* made by an election officer, it may, after sufficient notice, to such officer to show cause to the contrary, make such order as to the payment by such election officer of the costs of the proceedings or a portion thereof, as it may consider proper.
- (3) The court may, on application made by any person to whom any costs, charges or expenses are payable under this Act, order the costs, charges or expenses to be paid out of any deposit made to secure the costs, charges or expenses or by any surety who gave a recognisance to secure the costs, charges or expenses:

Provided that notice of such application shall be given, in such manner as may be prescribed by rules under section twenty-three, to the party by or on whose behalf such deposit was made or for whom such surety gave a recognisance, requiring such party, or such surety and such party, as the case may be, to state, within such time and in such manner as may be so prescribed, whether he resists the application.
- (4) Where, on the trial of an election petition, any person appears to the court to have been guilty of any corrupt practice or illegal practice relating to the election which is the subject of such election petition, the court may, after giving that person an opportunity of making a statement to show why the order should not be made, order the whole or a portion of the costs of or incidental to the trial of such election petition to be paid by the said person to such person or persons as the court may determine.
- (5) Execution may be levied under any order for payment made by the court under this section in the same manner and to the same extent as execution may be levied under a judgement for the payment of money.

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

## Part VI – Corrupt and illegal practice and election offences

### 31. Bribery

Any person who, directly or indirectly, by himself or any other person—

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

shall be guilty of the offence of bribery.

### 32. Personation

Any person who—

- (a) at any election applies for a ballot paper in the name of some person, living or dead, or of a fictitious person;
- (b) having voted once at any election, applies again at the same election for a ballot paper; or

- (c) votes or induces or procures any person to vote at any election knowing that he or that person is not entitled to vote at that election;

shall be guilty of the offence of personation.

### 33. Treating

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

### 34. Undue influence

- (1) Any person who directly or indirectly, by himself or by any other person—
  - (a) makes use of or threatens to make use of any force, violence or restraint upon any other person;
  - (b) inflicts or threatens to inflict by himself or by any other person, or by any supernatural or non-natural means, any temporal or spiritual injury, damage, harm or loss upon or against any person; or
  - (c) does or threatens to do anything to the disadvantage of any person;in order to induce or compel that person—
  - (i) to sign or refrain from signing a nomination paper;
  - (ii) to vote or refrain from voting; or
  - (iii) to refrain from offering himself as a candidate for an election;on account of that person having—
  - (A) signed or refrained from signing a nomination paper;
  - (B) voted or refrained from voting at any election; or
  - (C) refrained from offering himself as a candidate; shall be guilty of the offence of undue influence.
- (2) Any person who, by abducting, duress or any fraudulent device or contrivance impedes or prevents the free exercise of his vote by any voter or thereby compels, induces or prevails upon any vote at any election shall be guilty of the offence of undue influence.

### 35. Penalty

Any person who is guilty of the offence of bribery, personation, treating or undue influence shall be liable on conviction to a fine not exceeding eight hundred penalty units or to imprisonment for a period not exceeding two years, or to both.

*[As amended by Act No. 13 of 1994]*

### 36. Illegal practice of publishing false statements in respect of candidates

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

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

### **37. Illegal practice in respect of nomination of candidates**

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

### **38. Illegal practice in respect of voters**

Any person who at an election obstructs a voter either at the polling station or on his way thereto or therefrom shall be guilty of an illegal practice.

### **39. Illegal practice in respect of public meetings**

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

### **40. Illegal practice in broadcasts**

Any person who, with intent to influence persons to give or refrain from giving their votes at an election, uses or procures the use of any wireless transmitting station outside the Republic shall be guilty of an illegal practice.

### **41. Penalty for illegal practices**

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

*[As amended by Act [No. 13 of 1994](#)]*

### **42. Election offences**

- (1) Any person who—
- (a) forges or counterfeits or fraudulently destroys any ballot paper of any person;
  - (b) without due authority, supplies or causes to be supplied any ballot paper to any person;
  - (c) without due authority, puts into any ballot box any ballot paper which is not authorised by law to put in;
  - (d) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person;
  - (e) not being a person entitled under this Act or the regulations made thereunder to be in possession of a ballot paper, official seal or official mark, has any such ballot paper or official seal or official mark in his possession;
  - (f) puts into any ballot box anything other than the ballot paper which he is authorised by law to put in;
  - (g) without due authority, takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;

- (h) without due authority, destroys, takes, opens or otherwise interferes with any ballot box or packet or ballot paper in use or intended to be used for the purpose of an election;
- (i) without due authority, prints or makes any ballot paper or what purports to be or is capable of being used as a ballot paper at an election;
- (j) manufactures, constructs, has in his possession, supplies or uses for the purpose of any election, or causes to be manufactured, constructed, supplied or used for the purpose of any election, any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box in the course of polling at any polling station;
- (k) on any polling day, at the entrance of or within a polling station, or in any public or private place within four hundred metres from the entrance to such polling station—
  - (i) canvasses for votes;
  - (ii) solicits the vote of any person;
  - (iii) induces any person not to vote; or
  - (iv) induces any person not to vote for a particular candidate;
- (l) on a polling day loiters in any public place within four hundred metres from the entrance to any polling station;
- (m) on any polling day exhibits in any public or private place within one hundred metres from the entrance to any polling station any notice or sign, other than an official notice or sign authorised by an election officer, relating to the election;
- (n) not being a presiding officer, a polling assistant, a candidate or a polling agent in the course of his functions within a polling station, makes any record showing that any particular person has voted in an election;
- (o) without lawful authority, destroys, mutilates, defaces or removes any notice which is exhibited under the regulations made under this Act or any such regulations;
- (p) wilfully obstructs or interferes with an election officer in the execution of his duties;
- (q) makes a false answer to any question lawfully put to him by a presiding officer or polling assistant in connection with the conduct of an election;
- (r) having been lawfully required or directed by an election officer to leave a polling station or its precincts fails to comply with such requirement or direction;
- (s) associates himself or any candidate with or uses any symbol in the course of an election unless such symbol is authorised for such purpose or use by regulations made under this Act;
- (t) within the period appointed for the receipt of nominations under Part IV, loiters in any public place within four hundred metres from the entrance to a nomination office;

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

*[As amended by Act No. 13 of 1994]*

- (2) In a prosecution for an offence in relation to nomination paper, ballot box or ballot paper, the property in such nomination paper, ballot box or ballot paper, as well as the property in the counterfoil of any ballot paper may be stated to be in the returning officer at that election.

#### 43. Secrecy

- (1) Every person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at such station and shall not communicate, except for some purpose authorised by law,

to any person any information as to the name or number on the register of voters of any voter who has or who has not applied for a ballot paper or voted at such polling station, or as to the official mark or official seal at such polling station.

- (2) No person, except a presiding officer acting under the provisions of this Act, shall obtain or attempt to obtain in a polling station information as to the candidate for whom any person in such polling station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any person in such polling station is about to vote or has voted, or as to the number on the ballot paper issued to any person at such polling station.
- (3) Every person in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting and shall not ascertain or attempt to ascertain at such counting the number on any ballot paper or communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper.
- (4) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding eight hundred penalty units or to imprisonment for a term not exceeding two years, or to both.

*[As amended by Act [No. 13 of 1994](#)]*

#### **44. Offences by election officer**

Any election officer who wilfully fails to perform the functions of his office under this Act or the regulations made thereunder shall be guilty of an offence and liable on conviction to a fine not exceeding eight hundred penalty units or to imprisonment for a term not exceeding two years, or to both.

*[As amended by Act [No. 13 of 1994](#)]*

#### **45. Offences by printers and publishers**

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

#### **46. Penalty for attempt to commit certain offences**

Any person who attempts to commit an offence which is a corrupt practice or illegal practice or an offence against section forty-eight shall be guilty of an offence and shall, on the conviction, be liable to the punishment prescribed for the offence commission of which is attempted.

### **Part VII – Miscellaneous**

#### **47. \*\*\***

*[Repealed by Act [No. 17 of 1994](#)]*

#### **48. When incapacity may be removed**

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

#### 49. No person required to state how he voted

No person who has voted at an election shall in any proceedings, whether brought under this Act or otherwise, be required to state for whom he has voted.

#### 50. Evidence as to holding of election

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

#### 51. Validation of certain documents

No misnomer or any inaccurate description of any person or place in any register, list, nomination paper, notice or other document required for the purpose of this Act shall affect the full operation of the document in respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

#### 52. Transitional provisions in respect of elections in 1991

Notwithstanding anything to the contrary in this Act, the following provisions shall have effect in relation of election to be held in 1991, under subsection (1) of section two:

- (a) where the Minister makes an order under the Local Government Act altering the area of a council or declaring that any area shall cease to be a municipality or a township or a rural area, as the case may be or altering the number of elected councillors of any council, and order made prior thereto under subsection (1) of section ten shall cease to have effect in relation to any such area or council;
- (b) where the Minister makes an order referred to in paragraph (a) in respect of any area or council, any order made prior thereto under subsection (1) of section nine shall cease to have effect in relation to such area or council;
- (c) where the Minister makes an order referred to in paragraph (a) in respect of any area or council, the Commission shall, after such consultation with such other authority as it may consider necessary or desirable, exercise its powers under section ten in relation to such area or council in conformity with, and in such manner as may be necessary to give effect to the provisions of, the said order of the Minister;
- (d) where the Minister makes an order referred to in paragraph (a) in respect of any area or council, no order shall be made by the President under subsection (1) of section ten in respect of such area or council until the Commission has exercised its powers in relation to such area or council as provided in paragraph (c);
- (e) where the Minister makes an order referred to in paragraph (a) in respect of any area or council, the foregoing provisions shall have effect in relation to such area or council as from the date of publication of the order in the *Gazette* and, notwithstanding that such order is expressed to come into operation at a later date, any order made by the Commission under section nine as provided in paragraph (c) and any order made by the President under section ten as provided in paragraph (d) in relation to such area or council prior to such later date shall be considered to have effect as from the date of publication thereof in the *Gazette*;
- (f) where the Minister makes an order referred to in paragraph (a) altering the area of a council, any reference in this Act a council to all, for the purposes of this section and as from the date of publication of the order in the *Gazette*, be deemed to include a reference to a council as so altered;
- (g) where the Minister makes an order referred to in paragraph (a) declaring that any area shall cease to be a municipality or a township or a rural area, any reference in this Act to a council shall, for the purposes of this section and as from the date of publication of the order in the *Gazette*, be deemed



not to be a reference to the council for such municipality or township or rural area, as the case may be.

*[Cap. 281]*